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**Roma EU citizens – Caught Between EU and Member States**

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## ***Roma EU citizens – Caught Between EU and Member States***

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### **Abstract**

*This article explores the expulsion of Roma EU citizens from France in 2010. It analyses the French and European reactions in the aftermath of the events and contrasts them to the EU Roma Framework. It identifies an attempt to shift the responsibility from the EU to the national level, which brings with it a diminution of the importance of free movement. It concludes that this testifies to the weakness of EU citizenship and the right of free movement. It also shows that by being caught between the two levels, Roma EU citizens' ethnic discrimination remains a subject yet to be properly addressed.*

### **Introduction**

The debate on the expulsion of Roma migrants from France in the summer of 2010 drew significant media and political attention at both national and European levels. The issues at stake were the violation of the Racial Equality Directive<sup>1</sup>, the Citizens' Rights Directive<sup>2</sup>, the Data Protection Directive<sup>3</sup> and, ultimately, the violation of human rights. However, less attention has been paid to the challenges these events brought to the concept of EU citizenship and the right of free movement.

This paper refers to free movement as guaranteed under EU citizenship. For Maas, who builds on the Canadian and American examples, the freedom of movement within the borders is fundamental to full citizenship (Maas, 2013, p. 14). In the EU case, this freedom of movement takes place beyond national borders but within the EU borders and goes well beyond the creation of an integrated market, producing visible sociological effects (Favell and Recchi 2009, p. 24). The 2010 expulsions are still relevant today because they pinpoint at the weaknesses of free movement rights and EU citizenship. I am arguing that these free movement rights, though guaranteed in EU Treaties and EU legislation, are not fully implemented in practice.

It seems that the 'Roma mobility question' constituted the topic of a blame game when France failed to deal with it in accordance with EU norms. While EU institutions vehemently criticized France's conduct and emphasised the importance of free movement, later on the EU Roma Framework passed the ball back to the Member States and encouraged bilateral agreements between countries. Overall, the focus changed from protecting free movement and non-discrimination to ensuring the integration of Roma migrants in their home countries. This article takes a critical perspective on the construction of the Roma minority in French and EU discourses. It builds on the development of the French expulsions

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<sup>1</sup>Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin OJ 2000 L 180/22 (Racial Equality Directive) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0043&from=en>

<sup>2</sup>European Parliament and Council Directive 2004/38/EC 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 OJ 2004 L 158/77 (Citizens' Rights Directive) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>

<sup>3</sup>European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ 1995 L 281 (Data Protection Directive) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>

of Roma EU citizens in 2010 and analyses the reaction of the EU. It shows how attempts to affect a responsibility shift actually led to a responsibility failure in the treatment of the 'Roma problem'.

## Roma EU Citizens

Roma people are the EU's largest minority, with 10-12 million on the EU territory -a number which rose from approximately 2 million prior to the 2004 and 2007 enlargements (McGarry, 2011, p. 129). Fundamental rights, non-discrimination provisions and free movement rights should be respected and enforced for Roma EU citizens as for any other EU citizens. More specifically, this means that Roma holding EU citizenship have the right to move freely, to settle, or to be either employed or self-employed anywhere within the EU borders. Consequently, the collective expulsions of Roma EU citizens from France in 2010 illustrate a major weakness of EU citizenship and the inequalities that it comprises.

I start with a brief overview of the specificities of the Romani minorities' situation in the EU. Note that I use the term 'Romani' rather than the EU established preference for 'Roma' in this section as it engulfs the multitude of different cultures regrouped by this generic category. Romani constitute a very specific ethnic minority, as they are very dispersed and diverse. As McGarry (2012, p. 127) observes, the attempts to foster a collective and trans-border Roma identity are hampered by the extreme geographical, cultural, linguistic, religious, or socio-economic diversity. Nevertheless, a strong argument underlining their common roots comes from the linguistic perspective. Matras explains that despite the fact that "some Romani populations, such as those in Britain and Spain and many in Scandinavia and in Hungary, have shifted completely to the majority language over the past two centuries" (Matras, 2013, p. 212), the Romani language can be named as the quintessential manifestation of the Romani culture. I argue that Romani are best characterized by Brubaker's (2004) constructivist theory of 'ethnicity without groups', which goes against the assumption that ethnic groups should be understood as "discrete, sharply differentiated, internally homogenous and externally bounded groups" (Brubaker, 2004, p. 164). This is not to say that Roma ethnicity is "a mere 'construction' lacking a basis in objective features such as language, culture, history and a traditional sense of mutual affinity felt by group members" (Matras, 2013, p. 246). However, without trying to dismiss the existence of these elements, I subscribe to Brubaker's perspective that political projects are "aimed at transforming categories into groups or increasing levels of groupness" (Brubaker, 2004, pp 170-171).

In line with this assumption, my article looks at how the category of Roma migrants is constructed, differentiated and legitimized. In Brubaker's terms, I look at how this category is "proposed, propagated, imposed, institutionalized, discursively articulated, organizationally entrenched and generally embedded in multifarious forms of 'governmentality'" (Brubaker, 2004, p. 170). The idea of division is of outmost importance here; one of the main questions raised in this article is how different groups of migrants are differently constructed based on their generic and distinct properties. Furthermore, as Bourdieu argues, when coming from an expert discourse (which arguably is the case for French authorities and EU institutions discourse), these "'scientific' mythologies" can end up building the conditions for their own realization and implementation (Bourdieu, 1991, p. 225). I draw on Bourdieu's view according to which endeavours of naming and classifying are powerful devices for the imposition of identities. I believe that Brubaker's plea for a "relational, processual, dynamic, eventful and disaggregated" understanding of ethnicity (Brubaker, 2004, p. 167) is the key to analysing the events described in this article, where Roma ethnic identity is elaborated and constructed from above in relation to a particular event. The identity construction made by the French authorities is long-lasting and has repercussions at the European level.

To begin with, the very designation of these persons as Roma is questionable. As Guild and Carrera suggest, we do not know “the ethnic composition of these people who move”; and it is a matter of extreme subjectivity to judge their ethnicity on their appearance or lifestyle (2013, p. 10). The French Circular<sup>4</sup> specifically mentions Roma but, on the expulsion orders,<sup>5</sup> only nationality, but not ethnicity is mentioned. In these cases, Roma expelled from France were EU citizens by virtue of their Romanian (the majority) or Bulgarian nationality. However, the campaign documented and publicized by several Roma Rights organizations did indeed maintain the ethnic designation, referring to the Roma situation<sup>6</sup>. It is perhaps even more important to question how the French authorities knew that those migrants are Roma. According to the 78-17 Law from the 6<sup>th</sup> of January 1978, it is prohibited to collect and record information on racial and ethnic minorities in France<sup>7</sup>. It seems that, nonetheless, French authorities have been collecting data on Roma foreign citizens for quite some time<sup>8</sup> and “efforts to monitor foreign Roma have been a longstanding practice of the French gendarmerie” (Parker and Toke, 2013, p. 369). The question that arises is then how to distinguish the Roma communities without using ethno-racist criteria. For Bigo, this involves modern theologies used to “find out how to filter these minorities without categorising them directly as such” (Bigo, 2013, p. 30) but rather by using secondary multi-criteria analysis to try to identify their ‘so-called features’.

It follows that these categories were imposed on them from above and that it was by no means a self-definition. This discussion goes beyond the scope of this article, but these practices testify to a contradiction between the French law and an ethnic based approach. They also testify to a contradiction between the mobility implied by the EU citizenship and the French Republicanism. In other words, it seems that “the downloading of a EU citizenship challenges a republican monocultural closure” (Parker and Toke, 2013, p. 363). Moreover, it can be argued that the European mobility challenges an integrationist vision of citizenship.

## The Expulsion of Roma EU Citizens from France in 2010

I will now briefly draft the case of Roma EU citizens who have seen their rights of free movement as EU citizens violated. In the summer of 2010, the French authorities decided to expel Roma who resided in France for more than three months while remaining unemployed. Technically, it is within the law to question the presence of EU citizens from other Member States on the territory of a state after more than three months, but, as I contend, the actions specifically mentioned Roma communities in this case. Hence, it is important to go back to how the event started and analyse how the category of Roma was introduced and targeted. According to Parker (2012), the event that set everything into motion was an attack by one member of the community of ‘gens de voyage’ on a police station. The term ‘gens

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<sup>4</sup>Interior Ministry, 5<sup>th</sup> of August 2010, ‘Circular of the French Interior Ministry’, IOC/K.1017881J documented in <http://www.errc.org/cms/upload/file/appendix-2.pdf>

<sup>5</sup>Prefet du Val de Marne, 12<sup>th</sup> of August 2010, Expulsion orders documented by ERRC- ‘30 OQTF issued in Choisy-le-Roi’ <http://www.errc.org/cms/upload/file/appendix-3a.pdf>

<sup>6</sup>ERRC, 28<sup>th</sup> of September 2010, ‘ERRC Provides European Commission Evidence of French Violations of EU Law’ <http://www.errc.org/article/errc-provides-european-commission-evidence-of-french-violations-of-eu-law/3715>

<sup>7</sup> Commission nationale de l’informatique et des libertés, 1978, ‘Loi n° 78-17 du 6 janvier 1978 relative à l’informatique, aux fichiers et aux libertés’ <https://www.cnil.fr/fr/loi-78-17-du-6-janvier-1978-modifiee>

<sup>8</sup>Le Monde, 7<sup>th</sup> of October 2010, ‘MENS, le fichier ethnique illégal sur les Roms’ [http://www.lemonde.fr/societe/article/2010/10/07/la-gendarmerie-detient-un-fichier-roms-illegal\\_1421548\\_3224.html#93wfkKDBpTqIZYaG.99](http://www.lemonde.fr/societe/article/2010/10/07/la-gendarmerie-detient-un-fichier-roms-illegal_1421548_3224.html#93wfkKDBpTqIZYaG.99)

de voyage' refers to people (some of whom are French Roma) living in mobile residencies and it represents an administrative category invented by French authorities. According to Parker and Toke (2013), there are around 300,000 travelling people in France, with foreign Roma representing only a tenth of this number. It is crucial to note that Roma from other EU countries (in France mainly from Romania and Bulgaria) were not implicated in the attack (Parker, 2012, p. 478). However, President Sarkozy's speech in Grenoble (30th of July)<sup>9</sup> conflates the two categories of French 'gens de voyage' and foreign Roma and talks about delinquency and the need to dismantle the unlawful camps ('campements illicites'). The main argument put forward by the public speeches pointed towards the "alien culture of Roma" (Gould, 2014, p. 27). Nevertheless, arguments such as insecurity, fraud and crime followed closely after. The French political discourse supporting the expulsion of Roma explicitly makes EU integration and its right of free movement responsible for the problem.

The purposive targeting of the Roma was confirmed by a circular<sup>10</sup> from August 2010. The Roma were also the only group specifically singled out at the time of the camp dismantling (Gould, 2014, p. 29). The circular drew directly from the Grenoble speech and had the vaguely spelled out objective to evacuate "unlawful camps". Nevertheless, from the first paragraph, the document states that 300 camps have to be evicted, "prioritising those of Roma"<sup>11</sup>. Further on, the document distinguishes and sets separate targets for Roma evictions and for 'gens du voyage' evictions.

The European Commission was at the time investigating whether or not the French authorities were guilty of ethnic profiling. The French Officials gave assurances that this was not the case and that there was no mention or purposive targeting of Roma. On their visit to Bucharest on the 9<sup>th</sup> of September 2010, the French Minister for Immigration, Integration and National Identity, Eric Besson and the State Secretary of European Affairs, Pierre Lellouche seized the opportunity to stress once more "that there is no such thing as a plan specially targeting Roma"<sup>12</sup>. They also discussed the basis for a voluntary return plan to be applied commencing the following month. According to this new tool,<sup>13</sup> the returning migrants had to give fingerprints to benefit from the 'humanitarian aid' to return. When asked why individuals were offered €300 if their return is voluntary, Eric Besson explained that despite being voluntary, the return was not one "for pleasure"<sup>14</sup>. Most of these EU citizens chose to return voluntarily and only some of them were formally expelled or repatriated. However, to what extent even the former ones were exercising their free movement rights voluntarily is open to debate. Had they been permitted to stay in France - as many interviewees suggested for the European Roma Rights Centre<sup>15</sup> – they would have done so. Nevertheless, when having to choose between 'returning voluntarily' and being expelled, they opted for the former. Only a few days after Eric Besson's declarations that Roma

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<sup>9</sup>Nicolas Sarkozy, 30<sup>th</sup> of July 2010, 'Grenoble Speech', <http://www.lefigaro.fr/politique/le-scan/2014/03/27/2500120140327ARTFIG00084-le-discours-de-grenoble-de-nicolas-sarkozy.php>

<sup>10</sup>Interior Ministry, 5<sup>th</sup> of August 2010, 'Circular of the French Interior Ministry', IOC/K.1017881J, documented in <http://www.errc.org/cms/upload/file/appendix-2.pdf>

<sup>11</sup>Ibid.

<sup>12</sup>Euractiv, September 2010, 'Oficialii francezi la Bucuresti', [http://arhiva.euractiv.ro/uniunea-europeana/articles|displayArticle/articleID\\_20998/Oficialii-francezi-la-Bucuresti-Schengen-nu-are-legatura-cu-romii-dar-este-legat-de-mecanismul-de-cooperare-si-verificare-pe-justitie.html](http://arhiva.euractiv.ro/uniunea-europeana/articles|displayArticle/articleID_20998/Oficialii-francezi-la-Bucuresti-Schengen-nu-are-legatura-cu-romii-dar-este-legat-de-mecanismul-de-cooperare-si-verificare-pe-justitie.html)

<sup>13</sup>Commission nationale de l'informatique et des libertés, 2010, 'OSCAR : Outil de Statistique et de Contrôle de l'Aide au Retour', <https://www.cnil.fr/fr/oscar-outil-de-statistique-et-de-contrôle-de-l'aide-au-retour>

<sup>14</sup>Ibid.

<sup>15</sup>Interviews taken by the European Roma Rights Centre (details included in the bibliography).

were by no means specifically targeted, the circular<sup>16</sup> was leaked exposing that the policy indeed did target Roma. When it was leaked, in September 2010, this document caused an uproar in the European Parliament<sup>17</sup>, NGOs and the media. This had immediate implications at both the European level and French national level. NGOs defending Roma rights and human rights in general were very vocal as well. However, in Romania - the country of origin of most of the targeted Roma - only a handful of people protested<sup>18</sup>.

The situation of these Roma migrants residing in France was already difficult prior to these events. Romania and Bulgaria were part of transitional agreements<sup>19</sup> with France -and most of the other EU countries. A key aspect of these agreements was the fact that Romanian and Bulgarian citizens needed a working permit in order to access employment in most of the other EU countries. In most cases, the working permit required a sponsorship which further decreased the chances of finding employment. It follows that without any employment it is difficult for migrants to obtain a residence permit which is required to legally reside in France. Access to social services and health services is also conditioned by a proof of residence so that these communities, sometimes living illegally, are also excluded from any kind of healthcare. This transitional situation - when migrants have neither residence nor employment - creates a hiatus in the normal expression of the right of free movement. Despite having a protected status *de jure*, some Roma migrants are, *de facto* less privileged than many third country nationals.

It can be argued that this type of treatment of Roma became normalized in France and allowed for the 2010 wave of expulsions to happen. There were significant numbers of deportations (OQTF – ‘obligation de quitter le territoire français’) starting as soon as 2007. The previous violations of the right of free movement opened the door for what followed in the summer of 2010, as “such an ‘extra-ordinary move was, in other words, rendered possible by the ‘ordinary’ practices of security by which it was preceded” (Parker, 2012, p. 481). However, they only drew attention to themselves in the summer of 2010 as these were done not only at a bigger scale but also in a collective way.

## Legal challenges

The European Roma Rights Centre (ERRC)<sup>20</sup> raised a number of legal claims concerning the infringement of European Union law by these collective expulsions. They specifically relied on The Racial Equality Directive 2000/43/EC, The Citizens’ Rights Directive 2004/38/EC and The Data Protection Directive

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<sup>16</sup>Interior Ministry, 5<sup>th</sup> of August 2010, ‘Circular of the French Interior Ministry’, IOC/K.1017881J, documented in <http://www.errc.org/cms/upload/file/appendix-2.pdf>

<sup>17</sup>European Parliament Resolution, 9<sup>th</sup> of September 2010, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0312+0+DOC+XML+V0//EN>

<sup>18</sup>MEDIAFAX.ro, 6<sup>th</sup> of September 2010, ‘Protest al romilor în fața Ambasadei Franței la București’, <http://www.mediafax.ro/social/protest-al-romilor-in-fata-ambasadei-frantei-la-bucuresti-foto-video-7124568>

<sup>19</sup>Proposal for a Council Decision on the signature, on behalf of the European Community and its Member States, of a Protocol to the agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons regarding the participation, as contracting parties, of the Republic of Bulgaria and Romania pursuant to their accession to the European Union /\* COM/2008/0209 final \*/ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008PC0209\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008PC0209(01)&from=EN)

<sup>20</sup>ERRC, 27<sup>th</sup> of September 2010, ‘Submission in relation to the analysis and consideration of the legality under EU law of the situation of Roma in France: Factual Update’ <http://www.errc.org/cms/upload/file/france-ec-legalbrief-27-sept-2010.pdf>



95/46/EC<sup>21</sup> and also the Charter of Fundamental Rights for the European Union (CFREU)<sup>22</sup> and of the European Convention on Human Rights<sup>23</sup>. The ERRC suggested that ethnic discrimination and ethnic profiling caused by the singling out of the Roma and by the collection of information on them violated the Racial Equality Directive, the non-discrimination clauses of the Citizens' Rights Directive as well as the non-discrimination provisions in the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights<sup>24</sup>. The ERRC stressed that "all of the returns reported in the media have involved Roma"<sup>25</sup> and no other non-Roma Romanian or Bulgarian national.

The second series of concerns refers to the collective character of these expulsions. The ERRC documented at least six camp evictions where identical OQTFs were served to Roma in the span of a few hours. There was no consideration of individual circumstances in order to establish whether each of these individuals represented 'an unreasonable burden on the social assistance system' such as the Citizens' Rights Directive requested. Yet this is not the only violation of the Citizens' Rights Directive. According to the interviews taken by the ERRC<sup>26</sup>, some of these migrants had been residing in France for less than three months. The Directive emphasises that for a period of less than three months, the presence of an EU citizens on the territory of another Member State cannot be questioned (Article 6). The ERRC report also notes other violations of the EU law: some Roma were photographed and fingerprinted without their consent (a violation of the Article 30 Directive 95/46); the procedures and situation were not explained to these migrants (or at least not in a language of their understanding); and some children were also expelled regardless of their particular circumstances (even if, allegedly, some of them were attending school in France), with deportation not being in their best interest (the only circumstances under which a minor can be expelled according to Article 28 (3) Directive 2004/38).

Article 27 (1) Directive 2004/38 states that Member States can restrict the freedom of movement on grounds of public policy, public security or public health. However, "these grounds shall not be invoked to serve economic ends" (Article 27 (1) Directive 2004/38). The wording of the directive leaves room for interpretation. On the one hand, it requires that the individuals have sufficient resources to move, while on the other it does "include all kinds of signals that when these inactive persons apply for a social assistance benefit, this should be granted and this will not mean automatic expulsion of these inactive EU citizens" (Minderhoud, 2014, p. 210). Member States may lawfully end the residence of a EU citizen who is not economically active and becomes an unreasonable burden on the social assistance system of the host Member State (Article 14 (1, 2), in conjunction with Articles 6, 7 Directive 2004/38). However, expulsion shall not be the automatic consequence of a EU citizen's or his or her family member's recourse to social assistance (Article 14 (3) Directive 2004/38). In addition, as previously mentioned, the Directive states that any expulsion on grounds of public policy or public security needs to be proportional and shall be "based exclusively on the personal conduct of the individual concerned" (Article 27 (2) Directive 2004/38).

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<sup>21</sup>See footnotes 1, 2, 3.

<sup>22</sup>European Union (2012) *Charter of Fundamental Rights of the EU* OJ 2012/C 326/02 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

<sup>23</sup>Council of Europe (1950) *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>24</sup>Ibid.

<sup>25</sup>Ibid., p.2

<sup>26</sup>Interviews taken by the European Roma Rights Centre (details included in the bibliography).

Overall, the Directive is meant to offer an enforced protection against the expulsion of EU citizens. However, as it emerged at the time of the 2010 expulsions, France did not fully implement the Citizens' Rights Directive (Dir 2004/38/EC) and this "enabled the country to avoid deploying various safeguards specified in this Directive in order to protect EU citizens targeted for" (Parker, 2012, p. 480). Consequently, France has been able to circumvent these safeguards and proceed to expulsions that ought to have been prohibited otherwise: on a collective basis, arguably for economic ends and where the principles of judicial review and proportionality have not been granted. Even if, arguably, these migrants might have been a burden on the social assistance system, the expulsions should have been carried out on a case by case basis, taking into account individual circumstances. Under the threat of an infringement procedure<sup>27</sup>, France did eventually correctly transpose the rules hours before the deadline thus putting an end to the entire scandal. Also, from that moment on, France assured that all the safeguards specified by the Directive would be enforced. This seems to be contradicted by the expulsions of Roma EU citizens that continued in the following years. By 2012, there were some positive results over values and practices between France and the EU as far as Roma minorities were concerned. When Francois Hollande took office, there were even two circulars targeting the inclusion of these communities in the French society. Nevertheless, in September 2013 the situation escalated again and the expulsions continued, causing discriminatory speeches in regard to Roma. This brings me back to the normalization of securitization practices mentioned above.

### The EU's Response

On the EU side, initially at least, the Roma controversy brought by the French expulsions caused some powerful reactions. Viviane Reding's (European Commissioner for Justice Fundamental Rights and Citizenship) statement openly criticized the deportations, likening them to Nazi endeavours<sup>28</sup>. This declaration marked an important change since, at that time, it stressed the importance of EU citizenship. The European Commission launched the infringement procedures on the 30th of September, as it became obvious that France did not correctly implement the Citizens' Rights Directive. As mentioned above, the belated transposition stopped the procedure. No action was brought to the Court of Justice of the European Union and no penalties were applied. At best, there was an attempt to publicly shame France.

The European Parliament passed a resolution on the 9<sup>th</sup> of September 2010 on the situation of Roma and freedom of movement in the EU. This resolution explicitly stated that "mass expulsions are prohibited by the Charter of Fundamental Rights of the European Union and European Convention for the Protection of Human Rights and Fundamental Freedoms and that such measures are in violation of the EU treaties and law, since they amount to discrimination on the basis of race and ethnicity and a breach of Directive 2004/38/EC on free movement of citizens and of their families within the EU"<sup>29</sup>. In addition, the resolution stated that collective expulsions were in breach of the 2000/43/EC Directive, as the whole process implied discrimination on the basis of ethnic and national origin, and of the CFREU be-

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<sup>27</sup>Viviane Reding, 2010, 'Statement on the latest developments on the Roma situation', [http://europa.eu/rapid/press-release\\_SPEECH-10-428\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-10-428_en.htm)

<sup>28</sup>Ian Traynor, 14<sup>th</sup> September 2010. 'Roma deportations by France a disgrace, says EU', <https://www.theguardian.com/world/2010/sep/14/roma-deportations-france-eu-disgrace>

<sup>29</sup>European Parliament Resolution, 9<sup>th</sup> of September 2010, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0312+0+DOC+XML+V0//EN>



cause of the fingerprint-taking practices. Finally, in legal terms, the document emphasised the inconsistencies in the application of safeguards of the Citizens' Rights Directive and notably that the expulsion can only be made on individual basis, ensuring that personal circumstances have been taken into account, and by no means on the basis of lack of economic means (automatically, at least). Breach of law aside, the EP openly criticized the "inflammatory and openly discriminatory rhetoric that has characterized political discourse during the repatriations of Roma"<sup>30</sup>. The French authorities were not the only ones criticized by this resolution. The European Commission's inaction was also condemned by the members of the European Parliament. This resolution itself was harshly criticized by the French government and notably the French State Secretary on European Affairs Pierre Lellouche, who, while on official visit in Bucharest, accused the PE of voting the resolution in the heat of the moment and for ideological reasons<sup>31</sup>.

### **The Roma Caught Between EU and Member States**

This section discusses how Roma citizens are constructed as a security threat at the EU level and especially at the national level and how, despite this existent stigma, the EU chooses to leave the 'Roma problem' to the Member States by adopting a loose EU Framework for National Roma Integration Strategies.

The roots of migration securitization in the EU -understood as "turning a policy issue (...) into a security issue" (Faist, 2006, p 104) and criminalizing illegal immigration- are linked to the development of common migration and asylum policies. This development is summarized under the idea of a 'Fortress Europe' which suggests that while the EU is suppressing internal borders, it is also becoming more and more restrictive in regard to the immigration of third country nationals. Talani argues that this can be traced back to a first phase of the common approach to migratory policy in the EU -notably to the Council regulation 1612/68<sup>32</sup>- which introduces a differentiation between the right of free movement of citizens of the Member States and of third country nationals was first introduced (Talani, 2011, p. 61). This distinction was strengthened during a second phase of the common approach, which sees securitization and the creation of law enforcement agencies as the main concern. Finally, the institutionalization of this 'fortress' took place during a third phase lasting between 1985 and 1992 (Talani, 2011, p. 63) which culminated with the introduction of EU citizenship by the Maastricht Treaty. For Talani, Fortress Europe progressed because of the adoption of the Schengen Agreement and the Dublin Convention which brought common external frontiers, common rules against illegal migration, a common system for asylum seekers, and a database for illegal migrants (Talani, 2011 p. 64). Moreover, the Lisbon Treaty widened the EU's competence in the field by aiming at 'common policies' in the areas of migration and asylum. Title V of the TFUE -Area of Freedom, Security and Justice<sup>33</sup>- juxtaposes provi-

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<sup>30</sup>Ibid.

<sup>31</sup>Euractiv, 10<sup>th</sup> of September 2010, 'Oficialii francezi la Bucuresti', [http://arhiva.euractiv.ro/uniunea-europeana/articole/displayArticle/articleID\\_20998/Oficialii-francezi-la-Bucuresti-Schengen-nu-are-legatura-cu-romii-dar-este-legat-de-mecanismul-de-cooperare-si-verificare-pe-justitie.html](http://arhiva.euractiv.ro/uniunea-europeana/articole/displayArticle/articleID_20998/Oficialii-francezi-la-Bucuresti-Schengen-nu-are-legatura-cu-romii-dar-este-legat-de-mecanismul-de-cooperare-si-verificare-pe-justitie.html)

<sup>32</sup>Council of the European Communities *Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community*, OJ 1968 L 257, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31968R1612:en:HTML>. This has now been replaced by European Parliament and Council Directive 2004/38 and European Parliament and Council Regulation 492/2011.

<sup>33</sup>European Union (2012) *Consolidated version of the Treaty on the Functioning of the European Union*, OJ 2012/C 326/01, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN>

sion on border checks, asylum and immigration; judicial cooperation in civil matters; judicial cooperation in criminal matters and police cooperation. However, in the case discussed here, the securitization takes place within the EU and those framed as a threat are EU citizens. For Parker, this securitization is “part and parcel of a multi-level polity” (Parker, 2012, p. 476) and it does indeed concern even those endowed with EU citizenship.

In the particular case described in this article, the securitization of Roma in France, started with President Sarkozy’s Grenoble speech when he “noted, without real justification given the identities of the actual perpetrators of violence – to, inter alia, present the Roma as threat to the integrity of state and, in particular, France’s republican way of life” (Parker, 2012, p. 478). In the discourses that followed this initial speech there were numerous references to ‘delinquent citizens’ that are portrayed as a threat to the French republican way of life. This goes back to the initial observation on the importance of constructed categories and how they negatively frame the image of Roma migrants. In the case of Roma EU citizens, there is a dominant populist rhetoric in both countries of emigration and immigration, which criminalises these communities. Bigo argues that there is a governmental discourse “based on the reality of criminal danger” (Bigo 2013, p. 23) and on the Schengen Agreements that is used to justify the collective deportation of Roma back to Romania and Bulgaria. Moreover, he shows that Roma are not persecuted because of their different lifestyles but because “they are constructed as a group on the margins of societies and states, as nomads” (Bigo, 2013, p. 27) or, put bluntly, as “‘useful enemies’, ‘useful targets’ when something goes wrong in the political landscape, nationally or internationally” (Bigo, 2013, p. 27).

It has been argued that this logic of security derives from a realist vision of politics and is in contradiction with the liberal one that praises the benefits of mobility (Parker 2012, Parker and Toke 2013). It has often been underlined that the EU freedom of movement is Janus-faced, as “on the one hand it is conducive to better integration and political union, on the other it appears as a source of dangerous excesses” (Ardau et al, 2015, p.138). Some EU citizens are encouraged to be mobile, whereas the mobility of others is restricted on grounds of security (Ardau et al, 2015, p. 138). These explanations are in line with the fact that there seems to be a long-lasting stigma against Roma, which is now being transmitted from their countries of origin to other Member States. In this line of thought, Matache links the expulsions to this ingrained prejudice and even goes as far as comparing “the image of the criminal Roma deserving expulsion” - recently created by the European democracies - to the Roma abuses that used to be characteristic to the Middle Ages (Matache, 2014, p. 331). It would be simplistic to only focus on the ethnicity of the occupants of these camps. Their economic status is well documented in both their countries of origin and of residency. Roma citizens have important push factors to move – racism, poverty, unemployment. From this point of view, the migration of Roma EU citizens is not “an ethnic but a social, economic phenomenon in transition from peripheral society and global capitalism” (Tóth 2013, p. 53). Nevertheless, their attempt at social mobility ends up being a form of forced mobility back to their countries of origin. Firstly, this symbolises that the whole EU cannot be seen as the home ‘country’ of EU citizens. EU citizenship fails to be the fundamental status of EU citizens, such as pronounced in Grzelczyk case<sup>34</sup>. Secondly, it can be argued that the way in which Roma migration has been framed is a policy failure precisely because it has been described as a purely economic migration. For McGarry, the EU chooses to see only half of the problem. There is, of course, an economic and employment aspect, as Roma communities face “structural injustices such as endemic

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<sup>34</sup>Case C-184/99 Rudy Grzelczyk v Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve [2001] ECR I-06193, paragraph 31

unemployment, discrimination, poverty, racism and inadequate access to basic services such as health and education, amongst others” (McGarry, 2012, p. 127), but this is not the only aspect.

Apart from their precarious economic and social situation, Roma suffer from ethnic discrimination and segregation in their countries of origin as well. Matache stresses the revival of discriminatory attitudes in the light of extremist parties’ accession. For her, beliefs of Roma inferiority were latent, and authorities failed to tackle them through anti-bias education and enforcement laws (Matache, 2014, p. 326). The amount of documented abuses, attacks and hate crimes in the Central and Eastern European countries (Bulgaria, Czech Republic, Hungary and Romania) prove the persistent trait of the prejudice. In this regard, the discrimination of Roma - this time in the West of the EU - is linked to previous marginalization in the East of the EU, with the propagation of the idea of their ‘inferiority’, ‘alien culture’, and of course with their association with un-educated, low-skilled migrants.

Furthermore, the problem is aggravated by the fact that these Roma communities cannot be recognized as being in a situation of danger, because this would jeopardize the assumption that all EU states are ‘safe states’. In order to prevent any challenge of this type, the Aznar Protocol assumes that all EU Member States protect fundamental freedoms and rights and therefore implies that “every EU citizen applying for asylum in another EU Member State will, as a general rule, have her/his application classified as ‘manifestly unfounded” (Guild and Carrera 2013, pp. 15-16). In these circumstances, where Roma communities have nowhere to go and no possibility to seek asylum, their ethnic discrimination within the EU is one of the major challenges of the present times. If EU citizenship is the fundamental status of citizens of the Member States, one would expect that the legal protection derived from this can address this challenge. However, EU citizenship rights fail to assume the task, and the EU engages in a responsibility game.

### **EU Roma Framework – Whose Responsibility?**

The EU seems to view national governments as the solution to the Roma discrimination problem. However, as shown by the example above, national governments might actually be the problem. An EU Roma Framework<sup>35</sup> was adopted in April 2011 and it focuses on the integration of Roma communities in their home countries. The Framework was adopted as a Communication of the European Commission to the Council and the European Parliament, which falls short of having any legal effects. On the one hand, it can be argued that the shape taken by the EU Roma strategy - a broad Framework allowing for flexibility - has the merit of requiring a proactive approach from the Member States. Arguably, this middle-ground solution has been adopted because a purely transnational strategy for the integration of Roma would take away any responsibility from national governments (McGarry 2012). The framework does have some overarching objectives, targeting Roma inclusion through education, housing, health and employment, but it generally aims to develop national strategies rather than a common European one.

Moreover, the Framework also implies a financial conditionality for Member States. Member states have to implement Roma integration policies if they want to benefit from certain funds offered by the Commission. Through the Framework itself, the Commission commits to allocating €26.5 billion of EU funding but stresses that Member States should contribute too. The Framework also enumerates the

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<sup>35</sup>European Commission, Communication (2011), *An EU Framework for National Roma Integration Strategies up to 2020*, COM/2011/0173 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0173&from=en>

instruments that Member States have at their disposal and emphasises the importance of the European Platform for Roma inclusion. And finally, it mentions the necessity for putting in place “a robust monitoring mechanism with clear benchmarks which will ensure that tangible results are measured” (European Commission, 2011, p. 13). There is, indeed, an annual follow-up undertaken by the Commission.

However, some authors criticize the Framework by claiming that it does not make clear the follow up procedure (Carrera, 2014, p. 50). Hence, it can be argued that the Framework remains vague and does not establish precise objectives or deadlines to be met by the Member States. To this, it should be added that there is no enforcement mechanism against the Member States or administrations that do not comply. The European Roma Policy Coalition issued a statement entitled “EU Roma Framework weak on discrimination against Roma” that criticizes the Framework for failing to “specify measures to combat discrimination, intimidation, anti-Gypsyism, hate speech or violence against Roma”<sup>36</sup>.

On this point, it is worth mentioning that the Framework ignores the construction of Roma as an ethnicity. The word ‘ethnic’ appear twice in the body of the text and once in a footnote but it only refers to ethnic discrimination in general and does not specifically associate Roma to an ethnicity. It can be argued that in spite of the EU’s efforts to avoid ethnic discriminatory practices (as shown by their response to France’s attitude against the Roman community), the EU seems not to be fully aware of the ethnic discrimination factor. The challenge in this regard is to find the right balance between redistribution and the recognition of Roma as a group with a cultural value. It is thus correct to say that “Roma require a policy intervention which simultaneously treats Roma the same as other EU citizens whilst also recognizes their difference” (McGarry, 2012, p. 128). Gould (2014) concurs with this idea, emphasizing that by ‘different’ should be understood as ‘having different needs’. Furthermore, given that the Framework was adopted one year after the expulsions, it was expected that it would tackle the elephant in the room, the freedom of movement for EU citizens. However, freedom of movement is not one of its priorities –it is only once mentioned in the conclusions of the text and in a very unspecific manner.

On the other hand, it can be argued that the Framework was adopted because no other agreement could be found. From a legal point of view, stronger instruments were available<sup>37</sup>. However, Member States might not have been ready to commit to those. The Framework is indeed a soft law instrument and has a non-binding character, but, as mentioned above, it does have some merits. Nevertheless, shifting the responsibility of protecting Roma communities from the EU level to the Member States has some implications for EU citizenship. The Framework specifies upfront that “it is the EU’s response to the current situation and does not replace Member States’ primary responsibility in this regard” (European Commission, 2011, p. 3). It can also be seen as shifting not only the responsibility, but also the blame. The issue can no longer be framed as an exclusively European one, as it was the case in the aftermath of the 2010 expulsions, because according to the Framework Member States have to fulfil their obligations (Carrera, 2014, p. 55).

Unsurprisingly, the national strategies mirror the priorities established by the Framework. Hence, the problems of discrimination against mobile Roma citizens are neither covered by national strategies nor the reporting actions by Member States (Carrera, 2014, p. 50). However, some bilateral initiatives do tackle the mobility problem, although they do not do so in a manner meant to encourage free movement. According to the Franco Romanian agreement on police cooperation, Romanian authorities are

<sup>36</sup>ERPC, 2011, ‘ERPC Statement’, <http://www.errc.org/cms/upload/file/erpc-euframework-reaction-05042011.pdf>

<sup>37</sup>For example, Article 19 TFEU as a competence norm.

supposed to assist the French ones in “identifying Roma ‘criminals’ and returning them to Romania where efforts should be made for “the social inclusion, reintegration or ‘re-inclusion’ of the Roma minority into Romanian society” (Carrera 2014, p. 51). Here, again, the idea of returning to Romania and being integrated or reintegrated there dominates the discourse.

As far as the implications for EU citizenship are concerned, it seems that the EU Roma Framework fails to offer a supranational protection for the right of free movement –the EU’s so-called fundamental right. It can be seen as the renunciation of the EU to “its ownership and obligations over EU citizenship acts and claims of Romanian and Bulgarian nationals of Roma origins exercising one of the most paradigmatic components of citizenship of the Union, i.e. freedom to move” (Carrera, 2014, p. 55). It is important to emphasize that these citizens, even if living in improvised camps, are the very expression of European right of free movement. As discussed above, their collective expulsions violated EU norms and the right of free movement and raised important doubts in regard to the strength of EU citizenship.

## Conclusion

This article has analysed the expulsions of Roma EU citizens from France in 2010 with the aim of showing the challenges this situation posed to the concept of EU citizenship. Despite the claims that the right of free movement is a fundamental and universal right of EU citizens, this article has attempted to show that this is not the case for every EU citizen. The Roma expelled from France were singled out as an ethnic minority and purposively targeted. This situation violated the Racial Equality Directive, the Citizens’ Rights Directive and ultimately human rights (notably the non-discrimination rights). This example is one of ‘securitization’ and of creation of an ethnic identity from above. The expelled Roma saw their identity named, framed and associated with delinquency and crime.

Moreover, after this initial stage, a blame game started and the responsibility was passed from one level to the other. Immediately after the events, a powerful European discourse condemned the expulsions and stated the importance of free movement and non-discrimination. Nevertheless, the 2011 EU Roma Framework passed the ball to the national courtyards. While it can be argued that it was done for the sake of involving Member States, it can also be claimed that EU institutions found their scapegoat by doing this. In regard to formal aspects, the Framework was criticized for lacking real targets, having a non-binding nature and lacking an enforced monitoring mechanism. On more substantive matters, it can be criticized for failing to tackle the ethnic discrimination faced by Roma communities while exercising their right of free movement.

Overall, the responsibility shift was accompanied by a priority shift. The integration of Roma migrants in their home countries took priority over the protection of their free movement. On the one hand, this testifies to the weakness of EU citizenship, as it proves how the right of free movement is not equally applying to all EU citizens. The opposite seems to actually be the norm, as some of these citizens are invited to integrate at home rather than move abroad. On the other hand, the failure to tackle the ethnic discrimination at any level weakens the protection of Roma EU migrants who are caught between the two levels.

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