

LEVAKOVIC

Applicant

v

DENMARK

Respondent State

Application Number 7841/14

Third-Party Intervention of the European Roma Rights Centre

1. The European Roma Rights Centre (“the ERRC”) submits these written comments in accordance with the permission to intervene granted by the President of the Chamber.
2. In order to assist the Court in summarising the intervention for inclusion in the judgment, the ERRC has prepared the following summary:

The European Roma Rights Centre (“the ERRC”) made submissions on two points. First, they provided an overview of the relevant provisions of EU law on the free movement of persons, citing, in particular, the EU Charter of Fundamental Rights (Article 45 § 1), EU Directive 2004/38, and the case law of the Court of Justice of the European Union (“the CJEU”). The ERRC pointed out that EU citizens who have resided for an extended period in other Member States are likely to enjoy a very high level of legal protection against expulsion from the Member State in which they are living. This was the case even if they had only recently become EU citizens, that is, if their country of underlying nationality had only recently joined the EU. The ERRC submitted that in order for the expulsion of an EU citizen from another Member State to be “in accordance with the law”, the domestic courts would have to have undertaken an extensive analysis of the relevant EU law principles, which would necessarily involve consideration of the applicable EU legal instruments and the CJEU case law. See *Aristimuño Mendizabal v France* (2006), § 79; *Ullens de Schooten and Rezabek v Belgium* (2011), § 62. Second, the ERRC described the effect of antigypsyism and xenophobia in Denmark on Roma living in the country, including the willingness of the authorities to disregard the EU law rights of Romani EU citizens when attempting to expel them. In this context, the ERRC urged the Court to be particularly attentive to any stereotypes that may have contaminated any decision to expel a Romani person, to name those stereotypes, and to challenge them. This was particularly important in cases where the rights of the persons concerned – such as their EU law rights – had not been properly considered in the domestic proceedings.

A. Relevant Aspects of European Union Law on the Free Movement of Persons

3. The ERRC has been concerned, especially since the eastward expansion of the European Union in 2004, 2007, and 2013, about respect for the rights of the EU's many Romani citizens under EU law on the free movement of persons. The ERRC's work in this area has focused on France;¹ yet the failure of domestic authorities and judges to respect the free movement rights of EU citizen Roma is a problem across the older Member States of the Union. This section provides an overview of those principles of EU law on the free movement of persons that may assist the Court in deciding the present case.
4. This analysis is put forward in the light of the Court's own past finding that the failure to respect the EU law rights of an EU citizen living in another Member State will result in a breach of Article 8, as EU law in this area is considered "the law" for the purposes of determining if an interference was compatible with Article 8 § 2. *Aristimuño Mendizabal v France* (2006), § 79.
5. The freedom of European Union citizens to live in Member States other than their Member State of underlying nationality is protected in various provisions of the EU treaties.² Article 45 § 1 of the EU Charter of Fundamental Rights – which has the same legal value as the treaties in EU law (see *Avotiņš v Latvia* (Grand Chamber, 2016), § 43) – specifically states that "Every citizen of the Union has the right to move and reside freely within the territory of the Member States". The ERRC recalls, in this respect, that Article 53 of the Convention guarantees that "[n]othing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any agreement to which it is a party".
6. The main piece of EU secondary legislation which gives effect to the right of free movement is EU Directive 2004/38 (hereinafter "the Directive").³ The Directive guarantees the right of EU citizens to enter other Member States⁴ and to remain there for up to three months for any reason.⁵ The Directive also guarantees the right of EU citizens to remain in other Member States longer if they are economically active, self-sufficient, or students who have made a declaration of self-sufficiency, or if they are the family members of other EU citizens in one of those categories.⁶ After five years, EU citizens who have been exercising residence rights in another Member State in this way become permanent residents of the host Member State.⁷

¹ The ERRC's work in this area can be found on our website: www.errc.org.

² See, e.g., Articles 20 § 2(a), 21, and 45 of the Treaty on the Functioning of the European Union.

³ DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

⁴ Article 5 § 1.

⁵ Article 6 § 1.

⁶ Article 7 § 1.

⁷ Article 16 § 1.

7. The Directive also ensures the right of Union citizens living in another Member State not to be expelled from that Member State. An EU citizen who is exercising residence rights in another Member State, for example as a worker or the child of an EU citizen worker, may only be expelled “*on grounds of public policy, public security or public health*”; such decisions must be proportionate, “*based exclusively on the personal conduct of the individual involved*”, and the person “*must represent a genuine, present, and sufficiently serious threat affecting one of the fundamental interests of society*”.⁸ The Directive is clear: “*Previous criminal convictions shall not in themselves constitute grounds for taking such measures*”.⁹ It is widely recognised that these provisions provide more protection against expulsion than Article 8 of the Convention on its own.¹⁰ The specific wording of the proportionality test in the Directive is as follows: “*the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin*”.¹¹ The level of protection is even greater yet for EU citizens who have permanent residence in the host Member State: they can be expelled only if there are “*serious grounds of public policy or public security*”.¹²
8. More importantly for the present case, there is a third, very high level of protection for EU citizens who “*have resided in the host Member State for the previous ten years*”: an expulsion decision may not be taken against such a citizen “*except if the decision is based on imperative grounds of public security, as defined by the Member States*”.¹³ Recital no.24 to the Directive explains that “*Only in exceptional circumstances, where there are imperative grounds of public security, should an expulsion measure be taken against Union citizens who have resided for many years in the territory of the host Member State, in particular when they were born and have resided there throughout their life*”. The leading case from the Court of Justice of the European Union (“the CJEU”) on this level of protection is *P.I. v Oberbürgermeisterin der Stadt Remscheid*.¹⁴ While Member States have some latitude to define “imperative grounds”, the term must be interpreted strictly and “*presupposes... a particularly high degree of seriousness*”.¹⁵ When deciding that engaging in sexual activities with a child fell within the scope of “*imperative grounds*”, the CJEU relied on a wide range of

⁸ Article 27.

⁹ *Ibid.*

¹⁰ See, e.g., *MG (prison-Article 28(3)(a) of Citizens Directive) Portugal* [2014] UKUT 392 (IAC), § 36 (“*[Article 27(3) of the Directive] stands in sharp contrast to the more rigorous proportionality test to be applied to foreign criminals seeking to rely on Article 8 of the ECHR, where it is legitimate to take account of the public interest and the principle of deterrence in general*”). This is a determination of the United Kingdom Upper Tribunal (Immigration and Asylum Chamber).

¹¹ Article 28 § 1, emphasis added.

¹² Article 28 § 2.

¹³ Article 28 § 3(a), emphasis added.

¹⁴ Case C-348/09, judgment of the Grand Chamber of 22 May 2012.

¹⁵ *Ibid.*, § 20.

international and EU instruments which establish that the sexual exploitation of children is a particularly serious threat to fundamental rights and an area where, by virtue of its seriousness, the European Union has the competence to take measures when there is a cross-border element.¹⁶ Even then, the fact that a person has committed such an offence does not, in and of itself, justify her/his expulsion; the domestic authorities must consider whether the person is a present threat, as well as “*his/her age, state of health, family and economic situation, social and cultural integration into that State and the extent of his/her links with the country of origin*”.¹⁷

9. The CJEU has been asked to interpret the phrase “*the previous ten years*”, to clarify who is eligible for this particularly high level of protection. In *M.G. v Secretary of State for the Home Department*, the CJEU clarified that “*the 10-year period of residence... must be calculated by counting back from the date of the decision ordering that person’s expulsion*”.¹⁸ In principle, periods of imprisonment interrupt that ten-year period of residence.¹⁹ However, periods of imprisonment “*may – together with the other factors going to make up the entirety of relevant considerations in each individual case – be taken into account by the national authorities responsible for applying Article 28(3) of that directive as part of the overall assessment required for determining whether the integrating links previously forged with the host Member State have been broken, and thus for determining whether the enhanced protection provided for in that provision will be granted*”.²⁰ The CJEU also made clear that if the person resided for a full ten years in the Member State prior to being imprisoned, this should be taken into account as part of that overall assessment.²¹ The key question is whether the person’s “*integrating links*” with the host Member State have been broken.
10. If a Member State decides that a person does not enjoy the highest “*imperative grounds*” level of protection, it will then have to decide whether the person acquired permanent residence in the country, to see if the middle-level (“*serious grounds*”) test applies. For example, the child of an EU citizen worker who lived in the country for five years would have become a permanent resident.²² If the authorities later wanted to expel her, even if she did not enjoy “*imperative grounds*” protection, she would enjoy “*serious grounds*” protection as long as she still had permanent residence.²³ The relationship between time spent in prison

¹⁶ *Ibid.*, §§ 25-28.

¹⁷ *Ibid.*, §§ 29-32.

¹⁸ Case C-400/12, judgment of 16 January 2014, § 24.

¹⁹ *Ibid.*, § 33.

²⁰ *Ibid.*, § 36.

²¹ *Ibid.*, § 37.

²² The CJEU has nonetheless indicated that time spent in prison will break up the five years’ continuity of residence needed to acquire permanent residence, at least in the case of the non-EU family member of an EU citizen living in another Member State. *Onuekwere v Secretary of State for the Home Department*, Case C-378/12, judgment of 16 January 2014.

²³ An example of the complex analysis of what level of protection applies can be found in *Secretary of State for the Home Department v Benedetto Vassallo*, [2016] EWCA Civ 13, a judgment of the Court of Appeal of England and Wales. It

and the acquisition of permanent residence has also given rise to CJEU case law²⁴ requiring careful consideration by domestic authorities and courts considering individual cases.

Questions of EU law would clearly arise if a person who had previously acquired permanent residence (e.g. as the EU citizen child of an EU citizen worker) were subsequently sentenced to prison.²⁵

11. What about people who were already lawfully living in EU Member States at the time their countries of underlying nationality joined the Union, making them EU citizens? The CJEU faced such a question in *Ziolkowski and others v Land Berlin*.²⁶ Polish citizens who had been living with residence permits in Germany prior to Poland's accession to the EU applied for permanent residence documentation once Poland acceded. The question was whether their legal residence in Germany before they became EU citizens should count towards the five years' residence needed for permanent residence. The answer was yes; periods of residence before those people became EU citizens should be taken into account, as long as those periods of residence "*were completed in compliance with the conditions laid down in Article 7(1) of the directive*".²⁷ In other words, if a Polish citizen, as of 1 May 2004, or a Croatian citizen, as of 1 July 2013, had been the child of an EU citizen worker, self-employed person, self-sufficient person, or student, for five continuous years, she would have acquired permanent residence on that date.
12. What about a person whose expulsion is ordered from an EU Member State while she is a third-country national (i.e. not an EU citizen), and who then subsequently becomes an EU citizen? It is clear that she enjoys all of the rights under the Directive, including protection from expulsion, after becoming a citizen of the Union.²⁸ Any domestic court considering the lawfulness of such an expulsion would have to determine which level of protection to apply, based on an analysis of whether the person has resided in the country for ten years counting backwards from the date of the expulsion decision and whether any period of imprisonment has broken that person's "integrating links" with the host Member State. If the highest level of protection does not apply, then the domestic courts would have to determine whether the intermediate level of protection applies, which requires determining whether the person

concerned the proposed expulsion of an Italian citizen born in 1948 who had been living in the UK since 1952. He had "*been convicted in the United Kingdom on 31 separate occasions, in respect of 68 offences. They have consisted mainly of dishonesty offences, including numerous offences of burglary, and have resulted in custodial sentences ranging in length from 14 days to 54 months*" (§ 3). He was, unusually, despite his long residence in the United Kingdom, found not to benefit from either the middle or highest level of protection from expulsion. Yet the courts ruled that his expulsion was not permissible, applying the lowest level of protection available to EU citizens.

²⁴ See Case C-378/12, *Onuekwere v Secretary of State for the Home Department*, judgment of the CJEU of 16 January 2014. The case concerned the non-EU family member of an EU citizen, both living in another EU Member State.

²⁵ See Case C-325/09, *Secretary of State for Work and Pensions v Dias*, judgment of the CJEU of 21 July 2011. The case concerned a person who met the five-year continuous residence requirement before the right of permanent residence was introduced, and then continued to reside in the host Member State but not on the basis of an EU residence right.

²⁶ Case C-424/10, judgment of the Grand Chamber of 21 December 2011.

²⁷ *Ibid.*, § 63.

²⁸ See Case C-33/07, *Ministerul Administrației și Internelor Direcția Generală de Pașapoarte București v Jipa*, CJEU judgment of 10 July 2008.

acquired permanent residence (e.g. in line with the *Ziolkowski* judgment) and has maintained it. This will inevitably be a complex analysis.²⁹ The domestic court would also have to carry out the tests set out in Articles 27 and 28 § 1 of the Directive, which, regardless of the level of protection, offer more protection than Article 8 of the Convention. In order for such an expulsion decision to be “in accordance with the law”, the ERRC submits that a domestic court deciding on its lawfulness would have to have carefully analysed all these issues by reference to the case law of the CJEU, including but not limited to the cases mentioned above. See, mutatis mutandis, *Ullens de Schooten and Rezabek v Belgium* (2011), § 62. If the domestic court of last instance has questions about whether it is relevant that the expulsion order was made before the person became a Union citizen, but had not been executed by the time he had become a citizen, or about any other matters arising under EU law, then it must make a reference to the CJEU under Article 234 of the Treaty on the Functioning of the European Union. See *Ullens de Schooten and Rezabek*, § 33. In relation to the concept of “integrating links”, the CJEU has not, as far as the ERRC is aware, dealt with a case where the person facing expulsion has no links with his Member State of underlying nationality or any other EU Member State; before concluding that such a person could be expelled, the national court would, it seem, be obliged to seek clarification from the CJEU about whether it is even possible to consider a person’s integrating links “broken”, which would presumably leave her/him with no integrating links anywhere. It is worth noting that it would require a very intensive level of EU law analysis to determine that an EU citizen, particularly one with long residence and family ties in the host Member State, did not have any EU law right to be there or any EU law protection from expulsion; the case law of the CJEU³⁰ and of domestic courts in EU Member States³¹ shows how very unusual such a situation would be.

13. It is worth mentioning that as part of the recent expansions of the Union eastward in 2004, 2007, and 2013, Member States have been allowed to restrict the right of citizens of the new Member States to work on their territory for a limited period. For example, following Croatia’s accession to the EU in 2013, and in accordance with Annex V, Part 2 of the Accession Agreement between the European Union and Croatia,³² Member States such as Denmark

²⁹ See, above, note 23.

³⁰ See, e.g., *Trojani v Centre public d’aide sociale de Bruxelles*, Case C-456/02, judgment of the Grand Chamber of 7 September 2004, finding that a French citizen who was not exercising residence rights (under what is now covered by Article 7 § 1 of the Directive), but who had a residence permit in Belgium, enjoyed the protections of EU law, in that case, in respect of social assistance.

³¹ See, e.g., the UK case cited above at note 23, § 64; the Court of Appeal noted that any EU citizen who had residence status under domestic legislation enjoyed protection from expulsion under the principles set out in the Directive, even if (s)he was not exercising a right to reside under EU law.

³² The full text of the agreement can be found at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012J%2FTXT>.

could limit the right of Croatians to work for a limited period.³³ Denmark could not, however, limit the right of Croatian citizens to move to Denmark for any other purpose, such as self-employment or studies, except as in accordance with EU law, particularly the Directive. So on 1 July 2013, when Croatia joined the Union, its citizens acquired all of the rights under EU law to travel to and live in other Member States, except the right to work. Those who already had the right to work on the territory of another Member State, though, acquired certain protections to allow them to continue working there. The provisions on expulsion of EU citizens mentioned above became fully applicable to all people on the date they became EU citizens.

B. Antigypsyism in Denmark in recent years and its link to the entry, stay, and particularly the expulsion of foreign-citizen Roma, notably Roma who are EU citizens

14. The European Commission against Racism and Intolerance (“ECRI”) defines antigypsyism as “*a specific form of racism, an ideology founded on racial superiority, a form of dehumanization and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatization and the most blatant kind of discrimination*”.³⁴ The Alliance Against Antigypsyism, of which the ERRC is a member, defines the concept as follows:

Antigypsyism is a historically constructed, persistent complex of customary racism against social groups identified under the stigma ‘gypsy’ or other related terms, and incorporates:

1. a homogenizing and essentializing perception and description of these groups;
2. the attribution of specific characteristics to them;
3. discriminating social structures and violent practices that emerge against that background, which have a degrading and ostracizing effect and which reproduce structural disadvantages.

15. For Roma living in Denmark, these are not abstract concepts: antigypsyism and xenophobia, each toxic on their own, combine to make Denmark a uniquely difficult place for the estimated 5,500³⁵ Roma living there.
16. Many of the Roma living in Denmark today came to the country, or are the children of people who came to the country, during the collapse of Yugoslavia, or after the EU expanded eastward from 2004. If you were a Romani person in Denmark today, you would undoubtedly feel the antigypsyism in the air. The EU Fundamental Rights Agency (FRA)

³³ This is based on a “2-3-2” formula. For the first two years following Croatia’s accession, domestic law in the other Member States applies to the right of Croatian citizens to work there. Other Member States are then free to indicate that domestic law will continue to apply for another three years. Only in cases of a “serious disturbance to the labour market” may Member States still restrict the freedom of Croatian citizens to work in their territory for the final two years.

³⁴ ECRI General Policy Recommendation no.13, CRI(2011)37.

³⁵ According to the European Union, 5,500 is the Council of Europe’s estimate of Denmark’s Romani population. See http://ec.europa.eu/justice/discrimination/roma-integration/denmark/national-strategy/national_en.htm. According to a report published by the EU’s Fundamental Rights Agency, there are between 1,500 and 10,000 Romani people in Denmark. Danish Institute for Human Rights, “Denmark, FRANET National Focal Point, Social Thematic Study, The Situation of Roma” (2012), page 3, available at <http://fra.europa.eu/en/country-data/2013/country-thematic-studies-situation-roma>.

conducted its National Focal Point Social Thematic Study on the situation of Roma in 2012 and reported that in Danish society Roma are considered to have the lowest status, and to experience high levels of social exclusion, ethnic profiling, and discriminatory treatment by police and immigration authorities.³⁶ Discrimination against Roma in Denmark's labour market means that Roma moving from other EU Member States to find work there are unlikely to succeed.³⁷ According to the European Commission against Racism and Intolerance ("ECRI"), media reports about criminal offences allegedly committed by Roma are frequent.³⁸ ECRI reports that the media get the information they publish directly from the police,³⁹ suggesting the existence of institutional racism in police services.

17. Some Roma from the newer EU Member States who, due to centuries of discrimination and exclusion, are among the poorest citizens of the European Union, have moved to Denmark – as is their right as EU citizens – to improve their economic situation. Many have faced homelessness in Denmark, particularly in Copenhagen. They have not been treated well. In 2010, 23 Roma with Romanian citizenship who were found to be living on public land were expelled from the country, following remarks by the Lord Mayor of Copenhagen and the Ministry of Justice about the need to expel "*criminal Roma*".⁴⁰ Following complaints, the expulsion was ruled unlawful, because it was incompatible with EU law. The ERRC is still supporting some of the people expelled to secure compensation in accordance with Article 5 § 5 of the Convention, because they were unlawfully detained as part of the unlawful expulsion.
18. This climate of antigypsyism targeting EU citizen Roma continues. The evidence from this year alone is compelling. On 22 May 2017, the Speaker of the Danish Parliament, Pia Kjaersgaard, wrote that the homeless Romani population "*mars the cityscape of Copenhagen.... these filthy [people] have led the staff of Our Lady.... [to] clean up after [them]... and [are] now [being] forced to... vaccinate against hepatitis*".⁴¹ On 27 May 2017, in the same newspaper, Marcus Knuth MP said that "*Roma ... put a new level of how uncivilised [people] behave. Without any shame they use our church area as toilets, they steal, they extort Danish homeless for money, they will camp exactly where they want. In*

³⁶ The report is cited at note 35. See page 3.

³⁷ The report is cited at note 35. The reference to the labour market situation is at page 6. In one municipality, two social workers at the job centre were assigned to Roma, which resulted in discriminatory treatment: Roma were directed to those people, regardless of the nature of their query.

³⁸ CRI(2012)25, § 104.

³⁹ Ibid. ("*ECRI has been informed that the information relayed by the media to the public about Roma is often derived from police sources*").

⁴⁰ The case is described in some detail in a submission the ERRC made about Denmark to the UN Human Rights Committee in the context of the Universal Period Review of Denmark, in 2010. The document can be found at <http://www.errc.org/cms/upload/file/denmark-submission-un-upr-19112010.pdf>. See §§ 2.1-2.2.

⁴¹ Berlingske, 22 May 2017 "Roma-lejrene i København skal fjernes", available at https://puls.b.dk/roma-lejrene-i-koebenhavn-skal-fjernes/?_ga=2.78266711.212373680.1500297154-350679688.1500297153.

short they are a disgrace to the Danish capital".⁴² In their statements, these influential politicians called for new measures to allow police to raid camps in which Roma are living, to change immigration policy, and to expel homeless Roma from the city.

19. In June 2017, Justice Minister Søren Pape announced various new initiatives to allow police to "*expel people from creating insecurity camps*".⁴³
20. On 6 July 2017 four Romanian citizens were arrested, fined, and subsequently expelled from Denmark for two years because they were caught sleeping rough; they are challenging their expulsion under EU law.⁴⁴ On 7 July 2017, 12 of the 23 Romani people who were sleeping in a demolished building were arrested and then expelled from the country for two years.⁴⁵
21. The way antigypsyism and xenophobia entwine to create a uniquely hostile environment for Roma in Denmark has consequences for when the Court considers cases brought by Roma facing expulsion from the country. The authorities in Denmark have proven willing to set aside respect for fundamental European Union law rights in order to give effect to sentiments that are contaminated by antigypsyism. In this context, the ERRC urges the Court to be particularly attentive to racial stereotypes that may have contaminated the reasoning behind any particular decision to expel a Romani person from the country. The Court has experience in detecting such stereotypes. See, e.g., *Konstantin Markin v Russia* (Grand Chamber, 2012), §§ 142-143. The Court has also recognised that analysing and understanding stereotypes is not straightforward. *Carvalho Pinto de Sousa Morais v Portugal* (2017), concurring opinion of Judge Motoc:

15. There can be a fine line between perpetuating a harmful stereotype and using that stereotype to abolish de facto inequality by identifying gender stereotypes and exposing their harm.

16. In the words of Catherine MacKinnon, "You can't change a reality you can't name". What is wrongful has to be diagnosed as a "social harm"; otherwise it will not be possible to determine its treatment and bring about its elimination. The first phase should be naming the stereotypes....

18. The second phase involves contesting the stereotypes once it has been established that they are harmful. The Court has developed different approaches to this issue.

22. The stereotypes that are characteristic of antigypsyism are complex. They include the vicious notions that Roma are rootless, criminals, and unclean. These stereotypes must be named and contested when they contaminate the reasons for interfering with a person's Article 8 rights. See, mutatis mutandis, *E.B. v France* (Grand Chamber, 2008), § 80. The fact

⁴² Berlingske, 27 May 2017 "Et roma-opgør er uundgåeligt", available at <https://www.b.dk/kommentarer/et-roma-opgoer-er-uundgaaeligt>.

⁴³ Berlingske 18 July 2017 "DF: Minister går ikke langt nok mod udenlandske hjemløse", available at <https://www.b.dk/politiko/df-minister-gaar-ikke-langt-nok-mod-udenlandske-hjemloese>.

⁴⁴ Jyllands Posten 10 July 2017 "Udvisning af hjemløse rumænere skal for Højesteret", available at <https://jyllands-posten.dk/protected/premium/indland/ECE9715913/udvisning-af-hjemloese-rumaenere-skal-for-hoejesteret>.

⁴⁵ Politiken, 7 July 2017 "12 romaer skal udvises fra Danmark", available at <http://politiken.dk/indland/art4966654/12-romaer-skal-udvises-fra-Danmark>.

that a person who has committed criminal offences happens to be Romani does not in any way enhance the threat (s)he poses to the community, and must not in any way diminish the right she enjoys under domestic law, EU law, and the Convention. The fact that a foreigner whose residence status is in question happens to be Romani must not in any way influence the assessment of that person's links with the country in which (s)he is seeking to remain. Roma are equal and the starting point must be to treat Roma as equal. The particular vulnerability Roma face is the result of the way they are treated by the majority society. Stereotypes about Roma are reinforced by the constant marginalisation of Roma: their exclusion from the labour market (as in Denmark); the refusal to provide social support; attempts to expel them from cities or countries. In individual cases where stereotypes about Roma appear to be in play, it is crucial for the Court to be careful to identify them, and, when it has done so, to name them and contest them in its judgments. The Court should be particularly alert to such stereotypes when the domestic authorities and courts have failed to recognise the rights a Romani person has, for example, as an EU citizen.

The European Roma Rights Centre
22 September 2017