

Roma in the EU: the French deportations v. European law

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Dr. Morag Goodwin

Tilburg Institute for Law, Technology and Society

m.e.a.goodwin@uvt.nl

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*Tilburg Institute
for Law, Technology,
and Society*

Why focus on the Roma?

- Scope and scale of problems mean Roma constitute toughest test for non-discrimination instruments
- What conditions do they face?
 - Racially-motivated violence
 - Denial of access to:
 - Work
 - Health care
 - Education
 - Housing
 - Social Benefits
 - Public Places
 - Free Movement (as EU citizens)
 - Gut-wrenching poverty

- “by such measures as literacy, infant mortality and basic nutrition, most of those country’s [Bulgaria, Czech Republic, Hungary, Romania and Slovakia] Roma endure conditions closer to sub-Saharan Africa than Europe”, UNDP, 2003
- In sum: Roma face structural discrimination in nearly every area of life, from birth through childhood, in healthcare, education, employment, housing, starting a family, in political and social participation, and in their eventual death

Roma in contemporary Europe

- Rise of the right across Europe: Hungary, the Netherlands, France, Austria, Italy, Scandinavia, the UK
- Roma the scapegoat in societies that are becoming more tolerant in certain areas and less in others
- Roma increasingly labelled as a 'security risk', e.g.
 - Italy, with deportations in 2008
 - 100 Romanian Roma mob attacked in Ireland 2009
 - 10,000 deportations from France
 - Abolition of duty to provide stopping sites and preparation for mass evictions in UK

- German government has announced the desire to deport 12,000 Roma back to Kosovo, inc. 6000 children born in Germany
- Sweden is deporting Roma for acts such as begging
- Danish government deported 23 Roma in July for 'criminal behaviour'

Deportations from France

<http://www.bbc.co.uk/news/world-europe-11105262>

- What issues are raised in this clip?
- Dismantling of camps
- Police escort to airport
- Living conditions of the camps
- Link made between Roma and crime
- Individual circumstances e.g. medical conditions
- Alleged separation of families
- Stripping of nationality from those of 'foreign origin' who attack a police officer

Relevant Legal Issues

- Are the deportations voluntary or are they expulsions?
 - dismantling of camps
 - police escort
- Targeting of a specific racial or ethnic group
 - linking of Roma to crime
 - threat to strip those of 'foreign origin' of nationality
 - no other group targeted
- Conditions prior to deportation and upon return to home country
 - human dignity
 - inhuman and degrading treatment

The Legal Situation in the EU: an overview

- Right to free movement as EU citizens:
 - Article 21 (ex. Art. 18) TFEU (directly effective since *Baumbast* [2002])
 - Directive 2004/38/EC on the right of citizens of the Union and their families to move and reside freely within the territory of the Member States
- Race Directive (2000/43/EC):
 - Prohibiting direct racial discrimination in relation to a range of services and employment opportunities
- Charter of Fundamental Rights

Article 2 TEU

- The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the MS in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women prevail.

Article 21

- ECJ: EU citizenship has a fundamental status (*Grzelczyk* [2001]); also, *Collins* [2004]: ECJ re-interpreting case law in the light of EU citizenship to grant further benefits (in this case to jobseekers allowance)
- ECJ in *Baumbast* [2002]: “the TEU does not require that citizens of the Union pursue a profession or trade activity, whether as an employed or self-employed person, in order to enjoy the rights provided by ... citizenship of the Union. ...”

Article 21 contd.

- Further, there is nothing in the text of the Treaty to permit the conclusion that citizens of the Union who have established themselves in another MS in order to carry on an activity as an employed person there are deprived, where that activity comes to an end, of the rights that are conferred on them by the EC Treaty by virtue of that citizenship.” (*Baumbast* para 83)
- *Baumbast* (para. 90-91): the right of residence is subordinate to the legitimate interests of the MS **BUT** those limits must be *applied* in accordance with Community law, with the **general principles of community law**, and in particular, the **principle of proportionality**.

Article 21 contd.

- *Case C-144/04 [2005] ECR I-9981 Mangold*
 - age discrimination a general principle of EU law
- *Case C-555/07 Seda Küçükdeveci*
- *Trojani [2004]*: even where a citizen is not legally resident in a MS due to a lack of sufficient resources, they may rely upon the fundamental principle of equal treatment as contained in Art 18 TFEU (ex. Art 12)
 - and general principles of EU law will nonetheless apply

Directive 2004/38/EC

- Article 6: free to reside in any MS for 3 months without restriction (although citizens of new MS require a work permit for paid employment in most MSs (including France))
- Requirement to have sufficient means not to become a burden to the receiving state and to have comprehensive health insurance
- Restrictions on grounds of public policy, security and health on the right of entry and residence; but, substantive and procedural limitations to restrictions:

- Article 27(2): all measures (i.e. expulsion) adopted in regards to public policy or security shall comply with principles of **proportionality**, and shall be based solely upon **individual conduct**
(Note: expulsion constitutes a ‘serious harm’ (see para 23 preamble))
- ECJ emphasized an element of comparability in terms of alleged threats to public order or security (*Adoui and Cornuaille* [1982])

- Conduct must represent ‘a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society’
- Expulsion may not be the automatic consequence of an ability to provide for oneself i.e. of a recourse to resources of the host state (Article 14 (3))
- Under no circumstances may those who are self-employed or seeking work be expelled (Article 14(4))

Article 28 2004/38

- Article 28: strict procedural safeguards on expulsion
 - MS needs to take into account how long the individual has resided on its territory, his/her age, state of health, family and economic situation, level of integration and links to the country concerned i.e. an individual assessment is needed (see also para. 16 of preamble)
 - Expulsion not allowed except on grounds of public security for those resident more than 10 years
 - A special assessment is needed for minors i.e. whether expulsion is in their best interests

Article 31 2004/38

- Article 31 provides further procedural safeguards:
 - the right to judicial and administrative redress procedures to appeal or seek review of an expulsion order
 - can apply for an interim order to delay expulsion, except where based upon imperative grounds of public security
- Expulsion cannot automatically follow from criminal conviction (threat to public order or public security must be demonstrated)

Race Directive

- Prohibits direct and indirect discrimination on grounds of race or ethnicity i.e. targeting a group on the grounds of race is prohibited under EU law,
 - regardless of whether deportations are voluntary in individual cases
 - regardless of whether individuals are present illegally

Charter of Fundamental Rights

- Same legal value as the treaties under Article 6(1) TEU
 - Article 21: prohibits discrimination on any ground, such as ... race, colour ethnic or social origin
 - Article 19(1): Collective expulsions are prohibited; (2): No expulsion where risk of torture or inhuman and degrading treatment
 - Article 45: freedom of movement and residence

- Article 47: right to a fair and public hearing
- Article 1: human dignity shall be inviolable
- Article 4: no-one shall be subject to torture or to inhuman or degrading treatment
- Article 24: the best interests of the child must be a primary consideration

The Legal Situation: the ECHR

- No right under Convention to enter or reside in a given country. But other rights may apply:
- Article 3:
 - *East African Asians case*. Blatant and deliberate racial discrimination may itself constitute a breach
 - Risk of inhuman treatment upon return e.g. *D. v. UK*
 - *Moldovan and others v. Romania* (the *Hădăreni* case); housing conditions can themselves constitute a violation

- Article 8: right to family life e.g. *Boultif v. Switzerland*
- Article 6: the right to a fair hearing (*Golding* established a wide approach)
- Article 14: non-discrimination provision: not free-standing and the Court tends not to apply it where it finds a violation of a substantive article (but now covers indirect discrimination e.g. *D.H. and Others v. Czech Republic*)
- Protocol 12: free-standing non-discrimination right

- Likely that the deportations are illegal under EU law and would constitute a violation of the ECHR on multiple grounds
- Commission interim report has expressed serious concerns about the deportations requesting more information concerning the safeguards applied, particularly in regards to the assessment of individual circumstances
- Given the EU's repeated concern with human rights, it is to be hoped that the Commission mounts a challenge to French actions as a statement against anti-Romani discrimination across Europe