

27 August 2010

SUBMISSION IN RELATION TO THE ANALYSIS AND CONSIDERATION OF LEGALITY UNDER EU LAW OF THE SITUATION OF ROMA IN FRANCE

The European Roma Rights Centre (ERRC) is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. The ERRC has worked, since its establishment in 1996, in Romania, Bulgaria and France and has undertaken intensive research and monitoring in all three countries since the announcements of the President of France on 21¹ and 28² July 2010 regarding the destruction of camps and expulsion of Roma.

The ERRC respectfully submits the following observations to the European Commission Vice President in charge of Justice, Fundamental Rights and Citizenship in the context of her proposed analysis of the situation in France of Roma and the full compliance with EU law of measures taken.

Background on Roma in France and Movement within the EU

There are generally believed to be between 10,000³ and 20,000⁴ migrant Roma living in France, a significant number of whom are from Romania and Bulgaria. In its report on the exercise of freedom of movement and residence by Roma EU citizens issued in October 2009, the European Union Agency for Fundamental Rights found that the main push factors for Roma migration within in the EU include poverty and racism in the country of origin. At the same time, search for better opportunities and employment featured prominently on the pull side.⁵

The return of Roma from France to Romania and Bulgaria is not a new phenomenon. France has been returning Roma to these countries under various schemes in significant numbers since at least 2007. Indeed, it has been reported that France sent almost 10,000 Roma back to Romania and Bulgaria, 7,966 of whom were provided some level of support.⁶ The French Immigration Minister has also announced that within one month of President Sarkozy's

¹ See: <http://www.elysee.fr/president/les-actualites/declarations/2010/declaration-de-m-le-president-de-la-republique.9344.html>.

² See: <http://www.elysee.fr/president/les-actualites/communiqués-de-presse/2010/juillet/communique-faisant-suite-a-la-reunion.9381.html>.

³ See:

https://wcd.coe.int/ViewDoc.jsp?id=1410711&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P515_102369.

⁴ See: <http://www.amnesty.org/en/news-and-updates/france-president-urged-not-stigmatize-roma-and-travellers-2010-07-23>.

⁵ See: http://fra.europa.eu/fraWebsite/attachments/ROMA-Movement-Comparative-report_en.pdf.

⁶ "What future for the Roma if they are forced out of France?", *France24*, 3 August 2010, available at: <http://observers.france24.com/en/content/20100803-what-will-happen-roma-they-are-sent-back-country-romania-switzerland-geneva-hortefeux-discrimination-france>.

announcement around 950 Roma will have been returned to Romania and Bulgaria, bringing the total to more than 5,000 since the beginning of 2010.⁷

French authorities have characterised many of these returns as voluntary, however the extent to which these returns have actually been on a voluntary basis has been questioned by intergovernmental agencies and NGOs alike. In his 2008 report on France, the Council of Europe's Commissioner of Human Rights expressed concern that:

such repatriation is not always genuinely "voluntary", as repatriation operations are sometimes coordinated with intimidating, or even improper, police operations. The Commissioner was informed that in some instances of organised repatriation, "volunteers" had had their identity papers confiscated until they reached their country of origin, so that they could not change their mind. The Commissioner would like such repatriation to be organised with due regard for the rights of those concerned, and a full guarantee of its "voluntary" nature to be given.⁸

On 31 July 2008, a French NGO coalition lodged a petition with the European Commission urging that it open infringement proceedings against France on this matter concerning non-compliance with the Directive 2004/38/EC (Free Movement and Residence) on account of these returns.⁹

Current Practice and Relevant Law

The French government's ongoing practice of seeking to remove EU nationals, particularly those of Romani origin, from its territory has been put into sharp focus by President Sarkozy's announcements linking Roma as an ethnic group to various criminal activities and undertaking to destroy their homes and deport them within a three month period: an unrealistic aim, given the time required to follow due process in criminal and immigration law, were there a genuine security risk. The stated policy of clearing camps inhabited by Romanian and Bulgarian citizens of Romani ethnicity has been implemented without delay, and around 635 people are said to have been returned since the end of July,¹⁰ including 61 to Bucharest on 19 August, 132 to Timisoara on 20 August, 13 to Sofia on 25 August and 158 from Paris and 125 from Lyon to Bucharest on 27 August. The implementation of this policy follows a two-stage process, namely the clearance of camps and the destruction of homes and then the removal of Romani EU citizens from French territory.

Some EU Member States, notably Italy and Hungary, have appeared to view the openly discriminatory words and actions emanating from France and the apparent impunity with which the French government acts against Roma as giving legitimacy to their own ongoing anti-Romani policies and encouraging new ones. In Italy, Interior Minister Roberto Maroni has renewed calls for the mandatory deportation of Roma who violate basic requirements of the Free Movement Directive and for increased requirements for the exercise of free movement and residence rights in Italy. In particular, Italy has suggested that EU citizens be required to demonstrate that they have adequate housing, despite the fact that this is not reflected in the Directive.¹¹ In a statement mirroring recent calls by President Sarkozy, a Member of Parliament representing Jobbik, a far right Hungarian political party, recently called for the eviction of

⁷ David Charter, "Roma crisis exposes flaws in EU policy", *The Times*, 25 August 2010.

⁸ See:

https://wcd.coe.int/ViewDoc.jsp?id=1410711&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P515_102369.

⁹ See: 'Plainte contre la France pour violations du droit communautaire en matière de libre circulation des personnes' brought by the organisation GISTI, also on behalf of the civil society organisations and networks', available at:

<http://detentions.wordpress.com/2008/10/01/plainte-contre-la-france-pour-violation-du-droitcommunautaire>.

¹⁰ David Charter, "Roma crisis exposes flaws in EU policy", *The Times*, 25 August 2010.

¹¹ Jim Brunsten, "Italy wants to limit free movement of Roma people, *European Voice*, available at: <http://www.europeanvoice.com/article/2010/08/italy-wants-to-limit-free-movement-of-roma-people/68718.aspx>.

habitual Romani criminals from a northeastern Hungarian city, their placement in a camp and the stripping of their Hungarian citizenship.¹²

Incompatibility with Directive 2000/43/EC (Racial Equality Directive)

The racial/ethnic element of the measures in question is manifest. When announcing the measures targeting migrant Roma from Romania and Bulgaria, President Sarkozy blanketly characterised members of these groups as living in a “situation of lawlessness” linked to illegal settlements, illicit trafficking and exploitation of children for begging, prostitution or crime.¹³ There is no documented instance of a removal of a Bulgarian or Romanian national not of Romani ethnic origin. French Interior Minister Bruce Hortefeux announced that about 700 Romani people had been evicted from 40 camps in the first 2 weeks since President Sarkozy’s measures were announced.¹⁴ Camp clearances, with dawn raids on family homes, often rendering people homeless, have taken place throughout August.

Against this background, not only does this engage a number of fundamental rights norms which bind the EU and the Member States,¹⁵ but the element of ethnic profiling by law enforcement and immigration officials, it is submitted, violates Directive 2000/43/EC.

Incompatibility with Directive 2004/38/EC (Free Movement Directive)

The expulsion of EU citizens from French territory, however construed, in the current circumstances contravenes the Free Movement Directive, in addition to a number of other fundamental rights.¹⁶

Firstly, it is submitted that the so-called humanitarian returns are incompatible with the Free Movement Directive, as a fundamental right of European citizenship cannot be put up for sale (for 300 EUR).¹⁷ EU citizens are therefore denied the right to move freely, as none of the restrictive exceptions to that right foreseen in the Directive are even purported to be engaged.

Secondly, it is submitted that the current returns – although they have, so far, been conducted under France’s so-called humanitarian assistance returns programmes – have not been voluntary and that Roma are effectively coerced into leaving France. They are thus denied the right to move freely. Based on evidence collected by the ERRC and other NGOs from returns conducted hitherto,¹⁸ it is clear that the repatriations are not genuinely voluntary. Returnees state that they took up the offer of repatriation before they would – in their view – be returned in less favourable circumstances. Returnees were aware of the government rhetoric and had also suffered police harassment. This echoes the 2008 findings of the Council of Europe’s Commissioner of Human Rights, cited above; but with the added impetus of high-level government anti-Romani rhetoric.

¹² “A Jobbik táborokba zárna a “cigánybűnözőket””, MTI, 24 August 2010, available at: http://index.hu/belfold/2010/08/24/a_jobbik_taborokba_zarna_a_ciganybunozoket/.

¹³ See: <http://www.elysee.fr/president/les-actualites/communiqués-de-presse/2010/juillet/communiqué-faisant-suite-a-la-reunion.9381.html>.

¹⁴ “French police dismantle some 40 Gypsy camps”, *The Associated Press*, 12 August 2010, available at: <http://www.google.com/hostednews/ap/article/ALeqM5huDQ-4a0mF82AwSEB7b4VGs0TPuQD9HI1DG81>.

¹⁵ Not least: Articles 6, 7 and 21 of the Charter of Fundamental Rights of the European Union (Charter) and Articles 5 and 14 and Article 2 of Protocol 4 of the European Convention on Human Rights (ECHR).

¹⁶ Primarily the prohibition of collective expulsions under the Charter (Article 19) and the ECHR (Article 4 of Protocol 4), together with the respective anti-discrimination provisions.

¹⁷ See, for example, the judgment of the Grand Chamber of the European Court of Human Rights in the case of *DH and others v The Czech Republic* (57325/00) at para 202, in which the Court underlined the very strict constraints on waiver of the right not to be discriminated against: ‘the waiver of a right guaranteed by the Convention – in so far as such a waiver is permissible – must be established in an unequivocal manner, and be given in full knowledge of the facts, that is to say on the basis of informed consent ... and without constraint’.

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=d.%20|%20h.%20|%20%22THE%20CZECH%20REPUBLIC%22&sessionid=58591532&skin=hudoc-en>

¹⁸ See for example: <http://www.errc.org/cms/upload/file/france-returns-roma-to-timisoara-20-08-2010.pdf> (attached as Appendix 1 of this submission) and <http://www.romanicriss.org/report%20France%20repatriation%2019%20august%20eng.pdf>.

Thirdly, it is submitted that any analysis of the current situation in France must be made with full regard to past attempts by the French government to remove EU citizens from Romania and Bulgaria (the majority, if not all, of Romani ethnic origin) ostensibly under the public order or means test exceptions under the Free Movement Directive. A number of such efforts, often undertaken in circumstances in which cases were not individually considered, are set out in the abovementioned coalition NGO submission of 2008. Such practices have continued to date and, it is submitted, the Free Movement Directive remains inadequately transposed in French domestic law, thus further removing protections of otherwise vulnerable EU citizens. There are serious concerns that coercive interventions by the police will continue and increase in weeks and months to come.

The Free Movement Directive shall be implemented without discrimination and in accordance with other principles the Charter of Fundamental Rights of the European Union (Charter).¹⁹ Particularly in the light of the rhetoric surrounding repatriations, the ethnicity of returnees and the sheer number of returns, it is submitted that the actions of the French government contravene the non-discrimination element of the Free Movement Directive itself and of the Charter²⁰ and of other substantive provisions of EU law. In particular, it is submitted that the measures undertaken amount to collective expulsions prohibited under both the Charter²¹ and the European Convention on Human Rights,²² in combination with the non-discrimination provisions of both instruments.²³

Incompatibility with Directive 95/46/EC (Data Protection Directive)

There have been a number of reports in various media of biometric data being taken from Roma in the past weeks in France. The ERRC has sought information from French Immigration authorities as to the collection of such data, the types of data being collected, its use and storage. Further, Roma returned to Timisoara, Romania, also reported to ERRC researchers that they had been asked to sign a document on entering the aeroplane in France which they did not understand and of which they did not receive a copy. It is not at all clear what this document was, although the ERRC has requested a blank copy from the French Ministry of Immigration.²⁴ The ERRC urges the Commissioner to investigate these matters further and to consider the legality of any such actions, particularly under Directive 95/46/EC.

EU Roma Policy

The EU has repeatedly stressed the importance of integration of its Romani population across its Member States. The current situation in France is in complete conflict with the aims of the EU and the following statements serve to highlight that fact.

In 25 March 2010, the European Parliament adopted a resolution on the Second European Roma Summit, in which it highlighted:

the precarious situation of many Roma, who, exercising their freedom of movement within the Union, have migrated within the EU; stresses that any measures taken in respect of these groups must be consistent with European standards and legislation and calls on the Commission and the Member States to establish whether there is a need for a coordinated European approach.²⁵

In light of growing negative Government responses to the situation of Roma around the EU, the ERRC considers it of the utmost importance that the EU provide strong leadership and guidance to the Member States in taking positive, inclusion oriented steps to promote equality of Roma and respect of their fundamental rights. The development and adoption of an EU Framework Strategy on Roma Inclusion, as called for (a second time) in the abovementioned European Parliament resolution is increasingly a necessary step for achieving this.

¹⁹ Para 31 of the Preamble of the Free Movement Directive and Article 6 of the Treaty on European Union.

²⁰ Article 21 of the Charter.

²¹ Article 19.

²² Article 4 of Protocol 4.

²³ Articles 21 and 14 respectively.

²⁴ ERRC letter of 26 August 2010, attached herewith as Appendix 2.

²⁵ See: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0085&language=en>.

In its 2009 report on the exercise of freedom of movement and residence by Roma EU citizens, FRA found that access to employment is the most crucial determining factor with regards to the integration of EU citizens, especially Roma, in exercising this right. It stated: “those unable to secure employment in the formal economy encounter a series of barriers and therefore can not always meet the requirements to exercise the right of residence in other Member States.”²⁶

The right to employment is significantly limited for Romani and non-Romani Romanian and Bulgarian citizens in France through the restrictions introduced in the accession treaties. The European Commission has clearly stated that these restrictions should be removed to enable the freedom of movement of all workers:

Lifting restrictions would not only make economic sense, without causing discernible harm to local labour markets, it would also help to avoid some of the more serious problems associated with closed labour markets, in particular undeclared work and bogus self-employment. The volume and direction of mobility flows are driven rather by general labour supply and demand and other factors than by restrictions on labour market access. Restrictions may even delay labour market adjustments and exacerbate the incidence of undeclared work.²⁷

In France, there is no specific strategy or other measures to integrate Roma EU citizens from other Member States. In its 2009 report, the FRA indicated that this reflected a general lack of policies and measures raising awareness and promoting free movement and residence, as foreseen by Article 34 of the Free Movement Directive. At that time, the FRA recommended that Member States should facilitate exercise of the right of free movement and residence by developing proactive, inclusion-oriented policies. It also called on the Member States to “ensure that any measures taken that impact directly or indirectly on EU citizens of Roma origin are in compliance with principles laid out in the EU Charter of Fundamental Rights and in conformity with the Racial Equality Directive that explicitly prohibits direct and indirect discrimination.”²⁸ Member States such as France should also be urged to repeal the employment restrictions in place to reduce unnecessary barriers to integration of migrating citizens in the EU.

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²⁶ See: http://fra.europa.eu/fraWebsite/attachments/ROMA-Movement-Comparative-report_en.pdf.

²⁷ ‘Commission report on transitional arrangements regarding free movement of workers’ MEMO/08/718 Brussels, 18 November 2008 p.2.

²⁸ See: http://fra.europa.eu/fraWebsite/attachments/ROMA-Movement-Comparative-report_en.pdf.