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## Expulsion of the Roma: Is France Violating EU Freedom of Movement and Playing by French Rules or Can it Proceed with Collective Roma Expulsions Free of Charge

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# EXPULSION OF THE ROMA: IS FRANCE VIOLATING EU FREEDOM OF MOVEMENT AND PLAYING BY FRENCH RULES OR CAN IT PROCEED WITH COLLECTIVE ROMA EXPULSIONS FREE OF CHARGE?

## INTRODUCTION

The European Union (“EU”) implemented several procedural safeguards to promote the integration of Roma migrants<sup>1</sup> throughout Europe, but the efficacy of these mechanisms is the subject of much international attention and criticism.<sup>2</sup> In the Romani language, the word “Roma” means “people” in the plural masculine gender.<sup>3</sup> Roma encompasses people belonging to both nomadic and non-nomadic communities that are diverse with respect to language, religion, nationality, history, and culture, but are understood to share a common ethnicity.<sup>4</sup> Arguably, the common interest that unites the diverse communities of Roma throughout Europe is a shared interest in the pursuit of equality, nondis-

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1. Iskra Uzunova, *Roma Integration in Europe: Why Minority Rights are Failing*, 27 ARIZ. J. INT’L & COMP. L. 283, 287 (2010). For the purposes of this Note, the term Roma generally refers to persons who “[describe] themselves as Roma, Gypsies, Travellers, Manouches and Sinti as well as other terms.” *Id.* It must be noted, however, that the general use of the term Roma is not intended to ignore the diversity within the many different Romani groups and related communities, nor is it intended to promote stereotypes. *Id.* Diversity within Romani communities is complex and multi-dimensional and involves differences of language and dialect, history, culture, religion, and social class. *Id.* Some Romani communities and individuals are nomadic by culture while others are sedentary. It is also noted that the term Roma is misdirecting to the extent that it automatically suggests Romanian origins. *Id.*

2. Jay Carmella, *Rights Group Urges EU Nations to Stop Forced Roma Deportation*, JURIST LEGAL NEWS & RES. (Sept. 28, 2010), <http://jurist.org/paperchase/2010/09/rights-group-urges-eu-nations-to-stop-forced-roma-deportation.php>.

3. Larry Olomoofe, *In the Eye of the Beholder: Contemporary Perceptions of Roma in Europe*, EUR. ROMA RIGHTS CTR. (Nov. 20, 2007), <http://errc.org/cikk.php?cikk=2881>.

4. Uzunova, *supra* note 1, at 287. While the Roma share a common ethnicity based on common origin in India, their scattered geography throughout Europe makes it impossible to identify a modern nation of origin for the population. *Id.* The muddled historical development of Roma will be briefly discussed later in this Note but due to this fractured development, today’s Roma are essentially a continuum of related subgroups with flexible identities. However, countries containing the largest Roma minorities are Romania and Bulgaria as well as other Eastern European countries. *Id.* This Note does not purport to track the demographic patterns of Roma populations nor does it exclude the possibility that modern Roma can originate from a wide variety of European nations. For more on Romani traditions and culture see generally, GYPSY LAW: ROMANI LEGAL TRADITIONS AND CULTURE (Walter O. Weyrauch ed., 2001).

crimination, and integration.<sup>5</sup> However, Roma efforts to unite around these shared goals are often thwarted by deeply rooted animosity and historical mistrust operating between Roma and non-Roma peoples throughout Europe.<sup>6</sup>

Specifically, the French government has attracted a great deal of recent derision from its fellow EU Member States (“Member States”) for its pursuit of a concentrated effort to eliminate encampments populated by what the French refer to as “gens du voyage.”<sup>7</sup> These encampments constitute a combination of migrant Roma, including those with and without French citizenship.<sup>8</sup> France’s recent efforts, in summer 2010,<sup>9</sup> targeting Roma expulsion continue to draw an enormous amount of criticism from within the country, from abroad, and from the EU itself.<sup>10</sup> This “campaign” involves the French government’s attempts to dismantle itinerant camps and expel Roma living in France without residence permits by forcibly deporting individuals back to their nation of origin.<sup>11</sup> If Roma individuals overstay their visas and cannot produce a work permit or evidence of steady employment, French officials often order them to leave France or alternatively accept three hundred Euros for their “voluntary departure” from the country.<sup>12</sup> These programs are fervently defended by French officials who insist that the country is not singling out the Roma as an ethnic group<sup>13</sup> and deny that France conducts collective expulsions aimed solely at the Roma.<sup>14</sup>

These assurances were frustrated by the discovery of an accidentally leaked Interior Ministry Document<sup>15</sup> dated August 5, 2010, which was

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5. Uzunova, *supra* note 1, at 292.

6. *See id.* at 286.

7. Perrine Mouterde, *Sarkozy to Address Cabinet on ‘Roma Problem’ Amid Criticism*, FRANCE 24 (July 28, 2010), <http://www.france24.com/en/20100728-sarkozy-address-roma-problem-cabinet-meeting-amid-criticism-rights-groups-france-travelling-people> (describing “gens du voyage” as French term used to describe “traveling people”).

8. Steven Erlanger, *Document Cites French Bid to Oust Roma*, N.Y. TIMES, Sept. 12, 2010, at A14.

9. *Id.*

10. Bruce Crumley, *A Defiant France Steps Up Deportation of Roma*, TIME (Sept. 1, 2010), <http://www.time.com/time/world/article/0,8599,2015389,00.html>.

11. *Id.*

12. This process is later identified as “voluntary deportation” as it is defined in Erlanger, *supra* note 8.

13. *Id.*

14. *Id.*

15. Circulaire IOC/K/1017881J, Le Ministre de l’Intérieur, de l’Outre-mer et des Collectivités territoriales, à Monsieur le Préfet de police, et. al., Evacuation des campements illicites [Removal of Illegal Encampments] (Aug. 5, 2010) (Fr.), available at <http://www.gisti.org/IMG/pdf/noriocck1017881j.pdf>.

directed at the police prefects of French regions and shed light on the reality that France's priority in the current program was "those of the Roma."<sup>16</sup> Although the French government subsequently withdrew this document,<sup>17</sup> it revealed the government's discriminatory program of singling out the Roma and may spawn civil cases in France brought by Roma whose rights were breached.<sup>18</sup> This campaign has been legally challenged by the European Commission<sup>19</sup> (the "Commission"), which expressed concern that the targeted initiative may violate the fundamental citizenship rights guaranteed to all EU citizens, and by the "Freedom of Movement" Doctrine—a status conferred on all Romanians and Bulgarians during the 2007 enlargement of the EU.<sup>20</sup> The Commission further asserted that discriminating against Roma on ethnic grounds contravenes EU minority rights protection mechanisms.<sup>21</sup> In addition, several human rights groups such as Amnesty International have urged the EU members to end forcible deportation of Roma asserting that the deported Roma could face persecution and human rights violations of violence upon their return to native countries through readmission agreements.<sup>22</sup>

Thus, the EU is currently faced with the question of whether to take legal action<sup>23</sup> against France for its deportation of the Roma. In order to threaten such legal action, the EU must assess whether France's mecha-

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16. Erlanger, *supra* note 8.

17. Stephen Castle, *France Faces European Action after Expulsions*, N.Y. TIMES, Sept. 29, 2010, at A14 ("The document—which has since been withdrawn—showed that Roma had been specifically singled out by the French government."); Scott Sayare, *France: Replacement Directive Omits Word 'Roma,'* N.Y. TIMES, Sept. 13, 2010, at A10 ("Interior Minister Brice Hortefeux signed a replacement directive in which the word 'Roma' does not appear. The ministry gave no explanation for the change but humanitarian groups and opposition politicians had denounced prior Interior Ministry documents as racist and potentially illegal.").

18. Castle, *supra* note 17.

19. Comm'n of the Eur. Communities, Governance Statement of the European Commission (May 30, 2007), [http://ec.europa.eu/atwork/synthesis/doc/governance\\_statement\\_en.pdf](http://ec.europa.eu/atwork/synthesis/doc/governance_statement_en.pdf) (describing the way the Commission and its services function, and in particular the responsibility and accountability mechanisms).

20. Crumley, *supra* note 10 (discussing the argument that Romania and Bulgaria must improve efforts to integrate their own Roma populations and more effectively monitor Roma migration elsewhere in the EU due to the higher percentages of Roma which originate in these two countries).

21. *See id.* ("The European Commission, which is the guardian of the EU's governing treaties, is usually at pains to deal diplomatically with national governments and has spent weeks discussing the situation with French authorities.").

22. Carmella, *supra* note 2.

23. *Id.*; *see* Stephen Castle, *E.U. Casts Legal Doubt on French Roma Expulsion*, N.Y. TIMES, Sept. 1, 2010, at A11.

nisms for expelling the Roma population is a violation of the EU Freedom of Movement Doctrine as well as the fundamental citizenship rights of these individuals.<sup>24</sup> The Commission took the first steps toward warning France that it will face legal proceedings if it fails to meet minimum EU safeguards implemented to protect the rights of the EU citizens by submitting to the French government a formal letter.<sup>25</sup> The legal case and accompanying letter represent the preliminary stages of legal action and accuse France of failing to properly protect ethnic groups with national legislation and EU standards.<sup>26</sup> While this initial legal complaint is temporarily suspended due to France's timely and pertinent legal response to the Commission, France could still be taken to the European Court of Justice ("ECJ") and forced to bring their laws into line with EU rules if it fails to comply in the future.<sup>27</sup>

This Note posits that France's recent Roma-expulsion mechanisms are a contravention of the EU Directives on Freedom of Movement and Fundamental Rights. The French government's overall failure to properly implement these laws places the country at risk of committing ongoing human rights violations within its own borders. Part I of this Note will provide a general historical background on the development of Roma identity and law. It will briefly address the extent to which a pervasive and discriminatory "anti-Gypsy" stereotype has caused the Roma to struggle in their pursuit of integration among European nations. Part II will assess what EU citizenship status means for Roma individuals and how this status includes fundamental citizenship rights pursuant to EU law.<sup>28</sup> Part III will argue that France's implementation of the EU Directives is flawed because the French government failed to complete the requisite review process with respect to Roma individuals living in France. Here, the Note will consider several theoretical approaches to Member State implementation of EU law and how specific provisions of French law have failed to properly promote the spirit of the EU Freedom of Movement Doctrine. Part IV briefly discusses the problematic nature

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24. See Carmella, *supra* note 2 (while not intended to be an exhaustive list of provisions that could be violated, this is a specific reference to sources of EU fundamental rights which will be more specifically referenced throughout the Note).

25. Castle, *supra* note 17.

26. *Id.*

27. *Id.*; Ann Riley, *France Lawmakers Vote to Adopt Controversial Immigration Bill*, JURIST LEGAL NEWS & RES. (Oct. 20, 2010), <http://jurist.org/paperchase/2010/10/france-lawmakers-vote-to-adopt-controversial-immigration-bill.php>; Press Release, Viviane Reding, Vice President, Eur. Comm'n & EU Comm'r for Justice, Fundamental Rights & Citizenship, Recent Developments concerning the Respect for EU law as regards the Situation of Roma in France (Oct. 19, 2010).

28. Carmella, *supra* note 2.

of three specific actions taken by the French government that complement its campaign of Roma expulsion. Finally, this Note will conclude by asking whether Member States' current struggles to properly implement minority rights safeguards can serve as an instructive tool for the future of EU integration and the balance between national and EU law.

## I. THE ROMA IN EUROPE: BRIEF HISTORICAL BACKGROUND

### A. Historical Development

The Roma first emerged from the Indian sub-continent as a tribe of nomadic musicians and entertainers, finding their way into Europe as slaves in the thirteenth and fourteenth centuries.<sup>29</sup> "Romani groups were noted in the European part of the Byzantine Empire by the eleventh century as well as in Spain at around the same time."<sup>30</sup> Following a period of relative tolerance in the late Middle Ages, Roma were first subjected to persecution in Europe during the sixteenth and seventeenth centuries.<sup>31</sup> The Enlightenment brought with it a series of new oppressive approaches toward Roma throughout the mid-eighteenth century.<sup>32</sup> "Roma were again targeted for race-based persecution during the Hitler regime in Germany from 1933–1945."<sup>33</sup> However, the post-1989 era in Europe has

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29. Uzunova, *supra* note 1, at 287 (explaining that "it is uncertain whether they were brought and traded as slaves or brought to Europe and later enslaved in the course of subsequent warfare. However, most historians agree that well over half the Roma population in Europe during the fourteenth century consisted of slaves.").

30. EUR. COMM'N DIRECTORATE-GEN. FOR EMP'T & SOC. AFFAIRS, THE SITUATION OF ROMA IN AN ENLARGED EUROPEAN UNION 7 (2004) [hereinafter THE SITUATION OF ROMA IN AN ENLARGED EU], *available at* [http://www.erionet.org/site/upload/publications/reports/roma\\_in\\_enlarged%20european%20union\\_en.pdf](http://www.erionet.org/site/upload/publications/reports/roma_in_enlarged%20european%20union_en.pdf) (explaining that areas located in what is today southern Greece were noted as centers of Romani settlement in the fourteenth and fifteenth centuries and it is thought that Roma lived throughout the Balkans by that time).

31. *Id.* at 7.

32. *Id.* The first in a series of efforts was undertaken attempting to compel Roma to conform to the norms of the wider society. *Id.* It is unclear to what extent these early orders were obeyed at a local level, but in the subsequent two centuries Roma have frequently been removed from their families by force and placed with non-Romani families, or placed in institutions in an effort to rid them of what have been perceived as deviant traits, and to end the common existence of the ethnic group itself. Uzunova, *supra* note 1, at 298. Roma were expelled from cities and countries, executed or mutilated for being Gypsies, and transported to other countries where they were ordered to settle down or face expulsion or death. *Id.*

33. THE SITUATION OF ROMA IN AN ENLARGED EU, *supra* note 30, at 7; Uzunova, *supra* note 1, at 299 ("During the Holocaust, Roma faced the same fate as Jews and were singled out for annihilation on racial grounds.").

seen an outbreak of intense anti-Romani sentiment in both Eastern and Western Europe, taking the form of both racist movements as well as attempts to blame Roma for apparent breakdowns in public order.<sup>34</sup> In 1999 the European Romani suffered the worst catastrophe it has endured since World War II when, following the end of the North Atlantic Treaty Organization's military action in the Federal Republic of Yugoslavia, ethnic Albanians undertook a campaign of "ethnic cleansing against Roma and other persons perceived to be 'Gypsies.'"<sup>35</sup>

Currently, the Roma now constitute the largest minority in Europe with an approximate population estimated between 10 to 12 million people.<sup>36</sup> However, accurate population size assessment is difficult, and other historians estimate significantly fewer Roma in Europe, around 6.8–8.7 million.<sup>37</sup> Precise demographic data is difficult to obtain due to the stigma associated with Romani identity as well as the reluctance of many Roma to identify themselves for official purposes.<sup>38</sup>

Despite this vast size and pervasive presence, Roma continue to experience extreme social exclusion, poverty, and discrimination in job opportunities throughout Europe and have a lower life expectancy than the average European.<sup>39</sup> Their scattered geography and lack of a common language, religion, or defined common cultural identity create obstacles

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34. THE SITUATION OF ROMA IN AN ENLARGED EU, *supra* note 30, at 9.

35. *Id.* at 9. Despite four years of UN administration in Kosovo violence and destruction has continued. *Id.* Today an estimated four-fifths of the pre-bombing Romani population of Kosovo is displaced or is in exile in countries bordering Kosovo or in the West. *Id.*

36. Uzunova, *supra* note 1, at 288; THE SITUATION OF ROMA IN AN ENLARGED EU, *supra* note 30, at 7.

37. Uzunova, *supra* note 1, at 288. Because of the Roma's dispersed and scattered existence, it is difficult to determine with certainty where migrant Roma originate from. However, estimates indicate that 68 percent of Roma who live in Europe come from Central and Eastern Europe and the Balkans. *Roma in Bulgaria*, EURO TOPICS (Aug. 8, 2006), <http://www.eurotopics.net/en/presseschau/archiv/article/ARTICLE6248-Roma-in-Bulgaria> (according to official figures 370,000 Roma currently live in Bulgaria).

38. THE SITUATION OF ROMA IN AN ENLARGED EU, *supra* note 30, at 9; Uzunova, *supra* note 1, at 288 ("The Roma live throughout Europe in hundreds of small ghetto like communities without common religion or languages making it difficult for them to unite their efforts towards integration" or to be formally accounted for.).

39. *Id.* at 288.

Roma have a life expectancy 10 to 15 years lower than the European average, have a higher infant mortality rate, and in many instances do not have access to healthcare or education. Due to these factors it is estimated that half the Roma population in Central and Eastern Europe is under the age of 20.

*Id.*

in the path of devising a unified approach toward declaring an identity.<sup>40</sup> Due in large part to their diversities, national governments tend to ignore Roma as a distinct minority, seeing the population instead as merely a socio-economic problem.<sup>41</sup>

Thus, the treatment of Roma within the EU has become the litmus test of a humane society as well as one of the most pressing political, social, and human rights issues facing Europe.<sup>42</sup> France, in particular, has expelled the Roma for years, sending about 10,000 non-French Roma back to Romania and Bulgaria in 2009.<sup>43</sup> French officials defend these expulsions by arguing for French national security and a bid to curb crime. President Nicholas Sarkozy authorized the current crackdown based on official statements claiming Roma from Eastern Europe commit up to 20 percent of the robberies and violent crimes in the Paris region.<sup>44</sup> Further analysis done by the Interior Minister Brice Hortefeux has claimed that criminal acts by Roma in Paris rose 259 percent in the past 18 months.<sup>45</sup>

#### *B. Isolationist Elements of Roma or “Gypsy”<sup>46</sup> Law*

The foundations of Roma law provide yet another factor contributing to the general isolation and prejudice that they face in nations across Europe, including France.<sup>47</sup> Since Roma maintain that “their law is the only true law,” individuals often find themselves unable to comply with the existing laws of a host country, thus the Roma commonly violate theft and fraud laws and experience general incompatibility with the host country.<sup>48</sup>

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40. Uzunova, *supra* note 1, at 291–92. Roma attempts to unite an effort toward establishing an identity have ranged from declarations of a self-proclaimed “Gypsy-King” to the International Romani Union’s declaration of a Roma Nation in Europe. *Id.* In 2001 the International Romani Union requested recognition from the international community in an oral statement before the U.N. Commission on Human Rights. *Id.*

41. *Id.* at 285.

42. THE SITUATION OF ROMA IN AN ENLARGED EU, *supra* note 30, at 10; Uzunova, *supra* note 1, at 314 (noting that the Roma issue became especially relevant for the EU due to the accession of Eastern European countries such as Romania and Bulgaria, with large Roma populations, to the Union).

43. Erlanger, *supra* note 8.

44. Edward Cody, *France Weighs Immigration Bill*, WASH. POST, Sept. 29, 2010, at A12.

45. Crumley, *supra* note 10.

46. Uzunova, *supra* note 1, at 287 (“The term Gypsy originated from the mistaken assumption that Gypsies came from Egypt and is not used in this context to signal a stereotype but merely to indicate a word that albeit mistaken, remains in common usage.”).

47. Uzunova, *supra* note 1, at 293.

48. *Id.* at 295.



The Roma operate under a normative code known as “an autonomous legal system which operates outside the parameters of state law.”<sup>49</sup> This thousand year old oral ethics code has been carried by the Roma people to forty countries as well as several continents.<sup>50</sup> Romani legal tradition is oral so variations on normative proscriptions are common, but the main principles of strict social norms in Gypsy law can be common in many circumstances.<sup>51</sup> Examples of such common elements include a fervent belief in their own uniqueness and a related sense of ethnocentricity which stands in the way of true cultural integration.<sup>52</sup>

Thus, Gypsy law has evolved in a way which insulates Roma from a host society and legal system.<sup>53</sup> Factors that contribute to this dynamic include cultural superiority and an entitlement to treat the “non-Roma” (better known to Roma as “*Gaje*”) as impure and inferior people.<sup>54</sup> The Roma also view theft and crime in a unique way, as they consider theft and fraud to be crimes only when they are perpetrated against other Gypsies.<sup>55</sup> Because *Gaje* are seen by the Roma as overindulgent and exploitative, theft from *Gaje* is considered praiseworthy in many circumstances.<sup>56</sup> Thus, Roma law has arguably evolved in a way that has encouraged the notion throughout Europe that Roma have intentionally avoided integration based on substantial mistrust and predatory animosity toward *Gaje*.<sup>57</sup>

As a result of this legal disparity, Member State governments in the EU face conflicting motivations that influence their Roma-focused policies and activities.<sup>58</sup> Currently, commentators argue that European attitudes toward Roma are defined by anti-Gypsyism.<sup>59</sup> However this mis-

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49. *Id.* at 294.

50. Joy Kanwar, *Preserving Gypsy Culture through Romani Law in America*, 24 VT. L. REV. 1265, 1265 (2000).

51. Uzunova, *supra* note 1, at 294; Kanwar, *supra* note 50, at 1265.

52. Uzunova, *supra* note 1, at 294. In addition, Gypsy law centers on taboo notions of purity and impurity of body parts, words, and actions. *Id.*

53. *Id.*

54. *Id.* at 295. For example, “gypsies generally view the *gaje* as having no sense of justice or decency.” *Id.*

55. *Id.*

56. *Id.*

57. *See id.* at 294.

58. *Id.* at 309.

59. Uzunova, *supra* note 1, at 301.

[A]nti-gypsyism is a specific form of racism which is based on de-legitimization and moral exclusion as the European community sees Roma as crooks and social parasites with deviant traits. The unique nature of anti-Gypsyism as a type of moral judgment toward a cultural model seen as incom-

trust and misunderstanding of Roma laws and culture is based on historical and obsolete elements of animosity. This confusion does not justify discrimination.<sup>60</sup> Rather, anti-Gypsyism constitutes a flawed moral judgment toward aspects of Roma tradition and culture that conflicts directly with EU minority rights frameworks.<sup>61</sup> These stereotypes represent a cultural fiction grounded in opposition to perceived cultural elements rather than opposition to modern Roma inclusion.<sup>62</sup> Commentators offer several reasons for the emergence and persistence of the negative Roma stereotype in Europe,<sup>63</sup> but these justifications do not warrant discriminatory expulsion programs that serve to perpetuate the stereotype.<sup>64</sup> Thankfully, EU law recognizes this dynamic and initiates attempts to address outdated discrimination in an effort to pursue greater levels of integration.<sup>65</sup> However, the EU fails to openly discuss the reasons for hostile attitudes between Roma and non-Roma, stalling its own movements toward real improvement or cooperation.<sup>66</sup>

## II. CITIZENSHIP: WHAT ARE THE POLITICAL AND CIVIL RIGHTS AT STAKE

### *A. The EU Citizenship Issue: In General*

A definition of what EU citizenship means, and should mean to Roma EU citizens, is a crucial determination in this analysis.<sup>67</sup> It is important to

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patible with mainstream social order is one of several reasons why minority rights legislation is failing to improve the Roma situation in Europe.

*Id.*

60. *See id.* at 302.

61. *Id.*

62. *Id.*

63. *Id.* (explaining that the historical circumstances of the Gypsies' arrival in Europe as scattered peoples contributed to their original failing to assert a positive identity. Further, association with the Islamic threat, their darker skin and various means of livelihood exploited the superstitious nature of Medieval Europeans.). For more on the development of "anti-gypsyism" as a type of moral racism see generally, IAN HANCOCK, *THE PARIAH SYNDROME: AN ACCOUNT OF GYPSY SLAVERY AND PERSECUTION* (1987).

64. Uzunova, *supra* note 1, at 303.

65. *See* Natalie Shimmel, *Welcome to Europe, but Please Stay Out: Freedom of Movement and the May 2004 Expansion of the European Union*, 24 *BERKELEY J. INT'L L.* 760, 761 (2006).

66. Uzunova, *supra* note 1, at 321.

67. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, *THE SITUATION OF ROMA EU CITIZENS MOVING TO AND SETTLING IN OTHER EU MEMBER STATES* 11 (Nov. 2009) [hereinafter *ROMA EU CITIZENS SETTLING IN OTHER EU MEMBER STATES*], available at [http://fra.europa.eu/fraWebsite/attachments/Roma\\_Movement\\_Comparative-final\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/Roma_Movement_Comparative-final_en.pdf).

distinguish between Roma who are nationals of an EU Member State and have the rights of EU citizenship and those who do not have EU citizenship at all.<sup>68</sup> This distinction will play a key role in determining whether there has been a true legal violation of Roma fundamental rights according to EU citizenship laws. However, a major factor affecting Roma rights in the EU is a significant disparity in the standards applied to older and newer EU Member States with regard to the Freedom of Movement and Race Equality Directives.<sup>69</sup> Thus, the development of these Directives and how their implementation has formed the minority rights of Roma populations throughout the EU is of particular concern.

The EU traces its roots to the European Coal and Steel Community ("ESCS"), created in 1951 by Belgium, France, Germany, Italy, Luxembourg, and the Netherlands.<sup>70</sup> With the gradual accession of more countries, this coalition developed into a body aimed at coordinating economic and political policy, while building a common internal market organized around four fundamental freedoms.<sup>71</sup> These freedoms were the free movement of capital, the freedom to provide services, the free movement of goods, and the free movement of people.<sup>72</sup> Today, the EU has grown into a complex and powerful multinational organization made up of four main institutional actors: the European Council, the Commission, the European Parliament, and the ECJ.<sup>73</sup>

The Treaty of Maastricht, signed in 1992, made nationals of all EU Member States official citizens of the EU.<sup>74</sup> This citizenship right became further clarified and codified by the language of the Charter of Fundamental Rights of the European Union<sup>75</sup> ("CFR"), as well as Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the

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68. *Id.* at 12. Individuals who identify themselves as ethnically Roma, who are nationals of an EU Member State and who exercise their right to freedom of movement in a Member State other than their own maintain different rights from those Roma without EU citizenship. *Id.* However, this Note focuses solely on Roma who maintain EU citizenship.

69. Uzonova, *supra* note 1, at 315–16.

70. Shimmel, *supra* note 65, at 761 ("The ESCS was designed to manage Europe's coal and steel supply and prevent Germany from rearming itself after WWII. It was soon joined in 1957 by the European Atomic Energy Community.").

71. *Id.*

72. *Id.*

73. *Id.*

74. ROMA EU CITIZENS SETTLING IN OTHER EU MEMBER STATES, *supra* note 67, at 11.

75. See Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) [hereinafter CFR] (signed and proclaimed in Nice in 2000).

Member States (The “Freedom of Movement Directive”), which was entered into on April 29, 2004.<sup>76</sup>

Thus, EU citizens now enjoy several rights and advantages enabling them to invoke a status which requires treatment in accordance with a common code of fundamental values, represented by the Latin expression *civis europaesus sum*.<sup>77</sup> From a judicial standpoint, the most significant rights conferred on EU citizens and represented by this phrase are those to move and reside freely in any of the Member States.<sup>78</sup> These are also the rights which stand to be most seriously violated through France’s current actions.

### *B. The Right to Free Movement*

Over the last forty years, the principle of the free movement of persons within Europe has constantly developed and continues to grow steadily stronger.<sup>79</sup> Member States are under a duty to fulfill and protect the right to free movement of citizens.<sup>80</sup> It is France’s failure to properly fulfill this right for Roma citizens that violates EU law.

Originally intended for the actively employed population only, the fundamental freedom of movement has gradually been extended to apply to all of the European population and now constitutes one of the broadest individual rights that the EU guarantees to its citizens.<sup>81</sup> The Schengen Agreement remains the original foundation for the widespread relaxation

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76. See Directive 2004/38/EC of the European Parliament and of the Council of Apr. 29, 2004 on the Right of Citizens of the Union and their Family Members to Move and Reside Freely within the Territory of the Member States, 2004 O.J. (L 158) 77 [hereinafter Freedom of Movement Directive], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>.

77. ROMA EU CITIZENS SETTling IN OTHER EU MEMBER STATES, *supra* note 67, at 12 (discussing the Latin expression which is an often quoted statement made at the ECJ and is used to represent the invocation of a status which opposes any violation of fundamental rights enjoyed as a citizen of the EU).

78. Piet Eeckhout, *The Growing Influence of European Union Law*, 33 FORDHAM INT’L L.J. 1490, 1493 (2010).

79. *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Reaffirming the Free Movement of Workers: Rights and Major Developments*, at 2, COM (2010) 373 final (July 13, 2010) [hereinafter *Reaffirming the Free Movement of Workers*].

80. ROMA EU CITIZENS SETTling IN OTHER EU MEMBER STATES, *supra* note 67, at 12.

81. *Reaffirming the Free Movement of Workers*, *supra* note 79, at 2.

of EU internal borders and free movement.<sup>82</sup> The Schengen Agreement was integrated and implemented by a 1990 Convention providing for the complete elimination of all internal borders and establishing the basic concept of free movement of persons and goods between participating countries.<sup>83</sup> Now known as “The Schengen System,” the doctrine evolved through the development of secondary law that has led to a thinning of internal regulatory borders in matters of admission to the EU.<sup>84</sup>

The most recent and substantial development of the Schengen System’s right to free movement occurred on April 29, 2004,<sup>85</sup> when the EU adopted the Freedom of Movement Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.<sup>86</sup> The new measures imposed by the Freedom of Movement Directive were designed to encourage EU citizens to exercise their right to move and reside freely within Member States, to cut back on administrative formalities, to provide for better definition of the status of family members, and to limit the scope for refusing entry or terminating the right of residence among Member States.<sup>87</sup> Thus, under the Freedom of Movement Directive, all EU citizens have the right to enter another Member State merely by virtue of having an EU identity card or valid passport.<sup>88</sup>

While virtually every Member State has transposed the Free Movement Directive into some form of national law, several seem to have fall-

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82. Francesca Strumia, *Tensions at the Border in the U.S. and the E.U.: The Quest for State Distinctiveness and Immigrant Inclusion*, 25 AM. U. INT’L L. REV. 969, 990–91 (2010).

83. Yelena Akopian & Ryan Adames, *Immigration within Borders: A Case Study of the French Roma*, PROSPECT J. INT’L AFFS. (Oct. 2010), <http://prospectjournal.ucsd.edu/index.php/2010/10/immigration-within-borders-a-case-study-of-the-french-roma>.

84. Strumia, *supra* note 82, at 991–92 (noting that the Schengen System has not replaced Member States choices in the field or issuing visas for stays exceeding three months as this remains a competence of Member States); *see also Reaffirming the Free Movement of Workers*, *supra* note 78, at 2.

85. *See* Freedom of Movement Directive, *supra* note 76; Shimmel, *supra* note 65, at 761.

86. Directive 2004/58/EC of the European Parliament and of the Council of April 29, 2004 on the Right of Citizens of the Union and their Family Members to Move and Reside Freely within the Territory of the Member States, 2004 O.J. (L 229) 35.

87. *Id.*

88. *Id.* (explaining that where citizens do not have valid travel documents, the host Member State is expected to afford them every reasonable means in obtaining the requisite documents or having them sent); Freedom of Movement Directive, *supra* note 76, art. 6.

en short of making the rights fully and practically accessible.<sup>89</sup> The shortcomings of this Doctrine are highlighted by the skepticism with which it was met with in 2004 by existing Member States.<sup>90</sup> As a result, many old Member States demanded and won the right to impose transitional measures temporarily denying new Member State citizens the complete right to freedom of movement.<sup>91</sup>

A subsequent compromise occurred whereby new Member States would enjoy full freedom of movement recognized by existing Member States eventually—but not immediately upon accession into the EU.<sup>92</sup> Instead, freedom of movement would be gradually phased in through a series of transitional measures that allowed each existing EU Member State to determine the proper timelines for its implementation.<sup>93</sup> Under these transitional measures Member States are free to apply whatever national measures they have been employing for the first two years following accession, thus delaying implementation of full freedom of movement.<sup>94</sup>

With regard to Roma, these compromises are best represented by the temporary restrictions applied to the accession of Romania and Bulgaria to the EU which entered into force January 1, 2007.<sup>95</sup> While the Directive on Freedom of Movement applies to the accession of Romania and Bulgaria, the Treaty of Accession provides general limitations on the

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89. ROMA EU CITIZENS SETTling IN OTHER EU MEMBER STATES, *supra* note 67, at 14. The European Commission in its report on the application of the Free Movement Directive notes its disappointment with the transposition of the Directive stating, “[n]ot one Member State has transposed the Directive effectively and correctly in its entirety.” *Id.*

90. Shimmel, *supra* note 65, at 764.

Many original Member States became fearful that the inclusion of poor, newly democratized neighbors to the East would destabilize the EU and cause stagnation in economic growth. Specifically, citizens of original Member States worried that their labor markets would be flooded with poor migrants who would consume already scarce jobs from current EU citizens.

*Id.*

91. Shimmel, *supra* note 65, at 764.

92. *Id.* at 778.

93. *Id.*

94. *Id.* at 779 (explaining that before the end of that initial two year period, the Council must conduct a review of each Member State on the functioning of the transitional measures).

95. Treaty Concerning the Accession of the Republic of Bulgaria and Romania to the European Union, June 21, 2005, O.J. (L 157) 11 [hereinafter Accession Treaty].

rights of freedom of movement during a seven year transition period.<sup>96</sup> Thus, although Romania and Bulgaria became members of the EU in 2007, their citizens will not enjoy full freedom of movement until January of 2014, or seven years after the countries' accession into the EU.<sup>97</sup> Because of this, Romania and Bulgaria currently remain in "a sort of twilight zone, somewhere between the pre-accession strategy and membership on a par" with existing Member States.<sup>98</sup> This legal "loophole" has created some of the general basis for which the French government has attempted to legally exclude Roma assumed to be Romanians and Bulgarians from the full freedom of movement granted to all other EU citizens.<sup>99</sup> In addition to these transitional measures, old Member States such as France received other concessions.<sup>100</sup> If an old Member State undergoes or foresees disturbances in its labor market which could seriously threaten the standard of living or level of employment, that State may request that freedom of movement be wholly or partially suspended.<sup>101</sup>

#### i. Expulsion Standard under Freedom of Movement Directive

Expulsion orders under the Freedom of Movement Doctrine may not be issued by the host Member State as a penalty or legal consequence unless they conform to the requirements of Articles 27, 28, and 29 of the Directive.<sup>102</sup> Thus, the Freedom of Movement directive allows for expulsion of an EU citizen only when the individual has stayed in the country beyond the three month period set by Article 6 of the Free Movement Directive, and cannot prove "sufficient resources" to stay there pursuant to Article 7, either through employment or other means.<sup>103</sup> Furthermore, pursuant to Article 27, if the individual poses a genuine, present, and suf-

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96. *Expulsion de Roms de Palaiseau: Le sous-préfet doit réviser son droit* [Expulsion of Roma from Palaiseau, The Sub-Prefect Must Revise its Laws], GISTI (Jan. 31, 2007), <http://www.gisti.org/spip.php?article725>.

97. Akopian & Adames, *supra* note 83.

98. Dana Neacsu, *Romania, Bulgaria and the United States and the European Union: The Rules of Empowerment at the Outskirts of Europe*, 30 BROOK. J. INT'L L. 185, 201–02 (2004).

99. Akopian & Adames, *supra* note 83.

100. Shimmel, *supra* note 65, at 779 (discussing the division of the seven year transitional period into 3 blocks of years therefore referring to the transitional arrangements as the "2+3+2" arrangement).

101. *Id.*

102. Freedom of Movement Directive, *supra* note 76, art. 33.

103. *See id.* art. 6.

ficiently serious threat to public policy or security, Member States may restrict the freedom of movement.<sup>104</sup>

The ECJ interpreted this clause narrowly when it rejected the French government's argument that living in unauthorized, informal settlements justifies expulsion based on "public security" grounds alone.<sup>105</sup> In addition, Article 27 states that expulsion cannot be invoked to serve "economic ends" which has been interpreted to mean that expulsion cannot be the "automatic consequences of . . . an individual's recourse to the social assistance system of the host Member State."<sup>106</sup> However, a host Member State is not obliged to give an individual entitlement to social assistance during the first three months of residence.<sup>107</sup>

Despite these protections, Article 7 of the Directive subjects the right of residence for more than three months to certain strict conditions.<sup>108</sup> Some of these conditions are (i) being workers or self-employed persons; (ii) having sufficient resources as well as comprehensive sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay; (iii) following a course of study including vocational training and having sufficient resources; (iv) or being a family member of a Union citizen who falls into one of the above categories.<sup>109</sup> Roma living within France have extreme difficulty satisfying several of these conditions because they are unable to become productive members of society within the requisite time frame.<sup>110</sup>

Unfortunately, true levels of free movement may vary from one Member State to the next, obliging migrants to go about the difficult task of ascertaining what the country they desire to live in allows them to do.<sup>111</sup>

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104. *Id.* art. 27. This article explicitly covers restrictions on the right of entry and the right of residence on grounds of public policy, security, or health. *Id.* Article 27 outlines the guidelines for taking measures on the grounds of public policy in compliance with the principle of proportionality and guides Member States in the process of how to ascertain whether an individual person presents a danger for public policy or security. *Id.*

105. *EU: A Key Intervention in Roma Expulsions*, HUMAN RIGHTS WATCH (Sept. 14, 2010), <http://www.hrw.org/en/news/2010/09/14/eu-key-intervention-roma-expulsions?print>.

106. Freedom of Movement Directive, *supra* note 76, art. 27.

107. *Id.* art. 24.

108. ROMA EU CITIZENS SETTLING IN OTHER EU MEMBER STATES, *supra* note 67, at 34.

109. Freedom of Movement Directive, *supra* note 76, art. 7.

110. *Id.* at 52. Respondents in the fieldwork research reported difficulties in meeting the "sufficient resources" requirement for registering their residence and staying in France, because the income earned from informal economic is not recognized by the government. *See Uzunova, supra* note 1, at 321.

111. Shimmel, *supra* note 65, at 784–85. In her criticism of the transition measures on the whole, the author notes that in light of Western Europe's insecurities regarding immi-



Thus, European nationals remain deeply divided over the issue of whether to continue to extend free movement and continue to move toward greater European integration.<sup>112</sup>

ii. Concurrent Right to be Free From Racial Discrimination

The treaty creating the European Community commits all Member States to ensure equal opportunities, respect for human rights, and fundamental freedoms for all citizens.<sup>113</sup> Thus, EU law clearly gives an overwhelming priority to the nondiscrimination aspect of minority protection.<sup>114</sup> The basis for this priority lies in the deeply rooted notion that discrimination on the basis of ethnic origin or race is incompatible with the values of the EU as well as the spirit of the Freedom of Movement Directive.<sup>115</sup> The right of movement and residence applies to all EU citizens without discrimination as stated under Consideration 31 of the Free Movement Directive:

Member States should implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as sex, race, color, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age, or sexual orientation.<sup>116</sup>

Any national authorities who discriminate against ethnic groups in the application of EU law are acting in violation of the Charter of Fundamental Rights of the European Union, also known as the Race Directive<sup>117</sup>—a Directive to which all Member States, including France, are signatories.<sup>118</sup> Read together, these provisions make it abundantly clear that nondiscrimination on the grounds of national origin or association

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grant populations it does not come as a surprise that many EU citizens reacted violently toward the prospect of freedom of movement for Member States. *Id.* A widespread debate about migration has resulted, fueled by prejudicial media such as a recent article proclaiming that “the Roma gypsies of Eastern Europe are heading to Britain to leech on us.” *Id.*

112. *Id.* at 798.

113. Uzonova, *supra* note 1, at 313.

114. Dimitry Kochenov, *A Summary of Contradictions: An Outline of the EU's Main Internal and External Approaches to Ethnic Minority Protection*, 31 B.C. INT'L & COMP. L. REV. 1, 10 (2008).

115. Reding, *supra* note 27.

116. ROMA EU CITIZENS SETTLING IN OTHER EU MEMBER STATES, *supra* note 67, at 18 (discussing the significance of consideration 31 to the fundamental rights analysis).

117. Council Directive 2000/43, 2000 O.J. (L 180) 22 (EC) [hereinafter Race Directive].

118. Freedom of Movement Directive, *supra* note 76.

with a national minority is elevated to one of the highest principles of EU Community Law.<sup>119</sup>

In fact, since 2004 and the accession of countries containing the largest Roma minorities such as Romania and Bulgaria, the EU has been increasing its efforts to promote social inclusion by advocating for anti-discrimination, human rights, and minority protection norms.<sup>120</sup> Thus, France's actions oppose these dedicated efforts by endangering both the right to free movement as well as the concurrent right to remain free from ethnic or racial discrimination.<sup>121</sup> When France specifically targets those "of the Roma" as a distinct ethnic group, it essentially discriminates among potential beneficiaries of the Free Movement Directive.<sup>122</sup> The Directive makes it clear that national authorities do not have the authority to decide who can exercise free movement based on their country of origin or cultural ethnicity alone. Thus, France's denial of free movement rights to Roma based on discriminatory concepts of anti-Gypsyism violates the spirit of the minority rights protection mechanisms set forth by the EU.<sup>123</sup>

### *C. Right to Work and the "Informal Economy"*

EU citizens that are involved in formal or self-employment and choose to visit another Member State typically have access to similar social rights as a country's own nationals.<sup>124</sup> However, when an EU citizen is not employed, his or her social entitlements are severely curtailed and the Article 7 requirement that a citizen have "sufficient resources" for themselves and for their family<sup>125</sup> becomes a difficult burden to satisfy.<sup>126</sup>

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119. See Erika Szyszczak, *Antidiscrimination Law in the European Community*, 32 *FORDHAM INT'L L.J.* 624, 632 (2009). Stating that the principle of non-discrimination and equality of treatment emerged as a general principle of community law and, within this concept, as a fundamental right in Community law of the modern day European Community. The author includes an interesting discussion of a recent decision made by the European Court of Human Rights ("ECHR") on segregation in the schooling of Roma children, *D.H. and Others v. Czech Republic*, App. No. 57325/00 Eur. Ct. H.R. (2006), which drew heavily on Community case law on antidiscrimination. The court found evidence showing that a Roma child was twenty-eight times more likely to be educated in a school for children with learning disabilities. This was a form of discrimination outlawed by the ECHR and the ruling provides a landmark judgment in terms of advancing the undeveloped jurisprudence on race and ethnic discrimination under Community law to the Roma. Kochenov, *supra* note 114, at 11.

120. Uzunova, *supra* note 1, at 314.

121. Freedom of Movement Directive, *supra* note 76, art. 19.

122. *Id.*

123. Uzunova, *supra* note 1, at 316.

124. *Id.* at 42.

125. Freedom of Movement Directive, *supra* note 76, art. 7.

This reality has a disproportionate impact on the Roma as they are typically characterized by Member States as “economically inactive” due to their involvement in what has come to be known as the “informal economy”<sup>127</sup>

This “sufficient resources” requirement of the Free Movement Directive must be judged based on a proportionality assessment which considers the personal situation of an individual, the duration of the benefit sought, and the amount of income existing.<sup>128</sup> However, when governments review an individual to determine whether he meets the sufficient resources criteria, they do not typically take income earned from “informal” activities into account.<sup>129</sup> This essentially disqualifies Roma who have struggled to establish employment in the formal economy during their short time in France.<sup>130</sup> Despite this reality, as long as EU citizens do not become an unreasonable burden on the social assistance system of the host State, they cannot be expelled solely for this reason.<sup>131</sup>

Thus in order for France to assert its right to expel Roma based on social welfare, according to EU law it must complete a case by case assessment of proportionality, establishing that each individual provides an unreasonable burden on the social system of France.<sup>132</sup> The proportionality assessment indicates to Member States that an individual’s reliance on basic social assistance for a given time period cannot automatically lead to his expulsion.<sup>133</sup> Therefore, France is not justified in expelling Roma based *solely* on the argument that reliance on French social assis-

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126. ROMA EU CITIZENS SETTling IN OTHER EU MEMBER STATES, *supra* note 67, at 41.

127. *Id.* at 50.

Participation in the informal economy involves a range of income-generation activities and may include recycling glass or metal, playing music on the street or begging, among other things. Such activities are often regarded as “deviant” or “undesirable” and those engaged in the informal economy have even been associated with accusations of criminal behavior.

*Id.*

128. Free Movement Directive, *supra* note 76, art. 27; ROMA EU CITIZENS SETTling IN OTHER EU MEMBER STATES, *supra* note 67, at 42–43.

129. ROMA EU CITIZENS SETTling IN OTHER EU MEMBER STATES, *supra* note 67, at 52.

130. *Id.*

131. *Id.* at 41.

132. Castle, *supra* note 17.

133. ROMA EU CITIZENS SETTling IN OTHER EU MEMBER STATES, *supra* note 67, at 43.

tance programs represents an undue burden until it completes proportionality reviews of each individual financial situation.<sup>134</sup>

The Roma right to take up work is also further qualified by the transitional arrangements of the accession of Bulgaria and Romania, placing heavy restrictions on employment rights.<sup>135</sup> These restrictions continue to limit employment rights by making it clear that citizens of transitional countries may experience restrictions on their access to the labor markets in other EU Member States.<sup>136</sup> As a consequence, Roma citizens are formally excluded from numerous EU countries' labor markets, making it nearly impossible to meet the sufficient resources requirement at all.<sup>137</sup> For example, French national law requires that Romanian and Bulgarian citizens obtain French resident permits for stays longer than three months, and often times for a stay shorter than three months.<sup>138</sup> This requirement comes as a result of the same seven-year transition conditions set when Romania and Bulgaria joined the European Union in 2007.<sup>139</sup> These transitional restrictions are the mechanisms formally excluding Roma from the labor markets of several EU countries, making successful integration into the economy nearly impossible.<sup>140</sup> The EU has explicitly encouraged Member States to counter this problem by opening their labor markets to Romanian workers from January 1, 2007, in accordance with the full spirit of the right of free movement of workers.<sup>141</sup>

The citizenship rights outlined above create a relatively simple rights regime for Roma from other Member States. If Roma are EU citizens and are formally employed, then they have a fairly straightforward right of residence to remain in France.<sup>142</sup> However, this is not the case for Roma from other Member States who engage in informal economic activity or are subject to the transitional arrangements of the Accession

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134. *Id.*

135. *Id.* at 44 (discussing 2+3+2 year logic). For the first two years after accession access to labor markets of old EU member states was dependent on national law and policy of that member state. National measures may be extended for a further period of three years. After that EU member state measures can continue to apply for further two years if the Commission is notified of serious disturbances in the labor market. *Id.*

136. *Id.*

137. *Id.*

138. Bruce Crumley, *France Departs Gypsies: Courting the Xenophobes?* TIME (Aug. 19, 2010), <http://www.time.com/time/world/article/0,8599,2011848,00.html>.

139. *Id.*

140. ROMA EU CITIZENS SETTLING IN OTHER EU MEMBER STATES, *supra* note 67, at 44-45.

141. *Id.*

142. *Id.* at 44.

Treaties which limit their access to labor markets.<sup>143</sup> Although many of these individuals are not truly “economically inactive,” their involvement in income generating activities such as recycling glass or metal, playing music on the street, or begging, does now successfully establish “sufficient resources” according to French authorities.<sup>144</sup> Because these activities are often regarded as “deviant” and undesirable, they give rise to Roma’s reputation as a drain on society regardless of the economic significance that these activities may represent.<sup>145</sup> Thus, there lies somewhere in between the language and spirit of the Freedom of Movement Directive and France’s implementation of the Doctrine pursuant to the Roma, a severe disconnect which appears to be the culprit of this current upheaval.

### III. EU LAW AND FRENCH NATIONAL LAW: IMPLEMENTATION STRATEGY ANALYSIS

France’s inability to properly implement the Directive on Freedom of Movement through effective and proportional review of migrant Roma lies at the core of this legal analysis. While France must adhere to its own sovereign laws, it also maintains its obligations to properly implement European law. The rights of EU citizens and their families are governed by European Standards<sup>146</sup> and are applicable in France directly or through the internal legislation process of “translation.”<sup>147</sup> However, commentaries reflect the notion that the texts which allow EU citizens and their families to come to France to work, study, retire, or reside often remain worthless because they are improperly implemented by the administration.<sup>148</sup> Thus the “federal question” of EU law arises—a question addressing the proper reach and scope of EU law and how it is determined by individual Member States such as France.<sup>149</sup>

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143. *Id.*

144. *Id.* at 50.

145. *Id.*

146. *La France en flagrant délit de violation du droit communautaire sur le droit au séjour des citoyens de l'Union* [France is in a flagrant breach of EU law on the right of residence for EU citizens], GISTI (Sept. 30, 2008), <http://www.gisti.org/spip.php?article1248> (speaking to European standards in the form of Regulations and Directives).

147. *Id.*

148. *Id.*

149. Eeckhout, *supra* note 78, at 1491–93 (labeling it as the “federal question” of EU law, Eeckhout discusses the current expansion of EU law to include matters of foreign direct investment, greater judicial involvement by the EU courts, and new expanding policies set in motion by earlier EU treaties).

A. EU MEMBER STATE IMPLEMENTATION: CONCEPTS OF PURELY INTERNAL SITUATIONS AND PRIMACY

The mechanisms used by Member States for the implementation and application of EU law make it very difficult to define the boundaries between EU law and national laws.<sup>150</sup> The EU's main legislative instrument, the Directive, is the clearest exponent of legal integration.<sup>151</sup> While all Directives need to be transposed into national law, Member States retain the ability to decide on form and methods so long as the prescribed results of a Directive are achieved.<sup>152</sup> Two opposing theoretical doctrines addressing Member State implementation of EU law are particularly helpful in assessing the limits of France's discretion in the Roma campaign.

The "counter federal" principle of EU law posits that "purely internal situations" are not caught by EU Free Movement law with regard to citizenship rights.<sup>153</sup> Purely internal situations concern facts that are confined to a particular Member State.<sup>154</sup> In fact, the ECJ has held that purely internal situations are not within the scope of EU law.<sup>155</sup> However, the court did point out that interpretation of EU law could be relevant to internal situations which address national principles of nondiscrimination and equal treatment.<sup>156</sup> This analysis shows how principles of EU law have the potential of becoming more pervasive and can potentially interfere with domestic constitutional arrangements when they address purely internal situations.<sup>157</sup>

It is possible that France, if faced with future legal charges brought by the Commission, could claim that the issues it faces are purely internal as they remain different and more severe within France than in any other Member State. This would give France a stronger argument with which to justify its targeted and specific attempts to rid the nation of a population that provides undue economic hardship and risk of crime to the French citizens. France would need to assert that the challenges brought by the Roma strike at the core of their nation's values and must be dealt with on the purely internal basis of nationality and sovereignty. However, it is unlikely that the EU would accept this argument because the Free

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150. *Id.* at 1519.

151. *Id.*

152. *Id.* at 1520.

153. *Id.* at 1495.

154. *Id.*

155. *Id.* at 1495–96 (discussing the holding of relevant case law Case C-212/06, Gov't of the French Cmty. v. Flemish Gov't, (2008) E.C.R. I-1683).

156. *Id.* at 1496.

157. *Id.* at 1497.

Movement Doctrine is directly intended to protect the minority population that France wishes to expel.

As a counter principle, the primacy of EU law over national law is a primordial requirement of the EU legal order.<sup>158</sup> However, national constitutional courts still maintain a significant role in the interpretation of EU general principles and fundamental rights. Member States must be refined and developed by the ECJ in a process of dialogue with the national courts.<sup>159</sup>

The French Conseil d'Etat recently had the opportunity to consider the constitutionality of implementing an EU Directive similar to the Freedom of Movement Directive, under the doctrine of primacy.<sup>160</sup> The administrative judge in such a circumstance, when faced with a claim of breach of a provision or principle of constitutional value must examine whether EU law at hand offers a rule or a general principle that guarantees the effectiveness of the constitutional provision or principle relied upon.<sup>161</sup> Where the judge establishes that there are corresponding rules or principles of EU law, a reference to the ECJ must be made.<sup>162</sup> However, when there is no corresponding rule or principle of EU law the judge needs to directly examine the constitutionality of the implementing decree.<sup>163</sup> Essentially the Conseil d'Etat reserves the right to intervene and to apply the French Constitution where the relevant constitutional rules or principles have no counterpart in EU law.<sup>164</sup>

In applying the theory of primacy to the treatment of Roma, there is an abundance of EU law intended to address how France should treat other citizens of the EU who wish to remain in the country. This is precisely what the Freedom of Movement Directive is designed to do. However,

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158. *Id.* at 1511–16. The primacy of EU law is characterized as a legal system that (a) is based on the principle that, in case of conflict with national or municipal law, the international/supranational norm prevails and (b) makes that principle part of municipal law, both in theory and in practice. *Id.* The kind of primacy which EU law has managed to establish continues to be unique according to the author. *Id.* However, while the ECJ confirms the absolute character of the principle of primacy, national supreme and constitutional courts continue to emphasize that primacy is not absolute and unqualified. *Id.* Thus the topic remains a contested and sensitive issue notwithstanding the fact that it was established as long ago as 1964.

159. *Id.*

160. *Id.* at 1517. The case involved a challenge to a French decree giving effect to the Directive establishing a greenhouse gas emission allowance trading scheme in so far as the decree extended to the steel sector. *Id.* The challenge was in effect an indirect challenge to the conformity, with the French Constitution, of the Directive itself. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

France may be in need of a more detailed implementation decree that addresses minority populations specifically and could guide the nation in the proper ways to execute the Freedom of Movement for Roma. The transitional measures applied to Romanian and Bulgarian citizens are also subject to primacy over French law and provide France with at least a theoretical foundation for its selective treatment of Romanian and Bulgarian Roma who potentially threaten public safety, order, or welfare.

The fact that France's mechanisms seem to align with the transitional measures applied to Bulgaria and Romania would appear to give France a legal basis for taking action. However, this argument contradicts the implied intent of the transitional measures themselves. France is indeed expelling Roma from the country by arguing that the population "threatens the public order" or "constitutes an unreasonable charge to the French social assistance system."<sup>165</sup> French officials defend deportation on the grounds of public safety—given the fact that Roma have recently been involved in several dangerous public riots particularly in Southeastern France.<sup>166</sup> Plainly stated, the French authorities consider the Roma to be a menace to a calm life and a threat to safety.<sup>167</sup> However, these justifications must be based in clauses of the Freedom of Movement Directive and should certainly be accompanied by the necessary review process. The expulsions cannot be based on France's voluntary discrimination of a population based solely on their origin. The EU has not explicitly given France the right to discriminate based on the Roma identity—it has given France the right to act in cautious ways toward Bulgarian and Romanian citizens who are still involved in the process of accession to the EU. Therefore, any targeted discriminatory actions toward Roma which do not find specific legal basis in the aforementioned Articles of the Directive are unjust violations of EU law.

In sum, European law in the Community of Member States is an autonomous legal system.<sup>168</sup> Member States like France have transferred sovereign rights to the institutional framework of the EU, submitted their national legal orders to the rules of European law, and accepted its capacity to alter national legal order through applicability and direct ef-

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165. Meryem Marzouki, *France: Imminent "Humanitarian Fingerprinting" of Roma with OSCAR*, EUR. DIGITAL RIGHTS (Sept. 8, 2010), <http://www.edri.org/edriagram/number8.17/fingerprinting-roma-france-oscar>.

166. Catalina Toma, *Roma Deportation, A Disgrace or France's Right to Do So*, METROLIC (Sept. 14, 2010), <http://www.metrolic.com/roma-deportation-a-disgrace-or-france-s-right-to-do-so-128726/>.

167. *Id.*

168. Christina Eckes, *European Union Relationship with the United Nations & the World Order*, 2008 EMERGING ISSUES 1305 (2007).



fect.<sup>169</sup> Therefore, France must submit to the rules of the Freedom of Movement Directive and act in pursuit of the common goal of European integration without engaging in “free” discrimination.

*B. France's Legal Framework and Authority*

The Constitution of the French Republic guarantees “equality before the law for all citizens without distinction of origin, race or religion,” and any proposals that ignore this founding principle constitute a breach of France’s civil peace and order.<sup>170</sup> However, France and the EU have differing characterizations of conduct warranting expulsion under the Freedom of Movement Directive. These differences reveal the apparent disconnect within the implementation of the doctrines.

France relies on two main sources of law and legislation within the French Civil Code in forming their internal authority for the expulsion of the Roma and carrying out the Freedom of Movement Doctrine.<sup>171</sup> The heading of Title 1 Book V of the Code of Entry and Stay of Aliens and Asylum reads, “The obligation to leave French territory and the prohibition of return on French territory.”<sup>172</sup> Chapter 1, Title 1, Book V of the

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169. *Id.*

170. 1958 CONST. art. 1 (Fr.); *see also Face à la xénophobie et à la politique du pilori : liberté, égalité, fraternité* [Faced with Xenophobia and Politics of the Pillory: Freedom, Equality, Fraternity], GISTI (Aug. 4, 2010), <http://www.gisti.org/spip.php?article2016>. This language of the Constitution gives rise to the issue of whether France intends through its use of the word “citizen” to specify French citizens as opposed to EU citizens. Its use of the word “citizen” here and “alien” in the subsequent legislation would indicate that the language here is restricted only to citizens of the French Republic.

171. In the course of researching French laws and statutes the author discovered that very few French laws are translated into the English language. Therefore, the author was unable to probe any additional laws to the ones mentioned above for their potential significance on the topic. This section is not meant to indicate an exhaustive list of the French laws pertinent to the Roma Campaign, but rather notes several significant ones that were also available in English translated versions. Akopian & Adames, *supra* note 83. The country’s most blatant, and perhaps most humiliating declaration of its authority on deportation of the Roma was the leak of the “circulaire,” a certain type of decree, which was issued by the French Minister of Interior and leaked to the public. *Id.* This decree was addressed to the “préfectures,” which are the French immigration agencies, or police chiefs. *Id.* It read in part “300 camps of illegal settlements must be evacuated within three months; Roma camps are a priority. It is down to the prefect [state representative] in each department to begin a systematic dismantling of the illegal camps, particularly those of the Roma.” *Id.* The memo established not only that the Roma are being specifically targeted and discriminated by the government but also that the expulsions are essentially “collective.” *Evacuation des campements illicites*, *supra* note 15.

172. *Projet de loi du 12 octobre 2010 relatif à l’immigration, à l’intégration et à la nationalité tel qu’adopté en 1ère lecture à l’Assemblée nationale n° 542* [Bill of October

French Civil Code covers “[c]ases in which an alien may be subject to an obligation to leave French territory and a ban on returning back to French soil.”<sup>173</sup> Article L511-1-I states that the administrative authority may require a foreign non-national of a Member State of the Union to leave French territory for the following reasons:

1. If the alien cannot be justified legally entered the French territory.
2. If the alien has remained in French territory beyond the validity of his visa or at the expiration of three months from its entry without holding a first residence permit.
3. If the alien has not applied for renewal of his temporary residence permit and remained in French territory upon expiry of this title.<sup>174</sup>

Further, “the administrative authority may, by reasoned decision, decide that the foreigner is obliged to leave French territory *immediately* if: [1] the behavior constitutes a threat to public order.”<sup>175</sup> However equally as important is Article L511-3-I, the Code’s “Abuse of Law” clause, which has recently been amended to read:

The competent administrative authority may, by reasoned decision requiring a national of a Member State of the Union, another state party to the Agreement on the European Economic Area or the Swiss Confederation or a member of his family to leave French territory when it finds . . . [2] as his residence constitutes an abuse of law. It constitutes an abuse of law to renew stays of less than three months in order to remain on the territory while the requirements for a stay of longer than three months are not met. It also constitutes an abuse of right living in France with the primary aim to benefit from social assistance systems including health welfare and public social services.

The foreigner has to fulfill the obligation that has been made to leave French territory, a period of which, except in an emergency, cannot be less than thirty days after notification. Exceptionally, the administrative authority may grant a period of voluntary departure in excess of thirty days.<sup>176</sup>

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12, 2010 on Immigration, Integration and Nationality, as adopted in first reading in the National Assembly] [hereinafter Bill on Immigration, Integration and Nationality], *available at* <http://www.assemblee-nationale.fr/13/ta/ta0542.asp>.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

French national legislation implicitly recognizes the right of Europeans to move freely within the Union area, provided that these persons do not represent an unreasonable burden on the countries that they visit. However, it becomes clear from reviewing these provisions that France has difficulty accepting a pure right for underprivileged minority populations, particularly the Roma. This is because such groups can consistently evade French rules by extending their three month stays with the intention of benefitting from social assistance systems, thus automatically “threatening public order” according to the French government.

French laws apply a broader interpretation of “threats to public order” and “abuse of law,” and attach stricter punishment for this conduct than the EU does through the Freedom of Movement Directive.<sup>177</sup> France would allow for an immediate expulsion upon discovering an alien’s threat to public order or “abuse of law,”<sup>178</sup> where the EU would require in individualistic review process based on proportionality and a balancing analysis of the potential threat of an individual.<sup>179</sup> While the EU does not consider reliance on social systems to be an immediate cause for expulsion, France considers it a blatant and automatic abuse of law. Furthermore, Article 28 of the Freedom of Movement Directive explicitly provides protections against expulsion. This Article requires that a Member State take consideration of factors such as “how long the individual has resided in the territory, social and cultural integration into the host Member State, and the individual’s economic situation.”<sup>180</sup> These factors must be carefully considered according to the EU, but in France these factors may be dispositive reasons to automatically deport an individual without further consideration.

This problem exposes a severe disconnect between the EU interpretation of conduct warranting expulsion and the behavior that France sees as an abuse of law requiring immediate expulsion under its recently amended Civil Code. This disconnect contributes greatly to the current inability to reconcile both legal regimes into an efficient and orderly mechanism for minority protection of Roma.

#### IV. SPECIFIC VIOLATIONS UNDER EU LAW

While France has certain domestic legal grounds for taking action against aliens within French territory, it has violated EU law through its flawed implementation of mechanisms which complement its campaign

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177. *See id.*; see Freedom of Movement Directive, *supra* note 76, art. 27.

178. Bill on Immigration, Integration and Nationality, *supra* note 172.

179. Freedom of Movement Directive, *supra* note 76.

180. *Id.* art. 28.

against Roma. These mechanisms are a contravention of France's obligations under European law in three specific ways.

First, France's participation in a "collective expulsion" is in direct violation of the Charter of Fundamental Rights of the European Union.<sup>181</sup> Expulsions carried out by French officials are in direct violation of the Charter's Article 19 prohibition on collective expulsions.<sup>182</sup> The European Convention on Human Rights has defined collective expulsions and it has been interpreted by the European Court of Human Rights to forbid "any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the case of each individual of the group."<sup>183</sup> Thus, collective expulsions are banned under European law, including circumstances where such measures are "targeted solely at those who have overstayed the three month residency period allowed under the Freedom of Movement Doctrine and have failed to register with local authority."<sup>184</sup> This is precisely what France is attempting to achieve in forcing the deportation of Roma who have overstayed their welcome.<sup>185</sup>

Second, the French government's recent consideration of a highly controversial immigration bill could have serious indirect effects on the Roma population as well as represent additional violations of EU law. The French National Assembly recently voted 294 to 239 to adopt an Immigration Bill [No. 542] ("the Bill") which could make it easier to expel illegal residents and strip recently naturalized citizens of their French passports.<sup>186</sup> Proponents of the Bill argue that it will help to decrease rampant crime in the country and also give local authorities greater power to dismantle and evacuate illegal settlements.<sup>187</sup> The provisions were ordered by President Sarkozy after an immigrant-populated suburban neighborhood in Grenoble exploded in July 2010 resulting in several days of rioting and gunfire aimed at police.<sup>188</sup> However, several human

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181. *Deportation of Roma Immigrants by French Authorities is Illegal: Equal Rights Trust*, BAUU INST. (Sept. 10, 2010, 10:08 PM), [http://indigenouspeoplesissues.com/index.php?option=com\\_content&view=article&id=6607:deportation-of-roma-immigrants-by-french-authorities-is-illegal-equal-rights-trust&catid=56:europe-indigenous-peoples&Itemid=78](http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=6607:deportation-of-roma-immigrants-by-french-authorities-is-illegal-equal-rights-trust&catid=56:europe-indigenous-peoples&Itemid=78) [hereinafter *Equal Rights Trust*].

182. CFR, *supra* note 75, art. 19.

183. *Conka v. Belgium*, App. No. 51564/99, 34 Eur. H.R. Rep. 54 (2002).

184. *Equal Rights Trust*, *supra* note 184.

185. *France: Reject Anti-Roma Bill*, HUMAN RIGHTS WATCH (Sept. 27, 2010), <http://www.hrw.org/en/news/2010/09/14/eu-key-intervention-roma-expulsions?print> (quoting Judith Sunderland) [hereinafter Sunderland].

186. Cody, *supra* note 44, at A12.

187. Riley, *supra* note 27.

188. Cody, *supra* note 44.

rights organizations have criticized this proposal because it unduly targets minority populations, particularly Roma.<sup>189</sup>

Perhaps the greatest consequence of the Bill for the Roma populations is its ability to permit the expulsion of EU citizens when their presence in France constitutes "an abuse of rights."<sup>190</sup> This would include those who renew three month stays for the purpose of staying in France even though they do not fulfill the employment requirement for long term stay as well as those who stay in France with the purpose of benefitting from the welfare system.<sup>191</sup> Thus, this Bill applies directly to Roma migrants whose participation in the informal economy renders them unable to fulfill employment requirements and it violates the Free Movement Directive's protection of citizens from expulsions based solely on economic reasons.<sup>192</sup>

The Bill also withdraws acquired French citizenship upon conviction of certain crimes, acting as another barrier to the Roma's ability to successfully integrate. The Bill would deport EU citizens for crimes such as repeated acts of theft, aggressive begging, or illegally occupying land.<sup>193</sup> This facet of the Bill would target and immediately deport Roma who participate in any level of theft or begging without allowing the individual to undergo the individual review required by the Free Movement Directive.<sup>194</sup>

The Bill is also attacked as effectuating a reduction in the rights of detained migrants, many of whom are Roma.<sup>195</sup> Immigration protection advocates expressed concern over the provisions of the bill that are designed to frustrate judicial oversight of expulsion orders, similar to those that are currently being handed down against Roma families in connection with the deportation campaign.<sup>196</sup> Under current French law, judges annul up to one-third of government expulsion orders, but under the new provision judges would have considerably less time to review expulsions, giving the government more opportunity to deport immigrants and EU citizens alike without fulfilling the requirements of Article 7 of the Freedom of Movement Doctrine.<sup>197</sup>

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189. Riley, *supra* note 27.

190. *France: Reject Anti-Roma Bill*, *supra* note 185.

191. *Id.*

192. Freedom of Movement Directive, *supra* note 76.

193. Riley, *supra* note 27.

194. Freedom of Movement Directive, *supra* note 76, art. 27.

195. Sunderland, *supra* note 185.

196. Cody, *supra* note 44.

197. *Id.*

If these controversial provisions are included in the French Bill, then they have the potential to lead to serious rights violations of the Roma.<sup>198</sup> The proposed legislation's apparent focus on the Roma comes as a surprise to government officials as the Bill is being considered during a time when the Commission has already threatened legal action over France's expulsions of Roma.<sup>199</sup>

Finally, France's use of voluntary deportations in conjunction with the recording of biometric data in a specialized database is a direct violation of Roma legal rights protected under the EU. Voluntary deportations in the case of EU citizens take the form of a specialized grant called "humanitarian repatriation help" and represent the process whereby the French administration issues a payment of about three hundred Euros per person in exchange for voluntarily leaving the country.<sup>200</sup> A database known as OSCAR (Tool for Repatriation Aid Statistics and Control—"Outil de Statistiques et de Contrôle de l'Aide au Retour" in French) was created by decree in October of 2009 and has been instrumental in the issuance of such payments.<sup>201</sup> OSCAR aims to collect biometric data,<sup>202</sup> digital photographs, and fingerprints of foreigners who are expelled from the country or leave it voluntarily (through programs such as voluntary deportation) in order to avoid the disbursement of double payment if that individual happens to return on a subsequent occasion.<sup>203</sup>

The French government decided to set up this system for EU Citizens at the end of 2006, anticipating the consequences of Romania and Bulgaria's accession to the EU.<sup>204</sup> In 2007, an amendment to the French Immigration Act allowed for the biometric registration of beneficiaries of state assistance, providing for the legislative basis for creating and maintaining the OSCAR file.<sup>205</sup> Since then, Romanian and Bulgarian citizens

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198. Sunderland, *supra* note 185.

199. *Id.* ("Political commentators argue that it 'smacks of a populist move at the expense of the most discriminated against and vulnerable people in Europe today.'").

200. *Humanitarian Fingerprinting*, *supra* note 165 (humanitarian repatriation provides for an additional 100 Euro for each accompanying child).

201. *Id.*

202. *Id.* A general term used to refer to any computer data that is created during a biometric process. *Id.* This includes samples, models, fingerprints, similarity scores, and all verification or identification data excluding the individual's name and demographics. Essentially the program represents a process of "humanitarian fingerprinting." *Id.*

203. *Id.*

204. *Id.*

205. *OSCAR ou le déni de citoyenneté européenne des Roms - Communiqué commun du GISTI, d'IRIS et de la LDH [OSCAR or Denial of Citizenship European Roma Joint Communique of GISTI, IRIS, and LDH]*, LES IRIS (Sept. 21, 2010),

have been unduly targeted by the program, constituting only four hundred participants in the humanitarian repatriation help in 2005 and 2006, three thousand participants in 2007, more than ten thousand in 2008, and more than twelve thousand in 2009.<sup>206</sup> Thus, this program encourages treating Bulgarians and Romanians as second-class EU citizens, reinforcing the stereotype that they pose a threat to French public order.<sup>207</sup>

OSCAR is a tool for the French government to keep tabs on its campaign to dismantle the Roma.<sup>208</sup> The justification for the program lies in its ability to help the French government avoid distributing double payouts of humanitarian assistance funds to migrants returning to the country for multiple of three month periods.<sup>209</sup> French officials and police are able to force the Romanian and Bulgarian Roma to accept the humanitarian return assistance in return for donating biometric registration rather than incurring forced deportation.<sup>210</sup> The OSCAR strategy essentially compels Roma into documenting their personal information with the government in return for a voluntary (paid) deportation, thus making it more difficult for Roma to remain unnoticed when leaving or being deported.<sup>211</sup>

Three French NGOs filed complaints before the Conseil d'Etat to obtain the annulment of the OSCAR database back in 2009.<sup>212</sup> Their legal claims argued that the biometric data and the duration of storage (five years) are arbitrary and disproportionate given the purpose of the database, which is merely the management of the grant disbursement to ensure that individuals do not receive funds twice.<sup>213</sup>

#### CONCLUSION

The primacy of EU laws on freedom of movement over the national laws of France can only be reconciled if the scope and reach of EU laws are themselves limited.<sup>214</sup> This is likely the most important EU law prin-

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<http://www/iris.sgdg.org/info-debat/comm-oscar0910.html> [hereinafter *OSCAR or Denial of Citizenship*].

206. *Humanitarian Fingerprinting*, *supra* note 165.

207. *Id.*

208. *See id.*

209. *OSCAR or Denial of Citizenship*, *supra* note 205.

210. *Id.*

211. *Id.*

212. *Humanitarian Fingerprinting*, *supra* note 165 (clarifying the best translations of the NGO's: EDRI, European Digital Rights, GISTI, an association defending the rights of migrants and IRIS, the association Imagine an Internet solidaire).

213. *Id.*

214. *See Eckes*, *supra* note 168.

principle of all.<sup>215</sup> The overall scope of EU directives must be subject to limitations in order for proper implementation to result.<sup>216</sup> France's current misinterpretation of EU laws on citizenship and free movement is a primary example of how substantive interpretations of EU provisions are highly relevant to the processes of implementation and drawing boundaries in the EU rule of law.<sup>217</sup>

The xenophobic anti-Roma campaign which has faced strong reactions from diverse sources within France and abroad must be stopped.<sup>218</sup> Roma citizens of the EU, like all other citizens, maintain the right to move and settle in any European country, and must abide by the rules of the Freedom of Movement Directive.<sup>219</sup> The French government has the primary responsibility to develop an implementation policy that guarantees respect for the human dignity and rights of the Roma that also maintains allegiance to its sovereign state law. However, the process remains a two way street. The Roma community needs to demonstrate to the French authorities an increased interest in civic responsibility in exchange for the government's effort to make opportunities available to them.<sup>220</sup> It is clear that Roma cannot lift themselves out of this current predicament on their own by simply becoming productive members of society and immediately dispelling the notions of anti-Gypsyism.<sup>221</sup> Rather, the process will require an "across the board" commitment to Roma inclusion and systemic changes in light of the pervasive anti-Roma sentiment.<sup>222</sup>

The level of problems facing Roma has led to recent proposals that the EU adopt a Roma Integration Directive specifically aimed at encouraging the integration of Roma.<sup>223</sup> The proponents of these proposals believe

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215. Eeckhout, *supra* note 78, at 1521.

216. *Id.*

217. *Id.*

218. *Humanitarian Fingerprinting*, *supra* note 165. Xenophobia is defined as fear and hatred of strangers or foreigners or of anything that is strange or foreign. *Xenophobia*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/xenophobia> (last visited Feb. 18, 2012).

219. Lettre ouverte au Pierre Lellouche, secrétaire d'Etat aux affaires européennes, Les Roms roumains, citoyens de l'Union européenne, ont comme tous les autres le droit de circuler et de s'installer dans tous les pays d'Europe [Open Letter to Sec'y of State for Eur. Affairs, Roma Romanian Citizens of the European Union have the Right to Move and Settle in all European Countries] (Feb. 23, 2010), *available at* <http://www.gisti.org/spip.php?article1898>.

220. Uzunova, *supra* note 1, at 322.

221. *Id.*

222. *Id.*

223. THE SITUATION OF ROMA IN AN ENLARGED EU, *supra* note 30, at 44. The EU Network of Experts in Fundamental Rights proposed this idea in its "Report on the situation of Fundamental Rights in European Union" in 2004. *Id.* This network was established by



there is sufficient evidence to establish that without such a Directive, there will not be sufficient impetus for EU Member States to integrate Roma.<sup>224</sup> However, this proposal also raises a number of legal and practical questions as to whether legislation targeting one specific ethnic minority group would be desirable over a general framework of equal treatment that could benefit all minorities.<sup>225</sup>

Furthermore, the Roma situation highlights several critical issues that are facing France in particular and the EU on a broader scale. First, the violence and rioting that is occurring among migrant and native populations points to a lack of integration among the European populations as well as a major failure on the part of European officials to facilitate these necessary levels of integration.<sup>226</sup> Furthermore, the concept of freedom of movement, which seeks a fully integrated European Union, has realistically been met with serious reluctance by Member States, particularly to incorporate Romanians and Bulgarians.<sup>227</sup> Unfortunately, the plight of the Roma within France represents only a small portion of the grievances felt by immigrants and minorities throughout the EU as a result of this general reluctance.<sup>228</sup>

However, within the broader borders of the EU, a “constellation of state subunits” will always raise claims for distinctiveness in this manner.<sup>229</sup> The push for “Union” rule in matters of immigration, free movement, and minority rights prompts a necessary reallocation of the power necessary to decide how to handle admission and integration.<sup>230</sup> This undoubtedly creates a tension in the EU between the competing interest of state subunits in distinctiveness and of the interest of migrants in integration.<sup>231</sup> This is precisely the tension that has exposed itself through Roma

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the European Commission at the request of the European Parliament and charged with monitoring fundamental rights in the Member States and in the Union and comprises leading jurists from all of the EU Member States. European Commission, Directorate General for Employment and Social Affairs.

224. *Id.* at 7.

225. *Id.*

226. Akopian & Adames, *supra* note 83.

227. *Id.*

228. *Id.*

229. Strumia, *supra* note 82, at 971.

230. *Id.*

231. *Id.* at 970–76. This analysis draws a curious parallel between the European Union and the United States and the ways in which “national distinctiveness” orients citizenship and immigration policies in both organizations. *Id.* Strumia discusses that external borders in the United States mark a civic and cultural community so the United States pushes for federal rule in immigration and citizenship, whereas the EU pushes for member states’ independence in immigration and citizenship because the common borders in the EU enclose a community of law in which European citizens participate as economic ac-

struggles throughout the EU Member States like France, which seeks to maintain its national identity and distinctiveness. This Note's discussion of relevant provisions addressing free movement and integration suggests that European law has influenced the status of migrants in the EU by setting common standards for their rights of residence and, in that respect, the internal borders are thinning in Europe.<sup>232</sup> However the apparent struggle throughout the process begs the question: do European laws completely constrain EU Member States' ability to discriminate between their own nationals and nationals of other Member States?<sup>233</sup> While this question may be unanswerable until future evolutions in EU integration come to fruition, there is no doubt that Member States must retain at least some measure of autonomy in adopting regulations that pertain to the inclusion and exclusion of their national community.<sup>234</sup> How far each dynamic will extend is for time to tell, but the inadequacies and struggles in implementing free movement rights must now serve as a tool in paving the way for further EU integration.

The EU has made progress in moving toward setting "common standards" for the treatment of minority populations and citizens alike through the Freedom of Movement Directive. This has induced a "thinning impulse for regulatory internal borders" in further pursuit of the Schengen system.<sup>235</sup> However, the EU and its Member States must continue the process of ensuring fair treatment for EU citizens who reside legally in European territory.<sup>236</sup> The EU must follow through on its promise to work on promoting the economic and social integration of Roma in all EU Member States through the use of a Roma Task Force. It must get to the root of the problem by encouraging stronger national efforts in

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tors while it is the internal borders that guard distinct cultural and civic communities. *Id.* As a result, the author posits that the structure for rules of admission, treatment of immigrants, and integration differ while the national distinctiveness variable alters the relative weight of states' interest in distinctiveness and immigrants' interests in inclusion. *Id.* 232.

In the field of access to citizenship, the contrast between the United States and the European Union is remarkable: thin border in the United States, where the route to federal citizenship rights is singular regardless of state residence, contrasted with extremely thick borders in the European Union, where citizenship rights attach according to the terms of multiple diverging regimes of law that impose requirements differing in quantity and quality.

*Id.* at 1011.

233. *Id.*

234. *See id.* at 1017.

235. *Id.* at 1001.

236. Presidency Conclusions, TAMPERE EUR. COUNCIL § A.III para. 18 (Oct. 15–16, 1999), available at [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm).

providing access to the labor market and eradicating widespread poverty.<sup>237</sup> Once the EU is able to carefully reexamine how EU funds can strengthen national measures for Roma integration, it will finally be able to truly implement the Free Movement Doctrine for the largest European minority.<sup>238</sup> The EU must use the current situation in France as a symptom of the problem and as an example of why there is a necessity for targeted policies grounded on integrated rights and equality based standards of promoting social cohesion. If the EU is able to properly enforce and implement the procedural safeguards aimed at minority integration and free movement, it will take the next step in delivering to *all* citizens on the sacred promise of *civis europaeus sum*.

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237. Reding, *supra* note 27.

238. *Id.*

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