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Law as an instrument of discrimination

Denying Citizenship to the Czech Roma

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This article is about Gypsies—Roma or Sinthi—and, especially, their situation in the Czech and Slovak republics after 1993, when these two countries came into being. The question that will occupy us is one of citizenship. The story of this direly underprivileged group can be illuminated by a brief flashback. In 1989, so peaceful was the change of government in Czechoslovakia that it was called the Velvet Revolution. Those who would become the so-called elite of our nation successfully accomplished a variety of difficult tasks, such as taking political power in the first place, ratifying a new constitution, electing the first government, and founding the first political parties. A democratic system was established and, in the Czech Republic today, we not only run legal elections but we also have undergone genuine governmental crises. We have banks, a stock market, and new financial systems. But despite these new acquisitions, so familiar to Westerners, there are still many postcommunist citizens who do not comprehend very well certain things that seem self-evident to the inhabitants of Western democratic societies. For instance, most people are thoroughly unfamiliar with the new laws to which they are being asked to adapt their behavior. They are often simply unaware of the very existence of these laws. They seldom know the basics of a free-market economy. And such ignorance prevails despite the fact that informative lectures have been broadcast on national radio explaining what is the value-added tax and what is a tax return.

To understand the fundamental problem, one must remember what life was like before and after 1989. Before it ended, life under communism resembled what goes on in a foster home or perhaps (as someone said) in an asylum for the mentally retarded. Everything was decided for you, from above and in advance. The paternalism of the state was so pervasive that it can barely be comprehended by those who have not lived under it for generations. Then, suddenly, in the aftermath of the Velvet Revolution, Czechoslovaks became, as it were, political adults—feeling like inmates who had been deinstitutionalized if not cured, grown-up but with little experience, pushed out of the foster home and onto the streets, and encouraged (with little or no follow-up) to take care of themselves.

Most people were able to do so, but many still do not fully grasp the tasks involved. And if the mundane challenges of a democratic and relatively free-market society can prove daunting to ordinary citizens, imagine how people whose lives were already socially marginalized before the 1989 would (or would not) cope with legal concepts and constitutional issues that sometimes baffle even sophisticated members of modern Western nations. What makes this story especially painful is that the concept in question, namely citizenship, touches on the Roma's legal status as members of the Czech community.

Some background and history

The social issues and policies concerning the citizenship of the Romany minority and their integration into the Czech Republic are complex and fraught with difficulties. But it may be that our experiences and mistakes will someday serve as a lesson guiding welcome changes in the citizenship laws of other postcommunist countries. The problem here is acute. For the technical complexity of legal regulations invariably seems to weigh most heavily on socially marginalized groups, such as

the Roma. This is the case not only in Eastern and Central Europe but, it should be said, in Western Europe as well.

For centuries, Roma and Sinthi shared a similar fate all across the Continent. They were mistreated, expelled, persecuted, and, in the twentieth century, subject to mass extermination. Only after WW II, when Europe was divided, did the living conditions of Roma in the so-called socialist states begin to deviate significantly from the way of life of their brethren living in the West. For example, the closed borders of the socialist states put a stop to Roma nomadism. In most socialist states, including Czechoslovakia, Gypsies were forced to settle and work in one place and, during Stalinist times, the very terms “Roma” and “Sinthi” were banned. The phrase “population of Gypsy origin” was used instead. This forced assimilation was hammered home by governmental paternalism and its system of social benefits, which only enhanced Roma dependence on the state. Every child of a Romany family was documented in school as a “social case,” that is, as a case requiring social work. Often children would be snatched away from their families and placed in foster homes if they refused to attend school (see below). The Romany language was not taught, and ethnographers and linguists who specialized in it were forced out of Charles University. The famous Czech Indologist and author of Romany Grammar and Romany Dictionary, Milena Hubschmannova, was allowed to return to the university only after 1989.

Romany tribal culture and its original value system were largely destroyed by the judicial resolutions of the communist authorities, creating a handicap not to be overcome in the span of one generation, much less in five short years (the period since the division of Czechoslovakia). After the 1968 Prague Spring, the Roma had tried to organize themselves, but they were stopped, and their organizations banned. National, racial, and ethnic intolerance grew among a majority of Czechs, and similar attitudes and conduct spread in all the former Soviet states, differing only in the degree of repression and the extent to which concrete social benefits were withheld. In the poorer countries, minorities—such as Gypsies—received proportionally less. As a result, Roma poverty is more pronounced in Moldova, Ukraine, and Romania than elsewhere, and Roma from these countries often attempt to emigrate to the Czech Republic, just as Czech Roma try to make their way to Western Europe.

In Czechoslovakia, and particularly on the territory of what is now the Czech Republic, the Roma’s situation is especially complicated, since the original local Roma, who used to be called Gypsies and who had been allowed to settle in Czech lands as early as eighteenth century by a decree of Empress Maria Theresa, were almost completely exterminated during WW II. There were fewer than 700 survivors. Those Roma are the ancestors of between 160,000 and 250,000 people (of whom, however, only 32,903 declared themselves in 1991 to be of Romany nationality). Originally they had come from Slovakia and the Sub-Carpathian Ukraine, brought to Czech lands to do hard, unskilled labor in the surface mines of Northern Bohemia, to work in the steel works in Ostrava, Karvina, and Havírov (Moravia), or in the local black-coal pits. In part, the Roma replaced the Germans, who had been forcibly expelled from the border regions of Sudetenland to Germany. The public after the war was wholly ignorant of the problems of this obscure ethnic group.

And the Roma’s problems were legion. Movement was highly restricted in the early years after the war. Everyone was required to register and to carry an identity card to be shown at the request of any policeman. Such tight surveillance prevented the Roma from moving around freely or even visiting the capital, and those Roma who did not have a permanent residence in Prague were usually booted out of the city. Moreover, because the Romany nationality was not officially recognized, the very category was not used. If queried about their nationality, Romany called themselves Slovaks or Hungarians. And yet state officials maintained detailed files on the “population of Gypsy origin,” labeled according to skin color. They were registered as persons to whom “special attention” had to be paid or as “social cases,” even if they did not need any social aid. Here was a group that was legally denied an identity and yet was easily identifiable and, as had always been the case, which remained the target of serious discrimination.

The wider public knew next to nothing about anti-Roma discrimination—about the forced sterilization of Romany women, for example—and writing on the subject was forbidden. This taboo was broken by Czech dissidents only in 1978, when Charter 77 published a report, Document Twenty-Three, on the persecution of the Romany population. The report exposed all the problems that continue to be discussed in the Czech Republic and elsewhere today.

Needless to say, the November 1989 disintegration of the totalitarian political system and the subsequent evolution toward a market economy and the reprivatization of property delivered a shock to the entire Czech body politic. Two-thirds of the working population has changed jobs since 1989. Most have adapted well to the market system. The social problems that now appear in our country (drugs, organized crime, gambling, and the like) more or less correspond to the social problems afflicting Western democracies. Only about 1.8 percent of the population lives below the poverty line. Dozens of political parties have been created, tens of thousands of civic associations and foundations established, and interest groups have emerged and are becoming increasingly active. People have understood and come to accept the democratic political system. The biggest economic downturn came in 1992–93, but people survived it living off the euphoria of their newly won freedom. That there is also disappointment, weariness, fatigue, and impatience is hardly surprising. Since 1994, in any case, there has been a slow upswing in the living standards for most people.

The Romany minority is definitely an exception. Representing about 2.1 percent of the population, the Roma have been the social group hit hardest by the economic transformations. When the old paternalistic system disintegrated, the pressure for individual responsibility accelerated. Moreover, the new laws are unclear and subject to multiple interpretations; the resulting confusion adds to the instability. Although the unemployment rate in the Czech Republic is still relatively low (about 4 percent), a stunning two-thirds of the Roma are unemployed because they lack skills, motivation, and professional aspirations. They are covertly, and often overtly, discriminated against, living almost exclusively on state aid. The Roma have also started to migrate once again. They gravitated to the capital, and their relatively high contribution to the general rate of criminality enflames racism and xenophobia.

Czechs do not want Roma as neighbors. Many racially motivated attacks have occurred, not to mention clashes with skinheads. Several dozen Roma have been killed. At the same time, to counteract the discrimination and respond to the humiliations, dozens of new Romany organizations, each with their own spokesmen and leaders, have emerged, although they seldom agree with one another or act in concert. Today, there are 32 Roma political parties (none represented in Parliament), a fragmentation that patently reduces the Roma's political effectiveness. There are 43 Roma cultural institutions, broadcasts in the Romany language on radio and television (once a week, not during prime time), and 57 organizations established by the majority population to underwrite Romany cultural awareness. Serious sociological research on Romany subjects has also emerged. Nevertheless, the actual position of the Roma is poor, and hatred against them is on the rise. The problems they face are many and complex. But here we focus on only one: the Czech law regarding citizenship, a law entirely unsuitable for Roma. Its legal shortcomings—it is called the Law on the Acquisition of Citizenship—have hurt the Roma living in the Czech Republic more than any legal measure put in place since the breakup of Czechoslovakia, and it has been justly criticized by the Council of Europe as well as the US State Department in 1995.

On citizenship

The Czechoslovak Federal Republic (CSFR), which was created after the collapse of the Communist Party in 1989, was divided on January 1, 1993, into two successor states, the Czech Republic and Slovak Republic. This division naturally raised the question of the nationality of the citizens of the former federation. In the majority of cases, nationality in the newly established states is governed by legislation that was in force before the two new states came into being. Still, certain inhabitants, those who often moved between the two republics, namely, the Roma, found themselves in an awkward position.

In the period from the creation of the Czechoslovak Republic in 1918 until 1968, there was only one kind of Czechoslovak citizenship. With the establishment of the federation, in 1969, new legislation governing citizenship was adopted. Each citizen of the Czechoslovak Socialist Republic became, as of January 1, 1969, a dual national: a member of the federation proper and of one of the two federal republics. Law No. 165/1968 Coll. defined federal nationality, while Law No. 39/1969 Coll. defined republican nationality. The republican nationality of citizens born before January 1, 1954, was determined according to place of birth, while that of citizens born after this date was determined by the nationality of their parents. When determining republican nationality the *jus soli* principle was replaced—on crossing the January 1, 1954, threshold—by the *jus sanguinis* principle.

But republican-nationality status had absolutely no practical meaning: it was not found on any identity documents, and all rights (including the right to education, social benefits, housing, and the right to vote) were established according to one's permanent residence. As a result, in 1969, very few people took advantage of the option period during which one could change one's republican-nationality status (as it had been defined in the former Czechoslovak Socialist Republic [CSSR]).

On the day in 1993 when the CSFR split, that is, the day the successor states came into being, new rules on citizenship came into effect in both states. Under Law No. 40/1993 Coll., federal nationality ceased to exist, and citizens of the previous federation became either Czech or Slovak nationals, depending on their former republican nationality. A period of a year and a half (to June 30, 1994) was stipulated by law during which one could change one's nationality. After this date, Slovak citizens could acquire Czech citizenship only by applying to the Interior Ministry of the Czech Republic. Under the previous dispensation, one had the option of selecting a nationality; this was now no longer the case. Nor was it possible to make a legally enforceable claim to acquire citizenship through "naturalization," and the Interior Ministry was perfectly free to reject such applications.

Not long after the federal breakup, this new citizenship law came under criticism, above all in connection with the "catastrophe scenario." A confidential document had been prepared in the fall of 1992 by the Czech government, analyzing in advance necessary legal steps and legislation that would be needed in the event of a division of Czechoslovakia. At that time, an exodus of Roma from Slovakia was anticipated, and critics of the Law on the Acquisition of Citizenship claim that it was expressly designed to exclude the Roma who were, of course, citizens of the federation, and to prevent their gaining citizenship in a successor Czech Republic. Even if Law No. 40/1993 Coll. had not been intended to prevent Slovakian Roma from becoming Czech citizens, the Roma were nevertheless the ones most burdened by it. It was mainly Roma who had moved to the earlier Czech Republic after 1945, in the aftermath of the Benes decrees. The Roma were originally from Slovakia and, in 1969, when the Czechoslovak Federation was created, as well as in 1993, when the independent Czech Republic came into being, the Roma were defined by law—although they did not know this—as citizens of the Slovak Republic.

Though officials now deny it, the Czech government must have been aware of the exclusionary potential of the new law. Their tacit understanding is at least partially implicit in a report of April 1993 that reads:

The second most numerous group [of Roma has been living] in the Czech Republic without applying for permanent residence, which means that . . . they also do not enjoy rights in the above-mentioned areas. It can be assumed that this group of Roma makes its living by illegal or semilegal activity, and its presence may contribute to the growth of crime. . . . [That] part of the Roma who de facto live in the Czech Republic is not and cannot be registered as having their permanent residence here, and thus does not have the legal prerequisites for the acquisition of Czech Republican citizenship. Law No. 40/1992 Coll. of the Czech National Council . . . also stipulates the condition of a five-year clean criminal record as a prerequisite for the acquisition of the citizenship of the Czech Republic, and this clean-record condition will undoubtedly affect the Romany community as a whole more than other inhabitants. . . . It can be expected that . . . at the beginning of 1994, a number of Roma will find themselves in the position of foreigners living in the Czech Republic, without any legal basis.

To select Czech citizenship between January 1, 1993, and June 30, 1994, in accordance with Sec. 18 of Law No. 40/1993 Coll., was made all the more difficult by a number of conditions that the Roma were often unable to meet. The group, as a whole, is largely ignorant of the law; many Roma are semiliterate and, without assistance, they have been unable to understand administrative procedures or deal with state authorities. Of those who realized that it would be advantageous for them to acquire Czech citizenship, many were still unable to do so because the law required, among other things, documentation proving at least two years of continuous permanent residence in the Czech Republic and the absence of a criminal record for the past five years. The Interior Ministry, until now, has interpreted "permanent residence" in a strictly technical sense. To do so is to ignore the actual experience of the Roma. For example, consider the problem of registering one's residence. During the communist period, the Roma often found themselves in a situation where they had been living in the Czech Republic for decades or were even born there but were never officially registered

as permanent residents and were still holding temporary residence permits. This applied particularly to Roma living in factory dormitories. The same problem occurred with the children in foster homes, who were placed for long periods of time in state institutions without being registered as Czech citizens. In theory, an applicant could prove his permanent residence by means of a witness or with convincing documentation that he or she had lived for years in the Czech Republic, but the Interior Ministry did not have to recognize such proofs as valid evidence. More often than not, Roma were unable to understand this procedure: and government bureaucrats did nothing to explain this option before the deadline for declaring one's citizenship expired.

The other condition—having a clean record—required that a person not have been convicted of a felony or misdemeanor for a period of five years before the law came into effect. Thereafter, one could apply for naturalization. The absurdity of such a condition was this: an applicant who was, for example, sentenced to life imprisonment for a murder six years prior to the adoption of the law could apply for Czech citizenship, while an applicant who was convicted of a misdemeanor, two years before the disintegration of the federation, could not. The statistics on Roma criminality show that, although it is indeed high, the crime rate for this ethnic group is clearly influenced by the social circumstances of its members and has a different character from the criminality of the majority population. Misdemeanors, such as shoplifting, pickpocketing, and the like, prevail among Roma and, in addition, given the tradition of family solidarity, they often “justly share” their crimes. That is, it is quite common for a relative to confess to a crime because the real perpetrator has small children, has just gotten married, or is under threat of getting a stiff sentence because he is a habitual offender. These and other factors mean that the requirement of a five-year clean record prevents thousands of Czech Roma from meeting the “legal” conditions for citizenship.

Most Roma in the Czech Republic—who had been defined by the legislation of January 1, 1993, as citizens of the Slovak Republic—had no documents to prove their nationality, one way or the other. They often had lost their legal documents or willfully destroyed them in hope of getting new ones. But the Roma cannot acquire a Czech identity card, and maybe not even a Slovak one, because they are not, or have not been, registered as permanently residing in the Slovak Republic; and they cannot acquire a Slovak passport because they have no certificate showing Slovak citizenship. Of course, it was possible and has been possible all along to apply for and obtain such documents; but the whole procedure is very complicated and costly, and it must be made through the Slovak Embassy in Prague. In such cases, as may be imagined, state administrators seldom go out of their way to create extra work for themselves. Citizen associations, intent on lending aid to the Roma, began forming in 1995, when it became clear that the Roma were unable on their own to work these legal procedures. For example, with the efforts of the Czech Helsinki Committee, the Advisory Center for Citizenship was established, and students from Charles University's Department of Social Work (with financial support from the Open Society Fund) began as early as 1995 to assist Roma who were entitled to citizenship; meanwhile other citizens raised funds for legal expenses. But the Roma themselves were often uninterested in Slovak documents, not understanding why they should get them when they were born and grew up in the Czech Republic. Some had never even been to Slovakia.

Another large group of former federal citizens, who have been unable to legalize their stay in the Czech Republic, consists of Romany foster-home children. They were either taken from their parents' care by a judicial decision or were placed in foster care voluntarily by their parents, usually of Slovak citizenship, with the intention of taking them back later. The parents have never been officially stripped of their parental rights. Although these children have spent their entire lives in foster homes, their representation in administrative proceedings for citizenship (as with any other applicant under 15 years of age) can be performed only by those legally empowered to do so, in other words, by a parent. Both parents, as registered in the child's birth certificate, have to attach to their child's application for citizenship their notarized consent for any change of citizenship. As might be imagined, it is almost impossible for children from foster homes to meet this demand; it is equally onerous for children whose parents are divorced or possibly never got married or for those whose parent or parents cannot be found. In view of the law's requirements, administrative citizenship proceedings for these children present nearly insurmountable hurdles. Thus children are released from foster care after reaching 18 years of age (or simply leave such homes on their own) without any documents that would legalize their continued stay in the country. As a result, like all

other “illegal aliens,” they are not entitled to the social benefits of the state; they are denied health insurance, and cannot work legally in the Czech Republic. If they commit a crime, they may be expelled from the country by court order or by an administrative decision of the Immigration Police. The Advisory Center for Citizenship of the Czech Helsinki Committee has roughly 4,000 clients registered with it. Among them are several hundred minors placed in foster homes.

Legal vagueness and governmental foot dragging

Aware of the lack of clarity in the citizenship law, the Czech government has repeatedly amended it and created many exceptions facilitating the acquisition of citizenship. As a result, however, many features of the law have now grown unclear to most of the public administrators charged with applying it. For example, since current citizenship legislation does not allow for dual citizenship, one of the conditions for granting Czech citizenship is also the submission of a document certifying release from one’s original citizenship (Sect. 7.1.b of Law No. 40/1993 Coll.). This requirement resulted in some applicants losing their *de jure* citizenship because they acquired a certificate releasing them from Slovak citizenship without first confirming that they were entitled to Czech citizenship. Although this situation applies to several dozen people at most, of all the law’s provisions, this was the one most criticized by international organizations. The Czech government, however, steadfastly ignored this criticism during the first years after the federation’s breakup, arguing that citizenship was an issue touching upon state sovereignty.

This whole question of citizenship was distinctly politicized before the 1996 elections. Not one political party proposed amending this controversial law. Clearly, any simplifications in the law would have helped the Romany ethnic group the most. Although nongovernmental organizations criticized the law (as early as 1994) as retroactively discriminatory toward one minority, the government started a dialogue on the subject only when the Council of Europe handed down its recommendations. In April 1996, the citizenship law was finally amended; it then became possible to waive the five-year clean-criminal-record requirement, which defines the practice at present. But since low-level officials often still do not know how to proceed, they leave individual cases to be solved by NGOs.

From the legal point of view, the situation is further complicated by the fact that authorities are no longer allowed to define Roma as a minority since, beginning in 1990, the Roma are no longer registered with the authorities as “social cases.” The accompanying social-work files were (or should have been) destroyed. The Roma themselves usually do not claim Romany nationality; and thus the actual number of Roma who remain in the Czech Republic as “foreigners,” without Czech citizenship, has never been exactly determined. By indirect evidence, that is, from the number of persons addressing requests to both nongovernmental and governmental organizations, it is estimated that those applying for citizenship amount to several thousand. And there is a further complicating factor: according to the amended law, persons in institutions should not be released before the authorities themselves have arranged documents regarding their Czech or Slovak citizenship. But if they reach 18 years of age, or their sentence in prison expires, and the authorities have not managed to prepare their documents in time, they cannot be held any longer and are thus released without papers. At this point, they can only be given recommendations on what to do next to acquire citizenship. The situation remains, however, one in which an unknown number of people, hard to trace and not officially identifiable, remain within the country without citizenship and largely without the means to apply for it.

It was only in late 1997 that the Czech government finally began to address its citizenship problems. And this response may have come about, in part, because of Czech and Slovak Roma who, in 1997, had tried to emigrate to Canada or the United Kingdom. This is another story, and one which cannot be told here, but this attempted emigration—while threatening to deplete further the Roma’s intellectual leadership—did have one seemingly beneficial effect. The Canadian government responded to the influx of Czech Roma (about 1,200 in 1997) by reintroducing visa requirements for all Czech citizens. Coincidentally or not, the Czech government felt at this point compelled to focus on the issue. To which one must add that, in 1997, the Council for Nationalities, led by Minister Pavel Bratinka, prepared an extensive report. This report vividly criticized the government at the time for failing to accommodate Roma and leaving most assistance initiatives to NGOs. The report details everything that is being done to help the Roma in the Czech Republic. But while a

good deal is actually attempted, these measures are random and arbitrary, and the solutions do not reflect a broader theoretical strategy about how to resolve the dilemmas of such a vaguely defined minority. As the sociologist Ivan Gabal correctly remarks, not even a clear legal definition of a “Roma” exists. The report itself, which was presented to Parliament and the government, uses interchangeably such terms as “the Romany community,” “minority,” “ethnic group,” “population,” and so on. The concept of race is rejected, although racial markers (such as dark complexion) and language are presented as ways to identify Roma. The Roma themselves do not usually declare their nationality, though that option has been available since 1991. And members of this majority do not uniformly speak Romany; in fact, they lack a common, consciously shared identity. Educated Roma—that is, the group’s intelligentsia (with very few exceptions)—after obtaining an education and professional qualifications seek to become assimilated quickly into the rest of society.

Roma who claim Romany nationality represent less than 12 percent of the total Roma population. There are only several dozen spokespersons and activists from among Roma willing to stand up for their own ethnic group, and even among these people family differences prevail. Therefore, they are unable to unite and organize themselves, or to elect their own leaders to regional representative offices. In the first 1990 Parliament, there were four Romany MPs, while at present there are none. Moreover, the government cannot determine whether the Roma want to keep separate as a nationality, to adapt, or to assimilate, and which of their leaders are authorized to answer these questions. In other words, the government’s very ignorance with regard to the Roma (added to the Roma’s own ambivalence) leaves it unable to decide on a course of action. The government does not know whether to strengthen the cultural elements typical of an ethnic minority, in other words, to bolster its positive cultural (not racially derived) identity, or to seek to integrate it tracelessly into society at large. A simple “increase in the activity and investment of the state does not bring out a qualitative change by itself,” writes Ivan Gabal. He emphasizes that the mostly negative attitudes of Czechs toward Roma (who are still searching for their own new identity) are those of a nation insecure, “threatened by [an] acquired freedom,” and in a state of metamorphosis. Because other postcommunist states are in a similar situation, it would be useful to develop a regional approach to the status of the Romany group—especially since, after individual Central European countries join the European Union, this problem will become a truly international one.

But even now we can draw attention to the new ordeals that Czech legislation and administrative practice have unjustly added to the age-old plight of the Romany.

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