

EU's Free Movement of Workers Constrained:
French Labor Policies towards New Europeans.

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by

Rafieva Diyora

Supervisor: Michelle Leighton,
Deputy Director, Tian Shan Policy Center

American University of Central Asia
Bishkek, Kyrgyzstan
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ABSTRACT

Freedom of movement is known to be a great privilege granted to EU citizens. However, a closer look into this right illustrates that it had some limitations when new countries joined the Union in 2004 and 2007. The work discusses the legal aspects of France's practice in these two distinguished cases.

Additionally, the special focus is made on economic migrants- the Roma, who are the EU citizens mainly from Romania. Recently, the EU Commission and human rights organizations criticized massive expulsions of this minority group from the French soil. Contrary, France argues that the measures taken against citizens of another EU state were in complete accordance with free movement laws.

On the example of France this research covers crucial areas of the European concerns, such as enlargement, labor immigration, and minority rights.

RÉSUMÉ

On sait que la liberté de circulation est l'un des principaux avantages reconnus par l'Union Européen à ses citoyens. Cependant, quand on y regarde de plus près, on s'aperçoit que cet avantage a subi certaines limitations lorsque de nouveaux pays ont rejoint l'Union en 2004 et 2007. Le présent mémoire passe en revue les aspects juridiques de la position française dans ces deux cas particuliers.

En outre, l'accent est particulièrement mis sur ces migrants économiques que sont les Roms, citoyens de l'UE en provenance surtout de Roumanie. Récemment, la Commission européennes et les organisations de défense des droits de l'homme ont critiqué les expulsions massives du territoire français visant cette minorité. La France, de son côté, soutient que les mesures prises contre des citoyens d'un autre État européen n'enfreignent nullement les lois sur la libre circulation.

À partir de l'exemple de la France, la présente étude aborde des aspects sensibles des préoccupations de l'Europe, tels que l'élargissement de l'Union, les mouvements de main d'œuvre et les droits des minorités.

ABRIVIATION

CEE	Central and Eastern Europe
EC	European Community
EP	European Parliament
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
MS	Member States
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
OSCE	Organization for Security and Cooperation in Europe
UNHCR	United Nations High Commission for Refugees
PHARE	Poland and Hungary Aid for Economic Reconstruction
CARDS	Community Assistance for Reconstruction, Development, and Stability in Balkans
JHA	Justice and Home Affairs
CNIL	Commission Nationale de l'Informatique et des Libertés
FRA	European Union Agency for Fundamental Rights
EMPL	European Parliament's Committee on Employment and Social Affairs

INTRODUCTION

1.1. Problem and objectives

The fall of Soviet socialism in 1991 drastically changed the political map of Europe. In order to bridge the gap between East and West, the European Union (EU) reacted by opening its borders to “new democracies of Eastern Europe” (Berglund 3). This enlargement was marked as a historical one in the whole existence of the EU integration. The institution has never before, for over fifty years, absorbed that many states in such a short period of time. Two Mediterranean islands of Malta and Cyprus and eight former communist countries have expressed their will to be a part of the EU. On May 1, 2004 Europe, after decades of separation, the union moved its boundaries towards Central and Eastern Europe (CEE). The Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia, also known as EU-8¹, became members of the Union. Three years later, on January 1, 2007, Bulgaria and Romania, often referred to as EU-2, joined the EU completing this significant process.

When internal frontiers were demolished, principle of free movement of persons within the EU became an essential target for the individuals from newly joined states. This right is of particular importance for those who want to use it as a privilege to pursue employment in another member state due to better financial and leaving opportunities. For this reason, this paper will examine the implications of free movement laws for job seekers from the CEE in general. However, there will be special attention made toward Europe’s largest minority group, yet economically most disadvantaged one: The Roma and Travellers, who predominantly are citizens of annexed countries.

¹ Malta and Cyprus entered the EU the same time; however, the focus of the research will be on the challenges faced with the annexation of the communist block referred to as EU-8 and EU-2.

It is necessary to state that many of EU-15² countries, the fulfillment of EU free labor movement regulations create serious challenges for decision makers. The state faces the dilemma between society expectations and EU objectives of free movement of workers meaning “the abolition of any discrimination based on nationality between workers of the Member States regarding employment, remuneration, and other conditions of work and employment” (Art.39: 2 TEU). France, one of the founders of the EU and historically the home for large immigrant population, is today taking special restrictive positions on immigration. In the case of the CEE states, it implemented legal restrictions to access its labor market. Furthermore, the country made a special distinction on the migrant flow from so-called EU-8 and EU-2. The paper will investigate whether such difference in treatment between candidate countries was just under the Community law³.

Additionally and most recently the state had massive expulsion of the Roma peoples coming from Romania from. This is a very controversial issue that has made it to the top of European newspaper headlines. The European Commission and European Parliament (EP) were concerned with France’s actions, while human rights offices also expressed their criticism.

Considering the facts mentioned, it is possible to question the compliance of France with the EU law on freedom of movement. In the cases of severe breaches of Community directives and European human rights standards, France should reform it’s national labor policies affecting workers from the EU-2, including the Roma immigrants, by applying similar treatment measures towards the EU-8 countries.

² The term comprises Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, Netherlands, Portugal, Spain, Sweden, and UK.

³ The set of treaties and laws that have to be incorporated into domestic legislation of EU MS. The main sources of primary law are the treaties. Secondary sources include regulations and directives based on the EU treaties. Supplementary sources include case law, international law, and general principles of EU law (ex. fundamental human rights, proportionality).

Moreover, this paper will provide suggestions for potential legal reforms and further developments for France on the issue of economic migrants.

The test of the hypothesis - conflict of French measures with the EU normative acts- requires an analysis of the provisions of primary sources: Consolidated version of the Treaty on European Union (TEU) and on the Treaty on the Functioning of the European Union (TFEU) and on the Charter of Fundamental Rights of the European Union. For deeper legal analysis the paper will also rely on other instrument of primary importance: the Directive 2004/38/EC of the European Parliament and the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (MS).

Furthermore, in order to explore the hypothesis together with treaties it will be also necessary to look at secondary sources, such as French regulations, statements of authorities as well as their dialogue with the EU institutions. The obtained information will assist in evaluating the position of the country on the case of the removal of the Roma and Travellers from its territory.

Publications of the Council of Europe, reports of the European Commission, the Council of EU conclusions, technical papers, viewpoints of experts etc. will be a valuable source of information on freedom of movement and residence of workers. At the same time, this type of documentation will help to formulate an opinion of the EU bodies and human rights organizations on the Roma community contrary to France's statements.

After receiving a complete picture on the application of EU norms within the French territory, it will be possible to witness and estimate the authority of the EU over national governments. Consequently, it will also be possible to identify the shortfalls of European law that still solves problems in the enlarged territory.

This paper will explore mentioned questions by researching the material with two methods. Content analysis approach will be a tool to scrutinize primary sources of the European legislation and the national law of France. Discourse analysis approach will help to examine following type of data: official statements of politicians, reports, reports, and communications.

Moreover, it is necessary to note that this paper refers to the specific information available only in its original language. The author provides the translation in the course of the paper from French, whereas authentic text is available as a footnote.

i.2. Structure of the paper

Chapter one will make the necessary clarifications of specific concepts further used in the work. These principles are unique for EU laws and have to be respected by governments of EU MS and their citizens.

Chapter two discusses the Eastern enlargement as a result of ten countries, under the former communist rule, deciding to become part of the Union. This was a complicated undertaking to assist CEE states in adapting their economy, their politics, and their law to a completely new way of functioning. Meanwhile, every existing member state, upon their will, could implement transitional arrangements for up to 7 years restricting access to labor markets. The EU level Directive 2004/38/EC (Directive) was specifically issued with the enlargement to simplify and strengthen movement and residence of all citizens of the Union.

Chapter three discusses the legal attitudes of France towards new MS. In the case of the EU-8 countries, France lifted restrictive measures for job access before it initially planned. Nevertheless, the French Republic took only partial measures to

transport the same EU norms in treating individuals from the EU-2 group.

The impact of these limitations will be investigated in Chapter four. The case study of the Roma peoples illustrates the imperfections of the unrestricted movement laws. This section will determine if it was the abuse of freedom by illicit and poor migrants or abuse of powers by western European states. The section will conclude by scrutinizing the obtained results and revealing the weaknesses in functioning of the EU. Based on the findings the paper will provide potential legal reforms and developments to ameliorate the effectiveness of the right of free movement and residence for vulnerable groups.

This research covers crucial areas not only of France's standards, but also of the European concerns, such as labor immigration, enlargement, and supremacy of the EU law. Issues of the Roma and of immigrant restrictions are of current interest in France as well. President Sarkozy is running for his second term and the limitation of immigration is one of the important points in his agenda.

CHAPTER ONE:
DEFINITION OF TERMS

Throughout the chapters the author refers to number of conceptual and contextual terms that are fundamental for the EU law. In order to fully appreciate the paper it is necessary to clarify the legal principals that are essential in the study.

This paper discusses the right of *free movement for workers* that “shall be secured within the Community” (Art. 39:1 TEU). The Directive 2004/38/EC establishes that all EU citizens have a right to enter and exit another MS upon presenting a valid identity card or passport. With regard to *residence* administrative formalities depend upon the type of residence. The residence up to three months in the country is not subject to any conditions. The period of residence longer that three months may have some restrictions.

Freedom of movement is one f the rights enshrined in the legislation of European *acquis communautaire*. The *acquis* is used to describe the body of law and regulation of the European Community (EC). In other words, it is a legal heritage of the EU that comprises - substantive rules, policies, the primary and secondary legislation and case law – that developed and will develop with the EU.

For the purpose of this study author distinguishes two types of ‘safeguard clauses’. An *economic safeguard clause* applied after the enlargement. For the purpose of protecting labor markets from immediate disturbance many EU-15 countries relied on seven-year transitional period restricting access for workers from newly joined states. Identically, the other safeguard close protects national interests. MS can take measures to remove certain individuals if they are recognized as being a *threat to public policy and public security*. The Art 4:2 TEU notably recognizes after

MS “the essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State”.

It is true that MS are responsible for protecting public interests, but by doing this they cannot abuse the freedom granted to them under the treaty. The states are to respect the *principle of proportionality*, a general principle of Community Law, which implies that measures should not exceed the aim pursued. For instance, in the important constitutional case of *Internationale Handelsgesellschaft v Einfuhr (1970)* the European Court of Justice ruled, “the individual should not have his freedom of action limited beyond the degree necessary in the public interest” (Hadjiemmanuil, Monti and Tomkins 448-449). Proportionality consists of several characteristics: measures must be crucial in order to achieve legitimate objectives; when there is a choice between several appropriate measures, option must be the least burdensome; and the disadvantages caused must not be disproportioned to desired results (*ibid* 449).

One of the examples of disproportionality in practice is ‘collective expulsions’, that are prohibited under article 19:1 of the Charter of the Fundamental rights of the EU and article 4 of the Protocol 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The provisions of these international documents are meant to force the states parties to take an individual approach to every human being in order to grant a fair punishment.

Provided definitions will help the reader to navigate in the course of the paper. Some of the explained concepts will be already used in Chapter Two, which talks about EU requirements in accession procedure.

CHAPTER TWO: THE PROCESS OF ENLARGEMENT

§1. Prerequisites for joining the EU

Until 1989 European borders seemed to be established: Europe starts where the Communist block ends. Minor enlargements took place for over forty years⁴, but, joining members shared common democratic values and the market economy which were politically independent. Ever since the collapse of the USSR, the European frontiers have been a source of a constant debate. The new states that had socialist economical and political background appeared. Cini states “people across Europe rediscovered their national identities and escaped from the tyranny of the Soviet Union as in the case of Baltic States; or broke away from the Yugoslav Federation, as did Slovenia” (420). The first major reason for the CEE to annex to the EU was its attractive economic success compared to the neighboring states. Besides, new members were willing to change the political power and welcome democratic governance. This can be seen namely in Bulgaria where the survey shows that mainly the citizens enjoy the EU membership for the possibility of free travel, study and work anywhere in the EU, economic prosperity, peace (34%) and social protection (*Eurobarometer Spring 2005*)⁵. The motive of new members, thus, was to consolidate their economies and politics in order to bring them closer to European level.

The fact that there is “a queue of states wishing to join...” clearly illustrates the success of Europe as a Union (Cini 419). Nonetheless, in order to preserve its stability, the EU could not immediately accept all aspiring countries. Hence, in 1993,

⁴ EU membership: Denmark, Ireland, UK (1973), Greece (1981), Portugal and Spain (1986).

⁵ National Report. Executive Summary. Bulgaria

<http://ec.europa.eu/public_opinion/archives/eb/eb63/eb63_exec_bg.pdf>

during the meeting of the European Council in Copenhagen, they set out ‘entrance ticket’: general criteria for membership. The so-called “Copenhagen criteria” requires a candidate in the country:

- to have stable institutions that guarantee democracy, the rule of law, respect for human rights, and the protection of minorities;
- to have a functioning market economy, as well as the ability to cope with the pressure of competition and the market forces inside the Union;
- to have the ability to assume the obligations of membership, in particular objectives of political, economic, and monetary union;
- to adopt the *acquis communautaire* of the EU (*Conclusions of the Presidency- Copenhagen 13-15*)

These terms of membership are only the first steps towards unification, yet, are still essential because they set a scheme for transition. First of all, the criteria indicate the EU’s preparedness to go much deeper than in the past to influence the domestic law of the candidate states. Likewise, the pace of transition, when the EU allows new members into the organization, depends upon the organization’s capacity to absorb new members (Cini 422-23). In other words, the Union offers enough time for the applicant countries to conform to the EU standards of their political, economic, and legal situation. On the other hand, the European Union MS themselves have a sufficient period to adjust their markets to newcomers prior to when the accession actually takes place.

The process of accession itself is a “highly technical exercise” which has to be accomplished by every joining state, which is managed and regulated by the Directorate-General for Enlargement within the European Commission. The

Commission collects responses from national governments of applicant states regarding their implementation of rules and progress in specific spheres: such as illegal immigration, border control, crime, corruption etc. The EU Commission can also refer to the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the United Nations High Commission for Refugees (UNHCR) and other institutions to request the necessary information regarding the situation in any aspiring country (*ibid* 428). Meanwhile, EU also provides various supportive measures to assist in the implementation of required market-oriented reforms. For instance, the financial instruments for support are PHARE (Poland and Hungary Aid for Economic Reconstruction) for institution-building, economic and social cohesion and regional assistance program CARDS (Community Assistance for Reconstruction, Development, and Stability in Balkans). The supervision of the Commission and the EU financial assistance are specifically designed to prepare the states for membership.

The conditions of membership are important for new and older member states equally. The Conclusions of the Presidency from February 1, 2005 also mentioned “the Union's capacity to absorb new members, while maintaining the momentum of European integration, is ... an important consideration in the general interest of both the Union and the candidate countries” (2). They ensure that aspiring members are ready for membership. Also, the countries agree to be bound by the required set of norms in order to keep the bar high. Therefore, in reality the EU awaits specific actions from new members in different spheres depending on the situation in each candidate state. For example, in November 1998 there was a report on the Czech Republic regarding the free movement of persons. The Commission found that there was a delay in tightening border controls in order to fight against drugs and organized crime and it “felt that the new government should speed up the pace of reform in

order to meet the medium-term priorities of the accession partnership” (*The Czech Republic*). Already in October 2002, another report states that Czech Republic has transferred into its legislation nearly every Justice and Home Affairs (JHA) *acquis*. Nevertheless, the lack of effectiveness in the fight against crime and corruption remained the main weakness in the country.

Romania went through similar evaluation process. The November 1998 Report noted the absence of “any real progress” in the combat against corruption, organized crime, and border controls, although these were “among the short-term priorities of the accession partnership” (*Romania*). In this communication it is possible to see that the EU has clarity in its expectations and precisely sets the goals for new countries to achieve. By 2005 Romania improved the situation and the Commission ‘congratulated’ Romania on its compliance with the commitments and requirements in the areas of immigration, asylum, war against terrorism, customs cooperation, and human rights legal instruments (*ibid*). However, when Romania and Bulgaria joined the EU on 1 January 2007, shortcomings remained in Romania regarding judicial reform and the fight against corruption, particularly within the local government (*Romania. Commission Decision*). In the case of Bulgaria, the corruption is at the borders and within the local government as well as in the fight against organized crime⁶.

Despite some shortfalls in applying the necessary EU requirements, the reform process successfully took place in every country of the EU-8 and EU-2. In other words, the EU-8 met the prerequisite standards to qualify for membership by 2003 when it signed the Treaty of Accession. In 2005, the EU-2 signed the same treaty. The

⁶ Bulgaria < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0058:0060:EN:PDF>

act of annexation means that these CEE states went through the necessary procedures and complied them with a minimum level of requirements from the EU membership.

§2. Transitional arrangements for the new Member States

Thanks to the 2004 and 2007 enlargements, the CEE states became part of the EU, yet, joined countries that still had a number of limitations. Certain aspects of the EU's freedom movement of peoples were restricted. In respect to all the new Member States' nationals, the recognition of the right to free movement of persons was immediate. The right of free movement as workers, nonetheless, was limited and delayed in a number of existing MS.

France, along with other EU-15 countries (except Ireland, Sweden and the UK), took advantage of 'transitional arrangements' to restrict the mobility of workers from the new Member States in Central and Eastern Europe for up to seven years. Transitional measures limit the possibility to automatically enjoy the basic principal right laid down in the Treaties: to take up the employment in another state of the EU. Member States can rely on "variety of different restrictions ranging from limitations depending on sector or type of work, through quota arrangements, to work permits granted only when a national cannot be found to fill the vacancy" (Traser 6).

The purpose of the period is to gradually eliminate the obstacles for workers from new EU states wishing to work in old MS. At the same time, the latter can progressively adjust labor markets for a possible flow of a cheap workforce. The study of the National Institute of Economic and Social Research states that "while in the long-run, free mobility can be expected to raise potential growth in the EU as a whole, the shock to labor markets and wages may have negative impacts on host

economies in the short-term (Fig 4). Therefore, the gradual introduction of a new labor force is necessary to avoid the disturbances in the inner labor market.

Accession Treaties of 2003 and 2005 allow the MS to individually decide on the (non) applicability and length of restrictions under a “2+3+2” year scheme.

- During first 2-year period domestic legislation of other MS regulates the access of people from EU-8 and EU-2 to national labor markets. At the end of this first stage, the Commission has to provide a report based on which the Council examines the first phase.
- During second 3-year period Member States can extend their national measures upon notification of the Commission before the end of the first stage; otherwise, EC law granting free movement of workers applies.
- By third 2-year period restrictions should in principle be abolished. However, a Member State can preserve national measures at the end of the second phase until the end of seven year period following the date of accession “in case of serious disturbances of its labor market or threat thereof” (*Functioning of the Transitional Arrangements*).

This phase is essential for receiving states as their governments have a chance to decide whether or not to extend the restrictions for a further three and two year period. In principle, restrictions during the final phase can only be extended if the country is facing a ‘serious disturbance of its labor market or a threat thereof’. However, in practice there is no agreed definition of what constitutes a “serious disturbance”, allowing a degree of flexibility in its interpretation (Fig 7).

It is necessary to point out that EU institutions carefully oversee each stage of the process to insure that the governments have sufficient grounds to rely on the provisions during the transition period.

By the end of the period the freedom of movement of workers have to be fully secured in the Community “whereas the attainment of this objective entails the abolition of any discrimination based on nationality between workers of the Member States in regards to employment, remuneration and other conditions of work and employment” (*Regulation EEC 1612/68*). Hence, transitional arrangements ended for the EU-8 on 30 April 2011 and will irreversibly end for Bulgaria and Romania on 31 December 2013 and in all other nations of the EU.

§3. The Directive 2004/38/EC- “Free Movement Directive”.

Just before the enlargement in April 2004 the Directive 2004/38/EC of the European Parliament and of the Council entered into force. This piece of ordinance codified number of previously existing legal acts and the case-law on freedom of movement of individuals including Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families; Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services; Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity etc. Thus, today, there is a single legal instrument regulating the relationship of a migrant with the hosting state. The main objectives of this new consolidated legislation can be summarized into following categories:

- (1) strengthening the right to move and reside for all citizens of the Union and their family members;
- (2) extending the definition of family members and registered partners who have the right to move and reside together with their spouses (whether they are citizens of the Union or not) and who also has independent rights;
- (3) simplification and improvement of the administrative formalities applying to the right to move and reside;
- (4) clarifications according to previous ECJ jurisprudence, the grounds on which a receiving Member State can expel a citizen of the Union and the procedural rights and judicial redress.

One of the examples of simpler administrative formalities for EU citizens and their families is when procedures linked to the free movement of Union citizens within the territory of Member States “should be clearly defined, without prejudice to the provisions applicable to national border controls” (Directive 2004/38/EC:7). Furthermore, the law also states that “The supporting documents required by the competent authorities for the issuing of a registration certificate or of a residence card should be comprehensively specified in order to avoid divergent administrative practices or interpretations constituting an undue obstacle to the exercise of the right of residence by Union citizens and their family members (*ibid* 14). There are number of other examples that illustrate the strivings of EU to drastically reduce administrative barriers, and, hence, foster the EU citizenship through unrestricted movement of people.

Member States had to bring into force the laws and administrative provisions necessary to comply with the Directive by 30 April 2006. Commission’s report of 10

December 2008 affirms “All Member States have adopted national laws to protect the right of EU citizens and their families to move and reside freely within the EU” (*On the Application of Directive 2004/38/EC* 3). This institution recognizes that national laws in some areas even give EU citizens and their families better conditions than EU law requires. Nevertheless, the report points out “Not one single Member State has transposed the Directive effectively and correctly in its entirety. Not one Article of the Directive has been transposed effectively and correctly by all Member States” leaving the results to be rather “disappointing” (*ibid* 3-4).

One of the main problems concerns the issue of certificates for those who are staying in MS for the period of over three months. This time limit concerns the period when the citizen has entered the host state to look for work. An individual can remain in the hosting state as long as he can provide evidence that he/she is “continuing to seek work and has a genuine chance of being engaged” (Art.14: 4§b). Additionally, these individuals have to provide evidence of ‘sufficient resources’ as included in article 7 (1:b) of Directive 2004/38. Member States cannot apply this requirement to workers or the self-employed but they can require other categories of citizens to show that they have enough financial support to be living in the country. The Special Report for the Center of European Policy Studies identifies that in practice it seems that the “administrations in many Member States make mistakes as regards each of these categories, and often ask workers (particularly those working part-time or carrying out casual jobs) to show evidence of sufficient resources” (Carrera and Atger 8).

Considering the example mentioned above, when one examines the ways in which the Directive has been implemented, a highly diversified picture emerges. In

other words, there are grave shortfalls in national transposition of central elements of the Directive 2004/38 in all MS.

The following section will discuss these problems as they relate to France. Particularly, the chapter will examine country's labor immigration policy and its impact on unskilled workers from EU MS.

CHAPTER THREE:
LEGAL OBLIGATIONS OF FRANCE AND GENERAL FRENCH
POLICIES ON IMMIGRATION FROM NEWLY JOINED STATES

§1. Immigration to France from Eastern Europe.

The EU Regulation on freedom of movements of workers and their family members has even a greater importance after the enlargement when close interaction between the states of EU becomes an inevitable practice. However, less developed countries with grave political and social problems tend to be poorly regarded in the wealthy states of the EU-15 because they abuse a welfare system, “undermine the image of the organization” and are “a drain on resources” (Cini 431). For example, the largest Romanian national minority the Roma is still known to be associated with “poverty, deviance and other negative characteristics, and is viewed as being at odds with majority culture” (Toggenburg 44). Consequently many EU citizens have a difficulty to be related with such countries.

One of the representatives from the list of skeptics is French. The question of immigration is a sensitive issue in this country. Accordingly, during EU Referendum in France, where the country had to make a decision on ratification of the Constitutional Treaty for Europe⁷, French opponents of the constitution went as far as to invent the idea of the “Polish plumber”, as a symbol of cheap labor from Central Europe, penetrating into Western Europe in the future and seizing jobs away from nationals. Kahanec points out that only 24% of the French by 2009 agreed that immigrants were taking jobs away from native-born workers, compared to a European average of 34% (81). Nevertheless, Pijpers states “anxiety over job competition

⁷ The Treaty sometimes known as the EU Constitution, which was signed on October 2004, but was not ratified due to negative referendums in France and the Netherlands in 2005

among domestic workers is only reinforced by the potential presence on the labor market of outsiders who are able and willing to accept more jobs for lower wages” (92-93). From one side new the workforce fosters the competition and better matches it in the job position; from the other side, their own nationals of the MS are left out of the labor market.

In 2006, Pijpers predicted that “open borders [could] be closed and access to competitive labor markets effectively denied” (93). In essence, the MS can shut down its labor market when there is a real threat of employment for its own nationals by relying on a safeguard clause. Safeguard measures allow a Member State that has stopped using national policies and applies EU law on the free movement of workers before the end of the overall transitional period to re-introduce restrictions if there are serious disturbances on the labor market, or threat thereof (Andor).

This was the case for Spain, one of the few countries who immediately opened its labor markets for Bulgarian and Romanian citizens after the accession. With reference to a serious disturbance of the Spanish labor market, the state notified the Commission that it had decided to re-impose restrictions on labor market access for Romanian workers, because of the “need to take immediate action in view of the seasonal situation in the agricultural sector in the summer” (*ibid*). At the same time, the Spanish government submitted a reasoned notification with supporting information as to the market disturbance. Therefore, in August 2011 the country upon the agreement of EU applied restrictive measures against Romanian workers (*Authorising Spain to Temporarily Suspend the Application of Articles 1 to 6 of Regulation (EU) No 492/2011*).

French attitude towards labor immigrants are expressed through rigid immigration policies limiting access of economic migrants to the labor. Nicolas

Sarkozy, when he was only a candidate for presidency, declared in the magazine *Le Journal du Dimanche* “We no longer want an immigration that is inflicted [on us], but an immigration that is chosen. This is the founding principle of the new immigration policy I advocate” (Sarkozy, *“Une Immigration Choisie”*). As the statement of a high governmental official suggests, the Republic will act in favor of selective immigration, which welcomes highly skilled immigrants, filters down unskilled, and combats the irregular migrants.

As a result of chosen immigration in France, the number of foreign residents from EU8 and EU2 constitute less than 0.1 percent of the country’s population as of 2007 (Kahanec 11). In fact, this percentage is the lowest among all old MS. For the sake of comparison, the largest increase in the share of EU8 residents was in Ireland and the UK after enlargement. The report suggests an average inflow was around 250,000 people from the EU8 per year since 2003. Indeed, almost 70% of them have been absorbed by the UK and Ireland (*ibid 10*).

Despite the restriction of the French government, the Commission report (2006) shows the tendency since enlargement and the employment rate of EU-8 nationals in several EU-15 Member States including France has increased (*Report on the Functioning of the Transitional Arrangements 11*). The EU provides two explanations for this phenomenon.

Firstly, enlargement may have caused to disclose part of the previously unreported workers from the EU-10. This action has beneficial economic effects, such as “a greater compliance with legally sanctioned labor standards, improved social cohesion... and higher State income from tax and social security contributions.” Secondly, a real development in the employment rate of EU-8 nationals may have occurred after expansion due to a change in the employers' attitudes, better

information and regulation (*ibid*). To put it frankly, workers were present in the country illegally anyways; however, by granting them less complicated and lawful access to work, not only a migrant benefited, but also the entire state had a profit through taxes by filling up free sectors. Additionally, employers started hiring new workers, who became officially present in the hosting state.

The proportion of foreign residents from Bulgaria and Romania into EU MS has also been continually increasing. Since 2000 until 2007, it amounted to around 1.86 million people throughout EU15. Main destination countries for these immigrants are Spain and Italy. This is due to the fact that Romanians have been historically establishing themselves as Spain's largest minority and they have been easily linguistically integrating (Bosneag 63-66).

France is another country that is an attractive destination for citizens of Bulgaria and Romania. However, the significant factor that constrained the movement of economic migrants to France was the type of transitional arrangements the country has chosen.

§2. French legal policies towards EU-8 countries

Like most of the "old" member states, France implemented the restrictions opening up its labor market gradually to citizens of the countries that joined the EU in 2004. During the transitional period the country sustained its "existing work permit system where permits are issued on the basis of a number of criteria, including the job offer, salary offer and qualifications of the applicant" (Heinz 13). Moreover, the document issued by the European Central Bank, reports that workers from the EU-8 obtaining a work permit had equal access to social security as French citizens and could bring their family with them who had full access to the labor market as well

(*ibid*). However, in reality the labor migration during the first phase of the transitional period was of a temporary nature. Accordingly, the data from 2004 indicates that from those who had the authorizations to work, 74% were seasonal workers, and 11% were temporary workers ⁸ (*Report on the Functioning of the Transitional Arrangements 10*). Thus, a significant percentage of work permits is granted for short-term or seasonal workers, which illustrates the country's attempt to untighten the borders progressively. So to say, when the first stage was coming to an end on May 1, 2006 France had to make an evaluation of the situation and get a position for a second phase until May 1, 2009. During the committee of ministries meeting under the chairmanship of Prime Minister, the French government decided to have gradual and controlled release of restrictions for the employees of eight Eastern countries.

French authorities clarified that coordinated immigration provides access only to specified types of professions that are difficult to recruit in the national labor market. Positions in such sectors as construction and public works, hotel and restaurant management, food and agriculture, mechanics and metal work, trade and sale as well as processing industries and cleaning are vacant for employees. In fact, the Ministry of Employment, Social Cohesion and Housing, together with the Ministry Delegate for Employment Labor and Professional Integration of Youth produced the detailed 'list of open occupations' consisting of over sixty positions (*Bertossi 10*). The functions of each position are described which enables to clearly see the demands of France in its labor market. At the same time, however, this strategy narrows down the possibility of individuals with different qualifications and backgrounds to apply for the job in that country. In such situations as this, it is

⁸ It should be noted though according to the French authorities this data does not include work permits issued for lengths of stay less than three months.

possible to observe how interests of “*immigration choisie*” are becoming more favorable than those of the entire Community.

Besides, it is worth to mention that the French Labor Code abolished paragraph 2 of article R 341-4 that requires the work permit for above-mentioned positions during the second phase of transitional arrangements (*Comparative Study of the application of the Directive 2004/38/EC 63*). The abolition of this section in the article, certainly, had an impact for making a migrant worker from EU-8 to consider heading towards France. Immigration authorities realized the possible high interest of eastern neighbors caused by this decision. Thus, in order to avoid “*les flux migratoires*” they asked the Department of Labor; Employment and Vocational Training to ensure effective management of population migration and rigorous monitoring of the applications for work permits for nationals of eight countries (*Bertossi 10*). The actions of France illustrate that, from one side, the state tries to recruit the new labor that is in deficit at home, but from the other side, it fosters the control over those workers.

Furthermore, on July 1, 2008 France entirely lifted existing temporary regulations. In fact, it did so a year in advance in the final third stage of transitional restrictions. From this date onwards in France, the citizens of eight new members were treated as employees from other MS of the Community. For instance, a worker from Hungary had the same requirements to access the job and earned equally for similar work as a national of, let’s say, Belgium or Germany. A worker now could receive the post without providing a work-permit or a residence permit (*Le Ministre De L’immigration, De L’intégration, De L’identité Nationale Et Du Développement Solidaire*). Therefore, an employer has the freedom to directly hire a worker independently from a valid authorized permission for work and stay. Moreover, if a

person insists on issuance of a residence permit certifying the length of his activity, the authorities cannot refuse the request and have to grant a certificate of *CE – Toutes activités professionnelles*⁹. An individual is allowed to hold such a document for up to five years, a maximum time period until obtaining an acquisition for the permanent right of residence. In addition, a new EU citizen now has a chance to pursue any professional of his or her choice independently from the nature and the duration of the contract (*ibid*). Therefore, since 2008 workers from the EU-8 can take up not only positions that are in deficit in France, but also a wide range of other ones on an equal basis with French nationals and citizens of other MS not undergoing the transition period.

§3. French approach towards Bulgarian and Romanian citizens

The migration landscape in Europe has further changed in 2007 when the European Union opened up to Bulgaria and Romania. However, actions of France clearly illustrate a different approach towards EU-2 migrant workers. In order for a Bulgarian and Romanian to have access to the French labor market, he or she must first have a residence permit "EC – all professional activities" or "EC - family members - all professional activities". Secondly, the criteria to issue a work permit for this person is to be eligible for the profession “officially listed as experiencing recruitment difficulties.” Moreover, a job seeker coming to France without a job offer cannot obtain a work permit (*Free Movement: France*). Since 2007 up to today, transitional arrangements lack any progression, and there is nearly no gradual adjustments to the market for newcomers.

⁹ “EC- All Professional Activities”

The 2005 Act of Accession allows existing MS to temporarily restrict the free access of workers from Bulgaria and Romania to their labor markets by “making it subject to their national law”. Despite this constraint permitted by the transitional arrangements, a MS “must always give preference to Bulgarian and Romanian workers over workers who are nationals of non-EU countries as regards first access to the labor market” (*Commission Report 2011, p.2*). It is possible to see that the EU strives to faster integrate EU-2 workers taking into consideration the interest of the MS.

Therefore, the MS under the supervision of the Commission, had to implement the same three-phase (‘2- plus-3-plus-2’) approach with a possibility to opt out any time before the end of the transitional period. The transitional arrangements applied on EU-2 citizens will irreversibly end on 31 December 2013 for all MS. Once admitted to the labor market of a Member State, Romanian and Bulgarian a worker benefits fully from all other rights under the EU law on the free movement of workers the same way as the neighboring EU-8 had in July 1, 2008.

Currently, workers from Bulgaria have free access to the labor markets of 15 of the EU-25 MS. Romanian workers currently have free access to 14 labor markets of the MS¹⁰. All EU-8 states, Finland, and Sweden immediately allowed the entrance of Bulgarians and Romanians. The second phase for the EU2 countries started on January 1, 2009, and following the Commission’s report, Spain, Greece, Hungary, Portugal, and Denmark have also opened their labor markets (Kahanec 5).

The countries that maintained boundaries on labor market access apply a range of national measures- legally different regimes for access to their markets. Some apply full work permit schemes while others have simplified procedures or eased

¹⁰ After Spain invoked the safeguard clause and the Commission, on 11 August 2011, accepted its request to re-introduce restrictions for Romanian workers until 31 December 2012.

conditions. Interestingly enough, the UK took a completely opposite position as for EU-8 workers by applying a number of restrictions on the EU-2 citizens (*Free Movement: UK*).

Similarly, for workers from Bulgaria and Romania in France, there are “restrictions with simplifications” during the whole transitional period from 1 January 2007 until the final possible date- 31 December 2011 (*on the Functioning of the Transitional Arrangements on Free Movement of Workers from Bulgaria and Romania 4*). In other words, the French government restricts the employment only to certain positions, but at the same time French employers can use a simplified procedure for introducing foreign labor for 61 occupations from 7 major fields of activity. Moreover, work permit issuance was later facilitated for 150 occupations experiencing hiring difficulties, which meant that workers from the new MS could theoretically apply for around 40% of the job vacancies. Moreover, for these occupations, foreign labor departments could not use the job situation in France as an objection (*The Opening of France's Labour Market to New EU Member States 3*).

This analysis illustrated that the year 2008 was the final year for France to completely lift its measures against the EU-8, moreover not being seen as a threat to its markets. Conversely, in the case of the EU-2, there is nearly stagnation in their inclusion into the French market.

CHAPTER FOUR:
FRANCE'S APPLICATION OF SAFEGUARD MEASURES:
IMPACT ON ROMA

§1. Background of Roma people.

One of the major reasons of France's restraining behavior towards EU-2 is the category of workers traveling from Romania and Bulgaria. There is a separate group of economic migrants, the Roma, moving from Central Europe, especially from Romania, Bulgaria, Bulgaria, Slovakia, and the Czech Republic to five destination countries, including France.

Roma, or "gypsies", are the largest minority group in Europe who are identified by their unique traveling lifestyle. The Roma have no particular historical homeland and can be found in all countries of Europe. Throughout Europe the Roma community is composed of several groups distinguished by settlement model, culture and religion, legal status, language, and period of migration. While some Roma groups have nomadic lifestyle, 80% of members of this community have been established in CEE states and became full-fledged citizens of respective countries (*Centre for Strategy & Evaluation Services*).

The traveling Roma settle in authorized or unauthorized camps in urban, semi-urban or rural areas throughout Europe. The minority leads this way of life not only due to their culture but also out of the necessity. In the study for European Parliament Crepaldi points out "migration and the nomadic life have often been forced due to discrimination, eviction or deportation"(10). Illustrious example from history is in Nazi Germany. The first years after the fascists came to power, they introduced a

range of anti-gypsy restrictions, including an obligation for them to register and submit to “racial examination” following by the introduction of limitations on freedom of movement (Wontor-Cichy). Later Roma were driven into concentration camps alongside with Jews and suffered severe persecutions. Furthermore, in fascist Italy a regulation in 1926 ordered the expulsion of all foreign Roma in order to “cleanse the country of gypsy caravans which, needless to recall, constitute a risk to safety and public health by virtue of the characteristic gypsy lifestyle” (Hammarberg 2012, 7). Many Roma were detained in special camps; others were sent to Germany or Austria and later exterminated.

The collapse of socialist regime in Eastern Europe was another test for many Roma. More than the rest of the native population they suffered loss of security in jobs, inadequate housing, and economic opportunities, which lead to the emergence of severe poverty. Indeed, the report of the World Bank on poverty in Europe and Central Asia identified Roma to be “poorer than other population groups and more likely to fall into poverty and remain poor” (Ringold xiv).

Poverty comprises not only financial disadvantage but also unemployment and low level of education. This kind of unfavorable starting point of Roma lead to disadvantageous position on the labor market. Commissioner for Human Rights of the Council of Europe following the visit to Bulgaria reported that unemployment level among Roma population is 70-80% (Hammemberg 2010). Roma who are employed work in industry and services, such manufacturing and mining (Revenga 27). This illustrates that either the Roma not holding any jobs at all or having very low paid positions.

As a result of a combination of under-education and discrimination in the job market, generations of Roma have performed work on the margins of the economy,

and sometimes, illegality. It is the Roma who are largely involved in collecting and selling used items; fortune telling; gambling; remittances from relatives abroad; selling off personal property; and welfare. Likewise, it is very common to see women and children from this community to be involved in informal economic activity in European streets, such as begging. These methods of income generating activity of the Roma are often regarded as ‘deviant’ or ‘undesirable’ and those engaged in them may even be associated with criminal behavior (*The Situation of Roma EU Citizens* 50).

Moreover, the image of Roma community is a perfect ground for emergence of stereotyping and generalization. According to the report published by BBC “right after Romania entered the EU” in Spain police reviled a criminal gang that was using children for pick pocketing. The article continues, “Madrid police say that 95% of children under 14 that they pick up stealing on the streets are Roma from Romania” (Begnall). This percentage raises questions on the validity of the information as article 81 of the Spanish Organic Law 15/1999 on the Protection of Personal Data states that the data, which refers to racial origin “shall also implement high-level security measures, in addition to the basic- and medium-level measures” (*Royal Decree 1720/20*). This provision was adapted to the Directive 95/46/EC of the European Parliament and the Council on protection of individuals from processing their personal data. Hence, in Spain the statistics on, for instance, people of Roma origin can be “obtained, processed and disclosed when so provided by a law on grounds of general interest, or with the data subject’s express consent” (Church 204). In other words, data files containing sensitive data must, among other duties, encrypt the information and cannot be revealed. For this reason, police in Madrid could not possess accurate figures to make such claims on Roma children as the records are not generally available. Consequently, the numbers are not objective, comprise certain

level of assumption based on observation. Rather than placing the responsibility on the government to investigate the issue further and examine how such children, victims of trafficking can be supported, this kind of misleading information from major television channels contribute on Roma stereotyping and prejudice.

The vulnerable situation of Roma illustrates the challenges the eastern and western European governments have been facing in integrating the minority group. In the Union states can take joint actions in supranational level to overcome stigmatization, promote tolerance and reduce poverty. The *European Union Agency for Fundamental Rights* published a study in 2009 entitled: “The situation of Roma EU citizens moving and settling in other EU member states” confirming that the main pushing factors for the Roma people from the countries mentioned above are still: poverty, experiencing racism and discrimination in the countries of origin (6). The same study revealed that pulling factors for the Roma migration towards Finland, France, Italy, Spain and the United Kingdom: the friends and family, who are already migrants of a specific country and provide support and information; the hopes for less discriminative policies, and the plans of finding employment on the official or unofficial labor market (*ibid* 20).

§2. The “Roma Problem” in France

Inclusion of new members to the EU, particularly Romania and Bulgaria¹¹ enabled the Roma from this countries to travel towards more developed neighbors. As EU citizens they obtained a legal opportunity to take advantage of freedom of movement and residence in any country of EU immediately or within seven-year transitional period.

¹¹ Romania counts in average 1,850,000 Roma people (8,32% from the total country’s population). Bulgaria has 750,000 of people with this origin (10,33) of total population.

One of the main countries of destination was France, the home of *Liberté, Égalité, Fraternité*¹². There are no official figures of how many Roma people immigrated to French Republic as the country, similarly to Spain, has to comply with EU privacy laws on personal data. Special authorization is required from *Commission Nationale de l'Informatique et des Libertés* (CNIL)- French data protecting agency- to process such categories of records through strict procedural rules. Therefore, there is no official number of gypsy population, both nationals and foreigners, present in the state. The Council of Europe provides its own estimations counting 300,000-400,000 Roma living in the French Republic by 2010 (*Statistics*). According to *Green European Foundation* around 250,000 of them have nomadic lifestyle (21). Jean-Pierre Liégeois, a French sociologist and Roma expert notes that in the same year number of Roma in France who are foreigners is 10,000 to 12,000, a relatively small quantity compared with the total Roma population in the state and those leading itinerant lifestyle (Severance).

The majority of Roma in France have lived there for long periods of time; there are some who have successfully integrated into French Republic. The research of the *European Union Agency for Fundamental Rights (FRA)* reveals that there are individuals that effectively used their EU freedoms of movement and establishment. In the interview a Roma man admitted ‘I’ve never felt this good in Bulgaria. In France I can drink coffee on Champs-Élysées and nobody will tell me that I am not entitled to stay there. I do not want too much, do I?’ (*The Situation of Roma EU Citizens II*). There are also Roma that try to integrate and plan the future in the new state:

¹² *Liberty, Equality, Fraternity*- the motto of French Republic taking its origins from the French Revolution of 1789.

'I have been in France for about six years now [from 2003]... My children are educated. I personally go to French lessons. We want to establish ourselves permanently in France. When we are able to speak French we will bring our purpose to a successful conclusion... Personally, my objective is to stay around Paris and do business... a little restaurant where all my family could work' (ibid 21).

On one hand, there are people who are completely satisfied bringing benefit to themselves and destination countries. On the other hand, in the study conducted upon the request of European Parliament's Committee on Employment and Social Affairs (EMPL) Roma community in France is mainly living in precarious conditions, due to problematic access to employment and education (Bertossi). It is likely that certain of these individuals leading an itinerant way of living, drastically different from the rest of the population, create tension in the country. A number of questions arise to explain the causes of unpleasant image of the Roma. Was it the fact that families lived in self-made constructions without sanitation and basic commodities? Was it that men women and children participate in informal economy? Or was it some other social tension?

In July-August 2010 passive attitude of France turned into active actions that even required EU Commission's interference. The government decided to remove camps of Roma migrants from the territory. French authorities announced that 128 "illegal" settlements had been closed and 979 Bulgarian and Romanian citizens were removed, out of which 151 forcibly and the rest 828 through so-called 'voluntary' returns (Reding 3). However, Maccanico suggests that the fact that the deportations took place at the same time indicates that it was all about returning people mainly to

Romania in one way or the other (2). Henceforth, every Roma who got on board of a plane received €300 (\$385), along with €100 for every child from the French state. Moreover, in order to ensure that these people will not return to the French territory the government took fingerprints of the deportees (*Have Your Roma Back*). This fact also puts under question the voluntarily nature of the leave of Roma.

According to the French Ministry for Foreign and European Affairs by October more than 355 traveller camps have been evacuated, of which 199 were inhabited by Roma from Bulgaria and Romania (Brasseur 5). Contrary, already in November 2010 The French authorities announced that in the first 10 months of that year 13 241 Romanian and Bulgarian citizens had been expelled (Hammarberg 2012, 204).

Forced eviction of Romani housing and expulsion of Roma is not a new tendency in France. Indeed, France has expelled Roma under various schemes in significant numbers since at least 2007 (*COHRE v. France*) However, with the announcements by the President Sarkozy on 10 July 2010 the, where he declared that the behavior of ‘small minority’ of the travellers and Roma “was a particular source of problem”, the situation of gypsies in general deteriorated substantially. The head of the Republic offered to take measures to demolish irregular Roma camps and expel their residents from the country in cases when the law allows that. Furthermore, Sarkozy also finds absolutely unacceptable situation of absence of law in the communities of Roma people coming from the Eastern Europe to the French territory (*Communiqué*). The purpose of the whole reunion was to call for the need of national legislative reforms on internal security, migration, and citizenship.

Other high-ranking officials in the French Government further carried out a wave of anti-Roma and anti-traveller statements. French Interior Minister Hortefeux

stated to the media “in all three cases – Roma, sedentary Travellers and other Travellers – the consequence is the same: an increase in crime” (Hammarberg 2012, 41). According to the authorities “unacceptable living conditions” create grounds for “illicit trafficking, child exploitation for the purpose of begging, prostitution as well as crime” (*ibid*). In other words, the state enters inside the settlements in order to eradicate the unlawful actions. These statements were uttered in the context of efforts to expel Roma from France, as well as to dismantle informal settlements. Incidentally, the *Transatlantic Trends: Immigration survey* finds “a close link between immigration and crime”. The statements found support of 28% of French people who believe that immigration will increase crime in their society in general¹³ (Kahanec 81).

Poverty, unemployment, and inflexible policies are the main reason for certain Roma to go into streets to beg or even enter into criminal affairs. In additions, politicians and the media portray illegal camps as the source of unrest in towns and cities, and, which has led to some social tension. The most notable events, that claimed to have led to well-known massive expulsion shortly after, were the ones near Paris and in Grenoble. On 17 July 2010 Luigi Duquet, a young 22-year old man, a French citizen and belonging to a family of *gens du voyage* (‘travellers’), was killed by a gendarme, during a car chase near Saint-Aignan, a small town in central France. Fifty or so people attacked the Saint-Aignan police station the next day (Bertossi 2). Moreover, in Grenoble there had been violent incidents involving gypsy during which shots were fired and cars burned after a man, who had stolen 20,000 euros in an armed casino robbery, was shot dead by police while he and an accomplice were being chased (Maccani). It is necessary to point out that the criminal act occurs

¹³ However, in the majority of all other European countries the percentage was higher (66% in Italy, 61% in the Netherlands, 57% in Poland and 53% in UK)

independently from citizenship, as it is possible to see in one of the cases. Individual cases yet alert the government and affect the whole Roma population.

§3. France's application of safeguard measures

Following Grenoble announcements by Sarkozy and Hortefeux, the Ministry for Immigration have put words into action by enacting several administrative guidelines (*circulaires*). They gave instructions on ways in which the ministerial guidelines needed be interpreted and applied to systematically liquidate irregular settlements.

The *circulaire* of 5 August 2010, addressed to the *préfets*¹⁴, was mainly instructing the authorities to target Roma camps when implementing expulsion measures. The Minister of Interior stated that was not aware of this command. Later order was annulled and replaced by an instruction of September 13, 2010, that did not target any specific groups (Atwill). Though the Roma ethnicity was not specifically mentioned, in reality the measures described in the regulation were directed towards them.

French authorities claim that the measures in the *circulair* are compatible with EU law as the right of residence for more than three months, is mainly conditioned upon the:

- a) EU citizen being a worker or self-employed in the host Member State, or
- b) having sufficient funds for not becoming a burden on the social system of the hosting state and having comprehensive health insurance, or
- c) are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative

¹⁴state representatives in each municipality

practice, for the principal purpose of following a course of study, including vocational training. (*Directive 2004/38/EC, art. 7*).

It is possible to assume, the expatriated Roma did not have an employment in France, could not financially support themselves, and, thus, were a burden for the welfare of the state. Additionally, in order to fight the problem the France used safeguard measures provided by the Directive. The freedom of movement and residence of EU citizens may be constrained "on grounds of public policy, public security or public health." The conduct of the individuals, however, must represent "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" (*ibid*, art 27). To put it other way, there is a criterion to follow when making a decision to remove certain individuals from the own territory. Ultimately, there has to be grave threat to the essential interests of the public.

On 27 August 2010 Eric Besson, Minister for Immigration, Integration, National Identity and Development Solidarity, issued a statement with the explanation of measures France applied on deported people. He affirmed the legality of actions under international, European, and national obligations (Larrose)¹⁵. Besson stressed that freedom of movement for EU nationals applies for three months. Hence, Romanian and Bulgarian nationals residing on a French territory according to Ministers interpretation of the Directive 2004/38 were removed either on grounds of security or lack of personal financial support for a period over three months.

The minister also denied that France had carried out any collective expulsions saying that people were deported in groups purely for reasons of effectiveness and

¹⁵ Eric BESSON, Ministre de l'immigration, de l'intégration, de l'identité nationale et du développement solidaire, réaffirme son attachement au respect de la légalité, et tient à démentir fermement tous ceux qui ternissent l'image de la France, en l'accusant de violer ses obligations internationales et européennes, ainsi que ses règles et traditions républicaines.

financial saving¹⁶. The decision was made 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 with the presence of a judge (*ibid*)¹⁷. As statement indicates that measures taken by the state are compatible with Free Movement Directive. Thereupon, he concluded that France remains perfectly loyal to its republican and humanist tradition (*ibid*)¹⁸.

Primary analysis illustrates that in protection of public order every requirement of the Directive has been followed and adequate attention is provided to Roma, who are sources of unrest. Although French government's actions seem to protect national interests by drastically reducing crime in the territory, the EU bodies and human rights groups do not share the same position.

§4. Reactions of European institutions and civil society organizations.

The French government's claims that circulars are only affecting criminal activity without discrimination against particular minority did not convince EU institutions. Within couple of months the European Commission, European Parliament as well as the Council of Europe and human rights organizations expressed their views against French measures on gipsy removal. They expressed their positions in oral statements, resolutions and publications. Council of European Union, however, did not produce any statements.

The first EU response "On the Roma situation in Europe" arrived on 25 August 2010, through a written statement by Viviane Reding, responsible for Justice,

¹⁶ Les rapatriements en groupe, pour lesquels la France peut opter pour des raisons d'efficacité et d'économie

¹⁷ Les procédures sont conduites après un examen particulier de la situation de chacun, qu'il s'agisse de l'exécution d'une mesure d'éloignement forcée ou bien d'une mesure d'accompagnement social...est contrôlée par le juge."

¹⁸ *La France est parfaitement fidèle à sa tradition républicaine et humaniste.*

Human Rights and Citizenship in the European Commission. The Commissioner expressed her regret “that some of the rhetoric that has been used in some Member States in the past weeks has been openly discriminatory and partly inflammatory” (Reding)¹⁹. In this sentence she did not specifically refer to France but the wrongdoer stand out from overall picture. Moreover, on 1 September Commission after meeting with French and Romanian authorities produced an Information Note with preliminary legal analysis. In these note compliance of the French measures with the legal framework carried out by the Commission ended in a conditional way by indicating that further detailed information was still necessary to form a position on the matter (*ibid* 5).

Commissioner Reding reacted furiously 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 only removing references to a specific ethnic group. She stated:

“This is not a minor offence...this is a disgrace. ’ Let me be very clear: Discrimination on the basis of ethnic origin or race has no place in Europe. It is incompatible with the values on which the European Union is founded. National authorities who discriminate ethnic groups in the application of EU law are also violating the EU Charter of Fundamental Rights, which all Member States, including France, have signed up to’ (*European Affairs News Video*).

She announced that the Commission had no “choice than to initiate an

¹⁹ Annex 8.

infringement action against France on two grounds: first, discriminatory application of the Free Movement Directive; second, lack of transposition of the procedural and substantive guarantees under the Free Movement Directive” (*ibid*). In this communication Commissioner with direct reference to the country made it clear that measures were targeting mainly Roma. In addition, French government failed to follow the formal procedure on removal the EU nationals from its territory. The punitive act the Commission named ‘infringement action’ starts with the Commission communicating the Member State and requesting responses to questions regarding the failure to observe the governing law. This is a preliminary step in case if the Commission chooses to refer the matter to the European Court of Justice and proceed with litigation. The warning was in a form of letter of official notice to France requesting the proper transposition of Directive 2004/38/EC. The Commission thus concluded that investigations should be pursued and concrete legal instrument to be adopted.

The other institution to immediately take notice was European Parliament. In fact, the Commissioner Reding’s harsh statement was heavily influenced by Parliament’s resolution on Situation of *Roma people in Europe* issued on 9 September. The institution expressed its ‘deep concern’ and urged French authorities to “immediately suspend” all expulsions of Roma, at the same time requesting the Commission, the Council, and the MS to intervene taking on account the opinions of NGOs and advocates of Roma population (*European Parliament Resolution*). As a representative of all citizens of Europe regardless their nationality and identity, European Parliament resolution, though not legally binding, were rapid, sharp, and large-scale.

The formal reproaches of France by the EU did not terminate at this point. The

Council of Europe commissioner for human rights, Thomas Hammarberg, also addressed the summer events in France. In his quarterly report from 1 July – 30 September the Commissioner affirmed that politicians should carefully chose statements concerning the Roma as the language can further stimulate prejudice against Gipsy. The Commissioner emphasized that as part of the recent French government fight against crime, Roma from other EU countries have been targeted as a “threat against public security” and “no clear distinction has been made between the few who had committed crimes and the whole group of Roma immigrants” (Hammarberg 2010, 10). The hate speeches of the head of state and other officials in one MS can encourage the other countries to use the same ‘excuse’ more and more often to remove the Roma from the territory by generalization the entire community on the grounds of criminality. Therefore, if French attitude and improper transposition of the EU law remains unchanged from expulsions will inevitably increase throughout Europe.

The Council of Europe immediately denounced the French actions, as did the Vatican, United Nations Committee for the Elimination of Racism and Discrimination, as well as very large number of national and international NGOs. For instance, Amnesty International in its public statement is “troubled” that some Roma are being returned to their countries of origin “in a context of statements by the French government suggesting links between Roma and criminality” (*France urged to end stigmatization of Roma and Travellers*). Likewise, in September Roma rights activists protested in front of the French embassy in Bucharest, Romania covering their faces with enlarged fingerprints (Photo. Vadim Ghirda). The biggest opposition, however, was among the population in France. According to police turnout for the protest across France was slightly more than 77,000 while organizers put the figure

nearer 100,000 (Fraiser).

After the announcement of the intention by the European Commission to initiate infringement proceedings, the French Government provided guarantees that it would adequately incorporate the Free Movement Directive into the legislation. France submitted detailed draft of a new law that follows necessary procedural safeguards indicated in Free Movement Directive. Inasmuch as the documentation answered the request of the Commission, the institution made another statement on 29 September 2010 “...not to pursue the infringement proceedings for now” (*Viviane Reding issues video statement on Roma*).

On 17 June 2011 the new French Law No. 2011-672 on Immigration, Integration and Nationality²⁰ entered into force. However, the analysis of Human Rights Watch submitted to the Commission in July 2011 shows that the French law and practice in the sphere of immigration still violates European and international human right laws. In fact, the provisions of the law directly contradict the EU Freedom of Movement Directive and seem to make it easier for authorities to remove Roma who are in France. Likewise, procedural guarantees in the new legal order are incompatible with the standards imposed in the Directive. As a result, these omissions enable France to carry on unlawful expulsions of people of Roma origin (*France's Compliance with the European Free Movement Directive*). NGOs have reported that almost 11 000 Roma migrants have been evicted between January 2010 and September 2011, with a notable increase registered in the second trimester of 2011. In a particularly disturbing expulsion took place on 1 September 2011. On this day anti-riot police have put about 200 Roma from Saint-Denis into trains without any indication of the destination. Some minors were even separated from their parents

²⁰ La loi n° 2011-672 relative à l'immigration, à l'intégration et à la nationalité.

(Hammerberg 2012, 149). As a matter of fact numbers clearly show that enactment of a new immigration law did not change the fate of the Roma France.

§5. Legal analysis of the application of EU law:

The rights of France and rights of the Roma

France continues to rely on a new law that is recognized to be in accordance with the “Free Movement Directive”. The rights and obligations of receiving MS in case of evictions of EU citizens under this normative act depends on two major factors. The country can remove other EU nationals if they cannot support themselves in a hosting state by relying on financial assistance and/or represent threat to public policy or public health.

The Directive 2004/38 the right to enter the territory of another MS and settle legally for periods longer than three months depends on the ability to demonstrate financial independence in the country of immigration for themselves and for their family members. This is a complicated task for the Roma to accomplish. Since 2007 all Bulgarians and Romanian Roma have had access to employment in France in a restricted set of just 150 occupations and could not be employed unless the employer pays a fixed tax of approximately 900 euros (ibid 161). Technically there is no any violation of EU legislation. Limited access to certain types of occupations is in accordance with transitional arrangements for EU-2 countries; tax regime is a subject to domestic law. Nonetheless, in reality they are barriers to labor access indirectly discriminating the Roma leaving no other choice as to be attracted to undeclared economic activity, which immediately pushes them away from being recognized as workers and self-employed.

Engagement in informal economy, such as begging, for instance, and leading a

life in slum-type housing give a perception of inability to satisfy the requirements of “sufficient resources” in order not to be a “burden on the social systems of Member States” mentioned in article 7(b) of the Directive. Although this may be true, the 2009 European Commission guidance on proper application of the 2004 Directive clarifies that “only receipt of social assistance benefits can be considered relevant to determining whether the person concerned is a burden on the social assistance system” (*Communication from the Commission to the European Parliament and the Council* 9). Hence, in the event that a person is not receiving a governmental aid or mere assumption that somebody will become a burden for social assistance system cannot justify an expulsion measure. For instance, an unemployed living in an extreme poverty and is not receiving an allowance from the hosting state; he cannot be subject to removal just because he ‘looks like’ to be an encumbrance for the state. In practice, however, the study for the *Organization for Security and Co-operation in Europe (OSCE)* regarding France shows that “it is evident that... an inability to demonstrate employment or other means of support is used as a determining factor in arriving at decisions to expel” (Cahn 74).

Before issuing an expulsion order the authorities of MS must use a proportionality test in evaluating whether an individual, whose resources can no longer be considered as sufficient, has become an unreasonable burden. It is three sets of criteria grouped together from the recital 16, 23 and article 8:4 of Directive 2004/38:

- (1) duration- the period of time an individual has been in the country and has been receiving the benefit; the chances of getting out of the social assistance policy;
- (2) personal situation- degree of integration of the persons concerned,

their age, state of health, family and economic situation and the links with their country of origin;

(3) amount- total amount of aid granted (*Communication from the Commission to the European Parliament and the Council 8-9*).

As it is possible to observe there are number of factors to take into account before removing a single person. The clarifications provided by the Commissions are meant to precise the uncertainties of the Directive. The explanations do highlight the importance of the individual approach to every one. Nonetheless, the proportionality test still remains ambiguous leaving the MS wide room for interpretation. States themselves are to determine whether it is likely for a person to get out the security net; whether sufficient money was granted before removal measures had been exercised. Another question always remained vague is three-month period during which an individual is allowed to stay in France without an employment. There are no any internal border controls in the EU and the requirements to register for temporary residence during that period. In that case, what legal instruments France is relying on to control the fact that people have exceeded the allowed limit if they do not receive financial support from the state?

Other mechanism then for French authorities to rely on in order to justify the expulsion is the reference to article 27 of the Directive “Member States may restrict the freedom of movement and residence of Union citizens and their family members... on grounds of public policy, public security or public health” when “personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society” (art.27: 1, 2 §2 of the Directive 2004/38/EC).

While article 63 of 2011 French Immigration Law has the same wording,

article 65 with reference to Criminal Code increases the power of a state to remove all non-nationals who regarded as posing a threat to public order, including those liable to trial for certain crimes such as exploitation of begging^{21 22} and illegal land occupation". For example, article 322-4-1 concerns unlawful land acquisition by the Travellers. Settlements of the *gens de voyage* have to be registered under departmental plan in a particular municipality or these people have to possess other justification of the ownership to land being occupied. If the gypsies fail to do so they are subject to imprisonment and heavy fines²³. Inasmuch as under this law gypsies have to register under departmental plan or go through administrative procedures to obtain legal prove of possessing the land parcel they inhabit. It is important to point out that same requirements apply to settlements of a temporary nature. On the same token, if the settlement is done with a vehicle, the transportations can be confiscated through court, unless the owners directly use it for housing. Thereupon, even if one has a right of residence in another MS for three months without checking in with the local authorities, he/she still has to comply with the provisions of this article. As a matter of fact Roma arrived from newly joined states have to show their title to land or otherwise they will be regarded as a threat to public order. To put it differently, authorities 'developed' further the EU Directive by broadening the scope of activities

²¹ Article 225-12-5; 4(b): "Est assimilé à l'exploitation de la mendicité le fait de ne pouvoir justifier de ressources correspondant à son train de vie tout en exerçant une influence de fait, permanente ou non, sur une ou plusieurs personnes se livrant à la mendicité ou en étant en relation habituelle avec cette ou ces dernières." "L'exploitation de la mendicité est punie de cinq ans d'emprisonnement et d'une amende de 75.000 Euros lorsqu'elle est commise :1° A l'égard d'un mineur;" Article 225-12-6

²² Though personal act of begging is not considered a crime; for instance, a parent making his/her child beg or pursuing this activity together with his/her child falls under "exploitation of begging".

²³ Article 322-4-1: "Le fait de s'installer en réunion, en vue d'y établir une habitation, même temporaire, sur un terrain appartenant soit à une commune qui s'est conformée aux obligations lui incombant en vertu du schéma départemental prévu par l'article 2 de la loi n° 2000-614 du 5 juillet 2000 relative à l'accueil et à l'habitat des gens du voyage ou qui n'est pas inscrite à ce schéma, soit à tout autre propriétaire autre qu'une commune, sans être en mesure de justifier de son autorisation ou de celle du titulaire du droit d'usage du terrain, est puni de six mois d'emprisonnement et de 3 750 Euros d'amende."

under which Roma people can be removed from the French territory.

Another point to emphasize is a necessity for public threat to be a “personal conduct of the individual concerned” (*ibid*). Individual assessment is indicated in both, EU Directive and national immigration law. However, there were men and women from different age groups as well as children deported back home without clear identification of the cause. Human Rights Watch investigated 198 deportation notices issued on Romanian Roma between August 2010 and May 2011 by six different prefectures across France. In all cases that authorities used standardized form saying that the deportee stayed over three months, does not have fixed domicile, constitutes unreasonable burden to the French state (*France’s Compliance with the European Free Movement Directive*). Differences existing among the people expelled for over two years and the number of settlements removed makes it impossible to believe that there was an assessment on case-by-case basis.

The deeper analysis with the help of different institutions, publications, and most importantly, the EU and national legislation, illustrates that as a whole French authorities abused their powers by removing the Roma. It is important to realize that enactment of a new law *de facto* did not bring much, if any, modifications into domestic legislation making it still possible to expel the EU citizens from another MS.

Surprisingly, the Commission has been silent about reintroducing the infringements procedures against France. How is it possible to explain the EU’s lack of action in response? How can massive evictions go effectively unpunished?

Part of the reason is because legal ambiguities still exist in the law. The Directive is open for interpretation leaving the MS freedom of action in deciding whom to expel. In reality poverty and itinerant way of leaving is practically enough for the Roma to be eligible for recognition as a threat to public order.

Carrera and Atger are also accusing the enforcement procedures to be “heavily politicized” and “*ex post*” being the violation of EU Law has been completely proved, which is hardly could be a case (17). Article 7 TEU supports the statement by describing the procedure of recognizing the fact that a MS has “a clear risk of a serious breach”. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine a risk of a substantial violations if fundamental rights. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure (*ibid*). Consequently, the words of a Commissioner Reding were only very minor step to actually do something against France. In addition, the fact that the Council of EU decided not to get involved in the political debate broke the way of the decision-making before it even started. Obviously, it is complicated to find objective and impartial compromise between and within the bodies of the EU. Nevertheless, it is crucial to find out the way to have more authority over unlawful actions of the states.

CONCLUSION:
FINDINGS AND SUGGESTIONS

In a meantime, France from time to time still removes groups of gypsies to Romania and Bulgaria. European mass media claims the deportations to be a part of a Sarkozy's 2012 PR-election campaign. In the article *Roma under Fire in French Election Campaign* the author underlines that current governments "hardline against one of Europe's most maltreated minorities appeals to the sensibilities of the country's far right voters" (Nielsen). The statement illustrates that now the Roma and the Travellers are being the victims of one's political ambitions. This move increased the popularity of Sarkozy meaning that the policy finds support among the population as well.

The EU law is still silent. It is silent when faced with EU reality.

Inability to effectively and timely react to the event when a MS breached its obligations show the weakness the EU institutions still possess in their functioning between 27 MS. The current situation of the Roma in France is an illustrative example when human rights are compromised in favor of national or political interest of a particular MS. When completing the research the author came to several conclusions.

The enlargement procedure though was done with every accessing country separately; it was still conducted in a short time. To compare, it took nearly 45 years, five treaties, four enlargements as well as constant change of national laws and economies for the community of six to become a union of fifteen with a separate governing body and more or less functioning single market. Contrary, for slightly over 10 years and two treaties for the rest twelve states to annex what have been created for decades. Despite the legal, economical, and political reforms done in pre-

enlargement period enough attention was not paid and could be paid in discussing and finding solutions to such problems as those related to minority groups. This kind of rapidity in action certainly was to create complications in the future.

The transitional arrangements after the former-Communist accession states gained entry into the Union for many EU-15 states could be seen as a way out protecting labor markets from the influx of a cheaper labor and migrating groups. France used this possibility granted under EU law. In relation to Romania and Bulgaria it is relying on until the last possible date. This is due to the fact that large number of unskilled Romanians is moving westwards. Based on the statistics of persons being removed from France back to Romania it is possible to conclude that the biggest group out of those migrants are people of Roma ethnicity. The transitional period is going to be terminated this December, meaning that the Roma along with other Romanians and Bulgarians are to have greater access to the market of Western Europe. However, the gypsies are still being expelled.

True that the larger Union created undeniable benefits for businesses, skilled-labor and economy of Europe as a whole. Thus, a lot of Polish people, for example, can be seen in many 'old' member states. They are likely to enjoy their freedom; and can protect their rights when it is necessary. Nonetheless, coming back to the issue of the Roma after researching the material and making legal analysis, it seems different EU directive applies to this community; or the same directive applies differently.

This kind of post-2004 enlargement issues will likely to become more complicated and diverse in possible further enlargements. In case of Turkey, a country along with many unique and specific problems, is the home for the largest Roma population in the Council of Europe²⁴; gypsies make up over 3% of Albania's and

²⁴ In average there are about 2,750,000 Roma people in Turkey (*Council of Europe Statistics fact sheet*)

over 8% of Serbia's population (ibid). Roma people from these states will also want to use the privilege of free movement to pursue a better life in richer countries. Consequently, the expulsions are not a long-term solution. For now it would be appropriate to focus on deepening the famous European integration rather than enlarging the Europe.

Henceforth, the EU should hence develop a new preventive and enforcement instruments that would supplement the existing infringement proceedings. Under consolidated treaty the opening of the procedure is the right of the Commission (Art. 258 and 260 TFEU). It could be efficient if infringement procedure could start by European Parliament as well.

Nevertheless, the EU has to further develop its enforcement mechanisms. As the France case proves, for now it can do relatively little to condemn a nation state when they contradict European norms and violate European human right standards.

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