Minority Rights, Multiculturalism and the Roma of Europe

William K. Barth*

Abstract. In this article, I review legal initiatives to improve conditions for the Roma peoples who live in the states of Europe. The question is timely given the accession of Romania and Bulgaria to the European Union on 1 January 2007.1 Romania contains the largest concentration of the Roma population in Europe. My article uncovers a schism between political theory and international law on the question of minority rights. I distinguish how the conclusions of Will Kymlicka, one of the most prolific writers on the subject of multiculturalism in political theory, differ from the international jurisprudence that protects minority groups. In this essay, I analyse Kymlicka’s claim that multicultural policies are contextually dependent, and an inappropriate subject for a common legal regime of international human rights treaties. To determine the implications of human rights jurisprudence for this normative claim, I also research court cases filed by the Roma under the European Framework Convention for the Protection of Minorities and the European Convention for the Protection of Human Rights and Fundamental Freedoms.2 I contrast the international treaties that protect minority groups from political theorist accounts of multiculturalism in three areas. First, my article discusses jurisdictional issues concerning whether the particular groups defined by minority rights, irrespective of their geographical location or contextual experience, are proper subjects for protection by a common rights regime. Next, I illustrate how cultural rights are distinguishable from traditional civil rights laws. Finally, I examine how the historic persecution of the Roma violates human rights standards that protect minorities. The Roma have a long and unique relationship with the European states, which serves to demonstrate whether or not a common regime of minority rights safeguards the cultural development of the Roma.

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2) Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the ‘European Convention on Human Rights’), Rome, 4.XI.1950, entered into force 3 September 1953, The text of the Convention has been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into
1. Introduction

In this article, I discuss whether international treaty protections for minorities are consistent with international human rights standards. This I carry out by reviewing legal initiatives to improve conditions for the Roma peoples who live in the states of Europe. The question is timely given the 1 January 2007 accession of Romania and Bulgaria to the European Union. Romania contains the largest concentration of the Roma population in Europe.

Will Kymlicka is one of the most prolific writers on the subject of multiculturalism in political theory. I discuss the implications for Kymlicka's theories by analysing his claim that multicultural policies are contextually dependent, and not the proper subject for a common international human rights regime. To determine the implications of human rights jurisprudence for this normative claim, I research court cases filed by the Roma under the European Framework Convention for the Protection of Minorities and the European Convention for the Protection of Human Rights and Fundamental Freedoms.3 In this article, I discuss jurisdictional issues about whether the particular groups defined by minority rights, irrespective of their geographic location or contextual experience, are the proper subject matter of protection by a common rights regime. Next, I illustrate how cultural rights are distinguishable from traditional civil rights laws. Finally, I examine how the historic persecution of the Roma violates human rights standards that protect minorities.

Determining how human rights jurisprudence administers minority protections is important because even though Kymlicka is predisposed in favour of protection for minority cultures, he disputes the necessity for a common legal regime to protect minority groups. Kymlicka maintains that the issue of multiculturalism is a complex international question and not the proper subject of a common legal regime. By contrast, the growing body of human rights' jurisprudence develops as a common regime that shields minority groups against an empirical history of state-initiated, coercive assimilation campaigns. Human rights law entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5(3) thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed and Protocol No. 10 (ETS No. 146) has lost its purpose. Framework Convention for the Protection of National Minorities (ETS No. 157), entered into force on 1 February 1998. For more information, i.e. text, signatures and ratifications, etc., on these Conventions and Protocols, see the Council of Europe's website at <www.coe.int>.

3) Ibid.
rights by definition primarily focus protection on the individual’s right to access culture in community with other members of his or her group. The human right to the enjoyment of culture is not contextually dependent, at least not in terms of the particular minority groups identified by Kymlicka, rather it is a universal human right.

Kymlicka concludes that the Roma peoples, along with African-Americans and Russian settlers in the Baltic states, are ethno-cultural groups that do not fit into standard minority group categories of immigrant groups or so-called national minorities. I have selected the legal challenges facing the Roma as the subject of this article. Kymlicka assigns all minority groups to six different categories, namely, national minorities, indigenous peoples, legal immigrants with the right to become citizens, illegal immigrants or guest workers without the right to become citizens, racial caste groups and isolationist ethno-religious sects. He maintains that these various categories are entitled to relative degrees of legal protection, or what he terms accommodation or poly-ethnic rights, against integration (assimilation) into societal culture. For example, national minorities, a term placing artificial limitations upon persons and categories of minority groups qualified by Article 27 of the International Covenant on Civil and Political Rights (ICCPR) of 1966, deserve greater protection than immigrant groups. However, international minority rights do not make Kymlica-type distinctions between categories of minority groups. For example, Article 27 of the ICCPR qualifies a common regime of legal protection to all linguistic, ethno-cultural (inclusive of race), national and religious minority groups. By contrast, Kymlicka maintains that the greater the number of minority groups he studies, the stronger the claim that minority protection (ethno-cultural justice) “cannot be secured by a regime of common rights.” Instead, he argues that the application of minority rights should be contextually dependent. That is, protection for

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4) The human right to the enjoyment of culture is protected in the following treaties and other international instruments: International Covenant on Economic, Social and Cultural Rights (1966); Article 27 of the International Covenant on Civil and Political Rights (1966); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). UNESCO instruments on the human right to culture include: Declaration of the Principles of International Cultural Cooperation (1966); Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to it (1976); Declaration on Race and Racial Prejudice (1978); Declaration on Cultural Diversity (2001); Draft Convention on the Protection of the Diversity of Cultural Expressions (2005).


8) Kymlicka, supra note 6, p. 47.
minorities should be restricted to groups that qualify as a separate, distinct society, in which case it is unfair to forcibly assimilate it.\textsuperscript{9}

This article on the Roma also provides an opportunity to examine how regional trans-national courts, such as the European Court of Human Rights (ECHR), influence states to provide cultural protection for minority groups. In this essay, I demonstrate how the regional protection and implementation of human rights that are inclusive of minority rights contrast with those provided for by United Nations treaties. The administration of international human rights\textsuperscript{10} is frequently carried out by states, as well as by regional political bodies—such as the Council of Europe’s (CE) sponsoring of the European Convention on Human Rights that established the European Court of Human Rights. In this article, I examine individual court cases to illustrate whether the European Court of Human Rights has influenced the European states’ recognition of the Roma people. The Roma have a long and unique relationship with the European states, which serves to demonstrate whether or not a common regime of minority rights safeguards the cultural development of the Roma.

2. Summary of Europe’s Minority Regime

The sovereignty of states is increasingly being eroded by the social, monetary, strategic and trade enhancements offered by membership in regional organisations such as the Council of Europe. State members of the Council of Europe also assume obligations for the implementation of the human rights regime encompassing minority rights as a condition of membership. The integration of states into a type of regional-federalism for the supra-national governance of trans-national society is the focus of scholarly confirmation. For example, Alec Stone Sweet concludes that the Treaty Establishing the European Community as Amended by Subsequent Treaties\textsuperscript{11} (Rome Treaty) establishes a constitutionalisation of Europe.\textsuperscript{12} This takes place under a legal and civil administration with jurisdictional powers granted to the European Court of Justice (ECJ). The ECJ’s doctrines of supremacy and direct effect make it the authoritative interpreter of European Community law. The system bestows rights on the ECJ to confer

\textsuperscript{9} Ibid., p. 29.
\textsuperscript{11} Done in Rome, 25 March 1957.
judicial rights and obligations on all legal persons and entities, public and private, within European Community territories. The ECJ maintains a degree of judicial supremacy over domestic-state legislative policy and court decisions. Additional CE conventions have established institutions that diminished sovereignty while strengthening the integration of European states, as well as implementing human rights, ever since the end of World War II.

Similar to the UN Charter (26 June 1945), passage of the Statute of the Council of Europe (5 May 1949) was motivated by the scourge of two world wars in Europe that had resulted in the deaths of over 56 million persons. The Statute provided a foundation to prevent a recurrence of armed conflict by means of European integration and cooperation, as well as adherence to a human rights regime. Article 3 of the Statute of the Council of Europe requires that CE member states accept the rule of law, as well as the enjoyment of human rights and fundamental freedoms within their jurisdiction. The Convention for the Protection of Human Rights and Fundamental Freedoms was also drafted within the Council of Europe. It was opened for signature in Rome on 4 November 1950, and entered into force in September 1953. Taking as their starting point the Universal Declaration of Human Rights (1948), the framers of the Convention passed a catalogue of fundamental civil and political human rights implemented by three regional institutions: the European Commission of Human Rights (1954), the European Court of Human Rights (1959) and the Committee of Ministers of the Council of Europe. Legal standing to enable an individual to file a complaint in the ECHR against his or her own state was made compulsory by the passage of Protocol No. 11, which came into force on 1 November 1998. Applications to the ECHR filed on behalf of the Roma against various states are the subject of my discussion in section 5.

On 10 November 1994, the Committee of Ministers of the Council of Europe adopted the first comprehensive convention protecting the right to the enjoyment of culture for Europe’s minority groups, namely, the Framework Convention for the Protection of National Minorities. The preamble to the Framework Convention incorporates existing UN conventions and declarations protecting minority rights. However, the Framework Convention contains textual

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13. Ibid., pp. 14, 15, 20, 21, 23, 64, 65.
language more restrictive of cultural protection for minorities than other international minority rights instruments, namely, the UN’s Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). For example, Article 5 of the Framework Convention requires that states merely promote conditions necessary for minority cultural development.

By contrast, the UN’s Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities uses stronger language: Articles 1 and 2 declare that state parties shall protect minority cultural identity. Article 19 of Europe’s Framework Convention reconciles these differences by clarifying that the Framework Convention is restricted by any existing international conventions, including UN legal protections for minorities. A Roma whose application has been denied by the ECHR may have standing to file a communication with the UN’s Human Rights Committee (HRC) under Article 27 of the ICCPR.

Human rights jurisprudence on minority protection, similar to other areas of international law, is not a consistently ordered legal regime such as those found within a federal political system. Also, human rights are not a part of a legislative framework mandated by a world parliament or enforced by a global-federal administration. Rather, regional and international treaties ratified by independent states that voluntarily assume human rights obligations create human rights jurisprudence. The relationship between regional and international human rights institutions is not vertical but horizontal. It is, in substantial part, a self-implementing regime that relies upon the legal doctrine of comity as well as the goodwill of participating member states and party signatories. Jurist Patrick Thornberry notes, for example, that overlaps between the HRC and the ECHR occasionally take place. However, this does not prevent the filing of a communication to the HRC by an author whose application was previously denied by the ECHR. A state that seeks to prevent such appeals can only do so by a formal reservation to the ICCPR. Article 35(2)(b) of the Convention for the Protection of Human Rights and Fundamental Freedom as well as Article 2(a) of the First Optional Protocol to the ICCPR reject an application or communication that has already been submitted to another procedure of international investigation

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or settlement. Article 35(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 2(a) of the First Optional Protocol to the ICCPR also require that domestic remedies be exhausted prior to the filing of an application or communication. Standing to file a communication requires that the applicant (ECHR) or the author (ICCPR) make an election between the two different international forums through to the exhaustion of the remedy. Article 5(b) of the First Optional Protocol to the ICCPR and Articles 6 (fair trial) and 13 (effective remedy) of the Convention for the Protection of Human Rights and Fundamental Freedoms provide an exception to this rule in cases where a domestic judicial forum engages in an abuse of process such as an unnecessary delay of trial.

Additional minority protections were also passed by the CE as well as by other regional institutions. For example, the European Charter for Regional or Minority Languages\textsuperscript{20} entered into force in March 1998. The Charter includes specific protection for the Romani and Yiddish languages that have no precise territorial base within any member state.\textsuperscript{21} Also, the Organization for Security and Co-operation in Europe (OSCE) established the post of OSCE High Commissioner on National Minorities. Protection of minority groups has been the subject of OSCE interest in the prevention of war resulting from ethnic violence, primarily in the Balkans as well as in other parts of Central and Eastern Europe. The Copenhagen Document of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe (CSCE) (June 1990) and the Report of the Geneva Meeting of Experts on National Minorities of July 1991 are also critical OSCE instruments for the international protection of Europe’s national minority groups.

The statutory framework establishing the Council of Europe also instituted the Parliamentary Assembly of the Council of Europe (PACE). The PACE has adopted numerous recommendations on the recognition and treatment of minorities.\textsuperscript{22}

\begin{footnotesize}
\textsuperscript{20} European Charter for Regional or Minority Languages, Strasbourg, 5.XI.1992.


\textsuperscript{22} These include Recommendation Nos. 1134 (1990)—the rights of minorities; 1177 (1992)—language and mediation rights of minorities; 1275 (1995)—against racism, xenophobia, anti-Semitism and intolerance; 1353 (1998)—minority access to higher education; and 1492 (2001)—national minorities. Specific recommendations concerning the Roma peoples include Recommendation Nos. 563 (1969)—situation of Roma and other Travellers in Europe; 1203 (1993)—Roma linguistic, educational and cultural rights as well as appointment of a Roma ombudsman; 1557 (2002)—legal situation of Roma in Europe.
\end{footnotesize}
3. The Roma Peoples

Similar to the Jewish Diaspora, the Roma have lived in what Jean-Paul Clebert terms a dispersion that dates back to the tenth century AD.23 Like the Jewish people, the Roma are distinguished by a history of persecution that almost lacks credulity because of the degree and consistency of persecution against them that continues through to the current day. In contrast to the Jewish peoples, the Roma do not suffer discrimination based upon their religious beliefs. European persecution of the Roma is targeted against nomadism (crime of vagabondage—section 10) that is practiced by the Roma peoples. This includes the Roma’s nomadic economic trading within the various states of Europe. Other than the parallel dispersion and persecutions suffered by the two groups, there is no ethnical connection between the Roma and Jewish peoples. Both groups, nevertheless, suffered genocidal extermination campaigns led by the Nazis in World War II. The migration patterns of the Roma make their history a challenge for scholars as they are difficult to accurately research. Although the Roma world population numbers 15 million persons who reside in the Americas, Australia, Africa and some parts of Asia,24 Europe is the continent that contains the largest concentration of Roma. The Roma population in Europe is estimated at between 8 to 10 million people (Table 1).

However, the Roma cultural trait of travelling or nomadism makes the exact population number, like other statistics about the Roma, difficult to obtain.25 Also, no comprehensive inquiry has been commissioned by the Council of Europe to research the history or status of the Roma. Other countries have successfully performed such studies. For example, the Canadian government-commissioned Report of the Royal Commission on Aboriginal People26 serves as an original source for research into the Aboriginal peoples of Canada. Canada authorised the Royal Commission on Aboriginal People to perform a comprehensive inquiry into the history and nature of, and the solution to, the Canadian-Aboriginal relationship. Such studies are necessary to help us understand the persecution encountered by

Table 1. (1987) Estimate of Numbers of Roma and Travellers in Europe*

<table>
<thead>
<tr>
<th>State</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>100,000</td>
</tr>
<tr>
<td>Austria</td>
<td>25,000</td>
</tr>
<tr>
<td>Belarus</td>
<td>15,000</td>
</tr>
<tr>
<td>Bosnia-Herzegovina</td>
<td>50,000</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>800,000</td>
</tr>
<tr>
<td>Croatia</td>
<td>40,000</td>
</tr>
<tr>
<td>Cyprus</td>
<td>1,000</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>300,000</td>
</tr>
<tr>
<td>Denmark</td>
<td>2,000</td>
</tr>
<tr>
<td>Estonia</td>
<td>1,500</td>
</tr>
<tr>
<td>Finland</td>
<td>9,000</td>
</tr>
<tr>
<td>France</td>
<td>340,000</td>
</tr>
<tr>
<td>Germany</td>
<td>130,000</td>
</tr>
<tr>
<td>Greece</td>
<td>200,000</td>
</tr>
<tr>
<td>Hungary</td>
<td>600,000</td>
</tr>
<tr>
<td>Ireland</td>
<td>28,000</td>
</tr>
<tr>
<td>Italy</td>
<td>110,000</td>
</tr>
<tr>
<td>Latvia</td>
<td>3,500</td>
</tr>
<tr>
<td>Lithuania</td>
<td>4,000</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>150</td>
</tr>
<tr>
<td>Macedonia</td>
<td>260,000</td>
</tr>
<tr>
<td>Moldavia</td>
<td>25,000</td>
</tr>
<tr>
<td>Netherlands</td>
<td>40,000</td>
</tr>
<tr>
<td>Norway</td>
<td>1,000</td>
</tr>
<tr>
<td>Poland</td>
<td>50,000</td>
</tr>
<tr>
<td>Portugal</td>
<td>50,000</td>
</tr>
<tr>
<td>Romania</td>
<td>2,500,000</td>
</tr>
<tr>
<td>Russia</td>
<td>400,000</td>
</tr>
<tr>
<td>Serbia-Montenegro</td>
<td>450,000</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>520,000</td>
</tr>
<tr>
<td>Slovenia</td>
<td>10,000</td>
</tr>
<tr>
<td>Spain</td>
<td>800,000</td>
</tr>
<tr>
<td>Sweden</td>
<td>20,000</td>
</tr>
<tr>
<td>Switzerland</td>
<td>500,000</td>
</tr>
<tr>
<td>Turkey</td>
<td>500,000</td>
</tr>
<tr>
<td>Ukraine</td>
<td>60,000</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>120,000</td>
</tr>
<tr>
<td><strong>Europe (approximately)</strong></td>
<td><strong>8,500,000</strong></td>
</tr>
</tbody>
</table>

*J-P. Liegeois, *School Provision for Ethnic Minorities: The Gypsy Paradigm* (University of Hertfordshire Press, Hertfordshire, 1987) p. 35. This 1987 population estimate has increased. However, proportional percentages of the Roma population for each country are still useful.
minority groups and to consider how best to remedy their problems within the parameters established by domestic and international minority rights.

Kymlicka is correct to argue that the amount of justice dispensed to a minority group is circumstance-dependent. However, he mistakenly concludes that simple justice can be applied in the absence of a common regime of minority rights laws. For instance, my research finds that their nomadism caused states to identify the Roma as stateless persons subject to violent assimilation practices motivated by economic forces. However, irrespective of their unique social and historical context, the Roma are the proper subjects of a common regime of cultural protections under the jurisdiction of the ICCPR. Nevertheless, no comprehensive inquiry researching the Roma people has yet been produced by the European Union. A trans-national inquiry concerning the history of the Roma persecution experience in Europe is necessary to obtain a comprehensive solution to their problems. The UN’s Sub-Commission on the Promotion and Protection of Human Rights endorsed the need for a formal inquiry:

Considering the magnitude and complexity of Roma human rights problems there is a need to initiate a study to identify the reasons why, unlike other minorities who integrate successfully in the countries of their choice, the problems of the Roma are recurrent in spite of the fact that they have been living for several generations within the same countries.27

The court cases and legal challenges involving the Roma’s right to travel primarily focus on unauthorised camping, town planning and trailer park disputes, which I will examine in the next four sections. Examples include challenges to domestic laws such as the United Kingdom’s Caravan Sites Act, 1969; Public Order Act, 1986; Town and Country Planning Act, 1990; and Criminal Justice and Public Order Act, 1994.28 These Acts delegate trailer seizure, trailer eviction and caravan site approval powers to local authorities, as well as reducing the number of trailer encampments. One third of England’s Roma population, for example, does not have a lawful place to camp and is criminalised by being forced to stop in unauthorised encampments.29 The primary questions affecting the Roma—such as illiteracy and the education of Roma children, official recognition of the Romani language, migration reforms that respect Roma cross-border travel,30

commercial support for nomadic trades, representation in domestic and European parliaments and statehood (Romanestan)–require a formal inquiry by Europe’s regional institutions.

No original source material of equivalent breadth and substance to the Royal Commission on Aboriginal People’s report exists to research the Roma peoples. Instead, for this article, I examine primary international and regional studies from organisations such as the OSCE, the UN and the World Bank. I also research secondary sources by scholars who use demographic material such as census data from official records from individual European states, as well as legislative records illustrating historic laws and decrees tracing official persecution within individual European states to illustrate the status and plight of the Roma peoples. These authors frequently provide research support for organisations that provide legal defences against new persecution efforts against the Roma by states in Europe.

An example of secondary source research about Roma migration patterns is provided by Jean-Pierre Liegeois, the director of the Gypsy Research Centre in Paris, who finds that the homeland of the Roma people is Eastern India (Hindustan), where they lived prior to the tenth century. By contrast, Jean-Paul Clebert explains that the Roma formed a loose conglomeration of nomad tribes dispersed over Northern India and particularly in the basin of the Indus. Clebert’s view is supported by several authors who discovered that the Roma originate from Northwest India. The Roma comprise part of the Gond peoples known in Nepal and Burma as Gond-Sindu or Gond-Sinti, who existed within the Indian Dom ‘jati’ or ‘caste’ (Hindi-Dom). Yaron Matras, editor of the Romani Project, discovered that in various parts of India, the Dom were known as a low-status caste of commercial nomads who worked as cleaners, sweepers, musicians, singers, jugglers, metal workers and basket-makers. The self-designation Dom Rom appears to have originally been a caste-designation used by different populations with similar types of trade.

The Roma have maintained their language, Romani cib, throughout their over one thousand-year dispersion from India through to the current day. Romani cib descended from Indian Sanskrit, and while similar to other Northern Indian languages such as Hindi, Bengali, Punjabi, Gujarati and Rajasthani, it is closest to Hindi. While preservation of the Indian-Roma language is in itself a remarkable

32) Clebert, supra note 23, p. 22.
33) See chapter 5 supra note 2; see also E. Marvshiakova and V. Popov, Gypsies in the Ottoman Empire, A Contribution to the History of the Balkans, edited by D. Kenrick, and translated by O. Apostolova (University of Hertfordshire Press, Hertfordshire, 2000) p. 11.
achievement, Romani cib also reflects the linguistic influences from the dispersion. Maintaining its Hindi and Punjabi roots, the language incorporates aspects from the languages of Asia Minor (including Kurdish), Greece, Iran, Armenia as well as the Balkan languages from Hungary, Romania and Germany. Table 2 presents a lexicon comparison showing the origin of the Romani language as well as borrowings made during the Roma dispersion:³⁶

Proudly confirming the Roma contribution not only to the Indian language but also to human culture and Indian national heritage, Indian Prime Minister Indira Ghandi proclaimed during the second International Romani Festival in Chandigarh, India:

It is apt the [Romani] Congress is being held here, for the Roma people have an affinity with the Punjab. Roma culture has imbibed and absorbed features of many lands and peoples and it retains memories of elements of Indian civilization. . . . The Indian people support the effort of the Roma in enriching human culture.³⁷

The Roma comprise 70 per cent of the population of groups in Europe that practice nomadism or travelling as one aspect or trait of their cultural heritage or group lifestyle.³⁸ Many nomadic or travelling groups (travellers) in Europe such as the Yeniches of Belgium and France, the Woonwagenbewoners of the Netherlands, the Landfahrer in Germany, the Tattares in Sweden and the Kalderash in Eastern Europe do not share the Roma's Indian heritage. Because these groups are not qualified as Roma-Indian, they are popularly described as Travellers and frequently not identified by their cultural heritage but rather by one aspect or trait of their culture, that is, nomadism or travelling. In the European context, the term Traveller describes indigenous groups not generally considered to be of Indian origin. Nomadism (travelling) as a practice has been associated with a wide range of other groups that do not fall into categories of protection offered by the minority regime as such, namely, vagabonds, tramps, hobos, itinerant smiths and wanderers.³⁹ However, these groups as well as members of the Roma do fall under the scope of protection offered by other international and regional instruments established for the protection of social and economic rights such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) as well as the European Convention on the Legal Status of Migrant Workers.⁴⁰

Table 2. Lexical Comparisons Showing the Origin of Romani and Borrowings Made in Dispersion

<table>
<thead>
<tr>
<th>Romani (Kalderas)</th>
<th>Hindi</th>
<th>Punjabi</th>
<th>English</th>
</tr>
</thead>
<tbody>
<tr>
<td>av-</td>
<td>a-</td>
<td>au</td>
<td>to come</td>
</tr>
<tr>
<td>de-</td>
<td>de-</td>
<td>de-</td>
<td>to give</td>
</tr>
<tr>
<td>dikh-</td>
<td>dekh-</td>
<td>dekh-</td>
<td>to see</td>
</tr>
<tr>
<td>ker-</td>
<td>kar-</td>
<td>kar-</td>
<td>to do</td>
</tr>
<tr>
<td>khel-</td>
<td>khel-</td>
<td>khel-</td>
<td>to play</td>
</tr>
<tr>
<td>phir-</td>
<td>phir-</td>
<td>phir-</td>
<td>to walk</td>
</tr>
<tr>
<td>cor</td>
<td>cor</td>
<td>cor</td>
<td>thief</td>
</tr>
<tr>
<td>kan</td>
<td>kan</td>
<td>kann</td>
<td>ear</td>
</tr>
<tr>
<td>nakh</td>
<td>naqk</td>
<td>nakk</td>
<td>nose</td>
</tr>
<tr>
<td>andre</td>
<td>andar</td>
<td>andar</td>
<td>inside</td>
</tr>
<tr>
<td>kalo</td>
<td>kala</td>
<td>kala</td>
<td>black</td>
</tr>
<tr>
<td>kolo</td>
<td>lal</td>
<td>lal</td>
<td>red</td>
</tr>
<tr>
<td>jekh</td>
<td>ek</td>
<td>lkk</td>
<td>one</td>
</tr>
<tr>
<td>duj</td>
<td>do</td>
<td>do</td>
<td>two</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Romani (Kalderas)</th>
<th>Persian</th>
<th>Kurdish</th>
<th>English</th>
</tr>
</thead>
<tbody>
<tr>
<td>baxt</td>
<td>baxt</td>
<td>bext</td>
<td>luck</td>
</tr>
<tr>
<td>kez</td>
<td>kaz</td>
<td>kez</td>
<td>raw silk</td>
</tr>
<tr>
<td>koro</td>
<td>kur</td>
<td>kor</td>
<td>blind</td>
</tr>
<tr>
<td>tang</td>
<td>tang</td>
<td>teng</td>
<td>narrow</td>
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<td>zor</td>
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<td>zor</td>
<td>strength</td>
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<th>Romani (Kalderas)</th>
<th>Greek</th>
<th>English</th>
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<td>drom</td>
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<td>road</td>
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<td>kakavi</td>
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<td>kettle</td>
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<td>kokalo</td>
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<td>staidi</td>
<td>skiadi</td>
<td>hat</td>
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<td>xoli</td>
<td>khole</td>
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<td>zumi</td>
<td>zoumi</td>
<td>soup</td>
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<tr>
<th>Romani</th>
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<td>akh</td>
<td>eye</td>
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<tr>
<td>yag</td>
<td>ag</td>
<td>fire</td>
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<tr>
<td>kalo</td>
<td>aala</td>
<td>black</td>
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<tr>
<td>ker</td>
<td>kar</td>
<td>to do, make</td>
</tr>
<tr>
<td>khil</td>
<td>ghi</td>
<td>butter</td>
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<tr>
<td>kin</td>
<td>kin</td>
<td>to buy</td>
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<tr>
<td>amaro</td>
<td>amara</td>
<td>our</td>
</tr>
</tbody>
</table>

Europe’s legal persecution regime segregated the Roma into deplorable and inhumane social and economic conditions that exist to the current day. A number of organisations such as the Organization for Security and Co-operation in Europe as well as multi-state studies disclose the plight of the Roma, even though the Council of Europe has failed to commission a continental inquiry to recommend comprehensive solutions for this minority group’s degraded legal, social and political status. For example, a World Bank study on the Roma uncovered the fact that 80 per cent of Roma households in Bulgaria, 70 per cent in Romania and 40 per cent in Hungary qualify as poor. Unemployment levels for Roma rose to 74 per cent in Hungary in 1993, and to 70 per cent in the Czech Republic in 1999. Another important study by the OSCE High Commissioner on National Minorities Max van der Stoel reported that in the Slovak Republic unemployment rates for the Roma are close to 100 per cent in some areas. The housing statistics for the Central and Eastern European Roma are similarly bleak. Only 9 per cent of Roma houses in Bulgaria and 10 per cent in Romania have hot water. Over half of Roma households in Bulgaria have wet walls and leaky roofs. Jean-Pierre Liegeois reported that in Bulgaria in 1980, 68 per cent of Roma dwellings had no toilets, and 85 per cent had no drainage. It is common for two to three generations of Roma to live in a single room measuring four by four metres, while two or three rooms are a rarity, and kitchens are set up in the hall. The percentage of Roma households with their own telephone is 12 per cent in Bulgaria, 26 per cent in Romania and 41 per cent in Hungary. Roma illiteracy is 50 to 100 per cent, depending on the country, and half of the Roma children never attend school. For the Roma children who do attend school, 80 per cent are in classes for the socially handicapped. In Bulgaria, only 10 per cent of Roma children have secondary education, and less than 1 per cent of Roma students in Bulgaria, Romania and Hungary continue past secondary education. In the Czech Republic, it is estimated

Workers (1977), ETS No. 193. Other international conventions applicable to nomadic or travelling groups include the Convention on the Reduction of Statelessness (1961), 989 UNTS 175, and the Convention Relating to the Status of Refugees (1951), 189 UNTS 137.

41 ODHIHR, supra note 30, p. 26. This World Bank study reports that “data on social welfare in Central and Eastern Europe are plagued with problems due to weak and sometimes biased statistical systems inherited from the socialist era and the use of definitions and methodologies that are often outdated, inconsistent with international standards, or not comparable across countries.” Also, seemingly straightforward questions, such as how many Roma live in a particular country, prove extremely challenging.

42 Ibid., p. 28. Describe the numbers of Roma living on less than USD 4.30 per capita and per day, adjusted for purchasing power parity.

43 Ibid., p. 35.


45 Liegeois, supra note 39, p. 187.

46 ODHIHR, supra note 30, p. 31.

that less than 2 per cent of the Roma receive a regular academic education, while some 75 per cent of Romani children attend special schools for the mentally retarded.\footnote{48} In the Czech Republic and the Slovak Republic, infant mortality for Roma is double the number for that of non-Roma. There remains a 10 to 15-year life-expectancy gap between Roma and non-Roma in the Czech Republic and the Slovak Republic, as well as in Hungary\footnote{49} (Table 3 and 4).

<table>
<thead>
<tr>
<th>Country</th>
<th>50 % of median*</th>
<th>$2.15**</th>
<th>$4.30**</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per equiv. adult</td>
<td>Per capita</td>
<td>Per capita</td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roma</td>
<td>36.1</td>
<td>37.2</td>
<td>41.4</td>
</tr>
<tr>
<td>Non-Roma</td>
<td>3.8</td>
<td>3.4</td>
<td>4.1</td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roma</td>
<td>24.5</td>
<td>26.3</td>
<td>6.6</td>
</tr>
<tr>
<td>Non-Roma</td>
<td>4.5</td>
<td>3.6</td>
<td>0.5</td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roma</td>
<td>39.5</td>
<td>43.1</td>
<td>37.6</td>
</tr>
<tr>
<td>Non-Roma</td>
<td>10.9</td>
<td>11.1</td>
<td>7.3</td>
</tr>
</tbody>
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*Relative line amounting to half of median per capita and per equivalent adult expenditures. **Two international poverty lines: USD 2.15 and USD 4.30 per person per day, adjusted for purchasing power parity.

4. Extra-Judicial Execution of the Roma

In the modern day, the deplorable socio-economic status of the Roma, as well as human rights violations committed against them, have become the subject of scrutiny by regional courts as well as international organisations. The OSCE High Commissioner on National Minorities notes that widespread civilian violence against the Roma has been documented in recent years, with the largest number of skinhead attacks recorded in the Czech Republic, Bulgaria and the

\footnote{49} ODIHR, supra note 30, pp. 37, 41.
\footnote{50} Ringold et al., Roma in an Expanding Europe: Breaking the Poverty Cycle (The World Bank, Washington DC, 2003) p. 28. The chart illustrates per capita income levels comparing Roma and Non Roma in three countries from the comparative research undertaken in the Sociology Department of Yale University’s 2000 report.
Table 4. Household Characteristics by Ethnicity, 2000 (% of households)\textsuperscript{51}

\begin{tabular}{lcccccc}
\hline
 & Bulgaria &  & Hungary &  & Romania &  \\
 & Non-Roma & Roma & Non-Roma & Roma & Non-Roma & Roma \\
\hline
Households with: &  &  &  &  &  &  \\
Electricity & 99.6 & 94.5 & 99.0 & 98.1 & 99.1 & 94.5 \\
Central or gas heating & 16.0 & 4.1 & 78.6 & 35.3 & 51.2 & 25.6 \\
Cold running water & 96.8 & 67.6 & 92.0 & 65.3 & 67.4 & 41.4 \\
Hot running water & 39.1 & 9.4 & 83.2 & 45.1 & 35.3 & 10.7 \\
Sewer or cesspool & 90.3 & 52.3 & 58.3 & 33.4 & 53.6 & 30.0 \\
Telephone & 80.6 & 12.1 & 76.0 & 41.4 & 58.2 & 26.4 \\
Bathroom/shower & 82.5 & 23.5 & 88.8 & 50.2 & 54.3 & 18.9 \\
Indoor toilet & 65.2 & 15.0 & 86.4 & 49.9 & 52.6 & 18.3 \\
Wet walls & 20.6 & 50.4 & 16.6 & 40.1 & 21.0 & 44.9 \\
Leaky roofs & 19.2 & 54.2 & 9.6 & 33.0 & 4.8 & 40.2 \\
Earthen floor (sleeping) & 7.4 & 36.7 & 5.8 & 13.2 & 19.3 & 39.0 \\
\hline
\end{tabular}

Slovak Republic.\textsuperscript{52} The High Commissioner also reported skinhead attacks and violence against the Roma in Albania, Austria, Bosnia, Croatia, Hungary, Poland, Romania, Russia, Ukraine and Yugoslavia. In addition, the Roma have suffered physical assaults by police who are frequently implicated as a part of the civilian violence taken against them.\textsuperscript{53} As reported by the OSCE High Commissioner on National Minorities:

Roma in most countries of the Central and Eastern European region encounter police violence in almost any . . . everyday life situation. Information about police ill-treatment of Roma or of use of excessive force . . . against Roma comes from almost all countries of Central and Eastern Europe, and occasionally from Western Europe as well. Few of these cases have been investigated or prosecuted.\textsuperscript{54}

Further, the OSCE report disclosed that Romani communities have been targets of pogroms as well as civilian violence in Italy, Spain, Kosovo and Romania. In several OSCE countries, victims face obstacles to secure legal redress for these attacks.\textsuperscript{55} The Roma increasingly seek protection from the European Court of

\textsuperscript{51} Ibid., p. 34 (citing Yale dataset, Revenga et al. 2002).
\textsuperscript{52} van der Stoel, supra note 44, pp. 41-45.
\textsuperscript{53} Ibid.
\textsuperscript{54} Ibid., p. 45; D. Petrova. The Human Rights Situation of Roma in Europe (OSCE Implementation Meeting on Human Dimension Issues, Warsaw, 26 October–6 November 1998) p. 11.
\textsuperscript{55} van der Stoel, supra note 44, p. 36.
Human Rights (sections 4 and 5) as well as the United Nations. Several ECHR cases successfully penalised Central and Eastern European states for human rights violations committed against Roma applicants. For example, in Moldovan and Others v. Romania, the ECHR ordered Romania to pay EUR 262,000 as damages to Roma applicants. In Moldovan and Others, the ECHR ruled that the Romanian police acting with the cooperation of the state’s judicial administration had participated in the commission of a pogrom as well as acts of torture against Roma living in the village of Hadaeni (Mures district), Romania that resulted in the death of three Roma and the destruction of Roma homes and property. In other cases, the ECHR issued judgments against Bulgaria and Greece for the beatings and torture as well as the extra-judicial or arbitrary executions of Roma while in police custody. A 1996 United Nations Special Rapporteur’s report on extrajudicial, summary or arbitrary executions issued allegations against Bulgaria, the Czech Republic and Romania for the summary executions of Roma prisoners while under police arrest or custody.

I describe these ECHR cases involving Roma applicants as traditional minority rights cases in contrast to the cases I discuss in section 5. The positive outcome for the Roma in the traditional cases demonstrates that the ECHR is willing to act positively on applications from Roma for redress against state acts of torture and murder committed by police. That is, in the police abuse cases, the state activity complained of was targeting individual Roma for special (discriminatory) treatment. By contrast, the more recent caravan-settlement cases target the Roma’s cultural practice of nomadism. The ECHR decisions regarding the Roma’s nomadic-caravan settlements, which I discuss in section 5, illustrate that the Court is less inclined to protect the Roma when it comes to their cultural practices. Thornberry cautions, however, that even in the traditional minority rights cases of police abuse, the Roma applicants were expected to meet a

burdensome standard of proof in order to demonstrate that the wrongful police conduct also constituted an act of discrimination under Article 14 (prohibition of discrimination) of the Convention for the Protection of Human Rights and Fundamental Freedom.\textsuperscript{59}

For example, in \textit{Anguelova v. Bulgaria},\textsuperscript{60} a 17-year old Roma boy, Anguel Zabchekov, died while in police custody from an accumulated epidural cerebral haematoma on the left side of his forehead. Mr. Zabchecov's death took place in the Razgrad police station after his arrest for an alleged theft of a used car battery for which he was taken into police custody. The ECHR found that the Bulgarian police officers as well as police records referred to the deceased applicant as “the Gypsy.”\textsuperscript{61} The ECHR made findings that Bulgaria had violated Articles 2 (right to life), 5 (right to liberty) and 13 (right to effective remedy) of the Convention for the Protection of Human Rights and Fundamental Freedom. However, Bulgaria prevailed in its argument that the state complied with the Article 14 (prohibition of discrimination) of the Convention. In \textit{Anguelova}, the ECHR applied a burdensome ‘beyond a reasonable doubt’ standard that required a difficult evidentiary test to be met by the Roma as a prerequisite to prove that Bulgaria’s actions were racially motivated. Judge Bonello's dissenting opinion argued that the ECHR had mistakenly applied a standard of proof equivalent to that required of a state for a criminal conviction, and that Bulgaria had been cited by numerous international monitoring organisations for racially prejudiced ill-treatment of the Roma by police.\textsuperscript{62} Judge Bonello concluded that the standard used by the Court was legally untenable to demonstrate a case of ethnic prejudice.\textsuperscript{63} The ECHR's application of the standard also made it difficult for Roma applicants to prove ethnic discrimination in other cases of police torture and abuse. As examples, Roma applicants failed to prove the state violated Article 14 (prohibition of discrimination) in the case of \textit{Velikova v. Bulgaria},\textsuperscript{64} which involved the death of a 49-year-old Roma man while in police custody. Similarly, the Roma failed to prove discrimination in the case of \textit{Balogh v. Hungary}\textsuperscript{65} in

\textsuperscript{59} Thornberry and Estebanez, supra note 18, p. 69. Thornberry cites the dissenting opinion of Judge Bonello in \textit{Anguelova v. Bulgaria}, supra note 57.

\textsuperscript{60} \textit{Anguelova}, ibid., paras. 106, 116, 119.

\textsuperscript{61} Ibid., para. 164

\textsuperscript{62} Dissenting opinion of Judge Bonello in \textit{ibid.}, paras. 5–7. Judge Bonello cites Amnesty International's report \textit{Bulgaria, Shooting, Death in Custody, Torture and Ill Treatment} (AI Index: EUR 15/07/96); a second report issued by Amnesty International on the same topic in AI Index: EUR 01/06/97; \textit{Bulgaria: Concerns About Ill Treatment of Roma by Bulgarian Police} (AI Index: EUR 15/05/95); and European Roma Rights Centre, \textit{Profession: Prisoner, Roma in Detention in Bulgaria} (\textit{Country Reports Series} No. 6, December 1997). Judge Bonello also cites general works by the Human Rights Project, the Bulgarian Helsinki Committee and Human Rights Watch.

\textsuperscript{63} Dissenting opinion of Judge Bonello, \textit{ibid.}, paras. 9–12.

\textsuperscript{64} \textit{Velikova v. Bulgaria}, supra note 57, para. 94.

\textsuperscript{65} \textit{Balogh v. Hungary}, supra note 57, para. 77.
which a Roma man was tortured by Hungarian police while in police custody at the Oroshaza police station.

In more recent cases, however, the ECHR altered its application of the ‘beyond a reasonable doubt’ standard and demonstrated a willingness to shift the legal burden against state activity that offends the human rights of Roma. For example, Nachchova and Others v. Bulgaria\(^\text{66}\) involved the killing of two, 21-year-old Roma-Bulgarian Construction Force military conscripts. The unarmed transcripts were shot by Bulgarian military police in the village of Lesura after their escape from an apartment construction site where they were arrested for being absent without approved leave. The ECHR decided that the shooting violated the applicants’ recourse to Article 2 (right to life). The decision also established a rule that Article 2(2) prohibits the use of “[police] firearms to arrest a person suspected of a non-violent offence who is known not to pose a threat to life or limb, even where a failure to do so may result in the opportunity to arrest the fugitive being lost.”\(^\text{67}\)

In Nachchova and Others, the ECHR made a decision to revise the ‘beyond a reasonable doubt’ standard in qualified Article 14 (prohibition of discrimination) cases. During the military police killing of the Roma, a major of the Bulgarian Army was reported as saying: “You damn Gypsies.”\(^\text{68}\) The ECHR qualified the ‘beyond a reasonable doubt’ standard, explaining that it should not be interpreted as requiring such a high degree of probability as the standard used in criminal trials. Rather, “sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact”\(^\text{69}\) was enough to prove discrimination. The ECHR went on to establish a principle used in American court de-segregation cases that acts may be considered discriminatory on the basis of disproportional prejudicial effects or impact on a particular group, notwithstanding that the measure is not specifically directed at that group. Importantly, in cases involving acts of violence (killing and torture) by state agents against a minority group, the court may presume a negative interference with Article 14 and reverse the burden of proof to the respondent government.\(^\text{70}\) In Nachchova and Others, the ECHR shifted the burden of proof against Bulgaria and required the state to prove by a convincing explanation that the killings were not shaped by a “prohibited discriminatory attitude.”\(^\text{71}\) The ECHR decision restricted the burden of proof test to cases of violent acts motivated by prejudice that are tied to substantive

\(^{66}\) Nachchova and Others v. Bulgaria, supra note 57.

\(^{67}\) Ibid., para. 105.

\(^{68}\) Ibid., para. 31.

\(^{69}\) Ibid., para. 166.

\(^{70}\) Ibid., para. 169.

\(^{71}\) Ibid., para. 171.
Convention articles such as Article 2 (right to life) or Article 3 (prohibition against torture). That is, the Court considers Article 14 (prohibition of discrimination) as a procedural right to be implemented in conjunction with the other substantive Convention articles, for example, such as those prohibiting torture or killing. In his dissenting opinion, Judge Bonello argued that the ECHR instead make a separate finding of Article 14 (prohibition of discrimination) against Bulgaria that was not connected to other Convention articles. Additional ECHR civil rights cases qualifying the burden of proof standard include Balogh v. Hungary. In Balogh, the ECHR required that the Roma produce sufficient necessary evidence to make a finding of discrimination by the state. A police officer’s statement (“Tell the Miskolc gypsies that they had better not set foot in Oroshaza”) was held as insufficient evidence to prove discrimination in the case of police torture of a Roma man who was arrested for selling coal.

5. The Roma-British Challenge to Persecution for Vagrancy

An individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law.

—Rev. Martin Luther King Jr.

Europe's human rights court to protect the Roma in modern times. In reaching their decision, a majority of ECHR judges were persuaded that the Framework Convention for the Protection of National Minorities, the PACE and the OSCE, as well as the other regional instruments protecting minority cultural practices, failed to provide sufficient authority to influence either stricter judicial scrutiny or a presumption to shift the legal burden against the United Kingdom's domestic restrictions on Roma caravan-settlements. The legal eviction of all seven Roma applicants from their lands was upheld in the ECHR's decisions. There is no alternative international remedy for the Roma applicants. Because the United Kingdom refused to join the 105 state parties as a signatory to the First Optional Protocol to the ICCPR, individual communications authored by Roma-British residents may not be filed with the HRC.

The factual circumstances and ECHR decisions are similar in all seven of the Roma caravan-settlement cases. The cases also demonstrate how historic persecution against the Roma is continued today by legal procedures that criminalise the Roma for parking their trailer-caravans on their own privately-held lands. In *Buckley v. United Kingdom*, Mrs. June Buckley, a Roma-British citizen, resided in a caravan with her three children on land she owned located in South Cambridgeshire, England. Mrs. Buckley had lived in trailer-caravans all of her life and as a child had travelled with her parents in South Cambridgeshire. In her application, Mrs. Buckley stated that she intended to maintain a travelling life and pass this tradition on to her children. Mrs. Buckley was denied permission to park her trailer-caravans on her land by order of the South Cambridgeshire District Council. In refusing Mrs. Buckley's application, the Council explained that South Cambridgeshire had reached a saturation point for Gypsy accommodation and ordered Mrs. Buckley to remove her caravans from her land. As in the other seven cases, Mrs. Buckley failed to comply with the Council eviction order and was subsequently prosecuted several times by local authorities as well as fined. She unsuccessfully sought protection against eviction from her land from the ECHR under several articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, including Article 8 (right to the respect of private and family life) and Article 14 (prohibition of discrimination).

All of the Roma case applicants went through similar evictions and prosecutions as a part of the domestic planning administration. Each of these Roma applications was also similarly denied relief against eviction from their lands by the European Court of Human Rights. Local magistrates fined or awarded jail sentences to the Roma for their failure to comply with their respective local authority's eviction orders. As examples, in *Varey v. United Kingdom*, Roma

77) As of 26 January 2006.
applicants Mr. Joseph and Mrs. Mary Varey were evicted from their land by the South Stafford District Council. They suffered three prosecutions and were fined over GBP 2,000. Mr. Varey was also sentenced to 14-days imprisonment (suspended) for his non-compliance with the expulsion order. In Chapman v. United Kingdom, the Three Rivers District Council in Hertfordshire evicted Mrs. Sally Chapman and her husband from her land in Hertfordshire, also fining them over GBP 1,200. Both Mrs. Chapman’s daughters were forced to abandon enrolment in their schools as a result of the Council’s expulsion order. In Coster v. United Kingdom, Mr. Thomas and Mrs. Jessica Coster were evicted and fined over GBP 1,250. The education of their four children was continually disrupted as a result of eviction orders issued by the Borough of Maidstone in Kent. In the Beard v. United Kingdom, Mr. John and Mrs. Catherine Beard were evicted from their land by the Lancaster City Council. They were also prosecuted by Lancaster magistrates who sentenced Mr. Beard to three-months imprisonment (suspended). In Lee v. United Kingdom, Mr. Thomas Lee was evicted from his Stour Valley land in the village of Chartham by the Canterbury City Council. The case decision reported that Mr. Lee remained under constant threat of civil and criminal prosecution and had been evicted from 40 different Roma sites.78

In Buckley v. United Kingdom, the ECHR was asked to decide whether Britain’s caravan-settlement regime complied with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The existence of the United Kingdom’s caravan-settlement laws illustrates the challenge faced by a human rights court in judging ancient legal regimes that expel the Roma. International human rights courts are mindful of the treaty relationship they have with the state whose laws are being reviewed. The relationship is not analogous to that of a supreme court in a federal system ordering a subordinate province’s compliance. Rather, it is a relationship that provides a reasonable degree of latitude to the domestic law of the state party. The ECHR refused to analyse the United Kingdom’s caravan-settlement laws as an aspect of Europe’s ancient Roma persecution regime. Instead, the ECHR gave substantial latitude to the United Kingdom’s caravan-settlement and town planning laws by finding them neutral in character, as well as sensitive to the special needs of the Roma. The ECHR’s majority view in Buckley held: “In so far as it was necessary [for the United Kingdom] to afford Gypsies special protection, this need had been taken into account.”79

The ECHR did not give legal categories identifying Gypsies [Roma] strict or increased judicial scrutiny. While classifications targeting the Roma were discovered by the ECHR, laws impacting the Roma are distinguishable from

78) Lee v. United Kingdom, supra note 76, paras. 11, 20.
79) Buckley v. United Kingdom, supra note 76, para. 69.
traditional discrimination based, for example, on race, sex, religion or nationality. The Roma cases involve planning and environmental laws that appear to be acts that are neutral in content. However, these laws result in a disproportionate impact that interferes with the Roma’s nomadic (travel) practices. Neutral planning and caravan-settlement laws are the modern day component of Europe’s ancient persecution regime that coerces expulsion of the Roma (section 10). The motives that underlie these laws are suspect and deserve increased judicial scrutiny that considers legal classifications for the Roma as part of a suspect class (presumption of invalidity). Under the rule established by the ECHR in Nachchova and Others, the burden for proving discrimination under Article 14 (prohibition of discrimination) must shift to the respondent state when the discriminatory activity is combined with other substantive Convention rights. The Roma’s nomadic rights are protected under Article 8 (right to family and private life) of the Convention. The United Kingdom’s environmental and planning regime identifies Roma private and family life for special (discriminatory) treatment under Article 14.

Examples of classifications used by the United Kingdom to target the Roma include: Section 16 of the Caravan Sites Act, 1968 excludes trades associated with the Roma such as “travelling showmen, or persons engaged in travelling circuses . . .”. Also, sections 9 and 10 of the same Act enable qualified local authorities to make it an offence for any Gypsy [Roma] to station a caravan within a designated area with the intention of living in it for any period of time. The Criminal Justice and Public Order Act, 1994 defines circumstances permitting local authorities to evict as well as makes it a criminal offence to park an unauthorised [Roma] camper. In Buckley v. United Kingdom, the South Cambridgeshire District Council sought to limit the Roma by depriving Mrs. Buckley of residence in the area because “Gypsy caravans . . . in the South Cambridgeshire area had . . . reached saturation point.” That is, the Council’s action expressly deprived Mrs. Buckley of residence in South Cambridgeshire because of her Roma ethnicity. Also, in Buckley, the Secretary of State for the Environment’s inspector’s report cited the necessity to limit the Roma population, stating:

I consider it important to keep concentrations of sites for Gypsies [Roma] small, because in this way they [Roma] are more readily accepted by the local community.

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82) Buckley v. United Kingdom, supra note 76, para. 37.
84) Buckley v. United Kingdom, supra note 76, para. 14(1).
85) Ibid., para. 16.
The state inspector’s administrative decision subordinated the human right of Mrs. Buckley to purchase land and reside with her family in the community of her choice in favour of the majority unwillingness to accept residence by a member of the Roma minority group. In Chapman v. United Kingdom, the Department of Environment inspector noted that paragraph 13 of the United Kingdom Secretary of State Circular 1/94 (5 January 1994) states that “gypsy sites are not regarded as being amongst those uses of land which are normally appropriate to green belts.” Judge Pettiti’s dissenting opinion in the Buckley case objected to the classifications, explaining that if the United Kingdom’s laws and procedures targeting the Roma “were transposed to a family of ecologists or adherents of a religion instead of Gypsies, the harassment to which Mrs. Buckley [and the Roma are] subjected would not have occurred.”

6. Great Britain’s Margin of Appreciation

‘Margin of appreciation’ is the term used by the European Court of Human Rights to describe the scope of discretion that is accorded state domestic laws that interfere with the European Convention on Human Rights. It is also the legal standard used by the ECHR’s scope of review for the UK’s caravan-settlement laws that target the Roma. The standard was introduced in Handyside v. United Kingdom and provides a practical illustration of how Alec Stone Sweet’s theory of constitutionalisation is judicially implemented by the ECHR. In the Handyside case, the ECHR decided whether the United Kingdom’s prosecution of a London book publisher under the Obscene Publications Act, 1959/1964 violated Article 10’s (freedom of expression) protection guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The ECHR held that the Convention:

leaves to contracting states a margin of appreciation. This margin is given both to the domestic legislator... and to the bodies, judicial amongst others, that are called upon to interpret and apply the laws... Nevertheless... the domestic margin of appreciation goes hand in hand with a European supervision. Such supervision concerns both the aim of the measure challenged and its ‘necessity’... The court’s supervisory function obliges it to pay the utmost attention to the principles characterizing a democratic society.

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86) Dissenting opinion of Judge Pettiti in Buckley v. United Kingdom, supra note 76, p. 26: “It is not in keeping with the spirit of Article 8 [of the Convention for the Protection of Human Rights and Fundamental Freedoms on the right to respect for private and family life] to subordinate respect for the applicant’s right to family life... to the greater convenience of the greater local community and its willingness to accept others...”.
87) Chapman v. United Kingdom, supra note 76, para. 17(26).
89) Handyside v. United Kingdom, 7 December 1976, No. 5493/72, paras. 48, 49.
90) Ibid.
Under the Convention’s framework, domestic law is the primary arbiter of the values and morals that provide the justification for domestic rules. The ECHR gives deference to the United Kingdom’s legitimate interest in planning and environmental rules that disproportionately impact the Roma as necessary in a democratic society. The judicial scrutiny imposed by the ECHR is one of reasonableness, that is, to determine whether the infringement imposed by the domestic law is proportionate to the legitimate aim pursued. In the Roma cases, the ECHR found that the planning rules used by the United Kingdom were proportionate to a legitimate aim and that national authorities enjoy a wide margin of appreciation because they are in the best position to decide local planning questions.91

In Chapman v. United Kingdom, the applicant urged that the ECHR reduce the margin of appreciation granted the United Kingdom’s planning regime based on the Framework Convention for the Protection of National Minorities.92 The ECHR refused to implement the Framework Convention, explaining that there was no concrete consensus between states to derive any guidance on how to apply the Convention or implement the Convention in any particular circumstance.93 However, an important joint dissenting opinion co-authored by seven judges hearing the case discovered an “emerging consensus amongst the member States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity, lifestyle... not only for the purpose of safeguarding the interests of the minorities themselves but also in order to preserve a cultural diversity of value to the whole community.”94 Further, the dissenting judges found that the Framework Convention required states to refrain from practices that discriminate against the Roma and to take positive steps to improve the Roma’s situation through specific legislation or programmes.95 The strong

91 Chapman v. United Kingdom, supra note 76, para. 92; Buckley v. United Kingdom, supra note 76, paras. 75, 80, 84. Also, recall my discussion in section 5 that contrasts the ECHR approach to that used by the US Supreme Court. The US Supreme Court applies a test of heightened or strict scrutiny in reviewing legal classifications that target or impact African-Americans as well as other US minority groups. It shifts the legal burden (presumption of invalidity) and demands that states provide a compelling state interest to justify racial categories or laws that have a desperate impact on African-Americans as well as on other minorities.

92 Recall that the Framework Convention for the Protection of National Minorities did not enter into force until 1 February 98, approximately 14 months after the ECHR’s decision in Buckley v. United Kingdom. The ECHR failed to order the UK to revise its caravan-settlement planning regime in the later Roma cases.

93 Chapman v. United Kingdom, supra note 76, para. 94; Coster v. United Kingdom, supra note 76, para. 107; Beard v. United Kingdom, supra note 76, para. 105; Lee v. United Kingdom, supra note 76, para. 96.

94 See the joint dissenting opinion of Judges Pastor Ridruejo, Bonello, Tulkens, Straznicika, Lorenzen, Fischbach and Casadevall in Chapman v. United Kingdom, supra note 76, para. 3.

95 Ibid. Thornberry maintains that the Framework Convention is a binding treaty in international law and its language of international obligation is clear. Thornberry and Estebanez, supra note 18, p. 115.
dissenting opinion in Chapman demonstrates that the ECHR’s current interpretation of the Framework Convention is controversial and subject to re-examination in future cases involving the Roma. The ECHR also failed to incorporate into its opinion domestic obligations to other international minority rights instruments such as Article 27 of the ICCPR or the UN’s Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. These UN instruments firmly entrench state party obligations to enhance the enjoyment of culture for minorities such as the Roma’s practice of nomadic trading and travel. When considered together with regional minority protections, inevitably, the ECHR is compelled to evolve a new legal standard governing domestic caravan-settlement and planning laws that target the Roma. The ECHR is the reigning human rights institution in Europe. It is duty-bound under several international minority rights conventions to safeguard the Roma’s travelling freedom and prevent states from engaging in ancient practices that result in the expulsion of the Roma peoples.

7. The Concept of Equality in the ECHR Roma Cases

It was a wise man who said that there is no greater inequality than the equal treatment of unequals.

–US Supreme Court Justice Felix Frankfurter96

In the Roma cases, the applicants successfully convinced the ECHR to use a standard established in earlier minority rights jurisprudence providing that discrimination takes place when parties in unequal situations are treated equally. That is, the law should, in principle, reflect the relevant differences between individuals.97 The ECHR established the precedent for this principle in the case of Thlimmenos v. Greece.98 In Thlimmenos, the applicant, Mr. Iakovos Thlimmenos, was denied government employment in Greece as a chartered accountant because of a prior criminal conviction based on his refusal to undertake military service on account of his religious beliefs. The ECHR found that the Greek government had committed a violation of Article 14 (prohibition of discrimination) of the Convention for the Protection of Human Rights and Fundamental Freedom by failing to recognise that Thlimmenos’s criminal conviction was different from convictions for other more violent crimes:


The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is ... violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.\footnote{Ibid., para. 44.}

The ECHR applied this discrimination principle established in the \textit{Thlimmenos} case to the Roma cases, and required that the United Kingdom demonstrate an objective and reasonable justification for failing to "treat differently Roma whose situations are different."\footnote{Chapman v. United Kingdom, supra note 76, para. 129.}

The ECHR agreed that Roma caravan sites may have been singled out for special treatment by the government’s planning regime in that unlike house dwellers the Roma sites did not benefit from a systematic assessment of and provision for their needs arising from their tradition of living and travelling in caravans. For a Roma, coerced eviction from a caravan-settlement site means the elimination of his or her ability to exercise the enjoyment of culture by the practice of nomadic travel. The ECHR also acknowledged that the Roma lack an adequate number of caravan-settlement sites. In 1976, a respected government-commissioned study performed by Sir John Cripps uncovered that there are no legal caravan sites available for 75 per cent of the 40,000 Gypsies [Roma] living in England and Wales:

Provision exists for only one-quarter of the estimated total number of gypsy families with no sites of their own. Three-quarters of them are still without the possibility of finding a legal abode. . . . Only when they are travelling on the road can they remain within the law: when they stop for the night they have no alternative but to break the law.\footnote{Ibid., para. 35; J. Cripps, Accomodation for Gypsies: A Report on the Working of the Caravan Sites Act 1968 (HMSO, London, 1977) p. 9, as cited in van der Stoel, supra note 44, p. 116.}

The ECHR also considered a January 2000 Department of Environment, Transport and Regions report putting forth that approximately 2,156 Roma trailer-caravans were settled on unauthorised and un-tolerated sites.\footnote{Chapman v. United Kingdom, supra note 76, para. 53. The UK Department of Environment, Transport and Regions’ figures on Gypsy caravans in England disclosed that of the 13,134 caravans counted, 6,118 were stationed on local authority patches, 4,500 on privately-owned sites and 2,156 on unauthorised sites.} Finally, in 1994, an Advisory Council for the Education of Romany and Other Travellers (ACERT) study discovered a loss of one hundred Roma caravan sites per year. The ACERT study concluded that if trends continued the ethnic, cultural and linguistic identity of Gypsies and Travellers could not be protected.\footnote{Ibid., para. 50}

Despite the growing shortage of caravan-settlement sites, the ECHR decided that the development of the minority rights law in Europe does not yet require that contracting states have a positive obligation to provide an adequate number
of suitably equipped caravan-settlement sites for the Gypsy [Roma] community. The ECHR was reluctant to decide a political question that would obligate state parties to provide increases in funding for additional Roma caravan-settlement sites, as well as order changes in immigration, planning and environmental policies that firmly guaranteed protection for Roma nomadic-travel practices. Similar to US court decisions in segregation cases, American courts engaged in a century-long refusal to order the de-segregation of African-Americans prior to the US Supreme Court’s decision banning segregation in Brown v. Board of Education.104 The fact that a shortage of caravan-settlement sites makes them too expensive for most Roma to afford merely places the Roma “in the same unfortunate position as many others who are not able to afford to continue to reside on sites or in houses attractive to them.”105 This ECHR view is consistent with that of the United Nations Human Rights Committee in Sandra Lovelace v. Canada, which maintained that Article 27 of the ICCPR did not guarantee a general right to live on a reserve.106 These two minority group cases illustrate that human rights courts are focused not on guaranteeing a broad social right to affordable housing, but rather on protecting a limited minority right to access housing necessary for the enjoyment of culture. Nothing in the Roma decisions prevents the ECHR from making a future determination that contracting states have a greater obligation to preserve caravan-settlement sites as necessary to insure Roma cultural identity, as well as protect their enjoyment of nomadic travel.

The discrimination principle in Thlimmenos v. Greece continues a precedent established by the League of Nations’ Permanent Court of International Justice (PCIJ) in its advisory opinion Minority Schools in Albania.107 In Minority Schools in Albania, the PCIJ decided that different treatment for minorities was necessary to attain a result which establishes an equilibrium between different situations. According to the PCIJ, differential treatment of minority groups is necessary to preserve minority identity and to promote equality between minority and majority groups. The standard of perfect equality established by the PCIJ requires that minorities have “suitable means for the preservation of their racial peculiarities, their traditions and their characteristics.”108

104) Brown v. Board of Education, 347 US 483 (1954). Segregation by race is a classification that appears to treat both races equally; however, evidence for the necessary finding of segregative intent may be drawn from actions having foreseeable and anticipated disparate impact. See Columbus Board of Education v. Penick, 443 US 449 (1979).
105) Chapman v. United Kingdom, supra note 76, para. 126.
108) Ibid.
It is now a well-established principle of minority rights jurisprudence that a state’s failure to provide differential treatment to members of a minority group may constitute an act of discrimination. Although the ECHR required differential treatment for the Roma cases, it found that they were “not treated worse than any non-Gypsy who wants to live in a caravan and finds it disagreeable to live in a house.”109 By this statement, the ECHR retreats from the difficult challenge of protecting nomadic travel and ordering contracting states to revise legal regimes that expel the Roma. It also reflects the failure of the ECHR to consider the historic evidence of Roma persecution. The ECHR has an obligation to take judicial notice of the proven, historical and overwhelming evidence of legal persecution taken against the Roma peoples by the states of Europe. Planning and environmental laws that disproportionately impact the Roma require careful scrutiny and a restricted margin of appreciation.

As noted in Judge Pettiti’s dissent in the Buckley case:

The [ECHR’s] difficulty . . . is that the deliberate superimposition and accumulation of administrative [planning] rules . . . result, firstly, in its being totally impossible for a Gypsy family to make suitable arrangements for its accommodations, social life and integration of its children at school . . . . Such unreasonable combinations of measures are in fact only employed against Gypsy families to prevent them living in certain areas.110

Judge Pettiti’s view is supported by the OSCE High Commissioner on National Minorities report explaining that the lack of legal caravan-parking sites entails an interlocking set of social and civil problems for the Roma. The report found that the Roma become hard-pressed to keep their children in school. In France and other countries, difficulties establishing lawful residence may effectively disenfranchise nomadic groups and disqualify them for social benefits.111

The ECHR concluded that the United Kingdom successfully demonstrated an objective and reasonable justification for its failure to incorporate the different circumstances of the Roma into local planning and environmental decisions. In fact, the ECHR decisions found that the planning scheme incorporated the difficult circumstances of the Roma before making its determination to evict Roma caravans from the applicants’ own privately-held lands. The ECHR found that any interference with the Roma’s rights were proportionate to the legitimate aim of preservation of the environment.112

109) Coster v. United Kingdom, supra note 76, para. 111; Lee v. United Kingdom, supra note 76, para. 99.
110) Dissenting Opinion of Judge Pettiti in Buckley v. United Kingdom, supra note 76.
111) van der Stoel, supra note 44, p. 111.
112) Lee v. The United Kingdom, supra note 76, paras. 127–129.
8. Cultural Protection for the Roma Minority

The case of the Roma highlights the necessity to provide cultural protection for minority groups in Europe. Civil rights legislation that protects individuals against discrimination on the basis of race, religion, gender, sexual preference, disability or national origin, for example, does not contemplate protection of cultural group practices such as the Roma’s association with travel. Civil rights laws are not intended to terminate legal persecution regimes that criminalise the cultural practices of groups. The primary goal of the legal persecution regime used against the Roma is the eradication of the cultural practice of nomadism. Travelling is not only central to Roma cultural identity, but it is also the foundation of the Roma system of commercial trade. States continue to adopt laws that either ban or regulate nomadic practices, and that though neutral on the face of it, have a disproportionate impact on the Roma. State laws regulating the right to travel for nomadic groups contain a suspect motive because of the history of legal persecution used against the Roma. From the viewpoint of the Roma, Europe’s domestic laws regulating trailer-park camping, road use and community planning, though seemingly neutral, constitute de facto discrimination because of the laws’ disparate impact on the cultural practices of the Roma people. So-called neutral planning and camping laws require close scrutiny by state and regional courts because of the suspect and discriminatory motives underlying such laws. Traveller classifications can be analysed as a suspect classification in a manner similar to the way US Federal courts review racial classifications for African-Americans in civil rights and de-segregation cases. This is the term used by US federal courts for laws that do not appear to impose burdens on ethnic groups but still result in a discriminatory impact.113

Laws incorporating racially suspect classifications are similar to those regulating the movements of Roma travellers. US federal courts imply a presumption of invalidity against such classifications and impose a heavy burden to prove a compelling state interest to justify their use. The European Court of Human Rights may employ a similar standard of review in cases involving the use of traveller classifications by domestic laws. Remember that in Nachchova and Others the ECHR decided that in cases involving state violations of Article 14 (prohibition of discrimination), the addition of substantive Convention rights shifts the legal burden against states. Domestic planning regimes that restrict the Roma caravan-settlements meet the requirement established in Nachchova and Others. Discriminatory planning regimes that result in the expulsion of the Roma also involve additional substantive Convention protections, including Article 8 (right to private and family life). To this date, however, the ECHR is not yet willing to

reverse the legal burden against states in cases involving environmental and planning restrictions that target the Roma.

The legal persecution regime used against the Roma is complicated by the regime's emphasis on travel practices in contrast to traditional kinds of discrimination based on categories of race, religion, gender, national origin, etc. Because nomadic travel is adopted by many non-Roma groups as an alternative to sedentary wage-labour employment, the application of minority rights alone does not resolve grievances of non-Roma travelling groups. Some critics of multiculturalism claim that minority rights inevitably lead to a proliferation of claims from all groups who encounter acts of discrimination against them. For example, providing a minority rights remedy for the Roma may encourage additional legal challenges against such laws from other travelling groups who are not qualified minorities, such as hobos or travellers. However, the international minority regime is intended as a corollary to the radical excesses of nationalism and is not a shield for all groups who suffer discrimination. Only minority group members qualified under linguistic, ethnic (inclusive of race), religious or national categories, for example, have the standing to bring a communication before the UN’s Human Rights Committee under Article 27 of the ICCPR. Further, that travelling groups such as hobos or tramps who do not qualify as recognised minority groups derive unintended benefits from official recognition for the Roma is a positive outcome since it serves to increase the state’s tolerance as well as responsibility for the implementation of human rights obligations. The Roma qualify for international legal protection under several categories of the minority regime, including those of being a linguistic, ethnic and national minority. As an ethnically Indian and Romani-speaking minority group, the Roma are entitled to protection of their nomadic travel as well as commercial trading, considered inherent parts of Roma cultural identity under Article 27 of the ICCPR, and also under Europe’s regional Framework Convention for the Protection of National Minorities.

Nomadism represents only one aspect of the Roma culture, even though the Roma are often solely identified by their travel practice. Incredibly, most aspects of the Roma culture, such as their family clans, legal system, language, marital arrangements, dress, hygiene, traditions, customs and values, have survived their over one thousand-year persecution, as well as their dispersion experience since the Roma’s migration from India. Raphael Lemkin, a Jewish-Polish lawyer considered to be the father of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), concluded that a group’s culture represents an invaluable contribution to humanity. Somehow, the Roma have acquired the

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ability to survive as a people while preserving their cultural contribution for the betterment of the human condition. According to the Roma’s principle of descent, their offspring are raised in the ‘Gypsy’ way of life that includes transmission of the ideology of travelling, the value of self-employment, adherence to specific rituals of cleanliness and knowledge of the Romani language.\footnote{116) J. Okely, ‘Gypsies Travelling in Southern England’, in R. Farnham (ed.) Gypsies, Tinkers and Other Travellers (Academic Press, London, 1975) pp. 61, 62.} Contrary to popular stereotypes, the Roma do not travel or wander aimlessly, but rather do so in a way based on a complex inter-relationship of political, economic and ideological factors.\footnote{117) Okely, supra note 39, p. 121.} Roma travelling tends to be within regions for work contracts and incorporates additional factors such as the degree of official and police harassment they will encounter.\footnote{118) Ibid., p. 71.} Their travel practices contain a rich cultural and psychological meaning that stresses the values of adaptability, flexibility and social cohesion. The Roma view society through the social groups to which they belong. The practice of travelling permits Roma groups to engage in continuous social and commercial exchanges. Liegeois explains that travelling “separates relatives, relates the unrelated, and introduces an element of unity.”\footnote{119) Liegeois, supra note 31, pp. 54, 56, 64.} Also, the Roma have evolved rituals surrounding cleanliness based on a spiritual and religious foundation that is contrary to a popular stereotype about their lack of hygiene. For example, the Roma ban various practices from taking place inside their trailer homes in order to preserve spiritual cleanliness: clothes washing, childbirth, urinating and dying there are banned. Toilets and domestic rubbish are also not permitted inside a Roma trailer. The Roma inner body is also the subject of cleanliness rituals, and they exercise extreme personal hygiene. Food is handled, packaged and stored using great care. They are less concerned with external tidiness, but only because they are subject to constant evictions by state authorities.\footnote{120) Ibid., 83, 86, 87. Ibid., p. 63. Older laws intended to criminalise the Roma include the Highways Act, 1980; Caravan Sites and Control of Development Act, 1960; Law of Property Act, 1925 and the Environmental Protection Act, 1990. Recent British domestic court challenges to local powers used to harass the Roma include: Mole Valley District Council v. Smith (1992) 90 LGR 557; Wrexham County Borough Council v. Berry, South Bucks District Council v. Porter and Another, Chichester District Council v. Searle and Others (2003) UKHL 26.} Europe’s legal persecution regime that criminalised the Roma as a class not only shocks the moral consciousness but was also a shameful failure. The result of the regime merely served to impoverish, segregate and marginalise the Roma from mainstream society. The legal regime’s self-fulfilling objective also resulted in the stereotyping of Roma in the most degraded fashion as a class of professional beggars, pick-pockets and thieves.
The outcome of the Roma dispersion was the development of an elaborate, world-wide network of diversified family groups and clans constituting what some experts claim to be a *sui generis*\textsuperscript{121} social entity. The Roma-clan groups exist for one another in a perpetual cooperation as well as in a struggle for influence blending Roma economic, marital, political and familial relationships. Other aspects of Roma cultural practices include development of their own courts of justice—Kris or Kalderas Rom—that help them to maintain social order.\textsuperscript{122} Also, Roma birth, marriage and death customs include strict prohibitions against marriage with the Gorgio (non-Roma people), first cousins, different generation persons and within an immediate family, and they value marriage as a permanent and monogamous ideal.\textsuperscript{123} Death, in contrast to birth, is viewed as their life marker, and the Roma destroy a dead person’s property to remind themselves that accumulated property is associated with sedentarism (a kind of spiritual death for the Roma).\textsuperscript{124}

My brief summation of Roma customs does not begin to highlight their elaborate culture that has evolved over the centuries. I intend only to illustrate why the Roma, in contrast to other travelling groups, qualify for international treaty protection. Further, human rights courts can use heightened judicial scrutiny for cases involving cultural restrictions. I aim to demonstrate the necessity for a minority regime that protects the existence and development of minority cultures.

9. Identifying the Roma

Records confirming the first appearance of Roma-Indians on the European continent go back to 9th century Byzantium, and most scholars agree that the Roma’s primary migration to Europe started between the 14th to 16th centuries. To those in Europe, the Roma-Indians were identifiable by racial characteristics, and due to their appearance in Europe, the term ‘brownie’ was used by the French and British to identify as well as describe the Roma’s matt complexion and dark skin colour. However, neither race nor religious affiliation was the primary source of discrimination used against the Roma.

The Roma expressed diverse religious affiliations and were exposed to numerous religious influences as a result of their dispersion from India. For example, in Bulgaria, the Dasikane Roma became Christians while the Xoranane Roma turned Muslim. In Italy, the Roma converted to a wide variety of practices including the Catholic, Orthodox, Pentecostal and Muslim religions. In contrast, Roma Russians are Orthodox while Roma Latvians living in Estonia are

\textsuperscript{121} Meaning ‘of its own kind’, or unique to itself.

\textsuperscript{122} Liegeois, *supra* note 39, pp. 63, 69, 74.

\textsuperscript{123} Okely, *supra* note 39, pp. 154, 159.

\textsuperscript{124} Ibid., p. 229.
Lutheran. English Romanichals practice Pentecostalism whilst Irish Travellers became Roman Catholic. A survivalist instinct encouraged the Roma people to adopt whatever dominant religious belief was necessary in the hopes of avoiding persecution and reaping the benefits that membership might bring.

The Roma did not self-identify in Europe as members of an ancient, Indian national culture. Instead, they were labelled by the states in which they travelled as Gypsies, a corruption of the word Egyptian. The actual Roma migration through Egypt from India is, at best, unclear and only the subject of hypothesis, legend or myth. In English, to ‘gyp’ from the roots ‘Egypt’ and ‘Gypsy’ is pejorative slang, meaning to trick, swindle or cheat. The various terms used to identify the Roma were de-linked from the Roma’s Indian national and cultural heritage. By contrast, words describing the group referred to a single aspect of the group’s lifestyle, namely, travelling, implicitly denying all other aspects of the group’s rich cultural background. The word Gypsy is not found in the Romani cib language, nor are the other terms used to describe Roma-Indians.

A series of different names in various states are used to identify Roma-Indians, many pejorative. In Germany, for example, the word used to identify the Roma was ‘Zigeuner’ which comes from the Greek root meaning ‘untouchable’. During World War II, the Nazis established a segregated section at the Auschwitz human extermination camp for the Roma known as ‘Zigeunerlager’ or ‘Gypsy camp’. The Nazis also tattooed the letter ‘Z’ onto the arms of Roma-Indians upon their arrival in Auschwitz. Historical events suffered by the Roma-Indians included the genocide of up to, by one estimate, 600,000 Roma-Indians in Nazi Germany during World War II. Illustrating the lack of international opprobrium granted these crimes, Germany refused to even acknowledge the Roma genocide until 1982. As yet, no reparations to the Roma-Indians have been authorised by Germany. Isabel Fonseca discovered that the Roma orphaned by the Nazi genocide do not even qualify for social security payments.

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125 Liegeois, supra note 39, p. 89.
129 Clebert, supra note 23, p. 27.
130 Fonseca explains that the term ‘Die Zigeuner’ was used to imply cannibalism (a stereotype that still remains with the Roma) or a relish for human flesh. Fonseca argues that in German the term ‘Zigeuner’ is similar to the racial insult and slander evoked by the term ‘nigger’. Fonseca, supra note 126, pp. 28, 128. Lewy argues that “there is nothing pejorative per se about the word ‘Zigeuner’”. Lewy, supra note 128, preface.
In Bulgarian, the word used to label the Gypsies, namely Tsiganin, is considered an extreme insult. The actual translation for the term is ‘Gypsy’, but used in a pejorative manner.132 Other names imposed upon the Roma by non-Indian states are described by Clebert as “bizarre”,133 and include the terms: Luri in Baluchistan; Luli in Iraq; Karaki and Zangi in Persia (Iran); Kauli in Afghanistan; Cinghanes or Tchinganes in Turkey and Syria; Katsiveloi, Tsiganos and Atsinganio among the Greeks; Tsiganies and Cigain in France; Zingari in Italy; Ciganos in Portugal; and Sigoyner in Norway. Other host countries for the Roma labelled Roma-Indians with names that included: Tsigan in Romania, Hungary and Bulgaria.

Roma-Indians were also described as ‘little Egypt’ upon their first appearance in Europe.134 Roma dispersed from Wallachia and Bohemia were named Bohemians and Bohemianos. Liegeois explains that the French labelled the Roma Bohemians when they arrived in France bearing letters from the King of Bohemia in Spain.135 Names assigned Roma-Indians creolised by inter-marriage included: North Welsh Kale; South Welsh and English Romanichals; Irish Pavees or Minceirs as well as the Tinkers or Tynkers; and Scottish Travellers.136

10. The Cultural Basis for Persecution of the Roma

Some normative critics of multiculturalism claim that culture is too vague a concept to be made the subject of international legal protection, and that culture is neither the source nor the solution to solving group inequality. My empirical analysis of the over one thousand-year legal persecution regime established by states in Europe against the Roma-Indians demonstrates the opposite of this viewpoint. Europe’s persecution of the Roma has been consistent if not unrelenting in one central goal, that is, to eradicate Roma culture, especially the Roma cultural practice of travelling (nomadism). The over one thousand-year assault on the Roma was not targeted against Roma racial characteristics but rather against what was historically identified by the legal persecution regime as vagabondage. The practice of vagabondage,137 namely, wandering about without recognised domicile or occupation, was first criminalised by France in 1350.138

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133 Clebert, supra note 23, p. 27.
134 Liegeois and Gheorghe, supra note 38, p. 7.
136 Ibid., p. 32.
137 The practice was also criminalised as vagrancy (vagrants), itineracy (itinerants) and nomadism (nomads).
138 Clebert, supra note 23, p. 59.
Attributing the crime of vagabondage (vagrancy) to the Roma people constituted a group slander that demeaned the sophisticated commercial trading system developed by the Roma. In fact, they created highly specialised nomadic trades that defined various groupings of Roma. Clebert describes two such groups of Roma, that is, the Kalderash who reside in the Balkans, Turkey and Central Europe, who are smiths—tinsmiths, coppersmiths, etc. (Romanian ‘caldera’—copper pot, boiler; Spanish ‘caldera’—cauldron, boiling pan), and a second group he describes as the Manush. The Manush, also known as Sinti because of their Indian origin from the banks of the Sind, are divided into sub-groups that include the Valsikanes or French Sinti, who work as travelling showmen and circus people. Another Roma travelling group that developed specialised trades in horse-dealing is called the Irish Tinkers. Yet another are the Ursari Roma who innovated animal training to advanced levels that helped them develop circus trades in dancing bears and clapping monkeys.139 Other Roma groups identified for their advanced trade skills are: the Blidari, also known as makers of kitchen objects in wood; the Chivutse, women employed as painters in the building trade to whitewash or colourwash the fronts of houses; the Ciobatori, makers of boots and cobblers; the Costorari, tinsmiths, tinners; the Ghilabari, musicians; the Lautari, musicians and makers of stringed instruments; the Lingurari, makers of wooden objects; the Meshteri Lacatuschi, locksmiths; the Rudari, makers of wooden objects; the Salahori, masons and bricklayers; the Vatraschi, agriculturists and gardeners; and the Zlatari, gold-washers. Roma known for their skill in palmistry are described by the Greeks as Astingani.140 Contemporary trades with which the Roma are associated include tinning, metalworking, basket-making, stuffing chairs, circus trades, music and dance, second-hand car dealing, vine-cutting and grape-harvesting, copper-making, gathering medicinal herbs and fortune-telling.

The commercial trading practices of the Roma threaten the established economic and political order of Europe. In contrast to Europe's sedentary economic system (sedentarism),141 nomadism does not contain private land rights, exploit land ownership nor stress capital accumulation. The nomadic practice of travelling resists proletarianisation or lumpness created by individual property relationships, permitting groups such as the Roma to escape the system of sedentary wage-labour in exchange for self-employment gained by the development of

139) Fonseca, supra note 126, pp. 180–182.
141) R. McVeigh, 'Theorising Sedentarism: The Roots of Anti-Nomadism', in Acton, supra note 22, p. 9. McVeigh defines sedentarism as "that system of ideas and practices which serves to normalize and reproduce sedentary modes of existence and pathologise and repress nomadic modes of existence."
trading skills founded on the practice of travelling. The travelling economic system, also known as tramping, provides an opportunity for labourers to resist unemployment. Robbie McVeigh explains that “by their very existence, nomads bear witness to the illegitimacy of contemporary property relations.” Nomadic travelling also serves as an alternative economic system adopted by many non-Roma groups that do not qualify as minority groups such as tramps, hobos, itinerants and travellers.

Nomadic trades were criminalised by state laws targeting the Roma (Egyptians or Gypsies) through decrees and legislation that outlawed vagrancy, vagabondage, rogues, tramps, peddlers, wanderers, beggars and hawkers. For example, English laws (1530–1800) criminalised all people who engaged in nomadic practices, using terms such as idle, vagraunte, loyterynge, sturdy roags, masterless men, lewd and ill-disposed persons. French laws (1350–1789) not only criminalised the Roma as vagabonds, but also associated the Roma with other banned groups such as wandering scholars, itinerant extractors of teeth, sellers of theriac (antidote for snake-bite), surgeons, players of the game of tourniquet (modern roulette), marionette showmen, singers of laments and prowlers after girls.

Europe’s campaign to eradicate the Roma was as brutal as it was relentless. From the 15th century through to the current day, states employed techniques to eliminate Roma-Indians that included over five hundred years of slavery in Romania (1400–1856), the forced removal of Roma children in Austria, Hungary, Prussia, Spain, Finland and Switzerland, and the genocide of Roma-Indians that took place in Nazi concentration camps such as the ‘Ziegunerlager’ human extermination camp in Auschwitz. The legal persecution regime employed three primary techniques against the Roma, namely, expulsion (deportation), banishment and containment (assimilation). Strands of these approaches remain the primary legal approach used to eliminate Roma nomadism through to the current day.

An example of how European society viewed the Roma is provided by a Lithuanian pastor (1787) who explains that “gypsies in a well ordered state are like vermin on an animal’s body.” As I discussed in the paragraph above, the initial legal technique used by most European states against the Roma was one of

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142 Ibid., p. 21.
144 Clehert, supra note 30, p. 59.
expulsion or banishment.147 As examples, France, Spain and England all passed legislation to prevent Roma migration as well as to force expulsion (banishment) of the Roma from their countries. For instance, the Egyptians Act of 1530 was passed in England; this required that the Roma travelling on English roads depart voluntarily or suffer imprisonment and deportation. In 1554, England passed a second Egyptians Act that required payment of a fine for anyone transporting the Roma into the country. Scotland attempted to expel the Roma by passing the Trespass Act of 1865 and the Road and Bridges Act of 1878 that prohibited camping.148 English authorities had great difficulty regulating migrations because the Roma’s mobility made apprehension difficult and immigration controls ineffective.149 The first official repression in France is dated 1539 when the Parliament of Paris issued an expulsion order against the Roma (Gypsies). In 1560, the States General of Orleans called upon “all those impostors known by the name of Bohemians or Egyptians [Roma] to leave the Kingdom under penalty of the Galleys.” Expulsion orders against the Roma were also promulgated in France by Kings Henry IV (1607), Louis XIII and Louis XIV (1660). However, French expulsion was also ineffective because of protection received from Gentry and Lords’ justiciaries who gave the Roma refuge in castles and houses, notwithstanding the decrees of parliaments which expressly forbade this. Further, expulsion in practice failed as a policy because adjacent countries confronted with the same so-called ‘Gypsy problem’ also sought to prevent Roma emigration.150 Similar repressions of the Roma existed in Germany and Switzerland, whilst Spanish legislation decreed banishment of the Roma under penalty of death in 1619.151 From 1500 to 1950, expulsion of the Roma was repeatedly prescribed in law after law and in state after state over the centuries.152

Containment is the term used to describe the policy employed by European states after failing to successfully expel the Roma through banishment or expulsion. Containment is distinguishable from the policy of forced assimilation of minority groups for two reasons. First, the primary goal of containment was to eradicate the Roma practice of nomadic travel. Second, containment did not stress any religious conversion since the Roma adopted if not welcomed Christianity—as well as Islamic religious influences for those Roma who lived in the Ottoman Empire—as a means of avoiding persecution.

147 Ibid., p. 77. The actual process of expulsion from a country is described by Liegeois as “a social and psychological death sentence.”
148 Ibid., p. 133.
149 Mayall, supra note 143, pp. 20, 21.
150 Clebert, supra note 23, pp. 61, 62.
151 Ibid., pp. 59, 60; Liegeois, supra note 31, p. 107.
152 Ibid., p. 88.
An example of containment policy is uncovered in the Egyptians Act of 1554 that exempted from prosecution Gypsies (Roma) that “abandoned their 'naughty idel and ungodly life and company’, adopted a sedentary way of life and took up a settled occupation.” The objective of containment was to force settlement and assimilation of the Roma into sedentary society and end the nomadic travel that characterised Roma identity.

The most hideous crime committed against the Roma by a European power was the Nazi ‘final solution’ promoting the use of genocide to solve the so-called Gypsy question. As discovered by Michael Burleigh and Wolfgang Wippermann in their research on the racial policies of the Nazis, Heinrich Himmler signed the order dispatching Germany’s Roma population to the Auschwitz human extermination camp on 16 December 1942. The Nazi campaign to exterminate the Roma is known in Romani as the ‘Porajmos’ or the ‘Devouring.’ An OSCE study finds that up to 600,000 Roma were murdered by the Nazi regime, though the exact number remains a subject of dispute among researchers. The German genocide of the Roma illustrates the Nazi success at promoting eugenic (hereditary) pseudo-science. Frances Galton (1872–1911) developed the theory based upon Charles Darwin’s On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life. Galton maintained that natural selection could be used to improve biological human health by eugenics—a programme for improving the human race by genetic means such as judicious mating, education, public-health and welfare. Nazi public-health initiatives to insure the racial-hygienic improvement for the German people were justified by eugenics.

Eugenic pseudo-science provided a veneer that legitimised theories of racial supremacy, not only in Germany but also in many liberal democracies such as Great Britain, Canada, Australia and the United States. Nazi health programmes targeted groups that threatened the biological and political health of the German nation, namely, the Jewish peoples (war on the Jews), as well as the Roma,

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153) Mayall, supra note 143, pp. 21, 22, 28.
155) van der Stool, supra note 44, p. 23.
156) Clements et al., supra note 131. Illustrating the need for research on the subject of Roma history, Lewy quotes a lower Roma death count in Nazi Germany ranging from 196,000 to 219,000. Lewy postulates the specious argument that the Nazis did not commit the crime of genocide against the Roma. Lewy, supra note 128, pp. 222–228. McVeigh claims a substantially higher Roma death rate of 1.5 million. McVeigh, supra note 141, p. 19.
Blacks, so-called Rhineland bastards, the asocial, the hereditarily ill, the hereditarily inferior, homosexuals, mental patients, the hereditarily blind, deaf and deformed, the work-shy and alcoholics. The Nazis implemented initiatives against these groups that included the use of racially-selective breeding, forced sterilisation, compulsory castration, compulsory abortion, certificates of fitness to marry, proofs of ancestry, expanded euthanasia programmes, hereditary health courts, miscegenation laws, systemic murder of persons mentally and physically handicapped, prohibition of marital and extra-marital relations between Jews and Aryans and compulsory divorce for inter-marriage with Jews. For example, the Law for the Protection of German Blood and Honour, 14 November 1935, mandated restrictions on German inter-marriage with Roma (Gypsies), as well as Blacks, bastards and Jews. Nazi public-health initiatives took the European assault on Roma nomadism to its radical extreme by redefining Roma travelling practices as a criminal disease pathology that resulted from heredity defects.

The 'final solution' of the Gypsy question was initiated by Himmler's order to send the Roma to Auschwitz B II e camp ("Zigeunerlager"), where the Roma and their families were subjected to torture, human medical experimentation, murder and mass extermination. In 1953, after World War II, Germany opened a new Travellers' office within the Bavarian Criminal Police and continued deportations (expulsion) of the Roma from Eastern Europe through to November 1989. Unfortunately, the morbid public fascination with eugenic pseudo-science did not end with Germany's genocide of the Roma and Jewish peoples in Europe. For example, in his 28 September 2005 radio show, the United States government's former Secretary of Education and Drug Czar William Bennett used a eugenics argument to make the corrupt, scientifically-flawed and pro-genocide statement that the crime problem in the United States could be lowered through a program of mass abortion for all Black women.

Eastern European states during the socialist period were similarly brutal, using similar assimilation-containment practices to eliminate Roma nomadism. A Slovakian law (1958) and a Polish law (1952) put an end to nomadic travel by authorising police to shoot horses and remove the wheels from caravans to stop...
people in their tracks. Roma children were enrolled in special school programmes reinforced with compulsory military service that also incorporated long-term assimilation programmes. The Soviet Union also refused to recognise the Roma as a national minority because they lacked the essential criteria of the Stalinist definition, notably territory. As a result, the Roma were obliged to find a place of residence, work in an organised fashion and become strictly monitored by Soviet authorities.\(^{162}\) The Roma failure to obtain recognised status as a national minority in the Soviet Union also took place in many other states. This resulted in their inability to obtain official recognition of the Romani language, amongst other forms of cultural deprivation. Most states in Europe failed, neglected or refused to recognise the Roma as a minority group that had migrated from India, instead treating the minority group as stateless, unemployed and aimless so-called vagrants. In 1994 the Roma were persecuted by the Serbs during the hostilities in Bosnia, and later suffered hostilities from ethnic Albanians in Kosovo because some of them allegedly sided with ethnic Serbs. In current-day Eastern Europe, the Roma are barred from restaurants, swimming pools and discotheques. The Roma are pejoratively stereotyped in the media and physical assaults against the Roma are often condoned or ignored by the police and judiciary.\(^{163}\) Leigeois finds that even after the defeat of the Nazis, other countries, namely, Romania, Czechoslovakia and Bulgaria, continued the practice of forced sterilisation of Roma women.\(^{164}\)

11. Conclusion

Recall that earlier, I discuss Kymlicka’s view that minority rights are not the proper subject for a common international rights regime. It is difficult to imagine how the Roma could prosecute their right to access and develop their nomadic culture in Europe without the benefit of common minority rights such as those found in Europe’s Framework Convention for the Protection of National Minorities. Despite the disappointing outcome of the ECHR caravan-settlement cases for the Roma, they now have at least some basis to assert legal claims that protect their cultural development within the different states in which they travel. The international minority regime guarantees that a state’s treatment of its minority groups is the subject of regional and international scrutiny. Without an international minority regime, minority groups would lack a forum to appeal claims beyond the state in which they reside. The international

\(^{162}\) Okely, supra note 39, pp. 148, 150.


\(^{164}\) Liegeois, supra note 31, p. 175.
minority regime does not permit restrictions on cultural protection in a subjective, contextually dependent manner. Otherwise, the survival of minority groups would become subordinated to the whim of majority sentiment. Kymlicka’s view that minority protection is contextually dependent is correct only to the extent that protection required for the enjoyment of culture, as in the Roma cases we discussed, differs with the factual circumstances of each particular case.

In the jurisprudence on minority rights, the extent and degree of remedy or cultural rights protection granted to a minority group is determined by the facts and circumstances of any particular case or communication filed by a minority group member. However, the case of the Roma demonstrates that a common regime of minority rights does indeed exist (in fact it has evolved to include a substantial international jurisprudence), and has successfully compelled states to recognise as well as shield a minority culture against majority sentiment. Normative discussions on multiculturalism have not incorporated the evolution of human rights jurisprudence into their analysis. In opposing a common minority regime, Kymlicka does not argue against international law as a mechanism to regulate the conduct of states towards each other. If we accept the administration of international legal norms in complex areas of statecraft involving refugees, immigration, trade, monetary policy, environmental protection, labour standards, criminal activity, nuclear proliferation and military security, it is inconsistent to oppose their use in the area of minority protection as a part of the human rights treaty system.

An example of the requirement for a common minority regime is the need for groups such as the Roma to not only safeguard cultural practices (including nomadic travel) against state persecution, but also to identify themselves as a cultural minority group. The need for minority self-identification is pronounced in the case of the Roma because European states have frequently exercised illiberal approaches to regulating Roma membership and cultural practices. In response to the history of European persecution against the Roma, delegates at the first World Romani Congress held in London in 1971 rejected identification terms given by European states for the Roma, such as ‘Tsiganes’, ‘Zigeuner’, ‘Gitanos’ and ‘Gypsies’, which were not theirs and did not coincide with reality anywhere, opting instead for the term ‘Rom’. 165

The rights of cultural groups to that of self-identification is an important aspect of minority protection. Self-identification provides groups such as the Roma with a mechanism to redefine the stereotypes perpetrated upon them by various alien host states. Permitting members of minority groups to self-identify or define the criterion for minority group membership, however, is opposed by

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165 Liegeois, supra note 39, p. 258.
some political theorists. Critics of multiculturalism maintain that the process of minority group self-identification encourages arbitrary, illiberal practices against an individual who seeks entrance into a minority group or disassociation (exit) from a minority group. That is, the criterion established by a minority group for membership may be manipulated by the group and unfairly denied to an individual. Also, an individual might be denied the prospect of leaving his or her minority group once membership is assigned.

The international minority regime mandates due process protection to individuals at the domestic and international levels against arbitrary membership practices by a minority group because it is incorporated into broader human rights protections.\(^{166}\) For example, the United Nations Human Rights Committee provides in its General Comment No. 23 that minority group existence (membership) must be established by objective criteria.\(^{167}\) Further, regional bodies prescribe similar protections against arbitrary and subjective actions by minority groups or state parties as evidenced in the European Framework Convention for the Protection of National Minorities. Article 3 of the Convention recommends:

> Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to the choice.

The regime also serves as an appeal against arbitrary state conduct regulating minority group membership. For example, in the case of *Sandra Lovelace v. Canada*,\(^{168}\) the UN’s Human Rights Committee, using an international treaty, overruled Canadian government actions to arbitrarily deprive Lovelace, a state-registered Maliseet Indian, of her membership in the Tobique Band, including Canada’s effort to deny Lovelace of her residence on the Tobique Reserve. International authority for the self-identification of Roma-Indians is recognised by European governments under Article 27 of the ICCPR as further clarified in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as Europe’s regional Framework Convention for the Protection of National Minorities. “The corollary of the

\(^{166}\) See Articles 2 (discrimination), 16 (standing), 17 (privacy), 22 (association), 26 (equal protection), 27 (minority rights) of the ICCPR.

\(^{167}\) Compilation of General Comments and General Recommendations Adopted By Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.7, 12 May 2004. See HRC General Comment No. 23, which clarifies Article 27 protections at para. 5.2. Further, paragraph 6.1 requires that positive measures be taken by a state against private parties (including minority groups) that impede the exercise of an individual’s right to enjoy his or her culture.

\(^{168}\) *Sandra Lovelace v. Canada*, supra note 106.
The obligation to protect minorities under international instruments is a duty to recognize them.\textsuperscript{169} The minority group aspirations in my Roma case study demonstrate how cultural protections belong to a common species of rights. Roma nomadic travelling practices fall under the common umbrella of protection provided for by cultural rights. The diverse elements of human culture, as well as the ability of individual human beings to access it, require the formal recognition of minority groups. Cultural rights are intended to eliminate the suffering of groups such as the Roma peoples who weather persecution to protect their nomadic ways. Before passage of the international minority regime, the Roma's only alternative to persecution was to accept their containment in sedentary society. Instead, the Roma rejected forced containment and managed to survive as a people. The passage of a minority regime in Europe is intended to bring the demise of the over one thousand-year persecution suffered by the Roma.

The Roma legal cases also demonstrate that the problem with the implementation of cultural rights is not inherent in the complexity of multicultural political theory or in the different cultural standards of states. That a common minority regime evokes resistance from states is no reason to withdraw such protection from the corpus of human rights laws. Rather is it an historic phenomenon common to the resistance by many states of human rights that have as a foundation the dignity of the person and the advancement of the human species. The contribution of ethnical, linguistic, religious and national groups to the advancement of world cultures represents an important, if not critical, enrichment of human society. The legal protection for this value, as in the case of all human rights, does not come without a degree of social conflict. Over the course of history, states may now evolve not only to recognize, but also benefit from the contributions of these groups as an enhancement to the quality of human life. The slain African-American civil rights leader Reverend Martin Luther King Jr. explains the principle:

\begin{quote}
We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.\textsuperscript{170}
\end{quote}

\textsuperscript{169} G. Gilbert, 'Individual, Collectives and Rights', in N. Ghania, and A. Xanthaki (eds), \textit{Minorities, Peoples and Self-Determination} (Martinus Nijhoff Publishers, Leiden, 2005) pp. 159.\textsuperscript{170} Reverend Martin Luther King Jr., \textit{supra} note 75.