THE ROLE OF THE JUDICIARY IN THE EUROPEAN UNION'S (DE)SEGREGATION OF ROMA STUDENTS

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I. INTRODUCTION

"They are a strange people, these Gypsies . . . ."¹ In 1973, this may have been an acceptable way to begin a book, but not today. In fact, the term "Gypsy" has largely been replaced by the term "Roma" because of its pejorative connotations.² This change indicates societal progress regarding the perception and tolerance of Roma.³ In Europe, twelve countries are now in their "Decade of Roma Inclusion" (2005–2015), which shows the level of importance recently placed on the issues this ethnic group faces across the continent.⁴ Further, the European Union (EU) has adopted several major, longstanding laws that prohibit the discrimination of people based on racial or ethnic origin.⁵ Despite these efforts to curb discrimination and to promote inclusion of this group, the stigma surrounding Roma remains widespread across Europe.

The Roma of Europe suffer in a variety of ways, with unequal education, high unemployment, poor housing conditions, and limited access to health

¹ HARRY EZEKIEL WEDECK, DICTIONARY OF GYPSY LIFE AND LORE, at v (1973) (appearing on the introduction page to a dictionary of "Gypsy" terms).
² JÁNOS LADÁNYI & IVÁN SZELÉNYI, PATTERNS OF EXCLUSION: CONSTRUCTING GYPSY ETHNICITY AND THE MAKING OF AN UNDERCLASS IN TRANSITIONAL SOCIETIES OF EUROPE 3 n.1 (2006); see also JEAN-PIERRE LIEGEOIS, ROMA IN EUROPE 11–12 (2007) (discussing the changes over time of words used to refer to the "Gypsy" population, including the use of the "Traveller," and the difficulty associated with "find[ing] a single term for a number of communities that wish to have distinct identities"); HELEN O’NIONS, MINORITY RIGHTS PROTECTION IN INTERNATIONAL LAW: THE ROMA OF EUROPE 4-6 (2007) (describing the importance of finding a "suitable label" for this group of people, particularly because extending human rights protections to them is based on how they are identified).
³ LIEGEOIS, supra note 2 ("It was the geopolitical upheaval after 1989 that brought the term ‘Roma’ to the fore . . . .").
⁴ See ABOUT, DECADE OF ROMA INCLUSION 2005–2015, http://www.romadecade.org/about (last visited Mar. 20, 2011) (explaining that the idea for the "Decade of Roma Inclusion" was developed at a high-level regional conference on Roma inclusion in 2003; on February 2, 2005, the Declaration of the Decade of Roma Inclusion was signed by Prime Ministers of eight European countries (with four countries joining later), all with significant Roma populations. The twelve participating countries are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Montenegro, Romania, Serbia, Slovakia, and Spain); see also Governments Endorse "Decade of Roma Inclusion," OPEN SOCI’Y FOUNDS. (July 8, 2003), http://www.soros.org/initiatives/roma/news/decade_20030708 (providing details about the conference including that the purpose was to discuss Roma inclusion in the policymaking process, particularly in the areas of "discrimination, education, employment, housing, and health").
Of these areas of hardship, education may be the most important. Improved education could break the cycle of poverty and facilitate improvements in each of the aforementioned areas of life. Education of Roma and non-Roma children together could also improve the lives of the Roma by facilitating relationships that are necessary to narrow the social gap that exists between these groups.

Notwithstanding the existing laws and the recent emphasis on Roma inclusion, the European courts have paid little attention to the issue of persistent school segregation. This Note focuses on the role the judiciary can play in reducing the continued school segregation of Europe’s Roma by legitimizing existing laws that prohibit discrimination. To this end, Part II begins with a brief history of the Roma, their discrimination, and their status today. This section also includes an examination of the past and persistently marginalized position of Roma children in schools throughout Europe. A brief history of African American discrimination in the United States follows, providing the foundation for a later comparison of the respective court systems.

Part III describes the laws that have developed to protect the rights of EU citizens and the enforcement mechanisms for these laws. Part IV presents a comparison of school segregation cases, to date, from the European Court of Human Rights and the role of the courts in American school desegregation. Additionally, this part reviews social science research to assert that courts play a significant role in changing public opinion and affecting change in a society by validating existing laws in the eyes of the citizens. Finally, this part recommends that EU courts take a more proactive role in the

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7 O’NIONS, supra note 2, at 132-33.

8 See PLAMEN RALCHEV, INST. REG’L & INT’L STUDIES, THE DECADE OF ROMA INCLUSION — AFFIRMATIVE ACTION IN THE NEW EUROPE? 3 (2005), available at http://www.iris-bg.org/files/Roma%2520Decade.pdf (pointing to “entry points of interaction between Roma and non-Roma as means of shortening the social distance between them” (emphasis omitted)); see also O’NIONS, supra note 2, at 133 (noting that “if [education is] delivered sensitively and appropriately, it can break down barriers and prejudice between communities”).

9 See Jack Greenberg, Report on Roma Education Today: From Slavery to Segregation and Beyond, 110 COLUM. L. REV. 919, 938 n.66 (2010) (stating that there have only been three cases in the European Court of Human Rights and a “handful of lower court cases” on this topic).
desegregation of Europe’s schools in order to legitimize existing laws and to permanently end the segregation of Roma students.

II. BACKGROUND

A. History of Roma Marginalization

The Roma have a long history of marginalization and discrimination\(^\text{10}\) in the form of “relentless persecution.”\(^\text{11}\) This mistreatment often occurs because of a misunderstanding of Roma culture, which cultivates mistrust.\(^\text{12}\) Similar to the lack of accurate Roma statistics in present day,\(^\text{13}\) there is a dearth of written Roma history, and much of what exists was written by outsiders whose writings may be uninformed or prejudiced.\(^\text{14}\) As a result of this paucity, the exact path of the Roma to Europe is unknown; however, it is generally accepted that their origins are in India.\(^\text{15}\) It is believed that the Roma migrated from India into the Balkans around 1100 A.D. and swept westward into Europe in the fourteenth and fifteenth centuries.\(^\text{16}\) Roma migrations due to war and persecution characterized the next several hundred years.\(^\text{17}\)

Unfortunately, the extreme discrimination of the Roma is not ancient history. Like the Jews of Eastern Europe, Roma were targeted for extermination.\(^\text{18}\) It is estimated that between 200,000\(^\text{19}\) and 500,000\(^\text{20}\) Roma

12 See Donald Kenrick & Grattan Puxon, Gypsies Under the Swastika 3–6 (2009) (giving reasons for Roma discrimination, such as the mystery of their origin, their lack of religion, the dark color of their skin, and the myths of cannibalism, magic, and of being cursed); see also Ringold et al., supra note 10, at 12 (“The distance between Roma and non-Roma communities breeds mistrust and misunderstanding among non-Roma and reinforces negative stereotypes and discrimination.”).
13 See infra note 73 and accompanying text (describing why limited data exists regarding Roma).
14 Angus Fraser, The Gypsies 10 (2d ed. 1995).
15 See Ian Hancock, We Are the Romani People 2 (2002) (describing how the connection between the Roma and India was made when a Hungarian student overheard several Indian language students using words that sounded akin to the speech of the Romani laborers at the Hungarian student’s family estate); see also id. at 9 (explaining that linguistic and genetic research supports the conclusion that the Roma came from India).
16 Brearley, supra note 11, at 588.
17 See id. at 22–24 (identifying multiple conflicts that affected Roma migration and detailing various forms of Roma maltreatment including slavery, deportation, and execution).
18 Ringold et al., supra note 10, at 7.
19 Kenrick & Puxon, supra note 12, at 153.
20 Ringold et al., supra note 10, at 7; see also Kenrick & Puxon, supra note 12, at 153.
were killed or died in concentration and death camps in the “forgotten Holocaust.”\textsuperscript{21} In the wake of World War II, Eastern European countries made culturally repressive attempts to assimilate the Roma into mainstream society.\textsuperscript{22} Although the attempts to assimilate during the socialist era were somewhat successful in improving access to education, housing, and employment, these policies often perpetuated existing inequalities by suppressing the cultural identity of the Roma.\textsuperscript{23} For example, the push to increase Roma student enrollment led to a rise in literacy, but Roma students were frequently segregated into schools for children with disabilities.\textsuperscript{24} Additionally, forced integration and lack of Roma participation in this paternalistic process resulted in “mistrust and tensions” between the Roma and the state, and instilled “a culture of dependency” in Roma.\textsuperscript{25} As the communist era came to a close, state protections providing “a modicum of health care, education, housing, and regular paid work as skilled or unskilled laborers” were eliminated, resulting in worsened conditions for Roma.\textsuperscript{26} During this transition from communism, “[w]here nationalism, material hardship and unfamiliar levels of unemployment created a need for scapegoats, Gypsies, if numerous, could be blamed for many of the social and economic problems.”\textsuperscript{27} While the account of Roma persecution could go on indefinitely, this snapshot of history provides a backdrop of the broad discrimination experienced by this people.

\textbf{B. Current Position of the Roma}

The current picture of the Roma is a mosaic\textsuperscript{28} of varying languages, cultures, religions, places of origin, periods of migration, and settlement models (settled or nomadic).\textsuperscript{29} Roma in Europe total almost twelve million, making them the EU’s largest minority.\textsuperscript{30} The size of the Roma population

\textsuperscript{21} ANGUS BANCROFT, ROMA AND GYPSY-TRAVELLERS IN EUROPE 1 (2005).
\textsuperscript{22} See FRASER, supra note 14, at 274–75 (explaining that the assistance given to the Roma was an effort to further communist goals rather than to improve conditions of injustice).
\textsuperscript{23} RINGOLD ET AL., supra note 10, at 7–8.
\textsuperscript{24} Id. at 8.
\textsuperscript{25} Id.
\textsuperscript{26} Brearley, supra note 11, at 591–92.
\textsuperscript{27} FRASER, supra note 14, at 289–90.
\textsuperscript{28} See JEAN-PIERRE LIÉGEOIS, ROMA, GYPSIES, TRAVELLERS 61 (Sínead Ní Shui'néar trans., 1994) (1994) (explaining that the Roma are like mosaic because each subgroup has individual characteristics and is distinct from the other subgroups, but together they combine to compose a whole).
\textsuperscript{29} SOCIAL SITUATION OF THE ROMA, supra note 6, at 1.
\textsuperscript{30} EUROMA REPORT: ROMA AND THE STRUCTURAL FUNDS 5 (Fundación Secretariado Girano
varies by country with the largest numbers in Romania, Bulgaria, Slovak Republic, and Hungary. Further, the socio-economic position of Roma is varied among the countries of the EU, due in part to their legal status in each country. A person’s legal status is important because it affects rights such as access to social security, healthcare, education, employment, free circulation throughout the EU, and participation in public or political life.

Recent research confirms that Roma living in the EU continue to face “persisting discrimination and far-reaching social and economic exclusion,” with discrimination found in areas such as employment, housing, healthcare, and education. Each of these areas is inherently intertwined: “poor housing for example has an impact on health and educational performance as well as access to public services, while low attendance rates at school and unequal treatment within the educational system affect employment opportunities, access to services, health, and access to justice.” Despite their relationship, a closer look at each category provides a valuable understanding of their impact on the Roma community.

With regard to employment, the Roma suffer from high levels of unemployment and low levels of income. Among other factors, low levels of employment are the result of prejudice in the labor market, inadequate training, and inferior education. These employment struggles often result in greater dependency on social services.

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31 See Social Situation of the Roma, supra note 6, at 16–18 (showing Roma population estimates in Europe, by country).
32 Id. at 16.
33 See id. at 18–22 (listing the multiple status types including citizen, national, national minority, ethnic minority, refugee, asylum seeker, and illegal immigrant); see also Liégeois, supra note 2, at 135 (stating that the majority of Roma are citizens of their resident state).
34 See Social Situation of the Roma, supra note 6, at 20–21 (detailing the legal status of Roma in Europe, by country).
35 See id. at 18–22.
36 Id. at 22.
37 Id.; see also id. at xv (explaining that EU social policy is aimed at social inclusion in said areas).
38 Id. at v.
39 Id. at 22.
40 EUROMA REPORT, supra note 30, at 15 (“Roma unemployment is estimated at 64% in Slovakia, 51% in Bulgaria, 32% in Czech Republic, 25% in Hungary and Romania, 34% in Greece and 14% in Portugal.” (citations omitted)). Roma, however are much more likely than the majority EU population to participate in informal labor activities. Id.
41 Id.
In the area of housing, Roma typically live in isolated areas such as ghettos or shantytowns, which are usually found on the periphery of cities. It is often difficult for Roma to find accommodations because of financial inability or the prejudice of property owners, and the accommodations they do find are often in socially isolated areas and regularly characterized as overcrowded, temporary, and lacking basic facilities. Finally, access to social housing is often limited due to a lack of legal status or proper documentation, or to the inability to accommodate the extended family framework that characterizes Roma.

Access to health care services is limited to Roma due to financial constraints, geographical segregation, and the lack of medical insurance, while communication problems associated with prejudice and stereotypes further exacerbate this issue. Further, Roma suffer increased health risks resulting from poor eating habits, sub-standard and crowded housing conditions, low physical activity, and high rates of smoking. These aggravating factors make access to health care a more urgent concern. The restricted access to health care and poor living conditions contribute to a significantly lower life expectancy for Roma compared to other Europeans, which is ten or more years lower in some countries.

Not only does research demonstrate the existence of discrimination, but a recent EU survey also details Roma perceptions that they are being discriminated against. Half of the respondents reported being the victim of discrimination in the past year, and between 66% and 92% (depending on the country of residence) indicated that they did not report the incident—primarily because reporting the incident would not result in any action or change. Further, an overwhelming majority (an average of 86%) of Roma said that they were unaware of an official agency that could provide

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42 SOCIAL SITUATION OF THE ROMA, supra note 6, at 23.
43 Id.
44 Id. at 10.
46 RINGOLD ET AL., supra note 10, at 48 (explaining that poor living conditions make Roma more vulnerable to communicable diseases such as tuberculosis and hepatitis).
47 HEALTH AND THE ROMA COMMUNITY, supra note 45, at 71–73.
48 SOCIAL SITUATION OF THE ROMA, supra note 6, at 23.
50 Id.
assistance for incidents of discrimination. These findings suggest the importance of increasing awareness of Roma’s individual rights and state obligations.

The global economic crisis that began in 2008 eliminated much of the growth that Roma saw in the previous decade, particularly in areas such as poverty reduction and social inclusion, making efforts at progress even more important than before. The education of Roma children may stop the cycle of poverty by enabling them to secure employment which in turn provides better access to housing and healthcare. Education is also extremely important to social cohesion because “apart from providing knowledge and developing skills, education shapes attitudes and empowers young people to adapt to rapidly changing social and economic conditions.” The problems facing Roma are complex, yet education has enormous potential for improving the lives of Roma in Europe.

C. Roma Education: Past and Present

Roma first experienced social exclusion from education, then reformative education, followed by forced assimilation during the communist period. Today Roma experience several forms of discrimination, including the focus of this Note: segregation.

Prior to the Communist Era, Roma children received public education in limited numbers. In the eighteenth and nineteenth centuries, the education of Roma—if education was provided at all—was used as a mechanism for

51 Id.
53 EUROMA REPORT, supra note 30, at 5.
55 DAVID MAYALL, GYPSY-TRAVELLERS IN NINETEENTH-CENTURY SOCIETY 97 (1988) (explaining that Roma were eradicated by “transportation, banishment, and execution”).
56 See infra notes 59–64 and accompanying text (providing examples of reformative efforts).
57 See infra text accompanying notes 65–68 (describing the experience of Roma students during the communist era).
58 See RINGOLD ET AL., supra note 10, at 41 (“Not until the socialist regimes came to power in Central and Eastern Europe following World War II were large numbers of Roma compelled to participate in public education.”).
reformation. For example, in Scotland, there was a push to adopt a mandatory education scheme for Roma, in which all Roma children would be educated in sex-segregated schools and later through apprenticeships. Further, an example in the 1830s is of Reverend John Baird of Scotland, who possessed deeply held sentiments that it was too late to change the “habits of wandering” of adults but that it was possible to reform children. As a result, Baird began a mission-based education of Roma children. Similar ventures in England and Prussia developed in the early nineteenth century based partly in Methodist mission and partly in education, and had limited success in reaching their goal of “reformation.” In Hungary, at the close of the nineteenth century, there was limited integration, with a mere 30% of school-age Roma attending school.

During the communist period, Roma children were forced to attend school as part of the assimilation campaign, however, most did not complete secondary school. Although these initiatives increased literacy and school attendance, the isolation of Roma students into separate classrooms or segregated schools resulted in disparate educational quality. With the fall of communism the educational picture worsened, including decreased access to services and continued segregation into special schools.

Many countries have adopted comprehensive strategies to improve the quality of their education system, yet problems persist. Roma students continue to suffer multiple problems related to education, including poor attendance, low enrollment, low academic performance, and segregation from non-Roma students at varying levels by country. Some education-

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59 See Mayall, supra note 55, at 97–129 (describing the reformist movement that was led by evangelists).
60 See id. at 100 (noting that the goal was “to destroy the travelling way of life, split up families by removing the children to schools and by apprenticing them to various trades, and by making their actions and activities subject to the control and supervision of an overseer”).
61 Id. at 114–15.
62 See id. at 115–16 (outlining Baird’s initial efforts at educating Gypsy children).
63 Fraser, supra note 14, at 199.
64 Id. at 212.
65 Ringold et al., supra note 10, at 41.
66 Social Situation of the Roma, supra note 6, at 123.
67 Ringold et al., supra note 10, at 41.
68 See id. at 9–10, 41 (noting that while the Socialist era was characterized by paternalistic programs, these programs no longer exist, thus diminishing Roma access to services; however, the foundational inequalities in education persist).
70 EMC Report, supra note 54, at 21.
71 See id. at 22–44 (detailing Roma education statistics by country).
related data on Roma exists, but it provides an incomplete picture. There are two primary reasons for the difficulty in collecting data for Roma: first, the belief that there are laws prohibiting the collection of data on ethnicity, and second, the fear of discrimination and misuse of ethnic data. Thus, while the data cannot offer a complete picture, the figures discussed below provide insight into the status of Roma students today. A 2009 study of seven EU countries found that school enrollment among Roma is high (roughly 90% between the ages of six to fourteen) until the age of fourteen, when many drop out. However, almost half of Roma over the age of fifteen did not complete primary school. Moreover, just under a quarter have completed secondary school compared with two-thirds of the total EU population. The impact of these numbers is compounded by the common experience of segregated education, even today.

Although segregation is illegal in European schools, it persists throughout the EU. There are at least three varieties of school segregation facing Roma. First, Roma students and non-Roma students often attend separate schools, whether this plan is explicit or implicit. Roma students are sometimes denied entry—despite available space—or if they are allowed to enroll, their attendance often results in “white flight” from those schools. Under-qualified teachers who use a reduced curriculum and hold low expectations for Roma students, often staff the separated schools. Second,

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72 Social Situation of the Roma, supra note 6, at iv; see also Greenberg, supra note 9, at 926 (explaining the lack of basic information on the Roma, such as demographics, which “reveals a huge data gap—one that must be filled in order to engineer and implement a plan to integrate Roma children into school systems”).

73 Social Situation of the Roma, supra note 6, at iv (“While gathering disaggregate ethnic data may itself be problematic, in the case of the Roma it is made even more difficult by a systematic under-recording trend.”); see also Dimitrina Petrova, Ethnic Statistics, European Roma Rights Ctr. (July 21, 2004), http://www.errc.org/cikk.php?cikk=1935 (listing seven reasons for the lack of reliable statistics on Roma).

74 Health and the Roma Community, supra note 45, at 24. The countries included in the study are Bulgaria, Czech Republic, Greece, Portugal, Romania, Slovakia, and Spain. Id. at 11.

75 Id. at 21.

76 Id. at 21–22.

77 See Part III (describing the legal authority for the prohibition of segregation in EU schools).

78 See Greenberg, supra note 9, at 935 (“School segregation throughout the region is widespread, but its nature, causes, and solutions are not easily explained.”).

79 Id. at 936.


when Roma students do attend the same schools as non-Roma students, Roma students are sometimes separated into different classrooms or separate areas of the classroom.\textsuperscript{82} Third, Roma students are over-identified as having special needs, and thus are segregated to different classrooms or different schools entirely.\textsuperscript{83} For example, in Ostrava, Czech Republic, the number of Roma students in special schools is twenty-seven times that of non-Roma students.\textsuperscript{84} Each of these segregation scenarios is illegal and detrimental to Roma education.

Over the course of history, Roma have adapted to the hardships of varied lifestyles and roles in society, but they continue to face obstacles in education, including the pressure to assimilate. In addition to the structural and societal barriers to Roma education, there are several other reasons that Roma may have been and continue to be resistant to formal, public education. These reasons include, but are not limited to: language and cultural differences, different social and learning patterns, fear of losing cultural identity through assimilation, and a nomadic lifestyle.\textsuperscript{85} Integration with programs that are culturally sensitive is important because "'[i]f integration is pushed too far, the result is assimilation and the disappearance of the minority as a distinct culture; a policy of separation, on the other hand, can lead to a ghetto culture of withdrawal from society.'"\textsuperscript{86} With this history in mind, the importance of well-reasoned and well-executed school desegregation is impossible to ignore.

\textit{D. History of African American Discrimination}

The practice of discrimination against blacks in the United States has roots older than the nation itself and is similar, in many ways, to the discrimination of Roma in Europe. Beginning in 1619, an estimated 600,000\textsuperscript{87} Africans were brought to what would become the United States,
initially as indentured servants and eventually as slaves. Although not all blacks were slaves at this time, "all blacks . . . came to be regarded as lowly and inferior. . . . Just as prejudice against blacks had helped to create the institution of slavery, so slavery in turn strengthened prejudice against blacks." At a time when white Americans were angry about British attempts to take their own freedoms, they were forced to consider the hypocrisy of their complaints against Britain in light of their enslavement and historically poor treatment of blacks. During the era of the American Revolution, however, "racism was already deeply ingrained in [whites'] thinking. Therefore, they had to decide not only whether blacks should be slave or free, but whether free blacks should have the same rights as whites." Slavery continued to exist during this time—although controversially—and eventually contributed to the start of the American Civil War in 1861.

It was not until the end of the American Civil War in 1865 that slavery was abolished with the enactment of the Thirteenth Amendment to the U.S. Constitution. However, emancipation did not necessarily mean freedom or equality for blacks in America. The next one hundred years were characterized by some victories for African Americans, but despite these successes, African Americans continued to face legal segregation and discrimination in all major aspects of life. As characterized by the Report of the National Advisory Commission on Civil Disorders in 1968, "[o]ur nation is moving toward two societies, one black, one white — separate and unequal."

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88 See id. at 16–17 ("After around 1640 . . . indentured blacks found that their status was declining. Their masters were forcing them to work terms of 20 years or longer or, more and more often, for their entire lives.").
89 Id. at 18.
90 See id. at 37 ("Some of the colonists who denounced Britain's attempted to "enslave" them began to see a contradiction between their defense of freedom and their ownership of slaves."); see also id. at 37–39 (detailing important and relevant events between 1764 and 1776).
91 Id. at 39.
92 See id. at 79–82 (describing the events in the decade preceding the commencement of the American Civil War).
93 See U.S. CONST. amend. XIII, § 1 (prohibiting slavery and involuntary servitude throughout the country, except as a punishment for crime).
95 See WILLIAM MCKEE EVANS, OPEN WOUND: THE LONG VIEW OF RACE IN AMERICA 193 (2009) ("The racial system appeared to be completely stable, like a frozen river.").
Specifically concerning education, African Americans have experienced a similar history to Roma. During the days of slavery, formal education was denied to the majority of African Americans, and was outlawed in a number of states. Some of the first schools for blacks were for children of former slaves, and instituted to instill moral and behavioral virtues that whites believed they lacked. Following abolition, blacks were “allowed” to go to schools; however, the schools were often segregated and continued to have “strong moralistic or vocational overtones.” Segregation in American schools was endorsed by the holding of Plessy v. Ferguson in 1896, which confirmed that the policy of “separate but equal” did not violate the Fourteenth Amendment. It was not until 1954, with Brown v. Board of Education, that the “separate but equal” doctrine of Plessy was overturned, requiring that black and white children attend integrated schools. Although the remnants of racism persist in American society, judicial decisions striking down racist policies, combined with the civil rights movement and continued social pressure to eliminate racial discrimination, have greatly reduced the prevalence of prejudice. Bridging longstanding social gaps, such as those between blacks and whites in the U.S. or Roma and non-Roma in the EU, is a difficult task—one that requires the endorsement of a people’s government.

III. THE CURRENT LEGISLATIVE AND JUDICIAL FRAMEWORK

There are several legal instruments in place in Europe that prohibit discrimination of many kinds, including discrimination in European schools. An early promise of these freedoms came when the General Assembly of the United Nations adopted the Universal Declaration of Human Rights (UDHR) in 1948, declaring that “[a]ll human beings are born free and equal in dignity and rights” and that “[e]veryone is entitled to [these] rights and freedoms . . . without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin,

97 See John L. Rury, Education and Social Change: Contours in the History of American Schooling 111 (3d ed. 2009) (“To be caught merely in possession of a book was cause for severe, even cruel punishment.”).
98 See, e.g., id. at 44–45 (detailing the New York African Free School that “was intended to deliver an education in traditional morality for the children of ex-slaves”).
99 Id. at 112–13.
100 Plessy v. Ferguson, 163 U.S. 537, 552 (1896).
102 Universal Declaration of Human Rights, supra note 5.
103 Id. art. 1.
property, birth or other status." This declaration specifically includes the "right to education." As a declaration, the UDHR was not legally binding, but it represented the international community's recognition and support of protecting and promoting universal human rights.

Shortly after the adoption of the UDHR, Europe again demonstrated its commitment to these principles with the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The ECHR entered into force in 1953 and has been ratified by a total of forty-seven countries as of October 30, 2010. The ECHR prohibits discrimination on similar grounds as the UDHR, including discrimination based on "national or social origin [and] association with a national minority." The Convention calls for all ratifying countries to incorporate the principles of the Convention in their respective laws.

The ECHR also established the European Court of Human Rights (ECtHR) to preside over "all matters concerning the interpretation and application of the Convention," but only "after all domestic remedies have been exhausted." Decisions of the ECtHR are final and binding on the parties. With regard to domestic remedies, the courts and authorities of

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104 Id. art. 2.
105 Id. art. 26.
106 Treaty Reference Guide, UN Office of Legal Affairs, http://untreaty.un.org/ola-internet/assistance/guide.htm#declarations (last visited Mar. 20, 2011) ("Declarations are not always legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations... Some instruments entitled "declarations" were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage. Such was the case with the 1948 Universal Declaration of Human Rights.").
107 See Universal Declaration of Human Rights, supra note 5, pmbl. ("This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.").
111 Id. art. 1.
112 Id. art. 19.
113 Id. art. 32.
114 Id. art. 35.
115 Id. art. 44.
116 Id. art. 46.
member states have the duty to apply the ECHR. Finally, domestic courts’ case law and the ECtHR’s application of the ECHR have developed in a mutually supportive and enriching way.

More recently, the EU issued the Race Equality Directive in 2000, declaring “that there shall be no direct or indirect discrimination based on racial or ethnic origin” including specific protections in the area of education. This Directive requires that member states provide for the enforcement of these rights and that new members of the EU are in compliance with these laws before entrance is granted.

The UDHR, ECHR, and the Race Equality Directive identify protected human rights and provide for enforcement of those rights, including that of equality in education. As such, the segregation of schools is not permitted under this legal framework.

IV. ANALYSIS

A. (De)Segregation Cases of the European Court of Human Rights

The ECtHR has addressed the issue of school segregation in three cases to date. The first case, D.H. v. Czech Republic, was filed in early 2000 on behalf of eighteen students of Ostrava, Czech Republic, claiming a violation of Article 2 of Protocol No. 1 (right to education), and Article 14 of the ECHR (protection against discrimination). Each student was placed in a special school for children with mental deficiencies, based on psychological

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118 See id. (noting that the ECtHR has a high level of authority over member state courts).
119 Race Equality Directive, supra note 5, art. 2(1).
120 Id. art. 3(1)(g).
121 Id. art. 7(1).
122 Treaty of Accession arts. 53, 54, Apr. 16, 2003, 2003 O.J. (L 236); see also CHRISTIAN P. SCHERRER, *ETHNICITY, NATIONALISM AND VIOLENCE: CONFLICT MANAGEMENT, HUMAN RIGHTS, AND MULTILATERAL REGIMES* 179 (2003) (“In this respect the . . . incorporation of the [Race] Equality Directive into the national laws of the EU member states and the accession states before July 2003—as an *acquis communautaire*, in other words a mandatory condition for new members—paves the way for meaningful enlargement [of the EU].”).
tests and with the requisite parental consent.\textsuperscript{126} The data available at the time of the case indicated that over half of the students enrolled in special schools were Roma, despite the fact that Roma represented only 2.26\% of the students in Ostrava.\textsuperscript{127} Further, while over half of all Roma students were enrolled in special schools, a mere 1.8\% of non-Roma children were similarly enrolled.\textsuperscript{128} In other words, “a Roma child in Ostrava was 27 times more likely to be placed in a special school than a non-Roma child.”\textsuperscript{129}

In \textit{D.H.}, the court concluded that the psychological tests used for school placement were susceptible to bias and their results could not justify the disparate treatment of Roma students.\textsuperscript{130} The court also noted that the right against discrimination could not be waived, which prohibited the government from using the parental consent required for school placement as a defense.\textsuperscript{131} The court found a violation of Article 14 read in conjunction with Article 2 of Protocol No. 1,\textsuperscript{132} and the judgment imposed a fine to be paid to the applicants.\textsuperscript{133} The court likely did not provide further relief because the Czech Republic had already passed legislation that abolished special schools altogether.\textsuperscript{134} The court did require the Czech government to make changes to prevent them from violating these laws (simply reiterating its legal obligations under the ECHR), but did not provide any guidance on this matter.\textsuperscript{135} Since the conclusion of the case, the situation has improved somewhat; however, Roma children are still being placed in a segregated setting.\textsuperscript{136} Although the Czech Republic no longer uses special schools for students with “mild mental disabilities,” it continues to segregate Roma

\begin{itemize}
\item \textsuperscript{126} \textit{Id.} para. 20.
\item \textsuperscript{127} \textit{Id.} para. 18.
\item \textsuperscript{128} \textit{Id.}
\item \textsuperscript{129} \textit{Id.}
\item \textsuperscript{130} \textit{Id.} para. 201.
\item \textsuperscript{131} \textit{Id.} paras. 202–204.
\item \textsuperscript{132} \textit{Id.} para. 210.
\item \textsuperscript{133} \textit{Id.} paras. 217, 220 (detailing that each applicant received €4,000 and the applicants jointly received €10,000 for litigation costs).
\item \textsuperscript{134} See \textit{id.} para. 208 (noting that legislation had abolished special schools and provided for the education of special needs children in ordinary schools).
\item \textsuperscript{135} \textit{Id.} para. 216 (noting that the Czech Republic has a “legal obligation not just to pay [the fine], but also to select . . . individual measures to be adopted . . . to put an end to the violation found by the Court . . . However, the respondent State remains free to choose the means by which it will discharge its legal obligation.”).
\item \textsuperscript{136} See Lydia Gall & Robert Kushen, \textit{What Happened to the Promise of D.H.?}, ROMA RIGHTS, No. 1 2010, at 39, 40, available at http://www.errc.org/cms/upload/file/roma-rights-1-2010-implementation-of-judgments.pdf (explaining that, while the Czech government eliminated special schools for students with “mild mental disabilities,” Roma children continue to be overrepresented in schools that only offer a curriculum focused on “practical skills”).
\end{itemize}
students through the use of “practical schools.” These schools offer a reduced curriculum aimed at developing practical skills, which makes it difficult for Roma students to progress to secondary schools. Ultimately, the court’s failure to guide the Czech government in eliminating segregation has resulted in continued discrimination.

Sampanis v. Greece, the second school desegregation case before the ECtHR, concerned eleven students from a school district in Aspropyrgos. The parents of these students wanted to enroll their children in school, but did not complete the necessary administrative documents to finalize the enrollment process, which meant these students missed an entire year of school. The following year, the children were invited to join preparatory classes in a special school—attended exclusively by Roma children—to prepare them for the transition into ordinary schools. The court noted that the school officials should have considered the vulnerability of the Roma community and enrolled the students despite the lack of requisite paperwork. Additionally, the court suggested that the process for choosing children for the preparatory classes was not uniform and that the students were not returned to ordinary schools following the preparatory classes as planned. The court again held that the students’ rights were violated under Article 14 and Article 2 of Protocol No. 1. The award here was also pecuniary, yet the court did not order any changes to prevent this type of discrimination in the future.

The third school desegregation case, Orsus v. Croatia, involved fifteen applicants complaining of state-enforced segregation of Roma children within the education system on the basis of linguistic and/or cultural differences, and its negative impact on their future success in Croatian

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137 Id. at 40.
138 Id.
140 Id.
141 Id.
142 Id.
143 Id.
144 Id.
145 See id. (detailing that the award for each applicant was €6,000 for non-pecuniary damages and €2,000 for costs).
The students in Orsus were from three different Croatian cities and attended separate classes composed only of Roma students. As in D.H. and Sampanis, the ECtHR held that this treatment constituted a violation of Article 14 of the ECHR in conjunction with Article 2 of Protocol No. 1 of the ECHR. As in D.H. and Sampanis, the ECtHR awarded the plaintiffs damages but did not include an order to prevent segregation in other schools.

In each case, the court was charged with determining whether the existing rights of the Roma students were violated and if so, providing remedies. The plaintiffs sought to have the courts either enforce the existing laws or force legislative bodies to enact laws that effectively prevent school segregation, but the courts failed to do so. The result of these cases is a pattern of denouncing discrimination that is already prohibited by law without providing guidance for schools regarding changes that would bring them into compliance with those laws. Instead, the court imposed nominal fines on the offending states that amounted to nothing more than a "slap on the wrist." The court's failure to legitimize the rights of Roma—at least in regard to the desegregation of schools—has stunted the progress of improving public opinion of Roma and their right to education. The U.S. Supreme Court cases regarding school segregation provide insight into action the ECtHR should take to produce effective results.

B. (De)Segregation Cases of the U.S. Supreme Court

The road to school desegregation in the U.S. has several judicial milestones. The seminal case is Brown v. Board of Education, where the Court denounced the Plessy holding, stating that "in the field of public education the doctrine of 'separate but equal' has no place." Because Brown effectively transformed the law in the United States, this pivotal case takes on the same role as the European laws that prohibit segregation in school. Thus, the cases following Brown are particularly relevant because—like the situation with the ECtHR in Europe—these cases enforced existing

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147 Id. paras. 9–10.
148 Id. para. 185.
149 See id. paras. 191–192 (detailing that the award provided €4,500 per applicant for non-pecuniary damages and a joint €10,000 for litigation costs).
150 Greenberg, supra note 9, at 938.
151 Id. at 938–39.
law. However, while looking to the cases following Brown for guidance in Europe is informative, the surrounding social and political climates of the two settings bear considerable differences. As a result, the outcomes of the cases following Brown may not be predictive of the outcome in Europe. In light of this distinction, in the next section, social science literature provides a foundation regarding the role of courts for minorities’ rights and social change. This research suggests that these types of cases have the potential to do more than draw attention to the situation; they have the power to change the way people feel.

In Brown, the Court jointly considered four cases where black students were denied admission to white schools, and in each case, the lower court denied relief based on Plessy’s “separate but equal” doctrine. Specifically, the plaintiffs in Brown asserted that failing to admit these students constituted a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, declaring, “Separate educational facilities are inherently unequal.” In a subsequent statement, commonly called Brown II, the Court considered the issue of implementation of desegregation in American schools. The Court held that schools were to desegregate “with all deliberate speed” and that the lower courts were in the best position to consider both the problems of a district and the adequacy of district plans “to effectuate a transition to a racially nondiscriminatory school system.” The Court issued this instruction to assist in the implementation of the Court’s ruling the year before.

The Brown case was considered a triumph for civil rights in the United States and was heralded around the world. After Brown, however, the desegregation of America’s schools was not automatic, and little progress was made in the following decade.

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153 See infra notes 184–204 and accompanying text (discussing why and how the courts may influence public opinion).
154 See Brown v. Bd. of Educ., 347 U.S. at 486 n.1 (providing details of the four cases considered from Delaware, Kansas, South Carolina, and Virginia).
155 U.S. Const. amend. XIV, § 1.
158 Id. at 300–01.
159 The Court requested further argument on the question of relief because of the complex nature of the cases in Brown. Id. at 298.
161 See KEVIN BROWN, RACE, LAW AND EDUCATION IN THE POST-DESEGREGATION ERA 176–77 (2005) [hereinafter RACE, LAW AND EDUCATION] ("A full ten years after the Court’s
namely *Green v. New Kent County School Board* in 1968\(^{162}\) and *Swann v. Charlotte-Mecklenburg Board of Education* in 1971\(^{163}\)—showed substantial improvement regarding school integration.\(^{164}\)

The Court first revisited the issue of segregation in 1968 in *Green*. In *Green*, the school district was accused of continuing to operate a segregated school system—one white school and one black school—despite the absence of residential segregation.\(^{165}\) After the filing of the case in 1965, the district employed a “freedom of choice” policy that allowed students to choose which school they wanted to attend, but the policy had a limited effect.\(^{166}\) The Court held that school districts were required to provide a plan that effectively eliminated school segregation and that did so immediately.\(^{167}\) The Court also reaffirmed the district courts’ obligations to assess the effectiveness of the plan based on each school’s individual facts and the consideration of feasible alternatives, and instructed the district courts to retain jurisdiction until state-imposed segregation was eliminated.\(^{168}\) Finally, the Court explicitly held that the “freedom of choice” plan was unacceptable because there were quicker and more feasible options.\(^{169}\)

Three years later in *Swann*, the Court sought to further clarify the duties of school districts and district courts as set out in *Brown* and *Green*.\(^{170}\) In this case, blacks comprised 29% of students in the district, yet two-thirds attended schools that were either completely or more than 99% black.\(^{171}\) The Court recognized that school districts and district courts were having difficulty implementing the decisions of *Brown* and *Green*.\(^{172}\) Consequently,

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\(^{164}\) *See Race, Law and Education*, supra note 161, at 177 (“[T]he Court’s opinions in [*Green*] and [*Swann*] . . . helped to spur the desegregation of public schools.”); see also id. (providing statistics on the “dramatic and immediate” increase in minority enrollment in majority white schools between 1968 and 1988).

\(^{165}\) *Green*, 391 U.S. at 432.

\(^{166}\) *See id.* at 440–41 (noting that no white students had actually chosen to attend the historically black school and that only 115 black students had chosen to attend the historically white school).

\(^{167}\) *Id.* at 438–39 (reflecting the Court’s impatience with the school districts’ efforts to achieve desegregation).

\(^{168}\) *Id.* at 439 (providing guidance and authority for courts in assisting with the desegregation of schools).

\(^{169}\) *Id.* at 439–41.


\(^{171}\) *Id.* at 6–7.

\(^{172}\) *Id.* at 13–14 (“Nothing in our national experience prior to 1955 prepared anyone for dealing with changes and adjustments of the magnitude and complexity encountered since
the Court said it was “plain that [they] should now try to amplify guidelines, however incomplete and imperfect, for the assistance of school authorities and courts.”173 The Court explained that racial distinctions must be eliminated “[w]ith respect to such matters as transportation, supporting personnel, and extracurricular activities . . . maintenance of buildings and the distribution of equipment . . . faculty assignment and new school construction.”174 The Court’s other holding in Swann required “[t]he district judge or school authorities [to] make every effort to achieve the greatest possible degree of actual desegregation . . . ”175

The U.S. Supreme Court took affirmative steps to enforce desegregation—steps that the ECtHR has not yet taken.176 For example, Brown II provided for a transition period following any ruling, during which the relevant court would retain jurisdiction.177 Second, Green required schools to develop a plan to eliminate segregation and to do so immediately.178 Third, in Swann, the Court provided specific areas and examples of issues that the school districts and courts should focus on in their quest to end school segregation.179 In the years immediately following Green and Swann, public school desegregation in the United States increased significantly,180 suggesting that the Court’s explicit directions assisted in effectuating these changes.

Another important reason to take a solid stance on the desegregation of schools is that it may have positive effects in other areas for Roma and other marginalized groups. As described by U.S. Supreme Court Justice Ruth Bader Ginsburg, the campaign leading up to and following Brown was influential in the fight for women’s rights.181 Ginsburg also describes how Brown was influential internationally.182 Given the present international
The stature of the EU, the ECtHR could blaze a trail for the advancement of other
groups experiencing discrimination around the world by emulating the
Supreme Court's post-Brown guidance.

The U.S. school segregation cases had a positive impact on social
ideology, which suggests that the same result is possible if the ECtHR
applied similar pressure on European society. While the United States is
useful for comparison, there are important social and political differences
between the United States and Europe. However, social science literature
that speaks to the general power of courts to dictate public opinion supports
the proposition that the ECtHR should take a stronger stand against school
segregation.

C. Social Science Research on the Impact of Courts on Public Opinion

In the European Union—as in the United States—the judiciary is an
independent body; it is intended to be apolitical. This independence fosters
the public's trust. However, studies on the persuasive ability of courts are
limited, especially with regard to courts outside the United States. Therefore, contemplating arguments addressing the effects of court decisions
is an important component of this Note.

The ability of courts to affect public opinion is not well understood, but
type theory and existing analyses suggest that a high-ranking court, such as the
ECtHR, can be influential. This argument relies on a general understanding
of whom people trust, and "it has been frequently demonstrated that highly
trustworthy and expert spokespeople induce a greater positive attitude toward
the position they advocate than do communicators with less credibility." This proposition suggests that rulings of the ECtHR carry weight with the
populace of Europe. This argument assumes that people are aware of ECtHR
cases, and, in the situation of highly controversial cases, that the number of
people who hear about these cases is higher.

A second, and arguably stronger, way that the ECtHR can affect public
opinion is to lead by example and assist schools in making changes that bring
school policy into conformance with ECtHR rulings. Some theorists call
leading by example, rather than by coercion, "soft power" and suggest that
political institutions, such as a human rights court, can influence other

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183 See Greenberg, supra note 9, at 977 ("Similarities between Roma and African American
school segregation suggest consulting U.S. experience, but not uncritically adopting its
remedies. We should not assume that United States correctives, which have not been wholly
successful, should be transferred wholesale to Europe.").
184 Brian Sternthal et al., The Persuasive Effect of Source Credibility: Tests of Cognitive
nations this way.\textsuperscript{185} This argument implies the importance of the ECtHR globally, not just locally.\textsuperscript{186} Further, high courts can affect change through the judicial system by requiring courts to follow suit, and also extra-judicially, as "[c]ourt decisions may produce significant social reform by inspiring individuals to act or persuading them to examine and change their opinions."\textsuperscript{187} Thus, the ECtHR can have a significant impact on the vast number of EU state courts and, in turn, all EU citizens.

In comparing the adequacy of courts with the other branches of government, "[i]ndeed, many problems reach the judiciary as a result of a failure by other social and governmental institutions to deal with these problems adequately. Surely this may be said of the problem of racial injustice."\textsuperscript{188} As such, "all societies require the courts to perform three important functions: (1) they provide a forum for the settlement of disputes, (2) they are part of the system of administration of criminal justice, and (3) they provide, as custodians of the law, a \textit{symbolic legitimacy for government}."\textsuperscript{189} Thus, courts must act as the validator of government, as compared to the other branches, in the eyes of citizens.

In Europe, the need for courts to take a strong role in legitimizing the government is particularly important because the relatively new and complicated structure of the EU carries varying authority in the minds of its citizens. Generally, courts are

the major symbolic actors in the modern state and the guardians of the only element of public policy, the law, that has a perceived link with both the past and the divine. The debilitating lack of symbolic, and hence real, authority of other institutions of government will heighten the need for courts. Unless governors choose to draw on symbols of excessive nationalism or racial superiority, which would undermine severely the democratic state and the quality of modern life, it

\textsuperscript{185} Michael D. Goldhaber, \textit{A People's History of the European Court of Human Rights} 185 (2007).
\textsuperscript{186} See id. (discussing other tribunals that cite the ECtHR and the potential for future conventions and systems of law that seek guidance).
is largely the courts that can provide the symbolic base for governing.\(^{190}\) Not only is it important that the courts take a stand to legitimize the government, but they can also improve compliance with their decisions by setting forth “clearly announced decision[s].”\(^{191}\) This clarity is where the ECtHR has primarily failed: the court hands down decisions that simply restate existing law without a deliberate statement on how to abide by laws that are clearly not being observed.

Much of the research on a court’s ability to change popular opinion revolves around the U.S. Supreme Court.\(^{192}\) Although the Supreme Court may not always affect the opinions of every citizen, at a minimum, the Court has the ability to influence social norms.\(^{193}\) A study of Russian courts determined that its Supreme Court and its Constitutional Court have the ability to affect public opinion.\(^{194}\) The research concluded that opinions showing intolerance rather than tolerance had a greater impact on public thought,\(^{195}\) suggesting that a court’s role is even more important when it must deliver an unpopular opinion, which may be the scenario for the ECtHR in Roma school desegregation cases.

Additional evidence that courts are a venue for affecting public opinion and behavior regarding desegregation is that the European Roma Rights Centre (ERRC)\(^{196}\) has resorted to litigation.\(^{197}\) If the ERRC did not believe courts could affect change, they would not have expended the time and resources of this path.

A few statistics underscore the importance of affecting public opinion. First, a survey revealed that 77% of Europeans thought that being Roma was a disadvantage in society.\(^{198}\) A second survey indicated that roughly a

\(^{190}\) Id. at 230.
\(^{191}\) KLEIN, supra note 188, at 283.
\(^{193}\) See id. (explaining that opinions differ on the impact of U.S. Supreme Court opinions on public sentiment).
\(^{194}\) Id. at 431.
\(^{195}\) Id.
\(^{198}\) EUROBAROMETER, DISCRIMINATION IN THE EUROPEAN UNION: SUMMARY 9 (2007),
quarter of Europeans would feel uncomfortable having a Roma neighbor and that this tendency is significantly higher toward Roma than toward a person from a different ethnic origin generally (which is at only 6%).

The point, however, is not just to change public opinion; it is to change the status of Roma in society, which relies heavily on the support of individual European citizens. Without widespread public support of policies that could improve the lives of Roma, the needed change will not occur. For these reasons, the ECtHR needs to take a more assertive, guiding role regarding the methods employed to eliminate segregation in European schools, and also to improve European citizens’ overall public opinion of Roma.

It is also important for the ECtHR to recognize its impact on member state courts and, as such, take a stance that will effect some much-needed change. As previously described, sheer quantity may cause lower court rulings may have a greater impact on citizens, underscoring the importance of national courts in the process of eliminating the segregation of Roma children in schools. Thus, the ECtHR must provide a path for member states courts to follow.

The abilities of the ECtHR are not endless. The court’s ability to affect social change is limited by the media’s interest in distributing this information to the public. National media is dominant in Europe, and the absence of regional media coverage limits citizens’ exposure to the news of regional concerns, underscoring the importance of the radiating effect of the court’s decisions. Thus, the courts are not the only or ultimate method of effecting social change—and perhaps it is not so important if the effect begins in a community and radiates outward, as opposed to an EU-wide effect from a ECtHR opinion. After all, aren’t the results the important part—to get society to a better place?


200 See Leuprecht, supra note 117, at 316 (“[T]he Court has become ‘a quasi-constitutional court for the whole of Europe.’ The Strasbourg case law has had far-reaching and highly positive effects on the legal systems and the social reality in the contracting states. Both the Court and the Commission command a high degree of authority.” (quoting Rolv Ryssdall, The Coming of Age of the European Convention on Human Rights, 1 EUR. HUM. RTS. L. REV. 18, 22 (1996)); see also GOLDHABER supra note 185 (“The European Court of Human Rights is at the center of a web of national and international courts that increasingly engage in dialogue on common problems with potentially common solution.”).

201 See supra text accompanying note 187.

202 GOLDHABER, supra note 185, at 178.
Finally, the ECtHR should not engage in judicial activism to end school segregation as there are valid criticisms of courts taking unilateral action in deciding important questions of public policy. This Note urges the ECtHR to legitimize existing law by reinforcing that law through clear decisions that offer guidance to member states seeking to comply with the law. Judicial “norm enforcement helps to reaffirm in people’s minds the validity of certain behavior and the impropriety of other behavior.” For this reason, EU citizens should demand that their courts become institutions that society can look to for instruction regarding treatment of Roma.

V. CONCLUSION

Europe’s Roma have suffered for a very long time, just as the African Americans did and continue to in the United States. Social change is a slow process, and although progress has been made in changing the public perception of Roma and in passing laws that prohibit discrimination, disparities persist throughout the continent. As an instrument of governmental legitimacy, it is critical that the European Court of Human Rights take a stronger stance than it has to date regarding school desegregation. Like the cases following Brown v. Board of Education in the United States, this stance would declare to the populace that discrimination is not tolerated, and would detail steps that school districts should take to effectively eliminate discrimination. Although it is not suggested that the ECtHR has a supreme ability to affect widespread social change, it is a powerful instrument that should be utilized for improving the status of Europe’s Roma.

204 KLEIN, supra note 188, at 112.