

THE ILLEGALITY OF FRANCE'S EXPULSIONS OF BULGARIAN AND ROMANIAN ROMA UNDER EUROPEAN UNION LAW

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Article abstract

This contribution will try to answer the question whether and to what degree France has infringed domestic and European law by expelling Romanian and Bulgarian Roma citizens since the acceptance of both countries into the European Union on January 1, 2007. This paper is divided in two parts. In the first part, the author seeks to demonstrate how the expulsions of Bulgarian and Romanian Roma citizens from France infringe the 2004 Directive on Freedom of Movement of European Union (EU) nationals under EU law. In the second part, the study shows that the curtailment of Bulgarian and Romanian citizens' freedom of movement infringes those citizens' rights under European law, namely under the European Social Charter and the European Convention on Human Rights. The rights discussed under the European Convention are the right to respect for private and family life under which is examined the right of housing and children's right to education. Finally, the author outlines positive practices from France that can be translated into European Union law and adopted by the Member States as one means of ensuring Roma children's right to education across the European Union.

THE ILLEGALITY OF FRANCE'S EXPULSIONS OF BULGARIAN AND ROMANIAN ROMA UNDER EUROPEAN UNION LAW

*Silvia Dimitrova**

This contribution will try to answer the question whether and to what degree France has infringed domestic and European law by expulsing Romanian and Bulgarian Roma citizens since the acceptance of both countries into the European Union on January 1, 2007. This paper is divided in two parts. In the first part, the author seeks to demonstrate how the expulsions of Bulgarian and Romanian Roma citizens from France infringe the 2004 Directive on Freedom of Movement of European Union (EU) nationals under EU law. In the second part, the study shows that the curtailment of Bulgarian and Romanian citizens' freedom of movement infringes those citizens' rights under European law, namely under the European Social Charter and the European Convention on Human Rights. The rights discussed under the European Convention are the right to respect for private and family life under which is examined the right of housing and children's right to education. Finally, the author outlines positive practices from France that can be translated into European Union law and adopted by the Member States as one means of ensuring Roma children's right to education across the European Union.

Cet article tentera de répondre à la question de savoir si la France a enfreint le droit national et européen en expulsant des citoyens roms de nationalité roumaine et bulgare depuis l'entrée de ces deux pays au sein de l'Union européenne le 1^{er} janvier 2007. Cet article comprend deux parties. Dans la première partie, l'auteure cherche à démontrer comment les expulsions de citoyens, bulgares et roumains, de France enfreint la *Directive de la libre circulation des citoyens de l'Union européenne*. Dans la deuxième partie, l'analyse démontre que la restriction de la liberté de circulation des citoyens bulgares et roumains bafoue les droits de ces citoyens, notamment en vertu de la *Charte européenne sociale* et la *Convention européenne des droits de l'homme*. Les droits évoqués en vertu de la *Convention européenne* se réfèrent au respect de la vie privée et familiale à travers lequel le droit au logement et le droit des enfants à l'éducation sont examinés. Enfin, l'auteure souligne les actions positives de la France qui se reflètent dans le droit l'Union européenne et sont reconnues par les États membres comme des mesures assurant le droit à l'éducation des enfants roms.

* This author would like to thank Professor Francois Crépeau, the Hans & Oppenheimer Professor in Public International Law at the Faculty of Law at McGill University, for his helpful comments and feedback. The author would also like to thank l'Association pour la scolarisation des enfants tsiganes (ASET 93) and Soraya Amiar.

The European Parliament, numerous organizations and authors have denounced the expulsions of Bulgarian and Romanian Roma citizens from France and related practices by the French authorities as discriminatory. Resolution adopted by the European Parliament on 9 September 2010 came as a response to the French government's announcement of a package of measures aimed at removing Bulgarian and Romanian Roma citizens from France. The announcement followed the dismantlement of 128 irregular settlements and the expulsion of around 1000 Romanian and Bulgarian Roma citizens by the end of August 2010.¹ In response, the European Parliament expressed "deep concerns at the measures taken by the French authorities and by other member states' targeting Roma and travellers", urging France "immediately to suspend all expulsions of Roma" and stating that the policy "amount to discrimination".² The expulsions have continued since the French Socialist Party won the parliamentary elections in June 2012.³

This contribution will try to answer the question whether and to what degree France has infringed domestic and European law by expelling Romanian and Bulgarian Roma citizens since the acceptance of both countries into the European Union on 1 January 2007.⁴

This paper is divided in two parts. In the first part, the author seeks to demonstrate how the expulsions of Bulgarian and Romanian Roma citizens from France infringe the *Directive* of European Union (EU) nationals under EU law. In the second part, the study shows that the curtailment of Bulgarian and Romanian citizens' freedom of movement infringes those citizens' rights under European law namely under the *European Social Charter* and the *European Convention*. The right discussed under the *European Convention* are the right to respect for private and family life under which is examined the right of housing and children's right to education. Finally, the author outlines positive practices from France that can be translated into EU law and adopted by the member states as one means of ensuring Roma children's right to education across the European Union.

¹ Valentina Pop, "EU questions legality of French Roma expulsions" *EU Observer* (2 September 2010), online: EU Observer <<http://euobserver.com>>.

² EC, *European Parliament resolution P7_TA(2010)0312 of 9 September 2010 on the Situation of Roma and on Freedom of Movement in the European Union*, [2010] at 4.

³ "French Socialists Ramp up Roma Evictions" *The Local* (6 February 2013), online: The Local <<http://www.thelocal.fr>>.

⁴ European law here encompasses the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 UNTS 221 at 223, (entered into force 3 September 1953) [*European Convention*] and the *European Social Charter*, 18 October 1961, 529 UNTS 89 at 138 (entered into force 26 February 1961), and decisions of the European Committee of Social Rights. European Union law encompasses the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, EC, *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*, [2004] OJ, L229/35 [*Directive*], the Charter of Fundamental Rights of the European Union, EC, *Charter of Fundamental Rights of the European Union*, [2000] OJ, C364/1 [*EU Charter*] and case-law by the Court of Justice of the European Union; see "Description of this Author's Project".

This author embarked on the project of examining the impact of expulsions of Bulgarian and Romanian Roma on their rights under EU law and European law following the expulsions of Bulgarian and Romanian Roma from France in 2010. The author completed her internship with the association *Aide à la scolarisation des enfants Tsiganes en Seine-Saint-Denis*⁵ (ASET 93) in the summer of 2011 as part of her specialization in International Development and Human Rights within the B.C.L./LL.B. degree at McGill University. Under the guidance and supervision of Professor Francois Crepeau⁶, this author volunteered as mediator to assist ASET 93 in examining the legality of the on-going expulsions against Bulgarian and Romanian Roma from France under both EU and European law.

The author's role and mandate as an intern in the summer of 2011 was to assist ASET 93 in ensuring that all Roma children in region Seine-St-Denis (outside of Paris) attended school. ASET 93 intervenes in 11 of the 42 terrains of Roma in Paris. The organization's mission is to guarantee that all French Roma and migrant Roma children on the territory of region Seine-Saint-Denis attend school and that both parents and children are educated about mandatory schooling in France.

The author's role as an intern involved meeting with individuals on Roma terrains to explain the system of mandatory education in France, to inform children and parents of their rights and to help prepare and enroll the children at school. A short period of school preparation in the organization's mobile schools allowed the children to acquire basic academic and linguistic skills to facilitate their transition into a stable school environment. In addition to an educational role, this author's task as a mediator allowed her to observe and examine the way expulsions are carried out to determine if the manner of evacuation complied with procedural safeguards.

During her internship, this author was also involved with the *Campagne pour le droit à l'éducation et la scolarisation des enfants roms* in France. This campaign is a reaction to the French administration's inability or reluctance to ensure that Bulgarian and Romanian Roma children access mandatory primary education in France. Through press conferences in the Senate and the General Assembly, negotiations with French institutions and interventions by United Nations Children's Fund (UNICEF) and United Nations Educational, Scientific and Cultural Organization (UNESCO), this movement of non-governmental organizations (NGO) and citizens has the objective to raise awareness about the Roma children's inability to exercise their right to education in France as a result of on-going expulsions from France.

⁵ Information about the association *Aide à la scolarisation des enfants Tsiganes en Seine-Saint-Denis* can be found at: <http://www.aset93.fr/>.

⁶ Professor Francois Crepeau is the Hans and Tamar Oppenheimer Chair in Public International Law, at the Faculty of Law of McGill University. He was appointed United Nations Special Rapporteur on the Human Rights of Migrants in 2011.

I. FRANCE INFRINGES THE DIRECTIVE ON FREEDOM OF MOVEMENT AGAINST ROMANIAN AND BULGARIAN CITIZENS

France has severely limited the freedom of movement of Romanian and Bulgarian citizens. The *Directive* guarantees the freedom of movement of all EU nationals to reside in any member state and only requires that EU citizens travelling in the European Union carry a valid identity card or passport.⁷ However, since the acceptance of Bulgaria and Romania in the EU, France has undertaken a policy of on-going removals of Bulgarian and Romanian Roma citizens.

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A. A Broad Freedom of Movement under EU law

The principle of the free movement of persons is a foundational principle of EU law. Any provision granting this freedom must be interpreted broadly and any derogation from this right must be given strict interpretation.⁸ In its *Guidance* from the Commission to the European Parliament and the Council for Better Transposition and Application on the Directive, the Commission underscores that the *Directive* should be given broad interpretation in favour of the human rights enshrined in the *European Convention*, in particular the right to respect for private and family life, the principle of non-discrimination, the right of the child and the right to an effective remedy.⁹

Bulgarian and Romanian citizens, like all EU citizens, have the right to reside in another member state for up to three months. Expulsion measures beyond this time must be subject to an individualized assessment.¹⁰ Under EU law, if European citizens wish to reside in another member state beyond the first three months, they must show that they have sufficient resources and a comprehensive

⁷ Article 6 of the *Directive* lays a broad right of freedom of movement for all EU citizens, by limiting the requirement to stay in any EU Member State country to the possession of a valid passport or identity card. *Directive*, *supra* note 4, art 6.

⁸ See European Court of Justice Cases, *Ministerul Administrației și Internelor - Direcția Generală de Pașapoarte București v Gheorghe Jipa*, C-33/07, [2008] ECR I-05157 [*Gheorghe Jipa*] and *R H Kempf v Staatssecretaris van Justitie*, C-139/85, [1986] ECR 01741 [*R H Kempf*].

⁹ EC, *Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, [2009], at 3, online:

EUR-Lex <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>> [*The Guidance*].

¹⁰ In its *Guidance* on the transposition of the *Directive*, the Commission states that: "The authorities of the Member States must take into account the personal situation of the individual concerned," when assessing whether a European citizen represents a burden on the social assistance system of the member State. *Ibid* at 8.

sickness insurance coverage.¹¹ As per the Commission's *Guidance*, only proof of receipt of social assistance can be a valid ground for expelling an EU citizen on the ground that they present a burden on the receiving member state.¹²

Roma normally live in tight-knit communities where upon arrival in France, many choose to join family members on private terrains upon the payment of rent to the owner of that terrain. Alternatively, some Roma settle on abandoned public terrains. To prevent the formation of such settlements, the French state has undertaken preventive expulsions *en masse*. Such public order expulsions are prohibited under EU law, as expressed in *Royer*:

The mere failure by a national of a Member State to comply with the formalities concerning entry, movement and residence of aliens is not of such a nature as to constitute in itself conduct threatening public policy and public security and cannot therefore by itself justify a measure ordering expulsion or temporary imprisonment for that purpose.¹³

Furthermore, EU law precludes expulsion as a preventive measure and treats it an undue limitation of EU nationals' freedom of movement: "Article 3(1) and (2) of the *Directive* prevents the deportation of a national of a member state if such deportation is ordered for the purpose of deterring other aliens, [...] on reasons of a general preventive nature".¹⁴

B. France's superficial transposition of the Freedom of Movement Directive

Although the status of the *Directive* under French law is transposed, French law has only partially transposed this *Directive* in national law. EU nationals' freedom of movement in France is more restricted under French law than under the *Directive*. For example, article L121-4-1 of the French *Code de l'entrée et du séjour des étrangers et du droit d'asile* accords the right to all EU nationals to reside in France for up to three months "without any other conditions or any formalities other than those for entry in France provided for by law".¹⁵ In contrast, article 6 of the *Directive* guarantees that Union citizens shall have the right of residence in any 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".¹⁶

¹¹ *Ibid.*

¹² "Only receipt of social assistance benefits can be considered relevant to determining whether the person concerned is a burden on the social assistance system", *The Guidance*, *supra* note 9 at 9.

¹³ *The State v Jean Noël Royer*, C-48/75, [1976] ECR I-497 at I-515, online: EUR-Lex <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61975CJ0048:EN:PDF>> [*Royer*].

¹⁴ *Carmelo Angelo Bonsignore v Oberstadtdirektor der Stadt Köln*, C-67/74, [1975] ECR I-297, at I-306-07, online: EUR-Lex <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61974CJ0067:EN:PDF>> .

¹⁵ Art L121-4-1 CESEDA [*CESEDA*].

¹⁶ *Directive*, *supra* note 4, art 6.

CESEDA's use of "other than those for entry in France provided for by law"¹⁷ limits EU citizens' freedom of movement in the initial period of stay of three months by attracting discretionary decision-making by the French authorities in exercising expulsion powers.

Another example of France's failure to fully transpose article 30 of the *Directive*¹⁸ is that the French *CESEDA* changes the wording in the *Directive* by stipulating that expulsion orders be done by "reasoned decision".¹⁹ In contrast, the *Directive* imposes a substantive requirement to guarantee that the person concerned understands the implications of the decision by way of not only the language, in which it is communicated, but also the content.²⁰ Thus, *CESEDA* does not specify that the notification of expulsion orders be written "in a way that [EU citizens] are able to comprehend content [of the expulsion order] and the implications for them."²¹ This wording in the provision of the *Directive* indicates that EU law requires the services of translators where the individual cannot understand the content and the implications of a decision restricting their freedom of movement in France.

Furthermore, neither has paragraph 2 of article 14 of the *Directive* been transposed into French law. This provision stipulates that recourse to social assistance cannot be a valid ground for expelling an EU national.²² French law has legislated in breach of this guarantee. EU nationals who have the "primary objective of benefitting from the social assistance system"²³ are subject to an expulsion order. No guidelines exist under *CESEDA* on how this assessment is conducted without infringing EU citizens' procedural safeguards.

France's failure to demarcate the limits of this discretionary decision-making power results in the discriminatory treatment of Bulgarian and Romanian Roma citizens in France. The French authorities assume that Roma citizens from the new member States are in France to benefit from the state's social services. The State uses this presumption as the *modus operandi* behind restricting Roma citizens' rights – as accorded to all European citizens – to reside legally on the French territory for an initial period of three months.²⁴

¹⁷ *CESEDA*, *supra* note 15, art L121-4-1.

¹⁸ *Directive*, *supra* note 4, art 30.

¹⁹ The wording in French is *par décision motivée*. The exact wording in the French law is "*sans autre condition ou formalité que celles prévues pour l'entrée sur le territoire français*". Voir *ibid*, art L121-4-1.

²⁰ The exact wording of the *Directive* is that a decision restricting an EU national's right of residence: "The persons concerned shall be notified in writing [...] in such a way that they are able to comprehend its content and the implications for them". *Directive*, *supra* note 4 at art 30(1).

²¹ *Ibid*.

²² *Directive*, *supra* note 4, art 14(2).

²³ *CESEDA*, *supra* note 15, art L511-3-1(2) [translated by author]. The French language of this provision is "*le but essentiel de bénéficier du système d'assistance sociale*".

²⁴ See section 1 of this paper for a discussion of the recently added powers used French state to curtail the right of Romanian and Bulgarian Roma citizens to remain in France within the initial period of three months.

Further, paragraph 3 of article 30 of the *Directive* has not been transposed into French law. Under this provision, all decisions restricting EU nationals' freedom of movement must be notified in writing.²⁵ This procedural requirement is not articulated in *CESEDA*. The expulsion orders served to Bulgarian and Romanian nationals are written, but the lack of legislative stipulation to this effect opens the door to unfettered discretion by the French authorities.

Finally, in paragraph 1 of article 30, the *Directive* provides that an expulsion order must also include an indication that the individual concerned can appeal the decision within a specific period.²⁶ Although formally transposed into French law under article L511-3-1 of *CESEDA*, this procedural requirement is not indicated in the French expulsion orders issued against Bulgarian and Romanian citizens.²⁷ Bulgarian and Romanian nationals are not aware of this possibility upon expulsion. This requirement must be specified in the French removal orders to ensure that each individual enjoys the procedural guarantees to guard against illegal expulsions.

1. THE ADDITION OF TWO POWERS OF EXPULSION OF EU NATIONALS IN FRENCH LAW BREACHES THE EU DIRECTIVE

The right of EU nationals to reside in France for more than three months is guaranteed in article 7 of the *Directive*.²⁸ However, French law has a lower threshold for the right to reside in France. Although the conditions of residence beyond the first three months are transposed in article L121 of *CESEDA*,²⁹ EU nationals' right of residence in France is restricted by two additional procedures.

French law provides two separate procedures for expelling visiting EU nationals within their first three months of stay in France.³⁰ Both of those procedures are incompatible with the *Directive's* high threshold for residing in an EU Member State during the initial period of three months.³¹ Under the *Directive*, an EU Member State can only restrict EU nationals' right of residence if the person's conduct represents "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society."³² A judgment by the Administrative Tribunal of Lille from 27 August 2010 notes that France is to transpose this provision:

²⁵ *Directive*, *supra* note 4, art 30(3).

²⁶ *Ibid* note 4, art 30(1).

²⁷ *CESEDA*, *supra* note 15, art L511-3-1. During the scope of her project in the summer of 2011, this author has not seen that the *obligation de quitter le territoire français* (OQTFs) contained the procedural guarantee of the possibility to appeal an expulsion order.

²⁸ *Directive*, *supra* note 4, art 7.

²⁹ The conditions for residence beyond the three months are transposed from the article L121 of *CESEDA* (voir *CESEDA*, *supra* note 15, art L121ff) and are that the citizen is a worker or self-employed in the host member state or has sufficient resources, as well as a comprehensive sickness insurance cover in order not to become an unreasonable burden on the social system of the host country.

³⁰ *CESEDA*, *supra* note 15, arts L511-3-1, L213-1.

³¹ *Directive*, *supra* note 4, art 7.

³² *Ibid*, art 27(2); transposed in French law in *CESEDA*, *supra* note 15, art L511-3-1(3).

However, Community law, which France is yet to transpose, states that “the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.”³³

The first ground of expulsion within the first three months of stay in France is referred to as *abuse of rights*.³⁴ Abuse of rights was recently added to the Chapter “*Cas dans lesquels un étranger peut faire l'objet d'une obligation de quitter le territoire français et d'une interdiction de retour sur le territoire français*” in the French *CESEDA* law.³⁵ French law defines this ground of expulsion as the renewal of stays of less than three months for the purpose of residing in France when the conditions required for a stay of longer than three months have not been met. Another form of abuse of rights under French law is when the French authorities identify that an individual “remain[s] in France for the fundamental purpose of benefitting from the state’s social assistance system.”³⁶ Both forms of abuse of rights as grounds of expulsion are incompatible with the *Directive* because neither procedure requires individualized assessment prior to issuing an expulsion order in accordance with paragraph 2 of article 27 of the *Directive*.³⁷

Article 6 of the *Directive* guarantees the right of every EU citizen to stay and reside in any other member state “without any conditions or any formalities other than the requirement to hold a valid identity card or passport.”³⁸ In view of this high threshold, the Lyon Court has held that the failure to conduct individualized assessment in determining if someone’s stay amounts to an abuse of rights is illegal and annulled 12 OQTF orders, issued between October 2010 and April 2011.³⁹

Abuse of rights gives the French authorities wide discretion in determining when to apply this procedure against EU citizens. Nothing prohibits the French prefect from using abuse of rights as a ground to expulse individuals on the mere presumption that they are living on welfare assistance. The *Directive*, however, rejects reliance on social assistance as a ground of expulsion within the first three months of stay on the territory of a member state. The *Directive* states that grounds of public order should not be invoked as an “automatic consequence to recourse to the

³³ Trib admin Lille, 27 August 2010, Arrêtés de reconduite à la frontière, online: Trib admin Lille – Communiqué < <http://lille.tribunal-administratif.fr/communiqués/arretes-de-reconduite-a-la-frontiere.html> > [translated by author] [Trib admin Lille].

³⁴ *CESEDA*, *supra* note 15, art L511-3-1(2) [translated by author].

³⁵ See *CESEDA* at chapter I “*Cas dans lesquels un étranger peut faire l'objet d'une obligation de quitter le territoire français et d'une interdiction de retour sur le territoire français*” in Titre I “*L'obligation de quitter le territoire et l'interdiction de retour sur le territoire français*” of Livre V “*Les mesures d'éloignement*”. *Ibid*.

³⁶ Both forms of “abuse of right” are listed under article L511-3-1, paragraph 2 of *CESEDA*. See *ibid*, art L511-3-1(2) [translated by author].

³⁷ *Directive*, *supra* note 4, art 27(2).

³⁸ *Ibid*, art 6(1).

³⁹ Human Rights Watch, “France’s Compliance with the European Free Movement Directive and the Removal of Ethnic Roma EU Citizens” *Human Rights Watch* (28 September 2011), online: Human Rights Watch < <http://www.hrw.org/news/> > [Human Rights Watch, “*France’s compliance*”].

social assistance system".⁴⁰ In addition, *the Guidance* underscores that only proof of reliance on social assistance can be a valid ground of expulsion.⁴¹

The second power added to the most recent amendment of *CESEDA* is also contrary to the *Directive*. Article L213-1 allows a new power to expulse EU nationals as a measure of public order called an *Arrêté préfectoral de reconduite à la frontière (APRF)*.⁴² An APRF allows the French state to remove EU citizens for certain crimes, like illegal land occupation and exploitation of begging.⁴³ This area of the law targets specifically Bulgarian and Romanian Roma citizens.⁴⁴ This provision authorizes the French state to order the removal of an EU citizen who has resided in France for less than three months on a mere suspicion that he or she has committed any one of a list of enumerated offences⁴⁵. The *Directive* places a high threshold for public order and public safety removals and requires that such removals be done only against individuals who pose a "genuine, present and sufficiently serious threat affecting one of the fundamental interests in society".⁴⁶ A mere suspicion that an individual has committed a crime cannot justify such serious measure. Therefore, this power infringes the *Directive's* high threshold for limiting EU nationals' freedom of movement.

2. INCORRECT TRANSPOSITION OF EU LAW - UNREASONABLE BURDEN

France passed a Circular on 22 December 2006 in anticipation of Bulgaria and Romania's acceptance into the EU. In this Circular, the French state directs the French authorities on the application of French law towards Bulgarian and Romanian citizens. The Circular states that although Bulgarian and Romanian citizens enjoy the same right of residence in France as do other EU nationals, their right to remain in France would have to be restricted if the authorities determined that those nationals posed an "unreasonable burden on the social assistance system, particularly social welfare and health care".⁴⁷

The French Circular from 22 December 2006 discriminates against Bulgarian and Romanian Roma nationals by establishing "unreasonable burden" as a ground of expulsion against nationals from either Member State. Pursuant to section 1.1 of the

⁴⁰ *Directive*, *supra* note 4 at 82.

⁴¹ *The Guidance*, *supra* note 9 at 9.

⁴² *CESEDA*, *supra* note 15, art L213-1.

⁴³ *Ibid*, arts L121-4-1, L511-3-1.

⁴⁴ Human Rights Watch, "France's compliance", *supra* note 39. Statements by high-ranking ministers in the French government explicitly showed a linkage between the measures facilitating the removal of EU citizens from Romania and Bulgaria and the amended French law. The then Immigration Minister Eric Besson proposed the measures at a press conference on 30 August 2010, with the goal "fight more effectively against illegal immigration and human trafficking networks in Romania and Bulgaria." *Ibid*.

⁴⁵ Examples of those crimes are drug trafficking, human trafficking, profiting from prostitution by other, certain kinds of aggravated theft, exploitation of begging, and illegal land occupation.

⁴⁶ *Directive*, *supra* note 4, art 27(2).

⁴⁷ France, Ministère de l'intérieur et de l'aménagement du territoire, *Modalités d'admission au séjour et d'éloignement des ressortissants roumains et bulgares à partir du 1^{er} janvier 2007*, NOR INT/D/06/00115/C at 2 (22 December 2006) [translated by author].

Circular, the French authorities could take controversial measures to determine whether a Bulgarian or Romanian citizen creates an “unreasonable burden” on the French state.⁴⁸ If the French authorities can “reasonably assume” that the Bulgarian or Romanian national relies on state aid and does not have health coverage in her home country, the authorities are authorized to expulse her. The French State Council has found this ground unconstitutional.⁴⁹

It is convenient “to reasonably assume”, as the Circular words it, that Bulgarian and Romanian migrant Roma come to France to rely on social assistance given that many of them already use welfare assistance and have no health coverage in their home countries. Although partially annulled, the Circular still lays the ground for a differential and discriminatory treatment of Bulgarian and Romanian Roma under French law.⁵⁰

France’s use of “unreasonable burden” as a ground of expulsion is illegal and quasi-impossible under French law as well. Firstly, EU nationals are ineligible to receive social assistance within their first three months of stay in France. Actual proof of reliance on social welfare is the threshold requirement under *the Guidance* of the European Commission to justify an expulsion for “unreasonable burden”, as codified in article L511-3-1 of the French *CESEDA*. Secondly, since many Roma are expelled every three months, they are normally unable to produce proof of reliance on social assistance in France. Despite being illegal, this ground still figures on all expulsion orders served on Bulgarian and Romanian Roma citizens.⁵¹

The *Directive* requires individualized assessment in determining if an individual poses an unreasonable burden on the French state. Such determination can only be reached if the person has in fact received social assistance in France.⁵² *The Guidance* report of the European Commission indicates that any expulsion measure on the basis of “unreasonable burden” must follow a proportionality analysis, individualized assessment, must examine the personal situation of the individual, whether the individual’s difficulties are temporary and the amount of state aid already received.⁵³ Therefore, expulsion orders that do not follow those procedural safeguards are invalid under French and European law. One chamber of the Administrative Tribunal of Lille has already annulled 12 OQTF orders because no individualized assessment took place at the time of issuing the orders.⁵⁴

⁴⁸ *Ibid.* Unreasonable ground is a ground upon which an eviction order can be justified under art L511-3-1 of *CESEDA*. *CESEDA*, *supra* note 15, art L511-3-1.

⁴⁹ CE, 19 May 2008, *Association SOS Racisme, Ligue des droits de l’homme et autres*, (2008).

⁵⁰ *Ibid.*

⁵¹ *Plainte contre la France pour violations du droit communautaire en matière de libre circulation des personnes*, [Paris, 22 October 2010] at 6, online: GISTI <http://www.gisti.org/IMG/pdf/cedh_plaintes-roms_2010-10-22.pdf> .

⁵² Human Rights Watch, “*France’s compliance*”, *supra* note 39.

⁵³ Those factors are listed in article 16 of the *Directive*. *Directive*, *supra* note 4, art 16.

⁵⁴ Human Rights Watch, “*France’s compliance*”, *supra* note 39. Nevertheless, this recent Human Rights Watch report notes that courts have taken an inconsistent approach towards appeals of expulsion orders. Although one chamber of the administrative court in Lille had annulled 12 OQTF orders

In France, “unreasonable burden” cannot be a valid ground for the expulsion of Roma citizens also because no EU national who has lived in France under three months can qualify to receive state assistance. The only exception is where the individual requires an urgent domicile and access to “urgent and vital care” (*soins urgents et vitaux*) as per article L254-1 of the *Code de l'Action Sociale et des Familles*.⁵⁵ However, the threshold to qualify for such assistance is very high, namely only when failure to provide aid “would endanger the life of an individual or could lead to serious and continued deterioration in the health of a person or of an unborn child.”⁵⁶

The ground of unreasonable burden as an expulsion measure specifically targets Bulgarian and Romanian Roma. This ground appears on all expulsion orders examined in this author's work and handed to Bulgarian and Romanian Roma. This practice also infringes the *Directive's* high threshold for a right of residence in France: “[Expulsion orders] shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host member State.”⁵⁷ Furthermore, the European Court has recognized that even in the case of recourse to the social assistance system, a European citizen should not be expelled because of temporary financial difficulties he or she may experience.⁵⁸

II. CURRENT FRENCH PRACTICES OF CURTAILING THE RIGHT OF RESIDENCE OF BULGARIAN AND ROMANIAN ROMA ARE ILLEGAL UNDER EUROPEAN LAW

Current French law does not provide for the lawful expulsion of Bulgarian and Romanian Roma citizens in accordance with European law and jurisprudence. All avenues for the expulsions of Roma citizens must be sanctioned by the Commission, the Court of Justice of the European Union and the Council of Europe's Committee of Ministers as inadmissible violations of EU citizens' rights under the *European Convention* and under the *European Social Charter*.

between October 2010 and April 2011 because there had been no individual assessment, another chamber rejected 11 appeals against identical orders. See *ibid*.

⁵⁵ Art L254-1 C de la famille.

⁵⁶ The wording is “*mettrait en jeu le pronostic vital ou pourrait conduire à une altération grave et durable de l'état de santé de la personne ou d'un enfant à naître.*” *Ibid*.

⁵⁷ *Directive*, *supra* note 4, art 14(3).

⁵⁸ *Rudy Grzelczyk c Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, C-184/99, [2001] ECR I-06193.

A. Expulsion orders (OQTFs) against Bulgarian and Romanian Roma citizens are illegal

1. SUBSTANCE IN THE OQTFs CONTRAVENES EU LAW

Past and present French practices use three primary grounds to justify the expulsion of Roma citizens of Bulgaria and Romania. The primary ground in an expulsion order served to Bulgarian and Romanian citizens is lack of sufficient resources to remain in France after the third month of stay. The OQTFs⁵⁹ gathered throughout the scope of this author's project with ASET 93 and with Grégoire Cousin⁶⁰ show that "insufficient resources" figures as a ground for expulsion on the majority of orders served to Bulgarian and Romanian Roma citizens. Article L121-1 of *CESEDA* states that EU nationals cannot remain in France for over three months unless they are employed or have sufficient resources and adequate health coverage for them and for their family to continue to reside in France.⁶¹

It is illegal for the French authorities, however, to expulse EU nationals only on the basis that they pose an unreasonable burden on the State without any proof that they rely on social assistance or have insufficient health coverage.⁶² The majority of OQTFs appear pro-forma, without any proof that individualized assessment took place.⁶³ The forms are also normally served *en masse*.⁶⁴ On one occasion, this author and Grégoire Cousin inspected several OQTFs handed to Bulgarian and Romanian Roma in Bobigny to determine if they followed the legal format and to observe if the police had carried out individualized assessment. In both instances, the OQTFs had identical grounds of expulsion. The persons subject to the expulsions orders whom we interviewed stated that the only document the authorities required them to procure in issuing the order was their identity cards. No request for proof of adequate health coverage, employment or a proof of sufficient resources was made.

⁵⁹ OQTF is a document distributed to individuals subject to an expulsion order based on any of the grounds enumerated under article L511-3-1 of *Ceseda*. *CESEDA*, *supra* note 15, art L511-3-1.

⁶⁰ Grégoire Cousin is a Ph.D. in public law with the *Groupe d'études et de recherche sur la coopération internationale et européenne* (Gercie) at the Faculty of Law, Economics and Geography of University François-Rabelais in co-supervision with the Department of Comparative Law at the University of Florence.

⁶¹ *CESEDA*, *supra* note 15, art L121-1.

⁶² See the website of ASET93 at aset93.fr. See also *Directive*, *supra* note 4, art 6.

⁶³ In its decision against France, the European Committee of Social Rights takes judicial notice of the massive expulsions of Bulgarian and Romanian Roma by way of standard forms handed out with identical content and with no account of the individuals' circumstances or how long they had been in France. Council of Europe, European Committee of Social Rights, 251st Sess, *Centre on Housing Rights and Evictions (COHRE) v France*, *Complaint No. 63/2010*, (28 June 2011) at para 66 [*Complaint No.63*].

⁶⁴ See *Directive*, *supra* note 4, art 6.

2. EXPULSIONS AS A MATTER OF PUBLIC ORDER UNDULY LIMIT CONVENTION RIGHTS

France's expulsions of Bulgarian and Romanian Roma citizens for reasons of public policy, public security and public health are illegal under European law because no individualized assessment takes place in determining whether an expulsion is warranted. Chapter VI of the *Directive* authorizes member States to take measures that restrict EU nationals' right of residence for the initial three months of stay in another member state on the basis of public policy.⁶⁵ Those measures are transposed in article L511-1 of *CESEDA*.⁶⁶ In harmony with the *Directive*, French law also stipulates that to assess whether an individual can be subject to a removal order on the basis of public order, individualized assessment must take place first to determine whether that person represents "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society".⁶⁷

As a result of the lack of individualized assessment, any expulsion measure taken against a Bulgarian or Romanian national amounts to a collective expulsion.⁶⁸ Although no French law authorizes the French state to take measures of collective expulsion against individuals who present a threat to public order,⁶⁹ the French authorities often carry out collective expulsions in breach of Article 4 of the *European Convention*.⁷⁰ This author personally witnessed how a collective expulsion took place by way of the massive distribution of expulsion letters to five individuals occupying the terrain at Pont Bondy in Bobigny in June 2011.

Collective expulsions, even as a matter of public order, are illegal under EU law and are prohibited under article 19 of the *EU Charter*.⁷¹ A Circular from 5 August 2010 instructed the French authorities to evacuate "300 camps or illegal settlements" (*campements ou implantations illicites*) within the following three months. The French authorities were instructed to pursue "systemic dismantling of illegal camps, with a priority of the Roma camps."⁷² Furthermore, the French state ordered the

⁶⁵ *Directive*, *supra* note 4.

⁶⁶ *CESEDA*, *supra* note 15, art L511-1.

⁶⁷ *Directive*, *supra* note 4, art 27(2).

⁶⁸ According to the *European Convention*, collective expulsion, within the meaning of article 4 of Protocol No. 4, is "any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group. That does not mean, however, that where the latter condition is satisfied the background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with article 4 of Protocol No. 4." See *Conka v Belgium*, No 51564/99 [2002] ECHR 34 EHRR 54, at para 59.

⁶⁹ France, Sénat, *Avis sur le projet de loi de finances pour 2011, adopté par l'assemblée nationale: Sécurité, immigration, asile et intégration*, by François-Noël Buffet and Jean-Patrick Courtois, *Avis* No° 116 (18 November 2010) [*Avis no° 116*].

⁷⁰ "UN urges France to avoid Roma deportations", BBC News (27 August, 2010), online: BBC <<http://www.bbc.co.uk/news/world-europe-11113163>>.

⁷¹ *EU Charter*, *supra* note 4, art 19.

⁷² France, Ministère de l'Intérieur, de l'Outre-mer et des Collectivités territoriales, *Évacuation des campements illicites, Circulaire IOC/K/1016329/J* at 1 (5 August 2010).

authorities to carry out evacuations strictly without regard to convention rights.⁷³ The language of targeting specifically the Roma is in flagrant breach of article 21 of the *EU Charter* which prohibits discrimination on grounds of race, ethnic or social origin or membership to a national minority.⁷⁴ This ministerial circular was annulled by the *Conseil d'État* and replaced by a new circular from 13 September 2010.

The conclusion of the European Committee of Social Rights is that the new and old circulars have strikingly similar features. Like the old circular, the new circular stated that the actions stemming from the old circular must continue, reaffirming France's obligation to continue to evacuate illegal camps.⁷⁵

Collective expulsions are also illegal under European law by virtue of paragraph 8 of article 19⁷⁶ of the *EU Charter*. Article 19, paragraph 8, obliges States to prohibit by law the expulsion of migrants residing lawfully on their territory and allows exceptions for threats to national security or for offending public interest or morality.⁷⁷ Any expulsion that takes place without an examination of the individual circumstances of the person, that is not based on the existence of more than a criminal conviction but on all aspects of the non-nationals' behaviour and the entire length of time on the territory of State is contrary to article 19, paragraph 8. The European Committee of Social Rights has already found that the expulsions of migrant Roma from France⁷⁸ and from Italy⁷⁹ breached article 19, paragraph 8. In its decision against France, the Committee found that since Bulgarian and Romanian Roma resided lawfully in the country (considering the acceptance of both countries in the European Union in January 2007) and as per the *Directive*, those expulsions amounted to collective expulsions.

⁷³ Elise Vincent, "Le gouvernement presse les préfets de cibler prioritairement les Roms" *Le Monde* (12 September 2010), online: *Le Monde.fr* < http://www.lemonde.fr/societe/article/2010/09/12/le-gouvernement-presse-les-prefets-de-cibler-prioritairement-les-roms_1410138_3224.html> . See also Elise Vincent, Arnaud Leparmentier & Philippe Ricard, "Roms: volte-face gouvernementale sur une circulaire" *Le Monde* (14 September 2010), online: *Le Monde.fr* < http://www.lemonde.fr/societe/article/2010/09/14/roms-volte-face-gouvernementale-sur-une-circulaire_1410933_3224.html> .

⁷⁴ In *Complaint No.63*, the European Committee of Social Rights concluded that the treatment of Bulgarian and Romanian Roma by the French authorities amounted to a violation of those citizens' rights under Article E (the principle of non-discrimination) of the *EU Charter*. *Complaint No.63*, *supra* note 63.

⁷⁵ Council of Europe, European Committee of Social Rights, 255 Sess., *Forum européen des Roms et des Gens du Voyage c. France, Complaint No.64/2011*, (24 January 2012) [*Complaint No.64*]. In this resolution, the Committee of Ministers found several violations by France of the European Social Charter, one of which was a violation of Article E (non-discrimination) taken in conjunction with Article 19(8) for illegal expulsions of Roma of Romanian and Bulgarian origin.

⁷⁶ Article 19 guarantees the right of migrant workers and their families to protection and assistance. Article 19(8) reads: "With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality." *European Social Charter*, *supra* note 4, art 19(8).

⁷⁷ Council of Europe, European Committee of Social Rights, 244 Sess., *Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009*, (25 June 2010), at para 150 [*Complaint No.58*].

⁷⁸ *Complaint No.63*, *supra* note 63 at para 62.

⁷⁹ *Complaint No.58*, *supra* note 77.

a) *A threat to a fundamental interest of society*

Expulsion orders as a measure of public order can only be issued against individuals who pose “a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.”⁸⁰ The communication by the European Commission has explicitly stated that orders for the expulsion of EU citizens must follow a proportionality analysis, taking into account all circumstances of the individual, namely: “How long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host member State and the extent of his/her links with the country of origin.”⁸¹ The equivalent provision in the French law is *CESEDA* article L511-3-1 (paragraph 3). This is also the conclusion reached by the European Committee of Social Rights with respect to the expulsion of Romanian and Bulgarian Roma by the French state. In its resolution, the European Committee acknowledged that Roma of Romanian and Bulgarian origin living in France survive on extremely low income obtained on instances by begging, theft or rely on unlawful occupation of the public domain or private property. However, this situation cannot justify their expulsion on the basis of posing a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”.⁸²

The French Senate has taken the position that the French state has not transposed the standard of a “genuine, present and sufficiently grave threat to a fundamental interest of society”.⁸³ Any derogation from the right of stay of each European citizen in France is subject to a high burden. The European Court has defined this burden in the following manner:

*Le recours par une autorité nationale à la notion d'ordre public, suppose, en tout cas, l'existence, en dehors du trouble pour l'ordre social que constitue toute infraction à la loi, d'une menace réelle et suffisamment grave, affectant un intérêt fondamental de la société.*⁸⁴

The notion of “a real, present and sufficiently grave threat to public safety” is well established under European law.⁸⁵ To demonstrate the uneven transposition of this principle in French law, the Senate has indicated the decision from 30 August 2010 by the Administrative Tribunal of Lille to annul several deportation orders.⁸⁶

b) *Illegal Occupation of Land*

The public order ground routinely used by the French authorities to justify a removal order against Bulgarian and Romanian Roma nationals is the illegal

⁸⁰ *Directive, supra* note 4, art 27(2).

⁸¹ *Ibid*, art 28(1).

⁸² *Ibid*, art 27(2).

⁸³ *Ibid*.

⁸⁴ *Régina c Pierre Bouchereau*, C-30/7727, [1977], ECR I-01999 at I-02014.

⁸⁵ Conseil d'État, *Cheghba* (24 juillet 1981), cited in *Avis no° 116, supra* note 69 at 68.

⁸⁶ See Trib admin Lille, *supra* note 33 and *Avis no° 116, supra* note 69 at 68 [translated by author].

occupation of land. The Administrative Tribunal of Lille annulled four orders for public order removals of individuals occupying land illegally and rejected the government's arguments that illegal occupation of land is a valid removal on public order grounds.⁸⁷ The tribunal examined four expulsion orders from 24 August 2010 issued against Bulgarian and Romanian nationals. In applying the test on whether "there [was] a sufficient threat to one of the fundamental interests in society,"⁸⁸ the tribunal concluded that there was no such risk inhering in the illegal occupation of land.

The Commission's *Guidance*, jurisprudence of the European Court of Justice and decisions of the Council of Europe's Committee of Ministers show that any measures restricting one's freedom of movement on the ground of illegal occupation of land must follow an individualized assessment and must comply with the principle of proportionality. Such measures cannot be taken on preventive grounds or on the assumption of risks.⁸⁹ Furthermore, the European Committee of Social Rights, in its decision against France from 24 January 2012 has found that illegal occupation of land was not a valid ground of expulsion against Bulgarian and Romanian Roma in France because in addition to no individualized assessment or proportionality analysis, there was discriminatory treatment since Roma were specifically targeted in the expulsion operations.⁹⁰ In this decision, citing the *European Roma Rights Centre (ERRC) v Greece*⁹¹, the Committee of Ministers recalled that illegal occupation of a site or a dwelling may only justify the eviction of illegal occupants when certain strict criteria are met⁹². Those criteria are:

[T]he criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned.⁹³

In addition, the Committee recalled that when the general interest justifies the evictions, the authorities must nevertheless take steps to rehouse or financially assist the persons concerned.⁹⁴

Furthermore, the French Constitutional Council found article 90 from the law *La Programmation pour la Performance de la Sécurité Sociale Intérieure (LOPPSI)*,

⁸⁷ Trib admin Lille, *supra* note 33.

⁸⁸ *Directive*, *supra* note 4, art 27(2). Since an expulsion orders as a measure of public order can only be issued against individuals who pose "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society", article 17(2) established the test.

⁸⁹ See *The Guidance*, *supra* note 9 at 9; *Royer*, *supra* note 13 at I-515; *Complaint No.63*, *supra* note 63 at para 69.

⁹⁰ *Complaint No.64*, *supra* note 75 at para 66.

⁹¹ Council of Europe, European Committee of Social Rights, 205 Sess, *European Roma Rights Center v Greece*, *Complaint No.15/2003*, (8 December 2004) [*Complaint No.15*].

⁹² *Complaint No.64*, *supra* note 75 at para 120.

⁹³ *Complaint No.15*, *supra* note 91 at para 51.

⁹⁴ *Complaint No.63*, *supra* note 63 at para 42.

which authorizes the expulsion of illegal occupants of land, unconstitutional.⁹⁵ The Council stated that because occupants had only 24 hours to evacuate the terrain and the French authorities disregarded the “*situation personnelle ou familiale, de personnes défavorisées et ne disposant pas d'un logement décent*,”⁹⁶ such expulsions were illegal. Despite this constitutional ruling, the French police and authorities continue to force Roma off of public and private terrains with little or no notice.⁹⁷

The Foundation Abbé Pierre has published a statement of opposition to a 16 March 2011 order by the French prefect to evacuate the terrain by the bridge Bondy, Noisy-le-Sec in Bobigny. The statement points out that there was no judicial notice of the pending expulsions and no consultations with the municipality of Bobigny, or with the owners of the terrain.⁹⁸

B. France breaches the procedural safeguards

France has breached its obligation under European law to protect the procedural rights of all citizens on its territory as a signatory of the *European Convention* and as a member of the Council of Europe. The *Convention* protects procedural rights principally through article 5 (right to liberty) and article 6 (the right to a fair trial).⁹⁹ The right to a fair trial recognized in European jurisprudence includes:

[P]resumption of innocence, the right to silence, equality of arms, and the (conditional) right to release pending trial, the rights protected include: the right to information; the right of an arrested person to defend themselves in person or through a lawyer of their choice [...] and a number of procedural rights such as the right to adequate time and facilities to prepare a defence, participation rights, the right to free interpretation and translation, the right to reasoned decisions and to appeal.¹⁰⁰

Lack of individualized assessment, the urgency procedure for expulsion and oppressive administrative practices against Roma citizens demonstrate that France infringes all procedural safeguards of Bulgarian and Romanian citizens under the *European Convention*.

⁹⁵ The Constitutional Council found that illegal occupation of land is not sufficient to justify “*de graves risques pour la salubrité, la sécurité ou la tranquillité publiques*” that would require the evacuation of the inhabited terrains. *Décision n° 2011-625 DC du 10 mars 2011, Loi d'orientation et de programmation pour la performance de la sécurité intérieure*, JO, 15 March 2011, 4630 at para 51 [LOPSSI].

⁹⁶ *Ibid* at para 55.

⁹⁷ “France: Authorities must stop forcibly evicting Roma” *Amnesty International* (5 September 2011), online: Amnesty International <<http://www.amnesty.org>>.

⁹⁸ Mighelina Santonastaso, “La Fondation s’insurge contre les pratiques inhumaines de la préfecture de Seine-Saint-Denis vis-à-vis des familles roms” *Fondation Abbé Pierre pour le logement des défavorisés* (24 March 2011), online: Romeurope <http://www.romeurope.org/IMG/pdf/CP_CAMPEMENT_BOBIGNY_3_-2.pdf>.

⁹⁹ *European Convention*, *supra* note 4, arts 5-6.

¹⁰⁰ Ed Cape et al, *Effective Criminal Defence in Europe. Executive Summary and Recommendations*, (Antwerp-Oxford-Portland: Intersentia, 2010) at 1-2 [Cape].

1. NO INDIVIDUALIZED ASSESSMENT

By failing to carry out individualized assessment in the issuance of expulsion orders of Bulgarian and Romanian citizens, France infringes the rights of those citizens to liberty and the right to a fair trial under the *European Convention*. The requirement of individualized assessment in carrying out expulsion measures in article 27(2) of the *Directive* is transposed into article L511-3-1 of the latest version of *CESEDA*.¹⁰¹ However, the prefect has failed to conduct such assessment when issuing expulsion orders against Bulgarian and Romanian citizens. This failure to inspect each situation individually leads to collective expulsions of Roma citizens, with no proof that the individual actually poses an unreasonable burden on the state system. In the course of this author's fieldwork, she observed how several OQTFs were delivered *en masse* without any proof of health insurance or welfare assistance required to justify the expulsion orders. All OQTFs that we examined were identical and followed a standardized form.

The European Committee of Social Rights has condemned the lack of individualized assessment in its decisions against France and Italy with respect to the expulsion of Roma.¹⁰² The Committee ruled against France in holding that the expulsions in the summer of 2010 amounted to collective expulsions:

[W]ith no consideration given to the individual circumstances of those concerned. [The ERRC report] refers to dozens of orders to leave French territory, using standard forms with identical content (other than handwritten names and dates of birth), with no account taken of individuals' circumstances or how long they had already been in France.¹⁰³

In its second decision against France¹⁰⁴, the Council of Europe's Committee of Ministers has found that the expulsions of Bulgarian and Romanian Roma from France on grounds of excessive burden on social assistance budgets violates Article E of the *EU Charter*¹⁰⁵ taken in conjunction with article 19, paragraph 8¹⁰⁶ because there is no individualized assessment at the time the expulsions take place. Due to the lack of examination of their personal circumstances, no respect for the proportionality principle and discriminating against the Roma community by targeting them specifically, the expulsions of Bulgarian and Romanian Roma were found to be in violation of the *EU Charter*.¹⁰⁷

¹⁰¹ See *Directive*, *supra* note 4, art 27(2); *CESEDA*, *supra* note 15, art L511-3-1.

¹⁰² See *Complaint No.63*, *supra* note 63 at para 62; *Complaint No.64*, *supra* note 75 at para 66; *Complaint No.58*, *supra* note 77 at para 157.

¹⁰³ *Complaint No.63*, *supra* note 63 at para 66.

¹⁰⁴ *Complaint No.64*, *supra* note 75.

¹⁰⁵ "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status." *EU Charter*, *supra* note 4, art E.

¹⁰⁶ *EU Charter*, *supra* note 4, art 19(8).

¹⁰⁷ *Complaint No.64*, *supra* note 75 at para 66.

Furthermore, the expulsions from France amount to forced collective expulsions because the returns happen under the condition to accept financial assistance of 300 euros per adult and 100 euros per child.¹⁰⁸ The willingness to accept such assistance shows the desperate poverty in which live the Roma. This is the conclusion of the European Committee of Social Rights against France which held that the returns were “disguised forms of collective forced expulsions”.¹⁰⁹ Without economic freedom, Roma are unable to enjoy their right of freedom of movement within the EU and are forced to leave France.

In keeping with article 28, paragraph 1, of the *Directive*, in its latest amendment, *CESEDA* formally transposes the requirement of individualized assessment in law.¹¹⁰ However, in practice, the French authorities do not individually assess the situations of Bulgarian and Romanian Roma at the time of issuing the expulsion orders. This author has examined two OQTFs from 13 May 2011 distributed on the terrain of the Bulgarian Roma in Bobigny, in the outskirts of Paris, France. Both decisions have the same legal grounds, are worded identically and follow the same form. The witness testimony of the two citizens subject to the orders confirmed that there was no individualized assessment done to determine their personal circumstances and the duration of their stay. Both decisions were motivated in the following manner:

Considérant qu'ainsi, l'intéressé(e) constitue une charge déraisonnable pour l'état français et qu'en conséquence son droit au séjour en France ne peut être maintenu; Considérant que l'intéressé(e) ne justifie pas, en France, d'une situation personnelle et familiale à laquelle la présente décision porterait une atteinte disproportionnée; Considérant que l'intéressé(e) n'établit pas d'être exposé(e) à des peines ou traitements contraires à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales en cas de retour dans son pays d'origine ou tout autre pays où il (elle) est effectivement réadmissible.

An expulsion order must “take into account the personal conduct of the individual concerned” and must justify that his conduct represents “a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”.¹¹¹ The *Directive* specifically forbids expulsions of general prevention. The French state must change its expulsion practices to ensure that individualized assessment takes place when a removal order is issued against Romanian and Bulgarian Roma nationals. This is also the recommendation of the European Committee of Social Rights in its decision against France.¹¹²

During the course of her internship, this author personally observed how the French prefect failed to carry out individualized assessment. The absence of an interpreter at the time of serving a removal order is one indication that there was no

¹⁰⁸ *Complaint No.63, supra* note 63 at para 40.

¹⁰⁹ *Complaint No.63, supra* note 63 at para 73.

¹¹⁰ *Directive, supra* note 4, art 28(1).

¹¹¹ *Directive, supra* note 4, art 27(2).

¹¹² *Complaint No.63, supra* note 63 at para 69.

effective individualized assessment. The right to have access to an interpreter or to the translation of documents by the production and discussion of evidence is based in article 734 of the French Code of Civil Procedure.¹¹³ This right is not always guaranteed when issuing expulsion orders. When asked whether a translator was present, the individuals concerned from the terrain of the Bulgarians in Bobigny stated that there was no interpreter on site. The absence of a translator when issuing an expulsion order infringes both EU law and French law.¹¹⁴ In their testimony, both Bulgarian Roma indicated that an officer had stopped by requesting their identity cards and that they felt compelled to provide them. Had an individualized assessment taken place, the prefect would have identified that the citizens were job-seekers, or that upon their return to Bulgaria, they would be subject to discrimination;¹¹⁵ or that their personal situation, like a sick relative, may not have warranted the expulsion. It is unclear how the authorities made the determination that the individuals posed an “unreasonable burden” without requiring proof of health insurance or receipt of social assistance in France.

The evidence collected by Human Rights Watch (HRW) also confirms this author’s observations that no individualized assessment takes place at the time of issuing OQTFs to Bulgarian or Romanian Roma. In examining 198 OQTFs served on Romanian Roma between May 2010 and August 2010 by six different prefects in France, HRW concludes that only in two of the cases, the individual subject to the expulsion order received social welfare.¹¹⁶

In reality, the majority of OQTFs issued against Bulgarian and Romanian Roma are based on racist assumptions about the Roma; that the purpose of their arrival in France is to benefit from the French state by living and working illegally. Those assumptions inform the legal grounds carefully drafted to justify expulsion orders. The grounds of expulsion that normally figure in the expulsion orders are: posing an unreasonable burden on the social assistance system under article L121-4-1 of *CESEDA*, and article 14.1 of the *Directive*; unemployed and hence without health coverage under article L121-1 of *CESEDA*; and that given their home countries are now EU Member States, their fundamental rights and freedoms would not be

¹¹³ Art 734 N C proc civ.

¹¹⁴ Article 30(1) of the *Directive* states that: “The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.” In addition, article L111-8 of *CESEDA* requires the assistance of a translator where the person does not speak or read French. *Directive*, *supra* note 4, art 30.1; *CESEDA*, *supra* note 15, art L111-8.

¹¹⁵ Those two grounds appear on the standard form expulsion orders that this author examined in the course of her work in the summer of 2011. However, Romas are often subject to discrimination in both Bulgarian and Romania. In response to the latest incident on 23 September 2011, where a Bulgarian youth was allegedly run over by an ethnic Roma in the village of Katunitsa on 23 September 2011 and the ensuing anti-Roma protests across the country, the UN Commissioner of Human Rights, Rupert Colville, strongly condemned the anti-Roma sentiments prevalent in Bulgaria. See United Nations, Press Release, “Press Briefing Note on Bulgaria”, online: United Nations Human Rights Office of the High Commissioner for Human Rights <<http://www.ohchr.org>>.

¹¹⁶ Human Rights Watch, “*France’s compliance*”, *supra* note 39.

threatened upon returning home under article L513-2 of *CESEDA*.¹¹⁷

Articles 30 and 31 of the *Directive* require that expulsion measures follow all procedural guarantees such as the possibility of appeal.¹¹⁸ The OQTFs served on Bulgarian and Romanian Roma, however, do not specify this possibility. This is contrary to article 30, paragraph 3, of the *Directive*.¹¹⁹ Failure to inform individuals of the possibility of appeal deprives them of a fundamental procedural guarantee, the right to seek judicial recourse. In its *Report on the application Directive*, the Commission criticizes France for its failure to effectively transpose and apply the procedural safeguards in article 30 and 31 of the *Directive*.¹²⁰

France must transpose clearly the rights of European citizens into French law by: (1) Stipulating if expulsion orders for reasons of public order issued against EU citizens who have resided in France for less than three months are valid only for citizens whose personal conduct is a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.”¹²¹ (2) Announcing the procedural safeguards of EU citizens subject to an expulsion order. (3) Stipulating unconditionally the requirement of individualized assessment for expulsion orders.

2. URGENCY PROCEDURE OF EXPULSION

Article L521-5 of *CESEDA* expands the power of expulsion to use an urgency procedure in the removal of all foreigners, including EU nationals¹²², the APRF. This procedure violates the procedural guarantees of EU citizens under article 27 of the *Directive* because an APRF must be appealed within 48 hours of notification.¹²³ This very short time frame prevents many Roma citizens from accessing judicial and/or administrative redress procedures in France. In its *Guidance*, the Commission writes:

In cases of absolute urgency, no procedural safeguards apply in France. The EU citizen receives no written notification of the expulsion decision, is not informed of the grounds on which the decision was taken and has no right of appeal before the decision is enforced.¹²⁴

Access to a lawyer is a common concern for Roma citizens. Even if a representative from an NGO visits the terrain soon after notification of the expulsion

¹¹⁷ See *CESEDA*, *supra* note 15, arts L121-1, L124-1, L513-2; *Directive*, *supra* note 4, art 14.1.

¹¹⁸ *Directive*, *supra* note 4, arts 30, 31.

¹¹⁹ *Ibid*, art 30(3).

¹²⁰ EC, *Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, [2008], at 10, online: EUR-Lex < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0840:FIN:en:PDF> > [Report]. See also Gheorghe Jipa, *supra* note 8; R H Kempf, *supra* note 8.

¹²¹ *Directive*, *supra* note 4, art 27(2).

¹²² *CESEDA*, *supra* note 15, art L521-5.

¹²³ *Directive*, *supra* note 4, art 27.

¹²⁴ *Report*, *supra* note 120 at 10.

decision, 48 hours is still very short notice for a representative to locate a lawyer and to appeal the decision, if necessary. Access to a lawyer is not guaranteed on arrest and where available is only limited to a 30 minute consultation. The lawyer's presence at the interrogation is also limited because counsel may be refused access to the client's file. The police are also not required at this stage of the interrogation to inform that the suspects remain silent.¹²⁵ This is in breach of article 6 of the *European Convention*.¹²⁶

Article L521-5 of *CESEDA* sets out that EU citizens may be subject to an expulsion order only when their personal conduct constitutes a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society."¹²⁷ Although in formal keeping with article 27 of the *Directive*¹²⁸, this provision also allows for the lawful expulsion of EU citizens who have resided in France for less than three months and who are suspects of organizing or engaging in human trafficking, profiting from prostitution by others, illegal land exploitation and exploitation of begging. Under the amended *CESEDA*, EU nationals who are mere suspects of those crimes can be subject to an APRF.¹²⁹ HRW notes that statements from highly placed officials, suggest that these provisions are targeted at Bulgarian and Romanian Roma migrants.¹³⁰

In addition, European law indicates that article L521-5 of *CESEDA* which authorizes the issuance of expulsion orders on a mere presumption that an individual has committed a crime is not a legitimate measure of public order. In its latest decision on the legality of the expulsions of Bulgarian and Romanian Roma from France, the European Committee of Social Rights¹³¹ held that

the decision to expel cannot be based solely on the mere existence of a criminal conviction but must take into account all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of their presence on the territory of the [French] [s]tate.¹³²

The expulsion of EU Roma migrants for offences against public order is only legal when the offences arise out of a criminal sanction imposed by a Court or a judicial authority.

This initial decision by the European Committee of Social Rights against France was confirmed in a subsequent decision on 24 January 2012.¹³³ The Committee held that while there is ample evidence that Roma from Bulgaria and Romania have

¹²⁵ Cape, *supra* note 100 at 6.

¹²⁶ *European Convention*, *supra* note 4, art 6.

¹²⁷ *CESEDA*, *supra* note 15, art L521-5(a) [translated by author].

¹²⁸ *Directive*, *supra* note 4, art 27.

¹²⁹ For examples, see *CESEDA*, *supra* note 15, arts L313-5, L311-4 and arts L222-14, L224-1, L227-4-2-L227-7, L322-4-1ff C pén [*Code pénal*].

¹³⁰ Human Rights Watch, "France's compliance", *supra* note 39.

¹³¹ This is a committee of independent experts established under article 25 of the European Social Charter. *European Social Charter*, *supra* note 4, art 25.

¹³² *Complaint No.63*, *supra* note 63 at para 63.

¹³³ *Complaint No.64*, *supra* note 75.

extremely low incomes and are thus forced to engage in some minor illegal activities, such activities do not pose “a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”¹³⁴ to warrant an expulsion from French territory.¹³⁵ Occasional instances of theft, aggressive begging or unlawful occupation of private property or the public domain were not deemed to be serious enough to invoke the urgency procedure or any other expulsion procedure.¹³⁶ Neither can this reprehensible behaviour be used as a measure to justify continuing to deprive them of benefitting from their rights or imposing any sanction or measure towards these persons.¹³⁷

3. OPPRESSIVE AND DISCRIMINATORY ADMINISTRATIVE PRACTICES TOWARDS BULGARIAN AND ROMANIAN ROMA IN FRANCE

Bulgarian and Romanian citizens are subject to indefinite detention at a disproportionate rate in France. As indicated on the OQTFs, an EU citizen has one month to leave the French territory upon being served with an expulsion order. During this interim, the French police tend to use illegal tactics, from indefinite detention to routine police checks to pressure Roma citizens to comply with the order. HRW notes that between October 2010 and May 2011, 11 cases were reported in the city of Lyon of Roma being detained within the one month after receiving their OQTFs. In the same period, Romanians and six Bulgarians were detained in the Lyon Immigration Detention Center, while only nine other EU citizens were detained during the same period.¹³⁸ This form of oppressive detention perpetuates a discriminatory policy against Bulgarian and Romanian Roma in France.

One example of oppressive practices against the Roma in France is illustrated by an incident that occurred on an abandoned terrain where several Bulgarian Roma families lived in May 2011. A man in his early forties was gravely injured during an incident involving the garbage collection company or the police when that company asked several Bulgarian Roma living nearby to clean the garbage around two large barrels.¹³⁹ One of the men went on top of one of the barrels, lost balance while trying to make space for the garbage to go in and fell on the ground. He broke both of his arms during the incident. The physical and emotional trauma caused to him and to his family resulted in Sergey's eventual departure. Currently, ASET 93 and friends of the association are preparing a law suit against the French authorities. The Roma men who cleaned the garbage were not employees of the garbage

¹³⁴ The Committee is referring to article L521-5(a) of the *CESEDA*. See *CESEDA*, *supra* note 15, art L521-5(a).

¹³⁵ *Complaint No.64*, *supra* note 75 at para 60.

¹³⁶ *Ibid.*

¹³⁷ Council of Europe, European Committee of Social Rights, 218 Sess, *European Roma Rights Centre (EERC) v. Bulgaria*, *Complaint No.31/2005*, (18 October 2006) at para 53.

¹³⁸ Human Rights Watch, “*France's compliance*”, *supra* note 39.

¹³⁹ In his testimony, Sergey did not point to either, but it will be a question of fact in the Court as to whether it was the police or the garbage collection company that provided the instructions to clean the garbage bins.

collection company and were not responsible to perform the duties of employees. This incident demonstrates the oppressive attitude prevalent towards Bulgarian and Romanian Roma citizens in France by the French authorities.

The organization *Groupe d'information et de soutien des immigré-e-s* (GISTI) compiled a list of discriminatory practices by the French authorities targeting Roma citizens as a means of enforcing expulsion orders and discouraging Roma from returning to France.¹⁴⁰ Such practices include the regular, in some cases daily, arrival of the police on certain terrains, unaccompanied by a translator. At a police identity check in Lormont in May 2009, GISTI reported that the municipal police had seized the passport of a Roma citizen and placed it with the police station's Office of the Lost and Found. Although the officer at the desk of "Lost and Found" was there on the day, several police officers intervened and asked the person to come back the following day to retrieve his passport.¹⁴¹ The person finally recovered the passport with the intervention of the police director. Another incident witnessed by this author was the offer of \$2000 to Sergey, a Bulgarian Roma, to leave France with his family and to promise to not come back to France.

C. Effect on families

The OQTFs are also contrary to EU law because they infringe upon children's right to education and the individual's right to respect for their private and family life and home.

1. CHILDREN'S RIGHT TO EDUCATION IS MANDATORY IN FRANCE

Children's right to education is entrenched in article 14 of the *EU Charter*.¹⁴² By expelling Roma citizens, including children, France denies children the right to compulsory education. This right is also guaranteed in article 28 of the *Convention on the Rights of the Child* and transposed into European law through the *Lisbon Treaty* and the *EU Charter*.¹⁴³ The *Lisbon Treaty* imposes on the EU the objective of promoting children's rights.¹⁴⁴ Furthermore, the EU Charter guarantees the right of children to compulsory free education in article 14(2)¹⁴⁵ and the protection of children's rights by EU institutions and member States in the implementation of EU law.¹⁴⁶

¹⁴⁰ Information about the organization GISTI can be found online at: www.gisti.org.

¹⁴¹ "Des exactions policières qui se multiplient pour dissuader les Roms, citoyens de l'Union européenne, de venir ou rester en France" *GISTI* (6 July 2009), online: [GISTI <http://www.gisti.org>](http://www.gisti.org) [GISTI].

¹⁴² *EU Charter*, *supra* note 4, art 14.

¹⁴³ *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 at 177; *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 50 OJ C306 1 [*Lisbon Treaty*]; *EU Charter*, *supra* note 4, arts 14-24.

¹⁴⁴ *Lisbon Treaty*, *supra* note 143, art 3.

¹⁴⁵ *EU Charter*, *supra* note 4, art 14(2).

¹⁴⁶ European Commission, "Right of the Child", online: European Commission – Justice <http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm> .

French law has transposed those guarantees to ensure criminal consequences for the parents or guardians who fail to register their children in school. French law goes as far as to guarantee that even non-French children must receive compulsory education by virtue of article L131-1-1 of *CESEDA*.¹⁴⁷ Under French law, the obligation of mandatory education is also imposed on the parents or guardians. They must register their children to school, failing which the law imposes imprisonment of six months and a penalty of 7500 Euros. Article 227-17-1 of the Criminal Code creates the offence of omission or failure to register one's child in school.¹⁴⁸

The regular expulsions of Roma families deprive Roma children of their right to education. This author has witnessed the reluctance by several schools to register Roma children in their schools in May and June 2011.¹⁴⁹

a) *Positive Practices*

Roma children are vulnerable in the French school system to discrimination and targeting on the basis of their ethnicity or nationality. Firstly, they do not speak the language, a significant barrier in their cultural and linguistic integration. As such, they are at a greater risk of dropout in comparison to the rest of the student population. Progressive and innovative teaching techniques are one effective way to help ensure Roma children's right to education on the French territory through educational methods that encourage Roma children to stay at school. Progressive and innovative teaching has shown to be one effective way in addressing the reluctance of Roma children to attend school. The innovative techniques of French teachers in the Romain Rolland public school in Drancy have tried to lower this dropout rate.

On 4 July 2011, the National Day on the Education of Roma children, the *Collectif pour le Droit des Enfants Roms à l'Éducation* showcased some of those methods at the group's reunion. This reunion also served as a symbolic sign of protest against the French authorities' inability or reluctance to ensure enough spots for Roma children to attend school in France.¹⁵⁰ The teaching methods focused on boosting Roma children's confidence, encouraging their creativity and making them feel appreciated and accepted at school.

One of the teaching methods demonstrated at the reunion emphasized team work and the building of a team project. Tasks that encourage performance and the showcase of musical and artistic skills give way to Roma children's inclinations in the

¹⁴⁷ *CESEDA*, *supra* note 15, art L131-1-1.

¹⁴⁸ *Code pénal*, *supra* note 129, art 227-17-1.

¹⁴⁹ Refusal to register Roma children in the public schools has led one police station in Lyon to accommodate space for 20 Roma children to attend school under the supervision of one teacher inside a police station. "Roma children refused access to Lyon schools" *France 24* (29 January 2013), online: *France 24* <<http://www.france24.com>>.

¹⁵⁰ Sarah Leduc, "À Lyon, des enfants roms vont en classe au commissariat" *France 24* (29 January 2013), online: *France 24* <<http://www.france24.com>>. This article shows that around 20 students, aged between 6 and 12 years, have attended school on the premises of the police station of Saint-Font, a suburb of Lyon, France, because there were not enough spots to accommodate them in the public schools.

arts and music. Boosting the children's self-confidence, on the other hand, results from their performance in front of an accepting and encouraging audience. Arts and crafts and emphasis on teamwork is an alternative method to the traditional curriculum of lectures and examinations.

A disproportionately high percentage of Roma drop out of school in Bulgaria and Romania. This is due in large part to the little relevance that Roma believe school has for them¹⁵¹ In Bulgaria, for example, the traditional method of teaching places all children in the same educational cycle. The rigorous method of teaching does not have the appeal to Roma children that it may have for Bulgarian children. Bulgarian schools do not provide sufficient pedagogical support to help children with their homework after school and to boost their motivation. For that reason, Roma children are not motivated to come back to their schools and end up dropping out.

The progressive school methods used in the Romain Rolland public school in Drancy, France, have according to the teachers and the school principal, proven effective in encouraging Roma children to return to the school. Among rights activists and organizations, Romain Rolland is known as one of the most successful schools in fighting Roma children dropout.

2. RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

The expulsions of Bulgarian and Romanian Roma nationals from France amounts to a breach of their article 8¹⁵² under the *European Convention* and under article 31, paragraph 2,¹⁵³ taken in conjunction with article E¹⁵⁴ of the *EU Charter*, namely the right to respect for one's private and family life. Roma nationals are expelled on an on-going basis without regard to their personal circumstances whether they have arrived alone or with their families and regardless of the duration of their stay in France. GISTI reports a filmed incident on 11 June 2009 when the police expelled around forty individuals who moved to this terrain after being expelled from another terrain in region St Denis the day before. One of the families purchased a tent after the police had destroyed their self-built home at the old location. The police destroyed the tent and many of the families were not permitted to return and recuperate their food to feed the children. This group was subject to another expulsion four days later after they settled on a new terrain in Bondy.¹⁵⁵

¹⁵¹ UNESCO, *EFA Global Monitoring Report 2010: Reaching the Marginalized*, Paris, UNESCO Publishing, 2010.

¹⁵² Article 8 of the *European Convention* guarantees that: "(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". *European Convention*, *supra* note 4, art 8.

¹⁵³ Article 31(2) of the *EU Charter* guarantees State Parties' commitment to guarantee the right to housing by taking measures designed "to prevent and reduce homelessness with a view to its gradual elimination". *EU Charter*, *supra* note 4, art 31(2).

¹⁵⁴ *Ibid*, art E.

¹⁵⁵ GISTI, *supra* note 141.

Connors v United Kingdom established that the expulsions of gypsies from local authority gypsy sites where there was no alternative relocation for their caravans amounted to an infringement of their article 8 rights under the *European Convention*, namely right to respect for private life, family life and home.¹⁵⁶ The Court ruled that the families' expulsion from the terrain for an alleged breach of license terms was not "necessary in a democratic society" in pursuit of the aim of protecting the rights of other occupiers of the site and the Council as owner and manager of the site. The Court held that the "seriousness of what was at stake for the applicant" would have "adverse consequences" for the family, rendering them homeless "in coping with health problems and young children, and in ensuring continuation in the children's education" and "in finding a lawful alternative location for their caravans".¹⁵⁷ The Court distinguished this case from *Chapman v United Kingdom*¹⁵⁸ where the applicants were occupying the terrain illegally in that in *Connors* the applicants were lawfully on the site before the expulsion.

In addition, the Court has established that the vulnerable position of gypsies as a minority requires special consideration to their needs and lifestyles in the relevant regulatory framework.¹⁵⁹ In this context, in *Chapman*, by virtue of article 8, the Court imposed a positive obligation on Contracting States to facilitate a gypsy way of life, an obligation stemming from article 8 of the *European Convention*.¹⁶⁰ By issuing collective expulsion orders to members of this minority, who have settled with their families on a terrain, the French authorities breach those citizens' article 8 rights under the *European Convention*.

France's expulsions of families and children amount to an infringement of Roma citizen's right to respect for their private life, family and home because those expulsions are done without regard to the situations of families. Expulsions disregard the situation involving the children, whether they attend school, how long the families have lived on the terrain and other relevant considerations from *Connors*.¹⁶¹ This case shows, for example, that anti-social behaviour cannot justify a summary power of eviction of Roma either from local authority gypsy sites or from private terrains because security of tenure must be guaranteed on both types of sites.¹⁶²

European case-law establishes that the expulsion of Roma families from legally occupied terrains would amount to a breach of their article 8 rights where it is done to groups of families who have lived on a terrain for a period of time, where the children attended school and where no alternative terrain for relocation can be found within a reasonable time. European jurisprudence has not defined precisely this period of time but has indicated that some stability of occupation on the terrain is required.

¹⁵⁶ *Connors v United Kingdom*, no 66746/01 (27 May 2004) [*Connors*].

¹⁵⁷ *Ibid* at para 85.

¹⁵⁸ *Chapman v United Kingdom* [GC], no 27238/95, [2001] I ECHR 41 [*Chapman*].

¹⁵⁹ *Buckley v United Kingdom* (1996), IV ECHR 1996 [*Buckley*].

¹⁶⁰ *Chapman*, *supra* note 158 at para 96.

¹⁶¹ *Connors*, *supra* note 156.

¹⁶² *Ibid* at para 89.

Currently, there is a case pending hearing at the European Court that once decided will establish if the eviction of families living in their caravans on an abandoned terrain for a period of time of anywhere between 5 and 20 years, would amount to a breach of their article 8 rights under the *European Convention*. The families had all lived there permanently and their children were attending school.¹⁶³

In *Chapman*, the Court held that the U.K. Government had not demonstrated the necessity to exercise the power to evict without giving reasons liable to be examined as to their merits by an independent tribunal. The Court concluded that this breach of procedural guarantees amounted to a breach of the applicants' article 8 rights.¹⁶⁴ Similarly, it is unwarranted that on 1 July 2009, around 10 families were expelled from a terrain in Strasbourg, France, on which they had lived permanently for three years or more. This decision was taken without judicial notice and without alternative arrangements for relocation made for the families.¹⁶⁵ Such expulsion would be a breach of the occupants' article 8 rights under *European Convention*.¹⁶⁶

Furthermore, expulsion of Roma families from an occupied terrain would amount to a breach of their rights to housing in violation of articles E and 31, paragraph 2, of the *EU Charter* if the expulsions violate the human rights of vulnerable persons and families and the authorities fail to take appropriate measures to prevent further violations.¹⁶⁷ The Committee has already ruled in a decision against Italy¹⁶⁸ that the right to housing also applies to migrant Roma. This expanded scope of application means that Romanian and Bulgarian Roma in France would also benefit from the protection of article 31 of the *EU Charter*.

In an earlier decision against Italy, the Committee of Ministers underlines the importance of States' obligation to avoid criminal actions against Roma by individuals or organized groups and to investigate all cases where criminal actions or violence had been allegedly perpetrated.¹⁶⁹ The Committee was referring in all three cases to the violent expulsions against Roma without regard to the dignity of the persons expelled and without alternative accommodations being made available.¹⁷⁰ In both cases, the Committee found that there was an aggravated violation of human rights because firstly, the measures taken violated human rights specifically targeting Roma and secondly, the public authorities did not take appropriate action against the perpetrators of these violations.¹⁷¹

¹⁶³ *Winterstein et autres c France*, no 27013/07 (17 October 2013).

¹⁶⁴ *Chapman*, *supra* note 158 at para 94.

¹⁶⁵ *GITSI*, *supra* note 141.

¹⁶⁶ *European Convention*, *supra* note 4, art 8.

¹⁶⁷ *EU Charter*, *supra* note 4, arts E, 31(2).

¹⁶⁸ *Complaint No.58*, *supra* note 77 at para 146.

¹⁶⁹ *Ibid* at para 68.

¹⁷⁰ See *ibid* at para 67; *Complaint No. 63*, *supra* note 63 at para 47; *Complaint No.64*, *supra* note 75 at paras 124, 135.

¹⁷¹ *Complaint No.58*, *supra* note 77 at para 76; *Complaint No. 63* at paras 53-55; *Complaint No. 64* at paras 124, 135.

The expulsions of Bulgarian and Romanian Roma from France represent flagrant human rights breaches of EU nationals' rights under the *European Convention* and the *EU Charter*. The expulsions also breach EU law which guarantees all EU nationals' right to freedom of movement, one of the fundamental pillars of EU citizenship. In addition, the lack of procedural safeguards at the time of expelling Roma citizens makes the OQTF orders illegal under both French and European law.

The EU has not publicly denounced the impact of collective expulsions on Roma children's right to education. On 29 September 2010, the European Commissioner for Justice, Viviane Reding, announced that the European Commission has launched infringement proceedings against France for discrimination against the Roma. Less than a year later, the European Commission stated that France "has responded positively" and has promised to adopt procedural changes in the French Senate as per the Commission's *Guidance*.¹⁷²

The EU and the Commission should take more proactive steps to monitor and sanction the conduct of EU Member States in their treatment of Roma citizens with view to protecting the most vulnerable, the children. To help accomplish its ambitious goals of ensuring that all Roma children attend elementary school by 2020, as announced in the 2020 EU platform for Roma integration¹⁷³, the EU should:

- (1) Create a list of best practices, incorporating France's alternative methods of teaching geared specifically at Roma children.
- (2) Adopt an EU law requiring each Member State to incorporate best practices in their educational systems.
- (3) Monitor the transposition of EU laws specific to Roma children's right to education at the state level of countries with significant Roma populations, including France.
- (4) Update the list of best practices to incorporate and keep track of the implementation of those practices at the domestic level in collaboration with the States Ministries of Education.
- (5) Judicially sanction the implementation of laws geared at Roma children's integration in the school systems in the different Member States through the Court of Justice of the European Union.
- (6) Ensure viable financial means for the implementation of this program by incorporating this ambitious program into the EU budget.

By incorporating best practices in the adoption of EU legislation, the EU will ensure that it gets closer to meeting its objective in the *EU Framework for National Roma Integration Strategies up to 2020* that Roma children have at least primary school education by 2020.¹⁷⁴ Otherwise, the EU will be far from improving the position of the most marginalized group in Europe, arguably the most important social challenge on this continent.

¹⁷² Aimee Mayer et al, "International Legal Updates" (2010) 18:3 The Human Rights Brief 42 at 47.

¹⁷³ EC, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Framework for National Roma Integration Strategies up to 2020*, [2011] at 5, online: European Commission – Justice < http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf > .

¹⁷⁴ *Ibid* at 6.