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EUROPEAN IGNORANCE OR EUROPEAN POWER PLAY?

The Case for Roma Discrimination in France

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European Ignorance or European Power Play?

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ABSTRACT

The study at hand observes the European Union's reactions to human rights violations towards the Roma people by and within European member states. A case study of the French deportation of Roma towards Romania and Bulgaria in summer 2010 serves as specific example. The evacuation, dismantlement, and deportation practiced by the French authorities here are tested against the European Union's legal framework in order to illustrate in how far France does not adhere to these legal standards. Notably, the Treaty on the Functioning of the European Union (TEU), the Charter of Fundamental Rights, and Directive 2004/58/EC, known as the free movement directive, are considered as dominant legal documents within the context. The breach of EU law that is under consideration constitutes mainly of the Roma's deportation. The next step is to compare the legal provisions to protect both human rights and ethnic minorities to the factual reactions by the EU institutions, the European Commission (EC) in particular. The main finding is that the EC does not act upon its legal provisions. It merely warns France instead of making the authorities accountable of the serious breach of human rights provisions. The explanation that is given for the EC's reservations to act convenes the political power relations of different European member states.

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1 INTRODUCTION

“Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.” (Art. 19 TEU)

“In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.” (Art. 10 TEU)

The protection from discrimination is explicitly expressed in these Articles of the Treaty on the Functioning of the European Union (TEU). Implicitly, this proves the value of human rights within the EU’s legal framework. That is, the incorporation of human rights constitutes a rigid and inalienable building block of European legislation – legally and politically. As the Freedom House indicates, the provision of human rights embodies one of the two main characteristics of any democracy (Freedom House, n. d.). As the European Union (EU) is a construct of democratic states that demands the rule of law, democratic principles, and the protection of human rights of its member states (European Council, 1993), the meaning of human rights for the union need not to be questioned. Additionally, a second aspect that immediately relates to human rights provisions is that intending to protect ethnic minorities. In the European legal framework, the protection of these minorities is incorporated in Article 21 of the *Charter of Fundamental Rights of the European Union* where it states that “[a]ny discrimination based on any ground such as [...] membership of a national minority, birth [...] shall be prohibited”. It is also anchored in many other legal documents.¹

On a more general scope, the European Commission (EC) states its intentions that “a priority for the coming years will be to focus on the interests and needs of citizens. The challenge will be to ensure respect for fundamental freedoms and integrity while guaranteeing security in Europe” (European Council, 2010). And it goes further by emphasizing that “the future should be centered on the citizen and other persons for whom the EU has a responsibility” (European Council, 2010). While this latter statement merely connects to the EU laws for European citizens, the supposed emphasis lies on the very needs of the European people including ethnic minorities. However, Toggenburg (2000) argues that the EU is far less concerned especially with minority protection, than for instance, the *United Nations* (UN), the *Organization for Security and Co-operation in Europe* (OSCE), and the Council of Europe. Freedom House ascertains a general, global tendency of decline in the rights of minorities over the last four years (Freedom House, 2010). Hence, there are reasons to take a closer look at the EU’s efforts to protect minorities. The Roma constitute one of these groupings, being one of the *European people* that has shared a history and territory for centuries. More importantly, the Roma constitute the biggest ethnic minority in Europe, counting millions of people (European Commission, 2008). Roma live in almost every European country (Bancroft, 2005); their picture appears on the media every so often:

¹ The most prominent documents in this context are the UN Declaration of Human Rights, the TEU, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Stockholm Programme (2010/C115/01), Directive 2000/43/EC, etc.

The president of France, Nicolas Sarkozy, caused a media uproar when, in summer 2010, he bulldozed Roma camps (Flynn, 2010). A Slovakian school inspector explains that, theoretically, integration of Roma and non-Roma in schools *should* be contained, but as the non-Roma parents constitute the largest financial source for the education sector being taxpayers, integration cannot occur (Amnesty International, 2008). Newspaper headings suggest Roma to be a plague; video reports take the situation as a given that cannot be changed.

What is striking about these media exerts and news coverage is that each of these events occurred within EU member states despite their very commitment to protect both human rights and ethnic minorities in particular. And indeed, the minority group of Roma, their (non-)integration and exclusion are conceived as a pan-European problem (Le Figaro, 2010b). The literature is full of observations of such Roma discrimination (Szente, 1996; Grabbe, 2000; Guy, 2001; Brearley, 2001; Simhandl, 2006; Spirova & Budd, 2008; Nacu, 2011). Nonetheless, the problem is dealt with ambivalently: On the one hand, it seems that Roma exclusion is considered as an inconvenient obstacle that is simply there but not to be handled. On the other hand, entering “Roma” in the search engine on europa.eu immediately shows a list of policies, agreements, opinions, and press releases on the EU efforts to alleviate Roma exclusion. In fact, a variety of different EU actors deals with improvements of their social conditions (European Union (EU), 2007; EU, 2009).

This discrepancy in dealing with Roma on a theoretical on-paper approach from the inter-European political elites and the practical hands-on attitude demonstrated vis-à-vis the Roma people, is not only astonishing but clearly dubious. The discrepancy between the political engagement of Eastern and Western European member states as suggested in the literature is even worse (Spirova & Budd, 2008). Benjamin (2008) expresses that the Western European states demand the protection of human rights and minorities from accession and candidate states, while too often they neglect these very values domestically. Without a doubt, this (Western) European ignorance is rarely addressed politically. As Mitchell and McCormick (1988) explain governments certainly do not admit their own failure with regards to human rights. Nonetheless, the EU institutions are authorized to deal with such a breach of (EU) law (Art. 10 TEU) but simply do not intervene. This disparity between what the EU can do and what it does gives the impression of a political power play. At the core of the explanatory thesis at hand, the question as to how the EU’s lack of action concerning the human rights violations can be explained will be addressed. In order to be able to observe this phenomenon, a case study of the French Roma deportation in summer 2010 is selected as a general framework. The following constitutes the basic research question,

How can the European Union’s non-compliance to its own legal incentives regarding the French human rights violations towards the Roma by and within its member states be explained?

In order to find a reliable response to this question, a variety of technicalities and legal provisions need to be examined. In the introductory paragraph and citations above, a few aspects of European legislation are mentioned already. As a matter of fact, an in-depth analysis of EU legal provisions for the protection of human rights is required though. The capacities and opportunities for the EU to cope with human rights violations in general need to be detected. Thus, the first sub-question to address sounds as follows:

(1) *What are the legal incentives for the European Union to handle the human rights violations towards the Roma people in France?*

When the theoretical groundwork is laid out, that is when all legal provisions and capacities are revealed, this study will pay regards to the actions that are, indeed, taken by the EU. In other words, the second research question will address the factual doings undertaken to protect the Roma. Thus, the theoretical provisions can then be compared against the actual activities brought forward. Therefore, the second sub-question examines what is actually happening within the European Union:

(2) *What are the factual responses towards the French human rights violations against Roma brought forward by the EU?*

Once the theoretical provisions are compared against what *is* done by the EU, this study will take an explanatory approach of why this comparison generates the results it does present. Hence, a third question will cover an explanation attempting to understand the factual activities. In other words, the study explains why the theoretical provisions are (not) matched by the activities practiced by the EU institutions. The third question reads:

(3) *How can it theoretically be explained that the EU does (not) prosecute the French human rights violations towards the Roma as provided for by EU legislation?*

The clarification of these three issues, the theoretical mechanisms, the practical activities, and the explanation of a (mis-)match between the two, will provide sufficient evidence to validly reply to the general research question of how the EU copes with human rights violations towards the Roma population. Preliminary research indicated that a study like this is scientifically and socially relevant. To put in a nutshell, here, the discrimination of Roma represents a phenomenon that has been existing in Europe ever since Roma migration started. However, in a 21st century that promotes democracy, civil liberties, the rule of law, and so on, the necessity to sweep in front of our very own door before mingling in the other's backyards is obvious but often neglected. The case of the European Roma suits as a perfect example to indicate where political improvements need to be taken, right here in Europe. Thus, the social relevance is manifest. Scientifically, an observation of the violations of the Roma's human rights *per se* is not very urgent as many such studies exist. The scientific observation of *what* the EU does about it, however, is rare.

In the next chapter, both the social and scientific relevance will be taken up again in terms of a study of the prominent literature. Here, the most significant existing scientific analyses will be eluded in order to distinguish the general field of study. The concepts of human rights, their violations, and ethnic minority protection as well as the usage of these will be addressed. Chapter three will explore the methodological approach of the study, including the case selection of France. In chapter four, the factual analysis will take place. Herein, a short section will explore the status quo of European Roma, especially of those living or biding on French territory. The next section will give an in-depth observation of European legislation concerning the core issue. The third section will connect the preceding ones, detecting and analyzing the mismatch between legal provisions and state interactions. Chapter five will conclude the study by addressing the general research question.

2 THEORETICAL BACKGROUND

With regard to the research at hand, the main theoretical concepts require further explanation: These are human rights (2. 1), the (non-)protection of ethnic minorities (2. 2), and the specific example of the Roma people (2. 3). The significance of human rights provisions, their definition, and legal conception are explained in order to establish an argumentation for why the Roma's human rights situation is problematic. To detect whether France crossed the line in terms of human rights violations, the concept itself needs to be defined. Moreover, ethnic minorities as a concept need to be regarded because of their special role within the human rights legal context. The Roma people constitute one of Europe's largest ethnic minorities that enjoys specific legal protection - in theory. To distinguish why the Roma are chosen as a minority within the study, their distinct characteristics are illustrated giving a brief historical and societal background. As a final step, human rights, ethnic minority protection, and the Roma will be set into connection in order to establish a line of argumentation for the study (2. 4).

2. 1 What Are Human Rights?

Human rights are a highly disputed topic that, politically, is handled very sensitively at the same time. For this research's attempt to explain the EU's handling of human rights, a clear definition of what those constitute and how they can be violated is required here. In this section, the concept is pitched and the opportunities for violations thereof are pinpointed. Human rights are defined as “[t]he innate, inalienable and inviolable right of humans to free movement and self-determination. Such rights cannot be bestowed, granted, limited, bartered, or sold away. Inalienable rights can be only secured or violated” (Newton & van Deth, 2005: 24). Human rights violations, in turn, can be detected on multiple dimensions; they can take different shapes and forms and cause different problems. As Mitchell and McCormick (1988) state, the right to live, a fair trial, and the protection from cruel and unusual punishments are just as much human rights entitlements as certain economic and social rights. Here, accordingly the different dimensions of their violations are visible, too. Moreover, the protection of human rights constitutes one of the two basic characteristics of democracy (Newton & van Deth, 2005: 27).² Mitchell and McCormick agree with this by stating that “[p]resumably, ‘democratic’ culture [...] is more or less influential [in human rights protection] depending on the time it has had to permeate the colonized society” (1988: 480), the latter part alluding to the very state's stage of development. Hence, in a developed democratic construct such as the EU human rights protection theoretically is a high-valued asset. Thus, a violation of human rights can be similarly complex in scope, conduct, and time as is the definition of human rights *per se*. Human rights can be violated by persons, institutions, organizations, and states. While the violation of such rights is a rather sensitive topic to be studied in any way, the study of such infringements by states and political institutions is extraordinarily complicated. Certainly, governments are reluctant to acknowledge its own violations as well as to commit to tolerate those of others (Mitchell & McCormick, 1988).³

² According to the Freedom House scale, the second set of main characteristics for a democracy is the entitlement of political rights (Newton & van Deth, 2005: 27).

³ The UN Commission on Human Rights shows one example of an international political construct where member states are not only pursuing a questionable protection of human rights, but where “nations notorious for their failure to observe the human rights standards” were included in the watchdog commission (Fasulo, 2009: 144).

The focus of this study falls on those violations of human rights that are executed by states or on their behalf, and that are principally expected to be prosecuted by international political institutions as the research question aims to examine the French violation of the Roma's rights. Mitchell and McCormick (1988) analyze the likelihoods of governments to infringe human rights. While they argue that "left-wing, totalitarian regimes are the greatest offenders against human rights" (1988: 481), they also claim that no democratic states can be excused from such offenses. Concerning the European integration process, one can clearly recognize the necessity for pan-European prosecutors in several aspects. First, the European legal integration resulted in the primacy of EU law that allows for European institutions to rule over its member states. While in politics it is often argued that there is no supranational 'world' body that has a say over any state's behavior, the European Union's *sui generis* character contradicts this argumentation.⁴⁵ Hence, there already are legally structured institutions that can act as a pan-European prosecutor. Second, the Europe of today is politically, socially, and economically interwoven – in fact, so much that a prosecution of hardly any crime can carry success if restricted to single member states only. Third, while the legal provisions and the means of prosecution apply across borders, the problems to be dealt with by the legal bodies are just as pan-European and borderless, too. As Newton and van Deth (2005) indicate further, a handful of such institutions has been established in Europe in order to prosecute these human rights infringements: the *European Court of Justice* (in short, ECJ; acting on behalf of the EU), the ECHR, and the OSCE. UN institutions such as the UN Universal Declaration of Human Rights remain equally responsible.

To sum up, human rights are universal, innate, and inalienable rights that apply to any human being by definition. However, the violations of these very rights are far from extinct relating to the lack of enforcement of laws, and of the exercise of rights (Fasulo, 2009). Ignorance of human rights violations based on political (power) relations is not uncommon. The power play with Russia and China within the UN constitutes an example outside of the EU that often includes the neglect of human rights issues – parallels in a construct such as the European Union may be drawn carefully here. In any case, a multitude of problems in the prosecution of human rights violations prevails in the 21st century. The following section on ethnic minority protection will introduce one particular aspect of this, indicating why the prosecution across Europe is extraordinarily complex here.

2. 2 The Protection of Ethnic Minorities

The protection of ethnic minorities is explored in this section emphasizing the specific character of ethnic groupings in a larger societal context. Herein, the concept of ethnic minorities is laid out and its special character with regards to the human rights context is explained. The discussion of this concept allows us to define what an ethnic minority is and why it often faces difficulties in a human rights context. These are necessary steps for the analysis at core of this study.

⁴ *Sui generis* literally means "one of a kind". As Winters argues, "Europe really is *sui generis*. It grew from a unique historical experience and out of a unique cultural background; these have resulted in an institutional structure that is also, so far, unique" (2010: 2).

⁵ In fact, even the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights (known as the International Bill of Human Rights) constitute legally binding rules for those that signed them (Fasulo, 2009).

As clarified in Newton and van Deth's (2005) definition of human rights, the special emphasis lies on the entitlements made to *humans*. By definition, human rights are innate and inalienable, meaning that by birth *any individual* is entitled with them and cannot be deprived of them. However, the protection of ethnic minorities resembles a notion that is often mentioned next to the advocacy of human rights – as a sort of special addition. Here, it is necessary to emphasize that within these minorities the individuals are entitled with individual human rights, too. However, the special attention paid towards the protection of ethnic minorities gives the general impression that it may even differ from the protection of human rights. Pinto (2010) articulates an interesting approach here. He describes the vulnerable cultural identity principle arguing that,

“majority members tend to regard their values and norms as normal and natural, and the minority's norms as strange and deviant. Majority members often oppose minority member's practices and customs, especially when they are conducted in the public sphere, as they do not conform to the way majority members believe things should be done” (2010: 704)

While this study dares not to judge about either a minority's nor the societal majority's customs, this argumentation is used to underline the deadlock that is often present in a situation where ethnic minorities are commonly and openly discriminated against and therefore deprived of their rights. Hence, the individuals within an ethnic minority are often deprived of their individual rights simply because of their belonging to a (minority) group.

Eventually, the argumentation can build that minorities need to be equipped with a more significant status than the mere protection of human rights. Mitchell and McCormick (1988) also claim that the ethnic divisions may sometimes be even more important than the national identity or sense of belonging. In other words, ethnic minority protection may have to be accentuated and regarded apart from the protection of individual rights. Why is this so? Ethnic groups, by definition, are “a socially distinct community of people who share a common history and culture and often language and religion as well” (Sillitoe & White, 1992: 143). Ethnic groups share a common identity that distinguishes them from other ethnic groupings. In a scenario where there is one ethnic majority and a differentiating ethnic minority, the community life of both is conflict-prone, if the majority attempts to force their identity upon the minority.

As McIntosh, Mac Iver, Abele, and Nolle argue, “the treatment of ethnic minorities [...] may influence, to a large degree, the level of ethnic conflict within [a] region. As long as minorities have the right to maintain their cultural identity and enjoy the same rights as members of the ethnic majority group in their society, [the conflict proneness remains diminishable]” (1995: 940). However, a majority community often attempts to protect its own identity thereby interfering with the identity of others. Alleyne identifies the “social constraints and real life-chances of people located in ethnically-stratified, racialized social space” (2002: 622) that inevitably disadvantage these minorities. Again, individuals experience such disadvantages because of their belonging to a particular group, not because of their personal character. Individuality does not play the most significant role here.

Such discrimination constitutes a violation of human rights but occurs in a rather complex societal construct. This is why the protection of ethnic minorities often needs to be regarded apart from the protection of human rights at large. To sum up, a difference between the protection of human rights and that of ethnic minorities needs to be ascertained. Notably, the protection of ethnic minorities may even

interfere with the general protection of fundamental individual rights as will be further explored in the study and the specific example below.

2.3 The Case for the Roma People

The Roma represent one very specific example of an ethnic minority in Europe as defined above. Within this chapter, their three dominant characteristics are discussed, including the violation and protection of their rights as minority grouping. The three dominant characteristics are their distinct culture, their societal features, and their discrimination and exclusion within Europe (e. g. Brearley, 2001; Simhandl, 2006). First, a general introduction to the historical origin and geographical presence of the Roma people antecedes.

The Roma people live in about every European country (Bancroft, 2005) and share a history with all other nationalities across the continent; the Inquisition, the World Wars, and the European integration process, the Roma experienced all the historical and political facades that every other people in Europe has experienced and endured, too. Mostly, it constitutes a people though that has endured constant hatred attacks, homicide, persecution, and discrimination. The cultural integration and acceptance lacks behind severely for the case of the Roma. Thus, the Roma people appears to be the most suitable ethnic minority for an analysis of human rights violations towards ethnic groupings, and how these are dealt with. The prominent, academic literature discusses this non-acceptance, persecution, discrimination, and even homicide (Szente, 1996; Grabbe, 2000; Guy, 2001; Brearley, 2001; Simhandl, 2006; Spirova and Budd, 2008; Nacu, 2011). Known as “‘gypsies’, ‘travellers’, ‘itinerants’, ‘nomads’, ‘people with no fixed abode’ and ‘Roma’” (Simhandl, 2006: 100), the Roma have never been truly accepted nor integrated in European society at large despite a 600-year sojourn on the European continent and compared to other minorities, such as the Jews for instance (Brearley, 2001).⁶ Generally, there are three distinct characteristics to be regarded here: their culture, the statelessness of the Roma community and their capability to (partially) adapt to their environment, and the continent-wide, continuous discrimination they endure.

First, the Roma culture needs to be identified because it differs fundamentally from the mainstream societies. Hence, when attempting to situate the Roma people in a European societal context, their ‘anomaly’ in terms of culture and lifestyle is significant. As Oakley puts it, “they avoid wage-labour, are of no fixed abode, and [...] seek intermittent access to land” (1983: 2); she describes their culture to be exotic, mystic, and dependent on trade with outsiders and therefore easily adaptable, too. Moreover, she alludes to the similarities to tribal societies (Oakley, 1983). In other words, the culture of Roma cannot be compared well with the mainstream societies in Europe.⁷ Thus, the intrinsically different character of the Roma is perceived to create a threat to the other European societies simply because it deviates from the norms. Naturally, such a threat perception encourages tensions between societies.

⁶ Within the study, the term *Roma* is chosen because it appears to be the least discriminatory. As the European Union Agency for Fundamental Rights (FRA) claims, “[t]he term Roma is used as an umbrella term [...] for groups] such as Roma, Sinti, Travellers, Ashkali, and Kalé” (2010).

⁷ One aspect that illustrates how the lifestyle of Roma people differs intrinsically from that of other European people can be seen in employment. The attitudes are comparably old-fashioned and do not fit with the Western free-market theories and lifestyles (Oakley, 1983). Nevertheless, the example at hand merely serves to illustrate one distinctive feature that conflicts with the European mainstream societies. Employment itself is not individually discussed within this study.

The second characteristic is embraced by the lack of a Roma territory. The statelessness of the Roma constitutes the greatest concern for their integration in and acceptance of the European society at large. As Spirova and Budd explain, “[u]nlike other minorities in [...] European countries, the Roma have no kin state and are not politically mobilized” (2008: 81). Benjamin (2008) underlines this notion by arguing that the Roma are a travelling people that does not fit into the European context by definition: Europe has developed by the means of nation states, where state frontiers usually coincide with national territories. The Roma have no territory to call their own and therefore conflict with the very concept of European politics. Benjamin argues,

“This juxtaposition of a stateless group in a continent of nation-states has hindered European societies from accepting Roma in their midst: unlike the French, the Italians, and the Poles, who all have a nation-state, the Roma were stateless and could not validate their existence with the backing of a political apparatus. The Jews, another traditionally stateless group in the European context, created Israel as the one Jewish homeland. For the Roma, returning to the land whence they came and establishing a state there would be infeasible: the fact that the Roma readily adapt to the culture and religion of their host countries means that they no longer have any deep ties to their northwestern Indian homeland” (2008: 8).

Benjamin’s argument surely accounts for other ethnic minorities in Europe alike. The lack of political support resembles one great obstacle to any ethnic minority’s integration into the mainstream society. Certainly, the Roma are not the only people without a state. Nonetheless, this focus on the lack of political support for the Roma throughout history is extraordinarily significant. Mostly, political associations of Roma have commonly been banned, as Brearely (2001) illustrates. Neither their target society offered political recognition or support, nor did the Roma themselves ever establish a political body that would advocate their rights. This lack of political opportunity has even aggravated the living conditions for the Roma people (Oakley, 1983). As Spirova and Budd explain further, “[it] leaves them largely dependent on the policies of the state for both socio-economic development and political representation of Roma within Europe” (2008: 81). This can be argued to account for the Roma’s capacity to adapt to their environment to a certain degree: Not all Roma are travelling people anymore, nor are the Roma one typical people. As Ringold explains, “[t]here are numerous subdivisions based on various crosscutting cleavages, including family groups and religion” (2008: 6). Therefore, it is not only striking that all Roma seem to be considered as one identical and equally problematic people but also that even in situations where the Roma are settled and have been so for centuries, their discrimination and non-acceptance remains salient. Roma can be a travelling people, but they often substitute a settled proportion of a particular society. Simhandl (2006) identifies this distinction in Europe in terms of Eastern and Western European Roma. Whereas in the European West the majority of Roma travels, in the European East most are permanently settled.

The aspect of discrimination – as third characteristic of the Roma people - is brought forward by a prominence of scientific literature, too (McIntosh *et al*, 1995; Szente, 1996; Simpson, 2000; Benjamin, 2008), but can easily be seen in a documentary by Amnesty International (2008) that illustrates the discriminatory life of Roma in Slovakian settlements. While Amnesty International, here, reveals the problems the Roma face in many Eastern European countries, it also suggests *why* the Roma are largely not accepted. The video reports, for instance, how segregation in nursery and basic schools already reemphasizes the burden of a separate, bottom status for Romany children. Oakley (1983) conveys the

notable character of the Roma people to be a reason for the serious and continuous discrimination they face.⁸ Ringold (2000) takes a similar line by stating that the particular Roma culture and group dynamic clashes with the European streamline that is catalyzed by nation-states mainly. Giving an example, the video published by Amnesty International (2008) shows that Romany preschoolers that do not know how to flush a toilet are considered a huge problem. In such a setting, the fact that certain states place such preschoolers and students from elementary school in schools for the mentally and physically handicapped underlines Ringold's argumentation as brought forward above. The scientific literature on Roma discrimination deals with this and other examples; each Article takes up a comparable line of argumentation. Thus, the social relevance of the topic seems to have remained vivid even in the 21st century; the Roma populations in Europe face human rights violations on multiple dimensions.

Discrimination vis-à-vis EU Measures

With regards to the prominent literature on Roma discrimination, it is remarkable nevertheless that it deals with human rights infringements in Eastern European countries almost exclusively. As brought forward by Szente (1996) as an example of Eastern European Roma maltreatment, both discrimination *and* violence against Roma experienced fundamental changes here; however, there had been hardly any improvements. Instead of community violence, the Roma people have faced violence in terms of systematical police raids now. The general literature reveals multiple other discriminations faced by the Roma: They occur in housing, employment, education, and the media (Halász, 2007). Moreover, women often face exclusion from health care or coercive sterilization (Bokulić, Bieber, Biró and Cheney, 2006). While these scientific analyses take place in an Eastern European context, it can be pointed out easily how the core of a problem is centrally European. As entitled by the *Universal Declaration of Human Rights*, but also the *Charter of Fundamental Rights of the European Union*, no state should provide the conditions for such fundamental human rights violations. Nor can institutions such as the EU allow for these conditions to be upheld.

Hence, a scientific analysis with regards to EU instruments and mechanisms as well as protective strategies and action seems necessary. Moreover is it interesting to have a closer look at Western European member states that are far from being off the discriminatory hook. Despite the fact that the Roma people constitute significant portions of Eastern European societies (Ringold, 2000), there are considerable numbers of Roma in the European West. Nevertheless, the literature only reveals protection measures that relate to the European accession processes in terms of EU enlargement procedures. As incorporated in the Copenhagen Criteria in 1993, accession to the EU will only be allowed if the acceding state can assure "stable institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities" (European Council, 1993: 13). In other words, the Eastern European countries – being the newcomers in the EU with the 2004 enlargement round, for instance – are politically obliged to protect their minorities on paper. Hence, many academics argue for the effect of political conditionality on the policies concerning ethnic minority protection (Ram, 2011; Simhandl, 2006; Johns, 2003; McIntosh *et al*, 1995). Spirova and Budd even argue that, "The EU accession process seems to have narrowed the gap between Roma and the majority [...] Poverty rates, unemployment rates, and education statistics for the Roma populations in all four countries improved over time" (2008: 97). Apparently, a certain amount of EU efforts to protect ethnic minorities can be detected, and moreover seems to carry along small successes.

⁸ Recall the attribution of tribal characteristics to the Roma communities, too.

Johns (2003), however, brings forward the core problem of any such EU efforts. He illustrates the discrepancy between what the EU asks of new member states and what it actually does for itself. Here, the lack of minority protection measures in the EU (EC) legal framework before the articulation of the Copenhagen Criteria and the Treaty of Amsterdam needs to be pointed out. Toggenburg (2000) explains that this is due to the former economic character of the European Community. The initial focus on a Single European Market and the following economic integration did not require for any civil protection or rights-ensuring measures.⁹ It was not until the Treaty of Amsterdam (entry into force in 1999) that minority rights were incorporated in European legislation that is legally binding for member states.¹⁰ In other words, the European member states agreed to demand minority protection measures from accession states in 1993, whereas they included such provisions for themselves in 1997 only.

The very discrepancy between what the EU does and what it wants reveals why the scientific literature does not focus on Roma discrimination in Western member states. Simhandl coins this discrepancy by paying special emphasis to the “differentiation [...] between ‘Western Gypsies and Travellers’ on the one hand and ‘Eastern Roma’ on the other, thus inscribing ethnicity as a category relevant to ‘Eastern Europe’ while avoiding this with regard to the ‘Western’ part of the continent” (2006: 98). While this gives an idea of the differentiated treatments of the Roma issue throughout Europe, Szente (1996) takes it to the next level. She addresses the Roma deportation from Western European countries, such as Germany or France, towards Eastern European countries that occurs against money transfers. In other words, Western European governments even pay Eastern European ones in order to be able to deport the undesired there. She closes off her argumentation that the EU needs to focus on itself as an entity that not only regards the Roma as a minority in the Eastern European states, but as one ethnic minority throughout the union.

Here, it needs to be pointed out that the EU does not regard the factual characteristics of the Roma people as illustrated above. It was argued that the Roma are a stateless people that lacks political support and that they cannot be considered as *one* entity whose problems can be solved by a one-fits-all solution. Nevertheless, the EU seems to solely offer exactly this: the requirement to protect the Roma in Eastern Europe, neglecting the needs and lifestyles of the travelling Roma in Western Europe. While these existing laws do cover the obvious discrimination against Roma in the European east – corresponding to the third characteristic of this people –, the acknowledgement of the Roma culture as laid out above is absent. Cultural aspects, such as the protection of their language, music, etc. seem to be harshly disregarded. The literature (Simhandl, 2006; Bancroft, 2005; Brearly, 2001; Szente, 1996) argues about discrimination that occurs in the sphere of education, employment, and health care. The protection of cultural assets *per se* is hardly mentioned in these studies – presumably because the necessary EU measures are absent. Hence, the EU deals with the topic of social exclusion, if only in a limited, geographically focused manner, while it appears to neglect the protection of the ethnic identity eluded earlier. The question arises whether this is truly the case; whether legal provisions intend to protect the Roma culture, too, or whether they only aim at an equal provision of opportunities.

⁹ The Single European Market (SEM) was established by the Single European Act in 1986 in order to introduce an open, unified market (Nugent, 2006).

¹⁰ A full account of EU legislation aiming at the protection of minorities within the union will be given in later chapters of this study.

Thus, a definite deficit of academic research on EU-wide measures intended to protect ethnic minorities from human rights deprivation can be detected. Meanwhile the call for a reformulation of politics and legal provisions sounds clearly. To conclude, the social and scientific relevance to pay regards to EU-wide measures and mechanisms of minority protection is obvious. This is why the analysis is based on the niche topic of how, whether or not, and why the EU institutions' actions and reactions to human rights violations towards the Roma are illustrated. The emphasis that will be put on Western European states is also explained by the clear lack of such studies as mentioned above. Note, however, that the topic of cultural protection will be included where possible but that it does not constitute the core focus of this study. The concentration lies clearly on the discrepancy of Western member states to keep up with their self-made standards.

2.4 A Theoretical Approach – Reaching for an Answer

As the research question suggests, the focus of this study lies on how the EU's non-compliance to its own legal incentives regarding the French human rights violations towards the Roma by and within its member states can be explained. In order to find a satisfactory response to this inquiry, the most significant concepts were highlighted above: human rights, ethnic minorities, and the Roma ethnic minority. A distinction of each of the concepts is necessary to be able to set up a strategy to find that response. The expectation is that a clear discrepancy prevails between what the EU is legally bound to do about Roma discrimination in the French case and what it factually does about it. With regards to the three distinguishable features of the Roma, it is significant to summarize here what aspects constitute the crucial focus of the study at hand. Mainly, the continent-wide, continuous discrimination and the statelessness are crucial features to conduct this analysis. Lying out the Roma situation in France in summer 2010, both the establishment of the Roma's existence throughout Europe and their simultaneous non-acceptance constitute the focal triggers for the conflict at hand. Here, the theoretical explanation of the Roma people from above will be seized again for the description of the French case. Thus, the most important aspect to keep in mind while reading further is the perception of how Roma discrimination seems to be ignored or tolerated in Western European member states.

The theoretical concepts of human rights as explained above play a significant role in the upcoming analysis of the EU legal incentives to counteract Roma discrimination that follows the description of the French case. Technically, this analysis is two-fold, starting with what the EU institutions are entitled or obliged to do by EU law, while then reflecting its actions to these paradigms. These two steps constitute what is at the heart of the study revealing the European Union's way to cope with these human rights violations: through tolerance, ignorance or power play. The analysis at hand will then allow to give an explanation to the research question. The next section will illustrate the methodology of how the analysis will be conducted and how answers are sought for. Especially, the research design embracing the theories above, the data selection and gathering will be illustrated.

3 METHODOLOGY

The strategy laid out above suggests several steps that are necessary from a methodological standpoint. As is explained already, there are two crucial points to be regarded of which, in turn, the latter is to be analyzed in a two-fold manner: (1) the French Roma situation as a case study that takes up the theories on

Roma people in its explanation; and (2) the EU legal incentives on the one hand and the EU activity on the other revealing the gap between theory and practice. In this second part, the concepts of human rights and minority protection play a major role. In order to conduct this analysis, a few methodological steps are obligatory. This chapter reveals how the study at large is conducted. First, the research design will be defined and the case selection explained (chapter 3. 1). Thereby justifying the set-up of the study, the reasons for the case selection of France are enumerated. Naturally, the case selection represents the analytical framework of the study. The principles behind the general data collection will be described (chapter 3. 2) in a second step. The data collection obviously needs to be in line with the theoretical approach: a variety of qualitative information is necessary for the conduction of the analysis at hand. Nevertheless, this very section will narrow down the sources and data collection procedures. Last but not least, the data analysis will be discussed (chapter 3. 3). This section gives a more methodologically focused description of the theoretical approach as pointed out in chapter 2. 4. While in the former sub-chapter the theoretical proceedings are illustrated, the latter will focus on the methodological conduction of the data analysis thereby giving a full picture of the analysis.

3. 1 Research Design & Case Selection

Research Design

The thesis at hand follows an explanatory research approach as it tries to find explanations and illustrations for how the EU copes with the human rights violation by and within EU member states. In order to do so, the factual discrimination and exclusion of Roma in France is set in contrast to the EU legislative framework, such as the ECHR, case law, and the *Treaty Establishing the European Union*. Here, the infringements by the French state are identified as are the EU institutions' responsibilities to intervene. The (mis-)match is revealed according to which an analysis of why particular interventions occurred or not. To sum up, the explanatory research will be conducted by means of a qualitative case study.

Case Selection: France

The case that has been selected for the study at hand is France. In the following, the reasons for its selection as well as the method are illustrated. As indicated in the theoretical background, multiple studies observing the Roma discrimination in an Eastern European context exist. So does the discussion of a discrepancy between policies and political conduct in Eastern and Western EU member states. Hence, the choice to opt for a case study of Roma discrimination in a Western European country has been made. Its relevance has been illustrated above and significantly exploited. With the general decision made, the case selection of the study at hand is already limited to certain member states in theory. The founding member states (France, Germany, Italy, Belgium, Luxembourg, and the Netherlands) are popular example cases in these contexts because of their stability, their heterogeneity, and their rigid stance in the EU. Hence, these countries, next to Spain and Great Britain (with a similar meaning in the union), for instance, are considered for selection.

Naturally, the proportion of Roma within the states under consideration is significant, too. As a specific choice, here, France is chosen to serve as exemplary member state. Why France? The first reason is as straight forward as practical. As eluded in the introduction, in 2010 the French president Nicolas Sarkozy placed himself on constant media reporting because of his anti-Roma policies. The severity of his

interventions was broadcasted across the globe. Not only does his action therefore constitute a prominent and relevant example of the Roma's human rights' violation, but it also promises to offer sufficient resources and reports on the French factual, political conduct.

The second reason relates to the prominence of Roma population in France throughout the centuries. In general, Western European countries such as France are continuously frequented by Roma as the living conditions, here, are by far more generous and 'acceptable' than in Eastern European countries (Amnesty International, 2008). Still, the French attempt to exclude and deport Roma people because they are considered to disrupt public order. The actuality of French politics concerning this issue has remained present until today; the tensions seem to be ever-increasing. Naturally, the tensions between indigenous people and the Roma are comparatively high in countries like Italy, Germany or Spain. As a selection has to be made, the choice to focus on France is also one of convenience and timeliness here.

Additional Remarks

In the case of Roma and the violation of their human rights, one cannot single out a European member state and pull it out of the broader context. In other words, France will not be singled out individually, but will be studied with regards to its connections to other, relevant EU member states. There is a clear linkage between member states because of the travelling character of the Roma people. For the case of France, special connections can be recognized to Romania and Bulgaria as can be recognized from the deportation of the Roma in summer 2010 to Romania and Bulgaria (Flynn, 2010). Hence, it is not only logical but necessary to have a comparative, but brief look at the society the Roma escaped from and are deported back to.

3. 2 Data Collection

Newspapers & NGOs - As A Source for First-Hand Information

The first set of data necessary for the analysis at hand contains information on the French events in summer 2010. Here, newspaper articles will be used as well as reports from NGOs and international political institutions. The selection of newspaper articles is rather broad: English, French, and German coverage will be used to establish a relatively sound picture but also to reflect the French public opinion (-making) to that of other European member states. Thereby, it is hoped for a more reliable picture of what happened in France. The selection promises to serve as a controlling factor in terms of objectivity, relevance, and accuracy.¹¹ The selection of media coverage followed the public perception and reputation of the news services. The newspapers such as *Le Figaro*, *Le Post*, *le canard social*, *Spiegel Online*, *Zeit Online*, *The Times*, and comparable ones were used because they are generally considered to conduct serious, relatively objective coverage. The very articles that were used in this study are enlisted in Annex A. An argumentation for why these were chosen is given there.

The time span to be analyzed will mainly cover the summer of 2010 and those articles that immediately cover the happenings in France at that time; nevertheless, newer articles lasting until the end of 2010 that address the particular issue may be used for the analysis as well to indicate a trend in developments. This is considered necessary because of the EU reactions that cover a longer time frame.

¹¹ Accuracy, as far as one can judge true accuracy in newspaper coverage.

The selection of reports from NGOs and political institutions is also divided. The popular agencies *Amnesty International* and the *Human Rights Watch* are chosen because they often serve as the only voice of those that have been deprived of their human rights. As Pinto (2010) claims, *Amnesty International* is considered the only human rights agency that is politically free. Hence, the selection here primarily occurred according to common understanding. Nevertheless, small NGOs and platforms such as the *La Voix des Rroms* are observed, too, in order to reveal potential aspects that are left out on purpose by politically more sensitive agencies. This may turn out as particularly interesting because there is a general “inadequacy of information on such violations, since governments are understandably reluctant to publicize their use of arbitrary [techniques]” (Mitchell & McCormick, 1988: 483). The *Decade of Roma Inclusion* (2010) argues in a similar direction as there are hardly any data on the Roma population. Hence, the methodology to analyze the human rights violations towards the Roma based on multiple, highly differentiating channels is feasible and logical. The selection method of these sources occurred after a phase of preliminary research where the ones that are used in this study turned out as the most active and explorative.

Last but not least, a governmental document issued by the French authorities is used to confirm what is reported by newspaper agencies and NGOs. Hortefeux’s circular is reprinted in the annex (Annex B). The use of such a combination of sources promises the creation of a sound and rather accurate picture of the Roma discrimination in France. The exact government mandates are also necessary for the examination of whether or not the activities breached the law revealing the precise political wording.

Legislation

As far as the analysis of EU legislation is concerned, the methods are straight forward: At a first stage treaty provisions and those that are incorporated in the human rights charter are observed. In a next step, the existence of case law, directives, and regulations is tested for. The legislation will be summarized, a potential development distinguished. The practical collection of these data occurs via the European legal archive EurLex and its search engine. Obviously, the time frame under examination here covers the period of the EU existence but a focus is placed on the most dominant, fundamental provisions because of time and space: the TEU, Directive 2004/38/EC, and Directive 2000/43/EC. The treaties are the fundamental legal provisions and therefore lay out the legal framework within which EU institutions, member states, and individuals can act. Further, EU institutions’ memos and documents such as the Council’s Stockholm Program are used in order to underline the legislation.

Limitations

As mentioned before, the data collection proceeds in qualitative steps. In order to reveal the factual human rights violations, several sources are used. Nevertheless, the reliability and availability of exact sources is often limited as with any human rights analysis (Mitchell & McCormick, 1988). The newspaper selection also includes particular limitations, as the French newspaper *Le Monde*, for instance, is not used as a source with the articles being not available without purchase anymore. These limitations have to be regarded in the conclusion and generalizations drawn at the end of the study.

3. 3 Data Analysis

The analysis of the data that deals with the actual French doings in terms of Roma discrimination and human rights violations – that is, the analysis of the newspaper and NGO – is straight forward. The collected data allows drawing up a chronology of what happened in France, and how and whether the national and European political bodies reacted to these actions. The data will be checked against the fundamental framework of this study: whether we cope with human rights violations here, whether it is a problem of ethnic minorities only, and in how far the EU intervened in the situation.

The procedure for the specific data analysis is obvious as far as the EU legislation is concerned: Any legislation that demands a particular type of action from a specific member state or institution accounts for all member states as determined in the EU's legal primacy. Thus, an analysis from this perspective is conducted. The first sub-question can be addressed here, as all potential mechanisms to protect ethnic minorities are revealed. Hence, all relevant legal data will be set into connection with the French proceedings in summer 2010. Thereby, the EU action that was or was not taken can be categorized in a general framework in order to be analyzed and judged upon. Potential deficits will be revealed by this. The second sub-question can be addressed here. The connection of the data from France and the EU legal provisions will provide sufficient evidence to preliminarily reply to the overall research question as the potential mechanisms can be clarified and the factual proceedings illustrated.

The third sub-question cannot be tackled from the data analysis alone. Here, the reflection upon the theoretical background, in particular upon the aspect of political conditionality, is necessary. The explanatory focus, here, does not use the practical and legal data alone but needs to regard purely political aspects as well. As little or no reliable information is visible for human rights violations in general, the outcome of this study faces low degrees to generalize the findings to other cases. Where information is missing or invalid, the general conditions can hardly be compared to another case. Moreover, the political aspect of legislating as opposed to executing will play a significant role in any generalization. On the one hand, the primacy of EU law cannot be disregarded in theory, regardless of the detailed proceedings in any human rights violation which is why the explanatory approach is likely to be highly comparable to other states and contexts.

As the French situation is regarded in connection to other European states and the institutions, and as the literature review positions the study in a general academic context, the explanatory findings of this study are likely to be transferrable – in principle – to other situations of Roma or ethnic minority discriminations in a European context. Obviously, the potential political opportunities (or the lack thereof) can only be applied to the European Union. Due to its *sui generis* status that still remains until today, the EU context is not comparable to any other transnational/international context. There is no other partially supranational institution that is entitled with its member states' sovereignty other than the EU. On the other hand, even within the EU the findings in this particular case cannot necessarily be compared to another situation. As indicated earlier, the information on human rights violations renders any generalization rather tricky.

4 ANALYSIS

In this chapter, the actual case study will be conducted which will enable us to address the main research question and its sub-questions. The first section will discuss the Roma situation in and around Paris laying down the general framework of the case study (chapter 4. 1). The next section will compose of the chronology of what happened in France in summer 2010 (chapter 4. 2) thereby creating the analytical framework of the study. Here, a time span from July to December 2011 will be under study in order to illustrate a full picture of the happenings during that time. July 2011 is chosen as a starting point because the incident with the Roma boy occurred in July as mentioned above. Articles were generally considered until December 2011 in order to embrace potential legal prosecutions by the EU. The last section will discuss the EU measures and capacities (chapter 4. 3). The reactions to President's Sarkozy's actions by the EU will be shown.

4. 1 The Roma in France

Within this section the general condition of the Roma in France is explored. First, their lifestyle in Western European countries – France in particular –as well as its reasoning is illustrated. As a second step, a chronology of the happenings in France in summer 2010 is developed. Here, particular emphasis is placed on the policy measures to clean and dismantle the Roma settlements. Last but not least, the initial reactions by the European Union are regarded in order to detect their general disposition to act in this particular case. Hence, the chapter at hand gives a full impression of the anti-Roma activities in France in summer 2010, including the public reactions by the EU. Thereby, the analytical framework of how the EU reacts to the particular Roma discrimination is created.

French Informal Settlements of Roma

As was explained earlier, Roma seem to be regarded as substantial threat to Western European nations. However, in terms of the attention they share and albeit the bad reputation they burden, they represent a constant ethnic group within these societies nevertheless. Indeed, a proportion of Roma people prefers to live a lifestyle of travelling or informally settling over living socially excluded and disadvantaged in their home countries. As Meier (2010) argues, the Roma in the west of Europe are mostly of Romanian and Bulgarian origin and flee their home countries because their living conditions there are unbearably terrible and unacceptable. The EU Agency for Fundamental Rights (FRA) claims that “[t]he Roma minority is identified as one of the most vulnerable groups in south-east Europe, and still faces in most of these countries very difficult living conditions and discrimination” (2010: 52). Hence, the reasons for large groups of Roma to leave their countries of origin are social exclusion and deprivation. But why are so many Roma moving to the west despite the common Western perception of Roma to be a criminal, unclean, and uneducated people?

In fact, Brearley describes the reoccurrence of such anti-Romany attitudes as well as the perception of Roma to be very criminal; she claims the media to present Roma “as parasites, as genetic criminals, as dangerous” (2001: 596). More importantly, she states that Romany criminal activity is even “universally [...] punished overzealously” as compared to non-Romany crimes linking back to the general attitude towards this group (2001: 594). This perception cannot only be seen in the media coverage of Roma incidents but it is mirrored by certain public policy measures. In France, the accusation of Roma to be

offensive and criminal allows for the police to regularly clean informal settlements in order to deport them to their home countries – despite the knowledge about their social exclusion there (Spiegel Online, 2010c; Meier, 2010). Indeed, thousands of Roma are annually deported back to Romania and Bulgaria (Spiegel Online, 2010a). The French government even offers a grant of 300 Euros per adult and 100 Euros per child for returning to their countries of origin hoping to convince them to leave (Zeit Online, 2010). Thus, hardly any effort is omitted by the French authorities in their cleaning process.

Despite the constant removal and deportation of Roma, hundreds of informal Roma settlements can still be counted in France. These usually lie at the outskirts of certain cities and are – of course – illegal. Amnesty International even classifies these settlements as slum belts (Amnesty International, 2010). While newspaper agencies claim that the number rises up to some 600 camps (Spiegel Online, 2010b), the French Minister of the Interior, Brice Hortefeux, speaks of 300 “campements ou implantations”, camps and settlements (Annex B). In the French public opinion, these camp inhabitants are often considered a threat to society (Spiegel Online, 2010a; Zeit Online, 2010; Amnesty International, 2010b; Le Figaro, n. d.) as they are by many other Europeans.

Sarkozy's Roma Intervention in Summer 2010

In fact, the trigger for the summer events in 2010 was tension between Roma and the police. A young Roma was shot by French police officer in an ordinary traffic control following which the boy's community vandalized the respective police office (Amnesty International, 2010b). The French politicians organized a meeting to deal with these tensions immediately after the uproar (Prochasson, 2010). Following this meeting, President Nicolas Sarkozy stated that within a three-month period, half of the Roma camps were to be removed (Spiegel Online, 2010b; Zeit Online, 2010). The Minister of Internal Affairs Brice Hortefeux confirmed this in an official statement on 28 July 2010 (Annex B). And in fact, newspaper coverage reported at later stages that up to 13,000 were deported, most of them towards Romania and Bulgaria (Le Figaro, 2010b; Le Post, 2010; Human Rights Watch, 2010a).

But on what political grounds was the deportation based? The political decision to dismantle the settlements and to deport the Roma was made on 28 July 2010; among the political actors were President Sarkozy and Minister of the Interior Hortefeux. Here, only the decision was taken on how to deal with the problem: evacuate and dismantle the camps, deport the Roma. The initial command to the executive forces was expressed by Hortefeux in form of a circular. Herein, the responsible authorities (prefects, the sheriffs, and the federal police) were asked to undertake immediate action towards the Roma. The command included the evacuation, dismantlement, and deportation of the Roma within a three-year time period (Ministère de l'Intérieur, de l'Outre-Mer et des Collectives territoriales, Annex B).

With regards to the procedure, two things are striking: Hortefeux stated that even after discussing the Roma problem with Romanian ministers, the French authorities would pursue their dismantlement plans because an illicit occupation of territory remains unjust (RTL.fr, 2010). The second aspect is that the Minister for Immigration was not informed about the circulars, and only learned about the evacuation at a later point, Le Figaro reports (Le Figaro, 2010a). In other words, the policy-making in this particular case proved to be ad-hoc aiming at rapid successes where important political offices were left out in the decision-making. Moreover, the only legal argumentation that was made was that the settlements are illegal and therefore unjust. Naturally, any government can argue to take such actions, specifically because

the Roma settlements are interfering with French law in the first place. Nevertheless, the activities here caused a media uproar because of its severity and force.

What Did the EU Say?

The initial reactions to the French measures are noteworthy. While the EU Commission observed the French happenings with care from the very beginning (Le Figaro, 2010b), they joined the UN in the canon to stop the mass deportations in August 2010, only a month after the conflict arose (Spiegel Online, 2010d). The UN claimed that despite the security concerns issued by France, the individual human rights need to be respected by any state. Barroso underlined this argumentation publically disagreeing with the French policy measures. In canon, it was argued by both the EU and the UN that deportations are – in any way – legally unacceptable. (Le Figaro, 2010c) Hence, it appears that the human rights violations are acknowledged and observed carefully promising official counteractions to protect the Roma. Nevertheless, it is striking that the French situation, in fact, is not unique within the EU. As Meier (2010) claims, Finland, Denmark, and Italy have ordered comparable deportations before (Human Rights Watch, 2010a). Therefore, it is necessary to assess in how far the EU can take action in order to be able to place the activity in France in a general political context.

To sum up, the French measures to deal with the Roma problem in the many informal settlements turns out to be doubtful for several reasons. First, the technical policy-making itself seems to have been ad-hoc, leaving out important actors and aiming at rapid successes. Considering that the Roma ‘problem’ is one that has lasted at least half a millennium as pointed out earlier, the invention of a policy to solve that conflict within a couple of days receives a dubious character. With regards to the theoretical background, the intrinsic differences between the Roma and other European cultures suggest that the conflict is not handled easily. Second, the harsh observation by both the UN and the EU underline the severity of the French actions as well as that of the problem itself. Especially these public reactions detect that the French activities infringe with universal human rights provisions as conceptualized earlier. Hence, the fine line between what France coined ensuring public order and safety and that of ethnic minority and human rights protection was crossed here. Clearly, the French anti-Roma action constitutes an issue the EU is expected to take care of. In the upcoming section, the EU’s legal incentives will be revealed in order to verify this expectation.

4. 2 How Can the EU Deal with the French Roma Case?

This section discusses the legal provisions ensuring Roma protection and creating the context for any ethnic minority protection. First, general human rights entitlements to any citizen are enumerated, including basic responsibilities for EU institutions. Next, these responsibilities are taken to a next level as the specific incentives for the Roma protection are illustrated. These two steps are expected to reveal the applicable legal framework in the context at hand. Explicitly, the legal tools and mechanisms to be used against Roma discrimination are detected. While the greatest focus lies on the protection of Roma, there are certain legal obligations that are to be fulfilled by the Roma themselves. In order to correctly present the context at hand, these need to be regarded, too, as is done in the third sub-section of this chapter.

General Human Rights Provisions

“The EU is committed to fully respecting the human rights of all persons, including those belonging to minorities” (European Communities, 2008: 51).

In fact, the EU not only acknowledges the *Universal Declaration of Human Rights* but it adheres to its own *EU Charter of Fundamental Rights* to protect its citizens. In particular, Article 19 of the *Consolidated Version of the Treaty on the Functioning of European Union* (TEU) entitles the Council in accordance with the European Parliament (EP) to take necessary and appropriate measures “to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” (art. 19 TEU).¹² Hence, basic treaty law does not only provide for legal protection of EU citizens but also empowers EU institutions to legally enact these rights. In fact, Article 21 of the EU Charter of Fundamental Rights provides that “[a]ny discrimination based on any ground such as [...] ethnic or social origin, [...] membership of a national minority [...] shall be prohibited” as well as that “[...] any discrimination on grounds of nationality shall be prohibited” (art. 21 Charter of Fundamental Rights).¹³

Whereas the treaty and charter provisions are broad in nature, the directive issued in 2000 (Directive 2000/43/EC) makes the human rights protection more specific. It initiates the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin, claiming equality before the law, too. In Article 2.1, it is further explained that the “principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin” (Directive 2000/43/EC). In turn, it is ascertained that “[h]arassment shall be deemed to be discrimination [...] when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment” (art. 2.1).

In addition, chapter II of the very directive states the remedies and enforcement measures in Article 7 on how the member states are to provide the defense of rights (Directive 2000/43/EC). In support of this, Article 14 in chapter IV claims that the member states “shall take the necessary measures to ensure that: (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished” (art. 14). The implementation of the directive was to occur by July 2003 (art. 16); its entry into force occurred with its publication in 2000. Hence, the directive and all its incentives have been legally binding since 2000. Another set of tools created by the EU institutions are the Copenhagen Criteria that ask the provision of the rule of law, democracy, and the provision and protection of human rights towards its citizen by accession and candidate states (European Council, 1993). However, these do not apply to the case at hand with France being one of the Founding Six.

To sum up, the legal provision for the protection of human rights calls on EU institutions, member states, and third parties alike. Each is not only entitled to take action against human rights violations but they are technically forced upon to interact. Especially, the discrimination based on race of ethnic belonging is enrooted in these fundamental legal frameworks. With regards to the first sub-question inquiring what

¹² The Articles is originally known as Article 13 TEC, and carries the subtitle “ex Article 13 TEC”.

¹³ The EP actually considers the Articles 1, 8, 19, 20, 21, 24, 25, 35, and 45 of the EU Charter of Fundamental Rights to be applicable to and account for the Roma situation (EP, 2010).

legal capacities exist for the EU to intervene in human rights violations, it can be concluded already that sufficient legal provisions ensure the protection of human rights specifically aiming at the prevention of discrimination based on ethnic belonging or race. Contrary to popular belief, the enlisted provisions above prove that the EU has not only enshrined the rights theoretically but that a variety of tools and mechanisms have been initiated, too, in order to enforce human rights' protection.

Incentives for Roma Protection

Next to the general human rights provisions, the protection of ethnic minorities is secured by additional laws and regulations, linking back and originating in the clauses against discrimination based on race and ethnic belonging. Here, the provisions account for either ethnic groupings in general or for migrants with specific ethnic roots. In the Stockholm Program[...], the European Council even argues that,

“[t]he Union and the Member States must make a concerted effort to fully integrate vulnerable groups, in particular the Roma community, into society by promoting their inclusion in the education system and labour market and by taking action to prevent violence against them” (2010).

The EC (2010b) argues in a similar direction as it includes Roma clauses in all relevant policy areas: employment, social inclusion, cohesion, and enlargement. By this, two important aspects are distinguished. First, these standards address EU institutions and member states alike by claiming that a *concerted effort* is needed to provide protection for these groups. Moreover, the supranational EC *and* the intergovernmental European Council argue for identical measures, suggesting that both pursue concerted ideas on the issue at hand. Second, the special focus on the Roma community is striking. The extraordinary role of the Roma people in Europe as discussed earlier is seized again; their disadvantaging hardships as a minority are indirectly confirmed here. This argument can be underlined by the EU's efforts to assign the most diverse agencies to incorporate the Roma protection in their area of expertise. For instance, the European Social Fund (ESF), the Development Fund (ERDF), and the EU Agency for Fundamental Rights (FRA) each examine studies and analyses of the Roma situation in particular. The FRA, in particular, “is mandated to provide evidence-based advice on fundamental rights issues to European Union institutions and bodies and EU Member States, when implementing European Union law” (EC, 2010b). Moreover, the European Roma Summit instigated in 2010 supports the argument that virtually any actor within the EU is included in the combat for Roma inclusion. At the summit, around 400 representatives of EU institutions, member states, regional and local public authorities, and non-governmental organizations (NGOs) discuss the Roma issue (Decade of Roma Inclusion 2005-2015, n. d.).

The vision that supports the protection of ethnic minorities as well as their full integration in the European mainstream societies derives from the prospective utility the (Roma) individuals carry. As the EC claims, a “[r]obust defence of migrants' fundamental rights out of respect for our values of human dignity and solidarity will enable them to contribute fully to the European economy and society” (2010b: 7). The EC communication identifies the need for the social and economic integration of Roma in Europe, delivering practical support on the grounds of Article 10 (TEU). When examining these policies, it appears that the EU's interest in an integrated Roma people is urgent. In the official document, the EC (2010b) claims that it will apply a zero tolerance policy for non-compliance with fundamental rights provisions of the Charter. The aim is to facilitate the Roma's participation in EU policy-making as well as to facilitate their mobility.

Nevertheless, the combined efforts to agree on Roma protection measures appear to take place on a theoretical basis only. Especially, local and regional authorities, though included in the Roma summit, treat Roma as “unwelcome guests, [as] a reaction prompted by the prevailing prejudices of sections of local communities” (FRA, 2009a: 8). This is extraordinarily striking considering that “states are called upon to provide nomadic Roma or Travellers with camping places for their caravans, equipped with all necessary facilities” (2009a: 17), the FRA argues. This is particularly interesting with regards to decisions that were taken by both the European Court for Human Rights and the ECJ. As the FRA summarizes, “[t]urning to Roma and Traveller cases the court recognized that caravans placed on a piece of land without prior permission were also to be considered as homes and came within the scope of Article 8” (2009a: 28). Hence, the discriminatory treatment by local and regional authorities infringe with EU law quite easily.¹⁴ The eviction and dismantlement of camps according to these laws may easily be unjust because they constitute homes nevertheless. Moreover, the provision of camping places is legally demanded in the first place. However, the Roma are not simply entitled with these additional provisions concerning their housing and lifestyles. The Roma are obliged to stick to certain rules, too. In the following section the requirements for Roma will be illustrated.

Obligations for the Roma People

The FRA claims that the Roma know their right to travel (2010) while very rarely they know about protective measures for ethnic groupings such as themselves (2009a). Their ‘right to travel’ is anchored in the TEU but also in Directive 2004/38/EC, also known as free movement directive. Herein, the “conditions governing the exercise of the right to free movement and residence within the territory of the Member States by Union citizens and their family members” (art. 1) are laid out. The directive states that for a period of up to three months any EU citizen can travel and reside freely throughout the EU’s territory (art. 6). However, there is one limitation to this. If a citizen exceeds the three-month period, they can remain here legally only when they are in steady employment or self-employed, come with sufficient resources, attend any educative public or private establishment or if they are family members of someone fulfilling one of these conditions. In addition, they need to have valid sickness insurance (art. 7, directive 2004/38/EC). So, in theory there are a variety of conditions that EU citizens need to fulfill in order to reside legally in another member state than their home country. As the FRA (2010) argues, the Roma know their right to travel. Nevertheless, the question remains whether they know their obligations as well.

While the member states can find sufficient grounds to send back citizens to their countries of origin, the directive equally provides for precise procedures for making such a decision. In Article 28, it is claimed that “[b]efore taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as [...] the extent of his/her links with the country of origin” (Directive 2004/38/EC). It goes further by arguing that “[e]xpulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty” (art. 33). Despite the obligations that need to be fulfilled by the Roma people themselves, the grounds for expulsion from a particular member states are not sufficient if the Roma simply do not stick to their obligations.

¹⁴ ECHR *Öneryıldız v. Turkey*, 48939/99 (30.11.2004), *Öneryıldız v. Turkey*, 48939/99 (30.11.2004), *Evangelos Tzamalīs and Others v. Greece*, 5469/07; *eviction and destruction*: 41138/98 and 64320/01 (12.07.2005), *Chapman v. United Kingdom*, no 27238/95 (18.01.2001) (FRA, 2009a)

Nevertheless, the EC acknowledges that “[t]he prevention and reduction of irregular immigration in line with the Charter of Fundamental Rights is equally important for the credibility and success of EU policies in this area” (2010a: 7). With regards to the problem at hand, it becomes obvious that the legal framework is far from clear-cut.

Thus, the EU legal documents provide for the protection of fundamental rights as well as for the protection of ethnic minorities, the Roma in particular. With regards to the travelling lifestyle of certain proportions of Western European Roma, one can argue that specific legal provisions exist in order to regulate it. Nonetheless, the compliance with all these provisions depends on a variety of factors that include the Roma’s particular behavior, the attempts to regulate immigration, and the conditions for the free movement of citizens. Whereas each of these aspects is defined specifically before the law, the adherence of one may be conflicting with that of another. Hence, the EU legal provisions are not only complex in writing but also in terms of their adherence and pursuit.

To conclude, the first sub-question inquires what EU capacities can be detected for the human rights protection. Here, it can be summarized that the main legal provisions are Article 19 (TEU), Article 21 (EU Charter of Fundamental Rights), and Directive 2004/58/EC concerning the protection of Roma and their human rights assurance. But what are the actual opportunities for the EU to act? It is striking that EU member states that infringe with these provisions as enumerated above can be brought before the ECJ. As the EC constitutes the guardian of EU law, they can report infringing member states to the European court (and also to the European Court on Human Rights). Moreover, the European Commission is entitled to ask the particular member state to take specific actions or stop these, as well as it can demand a member state to adhere to EU law. Theoretically, the member state could also be sanctioned. However, political relations, strengths, and reputation each play their part in these legal proceedings only too often. The political component will be illuminated at a latter point, too.

4. 3 How Did the EU Deal with the French Roma Case?

The section at hand aims to compare the legal provisions with the happenings of the French evacuation and dismantlement of Roma settlements as explained above. In order to do so, the reactions and proceedings by the EU will be displayed. The analysis will conclude with displaying the discrepancy between the legal provisions and the actual activity, thereby allowing to address the general research question as well as the second and third sub-questions.

Initial Reactions

The initial reaction by EU officials looked promising: José Manuel Barroso had declared the actions to be unacceptable (Le Figaro, 2010b) while the Commissioner of Justice Viviane Reding reacted tough and distinctly. She declared the French policies to be mortifying claiming that to deport Roma people only on the basis of their ethnicity reminds her of an attitude that was practiced during World War II (Le Figaro, 2010b).¹⁵ Even though the comparison is harsh to make, the similarity that only one particular grouping was evicted because of their origin holds true. Hence, the French policy classifies as highly discriminative considering that its focus was set on the Roma explicitly. In the circular it reads that the camps were to be

¹⁵ As a matter of fact, the statement – or more particular the comparison to World War II - was revoked by Barroso a couple of days later (Le Figaro, 2010b).

dismantled “en priorité ceux de Roms” (Annex B), meaning with a priority of those camps belonging to Roma. This literal exclusion caused the French media to claim the unconstitutionality of the policy early on (Le Post, 2010; Prochasson, 2010). Surely, this is the predominant reason for why Reding initiated an investigation following her public statements (Human Rights Watch, 2010a).

But on what grounds does Reding justify an investigation? Generally, three reasons can be identified with regards to the legal provisions laid out above – linking to each the evacuation, dismantlement, and deportations: First, the immediate eviction of any individual without a severe observation of the circumstances is generally considered as unlawful. Second, the dismantlement of the settlements itself equals the destructions of an individual’s home and possession. And third, the deportation of any individual can only follow a detailed analysis of the society of origin to which the particular person is to be repatriated.

The European legal provisions provide for protection measures towards minorities that are evicted from their homes. In line with Directive 2004/38/EC, the Roma are allowed to reside within a given member state for up to three months. Moreover are the member states obliged to arrange designated camping places for travelling people as indicated by the FRA (2009a). Hence, the French argumentation that the Roma built their camps illegally needs to be reconsidered. There is no evidence for any French arrangements of such camping spots. While the decision to evacuate the Roma camps can be justified before the French authorities – the camps are informal and set-up illegally –, the European Union recognizes a responsibility to provide substitute housing and/or compensation instead of a deportation (Human Rights Watch, 2010a). This argument connects to the next reason for why the French activity is perceived as illegal. The dismantlement of Roma camps, in turn, conflicts with EU law immediately. It is argued, as discussed by the FRA (2009b), that illegally constructed settlements still represent homes. According to EU law, no home can be torn down in an instant without reconsideration. Amnesty International supports this by claiming that evictions from unlawful settlements should still only be practiced as a last resort as no individual can be left homeless by state authorities (2010b).

The third reason for why the French policy conflicts with EU laws, directives, and regulations is the actual deportation of the Roma. The FRA (2009b) points out that the EU institutions expect any member state to consider the political, social, and economic situation of the individual to be deported. The integration and social status plays a significant role as no individual shall be deported to even more miserable living conditions than those in informal settlements. As the hardships by the Roma people in their home countries are generally acknowledged (Bancroft, 2005; Brearely, 2001; Szente, 1996; etc.), the ad-hoc decision-making by France receives a reckless character. Another argument that is incorporated in Directive 2004/38/EC is that deportation “may not be used as a penalty”. The French authorities claimed that the informal settlements and the Roma people per se constitute a threat to society because they are a criminal, dirty people. Thus, the deportation can be regarded as a penalty for illegally setting up a camp. Thus, the French activity classifies as illegal activity before EU law. The resolution by the EP (2010) uses the same argumentation when it states that a lack of economic means cannot be used to expulse people by any means.

To conclude, there is sufficient evidence to prosecute the French authorities for their non-compliance with several EU legal provisions. Indeed, the European Commission threatened to bring France to court while

initiating a three-month deadline to change its policies (Le Figaro, 2010c). The main reason for the investigation was, in fact, neither the evacuation nor dismantlement of the camps but the unbureaucratic, immediate deportation of Roma towards Romania and Bulgaria which is why the Commission's deadline allowed for the French authorities to stop their proceedings. Shortly before the deadline expired, the French government decided to give in to EU demands, promising to practically incorporate the provisions of Directive 2004/38/EC mostly. Thereby, the EU renounced the prosecution of France's activity (Le Figaro, 2010c). With regards to the second sub-question inquiring what actions the EU undertook to counter act against the French breach of EU law, it has to be acknowledged here that the Commission stopped its activities before having even started. While the initial reactions allowed for the assumption that comparably harsh measures were taken against France, the EC eventually pulled back from their approach to bring the matter to the ECJ. Hence, it can be concluded that the European Commission merely reproved France for its EU breach instead of enforcing any sanctioning.

Missing Out on Its Own Action – How the EU Withdrew Its Efforts

The drawback by the European Commission contradicts its highly-publicized statement of practicing a zero-tolerance policy in terms of Roma discrimination (EC, 2010a). With regards to Reding's disposition to initiate infringement proceedings (Human Rights Watch, 2010), this contradiction derives an even more absurd aftertaste. Even the French commissioner backed Reding's initial plans while acknowledging that the EC is the primary and only guardian of the treaties, and that all member states know these rules of the game (Le Figaro, 2010b). The EP confirms this by "urg[ing] the French authorities to immediately suspend all expulsions" (EP, 2010), while calling on the EC, Council and member states to intervene, too. In its argumentation, the EP (2010) grounded its demands on the occurrence of mass deportations that are prohibited by the EU Charter of Fundamental Rights, the ECHR as well as by the EU treaties and laws amounting to discrimination based on ethnicity and a breach of the provisions for free movement. Analyzing the situation, one immediately recognizes that the official statements by a multitude of political actors are similar and arguing in favor of EC intervention. Nevertheless, the only action undertaken by the EC composes of the demand to declare in writing that the French authorities will not practice any more discrimination against the Roma (Le Figaro, 2010c).

Hence, the question of which actions are undertaken by the EU authorities to stop the French Roma discrimination allows for a short and simple answer. To put metaphorically, the EC as a watchdog for member states' law-compliance reproved France to please not discriminate against Roma again. The EC threatened with a trial before court but allowed for a convenient deadline to comply with EU law. Hence, the action engaged in by the EU is only minimal. But why is that so? How can the Commission justify letting France walk away with such severe human rights violations? The evidence for the violations is abundant theoretically enabling the EC to bring France before court. However, the composure by the Commission can best be explained by the distribution of power and the extraordinary standing of particular member states within the union.

Political Power and Compliance with the EU Law

The third sub-question within this research addresses the explanation for why the EU institutions do not take clearer and more practical actions than those observed above. Here, the political component needs to be drawn into the picture. In Eastern European countries, as discussed in the introductory paragraph, the compliance with EU law was steered by EU political conditionality before their accession to the union.

Hence, the compliance to protect ethnic minorities – or at least to indicate political measures that intend to do so - can solely be explained by its conditionality according to which the states received the prospect of becoming an EU member state.¹⁶ Schimmelfennig and Sedelmeier (2004) support this by stating that political conditionality alone allowed for the EU to influence the domestic policies severely. Naturally, the Founding Six – among which is France – are not subject to this kind of conditionality. They are member states *and* they founded the union. Moreover, it is the temporary member states that exert this kind of political conditionality. So, the differentiated treatments of EU principle and law infringements according to member states can best be explained by the different political status of particular member states. The question arises of whether or not the political power play within the union is not far more extensive than commonly assumed. Alter gives reason to believe so by stating that the ECJ often “lacks the autonomy to decide against the interest of powerful member states” (1998: 121). In other words, the ECJ is more unlikely to rule against powerful member states than against weaker member states. France constitutes one of the most powerful European countries not only because of their historical position in Europe but because of their economic force, too.¹⁷ In addition, France is legally situated among the most powerful in the EU in terms of their 29 votes in the European Council (TEU, Protocol No. 36, art. 3. 3) and their 78 seats in the EP (EU, n. d.).

Wonka (2007) adds to this argumentation by claiming that the appointment of commissioners by member states occurs strategically and in accordance with their own political standing. Thereby, the political power play is carried to the next level. Nevertheless, for the French case at hand disclaims this argumentation as the French commissioner acknowledges the EC’s initial efforts to be necessary as mentioned above. Moreover, the Luxembourgish commissioner Vivian Reding was the driving force behind the attempt to prosecute France for its activities. Her interest presumably lay in the compliance with EU law based on the Charter of Fundamental Rights and the EU directives. As Eekhout argues, “[t]he Charter could [...] become a force for some degree of harmonization of human rights law in the European Union, complementing the essential standards approach of the ECHR” (2002: 992). There is no reason to believe that Reding’s attempt as Commissioner of Justice was based on a different motivation. However, there is reason to believe that the European Commission, as an entity, renounced their claim to bring France to court because it was France. Note though, that the EC allowed for France to adapt to EU law until a given deadline which – legally – France complied to. After all, it can be argued that the EC interacted by asking France to adapt their laws, and also that France fulfilled these requirements. Nonetheless, the deportation of Roma remains illegal according to EU law – and remains unpunished. The explanation for this, in turn, is likely to be based on the political distribution within the union as argued by Alter (1998).

To sum up the main findings of this analysis, the most crucial aspect is the acknowledgment of the human rights violations towards the Roma by France, and its violations of EU law. Besides the theoretical analysis of what legal incentives and provisions are enshrined in EU law in order to protect ethnic

¹⁶ As we know, the situation for Roma in Eastern Europe is not – by any means – in compliance with EU protective measures. As indicated several times within this paper, the Roma in Eastern member states suffer from social exclusion and deprivation.

¹⁷ France has an annual GNI per capita of \$46,620 as opposed to a EU average of \$34,358. The life expectancy in the EU lies at 79 while in France it is 81 years – among other indicators (World Bank, 2011).

minorities, human rights, and in particular the Roma, the factual analysis of the EU's reactions towards France are striking. As was established in the preceding sub-chapter, numerous legal provisions call upon EU institutions and member states alike to provide protection for the Roma. Nevertheless, this section highlighted that the true reactions by the EU turned out to be comparably weak, undermining its own "zero-tolerance" (EC, 2010a) with regards to the issue at hand. Thus, the sub-question of what are the factual responses towards the French human rights violations against Roma brought forward by the EU can be addressed bluntly by stating that the EU merely reprovved France for its actions. In other words, the European Commission as the watchdog of EU law clarified to the French government that its action has been unlawful and immoral, and that it is to be seized immediately. Nevertheless, the violations of human rights and EU law alike were not subject to further prosecution.

The third sub-question allows to present assumptions of why this may have been the case. Hence, the response to the question of how it can theoretically be explained that the EU does not prosecute the French human rights violations towards the Roma as provided for by EU legislation assumes that it is not European ignorance but that these decisions and actions are subject to a European power play. That is, while the European Commission and Parliament each acknowledged the French violations of applicable laws, and publically articulated their opinion on these, the expected reactions are perceived to have been dampened by the European power relations. To conclude this, the European power play is perceived as decisive parameter in the enforcement of human rights protections.

5 CONCLUSION

Subject to the analysis at hand is the question of how the European Union's non-compliance to its own legal incentives regarding the French human rights violations towards the Roma by and within its member states can be explained. While the legal incentives are clearly detected within the study revealing the discrepancy between what the EU is legally required to do and what it does, its explanation turns out to be only of a hypothetical character. Surely, the analysis above allows for the claim that there is no legal explanation for the lack of action and non-compliance with its own incentives. But the non-compliance is not a result of European ignorance towards the Roma people, the assumption that has been risen is that the EU's non-compliance within this context is the outcome of a European power play. In this conclusion, the particular reasons for this argument will be illustrated; further fields of research will be eluded.

To summarize the specific case under study first, the evacuation and dismantlement of Roma settlements and the following deportation of its inhabitants by French authorities each are clearly politically debatable: As in line with the universal human rights provisions, the protection of ethnic minorities is ensured by the EU through its legal provisions. In particular the protection and support of the Roma people is specifically enshrined in these laws, regulations, and directives. Hence, EU-wide efforts to enhance the Roma's living situations throughout its territory prevail. Nevertheless, the Roma are commonly displayed as a people that continuously faces discrimination and exclusion because of their belonging to an ethnic minority. Pinto's (2010) majority-minority dynamic partially accounts for this problem. The severity of the Roma's position within Europe mounts from three crucial factors: (1) their intrinsically different culture and lifestyle that is even considered to be tribal (Oakley, 1983), their statelessness as argued for by Benjamin (2008), and their continuous exclusion throughout the centuries (e. g. Brearley, 2001). Indeed, the French

policies to clean the illegal settlements concentrated solely and explicitly on the Roma people, as explained above.

With regards to the analysis of current EU legislation, prominent pieces of legislation point out that this kind of exclusion is illegal and immoral. The Treaty Establishing the Functioning of the European Union, the EU Charter of Fundamental Rights as well as the ECHR constitute these predominant legal frameworks according to which the member states are obliged to protect ethnic minorities already. Additionally, the Directives 2000/43/EC and 2004/58/EC have been detected as main guidelines in terms of ethnic minority protection and, in particular, that of the Roma. These legal provisions demand the protection of human rights *per se*, the provision for safeguarding measures for ethnic minorities, and the respect of the Roma's right to free movement within the EU. Each of these documents provides for sufficient guidelines for the European Commission to potentially punish any member state that interferes with the Roma's rights. Especially the French deportation of Roma breaches EU law; in particular it conflicts with the legal provisions of Directive 2004/58/EC. In short, the EU laws clearly call for authoritative reactions towards these types of legal infringements prohibiting such activities in the first place.

Concerning the actual proceedings initiated by the European Commission towards France, the response to the second sub-question is quite blurry: The reactions by the EC are rather theoretical than practical. While Commissioner for Justice, Reding, appealed to the legal prosecution of the French policy measures, Barroso eventually appeased the fronts: The initial threat to bring France to court was exchanged by a demand to incorporate and respect the EU legal frameworks, including the TEU, the Charter, and Directive 2004/58/EC in particular. France eventually decided to give in to EU law thereby jumping off the hook. Thus, the actual actions by the EU institutions can be summarized to be of a reproving character only, not making France accountable for its EU-breaching proceedings retrospectively but asking for an incorporation and legal respect that can be argued to have been overdue.

How can this be explained? Is this European ignorance at its best? No, the approach by Alter (1998) summarizes quite well that the proceedings are likely to have become victimized by the European power play. France is one of the strongest member states within the union which allows for the impression that both the EC and the ECJ are unlikely to rule against it on a human rights matter. To conclude, the manner of the EU institutions to deal with human rights infringements towards the Roma is rather limited in scope. The Commission's protective character of the law, in particular, is very weak in the situation at hand. The EC only takes a warning, reproving role that appears to remind the member states of their legal compliance with EU provisions rather than to coerce them to comply with the latter. Not being the result of a general ignorance, the character of the prosecution of human rights violations within the union can be described as one that is dominated by a power play of actors.

What's Next?

The political component in the topic at hand is only touched upon in this analysis. Further studies are necessary to concentrate on the power play; a comparison of powerful member state with that of a comparably weak one may reveal evidence to either reject or confirm the hypothesis that such a political competition for power dominates the human rights protection and the prosecution of the latter's violations. Naturally, a comparison of human rights violations exerted by states is a tricky and complex study to be

undertaken. Nevertheless, such a study may reveal shortcomings in the EU legal protection thereby eventually promoting the protection of ethnic minorities, the Roma in particular. After all, the Roma's endurance of constant human rights violations does not constitute a European characteristic that is very pricing and favorable.

The study at hand can only offer an analysis of the French situation in summer 2010, revealing what parts of the French policy measures clearly infringed international and EU law. In addition, the EU's responsibilities in this very conflict are laid open, revealing the discrepancy between EU legal compositions and hands-on policies. Here, the study does reveal the lack of explanation for the non-compliance of (supranational) EU institutions with their own legislation. The study clearly indicates that no flaw in the legal system *per se* accounts for the lack of action with regards to the French human rights violations.

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ANNEX A.

Explanation of Newspaper Selection · Limitations and Difficulties

Generally, German and French newspapers were chosen as sources: Naturally, French newspapers are significant because the case study concentrates on France. Newspaper coverage is considered as relatively first hand. German news reports were selected for two reasons, too: First, they serve as a means to cross-check the information that is collected. (Of course, the selection has to be done carefully because it can be positive *or* negative.) Foreign news coverage reveals the opportunity to perceive a second perspective. The comparability of information can more validly be justified if there are articles of different standpoints. In general it can be argued that the data collection occurred according to which newspapers appeared the most objective, most prominent, and most serious.

As far as the specific news agencies are concerned, the following French and German ones were chosen respectively: Le canard social, Le Figaro, Le Post, RTL.fr, Spiegel Online, and Zeit Online. Basically, all articles that were available via Google™ were observed and those that embraced the relevant time frame while delivering the most and relatively objective information were chosen. The selected articles for this study are enlisted in the following. Here, it needs to be ascertained that plenty of additional articles were read in the data gathering period in order to observe similarities. Due to timeliness and space, not every article is added in the annex, repetitive coverage was omitted.

In the data gathering period, several limitations appeared. Initially, French *le monde* was thought of as a French source, for instance. However, the availability of less recent articles is low; most articles were only available through payment. Due to financial matters, different and substitute sources were chosen instead.

Newspaper Articles Used within this Study

Source: Spiegel Online (2010a, July 28).

Sarkozy will Roma ohne Papiere abschieben

Schließung aller illegalen Lager innerhalb von drei Monaten: Frankreichs Präsident Sarkozy hat drastische Maßnahmen gegen Roma und Sinti angekündigt. Zudem sollen alle Landfahrer, die ohne Papiere in Frankreich leben, ausgewiesen werden - "aus Gründen der öffentlichen Ordnung und Sicherheit".

Paris - Frankreichs Staatspräsident Nicolas Sarkozy will schärfer gegen kriminelle Roma vorgehen. Nach Ausschreitungen zwischen der Polizei und einer Gruppe von Roma hat Sarkozy die Schließung aller illegalen Lager dieser Bevölkerungsgruppe innerhalb von drei Monaten angeordnet.

Bei einem Regierungstreffen am Mittwoch sagte Sarkozy, alle Sinti und Roma, die ohne gültige Papiere in Frankreich lebten, würden ausgewiesen. Nachdem die Polizei vor knapp zwei Wochen im Loire-Tal einen jungen Roma bei einer Verkehrskontrolle erschossen hatte, verwüsteten aufgebrachte Angehörige der ethnisch-kulturellen Minderheit das örtliche Polizeirevier. Diejenigen, die für die Verwüstungen verantwortlich seien, müssten "hart bestraft" werden, sagte Sarkozy.

Er plädierte für eine Änderung der Einwanderungsgesetze, um die Ausweisung "aus Gründen der öffentlichen Ordnung und Sicherheit" zu erleichtern und warf den Landfahrern ("gens de voyage") Kinderhandel und -ausbeutung sowie Prostitution vor. Vertreter der Minderheit waren zu dem Treffen am Mittwoch, an dem neben dem Innen-, Justiz- und Einwanderungsminister auch hochrangige Polizeifunktionäre teilnahmen, nicht eingeladen.

Steuerfahnder sollen Landfahrer überprüfen

Die Regierung wolle außerdem zehn Steuerfahnder in die Lager von sogenannten Landfahrern schicken, um zu überprüfen, ob sie korrekt Steuern zahlen. Bereits vor der Sitzung hatte es heftige Kritik der Opposition und von Lobbyverbänden gegeben, die der Regierung die Stigmatisierung einer Minderheit vorwerfen.

In Frankreich sind offiziell etwa 400.000 Menschen als Landfahrer registriert, eine Verwaltungskategorie, die seit den 1970er Jahren existiert. Etwa 95 Prozent von ihnen sind Franzosen, nur etwa ein Drittel von ihnen ist nicht sesshaft. Gemeinden mit mehr als 5000 Einwohnern sind verpflichtet, den Landfahrern geeignetes Gelände zur Verfügung zu stellen, wenn sie sich dort niederlassen wollen. In der Realität geschieht dies allerdings nur selten.

Daneben gibt es Roma, die häufig die rumänische und bulgarische Staatsangehörigkeit haben. Sie können als EU-Bürger problemlos in Frankreich einreisen, aber abgeschoben werden, wenn sie sich strafbar machen. Frankreich zahlt außerdem Prämien in Höhe von 300 Euro für Erwachsene für eine freiwillige Rückkehr. Im vergangenen Jahr hat Frankreich etwa 9800 Roma abgeschoben, die meisten von ihnen nach Rumänien. Kritiker werfen der Regierung vor, auf diese Weise die Abschiebestatistik aufzublähen, zumal viele von ihnen sich die Prämie zahlen ließen, um dann umgehend wieder nach Frankreich zu kommen.

Die Oppositionspartei PS wirft Sarkozy eine "ethnische Stigmatisierung" vor, die kommunistische Partei spricht von "einem Schritt in Richtung Rassismus". Andere vermuten, die Regierung wolle mit dem Aufregerthema von der Steuer- und Spendenaffäre um die L'Oréal-Erbin Liliane

Bettencourt ablenken. Sarkozy hatte kürzlich erst angekündigt, dass er das Thema Sicherheit wieder verstärkt in den Vordergrund schieben wolle.

luk/dpa/apn

Source: Spiegel Online (2010b, July 29).

Opposition wettet gegen geplante Roma-Abschiebung

Fremdenfeindlich, demagogisch, stigmatisierend: Die französische Opposition greift die Abschiebepläne der Regierung scharf an. Angehörige der Roma-Minderheit sollen nach Straftaten sofort ausgewiesen, rund die Hälfte der illegalen Siedlungen im Land abgerissen werden.

Paris - Mit Empörung und heftiger Kritik hat die Opposition in Frankreich auf die angekündigten Abschiebungen von Roma reagiert. Die französische Regierung rutsche mit ihrer Sicherheitspolitik in die "Fremdenfeindlichkeit" ab, sagte der für Menschenrechte zuständige Beauftragte der Sozialisten, Pouria Amirshahi, am Donnerstag in Paris.

Statt sich um die Integration der Roma zu kümmern, führten die Konservativen eine "demagogische, aggressive und stigmatisierende Diskussion". Auch andere linke Parteien und Menschenrechtsorganisationen griffen die harte Linie der Regierung von Frankreichs Präsident Nicolas Sarkozy scharf an.

Innenminister Brice Hortefeux hatte am Mittwochabend nach einem Spitzentreffen im Elyséepalast bekanntgegeben, dass die Hälfte der rund 600 illegalen Roma-Siedlungen im Land in den nächsten drei Monaten abgerissen werden sollen. Roma aus Bulgarien und Rumänien würden nach Gesetzesverstößen "nahezu umgehend" in ihre Heimatländer abgeschoben.

Zudem sollen Steuerfahnder die Bewohner der illegalen Siedlungen unter die Lupe nehmen, da nach den Worten des Innenministers viele

Franzosen "mit Recht verwundert" darüber seien, was für große Autos manche Roma hätten.

Auslöser der Krisensitzung waren Auseinandersetzungen zwischen Roma und der Polizei in der Bretagne. Dort war eine Polizeiwache verwüstet worden, nachdem Beamte einen Angehöriger der ethnisch-kulturellen Minderheit erschossen hatten.

Sarkozy kündigte harte Sanktionen gegen die Krawallmacher an. Die Ausschreitungen in der Bretagne verdeutlichten "die Probleme, die das Verhalten von manchen fahrenden Leuten und Roma verursacht", sagte er. Zu dem Spitzentreffen mit den zuständigen Ministern und Vertretern der Polizei waren die Betroffenen nicht eingeladen.

Rund 400.000 Angehörige des "fahrenden Volkes" in Frankreich

In Frankreich wird unterschieden zwischen Roma, die auch so genannt werden, und womit vor allem Betroffene aus Rumänien, Bulgarien und dem früheren Jugoslawien gemeint sind. Die französischen Roma werden hingegen offiziell als "fahrendes Volk" bezeichnet, obwohl die meisten von ihnen inzwischen sesshaft geworden sind, wenn auch häufig in Wohnwagen an einem festen Ort. Insgesamt werden der Verwaltung zufolge etwa 400.000 Menschen als "fahrendes Volk oder Roma" eingestuft. 95 Prozent von ihnen haben die französische Staatsbürgerschaft.

Bisher zahlt Frankreich freiwilligen Rückkehrern eine Prämien in Höhe von 300 Euro für Erwachsene. Kritiker werfen der Regierung vor, auf diese Weise die Abschiebestatistik

aufzublähen, zumal viele Personen sich die Prämie zahlen ließen, um dann umgehend wieder nach Frankreich zu kommen.

jok/AFP/dpa/apn

Source: Spiegel Online (2010c, August 20).

Frankreich fliegt mehr als hundert Roma aus

Paris greift durch gegen illegal in Frankreich lebende Roma: Mehr als hundert weitere Menschen wurden nach Westrumänien ausgeflogen. Der Vatikan protestierte. Die EU-Kommission erklärte, sie werde das Vorgehen der französischen Regierung genau beobachten.

Paris/Bukarest - Frankreich hat am Freitag seine umstrittene Ausweisung von Roma fortgesetzt. Vom Pariser Großflughafen Charles de Gaulle startete eine Chartermaschine, die am Abend in der westrumänischen Stadt Temeswar landete. An Bord des Flugzeuges seien 124 Menschen gewesen, darunter 56 Männer, 34 Frauen und 34 Kinder, teilten die rumänischen Grenzschutzbehörden mit.

Die erste größere Abschiebung seit dem Aufruf des französischen Präsidenten Nicolas Sarkozy zu einem härteren Vorgehen gegen illegal in Frankreich lebende Roma hatte am Vortag begonnen. In Bukarest waren 75 Roma eingetroffen, die nach französischen Angaben freiwillig gegen die Zahlung von Prämien Frankreich verlassen haben. Jeder erwachsene Heimkehrer bekommt 300 Euro, jedes dazugehörige Kind 100 Euro.

Frankreich schickt jährlich Tausende Roma zurück nach Rumänien und Bulgarien, allein vergangenes Jahr verließen rund 10.000 Roma das Land. Dieses Jahr kehrten mindestens 25 Gruppen per Flugzeug in ihre Heimat zurück.

Selbst die Behörden geben aber zu, dass die meisten "freiwilligen Rückkehrer" unverzüglich wieder nach Frankreich einreisen, was dank der

Freizügigkeit innerhalb der EU möglich ist. Da die rumänischen oder bulgarischen Roma EU-Bürger sind, können sie ungehindert jederzeit passieren. Frankreich will deshalb prüfen, ob es durch gesetzliche Änderungen eine Rückkehr der Ausgewiesenen verhindern kann - ab September sollen die Behörden die biometrischen Daten der ausreisenden Roma erfassen.

Massenabschiebungen, wie Italien sie vor wenigen Jahren geplant hatte, lehne Rumänien ab, wurde in Regierungskreisen in Bukarest betont. Sollte Frankreich dies vorhaben, würde Rumänien die EU-Kommission und andere zuständige Stellen anrufen. Der rumänische Staatschef Traian Basescu hatte die Europäische Union zuvor zu gemeinsamen Anstrengungen aufgefordert. Um das Problem der Minderheit zu lösen, sei ein europäisches "Eingliederungsprogramm" für die Roma nötig.

Die EU-Kommission hatte erklärt, sie behalte die Ausreise der Roma aus Frankreich genau im Auge; Paris müsse sich an geltendes europäisches Recht halten, vor allem an das Recht auf Freizügigkeit für EU-Bürger.

Aus dem Vatikan verlautete, die französischen "Massenabschiebungen" liefen den europäischen Standards zuwider. "Man kann nicht verallgemeinern und eine ganze Gruppe von Menschen ausweisen", erklärte der Päpstliche Rat der Seelsorge für Migranten und Menschen unterwegs. Verantwortung sei eine Frage des Einzelnen, nicht einer ganzen Gemeinschaft. Nicht alle französischen Gemeinden hielten sich daran, den Landfahrern einen Platz zur Verfügung zu stellen, an dem sie sich ansiedeln

könnten. Die Frage der Integration betreffe jedoch nicht nur Frankreich, sondern ganz Europa.

kgp/dpa/AFP

Source: Zeit Online (2010, July 29).

Nach Ausschreitungen Frankreich geht gegen Roma vor

Die französische Regierung will kriminelle Roma künftig abschieben und die Hälfte der illegalen Lager im Land schließen. Die Opposition spricht von Rassismus.

Die französische Polizei ging schon in der Vergangenheit gegen Roma-Lager vor wie hier im Februar 2008 in Saint-Denis

Frankreichs Regierung verschärft ihre Linie gegen Roma: Innerhalb von drei Monaten soll die Hälfte der landesweit etwa 300 illegalen Lager aufgelöst werden, kündigte Innenminister Brice Hortefeux nach einer Krisensitzung mit Präsident Nicolas Sarkozy in Paris an. Die Behörden sollen zudem Roma aus Bulgarien und Rumänien im Fall von Straftaten "nahezu umgehend" abschieben, sagte Hortefeux. Außerdem will die Regierung zehn Steuerfahnder in die illegalen Siedlungen schicken, da nach den Worten des Ministers viele Franzosen "mit Recht verwundert" seien über die Größe mancher Autos der Roma. Opposition und Lobbyverbände reagierten empört und warfen der Regierung Rassismus vor.

Auslöser der Krisensitzung im Elysée-Palast waren Auseinandersetzungen zwischen Roma und der Polizei in der Bretagne. Ein Beamter hatte dort einen jungen Roma erschossen, der ersten Ermittlungen zufolge vor einer Verkehrskontrolle geflohen war, weil er keinen Führerschein hatte und fürchtete, wegen eines Diebstahls in einem Nachbarort belangt zu werden. Daraufhin kam es zu Randalen von mehreren Roma, die eine Polizeiwache attackierten und drei Autos in Brand setzten. Die Krawalle in der Bretagne verdeutlichten "die Probleme, die das Verhalten von manchen fahrenden Leuten und Roma verursacht", hatte Sarkozy gesagt.

In Frankreich wird im offiziellen Sprachgebrauch unterschieden zwischen "Roma", womit vor allem Betroffene aus Rumänien, Bulgarien und dem früheren Jugoslawien gemeint sind. Sie können als EU-Bürger problemlos nach Frankreich einreisen, können aber abgeschoben werden, wenn sie sich strafbar machen. Frankreich zahlt außerdem Prämien in Höhe von 300 Euro für Erwachsene für eine freiwillige Rückkehr. Im vergangenen Jahr hat Frankreich etwa 9800 Roma abgeschoben, die meisten von ihnen nach Rumänien. Kritiker werfen der Regierung vor, auf diese Weise die Abschiebestatistik aufzublähen, zumal viele von ihnen sich die Prämie zahlen ließen, um dann umgehend wieder nach Frankreich zu kommen.

Die französischen Roma werden hingegen als "fahrendes Volk" bezeichnet, obwohl die meisten von ihnen inzwischen sesshaft geworden sind, wenn auch häufig in Wohnwagen an einem festen Ort. Insgesamt werden der Verwaltung zufolge etwa 400.000 Menschen als "fahrendes Volk oder Roma" eingestuft. Etwa 95 Prozent von ihnen sind Franzosen.

Bereits vor der Sitzung im Präsidentenpalast, an der mehrere Minister und Polizeichefs teilnahmen, hatte es heftige Kritik der Opposition und von Migrantenverbänden an der Regierung gegeben. Die Oppositionspartei PS warf Sarkozy eine "ethnische Stigmatisierung" vor. Ein Zusammenschluss von Roma-Organisationen drohte der Regierung mit einer Anzeige wegen "Aufstachelung zum Rassenhass". Andere Kritiker vermuteten, die Regierung wolle mit dem Aufregertema von der Steuer- und Spendenaffäre um die L'Oréal-Erbin Liliane Bettencourt ablenken. Sarkozy hatte kürzlich erst angekündigt, dass er das Thema Sicherheit wieder verstärkt in den Vordergrund schieben wolle.

Die Regierung wehrte sich vor dem Treffen gegen den Vorwurf, sie wolle wegen der Ausschreitungen in der Bretagne einzelne Volksgruppen wie die Roma brandmarken. Es

Source: Meier (2010).

gebe aber unter den Roma in Frankreich bestimmte Verhaltensweisen, "die nicht hinnehmbar sind", sagte Hortefeux dem Sender TF1.

Roma – in Europa abgestempelt und abgeschoben

Die Roma sind Europas größte Minderheit. In Frankreich müssen sie das Land verlassen – und auch in anderen EU-Ländern sind sie wieder zum Feindbild geworden.

In Frankreich erklärte Präsident Nicolas Sarkozy im Juli den Roma den „Krieg“, in Finnland mussten vor wenigen Wochen bulgarische und rumänische Roma ein illegales Zeltlager räumen. Und in Dänemark waren zuvor 23 Roma ausgewiesen worden; der Bürgermeister von Kopenhagen hatte die Regierung aufgefordert, angesichts einer Einbruchserie am Rande der dänischen Hauptstadt durchzugreifen. Dies sind nur drei Beispiele dafür, dass Roma im Westen und Norden Europas derzeit vor allem eines droht – die Ausweisung.

Das Vorgehen Frankreichs, wo am vergangenen Donnerstag die Abschiebung der Roma in ihre Heimatländer Rumänien und Bulgarien begann, erscheint zwar angesichts der Hunderten von Betroffenen besonders drastisch. Doch Frankreich steht damit in Europa keineswegs allein da. Veronica Scognamiglio vom EU-Büro der Menschenrechtsorganisation Amnesty international in Brüssel bezeichnet die von Sarkozy initiierten Abschiebungen als eine „unverhältnismäßige Reaktion“ auf mehrere Gewaltausbrüche in Frankreich, in die unter anderem auch Roma verwickelt waren. Nach den Worten von Scognamiglio haben Abschiebungen aber auch anderswo in der EU Methode: „Es gibt einen allgemeinen Trend in Europa beim Umgang mit den Roma: Man nimmt sie als

ganze Gemeinschaft ins Visier und schafft sie fort.“

Den Anfang der rigorosen Abschiebepaxis machte in der EU im Jahr 2008 Italiens Ministerpräsident Silvio Berlusconi, der den „nationalen Sicherheitsnotstand“ ausrief und Tausende Roma ausweisen ließ, vor allem Richtung Rumänien und Bulgarien. Wie in anderen Fällen auch traten allerdings viele von ihnen rasch nach der Ausweisung wieder die Reise Richtung Westen an, da sich auch Roma aus Rumänien und Bulgarien seit dem EU-Beitritt ihrer Länder frei in Europa bewegen können. Nach einer in einigen EU-Ländern bis 2013 geltenden Übergangsbestimmung müssen sie aber innerhalb einer Frist von drei Monaten eine reguläre Arbeit finden, um ein Aufenthaltsrecht zu bekommen. Eine solche Arbeit finden die Roma nur in den seltensten Fällen – und dann droht die Abschiebung. Das löst aber kaum das eigentliche Problem: Die Roma verlassen ihre Heimatländer in Osteuropa vor allem deshalb immer wieder, weil die Lebensbedingungen für sie dort häufig untragbar seien, erklärt Robert Kushen, Direktor des Europäischen Zentrums für die Rechte der Roma (ERRC) in Budapest. In Tschechien, Ungarn, der Slowakei, Rumänien und Bulgarien ist die Diskriminierung von Roma an der Tagesordnung, bis hin zu Gewaltexzessen gegen Vertreter der Minderheit. Aus dieser Perspektive erscheint ein Leben in Westeuropa für viele Roma immer noch verheißungsvoller als ihr erbärmliches Dasein in der Heimat. In

Frankreich gehe es ihm besser als in Rumänien, selbst wenn er in seiner neuen Heimat als Illegaler untertauchen müsse, bekannte ein 26-jähriger Rückkehrer am Donnerstag in Bukarest. „Natürlich spielt man mit dem Gedanken, nach Frankreich zurückzukehren“, sagte er.

Bis heute werden Roma in Osteuropa systematisch ausgegrenzt – zumindest diejenigen unter ihnen, denen der Aufstieg in die Mittelschicht nicht gelungen ist. Die Diskriminierung fängt schon bei den Kleinen an: In Ländern wie der Slowakei und Tschechien werden Roma-Kinder häufig in Schulen für geistig Behinderte abgeschoben. 2007 verurteilte der Europäische Gerichtshof für Menschenrechte Tschechien wegen dieser Praxis. Doch durch das Urteil hat sich nicht viel geändert. Bis heute würden Roma-Kinder ungeachtet ihrer tatsächlichen Begabung in Tschechien gemeinsam mit geistig behinderten

Altersgenossen unterrichtet, kritisiert Robert Kushen vom Budapester Roma-Zentrum.

Mit wieder anderen Problemen haben die Roma im Kosovo zu kämpfen. Hier fehlt es nach den Worten von Kushen wie vielerorts sonst auch an Unterkünften und an Arbeitsmöglichkeiten für sie. Vor allem müsse man sich aber um die Sicherheit zurückkehrender Roma im Kosovo Sorgen machen. Deutschland und das Kosovo haben im April ein Abkommen zur Rücknahme von Flüchtlingen aus dem Balkanstaat unterzeichnet. Die deutschen Behörden verzichteten bei den Abschiebungen von Roma ins Kosovo allerdings häufig auf Einzelfallprüfungen, sagt Kushen. Es gebe „keine Hinweise“, dass die Behörden in Deutschland in ausreichendem Maße von Einzelfallprüfungen Gebrauch machten, mit denen Abschiebungen in unwürdige Verhältnisse verhindert werden sollen.

Source : Le Post (2010, September 12).

Expulsions: le ministère de l'Intérieur demande aux préfets de cibler "en priorité" les Roms

Critiqué par le Parlement européen, Eric Besson avait soutenu jeudi que "la France n'avait pris aucune mesure spécifique à l'encontre des Roms".

Vraiment? *Le Canard Social*, un tout nouveau journal nantais vient de publier trois circulaires émanant du ministère de l'Intérieur et destinées aux préfets qui tendent à prouver le contraire. Une circulaire datée du 5 août 2010 vise expressément les Roms.

Sur cette circulaire, signée Michel Bart directeur de cabinet de Brice Hortefeux, adressée aux préfets, au directeur général de la police nationale et de la gendarmerie nationale, on peut lire: "Le Président de la République a fixé des objectifs précis, le 28 juillet dernier, pour l'évacuation des campements illicites : 300 campements ou implantations illicites devront avoir été évacués d'ici trois mois, en priorité ceux des Roms".

OBJET : Evacuation des campements illicites

Références : - Télégramme en date du 30 juillet 2010
- Circulaire IOC/K/1016329/J du 24 juin 2010

Le Président de la République a fixé des objectifs précis, le 28 juillet dernier, pour l'évacuation des campements illicites : 300 campements ou implantations illicites devront avoir été évacués d'ici 3 mois, en priorité ceux des Roms. Dans son discours de Grenoble, le 30 juillet dernier, le Président de la République a demandé de procéder d'ici la fin septembre au démantèlement des camps qui font dès à présent l'objet d'une décision de justice et, lorsque cette décision n'a pas encore été prise, d'engager les démarches pour qu'elle intervienne le plus rapidement possible.

"**Les préfets de zone s'assureront**, dans leur zone de compétence, de la réalisation minimale d'une opération importante par semaine (évacuation, démantèlement, reconduite), concernant prioritairement les Roms", peut-on lire également sur cette circulaire.

Or, comme le rappelle *France Info*, "la Convention internationale des droits de l'Homme interdit de faire une distinction selon une origine ethnique". Selon cette même source, qui cite le Gisti (Groupe d'information et de soutien des immigrés), "cette circulaire pourrait donc faire l'objet d'une saisine du Conseil d'État pour demander sa suspension, voire d'une plainte pour provocation à la discrimination".

Source : Prochasson (2010).

Expulsions de Roms, un «mode d'emploi» explicite

Article initialement publié le 09 septembre 2010

Annoncées au cœur de l'été, les mesures pour «lutter contre les campements illicites» ont été préparées bien avant. Dans trois circulaires dont Le Canard Social s'est procuré des copies, le gouvernement détaille de manière très précise l'ensemble des consignes données aux préfets pour démanteler ces camps, «en priorité ceux de Roms».

Mise à jour du 13 septembre 2010

Le ministre de l'Intérieur, Brice Hortefeux, a signé une nouvelle circulaire le 13 septembre concernant les évacuations de campements illicites pour éviter "tout malentendu sur une éventuelle stigmatisation". Lire le document sur le site internet du Figaro.

La première circulaire a été diffusée bien avant le discours de Grenoble. Le 24 juin 2010, plus d'un mois avant l'annonce de la politique sécuritaire du gouvernement, les ministères de l'Intérieur et de l'Immigration ordonnaient aux préfets de procéder aux évacuations de campements illicites. En huit pages au contenu inhabituel, les ministres Brice Hortefeux et Eric Besson détaillaient l'ensemble de l'arsenal juridique dont disposent les préfets pour procéder aux évacuations. Ils leur demandaient ainsi «*d'exploiter toutes les possibilités offertes par le code pénal*». Et dans un souci d'accélérer la procédure, les enjoignaient «*à informer le propriétaire (du terrain occupé, ndlr) et à l'inviter à saisir le juge compétent pour obtenir une décision d'expulsion.*» Le texte poursuivait : «*Une fois la décision de justice rendue, vous devez procéder le plus rapidement possible à l'opération d'évacuation.*»

«Porter atteinte à une population»

L'ensemble des trois circulaires gouvernementales dont Le Canard Social a obtenu copie, est un mode d'emploi pour parvenir à expulser les Roms de la manière la plus efficace possible. «*Ce n'est pas la question de la gêne supposée des Roms qui est ici discutée mais bien la volonté farouche d'utiliser tous les moyens possibles à des fins utilitaires d'expulser cette communauté*», estime Loïc Bourgeois, avocat spécialiste de la défense des Roms. Alors que la première circulaire faisait état d'une «*lutte contre les campements illicites*» de manière globale, le second document en date du 5 août, cible nommément et «*en priorité*» la population rom. «*Jusque là, ce type de circulaires interprétatives visaient une catégorie sociale, les pauvres par exemple avec le délit de mendicité. Celle-ci stigmatise une ethnie*, décrypte Loïc Bourgeois. *Rarement, il y a eu de telles circulaires qui précisaient de manière implacable toutes les ficelles juridiques pour porter atteinte à une population.* »

Une voie pénale exceptionnelle

Les ministres rappellent ainsi dans la circulaire du 24 juin que «*l'Article 322-4-1 du code pénal n'est pas suffisamment utilisé*». Selon les termes du texte, cet Article qui punit de six mois d'emprisonnement et de 3750€ d'amende toute installation illégale sur un terrain, «*présente pourtant plusieurs avantages : un intérêt dissuasif et un intérêt administratif*». En vue de la saisine de l'autorité judiciaire, cette voie pénale permet de procéder aux contrôles d'identité des occupants. «*On instrumentalise ainsi la voie pénale pour favoriser le contrôle social des Roms*, commente l'avocat Loïc Bourgeois. *Celle-ci devient alors une fenêtre pour enclencher les mesures d'expulsion.*» Car si le droit condamne pénalement l'occupation illicite d'un terrain, l'usage, dans ce type de décision de justice, est d'ordonner l'expulsion pour atteinte au droit de propriété. Sans pour

autant condamner l'occupant à des amendes ou à des peines d'emprisonnement.

Ressortissants européens

En pleine préparation du projet de loi Besson sur l'immigration qui devrait modifier en profondeur le droit des étrangers, le gouvernement n'omet pas de rappeler que les Roms, originaires pour la plupart de Roumanie, sont des ressortissants de l'Union européenne. En vertu des mesures transitoires applicables jusqu'en 2014 aux citoyens roumains et bulgares, ils peuvent donc circuler librement pendant trois mois dans tout pays de l'Union. *«Toutefois, signale la circulaire du 24 juin, un arrêté de reconduite à la frontière peut être envisagé en cas de menace pour l'ordre public.»* Le texte rappelle aux préfets la jurisprudence sur la notion de trouble à l'ordre public : vol à l'étalage, prostitution ou encore infraction à la législation sur le travail.

Les organismes sociaux pris à témoin

Les ministres proposent par ailleurs d'utiliser tous les moyens possibles pour apprécier la durée du séjour des occupants : *«L'arrêté relatif aux modalités de l'enregistrement en mairie n'ayant pu à ce jour être publié, vous pourrez vous fonder sur les déclarations faites par l'étranger, soit à l'occasion du contrôle en cours, soit sur des pièces trouvées en sa possession, tels que tickets de lignes internationales d'autocars, etc.»* Autre consigne : apporter la preuve de l'insuffisance

des ressources des occupants pour, à ce titre, obliger ces ressortissants roumains à quitter le territoire. La circulaire du 24 juin demande ainsi de *«se rapprocher des organismes sociaux et notamment de la caisse d'allocations familiales»*, appelée à jouer le rôle du délateur pour le compte de l'Etat.

Un écho médiatique

Dans la seconde circulaire en date du 5 août, le ministère de l'Intérieur fait part de sa volonté d'accélérer les procédures. Il chiffre ainsi les nouveaux objectifs de chaque préfet de zone *«à la réalisation minimale d'une opération importante par semaine (évacuation, démantèlement ou reconduite), concernant prioritairement les Roms.»* Une preuve selon l'avocat Loïc Bourgeois que *«ce n'est pas le trouble qui justifie la condamnation mais bien la volonté de réaliser des objectifs chiffrés. Ces circulaires sont rédigées sur le ton de la suspicion. Avec l'équation Rom = occupation illicite = délinquant.»*

Preuve d'une volonté d'afficher publiquement les résultats de ces opérations, le ministère de l'Intérieur ajoute dans une dernière circulaire datée du 9 août : *«Je vous remercie de veiller à m'informer préalablement de toute opération d'évacuation revêtant un caractère d'envergure ou susceptible de donner lieu à un écho médiatique.»*

David Prochasson

Source : Le Figaro (2010a, September 13).

Roms : Besson dit n'avoir pas été informé de la circulaire

Le ministre de l'Immigration affirme qu'il n'était «pas au courant» de la circulaire du ministère de l'Intérieur, qui fait du démantèlement des camps illicites de Roms une «priorité». De son côté, le patron de l'UMP Xavier Bertrand «assume tout à fait» ce document.

C'est un document qui fait «mauvais genre». Alors que la France peine à défendre sa politique concernant les Roms devant ses voisins européens, un journal en ligne publie une circulaire montrant que les préfets ont eu des consignes pour démanteler les camps illicites de Roms «en priorité».

Or, Eric Besson a assuré aux députés européens, qui l'avaient sévèrement critiqué jeudi, que «la France n'a pris aucune mesure spécifique à l'encontre des Roms». «Les Roms ne sont pas considérés en tant que tels mais comme des ressortissants du pays dont ils ont la nationalité», a-t-il affirmé en assurant que la France «ne met en œuvre aucune 'expulsion collective'». En effet, la Convention européenne des droits de l'Homme, dont Paris est signataire, interdit toute distinction sur la base de l'origine ethnique.

Lundi matin sur France 2, le ministre de l'Immigration Eric Besson a affirmé qu'il n'était «pas au courant» de la circulaire du ministère de l'Intérieur. «Je ne connaissais pas cette circulaire», explique-t-il. «Je n'en étais pas destinataire et je n'en avais donc pas en connaître».

Datée du 5 août 2010 et signée par Michel Bart, le directeur de cabinet du ministre de l'intérieur, la note mentionne à plusieurs reprises les Roms comme une priorité distincte des «gens du voyage» dont il est question dans une circulaire antérieure. «Il revient donc, dans chaque département, aux préfets d'engager (...) une

démarche systématique de démantèlement des camps illicites, en priorité ceux de Roms», dit le texte, mis en ligne par un journal nantais, le Canard Social.

Pas assez de reconduites à la frontière

Un peu plus loin, il est déploré que «les opérations menées depuis le 28 juillet contre les campements illicites de Roms n'ont donné lieu qu'à un nombre trop limité de reconduites à la frontière» quand Nicolas Sarkozy avait fixé à 300 les campements ou implantations illicites qui «devront avoir été évacués d'ici trois mois, en priorité ceux des Roms».

«Les préfets de zone s'assureront, dans leur zone de compétence, de la réalisation minimale d'une opération importante par semaine (évacuation / démantèlement / reconduite), concernant prioritairement les Roms», poursuit la circulaire qui est accompagnée d'un tableau type. A cette fin, les préfets sont engagés à «déterminer sans délai les mesures juridiques et opérationnelles pour parvenir à l'objectif recherché».

La circulaire faisait suite aux décisions prises par Nicolas Sarkozy fin juillet, qui visaient déjà les Roms. «J'ai demandé au ministre de l'Intérieur de mettre un terme aux implantations sauvages de campements de Roms, ce sont des zones de non-droit qu'on ne peut pas tolérer en France», avait déclaré le président de la République.

L'UMP «assume tout à fait»

Pour le Groupe d'information et de soutien des immigrés (Gisti), cette circulaire «joint le geste à la parole» politique de Nicolas Sarkozy. «On vise un groupe de personnes en raison de leur appartenance à une communauté. On est dans la provocation à la discrimination», a estimé le président du Gisti, Stéphane Maugendre. Et le Gisti d'annoncer qu'il va déposer un recours

devant le Conseil d'Etat «pour que la circulaire soit annulée». Si celui-ci donnait raison au Gisti, ce serait alors un revers significatif pour le gouvernement.

«Cette circulaire est absolument contraire à de nombreux textes juridiques français, européens et internationaux, et contrevient à plusieurs droits fondamentaux reconnus par l'Union européenne et la France et notamment le principe de non-discrimination», a jugé de son côté l'eurodéputé socialiste et numéro 2 du PS Harlem Désir, dans un communiqué.

Le patron de l'UMP Xavier Bertrand a lui déclaré assumer «tout à fait» la politique d'évacuation de campements illégaux, y compris la circulaire du 5 août visant explicitement les Roms, dénonçant «l'hypocrisie» du PS et des

Source : Le Figaro (2010b, September 16).

Barroso: discriminations "inacceptables"

Le président de la Commission européenne José Manuel Barroso a jugé à Bruxelles "inacceptables" les discriminations contre les minorités ethniques, alors qu'un conflit ouvert l'oppose à la France au sujet des renvois de Roms bulgares et roumains. "La discrimination des minorités ethniques est inacceptable", a-t-il déclaré à la presse à l'issue d'un sommet de l'UE.

Il a reconnu que sa commissaire à la Justice et aux Droits fondamentaux, Viviane Reding, avait quelque peu dérapé en comparant les renvois de Roms de France aux déportations de la

Source : Le Figaro (2010c, October 13).

UE/Roms: la France va adapter la loi

La France, menacée par Bruxelles d'une procédure pour non respect de la législation de l'UE sur la libre circulation après les renvois de

«associations de bien pensants» sur cette question. Cette circulaire «est la traduction de notre politique et je l'assume tout à fait», a-t-il lancé. «Les campements sont illégaux, ils sont démantelés en vertu de décisions de justice. Dans un Etat de droit on fait respecter la loi», a jugé Xavier Bertrand.

Le Canard Social publie par ailleurs deux autres circulaires, dont l'une, datée du 9 août, souligne la volonté du gouvernement de maîtriser la communication entourant les opérations d'évacuation. Elle demande aux préfets de «veiller à informer [le directeur adjoint du cabinet du ministre] au minimum 48h avant toute opération d'évacuation revêtant un caractère d'envergure, ou susceptible de donner lieu à un écho médiatique».

(Avec AFP)

Deuxième guerre mondiale. "C'est vrai que dans la passion des débats, nous avons entendu des commentaires exagérés", a-t-il dit. Mme Reding "l'a reconnu elle-même hier, d'autres devraient penser à faire de même", a-t-il ajouté.

La Commission pourrait aussi "se plaindre d'une certaine rhétorique, mais laissons ceci de côté maintenant, il y a des dossiers de substance à discuter, ne nous laissons pas distraire des vrais problèmes", a-t-il dit, dans une critique à peine voilée en direction de la France.

Roms, va adapter sa législation, a annoncé hier soir le ministre de l'Immigration, Eric Besson.

European Ignorance or European Power Play?

Mareike U Illing (s0170429)

"Puisqu'elle (la commission européenne) a un doute sur la transposition de la directive 2004/38 (sur la libre circulation des citoyens de l'UE), nous allons adapter notre législation pour tenir compte de ses remarques", a déclaré Besson sur la chaîne Public Sénat. "Il ne faut pas surjouer le

différend que nous avons" car "dans les faits, la France l'applique parce que les principes généraux du droit nous conduisent par exemple au traitement individuel des personnes", a ajouté le ministre.

ANNEX B.



MINISTÈRE DE L'INTÉRIEUR,
DE L'OUTRE-MER ET DES COLLECTIVITÉS TERRITORIALES

Paris, le 05 AOUT 2010

Le Ministre de l'Intérieur, de l'Outre-mer et
des Collectivités territoriales

à

Monsieur le Préfet de police
Monsieur le Directeur général de la police nationale
Monsieur le Directeur général de la gendarmerie nationale
Mesdames et Messieurs les Préfets
(pour action)

NOR IOC/K/10/178181/J

Monsieur le Secrétaire général
(pour information)

OBJET : Evacuation des campements illicites

Références : - Télégramme en date du 30 juillet 2010
- Circulaire IOC/K/1016329/J du 24 juin 2010

Le Président de la République a fixé des objectifs précis, le 28 juillet dernier, pour l'évacuation des campements illicites : 300 campements ou implantations illicites devront avoir été évacués d'ici 3 mois, en priorité ceux des Roms. Dans son discours de Grenoble, le 30 juillet dernier, le Président de la République a demandé de procéder d'ici la fin septembre au démantèlement des camps qui font dès à présent l'objet d'une décision de justice et, lorsque cette décision n'a pas encore été prise, d'engager les démarches pour qu'elle intervienne le plus rapidement possible.

Pour mettre en œuvre ces décisions, dès le 30 juillet, les préfets de zone ont été réunis et ont reçu toutes instructions et informations utiles.

Lors de cette réunion, des objectifs précis en matière d'opérations d'évacuation ont été fixés en fonction de la situation de chaque zone de défense et de sécurité sur la base des états département par département établis aux 21-23 juillet.

Le 30 juillet, suite à la réunion avec les préfets de zone, je vous ai adressé un télégramme d'instructions, et les préfets de zone vous ont réunis pour arrêter les modalités de mise en œuvre de ces directives.

.../...

ADRESSE POSTALE : PLACE BEAUVAU 75800 PARIS CEDEX 08 - STANDARD 01 49 27 49 27 - 01 40 07 60 60
ADRESSE INTERNET : www.interieur.gouv.fr

Figure 1. Circular from the French Minister of the Interior. (Source: Le Post, 2010)

European Ignorance or European Power Play?

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