



Statewatch Analysis

France

Collective expulsions of Roma people undermines EU's founding principles

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Assurances made by French government ministers to the European Commission that the expulsion of Roma people is being conducted on a case-by-case basis have been contradicted by leaked interior ministry circulars which establish a set time frame for the eviction of 300 "illegal" camps "among which Roma ones are a priority." EU Justice Commissioner Viviane Reding branded France's actions a "disgrace" and called on the European Commission to initiate an infringement action.

Introduction

Sarkozy announces tough stance against Roma people and "new" French

President Nicolas Sarkozy reacted to clashes in Saint Agnain (Loire-et-Cher department) in central France on 18 July 2010 by calling a meeting about the "problems posed by some members of the Roma and Traveller communities" to announce measures to "evict illegal camps" and expel foreigners in them, primarily to Bulgaria and Romania. Violence by members of the Roma community included an attack on a *gendarmerie* station and the burning of cars following an incident on the night of 16/17 July in which a 22-year-old Romanian Roma, Luigi Duquet, was shot dead by *gendarmes* after failing to stop at a checkpoint. A day earlier, there had been violent incidents during which shots were fired and cars burned in disturbances in the La Villeneuve neighbourhood in Grenoble after Karim Boudouda, who had stolen 20,000 euros in an armed casino robbery, was shot dead by police in a shoot-out while he and an accomplice were being chased. Sarkozy's reaction was to warn second-generation immigrants who had acquired French nationality that it would be revoked if they committed "serious offences", in particular violent acts against police officers or any representatives of public authority.

Following the meeting between Sarkozy, the prime minister and ministers, including Brice Hortefeux of the interior ministry and immigration minister Eric Besson on 28 July, a statement was published which included Sarkozy's view that the situation of "lawlessness that characterises the Roma populations that have

come from eastern Europe" is "inadmissible". The existence of 200 "illegal camps" was linked to "illegal activities, undignified living conditions and the exploitation of minors for begging, prostitution and crime". The statement called for their eviction over a three month period, whenever the law allows it, and envisaged legal reform to make evictions more effective. It suggested that eastern Europeans (who are EU nationals) in an irregular situation be removed from France, adding that the immigration law reform that is underway will enable their expulsion for public order reasons "by the end of the year". Ratification of an agreement to return unaccompanied Romanian minors to their home country is pending before the French parliament, and "intense cooperation" is underway to ensure that those expelled have the best possible chance of being reintegrated when they arrive in Romania. There will be "around 20 Romanian and Bulgarian police officers" posted in Paris, and an equivalent number of French officers are to be deployed in Romania and Bulgaria to counter trafficking. The statement also claims that France will take part in initiatives to improve the situation of Roma populations in their home countries. Repatriations would be enacted with payment to aid return and resettlement, and returnees' data would be entered in the OSCAR database (*Outil de statistique et de contrôle de l'aide au retour*, Tool for statistics and control of assisted returns) to detect fraudulent requests such as repeat applications for return and resettlement aid payments by the same people using different personal details. Hortefeux announced that "in three months, half of the illegal camps will be dismantled...that is, around 300".

Large-scale evictions followed and on 30 August, official figures were released indicating that 128 illegal settlements had been closed down and 979 Bulgarian and Romanian citizens had been repatriated since 28 July, 151 of them forcibly and 828 through so-called "voluntary" returns. The fact that both kinds of removals took place at the same time suggests that it was a case of people being returned by one way or the other.

Reactions from EU institutions and civil society

On 18 August 2010 the European Commission expressed concern over the announced expulsion of 700 Roma, reminding France of its obligation to respect EU norms on freedom of movement and residence for EU nationals, and requested further information. On 1 September, Commissioners Reding (Justice, Fundamental Rights and Citizenship), Andor (Employment, Social Affairs and Inclusion) and Malmström (Home Affairs) produced a document emphasising a number of principles and guidelines concerning large-scale repatriations, noting that practices that violated EU rules included:

- *expelling people purely as a result of their being Roma*
- *expelling people without a case-by-case evaluation of their personal situation*
- *enacting collective expulsions*
- *authorities inciting hatred or violence against a specific group defined by criteria including race, nationality or ethnic origin.*

The Commissioners also said that giving the returnees money as resettlement aid was not necessarily sufficient to classify them as “voluntary returns”. Moreover, re-entry bans cannot be issued against EU citizens who are removed merely because they no longer fulfil criteria for lawful residence. The notion of them being a “threat for public security” or an excessive burden for the social security system must be based on an individual assessment of their personal circumstances and conduct whereby, for instance, they may be deemed a “threat” if they have committed certain criminal offences and such a classification is not “disproportionate”.

On 9 September, the European Parliament adopted a resolution submitted by the Socialists and Democrats (S&D), Alliance of Liberals and Democrats for Europe (ALDE), Greens/European Free Alliance and European United Left/Nordic Green Left (GUE/NGL) groups “on the expulsion of Roma from France”. The resolution expressed “deep concern” at measures targeting Roma and Travellers’ expulsion in France and other member states, and called for them to be suspended. While it stressed that mass expulsions are forbidden, the resolution also criticised the “inflammatory and openly discriminatory rhetoric that has characterised political debate during the repatriations of Roma” and statements linking minorities and immigration to crime, as they reinforce stereotypes and racist discourse, contrary to the duties of public authorities. The resolution also stressed that taking the fingerprints of expelled Roma people amounts to discrimination on racial or national grounds and it notes that the so-called Directive on freedom of movement (38/2004/EC) establishes that:

“- restrictions on freedom of movements and expulsion of EU nationals must be exceptions subject to case-by-case assessment, and are practices for which clear limits are imposed;

- lack of economic resources per se cannot automatically lead to expulsion, as it can only be imposed on grounds of public policy, security and public health due to personal conduct and not as a result of general considerations of prevention or ethnic or national origin.”

Finally, the Resolution calls on member states to implement the free movement directive and eliminate policies that discriminate against Roma people on the basis of race and ethnicity. It envisages the possibility of the European Commission and European Council opening infringement proceedings against countries that fail to implement provisions in this field that are contained in relevant treaties and Directives.

There was also criticism from civil society organisations including migrant support, anti-racist and human rights groups, as well as those specialising in Roma matters. They called a nationwide demonstration on 5 September (protests were also held in other European countries), accusing Sarkozy and his government of betraying the principle of “freedom, brotherhood and equality” and of enacting “xenophobic” policies. In a response to the French president’s announcement of tough measures to evict illegal camps on 29 July 2010, the European Roma Rights Centre (ERRC) stressed that French town councils had failed to implement the law requiring the creation of an adequate number of sites for Travellers with appropriate services”.

It also called “for an end to plans which would lead to gross human rights violations of these marginalised groups” .

Amnesty International (AI) released a public statement in which it argued that “French officials should be working to fight discrimination, rather than making inflammatory statements linking entire communities to alleged criminality”. It noted that municipalities with over 5,000 inhabitants are obliged to set up camps for Travellers and highlighted the fact that in April 2009, France was criticised by the French Equal Opportunities and Anti-Discrimination Commission because only 25% had done so, causing an increase in people living in unauthorised sites, (*Rue 89* website estimates the current figure at around 50%). On 21 July 2010, four Traveller (*gens du voyage*) organisations criticised the “hateful stigmatisation of all Travellers and Roma people by the president” by portraying them as responsible for the government’s problems in the field of security. They added that his “muddling up” of Travellers and Roma people “reinforces a useless and dangerous ethnicisation of the debate”. Moreover, Travellers are generally French nationals, but they are subjected to “exceptional” legislation that has been deemed “discriminatory by [the ICJ in] The Hague” .

In a statement on 31 August 2010, GISTI, IRIS and *Ligue des Droits de l’Homme*, three organisations that had submitted a request to the *Conseil d’Etat* (State Council, the highest administrative court and an advisor to the government) to abrogate the introduction of the OSCAR database, stressed that it had become an extremely urgent matter in view of the expulsion of Roma people and Eric Besson’s announcement on 17 August 2010 that it would begin operating “in the next few weeks”. The organisations’ criticism of the measure, which was approved by decree on 26 October 2009, is that the database will contain the biometric data of people (photographs and ten fingerprints) who are subject to voluntary returns, including children aged 12 or above, for five years. They deem this to be excessive as it is meant to be a tool to help carry out “assisted returns”. Hence, they call for the *Conseil d’Etat* to either reach a quick decision, or to suspend the introduction of the database until a decision is reached, “because this hurried use of biometrics” is part of a “xenophobic escalation against Roma people” and “constitutes a further tool for the control and stigmatisation of all foreigners” who may resort to so-called “assisted returns” .

In view of Italian calls for expelled EU nationals to be forbidden re-entry, the database could end up serving similar identification functions to the Schengen Information System (SIS) or the EURODAC database for asylum seekers. Moreover, a circular sent to prefects inviting them to enact the policy of camp evictions and returns (see below) states that people removed from France for public order concerns will not be allowed to return for a year, which has aroused suspicions that this may be an ulterior motive for entering their biometric data in the OSCAR database.

France responds, with support from Italy

On 31 August 2010, the French authorities told the European Commission that measures to expel foreigners residing illegally had been adopted in the past (there

were 44 such flights in 2009 and the first flight following Sarkozy's outburst was the 25th to Romania or Bulgaria in 2010), but had been speeded up since July. It should be noted that France is not the only EU state to have carried out such expulsions: Denmark, Germany, and Sweden have done so in the past on a smaller scale, while a similar practice has also been adopted in Italy. The Italian interior minister, Roberto Maroni, supported the French government, and promoted a Rome-Paris axis on this matter (see below). Bulgarian and Romanian nationals will not enjoy the full benefits of accession until January 2012 because France has maintained a transitional regime requiring them to be issued with a work permit before taking up employment.

Eric Besson issued a statement on 27 August 2010 to explain the measures and addressed the matter of their compatibility with EU law in response to charges of discrimination and of undermining the founding principles of the French Republic. Besson expressed the need to "forcefully belie those who tarnish France's image by accusing it of violating its European and international commitments, as well as its Republican rules and traditions". He stressed that France only recognises foreigners as nationals of the countries of which they are citizens and that, hence, the treatment that they receive does not take into account their membership of the Roma community. Besson stressed that freedom of movement for EU nationals applies for three months, but it is not without conditions after this period has expired, and it may be curtailed if a person is a "threat to public order" and "if they do not exercise a professional activity and do not have the means not to become a burden" for the social services, or do not have medical insurance.

Hence, Romanian and Bulgarian nationals residing illegally may have removal measures issued against them, for reasons including their being a "threat to public order", or in breach of employment conditions, as they are obliged to have a residence permit allowing them to work without which a removal order (*arrêt préfectoral de reconduite à la frontière*, APRF). Another form that a removal may take is an order to leave the national territory (*obligation de quitter le territoire national*, OQTN) if they are unemployed, do not have the means to support themselves or lack medical insurance. The minister also denied that France had carried out any "collective expulsions", but rather they were lawful and based on an individual assessment of each person's circumstances in relation to laws on residence, both in cases involving forced removal and assisted returns. The flights chartered to carry people back to their countries do not change this, but are merely a resort to ensure effectiveness and the lowering of costs. Besson stressed that France gives preference to "voluntary" assisted returns over expulsions, the former involving the payment of travel costs, assistance in obtaining the required travel documents, travel costs in their home countries, and access to special procedures when they are needed. Hence, "France remains loyal to its Republican and humanist tradition", which does not entail "receiving any person who wishes to reside in France, without any limits or unlawfully".

Besson's arguments were tailored to counter any charges of discrimination and to fit the "application of the law", but the problem of Sarkozy's previous statements and the suspicion of discrimination remained. The Commission's vice-president, Viviane Reding, said that the institution would monitor developments.

Italy's reaction is interesting because the country is widely identified as the pioneer of policies in this field, both in terms of the eviction of illegal camps and the expulsion of eastern Europeans, primarily Roma people. At first, Rome mayor Gianni Alemanno said that his administration "opposes expulsions on an ethnic basis". Interior minister Roberto Maroni was more supportive, "Sarkozy is right, but this is certainly not something new". He claimed credit for the measures because "Italy has been using assisted voluntary returns for years". He added that a further step to enable the "expulsion of Community citizens" is required. In Rimini, on 25 August 2010, Maroni stressed that Directive 38/2004 allows EU nationals to reside in other member states for three months, "but under certain conditions", "rules that apply to me if I go to France, and must apply to those who come to Italy". He defined them as "a minimum income, adequate housing and not becoming a burden for the host country's social support system", adding that "many Roma are Community citizens but do not fulfil these three requirements".

As a guest of French interior minister Eric Besson on 6 September 2010, Maroni announced that he would ask the European Commission to "envisage measures to expel and repatriate Community citizens, because it is a gap that must be filled". Interviewed by *Corriere della Sera* newspaper, Maroni noted that Italy had been forced to scrap the measure when former Commissioner for Justice, Freedom and Security, Jacques Barrot, deemed it incompatible with EU law when Italy discussed its "security package" with the Commission. Hence, EU nationals could only be "asked to leave", but he said he would re-submit the proposal. Rules to turn third country nationals' irregular status into a criminal offence and their insufficient income or inadequate housing into a "threat to public order" were nonetheless adopted to evade limits to carrying out forced removals introduced by the so-called Returns Directive (115/2008).

Alemanno displayed a shifting attitude over the rejecting of expulsions on an ethnic basis, when he argued that the number of Roma in Rome should be limited to 6,000. He deemed this to be the "threshold of sustainability", implying the expulsion of 1,000 Roma from the city and the eviction of three or four settlements per week. Evictions have also become commonplace in Milan, where a pact in November 2009 between the *Lega Nord* (LN) and *Popolo della Libertà* (PdL) parties in the town council proposed to limit the Roma population in the city to 1,000 in 2011. The presence of illegal camps has been declared an ongoing "state of emergency" in Rome, Milan and Naples (and the regions of Lazio, Lombardy and Campania) since 21 May 2008. It was extended to Turin and Venice (Piedmont and Veneto) on 28 May 2009. This gave rise to large-scale evictions and expulsions. A second phase involved the setting up of authorised camps, but their provisional regulations have already drawn criticism and were the subject of a lawsuit because of the obligations they imposed upon their residents (see *Statewatch news online*, analysis 87, November 2009).

Eviction instructions surface, Commission responds

In two cases Lille administrative court annulled expulsion orders issued against 11 Roma people who were evicted from a camp in the city's suburbs between Mons and Villeneuve d'Ascq (four in the first case on 27 August 2010 and a further seven

on 31 August). The authorities had alleged a threat to public order, and added unhygienic conditions in the second case, but this was rejected by the court because the illegal occupation of land did not suffice to demonstrate the “existence of a threat to public order”. On 9 September, two immigration lawyers, Clément Norbert and Antoine Berthe, invited three Romanian Roma clients who had been issued APRFs to cross the Belgian border at the Armentières border post and then return to France a few minutes later, in an action to “demonstrate the absurdity of the French government’s policy on Roma people”. They argued that their clients had complied with the order to leave through the French border, thus invalidating it, and could then enter French territory again as citizens of an EU state.

However, it was the publication by *Le Canard Social* of three interior ministry circulars with instructions for police prefects concerning the eviction of illegal camps and the treatment of their residents that caused the French authorities the greatest problems. One of them directly belied reassurances given to the Commission by Besson and the minister for relations with the EU, Pierre Lellouche. The ministers had said that people who were being returned were being dealt with merely as Bulgarian and Romanian citizens who did not fulfil residence requirements, particularly as special rules still applied to them, without considering whether they were Roma or not. However, the circular issued on 5 August 2010 contained detailed instructions and developed the guidelines received by prefects on 24 June:

“The President of the Republic set out some precise goals on 28 July, for the eviction of illegal camps; 300 illegal camps or settlements will have to be evicted within three months, among which Roma ones are a priority.”

Its tone is striking, and does not require much commentary. Department prefects are held responsible for enacting a “systematic method for dismantling the illegal camps, among which Roma ones are a priority”. The document adds that the legal and operational measures required must be identified without delay for each site. It also claims that operations carried out since 28 July gave rise to a number of removals that were “too limited”. The operation is described as a “strong commitment” by the government to ensure that “the state’s authority is respected”. A “complete personal mobilisation” is “required” of prefects and “all the services, especially against the illegal camps of Roma people”. “In-depth preparation” by the relevant services is required, “in particular the PAF [the border police, *police aux frontières*] and the OFII [French immigration and integration office] for Roma camps”. The instructions order “evictions” and “immediate returns to the border for foreigners in an irregular situation”, and “systematically” initiating judicial procedures and social and tax controls in sites that cannot be immediately evicted. Roma people are explicitly mentioned again with regards to “preventing the establishment of new illegal Roma camps”. Fortnightly summaries are required, detailing:

“- the presence of illegal Roma camps as of 21-23 July 2010 [when it seems that a sort of census/mapping exercise must have been carried out], updated with developments and details of planned operations;

- new possible settlements of illegal Roma camps (after 23 July), and what has been done about them;"

and the same two categories, explicitly regarding *gens de voyage* (Travellers).

It ends by stating: "In view of the set objectives...in their area of competence, area prefects will ensure the carrying out of at least one important operation (eviction/dismantling/removal) per week, which will primarily concern Roma people".

Commissioner Reding reacted angrily on 14 September 2010, "I can only express my deepest regrets that the political assurances given by two French ministers officially mandated to discuss this matter with the European Commission are now openly contradicted by an administrative circular issued by the same government". She added that "we can no longer have confidence in the assurances given by two ministers at a formal meeting with two Commissioners and with around 15 senior officials at the table from both sides". She stated that "this is not a minor offence...it is a disgrace", and "Discrimination on the basis of ethnic origin or race has no place in Europe". Noting that a new circular was issued that removed references to a specific ethnic group, Reding said that "it is important that not only the words change, but also the behaviour of the French authorities".

She announced that the Commission was looking into the possibility of initiating an infringement action against France regarding "discriminatory application of the Free Movement Directive" and "lack of transposition of the procedural and substantive guarantees under the Free Movement Directive". Her most striking comment was that "This is a situation I had thought Europe would not have to witness again after the Second World War". Reding was accused of over-reacting and Sarkozy deemed the reference to the treatment of Jewish people during the Second World as unacceptable, stating that "Reding should receive the Roma people in Luxembourg". He remained silent to the more obvious reference - the fate of Roma people which included deportation and slaughter in Auschwitz/Birkenau because they were deemed a threat to society.

The 24 June 2010 circular is interesting because it documents the arsenal of legal and operational measures that have been approved in recent years targeting Travellers and Roma, as well as low-level crime in general. It also makes clear that the problem did not begin with Sarkozy's statements in July, but rather several aspects of the plan were already underway. The forced eviction of illegal settlements envisaged by law no. 297/2007 may be used for "Travellers" living in vehicles without judicial intervention, although this does not apply to stationary caravans or makeshift dwellings. The intervention of penal judges, who must be "systematically seized" (have the issue brought to their attention for a decision) with such matters, is required for other camps. If the land is public, the request to put an end to occupation without a title for doing so must be presented "urgently". The *tribunal de grand instance* (TGI) may have the matter brought to their attention for a decision with an expulsion request if the land belongs to a public person, the road authority or a private person. Owners must be informed and

encouraged to submit these requests. Prefects are invited to use all the opportunities provided by penal legislation, in association with the courts.

Law no. 239/2003 added article 322-4-1 to the penal code, making illegal settlement a criminal offence that may be punished with a six-month prison sentence and a 3,750 euro fine. The circular notes that this must be applied to all illegal camps, not just those of Travellers, although its use is limited to councils of 5,000 residents who have complied with law no. 614/2000 to provide legal sites for Travellers. The article is “underused” and has two benefits: dissuasive (due to the punishment it provides for) and administrative, (in that once a judge has had the matter brought to their attention it enables the identification of residents and may contribute to the security of removing foreigners who reside in France illegally, particularly if their legal stay is time-tied). Prefects are also called upon to encourage the police and *gendarmerie* services under their authority to verify all of the criminal offences connected with the illegal settlement and to inform prosecutors about them.

In particular, exploiting begging activities (which is construed as organised crime) may lead to three years’ imprisonment and a 75,000 euro fine; aggravating circumstances include the use of a minor for begging activities (even more so if the person using the minor has responsibility for them); aggressively begging or as part of a group, or using the threat of a dangerous animal, may lead to a six-month prison sentence and a 3,500 euro fine (see *Statewatch* Vol. 12 no 6). The circular stresses that evictions are an opportunity to check the legality of residence. Officers must execute any pending expulsion order against third-country nationals found in the camps residing illegally, or they must issue an order to be brought to the border (APRF). The measures available to remove EU nationals mentioned by Besson in his statement (three-month stay, lack of income or means, employment or medical insurance, representing a threat to security), depend on their stay for over three months being documented and personal conduct, as illegal occupation does not suffice to configure a “threat”. OQTFs (orders to leave the French territory), which may be issued in circumstances including a lack of means not to become a burden for social services even when a person or family has not asked for their services, involve a one month delay before compliance, which “could be used to describe the mechanism for assistance to returns” to the concerned people. The circular identifies the possibility of returning EU nationals during their lawful three-month stay by way of an APRF for being a “threat to public order”, applicable if their conduct “disturbs public order” without it being serious enough to justify an expulsion. It notes that this measure means that they may be refused re-entry for a year.

Le Canard Social asked Loïc Bourgeois, a lawyer who is a specialist in defending Roma people, for comments on the documents. He argued that “It is not a matter of the supposed annoyance that is caused by the Roma which is discussed here, but rather, the fierce will to use all available means for the utilitarian purpose of expelling this community”. He added that there have “rarely” been “such circulars that relentlessly detail all the legal resorts to undermine a population”. In his view, the circular of 5 August marked a shift insofar as “it stigmatises an ethnic group”, whereas “up to that point, this type of interpretative circular targeted a social category, for example the poor through the offence of begging”.

Expulsion of Roma people in the EU undermines founding principles

After restrictions on the free movement of EU citizens were first introduced against football hooligans (a useful category for introducing new measures because their violence is often indefensible), it was extended to violent protestors, a category to which some member states are trying to add so-called "troublemakers". Then a "security decree" was approved in Italy on 28 December 2007 to enable the expulsion of EU citizens on the basis of a wide interpretation of a person who represents a "threat to public security" (see *Statewatch* Vol 18 no. 1). The measure targeted Romanians, but was drafted to avoid charges of discrimination, so that any foreigners whose income or accommodation was deemed inadequate would be liable for removal.

The measure was abrogated, but the Italian government is now seeking an alliance with France to re-submit the principle to the EU, by calling for changes to be introduced to Directive 38/2004 (on the residence of foreign EU nationals) in other EU countries. The principle of Roma, or the nationals of any EU state, becoming "expellable" if their income or living conditions are deemed inadequate would be an ominous sign of "freedom of movement" (one of the EU's key principles) being limited to the wealthy. At a time of economic crisis, unemployment and high rents may mean that there are many (including Italians who are living abroad) who fall within this extensive "threat to public security" category, through no particular fault of their own. The equating of "foreigners" who do not have a work contract or a suitable home with security threats could lead to young people who often seek to start their working life abroad (for a myriad of reasons including lack of opportunities in their home country, the wish to have new experiences or to learn a language that may help them in their professional careers) having this option curtailed unless they get a long-term job.

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