Roma Go Home: The Plight of European Roma

Andrew M. Korando†

Introduction

On August 5, 2010, a French Interior Ministry circular was released stating that three hundred illegal camps had to be cleared within three months and that "the priority [are] those of the Roma."[1] This circular caused an uproar in the international community because the French were actively targeting an ethnic group.[2] Previously, the French government had repeatedly denied it was targeting Romani camps.[3] European Justice Commissioner Viviane Reding called the French actions a "disgrace,"[4] and the European Commission—the executive branch of the European Union (EU)—decided to begin infringement proceedings against the French government for its treatment of the Roma.[5] Later, the EU suspended the proceedings on the condition that France adequately transpose EU directives into French law.[6]

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1. *French Ministerial Circular Targets Roma Encampments*, RADIO NETH. WORLDWIDE (Sept. 10, 2010), http://www.rnw.nl/africa/bulletin/ french-ministerial-circular-targets-roma-encampments-0 [hereinafter *French Ministerial*]. The Roma or Romani (among many other names) have no relationship to the Romans (Latin: *Romanī*). It is an etymological coincidence that the two share a common name. See ANGUS FRASER, THE GYPSIES 25–29 (1992) for a discussion of the etymological origins of the Romani's names for themselves. Based on linguistic similarities, some believe that the Roma originated in India. IAN HANCOCK, WE ARE THE ROMANI PEOPLE (AME SAM E RROMANE DŻENE) 9 (2002). When they arrived in Europe, Europeans believed the Roma to have come from Egypt and called them Gypsies, from the original Greek Αιγύπτιοι (*Aigyptioi*). *Id.* at 1–2, 31.

2. *French Ministerial*, *supra* note 1.

3. *Id.*

4. Oana Lungescu, *EU Vice President Sees Red and Attacks France on Roma*, BBC NEWS (Sept. 14, 2010), http://www.bbc.co.uk/news/world-europe-11302013.

5. *EU To Launch Legal Action Against France*, SPIEGEL ONLINE (Sept. 29, 2010), http://www.spiegel.de/international/europe/0,1518,720311,00.html.

6. Matthew Saltmarsh, *E.U. Suspends Case Against France for Expulsions of Roma*, N.Y. TIMES (Oct. 20, 2010), http://www.nytimes.com/2010/10/20/world/europe/20roma.html.

In July 2010, French President Nicolas Sarkozy called a meeting of his ministers and police chiefs to examine "the situation of travelling people and Roma and the problems that certain members of these communities pose to public order and safety."[7] This meeting led to the deportation of approximately one thousand Roma to Bulgaria and Romania.[8] In late 2010, the French government destroyed several makeshift camps populated by nomadic groups.[9]

The EU Charter of Fundamental Rights prohibits collective expulsions of any group by a Charter member, and establishes that no one may be deported to another country where he or she faces "a serious risk" of severe harm or discrimination.[10] The French have stated that because they are deporting only those Roma who are in France illegally, they have done nothing wrong.[11] Bulgaria and Romania, the two countries to which the Roma are largely being deported, have been EU member states since 2007, though they have not yet been fully integrated into all of the EU's joint enterprises.[12] This means that while citizens, including Roma, of other member states are free to travel throughout the EU, Bulgarians and Romanians are not.[13] Still, the French treatment of the Roma may not conform to European standards.[14]

France is not the only EU member state discriminating against the Roma. They have been horribly discriminated against in Italy.[15] In 2008, Italian Prime Minister Silvio Berlusconi said that his nation was beset by an "army of evil," referring to illegal immigrants, many of whom are Roma.[16] The Italian government

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7. *French Ministerial*, *supra* note 1.

8. *Id.* The Romani people are not necessarily from Romania, a country that takes its name from Romanized tribes living within former parts of the Roman Empire. *See* 3 EASTERN EUROPE: AN INTRODUCTION TO THE PEOPLE, LANDS, AND CULTURE 741 (Richard Frucht ed., 2005).

9. *French Ministerial*, *supra* note 1.

10. Charter of Fundamental Rights of the European Union, art. 19, Dec. 18, 2000, 2000 O.J. (C 364).

11. *Sarkozy Defends Deportations of Roma Migrants from France*, RTTNEWS (Sept. 16, 2010), http://www.rttnews.com/Content/GeneralNews.aspx?Id=1421215&SM=1.

12. Elizabeth Konstantinova, *Merkel Tells Bulgarians Germany Supports Their Bid To Join Schengen Zone*, BLOOMBERG (Oct. 11, 2010), http://www.bloomberg.com/news/2010-10-11/merkel-tells-bulgarians-germany-supports-their-bid-to-join-schengen-zone.html.

13. *Id.*

14. *Id.*

15. Peter Popham, *Plight of the Roma: Echoes of Mussolini*, INDEP., June 27, 2008, at 36–37.

16. James Goldston, *Europe's Union Riven by Government Attacks on Minorities*, GUARDIAN (Aug. 23, 2010), http://www.guardian.co.uk/law/2010/

then declared a "security emergency" and called for all Roma to be fingerprinted "in order to expel those who do not have the right to stay in Italy."[17] Their homes have been destroyed and the Italian government has done nothing to stop the mistreatment.[18] In the former Czechoslovakia, Roma women were sterilized against their will, even after the fall of the communist regime.[19] The Czech government officially apologized for this practice, but the Slovakian government has yet to do so.[20] These are only some of the examples of how Romani individuals have been and are being treated throughout the EU.

Throughout its history, Europe has discriminated against the Roma.[21] While the past century has seen increases in equality for many groups, the nomadic Roma are still treated as second-class citizens in many European nations.[22] Nevertheless, with EU officials condemning the French government's actions and promising to take legal action against France, there is a new hope that the Roma will begin to be treated as full members of European society.[23]

The goal of this Article is to shed light on a few of the international agreements and laws that EU member states, particularly France,[24] are violating with respect to their treatment of the Roma. Part I of this Article will summarize the past treatment of the Roma throughout EU member nations,

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aug/23/european-union-minorities-law.

17. Popham, *supra* note 15, at 36.

18. *Id.*

19. Mindy Kay Bricker, *For Gypsies, Eugenics Is a Modern Problem / Czech Practice Dates to Soviet Era*, NEWSDESK.ORG (June 12, 2006), http://newsdesk.org/2006/06/for_gypsies_eug/.

20. Pavol Stracansky, *Apologising to Sterilised Roma Women – Slovakia's Turn*, IPS NEWS (Nov. 27, 2009), http://ipsnews.net/news.asp?idnews=49444.

21. HELEN O'NIONS, MINORITY RIGHTS PROTECTION IN INTERNATIONAL LAW: THE ROMA OF EUROPE 6–8 (2007).

22. SARAH CEMLYN ET AL., EQUAL. & HUMAN RIGHTS COMM'N, INEQUALITIES EXPERIENCED BY GYPSY AND TRAVELLER COMMUNITIES: A REVIEW, at v (2009), *available at* http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf.

23. Suzanne Daly, *Roma on Move, Test Europe's 'Open Borders'*, N.Y. TIMES, Sept. 17, 2010, at A1.

24. France was chosen due to its high-profile policies towards the Roma in recent years. Other nations in Europe may also be in violation of international agreements and laws in regard to their treatment of the Roma. However, it is hoped that by shedding light on a few of these instances, awareness of Roma issues throughout Europe will increase. It should also be noted that while this Article explores violations of the 2004 Directive on Free Movement and the Convention for the Protection of Human Rights and Fundamental Freedoms, this analysis is not intended to be comprehensive. There may well be other laws being broken and other rights being seriously violated.

particularly since World War II. Part II will focus on the current state of Roma populations in France. Part III-A will explore why France and other European nations are in violation of EU law, especially the 2004 Directive on Free Movement. Part III-B will discuss how the treatment of the Roma in these countries violates the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe.[25]

I. The Historical Plight of the Roma

When the Roma first came to the European continent in large numbers after the fall of the Byzantine Empire in 1453, they were enslaved in Wallachia and Moldavia (modern-day Romania).[26] Some free Roma traveled Europe, masquerading as Christian pilgrims on a mission from the Pope or the Holy Roman Emperor in order to gain access to new towns and cities.[27] Roma first entered France in 1418.[28] The first expulsion of Gypsies[29] from France occurred in 1504 under King Louis XII.[30] The first Gypsies may have come to Italy in 1422.[31] In 1493, the Duke of Milan ordered all Gypsies to leave the city under threat of execution.[32] Cesar Lombroso, an eighteenth-century Italian anthropologist, sought to show that certain anthropological traits were associated with particular "criminal types," and characterized the Roma as "the living example of a whole race of criminals."[33] Discrimination against the Roma continued into the twentieth century throughout Europe.[34]

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25. The Council of Europe is "[a]n international organisation in Strasbourg which comprises 47 countries of Europe. It was set up to promote democracy and protect human rights and the rule of law in Europe." *Council of Europe in Brief*, COUNCIL OF EUR., http://www.coe.int/aboutcoe/index.asp?page=nePasConfondre (last visited Sept. 30, 2011). It is not to be confused with the European Council, which is the "[r]egular meeting (at least twice a year) of the heads of state or government from the member states of the European Union for the purpose of planning Union policy." *Id.*

26. FRASER, *supra* note 1, at 57–59.

27. *Id.* at 61, 74.

28. DONALD KENRICK, HISTORICAL DICTIONARY OF THE GYPSIES (ROMANIES) 61 (1st ed. 1998).

29. The terms Gypsies and Roma will be used interchangeably in order to avoid confusion with other similar terms and to maintain consistency with the sources.

30. KENRICK, *supra* note 28.

31. *Id.* at 86.

32. *Id.*

33. Barry A. Fisher, *No Roads Lead to Rom: The Fate of the Romani People Under the Nazis and in Post-War Restitution*, 20 WHITTIER L. REV. 513, 518 (1999).

34. *See* FRASER, *supra* note 1, at 249–57.

In the early twentieth century the Roma faced a new threat. Eugenics was becoming a popular theory amongst European elites.[35] Roma were persecuted in Germany during the Weimar period.[36] Bavaria's Gypsy Affairs Office (later the Central Office for Fighting the Gypsy Menace) aligned itself with Interpol in order to have constant surveillance on Roma populations.[37] Police had the authority to detain, for up to two years in a work camp, any Rom over the age of sixteen who could not prove steady employment.[38]

When the Nazis gained power in Germany, the Roma were one of their targets.[39] The Nazis "subjected Roma to arbitrary internment, forced labor, and mass murder" because they were seen as racially inferior.[40] The Nazis originally considered the Roma to be better than Jews (who were considered "race enemies") but beneath Slavs ("subhumans").[41] However, by 1943, Gypsies were placed on equal footing with Jews.[42] Since the Roma are considered an Aryan people, the Nazi regime "faced a slight theoretical problem."[43] The Third Reich's official stance was that "through migration, the Roma had 'absorbed the blood of the surrounding peoples,' and thus became a racial mixture."[44] The Germans passed the Cooperative Interstate Agreement to Combat

35. *See* Richard J. Evans, *Social Outsiders in German History: From the Sixteenth Century to 1933*, *in* SOCIAL OUTSIDERS IN NAZI GERMANY 20, 31–32 (Robert Gellately & Nathan Stoltzfus eds., 2001). Eugenics has been described as "the science of the improvement of the human race by better breeding." Henry Friedlander, *The Exclusion and Murder of the Disabled*, *in* SOCIAL OUTSIDERS IN NAZI GERMANY, *supra*, at 145, 146. Eugenics would gain popularity in the late nineteenth and early twentieth centuries as people tried to increase breeding among those who were seen as especially fit and prevent "inferior" people from procreating. *Id.* Eugenics was not only popular in Europe but in the United States as well. *See* AARON GILLETTE, EUGENICS AND THE NATURE-NURTURE DEBATE IN THE TWENTIETH CENTURY 1–22 (2007).

36. *See* Fisher, *supra* note 33, at 519.

37. *Id.*

38. *Id.*

39. *See* Sybil H. Milton, *"Gypsies" as Social Outsiders in Nazi Germany*, *in* SOCIAL OUTSIDERS IN NAZI GERMANY, *supra* note 35, at 212, 212.

40. *Genocide of European Roma (Gypsies), 1939–1945*, U.S. HOLOCAUST MEMORIAL MUSEUM, http://www.ushmm.org/wlc/en/article.php?ModuleId=10005219 (last updated Jan. 6, 2011).

41. Fisher, *supra* note 33, at 520.

42. Milton, *supra* note 39, at 227.

43. Fisher, *supra* note 33, at 520. Nazi ideology says that Germans are an Aryan master race. *See Victims of the Nazi Era: Nazi Racial Ideology*, U.S. HOLOCAUST MEMORIAL MUSEUM, http://www.ushmm.org/wlc/en/article.php?ModuleId=10007457 (last updated Jan. 6, 2011).

44. Fisher, *supra* note 33, at 520.

the Gypsy Plague,[45] incorporating and expanding upon a Bavarian law that "stigmatized Roma and Sinti[46] as habitual criminals, social misfits, and vagabonds."[47] Nazi laws also led to the deportation of those Roma and Sinti who were stateless or foreign.[48] Roma were considered to be "asocial" in the Nazis' 1933 Law for the Prevention of Offspring with Hereditary Diseases, as well as in the Law Against Dangerous Habitual Criminals.[49] Some have claimed that Roma were not racially persecuted by the Nazis, but instead were targeted for behavioral characteristics; "[e]ven some eminent Holocaust scholars have contended that the Nazis had no Gypsy policy at all, while some German historians have accepted utterly fallacious rationales for the repression of Roma similar to those proclaimed during the Nazi period itself, including crime control, military security, and public health."[50] The perception of Gypsies as criminals has continued to this day.[51]

Roma and Sinti in the German "fatherland" were for the most part taken to Auschwitz-Birkenau.[52] Twenty-three thousand Roma were housed at that concentration camp alone;[53] nineteen thousand of them died there.[54] The Germans performed pseudoscientific experiments on their Roma captives.[55] Overall, the Holocaust took the lives of approximately two hundred and twenty thousand Roma, nearly twenty-five percent of the European Roma population.[56]

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45. Milton, *supra* note 39, at 214.

46. Sinti are Germanized Roma who have adopted some aspects of German language and culture and are largely settled and integrated into German society. ISABEL FONSECA, BURY ME STANDING 206 (1995).

47. Milton, *supra* note 39, at 214.

48. *Id.* at 215.

49. *Id.*

50. Fisher, *supra* note 33, at 520.

51. *See* Henry Scicluna, *Anti-Romani Speech in Europe's Public Space - The Mechanism of Hate Speech*, EUR. ROMA RTS. CENTRE (Nov. 21, 2007), http://www.errc.org/cikk.php?cikk=2912.

52. *Genocide of European Roma (Gypsies), 1939–1945*, *supra* note 40. In addition to being housed at Auschwitz-Birkenau, Roma were interned at the Chelmno, Belzec, Sobibor, and Treblinka killing centers. *Id.* Roma were also held in the Bergen-Belsen, Sachsenhausen, Buchenwald, Dachau, Mauthausen, and Ravensbrück concentration camps. *Id.* Also, "German civilian authorities managed several forced-labor camps in which they incarcerated Roma." *Id.*

53. *Id.* Auschwitz II housed the main camp for Roma families taken from Germany, Austria, and the Protectorate of Bohemia and Moravia. *Auschwitz*, U.S. HOLOCAUST MEMORIAL MUSEUM, http://www.ushmm.org/wlc/en/article.php?ModuleId=10005189 (last updated Jan. 6, 2011).

54. *Genocide of European Roma (Gypsies), 1939–1945*, *supra* note 40.

55. *Id.*

56. *Id.*

The Germans were not alone in persecuting Roma during World War II. After the fall of France in 1940, the Vichy French government participated in the deportation and murder of thousands of Roma.[57] The Vichy government sent nomadic Roma to concentration camps within France[58] and collaborated with the Nazis in the deportation of political and racial "undesirables."[59] The general French population held a low opinion of Gypsies, with French citizens often complaining to the government about nomadic groups that had moved into their area.[60] French citizens often blamed Gypsies for thefts caused by shortages from the war, whether Gypsies were responsible or not.[61] France established the Vichy Commissariat for Jewish Affairs which had jurisdiction over not only Jews, but also Roma.[62] Though the Vichy regime did not imprison settled Roma,[63] approximately thirty thousand nomadic Roma were interned at concentration camps by the Vichy government.[64] However, some of those Roma arrested—those of Belgian nationality—were released, but later rearrested in Nazi-occupied Belgium, where they were captured and sent to Auschwitz.[65]

The Italian government under Benito Mussolini was not initially as fixated on ideas of race as its Nazi allies.[66] In 1938, however, that changed.[67] Many Roma were expelled from the Italian mainland to islands off the coast and to Sicily.[68] The

57. *Sinti & Roma: Victims of the Nazi Era,* U.S. HOLOCAUST MEMORIAL MUSEUM, http://www.ushmm.org/education/resource/roma/roma.php (last updated Jan. 6, 2011). The Vichy government was the puppet government set up by the Nazis in "unoccupied" France with its administrative center at Vichy. *France*, U.S. HOLOCAUST MEMORIAL MUSEUM, http://www.ushmm.org/wlc/en/article.php?ModuleId=10005429 (last updated Jan. 6, 2011).

58. KENRICK, *supra* note 28, at 62.

59. Omer Bartov, *Outcasts in War and Genocide*, *in* SOCIAL OUTSIDERS IN NAZI GERMANY, *supra* note 35, at 294, 297.

60. *See* Shannon L. Fogg, *They Are Undesirables: Local and National Responses to Gypsies During World War II*, 31 FRENCH HIST. STUD. 327, 327–28 (2008).

61. *Id.* at 338.

62. Milton, *supra* note 39, at 222.

63. *See* KENRICK, *supra* note 28, at 62. French officials declared that "[w]andering individuals generally without a home, a homeland, or an actual profession, constitute a danger for national security . . . that must be removed." Robert Zaretsky & Olivia Miljanic, *France and the Gypsies: Then and Now*, INT'L HERALD TRIB., Sept. 7, 2010, at A6.

64. FRASER, *supra* note 1, at 266.

65. KENRICK, *supra* note 28, at 62.

66. *See* Franklin H. Adler, *Why Mussolini Turned on the Jews*, 39 PATTERNS PREJUDICE 285, 285–86 (2005).

67. *Id.*

68. KENRICK, *supra* note 28, at 87.

Italian government established internment camps for the Roma, particularly those of foreign citizenship.[69] Regardless, it was not until after the fall of Mussolini's government in Rome that the Gypsies in Italy faced the prospect of true annihilation.[70] In northern Italy, which was occupied by the German army, Gypsies were "rounded up for forced labour in Germany or sent to concentration camps."[71]

The end of the war would not see the end of anti-Roma sentiment. Many of those responsible for targeting Roma during the Nazi years remained in power and continued targeting Roma in the Federal Republic of Germany.[72] Until 1963, German courts maintained that actions taken by the Nazis against Gypsies did not become racially motivated until 1942, and thus no reparations were owed for actions before that year.[73] In 1963, West German courts recognized that racially motivated attacks against Roma began as early as 1938.[74] At present, any attacks against Roma prior to 1938 are not seen by German courts as worthy of reparations because they are viewed as incidental to the government's execution of normal criminal statutes.[75]

There were many migrations of Roma westward in the latter half of the twentieth century, mainly for economic reasons.[76] In Eastern Europe, the Roma also faced continued discrimination when communist nations tried to assimilate them into mainstream society.[77] These westward migrations were largely to Italy, France, Austria, Germany, and the Netherlands.[78]

In France, there were few sites for nomadic caravans to accommodate the large influx of Roma from Eastern Europe.[79] These Roma took to living either in the limited number of sites reserved for Gypsy use or in makeshift shantytowns.[80] By the 1980s, France had settlements scattered across the country with conditions "ranging from the well-equipped to the very

69. *Id.*
70. FRASER, *supra* note 1, at 268.
71. *Id.*
72. FONSECA, *supra* note 46, at 274.
73. *Id.* at 269.
74. Fisher, *supra* note 33, at 532–33.
75. *Id.* at 531–32.
76. FRASER, *supra* note 1, at 271–75.
77. *See* KENRICK, *supra* note 28, at 44.
78. *Id.*
79. KENRICK, *supra* note 28, at 62.
80. FRASER, *supra* note 1, at 274.

primitive."[81] In Italy, the Roma established "small, crude encampments around the periphery" of cities.[82] Even today, conditions in these Romani camps can be horrible.[83] With the accession of Romania and Bulgaria to the EU in 2006, and the increased ease of travel that accompanied accession, Roma have migrated to Western Europe in increasing numbers.[84]

Roma have been persecuted since their arrival on the European continent.[85] Discrimination against Roma is not new, and current deportations from Western European countries merely continue this historical trend.

II. The Treatment of Roma in France in the Twenty-First Century

Discrimination against the Roma is pervasive in France. About four hundred thousand Roma live in France as part of long-established communities.[86] Twelve thousand additional Roma have relocated to France from Bulgaria and Romania since the latter two nations' accession to the EU; the majority of these Roma live in unauthorized camps outside of major cities,[87] similar to how Roma in Italy have lived for decades.[88] In July 2010, a young Roma man was shot and killed by French police officers outside of a checkpoint.[89] While the shooting was found to be legal (the man ran over several gendarmes and attacked a police officer), Roma in the area reacted by rioting.[90] During the riot, "a bakery was

81. *Id.* at 287.

82. *Id.* at 274.

83. *See* Gavin Jones & Roberto Landucci, *Roma Camps in Italy Like Poorest Countries - U.N.*, STAR (Malaysia) (Mar. 12, 2010), http://thestar.com.my/news/story.asp?file=/2010/3/12/worldupdates/2010-03-12T031125Z_01_NOOTR_RTRMDNC_0_-468512-1&sec=Worldupdates (discussing the poor living conditions in Roma camps in Italy).

84. *See* Stephan Faris, *The Roma's Struggle To Find a Home*, TIME (Sept. 23, 2010), http://www.time.com (search "The Roma's Struggle to Find a Home"). See *Poverty Forces Roma To Leave Bulgaria and Romania*, EUBUSINESS (Aug. 21, 2010), http://www.eubusiness.com/news-eu/romania-bulgaria.5vw, for a discussion of some of the reasons that many Roma are leaving Bulgaria and Romania.

85. FRASER, *supra* note 1, at 57–59.

86. *Q&A France Roma Expulsions*, BBC NEWS (Oct. 19, 2010), http://www.bbc.co.uk/news/world-europe-11027288.

87. *Id.*

88. *See* FRASER, *supra* note 1, at 274.

89. *Q&A France Roma Expulsions*, *supra* note 86; *Travellers Riot in Central France After Police Shootings*, BBC NEWS (July 18, 2010), http://www.bbc.co.uk/news/world-europe-10679297.

90. *Travellers Riot in Central France After Police Shootings*, *supra* note 89. There is a long tradition of rioting as an expected, if not accepted, form of civil disobedience in France. Richard Posner, *The French Riots*, BECKER-POSNER BLOG

trashed, three cars torched and trees, traffic lights and road signs damaged."[91] President Sarkozy called a meeting of his cabinet at which he decided that the government would shut down over three hundred illegal camps and deport—without the possibility of return—Roma who had been living in the country illegally or who had been found guilty of public-order offenses.[92] The bar on returning to France would be enforced by fingerprinting all deported Roma.[93] These measures were purported to be implemented "for reasons of public order" because the nomadic camps are allegedly the source of "illicit trafficking, children exploited for begging, prostitution or delinquency."[94] At the time, the French government said that despite most of these nomadic camps being populated by Roma and expulsions being prompted by Roma riots, no ethnic group was being "stigmatiz[ed]" by its actions.[95]

The French began shutting down camps in the summer of 2010. Roma adults who agreed to leave France received three hundred euros plus an additional one hundred euros per child.[96] Human rights groups argued that the French had targeted an ethnic group for deportation.[97] Romania released an official statement saying that it "support[s] unconditionally the right of every Romanian citizen to travel without restrictions within the EU."[98] Romanian Roma indicated that they face even bleaker living conditions back home.[99] In Romania, Roma must contend with "unemployment rates close to 100% in places; low rates of literacy as a result of failing to finish school; and a life expectancy far below the national average."[100]

(Nov. 13, 2005, 5:08 PM), http://www.becker-posner-blog.com/2005/11/index.html ("[T]he French appear to have a much greater propensity to riot, or to engage in other riot-like direct action, than the citizens of other countries.").

91. *Travellers Riot in Central France After Police Shootings*, *supra* note 89.

92. Matthew Saltmarsh, *Sarkozy Toughens on Illegal Roma*, N.Y. TIMES (July 29, 2010), http://www.nytimes.com/2010/07/30/world/europe/30france.html. Many French municipalities do not offer legal camp sites for nomadic Roma, and French law criminalizes illegal camping. O'NIONS, *supra* note 21, at 7.

93. Saltmarsh, *supra* note 92.

94. *Id.*

95. *See id.*

96. *France Sends Roma Gypsies Back to Romania*, BBC NEWS (Aug. 20, 2010), http://www.bbc.co.uk/news/world-europe-11020429.

97. Saltmarsh, *supra* note 92; *see also France Sends Roma Gypsies Back to Romania*, *supra* note 96.

98. *France Sends Roma Gypsies Back to Romania*, *supra* note 96.

99. *See id.*; Nick Thorpe, *Limited Choices Push Roma from Romania*, BBC NEWS (Aug. 19, 2010), http://www.bbc.co.uk/news/world-europe-11028599.

100. Thorpe, *supra* note 99.

In September 2010, a French Interior Ministry memo was leaked.[101] The memo, dated August 5, 2010, stated in part, "Three hundred camps or illegal settlements must be evacuated within three months; Roma camps are a priority."[102] "It is down to the préfect [state representative] in each department to begin a systematic dismantling of the illegal camps, particularly those of the Roma."[103] This memo caused international outcry against the French policy.[104]

By targeting an ethnic group, the French government ran afoul of several international agreements.[105] On September 9, the European Parliament voted 337 to 245 to order France to suspend deportations.[106] On September 29, the European Commission informed the French government that it would face an infringement procedure if it did not begin implementing the EU's 2004 Directive on Freedom of Movement.[107] Then, on October 19, 2010, the European Commission called for further proof that France was not in violation of other antidiscrimination laws, particularly the EU Charter of Fundamental Rights.[108]

The French government has tried to erect an ethnically indifferent façade around its Roma policies,[109] but the August 5 memo revealed the discriminatory purpose behind its policies.[110]

III. Analysis

A. Violations of the 2004 Directive on Free Movement

Viviane Reding, the European Commissioner for Justice, Fundamental Rights, and Citizenship, said that the French

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101. Kim Willsher, *Leaked Memo Shows France's Expulsion of Roma Illegal, Say Critics*, GUARDIAN, Sept. 14, 2010, at 20.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Q&A France Roma Expulsions*, *supra* note 86.

106. Kim Willsher, *France's Deportation of Roma Shown To Be Illegal in Leaked Memo, Say Critics*, GUARDIAN (Sept. 13, 2010), http://www.guardian.co.uk/world/2010/sep/13/france-deportation-roma-illegal-memo.

107. *Q&A France Roma Expulsions*, *supra* note 86.

108. *Id.*

109. *Compare* Saltmarsh, *supra* note 92 (stating the French government has denied stigmatizing the Roma), *with* Malcolm Moore, *Silvio Berlusconi Says Illegal Migrants are 'Army of Evil'*, TELEGRAPH (Apr. 16, 2008), http://www.telegraph.co.uk/news/worldnews/1895799/Silvio-Berlusconi-says-illegal-migrants-are-army-of-evil.html (reporting on Italian Prime Minister Silvio Berlusconi's remark that illegal immigrants, many of whom are Roma, are an "army of evil").

110. *EU Threatens France with Legal Action over Roma 'Disgrace'*, EUBUSINESS (Sept. 14, 2010), http://www.eubusiness.com/news-eu/france-immigration.642.

deportations are "a situation [she] had thought Europe would not have to witness again after the Second World War."[111] She then stated that the European Commission would open infringement proceedings against France.[112] Infringement proceedings are "the main tool the EU executive has to punish states that violate EU laws."[113] France was accused of violating European law by not transposing the EU's 2004 Directive on Free Movement into law, particularly the provisions concerning the rights of people who are arrested or detained by the police.[114]

The 2004 Directive provides that citizens of EU member nations have the right to move and reside freely within the territory of member states.[115] Bulgaria and Romania were admitted as EU member nations in 2007.[116] On October 19, 2010,

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111. *Id.*

112. *Id.*

113. *EU Infringement Proceedings: A Long Road to Sanctions*, EUBUSINESS (Sept. 14, 2010), http://www.eubusiness.com/news-eu/france-immigration.648. First, the European Commission sends a letter to the offending government, allowing the government to respond and submit its observations on how European law should be applied. *Id.* If the EU is still unsatisfied, it sends an opinion to the government outlining the infringement and giving a time limit for the offending nation to conform to European law. *Id.* Then, if the state fails to meet the deadline set by the European Commission, the Commission can file charges with the European Court of Justice. *Id.*

114. *France Avoids E.U. Legal Hammer over Roma Crackdown*, EUBUSINESS (Oct. 19, 2010), http://www.eubusiness.com/news-eu/immigration-france.6l3/.

115. 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 1612/68/EEC 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, 2004 O.J. (L 158) 77, 78 [hereinafter 2004 Directive on Free Movement]. This directive was to have been transposed into every EU member state's laws by April 29, 2006. *Id.* at 122.

116. Treaty Concerning the Accession of the Republic of Bulgaria and Romania to the European Union, June 21, 2005, 2005 O.J. (L 157) 11, 12 [hereinafter Treaty of Accession]. Many, but not all, EU members are also a part of the Schengen Area:

> The Schengen area and cooperation are founded on the Schengen Agreement of 1985 . . . . The signatory states to the agreement have abolished all internal borders in lieu of a single external border. Here common rules and procedures are applied with regard to visas for short stays, asylum requests and border controls . . . . Schengen cooperation has been incorporated into the European Union (EU) legal framework by the Treaty of Amsterdam of 1997. However, all countries cooperating in Schengen are not parties to the Schengen area. This is either because they do not wish to eliminate border controls or because they do not yet fulfill the required conditions for the application of the Schengen *acquis*.

The Schengen Area and Cooperation, EUROPA, http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm (last visited Sept. 25, 2011). Bulgaria and Romania were to enter fully into the Schengen *aquis* on October 15, 2010, removing the last difference in regard to free movement between the new and old EU member states.

the EU suspended infringement proceedings against France after the French government agreed to transpose the 2004 Directive into French law by the spring of 2011.[117] Since that time, nothing has come of the European Commission's threats to continue infringement proceedings.[118] Commissioner Reding, in an interview with the European Union Agency for Fundamental Rights, maintained that France had promised to transpose the 2004 Directive.[119]

The 2004 Directive allows for the expulsion of EU citizens from a host country if they "become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence."[120] The Directive states that "the right of residence for Union citizens and their family members for periods in excess of three months should be subject to conditions."[121] Article 7 of the Directive provides that those seeking to live in a country for more than three months must work or be self-employed and have enough resources "not to become a burden on the social assistance system" in the host state.[122] While

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Council Decision 2010/365/EU, art. 1, 2010 O.J. (L 166) 17, 17–18. However, the decision has been delayed, in part because "France remains worried about potential inflows of Roma gypsies from Romania and Bulgaria if borders were fully opened." Stanley Pignal, *France and Germany Block Eastern Extension to Schengen*, FINANCIAL TIMES, Dec. 22, 2010, at 6.

117. *France Avoids E.U. Legal Hammer over Roma Crackdown*, *supra* note 114; *Europe: Just About Rights? The European Commissioner for Justice and Fundamental Rights Talks to Simon O'Connor About Brussels Role in Upholding the Continent's Core Values and Her Plans To Tighten EU Data Protection Laws*, E!SHARP (Feb. 28, 2011), http://www.esharp.eu/issue/2011-2/Europe-Just-about-rights. European Union directives are not self-enforcing; instead, they "lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so." *Application of EU Law*, EUR. COMMISSION, http://ec.europa.eu/community_law/directives/directives_en.htm (last updated Aug. 17, 2011); *see also* MILIEU LTD. & EUROPA INST., CONFORMITY STUDIES OF MEMBER STATES' NATIONAL IMPLEMENTATION MEASURES TRANSPOSING COMMUNITY INSTRUMENTS IN THE AREA OF CITIZENSHIP OF THE UNION, FINAL REPORT I, 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: HORIZONTAL SYNTHESIS REPORT 6 (2008) (charting what provisions had previously been transposed correctly, incorrectly, or not at all by EU member states).

118. *See Interview with European Commission Vice-President Viviane Reding, Responsible for Justice, Fundamental Rights and Citizenship*, EUR. UNION AGENCY FOR FUNDAMENTAL RTS. (Feb. 17, 2011), http://www.fra.europa.eu/fraWebsite/news_and_events/infocus11_1702_en.htm.

119. *Id.*

120. 2004 Directive on Free Movement, *supra* note 115, at 81.

121. *Id.*

122. *Id.* at 93–94. The Directive provides:

> 1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

the Directive states that individuals seeking work may be expelled for reasons of public policy or public security, this must be done on an individual basis.[123] Before expelling someone for these reasons, officials in the host nation must have determined that the "*personal conduct of the individual concerned*" is a threat.[124]

France requires that those seeking to reside in the country for more than three months must obtain a residence permit.[125] Prior to arrival in France, an alien who intends to work must obtain a long-term visa from French consular officials; the prospective employer initiates the process by submitting an application for the visa to the French National Agency for

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(a) are workers or self-employed persons in the host Member State; or

(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or

(c) – are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and

– have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or

(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

Id.

123. *Id.* at 113–14. The Directive states:

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures. The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

Id. at 114.

124. *Id.* (emphasis added).

125. L'ordonnance 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France [Ordinance 45-2658 of November 2, 1945 on the Conditions of Entry and Residence of Foreigners in France], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Nov. 4 1945, p. 7225, *amended by* Loi 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité [Law 2003-1119 of November 26, 2003 on the Control of Immigration, the Stay of Foreigners in France, and Nationality], J.O., Nov. 27, 2003, p. 20137.

Employment.[126] Law 2003-1119 of Nov. 26, 2003, amended French immigration law to state, "Nationals of European Union member states, from another state party to the Agreement on the European Economic Area or Switzerland, who want to establish residence in France are not required to have a residence permit."[127] This language was largely preserved in a 2004 law that rewrote French immigration rules, except that new member states of the EU were subject to transitional measures.[128] Until January 1, 2014, Bulgarian and Romanian citizens must obtain a work permit to live in France.[129] Taken together, the 2004 Directive and current French immigration law require France to investigate the

126. MARTINDALE-HUBBELL INTERNATIONAL LAW DIGEST, FRANCE 31 (2008), *available at* http://www.martindale.com/members/Article_Atachment.aspx?od=&id=537118&filename=asr-631560.pdf.

127. Ordinance 45-2658 of November 2, 1945, art. 9-1, *amended by* Law 2003-1119 of November 26, 2003, art. 14. The original French reads, *"Les ressortissants des Etats membres de l'Union européenne, d'un autre Etat partie à l'accord sur l'Espace économique européen ou de la Confédération helvétique qui souhaitent établir en France leur résidence habituelle ne sont pas tenus de détenir un titre de séjour." Id.*

128. L'ordonnance 2004-1248 du 24 novembre 2004 relative à la partie législative du code de l'entrée et du séjour des étrangers et du droit d'asile [Ordinance 2004-1248 of 24 November 2004 on the Legislative Part of the Code for the Entry and Stay of Foreigners and Asylum], J.O., Nov. 25, 2004, p. 19924. The 2004 law adds to the 2003 law:

> *S'ils en font la demande, il leur est délivré un titre de séjour, sous réserve d'absence de menace pour l'ordre public.*
>
> *Toutefois, demeurent soumis à la détention d'un titre de séjour durant le temps de validité des mesures transitoires éventuellement prévues en la matière par le traité d'adhésion du pays dont ils sont ressortissants, et sauf si ce traité en stipule autrement, les ressortissants des Etats membres de l'Union européenne qui souhaitent exercer en France une activité économique.*
>
> *Un décret en Conseil d'Etat précise les conditions d'application du présent article.*
>
> [If they request it, they are issued a residence permit, as long as they are found to be no threat to the public order.
>
> However, nationals of member states of the European Union who wish to pursue economic activity will remain under the jurisdiction of a residence permit for the duration of the validity of any transitory measures foreseen in the membership treaty materials of their country of origin, unless that treaty stipulates otherwise.
>
> A State Council decree specifies the conditions of this article's application.]

Id.

129. *Droit au Travail en France des Citoyens Européens* [Right to Work in France for European Citizens], SERVICE-PUBLIC.FR, http://vosdroits.service-public.fr/F2739.xhtml (last updated June 21, 2011) [hereinafter *Droit au Travail*] (*"Le citoyen bulgare ou roumain doit posséder un titre de séjour, s'il souhaite exercer une activité professionnelle, salariée ou non salariée, en France."* ["Bulgarian and Romanian citizens must have a residence permit if they wish to pursue an occupation, paid or unpaid, in France."]).

individual circumstances of allegedly deportable Roma in order to determine if they belong in France or if they have been there for more than three months.[130] France is within its rights to deport "illegal" immigrants from Bulgaria and Romania who are in the country for more than three months.[131] The French government, however, is not doing enough to ensure that procedures are followed.[132]

The official document given to deported Roma, called "*L'obligation de quitter le territoire français*" ("Obligation to Leave the French Territory") (OQTF), states that those expelled have "lived in France for over three months, have insufficient financial resources to stay and no family obligations in the country."[133] The OQTF is clearly an attempt to satisfy the provisions of the 2004 Directive; however, it falls short because it is not individualized.[134] The European Roma Rights Centre (ERRC) has found that the OQTFs used in recent raids are all generic forms, with "no reference . . . made to the specific circumstances of each person."[135] Additionally, "[t]he handwriting is the same on each form and names are inserted into pre-printed forms with a space sometimes not even big enough to fit the name."[136] The ERRC and other organizations maintain that blank presigned forms were filled out at the homes of Roma.[137] The ERRC and lawyers for several of the Roma ordered to leave France also maintain that no interviews or investigations were conducted into the specific circumstances of each individual Roma deported from France.[138] The French expelled the Roma without meeting the necessary administrative

130. 2004 Directive on Free Movement, *supra* note 115, at 114.

131. Editorial, *France and Its Deportation of Roma (Gypsies) – Echoes of U.S.?*, CHRISTIAN SCI. MONITOR, Sept. 1, 2010, at 23.

132. *See* 2004 Directive on Free Movement, *supra* note 115, at 114; Marianne Niosi, *Roma Expulsion Orders Called into Question by Lawyers*, FRANCE 24, http://www.france24.com/en/20101014-france-roma-expulsion-orders-documents-identical-justice-EU-law-police-montreuil (last updated Oct. 15, 2010).

133. Niosi, *supra* note 132.

134. *See, e.g.*, EUROPEAN ROMA RIGHTS CTR., SUBMISSION TO THE EUROPEAN COMMISSION IN RELATION TO THE ANALYSIS & CONSIDERATION OF LEGALITY UNDER EU LAW OF THE SITUATION OF ROMA IN FRANCE: FACTUAL UPDATE 2 (2010) [hereinafter FACTUAL UPDATE], *available at* http://www.errc.org/cms/upload/file/france-ec-legalbrief-27-sept-2010.pdf (stating that the French government has not met the requirement of the 2004 Directive on Free Movement to examine personal conduct of individuals).

135. *Id.* at 3.

136. *Id.*; *see also* Niosi, *supra* note 132.

137. FACTUAL UPDATE, *supra* note 134, at 3.

138. *Id.*; Niosi, *supra* note 132.

and investigatory requirements of the 2004 Directive.[139] When one considers that Roma were the specific target of the current French crackdown, and that no specific allegations were made against anyone deported by the French government, it becomes clear that the French government believes that the Roma as a group are a public threat.[140]

The French are currently attempting to conform to the wording of the 2004 Directive without conforming to its substance.[141] Even though the European Commission is dropping the infringement proceedings pending France's transposition of the Directive into French law,[142] there is no reason to think that France will comply fully with the Directive. Transposing it into French law will give France no more reason to comply than it already had. In fact, transposition gives the French more cover to continue their current practices with less scrutiny from the EU.[143] The French government's treatment of European Roma will almost certainly continue to fail to meet the standards compelled by the Directive.[144]

The French government may believe it can fix its Roma "problem" by deporting Roma to Bulgaria and Romania; however, deportation only delays a solution. In 2014, restrictions on Bulgarian and Romanian immigrants throughout the EU will be lifted.[145] While France currently has the right to deport Bulgarian and Romanian Roma if the proper procedures are followed, in only a few years that will no longer be the case. After 2014, when these same Roma immigrants return to France, the French government will not be able to deport them for lack of employment. More and more Romanian and Bulgarian Roma will travel to Western Europe looking for a better life.[146] France needs to prepare for a large influx of Roma immigrants in 2014. France currently has a

139. *See* 2004 Directive on Free Movement, *supra* note 115, at 114; Factual UPDATE, *supra* note 134, at 2.

140. *See, e.g.*, FACTUAL UPDATE, *supra* note 134, at 2 (listing documented situations in which expulsions without individual considerations have been undertaken by French authorities).

141. *Id.* at 3.

142. *France Avoids E.U. Legal Hammer over Roma Crackdown*, *supra* note 114.

143. *See id.*

144. *See* FACTUAL UPDATE, *supra* note 134, at 3.

145. *Droit au Travail*, *supra* note 129. In 2014, the French government will no longer require work permits for Bulgarian and Romanian citizens. *Bulgarians, Romanians Vulnerable in France Until 2014, Says Expert*, EURACTIV.COM (Sept. 3, 2010), http://www.euractiv.com/en/socialeurope/ bulgarians-romanians-vulnerable-france-until-2014-says-expert-news-497438.

146. *See supra* notes 99–100 and accompanying text.

statute requiring local governments to establish camps for nomadic peoples; however, only one-fourth of municipalities are in compliance.[147] French municipalities should prepare for the large influx of non-deportable Roma by establishing the required stopping points for nomadic Roma.

All of the member states of the EU must ensure that the Roma are afforded the same rights and privileges of other EU citizens. The EU should continue to put pressure on the French government—indeed on all member governments—to enforce the 2004 Directive on Free Movement as it applies to Roma. Accordingly, infringement proceedings should immediately begin anew against France and any other country that has not transposed the 2004 Directive correctly.[148]

B. Violations of the European Convention on Human Rights

In addition to the 2004 Directive on Free Movement, many European governments may be in violation of Protocol 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) with regard to their treatment of Roma.[149] Article 4 of Protocol 4 of the European Convention on Human Rights states simply that "[c]ollective expulsion of aliens is prohibited."[150] *Čonka v. Belgium*,[151] a 2002 European Court of Human Rights[152] case, addressed the issue of mass expulsions under the European Convention on Human Rights.[153] The expulsions in this case share many similarities with the current French expulsion measures.[154] In *Čonka*, the European Court of Human Rights held that Belgium's attempt to

147. O'NIONS, *supra* note 21, at 7.

148. *Id.*

149. *See* Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms Securing Certain Rights and Freedoms Other than Those Already Included in the Convention and in the First Protocol Thereto, art. 4, Sept. 16, 1963, E.T.S. No. 5, *available at* http://conventions.coe.int/Treaty/en/Treaties/html/005.htm [hereinafter Protocol 4 to the European Convention on Human Rights].

150. *Id.*

151. 2002-I Eur. Ct. H.R. 93.

152. The European Court of Human Rights was permanently established in 1998 to hear cases arising from the European Convention on Human Rights. *See* EUROPEAN COURT OF HUMAN RIGHTS, EUROPEAN COURT OF HUMAN RIGHTS IN BRIEF, *available at* http://www.echr.coe.int/NR/rdonlyres/DF074FE4-96C2-4384-BFF6-404AAF5BC585/0/Brochure_en_bref_EN.pdf (last visited Sept. 13, 2011).

153. *Čonka*, 2002-I Eur. Ct. H.R. at 97–98; *see also* FACTUAL UPDATE, *supra* note 134, at 3.

154. *See Čonka*, 2002-I Eur. Ct. H.R. at 118 (stating that the Belgian government had revealed in leaked letters that they specifically targeted Roma).

deport Slovakian Roma violated article 4 of Protocol 4 of the European Convention on Human Rights.[155] The court stated that "'collective expulsion' must be understood as meaning any 'collective implementation of expulsion measures,'" with no distinction between the decision to expel and its execution.[156] The court also found that letters from the Belgian government indicated that Belgium was collectively targeting Slovakian nationals.[157] On December 23, 1999, the Belgian Minister of the Interior responded to a question from Parliament by saying, "Owing to the large concentration of asylum-seekers of Slovakian nationality . . . arrangements have been made for their collective repatriation to Slovakia."[158] These facts are eerily similar to those facing the Roma in France.[159] The court found that the Belgian letters and statements were proof of a "general system intended to deal with groups of individuals collectively."[160] The court stated that violation of "[a]rticle 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual."[161] The court, however, went on to say that merely because there is an objective examination of individual circumstances does not mean that there has not been a violation.[162] Because France has not adequately made individual examinations in its expulsion of Roma, it is in blatant violation of Protocol 4—more so than the Belgian government in *Čonka*.[163] The court went

155. *Id.* at 120.

156. *Id.* at 117–18.

157. *Id.* at 118.

> [L]etters sent on 24 August 1999 by the Director-General of the Aliens Office to the Minister of the Interior and the Commissioner-General for Refugees and Stateless Persons, in which the Director-General had announced that requests for asylum by Slovakian nationals would be dealt with rapidly in order to send a clear signal to discourage other potential applicants. [There was also a] "Note providing general guidance on overall policy in immigration matters", which . . . contain[ed] the following passage: "A plan for collective repatriation is currently under review, both to send a signal to the Slovakian authorities and to deport this large number of illegal immigrants whose presence can no longer be tolerated."

Id.

158. *Id.*

159. *See supra* notes 133–40 and accompanying text.

160. *Čonka*, 2002-I Eur. Ct. H.R. at 118.

161. *Id.* at 119.

162. *Id. Contra id.* at 137 (Jungweirt, J., dissenting) (stating that since Belgium examined the individual circumstances of those being deported, it was not in violation of Protocol 4).

163. *Compare id.* at 119 (discussing the lengths to which the Belgian government went in order to satisfy article 4 of Protocol 4's requirement that each

on to list a series of factors indicating that Belgium was engaging in collective expulsion:

> [F]irstly, prior to the applicants' deportation, the political authorities concerned had announced that there would be operations of that kind and given instructions to the relevant authority for their implementation . . . . [S]econdly, all the aliens concerned had been required to attend the police station at the same time; thirdly, the orders served on them requiring them to leave the territory and for their arrest were couched in identical terms; fourthly, it was very difficult for the aliens to contact a lawyer; lastly, the asylum procedure had not been completed.[164]

The first and third factors are especially relevant to the situation in France.[165] The French OQTFs have been "couched in identical terms."[166] The French have made no attempt to investigate the individual circumstances of Roma who are deported from France.[167] At times, France has even failed to verify whether they have been in the country for more than the requisite three months.[168]

The French government is not alone in violating the European Convention on Human Rights with regard to treatment of the Roma.[169] Italian government officials have made several statements about the Roma and the Italian national policy toward them.[170] For example, when explaining a campaign to destroy illegal camps near Milan, the vice mayor of the city said, "These are dark-skinned people, not Europeans like you and me."[171] Additionally, Italian officials have specifically targeted the group

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expulsion be examined individually), *with supra* notes 133–40 and accompanying text (discussing the failure of the French government to take adequate measures to ensure that it examines individual circumstances of everyone deported).

164. *Čonka*, 2002-I Eur. Ct. H.R. at 120.

165. *See id.*; *supra* notes 133–40 and accompanying text.

166. *See supra* notes 134–38 and accompanying text.

167. *See* Niosi, *supra* note 132.

168. *Id.* ("[M]any [Roma] insist they have not spent three months in France. Their assertion, however, is impossible to verify. As European citizens, they have no obligation to register in their host country, or to have their passports stamped when crossing the border.").

169. The Berlusconi administration in Italy has cracked down on Romani immigrants. John Hooper, *Berlusconi Clamps Down on Gypsies*, GUARDIAN, May 22, 2008, at 22. Germany is deporting Kosovar Roma who received asylum during the Kosovo War. *German-Born Roma Teens Face Tough New Life*, LOCAL (Aug. 19, 2010), http://www.thelocal.de/society/20100819-29267.html.

170. *See, e.g.*, John Hooper, *Berlusconi Sweeps Back to Power as Left Concedes Defeat in Italian Elections*, GUARDIAN, Apr. 15, 2008, at 14 (stating that on Prime Minister Berlusconi's first day in office he referred to Romani immigrants as an "army of evil").

171. Anthony Faiola, *Italy Closes Door on Gypsies*, WASH. POST, Oct. 12, 2010, at A1.

by speaking of a "Roma emergency."[172] In 2008 the Italian high court "ruled that it was acceptable to discriminate against Roma on the grounds that 'all Gypsies were thieves,' rather than because of their 'Gypsy nature.'"[173] Under the precedent set by *Čonka*, the Italian government is also violating article 4 of Protocol 4 of the European Convention on Human Rights because Italy is selectively targeting an ethnic group.[174] Italian officials have also made "unauthorized entry into Italy a crime."[175] This was done at least in part to make collective expulsion of the Roma easier, despite the Roma's status as EU citizens.[176]

Italy, France, and possibly other European governments have violated the European Convention on Human Rights. Those persons deported from France or driven from their homes in other countries have the right to sue under this treaty.[177] Unfortunately, many Roma do not know of or understand their rights as Europeans.[178] The European Convention on Human Rights applies to all people under a contracting state's jurisdiction, including illegal immigrants.[179] Individuals may bring cases against states before the European Court of Human Rights, but nongovernmental organizations do not have standing.[180] The Council of Europe, however, has made legal aid available for those who wish to petition the European Court of Human Rights, and it is possible that as their story continues to grow the Roma will be able to avail

172. *Italian Official Proposes Fingerprinting All Gypsies*, MSNBC.COM (June 28, 2008), http://www.msnbc.msn.com/id/25432128/ns/world_news-europe.

173. Seumas Milne, *This Persecution of Gypsies Is Now the Shame of Europe*, GUARDIAN, July 10, 2008, at 29.

174. *See* Goldston, *supra* note 16 (reporting that Italian Interior Minister Roberto Maroni is alleged to have said, "All Romani camps will have to be dismantled right away, and the inhabitants will be either expelled or incarcerated").

175. Hooper, *supra* note 170.

176. *See id.*; Goldston, *supra* note 16.

177. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953), *amended by* Protocols Nos. 3, 5, 8, & 11 (which entered into force Sept. 21, 1970, Dec. 20, 1971, Jan. 1, 1990, and Nov. 1, 1998, respectively) [hereinafter European Convention on Human Rights], *available at* http://www1.umn.edu/humanrts/instree/z17euroco.html.

178. FACTUAL UPDATE, *supra* note 134, at 3 (explaining that many Roma deported do not understand their rights).

179. European Convention on Human Rights, *supra* note 177, art. 1.

180. Eric Engle, Private Law Remedies for Extraterritorial Human Rights Violations 182 (Jan. 30, 2006) (unpublished Ph.D. dissertation, University of Bremen) (on file with University of Pittsburgh), *available at* http://aei.pitt.edu/7547/1/doktorarbeit.pdf.

themselves of other legal aid.[181] Nongovernmental organizations, such as the European Roma Rights Centre, the International Romani Union, and the French Human Rights League, should help to fund lawsuits by Romani individuals against European countries to force violating nations to comply with the European Convention on Human Rights in their treatment of Roma. This effort should be against any and all European nations that discriminate against Roma in violation of the European Convention on Human Rights.

Conclusion

Roma have been traditionally marginalized in European society.[182] Documented discrimination against the Roma goes back to the fourteenth century.[183] Stigmatization of the Roma is commonplace throughout Europe.[184] France is among the worst offenders in Western Europe by virtue of its institutionalized discrimination against the Roma.[185] Some European nations have been unabashedly public about targeting Roma.[186] European nations have cracked down on hundreds of nomadic Romani camps, forcing Roma to leave.[187]

France is in violation of the 2004 Directive on Free Movement because it has not ensured that each person deported was expelled because of that person's individual circumstances. The French government has expelled Roma using forms with boilerplate language.[188] Additionally, European politicians have shown blatant disregard for the well-being of the Roma.[189] The EU should continue infringement proceedings if France continues its current policies, whether the Directive is transposed satisfactorily or not.[190]

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181. Gianluco Esposito, *Legal Aid for 800 Million Europeans: The Council of Europe Efforts*, EUR. ROMA RTS. CENTRE (Apr. 10, 2001), http://www.errc.org/cikk.php?cikk=663 (detailing the legal aid systems in several European countries and what the Council of Europe is doing to promote the availability of legal aid).

182. *See* O'NIONS, *supra* note 21, at 1 ("Prejudice is exhibited by the non-Roma (Gadjo) citizens, media, government officials and law enforcers alike.").

183. *See* FRASER, *supra* note 1, at 57–59 (discussing the enslavement of the Roma in Wallachia and Moldova).

184. *See* O'NIONS, *supra* note 21, at 1.

185. *See Q&A France Roma Expulsions*, *supra* note 86 (discussing the treatment of Roma in France).

186. *See supra* note 109 and accompanying text.

187. Anna Momigliano, *Italy Targets Illegal Migrants*, CHRISTIAN SCI. MONITOR, July 25, 2008, at 7; *French Ministerial*, *supra* note 1.

188. *See supra* notes 133–40 and accompanying text.

189. Faiola, *supra* note 171.

190. *But see France Avoids E.U. Legal Hammer over Roma Crackdown*, *supra* note 114 (speculating that the Commission ultimately would have lost the legal

France and Italy are also in violation of the European Council's European Convention on Human Rights and its prohibition on collective expulsions. The European Court of Human Rights has defined "collective expulsion" as "any collective implementation of expulsion measures."[191] French and Italian officials have spoken out frequently against Roma immigrants, showing that actions against them are ethnically motivated.[192] These countries have blatantly violated the terms of the Convention.

The European Convention on Human Rights and the European Union's 2004 Directive on Free Movement are by no means the only international laws and agreements violated. For example, the European Union's Charter of Fundamental Human Rights also has a provision prohibiting collective expulsion.[193] Citizens of the EU and Council of Europe member nations should be aware of their rights. The EU should continue to pursue infringement proceedings against any and all European nations discriminating against Roma in violation of EU law. Organizations dedicated to improving the quality of life for Roma may be able to help the Roma address discrimination in these countries.[194] The Italian government, however, has recently said that it will introduce a bill to formalize the procedures to remove EU citizens from Italy.[195] The future of the Roma in Europe is in no way clear. Unfortunately, if history is any guide, it will not be a decade of Roma inclusion but a continuation of centuries of discrimination. Hopefully, increased awareness of Roma issues will spur European organizations to do what is right and protect one of the most marginalized minorities in Europe.

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battle in the European Court of Justice).

191. *Čonka v. Belgium*, 2002-I Eur. Ct. H.R. 93, 117–18 (quotation omitted).

192. *See, e.g.*, *French Ministerial*, *supra* note 1 (detailing a French interior ministry circular designating Roma camps as the priority to be cleared); *Italian Official Proposes Fingerprinting All Gypsies*, *supra* note 172 (reporting on an Italian proposal to fingerprint all Roma).

193. Charter of Fundamental Rights of the European Union, art. 19, Dec. 18, 2000, 2000 O.J. (C 364) 1, 12.

194. *See* O'NIONS, *supra* note 21, at 276.

195. Gabriella Bianchi & Guy Dinmore, *Italy Pushes Law Driven by Roma Influx*, FIN. TIMES (Sept. 10, 2010), http://www.ft.com/cms/s/0/b8033c7e-bd1d-11df-954b-00144feab49a.html#axzz164xt6I8I.