

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

Project on Social Control and Human Rights

Research Paper (Final Draft)

SOCIAL CONTROL AND HUMAN RIGHTS: A CASE STUDY OF THE ROMA IN EUROPE

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I. INTRODUCTION

1. Roma and others regarded as ‘Gypsies’ continue to face major burdens of discrimination throughout Europe. They are subject to a range of policies and measures that result in deprivation of their liberty and have been the focus of control measures of various kinds. In the context of a project undertaken by the International Council on Human Rights Policy (ICHRP) on new modes of social control and their impact on human rights, it has been decided to undertake particular examination of social control measures on Roma and others regarded as ‘Gypsies’.
2. Examining human rights issues facing Roma – particularly those facing Roma in Europe -- can be enlightening because the measures undertaken illuminate the scope and impact of social control measures. Following a summary of pre-modern social control approaches to ‘Gypsies’, this paper will focus on how control measures in the following policy contexts have impacted the human rights of the Roma: (1) policing and surveillance; (2) urban planning, housing and control of urban spaces in general (3) punishment and incarceration; (4) control over non-citizens and migrants; (5) health and medical control. Thereafter, conceptual discussion examines these issues briefly in light of several of the frameworks applied by the ICHRP project. The paper concludes that, although indeed there have been a number of advances in recent year in social control measures with very troubling human rights implications (and that these have had sserious, serial, direct impact on Roma), as concerns Roma, most of these are new manifestations of practices existing since at least the late 19th century; the modern state has placed ‘Gypsies’ at the centre of its pre-occupations with excluding the other. ‘New’ social control methods are old social control methods with a changing face.

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II. ROMA, HUMAN RIGHTS AND SOCIAL CONTROL

A. Pre-Modern and Modern Measures

3. The Roma are a European ethnic group with ancestral links to India. Roma first arrived in Europe in the 14th and 15th centuries.² The Romani language is closely related to modern Hindi, Urdu and Panjabi, although it evidently took on its contemporary features in the Byzantine and Ottoman Empires.³ Particularly as a result of a strong stigma on “Gypsies”, Roma are frequently associated with other marginal, pariah and/or peripatetic groups in Europe, to the point that it may be difficult or impossible in all cases to establish clearly a border between Romani and other “Gypsy” groups. Margalit and Matras attempt to distinguish between non-Romani groups regarded as “Gypsies” on the one hand, and Roma on the other, by drawing a distinction between what they term “Gypsy I” and “Gypsy II”. “Gypsy I”, in their usage, is “a common term associated with a lifestyle or socio-economic organizational form, irrespective of origin, language or traditions”, while “Gypsy II” stands “for a population which shares a language (albeit split into several dialect groups), traditions and beliefs, and ultimately originating in India”.⁴ Because this paper concerns social control measures applied on grounds motivated by the perception of deviance or other perceived non-normative behaviour, the persons at issue in this paper are “Gypsy I”. However, because of objections to the term “Gypsy” arising from a number of Roma rights groups, this paper will frequently refer to “Roma and others regarded as Gypsies”.
4. The history of Roma in Europe is frequently written in social control terms. Following an early period of apparent tolerance, pre-modern Western European social control efforts were crude. They included for example hanging the bodies of executed Roma on the border of principalities to discourage other Roma from arriving. This can be contrasted with measures in the Ottoman European possessions – southeastern Europe, today the home of very large Romani populations and in many ways the Romani heartland – which appear primarily concerned with separate regulation. For example, Roma were taxed differently from other faith communities (the primary organizing principle in the Ottoman system), even in those cases when they were Muslims (and therefore nominally of the preferred class).⁵
5. The development of the modern state in Central Europe, frequently seen as dating from the reigns of Habsburg Empress Marie Theresa (1740-1780) and Joseph II (1780-1790) also make a frequent appearance in historiography on Roma,⁶ even though the success of early measures at social control is not at all established. Specific measures targeting Roma included policies aimed at separating Romani children from their parents and placing them with non-Romani parents to be raised away from a Romani milieu. General measures impinging on Roma include the beginning of mandatory universal public education.
6. Another important – although understudied – element of modern state-building with impacts directly on Roma has been the administrative requirement of a family name. Like Jews, in a number of early modern European jurisdictions, those Roma without family names have been assigned neutral-sounding family names, often similar to those of Jews (“Rosenberg”, etc.) or malicious names, apparently for the amusement of the administration. The latter appears to have

² Fraser, Angus, *The Gypsies*, Oxford: Blackwell, 1992.

³ On the Romani language, see especially Matras, Yaron, *Romani: A Linguistic Introduction*, Cambridge: Cambridge University Press, 2002.

⁴ Margalit, Gilad and Matras, Yaron, “Gypsies in Germany – German Gypsies? Identity and Politics of Sinti and Roma in Germany”, in Stauber, Roni and Vago, Raphael (eds.), *The Roma: A Minority in Europe: Historical, Political and Social Perspectives*, Budapest: Central European University Press, 2007, pp. 102-103.

⁵ Marushiakova, Elena and Popov, Vesselin, *The Gypsies in the Ottoman Empire*, Hatfield: University of Hertfordshire Press, 2001.

⁶ See for example Crowe, David and Kolsti, John, *The Gypsies of Eastern Europe*, Armonck, N.Y.: [M.E. Sharpe](#), 1991.

been a particular specialty of the Czech-speaking parts of the Habsburg administration in the late 19th and early 20th century, and thereafter the Czechoslovak administration. Some family names of Roma borne by Roma today include “Kalo” (“black”), “Bily” (“white”), “Gadzo” (meaning “Non-Roma” in Romani), “Holomek” (“vagrant”) and others.⁷

7. Also from the late 19th and early 20th centuries, theories of criminal biology, increasingly applied first by the German and Netherlands police, focused particular attention on Roma and others regarded as Gypsies.⁸ These were taken over by the German National Socialist government (1933-1945) and its allies. These also applied first eugenic and then genocidal policies to Roma and others regarded as Gypsies, resulting in the deaths of hundreds of thousands, and all but annihilating the Romani population of some territories under German Nazi control, or that of their allies.⁹ Particular policing methods focusing on “Gypsies” survived de-Nazification intact, although today they appear in covert forms.¹⁰

B. Policing and Surveillance

8. Social control measures concerning Roma with human rights implications in the area of policing and surveillance can be divided into the following broad categories:
 - (i) Police raids, surveillance and other police control measures arising as a result of the exposed situation of Romani housing, and arising in particular where Roma live in marginalized slum settlements;
 - (ii) Racial or ethnic profiling measures in mainstream areas, such as urban spaces or open, main thoroughfares;
 - (iii) Police monitoring arising in migration control settings.
9. The latter issue will be addressed in a separate section below.
10. In Central and Eastern Europe, the events of 1989 were accompanied by a widespread sense that public order had broken down. During the first years after the end of Communism, the view that the once-safe public space was suddenly wild and dangerous was blamed first and foremost on Gypsies. In countries throughout Central and Southeastern Europe, communities took the law into their own hands, frequently burning whole settlements to the ground and expelling whole communities, in some cases with loss of life. Romania was particularly affected, with over thirty episodes of anti-Romani community violence during the period 1990-1993,¹¹ but no country of the region was spared.¹² Such pogroms continue to be reported to today in

⁷ Jews were in some cases assigned names such as “Osolobe” (“salt yourself”) and “Skocdopole” (“Jump into the Field”). One of the former is a prominent Brno architect, one of the latter a sociologist at Harvard.

⁸ See Widmann, Peter, “The Campaign Against the Restless: Criminal Biology and the Stigmatization of the Gypsies, 1890-1960”, in Stauber and Vago, *Op cit.*, pp. 19-29.

⁹ See especially Zimmermann, Michael, *Rassenutopie und Genozid. Die nationalsozialistische Lösung der Zigeunerfrage*, Hamburg: Wallstein Verlag, 1996.

¹⁰ Widmann, *Op. cit.*, p. 27.

¹¹ See Tanaka, Jennifer, “Discrepancies in the Damages Incurred and the Charges Depending on the Ethnicity of the Accused”, unpublished, on file with the author, which details 35 major crimes taking place during the period 1990-1997; see also European Roma Rights Centre, *State of Impunity: Human Rights Abuse of Roma in Romania*, Budapest: 2001.

¹² Three of the Romanian pogroms have been the subject of rulings by the European Court of Human Rights. Most notably, the 1993 pogrom at Hadareni was the subject of two judgments, (*Moldovan and Others v. Romania, Applications nos. 41138/98 and 64320/01*, Judgments of 5 July 2005 and 12 July 2005). Complaints concerning the pogroms at Casinul Nou and Plaiesii de Sus were settled amicably and struck from the Court’s docket. A 1995 pogrom in Montenegro was the subject of a complaint before the United Nations Committee Against Torture

Russia, Hungary and Italy. In many if not most cases, police were directly involved in these pogroms, sometimes advising communities to leave before mobs arrived, sometimes ordering the temporary disconnection of telephone lines, sometimes directly supervising the arsonists.

11. These events met with international criticism on human rights grounds. Perhaps of greater import to the authorities of the countries concerned, they seemed to suggest that the public authority had lost control of the public space. As a result, the subsequent period has seen a retrenchment of policing practices, particularly with respect to Romani slums; separated, segregated or otherwise excluded Romani settlements; or otherwise exposed residential areas.
12. In the first place, some Romani slums are subjected to raids – frequently pre-dawn raids – apparently with the aim of detaining persons for whom there may be an open arrest warrant, but in other cases simply for the purpose of conducting *ad hoc* searches. Often the primary aim of such raids appears simply generally to assert the authority of the police. The fact that whole settlements are targeted is considerably facilitated by the fact that individual houses in a given settlement may lack an individuated address, thereby seeming to provide (in the view of the police) license to search all houses, require their inhabitants to stand outside in the cold for periods of several hours, etc. In countries such as Ukraine and Romania, *ad hoc* forced labor has also been reported with, for example, the inhabitants of the settlement detained for the day and forced to clean the police station.¹³
13. Physical abuse – primarily beating with truncheons – has been a regular part of reports of such raids, as has physical abuse in custody, where persons are detained. Racist verbal abuse is also regularly reported. In some instances, police have used firearms during such raids. Police have in some cases shot to death Roma during such raids. In such cases, justice rarely follows, with the possible exception of cases brought before international tribunals such as the European Court of Human Rights.¹⁴
14. Another type of surveillance and control has been regular checks for documents, particularly in rural areas, of persons known by police and viewed as “problematic”. Failure to be in possession of documents can result in fines, with the regular application of fines resulting in the effective indenture of the person concerned to the police. This practice has been reported for example in several localities in Hungary.
15. In Western Europe, where long-standing settled Romani communities exist, practices may be fundamentally similar to those in Central and Eastern Europe. Thus, for example, the Romani community of Oberwart, Burgenland -- Austria’s largest long-term compact Romani settlement – has reported regular raid and profiling measures, including the detention of groups of Romani male youths in any case of suspected theft in the town. Countries such as France and Greece have had fatal police shootings of Roma.
16. However, Western European human rights social control issues are to some extent complicated and exacerbated by migration. Certain countries of Western Europe have very exposed Romani migrant settlements. A number of these are under supplementary, high-tech surveillance. The latter is particularly true in Italy, where some settlements are surrounded by high walls. Gates are monitored by police or private guards and access to non-residents is restricted and highly

which ultimately resulted in a settlement of close to one million dollars for the victims (see *Hajrizi Džemajl et al. v. Yugoslavia*. CAT/C/29/D/161/2000. UN Committee Against Torture (CAT). 2 December 2002. Online. UNHCR Refworld, available at: www.unhcr.org/refworld/docid/3f264e774.html [accessed 4 February 2009]).

¹³ See European Roma Rights Centre, *The Misery of Law: The Rights of Roma in the Transcarpathian Region of Ukraine*, Country Reports Series, No. 4, April 1997.

¹⁴ See for example Case of Nachova and Others v. Bulgaria, (*Applications nos. 43577/98 and 43579/98*), Judgment, Strasbourg, 6 July 2005.

discretionary. A number of such camps are under 24-hour video surveillance. In such camps, police may also partially delegate control powers to a “bulibasha” or similar Romani authority figure in the camp, adding a supplementary layer of authoritarian control over the residential area. The authority of such persons exists entirely outside any form of legal accountability framework.

17. Finally, very regular racial or ethnic profiling of Roma is standard police practice in certain urban areas. For example, in Budapest, police will check the documents of anyone looking like a Romani person who has come from a rural area, the presumption being that the only reason such a person can have in the city is crime. Such persons are identifiable by color of skin combined with (generally impoverished) type of clothing. In Hungary, it is not illegal to check the documents of individuals without cause, and indeed police name this practice as one of their primary modes of detaining people for whom there are open arrest warrants. Similar practices exist in Russia, Switzerland and elsewhere.

C. Urban Planning, housing and control of urban spaces in general

18. As noted above, intense control and surveillance methods are currently applied to a number of so-called “camps for nomads” in Italy, primarily those in which Roma from various countries in southeastern Europe have been forced to live, as a result of policies of not allocating mainstream housing to such persons, as well as because of massive, unchallenged racial discrimination on the private rental market. A number of other efforts at controlling the freedom of movement of Roma and/or modeling the urban space along race-loaded lines, with the most frequent factor being unchallenged racial discrimination.
19. The signature feature of Romani housing throughout Central and Southeastern Europe, as well as in a number of Western European countries, is its separation from mainstream housing, and exclusion from key public infrastructure. In some cases, particularly in places which were once Ottoman possessions, separate Romani neighborhoods are several-hundred-year-old features of the Ottoman system emphasizing autonomous community regulation. In the main, however, Romani quarters or slums are newer with, in each case, questions hanging over the extent to which separation is forced.
20. In some cases, separation is very forced. This is particularly evident in those cases where Roma try and fail to move out of such areas. In the eastern Slovak village of Svinia, for example, an internationally-funded project focusing on the development of Svinia’s very excluded Romani community was allowed to purchase a house in town on the sole condition that no Roma be allowed to live in it. In a number of towns in Hungary, it has been reported that persons refuse to sell houses to Roma, sometimes under pressure from local authorities.
21. Urban planning has in a number of instances determined that the mere presence of a Romani neighborhood is bad for an urban space. Planners in Sofia, Bulgaria have designed a highway to run straight through Fakulteta, Sofia’s largest Romani neighborhood. If implemented, at least half of the neighborhood faces possible displacement. Throughout the past three years, authorities in the Istanbul municipality of Fatih have been demolishing the Romani quarter of Sulukule, possibly the oldest Romani settlement in Europe. Sulukule is to be replaced with middle income housing; its current inhabitants are to be placed far outside Istanbul. More recently, in 2007, the town of Vsetin, Czech Republic, loaded a number of Romani families onto busses and expelled them several hundred kilometers away to areas of rural northern Moravia.
22. In some cases, rapid urban growth threatens Romani settlements and the tacit understanding is that Romani communities should give way to the forces of growth and business. Thus, for example, an informal agglomeration of Romani housing known as “Kuntz”, on the edge of

Timisoara, Romania, is currently threatened with destruction as Timisoara expands. The housing, which stands on public land and is of unclear ownership, exists in a state of legal uncertainty heightening the vulnerability of communities to destruction.

23. In Hungary, a series of second-tier municipalities have endeavored to attract tourism and/or a mythical middle class professional resident class, through measures to reverse communist-era placement of Romani families in housing in the centre of towns and moving them to the periphery. Some municipalities, such as Veszprem, have undertaken this by paying Roma to leave their housing. In other cases, such as Szekesfehervar, families have been forcibly evicted from central areas and relocated at the periphery. The Szekesfehervar moves, which took place over a decade, at times triggered violence or the threat of it. The municipality at one point purchased housing in surrounding villages, with locals in those villages uniting to forcibly obstruct Roma from moving in. A number of village mayors unified to tell Szekesfehervar to “keep its Gypsies”.
24. Forced movement or forced placement – usually coercing Roma from centre to periphery -- has in some cases been undertaken with very socially degrading effects. Throughout the 1990s and into the third millennium, Slovakia’s second city of Kosice managed the removal of Roma from the centre and their placement in a large communist-era housing estate called Lunik IX, while simultaneously facilitating the exit of non-Roma from Lunik IX. By 2003, the area was a massive ghetto with insufficient waste removal, frequent power-outages and heat and hot water cessation, as well as endemic disease.
25. Efforts at manipulating the urban space along racial or ethnic are often very difficult to detect. For example, different to many of the examples discussed above, the vast majority of Roma in Sweden live in integrated mainstream housing undifferentiated from other housing. The Swedish Discrimination Ombudsman reports, however, that by far the most frequent form of ethnic discrimination received in Sweden concerns discrimination against Roma on the housing market; Roma are effectively barred from certain areas through discriminatory rental policies or decisions.

D. Punishment and Incarceration

26. In a number of countries of Europe, discrimination against Roma is reported at a number of points in the criminal justice system. Allegations of racial discrimination occur at a number of points in criminal procedure, including (a non-exhaustive list): stop-and-search or street document checks; decisions to detain; access to legal representation; decisions to charge with crimes and prosecute; decisions to remand into pre-trial detention; types and quality of evidence regarded as sufficient to convict; decisions concerning length of sentence and whether or not to suspend sentences; decisions concerning probation. As noted in a recent study published by the Council of Europe’s European Commission Against Racism and Intolerance:

Roma are often over-represented among persons arrested and imprisoned for criminal offences. This helps to propagate stereotypes and the notion that Roma have a kind of “natural” propensity towards crime, due to cultural and social traits which encourage criminal behaviour. ... Moreover, the fact that Roma and members of vulnerable groups are over-represented among persons searched and arrested by the police is also the result of targeted checks (racial profiling). And the disproportionate number of Roma in prison reflects severer sentencing. In this case, the statistics tell us more about the *modus operandi* of police and courts than about the criminal propensities of vulnerable groups.¹⁵

¹⁵ Patrick Simon, “Ethnic” Statistics and Data Protection in the Council of Europe Countries, Council of Europe, European Commission Against Racism and Intolerance (ECRI), 2007, p. 15, available at:

27. In addition, Roma have frequently fallen victim to physical abuse by police, at the time of arrest, in police custody or pre-trial detention, or in prison. A number of deaths have been reported at the hands of police officers. The European Court of Human Rights has repeatedly found a number of Member States in violation of the European Convention on Human Rights as a result of violence by public officials against Roma.¹⁶ In some countries, such as Hungary, physical abuse in prisons has decreased following international concern. However, violence and/or threats of violence in pre-trial detention has proven a durable and resilient phenomenon in a number of European states.
28. European rules on data protection¹⁷ – and in particular provisions on the “sensitive” nature of ethnic data, necessitating more stringent regulation -- make it difficult to impossible to secure statistical data on the precise scope and dimension of the issue. Nevertheless, some civil society organizations have managed to produce indicative studies based primarily on empirical data. Thus, for example, the Bulgarian Helsinki Committee (BHC) has reported the following on developments in Bulgaria taking place between 1999 and 2003. An initial survey found that 51% of the respondents reported that physical force had been applied against them during arrest, 53% responded that they had suffered physical violence inside detention centres, and 37%--that physical force had been used against them during the preliminary investigation proceedings. This first BHC survey established that the proportion of the interviewed Turks and Roma among respondents reporting the use of physical force was “much higher than that of ethnic Bulgarians.”¹⁸ Although subsequent surveys tracked a decrease in violence against detainees generally, “the use of violence against minority members, particularly Roma, had not changed the least, moreover, it had increased. Thus, 56% of Roma continued to report violence used against them during arrest (compared to only 46% in 1999), and 48% confessed they had been tortured while in detention (against 42% in 1999).”¹⁹
29. Similar studies have been carried out in Hungary by the Hungarian Helsinki Committee. According to their research, in 1995, around 40% of inmates in Hungarian penitentiaries claimed to be Roma. Prison wardens estimated the percentage of Roma in Hungarian prisons to be around 60%. A follow-up study in 2001 produced similar results.²⁰ According to a study published in 2007 by the Open Society Institute, “In both Bulgaria and Hungary, Roma are roughly three times more likely than non-Roma to be stopped by police in pedestrian stops.”²¹ In the three countries at issue in the Open Society Institute study – Bulgaria, Hungary and Spain – there were no clear legal bans on ethnic profiling; in Spain, it has been explicitly endorsed by the Constitutional Court as a legitimate police practice.²²

http://www.coe.int/t/e/human_rights/ecri/1-ECRI/Ethnic%20statistics%20and%20data%20protection.pdf
(accessed 3 February 2009).

¹⁶ See for example: *Nachova v Bulgaria*, 26 February 2004; *Bekos and Koutroupoulos v Greece*, 13 December 2005; *Cobzaru v Romania*, 26 July 2007, a non-exhaustive list.

¹⁷ In the European Union (EU), the gathering, storage and transmission of ethnic data is government by Directive 95/46/EC “on the protection of individuals with regard to the processing of personal data and on the free movement of such data”. In the Council of Europe Member States, such data collection is further governed by Council of Europe Convention ETS 108 “for the protection of individuals with regard to automatic processing of personal data” (1981). All EU Member States are also Council of Europe Member States, but the latter organization also includes tens of states which are not members of the EU.

¹⁸ Bulgarian Helsinki Committee, “Alternative Report to the Report Submitted by Bulgaria Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities”, Sofia, November 2003, pp.6-7.

¹⁹ Ibid.

²⁰ Hungarian Helsinki Committee, “Briefing Paper for the Visit to Hungary by the UN Independent Expert on Minority Issues”, Budapest, 6 June 2005, p.1.

²¹ Open Society Justice Initiative, “*I Can Stop and Search Whoever I Want*”: *Police Stops of Ethnic Minorities in Bulgaria, Hungary and Spain*, New York: Open Society Institute, 2007, p.17.

²² Ibid., p.19.

30. The Spanish non-governmental organisation *Barañi* Project documented extensive disparate impact on Romani women in the criminal justice system. According to the findings of that study, although Roma make up not more than 1.5% of the general population of Spain, Romani women constitute circa 25% of the population of Spanish women's prisons.²³
31. As with other areas, extruding racial discrimination from the criminal justice systems of Europe has been considerably hindered by denial. This denial has extended even to such institutions as the European Court of Human Rights which, until 2004, had never found a violation of the European Convention's Article 14 ban on discrimination in a case concerning discrimination based on ethnicity. Commenting on this fact in a dissenting opinion in a case concerning physical abuse of Roma by police in Bulgaria, Judge Bonello wrote:

“Leafing through the annals of the Court, an uninformed observer would be justified to conclude that, for over fifty years democratic Europe has been exempted from any suspicion of racism, intolerance or xenophobia. The Europe projected by the Court's case-law is that of an exemplary haven of ethnic fraternity, in which peoples of the most diverse origin coalesce without distress, prejudice or recrimination. The present case energises that delusion ... Frequently and regularly the Court acknowledges that members of vulnerable minorities are deprived of life or subjected to appalling treatment in violation of Article 3; but not once has the Court found that this happens to be linked to their ethnicity. Kurds, coloureds, Muslims, Roma and others are again and again killed, tortured or maimed, but the Court is not persuaded that their race, colour, nationality or place of origin has anything to do with it.”²⁴

E. Control over non-citizens and migrants

32. Measures of social control of Roma with human rights implications are large, intrusive, egregious and systematic where non-citizens and migrants are concerned. As elaborated below, they comprise: (i) efforts to limit immigration on racially discriminatory grounds, as well as ethnic and racial profiling measures for Romani migrants; (ii) large-scale and in some cases collective expulsion; (iii) other measures aimed at forcing migrants to leave the country, such as regular destruction of shanty housing; (iv) failure to provide adequate security for migrants against vigilante attack, as well as failure to bring perpetrators of vigilante attacks on Roma to justice; (v) measures limiting or infringing the social and economic rights of migrants, including denial of access to mainstream housing and exclusion from all but emergency health care. In addition, (vi) some governments have displaced questionable or illegal activities, such as attempting to persuade persons applying for asylum to abandon claims, onto international organizations, most notably the International Organization for Migration (IOM), thereby fostering a degradation of international institutions.
33. Further, a number of measures aimed at limiting franchise have turned Roma into de jure or de facto non-citizens even in their home countries. These include the following: (vii) the collapse of the Communist federations (Czechoslovakia, Yugoslavia and the Soviet Union) was seized upon by lawmakers and administrators as a mode of excluding undesirable persons from the polity, even where they enjoyed real and durable ties to the country concerned; Roma and others in the Czech Republic, Croatia, Slovenia and Macedonia were denied the citizenship of successor states, acts which have not been remedied to today. In addition, reforms to Russian rules to citizenship laws may have rendered a number of Roma stateless or otherwise in extreme exclusion in that country.
34. Also, (viii) even where there are no formal obstacles to citizenship, a number of Roma may not in fact enjoy legal personhood, in contravention of Article 16 of the International Covenant on

²³ *Roma Women and the Spanish Criminal Justice System*. The Barañi Project, Ed Metyel, Madrid 2001.

²⁴ European Court of Human Rights, Judgment, *Anguelova v. Bulgaria*, (Application no. 38361/97), 13 June 2002.

Civil and Political Rights, as a result of exclusion from one or more personal documents. This issue affects tens of thousands of Roma throughout southeastern Europe, particularly those who have never had a birth certificate. Lack of birth certificate may occur where a person is not born in hospital, or where the mother has left the hospital without paying, generally as a result of poverty. Further, Roma may lack any form of administrative existence where, for example, they born in Italy to persons from Serbia who were unable to renew passports in the 1990s without returning to Serbia and being drafted into the military. There are currently several hundred such persons. Finally, (ix) some countries provide a legal status to migrants which does not accrue rights, thereby preserving formal exclusion from the polity.

35. In elaborating these seven elements below, the texts provided are illustrative, and by no means comprehensive.

(i) *Efforts to limit immigration on racially discriminatory grounds, as well as ethnic and racial profiling measures for Romani migrants*

36. In *Regina v. Immigration Officer at Prague Airport and another (Respondents) ex parte European Roma Rights Centre and others (Appellants)*, a case involving Roma from the Czech Republic stopped from travelling to the United Kingdom by UK border officials stationed at Prague airport, the UK House of Lords, the highest appeals court in the United Kingdom, ruled that United Kingdom Immigration Officers operating under the authority of the Home Secretary at Prague Airport discriminated against Roma who were seeking to travel from that airport to the United Kingdom by treating them less favourably on racial grounds than they treated others who were seeking to travel from that airport to the United Kingdom, in contravention of the law.²⁵ The UK government under Tony Blair also designed a scheme for monitoring international bus traffic from the Czech Republic, to be implemented by the Czech and German police.

37. The difficulties of entry onto the territory, flowing directly from frequently covert race considerations, has given rise to profiling measures by police, as well as avoidance measures by Roma. Thus, throughout the Balkans, photo studios offer light-intensive visa application photos, so that the applicant will look “white”. In Western Europe, profiling measures with respect to Romani migrants are now a regular feature of policing in a number of countries. Media in Switzerland have for example reported that police systematically target Romani beggars for street searches, based on stringent new laws banning begging. One source in Geneva reported 2200 searches of circa 20-60 persons during the course of one year.²⁶ According to the Czech Republic’s 5th and 6th periodic report to the UN Committee on the Elimination of Racial Discrimination (CERD), submitted in 2006, “The police headquarters of the Police of the Czech Republic monitors the migration of Roma from Slovakia. The chief aim of the monitoring is to obtain prompt information on increased attempts by members of the Roma community in Slovakia to settle in the Czech Republic and to prevent this happening in an uncontrolled fashion.”²⁷ The “prevention” mechanism is not described further. This monitoring is reportedly carried out in accordance with Government Resolution No. 1160 (19 November 2003), which instructed the Interior Ministry to create an “early warning system” to cover the scenario of a sudden increase in the number of migrants from the Slovak Republic to the Czech Republic and to arrange for the monitoring of localities in Eastern Slovakia with significant migration rates of Roma community members to the Czech Republic.²⁸

²⁵ House of Lords, *Judgments - Regina v. Immigration Officer at Prague Airport and another (Respondents) ex parte European Roma Rights Centre and others (Appellants)*, SESSION 2004-05, [2004] UKHL 55, on appeal from: [2003]EWCA Civ 666.

²⁶ *Le Matin*, “Roms: des saisies à coups de 90 ct.”, <http://www.lematin.ch/fr/actu/suisse/roms-des-saisies-a-coups-de-90-ct-9-305554>, accessed 9 November 2008.

²⁷ CERD/C/CZE/7, page 7, para. 12.

²⁸ http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/D7005E2DB55DD8FDC12571B6006F863D

38. In 2007, during the CERD Committee's review of the Czech Republic's 5th and 6th periodic report, Country Rapporteur Mr. Yutzis remarked on this information and other references to immigration as a phenomenon in the report, saying "it would be unwise to treat the situation of minorities and migrants as a national security issue."²⁹ In response, the government said the monitoring of the Slovak Roma was being conducted in tandem with the International Organization for Migration. An IOM publication describing this monitoring says it is intended to inform the Czech government as to the "status of Slovak Roma immigration".³⁰ Council of Europe bodies have also expressed strong concerns with respect to ethnic profiling by police and other officials in Russia.³¹
39. Perhaps most famously, during the summer months of 2008 and concluding in October 2008, the Italian government carried out a high-profile campaign to fingerprint and document Roma living in "nomads camps", including both migrants and Italian and other EU citizens, in three regions in Italy. The measure drew widespread criticism from domestic civil society as well as a range of institutions in other countries.
- (ii) *Large-scale and in some cases collective expulsion;*
40. Germany leads European expulsion practices, but it is by no means the only state applying forced expulsion as a social control measure. Expulsions from Germany are primarily to Serbia. Germany is joined by Denmark, Switzerland and Sweden in undertaking these expulsions. Although data is incomplete, the following is indicative:
41. A report published in March 2008 by the United Nations Development Programme and the Agency for Human and Minority Rights Government of the Republic of Serbia summarized existing data on expulsions of Roma to that as of that date as "fragmentary", but including the following:
- According to the Ministry of Internal Affairs, the EU countries sent 23,887 readmission requests from March 2003 to October 2007, with regards to the return of Serbian citizens who no longer have legal grounds for residing in these countries.
 - The same source registered 15,560 persons who were forcibly returned to Serbia from March 2004 to October 2007.
 - In the course of the year 2006, 1,884 citizens of Serbia were deported from Germany alone.
 - As of October 2007, the number of forced returns registered at the Belgrade airport ranged from 100 to 200 per month.
 - From January 1, 2008, to February 7, 2008, 52 requests for readmission were sent to Serbian authorities.
 - The Council of Europe estimated in 2003 that the total number of returnees to Serbia would range from 50,000 to 100,000 persons.

²⁹ CERD/C/SR.1804, page 7, para. 35.

³⁰http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/workshops/Migrants_and_Host_Society_12130706/seminar%20docs/integration_projects_0706_en.pdf

³¹ Council of Europe, European Commission against Racism and Intolerance (ECRI), *Third Report on the Russian Federation*, adopted on 16 December 2005.

- Most of the returnees are Roma, with the estimates ranging from 60 to 75 per cent of the total returnee population.³²

42. The Government of Kosovo has recently stated:

Kosovo might see in near future an increased return of Roma, Ashkali and Egyptians from Western Europe, neighbouring countries and probably from Serbia. While organised return of IDP from Serbia is very often facilitated and supported by reconstruction programmes, returnees from Western Europe can in general not profit from such programmes.³³ Only Germany hosts around 35,000 Roma, Ashkali and Egyptians under a toleration status (“Duldung”). In other European countries a few thousand Roma, Ashkali and Egyptians have found temporary refuge. It can be anticipated that most of them will be returned to Kosovo. It is expected that FYROM, Montenegro and Bosnia and Herzegovina will start to return its approximately 10,000 Roma, Ashkali and Egyptian refugees to Kosovo soon.³⁴

43. The most highly publicized expulsion acts undertaken recently have been those extensively carried out by the Italian government, with particular intensification in November 2007, and then again following the formation of a new government in May 2008. As of the end of December 2007 – and thus very much prior to the latest intensification of such acts by the new Italian government – it had been reported that more than 1,000 persons had been expelled from Italy and at least 1,000 Roma homes in Rome alone had been destroyed and the inhabitants had been evicted by Italian authorities.³⁵ A number of legislative acts undertaken by the Italian government in the period since May 2008 aim to facilitate the expulsion of foreigners, including EU nationals, and appear aimed particularly at Roma from Romania.³⁶ According to the Christian Science Monitor of 1 October 2008, citing an Italian parliamentarian, circa 12,000 illegal immigrants had been “apprehended” in Italy in 2008.³⁷ No figures for Romanian citizens were presented. According to the news agency *Adnkronos* media release of 15 October 2008, Interior Minister Robert Maroni stated that 6,553 people had been expelled in 2008 to date, a dramatic rise from 2007. Minister Maroni also told a delegation of the European Parliament in September 2008 that 350 EU citizens had been expelled from Italy.³⁸ Again, in both cases, figures on nationality or ethnicity were not presented, but anecdotal evidence, as well as media reports from Romania, indicate that a high number of these persons are Romanian Roma.

³² United Nations Development Programme and the Agency for Human and Minority Rights Government of the Republic of Serbia, “Reintegration of Returnees in Serbia: An Overview of Awareness Raising Activities of the Agency for Human and Minority Rights”, Belgrade, March 2008, pp. 2-3.

³³ However, it estimate that between 35% and 50% of the Roma, Ashkali and Egyptians originating from Kosovo and now living in Serbia are not registered as IDP. This would mean that up to 20,000 are not registered and could not profit from reconstruction programmes. For more details on this issue see the chapter on Return and Reintegration. (footnote in the original)

³⁴ The Draft Kosovo Government Strategy for the Integration of Roma, Ashkalis and Egyptians, circulated for comment on 1 October 2008 states, “It is expected that in the next future, considerable numbers will be (forcefully) returned from Western European, primarily Germany, but also from countries such as Montenegro, FYROM and Bosnia and Herzegovina.” (Republic of Kosovo, Government, Office of the Prime Minister, “Strategy for the Integration of Roma, Ashkali and Egyptians in Kosovo, First Draft”, circulated for comment 1 October 2008, p.39).

³⁵ See Council of Europe Commissioner for Human Rights, *Memorandum following his visit to Italy on 19-20 June 2008*, CommDH(2008)18, 28 July 2008, para. 38.

³⁶ See Open Society Institute, “Security a la Italiana: Fingerprinting, Extreme Violence and Harassment of Roma in Italy”, Budapest, July 2008, pp. 6-11.

³⁷ Momigliano, Anna, “‘Xenophobic climate’ fueling policies, violence in Italy, The recent death of an African immigrant in Milan highlights racial and ethnic tensions” *The Christian Science Monitor*, October 1, 2008, at <http://www.csmonitor.com/2008/1001/p04s02-woeu.html> (accessed 26 October 2008).

³⁸ European Parliament, “Draft Report on the LIBE delegation to Italy on September 18-19 (nomads camps emergency)”, Rapporteur: Gérard Deprez, draft circulated for comment in the week of 3 November 2008, pp.11-12.

44. France has been carrying out similar expulsions during the period. Among other measures, France has developed the category “humanitarian return”,³⁹ exercised in a number of documented instances with respect to Roma from Bulgaria and Romania. These returns do not appear to meet European Union law requirements, as described in the legal section of this study. A number of other expulsion practices by French authorities with respect to Roma from Bulgaria and Romania similarly seem not to meet the requirements of EU law and are the subject of legal complaint.⁴⁰ Romanian authorities have raised strong concerns about the treatment of Romanian migrants – including Roma – with their French counterparts.⁴¹
45. In some cases, French authorities have coupled expulsion with efforts to promote small business and small agriculture in the home country (generally Romania) by offering grants of several hundreds or several thousands of Euro to expelled persons who can provide a viable business plan. There is little evidence that such measures have been effective either in providing viable income for families or in stopping migration. In a number of cases, expelled Roma have reportedly declined offers of such support, fearing that it may jeopardize possibilities for returning to France. The Council of Europe Commissioner on Human Rights has recently presented data derived from the French Ministry of Immigration to the effect that in the period June 2007 to May 2008, 8,349 persons left France “voluntarily” as a result of the threat of expulsion, combined with financial incentive.⁴²
46. On a number of occasions, the expulsion of Roma from Council of Europe Member States has come before the European Court of Human Rights. As noted above, in 2002, Belgium was found in violation of the European Convention on Human Rights ban on the collective expulsion of aliens (Article 4 of Protocol No 4) after it first lured a group of Slovak Roma into police detention with misleading information, and then expelled them to Slovakia.⁴³ In 2002, Italy settled similar cases concerning Bosnian Roma amicably.⁴⁴ Similar cases against the Czech Republic have been dismissed on formal grounds⁴⁵ and ultimately also settled in non-adversarial proceedings.
47. In domestic proceedings, the Council of Europe Commissioner for Human Rights has recently noted, with respect to Italy:

Such expulsions were not an absolutely new phenomenon; they had already occurred in the recent past. The Commissioner has noted that on 19 May 2005 by judgment no 16571/05 the Italian Court of Cassation found against a decision of the Milan court that had annulled the expulsion orders of a number of Romanian Roma. The Court of Cassation recalled that under Article 4 of Protocol N°4 to the European Convention on Human Rights (ratified by Italy on 27/05/1982) the term “collective expulsion” indicated expulsions that target a group of aliens without a reasonable and objective examination of the reasons and of the defence of each of them. It also noted that under Italian law an expulsion may be proscribed on humanitarian grounds or on grounds relating to family cohesion. However, the Court of Cassation struck down the lower court’s decision, noting that the sole fact that the expulsion decrees in question had been adopted at the same time

³⁹ GISTI et al, “Plainte contre la France pour violations du droit communautaire en matière de libre circulation des personnes”, Op. cit., pp. 27-29.

⁴⁰ Ibid.

⁴¹ Communication on file with the author.

⁴² Commissaire aux droits de l’homme du Conseil de l’Europe, *Memorandum faisant suite à sa visite en France du 21 au 23 mai 2008*, CommDH(2008)34 Strasbourg, 20 novembre 2008, p.27.

⁴³ *Conka v. Belgium*, 5 February 2002.

⁴⁴ Cour Européenne des Droits de L’Homme, Arrêt, *Sulejmanovic & Autres et Sejdovic & Sulejmanovic c. Italie*, 8 novembre 2002.

⁴⁵ European Commission on Human Rights, Admissibility Decision, *Gejza Cervenak, Margita Cervenakova, Aranka Horvatova, Ondrej Cervenak, Iveta Cervenakova, Peter Mirga and Vojtech Filko v. the Czech Republic*, 28 February 1996.

using identical wording and reasoning and against persons of the same ethnic origin was not in itself contrary to Article 4 of Protocol N°4 to the Convention.

In this context, the Commissioner is gravely concerned at the case of *Hamidovic v Italy*, a case concerning a Roma citizen of Bosnia and Herzegovina, mother of three children, who was expelled from Italy in September 2005 while her individual application was pending before the European Court of Human Rights, despite the request made by the Court to Italy under its Rule 39 (Interim measures) to suspend the applicant's expulsion while her application was pending before the Court.⁴⁶

48. Switzerland is among a handful of Council of Europe Member States not to have yet ratified the Fourth Protocol to the European Convention. As a result, apparently there is no effective ban against the collective expulsion of aliens.⁴⁷ During recent years, and as recently as Autumn 2007, Switzerland has collectively expelled Romanian Roma, with little or no effort to conceal the racial-profiling element of these expulsions. Romanian citizens may enter and remain in Switzerland for three months, generally solely upon presentation of a valid travel document or identity document. Many of the extremely poor segment of the Romanian Roma arriving in Switzerland expect to be expelled after short periods; life calculations centre on repeated expulsion and return. Thus, the Geneva press began reporting in March 2008 that Roma expelled in Autumn 2007 were returning.
49. As noted above, the Czech government has endeavoured to try to force Roma with ties to Slovakia to go there. After the collapse of the former Yugoslavia, Croatia and Slovenia adopted restrictive measures with respect to persons from Bosnia, Serbia, Montenegro and the former Yugoslav Republic of Macedonia (FYROM), expelling or forcing to leave unwanted “persons from the south”, frequently meaning ethnic Albanians and Roma or others regarded as “Gypsies”. During the 1990s, it was possible to meet Roma who had left southern Yugoslavia in the 1980s to go to Slovenia; had been expelled and moved on to Germany; were then expelled to Slovenia, and subsequently by Slovene authorities back to other ex-Yugoslav republics in “the south”; whereupon they had returned to Germany. Bosnia, Montenegro and FYROM today shelter on their territories *de facto* refugees from Kosovo.
50. The vast majority of Roma expulsion cases undertaken in Europe never come to tribunal proceedings, generally due to the difficulty of effectively challenging such acts following expulsion, once the person expelled is no longer in the country concerned, and given limitations on possibilities for legal aid. As noted above, Germany has expelled literally thousands of Roma to countries of the former Yugoslavia since the early 1990s, and ongoing to the present day. Similar expulsions have taken place to Bulgaria and Romania.
51. The examples detailed above are particularly extreme. However, even those European Union Member States frequently held to have relatively positive policies on Roma have resorted to the forced expulsion of Roma at some point since 1989.⁴⁸ In some cases, the arrival of several hundred Roma on the territory has led directly to legal amendments making more restrictive access to asylum proceedings or to other legal measures aimed at rendering more difficult possibilities to remain.

⁴⁶ “Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 19-20 June 2008”, CommDH(2008)18, 28 July 2008, paras. 39-40.

⁴⁷ According to current plans, from 1 January 2009, Switzerland will be participating fully in the Schengen system and border controls with EU states will be abolished. This has key implications for EU national Roma from all countries with the exception of Bulgaria and Romania for the time being. Non-EU nationals will however remain unprotected from strong European law bans on collective expulsion.

⁴⁸ To name only one example, following the arrival of circa 1000 Roma from Slovakia to Finland in June 1999, the Finnish government first imposed a visa regime on Slovak citizens, and then subsequently expelled all or most of the persons concerned to the Czech Republic, a country through which they had come.

52. The extent of the expulsions has given rise to acts of dissidence. Among the most noteworthy of these have been the acts of Mr. Marin Mogos and his family, arrested at their home in Germany on March 7, 2002, at approximately 4:30 AM, and expelled by force by German authorities to Romania from the Munich airport, despite pending domestic appeals, as well as a pending application at the European Court of Human Rights. The family had been in Germany continuously since 1990. From 1990, they had given up their Romanian passports and declared themselves stateless. Upon arrival at Bucharest's Otopeni airport, they refused to re-accept their Romanian citizenship and thus were not readmitted to Romania. They lived in the transit zone of the Bucharest airport for the next five year. Mr. Mogos committed suicide on 17 March 2007, still at the Bucharest airport.

(iii) *Other measures aimed at forcing migrants to leave the country, such as regular destruction of shanty housing*

53. Italian authorities have for at least the past decade undertaken regular and repeated destruction of shanty housing of extremely excluded Romani communities frequently undertaken in contravention of international law guidelines⁴⁹ and involving arbitrary destruction of property. No one is ever brought to justice for these acts, and no remedy is ever provided. The measures appear to be primarily applied as a mode of forcing Roma to leave Italy, without the expense and endeavour required to undertake expulsions legally. Spanish authorities have previously undertaken similar acts.⁵⁰

(iv) *Failure to provide adequate security for migrants against vigilante attack, as well as failure to bring perpetrators of vigilante attacks on Roma to justice*

54. On 13 May 2008, assailants burned the Ponticelli Romani camp in Naples, Italy, to the ground, causing the approximately 800 residents to flee while Italians stood by and cheered.⁵¹ The incident occurred after an Italian woman claimed that a Roma girl had broken into her apartment to steal her baby.⁵² This alleged act and the intense media scrutiny of the alleged kidnapping which followed, playing on deeply imbedded anti-Romani stereotypes, sparked public hysteria, and in the days following the alleged attempted kidnapping, there were signs actively inciting hatred against Roma which police neglected to dismantle. On the day of the first attack on the Ponticelli settlement, a program on RAI television showed locals in the area shouting "Roma out".⁵³ Two weeks later, on 28 May, the same camp was set on fire for the second time by unknown perpetrators.⁵⁴ Interior Minister Maroni told a group of European Parliamentarians in September 2008 that a judicial inquiry was still ongoing in connection with the attacks.⁵⁵ It is unclear what is hindering Italian authorities from identifying and prosecuting perpetrators of the attacks.

⁴⁹ See in particular United Nations Committee on Economic, Social and Cultural Rights General Comments 4 and 7, elaborating the international law requirements of the right to adequate housing as derived in particular from Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁵⁰ See European Roma Rights Centre, "Forced Eviction of 1000 Roma in Spain", at: www.errc.org/cikk.php?cikk=990&archiv=1 (accessed 8 October 2008).

⁵¹ Popham, Peter, "Italian Tolerance Goes Up in Smoke as Gypsy Camp is Burnt to Ground", *The Independent*, 16 May 2008, www.independent.co.uk/news/europe/italian-tolerance-goes-up-in-smoke-as-gypsy-camp-is-burnt-to-ground-829318.html (accessed 8 August 2008).

⁵² Extensive information on the Ponticelli attacks is included in European Union Agency for Fundamental Rights, "Incident Report: Violent attacks against Roma in the Ponticelli district of Naples, Italy", FRA 2008, 5 August 2008, available at: www.fra.europa.eu/fraWebsite/products/publications_reports/incident_report_en.htm

⁵³ Ibid.

⁵⁴ 28 May 2008 report by Adnkronos International at: <http://www.adnkronos.com/AKI/English/Security/?id=1.0.2203930746>, accessed 12 July 2008.

⁵⁵ European Parliament, "Draft Report on the LIBE delegation to Italy on September 18-19 (nomads camps emergency)", Rapporteur: Gérard Deprez, draft circulated for comment in the week of 3 November 2008, pp.37-41.

55. Other attacks taking place on Romani migrants in the immediate wake of the election of the current Italian government include: four Molotov cocktails were thrown into a Romani camps in Milan and Novara in early May;⁵⁶ on 9 June, independent sources reported that a settlement of circa 100 Romanian Roma in Catania, Sicily had been attacked and burned to the ground.⁵⁷ The annex to a draft report by a Committee of the European Parliament sent to investigate human rights issues in Italy arising as a result of the ongoing crisis includes a non-exhaustive list of 24 incidents taking place during 2008 alone which it classifies as “human rights violations” against Roma, including racist attacks by vigilantes, assaults by law enforcement officials, forced evictions, and other acts.⁵⁸ High ranking Italian officials have not spoken out unequivocally to condemn any of the recent attacks on Roma taking place in the country.
56. The crisis in Italy has received widespread media attention, and has been commented on with concern by a number of international and regional monitoring bodies. By contrast, issues in Russia have transpired with less comment. During the period since January to October 2008, 254 attacks were recorded based upon xenophobia, involving 340 victims, of whom 113 had reportedly been killed.⁵⁹ Included in this data are two Romani persons reportedly killed by vigilantes.⁶⁰ Recent attacks on Romani migrants have also been reported in France.⁶¹

(v) *Measures arbitrarily limiting or infringing the social and economic rights of migrants*

57. In the main, school enrolment is often assisted for migrant children. However, school arrangements for migrants may be segregated. In addition, other services may be off limits or restricted to Romani migrants, even where they may be entitled to them. This is particularly evident in the fields of housing and health care.
58. In the field of health care, Roma who have been excluded from health insurance systems in countries of origin in South-eastern Europe (an issue affecting tens if not hundreds of thousands of persons) will be similarly excluded in Western Europe, because the European Union scheme for assisting free movement in the area of health insurance presumes coverage in the home country. Such persons may receive emergency health treatment on the good will of the medical practitioner, but will be excluded from all other forms of care.
59. Concerning housing, in Italy, a very exposed segment of the foreign Romani community lives in officially authorized “camps for nomads”; officially tolerated similar sites, generally with less available infrastructure; or in exposed settlements with little or no tenure, security or infrastructure provision. In at least one case, recent efforts by the previous Italian government to improve the housing of Romanian Roma have broken down as a result of failure to tackle racial discrimination on the rental market. The situation is similar in Greece, with a number of extremely exposed and excluded settlements of Roma from Greece and Albania existing on the margins of Athens and throughout other parts of Greece.⁶² Housing is a field in which

⁵⁶ ANSA, 11 May 2008.

⁵⁷ Email communication from Mr Fulvio Vassallo Paleologo, dated 9 June 2008. On file with the author.

⁵⁸ European Parliament, “Draft Report on the LIBE delegation to Italy on September 18-19 (nomads camps emergency)”, Rapporteur: Gérard Deprez, draft circulated for comment in the week of 3 November 2008, on file with the author, pp.11-12.

⁵⁹ Moscow Bureau for Human Rights, “Statistics of Attacks based upon Aggressive Xenophobia, (January-October 2008)”, distributed electronically 6 November 2008.

⁶⁰ Ibid.

⁶¹ <http://www.20minutes.fr/article/239040/Marseille-Marseille-une-rumeur-contre-les-Roms-entraîne-deux-agressions.php>, accessed 16 November 2008.

⁶² Greece has been found in violation of three aspects of European Social Charter Article 16 by the European Committee of Social Rights, as a result of inadequate housing conditions prevailing among Roma in Greece (European Committee of Social Rights, Decision on the Merits, *European Roma Rights Center v. Greece*, 8 December 2004). Forced evictions and the arbitrary destruction of housing also implicates a number of provisions of the

restrictive practices in some countries can hinder the ability of Roma to arrive from outside the European Union and establish within it. For example, Austria requires that a person seeking to settle in Austria from outside the European Union have and demonstrate “housing in conformity with the standards of the community” (*ortsüblichen unterkunft*). Italy has a similar requirement, and although as noted above it provides segregated “camp for nomad” housing, Italian authorities generally do not regard such camps as meeting legal requirements for adequate housing. In addition, camp housing lacks individuated addresses, calling into question Italian compliance with international and regional law privacy guarantees. Housing – or rather homelessness – among non-citizen Roma appears to play a particular role in amplifying a social policy challenge into a media-driven crisis.

60. Finally, although the European Union institutions have made extensive law guaranteeing rights of individual establishment for migrants from other European Union Member States, countries such as France have not yet eliminated complex bureaucratic structures hindering the effective exercise of these rights. As a result, many Roma from countries such as Bulgaria and Romania are excluded from gainful employment, although they otherwise establish legally.
- (vi) *Displacement of questionable or illegal activities, such as attempting to persuade persons applying for asylum to abandon claims, onto international organizations, most notably the International Organization for Migration (IOM)*
61. The IOM has been involved in so-called "voluntary return" projects. Projects of note include "voluntary return" programs for refugees from the conflicts in the former Yugoslavia -- for example to Bosnia and Kosovo, as well as to countries from which Roma have in recent years fled, requesting international protection in, *inter alia*, Western Europe, the Americas and Australia. The Belgian, Dutch and Finnish governments have sponsored "voluntary return" projects to countries including Czech Republic, Slovakia and Romania, involving primarily Romani asylum seekers in Western Europe. Hungary has been included "as a transit country".
62. According to descriptions by various employees of the IOM, "voluntary return" programs have involved measures such as IOM employees approaching Romani claimants for asylum in countries such as Belgium and attempting to persuade them to abandon their requests for asylum on grounds that there is very little chance that such applications will be successful. The Roma are told that if their application for asylum is rejected, they will receive a black stamp in their passports, making it difficult if not impossible to return to the country of exile (or to go to other countries) for years following the rejection. In return for joining a "voluntary return" program, they are promised that they will receive assistance with "reintegration" in their home countries.
63. NGOs in Slovakia and the Czech Republic report that in practice, IOM "reintegration" assistance is often little more than an IOM official waiting at the airport and escorting the returnee to his or her town of origin. In a number of cases, in addition to the discriminatory burdens and/or assaults he or she may have faced which caused flight in the first place, upon return, Roma may face very serious issues such as homelessness, on grounds that they may have given up rental contracts before leaving, or forfeited them due to absence or non-payment of rent. Such persons may also have been deleted from municipal registries, a fact which can put them fully outside access to basic social services.

European Convention on Human Rights, including but not necessarily limited to Articles 2, 3, 6, 8, 13, 14 and Article 1 of Protocol 1.

(vii) *Denial of citizenship*

64. In some cases, Roma may be unable to demonstrate the citizenship of any country, notwithstanding formal ties to one or more states, as a result of rigid legal practice, restrictive laws in the context of state succession, or for other reasons.⁶³ The issue has been particularly pronounced, after 1989, in countries which adopted new citizenship laws in the context of state succession (particularly Croatia, Czech Republic, Macedonia and Slovenia), as well as where other large-scale transformation of the legal regime governing citizenship and/or personal document has taken place (Russia).
65. In addition, Roma who left the former Yugoslavia in the 1980s and 1990s and went to Italy, Germany and elsewhere experienced particular challenges when their passports expired. In the case of persons from Serbia, during the 1990s, men might not be able to approach the Serbian embassy for passport renewal if they had not served in the military. In cases concerning persons from other ex-Yugoslav republics, the persons concerned might be unable to demonstrate the citizenship of the country concerned. This was particularly true of persons from Croatia, Macedonia and Slovenia, all of which adopted restrictive citizenship laws during the break-up of the former Yugoslavia.⁶⁴ A lack of a valid passport has rendered it difficult to impossible to secure valid residence permits in countries of migration, such as Italy, particularly in cases where they reside in informal settlements without a valid address. Thus, even in cases where there may be a formal entitlement to citizenship, for example as a result of birth on the territory, administrative obstacles in many cases preclude access to citizenship. Many of the persons concerned now have children and grandchildren, who may be formally stateless.⁶⁵ Their exclusion has thus been handed down to other generations.

(viii) *Exclusion from one or more personal documents*

66. Extreme poverty combined with exclusionary practices may conspire to preclude Roma from having access to documents such as birth certificates. In one scenario, persons unable to pay for maternity care may flee hospital with their newborn children before receiving a birth certificate for the infant. Alternately, some children are born at home. After a short period of time, it may be impossible to procure the birth certificate with paying administrative costs or fines. A person without a birth certificate will then be unable to access personal identity cards, health insurance documents, internal passports and other documents, and later will be effectively excluded from items such as a driver's license. They may be unable to enrol in school, gain access to health care, or secure social assistance benefits to which they may be otherwise entitled, including social housing. Such persons effectively have no administrative existence. This problem affects many thousands of persons, particularly in Romania and the countries of former Yugoslavia.⁶⁶

⁶³ An overview of status and citizenship issues concerning Roma in Europe is provided in Cahn, Claude and Sebihana Skenderovska, "Roma, Citizenship, Statelessness and Related Status Issues in Europe", paper presented at meeting on citizenship and minorities convened by the UN Independent Expert on Minority Issues Gay McDougall, December 2007, available at: <http://www.nationalromacentrum.org/en/category/reports/>.

⁶⁴ These specific circumstances provided the context in which the Council of Europe adopted, first the European Convention on Nationality (1997), including a specific Chapter VI on nationality in the context of state succession, followed by a specific treaty on the latter matter. However, both treaties were adopted after the collapse of the three major post-Communist Federations (Czechoslovakia, the Soviet Union, and Yugoslavia), and thus have to date had only limited impact on the citizenship laws of successor states.

⁶⁵ Council of Europe, European Commission against Racism and Intolerance (ECRI), *Third Report on Italy*, adopted on 16 December 2005, para. 96. See also Council of Europe Commissioner for Human Rights, Viewpoint, "No-one should have to be stateless in today's Europe", 09/06/2008, www.coe.int/commissioner.

⁶⁶ Concerning Romania, "Eligibility for non-contributory health insurance is conditional on access to social support, the eligibility criteria for which can be affected by various administrative practices, potential exclusion errors, possible discriminatory denials, and insufficient information. (...) Romania's social security system also creates 'hidden impediments' to supplying social services. Access to social support is conditioned on the apparently neutral requirements of permanent residence and possession of appropriate identity documents. Large parts of the Roma

Persons affected are frequently adults with children and grandchildren, thus again intergenerational exclusion. In recent years, several UNHCR and EU-supported projects have been created in recent years to begin to make inroads into this problem.⁶⁷ However, absent major state-level commitments to ameliorating conditions for currently excluded persons to have access to documents, for example via “amnesties” for persons with no birth certificates or similar measures, there is little indication that these pilot or otherwise piecemeal projects are having major impact.

67. The European Court of Human Rights has ruled on cases concerning the denial of documents. In the Court’s assessment, denial of key personal documents, such as, in one case, the Russian “internal passport”, could give rise to a denial of private and family life in the sense of Convention Article 8.⁶⁸

(ix) *Provision of legal status to migrants which does not accrue rights, thereby preserving formal exclusion from the polity*

68. In addition to the absence of documents and statelessness giving rise to the absolute denial of status, certain types of status provided in particular states give rise for concern. Forms of protection against expulsion in Germany, Austria and Macedonia, regularly provided to Roma, offer no residence status and no progressive accrual of rights. Exemplary of this issue is the status called “*duldung*” or “*geduldet*” (“tolerated”) provided in Germany to persons originally provided with temporary protection. In the case of Roma, this concerns primarily persons from Bosnia and Herzegovina or Kosovo.

69. A “*duldung*” is not a residence permit -- it is merely a stop on expulsion, and it must be renewed at very frequent intervals, in some instances after only several weeks.⁶⁹ Members of the same family are often provided with “*duldung*” status different periods of time, meaning that a head of household may be almost constantly queuing for renewal of the status for various members of family. The “*duldung*” status frequently includes restrictions on freedom of movement, access to employment and various forms of social and health protection,⁷⁰ although provisions

population however do not have identity documents and consequently cannot be registered as permanent residents. Some government employees refuse to consider the temporary structures in which Roma often live as habitable dwellings and deny Roma permanent resident status on these grounds.” United Nations Development Programme (UNDP), *The Roma in Central and Eastern Europe: Avoiding the Dependency Trap*. Bratislava: UNDP.

⁶⁷ See for example United Nations High Commission for Refugees (UNHCR) “UNHCR launches free legal aid project for Roma in Serbia”, press release, 6 May 2008.

⁶⁸ *Smirnova v. Russia*, 24 October 2003. The Court’s assessed these issues as follows: “The Court has a number of times ruled that private life is a broad term not susceptible to exhaustive definition ... It has nevertheless been outlined that it protects the moral and physical integrity of the individual, ... including the right to live privately, away from unwanted attention. It also secures to the individual a sphere within which he or she can freely pursue the development and fulfilment of his personality. ... The internal passport is ... required for more crucial needs, for example, finding employment or receiving medical care. The deprivation of the passport therefore represented a continuing interference with the applicant's private life.” (paras. 95-97)

⁶⁹ A number of international monitoring bodies have expressed concerns at the treatment of non-citizens in Germany. For example, the UN Committee against Elimination of Racial Discrimination has expressed concerns about absence of any protection accorded to populous *de facto* minority groups resident in Germany for longer periods of time (see CERD/C/338/Add.14, 10 August 2000). The Council of Europe's European Commission against Racism and Intolerance (ECRI) noted that around nine percent of the entire population (c. 7,000,000 persons) do not have German citizenship and called for regularisation of status of long-term foreign residents (see Council of Europe's European Commission against Racism and Intolerance, *Second Report on Germany*, adopted on 15 December 2000 and made public on 3 July 2001, para. 9). See also ECRI's *Third Report on Germany*, 8 June 2004, para. 53).

⁷⁰ Insured persons in the Federal Republic of Germany enjoy equal access to the benefits of statutory health insurance, irrespective of their nationality or origin. The legislation governing the statutory health insurance scheme contains no restrictions on benefit based on the nationality of the claimant. In the case of asylum seekers and persons facing deportation, however, protections available however are limited, as a general rule, to the treatment of

vary from state to state within the Federal Republic of Germany. Numerous Romani individuals have had had no administrative status in Germany other than a "duldung" for periods sometimes longer than ten years.⁷¹

70. There are no publicly available figures on the total number of Roma who are in possession of the "tolerated" status in Germany. It is currently estimated that there are circa 200,000 persons with "tolerated" status in Germany. At the end of 2006, there were still 10,795 persons in Germany with "tolerated" status from Serbia alone (i.e. not including any other former Yugoslav republic, or anywhere else in the world).⁷² In November 2006, the German Interior Ministers decided that persons currently in Germany under "tolerated" status for more than six years could have access to a durable residence permit if they could demonstrate legitimate employment by 2009.⁷³ The impact of this reform is as yet unclear. The provisions of a similar regime in Austria have been the subject of recent Constitutional Court challenge.⁷⁴
71. The repeated provision of extremely short-term "duldung" status and similar non-status provisions elsewhere has effectively prevented tens of thousands of third-country national Roma in Germany and elsewhere from integration in host societies, although such persons may have given birth to children on the territory (and those children may be enrolled in and regularly attending schools) and have formed extensive real and factual ties to the host country.
72. In addition, persons provided with the "duldung" status and their children may labour under conditions of stress due both to the ever-present threat of expulsion, as well as very frequent interaction with the often hostile public officials responsible for allocation of the "duldung". There are also widespread and plausible allegations that Roma are more likely to be provided with a "duldung" (rather than a more durable status including the progressive accrual of rights) than non-Romani third country nationals.⁷⁵

F. Health and medical control, including measures applied by social workers

73. Social control measures targeting Roma and others regarded as Gypsies have perhaps been most noteworthy in recent years in the partially overlapping – partially overlapping where social control measures are concerned -- fields of medicine, social work and child protection. This section will look in particular at two issues: coercive sterilization and the forced removal of children from the care of their biological parents. These issues are joined here because, in the first place, in practice they have throughout the 20th and into the 21st century been part of linked efforts to limit or end the Romani family. They are also joined here because in discussions as to

acute illnesses and pain. Other health care benefits may be granted on a discretionary basis. Medical care is provided outside the statutory health insurance scheme. Persons in such situations, including persons possibly traumatized by war and ethnic conflict, may have health insurance limited only to cases of acute illness.

⁷¹ Here again there appears to be no public data by ethnicity. However, overall, of a total of circa 282,100 persons from Serbia and Montenegro in Germany at the end of 2006, around 194,400 had been in Germany for periods of ten years or long (see <http://www.bundesregierung.de/Content/DE/Publikation/IB/Anlagen/auslaenderbericht-7-tabellenanhang-barrierefrei.property=publicationFile.pdf>, accessed 22 September 2008, p. 214).

⁷² <http://www.bundesregierung.de/Content/DE/Publikation/IB/Anlagen/auslaenderbericht-7-tabellenanhang-barrierefrei.property=publicationFile.pdf>, accessed 22 September 2008, p.223.

⁷³ See <http://www.bundesregierung.de/Content/DE/Publikation/IB/Anlagen/auslaenderbericht-7-barrierefrei.property=publicationFile.pdf>, accessed 22 September 2008.

⁷⁴ Ruling in June 2008, the Court set a time limit of nine months, i.e. to March 2009 to amend Austrian law to provide a right to apply ("Antragsrecht") for a permit for humanitarian reasons. Details are available at: <http://www.oe24.at/zeitung/oesterreich/politik/article323890.ece> (accessed 8 October 2008).

⁷⁵ The UN Committee on the Elimination of Racial Discrimination (CERD) has explicitly instructed States Parties to the ICERD "to take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin." (CERD, *Discrimination against Roma*: 16/08/2000, General Recommendation 27, article 1, para 5).

human rights remedy for these measures, they have frequently been joined in public discussion. An examination of these issues provides an opportunity to glimpse the continuing impact of eugenics on medical practice in some European countries. It also provides an opportunity to witness differences of social control approach between communist and market capitalist systems.

74. In 1999, a group of Roma arrived in Finland from Slovakia, requesting asylum. They were detained and prepared for expulsion from Finland. A number of the women among them however, were, upon medical examination, revealed to have had “invasive gynecological interventions”. The number was deemed unusually high by the examining nurses. The group was ultimately expelled from Finland, but not before the nurses concerned alerted several human rights organizations. Thus began the chain of events which led to the (re)opening of discussion concerning the coercive sterilization of Romani women in Central and Southeastern Europe, a discussion which has not yet been successfully concluded to today.
75. At the core of the discussion – but not only -- are the Czechoslovak successor states. In Slovakia, a highly polarized debate arose surrounding the issue. This debate became particularly intense following the 2003 publication of “Body and Soul”, a report on the subject by the Centre on Reproductive Rights and Poradna, a Slovak group, including documentation of a number of cases of coercive sterilization of Romani women.⁷⁶ Although the government has partially acknowledged the problem, the Slovak government and judiciary have not handled the matter well. Today, a number of the cases are pending before the European Court of Human Rights in Strasbourg, and a number of these have been ruled admissible.
76. In the Czech Republic, following events in Slovakia, cases of coercive sterilization were documented and systematically brought to the Ombudsman, following expressions of willingness by that office to address the issue. In 2005, on the basis of circa fifty cases reviewed carefully, the Ombudsman published a report into the issue, noting a number of violations of law. Several of the more recent cases have subsequently received various forms of compensation, including apology by the hospital or monetary compensation. However, most of the victims remain without compensation or other legal remedy today. Several cases have been filed at the European Court of Human Rights. The government has not yet issued any form of apology, despite urging by the Ombudsman and others. Due to the destruction of some medical files, a very restrictive interpretation of the statute of limitations for civil remedy and other obstacles, most of the cases cannot be remedied via judicial procedure under currently existing conditions. As in Slovakia, a general remedy mechanism – including broad recognition of the problem, not yet forthcoming – would be required.
77. Czechoslovakia and its successor states have been at the heart of the discussion because, beginning in the 1970s, the Czechoslovak government began sterilizing Romani women by policy, using financial encouragement combined with pressure. In certain localities, these practices were intense, systematic, and highly personalized. Thus, for example, in the predominantly Romani housing estate of Chanov, just outside the northern industrial city of Most, throughout the 1980s, social workers led by a Mrs. Macháčová,⁷⁷ forced Romani women to submit to sterilization by threatening to withhold social assistance or to have their children remanded into state custody or both. Although the policy framework enabling Mrs. Macháčová and others like her was officially ended in 1990, practices of sterilizing Romani women either without their consent or with only very crude forms of consent continued until at least 2004 and cannot be said to be definitively ended today.

⁷⁶ Center for Reproductive Rights and Poradňa pre občianske a ľudské práva, in consultation with Ina Zoon, *Body and Soul Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, 2003.

⁷⁷ Mrs. Macháčová was never brought to justice and is believed by the Roma of Chanov to be dead.

78. A very frequent profile for sterilization of Romani women after 1989 in both the Czech Republic and Slovakia is as follows: Romani families from particularly marginalized milieu or particular housing areas become known to social workers as “problematic families”. Women or girls from these families will often become pregnant at an early age and elect to keep the baby. During first and second pregnancies, doctors apply a particular type of caesarean section birth which will give rise to a possible threat to the mother in the case of a third pregnancy. During the second birth, the mother will be sterilized either without consent; with post facto “consent”; or with consent “secured” via signature in the middle of labor, while under heavy sedatives, with little or no explanation as to implications, options, etc.
79. These practices have continued at the initiative of doctors and social workers in particular localities, despite the official end in 1990 of the policy of sterilization adopted by the Czechoslovak Socialist Republic in the 1970s. This fact offers the possibility for a number of human rights insights. In the first place, absent genuine remedy – including punishment of perpetrators – practices are not certain to end. Indeed, they have been pronounced to be “definitely ended” on several occasions since 1989, only to have restarted once unpleasant attention has passed. Secondly, local tacit agreements as to the public good among elites (in this case doctors and social workers) can trump official policy. Third, state authority in both communism and capitalism are revealed to be weaker and more troubled than frequently assumed or asserted, although modes of advancing authority in the two named system types apparently differ.
80. In other post-communist successor states, the issue – or related issues – have also emerged. Hungary was found in violation of the CEDAW Convention by the UN CEDAW Committee in a case of coercive sterilization taking place in 1997. The case concerned a Romani woman sterilized after being provided with highly technical information which she did not understand as to the implications of the procedure. Fewer cases of coercive sterilization of Romani women have been reported in Hungary than in Slovakia or the Czech Republic. However, other abusive practices, such as segregated wards and verbal abuse, have been reported. As in the Czech Republic and Slovakia, questions have weighed in Hungary over the extent to which coercive sterilization practices have targeted Romani women, since there are allegations that non-Romani women have also been sterilized without adequate consent. In the Czech Republic and Slovakia, the overwhelming majority of women sterilized are Romani, but this may not be the case in Hungary. The fact of coercive sterilization cases in Hungary – absent any official policy whatsoever – raises questions about the endurance of eugenics in medicine under communism, and into post-communism.
81. In a social control context, it also raises questions about the relative strength of doctrines of paternalism in certain medical systems. Where strong doctrines of paternalism are operative in a medical system, there may be unchecked modes of social control in force, insulated from change and unaccountable for abuse, as a result of a veil of professional codes and collegial solidarity.
82. These issues as occurring in Communism and post-Communism have been compared with coercive sterilization – and remedy – practices in Western Europe. In these debates, the role of eugenics ideas has been raised explicitly.
83. The most radical case is Germany, which enabled revolutionary eugenics policies in the framework of National Socialism during 1933-1945. These included practices of sterilization of Gypsies from shortly after the Nazis took power in 1933, i.e. well before the major efforts to kill all of the Jews of Europe, together with other groups including Gypsies, took full shape in 1942-1943.⁷⁸

⁷⁸ See Zimmermann, Michael, “Jews, Gypsies and Soviet Prisoners of War: Comparing Nazi Persecutions” in Stauber and Vago, *Op. cit.*, pp.31-53.

84. Switzerland and Sweden have both had national debates concerning sterilization practices. In Sweden, this resulted in a compensation mechanism for victims. However, many Roma have been frustrated by the fact that government remedial efforts do not recognize that Roma have been particularly targeted. Switzerland had the last legal coercive sterilization measures for eugenics reasons; a Canton of Vaud law enabling doctors to sterilize for eugenics reasons was only repealed in 1985. Other countries, in particular Norway, have also had to address these issues.
85. In Switzerland and Sweden, debates about remedy for the legacies of eugenic sterilization have partially overlapped with debates concerning the role of the state in practices targeting Romani families for the forced removal of children during the period from the late 1920s until the early 1970s and, many contend, afterwards as well.
86. In Switzerland, from the 1920s until the early 1970s, an organization called *Hilfswerk für die Kinder der Landstrasse*, operating under the auspices of the highly respected *Pro Juventute* foundation and with the close involvement of a number of generations of very prominent Swiss public figures and the financial support of the government, systematically removed children from Yenish families and placed them in children's homes or other youth custody centres. The children often suffered threats, abuses and deprivations. Siblings were generally separated. The underlying ideology was a "peculiar mix of hereditary biology, genetics, and milieu theory",⁷⁹ in which the children of "vagrant" families were to be forcibly educated in the ways of mainstream society and thereby forcibly assimilated. The Swiss government apologized for funding the actions in 1986. In 1998, then-Swiss Federal Councilor Ruth Dreifuss called the measures, "one of the darkest chapters in recent Swiss history,"⁸⁰ although, as Meier notes:

As much as the methods of the *Hilfswerk* are condemned today, there was little public opposition between 1926 and 1973. ... there was broad agreement in society about how good Swiss citizens should lead their lives. The *Hilfswerk* could rely on this not only for its fight against so-called vagrancy but there was also support from sections of the scientific community. Especially in the inter-war period, this led a discourse on eugenic measures, which also involved vagrants as a social minority. Not only psychiatrists, but also lawyers, social scientists, social workers and, finally, the *Hilfswerk* itself, all contributed towards this scientific discourse.⁸¹

87. As an aside, it is noteworthy that, during the period 2007-2008, under the force of similar discourse, Switzerland has established new bans on begging and, exploiting a legal lacuna in which collective expulsion is not clearly banned,⁸² has repeatedly collectively expelled Romanian Roma from the country.
88. Sweden pursued measures similar to those of Switzerland, for which it similarly both apologized and established a compensation mechanism for victims, something the Swiss government has not yet managed to do. In Sweden, Roma link explicitly the end of sterilization practices with the intensification of measures to take children into state care, viewing them as a continuum of assaults on the Romani family: "Once they could no longer sterilize us, they used the 'softer measures' of taking away our children." Reports of targeting Romani families for invasive measures, regular surveillance measures, as well as acts up to the removal of children from the care of their biological parents persist to today in Sweden. They are also a regular part of discussion of Roma issues in other countries, such as the Czech Republic, Hungary and Italy.

⁷⁹ Meier, Thomas, "The Fight against the Swiss Yenish and the 'Children of the Open Road' Campaign", in *Romani Studies*, 18.2.2008, p. 118.

⁸⁰ *Ibid.*, p.118.

⁸¹ *Ibid.*, p.115.

⁸² Switzerland is one of the only Council of Europe Member States not to have ratified Protocol 4 to the European Convention on Human Rights, which includes a ban on the collective expulsion of aliens.

89. The removal of children from the care of their biological parents is a matter which has come repeatedly before the European Court of Human Rights, particularly from countries with highly advanced, paternalistic social protection systems, particularly northern continental and Scandinavian countries. In a series of decisions, the Court has checked abuses deriving from the functioning of child protection services and, in so doing, set out a series of markers as to requirements under the European Convention on Human Rights (ECHR).⁸³ In 2006, the Court ruled that children should not be separated from the care of their biological parents solely for reasons of poverty or homelessness (*Walla and Wallová v. Czech Republic*). The Court has never consented to considering the nexus between discrimination and such measures, and has not yet heard a case in which Romani ethnicity or other ethnic targeting of Gypsies was explicitly part of the case file.
90. Finally, the coercive sterilization and the seizure of children from the care of their biological parents are linked under international human rights law, because both are seen as linked to the crime of genocide. Article 2 of the Genocide Convention defines the crime of genocide as follows:
- In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
- (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group. (emphasis added)
91. The fact that these measures potentially fit within the international law definition of genocide has paradoxically both assisted and hindered efforts to end these practices. On the one hand, credible reports of sterilization of Roma have at least temporarily stopped the practice. On the other had, the extreme sensitivity of these issues has led to very high levels of denial of ethnic profiling in child protection services, even where such practices are obviously and evidently current.
92. This section has focused primarily on coercive sterilization and the separation of children from the care of their biological parents as the most exposed elements of social control measures

⁸³ Where the state intervenes by, for instance, removing children into care or via compulsory supervision, the Convention requires that the natural parents be properly involved in the decision making process and that full account is taken of their views and wishes (*O, H, W, B, R v. UK* (1987)). This means that — except in exceptional circumstances — parents are entitled able to put forward their point of view prior to the making of any provisional order (*Venema v. Netherlands* (2002)). In *Johansen v Norway* (1996), the Court considered a case in which a child had been in local authority care since the age of two weeks. The Court in no way criticised the state for taking the care proceedings or for maintaining the care order. However it did find a violation of Article 8 in respect of the state's action to terminate parental contact so that the child be adopted, stating:

In the present case the applicant has been deprived of her parental rights and access in the context of a permanent placement of her daughter in a foster home with a view to adoption by the foster parents. The measures were particularly far-reaching in that they totally deprived the applicant of her family life with the child and were inconsistent with the aim of reuniting them. Such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests.

In *Kutzner v. Germany* (2002) the applicants' 5 and 7-year-old daughters had been removed from their care because it was alleged that the parents 'impaired mental development' rendered them incapable of bringing up their children. There was no suggestion however of any neglect or ill-treatment. The children were separated from each other and eventually fostered. For the first six months they had no contact with their parents and thereafter it was restricted to one hour monthly. Rules that prevent an adopted person finding about her natural family (when the natural mother had requested anonymity) did not in themselves violate that person's right to know the identity of her adopted parents under ECHR Article 8 (*Odièvre v. France* (2003)).

imposed on Roma with human rights aspects in the field of health care. Others, such as segregated birthing wards in a number of countries of Central and Southeastern Europe, do exist. However, many other human rights issues facing Roma in health care concern exclusion from care and other failures by the health care system. These fall outside the scope of this paper.

III. SOCIAL CONTROL AND ROMA

93. In analyzing global trends of social control and the impact of social control practices on the exercise of human rights, the ICHRP has developed a vision of “modalities of social control” involving six elements: (1) criminalization; (2) pre-emptive measures to address deviancy, social problems and pre-criminal behaviour; (3) segregation/exclusion; (4) privatization and private actors; (5) technology/surveillance; and (6) transnationalisation regimes and international co-operation. The content of each of these elements is elaborated elsewhere.⁸⁴ In bringing this analysis to the treatment of Roma, the following observations are apparent:
94. First of all, and most obviously, certain features of these trends have affected Roma as members of the general public, in ways similar to other members of the public. For example, insofar as we all are under greater surveillance as a result of advances and uses of complex technology, Roma are similarly affected.
95. However, the previous observation should be supplemented by another one: a number of these forces have been used on Roma particularly. Or at least on particular categories of Roma. Thus, for example, when recently constructing a housing unit for “socially unadaptable citizens” (local code for Roma), one town in eastern Slovakia fitted all public spaces with video cameras, an approach to the common space unimaginable in other housing units in Slovakia.
96. Several of the components above, although they might be new generally, are not at all new where Roma are concerned. Thus, as noted above, a recent paper by Peter Widmann has recently shown how late 19th century theories of “criminal biology” played a key role in influencing first judicial, and then police practices, particularly in Germany, and particularly as they were brought to bear on Gypsies. Criminal biology identified the roots of criminal attributes in unchanging, biologically-determined traits, increasingly linked to ethnicity. Beginning with a discussion of the late 19th century theories of Cesare Lombroso, Widmann follows their growing influence in Germany in the late 1920s, as well as their continued influence even after World War II, particularly via police training materials in Germany. At the height of their influence, theories of criminal biology drove harsh punitive measures, including forced sterilization and arguments in favor of life-long incarceration. Widmann observes that, pre-Nazi theorists and practitioners of criminal biology were not necessarily Nazi, racist, nor even on the right. Lombroso was, according to Widmann, both a socialist and a committed multicultural.⁸⁵ Thus, the feature in the ICHRP framework of “criminalization” of Roma is deep, enduring, and a very dominant strain in the treatment of Roma by the public authority, as well as by the population at large.
97. It follows from the previous observation that a number of the elements of the ICHRP framework implicated questions of human rights remedy. Segregation, for example, is a deep, old force facing Roma. It was the operative organizing principle of the Ottoman Empire, and it has continued only sporadically challenged in the Ottoman successor states of southeastern Europe, as well as elsewhere. Periodically, segregationist forces have intensified. In Czechoslovakia, for example, recognition of the failure of early Communist forced assimilation policies in the field of education appears to have triggered a wave of covert segregation policies in the field of education in the 1950s, followed by another wave in the intense anti-Romani atmosphere of the mid-1990s to the present. In fields such as housing, where segregationist force is long-term and very constant, efforts to repair and remedy this segregation have to date been weak and conceptually constrained.⁸⁶

⁸⁴ Footnote to relevant project document.

⁸⁵ Widmann, *Op. cit.*, p. 27.

⁸⁶ I have written elsewhere on the application of *restitutio in integrum* as an approach to remedy by international tribunals, with particular reference to a CERD decision in a housing segregation case in Slovakia (see Cahn, Claude,

98. Insofar as human rights issues facing Roma in Europe take place in highly regulated societies with very strong state apparatus, some of the elements of the ICHRP framework, such as the category “privatization and private actors” are of relatively less relevance.
99. On the other hand, on issues such as “transnationalisation regimes and international cooperation” Roma issues have been prominent well beyond their modest numerical representation. Major, prima facie race-neutral international systems, such as mechanisms for international repatriation, have been repeatedly and regularly corrupted by covert and even blatant, overt racial discrimination. Some processes have also been influenced for good. For example the accession process of Central and Eastern European states to the European Union has repeatedly been a platform for efforts to improve policies in those countries. However, on the balance, the degrading and corrosive forces aimed at stopping and reversing Roma migration to the West, as well as practices in countries of migration aimed at enforcing artificial exclusion, have generally outweighed these positive efforts. They have also had very problematic impacts on the treatment of Roma in countries of origin, as states and publics impose measures locally to stop Roma from leaving, or to punish Roma for “discrediting our societies”.

“Slums, the Right to Adequate Housing and the Ban on Discrimination”, in *The Equal Rights Review*, Vol. 1/2008, pp.60-67).

IV. CONCLUSION

100. This paper has aimed to provide an overview of social control measures impacting on Roma in Europe, particularly those with evident human rights aspects. In the process, the impression may have been conveyed that European states apply these measures uniformly, or that they are unchanging. This, however, is not the case. Indeed, a lack of uniformity in approaches to Roma sometimes give rise to troubling cases, as, for example, when Roma from Serbia attempt to bribe German police – bribery being expected and common in Serbia, but sanctioned by criminal law in Germany. Nevertheless, the issues burdening the relationship of Roma with authorities are for the most part strikingly consistent, arising in particular from the suspicion with which authorities throughout Europe regard “Gypsies” and the fear they frequently inspire in non-Roma.