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Conflict Between Declared Roma Minority Rights and European Practice: Why the Legal Framework Doesn't Work in Reality

ALENKA KUHELJ*

Roma in Europe continue to be victims of racial discrimination, xenophobia and intolerance. Despite formal legal efforts and declarations from the European Union (EU), the European Council, and EU member states where large numbers of Roma reside, real shifts have yet to occur. This article will attempt to elucidate the factors underlying the actual lack of improvement or even stagnation of Roma, as well as determine who is responsible for the situation in Europe, where a policy of publicly declared concern for Roma rights appears side by side with blatant violations. Cases of systematic persecution and degradation of the Roma minority will be highlighted, as will the question of the political obligation to protect human rights on the levels of the individual states, the EU and the European Court of Human Rights (ECHR). This article will present the declarative "European" stance on discrimination towards Roma on the one hand, and the actual discrimination that occurs outside the framework of projects and programs in some European states on the other. Despite the efforts that have been made, Roma issues are still entrenched in the national, regional and local levels of political, legal, economic and social-educational structures.

I. INTRODUCTION

Roma are the largest and oldest European ethnic minority.¹ Roma in Europe continue to be victims of racial discrimination,

* Associate Professor of Law, University of Ljubljana, alenka.kuhelj@fu.uni-lj.si. "What should move us to action is human dignity: the inalienable dignity of the oppressed, but also the dignity of each of us. We lose dignity if we tolerate the intolerable." - Dominique de Menil.

1. AMNESTY INT'L, STOP FORCED EVICTIONS OF ROMA IN EUROPE (2010), available at <http://www.amnesty.org/es/library/asset/EUR01/005/2010/es/591718cb-d801-410d-9b44-1f9374c8e92a/eur010052010en.pdf> [hereinafter STOP FORCED EVICTIONS OF ROMA IN EUROPE].

xenophobia and intolerance. Their stigmatisation is tied to a number of factors. Gail Kligman² has broken these factors down into two specific characteristics: racial factors (darker skin tone) and social behaviours deemed inappropriate by “others, non-Roma.” This should be a cause for concern, especially if one takes into account the fact that approximately eighty percent of the Roma population (or nearly ten million people) resides in the territory of EU member and candidate states.³ Despite formal legal efforts and declarations from the EU, the European Council and EU member states where large numbers of Roma reside, real shifts have yet to occur. This article will attempt to elucidate the factors underlying the actual lack of improvement or even stagnation of Roma, and to determine who is responsible for the situation in Europe, where a policy of publicly declared concern for Roma rights appears side-by-side with blatant violations. Cases of the systematic persecution and degradation of the Roma minority will be highlighted, as will the question of the political obligation to protect human rights on the levels of the individual states, the EU and the ECHR.

A question that arises concerns the ECHR’s ability to act as a human rights protector in the face of public opposition. As Gerald Rosenberg argues, courts’ decisions can bring about social change, however small, as judges are not in the same positions as elected and appointed officials, who are often fearful of political repercussions and seldom willing to fight for unpopular causes or to protect the rights of disliked minorities.⁴ However, other studies have shown that the “hollow hope” argument overstates the limits of litigation strategies for social change.⁵ As the most recent literature highlights, one of the major obstacles to achieve full Roma equality is the absence of a Roma civil rights movement.⁶ Equally problematic is the disconnect between individual victories in court

2. Gail Kligman, *On the Social Construction of “Otherness”: Identifying “The Roma” in Post-Socialist Communities*, 7 REV. OF SOCIOLOGY, 61, 65, available at <http://www.akademai.com/content/hw26v823p7u500q2/fulltext.pdf>.

3. STOP FORCED EVICTIONS OF ROMA IN EUROPE, *supra* note 1.

4. GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 1-8 (Benjamin I. Page ed., 1991).

5. Malcolm M. Feeley, *Hollow Hopes, Flypaper, and Metaphors*, 17 LAW & SOC. INQUIRY 745, 749 (1992).

6. Erica Rosenfield, *Combating Discrimination Against the Roma in Europe: Why Current Strategies Aren’t Working and What Can Be Done*, HUM. RTS. AND HUM. WELFARE J. 122, available at <http://www.du.edu/korbel/hrhw/researchdigest/minority/MinorityRights.pdf> (last visited Sept. 3, 2013).

and the lack of broad political support for Roma rights.⁷ As Rosenfeld argues, any top-down, government-sponsored initiative for improving Roma rights is met with stiff political resistance at the local level.⁸ State policy is developed through national discussion—speaking of the individual states’ Roma policy coincides with questions of nationalism, national homogenization, and assimilation, which often become state policy. A well known historian highlights, “The situation of minorities . . . significantly change[s] once nationalism penetrate[s] into state ideology . . . assimilation often became state policy . . . It is enough to recall the assimilation policies of the Second German Reich, Tsarist Russia, the Hungarian lands, France and Italy.”⁹ Taking into account this history, today’s French, Italian and Hungarian anti-Roma politics and policy (which will be discussed later) should not be surprising.

Due to their specific way of life, which can primarily be traced to the retention of a nomadic way of life and general exclusion from “modern societies,” Roma are not wanted in any European state.¹⁰ It should also be noted that of the eleven to fourteen million Roma currently living in Europe, nine million have EU citizenship. Keeping in mind that “citizenship should be a forum where people transcend their differences, and think about the common good of all citizens,”¹¹ we ask ourselves: why does Europe take such a step-motherly stance towards Roma, and what is the nature of the vicious cycle in which issues of their existence and dignity are trapped?

In this article, the Roma situation will be presented as a multi-layered problem. As one can conclude from the almost daily reports

7. James A. Goldston, *The Struggle for Roma Rights: Arguments that Have Worked*, 32(2) HUM. RTS. Q. 311, 311-25. (2010); Michael Privot, *Real political will is needed for Roma*, EUROPEANVOICE, (June 26, 2013), available at <http://www.europeanvoice.com/article/2013/june/real-political-will-is-needed-for-roma/77647.aspx>; Tracey Gurd, *Time to Turn Legal Victories into Better Lives for Roma*, OPEN SOCIETY FOUNDATIONS (Apr. 7, 2011), available at <http://www.opensocietyfoundations.org/voices/time-turn-legal-victories-better-lives-roma>.

8. Rosenfeld, *supra* note 6, at 124.

9. MIROSLAV HROCH, *National Minority Movements and their Aims*, in *COMPARATIVE STUDIES IN MODERN EUROPEAN HISTORY: NATION, NATIONALISM, SOCIAL CHANGE 189, 199-200* (2007).

10. Presseurop, *Roma and Africans not welcome*, IRISH EXAMINER (Dec. 10, 2009), available at <http://www.presseurop.eu/en/content/news-brief/153501-roma-and-africans-not-welcome>.

11. WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS*, 175 (1995).

of new Roma rights violations, on the EU level, discrimination issues are linked to pompously declared measures that resound in the media and which, regrettably, are relatively unsuccessful. Additionally, the EU's policy of drawing on European funds to finance anti-discrimination measures has been a failure, with funds earmarked for these purposes going largely unused, as we will see below.

The ECHR has met somewhat greater success by rendering court decisions against countries that violate Roma rights, and has made a contribution to improving the status of individuals who have experienced discrimination. One example that deserves mention in this regard is the controversial practice of sterilizing women.¹² ECHR demonstrated that it is a strong defender of Roma rights by condemning mass eviction of Roma from their homes, located on public terrain—removal would have caused homelessness and governments were warned that they could not simply deem the housing needs of socially disadvantaged groups as “irrelevant.”¹³ Yet, in and of themselves, these decisions mean little, as the countries responsible for the violations do not abide by the decisions and fail to do what the court demands of them all too often.

In this context, another valid question concerns the actions of the EU and the European Council regarding “incorrigible” states that refuse to put an end to violations despite being given warnings. Warnings, it seems, are where the actions of European institutions begin and end. This article will present the declarative “European” stance on discrimination towards Roma on the one hand, and the

12. See *V.C. v. Slovakia*, App. No. 18968/07, Eur. Ct. H.R. (2011), which sadly, was nothing new in Europe. Closely connected to the problem of forced sterilization was the case of *K.H. and Others v. Slovakia*, App. No. 32881/04, Eur. Ct. H.R. (2009), where the applicants—eight Roma women—complained of not being able to obtain photocopies of their medical records, which they needed in order to establish reason for their infertility. There are also other cases illustrating the discrimination against Roma in education, including *D.H. and Others v. Czech Republic*, App. No. 57325/00 47 Eur. H.R. Rep. 3 (2007); *Oršuš and Others v. Croatia*, App. No. 15766/03, Eur. Ct. H.R. (2010); and *Sampanis and Others v. Greece*, App. No. 32526/05, Eur. Ct. H.R. (2008), in which the court condemned systemic and unlawful segregation of children of Roma origin from mainstream education. Another example is Roma housing discrimination, as in the case of *Yordanova and Others v. Bulgaria*, App. No. 25446/06, Eur. Ct. H.R. (2012).

13. Lourdes Peroni, *Roma Evictions Stopped in Strasbourg: Yordanova e.a. v. Bulgaria*, S STRASBOURG OBSERVERS (May 8, 2012), available at <http://strasbourgobservers.com/2012/05/08/roma-evictions-stopped-in-strasbourg-yordanova-e-a-v-bulgaria/>.

actual discrimination that occurs outside the framework of projects and programs in some European states on the other. Despite the efforts that have been made, Roma issues are still entrenched in the national, regional and local levels of political, legal, economic and social-educational structures. This article aims to point out the multi-layered structure of declared rights and actual inequality in today's democratic Europe through the treatment of Roma.

II. IS THERE A PLACE FOR ROMA IN EUROPE?

With the fall of communism over two decades ago and the accession of the first Eastern European states to the European Union over eight years ago, Western Europe has been forced to deal with massive inflows of Eastern Europeans.¹⁴ Ethnic Roma could also be found among these movements,¹⁵ in particular, citizens of Bulgaria and Romania who are now EU citizens. Conditions in their home countries had become unbearable, with the situation facing Roma drastically deteriorating under the political and economic regime of neoliberalism.¹⁶ The previous communist regime had generated employment for Roma and seen to their inclusion in society, more or less by force.¹⁷ Communist authorities forced Roma and non-Roma to live together; any protests or expressions of dissatisfaction were brutally oppressed, which is why one gets the impression that in this period, communism successfully created conditions for the peaceful co-existence of the minority and majority populations.¹⁸ One result of this compulsion was a superficial appearance of peace and a lack of conflicts.¹⁹ But when the system collapsed, so too did the peaceful co-existence that was supposedly created.²⁰ Greenberg identified the problem of Roma in

14. *Britain facing new eastern Europe immigration surge*, THE TELEGRAPH (Oct. 21, 2012), [available at](http://www.telegraph.co.uk/news/uknews/immigration/9637967/Britain-facing-new-eastern-Europe-immigration-surge.html) <http://www.telegraph.co.uk/news/uknews/immigration/9637967/Britain-facing-new-eastern-Europe-immigration-surge.html>.

15. Manuella Kropp & Anna Striethorst, *The Migrations of Roma in the European Union - an Ethnic Minority as the Sport of European Politics*, TRANSFORM! (Oct. 2012), [available at](http://transform-network.net/journal/issue-102012/news/detail/Journal/the-migrations-of-roma-in-the-european-union-an-ethnic-minority-as-the-sport-of-european-politic.html) <http://transform-network.net/journal/issue-102012/news/detail/Journal/the-migrations-of-roma-in-the-european-union-an-ethnic-minority-as-the-sport-of-european-politic.html>.

16. Jack Greenberg, *Report on Roma Education Today: From Slavery to Segregation and Beyond*, 110 COLUM. L. REV. 919, 925 (2010).

17. *Id.*; see Florinda Lucero & Jill Collum, *The Roma: During and After Communism*, TOPICAL RESEARCH DIGEST, 98, 98 (2006).

18. See Lucero & Collum, *supra* note 17, at 98–99.

19. *Id.* at 98.

20. Greenberg, *supra* note 16, at 925.

the communist and post-communist period in Eastern Europe: Communist regimes, intending to destroy Roma lifestyle and force assimilation, put an end to Roma wanderings and incorporated them into socialist economies.²¹ However, when the Soviet Union dissolved, so did its economy and those of its satellite nations.²² The Roma were unequipped to survive in the market systems that followed, and they fell upon exceedingly hard times.²³

The newly instated right of free expression as a fundamental right contributed not to the emergence of a peaceful dialogue between non-Roma and Roma, but to an agitated, sometimes even violent “debate” between oppressor and oppressed.²⁴ Still today, a number of Roma living in Eastern Europe mourn the fall of communism.²⁵ For them (and especially for those living in rural areas), the fall of communism meant privatisation and the redistribution of land, a development with severe ramifications for Roma.²⁶ They lost “the status of farmers” and were left without means to survive.²⁷ With that, they entered into a cycle of poverty: without money they could not support their families, they suffer from hunger, are unable to send their children to school if doing so means having to pay for transportation to the nearest school, etc. For Roma in urban areas and on the periphery of urban areas, the change of political regime meant the loss of employment in most cases. Unemployment forced them to take whatever jobs were available—even temporary jobs and jobs on the black market.²⁸

Another factor contributing to intolerance and even violence towards immigrants and other “vulnerable” minorities, including Roma, in Europe is the rise of extreme right-wing political parties. UN Human Rights Watch stresses that because of the power of the extreme right in Europe, the system for protecting human rights and freedoms is facing an ever-greater threat.²⁹ Rising

21. *Id.*

22. *Id.*

23. *Id.*

24. *Roma in Europe*, WHAT’S WORKING (last visited Jan. 31 2014), <http://www.whatsworking.edu/roma>.

25. Greenberg, *supra* note 16, at 928–29.

26. UN High Commissioner for Refugees, *Guidelines Relating to the Eligibility of Slovak Roma Asylum Seekers* (Feb. 10, 1998), available at <http://www.refworld.org/docid/3ae6b31c54.html>.

27. *See generally id.*

28. Will Guy, *Romani Identity and post-Communist Policy*, in BETWEEN PAST AND FUTURE: THE ROMA OF CENTRAL AND EASTERN EUROPE 3, 22–23 (Will Guy ed., 2001).

29. Benjamin Ward, *Divided We Fall: Intolerance in Europe Puts Rights at Risk*, HUMAN

unemployment and the financial crisis have caused nationalism to flare up; in a number of places, its rhetoric takes the tone of the Nazi-fascist politics of pre-war populism and stresses the negative role of minorities vis-à-vis the majority population.³⁰ In most cases, in Eastern and Central European countries and also increasingly in Western European countries, the Roma minority is depicted as being responsible for the current situation.³¹ Some political parties are no longer even attempting to mask their xenophobia and growing hatred towards minorities, but are defending their actions by appealing to the protection and interests of the majority nation.³²

One can now find parties in parliaments throughout Europe that not only publicly support, but also actively participate in the expulsion of Roma. Parties that advocate an anti-Roma, anti-minority, or anti-immigration policy include the extreme nationalist and Nazi Jobbik party in Hungary (which won forty-seven seats in the 2010 election and, thus, became the third largest party in the Hungarian Parliament).³³ The party proudly advertises rallies against Roma settlements, violence and threats aimed at Roma, as well as the foundation of paramilitary groups—which, though unconstitutional, are a very real occurrence in today's Hungary.³⁴ Another party with similar leanings is the Attack party, which is currently the fourth largest party in Bulgaria.³⁵ Both parties call for the degradation of Roma, the forced removal of Roma settlements,

RIGHTS WATCH (Feb. 14, 2013), <http://www.hrw.org/print/news/2013/02/14/divided-we-fall-intolerance-europe-puts-rights-risk>.

30. Katie Harris, *For Europe's Roma, Racism Gets Worse in Tough Economic Times*, TIME, Aug. 21, 2013, available at <http://world.time.com/2013/08/21/roma-in-europe-age-old-discrimination-worsens-in-tough-economic-times/>.

31. Ward, *supra* note 29, at 4.

32. *Profile: Greece's far-right Golden Dawn party*, BBC NEWS EUROPE (Oct. 1, 2013), available at <http://www.bbc.co.uk/news/world-europe-24346993>; Britta Schellenberg, *Strategies Against the Radical Right and For a Pluralist, Forward-Looking Europe*, in IS EUROPE ON THE "RIGHT" PATH?, RIGHT-WING EXTREMISM AND RIGHT-WING POPULISM IN EUROPE 309, 314 (Nora Langenbacher, Britta Schellenberg & Karen Margolis eds., 2011), available at <http://library.fes.de/pdf-files/do/08338.pdf>.

33. 2010 Hungary Parliamentary Elections Results (Apr. 25, 2010), http://www.valasztas.hu/en/parval2010/298/298_0_index.html; Immigration and Refugee Board of Canada, *The Movement for a Better Hungary (Jobbik Magyarorszagert Mozgalom), Including Reports of Hate Speech and the State Response to Such Statements [HUN103822.E]*, EUROPEAN COUNTRY OF ORIGIN INFORMATION NETWORK (Oct. 6, 2011), http://www.ecoi.net/local_link/204866/309958_en.html.

34. *Id.*

35. *Bulgarian Politics: An unhappy election*, ECONOMIST (May 18, 2013), available at <http://www.economist.com/news/europe/21578116-and-inconclusive-result-unhappy-election>.

and in Hungary, the establishment of “highly controlled public order protection camps” intended for Roma.³⁶ Yet, these two Eastern European countries are not isolated examples of nationalist hatred towards Roma. Extreme cases of violation of Roma rights are also being reported in Western Europe, making the problem a general, Europe-wide one. In England, the extreme right-wing British National party, which advocates for the expulsion of immigrants from the United Kingdom and the repeal of anti-discrimination legislation,³⁷ did not win any seats in the 2010 parliamentary elections;³⁸ it did, however, manage to get two deputies in the European Parliament.³⁹ The activities of both the Hungarian Jobbik party and the British National party were partly financed from EU funds in the amount of just under €300,000.⁴⁰ This is an alarming statistic that requires no comment.

In Greece, the openly fascist Golden Dawn party, which proclaims Greek and Aryan racial superiority and advocates for an ethnically pure Greece, entered parliament in the 2012 elections with eighteen deputies.⁴¹ And, in the Netherlands, the ultra right-wing party for Freedom (PVV) is spreading xenophobia. On its website, PVV calls on the Dutch to register their dissatisfaction with the masses of workers from Eastern and Central Europe, in particular Poles, Romanians, and Bulgarians (including Romanian and Bulgarian Roma), who are taking jobs from the local population and who behave in an anti-social manner in terms of crime, alcoholism, drug use, dumping household waste and prostitution.⁴²

36. David Cutler, *FACTBOX-Right-wing political parties in Europe*, REUTERS (Jan. 16, 2011), <http://www.reuters.com/article/2011/01/16/france-farright-europe-idUSLDE70D1IU20110116>.

37. *Immigration*, BRITISH NATIONAL PARTY, <http://www.bnp.org.uk/policies/immigration>.

38. *BNP vote increases, but fails to win seat*, BBC (May 7, 2010), available at http://news.bbc.co.uk/2/hi/uk_news/politics/election_2010/8667231.stm.

39. *European election results 2009: BNP wins two seats as Nick Griffin elected*, THE TELEGRAPH (June 7, 2009), <http://www.telegraph.co.uk/news/worldnews/europe/eu/5472045/European-elections-2009-BNP-wins-first-seat-in-Yorkshire-and-the-Humber.html>.

40. Benjamin Fox, *MEPs unite over Dutch anti-immigration hotline*, EUOBSERVER.COM Mar. 15, 2012, <http://euobserver.com/political/115606>.

41. *Profile: Greece's far-fight Golden Dawn party*, BBC NEWS EUROPE (Oct. 1, 2013), available at <http://www.bbc.co.uk/news/world-europe-24346993>.

42. *Problems With Poles? Report Them to Us, Says New PVV Website*, DUTCHNEWS.NL (Feb. 8, 2012), http://www.dutchnews.nl/news/archives/2012/02/problems_with_poles_report_the.php#sthash.fjPWqbw.dpufhttp://www.dutchnews.nl/news/archives/2012/02/problems_with_poles_report_the.php.

With twenty-four seats, PVV is the third largest parliamentary party in the Netherlands.⁴³ The Belgian Vlaams Belang party followed the PVV's example and published its own anti-immigration website thereafter.⁴⁴ It has twelve seats in the parliamentary assembly and three seats in the Senate.⁴⁵

Today, the situation facing Roma is an issue that even the general public is forced to deal with as the media showcases the inhumane, negative and collective attitudes towards the Roma minority. In many places, Roma are still pejoratively called "Tsigani" or "Gypsies," which is why they often conceal their identity.⁴⁶ For example, in Western Europe, they often pass themselves off as Turkish to guard against racial profiling. "Many successful Roma hide from their true identity."⁴⁷ The media is deeply politicized—the media may respond to events involving Roma in a more or less favourable manner depending on its political feelings towards their leadership. In either case, the polar opposition between Roma and non-Roma is always at the forefront.

Today, Europe is marked by a very negative attitude towards the Roma minority. This negative attitude has gone so far that European Commissioner, Viviane Reding, has compared Sarkozy's expulsion of Roma from France in 2010 with the atrocities Europe experienced during World War II.⁴⁸ And, in light of the actual situation in Europe, historical comparisons of this kind seem alarmingly accurate. While the Commissioner's words were rather harsh, the oppression, degradation, and even torture and execution of Roma in twenty-first century Europe merit more than just censure. Amid all of these developments, the greatest paradox stems from the fact that the expulsion of and discrimination against Roma in all areas of life is being carried out in conjunction with

43. Jolanda Vanderwal Taylor, *Netherlands: Year In Review 2010*, ENCYCLOPEDIA BRITANNICA, available at <http://www.britannica.com/EBchecked/topic/1733858/Netherlands-Year-In-Review-2010>.

44. Hans-Jürgen Schlamp, *Paris vs. Brussels: Roma Row Dominates EU Summit*, SPIEGEL ONLINE INTERNATIONAL (Sept. 17, 2010), <http://www.spiegel.de/international/europe/paris-vs-brussels-roma-row-dominates-eu-summit-a-717976.html>.

45. *Election Resources on the Internet: Federal Elections in Belgium - Senate Results Lookup* (June 13, 2010), <http://www.electionresources.org/be/senate.php?election=2010>.

46. Greenberg, *supra* note 16, at 921.

47. Violeta Naydenova, *Growing Up Roma*, OPEN SOCIETY FOUNDATIONS (Apr. 9, 2010), <http://www.opensocietyfoundations.org/voices/growing-roma>.

48. Constant Brand & Jim Brunnsden, *Reding slams France on Roma expulsions*, EUROPEANVOICE (Sept. 14, 2010), <http://www.europeanvoice.com/article/2010/09/reding-slams-france-on-roma-expulsions/68855.aspx>.

claims that human rights are being respected and in the presence of international organizations for the protection of human rights.

Strong nationalist sentiments and xenophobia are appearing in Eastern and Central Europe where, according to Bojan Bugarcic, the governments, political parties, and political movements that emerged during the transition from communism to liberal capitalism have become “the true voice of the common people against the corrupt elites.”⁴⁹ Bugarcic further adds that governments are attacking the “constitutionally-granted rights and freedoms of ethnic minorities, Roma, . . . [and] ‘other’ [social] groups” who do not fit the “organic, ethn[ic] and culturally conservative concept of the nation” while using the mistrust in constitutional courts and the judiciary as a smokescreen.⁵⁰

Along with the economic crisis, the transformation of political domination in Europe serves as a backdrop for the entire story of European nationalism, xenophobia, and hatred towards minorities. Some have referred to the political transformation as Europe’s shift from leftist to right-wing governments.⁵¹ There are currently six social-democrat governments in Europe—these found in Denmark, France, Slovakia, Cyprus, Austria, and Belgium.⁵² The respective governments are social-democrat (Denmark and Slovakia), socialist (France), communist (Cyprus), a coalition between social-democrats and people’s party (Austria), and a coalition between a larger number of parties with a socialist Prime Minister.⁵³ Social democrats, as recently as 2000, dominated governments throughout Europe.⁵⁴ However, by 2011, they were replaced to a considerable degree by right-wing political parties.⁵⁵ In the former British Foreign Secretary’s opinion, the problem facing social democrat parties is the fragmentation of these parties and the

49. Bojan Bugarcic, *Populism, Liberal Democracy, and the Rule of Law in Central and Eastern Europe*, 41 COMMUNIST AND POST COMMUNIST STUDIES 191, 191-203 (2008).

50. *Id.*

51. Allegra Stratton, *David Miliband: European left is fragmenting as the right is unifying*, THE GUARDIAN (Mar. 8, 2011), <http://www.theguardian.com/politics/2011/mar/08/european-left-fragmenting-david-miliband>.

52. Sheila Pulham et al., *Left, right, left: how political shifts have altered the map of Europe*, THE GUARDIAN (May 9, 2012), <http://www.theguardian.com/world/interactive/2011/jul/28/europe-politics-interactive-map-left-right>.

53. *Id.*

54. *Id.*

55. *Id.*

contemporaneous unification of the right, which has been gaining ground through its joint, unified approach.⁵⁶ Six countries (England, Sweden, Germany, France, the Netherlands, Italy), which historically represented the heart of European social democracy, are now (or were until just recently in the case of France) led by right-wing governments.⁵⁷ The political right is growing increasingly strong in Europe as right-wing parties that attempt to cater to disenfranchised voters concerned about jobs, increasingly resort to populism and anti-minority statements in times of economic hardship.

It is clear from the left versus right political problem (discussed above), that today, the right not only fails to support the special rights of minorities, but also takes a confrontational stance towards minorities and emphasizes the special powers and rights of the majority nation in the state. This is demonstrated by recent events. These events were marked by intolerance towards otherness in Europe and were publicly supported by right-wing political parties throughout the continent. NGO's Benjamin Ward pointed out the gravity of the situation: "The net result of human rights developments in Europe causes great concern. . . .Without concerted government action, the next generation of Europeans may see human rights as an optional extra rather than a core value."⁵⁸

The political geography behind the pigeonholing of countries as "left" and "right" is not in itself sufficient to gain a clear picture of the problems currently surrounding a xenophobic, anti-Roma, anti-Semitic, anti-immigration Europe. In a majority of European countries, right-wing parties have not come to official power but are represented in parliament;⁵⁹ this is a development, which, considering how these parties operate, represents the ideological contamination of those parties that are in power. Another aspect of the threat posed by the far right is the substantial support some

56. Stratton, *supra* note 51.

57. *Id.*; CNN Wire Staff, *Socialist Hollande in, Sarkozy out, as France elects a new president*, CNN.COM (May 6, 2012), available at <http://www.cnn.com/2012/05/06/world/europe/france-election/>.

58. Andrew Rettman, *EU becoming less tolerant, NGO says*, EUOBSERVER.COM (Jan. 23, 2012), <http://euobserver.com/justice/114978>.

59. *The right party, led by Viktor Orban, wins a resounding victory in the 1st round of general elections in Hungary*, FOUNDATION ROBERT SCHUMAN (Dec. 4, 2010), <http://www.robert-schuman.eu/en/eem/1015-the-right-party-led-by-viktor-orban-wins-a-resounding-victory-in-the-1st-round-of-general-elections-in-hungary>.

parties have garnered among the people. In France, for example, Marine Le Pen got the support of nearly twenty percent of voters in the first round of the last presidential elections with her anti-immigration policy.⁶⁰ And in Greece, seventy percent of voters showed support for the far right in the May elections.⁶¹ The Golden Dawn party is especially negative; not only does it deny historical facts like the holocaust and the negative role of Adolf Hitler, but it also spreads ideas such as erecting a wall between Greece and Turkey to stop the flow of unwanted immigrants.⁶² While this may sound like just another crazy scheme from the minds of political extremists, the way in which ideas like this are proliferating unchecked poses a considerable threat to today's Europe. In the opinion of a Belgian politician, European Parliamentarian and Head of the Group for the Alliance of Liberals and Democrats for Europe, Guy Verhofstadt, Europe has two options: "[I]t will either collapse under the weight of growing nationalism and scepticism or it will recover its sense of purpose, agree to make a qualitative leap in integration in response to the crisis and therefore offer the next generation the kind of peace and stability that we have enjoyed over the past half century."⁶³

Here, one must ask what the actual role of the European Union is in the current situation. Where are the EU institutions—the Council, Commission, and Parliament of the European Union—that are supposed to harshly criticize and expose public scrutiny issues of growing nationalism and xenophobia? The link between a lacklustre economy and a decline in the protection of human rights is no coincidence.

The President of the European Network Against Racism,⁶⁴ Chibo Onyeji Adla Shashati, has called upon the President of the

60. Elaine Ganley, *France Elections: Marine Le Pen Won't Endorse Anyone for President*, HUFFINGTONPOST.COM (May 1, 2012), http://www.huffingtonpost.com/2012/05/01/france-elections-marine-le-pen-wont-endorse-anyone_n_1466975.html.

61. Jon Henley & Lizzy Davies, *Greece's far-right Golden Dawn party maintains share of vote*, THEGUARDIAN.COM (June 18, 2012), <http://www.theguardian.com/world/2012/jun/18/greece-far-right-golden-dawn>.

62. Vassiliki Georgiadou, *Greece Country Analysis*, in RIGHT-WING EXTREMISM IN EUROPE COUNTRY ANALYSES, COUNTER-STRATEGIES AND LABOR-MARKET ORIENTED EXIT STRATEGIES 83-84, 87 (Ralf Melzer & Sebastian Serafin eds., 2013).

63. Guy Verhofstadt, *There is 'no need to fear a more federal Europe'*, ALLIANCE FOR LIBERALS AND DEMOCRATS FOR EUROPE GROUP (Nov. 5, 2012), <http://www.alde.eu/press/press-and-release-news/press-release/article/there-is-no-need-to-fear-a-more-federal-europe-39050>.

64. ENAR is a network of NGOs working to combat racism in all EU Member States.

European Commission, José Manuel Barroso, to publicly condemn the extremist Golden Dawn party “as a racist organisation opposed to fundamental European values.”⁶⁵ And the story of a Europe with its eyes tightly shut is repeating itself. The President of the Commission has not stated his opinion on this party.⁶⁶ In the debate about whether the neo-Nazi Golden Dawn party should be banned in Europe, he sidestepped the question, stating that it is first necessary to define a neo-Nazi party on the national level.⁶⁷ He then added that the EU will strongly sanction any violation of rights and freedoms in member states.⁶⁸ Yet it is becoming clear that these are hollow threats as the EU is increasingly leaving this field to the discretion of national policies.

III. LEGAL AND POLITICAL GROUNDS FOR ROMA’S SOCIAL INCLUSION

The EU introduced the term “values” with the Treaty of Lisbon.⁶⁹ This document stressed “respect for human rights, including the rights of persons belonging to minorities.”⁷⁰ The EU has not done this, despite expectations stemming from Article 1 of the Treaty of Lisbon, to which Article 1a of the Treaty on European Union (TEU)—which is based on these values and which states that the European Union will implement additional effective mechanisms for the protection of these rights as collective rights—has been added. The possibility of taking action remains limited to guaranteeing the individual rights of members of discriminated groups or adopting suitable anti-discrimination measures on the basis of Article 19, paragraph 1 of the Treaty on the Functioning of the European Union (TFEU).⁷¹ The establishment of minority

65. Letter from Chibo Onyeji Adla Shashati, President, Europe Network Against Racism, to Jose Manuel Barroso, President, European Commission (May 14, 2012), *available at* <http://www.euractiv.com/elections/golden-dawn-party-greece-neo-nazi-party-analysis-512672>.

66. *Id.*

67. Stella Tsolakidou, *Barroso Expresses Concern Over Election of Golden Dawn in Greece*, GREEKREPORTER.COM (May 9, 2012), <http://greece.greekreporter.com/2012/05/09/barroso-expresses-concern-over-election-of-golden-dawn-in-greece/>.

68. *Id.*

69. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Signed at Lisbon, Dec. 13, 2007, 2007, O.J. (C 306) 1.

70. *Id.* art. 1a.

71. Consolidated Version of the Treaty of the Functioning of the European Union 83/326, art. 19, 2012 O.J. 47 (EU) [hereinafter TFEU]. The provision reads:

Without prejudice to the other provisions of the Treaties and within the limits

collective protection for national minorities therefore remains the providence of individual member states. Accordingly, even though this issue has brought about a rise in nationalism and anti-immigrant political leanings and is currently a key issue linked to the economic and social crisis, the ECHR cannot be expected to decide on the collective protection of minorities. In this regard, Roma are the minority group that, because of their generally unfavourable position, requires the most attention from the EU.

Member states have exhibited a range of responses to the EU's warnings regarding violations of Roma rights. Yet they all stress what they have done and still intend to do to protect this minority. Emphasis is on legal regulation and ensuring fundamental human rights. Lawyers point out the existence of legal grounds (on local, regional, national, and international levels, including the EU) and effective legal means that ensure equality for Roma. Decisions from international courts are used alternatively to point out discrimination against the Roma minority or to refute claims that such discrimination exists. The attitude of the general population towards Roma depends on subjective preferences and political party membership, as different parties "react" differently to Roma. Politicians would prefer to avoid Roma issues as today's Europe is considerably intolerant and unfavourably minded towards recognizing a special status for Roma or for emphasizing the special rights that should be protecting Europe's largest minority.

As a directive on racial equality, Council Directive 2000/43/EC prohibits direct and indirect discrimination, harassment, and instructions to discriminate on the basis of one's racial or ethnic origin.⁷² It encompasses employment, training, education, social and health care, housing policy, and access to goods and services.⁷³ In the case of Roma, the Directive remains a dead letter in most member states. While Europe declares legal equality, in practice, it is contributing to the rise in xenophobia and discrimination, all too often either failing to respond to violations or responding to violations in an unengaged manner. Here, the system of sanctions available to the EU should be pointed out in cases where its

of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

72. Race Equality Directive 2000/43, 2000 O.J. (L 180) 22 (EC).

73. *Id.*

members violate human rights and the democratic foundations of the EU. Article 7 of the TEU foresees the possible use of a sanction that entails temporary withdrawal of certain rights stemming from the TEU, including voting rights in the Council, in the event that a member state blatantly and persistently violates the fundamental values of the EU.⁷⁴ This sanction, referred to as “the nuclear option,” has yet to be used.⁷⁵ A policy of isolation was only enforced on one occasion when, in 2000, dialogue between the EU member state and the then-remaining fourteen member states was frozen in response to Jorg Haider’s far right political party joining Austria’s ruling coalition.⁷⁶ The EU froze ties with Austria due to Haider’s nationalistic, xenophobic politics.⁷⁷ Haider nonetheless remained in government and the EU was forced to lift the sanction, which only served to highlight the weakness of European institutions vis-à-vis national governments.⁷⁸

The article mentioned above was also not used against Hungary, whose new constitution, which entered into force on January 1, 2012, fundamentally reduced the independence of the Central Bank and the courts.⁷⁹ It also limited rights stemming from freedom of religion and fundamentally infringed on the right of freedom of the press.⁸⁰ Instead of using Article 7, the European Commission opted for a more legally limited approach. It has launched three separate infringement proceedings against Hungary.⁸¹ Where the first proceeding over the independence of Hungary’s Central Bank was already suspended, two other proceedings dealing with the independence of judiciary and of the data protection authority are likely to be taken to the European Court of Justice.⁸²

The most revealing example of the EU’s impotence was French

74. TFEU, *supra* note 71.

75. James Fontanella-Khan, *Romania illustrates limits of EU power*, FT.COM (July 15, 2012), <http://www.ft.com/intl/cms/s/0/7bb4153a-ce65-11e1-9fa7-00144feabdc0.html#axzz2dDSDmLLH>.

76. *Id.*

77. Wojciech W. Sadurski, *Adding Bite to a Bark: The Story of Article 7, E.U. Enlargement, and Jorg Haider*, *Columbia Journal of European Law*, 16 COLUM. J. EUR. L. 385, 400 (2010).

78. Fontanella-Khan, *supra* note 75.

79. *EU to drop Hungary bank case, uphold action over judiciary*, EURACTIV.COM (Apr. 25, 2012), <http://www.euractiv.com/euro-finance/eu-drop-hungary-case-uphold-action-judiciary-news-512350>.

80. *Id.*

81. *Id.*

82. *Id.*

President Nicolas Sarkozy's removal of 8,000 Roma from France in 2010.⁸³ In this case, the EU threatened France with sanctions, but ultimately failed to act.⁸⁴ And the story repeated itself under France's new president, François Hollande: at the end of August 2012, Hollande once again began tearing down illegal Roma camps and expelling Roma who did not have French citizenship.⁸⁵ The EU's reaction was identical to its reaction two years earlier, once again validating the view that the EU will only threaten France while doing nothing to sanction the country and stop the forced expulsions.⁸⁶

The situation before the ECHR is somewhat different. Through its decisions against countries where issues involving the Roma minority have arisen, the ECHR established a broad spectrum of protection not only for individuals, but also for the minority community. Thanks to the jurisprudence of the Strasbourg Court in the 2007 case, *D.H. and Others v. The Czech Republic*, merely belonging to the Roma community now creates a specially protected "European" situation for minority who are relatively poorly protected on national levels.⁸⁷ Because of this case, the Strasbourg Court, was revolutionized on the question of indirect discrimination. Gaetano Pentassuglia identified the significance of Roma education in *D.H. and Others: D.H. and Others*.⁸⁸ That case "failed on the merits before a Chamber, which set a problematically high probatory standard to establish discrimination on account of race (or indeed ethnic or national origin)."⁸⁹ Surprisingly, the Grand reversed the Chamber's decision to uphold indirect discrimination without having to prove discriminatory intent.⁹⁰ There, the Grand Chamber focused on whether the way the legislation was applied

83. *Id.*; Justyna Pawlak & Luke Baker, *Sarkozy, EU leader clash over Roma dispute*, REUTERS (Oct. 16, 2010), <http://www.reuters.com/article/2010/09/16/us-eu-france-roma-idUSTRE68F4E620100916>.

84. *Id.*; *EU to drop Hungary bank case*, *supra* note 79.

85. Tony Todd, *France dismantles Roma camps, departs hundreds*, FRANCE 24 (Aug. 9, 2012), <http://www.france24.com/en/20120809-france-dismantles-camps-deports-roma-romania-lille-deportations-valls>.

86. *Wake-up call for a giant: The EU must end discrimination against Roma*, AMNESTY INT'L (Apr. 4, 2013), <http://www.amnesty.org/en/news/wake-call-giant-eu-must-end-discrimination-against-roma-2013-04-04>.

87. *See D.H. and Others v. Czech Republic*, App. No. 57325/00, 47 Eur. H.R. Rep. 3 (2007).

88. GAETANO PENTASSUGLIA, *MINORITY GROUPS AND JUDICIAL DISCOURSE IN INTERNATIONAL LAW: A COMPARATIVE PERSPECTIVE* 94 (2009).

89. *Id.*

90. *Id.*

resulted in a disproportionately high number of Roma pupils being placed in special schools without justification, instead of on the statutory provisions governing placements in special schools.⁹¹ It should be kept in mind, taking into account some separate opinions of ECHR judges who do not agree with the protective policy described above, that the current regime of protection does not rest on a sound foundation.⁹² Judges from member states of the European Council where in which the Roma community is very large, and who often find themselves as defendants in cases involving Roma, have on numerous occasions stressed that the decisions of the ECHR are rushed. With respect to the way Europe advocates for fundamental rights, it is quite telling that only eighteen member states of the Council of Europe (out of a total of forty-seven) have ratified Protocol 12 to the European Convention on Human Rights (which prohibits discrimination).⁹³ Only seven EU member states are among the countries that ratified the Protocol: Cyprus, Finland, Luxembourg, the Netherlands, Romania, Slovenia and Spain.⁹⁴

States have a rather step-motherly attitude towards Roma. Although statistical data shows that the EU has earmarked €26.3 billion in its 2007-2013 budget for member states to improve the situation of Roma, by 2011, member states had only accessed €100 million of these funds.⁹⁵ By mid-2012, seventy percent of the funds had gone unused, revealing the countries' disinterest in Roma issues.⁹⁶

Fear of Roma is growing in Western European countries (particularly in Italy and France), which should be serving as models of democracy and tolerance for ex-communist Eastern Europe. For example, in July 2008, the Italian authorities

91. *Id.*

92. See *D.H. and Others v. Czech Republic*, App. No. 57325/00, 47 Eur. H.R. Rep. 3 (2007) (Borrego J., dissenting) (noting that “[t]he Grand Chamber has in this judgment behaved like a Formula One car, hurtling at high speed into the new and difficult terrain of education and, in so doing, has inevitably strayed far from the line normally followed by the Court”).

93. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Apr. 11, 2000, CETS No.: 177 (entered into force Jan. 4, 2005).

94. *Id.*

95. Nikolaj Nielsen, *Brussels critical of national strategies on Roma*, EUOBSERVER.COM (May 23, 2012), <http://euobserver.com/social/116355>; Valentina Pop, *EU's Roma blueprint 'disappointing'*, EUOBSERVER.COM (Apr. 5, 2011), <http://euobserver.com/news/32126>.

96. *Brussels critical of national strategies on Roma*, *supra* note 95.

fingerprinted thousands of Roma adults and children living in camps throughout the country.⁹⁷ This controversial measure was adopted as part of a broader government initiative against street crime.⁹⁸ Similarly, French President Nicolas Sarkozy's decision to expel hundreds of Roma from France and send them back to Romania and Bulgaria, from where they had supposedly come, was widely criticized in the EU.⁹⁹ As this article will discuss below, the Roma have benefitted from these policies, gaining a great deal of attention in the media because the European Union now has to confront these blatant human rights violations and react, at the very least, on the legal-political level.

IV. FRENCH EXPULSIONS

In 2010, under a right-center government headed by President Nicolas Sarkozy, France began conducting expulsions of Roma who did not have French citizenship and were living in illegal camps on the outskirts of the larger French cities of Paris, Lyons, and Marseilles.¹⁰⁰ The matter became public when the media released a government "memo" on illegal immigration in which the Roma settlements were mentioned as "priority."¹⁰¹ The French Ministry of the Interior issued an administrative circular in August 2010, putting mayors in charge of using systematic action to remove or demolish all illegal camps, with special emphasis on Roma camps.¹⁰² As a result, a measure for the expulsion of all illegal aliens was issued.¹⁰³ In early September 2010, information about the measures,

97. Andrew Gilmore, *Italy begins mass fingerprinting of Roma minority*, JURIST (July 3, 2008), <http://jurist.law.pitt.edu/paperchase/2008/07/italy-begins-mass-fingerprinting-of.php>.

98. *Id.*

99. Q&A: *France Roma expulsions*, BBC NEWS EUROPE (Oct. 19, 2010), <http://www.bbc.co.uk/news/world-europe-11027288>.

100. Peter Allen, *'He's cleaning up illegal immigrants in his own back yard': French police armed with truncheons and shields clear out Roma camp in Paris suburb where minister who gave the order served as Mayor*, MAIL ONLINE, (Aug. 27, 2012), <http://www.dailymail.co.uk/news/article-2194230/Hes-cleaning-illegal-immigrants-yard-French-police-armed-truncheons-shields-clear-Roma-camp-Paris-suburb-minister-gave-order-served-mayor.html>.

101. Kim Willsher, *France's deportation of Roma shown to be illegal in leaked memo, say critics*, THE GUARDIAN (Sept. 13, 2010), <http://www.theguardian.com/world/2010/sep/13/france-deportation-roma-illegal-memo>.

102. *France: One Year On, New Abuses against Roma*, HUMAN RIGHTS WATCH (Sept. 28, 2011), <http://www.hrw.org/de/node/101967>.

103. *Id.*

particularly those targeting Roma, was made public.¹⁰⁴ However, criticism of France's discriminatory actions resulted in a new circular being issued without the emphasis on Roma.¹⁰⁵ In April 2011, the *Conseil d'Etat*, the highest-ranking administrative court in France, confirmed that the circular placing special emphasis on Roma had been discriminatory.¹⁰⁶

During the duration of the deportations, over 1,000 Romanian and Bulgarian citizens were returned to their respective countries of origin; 151 were returned by force and the others returned "voluntarily."¹⁰⁷ The French Office for Immigration and Integration introduced the "voluntary assisted returns" program, which paid adults €300 and children €100 for voluntarily departing France.¹⁰⁸ The UN as well as the EU responded to France's cleansing of its territory.¹⁰⁹ The European Parliament drew attention to the issue of discrimination against Roma with its Resolution on the Situation of Roma and the Free Movement in the European Union,¹¹⁰ The resolution listed France, Italy, and other (mainly Eastern European) countries that did not heed its warnings, as violators of Roma rights.¹¹¹ The European Parliament sternly reminded EU member states that free movement, as a fundamental, inalienable right guaranteed in treaties and documents, is the cornerstone of European citizenship.¹¹² The resolution was intended as a call to countries to consistently fulfill obligations stemming from EU legislation and to remove inconsistencies in fulfilling the demands of Directive 2004/38/EC.¹¹³ Directive 2004/38/EC on the Right of EU Citizens and Their Families to Move Freely and Reside in the Territory of Member States among other things, foresees the possibility that a state may expel a EU citizen, but requires this to be done in line with specifically defined conditions and in such a way such that the fundamental rights of citizens are not violated.¹¹⁴ The

104. Willsher, *supra* note 101.

105. Nielsen, *supra* note 95.

106. *France: One Year On*, *supra* note 102.

107. *Id.*

108. *Id.*

109. *Id.*

110. Resolution on the Situation of Roma and on Freedom of Movement in the European Union, EUR. PARL. DOC. P7_TA 0312 (2010).

111. *France: One Year On*, *supra* note 102.

112. *Id.*

113. *Id.*

114. Directive 38/2004, of the European Parliament and of the Council of 29 April 2003, 2004 O.J. (L 158) 77.

resolution was also a call to states to review and annul laws and policies that, directly or indirectly, discriminated against Roma on the basis of race or ethnic origin.¹¹⁵ At the same time, the European Parliament called on the Council and Commission to monitor the degree to which member states were applying treaties and directives that set out measures for the war against discrimination and the free movement of people, especially in respect of Roma, and to adopt the necessary measures if it found steps were not being taken.¹¹⁶ Specifically, it called on the Council and Commission to commence procedures for identifying violations.¹¹⁷

France did not respond to the calls from the UN and the European Parliament. The intensity rose when Viviane Reding, the European Commissioner for Justice, Fundamental Rights, and Citizenship and Vice President of the European Commission, entered the arena.¹¹⁸ Reding harshly condemned France's actions for being in violation of the right to the free movement of people within the EU, EU anti-discrimination legislation, and the Charter of Fundamental Rights of the EU.¹¹⁹ Together with Commissioners László Andor, the Commissioner for Employment, Social Affairs, and Inclusion, and Malmström, the Commissioner for Internal Affairs, Reding prepared a document highlighting France's violation of the rules of the EU by its collective expulsion of people solely on the basis of their Roma identity, noting that state bodies had even encouraged hatred and violence toward Roma.¹²⁰ In her speech to the Commission, Reding stressed that she had lost patience with France and its demands for special treatment.¹²¹ She compared the expulsion of Roma to the expulsions that took place in occupied France during World War II; a comparison that, despite demands from French President Sarkozy, she was not willing to apologize for.¹²² Her statement gave rise to a heated, opposing response. She

115. EUR. PARL. DOC. P7_TA 0312, *supra* note 110.

116. *Id.*

117. *France: One Year On*, *supra* note 102.

118. *Id.*

119. *Id.*

120. Current Signature and Ratification Status of Protocol 12 to the Convention for the Protection of Human Rights (Sept. 16, 2013), <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=&DF=&CL=ENG>.

121. *Id.*

122. Angelique Chrisafis, *Immigration: Frances sees tensions rise five years on from Paris riots*, THE GUARDIAN (Nov. 16, 2010), <http://www.guardian.co.uk/world/2010/nov/16/france-racism-immigration-sarkozy>; Constant Brand, *Reding: I have Not Apologised To France*, EUROPEANVOICE.COM (Sept. 23,

later added that the reaction to her statement would definitely have been different if she were a man, thus giving a sexist character to the debate.¹²³ President Sarkozy offered a contentious response to Reding's remarks and suggested that Reding's mother country, Luxembourg, took in Roma migrants that France did not want.¹²⁴ Sarkozy described comments by an EU commissioner about Roma deportations as "outrageous" and further stated, "The disgusting and shameful words that were used – World War II, the evocation of the Jews – was something that shocked us deeply."¹²⁵ He also stated that "France would continue to dismantle Roma camps."¹²⁶ President Sarkozy admitted that the French had demolished and depopulated around 500 shanty settlements on the outskirts of urban areas, 199 of which were Roma.¹²⁷ The settlements had been inhabited by 5,400 Roma, most of whom had French citizenship.¹²⁸ Those without French citizenship were deported to their respective countries of origin.¹²⁹ Sarkozy justified the demolition of Roma settlements by claiming that such settlements were dens of prostitution, human trafficking and child abuse.¹³⁰ As relations between the Commission and France grew tense, the President of the European Commission, José Manuel Barroso, and the French President exchanged harsh words in what Luxembourg Prime Minister Jean-Claude Juncker called "a testosterone-heavy exchange."¹³¹ German Chancellor Angela Merkel also weighed in on the matter, stating that Reding had gone too far and that her comparison to World War II was too harsh and inappropriate.¹³² Italian Prime Minister Silvio Berlusconi also took France's side.¹³³ Commissioner Andor expressed support for Reding's words, adding that the Holocaust was not only intended to purge Europe of Jews,

2010), <http://www.europeanvoice.com/article/imported/reding-i-have-not-apologised-to-france-/68930.aspx>.

123. *Id.*

124. Matej Hruska, *Sarkozy suggests Reding to host Roma in Luxembourg*, EUOBSERVER.COM (Sept. 15, 2010), <http://euobserver.com/1016tickers/111631>.

125. *Sarkozy denounces EU commissioner's Roma remarks*, BBC NEWS EUROPE (Sept. 16, 2010), <http://www.bbc.com/news/world-europe-11332189>.

126. *Id.*

127. *Id.*

128. *Id.*; Leo Cendrowicz, *Sarkozy Lashes Out as Roma Row Escalates*, TIME (Sept. 17, 2010), <http://content.time.com/time/world/article/0,8599,2019860,00.html>.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Paris vs. Brussels: Roma Row Dominates EU Summit*, *supra* note 44.

133. *Id.*

but also of “Gypsies” (who refer to the event as *O Baro Porrajmos*—the Great Devouring today).¹³⁴ Andor, who is a Hungarian citizen, placed special emphasis on the issue of the racism surrounding Roma in Hungary—there, a right-center government tolerated attacks and hate rallies at Roma settlements as well as hate speech by the Jobbik party.¹³⁵ In response to Reding’s demands that the French integrate Roma into their community, French-European Minister Pierre Lellouche said, “There is no budget line for Roma, Arabs, Buddhists or Jews.”¹³⁶ He also added, “A cash handout, a plane ticket to the EU country of origin are not the same as the death camps, the gas chambers.”¹³⁷ Statements of this kind, by a French Minister, demonstrates the intolerant stance of the government towards all minorities, both ethnic and religious (which the Minister haphazardly strung together in his response) and merits greater attention that received in the media.

The abovementioned EU funds intended for Roma, which have gone largely unused, show the complete lack of preparedness on the part of European countries to address Roma issues and improve the lives of Roma. Pierre Lellouche did little more than show that the Roma in France represent just another segment of France’s unwanted population with his statement. What is to become of the Arabs, Buddhists, and Jews that the Minister mentioned in the same sentence as Roma? In the debate between the European Commission and France, the issue of the expulsion of Roma from France took on unanticipated dimensions. Regardless of how words were twisted, the fact that the general public was confronted with this issue because of the Commission and the EU marks a positive development for Roma. Minority issues on the one hand and an epilogue of xenophobia and nationalism on the other, round out the image of Europe at the start of the twenty-first century. With the expulsions, France violated the rules on free movement within the EU as well as the prohibition on collective expulsion.¹³⁸ The free

134. Leigh Phillips, *Reding did not mean the Holocaust, but the ‘Great Devouring,’ Andor says*, EUOBSERVER.COM (Sept. 17, 2010), <http://euobserver.com/social/30835>.

135. Stephen Castle, *E.U. Lays Out Plan to Improve the Lives of the Roma*, N.Y. TIMES (Apr. 5, 2011), http://www.nytimes.com/2011/04/06/world/europe/06iht-union06.html?_r=0.

136. Oana Lungescu, *EU vice president sees red and attacks France on Roma*, BBC NEWS (Sept. 14, 2010), <http://www.bbc.co.uk/news/world-europe-11302013>.

137. *Sarkozy fury over EU attack on Roma round-up*, AFP (Sept. 15, 2010), http://www.google.com/hostednews/afp/article/ALeqM5hKhBA_IMePYYiGwn2Z2vSwJidQQ.

138. Caitlin T. Gunther, Note, *France’s Repatriation of Roma: Violation of Fundamental Freedoms?* 45 CORNELL INT’L L. J. 205, 205-08, 220-22 (2012).

movement of people within the EU is regulated by Directive 2004/38/EC, which establishes precisely defined procedures for the expulsion of illegal immigrants: a state may only expel those EU citizens (in this case Roma with Bulgarian or Romanian citizenship living in France) that present a public security risk or burden to the social assistance system.¹³⁹ The applicability of the terms “public security risk” and unreasonable “burden to the social assistance system” must be based on individual, not collective, considerations of personal circumstances and conduct.¹⁴⁰ An individual may present a threat to public security if he or she is the perpetrator of certain criminal acts and if, in his or her case, such a measure would not be disproportionate.¹⁴¹ The European Commission’s role as the guardian of the Treaties entails ensuring the comprehensive, effective implementation of this legislation in member states. With this in mind, at the end of September 2010, the Commission concluded, on the basis of an analysis of the expulsion of Roma, that France had not fully transferred European Directives on the free movement of people to its legal code.¹⁴² The Commission warned the violating country that it must respect Directives on Free Movement, as well as the fundamental rights of EU citizens, and that it must prevent discrimination, particularly discrimination based on citizenship or ethnic belonging.¹⁴³ The Commission threatened to commence proceedings against France for its failure to implement Directive 2004/38/EC.¹⁴⁴ In this case, it would be a so-called fast-track infringement procedure, which could eventually lead to France being held in violation of EU law and fined by the European Court of Justice.¹⁴⁵ And that’s where the Commission’s determined path ends. In the words of Commissioner Reding, France responded “positively” to calls from the College of Commissioners.¹⁴⁶ The French sent the Commission detailed documentation, including draft legislative measures and a calendar for implementing the

139. Directive 38/2004, *supra* note 114.

140. *Id.*

141. *Id.*

142. Press Release, Europa, European Commission Assesses Recent Developments in France, Discusses Overall Situation of the Roma and EU Law on Free Movement of EU Citizens, European Commission Press Release IP/10/1207 (Sept. 29, 2010).

143. *Id.*

144. *Id.*

145. *Id.*

146. *France gets EU reprieve on Roma*, BBC NEWS EUROPE, (Oct. 19, 2010), <http://www.bbc.co.uk/news/world-europe-11572646>.

procedural safeguards required by Directive 2004/38/EC.¹⁴⁷ The Commission, therefore, decided not to pursue the procedure for assessing whether violations had been committed, but did continue its investigation of discrimination.¹⁴⁸ In the phases of issuing warnings and threatening action against France, European criticism of French anti-Roma policy sent an important message: the exclusion of Roma is not in accord with the social values and economic model of the European Union.¹⁴⁹ At the same time, it served as a warning to countries like Italy, Sweden, and Denmark, which have begun expelling EU citizens solely on the basis of ethnic origin.¹⁵⁰

The French expulsions led the European Commission to decide to make a contribution to improving the situation of Roma in Europe. The Commission approved a strategy for national Roma integration.¹⁵¹ In line with the EU strategy, each of the twenty-seven EU member states was required to set out a plan for improving the situation of the most vulnerable Roma communities living on their territory by the end of 2011.¹⁵² The strategy was intended to serve as a plan for achieving better integration through measures foreseen in four key areas: education, employment, health care and housing.¹⁵³ It is significant that the EU offered states financing for these plans. The European Commission was to assess the plans and deliver its report in the spring of 2012.¹⁵⁴

Despite the EU's best intentions and the Commission's efforts, the rather fatalistic cliché "the more things change, the more they stay the same" is a more than apt description of the situation of

147. Press Release, Europa, Statement by Viviane Reding, Vice-President of the European Commission, EU Commissioner for Justice, Fundamental Rights and Citizenship, on the Recent Developments Concerning the Respect for EU Law as Regards the Situation of Roma in France, European Commission Press Release MEMO/10/502 (Oct. 19, 2010).

148. *Id.*

149. *Situation of Roma in Europe: MEPs quiz the Commission*, EUROPEAN PARLIAMENT/NEWS, (Sept. 30, 2010), available at <http://www.europarl.europa.eu/news/en/news-room/content/201009271PR83712/html/Situation-of-Roma-in-Europe-MEPs-quiz-the-Commission>.

150. Christian Fraser, *France sends Roma Gypsies back to Romania*, BBC NEWS EUROPE (Aug. 20, 2010), <http://www.bbc.co.uk/news/world-europe-11020429>.

151. Press Release, Europa, *EU Leaders Endorse Commission's Plan for Roma Integration* (June 24, 2011), http://europa.eu/rapid/pressreleases_IP-11-789_en.htm.

152. *Id.*

153. *Id.*

154. *Id.*

Roma in today's Europe.¹⁵⁵ In October 2010, the French government promised the European Commission that it would legally regulate migrations in accordance with Directive 2004/38/EC.¹⁵⁶ Towards this end, on June 17, 2011, France adopted Law no. 2011-672, the Immigration, Integration and Nationality Bill, which contains provisions that are in direct conflict with the European Directive and that make it even easier to expel Roma from France.¹⁵⁷ For instance, the Directive states that persons "should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport" (Art. 6: Right of residence for up to three months).¹⁵⁸ In contrast, the French law prescribes that authorities may expel a EU citizen in the first three months of his or her stay in France if his or her conduct presents a "genuine, present and sufficiently serious threat to one of the fundamental interests of society" (art. 39(3)).¹⁵⁹ According to the French law, expulsion is permissible in the event that an individual "abuses" his or her right to reside in the EU through shorter (less than three months) entries to and exits from the country if his or her stay in France is conditioned upon a fundamental intent to take advantage of the social assistance system and therefore represents an unreasonable burden on the social security system.¹⁶⁰ Such a rule is in violation of EU legislation, as it is not in accordance with Articles 6 and 14 (Retention of the right of residence) of the abovementioned EU Directive, and would in effect mean that the decision regarding which EU citizens may remain in France and which may not, is wholly at the discretion of the state.¹⁶¹ It does not seem very likely that this law would serve as a basis for assessing the intent of a German, Swede or Dutchman

155. *France: One Year On*, *supra* note 102.

156. European Commission, *France's Compliance with the European Free Movement Directive and the Removal of Ethnic Roma EU Citizens*, HUMAN RIGHTS WATCH (Sept. 28, 2011), available at <http://www.hrw.org/news/2011/09/28/france-s-compliance-european-free-movement-directive-and-removal-ethnic-roma-eu-citi>.

157. LOI n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité JORF n°0139 [ACT No. 2011-672 of June 16, 2011 on Immigration, Integration and Nationality] p. 10290, available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024191380&dateTexte=&categorieLien=id>.

158. Directive 38/2004, *supra* note 114.

159. ACT No. 2011-672, *supra* note 157.

160. *Id.*

161. *See id.* arts. 14, 16.

who travels to France two or more times for shorter periods in order to take advantage of the French social assistance system. It is true that the Directive also states (Art. 14) that persons who realize their right to residence are not to become an unreasonable burden to the social assistance system in the host member state during the initial period of residence.¹⁶² However, this does not mean that France may expel individuals solely on the basis of assumptions that the persons in question could eventually receive social assistance. Even if an individual has exercised rights stemming from the social assistance system, expulsion measures may not be the result of this alone (Article 14 (3)).¹⁶³ As long as those entitled to the right to reside do not constitute an unreasonable burden on the social assistance system in the host member state, they may not be expelled.¹⁶⁴

The expulsion of EU citizens and their family members is allowed only under Article 27 of the Directive, which is, on grounds of public order, public security and public health.¹⁶⁵ When taking an expulsion measure due to public order and public safety, the state is required to assess the “personal conduct of the individual concerned,” and such conduct must represent “a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.”¹⁶⁶ Before taking a decision on expulsion, the state must respect the personal circumstances of the individual, such as the duration of his or her stay in the territory of the state, his or her age, state of health and family, and his or her economic circumstances and social and cultural integration in the host country in relation to his or her country of origin (Directive, Art. 28(1)).¹⁶⁷ Therefore, the greater the degree of integration of EU citizens and their family members in the host member state, the greater the degree of their protection before there may be expulsion.

The French law contains all the elements laid out in the Directive to be used as prerequisites for making expulsion decisions; however, it also contains an exception for situations when there is sufficient reason to suspect that the Roma “profile”

162. *Id.*

163. *Id.*

164. *Id.*

165. ACT No. 2011-672, *supra* note 157.

166. *Id.* (quotations as translated by author of this paper).

167. *Id.*

will be used by the authorities to speedily expel Roma without assessing individual circumstance.¹⁶⁸ This exception is rooted in public order violation cases, which permit the authorities to forcibly remove an alien (even a EU citizen) on the grounds of sufficient cause to suspect that he or she will engage in a criminal act of vagrancy or abusive occupation of land.¹⁶⁹

As part of a pre-election campaign aimed at achieving likability among the largest possible number of French voters, in the fall of 2010, Sarkozy attempted to remove as many aliens as possible, with an emphasis on Roma.¹⁷⁰ Sarkozy's stance on immigrants appeared to be paying off politically, as he persistently, all the way up until the presidential elections on April 22, 2012 (with a run-off election on May 6th), continued with his agitation of aliens.¹⁷¹ Stating that the system of integration functions poorly because there are too many foreigners in France, he attempted to justify his political duty to voters to reduce the flow of "foreigners" from the current 180,000 per year to 100,000 per year.¹⁷² To effect the reduction of the number of foreigners in France, Sarkozy was even prepared to forego the Schengen Agreement, a 1985 treaty that removed border checks at the internal borders between member states (with the exception of Ireland and Great Britain), Switzerland and Iceland.¹⁷³ A pre-election "threat" in the form of the demand that, within one year, the EU amend the Schengen rules so as to cut off the free flow of illegal immigrants, was even addressed to the EU.¹⁷⁴ Sarkozy threatened that, should the EU fail to do this, France would leave the Schengen Area, which currently encompasses 400 million people on a territory of 1.7 million square miles.¹⁷⁵

During his presidency, Sarkozy banned begging in several

168. *Id.*

169. *Id.*

170. Chrisafis, *supra* note 122.

171. *Sarkozy Intensifies Anti-Immigration Rhetoric*, DW.DE (Dec. 3, 2012), <http://www.dw.de/sarkozy-intensifies-anti-immigration-rhetoric/a-15703843-1>; *France election 2012: Nicolas Sarkozy promises to protect France as he unveils manifesto*, THE TELEGRAPH (Apr. 5, 2012), <http://www.telegraph.co.uk/news/worldnews/nicolas-sarkozy/9188665/France-election-2012-Nicolas-Sarkozy-promises-to-protect-France-as-he-unveils-manifesto.html>.

172. *Nicolas Sarkozy Says France has too many foreigners*, BBC NEWS EUROPE (Mar. 7, 2012), <http://www.bbc.co.uk/news/world-europe-17280647>.

173. *Sarkozy: France may leave visa-free zone*, UPL.COM (Mar. 12, 2012), http://www.upi.com/Top_News/World-News/2012/03/12/Sarkozy-France-may-leave-visa-free-zone/UPI-24511331535600.

174. *Id.*

175. *Id.*

wealthy Parisian neighborhoods with the aim of reducing the number of bothersome foreigners (who were for the most part Roma).¹⁷⁶ The mayor of Paris, Bertrand Delanoë, described the measures as the unacceptable stigmatization of the (mostly) Roma population.¹⁷⁷ Today, the situation of Roma living on the outskirts of Paris and Marseilles, where most Roma can be found, is unbearable.¹⁷⁸ Just when it seemed that the tale of forced expulsions from France had reached an end, and that the subject of forced expulsions and removals had disappeared from the headlines, the Roma tragedy got a reprise under the new president, Francois Hollande.

As if it were a never-ending soap opera, in August of 2012, the systematic demolition of Roma settlements began anew.¹⁷⁹ The demolition of shanties continued in September, and although it once again caught the media's attention, it does not appear that the persecution of Roma will cease.¹⁸⁰ France claims that it is voluntarily returning Romanian Roma to their country of origin in the framework of a humanitarian aid project (*aides au retour humanitaire*, ARH).¹⁸¹ With the aim of deporting Roma, on September 12, the French and Romanian governments reached an agreement through which France would first remove eighty Roma families from France.¹⁸² The project is set to continue with eighty projects meant to provide assistance for the reintegration of Roma who are sent back to Romania from France. It is very obvious that departures of Roma from France of this kind are not voluntary, as the agreement sees Romania committed to monitoring the reintegration of the Roma. This agreement is the product of two years of prior experience: the French pay Roma to leave France, and then the Roma return a few months later and once again wait to be

176. Nikolaj Nielsen, *Roma under fire in French election campaign*, EUOBSERVER.COM (Jan. 13, 2012), <http://euobserver.com/social/114882>.

177. *Id.*

178. *Id.*

179. Dheepthi Namasivayam, *France orders dismantling of Roma camp south of Paris*, CNN (Aug. 27, 2012), <http://www.cnn.com/2012/08/27/world/Europe/France-Roma-Camp/>.

180. *Roma camps destroyed by city authorities in Turin and Rome*, ANSA.IT (Sept. 12, 2013), http://www.ansa.it/web/notizie/rubriche/english/2013/09/12/Roma-camps-destroyed-city-authorities-Turin-Rome_9287921.html.

181. *New Deal between France and Romania on Roma Returns Must Not Breach Rights to Free Movement*, ERRC.ORG (Sept. 14, 2012), <http://www.errc.org/article/new-deal-between-france-and-romania-on-roma-returns-must-not-breach-rights-to-free-movement/4053>.

182. *Id.*

sent back to Eastern Europe (and paid).¹⁸³ However, it is difficult to accept the policy of voluntary departure as truly voluntary, as the Roma who leave actually do not have the right to free movement within the EU; the objective of the agreement is the collective expulsion of Roma from France. From June to September 2012, France carried out over thirty expulsions (which affected around 4,000 Roma) by demolishing Roma settlements and paying €300 for each adult and €100 for each child who left France.¹⁸⁴ Hollande's pre-election promises to end Sarkozy's practice of demolishing Roma settlements and expelling Roma from the country were obviously mere words. Roma originally left Romania (and Bulgaria), only to be sent back by Sarkozy and now Hollande, because of severe forms of discrimination and economic and social exclusion.¹⁸⁵ In their Eastern European home countries, Roma are often the victims of physical attacks and various other forms of degradation, which is why they view France as the promised land.¹⁸⁶ Even with discrimination, prosecution of vagrancy and measures against parents who do not send their children to school, life in France is easier on Roma than life in Romania, the country to which Roma will be sent back over the next two years in line with the agreement.¹⁸⁷

V. THE ITALIAN "NOMAD EMERGENCY"

France's discriminatory treatment of Roma can be easily examined side-by-side with racist measures in Italy. Forza Italia, the right-leaning political party that won in the general elections in April 2008, began inciting intolerance towards Roma as early as its pre-election campaign.¹⁸⁸ According to data from 2008, as much as sixty-eight percent of the Italian population describe themselves as opposed to Roma and stated that they would like to see Roma

183. Vlad Teodorescu, *Expelled Roma will keep coming back* (Sept. 18, 2012), www.presseurop.eu/en/content/article/2715571-expelled-roma-will-keep-coming-back.

184. *New Deal Between France and Romania*, *supra* note 181.

185. Jan Puhl, *Unwanted in France, Unloved in Romania: A Desperate Homecoming for Deported Roma*, SPIEGEL ONLINE INT'L (Aug. 31, 2010), <http://www.spiegel.de/international/europe/unwanted-in-france-unloved-in-romania-a-desperate-homecoming-for-deported-roma-a-714649.html>.

186. VERONIKA LEILA SZENTE, *SUDDEN RAGE AT DAWN* (Dimitrina Petrova ed., 1996), available at <http://www.errc.org/cms/upload/media/00/18/m00000018.pdf>.

187. *New Deal Between France and Romania*, *supra* note 181.

188. Owen Parker, *Roma and the Politics of EU Citizenship in France: Everyday Security and Resistance*, 50 *JCMS* 475 (2012).

completely expelled from Italy, regardless of their nationality.¹⁸⁹

The anti-Roma declarations led the European Commission to issue a warning to Prime Minister Berlusconi immediately after the 2008 elections (Berlusconi resigned as Prime Minister on November 16 2011; he was replaced by Mario Monti) warning him not to introduce extreme measures targeting Roma.¹⁹⁰ Nonetheless, in just two months and with the broad support of citizens, the government introduced a package of legal and political discriminatory measures aimed at Roma; the measures were approved by the newly elected parliament.¹⁹¹ Of the 160,000 Roma living in Italy, 90,000 have Italian citizenship.¹⁹² The remaining Roma come from Eastern Europe, mostly from Romania and the countries of the former Yugoslavia.

The measures through which Berlusconi's government declared a state of emergency in five Italian regions (Campania, Lazio, Lombardy, Piedmont and Veneto) and which gave local authorities special powers regarding Roma and Roma settlements, were given the name the Nomad Emergency (*L'Emergenza Nomadi*).¹⁹³ The measures were aimed at documenting Nomads or Roma and included collecting information (including about ethnicity and religion) together with fingerprints.¹⁹⁴ Through the Nomad Emergency, local authorities could justify the demolition of illegal Roma settlements and even violations of human rights. The Nomad (that is, Roma) database also included children.¹⁹⁵ It included all Roma, regardless of age, which the government explained as an urgent measure aimed at preventing the trafficking of children and children being forced to beg.¹⁹⁶ It became

189. *Id.*

190. *Commission warns Italy not to expel Roma*, DIVERS.RO, http://www.divers.ro/documentar_en?wid=37648&func=viewSubmission&sid=8725 (last visited Mar. 28, 2014).

191. *Id.*

192. Malcolm Moore, *Italy to fingerprint all Roma gypsy children*, THE TELEGRAPH (June 26, 2008), <http://www.telegraph.co.uk/news/worldnews/europe/italy/2200020/Italy-to-fingerprint-all-Roma-gypsy-children.html>.

193. *Italy: 'Zero Tolerance for Roma': Forced Evictions and Discrimination against Roma in Milan*, AMNESTY INT'L (Nov. 29, 2011), <http://www.amnesty.org/en/library/info/EUR30/020/2011>.

194. *Id.*

195. Moore, *supra* note 192.

196. Centre on Housing Rights and Evictions (COHRE) v. Italy, Merits, Judgment, Council of Eur., Eur. Comm. of Soc. Rights, ¶ 15 (Jun. 25, 2010); Nick Pisa, *Italy declares state of emergency over Roma immigrants*, THE TELEGRAPH, July 25, 2008, at 1, <http://www.telegraph.co.uk/news/worldnews/europe/italy/2459968/Italy-declares->

increasingly obvious that the Italian government was collecting fingerprints to create records on a specific ethnic group (ethnic cataloguing); this gave rise to criticism primarily outside of Italy.¹⁹⁷ But even in Italy, the government's actions—the cataloguing of Roma—drew parallels to the cataloguing of Jews in World War II in many people's minds.¹⁹⁸ Another cause for concern was the fact that in a survey, eighty percent of Italian respondents said they agreed with the government's anti-Roma package.¹⁹⁹

As noted above, the Nomad Emergency also included the demolition of illegal Roma settlements, which were mostly located in the suburbs of Rome, Milan, and Naples.²⁰⁰ According to the government's plan, the camps were to be demolished and the Roma illegally living in Italy expelled by May 2009.²⁰¹ As a result of the "troublesome" nomad settlements, on May 21, 2008 the Italian government issued an ordinance (valid for one year) declaring a state of emergency in the Campania, Lazio and Lombardy regions.²⁰² In doing so, the government wished to highlight the danger to the local population, or in its own words, "the alarming social situation that could result in violations of public order and security."²⁰³ Due to the "danger," the ordinance was also extended to the Piedmont and Veneto regions.²⁰⁴ The Nomad Danger measures authorized government representatives in the regions in order to circumvent laws protecting human rights, which resulted in more frequent forced, and for the most part, unsanctioned, removal of the Roma community.²⁰⁵ Under the ordinance, authorized officials had discretion to fingerprint and document persons (including youth), and were able to adopt measures against persons who were or who could be expelled through administrative or judicial channels.²⁰⁶ They even got permission to violate or circumvent laws pertaining

state-of-emergency-over-Roma-immigrants.html.

197. Andrew Gilmore, *Italy begins mass fingerprinting of Roma minority*, JURIST (Jul. 3, 2008), <http://jurist.org/paperchase/2008/07/italy-begins-mass-fingerprinting-of.php>.

198. Moore, *supra* note 192.

199. *Council of Europe blasts Italy over Roma fingerprinting*, EURACTIV.COM (June 30, 2008), <http://www.euractiv.com/socialeurope/council-europe-blasts-italy-roma-news-220116>.

200. Costanza Hermanin, *Counts' in the Italian 'Nomad Camps': An Incautious Ethnic Census of Roma*, 34 ETHNIC & RACIAL STUD. 1731, 1735 (2011).

201. *Id.*

202. *Gazzetta Ufficiale*, 21 maggio 2008, n.122 (It.).

203. *Italy: 'Zero Tolerance for Roma,' supra* note 103.

204. *Id.*

205. *Id.*

206. *Id.*

to constitutionally protected fundamental human rights (for example, the right to be informed when collecting information).²⁰⁷ Additionally, in his speeches, the Minister of the Interior emphasized on several occasions that the government will take urgent action and, in the future, will evict both Italian and foreign Roma.²⁰⁸

It wasn't until three years later that the government's autocracy was brought to an end by a decision by the highest administrative court in Italy; the Council of State ruled that the government ordinances—the Nomad Emergency—were illegal.²⁰⁹ The court ruled that the implementation of the plan, through which a wide range of Roma communities' human rights were violated, was legally unacceptable.²¹⁰ Although this halted the discriminatory ordinances, the Roma whose rights had been violated through the state of emergency in the three years prior to the verdict, weren't even offered damages.²¹¹ Furthermore, in February of 2012, the government filed an appeal against the Council of State's ruling with the Court of Cassation.²¹² The Council of State has therefore put the enforcement of the ruling on hold until the Court of Cassation issues its ruling.²¹³ At the time of writing, a ruling still hadn't been issued.²¹⁴ Certain domestic and international organizations, including Association 21 July (*Associazione 21 luglio*)—the Association for Juridical Studies on Immigration, Amnesty International, Human Rights Watch and the Open Society Justice Initiative—have warned the Italian government and called on it to cease the Nomad Emergency and the violations of Roma rights that the measures permit.²¹⁵

Although the government that implemented the measures was replaced by a new government, headed by Mario Monti, the

207. *Id.*

208. Hermanin, *supra* note 200.

209. *Italy: Leave "Nomad Emergency" in the Past*, HUMAN RIGHTS WATCH (May 11, 2012), <http://www.hrw.org/news/2012/05/11/italy-leave-nomad-emergency-past>.

210. *Id.*

211. Costanza Hermanin & Steve Kostas, *Italy Takes a Step Towards Confronting Anti-Roma Discrimination*, OPEN SOCIETY FOUNDATIONS (June 28, 2013), <http://www.opensocietyfoundations.org/voices/italy-takes-step-towards-confronting-anti-roma-discrimination>.

212. *Italy: Leave "Nomad Emergency," supra* note 209.

213. *Id.*

214. *Italy: Supreme Court strikes down the 'Nomad emergency' for good*, AMNESTY INT'L (May 2, 2013), <http://www.amnestyusa.org/news/news-item/italy-supreme-court-strikes-down-the-%E2%80%98nomad-emergency-for-good>.

215. *Id.*

situation of Roma clearly hasn't changed a great deal. In December 2011, an angry mob (together with the President of the fifth ward, a civil servant) took part in a violent rally in Turin, setting fire to and destroying the illegal Roma camp at Via Continassa.²¹⁶ The violence was sparked by a media report about the rape of an Italian girl allegedly perpetrated by two Roma.²¹⁷ The alleged rape victim later withdrew the charges, but the disastrous consequences could not be undone.²¹⁸ The anger of the local Italian population led to violence against an entire Roma community.²¹⁹ The physical violence was accompanied by a flyer calling on residents to clean up the area where Roma reside.²²⁰

The Italian government has not confronted the problems facing the country's Roma in earnest, nor with a view to a solution. However, it submitted a strategy for the inclusion of Roma to the European Commission in February 2012, where in which it promised to put an end to segregation and to encourage the inclusion of Roma through various measures.²²¹ Nearly half a year has passed, and the situation of Roma hasn't improved one iota. In the strategy, Italy promised to provide non-discriminatory education for children and to train adult Roma, with special emphasis on the employment of Roma women.²²² Through the use of the European Social Fund, it is supposed to help Roma obtain micro-credits.²²³ Promises in the field of healthcare included vaccinations, improved medical care and even training Roma to work in the healthcare field.²²⁴ Ambitious measures were also

216. *ERRC Wins Vital Legal Case for Roma in Italy, as Highest Court Upholds Ruling on State of Emergency*, ERRC.COM (June 2013), <http://www.errc.org/cms/upload/file/errc-newsletter-2-2013.pdf>.

217. *Racist crowd sets fire to a Roma squatter camp after a false accusation of rape*, EVERYONE (Dec. 12, 2011), http://www.everyonegroup.com/Everyone/MainPage/Entries/2011/12/12_Racist_crowd_sets_fire_to_a_Roma_squatter_camp_after_a_false_accusation_of_rape.html

218. *Id.*

219. *Id.*

220. OHCHR, PARALLEL REPORT TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION ON ITALY 9 (2012).

221. *National Roma Integration Strategies: A First Step in the Implementation of the EU Framework* (The Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, Commission Staff Working Document 226 (2012), available at http://ec.europa.eu/justice/discrimination/files/swd2012_133_en.pdf).

222. *Id.*

223. *Id.*

224. *Id.*

foreseen in the field of housing—i.e., providing adequate housing, including the construction of new housing and micro-credits for the purchase of flats.²²⁵

In its strategy, the Italian government also explicitly stated its opposition to a system of camps, which, in its words, “contributes to social exclusion and segregation.”²²⁶ The Commission concluded that EU member states (Italy included) had “made an effort to develop a comprehensive approach to Roma integration.”²²⁷ Its main remark was that, in many areas, more specific definitions of objectives and calendars for implementing measures and obtaining funds for foreseen measures are lacking.²²⁸ This vagueness certainly serves Italy, as the lack of clear information makes monitoring and evaluating the implementation of the foreseen measures much more difficult, if not impossible.

While these promises are being made, local authorities in Italy continue to evict Roma from illegal settlements with the help of the police.²²⁹ Instead of offering them living conditions befitting the twenty-first century, such as clean drinking water, sewage systems, electricity and other basic amenities, local authorities are merely driving them out.²³⁰ Another method used by local authorities is to move Roma to official camps in isolated areas, even though official Italian policy, as outlined in the strategy for the inclusion of Roma, distances itself from these measures.²³¹ Roma families living in these camps face difficulties accessing some of the most basic necessities, including schools, stores and hospitals as they are fenced in and monitored by security cameras, far from other inhabited areas.²³² The newly founded official Roma camp in the vicinity of Rome, “*La Barbuta*,” is proof that the government is not keeping its promises to the European Commission.²³³ Although it has not resorted to the use of discriminatory language, in its

225. *Id.*

226. Press Release, European Commission, European Commission calls on Member States to implement national plans for Roma integration, (May 23, 2012) (on file with the European Commission Press Releases Databases).

227. *Id.*

228. *Id.*

229. *Italy: Halt closure of authorized Roma camp*, AMNESTY INT'L (June 28, 2012), <http://www.amnesty.org/en/news/italy-halt-forced-eviction-plans-roma-families-rome-camp-2012-06-28>.

230. *See id.*

231. *Id.*

232. *Id.*

233. *Id.*

actions, Monti's government is showing that its stance is ultimately identical to that of its predecessor. In the first half of 2012, around 850 people were driven out of unofficial camps in the vicinity of Rome.²³⁴

Although Roma living in Italy are no longer being fingerprinted, and the fingerprints already collected may not be used, they still exist. Amos Luzzatto (the former head of the Union of Jewish Communities in Italy) pointed out that it was precisely through measure like this documentation and fingerprinting, limited to the Roma population (including 80,000 Roma children), that Mussolini's regime achieved the segregation of the Jews in 1938.²³⁵ According to Luzzatto, there exists a latent racism within Italian culture that cyclically manifests itself.²³⁶ The fingerprinting of children presupposes that these children are potential thieves—perpetrators of criminal acts.²³⁷ Fingerprints are not only a way to document unwanted individuals, but are also, as recent history demonstrates, acts leading to discrimination, exclusion from schooling, and the introduction of separate classes. It is obvious that Italy, like a growing number of European countries, has begun to forget history's reminder.

VI. HUNGARIAN "GYPSY CRIMES" AND ATTACKS FROM FAR RIGHT GROUPS

The tale of Roma living in Hungary differs little from that of Roma living elsewhere in Europe. Are Hungarians concerned about demographic predictions, which foresee nearly half the population being of Roma origin by 2050? Do Hungarians feel repulsed at the thought of racial and cultural diversity? Regardless of the reasons behind the persecution of Roma in Hungary, the most recent anti-Roma developments in the country are cause for serious concern. According to data from the European Union Agency for Fundamental Rights for the year 2009, ninety percent of Hungarian Roma are aware of ethnic discrimination, and sixty-two percent of them reported being victims of discrimination in years 2008 and 2009.²³⁸

234. *Italy's Roma still segregated and without prospects*, AMNESTY INT'L (Sept. 12, 2012), <http://www.amnesty.org/en/for-media/press-releases/italy-s-roma-still-segregated-and-without-prospects-2012-09-12>.

235. Moore, *supra* note 192.

236. *Id.*

237. *Id.*

238. DATA IN FOCUS REPORT I: THE ROMA, EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, 4-7 (2009), http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-

The populist right-centre government of Prime Minister Viktor Orban has brought about the reawakening of the hatred of “the fascist movement[] of the 1930s and 1940s.”²³⁹ Anti-Semitism and the persecution of Roma are making a comeback, as if history had not taught the Hungarians a lesson. The government now supports the discriminatory outbursts of the Tiszavasvar-based Jobbik parliamentary party—also known as the *Jobbik Magyarországért Mozgalom* or “the Movement for a Better Hungary”—which have become a regular occurrence.²⁴⁰ The Jobbik party was formed from a right-leaning student organization, the *Jobboldali Ifjúsági Közösség-Jobbik*, which was founded in 2003.²⁴¹ At the national parliamentary election in 2010, it won 855,436 votes (16.67%) and seventeen seats (12.18%).²⁴² In the town where Jobbik headquarters is located, local police or *Csendorseg* (gendarmerie) have been instated to monitor and drive out Roma.²⁴³ Local militias of this kind are a phenomenon from World War II.²⁴⁴ In 1944, they played an extremely negative role in persecuting and rounding up Jews, who were ultimately deported by the Germans to concentration camps.²⁴⁵ Today, the government prohibits the establishment of militias of this kind.²⁴⁶ However, the local population of Tiszavasvar defends the gendarmie, citing their fear of theft perpetrated by Roma as the reason.²⁴⁷ The theft of chickens in Hungary and throughout Eastern Europe remains a characteristic “gypsy crime.”²⁴⁸ Accordingly, the Jobbik party generally labels gypsy crime as acts of racketeering and theft from homes and

MIDIS_ROMA_EN.pdf.

239. Nick Cohen, *Beware PR men bearing dictators' gifts*, THE GUARDIAN (Apr. 28, 2012), <http://www.theguardian.com/commentisfree/2012/apr/29/nick-cohen-dictators-public-relations>.

240. *The Movement for a Better Hungary (Jobbik Magyarországért Mozgalom), including reports of hate speech and the state response to such statements [HUN103822.E]*, ECOI.NET (Oct. 6, 2011), http://www.ecoi.net/local_link/204866/309958_en.html.

241. *Id.*

242. RUTH WODAK ET AL., RIGHT-WING POPULISM IN EUROPE 224 (Ruth Wodak et al. eds., 2013).

243. Nick Thorpe, *Hungary's Roma encounter 'gypsy crime' gendarmes*, BBC NEWS EUROPE (June 8, 2011), <http://www.bbc.co.uk/news/world-europe-13544903>.

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Hungarian public works plan 'terrorising' Roma:NGO*, THE NEW AGE ONLINE (Dec. 8, 2011), http://www.thenewage.co.za/37297-1020-53-Hungarian_public_works_plan_'terrorising'_Roma_NGO.

gardens.²⁴⁹

Gypsy crimes only further incite villagers to anger, making it easier for them to support the authorities' measures. It is interesting to note that every time support for the Jobbik party begins to decline, the party begins intensively using anti-Roma policies and persecuting Roma, which in turn strengthens its position among potential voters. The Jobbik party even proposed that parliament adopt a penal provision that would prohibit the denial of "gypsy" crime.²⁵⁰ The party foresees a penalty of up to three years in prison for denying that Roma are perpetrators of criminal acts and that they are criminals.²⁵¹ The new penal code adopted by the Hungarian parliament in June 2012 after months of heated debate (and which entered into force on July 1, 2013) did not include the Jobbik party's proposals.²⁵² It did, however, introduce an effective system of strict penalties for perpetrators of criminal acts stemming from prejudice and hatred if said acts are committed against a national, racial, religious, or ethnic group.²⁵³ Criminal acts committed against Roma will therefore not go unpunished as at present. Here, however, a question regarding the efficiency of sanctioning bodies, such as the police, the state prosecutor and the courts, arises. Even the best penal codes will fail to achieve their objectives if they are not actually enforced.

The Jobbik party has become very "innovative," cleverly making use of different methods for terrorising and persecuting Roma. One example is the extensive public building program in the village of Gyöngyöspat, whose mayor, Oszkar Juhász, is a member of the Jobbik party.²⁵⁴ At first glance, the project seems rather well-intentioned: eighty percent of the people it employs are from the local area and many of them are of Roma origin.²⁵⁵ Yet when one looks behind the facade, it becomes clear that the program is

249. Thorpe, *supra* note 243.

250. Adrienn Kácsor, *About Roma people's human rights in Europe – The black hole of the European Union's liberalism*, BARDPOLITIKDAILY (Sept. 21, 2010), <http://bardpolitikdaily.blogspot.com/2010/09/about-roma-peoples-human-rights-in.html>.

251. *Id.*

252. *Parliament has passed the New Penal Code*, WEBSITE OF THE HUNGARIAN GOVERNMENT, (June 28, 2012), <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/parliament-has-passed-the-new-penal-code>; MTI, *New penal code too lenient, says Jobbik*, POLITICS.HU, (July 3, 2013), <http://www.politics.hu/20130703/new-penal-code-too-lenient-says-jobbik>.

253. *Parliament has passed the New Penal Code*, *supra* note 252.

254. *Hungarian Public works plan 'terrorising' Roma: NGO*, *supra* note 248.

255. *Id.*

intended to terrorize the Roma minority. The pay is miserable, with the workers receiving 47,000 forints a month (€152 or \$205) for an eight-hour workday,²⁵⁶ which does not even come close to the amount an individual requires for his subsistence, let alone for that of his family. The hidden objective of this kind of “employment” is to address the laziness of Roma and finally, to get them to work. Inhumane treatment is used to coerce Roma workers in their work, and includes walking several kilometres through overgrowth, which the workers clear with machetes, in extreme heat and without water.²⁵⁷ In the winter, the police and local guards check and personally examine the Roma workers to make sure they do not carry off wood to use as fuel.²⁵⁸ For as petty an act as riding a bicycle without a bell or jaywalking, Roma are hit with fines in the amount of 10,000-15,000 forints (€35-53 or \$46-70), which, in light of the income situation of most Roma, are impossibly large.²⁵⁹ It is a case of blatant discrimination, as non-Roma are not fined for such petty violations. The aim of this treatment of Roma is very clear—to create living conditions in Gyöngyöspat that are so unbearable that Roma will have no choice but to move elsewhere. Regardless of how members of the EU interpret the work offered to Roma, one simply cannot overlook the fact that the extreme right-wing militant groups monitoring and patrolling in villages with a Roma population with the supposed aim of “re-establishing order” are blatantly inappropriate, ethically unacceptable, and legally discriminatory.

One may justifiably ask: where are the individuals of the village amid all of these discriminatory, offensive acts? Their problem is that they are blind to the situation. They are for the most part uneducated and poor, which is why indoctrination is not a very difficult task for the authorities.²⁶⁰ Yet, this must not be an excuse for looking the other way and ignoring the local anti-Roma policy.

These types of local policies are unavoidable as the police themselves are involved in the violation of Roma rights in many instances. Some parts of Hungary with high concentrations of Roma, like the Borsod-Abauj-Zemplen area in the southeast, record the largest number of incidents of verbal and physical assaults on Roma

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

by the police.²⁶¹ The attitude of the majority, including the police, towards Roma is not positive; it is telling that six Roma, some of them children, were killed in attacks by right-wing extremists between January 2008 and August 2009.²⁶² The question once again arises: are those who stand idly by, who do nothing to defend those under attack, preferring instead to look the other way, responsible? One example of standing idly by and doing nothing occurred in Italy in 2008, when two tourists found themselves calmly sunbathing next to the corpse of a young Roma girl.²⁶³ The number of such cases in Europe is on the rise.²⁶⁴

In addition to the discrimination mentioned above, Hungary has gained media attention from the Magyar Gárda, Jobbik's paramilitary wing, which was established in 2007.²⁶⁵ The Gárda held rallies and members dressed in military uniforms that were reminiscent of the Arrow Cross party, a World War II Hungarian fascist party.²⁶⁶ The Hungarian Supreme Court banned Jobbik's militant wing in 2009 for spreading nationalism and xenophobia.²⁶⁷ The Court's decision, however, has changed nothing, and the Gárda's rallies continue unchecked.²⁶⁸ Dressed in jackboots and black pants, with badges bearing discriminatory slogans, the Gárda frequently spreads hatred towards Roma, often calling for an end to "gypsy criminality."²⁶⁹ The "soldiers" also physically engage Roma and use physical threats to provoke fear.²⁷⁰

261. *Responses to Information Requests*, IMMIGRATION AND REFUGEE BOARD OF CANADA (July 16, 2012), <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454082>.

262. Nick Pisa, *Chilling indifference of Italians sunbathing just yards from the covered bodies of two drowned Roma children*, MAILONLINE.COM (July 20, 2008), <http://www.dailymail.co.uk/news/article-1036760/Pictured-Chilling-indifference-Italians-sunbathing-just-yards-covered-bodies-drowned-Roma-children.html>.

263. *Id.*

264. John Hooper, *Gypsy girls' corpses on beach in Italy fail to put off sunbathers*, THE GUARDIAN, July 20, 2008, <http://www.theguardian.com/world/2008/jul/21/italy.race>.

265. Georgiadou, *supra* note 62, at 229.

266. Marion Isobel & Jodie Liu, *Case Watch: European Court Supports Hungary's Dissolution of Racist Group*, OPEN SOCIETY FOUNDATIONS (July 16, 2013), <http://www.opensocietyfoundations.org/voices/case-watch-european-court-supports-hungarys-dissolution-racist-group>.

267. *Id.*

268. *Document - Hungary: Report Into Vigilante Activities in Gyöngyöspata Fails to Address Discrimination*, AMNESTY INT'L (Apr. 4, 2012), <http://www.amnesty.org/en/library/asset/EUR27/001/2012/en/a40f47f6-0345-4036-b9fd-0b81ff4f7a21/eur270012012en.html>.

269. Isobel & Liu, *supra* note 266.

270. Elvira Marx, *A Visit to Gyöngyöspata*, EUROPEAN ROMA MOVEMENT, (May 17, 2012), http://www.europeanromamovement.org/detail_t.php?ID=4&Lang=eng.

The Jobbik party's sister group, the so-called Brighter Future Militia, commenced similar actions in 2011.²⁷¹ In March and April of that year, the Brighter Future Militia began monitoring the Roma community in the towns of Hajduhadhaz and Gyöngyöspata in Eastern Hungary.²⁷² Uniformed members of the militia and other groups went through villages carrying torches, whips and axes.²⁷³ Their objective was to provoke fear among the Roma.²⁷⁴ A police decree issued by the Ministry of the Interior banned the militia's activities, but right-wing extremists continued with their one-off attacks.²⁷⁵

In 2012, public rallies and outbreaks calling for racial and ethnic discrimination against Roma continued. These public rallies and outbreaks contribute to the increased xenophobia in areas with larger Roma populations such as Hajduhadház, Gyöngyöspata, Zagyvarékas, Bekescsaba, Galgagyorgy, Tatárszentgyörgy, Miskolc and Sajóbáony.²⁷⁶ The government is keeping quiet on the matter and has not implemented an effective system for collecting data on "violent hate crimes" or the ethnicity of the victims of such crimes.²⁷⁷ Although the government occasionally calls on extremists to cease their activities, its inactivity cannot be interpreted as anything but an open affirmation of the violence against Roma.

In September 2010, European Parliament Member Csanád Szegedi proposed open discrimination against Roma.²⁷⁸ Ironically, Szegedi was a member of the Jobbik party until 2012 when it was revealed that he is of Jewish descent.²⁷⁹ In 2010, he proposed establishing "Public Order Detention Settlements" for the Roma who disturb or threaten the non-Roma's environment.²⁸⁰ Such

271. *Responses to Information Requests, supra* note 261; *Hungary: Treatment of Roma and State Protection Efforts*, IMMIGRATION AND REFUGEE BOARD OF CANADA (July 16, 2012), <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454082>.

272. *Responses to Information Requests, supra* note 261.

273. *Id.*

274. *Document - Hungary: Report Into Vigilante Activities, supra* note 268.

275. *Id.*

276. *Responses to Information Requests, supra* note 261.

277. *Id.*

278. Natalie Jaro, *Roma to be placed in Camps in Hungary?*, HUNGLISH.ORG, <http://www.hunglish.org/articles/roma-hungarian-conflict>.

279. *Id.*; Tony Paterson, *Csanad Szegedi, poster boy of Hungary's fascist right, quits after Jewish roots revealed*, THE INDEPENDENT (Aug. 17, 2012), <http://www.independent.co.uk/news/world/europe/csanad-szegedi-poster-boy-of-hungarys-fascist-right-quits-after-jewish-roots-revealed-8054031.html>.

280. Jaro, *supra* note 278; *Gypsy Voivod Confronts PM Orban at a Gypsy Crime Debate*, HUNGARIANAMBIANCE.COM (Oct. 24, 2010),

camps would be veritable concentration camps under constant police supervision.

Here, one must keep in mind the history of hatred towards Jews and Roma. Today, Hungary's extreme right preaches to its voters that "Roma and Jews" are enemies of the state. At a time of financial and social crisis, Hungarians have found (along with the oppressed and right-less Roma who pose a demographic threat) a "wealthier" enemy—Jewish people.²⁸¹ Representatives of the extreme right maintain that opposing socialist and liberal parties serve the interests of Israel and the Jews rather than their homeland, Hungary.²⁸² The all too familiar cycle of persecutor and persecuted is once again taking shape, with the respective roles being played by the same groups as in the past.

As seen on websites such as <http://kuruc.info/>, in addition to anti-Jewish policy and denial of the Holocaust, Anti-Roma policy and the public exposure of "gypsy criminality" are spreading. Is this a matter of freedom of speech and whether a EU member state is individually competent enough to regulate such speech and hatred? Or should the EU and the European Council step in and prohibit legally unacceptable, inflammatory, anti-minority actions of this kind?

VII. ACTIVATION POLICY IN SLOVAKIA

Ethnic discrimination is widely acknowledged as a factor that prevents effective implementation of plans to improve the employment of Roma. Even the Director of the Slovakian Employment Office has acknowledged ethnic discrimination.²⁸³ In 1999, the Director stated that applicants of Roma descent are marked with the letter "R" in their records due to their "complicated social adaptability."²⁸⁴ This is not an isolated case; open discrimination against Roma workers can be found more or less throughout Europe. One result of this is widespread

<http://www.hungarianambiance.com/2010/10/gypsy-voivod-confronts-pm-orban-at.html>.

281. Michael Goldfarb, *Hungarian government failing to shield Jews from right-wing hate*, GLOBALPOST BLOGS (May 16, 2013), <http://www.globalpost.com/dispatches/globalpost-blogs/belief/hungarian-government-failing-shield-jews-right-wing-hate>.

282. *Hungary far-right MP slams Israeli presence in parliament*, Y NET NEWS.COM (Nov. 30, 2012), <http://www.ynetnews.com/articles/0,7340,L-4313837,00.html>.

283. Huub van Baar, *Socio-Economic Mobility and Neo-Liberal Governmentality in Post-Socialist Europe: Activation and the Dehumanisation of the Roma*, 38 J. ETHNIC & MIGRATION STUD. 1289, 1294 (2012).

284. *Id.*

unemployment amongst Roma. In most European countries, Roma live off of social assistance from the state.

This pattern of unemployment can also be found in Slovakia, where the government tightened the social assistance system in 2003 and 2004 when it placed limits on social assistance for families.²⁸⁵ The measures implemented put pressure on social assistance recipients (including a large number of Roma), which led to demonstrations, primarily in Eastern Slovakia.²⁸⁶ Although the demonstrations were peaceful for the most part, the media labelled them "gypsy unrest" and "Roma riots."²⁸⁷ For the first time since the fall of the communist regime, Slovakia mobilized the police and military (1,600 police officers and 1,000 soldiers).²⁸⁸ The purpose of the armed presence was to monitor the Roma community and establish public order so that, in the words of the Prime Minister, "people could feel safe."²⁸⁹ With the aim of defusing the situation that arose, the government decided to expand social assistance for those actively seeking employment.²⁹⁰

At the beginning of 2004, Slovakia introduced an activation work program, created in conjunction with a new law (The Act on Employment Services) that lowered the standards for social assistance.²⁹¹ This new law reduced social assistance to families in need and also introduced a cap on assistance, which was not dependent on the number of family members.²⁹² This meant that for many who had previously been entitled to assistance, including many Roma with large families, social assistance was cut by as much as half.²⁹³ Through the simultaneous implementation of the activation program, the state promised it would actually increase aid to those who were eligible. The payment was initially €25.²⁹⁴

285. Ian Fisher, *Raslavice Journal; Where Gypsy Life Gets Harder, the Bitterness Boils Over*, N.Y. TIMES (Mar. 1, 2004), <http://www.nytimes.com/2004/03/01/world/raslavice-journal-where-gypsy-life-gets-harder-the-bitterness-boils-over.html>.

286. van Baar, *supra* note 283.

287. *Id.*

288. *Id.*

289. *Id.* at 1295.

290. *Id.*

291. Laco Oravec & Zuzana Bošelová, *Activation Policy in Slovakia: Another Failing Experiment?*, ROMA RIGHTS QUARTERLY, April 3, 2006, 13-14, available at <http://www.errc.org/article/activation-policy-in-slovakia-another-failing-experiment/2537>.

292. *Id.*

293. *Id.*

294. *Id.*

Today, it is €63.07 per month.²⁹⁵

The aim of the activation policy was to maintain the work habits of the employment seeker, who had performed at least ten hours of work per week, and at least forty hours of work per month.²⁹⁶ In many areas, Roma constituted close to 100% of the individuals participating in the activation activities.²⁹⁷ In 2004, an unprecedented 243,000 Roma were employed.²⁹⁸ In some areas (Košice, Prešov) there was even a shortage of work, which the government described as a tremendous success.²⁹⁹ The unemployability of Roma was supposed to be reduced through “activation” in public works programs.³⁰⁰ According to the law, activation activities can be performed in the following areas: “improvement of living conditions, social and cultural conditions, protection of the environment, preservation of cultural heritage, improvement of the economic conditions of the municipality, delivering social services and education as well as other community activities.”³⁰¹ “Activation” is currently the only program aimed at stimulating employment for Roma. However, it is task-based and does not provide any formal training or investment to improve the qualifications of participants.³⁰² The pay Roma receive for hard labour is exceptionally small—especially when compared to the minimum wage of €337.70³⁰³—an amount that has led some analysts to compare this employment to modern-day slavery.³⁰⁴

295. *Assistance in Material Need*, MIGRATION INFORMATION CENTER, <http://mic.iom.sk/en/social-issues/social-security/69-pomoc-v-hmotnej-nudzi-socialne-davky-slovensko.html> (last visited Mar. 28, 2014).

296. OECD, SLOVAK REPUBLIC 2009, art. 49, (2009), available at <http://www.oecd.org/slovakia/47346647.pdf>.

297. Oravec & Bošelová, *supra* note 291.

298. EUROPEAN ROMA RIGHTS CENTRE, THE GLASS BOX: EXCLUSION OF ROMA FROM EMPLOYMENT 57 (2007), available at <http://www.errc.org/cms/upload/media/02/14/m00000214.pdf>.

299. Oravec & Bošelová, *supra* note 291.

300. WORLD BANK, IMPLEMENTING THE BENEFIT IN MATERIAL NEED IN THE SLOVAK REPUBLIC 57 (2011), available at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0C CkQFjAA&url=http%3A%2F%2Femployment.gov.sk%2Fimplementing-the-benefit-in-material-need-in-the-slovak-republic.pdf&ei=8XrwUpTSDdjkoAS53YHADQ&usg=AFQjCNeu39lpTuT36AgYEAvIORMPL YioQ&sig2=Dvw-NAD2eFhXpZj1QLte0A&bvm=bv.60444564,d.CGU>.

301. *Id.* at 58.

302. *Id.* at 61.

303. *NMW - National Minimum Wage - Slovakia*, COUNTRYECONOMY.COM, <http://countryeconomy.com/national-minimum-wage/slovakia> (last visited Mar. 28, 2014).

304. Oravec & Bošelová, *supra* note 291.

Roma are forced to accept any work they can find because they are aware that participation in the activation programs is a condition for receiving social assistance.³⁰⁵ Some municipalities that have entered the activation program constantly come up with work that program employees can perform, thereby abusing the goal of the program.³⁰⁶ Furthermore, there have been instances where activation work has replaced the work of regular full-time employees and enabled private enterprises to lay off full-time workers.³⁰⁷ Although the tasks workers are asked to perform are the same or even more strenuous, pay for activation work is lower.³⁰⁸ This work does not contribute to the search for more permanent employment; as can be deduced from the above, the trend appears to be going in the opposite direction. Companies that make use of activation work provide services and produce goods at a lower price than companies with full-time employees.³⁰⁹

Activation policy serves to perpetuate discrimination against Roma, as it provides only the least desirable jobs, which some in Slovakia call “work for blacks.”³¹⁰ Local authorities who are in charge of implementing the program, divide workers into sub-groups—for example, waste separation, street cleaning, road maintenance work, maintenance work in public squares, maintenance work in parks, and cemeteries.³¹¹ Each group has its own unwritten rules, and cases of corruption are not infrequent.³¹² Workers are placed in a hierarchy, with their placement depending for the most part on the level of the sub-group.³¹³ The program was also supposed to offer activated workers with regular and special education and individual-based training aimed at making it easier to find a job, but it has fallen far short of these goals, which really never made it past the idea phase.³¹⁴ Although the implementation of the Activation Works Program in Slovakia is financed to a large degree from the European Social Fund, the actual program has little in common with the one submitted.³¹⁵ The European Commission

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

309. THE GLASS BOX: EXCLUSION OF ROMA FROM EMPLOYMENT, *supra* note 298.

310. Oravec & Bošelová, *supra* note 291.

311. THE GLASS BOX: EXCLUSION OF ROMA FROM EMPLOYMENT, *supra* note 298.

312. *Id.*

313. *Id.*

314. *Id.*

315. *Id.*

should also point this out. In listing priorities for accessing structural funds, it only emphasizes the stated purpose of reducing unemployment and improving the situation of marginalized groups; not that the project be carried out in conformity with the submitted program.³¹⁶

The social exclusion of Roma leads to poverty and need and, at the same time, has economic consequences for society as a whole. The above description shows that the inclusion of Roma in the real labor market is extremely low. As a result of discrimination, Roma are not offered work to the same extent as non-Roma, except work that is degrading and that non-Roma do not wish to perform.³¹⁷ This applies not only to private enterprises, but also to the public sector.³¹⁸ This void in the labor market could pose a serious problem in the future considering the demographic trend of an aging population across Eastern Europe. Young people, including Roma with full-time employment, are going to have to cover costs resulting from an increased number of pensions and medical payouts. Removing discrimination and providing equal opportunities for employment to Roma would certainly lead to a more favourable economic situation and to a reduction in social assistance. Despite the positive effects that an anti-discriminatory policy could have for state finances, and despite the fact that seventy-three percent of Roma households in Slovakia are still dependent on social assistance,³¹⁹ the Constitutional Court in Slovakia has prohibited positive measures aimed at removing discrimination.³²⁰ The Court recalled Section 8(8) Anti-Discrimination Act, which stated that “with a view to ensuring full equality in practice and compliance with the principle of equal treatment, specific balancing measures to prevent disadvantages linked to racial or ethnic origin may be adopted.”³²¹ The Court declared the anti-discrimination law unconstitutional, saying that it is not in the spirit of the principle of the rule of law.³²² Through

316. European Commission, *The ESF in Slovakia*, EC.EUROPA.EU, <http://ec.europa.eu/esf/main.jsp?catId=397&langId=en> (last updated Oct. 3, 2013).

317. Oravec & Bošelová, *supra* note 291.

318. THE GLASS BOX: EXCLUSION OF ROMA FROM EMPLOYMENT, *supra* note 298.

319. Immigration and Refugee Board of Canada, *Slovak Republic: Overview of the Situation of Roma; State Protection and Assistance from Romani Organizations*, REFWORLD (June 1, 2009), available at <http://www.refworld.org/docid/4e43aac02.html>.

320. DATA IN FOCUS REPORT I, *supra* note 238.

321. *Slovakia*, 3 EUROPEAN ANTI-DISCRIMINATION L.R. (2006)

322. *Id.*

positive racial and ethnic discrimination, the law was intended to create conditions that would be more favourable to Roma, which the Court found to be unacceptable. The Slovaks are obviously not aware that, in the long run, a privileged position would bring Roma closer to the majority population and thus create a better, higher standard of living for the entire community.

VIII. CONCLUSION – “THE ROMA ARE WHAT WE STRIVE TO BE: REAL EUROPEANS”³²³

In this conclusion, which is sadly not the “conclusion” of a series of unfortunate developments involving Roma, I would like to point out the different layers of the situation of Roma living in Europe today. The rise in intolerance towards Roma is clearly linked to the European policy of belt-tightening and worsening social and economic conditions on the continent. Politicians in the countries most affected by the economic crisis have had to find a “bone”—Roma—to throw to the angry, disaffected masses. This lessens pressure on ruling powers and takes the heat off the state, but at the same time, releases a wave of negativity on the fastest growing minority in Europe, which is helpless to defend itself.³²⁴ Roma are unwanted wherever they go, faced with poor living conditions and illiteracy, and forced to live on the fringes of society and the developed world. These conditions make it impossible for Roma to climb out of the dire straits in which they find themselves. Despite its big words, the EU has not been a great help. States have come to realize that violations will go unsanctioned and the media buzz criticizing what actually comes out of the EU quickly dies down. Thus runs the vicious cycle of Roma leaving Eastern Europe and arriving in France, where they are paid to return “voluntarily” to their home countries, only to once again depart from Eastern Europe.³²⁵ The French have caught on and cleverly reached an agreement on the expulsion of Roma with the Romanians, whereby

323. Quote by Günter Grass, recipient of the 1999 Nobel Prize in Literature.

324. European Committee on Romani Emancipation, *The Impact of Special Schools on the Roma in Central Europe: A Case of Willful Criminal Neglect & Professional Incompetence*, ECRE Doc. (2003) 002 (Feb. 26, 2003), available at <http://www.eu-romani.org/ec302ss.htm> (last updated Mar. 18, 2003) (If current demographic trends continue, Roma will be the majority population in Romania by the year 2050; in the Czech Republic, Roma will make up 11.3% of the population compared to 3.5% in 2000, and in Slovakia, they will make up 34.2% of the population compared to 11% in 2000.).

325. Article on French Immigration Policies, ERRC.COM (Sept. 14, 2012), http://www.errc.org/popup-article-view.php?article_id=4053.

the Romanians monitor Roma to ensure that they will not be able to return to France.³²⁶ It is quite possible that the system will be a success for France, and that the country will have found a long-term solution to deal with non-French Roma. Yet calculations of this kind are unacceptable. From a legal standpoint, the question of the free movement of people within the EU arises; and in practice, there is the question of how the monitoring and supervision of the Roma who have been returned to Romania is to be carried out. The discrimination, poverty and police supervision that Roma sought to escape by going to France will once again return to their lives. And Europe is once again silent.

In this contribution, I outlined some of the more blatant and problematic violations of the rights of Roma in Europe today. The list could be expanded daily, as new violations occur in a growing number of countries. So what can I offer by way of a conclusion? Or, more accurately, what can be done to improve the situation of Roma in Europe?

We have seen the impotency of criticism from both the EU and the European Council aimed at individual member states and their policies, and can conclude that merely providing legal arrangements and ensuring conditions on paper is not enough. This is apparent in the adoption of a national strategy for the integration of Roma on the EU level.³²⁷ States have gone about this task with a “two in the bush” approach; substantially, they promise a great deal, but do not back it up with calendars or financial planning, making the monitoring of actual implementation virtually impossible.³²⁸ While the EU has pointed this out, states are aware that the paper “holds water,” so to speak, and that ultimately, they themselves will have to deal with and manage the actual realities in their territories.³²⁹ National strategies are, to a large degree, constructs

326. Sergio Cathera, *Shifting Responsibilities for EU Roma Citizens: The 2010 French Affair on Roma evictions and Expulsions continued*, in LIBERTY AND SEC. IN EUROPE (June 6, 2013), available at <http://www.ceps.eu/book/shifting-responsibilities-eu-roma-citizens-2010-french-affair-roma-evictions-and-expulsions-con>.

327. EUROPEAN COMMISSION, EVALUATION OF ESF SUPPORT FOR ENHANCING ACCESS TO THE LABOUR MARKET AND THE SOCIAL INCLUSION OF MIGRANTS AND ETHNIC MINORITIES—ROMA THEMATIC REPORT (2011), available at http://ec.europa.eu/justice/discrimination/files/evaluationesfsupportroma2011_en.pdf.

328. Bernard Rorke & Martin Demirovski, “European Commission Making Headway on Roma Integration”: *So What About the Member States?*, OPEN SOCIETY FOUNDATIONS (June 5, 2013), available at <http://www.opensocietyfoundations.org/voices/european-commission-making-headway-roma-integration-so-what-about-member-states>.

329. ROMA THEMATIC REPORT, SUPRA NOTE 327.

consisting of innovative and encouraging proposals, which in many places, are completely unrealistic. For example, the introduction of mandatory kindergarten education in Slovakia, a country that cannot even provide basic education for Roma children, is unrealistic.³³⁰ A British proposal advising that forty percent of Roma children over two years of age be enrolled in kindergarten is considerably more realistic.³³¹ While they may serve as good starting points, national strategies will not guarantee the removal of inequalities between Roma and non-Roma. Moreover, the ECHR's rulings, regardless of how positive and favourable to the Roma community they may be, only serve to resolve the discriminatory situations of individual members of Roma communities.

A global solution to Roma discrimination is not within the competency of supranational organizations or individual states. It is simply a matter of changing the mindset of individuals. While it may sound populist, a pilot study on Roma children living in the United Kingdom provides insight into how different the lives of Roma could be if they lived in a non-discriminatory environment where diversity is equality and where the majority community accepts minorities without a problem.³³² Children who had been included in special schools for below-average children in the Czech Republic (after the Czech Republic lost a case before the ECHR, these schools were merely renamed "practical schools"),³³³ achieved near-average results in basic primary schools, which the study attributes in part to the children getting used to using a new language.³³⁴ The study showed that Roma children from Slovakia achieved similar success after having attended similar schools at home and then arriving in England without knowing the language.³³⁵ The study also shows a strong relationship between teachers, students and their parents; this attributable to the fact that most teachers had never heard of

330. Will Guy & Martin Kovats, EU-FUNDED ROMA PROGRAMMES: LESSONS FROM HUNGARY, SLOVAKIA AND THE CZECH REPUBLIC, MINORITY RIGHTS GROUP INTERNATIONAL (2006), available at www.minorityrights.org/download.php?id=64.

331. *The European Union and Roma – Country Factsheet: United Kingdom*, EUROPEAN COMMISSION (2013), http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2013/uk_en.pdf.

332. EQUALITY, FROM SEGREGATION TO INCLUSION: ROMA PUPILS IN THE UNITED KINGDOM (2011), available at http://equality.uk.com/Education_files/From%20segregation%20to%20integration_1.pdf.

333. *Id.*; Article on racial segregation of Roma children, ERRC.COM (Sept. 16, 2003), www.errc.org/popup-article-view.php?article_id=2982.

334. FROM SEGREGATION TO INCLUSION, *supra* note 332.

335. *Id.*

Roma nor had ever had them in their classes before. Instead of being placed in separate classes or groups, Roma children are treated just like children of other immigrants who require special assistance due to the language barrier.³³⁶

I mention this example because I believe that Roma issues must be addressed through best practices on all levels, especially in the field of education; the way the child—and later the adult—feels in the environment he or she lives in is of fundamental importance. It will, in all likelihood, be a considerable task to get a child excited about attending school if he or she is not allowed to board a bus and ride to school with the children he or she will have to socialize with at school because of prejudice. Without schooling, it will be difficult to find work and the child will find him or herself drawn into a cycle of poverty and hunger, which he or she will be forced to mitigate from time to time by stealing greens from a neighbour's garden. This vicious cycle will perpetuate negative judgment as well as the stereotype that Roma are lazy and filthy, that they steal, do not know how to live in an orderly environment and are incompetent and intellectually inferior. These judgments and stereotypes may remain entrenched in the minds of future generations.

Despite Europe's declarations of minority rights protections, real protection exists only on paper and seems a long way from becoming a reality for Roma. That is why it is understandable that today, Roma throughout Europe are increasingly passing themselves off as "others" (i.e., as Turks). In line with the logic of majority national groups, by doing so, they are putting themselves in a somewhat better position than they would encounter as "Tsigani." If we wish to introduce a greater degree of tolerance into nationalist Europe, the pejorative and demeaning words: "Gypsies" and "Tsigani" should disappear from our vocabulary. Or perhaps, as my close American friend of Hungarian descent suggested, we should begin using these words to denote "travellers," that is, all those who find that the world is already too small and who never fully know where the new day will take them.

336. *Id.*