

NOTES

PLEASE DON'T BE OUR GUEST: THE ROMA EXPULSION FROM FRANCE UNDER EUROPEAN UNION LAW

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I. INTRODUCTION: FRENCH POLICY OF EXPULSION

In late July 2010, French President Nicolas Sarkozy initiated a policy of expulsion aimed at the Roma minority in France.¹ The targeted Roma, European Union (EU) citizens primarily from either Romania or Bulgaria, were living in makeshift camps throughout the country.² The President's action was a response to a perceived threat of criminal activity within the Roma camps.³ The policy was not exactly new, as France deported thousands of Roma the previous year without any intense publicity.⁴ However, the President's policy, which accelerated the practice of deportation, combined with discriminatory rhetoric by the French administration, proved controversial.⁵ Officially, the French government claimed that it was not targeting the Roma specifically, but simply deporting non-nationals that posed a threat to public security.⁶ Shortly after the deportations began, however, an official government document was leaked to the press that explicitly and repeatedly named the Roma as the central object of the policy.⁷ As a result, what was once only a spark of controversy quickly ignited a firestorm.⁸ Many critics, including the European Commission (Commission),⁹ promptly pointed to potential violations of EU freedom of movement and anti-discrimination laws.¹⁰ To date, however, no serious legal action has been taken against France.¹¹

¹ *Protesters Deride French President's Crackdown on Gypsies and New Security Tack*, FOXNEWS.COM (Sept. 4, 2010), <http://www.foxnews.com/world/2010/09/04/protesters-deride-french-presidents-crackdown-gypsies-new-security-tack/>.

² *France Starts Removing Roma Camps*, BBC NEWS (Aug. 6, 2010), <http://www.bbc.co.uk/news/world-europe-10892669>.

³ *Id.*

⁴ Steven Erlanger, *France Intensifies Effort to Expel Roma, Raising Questions*, N.Y. TIMES, Aug. 20, 2010, at A4.

⁵ *See id.* (noting that what has changed "is the aggressiveness and frequency of the camp clearings"); *see also France: 300 Roma Are Sent to Romania amid Rebukes*, N.Y. TIMES, Aug. 27, 2010, at A8 (noting "French officials' discriminatory tone" and the resulting "widespread criticism").

⁶ Erlanger, *supra* note 4.

⁷ Kim Willsher, *Orders to Police on Roma Expulsions from France Leaked*, GUARDIAN (Sept. 13, 2010), <http://www.guardian.co.uk/world/2010/sep/13/sarkozy-roma-expulsion-human-rights>.

⁸ *Id.*

⁹ The Commission's important role in enforcing EU law is discussed *infra* Part IV.B.

¹⁰ *Q&A: France Roma Expulsions*, BBC NEWS (Oct. 19, 2010), <http://www.bbc.co.uk/news/world-europe-11027288>.

¹¹ *Id.*

This Note argues in favor of the Roma's right to remain in France under specific EU laws binding on France. Two sources of EU law will be analyzed: the 2004 European Council Directive on freedom of movement (2004 Directive)¹² and the Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights).¹³ Although other sources of EU law, French domestic law, and transnational law may apply, they will not be considered as the 2004 Directive and the Charter of Fundamental Rights are binding authority, on point, and support a strong case against France.

This topic is important for several reasons. First, the treatment of the Roma in France is by no means an isolated case of discrimination, but is rather an illustration of a broader trend of wealthy states' attitudes toward and treatment of immigrant populations from less affluent countries. Developed nations, particularly, often strain to balance the needs of an ailing immigrant community with the legitimate state concerns of public security and public burden.¹⁴ The French-Roma issue is particularly expressive of these concerns. Left unchecked, a state's interests will often triumph over the rights of an undesired immigrant minority. But this Note posits a different potential outcome under the umbrella of EU law.

Second, if unpunished, France's treatment of the Roma could send a message to the other twenty-six EU member states¹⁵ about how they may treat their Roma populations and other minorities, despite their status as EU citizens. In fact, while France's actions are particularly flagrant, certain other EU member states already have similar discriminatory policies aimed at the Roma.¹⁶ These facts starkly contrast a backdrop of many EU resolutions and initiatives aimed at Roma inclusion and protection,¹⁷ not to

¹² Directive 2004/38, on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely Within the Territory of the Members States, 2004 O.J. (L 158) 77 (EC) [hereinafter 2004 Directive].

¹³ Charter of Fundamental Rights of the European Union, Dec. 7, 2000, 2000 O.J. (C 364) 1 [hereinafter Charter of Fundamental Rights].

¹⁴ See James F. Hollifield et al., *The Liberal Paradox: Immigrants, Markets and Rights in the United States*, 61 SMU L. REV. 67, 68 (2008) (noting that liberal democracies are often driven to open their borders to immigration to benefit their market economy, but simultaneously pressured by internal political forces for stricter border policies).

¹⁵ *Countries*, EUROPA, http://europa.eu/about-eu/countries/index_en.htm (last visited Sept. 13, 2011).

¹⁶ See e.g., *EU Nations and Roma Repatriation*, BBC NEWS (Sept. 17, 2010), <http://www.bbc.co.uk/news/world-europe-11344313> (summarizing the policies of Italy, Spain, Germany, and the United Kingdom concerning their Roma minorities).

¹⁷ See European Parliament Resolution of 9 September 2010 on the Situation of Roma and on Freedom of Movement in the European Union, 2011 O.J. (C 308 E) 73 [hereinafter Resolution on the Situation of Roma] (European Parliament's response to the French policy which

mention the protective laws discussed below. The conflict between the EU's idealistic vision for minorities and the reality of state practice are at the heart of the French-Roma controversy.

Finally, this topic illustrates an interesting problem for EU development. As the EU expands to new areas of territory and influence,¹⁸ there exists a natural friction between its authority and that of the once-autonomous member states.¹⁹ This resistance has become even more abrasive as the EU has expanded to nations less developed than the original group of Western European states, making the EU less cohesive.²⁰ Furthermore, the EU now officially has a "legal personality"²¹ and retains some room to chart its own destiny by selecting the response to questionable member state policies. In this instance, by failing to bring the Roma's case before the European Court of Justice (ECJ),²² the EU has sent the message that violations of EU law with respect to minority groups will be tolerated.²³ The evidence that France violated EU law, however, as shown below, is compelling.

Part II of this Note gives a brief overview of the Roma as a people, including their origin, diaspora, culture, and history of discrimination. Part III provides further detail about the French policy and the controversy surrounding it. Next, because laws cannot be divorced from the system in which they operate, Part IV details basic knowledge about the EU, particularly its formation, evolution, institutional structure, and hierarchy of laws. Part V discusses the 2004 Directive, the Charter of Fundamental Rights, and the arguments based upon them. Part VI concludes that even binding EU law stands as a mere aspiration while member states are free to deny EU citizens of their rights without appropriate sanction.

summarizes the many prior EU efforts relating to the Roma).

¹⁸ For an overview of the various EU expansions, see *infra* Part IV.A.

¹⁹ See Peter L. Lindseth, *Democratic Legitimacy and the Administrative Character of Supranationalism: The Example of the European Community*, 99 COLUM. L. REV. 628, 672 (1999) ("The evolving variable geometry in Community law may simply lay the groundwork for further highly contentious legal disputes over perhaps the most sensitive issue in Community law: the line between national and supranational competence.").

²⁰ See Natalie Shimmel, *Welcome to Europe, But Please Stay Out: Freedom of Movement and the May 2004 Expansion of the European Union*, 24 BERKELEY J. INT'L L. 760, 763-64 (2006) (noting Western Europe's fear that the 2004 admittance of the less developed and fledgling democratic Eastern European nations would destabilize the EU because of the existing disparities).

²¹ EUROPEAN COMM'N, YOUR GUIDE TO THE LISBON TREATY 15 (2009) [hereinafter YOUR GUIDE TO THE LISBON TREATY], available at <http://ec.europa.eu/publications/booklets/others/84/en.pdf>.

²² For a brief explanation of the ECJ's role in enforcing EU law, see *infra* Part IV.B.

²³ Q&A: *France Roma Expulsions*, *supra* note 10.

II. THE ROMA PEOPLE

A. Names and Origin

The designation "Roma" encapsulates a host of different peoples that are collectively treated as a single, distinct ethnic group under EU law.²⁴ The origin of the Roma is an issue of some debate, but most agree that they originated from Northern India as shown by similarities between Romani dialects and the languages of that area.²⁵ However, the general consensus ends there. There are many theories on exactly how and when the Roma made the move to Europe with dramatic variation among them.²⁶ Regardless of exactly how and when they got there, it is generally accepted that the Roma made it to Southeastern Europe by the fourteenth century.²⁷ The Roma spread across Europe, in varying degree, by the sixteenth century, slowly migrating from east to west,²⁸ a trend that continues to this day.²⁹ The current wave, spurred by the 2007 entrance of Romania and Bulgaria to the EU,³⁰ catalyzed the current controversy in France.

B. Diaspora and Social Stratum

The Roma, a stateless ethnic group, are not the majority in any nation and have no country to call their own.³¹ They have become Europe's largest minority with an estimated population of ten to twelve million.³² However, an accurate figure of the Roma population is notoriously hard to pinpoint due to the social stigma associated with being Roma.³³ What is clear, though, is

²⁴ See generally *EU and Roma*, EUROPEAN COMM'N, http://ec.europa.eu/justice/discrimination/roma/index_en.htm (last updated May 31, 2011) (noting that "Roma" collectively denotes Roma, Gypsies, Travellers, Manouches, Ashkali, Sinti, and other groups of peoples).

²⁵ DONALD KENRICK, *GYPSIES: FROM THE GANGES TO THE THAMES* 3 (2004).

²⁶ *Id.* at 3–10 (discussing various theories on Romani origin).

²⁷ *Id.* at 36.

²⁸ *Id.* at 39.

²⁹ See CLAUDE CAHN & ELSPETH GUILD, COUNCIL OF EUROPE COMM'R FOR HUMAN RIGHTS, *RECENT MIGRATION OF ROMA IN EUROPE* 15 (2d ed. 2010), available at <http://www.osce.org/hcnm/78034> (citing the masses of Roma emigrating into France in 2000).

³⁰ *Member Countries: Romania*, EUROPA, http://europa.eu/about-eu/countries/member-countries/Romania/index_en.htm (last visited Sept. 10, 2011); *Member Countries: Bulgaria*, EUROPA, http://europa.eu/about-eu/countries/member-countries/Bulgaria/index_en.htm (last visited Sept. 10, 2011).

³¹ Adam M. Warnke, *Vagabonds, Tinkers, and Travelers: Statelessness Among the East European Roma*, 7 *IND. J. GLOBAL LEGAL STUD.* 335, 351–53 (1999).

³² *EU and Roma*, *supra* note 24.

³³ CAHN & GUILD, *supra* note 29, at 13 (noting that many Roma are not likely to report their

that Roma are present in all EU states with the dispersion varying greatly.³⁴ As far as the states involved in the current issue, recent estimates put the Roma populations of France at 400,000, Bulgaria at 750,000, and Romania at 1,850,000.³⁵

The Roma are the most impoverished ethnic group in the EU—a fact likely linked to a host of other problems.³⁶ For example, the Roma have very high rates of unemployment and low literacy rates.³⁷ Their lack of education is partly caused by the abundance of segregated schools and classrooms, particularly in Eastern Europe, where Roma children receive subpar educations that almost never lead to advanced degrees.³⁸ In addition, the Roma have lower life expectancies and higher infant mortality rates compared to other Europeans.³⁹ Finally, unsettled Roma often live in substandard housing environments,⁴⁰ epitomized by the camps targeted by the French policy.

C. Culture

Because of the diaspora, many divergent groups of Roma developed, making it impossible to identify a cohesive culture.⁴¹ Furthermore, there is no single set of religious beliefs that can be said to define them.⁴² The language associated with the Roma is Romani, which has varying dialects.⁴³ However, some Roma do not speak Romani and many speak it in conjunction with the language of their home country.⁴⁴ Despite this great variation, if there is one word that could describe the whole of Roma culture

true ethnicity to the authorities due to fear of discrimination, being deported, or simply being ousted as “gypsy”).

³⁴ See *id.* at 87–88 for a table with Roma population estimates for all European countries.

³⁵ *Id.* Romania and Bulgaria have the highest estimated Roma populations of the EU member states. *Id.*

³⁶ DENA RINGOLD ET AL., ROMA IN AN EXPANDING EUROPE: BREAKING THE POVERTY CYCLE, at xiv (2005) (“[The Roma] are poorer than other groups, more likely to fall into poverty, and more likely to remain poor. In some cases, Roma poverty rates are more than 10 times that of non-Roma.”).

³⁷ HELEN O’NIONS, MINORITY RIGHTS PROTECTION IN INTERNATIONAL LAW: THE ROMA OF EUROPE 8 (2007).

³⁸ Jack Greenberg, *Roma Victimization: From Now to Antiquity*, 41 COLUM. HUM. RTS. L. REV. 1, 7–9 (2009).

³⁹ O’NIONS, *supra* note 37, at 8.

⁴⁰ *Id.* at 15.

⁴¹ RINGOLD ET AL., *supra* note 36, at 10–12.

⁴² *Id.* at 10.

⁴³ KENRICK, *supra* note 25, at 3.

⁴⁴ CAHN & GUILD, *supra* note 29, at 13.

it would be *gadje*, the Romani word for non-Roma, because "Roma define themselves as distinct and different from gadje."⁴⁵ This cultural ideology helps explain the Roma's ability to separate themselves from the societies they inhabit despite often forceful efforts to integrate them.⁴⁶

D. History of Discrimination

Although the historical record is not precise, it is clear that many Roma were subjected to slavery at various times during their migration through Europe.⁴⁷ After the practice of slavery died out, the Roma endured the forced assimilation policies of the Austro-Hungarian Empire, a practice that spread to other areas of Europe.⁴⁸ Such policies included forbidding traditional Romani dress and the Romani language, restricting Roma movement, and forcibly taking Roma children and placing them with non-Roma families.⁴⁹ In the years leading up to and during World War II, it is estimated that Nazi Germany executed between 200,000 and 500,000 Roma.⁵⁰ In more modern times, the Roma have faced national "policies of sterilisation, compulsory name-changing and forced adoption . . . with an aim of restricting the birth rate and eliminating the reproduction of those considered 'social undesirables.'"⁵¹

Eastern European Roma, in a sense, actually fared a little better under the years of communism that followed World War II. Regardless of how poor the situation behind the Iron Curtain became for Eastern European countries as a whole, the Roma finally found themselves on more equal footing economically with the other citizens of those nations.⁵² After the fall of communism, however, the respite was over. These Roma found themselves in more despair than ever, not only because of discriminatory government policies, but also due to the growing anti-Roma sentiments of the public, which drove discrimination at every level of society.⁵³ Unsurprisingly, the

⁴⁵ RINGOLD ET AL., *supra* note 36, at 11.

⁴⁶ *Id.*

⁴⁷ See KENRICK, *supra* note 25, at 48–50 (discussing historical slave transfers of Gypsy families).

⁴⁸ ANGUS BANCROFT, *ROMA AND GYPSY-TRAVELLERS IN EUROPE* 27 (2005).

⁴⁹ *Id.* at 27–28.

⁵⁰ O'NIONS, *supra* note 37, at 9.

⁵¹ *Id.* at 9–10.

⁵² See generally *id.* at 8 (speaking of socio-economic gains experienced during the socialist era).

⁵³ See *id.* at 13 (noting that in a recent poll, 94% of Slovaks did not wish to have a Roma as a neighbor, and that other evidence suggests that similar sentiments are present across all of Europe).

Roma have since become convenient scapegoats for societal problems and adjustments.⁵⁴ Occasionally, these sentiments erupt in the form of racially motivated attacks against Roma, which have occurred throughout Europe from the early 1990s until today,⁵⁵ many such incidents have resulted in death.⁵⁶ Furthermore, political parties running on explicit anti-Roma platforms have had some success in certain European states, illustrating the widespread social disgust toward the Roma.⁵⁷ Given this startling history and reality, it becomes easy to understand the Roma's mistrust of others, their reluctance to identify themselves as Roma, and their resistance to social inclusion.

III. FRENCH POLICY IN DETAIL

A. Policy in Action

While most of the 400,000 Roma in France are settled and residing legally,⁵⁸ the French policy targets the roughly 12,000 Roma residing in camps located on land that they are not legally permitted to occupy.⁵⁹ Most of these Roma are those that have immigrated only in the past few years from Romania and Bulgaria and have not yet become settled into French society.⁶⁰ The French policy was enforced against each targeted camp as a unit. In a typical case, around one hundred French police officers descend on a Roma camp all at once.⁶¹ The Roma are then offered 300 euros per adult and 100 euros per child to agree to leave France "voluntarily" or face

⁵⁴ István Pogány, *Minority Rights and the Roma of Central and Eastern Europe*, 6 HUM. RTS. L. REV. 1, 11 (2006).

⁵⁵ See *id.* ("Acts of violence and intimidation directed against the Roma result, in part, from the fact that they have been treated as 'scapegoats', blamed for a perceived increase in levels of criminal activity and for other social ills."); O'NIONS, *supra* note 37, at 10–14 (detailing several examples of such racially motivated attacks since 1990).

⁵⁶ O'NIONS, *supra* note 37, at 10–14.

⁵⁷ *Id.* at 13–14.

⁵⁸ Q&A: *France Roma Expulsions*, *supra* note 10 (citing 400,000 Roma that are part of long-established communities in France).

⁵⁹ *Id.*; see also Letter from Robert Kushen, Exec. Dir., European Roma Rights Ctr., to Nicolas Sarkozy, President, Fr. (July 29, 2010), available at <http://www.errc.org/cms/upload/file/france-sarkozy-evictions-expulsions-july-2010.pdf> (noting that "many local authorities have failed to provide halting sites to meet the needs of French Travellers, despite legal obligations to do so since 2000" via French domestic law).

⁶⁰ *France Rounds up Hundreds of Roma*, BBC NEWS (Aug. 12, 2010), <http://www.bbc.co.uk/news/world-europe-10955717>.

⁶¹ Erlanger, *supra* note 4.

forcible expulsion.⁶² Either way, almost all of the Roma in the camps eventually find themselves on “specially chartered flights” back to their country of origin.⁶³ After eviction and deportation, the police dismantle the camps entirely in an attempt to prevent future migrants from taking up shop.⁶⁴ Living up to President Sarkozy’s promise that the illegal camps would be “systematically evacuated,” this process was repeated 300 times within just a few months, eliminating around half of all the Roma camps in France.⁶⁵

B. Leaked Directive and Criticism

In its earliest stages, France stated that the policy in no way targeted any ethnic group specifically.⁶⁶ It did not see the Roma as Roma, but instead, as non-nationals engaged in illegal activities.⁶⁷ However, after the internal government document dated August 5, 2010, was leaked to the press,⁶⁸ it became impossible to deny the true aim of the policy. The document, from the French Interior Ministry to regional police chiefs, repeatedly stated that the policy was aimed at illegal camps, “particularly those of the Roma.”⁶⁹ Although France quickly withdrew this document and issued a replacement without the damning word—Roma—the damage was already done.⁷⁰ The charade was over.

Heavy criticism of the French policy bellowed from European entities, international leaders, and French domestic sources. In early September, the European Parliament (Parliament) passed a non-binding resolution calling for an immediate end to the policy.⁷¹ France’s Immigration Minister, Éric

⁶² Bruce Crumley, *France Departs Gypsies: Courting the Xenophobes?*, TIME (Paris) (Aug. 19, 2010), <http://www.time.com/time/world/article/0,8599,2011848,00.html>; Doreen Carvajal, *France Vows to Continue Deporting Roma*, N.Y. TIMES (Aug. 25, 2010), <http://www.nytimes.com/2010/08/26/world/europe/26iht-roma.html>.

⁶³ *France Rounds up Hundreds of Roma*, *supra* note 60.

⁶⁴ Stephen Castle & Katrin Bennhold, *Dispute Grows over France’s Removal of Roma Camps*, N.Y. TIMES (Sept. 16, 2010), <http://www.nytimes.com/2010/09/17/world/europe/17unions.html?scp=22&sq=roma&st=cse>.

⁶⁵ *France Starts Removing Roma Camps*, *supra* note 2; *French Government Faces Internal ‘Malaise’ over Policy of Expelling Gypsies*, FOXNEWS.COM (Aug. 30, 2010), <http://www.foxnews.com/world/2010/08/30/french-government-faces-internal-malaise-policy-expelling-gypsies/>.

⁶⁶ Erlanger, *supra* note 4.

⁶⁷ Carvajal, *supra* note 62.

⁶⁸ Willsher, *supra* note 7.

⁶⁹ *Id.* (quoting the memo).

⁷⁰ Scott Sayare, *France: Replacement Directive Omits Word ‘Roma,’* N.Y. TIMES, Sept. 14, 2010, at A10.

⁷¹ Resolution on the Situation of Roma, *supra* note 17.

Besson, responded by calling the policy's cessation "out of the question" and calling the resolution "a political diktat."⁷² Later that month, a meeting of EU leaders designed to discuss the EU's role on the global stage, disintegrated into a heated debate between President Sarkozy and the President of the Commission, José Manuel Barroso, over the Roma issue and the Commission's series of threats to take legal action against France.⁷³ European Commissioner for Justice, Viviane Reding, indicated that she expected to see the case reach the ECJ, quite dramatically comparing the situation to the treatment of minorities in Europe during World War II, and calling the policy "a disgrace."⁷⁴

International leaders espoused similar sentiments. In an especially brazen example, Cuba's Fidel Castro stated that President Sarkozy had gone "crazy," calling the policy a "racial holocaust."⁷⁵ Some, particularly the French government, have understandably criticized such remarks as going much too far.⁷⁶ Other institutions that spoke out include the United Nations Committee on the Elimination of Racial Discrimination, the Vatican, and the European Roma Rights Centre.⁷⁷

Domestic forces within France have also expressed concern over the policy. Large protests and demonstrations occurred in France in opposition, including one of at least 12,000 people in Paris in early September 2010, which was comprised mostly of liberal activists and a few Roma.⁷⁸

⁷² Steven Erlanger, *France: Calls to End Expulsions*, N.Y. TIMES, Sept. 10, 2010, at A10.

⁷³ Castle & Bennhold, *supra* note 64.

⁷⁴ Stephen Castle, *Europe Advances Case Against over Expulsions*, N.Y. TIMES, Sept. 30, 2010, at A14; *see also* Viviane Reding, Vice President of the Euro. Comm'n Responsible for Justice, Fundamental Rights and Citizenship, Statement on the Latest Developments on the Roma Situation (Sept. 14, 2010) (transcript available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/428&format=HTML&aged=1&language=EN&guiLanguage=en>).

⁷⁵ *Cuba's Fidel Castro Says Nicolas Sarkozy Going Crazy*, BBC NEWS (Sept. 14, 2010), <http://www.bbc.co.uk/news/world-latin-america-11298197>.

⁷⁶ *See* Olivia Miljanic & Robert Zaretsky, *France: Behind the Expulsion of the Roma*, LE MONDE DIPLOMATIQUE (English edition) (Sept. 3, 2010), <http://mondediplo.com/blogs/france-behind-the-expulsion-of-the-roma> ("It's hard to know what is more outrageous: the policies practiced by President Sarkozy or the analogies proffered by his critics."); *French Answer Critic of Roma Expulsions*, N.Y. TIMES (Sept. 15, 2010), <http://www.nytimes.com/2010/09/16/world/europe/16roma.html?scp=9&sq=roma&st=cse> (quoting the French Minister for European Affairs, who stated that "[a] plane ticket back to the . . . country of origin is not the same thing as death trains and gas chambers"); *France Condemns Castro Roma 'Holocaust' Remark*, BBC NEWS (Sept. 11, 2010), <http://www.bbc.co.uk/news/world-europe-11271064> (noting the ignorance of such remarks).

⁷⁷ *Q&A: France Roma Expulsions*, *supra* note 10.

⁷⁸ *Protesters Deride French President's Crackdown on Gypsies and New Security Tack*, *supra* note 1.

However, these demonstrations were smaller than predicted.⁷⁹ As for France's Roma themselves, those that have not yet been expelled are understandably timid about protesting.⁸⁰ One Roma group, however, after being evicted from their camp, blocked a busy French bridge with 250 vehicles for five hours in protest.⁸¹ Despite all of the external and internal pressure, France remained unmoved; President Sarkozy stated: "We will continue to dismantle the illegal camps, whoever is there."⁸²

C. French Motives

The French government's official purpose behind the policy was to combat crime, specifically illegal trafficking, child exploitation, and prostitution.⁸³ It saw the Roma camps as a major source of such activity.⁸⁴ More directly, the policy was provoked by an attack on a police station in a French town committed by a group of young Roma just weeks prior to the policy's inception.⁸⁵ This attack, which itself was motivated by a prior incident with the French police, resulted in the death of a young Roma man and spawned riots.⁸⁶

Critics of the government's official explanation believe that the policy is really an attempt by President Sarkozy to rally support from his right-wing base to increase his waning chance of reelection in 2012.⁸⁷ Prior to the expulsions, his approval ratings were at an all-time low and a majority of the French public favored the policy.⁸⁸ Similarly, some argued that the policy was designed to avert the public eye from a recent corruption claim against

⁷⁹ *Protests Against Roma Expulsions Held in France*, BBC NEWS (Sept. 4, 2010), <http://www.bbc.co.uk/news/world-europe-11186592>.

⁸⁰ *Protesters Deride French President's Crackdown on Gypsies and New Security Tack*, *supra* note 1.

⁸¹ *Roma Protest Blocks French Bridge*, BBC NEWS (Aug. 15, 2010), <http://www.bbc.co.uk/news/world-europe-10982129>.

⁸² Castle & Bennhold, *supra* note 64.

⁸³ *France Sends Roma Gypsies back to Romania*, BBC NEWS (Aug. 20, 2010), <http://www.bbc.co.uk/news/world-europe-11020429>.

⁸⁴ *Id.*

⁸⁵ *France Rounds up Hundreds of Roma*, *supra* note 60.

⁸⁶ *Q&A: France Roma Expulsions*, *supra* note 10.

⁸⁷ *French Crackdown on Gypsies Raises Concerns About Discrimination*, FOXNEWS.COM (Aug. 18, 2010), <http://www.foxnews.com/world/2010/08/18/french-crackdown-gypsies-raises-concerns-discrimination/>.

⁸⁸ Bruce Crumley, *France: Anger as Sarkozy Targets Roma in Crime Crackdown*, TIME (July 23, 2010), <http://www.time.com/time/world/article/0,8599,2005818,00.html>; *Q&A: France Roma Expulsions*, *supra* note 10 (noting that 65% of French supported the policy).

Sarkozy's administration.⁸⁹ Sarkozy's party had taken a huge hit when twenty of his cabinet members ran in regional elections in 2010 and all of them lost—considered a forecast of the presidential race.⁹⁰ These facts taken together support the inference that the policy may merely have been the result of Sarkozy pandering to the electorate.

D. Contradiction and Complacency

The proud tradition of the French nation has suffered from the French-Roma controversy. The Czech Republic's Foreign Minister, Karel Schwarzenberg, speaking in reference to the Central and Eastern European countries, explained: "[W]e always look at France as a lighthouse of freedom and democracy."⁹¹ Traditionally, France is known throughout the world as a safe asylum for political refugees as part of a tradition of welcoming the oppressed.⁹² In light of the policies of the Sarkozy administration, however, many wonder what exactly has happened to the land of "*liberté, égalité* and *fraternité*."⁹³

On the other hand, it is also important to understand exactly why the Roma are flocking to countries like France. Most of the deported Roma are nationals of the less developed Romania and Bulgaria.⁹⁴ After landing back in their country of origin, many of the deported Roma have stated that they intend to return to France as soon as possible.⁹⁵ The Roma face an even lower quality of life and greater discrimination in their home countries than in Western European states like France.⁹⁶ For this reason, the French government has argued that the focus ought not to be on France, but on

⁸⁹ *France Sends Roma Gypsies back to Romania*, *supra* note 83.

⁹⁰ *Nicolas Sarkozy Reshuffles Cabinet After Regional Election Humiliation*, TELEGRAPH (Mar. 23, 2010), <http://www.telegraph.co.uk/news/worldnews/europe/france/7500704/Nicolas-Sarkozy-reshuffles-cabinet-after-regional-election-humiliation.html>.

⁹¹ Alison Smale, *Czech Eyes Letter From Europe*, INT'L HERALD TRIB., Sept. 7, 2010, at 2.

⁹² *Protesters Deride French President's Crackdown on Gypsies and New Security Tack*, *supra* note 1.

⁹³ Willsher, *supra* note 7 (quoting German Member of the European Parliament, Martin Schulz).

⁹⁴ Erlanger, *supra* note 4; *see generally* PEETER LEETMAA ET AL., THE 9 POOREST COUNTRIES CATCHING UP ON INCOME PER CAPITA (EUROSTAT, STATISTICS IN FOCUS ISSUE NO. 16/2011, 2011), available at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-11-016/EN/KS-SF-11-016-EN.PDF (discussing income inequalities of the various European countries).

⁹⁵ Suzanne Daley, *Roma, on Move, Test Europe's 'Open Borders'*, N.Y. TIMES, Sept. 17, 2010, at A1.

⁹⁶ *Id.* (quoting a Roma woman who said that "[t]here is not much for us in Romania" and that "[i]t is better there," referring to Western European nations).

improving the plight of the Roma in Romania and Bulgaria.⁹⁷ This argument, while certainly dodging the current issue, is not without merit.

Although the Commission originally threatened a lawsuit against France in the ECJ, the only action taken was to issue France a set of questions to answer about how it carried out its policy.⁹⁸ France's answer to this first set of questions prompted a second, as well as certain requests.⁹⁹ Satisfied with France's assurances that it would strive to better implement EU law on the subject in the near future, the Commission decided not to pursue a case against France in the ECJ.¹⁰⁰

IV. A LOOK AT THE EUROPEAN UNION

Before turning to the applicable law, one needs to understand the basic structure of the EU, the way its laws interact, and how those laws are enforced. This is especially important for those familiar with the legal system in the United States because the EU operates quite differently in many important respects. Thus, the following section gives a very basic overview of the EU. Many of these points are key to properly analyzing the 2004 Directive and the Charter of Fundamental Rights as they apply to the French-Roma issue.

A. Formation and Growth

What would later become the EU had humble beginnings as the European Coal and Steel Community (ECSC).¹⁰¹ The ECSC, formed by the Treaty of Paris in 1951, aimed to control strategic resources of coal and steel to help prevent further war in Europe after World War II.¹⁰² In 1957 the Treaty of

⁹⁷ *European Commission Assessment on the Situation on the Roma*, FRANCE-DIPLOMATIE (Sept. 29, 2010), <http://www.diplomatie.gouv.fr/en/european-union/eu-in-the-world/migrateon-policy/article/european-commission-assessment-on> (“[T]he essential issue is certainly the improvement of the integration of the Roma in the Member States of which they are citizens.”). For a typical response from Romania to these accusations, see *Romanian Leader ‘Asked Sarkozy to Stop Deporting Roma,’* BBC NEWS (Sept. 22, 2010), <http://www.bbc.co.uk/news/world-europe-11393094> (quoting Romanian President Basescu: “Romania will always defend the Roma’s right to move freely in Europe”).

⁹⁸ *European Commission Assessment on the Situation on the Roma*, *supra* note 97.

⁹⁹ *Id.*

¹⁰⁰ *Q&A: France Roma Expulsions*, *supra* note 10; *France: Government to Alter Laws on Roma Expulsions*, N.Y. TIMES (Oct. 15, 2010), <http://www.nytimes.com/2010/10/16/world/europe/16briefs-GYPSIES.html>.

¹⁰¹ RALPH H. FOLSOM, EUROPEAN UNION LAW IN A NUT SHELL 3 (7th ed. 2011).

¹⁰² Treaty Establishing the European Coal and Steel Community, Apr. 18, 1951, 261

Rome greatly expanded the organization and changed its name to the European Economic Community (EEC).¹⁰³ That same year, in a separate treaty, the European Atomic Energy Agency (Euratom) was created with very similar institutions to those employed by the EEC.¹⁰⁴ Because of the Merger Treaty of 1967, the institutions of the EEC and those of Euratom were merged and they effectively became a single organization.¹⁰⁵ In 1993, the Maastricht Treaty, which amended the Treaty of Rome, officially established the EU.¹⁰⁶ Three later treaties have further amended the Treaty of Rome, the last of which was the Lisbon Treaty which entered into force in 2009.¹⁰⁷

The EU and its past manifestations have gone through many membership expansions from the original six member states to the current number of twenty-seven.¹⁰⁸ The first few expansions were small and occurred in 1973, 1981, 1986, and 1995.¹⁰⁹ The largest expansion of the EU occurred in 2004, with the admittance of ten new member states,¹¹⁰ which was followed by the

U.N.T.S. 140. Six nations founded the ECSC: Belgium, France, Italy, Luxembourg, the Netherlands, and Germany. FOLSOM, *supra* note 101, at 4.

¹⁰³ The Treaty Establishing the European Community, Mar. 25, 1957, 298 U.N.T.S. 11. The Treaty of Rome was later renamed the Treaty Establishing the European Community. FOLSOM, *supra* note 101, at 10.

¹⁰⁴ Treaty Establishing the European Atomic Energy Community (EURATOM), Mar. 25, 1957, 298 U.N.T.S. 169. The European Atomic Energy Agency was set up for the joint research and development of peaceful applications of nuclear energy. FOLSOM, *supra* note 101, at 8–9.

¹⁰⁵ Treaty Establishing a Single Council and a Single Commission of the European Communities, Apr. 8, 1965, 1967 J.O. (152) 1; FOLSOM, *supra* note 101, at 9–10.

¹⁰⁶ Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C 191) 1; *see also* FOLSOM, *supra* note 101, at 30–31 (describing the extent of the Maastricht Treaty's level of European integration).

¹⁰⁷ Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, 1997 O.J. (C 340) 1; Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Feb. 26, 2001, 2001 O.J. (C 80) 1; Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Communities, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon]. The Treaty of Lisbon was written as a substitute for the failed European Constitution which was rejected by referenda in the Netherlands and France. Thomas Christiansen, *The EU Treaty Reform Process Since 2000: The Highs and Lows of Constitutionalising the European Union*, in *REJECTING THE EU CONSTITUTION?* 29, 33, 35 (Anca M. Pusca ed., 2009).

¹⁰⁸ *Countries*, *supra* note 15.

¹⁰⁹ In 1973 the United Kingdom, Denmark, and Ireland joined which spelled doom for a competing organization, the European Free Trade Area. Greece joined in 1981 followed by Portugal and Spain in 1986. In 1995, Austria, Finland, and Sweden followed. FOLSOM, *supra* note 101, at 19–23.

¹¹⁰ In 2004, the following states were admitted into the EU: Malta, Cyprus, Slovenia,

most recent entrance of Romania and Bulgaria in 2007.¹¹¹ These last two expansions have been the most controversial as they admitted less-developed countries, encouraging the trend of Roma migration.¹¹²

B. Institutions

The Treaty of Lisbon embodies the most recent major shift in EU structure and has affected EU institutions and how they relate to one another.¹¹³ One of the most important changes is that the EU now has a "single legal personality."¹¹⁴ This brings the EU closer to something like a state actor with expanded power to enter into treaties, join international organizations, and make foreign policy and defense decisions.¹¹⁵ The following paragraphs describe the EU institutions and how they relate to one another.¹¹⁶

The European Parliament is the representative legislative body of the EU.¹¹⁷ It is made up of 736 members that are directly elected for five-year terms by the EU citizens in the twenty-seven member states.¹¹⁸ The Parliament is essentially the lower house in a bicameral legislative system and rules alongside the Council of the European Union (Council), also called the Council of Ministers.¹¹⁹ The Treaty of Lisbon expanded the powers of the Parliament to new areas, making the two houses more equal in power.¹²⁰

Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, and Hungary. *Id.* at 26.

¹¹¹ *Member Countries: Romania*, *supra* note 30; *Member Countries: Bulgaria*, *supra* note 30.

¹¹² CAHN & GUILD, *supra* note 29, at 16–17 (citing persecution as additional impetus for Roma migration to Western Europe).

¹¹³ YOUR GUIDE TO THE LISBON TREATY, *supra* note 21, at 11–16 (describing the Treaty of Lisbon's extent of changes to Treaty of European Union and the EU's new powers derived therefrom).

¹¹⁴ Prior to the Treaty of Lisbon, the European Community and the European Union, although sharing the same institutions, operated under different statutes containing different rules. The Lisbon Treaty ended this duality. *Id.* at 15.

¹¹⁵ *Id.* ("The Lisbon Treaty will allow the EU to act more effectively, coherently and credibly in its relations with the rest of the world.").

¹¹⁶ Two of the seven EU institutions, the European Central Bank and the Court of Auditors, have no bearing on this Note and will not be discussed.

¹¹⁷ *Welcome to the European Parliament*, EUROPEAN PARLIAMENT, <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=146&language=en> (last visited Sept. 12, 2011).

¹¹⁸ *Id.* Each member state has a designated number of seats based on population. Under the Lisbon Treaty, the total number of seats will be capped at 751, with no country having more than ninety-six or less than six representatives. REJECTING THE EU CONSTITUTION?, *supra* note 107, app. 3, at 159, 165.

¹¹⁹ See YOUR GUIDE TO THE LISBON TREATY, *supra* note 21, at 12–13 (noting the co-decision power between Parliament and Council).

¹²⁰ REJECTING THE EU CONSTITUTION?, *supra* note 107, app. 3, at 159, 163 ("From now on,

In the Council, the other half of the legislative equation, each of the twenty-seven member states gets one seat with one vote.¹²¹ The Council rules along with the Parliament in a process known as “co-decision.”¹²² Although previously, in many instances, unanimous decisions were required in the Council, a new system of “double majority” will be introduced in 2014.¹²³

The European Commission is the EU body that is designed not to represent the member states, but rather the EU as a whole.¹²⁴ Thus, although there is currently one commissioner from every member state, their accountability resides with Parliament.¹²⁵ The Commission is essentially the executive body of the EU. It has broad powers, the most important being the power to propose legislation.¹²⁶ In addition, the Commission enforces EU policy by managing EU programs.¹²⁷ Finally, and particularly relevant here, the Commission acts as the face of the EU on the international stage and ensures that the EU treaties are properly applied.¹²⁸

Although not formally established as an EU institution until the Treaty of Lisbon in 2009, the European Council—not to be confused with the Council of the European Union discussed above—has long since been an important player in the EU.¹²⁹ The European Council consists of all the heads of state of the twenty-seven member states.¹³⁰ The European Council has no formal legislative powers, but mainly derives its influence from being made up of the chief executives of all the EU member states.¹³¹

The highest court of the EU is the European Court of Justice.¹³² The ECJ has twenty-seven members, one from each of the EU member states,

then, Parliament will have a role to play in almost all lawmaking.”)

¹²¹ YOUR GUIDE TO THE LISBON TREATY, *supra* note 21, at 13.

¹²² *Id.* at 12.

¹²³ *Id.* at 13. This means that “Council decisions will need the support of 55% of the Member States, representing at least 65% of the European population.” *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* In 2014, the number of Commissioners will be reduced to eighteen, with the seats rotating between all EU member states. REJECTING THE EU CONSTITUTION?, *supra* note 107, app. 3, at 159, 166–67.

¹²⁶ YOUR GUIDE TO THE LISBON TREATY, *supra* note 21, at 13.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 12.

¹³⁰ *Id.* at 12–13.

¹³¹ *Id.* at 12.

¹³² *EU Institutions and Other Bodies*, EUROPA, http://europa.eu/about-eu/institutions-bodies/index_en.htm (last visited Sept. 12, 2011).

appointed for six-year renewable terms.¹³³ Although the ECJ occasionally sits en banc, most often it hears cases in panels of three, five, or thirteen judges (the size of the panel often reflects the importance and complexity of the case).¹³⁴ Judgments are decided by a majority.¹³⁵ The goal of the ECJ is to have EU law applied uniformly across all member states.¹³⁶

There are five types of cases the ECJ routinely decides: (1) preliminary rulings, when high courts of member states ask the ECJ for advice on how to rule on a point of EU law; (2) proceedings for failure to fulfill an obligation, when the Commission or a member state brings an action accusing a member state of not following EU law; (3) actions for annulment, when a member state, the Council, the Commission, or sometimes Parliament believes an EU law is illegal under a Treaty; (4) actions for failure to act, when a member state accuses the Commission, the Council, or Parliament of failing to act when they were legally required to do so; and (5) directed actions in which an EU decision or action is the basis of a private individual's or corporate organization's suit.¹³⁷ If a case had been brought in the ECJ against France, it would have been a proceeding for failure to fulfill an EU obligation, the second type of commonly heard cases. Such a case may be brought by a member state, but would more likely be brought by the Commission.

C. *Types of Law*

There are several types of binding EU law made pursuant to the Treaty on the Functioning of the European Union,¹³⁸ including regulations, directives, and decisions.¹³⁹ The EU also issues non-binding laws in the form of recommendations and opinions,¹⁴⁰ but these are beyond the scope of this Note. As explained below, the type of law in question heavily influences its scope, application, and enforcement.

¹³³ *The Court of Justice of the European Union*, EUROPA, http://europa.eu/institutions/inst/ju/justice/index_en.htm (last visited Sept. 12, 2011).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Consolidated Version of the Treaty on the Functioning of the European Union, Sept. 5, 2008, 2008 O.J. (C 115) 47.

¹³⁹ *What is EU Law?*, EUROPA, http://ec.europa.eu/community_law/introduction/treaty_en.htm (last visited Sept. 12, 2011).

¹⁴⁰ *Id.*

The supreme sources of EU law are the founding treaties, which are somewhat analogous to a constitution.¹⁴¹ The ECJ will strike down EU legislation in conflict with EU treaties.¹⁴² Furthermore, Treaties control when they conflict member state's national laws.¹⁴³ Certain other documents, like the Charter of Fundamental Rights, have equal status to treaties.¹⁴⁴

Regulations are the most immediate form of EU law; they become automatically binding upon member states when they are passed and supersede conflicting state law.¹⁴⁵ Thus, there is no need for EU member states to write regulations into their own national laws.

Directives, on the other hand, while binding on member states, must be transposed into national law.¹⁴⁶ This transposition does not have to be direct as member states are free to decide how to best achieve the purposes and goals of the directive.¹⁴⁷ Directives give the member states a specific amount of time to incorporate the law into their national scheme.¹⁴⁸ If a member state should fail to transpose adequately, the Commission or another member state may bring a case before the ECJ, which can require the member state in question to bring its laws in line with the EU directive or face economic sanctions.¹⁴⁹

¹⁴¹ ROBERTA PANIZZA & DANAI PAPADOPOULOU, SOURCES AND SCOPE OF EUROPEAN UNION LAW 5 (2011), available at http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.1.pdf. Two member states rejected the idea of a Constitution of Europe in 2005: France and the Netherlands. However, many of the changes sought in the Constitution were later negotiated in the Lisbon Treaty. Anca M. Pusca, *Is the Constitutional Project Dead? An Introduction, in REJECTING THE EU CONSTITUTION?*, *supra* note 107, at 1, 2-4.

¹⁴² *The Court of Justice of the European Union*, *supra* note 133.

¹⁴³ Case 6/64, *Costa v. E.N.E.L.*, 1964 E.C.R. 585, 594 ("It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.")

¹⁴⁴ Press Release, Court of Justice of the European Communities, *The Treaty of Lisbon and the Court of Justice of the European Union* (Nov. 30, 2009), available at <http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-12/cp090104en.pdf>.

¹⁴⁵ *What Are EU Regulations?*, EUROPA, http://ec.europa.eu/eu_law/introduction/what_regulation_en.htm (last visited Sept. 12, 2011).

¹⁴⁶ *What Are EU Directives?*, EUROPA, http://ec.europa.eu/community_law/introduction/wh_at_directive_en.htm (last visited Sept. 12, 2011).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *The Court of Justice of the European Union*, *supra* note 133; Press Release, *supra* note 144 (noting that the ECJ can issue sanctions against a member state that it finds has failed to properly implement a directive).

And finally, decisions are binding EU law that are issued in response to a specific situation and, as a result, only apply in that instance.¹⁵⁰ Decisions have the authority to stop EU citizens and member states from doing something, require that they act, or confer rights on them.¹⁵¹

V. APPLICABLE LAW AND ANALYSIS

Freedom of movement of EU citizens is one of the fundamental aspects of the EU. This includes a right of equal access to employment on par with the nationals of any member state, within that state.¹⁵² However, as a condition to their entrance to the EU, Romania and Bulgaria each agreed to a Treaty of Accession which imposed temporary holds on Romanian and Bulgarian nationals' equal employment rights.¹⁵³ Under this agreement, each pre-2007 member state would decide after an initial two-year period of limitations whether to extend the transitional period a further three years with regard to Romania and Bulgaria.¹⁵⁴ At the end of the second period, a member state could possibly extend the transitional period another two years if it could demonstrate "serious disturbances of its labour market or threat thereof."¹⁵⁵ France is in the second period with its limitations against Romania and Bulgaria mostly intact.¹⁵⁶ This means that, for most jobs, workers from

¹⁵⁰ *What Are EU Decisions?*, EUROPA, http://ec.europa.eu/eu_law/introduction/what_decision_en.htm (last visited Sept. 1, 2011).

¹⁵¹ *Id.*

¹⁵² See Regulation 1612/68, of the Council of 15 October 1968 on Freedom of Movement for Workers Within the Community, 1968 O.J. (L 257) 2 (EEC) [hereinafter Regulation on Freedom of Movement], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31968R1612:EN:HTML> (recognizing that "freedom of movement for workers should be secured within the Community" and establishing that freedom subject to some limitations).

¹⁵³ Treaty Concerning the Accession of the Republic of Bulgaria and Romania to the European Union, June 21, 2005, 2005 O.J. (L 157) 11 [hereinafter Accession Treaty]; Protocol Concerning the Conditions and Arrangements for Admission of the Republic of Bulgaria and Romania to the European Union art. 20, June 21, 2005, 2005 O.J. (L 157) 29, 35 [hereinafter Protocol Concerning Admission of Bulgaria and Romania].

¹⁵⁴ Protocol Concerning Admission of Bulgaria and Romania, *supra* note 153, Annex VI, pt. 1, para. 2 [hereinafter Annex VI: Bulgaria]; *id.* Annex VII, pt. 1, para. 2 [hereinafter Annex VII: Romania].

¹⁵⁵ Annex VI: Bulgaria, *supra* note 154, pt. 1, para. 5; Annex VII: Romania, *supra* note 154, pt. 1, para. 5.

¹⁵⁶ LAETITIA DUVAL, LABOUR MOBILITY WITHIN THE EU IN THE CONTEXT OF ENLARGEMENT AND THE FUNCTIONING OF THE TRANSITIONAL ARRANGEMENTS, COUNTRY STUDY: FRANCE 2, 17 (2009), available at http://doku.iab.de/grauerpap/2009/LM_FR.pdf.

Romania and Bulgaria must obtain work permits from the government of France.¹⁵⁷

The transitional period, however, does not directly affect Romanian or Bulgarian nationals' ability to enter France or their rights with regard to expulsion, both set forth in the 2004 Directive.¹⁵⁸ Furthermore, the transitional period does not affect the applicability of the Charter of Fundamental Rights which applies "to the Member States . . . when they are implementing Union law."¹⁵⁹ Thus, the protections of the 2004 Directive and the Charter of Fundamental Rights apply to the French-Roma expulsion policy with full force.

A. Directive 2004/38/EC

Under the 2004 Directive, there are two avenues of expulsion France could possibly use to justify its deportation of the Roma: (1) burden on the public welfare system; and (2) threat to public security or public policy.¹⁶⁰ As it is not entirely clear under which arm of the 2004 Directive France is operating, the protections and procedures regarding both types of expulsions are detailed below, followed by the general protections applicable to both.

As an initial concern, the 2004 Directive guarantees a right to enter any member state by EU citizens without the need of any "entry visa or equivalent formality."¹⁶¹ Article 6 provides: "Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport."¹⁶²

After the initial three month period, EU citizens have the right of residence if they are enrolled in school, have a job, are wealthy enough to not qualify for social welfare, or are self-employed.¹⁶³ The member state can require EU citizens to register and explain their grounds for residence or face

¹⁵⁷ Q&A: *France Roma Expulsions*, *supra* note 10.

¹⁵⁸ The Accession Treaty, Protocol Concerning Admission of Bulgaria and Romania, Annex VI: Bulgaria, and Annex VII: Romania, *supra* notes 153–54, only delay the application of Articles 1 to 6 of the Regulation on Freedom of Movement, *supra* note 152. Those articles prescribe only the equal access to labor markets in other member states. The remainder of EU freedom of movement law remains unaffected.

¹⁵⁹ Charter of Fundamental Rights, *supra* note 13, art. 51, para. 1.

¹⁶⁰ 2004 Directive, *supra* note 12, *passim*. Because France has clearly not implicated public health as grounds for the expulsion, the public health provisions of the 2004 Directive will not be explored.

¹⁶¹ *Id.* art. 5, para. 1.

¹⁶² *Id.* art. 6, para. 1.

¹⁶³ *Id.* art. 7, para. 1(a)–(c).

proportionate sanctions for not registering.¹⁶⁴ An EU citizen that does not fall into one of the categories above may be expelled if deemed an unreasonable burden on the member state's social welfare system, subject to the protections detailed below.¹⁶⁵

If reasonable doubt exists regarding whether an EU citizen is residing in a member state legally, a member state may verify that the requisite conditions for residence are met.¹⁶⁶ However, "[t]his verification shall not be carried out systematically,"¹⁶⁷ and expulsion should not be an automatic consequence of an EU citizen's reliance on the host state's social welfare system.¹⁶⁸ In fact, expulsion is prohibited if the citizen is employed or is in search of a job and has a reasonable chance of obtaining employment.¹⁶⁹ Nor can a citizen be expelled because the citizen's passport or ID expires while residing in the member state.¹⁷⁰ Similarly, a member state may not impose a ban on reentry for citizens expelled for social welfare reasons.¹⁷¹ Finally, after a citizen has lived continuously in a member state for five years, that citizen becomes a permanent resident and is no longer subject to expulsion for unreasonable reliance on the social welfare system.¹⁷²

The 2004 Directive also provides that EU citizens may also be expelled for public policy or public security reasons.¹⁷³ "These grounds shall not be invoked to serve economic ends."¹⁷⁴ Rather, expulsion on these grounds "shall be based exclusively on the personal conduct of the individual concerned" that must illustrate 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."¹⁷⁵

The 2004 Directive lays out many factors that must be considered before justifying an expulsion decision on public policy or public security grounds.

¹⁶⁴ *Id.* art. 8, paras. 1–2.

¹⁶⁵ *Id.* art. 14, para. 1.

¹⁶⁶ *Id.* para. 2.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* para. 3.

¹⁶⁹ *Id.* para. 4(a)–(b). The Roma would likely not be able to rely on this provision because of the Accession Treaty discussed *supra* notes 153–59 and accompanying text.

¹⁷⁰ *Id.* art. 15, para. 2.

¹⁷¹ *Id.* para. 3.

¹⁷² *Id.* art. 16, para. 1. Perhaps this reveals another potential French motive for expelling as Roma, as Romanians and Bulgarians who migrated in 2007 could attain permanent resident status as early as 2012.

¹⁷³ *Id.* art. 27, para. 1.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* para. 2.

Those factors are age, health, length of residency, link to country of origin, economic situation, family situation, and level of cultural integration.¹⁷⁶ The 2004 Directive explicitly makes it more difficult to expel permanent residents, who can only be deported based on "serious grounds of public policy or public security."¹⁷⁷ Furthermore, minor citizens may only be expelled if "the decision is based on imperative grounds of public security," unless the expulsion is in the best interest of the child.¹⁷⁸

There are several procedural protections for EU citizens that apply regardless of the reason for the expulsion.¹⁷⁹ First, a citizen must be informed of expulsion in writing in a language that citizen can understand and the notification must contain the specific reason for expulsion with instructions on how to appeal the decision.¹⁸⁰ Second, the 2004 Directive provides that citizens will have at least one month to leave after a decision is reached except in "substantiated cases of urgency."¹⁸¹ Third, the 2004 Directive provides for a right of appeal no matter the reason for the expulsion.¹⁸² Finally, a citizen that files for an interim order to suspend enforcement cannot be expelled until after the case is heard on appeal, unless the case has already been before a court (as opposed to an administrative agency) or if the decision is based on "imperative grounds of public security."¹⁸³

The 2004 Directive also covers publicity, requiring member states to disseminate information on the rights contained in the 2004 Directive based on "awareness-raising campaigns."¹⁸⁴ More importantly, member states were required to transpose the 2004 Directive into national law by April 30, 2006.¹⁸⁵ Member states were also required to submit to the Commission the details of how they have applied the 2004 Directive in national law, complete with a table showing how the member state's provisions correspond to the 2004 Directive's provisions.¹⁸⁶

¹⁷⁶ *Id.* art. 28, para. 1.

¹⁷⁷ *Id.* para. 2.

¹⁷⁸ *Id.* para. 3.

¹⁷⁹ *See id.* art. 15 (providing for procedural safeguards established in articles 30 and 31, as well as interdicting expulsion on the grounds of a general ban on entry or expiration of identity card or passport).

¹⁸⁰ *Id.* art. 30, paras. 1, 3.

¹⁸¹ *Id.* para. 3.

¹⁸² *Id.* art. 31, para. 1.

¹⁸³ *Id.* para. 2.

¹⁸⁴ *Id.* art. 34.

¹⁸⁵ *Id.* art. 40, para. 1.

¹⁸⁶ *Id.* para. 2.

B. Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights “was given binding legal effect equal to the Treaties” on all EU member states when the Treaty of Lisbon came into force in 2009.¹⁸⁷ As mentioned previously, it is binding on EU member states when they are implementing EU law.¹⁸⁸ The 2004 Directive’s preamble emphasizes the importance of the Charter’s application to freedom of movement by stating that “[t]his Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights.”¹⁸⁹ Thus, the protections of the Charter of Fundamental Rights extend to expulsion decisions by member states of EU citizens via the 2004 Directive.

Reflecting concerns about systematic expulsion addressed in the 2004 Directive, Article 19 of the Charter of Fundamental Rights clearly articulates: “Collective expulsions are prohibited.”¹⁹⁰ Furthermore, Article 45 sets forth the basic principle that “[e]very citizen of the Union has the right to move and reside freely within the territory of the Member States.”¹⁹¹ These articles provide an important background to the 2004 Directive and remind that expulsion of EU citizens by a member state should be the rare exception to the general freedom of EU citizens to reside in whatever member state they choose.

Equally important are the principles of nondiscrimination enshrined in the Charter. Article 22 states: “The Union shall respect cultural, religious and linguistic diversity.”¹⁹² In more comprehensive and prohibitive language, Article 21 provides:

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

¹⁸⁷ *Summaries of EU Legislation: Charter of Fundamental Rights*, EUROPA, http://europa.eu/legislation_summaries/justice_freedom_security/combating_discrimination/l33501_en.htm (last visited Nov. 11, 2011); Treaty of Lisbon, *supra* note 107, art. 6; Press Release, *supra* note 144.

¹⁸⁸ Charter of Fundamental Rights, *supra* note 13, art. 51, para. 1.

¹⁸⁹ 2004 Directive, *supra* note 12, pmb., para. 31.

¹⁹⁰ Charter of Fundamental Rights, *supra* note 13, art. 19, para. 1.

¹⁹¹ *Id.* art. 45, para. 1.

¹⁹² *Id.* art. 22.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.¹⁹³

The Charter also guarantees access to a court system, a right echoed by the 2004 Directive. Article 47 states:

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.¹⁹⁴

That Article further states that “[l]egal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”¹⁹⁵

C. Argument Against the French Expulsion of Roma

Both the 2004 Directive, with its treatment of social burden and public policy and security, as well as the Charter of Fundamental Rights, continually stress the importance of individualized assessments and the illegality of systematic deportations. Perhaps most on point, the Charter of Fundamental Rights expressly prohibits collective expulsions.¹⁹⁶ The 2004 Directive, when dealing with social welfare, gives member states the right to verify the legality of a citizen only “[i]n specific cases where there is reasonable doubt as to whether” certain preconditions are satisfied and ensures that “[t]his verification shall not be carried out systematically.”¹⁹⁷ Furthermore, in reference to threats to public security, an expulsion decision “shall be based exclusively on the personal conduct of the individual

¹⁹³ *Id.* art. 21.

¹⁹⁴ *Id.* art. 47.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* art. 19, para. 1.

¹⁹⁷ 2004 Directive, *supra* note 12, art. 14, para. 2.

concerned. . . . Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.”¹⁹⁸

One certainty of the French expulsion policy rises above all others: it targeted an ethnic group. There were no individualized assessments, “particulars of the case,”¹⁹⁹ or “specific cases.”²⁰⁰ Decisions were not derived from the “personal conduct” of any individual Roma, but instead were based on membership in an ethnic community.²⁰¹ President Sarkozy himself reportedly stated that the Roma were to be “systematically evacuated”—a fitting description.²⁰² One reporter offered a particularly vivid account of the policy in action: “About 100 French riot police officers swooped down on an encampment of Roma here at 7 a.m. Thursday, taking names and filling out expulsion orders. Fully padded, but without helmets, the officers were aggressive but polite, accompanied by a Romanian policeman and three interpreters.”²⁰³ Three hundred such camps were in President Sarkozy’s crosshairs, all to be completely dismantled within three months.²⁰⁴ One would be hard-pressed to come up with a term more accurately expressive of the French policy than “systematic[],”²⁰⁵ “collective,”²⁰⁶ or “automatic”²⁰⁷—all terms describing illegal expulsion under EU law.

The systematic and collective character of the Roma expulsion is, by its very nature, discriminatory. Such discrimination has long been abhorred by the EU, which chose to prohibit such practices in its Charter of Fundamental Rights.²⁰⁸ The Charter of Fundamental Rights is equal in stature to an EU treaty,²⁰⁹ against which all other laws are measured, and member states are obligated to obey the Charter when acting in an area governed by EU law.²¹⁰ At least eight grounds of discrimination prohibited by Article 21 are potentially implicated by the policy: race, color, ethnic or social origin, genetic features, language, membership in a national minority, birth, and

¹⁹⁸ *Id.* art. 27, para. 2.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* art. 14, para. 2.

²⁰¹ *Id.* art. 27, para. 2.

²⁰² *French Government Faces Internal ‘Malaise’ over Policy of Expelling Gypsies*, *supra* note 65.

²⁰³ Erlanger, *supra* note 4.

²⁰⁴ *France Starts Removing Roma Camps*, *supra* note 2.

²⁰⁵ 2004 Directive, *supra* note 12, art. 14, para. 2.

²⁰⁶ Charter of Fundamental Rights, *supra* note 13, art. 19, para. 1.

²⁰⁷ 2004 Directive, *supra* note 12, art. 14, para. 3.

²⁰⁸ Charter of Fundamental Rights, *supra* note 13, art. 21, para. 1.

²⁰⁹ Press Release, *supra* note 144.

²¹⁰ Charter of Fundamental Rights, *supra* note 13, art. 51, para. 1.

nationality.²¹¹ President Sarkozy flatly ignored these protections when he ordered the destruction of the illegal camps, “particularly those of the Roma,” and the expulsion of their inhabitants.²¹²

The clear and overwhelming purpose of the 2004 Directive is to give a member state recourse against specific citizens posing a serious threat to, or unreasonable burden upon, that member state, while ensuring that such action targets only individuals as opposed to any distinguishable group of people.²¹³ As explained above, directives, while binding EU law, must be transposed by each member state.²¹⁴ This transposition need not be word for word but must respect the purposes and goals of the directive.²¹⁵ France was required to transpose the 2004 Directive by April 30, 2006²¹⁶ but has failed to do so.²¹⁷ Thus, it is not surprising that the policy missed the mark by a wide margin, unquestionably violating the 2004 Directive’s purposes and goals. Even if the policy were somehow legal under the 2004 Directive, it would still have run afoul of the Charter of Fundamental Right’s prohibition on collective expulsions and discrimination.

Put plainly, the Commission should have brought the case before the ECJ rather than allowing blatant violations of an especially sacred area of EU law. Such timidity will disserve and undermine the EU’s protection of minorities and will likely damage the EU’s authority in the continuing struggle to find balance between powerful member states like France and the interests of the EU as a whole. Allowing France to escape this situation with no more than bad publicity and a promise to do better next time sends exactly the wrong message to France, the Roma, and the other member states.

VI. CONCLUSION

The French expulsion policy toward the Roma was illegal under the laws of the EU. No doubt the French policy addressed the legitimate state concerns of rising crime rates; the illegal camps were almost certainly one source of such activity. However, the camps’ inhabitants, the Roma, are

²¹¹ *Id.* art. 21, para. 1.

²¹² Willsher, *supra* note 7.

²¹³ 2004 Directive, *supra* note 12, *passim*.

²¹⁴ See *supra* notes 146–49 and accompanying text.

²¹⁵ See *supra* notes 146–49 and accompanying text.

²¹⁶ 2004 Directive, *supra* note 12, art. 40, para. 1.

²¹⁷ *EU Warns France of Action over Roma*, BBC NEWS (Sept. 29, 2010), <http://www.bbc.co.uk/news/world-europe-11437361>.

citizens of the EU who must be treated as individuals under EU law. Rather than properly seek out individual criminals and those draining the social welfare and expel them in accordance with the law, President Sarkozy acted on a blanket generalization, and instead, targeted an ethnic group he viewed as especially problematic.

The Roma are characterized by poverty, illiteracy, unemployment, minority status, and statelessness. But most unfortunately, they are often subject to social exclusion and racist policies fueled by stereotypes and reciprocal animosity between the Roma and the societies they inhabit. Although the EU has made symbolic strides toward Roma inclusion and equality, not enough has been done on the ground within the member states to bring about such a result. Policies such as the one put forth by President Sarkozy are a sobering reminder of actual state practice and the reality that many Roma face every day.

EU law provides a unique and ideal avenue to affect widespread change with regard to member states' policies toward the Roma. However, these laws mean little if they are not enforced. Lack of enforcement could spur the development or expansion of similar policies in other EU member states, most of which are also dealing with new waves of immigration or already have sizable Roma populations. This Note has pointed out major violations of the 2004 Directive and the Charter of Fundamental Rights, both of which are binding upon France. These laws should be enforced by the Commission and cases should be brought before the ECJ when such policies are encountered, because the Roma and other EU minorities are entitled to be treated as exactly what they are: EU citizens.

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