

The European Constitution

A troubling example of how it will fail to uphold
individual freedoms & human rights

European Committee on Romani Emancipation

January 2005

European Constitution

During 2005, many European citizens will be asked to vote in referenda on the European constitutional draft. The document concerned represents a consolidation of the functions of various existing institutions in the European Union. Therefore, in order to understand in practice, what the European constitutional draft is likely to mean, it is important for European citizens to be able to assess the track records of the institutions concerned.

During 2004 the European Commission, the European Parliamentary Petitions Committee and the European Ombudsman showed themselves incapable of addressing the single most serious example of government-sponsored human rights abuse in Europe. This is the government management of systematic segregation and denial of education to in excess of 150,000 intelligent Roma children in rural regions of the Czech republic, Hungary and the Slovak republic.

This demonstrates in a shocking fashion that there are no guarantees for human rights within the permissible ranges of action of the European Commission, Parliamentary Petitions Committee or action by the Ombudsman. Indeed, the European constitutional draft contains no practical guarantees of the defence of individual freedoms from such abuse.

The single most significant human rights abuse in the European Union

During the period 2000 through 2003, the European Committee on Romani Emancipation (ECRE) undertook field work to investigate the scope, modality of operation and financial incentives which were sustaining a system of segregated educational denial, generally known as the Special Schools.

More than 150,000 children in Central Europe (Czech republic, Hungary and the Slovak republic) are segregated and denied education within this "school system" and the process is a direct result of a central government financial incentive which pays around 2,000 Euro per child forced into a special school. As a result of racial and cultural prejudice local authorities "qualify" to obtain such funding by forcing mainly Roma children into Special Schools. They then use these funds for other uses. The Roma children forced into these special schools receive no useful education and there are no records of Roma children being transferred back into normal schools to complete their school certification.

Children who attend Special Schools do not get school leaving certificates and, as a result, cannot pursue recognized professional training.

ECRE issued a report (The impact of the Special School on the Roma in Central Europe, February 2003) which was sent immediately to the European Commissioner for Enlargement. ECRE requested that the European Commission act to ensure that these, then accession, countries be required to abide by the Madrid Conditions of accession so that all governments and their institutions would be observing European Law in this case, by the time of accession. The Commissioner never responded and associated European Commission services simply sustained an unacceptable failure to act marked by procrastination and prevarication. The direct result of this failure to act was highly prejudicial to the children concerned. Today, in January 2005, they remain, now as citizens of the European Union, in this unacceptable status, in contravention to European law.

Appeals to the European Parliamentary Petitions Committee and European Ombudsman concerning the behaviour of the European Commission, resulted in practical failures to respond. In the case of the Petitions Committee they only looked at a misleading "reply" from the European Commission which represents a masterpiece in prevarication. The Petitions Committee investigated absolutely nothing and did not even ask ECRE to respond to any questions concerning the findings in a field report on the Special School system.

As a result, on May 1st 2004, with the accession of these countries, this horrific and unacceptable abuse of the futures of over 150,000 intelligent children, became part of the educational system of the European Union.

A fundamental weakness of the European Constitution

The European Constitution consolidates the relationships between existing institutions including the European Commission as the initiator of legislation and guardian of the treaties. It places the Petitions Committee and the Ombudsman in a more central position for defending human rights. But all of this remains just an empty promise when the individuals managing and working within such institutions, for various motivations, do not exercise their mandates in a way which upholds European law. If the very institutions which are supposed to uphold any written constitution are as defective as has been demonstrated in this case, then this calls into question the practical utility of the European Constitution.

This ongoing abuse of over 150,000 EU citizens is an affront to the sensibilities of the people of Europe. And yet, it is notable that the European Constitutional draft contains absolutely no guarantees for the defence of individual European citizens against the type of arbitrary institutional abuse recorded in this case. One has to ask, how can the people of Europe be asked to vote in favour of such a constitution?

There is clearly a need for action to confront this situation which does not involve complaints and legal procedures simply because these take too long to resolve the issue. Unless action is taken swiftly on the part of the European institutions to demand that the governments concerned terminate this unjustifiable abuse of Roma children, this issue cannot fail to become serious consideration in the minds of people being asked to support the European Constitution.

We provide in annex to this paper, a report by SEEL (2003) and sets out the evolution of this state of affairs and which has been updated to reflect the current situation.

We are ready to answer any questions on this matter and can be contacted at:

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European Committee on Romani Emancipation

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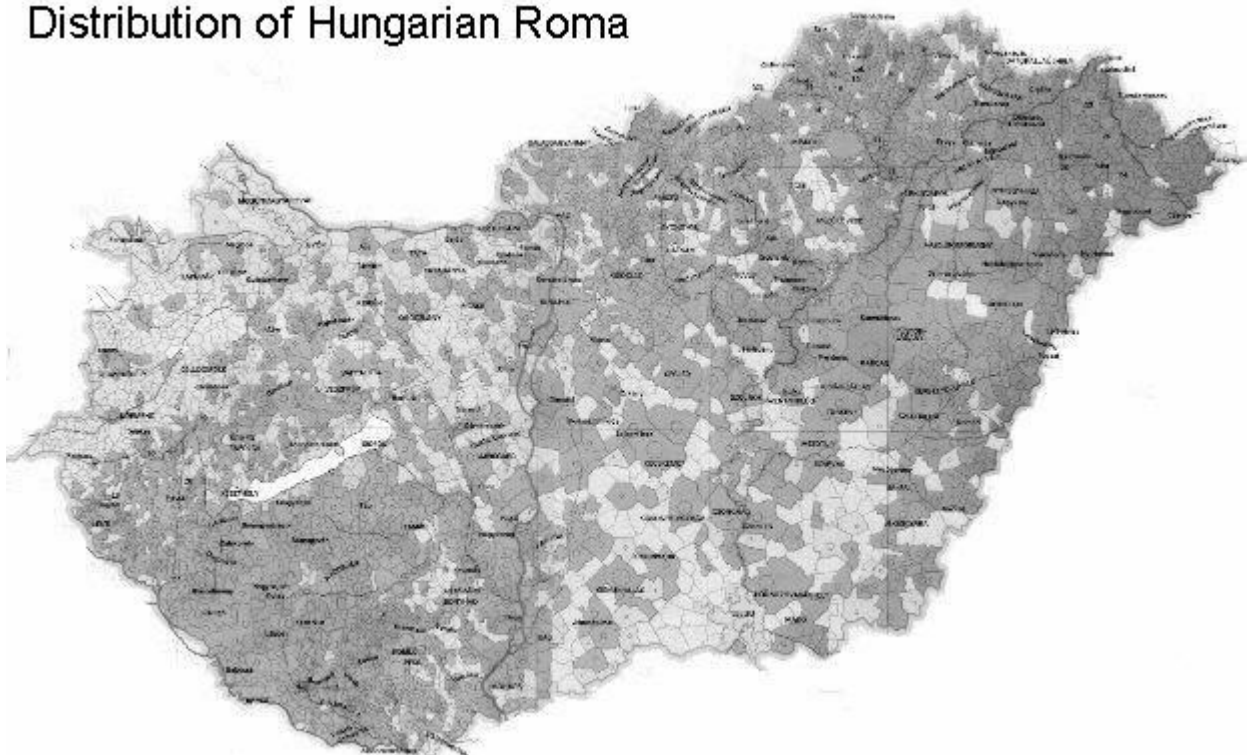
The Hungarian ZSED

Zone of Segregated Educational Denial

The Hungarian government supplies a proportion of local authority funding to rural areas which is paid according to the number of Roma children who are separated from the mainstream children and then kept in a status of educational denial for the rest of their "school life". Since 1989, this governmental and officially condoned bribery has created a zone called the ZSED (Zone of Segregated Educational Denial). The number of inmates has increased by 500% during this period to some 50,000. This whole system is operated, run and managed directly by central and local government employees as a "covert but official policy". It is located almost exclusively in rural areas far away from the larger town centres in villages with higher concentrations of Roma population

The map below shows the general distribution of Roma in Hungary.

Distribution of Hungarian Roma

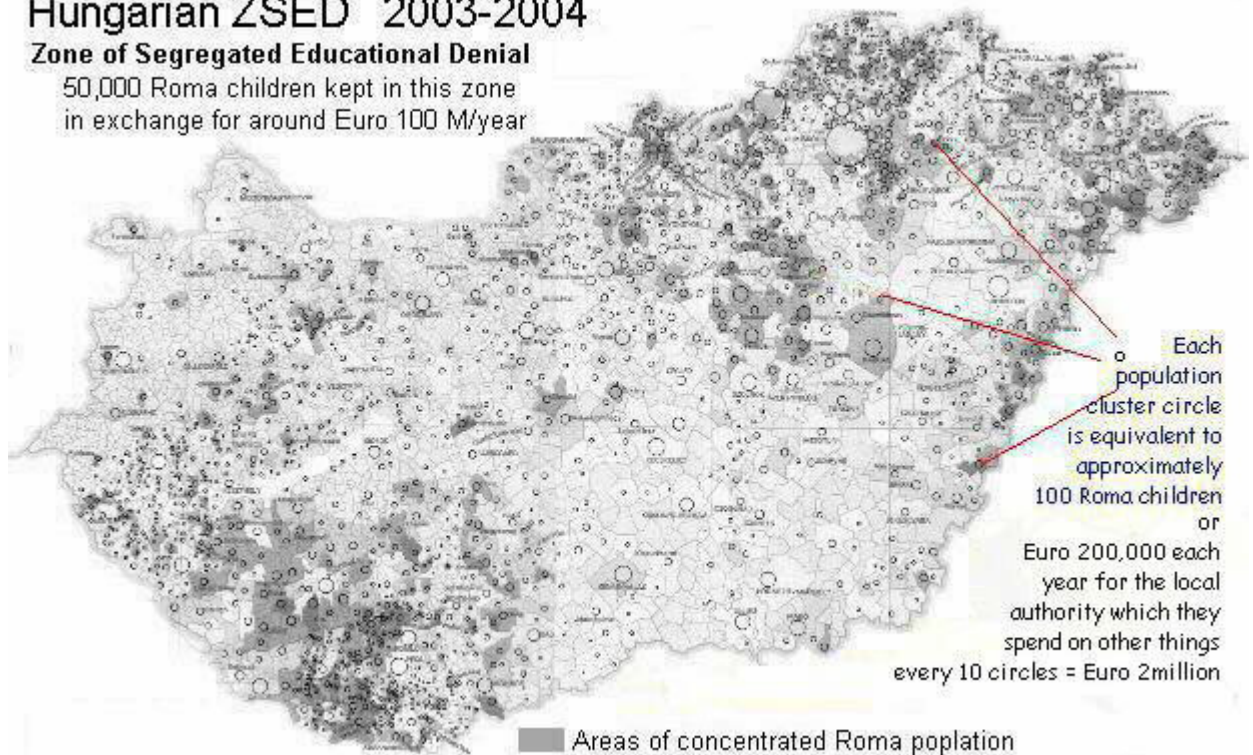


The Hungarian government pays in the region of Euro 2,000 for each Roma child forced into the ZSED and villages with higher number of school age children make more money from this business. The map below shows where the financial concentrations, where the local authorities making most money from Roma children, exist. And this provides a more exact idea of the location of the ZSED.

Hungarian ZSED 2003-2004

Zone of Segregated Educational Denial

50,000 Roma children kept in this zone
in exchange for around Euro 100 M/year



The ZSED is completely against European and International Law as well as regulations covering normative funding and educational provisions.

European Law

The ZSED contravenes the European Human Rights Convention Article 2, First Protocol concerning the right to education. It contravenes all sections in the Treaty of the European Union concerning citizens rights to equal treatment on all matters including access to all normal provisions, such as basic education, freedom from torture, freedom from abuse, rights to redress.

In terms of central government corruption and local authority fraud the ZSED "administration" involves the following:

1. Contravention of normative provisions

Normative funding from central government to rural local authorities allows the use of funds for uses other than those proposed when a proposed use is not subsequently undertaken. However, the local authorities place these children physically into the ZSED and ask for the funds according to the number of children forced into the ZSED. When the funds are transferred, the local authorities, with the knowledge of the central government funding agencies, divert the funds to other uses. In other words, in contravention to normative provisions the local authorities create a demand for resources by physically allocating children to a situation where the funds are needed to compensate for removal from the normal school system and then do not use the funds to satisfy this demand. This leaves the children debarred from any access to normal schooling and the local authority does not provide any compensatory educational provisions using the funds received. This is not only an abuse of the normative regulations but is also proactively harms and abuses these children.

The European Commission in its communications with ECRE and in their subsequent submission to the European Parliamentary Petitions Committee even argued in support of the

actions by the local authorities on the basis that normative funding provisions permit local authorities to use funds for purposes other than those for which funds were requested. The Commission failed to add that this is only true if the local authority does not go ahead and allocate resources and create a defacto demand for the funds for the stated purpose. If no such a demand is created then naturally using the funds for other uses creates no problem. In this case the failure to satisfy a demand created by the local authority actions intentionally sustains an unacceptable segregation and denial of education of small children.

2. Fraudulent basis for provision

Roma children are classified as being in need of an educational provision which consists of being banished to the ZSED. This classification is made by government paid educational psychologists. Hungary (together with the Czech republic and Slovakia) is the only country in the world which:

- has a classification of educational provisions which involves removing all useful education from children
- classifies normal children as being "in need of" educational denial
- pays racially-motivated educational psychologists to decide, on behalf of the authorities, that a large number of children with normal intelligence should be denied education
- willingly pays for such professionally fraudulent activity to sustain social segregation founded on racial prejudice

Historic precedents

Modelled on Hilter's Third Reich Special Schools, which were used for children classified as mentally defective, Jewish and Roma children, this system achieves the same ends by segregating normal children of a specific ethnic group, denying them education and making money for those who manage the system including "educationalists" and "psychologists" who tend to be party members.

Although these specific functions were terminated in 1945, these governments have succeeded in re-establishing their former function, with some enthusiasm, after 1989.

The system is conveniently operated in relatively remote rural regions, it has a broad geographic distribution and is centrally controlled or managed. This covert policy is a virtual industrial process of systematic abuse of a segment of the population. It compensates those who enforce segregation and deny education at village level handsomely and with cash; it is a modern day variant on the Soviet Gulag.

The role of the European Commission

The European Commission failed to report to the European parliament and the European Council any of these shocking facts in their Regular Reports on Accession Countries in spite of the fact that all responsible staff at the Commission were aware of these facts. Indeed, if the ZSEDs in the Czech republic and Slovakia are included, the number of Roma children abused in this way currently exceeds 150,000. The ZSED grew rapidly since 1989 (500% increase in the number of inmates) in the full knowledge of the European Commission.

Reasonable limits of compliance

The aim of transposing European legislation is to attain a situation, for the population as a whole, which approximates the general current circumstances in countries which are already member states of the European Union. However, it would be unreasonable for the European Union to expect accession countries to have been able to enforce European legislation so

effectively that the whole population was abiding by the requirements of such law before accession. Therefore a reasonable basis for a minimum limit for judging compliance, is that contained in the declarations of the Madrid European Council of 1995. That Council emphasized that it is more important that legislation be implemented effectively through appropriate administrative and judicial structures than just being limited to transposing European Community legislation into national legislation.

Administrative structures, in general terms, consist of the government and its administration, and the judiciary. These structures embody procedures, command chains and the rules which are obeyed in accord with the law. To demonstrate a minimum level of implementation of an appropriate structure then, at least, the governments, their civil servants and the judiciary should be acting in a way that confirms a full conformity and compliance with EU law and required regulations. If the governments, civil servants or the judiciary demonstrably fail to comply with EU laws then it is impossible to expect the population in general to comply. This would be an unacceptable failure to implement legislation, according to the Madrid criteria, and therefore would be a situation which fails to satisfy the prerequisite of the mutual trust required for EU membership. Under such circumstances the country concerned should not qualify to join the European Union.

Failure to act

The European Commission failed to report any of the above facts in its so-called Accession Progress Report chapters concerning, Democracy and the rule of law, Human rights and the protection of minorities, Social policy and employment, Education and training, Justice and home affairs, Corruption, Finance and budgetary provisions. In particular the European Commission completely failed to apply the Madrid conditions to the Copenhagen Criteria in this case.

The ZSED

In spite of this, the governments and civil servants in Hungary, the Czech republic and Slovakia are demonstrably breaking the law, including national laws, they have also not satisfied the accession criteria because they have not met the Madrid conditions.

In spite of this, the European Commission reported that these countries has satisfied all accession criteria. This serious case of maladministration by the European Commission is a significant failure to act. This has compromised the transparency of information used to take decisions by the European parliament and Council on accession and indeed, seriously undermined the validity of accession votes for these countries by those assemblies and has called into question the democratic legitimacy of the process.

Above all, the prevarication and failure to act by the European Commission (since 1999) and its failure to report has encouraged these governments to continue their abuse, their breaking of European Law and, more importantly, to continue to seriously prejudice the children concerned.

1. [An update on SEEL Report: 2003 \(103\)](#)

2: **This project is supported by ECRE-European Committee on Romani Emancipation**