

THE ROMA ISSUE FROM A EUROPEAN UNION PERSPECTIVE

INTRODUCTION

The French authorities' decision in August 2010 to expulse Roma from France triggered not only a storm of protests in Europe and abroad, but also generated an intense debate on the situation and the integration of Roma in the European Union.

These events and the difficult situation of Roma in Hungary itself led Hungary to react and define the integration of Roma as one of the country's priorities for its Presidency of the European Union (EU). One of its aims was to further implement the Stockholm Programme for Justice and Home Affairs, which, inter alia, explicitly called for the full integration of the Roma¹. Within the framework of the European Platform for Combating Poverty, the Hungarian Council Presidency sought to combat child poverty and the poverty of the ethnic Roma minority.

In 2009, Hungary witnessed a series of violent crimes against its Roma community (there were 39 violent attacks and 9 deaths²). In addition, a racist tone against Hungary's biggest minority (8% of the Hungarian population) – notably due to the Jobbik Party³ - has risen alarmingly. In the context of this anti-Roma political agenda, the radical right paramilitary guard (*Magyar Gárda*⁴) deployed in districts containing large Roma communities. Given these facts, it was an absolute necessity for Hungary to declare the Roma issue as a priority for its Council Presidency's political agenda.

In this context, the European Council of 24 June 2011 called for the rapid implementation of the **European Framework for National Roma Integration Strategies** proposed by the European Commission on 5 April 2011. This general integration strategy should serve Member States as a basis for their national integration strategies, which inter alia should lead to a more effective use of earmarked EU funds – only 70% of the money available for programmes for Roma integration has been used by the Member States. The strategy

¹ The Stockholm Programme – An open and safe Europe in the service of and for the protection of citizens, Chapter 2.3.3.

² Amnesty International, *Violent Attacks against Roma in Hungary*, 2010, pp.11-13,

<http://www.amnesty.org/en/library/asset/EUR27/001/2010/en/7ee79730-e23f-4f20-834a-deb8deb23464/eur270012010en.pdf> (6.01.2011).

³ Jobbik, a far right party which was set up in 2003, has been the third strongest party in the newly formed Hungarian parliament since the 2010 elections with 47 seats (12.18%).

⁴ In December 2009 *Magyar Gárda* was dissolved by the Hungarian Supreme Court. Since then many other similar groups with similar names (often with the same members) have replaced it.

aims to improve the integration of Roma in four critical fields – education, employment, health care and housing⁵.

In this context, this document presents the situation of the Roma in the EU, sums up the existing European legal provisions for the protection of the Roma's rights by taking the French government's measures as a test case and sheds light on the European institutions' main initiatives to improve the Roma's situation.

I - THE SITUATION OF THE ROMA IN THE EUROPEAN UNION

Box 1: The Roma, a definition

The term 'Roma' can be traced back to the word 'Rom' and means man/husband or person in the Romani language; 'Romni', the female form, means women/wife; 'Roma' is the plural. There are many ethnic subgroups of Roma in Europe, such as the Romani, the Kalé (called 'Gitanos' in Spain), Kalderash, Sinti (called 'Manouches' in France), Aschkali, Ursari, Lovara or Gurbeti⁶. The Sinti are the Roma group that has lived for the longest period in middle Europe and as the biggest group in Germany. The Sinti can mainly be found in German-speaking countries (Germany, Austria, Switzerland), in the Benelux countries, in a few countries in Northern Europe (e.g. Sweden), in Northern Italy, as well as in Southern France. The Sinti do not describe themselves as Roma; they are called, separately, 'Roma and Sinti'. Many Roma have the Indo-European Romani language (*romani čhib*) in common, an Indian language that has its roots in Sanskrit. There are many Romani dialects and a few Roma subgroups speak other minority languages (e.g. Beash in Hungary, Gammon in the United Kingdom (UK), and in Ireland, Jenish or Kalo). The origins of the Roma lie in the Indian middle-ages. Migration from India took place between the 9th and 14th century. By the 15th century, the Roma were spread throughout Europe.

Around 10 to 12 million Roma live in in the EU, candidate countries and potential candidate countries in the Western Balkans; around half of them in the EU (see table 1). The total figure for Roma in the EU is based on estimates, because there is a shortage of data at the national level, as some governments do not allow for 'the Roma' as a legitimate category in the censuses. Many Roma also do not want to admit their affiliation. But it is known that the Roma are the biggest ethnic minority in the EU. Within the EU, most Roma live in Romania, Bulgaria and Hungary. One and a half million Roma became Union citizens via the 2004 EU enlargement alone⁷.

⁵ HU Presidency 2011, *Priorities of the Hungarian EU presidency*, http://www.oegfe.at/cms/uploads/media/PPT_Ungarn_2011-01-10.pdf [German only]; HU Presidency 2011, *Creating a European Roma Policy*, <http://www.eu2011.hu/developing-european-roma-policy> (6.01.2011).

⁶In the subsequent text, the term 'Roma' will be used to represent all the subgroups.

⁷ European Commission, Directorate General Employment and Social, Unit D3, *The situation of the Roma in the enlarged European Union*, 2004, pp. 7-12; Grabmair, *Rechtliche und politische Maßnahmen der EU zur Verbesserung der Situation der Roma [Legal and political measures of the EU to improve the situation of the Roma]*, in German only], Degree work, Karl-Franzens-Universität Graz, 2008, pp. 11-14; Liégeois, *The Council of Europe and the Roma 40 years of action*, 2010, pp. 11-34.

Table 1⁸: The Roma in Europe

EU-Member States	Official number (last census)	Minimum estimate	Maximum estimate
Bulgaria	370.908 (2001)	700.000	800.000
Czech Republic	11.718 (2001)	150.000	250.000
France	No data available	300.000	500.000
Germany	No data available	70.000	140.000
Greece	No data available	180.000	350.000
Hungary	190.046 (2001)	400.000	1.000.000
Italy	No data available	110.000	170.000
Romania	535.140 (2002)	1.200.000	2.500.000
Slovak Republic	89.920 (2001)	400.000	600.000
Total for all EU-Member States		4.359.100	7.456.500
Non-EU Member States			
Bosnia and Herzegovina	8.864 (1991)	40.000	60.000
Croatia	9.463 (2001)	30.000	40.000
Kosovo (under UNSCR 1244/99)	45.745 (1991)	25.000	50.000
The former Yugoslav Republic of Macedonia	53.879 (2002)	135.500	260.000
Montenegro	2.826 (2003)	15.000	25.000
Serbia (excl. Kosovo)	108.193	400.000	800.000
Turkey	4.656 (1945)	500.000	5.000.000
Total for all Non-EU Member States		2.256.000	8.312.200

The everyday existence of the Roma is marked by discrimination in all areas of life. Unrestricted and equal access to employment, education, social protection, health provision, accommodation, other public services and justice continue to not be provided⁹. In its comparative report about the situation of Roma EU citizens, who have settled in other EU Member States, the EU's Fundamental Rights Agency (FRA) names poverty, job-seeking, racism and hope for an improvement in living standards as main reasons for the migration of Roma. However, the Roma mostly expect social marginalisation and impoverishment in the host Member State as well as in their home Member States¹⁰.

⁸ Ibid., pp. 22-23.

⁹ European Commission, Directorate General Employment and Social, Unit D3, op.cit., p. 8.

¹⁰ European Union Agency for Fundamental Rights, *The situation of Roma EU citizens, moving to and settling in other EU Member States*, 2009, pp. 5-9, http://194.30.12.221/fraWebsite/attachments/Roma_Movement_Comparative-final_en.pdf (10.12.2010).

In order to interrupt the vicious circle of poverty and discrimination, access to education, employment, healthcare and housing have to be provided in the same manner to the Roma population as to the non-Roma population.

In comparison of a European average of 97.5% of children that finalise primary **education**, an Open Society Institute Survey of 2008 stated that in six Member States (Bulgaria, Hungary, Latvia, Lithuania, Romania and Slovakia) only 42% of Roma children do so. Additionally throughout Europe racial segregation in education is widespread. Roma children are mostly sent to segregated schools in ghettos (so called “Gypsy schools” or “special schools”; e.g. 75% in Czech Republic, 80% in Germany) which are in regard to quality of education far below the average level. An important degree of discrimination can also be noted in the field of **employment**, which represents a crucial tool for achieving social inclusion. There is an important divergence between the employment rate of Roma population and the one of other groups of the population. Women are especially disadvantaged in access to the labour market (sociological studies indicate that out of the entire percentage of the Roma unemployment rate, 90% represent women and 10% men). Data from 2003/2004 indicate an unemployment rate for Slovak Roma of 87.5% (in comparison with 14.2% for the whole population); between 50% and 80% in the Czech Republic (10.8% for the whole population) and in Spain half of the Roma population is unemployed or having unstable and illegal jobs.

The other crucial areas where extreme gaps between Roma groups and the rest of the population exist are **healthcare** and **housing**. Concerning healthcare few data exists, but in general it can be said that general life expectancy for Roma is 10 years less than for the rest of the population (the average EU level is 76 for men and 82 for women) and the child mortality rate is 2 to 6 times higher among the Roma population. Their poor level of health is due to many factors: poor housing conditions, poor nutrition, restricted access to healthcare due to missing insurances, restricted information about health services and health prevention, and a bigger exposure to environmental harms, which makes them extremely vulnerable to diseases. Substandard housing is a considerable reason for poor health and a lack of integration into society. Roma live, in most cases, in ghetto-like settlements with poor access to public utilities and transportation, often in fear permanently forced eviction.

In July 2008, a Eurobarometer poll on the subject of ‘Discrimination in the European Union’ revealed that around a quarter (24%) of Europeans would feel uncomfortable about having a Sinti or a Roma as a neighbour: a glaring contrast to the feeling of wellbeing with a person with a generally “other” ethnic origin (8.1 on a scale from 1 to 10 where 10 represents being totally “comfortable”; a comfort of 6.0 for having a Roma as a neighbour)¹¹. It emerged from the EU census carried out by the FRA in April 2009 on the experiences of ethnic minorities and immigrants with discrimination and racist-motivated criminal acts that the highest level of discrimination was reported by Roma. Fifty percent of Roma admitted that they had experienced discrimination in the last 12 months and 81% that they had been victims of racist-motivated violence and criminal acts¹².

In a Deliberative Poll on Roma policy¹³, carried out in Bulgaria in 2007, the feelings of Bulgarian society towards the Roma were made clear. As it seems that certain laws are not applied as strictly with the Roma as with the rest of the Bulgarian population (for example no penalties for not paying electricity bills or for acts of petty crime), the Roma in Bulgaria are often seen by the majority of the population as a privileged group. The high amounts of aid money, which is exclusively available for the improvement of the situation of the Roma as well as the feeling of a higher awareness of the EU with regard to the violation of the rights

¹¹ European Commission, Special Eurobarometer 296, *Discrimination in the European Union: Perception, Experiences and Attitudes*, 2008, p. 45, http://ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf (8.12.2010).

¹² Fundamental Rights Agency of the European Union (FRA), *European Union Minorities and Discrimination Survey, First report of the series ‘Data in Focus’ / The Roma*, 2009, 3, http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_ROMA_EN.pdf (8.12.2010).

¹³ National Deliberative Poll ‘Policies toward the Roma in Bulgaria’ <http://cdd.stanford.edu/docs/2007/bulgaria-roma-2007.pdf>.

of Roma than for other Bulgarian citizens does not contribute to improving the problematic relationship between the Roma and Bulgarians. This highlights the complexity of the problem and the fact that there is a need for problem solving in many different areas. Undeniably rights go hand in hand with duties. However, the general opinion in EU Member States is that these are not sufficiently or not at all fulfilled by the Roma. But do the Roma also have an equivalent possibility to comply with general citizens' duties?

II - A LEGAL ANALYSIS OF THE ROMA'S RIGHTS IN THE EU¹⁴

After violent confrontations between young Roma and French security forces in the central French village of Saint-Aignan, caused by the killing of a young Romanian Roma when he fled the police, in July 2010, French authorities systematically dismantled numerous camps – mainly inhabited by Bulgarian and Rumanian Roma – and sent their inhabitants to their home countries.

By August 2010, altogether 128 illegal settlements had been cleared and 979 Romanians and Bulgarians in "irregular situations" had been repatriated (151 were forced and 828 went "voluntarily"). Repatriations were accompanied by a payment to aid return (300 euros per adult and 100 euros per child). Since October 2010 a database called OSCAR (*Outil de Statistiques et de Contrôle de l'Aide au Retour* - Tool for Repatriation Aid Statistics and Control) stores digital photographs and the fingerprints of those who have received the repatriation aid, in order to prevent possible deceit and fraud. This course of action, and especially the following media's publication of a French interior ministry circular¹⁵, ordering regional administrations to clear, within three months, 300 predominantly Roma camps), attracted the European Commission's attention as guardian of the Treaties.

In 2009, France deported 9,875 Roma and more than 8,000 in 2010. The same types of expulsions, albeit on a smaller scale, have also taken place in other Member States, such as in Sweden, Denmark, Italy and Germany¹⁶.

As citizens of Romania and Bulgaria, the evicted Roma are Union citizens, as per Article 20 of the **Treaty on the Functioning of the European Union (TFEU)**, and thereby enjoy full free movement in the area of the Union, as per Article 21 TFEU, as any other citizens of the EU. That of course raised the question as to whether the mass French evictions of those belonging to an ethnic group were in line with European law. The European provisions concerning protection against expulsion for Roma and any other citizens coming from a non-EU country are more complex and less protective.

EU institutions and as well the Council of Europe's European Commission against Racism and Intolerance (ECRI) expressed their concern about these "repatriations". On 9 September 2010, the European Parliament – "deeply concerned" about the deportations by French and other Member State's authorities – adopted a resolution on the situation of the Roma in Europe. The resolution demanded the immediate suspension of the expulsions, which have to be considered as "exceptions" with "specific and clear limits" – and the taking of fingerprints was considered as "illegal". Moreover, the Parliament demanded that

¹⁴ Spiegel, Legal Tribune online, *Was die EU-Kommission Sarkozy vorwirft [What the EU Commission criticises Sarkozy for]*, <http://m.lto.de/de/html/nachrichten/1616/roma-ausweisung/> (7.12.2010); Ferner Alsdorf law firm, *ECJ on the right to free movement*, <http://www.ferner-alsdorf.de/2008/07/eugh-zum-recht-auf-freizugigkeit/> (10.12.2010); Grabmair, op.cit., pp. 25-38. Isak, *European law I*, Part 2⁵, 2010, 28-31; Reding, Andor, Malmström, *Joint Information Note, The situation of Roma in France and in Europe*, <http://www.romamigration.ro/en/strategie/the-situation-of-roma-in-france-and-in-europe.htm> (1.12.2010).

¹⁵ Circular of 5 August 2010, http://www.france-info.com/IMG/pdf/7/f/6/Circulaire_du_5aout_2010.pdf (8.01.2011).

¹⁶ European Commission, press release IP/10/1207, *European Commission assesses recent developments in France, discusses overall situation of the Roma and EU law on free movement of EU citizens*, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1207&format=HTML&aged=1&language=EN&guiLanguage=en> (8.12.2010); migration-info.de, *Frankreich: Roma-Abschiebungen forciert [France: Roma expulsions forced; in German only]*, http://www.migration-info.de/mub_artikel.php?id=100701 (8.12.2010); migration-info.de, *Europa: Diskussion um Umgang mit Roma [Europe: Discussion about the handling of the Roma; in German only]*, http://www.migration-info.de/mub_artikel.php?id=100801 (8.12.2010); Reding, Andor, Malmström, op.cit.

political decision-makers avoid “inflammatory and openly discriminatory rhetoric”. In the resolution, the Council and Commission were requested to call for an end to the expulsions and the lack of reaction from these two institutions was also regretted.¹⁷

Two charges were levelled against France:

1. The infringement of EU law as the guidelines of the Directive on the right to move and reside freely, in particular its procedural safeguards, have not been transposed into French law. The Free Movement Directive was to be transposed by 30 April 2006 at the latest.
2. The infringement of the non-discrimination principle of Article 18 TFEU and of Article 21 of the Charter of Fundamental Rights as well as the ban on collective expulsions under Article 19 of the Charter as the expulsions targeted Bulgarian and Romanian Roma.

The right to free movement

As any EU citizens, Roma and their family members have a right to free movement in the area of the Union, under Article 21 TFEU and Article 45(1) of the **EU Charter of Fundamental Rights**. They may stay up to three months, as per **Directive 2004/38/EC (Freedom of Movement Directive)**¹⁸, without any preconditions and formalities (see Annex, table 2). For a stay of up to three months, the only condition is the possession of a valid personal identity card or a passport (Article 6 Freedom of Movement Directive).

A stay of more than three months is then only allowed if the EU citizen is an employee or self-employed person in the host Member State or can show that he/she has sufficient means of subsistence and sickness insurance so as not to claim welfare services (Article 7 Freedom of Movement Directive). Regarding the sufficient resources, the Member States are not allowed to fix a certain amount but have to take into account the personal situation of the individual concerned. Resources can be considered as sufficient when they are higher than the threshold under which social benefits are granted in the host Member State or higher than the national social security pension (Article 8(4) Freedom of Movement Directive).

It must also be mentioned that, in the **transitional provisions in the Accession Treaty of 25 April 2005 on the accession of Bulgaria and Romania**¹⁹ up until January 2012²⁰, access to the labour markets of EU Member States, which were already EU Member States before the current accession, is regulated by the national legal provisions of these Member States²¹. Concretely, this means that Bulgarian and Romanian citizens in France need a work permit²².

The right to free movement and residence may be restricted by the states on the basis of public order, security or health (Article 27(1) Freedom of Movement Directive). In this case, however, such restrictions must be based only on the personal behaviour of the affected person and the principle of proportionality (Article 27(1) subparagraph 1 Freedom of Movement Directive). This principle indicates that the Member State authorities should first state the interest that needs to be protected. In this respect, the intended

¹⁷ European Parliament resolution of 9 September 2010 on the situation of Roma and on freedom of movement in the European Union, T7-0312/2010.

¹⁸ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ. [L158, pp. 77-123](#).

¹⁹ Treaty between the Member States of the European Union and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to the European Union, Official Journal No. L 157 of 21 June 2005.

²⁰ Member States, which limit their labour market through national provisions, can do this for a further two years if their national labour market is faced with considerable problems and communicates this to the Commission. The period of validity of the transitional arrangements may not in any event go beyond seven years.

²¹ EU Accession Treaty with Bulgaria and Romania of 25 April 2005, Annexes VI and VII, Article 2 and 5, OJ No L157 of 21 June 2005.

²² European Commission, *EU enlargement: Transitional provisions*, <http://ec.europa.eu/social/main.jsp?catId=466&langId=en> (10.12.2010).

restricting measure must be appropriate to make it reach the goal that it pursues and must not go further than what is required for it to achieve this²³. The personal behaviour must represent a factual, present and considerable danger, which affects a basic interest of society (Article 27(2), subparagraph 2 Freedom of Movement Directive)²⁴.

Member States are free to decide according to their national requirements what public order and security require, but these requirements are to be understood narrowly so that their consequences cannot be determined by every Member State one-sidedly without control by the institutions of the EU²⁵.

EU Member States can expulse any EU citizen who fails to fulfil the free-movement criteria. Nevertheless, the Member States must respect the procedural safeguards for expulsions conducted on the grounds of public order and security, as set out by the Freedom of Movement Directive (see box 2).

Box 2: The procedural safeguards for expulsions of EU citizens

- For every expulsion it must be demonstrated on a **case by case basis** whether the mandatory conditions for an expulsion exist.
- The **personal circumstances** of the affected person, i.e. the length of stay, the age, the state of health, his/her family situation and economic position, his/her social and cultural integration and his/her connections with his/her country of origin are also to be closely checked.
- **Decisions to expel** an EU citizen **must be communicated to the person concerned in writing** as per Article 30 of the Freedom of Movement Directive and must be fully justified.
- The **grounds for expulsion** - outside those grounds which relate to the security of the state - **are to be communicated in full**.
- The possibility of accessing **legal redress** must also be provided.
- The **time period** before the expulsion must be **at least one month** unless the Member State believes that there is an urgent case for the expulsion. This must be substantiated in due form.
- Additionally Article 19 Charter of Fundamental Rights explicitly states that **collective expulsions** are inadmissible.

With regard to the allegation that France has not transposed the procedural safeguards of the Freedom of Movement Directive into national law²⁶, it is to be noted that, in its report of 2008 on the application of the Freedom of Movement Directive, the Commission has said that the transposition of procedural safeguards had not been satisfactory and that only four Member States have transposed the safeguards correctly (Cyprus, Lithuania, Spain and Portugal). In general it says that “not one single Member State has transposed the Directive effectively and correctly in its entirety. Not one Article of the Directive has been transposed effectively and correctly by all Member States”. Due to these results, the European Commission released a report on guidance for better transposition and application of the Directive 2004/38/EC²⁷.

²³ Case C – 33/07 *Jipa*, [2008] ECR I-5157, paragraph 29.

²⁴ The requirements set out by the Directive constitute a codification of the earlier jurisprudence of the European Court of Justice on the freedom of the employee within the European Community and should be used and configured in the light of this jurisprudence – Craig, de Burca, *EU Law, Text, Cases, and Materials*, OUP, 4th edition, 2008, p. 784.

²⁵ Case C – 33/07 *Jipa*, [2008] ECR I-5157, paragraph 23.

²⁶ As distinct from Regulations, which are directly applicable, Directives must be transposed into national law (Article 288(3) TFEU). If this does not happen within the set time period, this is a violation of Union law and can be punished with a Treaty infringement procedure (Article 258 TFEU).

²⁷ COM (2009) 313 of 2.7.2009, Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

In the case of France, no procedural safeguards are applied in cases of the highest urgency. The EU citizen receives no written communication about the expulsion decision, is not informed of the reasons why the decision was taken and has no right to legal remedy before the implementation of the decision²⁸.

When France decides on expulsions, French legislation does not refer to the need to check individual circumstances (length of stay, age, state of health, family situation, degree of integration, etc.).

Furthermore, entry may not be refused to those who return to France again after their expulsion, except if they were lawfully deported because of a threat to public security and order.

Summing up, it is to be noted that such government's measures are only to be seen as in line with the EU law on free of movement if:

- After a case by case check of, and attention to, personal circumstances, the EU citizen constitutes a threat to public order and security or an exaggerated burden for the welfare system.
- The material and procedural guarantees in connection with the right to free movement were fully respected by national authorities.
- These measures do not amount to any collective expulsions of Roma (or any other group of EU citizens).

The non-discrimination principle, child protection, and data protection

Article 2 Treaty on European Union (TEU) names as one of the values on which the Union is based "respect for human rights, including the rights of persons belonging to minorities". Attention to, and protection of, minorities demands both protection from discrimination and also promotion of their culture and language²⁹. Respect for, and protection of, minorities is a condition for entry into the EU (Article 49 TEU in connection with Article 2 TEU). According to the Copenhagen criteria, the circumstances of the Roma create problems in many accession countries. According to them, the political criterion must, alongside the economic and *acquis* criteria, be met for a country to join the EU. The political criterion demands "stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities". One cannot speak of the complete fulfilment of this criterion either in the old or new Member States.

It must also be stressed that, in their dealings with the rights of entry and rights to stay of EU citizens, the national authorities are bound by the provisions of the EU Charter of Fundamental Rights, which became binding with the entry of force of the Lisbon Treaty on 1 December 2009. The Charter of Fundamental Rights namely applies to Member States when they implement Union law (Article 51(1) Charter of Fundamental Rights); for the measures discussed here it is about the application by a Member State in concrete cases of EU primary and secondary law regarding the free movement of people³⁰.

The measures taken by the French authorities in August 2010 must comply with:

- the **non-discrimination principle** rooted in Article 21 of the Charter, which in paragraph one bans, inter alia, discrimination based on race, skin colour, ethnic or social origin, belonging to a national minority and, in paragraph two, bans any discrimination on the basis of belonging to a country
- the **general prohibition on discrimination** on grounds of nationality in Article 18 TFEU

²⁸ COM (2008) 840 from 10.12.2008, Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

²⁹ European Commission, Directorate General Employment and Social, Unit D3, op.cit., pp. 7,18; Open Society Institute, *Monitoring the EU Accession Process: Minority Protection*, 2002, p. 18.

³⁰ COM(2011) 160 of 30.3.2011, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2010 *Report on the Application of the EU Charter of Fundamental Rights*.

Article 19(1) TFEU empowers the Council, on a proposal from the Commission and after consulting the Parliament, to adopt unanimously measures to combat discrimination on the basis of sex, race, ethnic origin, religion, ideology, disability, age or sexual orientation.

On the basis of Article 19 TFEU, important directives for non-discrimination were enacted. The key piece of EU legal provisions on combating discrimination and thereby a particularly important directive for the Roma is **Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin (Race Equality Directive)**³¹. It is directed against discrimination based on race or ethnic origin in the areas of employment, education, social protection, including social security and health services as well as with regard to the access to and provision of goods and services, including of housing. Unequal treatment is then only allowed when the characteristic, which is connected to the race or ethnic origin and on which the discrimination is based, constitutes a substantial and decisive precondition for the professional activity and if the objective is legitimate and the requirement proportionate (Article 4 Racial Equality Directive).

Article 1 Race Equality Directive defines the purpose of the Directive as “to lay down a framework for combating discrimination on the grounds of racial or ethnic origin”. The minimum requirements of the current state legal provisions are stipulated by this Directive. Both direct and indirect discrimination are covered. As per Article 2(3), direct discrimination is also harassment, which violates the dignity of the person and creates a degrading environment. An instruction to discriminate is, as per Article 2(4), also banned. In Article 3(2) it is specified that the Directive does not cover difference of treatment based on nationality. But if the discrimination is based on a criterion that, with a characteristic, which “is necessarily connected and inextricably linked” to membership of a country, this is seen as direct discrimination.

In 2008, the Council approved a **Framework Decision on Racism and Xenophobia (Framework Decision 2008/913/JHA)**³². This requires the harmonisation of all legal and administrative provisions for acts of punishment with a racist or xenophobic background in all Member States.

The two last cited legal acts are part of the whole European legal framework. Their provisions are binding for the Member State – in this case French – authorities in the formulation of their policy when they decide on measures for their internal security. They are to be directly directed at France as a Member State and must be respected by France and any other Member State.

According to Article 24 of the Charter, the best interest of the child must be an overriding consideration for all measures that concern children³³.

Article 8 of the Charter guarantees the protection of personal data for everyone. This right is explicitly regulated in **Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Data Protection Directive)**³⁴. Article 7 Data Protection Directive details the preconditions for the processing of personal data. The person concerned must give their consent (Article 7 lit a Data Protection Directive) and the processing, out of which “racist and ethnic origin” emerges, is banned (Article 8(1) Data Protection Directive).

³¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2000 L 180, p. 22.

³² Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, pp. 55–58.

³³ The importance of this aspect was also raised through questions from the MPs of the German federal parliament to the German federal government: Answer of the German government to the inquiry of MPs Ulla Jelpke, Jan Korte, Jan van Aken, further MPs and the DIE LINKE parliamentary group – Drucksache 17/3018 - <http://dipbt.bundestag.de/dip21/btd/17/032/1703288.pdf>, Question 10, (7.01.2011).

³⁴ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281 of 23.11.1995, pp. 31-50.

According to this legal background, measures of national authorities are only in line with EU law if:

- They target all Union citizens in the same way in similar situations and not individual citizens on the basis of race, colour of skin, ethnic and social origin, their belonging to a national minority or for belonging to a country.
- The wellbeing of Roma children was an overriding consideration in the implementation of the measures.
- Personal data, which were inserted into the OSCAR database are only used for the specific purpose of the prevention of fraudulent double counting and not used for other purposes that were not mentioned.

Initially, the European Commission decided to act against France only for non-transposition of the Free Movement Directive. It announced that it would make a formal request in an official letter if it did not have an outline of measures and a precise schedule for the transposition of the Freedom of Movement Directive into national law by 15 October 2010. The written request would then be sent in the context of the Treaty infringement procedure. With regard to the allegation of discrimination, the Commission asked only for additional information.

By 15 October, France did present the requested legal drafts and a schedule for the transposition of the Free Movement Directive. The Commission has therefore forgone an infringement procedure against France and did not send the prepared letter of formal notice.

III. MAIN EU INITIATIVES TO IMPROVE THE SITUATION OF THE ROMA³⁵

The social and economic integration of the Roma is one of the EU's priorities. That is why, for a decade, the European institutions have been regularly calling for intensified measures from the Member States to improve the situation of the Roma.

Policy tools

In this spirit, a **European Platform for Roma Inclusion** was established in 2009. This is supposed to serve for exchanges of experience of successful integration strategies between EU countries, the European institutions, international organisations as well as representatives of Roma civil society. The meetings of the platform (two per year) are arranged and led by the Member State that holds the Council Presidency at that time. At the first meeting, on 24 April 2009, in the framework of the Czech EU Presidency, **10 Common Basic Principles on Roma inclusion**³⁶ were drafted. These are supposed to be helpful for the various players in the development of strategies and measures.

³⁵ European Commission, MEMO/10/383, Roma people living in the EU: Frequently asked questions; European Commission, IP/10/589, *EU adopts new measures to improve housing conditions of Roma communities*; European Commission, DG Employment, Social and Integration, *European Platform for the Integration of Roma*, <http://ec.europa.eu/social/main.jsp?catId=761&langId=en> (7.01.2011); European Commission, *Call for the submission of proposals – European Commission – DG REGIO Pilot project “Europe-wide co-ordination of the process of integrating the Roma” – Integration of the Roma*, (2009/C 171/08); COM (2011) 173/, *op.cit*; European Commission, DG Employment, Social Affairs and Inclusion, *Commission calls on EU countries to set national strategies for Roma integration*, <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1011&furtherNews=yes> (5.04.2011).

³⁶ European Commission, DG Employment, Social Affairs and Inclusion, <http://ec.europa.eu/social/main.jsp?catId=761&langId=en> (7.01.2011).

Exchange of information and further development of appropriate measures are made at the **Roma Summits**, which take place every two years and are organised by the European Commission. The first European summit for the integration of the Roma took place in Brussels on 16 September 2008 and the second one in Córdoba (Spain) on 8 and 9 April 2010.

In order to improve the social and material situation of the Roma, the European Commission also set up a **Roma Task Force** on 7 September 2010, which is supposed to analyse the use of EU funds by the Member States for the economic and social integration of the Roma. The Task Force published its first results on 21 December 2010. These indicate that the EU funds admittedly afford considerable possibilities to press on with Roma integration but their effectiveness is limited by bottlenecks at national, regional and local level. There is a problem with regard to the development of adequate strategies and targeted measures and the administrative capacity to make use of the EU funds. It is not the task of the European Commission to propose projects. The Member States must develop these themselves. The Task Force will now identify possibilities for a more effective use of EU funds. The results of this analysis flew into the **EU Framework for National Roma Integration Strategies up to 2020**, which was proposed by the European Commission on 5 April 2011, adopted by the Council in May 2011 and endorsed by the European Council of 24 June 2011.

This EU Framework calls on Member States to develop their own Roma integration strategy (based on the individual size and situation of the Roma population in each respective country) and presents therefore a guideline for national Roma policies in four areas - access to education, employment, healthcare, housing and essential services (such as water, electricity and gas).

Box 3: Four priority areas for the Roma integration policies

Education: ensuring that all Roma children complete primary school

Employment: cutting the employment gap between Roma and other citizens

Health: reducing the health gap, for example by cutting child mortality among Roma

Housing: closing the gap in access to housing and public utilities such as water, electricity and gas

Member States are requested to align their national strategies with the approach of the EU Framework by keeping in mind the Common Basic Principles on Roma Inclusion. National contact points should be appointed and be in charge of the coordination and the development of the national strategy. The EU's Fundamental Rights Agency will in cooperation with other relevant bodies collect the social data needed in order to assess the results which will be annually reported to the European Parliament and the Council. The Member States have until the end of the year to present their programmes³⁷.

On the one hand, NGOs working with Roma communities welcome the European Commission's initiative and underline its positive points such as its symbolic significance, the attempt to make Member States' national policies more focused on Roma integration, making the EU's role clearer, underlining the Roma problems and making them a key priority for the EU.

But on the other hand, critics have voiced concerns that the Framework document is too brief and vague, and is failing to specify anti-discrimination or anti-Gypsyism measures or to deal with violence against Roma and woman empowerment issues³⁸. As MEP Livia Járóka (EPP, HU) said "The document is of course not flawless and could be much bolder in many ways but it is a considerable step in the right direction". The real value of this Framework cannot be analysed as it has not been implemented yet and as a real

³⁷ COM (2011) 173/4, op.cit.

³⁸ Laco Oravec from the Milan Šimečka Foundation in an interview for the Slovak Spectator, http://spectator.sme.sk/articles/view/42325/2/european_commission_prods (18.04.2011).

improvement in regard to Roma integration strongly depends on the political will of every single Member State. The European Council is supposed to adopt the strategy at its meeting on 24 June 2011.

In order to strengthen as well the coordination between the measures of the Member States, the European Commission has sent all Member States a catalogue of questions regarding Roma integration. Twenty one of the 27 Member States have cooperated with this plan. No answer was received from Austria, Cyprus, Denmark, France, Portugal and the UK.

On **7 April 2010, the European Commission published a communication**³⁹ in which concrete proposals for more effective policy measures to improve the situation of the Roma are listed. This communication is the first political position paper specially dedicated to the Roma.

Also to be mentioned is the **European Union Agency for Fundamental Rights**, which was set up by a Council Regulation of 15 February 2007⁴⁰ with its seat in Vienna. Since 1 March 2007, it has been continuing, inter alia, with the work of its forerunner, the European Monitoring Centre for Racism and Xenophobia. The agency is supposed to support the Community bodies and Member States and provide them with expertise with regard to fundamental rights when they exercise Community law.

The European Parliament adopts **resolutions**, which deal with the Roma, such as for example the Resolution on the Situation of the Roma in the EU⁴¹ and the Resolution on the situation of Roma women in the EU⁴². These resolutions are admittedly not legally binding but are politically binding.

Financial tools

The EU Framework for National Roma Integration Strategies up to 2020 also suggests methods to maximize the use of existing EU-funds for Roma integration. Currently 26,5 billion euros are, through the Structural Funds and the EAFRD, at the Member States' disposal for social inclusion targets, but the existing budget is underspent. For a more efficient use, the national programmes financed by EU-funds have to be amended. The European Commission plans to install a monitoring mechanism in order to evaluate the results in each Member State.

In the framework of the EU structural funds, the European institutions have made considerable funds available for the integration of the Roma.

The two relevant funds for the Roma are the **European Social Fund (ESF)** and the **European Regional Development Fund (ERFD)**. According to Article 175 TFEU these funds are supposed to contribute to a strengthening of economic and social solidarity. Twelve of the 27 Member States (Bulgaria, the Czech Republic, Spain, Finland, Greece, Hungary, Ireland, Italy, Poland, Romania, Slovenia and Slovakia) have support programmes which run to 17.5 billion euros (including 13.3 billion euros from the ESF). After a proposal by the European Commission, certain rules for the use of ERFD resources were simplified so that marginalised groups of populations can improve their living situations.

In addition, the **European Agricultural Fund for Rural Development (EAFRD)** was used by some Member States for Roma integration projects. Concerning the 3,8 million Roma in the Western Balkans and Turkey,

³⁹ COM (2010) 133, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *The social and economic integration of the Roma in Europe*.

⁴⁰ Regulation (EC) No. 168/2007 of the Council of 15 February 2007 on the establishment of an Agency of the European Union for Fundamental Rights, OJ No. L53 S.1.

⁴¹ European Parliament resolution on the situation of Roma in the European Union, OJ No. 045E of 23.02.2006, pp. 0129-0133.

⁴² European Parliament resolution on the situation of Roma women in the European Union (2005/2164(INI)), OJ C 298E of 8.12.2006, pp. 283-287.

the EU will provide help in the framework of the enlargement process, notably through the **Instrument for Pre-Accession Assistance (IPA)**⁴³.

In the framework of the '**Pan European Coordination of Roma Integration Methods**' pilot project, which was initiated by the European Parliament, the European Commission (DG REGIO) has called for the submission of proposals on three independent subjects (early childcare, education; self-employment through micro-credit; information and raising awareness). Hence three grant agreements totalling 5 million euros were signed in June 2010 and will run until 2012⁴⁴.

In many Member States, the European Commission has organised **high level events** bringing together political decision makers, stakeholders and representatives of Roma communities in order to increase awareness of the different possibilities for projects in the framework of the structural funds.

CLOSING WORDS

The course of action of the French government and the unprecedented reactions to that have at least still further directed general attention to the poverty and discrimination of the Roma and let Roma integration policy become a priority on the political agenda.

As guardian of the Treaties, it was naturally the European Commission's task to carry out a legal analysis of the French government's measures. Since its analysis showed incompatibility with EU law, the European Commission had no other choice than to demand the French government to comply. It might be regretted that only additional information was called for with regard to the allegation of discrimination. This lets the question emerge as to whether this is sufficient as a measure of deterrence for Member States.

But it became clear that the social and economic challenges both in the Member State of origin as well as in the host Member State are wide-ranging and that the social marginalisation of the Roma must be fought with still more effective means and measures. As the key areas of education, housing, health and access to the labour market are competences of the Member States, the latter bear special responsibility. But for real improvement, the national, local and regional authorities, civil society and European institutions all need to work together.

One should also bear in mind that integration strategies and help programmes should not be directed only to help the Roma, but also generally favour economic and social development in the two least developed Member States – Bulgaria and Romania. The Roma who have settled there see, because of the prevailing poverty in their country, no other option but to leave it in the hope of finding better economic conditions in other Member States. Fuelled by the same problems and hopes, the Bulgarians and Romanians have been doing this for a long time already, but the Roma are additionally exposed to considerable racism in their home country. If the fight against the widespread discrimination and deep prejudices of Europe towards its biggest ethnic minority is not conducted simultaneously, with the integration of the Western Balkans, all the efforts for Roma integration will probably be accompanied by still more crises and might turn into an even larger problem for the EU.

A bigger responsibility is expected from the European Commission, but this crisis situation has shown that the problem can only be solved with the joint responsibility of the European institutions and the individual

⁴³ COM (2011) 173/4, Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, *An EU Framework for National Roma Integration Strategies up to 2020*, pp. 5-7; European Commission, Directorate General Employment and Social, Unit D3, op.cit., pp. 17-30; COM (2009) 567, Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, *Solidarity in health: Reducing health Inequalities in the EU*, p. 3.

⁴⁴ The three chosen projects are managed by Roma Education Fund, Polgár Alapítvány az Esélyekért and SPOLU International Foundation.

Member States. By putting forward the European Framework for National Roma Integration Strategies, the European Commission is affirming its guiding role by coordinating, monitoring and evaluating national Roma policies. But by doing so it is not freeing Member States from their primary responsibility. The EU's essential added value is the enforcement of EU-law in this field, the sanctioning of violations - which should be done more rigorously than so far - and the provision of adequate funds and the facilitation of their use.

The plight of the Roma is a general European problem that requires a general European solution. It is crucial that the Roma are involved in this process because a Roma policy without the cooperation of the Roma is not achievable.

TABLE 2: FREE MOVEMENT OF EU-CITIZENS AND THIRD-COUNTRY NATIONALS

	EU-citizens	Third-country nationals ^{47/48} (provided they enter/reside legally in a EU Member State)
Entry conditions for stay under three months	Only condition: valid identity card or passport ⁴⁹	A visa ⁵⁰ for a stay in one or several Member States applying the Shengen provisions ⁵¹ . The visa has to be requested from the Member State in question. After verification of the admissibility (fulfilment of the conditions, risk of illegal immigration or threat for public security and will to leave the country before expiration of the visa), the demand is registered in the Schengen Information System (SIS) . Once the short stay visa is obtained (visa type C), the applicant can move everywhere within the Schengen territory.
Conditions for stay exceeding three months	Being employed or self-employed or the possession of sufficient resources. Ability to proof that he/she will not be an unreasonable burden on the social security system of the host Member State. ⁵²	A long-stay visa (visa type D) or residence permit is required. Each Member State defines its own conditions for those ⁵³ . Family reunification ⁵⁴ and family members of a European citizen with a residence permit are exceptions to this rule.
Means of subsistence	Required for a stay exceeding three months when not employed or self-employed. Resources are sufficient when they are higher than the threshold under which social benefits are granted in the host Member State or higher than the national social security pension. ⁵⁵	Amount is determined by each Member State according to the length and reason of stay. ⁵⁶
Access to the labour market	No restrictions except for Bulgarians and Rumanians. Some Member States (including France) apply for Bulgarians and Rumanians restrictions on the right to work. Until, at the latest, 31 December 2013, Bulgarian and Rumanian nationals need a work permit. In France they are additionally restricted to 150 job categories.	Requirement of work permit in accordance with the respective conditions of every Member State. The Blue Card (EU-wide work permit) for highly qualified third-country workers was to be implemented by 19 June 2011. Denmark, Ireland and the United Kingdom do not participate in the Directive ⁵⁷ . The admission procedure for highly qualified workers will be accelerated and equal social and economic rights as nationals of the host Member State will be granted.
Social benefits	No restrictions for employed or self-employed persons. Access under the same conditions as nationals from the host Member State but the beneficiary should not become an unreasonable burden on the social assistance system. Every Member State can decide whether it grants social assistance in the first three months (to job-seekers also for a longer period), but only if the person is not employed or self-employed ⁵⁸ . This restriction should comply with Article 18, 21 and 45 TFEU.	Depending on the legal status and the nationality. The legal status determines the interaction between aliens law and social law; the nationality is important in regards to bilateral or multilateral treaties benefiting specific nationals. Benefits through EU-arrangements – either by being a family member of an EU national or by direct applicability of agreements by the EU and third parties (e.g. EU/Turkey Association Agreement and related Decisions; the EU/Maghreb Co-operation Agreements) which give substantial rights to legally resident nationals in the EU ⁵⁹ .

⁴⁶ Baldwin-Edwards, *Third Country Nationals and Welfare Systems in the European Union*, Jean Monnet Working Paper in Comparative and International Politics, 1997, p.5; Steinebach, Güne, *Network Migration in Europe e.V., Current EU law and the status of residence of EU-citizens and third-country nationals*, 2010, pp.1-7; Müller, Steffen, *Voraussetzungen des Freizügigkeitsrechts und Zugang zu Sozialleistungen für EU-Bürgerinnen* (in German only), 2010, pp. 11-22; ECOTEC Research and Consulting Ltd on behalf of the European Commission (DG Justice and Home Affairs), *Admission of Third-Country Nationals for Paid Employment or Self-Employed Activity – France, 2000*, p 99, http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/ecotec_en.pdf (15.06.2011).

⁴⁷ Different types: Third-country nationals who are **family members of EU-citizens** (they have the strongest protection as they are also covered by the Directive 2004/38/EC); **Turkish nationals** covered by the EEC-Turkey Association Agreement-Decision 1/80 of the Association Council. **Other third-country nationals: Third-country nationals who are long-term residents; Other third-country nationals** (they have the weakest legal status as only Article 8 of the European Convention on Human Rights (ECHR), which provides the protection of private and family life, can assure due to its broad interpretation a certain kind of protection from expulsion).

⁴⁸ **Third-country nationals who are long-term residents:** Non-EU Member Country nationals who have resided legally and continuously in an EU Member State for five years have a special status. Same treatment as nationals in regard to employment, welfare benefits, social assistance and benefits (Council Directive 2003/109/EC of 25 November 2003; Article 11 concerning the status of third-country nationals who are long-term residents).

⁴⁹ Article 6 Freedom of Movement Directive.

⁵⁰ A **Schengen visa** gives permission to travel within the **Schengen area** (Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders, Article 5 (Schengen Borders Code)).

⁵¹ The **Schengen area** includes the territory of 22 European Union countries (Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden) and three associated countries (Norway, Iceland and Switzerland). Bulgaria, Cyprus, Ireland, Romania and the United Kingdom still do not participate in the Schengen cooperation.

⁵² Article 7 Freedom of Movement Directive.

⁵³ Article 5 Regulation (EC) No 562/2006.

⁵⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L251/12, 3.10.2003.

⁵⁵ Article 8(4) Freedom of Movement Directive.

⁵⁶ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Article 5 - Schengen Borders Code), OJ L105,13.4.2006.

⁵⁷ Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ, L 155, 18.6.2009 (Article 5, Article 7, Article 12 and Article 14).

⁵⁸ Article 24 Freedom of Movement Directive.

⁵⁹ The French government provides contributive (a part of the contribution is paid by the employee and employer) and non-contributive social benefits (financed by general taxes). Some non-contributive social benefits are only granted to third-country nationals if they are regulated by an international agreement.

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