

27 September 2010

## **SUBMISSION IN RELATION TO THE ANALYSIS AND CONSIDERATION OF LEGALITY UNDER EU LAW OF THE SITUATION OF ROMA IN FRANCE: FACTUAL UPDATE**

The European Roma Rights Centre (ERRC)<sup>1</sup> respectfully submits to European Commission Vice-President Reding, Commissioners Andor and Malmström and the European Parliament the following observations to supplement its submission on analysis and consideration of legality under EU law of the situation of Roma in France, addressed to Commissioner Reding on 27 August 2010.<sup>2</sup> The ERRC, assisted by other organisations,<sup>3</sup> has undertaken documentation and fact-finding missions in a number of locations in France, Romania and Bulgaria over the past weeks. The results of this research further substantiate the observations already made and address some of the French government's public responses to the Commission. Sample testimonies and documentation pertaining to expulsions are appended.

In summary, ERRC fact finding suggests repeated violations by France of the Free Movement Directive, the Data Privacy Directive and the Charter of Fundamental Rights. Infringement proceedings on the basis of these violations would appear to be warranted.

### Ethnic discrimination / profiling

The ERRC maintains that the ethnic profiling and discrimination on the basis of race or ethnicity in French policy and actions breach Directive 2000/43/EC (Racial Equality Directive) and the non-discrimination clauses of Directive 2004/38/EC (Free Movement Directive), the Charter of Fundamental Rights of the European Union (Charter) and the European Convention on Human Rights (ECHR).<sup>4</sup>

It is submitted that the ethnic discrimination in French policy is and always has been manifest, as evidenced by the President's Communiqué of July 28, which singled out Roma as an ethnic group for law enforcement action. This is confirmed by the French Interior Ministry Circular of 5 August 2010,<sup>5</sup> of which the Commission is well aware, by which the French security forces were instructed to 'give priority to Roma' in conducting eviction and expulsion operations. Commissioner Reding addressed this issue on 14 September and in public responses the French government were evasive. *APF* reported on 22 September<sup>6</sup> that the French government claimed that higher numbers of French Travellers had been evicted in August than Roma and that a handful of third country nationals had been evicted too. Whatever the level of 'success' of the evictions, it is clear that Roma are targeted and that, in terms of expulsions from France, Roma are certainly targeted. The Circular of 5 August is very specific in its instructions to prioritise "Roms" – the term used by the French Government to refer to migrant Roma - for

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<sup>1</sup> The European Roma Rights Centre (ERRC) is an international human rights law organisation which works to combat anti-Roma racism and discrimination in Europe.

<sup>2</sup> See Appendix 1.

<sup>3</sup> Particular assistance has been provided in Romania and France by the Association Parudimos and in France by GISTI, Imediat, Médecins du Monde, MRAP93, Romeurope and Sodiarité Roms St-Etienne. In Bulgaria, the ERRC was assisted by Integro Association.

<sup>4</sup> Articles 24, 21 and 14, respectively.

<sup>5</sup> See Appendix 2.

<sup>6</sup> See: [http://www.google.com/hostednews/afp/article/ALeqM5iTd\\_q0G\\_ObB5uVS5lp7IJ598o1Qw](http://www.google.com/hostednews/afp/article/ALeqM5iTd_q0G_ObB5uVS5lp7IJ598o1Qw).

removal from France, explicitly stating that ‘operations since 28 July against Roma camps have resulted in too few *reconduites à la frontière*’ and the majority of the Circular details extensive measures to realise the eviction and removal from France of Roma.

All of the returns reported in the media have involved Roma and the ERRC is yet to identify a return to Romania or Bulgaria which did not involve Roma. It is submitted that there is compelling evidence of discrimination and ethnic profiling in this policy and that in any event, according to the principles of European law, the burden of rebutting this presumption lies with the French government. This principle is enshrined in Directive 2000/43/EC<sup>7</sup> and has been interpreted by the European Court of Human Rights (Court) to apply to cases of alleged discrimination which are argued under other legislation (in that case Article 14 of the ECHR, which it is submitted is applicable in this case), but which would be equally applicable under the Free Movement Directive and the Charter.

#### Mass expulsions and failure to make individualised determinations

As already submitted, the expulsions bear the characteristics of mass expulsions, which are contrary to the Charter and the ECHR,<sup>8</sup> and lack extensive examination of personal circumstances as required by the Free Movement Directive. The evidence collected by the ERRC over the past weeks suggests that mass expulsions and other expulsions without individual considerations are indeed commonplace. Documented examples included the following:

1. Choisy-le-Roi, 12 August 2010: 30 OQTF<sup>9</sup> were served on Romanian Roma between 8:10AM and 11:10 AM. The average rate was one every six minutes, with all but five documents showing the same notifying agent’s signature (two further were not even signed) and the same interpreter throughout (who did not sign a handful of orders). The forms are identical, save for names and dates of birth, which are inserted by hand in all but two cases. The OQTF were issued in the context of a camp eviction, which was reported in *Le Monde* on 13 August 2010.<sup>10</sup>
2. Montreuil, 13 August 2010: 9 OQTF<sup>11</sup> were served on Romanian Roma in 20 minutes following an eviction procedure in which men were separated from women and children. The 9 OQTF impact as many families, as they were only issued to the men. Again forms are identical and names and dates of birth simply filled in by hand. The process was recorded in *Le Parisien*.<sup>12</sup>
3. Corneuve, 19 August 2010: 10 identical OQTF<sup>13</sup> were served on Romanian Roma.
4. St Etienne, various dates from 30 July 2010: 20 appended expulsion documents (OQTF and APRF)<sup>14</sup> served on Romanian Roma. The documents are similar and show no evidence of individual consideration. On 30 July 8 orders were issued between 9:00 AM and 10.40 AM; on 30 August 3 orders were issued between 9:00AM and 9:35 AM. Other orders were issued on various times and dates.
5. St Denis, 2 September 2010: 20 OQTF<sup>15</sup> served on Romanian Roma.
6. Bobigny, 9 September 2010: 25 identical OQTF<sup>16</sup> were served on Romanian Roma.

On examination of the documents, it is quite clear that they have been produced *en masse* and distributed with no consideration of individual circumstances, including the length of stay in France, the level of individuals’ means, whether health insurance is available, whether social assistance is claimed<sup>17</sup> and the proportionality of expulsion in all circumstances: in short,

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<sup>7</sup> Article 8.

<sup>8</sup> Article 19 and Article 4 of Protocol 4 respectively.

<sup>9</sup> See Appendix 3a.

<sup>10</sup> See Appendix 3b.

<sup>11</sup> See Appendix 4a.

<sup>12</sup> See Appendix 4b.

<sup>13</sup> See Appendix 5.

<sup>14</sup> See Appendix 6.

<sup>15</sup> See Appendix 7.

<sup>16</sup> See Appendix 8.

<sup>17</sup> As noted in p.9 of the Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the rights of citizens of the

whether individuals represent an unreasonable burden on the social assistance system, as is claimed in each of the above cases. In the case of each set of expulsions the forms themselves are identical, save for the names, dates and places of birth of each person. They are also generic and no reference is made to the specific circumstances of each person. The handwriting is the same on each form and names are inserted into pre-printed forms with a space sometimes not even big enough to fit the name. Were these orders given any, or proper, individual consideration, then they would surely have been typed in an office before being distributed. The ERRC has also received anecdotal information from NGO activists that blank pre-signed forms were in fact filled in and that no interviews regarding individual circumstances were conducted. Roma returned to Romania confirmed that was also the practice in Lyon and Marseilles.<sup>18</sup> Roma in St Etienne confirm this to be the case with them too. This is further supported in the interviews conducted in France and Romania of people who had received OQTF.<sup>19</sup>

In addition to these sample expulsion orders, which characterise the perfunctory way in which orders are being habitually delivered, a table of Romani camps and dwellings in the 93rd department, including those where evictions have recently taken place, may provide a useful snapshot of where and how Roma live in the one of the target areas of French policy. The table, which provides some broad demographic information and details of expulsions, was compiled and updated to 22 September 2010 by a group of local NGOs.<sup>20</sup>

Finally, in *Čonka v Belgium*<sup>21</sup>, the leading case on mass expulsions decided by the European Court of Human Rights, the five elements the Court considered in finding that there had been a breach of Article 4 of Protocol 4 was breached are set out in paragraph 62 of the judgment:

That doubt is reinforced by a series of factors: firstly, prior to the applicants' deportation, the political authorities concerned had announced that there would be operations of that kind and given instructions to the relevant authority for their implementation...; secondly, all the aliens concerned had been required to attend the police station at the same time; thirdly, the orders served on them requiring them to leave the territory and for their arrest were couched in identical terms; fourthly, it was very difficult for the aliens to contact a lawyer; lastly, the asylum procedure had not been completed.

It is submitted that the documented issuance of expulsion orders in France meet the first four (and only relevant) considerations in the *Čonka* case and that the numbers involved in France bring greater weight to the arguments which persuaded the Court in *Čonka*, where only four Romani individuals (one family) from Slovakia were concerned.

#### Other violations of the Free Movement Directive

The ERRC has been unable to confirm the length of time which most of the individuals who received OQTF were in France. However, a number of people interviewed in Romania state that they had been in France for less than three months. It is noteworthy that the period of residence in France on the expulsion documents of these people is marked as unknown. It is submitted that where EU nationals claim to have been in France for less than three months and the French authorities do not have evidence to the contrary, then any expulsion is in manifest violation of the Free Movement Directive.<sup>22</sup>

In some, if not all, cases Roma who were expelled did not understand the legal process to which they were being subjected and thus had no meaningful opportunity to challenge that process. For example, some Roma returned from Lyon stated that they did not understand

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Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313 final

<sup>18</sup> See Appendix 7b and 7d.

<sup>19</sup> See Appendix 11a.

<sup>20</sup> See Appendix 9.

<sup>21</sup> Judgment of 5 February 2002, Application No. 51564/99.

<sup>22</sup> Article 6.

French and reported that they had no<sup>23</sup> or inadequate interpretation<sup>24</sup> of the orders (despite the signature of an interpreter on the document) and did not fully understand the process, let alone have an opportunity to state their position and allow the French authorities to take the proper consideration as required under the procedural safeguards of the Free Movement Directive.

#### Other violations of EU law

Children have been routinely evicted and expelled with their parents and there is no evidence of particular consideration of their best interest as required by Article 24 of the Charter. There have been instances of children being left to sleep in the open following evictions, families have been separated during a police raid<sup>25</sup> and in Strasbourg, NGO personnel described a recent instance in which two Romani adults were taken by law enforcement officials from their caravan and their six-year-old grandson was left alone until eventually neighbours were able to take care of him. The statement of F.M. from Romania, who lived in Lyon, stated 'The police began destroying the improvised shacks while the children were inside. The parents started yelling at the police that the children were inside so they stopped.'<sup>26</sup>

C.C., a Romani Romanian citizen, stated that two of her three children attend school in France. Nevertheless, she was served with an OQTF with no consideration of her particular circumstances on 31 August 2010, representing a violation of the Free Movement Directive as well as of Article 24 of the Charter.<sup>27</sup>

The ERRC has also received reports of Roma who have been arrested, seemingly without reasonable suspicion of commission of a criminal offence, held in police custody and then told to leave the country, in violation of the Free Movement Directive, the Charter and the ECHR.<sup>28</sup> This is, for example, the case of V.A., now in Romania, who reported being arrested after he was assaulted by a shop-keeper whose bins he was about to search for food.<sup>29</sup>

Almost all of the individuals interviewed report being subjected to repeated police checks, which also raise legal concerns under the Free Movement Directive, the Charter and the ECHR. Regardless of their legality, these checks have clearly influenced decisions by individual Roma to return to their countries of origin in cases where Roma have accepted or applied for 'aid to return' or have simply returned home in fear of receiving expulsion orders. This was the case, for example, for F.M., interviewed in Romania, who had been working in France collecting scrap metal and who, after several visits from the police, decided he had no other option but to leave.<sup>30</sup> In some cases, during regular raids of Romani settlements, police officers are reported to have threatened the residents with eviction and expulsion, and other individuals reported that the police pressured them to sign papers attesting that they would return to Romania voluntarily.<sup>31</sup> This police coercion belies the assertion by French authorities that many of the expulsions were voluntary and therefore the protections provided by the Free Movement Directive, the Charter and the ECHR do not apply.

#### Violations of the 95/46/EC (Data Protection Directive)

Roma interviewed in St Etienne, who represent each of the families served the OQTF and APRF attached,<sup>32</sup> were offered and refused 'humanitarian aid' to return to Romania. Eventually they were served expulsion orders; but nonetheless were photographed and fingerprinted, without their consent. In the absence of any explanation for this collection of personal data without consent, a violation of the Data Protection Directive should be presumed. French

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<sup>23</sup> See Appendix 11a and 11b.

<sup>24</sup> See Appendix 10b and 10c.

<sup>25</sup> Raid in Montreuil on 13 August 2010, see Appendix 4b.

<sup>26</sup> See Appendix 11d.

<sup>27</sup> See Appendix 10c.

<sup>28</sup> Article 6 of the Charter and Article 5 of the ECHR.

<sup>29</sup> See Appendix 11e.

<sup>30</sup> See Appendix 11d.

<sup>31</sup> Appendix 11a and 11d.

<sup>32</sup> See a sample of interviews at Appendix 10.

officials have asserted that the reason behind photographing and fingerprinting of persons expelled was to insure that those provided with assistance now would not be able to benefit from assistance in the future. However, this would not be the case for those expelled without receiving assistance the first time. These cases could not be linked to the stated aims of the OSCAR system and any other purpose for taking such data is unknown.

The taking of personal data (sometimes including biometric data<sup>33</sup>) is almost universally reported by individuals interviewed. Equally common was a failure by the French authorities to explain why data was being taken, to provide any pertinent documentation or to provide any information about the storage and usage of the data gathered. It is submitted that this widespread practice amounts to a breach of the Data Protection Directive and additionally amounts to discrimination and degrading treatment as prohibited by the Charter and the ECHR.<sup>34</sup>

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Executive Director

## APPENDICES

- Appendix 1: ERRC submission to Vice President Reding, dated 27 August 2010
- Appendix 2: Circular of French Interior Ministry, dated 5 August 2010
- Appendix 3a: 30 OQTF issued in Choisy-le-Roi, dated 12 August 2010
- Appendix 3b: *Le Monde* article, 13 August 2010
- Appendix 4a: 9 OQTF issued in Montreuil, dated 13 August 2010
- Appendix 4b: *Le Parisien* article, 14 August 2010
- Appendix 5: 10 OQTF issued in Corneuve, dated 19 August 2010
- Appendix 6: 20 OQTF, issued in St Etienne, dated variously from 30 July 2010
- Appendix 7: 20 OQTF, issued in St Denis, dated 2 September 2010
- Appendix 8: 25 OQTF issued in Bobigny Roma returned from France, dated 9 September 2010
- Appendix 9: Table of information on Romani camps and expulsion activities, updated 22 September 2010
- Appendix 10a-d: Testimonies of Romanian Roma evicted and served expulsion notices in St Etienne, taken 24 September 2010
- Appendix 11a-e: Testimonies of Romanian Roma returned to Bihor County, Romania, taken 23 and 24 September 2010
- Appendix 12a-b: Testimonies of Romanian Roma in Strasbourg, taken 25 September 2010

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<sup>33</sup> See Appendix 10a and 10c.

<sup>34</sup> Articles 4 and 21 and Articles 3 and 14 respectively.