Europe-Asia Studies

Publication details, including instructions for authors and
subscription information:

<http://www.tandfonline.com/loi/ceas20>

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Available online: 13 Oct 2011

To cite this article: Brad K. Blitz (2011): Evaluating Transitions: Human Rights and Qualitative Democracy in Central and Eastern Europe, *Europe-Asia Studies*, 63:9, 1745-1770

To link to this article: <http://dx.doi.org/10.1080/09668136.2011.611656>

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Evaluating Transitions: Human Rights and Qualitative Democracy in Central and Eastern Europe

BRAD K. BLITZ

THE POLITICAL RESTRUCTURING OF THE FORMER socialist states since 1989 has transformed Central and Eastern Europe into a region which scores particularly well when evaluated against political procedural criteria of democratic consolidation: elections are contested peacefully and fairly; there is an active civil society and an autonomous economic sector; and the rule of law is generally respected. Nonetheless, there are several areas where the legacies of former ideologies, policies and governmental structures continue to undermine the substance and quality of democracy enjoyed in these states. In particular, procedural accounts of democratic consolidation can underestimate the degree to which normative developments are institutionalised in domestic human-rights enforcing bodies, including courts and police. Focusing on two cases, those of Slovakia and Slovenia, this essay introduces the notion of ‘qualitative democracy’. This is examined in the context of the judiciary’s capacity to address complaints in Slovenia and the degree to which Slovak authorities have been able to protect the rights of Roma minorities. The central premise of this essay is that the state’s capacity to guarantee the protection of human rights to all is an essential indicator of democratic success. The extent to which there is an observed lack of effective enforcement of human rights is explored, and claims of consolidation are therefore called into question.

The idea of ‘quality’ as a measure of democracy is particularly relevant both to new EU member states and Central and East European countries undergoing pre-accession reforms. It is explicitly recorded in the European Union’s social policy agenda and has been part of the Lisbon strategy (European Commission 2005), but it also finds expression in earlier studies of political transition where it serves as an indicator of internal change and consolidation (O’Donnell *et al.* 1986; Linz & Stepan 1996). ‘Qualitative democracy’ emphasises democratic maturity as a guide to consolidation. It exposes both the operations of the state and its normative character and supplements procedural accounts of democracy which prioritise the conduct of elections and the smooth functioning of the rule of law for effective transition and the

consolidation of liberal practices. It develops O'Donnell's critique of procedural biases as indicators of consolidation (1996), and instead suggests that by comparing formal institutional rules (constitutional provisions, laws and administrative orders) and operational practices, one may arrive at a deeper understanding of political change. Evidence for qualitative democracy may be found both at the attitudinal level and by examining the degree to which states have the capacity to enforce reforms that address particularly vulnerable sectors of the population, including those hard to reach and on the fringes of the polity.

Qualitative democracy is rights-reinforcing; it assumes that people can access their rights and that the state or relevant authority is competent to enforce these rights through domestic institutions. While European citizens have recourse to the European Court of Human Rights, a further premise of this study is that the reliance on external arbiters to enforce their rights exposes weaknesses within the state to resolve disputes and hence undermines claims of democratic maturity. Indicators of qualitative democracy include respect for the principle of non-discrimination; the effective operation of the judiciary as a guarantor of rights and freedoms to all; the development of shared social values; and the internalisation of democracy as an expression of state actions and public attitudes. In the context of the European Union, qualitative democracy also relates to the delivery of universalist social policy goals and the expansion of real opportunities and the guarantee of fundamental and social rights to all.¹

This essay evaluates the qualitative dimension of the transitions in two states since 1989. The first part of this essay makes the case for a qualitative approach to democratisation. It reviews the literature on the effectiveness of conditionality and role of external actors as indicators of reform and democratic maturity. The second part evaluates some key developments in the area of human rights in Central and Eastern Europe. The third part examines the political transition of Slovenia and Slovakia by scrutinising how the introduction of new laws and accession to international instruments has been accompanied by operational developments in the justice sector. These countries were selected because, although they acceded to the European Union in the same year, they followed different trajectories and yet both have recently been condemned for their human rights record on specific issues. Slovenia, which was identified early on as a post-communist success story, was condemned by the European Court of Human Rights for failing to address the problem of 'the erased', the non-Slovene former Yugoslav nationals who did not take up Slovenian citizenship in 1991 and then saw their rights to residency revoked and acquired rights destroyed (European Court of Human Rights 2010). Slovakia, which began as a less promising reformer, was the target of much criticism, most recently by Amnesty International over its treatment of the Roma minority.²

¹'Qualitative measures' include the delivery of social policy goals and are evidenced in the areas of: 'quality of work', 'quality in industrial relations' and 'quality of social policy' (Eurofound 2011). The way in which qualitative democracy is measured by the European Commission includes a range of criteria that reflect both materialist and post-materialist concerns such as better jobs and more balanced ways of combining working life with personal life; high levels of social protection; good social services which are universally available; and the capacity to build consensus between workers and employers.

²See 'Slovak Republic' in Amnesty International (2010).

In Slovenia, the focus is on the effectiveness of the justice sector and in particular the right to an effective judicial remedy. In Slovakia the focus is on the state's ability to protect the rights of minorities. In both cases, the emphasis is on the state's ability to protect and uphold the rights of citizens through the courts and law enforcement bodies. The final part of this essay concludes with an evaluation of the concept of 'qualitative democracy' as it applies to the selected states.

Quality, conditionality and the substance of democracy

Qualitative assessments of political transition emphasise domestic-level developments where reform is suggestive of internalised change. This is particularly relevant for the European Union whose influence over the region has grown as a result of the disbursement of structural funds and other monies, and above all by holding out the prospect of accession. Arguably, the developmental paths taken by the former socialist states of Central and Eastern Europe have been affected by the application of 'conditionality'—a concept usually linked with areas of the *acquis* and understood in terms of the incentives and sanctions applied in response to state compliance or non-compliance with EU norms and rules.

In terms of political requirements imposed by the European Union in its dealings with applicant states, conditionality includes the provisions that states adhere to the 'Copenhagen Criteria' and transpose the *acquis communautaire* into domestic law. In practice, it also entails adherence to parallel systems of human rights law since the European Union frequently invokes the growing body of international and regional human rights jurisprudence as a condition for participation in EU activities. For example, the various United Nations and especially the European conventions are now crucial anchors for transitional states seeking EU support.³ It should be noted that the parallel systems of international law are important, not least because they contain specific monitoring and reporting requirements by international bodies, including the Council of Europe.

The European Union's influence as both a broker and political monitor in the former socialist bloc took on greater significance following the 2003 European Council in Thessaloniki, which set an important agenda for the inclusion of the Western Balkans in the European Union's sphere which seeks to close a large, illiberal, hole in the map of Europe (Council of the European Union 2003). Since Thessaloniki, the EU has spent millions of Euros on programmes carried out through Community Assistance for Reconstruction, Development and Stabilisation (CARDS)⁴ and has simultaneously taken over activities that were formerly conducted by the Organization for Security and Cooperation in Europe (OSCE). It has also explicitly linked human rights issues with the accession process, for example in the case of Croatia where it made cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and improved relations with the Serbian minority a condition for membership

³Especially, the UN Convention Against Torture, the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

⁴CARDS was adopted with the Council Regulation (EC) No. 2666/2000 of 5 December 2000.

(Blitz 2007). The same applies in the case of Serbia where cooperation with the ICTY has been a condition for accession (Council of the European Union 2010).

In a less direct way, the European Union has also been able to exercise its soft power to cement its normative agenda in the area of human rights. This has gained greater prominence as a result of the signing of the 2007 Charter of Fundamental Rights and the completion of the Lisbon process. The Charter and Lisbon Treaty attempt to bring the European Union in line with the European Convention on Human Rights and have allowed institutions in Brussels and Strasbourg to draw upon provisions contained in both European Commission (EC) law and European human rights jurisprudence. For example, the European Court of Human Rights ruled in *D.H. and Others v. Czech Republic* that the Czech Republic's failure to transpose the EU Race Equality Directive into law prevented the establishment of anti-discriminatory measures to protect Roma in Czech schools.⁵ This brought the Czech government into conflict with the European Court of Human Rights which in turn cited provisions on non-discrimination contained in EC law in its decision (European Court of Human Rights 2006). Such developments have strengthened the supranational character of the European Union and given it greater scope to intervene in states on matters of human rights.

For political scientists the sustained involvement of the European Union in the reconfiguration of Central and Eastern Europe, and the use of conditionality and soft power as potential levers for reform, introduce several challenges to our understanding of political transition. First, the involvement by the European Union complicates causal explanations for behavioural change at the level of the state and potentially undervalues the role of domestic interest groups in setting reformist agendas. This is significant because within the literature on political transition far greater weight has historically been given to internal forces rather than external actors or transnational influences as explanations for both regime change and ultimately democratic consolidation (O'Donnell *et al.* 1986). Indeed, one unifying factor in contemporary studies on transition is the emphasis placed on domestic politics and the need to examine change in relation to the state itself. Moreover, the application of conditionality and the extension of soft power support claims of relative democratic immaturity and suggest the possible co-existence of non-democratic alternative modes of governance which necessarily undermine the goal of consolidation and the integration of European norms and value systems (Przeworski 1986).

Recent research on the 2004 enlargement has called into question the application of conditionality for the successful transition to democracy and installation of the rule of law (Brusis 2005; Hughes *et al.* 2007; Kochenov 2008; Raik 2004). One unintended consequence in the elitist approach taken by the European Union has been the non-transposition of EC directives and the failure to achieve comprehensive reforms (Raik 2004). Some scholars question governmental willingness to promote substantive political change, charging that once the incentives had been met for EU membership and countries had acceded to the European Union, momentum for reform was lost (Blitz 2006; Pridham 2008). Rather, conditionality was arguably seen as a short-term

⁵*D.H. and Others v. Czech Republic*, 57325/00, Council of Europe: European Court of Human Rights, 7 February 2006, available at: <http://www.unhcr.org/refworld/docid/469e02e2.html>, accessed 22 July 2011.

approach which became less effective once the accession date was set and the EU accepted the candidate's state of reforms as sufficient (Steunenberg & Dimitrova 2007). The act of EU membership has also been associated with a decline in the number of civil society actors, including human rights monitors, which ironically has allowed some pre-accession abuses to continue, often with little censure from Brussels (but occasionally from the European Court of Justice) (Blitz 2006). An additional body of criticism claims that the influence of EU conditionality upon accession states has been quite exaggerated and has varied from one policy area to another (Haughton 2007). This may partly be explained by the diversification of external checks and balances and the creation of new policy goals.

While political conditionality has grown in importance with every round of enlargements, the goalposts have also shifted (Hughes *et al.* 2007), as have the levers for change, with the Commission becoming relatively less demanding than other European institutions (Pridham 2007). As Heather Grabbe notes in her discussion of the 2004 enlargement process, while the European Union primarily relied on soft power in its attempts to bring candidate countries to accept its norms and methods, the European Council also used its considerable bargaining power in a coercive manner at key points during the membership preparations (Grabbe 2006). Moreover, scholars have suggested elsewhere that the application of conditionality by the European Union and Euro-Atlantic institutions has not resulted in normative integration, as required for a truly consolidated state of democracy. Rather, they argue there remain measurable differences in the levels of political development achieved by the former socialist states of Central and Eastern Europe: while the promise of accession and NATO membership appealed to 'norm-violating' but reform-minded states, the European Union enjoyed less success with authoritarian governments where the costs of compliance were considered too high (Schimmelfennig 2007). For example, Estonia and Latvia, both reformer states, managed to accede to the European Union while only partially addressing their nationality problems which have left half a million stateless.⁶ Equally, Slovenia was admitted to the European Union while the issue of the 'erased' was left unresolved (Blitz 2006; Zorn 2009; Zorn & Lipovec Čebren 2008). By contrast, Croatia has been held to a high level of accountability while it remains on the slow track to EU accession (Blitz 2007).

A further challenge to the conditionality literature may be found in the sociological scholarship on networks and regime change. Like the literature on transition, this body of writing places emphasis on the domestic dimension and has generated several evaluations of the process of political change which raise the bar further in their analyses of democratic alternatives (Stepan 1996). Notably, a collection of East European sociologists has drawn upon empirical evidence of corruption and state capture in the former Eastern bloc to call attention to earlier classical theories of oligarchies and the role of elites in the development of anti-democratic political networks (Shlapentokh *et al.* 1999). Furthermore, some of the critical literature on the nature of social capital records that networks may not simply facilitate international

⁶Regarding Latvia see Hughes (2005) and Council of Europe (2006c); on Estonia see Kionka and Vetik (1996) and Vetik (1993, 2001, 2002, 2008).

exchanges but also frustrate the creation of open systems and hence prevent sustained democratic reform (Gargiulo & Benassi 1999; Portes 1998; Putzel 1997).

A brief survey of human rights reforms

Universal human rights provisions

One of the major tests of democracy in Central and Eastern Europe has been universal application of human rights, irrespective of one's national or ethnic status. Human rights are covered by both international and European regional instruments including European Union level legislation, which has a direct effect, and the 1950 European Convention on Human Rights (ECHR) which is the only international human rights agreement providing such a high degree of individual protection.⁷ In terms of international law, there is also a significant body of law that has elaborated the principle of non-discrimination as a non-derogable norm that prohibits discrimination on the basis of race, ethnicity and related criteria.⁸ One of the most significant human rights instruments is the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CEFRD), which provides a precise definition of racial discrimination. This also highlights the consequences of states creating conditions which exacerbate the vulnerability of minority populations and which make the state liable.⁹ Some of the key elements of this Convention include a universal provision under Article 5 that state parties are obliged to guarantee equality for all in the enjoyment of civil, political, economic, social and cultural rights, to the extent that they are recognised under international law (Weissbrodt 2008).

Within the European systems, there is an important body of European law that reinforces the principle of non-discrimination as set out in the 1950 European Convention on Human Rights (ECHR), its five protocols, corresponding rulings from the European Court of Human Rights, and the Consolidated Treaties of the European Union. Under Article 14, the Convention sets out a universal prohibition against discrimination, including against national minorities. In addition, the European Convention on Nationality (ECN) reaffirms the principle of non-discrimination in questions of nationality, sex, religion, race, colour, and national or ethnic origin. The above human rights instruments complement the prohibition of discrimination on the basis of nationality which is at the heart of the European Union where it is set out as a general principle under Article 12 of the EC Treaty, and in other provisions of the Treaty framework in respect of specific

⁷It should be remembered that state parties can also take cases against other state parties to the Court, although this power is rarely used.

⁸The principle is enshrined in key instruments including the 1965 Convention on the Elimination of All Forms of Racial Discrimination; the 1979 Convention on the Elimination of Discrimination Against Women (CEDAW); the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and the 2003 Migrant Rights Convention, as well as in significant bodies of case law (UN General Assembly 1965, 1979, 1992, 1990). UN General Assembly (1990) came into force in 2003 but was drafted in 1990.

⁹The text states that 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (UN General Assembly 1965).

situations regarding the free movement of workers (Article 39), the right of establishment (Article 43) and the freedom to provide services (Article 50). More recently, the introduction of the Race Equality Directive has sought to extend the European Union's enforcement of non-discrimination to issues of race and ethnicity.

Minority rights

A major dividing line in the classification of minorities in Central and Eastern Europe is whether or not people were considered habitually resident before 1989 (and in some cases much earlier): 'autochthonous minorities' are those which are formally considered to have greater historical claim and often receive constitutional protection while 'non-autochthonous minorities' are those who are considered newcomers or occupiers. This definition is not absolute and neither is the point of cut off. For example, in the case of Russian-speakers in Estonia the date of arrival tends to be the 1940s, not 1989. However, the distinction between the two categories of minority is nonetheless important because it has led to differentiated treatment of people not simply on the basis of ethno-national origin but also on the basis of length of residency. As a result some 'newer' minorities, including groups of Roma, have been more vulnerable to removal and the withdrawal of rights (Boucková 2007, p. 1). For example, by the first half of 1997, local Czech courts and police had expelled 851 Roma to Slovakia on the grounds that they were Slovak, even though this was undocumented and some had never lived in Slovakia (US Department of State 2000).

In terms of formal mechanisms for protection, all of the constitutions of East-Central and South-Eastern European states include elaborate human rights provisions which are further reinforced by the European Convention on Human Rights. Minority rights are frequently covered in specific articles on cultural rights, although there are considerable collective political rights afforded to most minorities in several states. Autochthonous populations are also often protected under specific laws that guarantee institutional representation (including reserved seats in the legislature) and provide communal channels for dialogue with state agencies through national councils. These 'historic minorities' may also benefit from affirmative action or equal opportunity programmes regarding participation in civil, military and police services. Nominally, autochthonous and non-autochthonous minorities should enjoy greater protection from non-state actors since the new European states have also introduced laws prohibiting incitement to racial hatred, and many have signed onto key international legal instruments, including the 1992 European Charter for Regional or Minority Languages (ECRML) (Council of Europe 1992) and the 1995 Framework Convention for the Protection of National Minorities (FCNM) (Council of Europe 1995). It should be noted, however, that not all states have acceded to these conventions; for example, while all the new EU member states are parties to the FCNM, Bulgaria, Estonia, Latvia and Lithuania have not ratified the ECRML.¹⁰

¹⁰See *European Charter for Regional or Minority Languages*, CETS No.: 148, Treaty Open for Signature by the Member States and for Accession by Non-member States. Status as of 28/10/2010, available at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=148&CM=8&DF=&CL=ENG>, accessed 27 July 2011.

At the constitutional level, however, there are still considerable differences in terms of the political accommodation of minorities as described in Table 1.

Finally, it is important to note the massive investment across the justice sectors in East-Central and South-Eastern European states. This includes the construction of

TABLE 1
MINORITY RIGHTS AND REPRESENTATION: SELECTED EXAMPLES

<i>Country</i>	<i>Examples</i>
Albania	There are no special bodies or seats reserved in parliament; minority rights treated as human rights but the constitution distinguishes between national (Greek, Macedonian) and linguistic minorities (Vlach). ^a
Croatia	Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Ruthenians and others are protected under the Constitutional Law on the Rights of National Minorities (155/22) 13 December 2002, which determines the organisation of local minorities councils in communities, cities and counties. ^b
Czech Republic	The Act on Rights of Members of National Minorities and Government Council for National Minorities (Act 273/2001Sb) guarantees members of national minorities the right to effective participation in cultural, social and economic life and in public matters. It also guarantees the right to the name and surname in the language of the national minority in question, the right to multi-linguistic names and signs, the right to use the language of the national minority during official contacts with offices and courts, the right to use the language of the national minority in elections, the right to training in the language of the minority, the right to the development of the culture of the minority, and the right to the expansion and acceptance of information in the language of the minority. ^c
Slovakia	Though minorities are represented by political parties, there are no specific constitutional provisions apart from the right to use minority languages. The Language Act of 30 June 2009, however, has been seen as a restrictive law which only allows citizens who are members of a national minority to use their native language in official communications if the law explicitly allows it. ^d
Slovenia	Italians and Hungarians are protected under the constitution, each having a representative in the National Assembly. In ethnically mixed areas, bilingualism is guaranteed, nurseries and schools are provided for minority children, and minority languages are used by the local media. ^e
Serbia	A Charter of Human and Minority Rights and Civil Liberties was adopted on 26 February 2003 and presides over several minority councils. ^f Article 19 provides for the election of national councils exercising rights of self-government regarding the use of language and script, education, information and culture. The councils represent the national minority in respect of official use of language, education, information in the language of the minority, culture, and participate in decision making or decide on issues in these fields, as well as establishing institutions in these fields.

Notes: ^aAlbanian constitution, Approved by the Albanian parliament on 21 October 1998, available at: <http://www.president.al/english/pub/doc/Albanian%20Constitution.pdf>, accessed 27 July 2011.

^bConstitutional Law on the Rights of National Minorities, *Official Gazette*, 155/22, 13 December 2002, available at: http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Constitutional-Law-on-the-Rights-NM.pdf, accessed 27 July 2011.

^cThe Charter of the Council of the Government for National Minorities, published by the Government of the Czech Republic, Supplement to the Government Resolution Nr. 1034 from 10 October 2001, available at: <http://www.vlada.cz/assets/ppov/rnm/statut-rnm-en.pdf>, accessed 27 July 2011.

^dOpinion on the Act on the State Language of the Slovak Republic, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15–16 October 2010), available at: [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)035-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)035-e.asp), accessed 27 July 2011.

^e*Constitution of the Republic of Slovenia*, available at: <http://www.dz-rs.si/index.php?id=351&docid=25&showdoc=1>, accessed 27 July 2011.

^fRepublic of Serbia (2003).

new courts, the introduction of case management systems to reduce delays, and the provision of wide-ranging technical assistance and training. Some states have particularly benefited. For example, 40% of CARDS funding in Albania from 2002 to 2006 went to justice sector development projects (€104.8 million) (Blitz 2008). Such investment is unprecedented since the EU has even directed funds at capital programmes to build prisons in Albania.¹¹

Practical realities

In spite of the above-mentioned human rights architecture, the extension of greater political rights to minorities and the development of institutional structures to improve the functioning of the justice sector, several loopholes have not been closed over the past two decades. Many states have struggled to protect minorities against violence from non-state parties as skinheads and other organised groups have attacked minorities on a regular basis. Though racist attacks are not limited to Central and Eastern Europe, violence directed against Roma minorities generated a significant number of asylum applications to Western Europe over the past two decades. Ill-treatment in prisons was a characteristic of the justice sector throughout the 1990s and, even recently, states such as Albania (European Committee for the Prevention of Torture 2009a), Latvia (European Committee for the Prevention of Torture 2009b) and Lithuania (European Committee for the Prevention of Torture 2009c) have been condemned by the Council of Europe's Committee for the Prevention of Torture (CPT) which has identified the lack of medical provision, the poor food regime, the use of solitary confinement, and the lack of air and exercise among its criticisms. Some of the most disturbing abuses carried out by European Union member states from 2005 to 2009 include forced sterilisations, segregationist policies regarding the housing and education of certain minority groups, *refoulement* of refugees and the repossession of property by the state.¹² More generally, there is also discrimination throughout educational systems, in the media, in the provision of housing, and in many practical barriers that prevent minorities from accessing essential services. Such practices were especially noted in the former Yugoslavia where returning minorities refugees and displaced people encountered multiple barriers from corrupt housing commissions which prevented the repossession of homes (Blitz 2007). In the Czech Republic, discrimination against minorities has proved particularly problematic both in the application and design of laws (Boucková 2007), as noted in the above-mentioned case of *D.H. and Others v. the Czech Republic*.

¹¹See: 2006/54/EC: Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with Albania and repealing Decision 2004/519/EC, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0001:01:EN:HTML>, accessed 27 July 2011.

¹²According to the US Committee for Refugees and Immigrations (USCRI), in 2006, Slovakia reportedly returned Chechen asylum seekers to Ukraine with Ukraine returning them to the Russian Federation. Slovakia granted asylum to only eight of the nearly 2,900 persons who applied during the year and none the year before (United States Committee for Refugees and Immigrants (USCRI) (2007).

The right to a fair trial is also a concern for states which have struggled to manage the large number of applications and resources required, including sufficiently trained judicial staff. Croatia, Lithuania and Poland have all been condemned by the European Court for Human Rights (ECtHR) for the excessive length of time required to conduct court proceedings. In some states, the use of sentencing also provoked significant criticism from international monitors, for example, in both Albania and Latvia where there was, until recently, an estimated 90% conviction rate and where irregularities exist concerning trials *in absentia* (Commission of the European Union 2009). In the case of the former Yugoslavia, there have been repeated claims of insufficient judicial independence and impartiality. This point was raised in some of the most notable war crimes cases in Croatia and Serbia (Human Rights Watch 2004; OSCE 2005, 2006). The Council of Europe has also acknowledged concerns that intimidation of judges is a problem in Serbia. Finally, there is the issue of non-enforcement of court orders and non-execution of court judgments.

Media reporting during the past two decades has also revealed examples of illiberal elements in many states of Central and Eastern Europe. One important consequence is that some chauvinistic media reporting in these countries has activated racial hatred to encourage minority flight. For example, in the Czech Republic in the late 1990s large numbers of individuals were involved in a mass emigration of more than 1,200 Roma to Canada. The context for this flight was most controversial and appeared to have been influenced by a television documentary about life in Canada. The European Roma Rights Center noted that several Czech officials had exploited the broadcast with a view to encouraging the mass departure of Roma populations. Liana Janáčková, Mayor of the Mariánské Hory district in the northern Moravian town of Ostrava, reportedly suggested that Roma who moved to Canada would receive payment for two thirds of the cost of their flights, on the condition that they abandoned their flats and returned their licenses of tenancy. The mayor described this suggestion as 'a friendly gesture' to 'help' Roma who 'don't want to live here' (European Roma Rights Center 2007).

An additional problem facing those who seek access to the justice system is the lack of documentation. This has principally affected Roma across the region but has been most problematic in the Czech and Slovak Republics and in the case of the 'erased' in Slovenia. In one particular instance, it has been caused by the use of interim legislation by an inexperienced state. In Macedonia, a 2004 transitory clause (under Article 26 (US Department of State 2007)) which temporarily eased naturalisation requirements for foreigners married to Macedonian citizens, persons without citizenship and persons with refugee status, expired in March 2006 leaving many vulnerable to denial and deprivation of citizenship.

Methods

In order to explore the concept of 'qualitative democracy', Slovenia and the Slovak Republic were selected as suitable case studies where systemic problems had been identified. Both the Slovak Republic and Slovenia also introduced interesting points of contrast: both had seceded from larger former socialist political units yet, while Slovenia spent much of the 1990s as a leading example of democratic transition,

Slovakia was mired by accounts of political corruption during the authoritarian rule of Vladimir Mečiar. Moreover, in spite of considerable investment and technical assistance from the European Union, both countries had been criticised for their ineffective justice systems, which raised questions over the protection and enforcement of human rights. In the context of Slovenia, uncertainty over its ability to protect the rights of its citizens was made public by a 2005 ‘pilot judgment’ issued by the European Court of Human Rights in the case of *Lukenda v. Slovenia* (European Court of Human Rights 2005). This case centred on excessively long domestic court proceedings in Slovenia—the result of some 500 Slovenian ‘length of proceedings’ cases which had been referred up to the Strasbourg Court. The problems in Slovakia, by contrast, pointed to wider issues of governance and targeted discrimination. The state had repeatedly been condemned for police mistreatment of Romani suspects and lengthy pre-trial detention, while the integrity of the judiciary had been called into question, as had national and local governments, which had been described as corrupt. Further, societal discrimination and violence against Roma and other minorities had been frequently cited as major problems (US Department of State 2010).

Measuring substantive change or quality issues in the process of democratic transition and consolidation introduces a number of practical and methodological challenges. Although, the European Convention on Human Rights (ECHR) provides one mechanism to gauge the enforcement of human right norms, the operation of the justice sector is addressed by different articles, for example Article 3 on the Prohibition Against Torture which covers a wide range of abuses, both pre- and post-trial; Article 6 on the right to a Fair Trial; and Article 8 on the Right to Respect for Private and Family Life (Council of Europe 2010). The ECHR is not sector specific and while it covers much similar territory to say, the Charter on Fundamental Rights, is not as far-reaching. For this reason, the research introduced broader qualitative measures which were not tied to specific articles of the ECHR or similar legal instruments, but were rather informed by the operation of justice-sector institutions. Specifically, the research sought to examine how three sets of indicators informed the nature of democracy in Slovenia and Slovakia: the extent to which people are able to access their rights through the court system; state capacity to enforce rights through domestic bodies, including protective agencies of law enforcement; and the degree to which political reform is internally located, as opposed to being promoted by external arbiters.

Research on Slovenia was informed by documentary analysis, interviews and focus groups with human rights experts, civil servants based in the Ministry of Justice, and lawmakers and lawyers ($n = 20$) in Ljubljana in Spring 2009.¹³ Research on Slovakia

¹³Focus groups (three) and interviews ($n = 14$) were held with government officials, members of parliament, legal experts and human rights advocates in Ljubljana between 1 and 4 June 2009. One further interview was conducted with two experts in London. Full interview details are as follows—Aldo Mihloni, Peace Institute, Ljubljana, 3 June 2009; Boštjan and Mateja Verstovšek, Ljubljana, 17 June 2009; Darja Lavtizar Bebler, National Assembly, Ljubljana, 2 June 2009; Dean Zagorac, Editor, *Pravna Praksa*, Ljubljana, 3 June 2009; Ivan Šelih and Jiri Rovšek, Ombudsman’s Office, Ljubljana, 2 June 2009; Judge Urška Klakočar of the Supreme Court, Ljubljana, 1 June 2009; Judge Krisper Kramberger, Constitutional Court, Ljubljana, 3 June 2009; Neža Kogovšek, Peace Institute, Ljubljana, 1 June 2009; Peter Pavlin and Zoran Skubic, Ministry of Justice, Ljubljana, 1 June 2009;

was carried out by means of documentary analysis of human rights reports from the US Department of State, Amnesty International and Human Rights Watch since 1991. The interview data and documentary findings were then analysed to assess how legal provisions and operational practices matched up. The aim was to ascertain the degree to which the judiciary in both states could guarantee rights and freedoms to all, including respect for the principle of non-discrimination, and to identify the locus of political reform.

The case of Slovenia

As it prepared for accession to the European Union, Slovenia was heralded as a European success story (Bebler 2002; Ramet 1998; Schopflin 2002; Vucetic 2004); however, two issues in particular undermined this reputation. First, there is the unresolved matter of the 'erased', the former residents of the Yugoslav republic who saw their residency rights withdrawn along with their social and economic entitlements following the introduction of new nationality legislation in 1992. The 'erasure' of their rights affected some 25,000 people, many of whom had settled in Slovenia and married Slovenes. It rendered them effectively stateless (Blitz 2006; Dedić *et al.* 2003; Zorn 2009; Zorn & Lipovec Čebren 2008). Second, there were problems concerning the constitutional rights of individuals to access courts and receive timely judgments. This section will focus on the latter issue, the enforcement of human rights provisions and the performance of the Slovene judiciary more broadly.

The issue of access to effective judicial remedies is an important marker of qualitative democracy. In the case of Slovenia, in spite of extensive constitutional provisions, the lack of legal remedies remains a major challenge to the functioning of the justice sector. The problem is essentially two-fold: in addition to an ineffective judiciary, there is an overwhelming demand made on courts. Slovenia is a highly litigious nation with an estimated 500,000 suits filed per year. In 2004, there were 566,588 cases pending, not including misdemeanours (Ministry of Justice of Slovenia 2005). In interviews, Slovenian legal experts offered several explanations for the backlog of cases which call into question the state's capacity to protect the rights of its citizens. During one focus group meeting, participants drew attention to the large proportion of young and inexperienced judges and uninformed court registrars; and the lack of alternative dispute mechanisms.¹⁴ In addition, some interviewees noted that legislative incompatibilities in the civil procedures act, and the occasional industrial dispute including the 'White Strike' of 2008 (a form of industrial action when judges refused to take on new cases), allowed a culture of litigation to flourish at the expense of swift judicial remedies. Bureaucratic explanations for the lack of judicial capacity contrast with the considerable ease of access to bring cases to court, including the right of Slovenes to appeal directly to the Constitutional Court. While the great access enjoyed by Slovenes suggests a high degree of freedom, the Ministry of Justice pointed

Vita Habjan, Pravno-informacijskega centra nevladnih organizacij (PIC, Legal Information Centre for NGOs), Ljubljana, 3 June 2009; interview with Zinka Strašek, President of the Celje High Court and President of the Supreme Court Celje, 1 June 2009.

¹⁴Focus group B with the author, Ljubljana, 2 June 2009.

out that the net result was many frivolous suits.¹⁵ Slovenian legal expert Rok Lampe offers the following opinion:

... the major factor [preventing the courts from operating effectively] can be traced to the complaint procedure and even broadly, to the role of attorneys in litigation. The Civil Procedure Act namely foresees complaints against the first instance judgments in a very liberal way which is connected to the entrepreneurial logic of attorneys. There is probably not even one civil litigation action in which parties are represented by attorneys that is not 'tested' at the appellate court. Most complaints are basically 'shots in the dark' because the appellate courts are obliged to test the first instance judgment *ex officio* (of course if a complaint was brought). Logically an attorney has consequently nothing to lose by bringing a complaint—either way he is going to 'win' and clients (who lost in the first instance) are keen on complaints. Therefore extremely long and ineffective civil litigations do not result just from vague civil procedure rules, but from deeper practical relations in our legal system. (Lampe 2008, p. 417)

The process of justice may be compromised by a combination of inexperienced staff, and the fact that cases may be referred from lower courts to high courts and back down. Further, it is important to note that the Supreme Court had been flooded with supervisory appeals where it had been called upon to question the decisions of lower courts.¹⁶

The significant delays in the handling of mostly civil cases were recognised in 2005 by the Constitutional Court of Slovenia which decided that the Administrative Dispute Act of 1997, a piece of legislation regarding civil dispute procedures which fall under administrative law, was 'unconstitutional in respect of some of its provisions which did not contain an effective legal remedy against the right to a trial within reasonable time' (Pavlin 2006, p. 6). The above-mentioned problems with the Slovenian justice system were considered endemic by the European Court of Human Rights (ECtHR) which issued a pilot judgment against the state—a form of judgment which is intended to help the national authorities to eliminate the systemic or structural problems highlighted by the Court as giving rise to repetitive cases (European Court of Human Rights 2009). In the case of *Lukenda v. Slovenia*, the first pilot judgment case which involved Slovenia, the Court found that Slovenia was guilty of systemic violations of the right to a fair trial without undue delay (European Court of Human Rights 2009).

The *Lukenda* judgment prompted the Slovenian government to initiate a series of reforms, characterised by the introduction of new laws and an action programme that aimed to accelerate concrete cases for legal remedy. This programme included: the appointment of an extra 140 judges, 650 judiciary personnel and 175 administrative staff; simplified legislation; and ensured that all courts were to be fully computerised and that judges and prosecutors were trained. Courts too were to be reorganised and

¹⁵Interview with Peter Pavlin and Zoran Skubic, Ministry of Justice, Ljubljana, 1 June 2009.

¹⁶A supervisory appeal is 'an appeal by a party or his drawing to the attention of supervisory authority (president of the same or a superior state body) that he should take measures under the right of supervision against the activity of his/her subordinates or subordinate or lower state body' (Pavlin 2006, p. 4). Supervisory appeals, however, do not constitute a legal remedy, even though the Supreme Court may act as the final arbiter.

the Act on Judicial Service amended to give incentives to judges and court staff. The Code of Civil Procedure and the Code of Criminal Procedure were also subject to extensive amendments to ensure that legislation was consistent.

While the ECtHR was identified by interviewees as the driver of reform, interviews with officials revealed that the pilot judgment provided the state with opportunities and set in place reforms that, although desired, had been impeded by the court system.¹⁷ Two laws in particular characterised the *Lukenda* project—the plan of action which was put in place by the Slovenian Ministry of Justice following the European Court of Justice’s decision—the Ministerial Law on the Protection of the Right to a Trial Without Undue Delay of 2005, known as ZVPSBNO, and the amended Novella ZVPSBNO A introduced in summer 2009.¹⁸ The first law, arguably the most important, attempted to redistribute the burden that had fallen on the Supreme Court and, indeed, higher level courts. The central features of this law were the introduction of binding criteria for decision making in procedures of supervisory appeal, motions for a deadline and just satisfaction and the imposition of a time line requiring all parties to file claims for compensation within 18 months. The second law sought to complement the first by strengthening the role of the court president and preventing fragmentation where cases could be referred from one court to another. It placed a greater burden on first instance courts to resolve disputes.

Initial assessments by the Ministry of Justice of the *Lukenda* project which resulted from the ECtHR decision were positive.¹⁹ The most recent data from the Ministry of Justice point to a small decline in the backlog, with a reduction of 3% of cases before district (*okružni*) courts and a 3.5% reduction at the local (*okrajni*) courts.²⁰ However, it was also noted that legislative, judicial and organisational developments that were primarily directed at courts could only offer partial reform. It was recognised by two interviewees that the shortened response time would restrict access to courts and might strengthen attempts to institute subsidiarity, so that cases do not simply move and up and down the judicial ladder.²¹ However, it was equally noted that the increased number of judges and staff has not, in itself, addressed the way in which courts

¹⁷Interview with Peter Pavlin and Zoran Skubic, Ministry of Justice, Ljubljana, 1 June 2009.

¹⁸Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja (ZVPSBNO) 12 May 2006, Act on the Protection of the Right to a Trial Without Undue Delay, available at: http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/zakonodaja/23.08.06-Act_on_the_protection_of_the_right_to_trial_without_undue_delay_of_Slovenia_eng.pdf, accessed 27 July 2011. The ‘novella’ is the Act Amending the Act on the Protection of the Right to a Trial Without Undue Delay (ZVPSBNO-A) No: 003-02-7/2009-10, issued in Ljubljana, 23 July 2009, available at: http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/zakonodaja/090918_Amended_ZVPSBNO_2009_eng.pdf, accessed 27 July 2011.

¹⁹Interview with Peter Pavlin and Zoran Skubic, Ministry of Justice, Ljubljana, 1 June 2009.

²⁰Focus group A with the author, 1 June 2009. As of 31 December 2007, there were 287,175 cases (excluding minor offences and cases before the Supreme Court) pending before courts in Slovenia. On 31 December 2008, there were 276,332 cases pending (excluding minor offences and cases before the Supreme Court). As of 31 December 2007, at the higher courts (of which in Slovenia there are four higher courts and one special court) there were 1,898 cases pending. As of 31 December 2008, at the higher courts there were just 853 cases pending (interview with Peter Pavlin and Zoran Skubic, Ministry of Justice, Ljubljana, 1 June 2009).

²¹Interview with Peter Pavlin and Zoran Skubic, Ministry of Justice, Ljubljana, 1 June 2009.

function nor the hours judicial staff keep.²² Further, the lowering of the age limit for judges was met with claims of inexperience and also accusations that there is still a high turnover of personnel, including judges. Partially this is a result of the increasingly feminised sector and also the age at which staff are appointed.²³ One frequent remark was that there were now many young female judges and more judges away on maternity leave.²⁴

There are also particular problems in certain courts, above all Celje municipal court. While ZVPSBNO A offers greater power to court presidents, for some interviewees there is still a sense that some cases will be not heard, including those that relate to the hundreds of cases filed in the local court in Celje.²⁵ Rather, officials described these multiple suits as ‘spam’ or nuisance complaints.²⁶ There remains potential for conflict at lower level courts, in spite of the introduction of new laws. Finally, interviews and focus groups with legal experts suggested that, in general, there is a lack of understanding about human rights in Slovenia and how they are covered in the constitution (through international and European case law). There is also a lack of appreciation for the importance of EU law—for example, Article 236 which permits cases to be referred to the European Court of Justice (ECJ) is never applied and rarely do judges seek additional information.²⁷

The reforms in Slovenia raise interesting conclusions regarding the democratic maturation of the country. Whereas the Constitutional Court had been under constant pressure, the burden has now shifted to lower courts indicating that caseloads have been redistributed. There are, nonetheless, many problems that need to be addressed regarding the management of large caseloads in lower courts. Equally, there is a need to explain how cases may be referred to European courts and how the court system may be better managed to address the expectations of Slovene complainants to ensure that human rights apply across the judicial and related sectors. The challenge for Slovenia is to establish a mature culture of rights, as opposed to a culture of complaint.

The case of Slovakia

The democratic challenges for Slovakia were more complex and could not solely be attributed to immature institutions and inexperienced public servants. Rather, the problems in Slovakia lay in broader problems of governance and societal discrimination. Slovakia joined the European Union in May 2004 having already set in place substantial human rights protections.²⁸ The rights of national minorities were also covered under Articles 33–34 of the constitution which provides for cultural

²²Interview with Aldo Mihlonić, Peace Institute, Ljubljana, 3 June 2009.

²³Interview with Zinka Strašek, President of the Celje High Court, 1 June 2009.

²⁴Interview with Zinka Strašek, President of the Celje High Court, 1 June 2009.

²⁵Interview with Boštjan and Mateja Verstovšek, 17 June 2009.

²⁶Interview with Zinka Strašek, President of the Celje High Court, 1 June 2009.

²⁷Interview with Neža Kogovšek, Peace Institute, Ljubljana, 1 June 2009.

²⁸See, under Human Rights and Equality (in Part 1, Articles 11–12; more specifically in Part 2, Articles 14–25 of the 1992 constitution), *The Constitution of The Slovak Republic*, available at: <http://www.vop.gov.sk/constitution-of-the-slovak-republic>, accessed 27 July 2011.

rights.²⁹ Torture was covered under Article 16(2) of the constitution and is included in the Penal Code but racially motivated crimes, including murder, are not specifically mentioned.³⁰ In addition to the above-mentioned domestic legislation, Slovakia is a signatory to a wide body of international legal instruments,³¹ yet the management of minority relations, above all with the Roma communities, has proved especially troubling.

The situation of the Roma in Slovakia

According to the 2001 Census, the population of Roma was 89,920 or 1.7% of the total population.³² This statistic, however masks the large number of Roma who were not registered and, arguably, the total number of Roma may be many times greater than officially recorded (International Helsinki Federation 2004). Roma are considered autochthonous minorities who have inhabited the area for hundreds of years and are today spread across 600 settlements in Slovakia. During the communist period, several laws were introduced in Czechoslovakia (in both the Czech and Slovak Socialist Republics) aimed at assimilating Roma, either directly or indirectly, and included programmes of dispersal and resettlement in urban dwellings (UNHCR 1998). The promise of democracy in the late 1980s raised the prospect that the assimilationist policies would be shelved following the introduction of new provisions that recognised the Roma population's education, social and cultural rights. The 'Declaration of Basic Human Rights and Freedoms' accepted by the Federal Assembly of Czechoslovakia on 9 January 1991, also gave Roma the right to freely decide their own ethnic affiliation. However, the first few decades of Slovakia's independence also saw increasing levels of racially motivated violence from nationalist and skinhead groups which forced the state to increase levels of policing in areas where disturbances had occurred (European Roma Rights Center 1998, 1999a, 1999b, 2000a, 2000b, 2000c, 2001a, 2001b, 2002a, 2002b).

From 1993 onwards, there was a marked backlash against Roma communities by non-state actors and local officials. One result of the increased police activity in

²⁹*The Constitution of The Slovak Republic*, available at: <http://www.vop.gov.sk/constitution-of-the-slovak-republic>, accessed 27 July 2011.

³⁰*Consideration of Reports Submitted by States Parties Under Article 19 Of The Convention, Second Periodic Reports of States Parties due in 1998, Addendum, SLOVAK REPUBLIC**, 1 February 2007, available at: <http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT-C-SVK2.pdf>, accessed 27 July 2011.

³¹These include: Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (18 March 1992); International Convention on the Elimination of All Forms of Racial Discrimination (28 May 1993); International Covenant on Civil and Political Rights (28 May 1993); International Covenant on Economic, Social and Cultural Rights (28 May 1993); Convention on the Elimination of All Forms of Discrimination against Women (28 May 1993); Optional Protocol to the Convention on the Elimination of Discrimination against Women (17 November 2000); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (28 May 1993); Convention on the Rights of the Child (28 May 1993) (Council of Europe 1950; UN General Assembly 1965, 1966, 1979, 1989, 1990, 1992, 1999; International Covenant 1966).

³²Štatistického úradu Slovenskej republiky (Statistical Office of the Slovak Republic), *Population by Nationality—2001, 1991*, available at: <http://portal.statistics.sk/showdoc.do?docid=7611>, accessed 27 July 2011.

Eastern Slovakia was reported incidences of police abuse of Roma and of attacks taking place under the watchful eye of permissive and complicit police officials (US Department of State 1995). Some police made counter charges to pressure Romani victims of police brutality to drop their complaints and medical doctors and investigators were accused of cooperating with police by refusing to describe accurately the injuries involved; lawyers were often reluctant to represent Roma in such situations for fear this would have a negative effect on their practice (US Department of State 1996). In less than a decade, attacks by skinheads were commonplace and human rights groups noted the lack of police protection. Human rights monitors even suggested that the failure to protect Roma against racially motivated attacks was largely due to governmental complicity and institutionalised racism, with many police officers sympathising with the extremists who carried out the violence (Amnesty International 2002).

An additional source of concern was the way in which acts against Roma were described by law enforcement officials, who often dismissed the gravity of physical attacks and failed to recognise the racial motivation behind them (UNHCR 1998). Throughout 1999, the European Roma Rights Center published reports on police abuse in eastern Slovakia, including beatings, verbal attacks, and the shooting of Roma following police raids (European Roma Rights Center 1999a, 1999b). Their accounts were supported by human rights monitors that noted the deterioration of human rights over the following five years. Recorded abuses included: police brutality and lack of protection from racist violence (Amnesty International 1999; Human Rights Watch 2000); the illegal sterilisation of Roma women (European Roma Rights Center 2005); and discrimination against Roma in the fields of education, employment, housing, health, social care and access to services (US Department of State 2002, 2003).

Abuses during the acquis process

In December 1999, just as Slovakia was formally invited to begin accession talks with the European Council, human rights monitors reported on the rise in xenophobia (International Helsinki Federation 2004). The European Roma Rights Center (ERRC) documented many claims and noted three important trends in cases of police abuse. First, there was a disturbing rise in the nature of physical attacks, especially while victims were detained in police cells. Roma reported that they were slapped across the face and beaten with truncheons on the arms, legs and back, and were sprayed with tear gas before money was extorted; others noted that pistols were put into the mouths of children and witnesses during raids on Roma homes (European Roma Rights Center 2000c). Second, victims were forced to sign documents which have served as confessions and statements, often incriminating other Roma (European Roma Rights Center 2000c). Third, international monitors noted that doctors and lawyers for Roma victims were harassed and threatened; some anti-racist organisations were targeted with arson (Amnesty International 2002).

In 2001, there was another report of Slovak police officers killing a Roma while in detention. The account of Karol Sendrei, who died in a police station in Revuca, drew the attention of international monitors, not least because the local mayor was also

accused of participating in the beating of the victim (European Roma Rights Center 2001b). By 2002, the numbers of reported racially motivated crimes had increased to 109 (US Department of State 2003). Similar accounts of abuse against Roma were described by international monitors. Moreover, the Slovak government was accused of consistent stonewalling (Amnesty International 2002, 2004a, 2004b; US Department of State 2002, 2003, 2004).

From 2002 onwards, police abuse was finally described in terms of torture. Amnesty International charged that the Slovak government permitted torture and ill-treatment of Roma by law enforcement agencies and that victims were not allowed to contact family members, lawyers or doctors of their choice, thus violating key international human rights provisions to which the state was a signatory (Amnesty International 2004). Following a visit to Slovakia, the Committee for the Prevention of Torture (CPT) found evidence of ill-treatment at the pre-trial phase.

The types of ill-treatment alleged consisted mostly of slaps, punches and kicks, or blows with hard objects such as batons; further, certain persons claimed that they had been struck with pistol-butts, flashlights or plastic bottles filled with water. In a notable proportion of the cases which came to the attention of the CPT's delegation, the alleged victims of ill-treatment were Roma. In a number of cases, the delegation gathered medical evidence consistent with the person's accounts of ill-treatment (Council of Europe 2006a, p. 51).

Post-accession developments up to the present

Since accession, successive Slovak governments have recognised the importance of addressing the Roma question but many illiberal practices have continued. For example, there have been repeated reports of sterilisation campaigns, which have drawn the attention of international monitors (Committee on the Elimination of Racial Discrimination 2010). Some reforms have been initiated, including creating a cabinet position for a representative of the Roma communities and a 10-year action plan for Roma inclusion, yet these have not fully addressed the scope of the problem. Moreover, official responses to human rights abuses have been met with stonewalling, denial, and in the case of illegal sterilisations of Roma women, outright duplicity (European Roma Rights Centre 2005). The government's reluctance to address the substantive criticisms made by international monitors is noted in the tone of reports that relate to the post-accession period including the most recent report by the US Department of State which identified extensive government and societal discrimination against Roma (US Department of State 2010). While noting reports of police mistreatment of Roma, the most disturbing feature of the Department of State report is that few racially motivated acts have resulted in prosecutions.

Racially motivated attacks on minorities (Roma and others) were widely reported throughout the year, but investigation of attacks and law enforcement varied by jurisdiction. Of the 213 cases of racially motivated crimes during 2008, two cases of racially motivated assault involving serious injury resulted in convictions; 33 cases of violence against a racial or ethnic group resulted in convictions; and 178 cases of promoting and supporting extremist groups resulted in convictions. There were no prosecutions for racially motivated murder in 2008. (US Department of State 2010)

Since 2008 Slovakia has made some measurable progress, in spite of the criticism of the Council of Europe and other monitoring bodies. In 2009, Amnesty International reported that the Supreme Court confirmed the sentences of six former police officers who were convicted of ill-treatment and the unlawful death of Karol Sendrei, a 51-year-old Romani man who died in police custody in 2001. Further, in response to the outcome of the 2010 UN Human Rights Council's Universal Periodic Review, which had condemned Slovakia over the forced sterilisation of Romani women, Slovakia announced that it had adopted legislative measures, including requiring health workers to seek informed consent for sterilisation and the definition of a new criminal offence of 'illegal sterilisation', though it had not introduced guidelines for the implementation of these measures.

Analysis

The above case studies, though substantively different, provide two illustrations of the challenges of institutionalising reforms that can reach down to individuals and guarantee their protection, which are the first and second indicators of qualitative democracy. In the case of Slovenia, the ineffective workings of the judiciary prevented citizens, without distinction, from accessing their rights; the state was found to be ill-equipped to ensure that complaints could be dealt with in a timely manner. Individuals seeking legal remedies had to navigate through the complex and uncoordinated public administration and judicial bodies. The fluid structures within the judiciary, which permitted judges to refer cases to higher level courts, and back down again, further complicated the delivery of justice. The problems within the Slovenian justice sector are system-wide, as found by the European Court of Human Rights, yet the proposed remedies have only offered a partial solution to an immature judiciary which remains overburdened by complaints.

In the case of Slovakia, historical patterns of segregation and forced assimilation of Roma have contributed to the exclusion of this minority which remains vulnerable to abuse. Entrenched traditions of intolerance have been given new expression by far right-wing groups which have tested the state's recent commitments to protect the rights of the Roma and other minorities; yet, in spite of the introduction of international and European human rights instruments in domestic law, the police and court system have failed to uphold the rights of Roma in a consistent manner and, in some documented situations, there is evidence of police misconduct and ill-treatment of Roma. Though human rights monitors correctly distinguish between direct abuse by state agencies (such as the police) and violence perpetrated by non-state actors (such as skinheads), Slovakia's record in both preventing and prosecuting abuse against the Roma minority points to a central failure of democratic reform.

The third indicator of qualitative democracy, namely the degree to which political change is internally located, highlights the shallowness of reform in both Slovenia and Slovakia, which appears to have been provoked from outside. The lure of EU accession forced Slovakia to introduce action plans for the Roma minority, especially programmes aimed to address their social exclusion. These plans however, have neither been able to provide effective protection nor address deeper causes of violence and discrimination against Roma (US Department of State 2010). In the case of

Slovenia, although the Constitutional Court had ruled on the problems of undue delay, it was, primarily, the threat of a further ECtHR judgment from Strasbourg that precipitated the *Lukenda* programme of reforms.

While Slovenia and Slovakia represent two particular Central and East European states, the relevance of the above case studies for other instances of political transition is further borne out by the assessments of the European Union and the Council of Europe. The above findings also affirm the claims made by Pridham (2007) and Steunenberg and Dimitrova (2007) regarding the limited power of conditionality to instil normative change. This is particularly evident in Slovakia which has proved unable to constrain non-state parties which have abused Roma. Slovakia's human rights record has been further tarnished by evidence of ill-treatment and collusion by police in anti-Roma violence. Thus the reactive and short-term political reforms in Slovakia in particular have not created conditions for rights-reinforcing behaviour, as required for qualitative democratic change.

Conclusion

This essay claims that by comparing formal provisions and laws aimed at protecting human rights and comparing them against operational practices, one may arrive at a deeper understanding of political change. The concept of 'qualitative democracy' is introduced here to inform our understanding of democratic consolidation which is examined in rights-enforcing sectors, for example in the court system and police. The main findings of this essay are that two European Union states failed to ensure that the rights of significant sections of their public were enforceable through the courts and respected by law enforcement bodies. These findings therefore call into question claims of democratic consolidation in Slovenia and Slovakia. While most European states have struggled to prevent racist abuse against Roma populations within their borders, none have been identified for the degree of complicity and complacency shown by Slovak authorities over the past two decades. Equally, it should be recognised that while the justice sector is often among the last and most complicated sectors in which one may identify evidence of institutional reform, the number of unresolved cases in Slovenia is staggering for a country with such a small population.

By introducing the concept of qualitative democracy, and highlighting areas where reform has yet to reach down to individuals and guarantee their protection, this essay seeks to add to the literature on democratic change and political transition. Although Slovenia and Slovakia have distinct histories, the above study of qualitative democracy has greater regional relevance: Slovakia's challenges with its Roma population are not unrelated to those experienced by the governments of the Czech Republic or Romania; and Slovenia's huge backlog of cases and lack of administrative capacity are not dissimilar to some of the problems confronting Croatia and other neighbouring states which are seeking membership of the European Union (Blitz 2007). There is a need therefore for further qualitative assessments, including examinations of the justice sector, to evaluate the degree to which norms of behaviour and state practices are substantively transformed and embedded in Central and East European states.

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