

France's Repatriation of Roma: Violation of Fundamental Freedoms?

Caitlin T. Gunther[†]

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

– Article I, Universal Declaration of Human Rights.¹

I. Background	209
A. History of Persecution	209
B. A Traveling People	211
II. Creation of the European Union and EU Law	212
III. Additional Sources of International Law	214
IV. Did France's Actions Violate International Law?	216
A. European Law and the Court of Justice	216
1. Procedure	216
2. Case Law	217
3. Analysis: Did France Violate Either the Fundamental Right to Freedom of Movement or Freedom from Discrimination?	218
B. European Convention on Human Rights	219
C. International Covenant on Civil and Political Rights	222
V. Moving Forward	223

In August 2010, approximately 80 Romani² boarded flights from France to their country of origin, mostly either Romania or Bulgaria.³ Pursuant to France's "voluntary" repatriation program, each adult received 300 Euro, or 415 USD, in exchange for leaving the country.⁴ President Nicolas Sarkozy asserted that these government-financed voyages, the first of several, were motivated by rising public concerns about illegal Roma camps associated with drug trafficking, prostitution, and child exploita-

[†] J.D. Candidate, Cornell Law School, 2012. The author would like to thank her mother, for inspiring her to live and work with compassion, and Professor Sital Kalantry, for her input during the writing process.

1. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 1, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at <http://www.un.org/en/documents/?udhr/index.shtml>.

2. Romani or Roma is another title for this group of people, commonly referred to as "gypsy."

3. Sebastian Moffet, *France Expels Group of Gypsies to Romania*, WALL ST. J. (Aug. 20, 2010), <http://online.wsj.com/article/SB10001424052748704476104575439184?291076528.html>.

4. *Id.*

tion.⁵ Human rights advocates roundly criticized these drastic measures, alleging that France was scapegoating the Roma to distract voters from other issues plaguing the country, and to garner political support from national conservatives.⁶

The repatriation program, however, was not the first action by the French government aimed at decreasing the Roma population in France. In 2009, roughly 10,000 Roma were expelled from France, compared with the 8,000 Roma repatriated by September 2010.⁷ Supporters of the repatriation program argued that the program was limited to individuals who needed to return to Romania or Bulgaria, or agreed to go voluntarily.⁸ Still, it is doubtful that the program is truly voluntary, particularly when one considers the widespread intimidation practices that French officials used against Roma. Further, the Commissioner of the Human Rights Council of Europe reported that police allegedly confiscated the identity papers of “volunteers” until they reached their country of origin during the repatriation program, leaving the “volunteers” no opportunity to freely change their minds.⁹

In September 2010, a copy of a memorandum sent from the French Interior ministry to all French prefects and police officials was leaked to the press.¹⁰ The memorandum explicitly called for police to target Roma camps for eviction.¹¹ Although the memorandum was formally withdrawn, it intimates the existence of discriminatory policies and practices by public officials.

France’s national policy aimed at excising the Roma population is not unique.¹² Indeed, Finland, Italy, Denmark, Sweden, Germany, and the United Kingdom have also reportedly provided Roma with travel costs and stipends in exchange for “voluntarily” returning to their countries of origin.¹³ Distancing itself from France’s actions, Germany characterized its

5. *Id.*

6. *See id.* A poll conducted at the time of the expulsions showed that, despite French President Sarkozy’s waning approval ratings, 56% of the French population supported him on this issue. *See* Doug Sanders, *Sarkozy Tries a New Approach: French President Turns Right in Attempt to Build International Power*, THE GLOBE & MAIL, Nov. 16, 2010, at A14.

7. *Factsheet: Summit-to-Summit Roma Rights Record 2010*, ERRC: EUROPEAN ROMA RIGHTS CENTRE (Apr. 8, 2010), <http://www.ertc.org/cikk.php?cikk=3573> [hereinafter *Factsheet*].

8. EUROPEAN UNION: EUROPEAN AGENCY FOR FUNDAMENTAL RIGHTS, THE SITUATION OF ROMA EU CITIZENS MOVING TO AND SETTLING IN OTHER EU MEMBER STATES 29 (Nov. 2009) [hereinafter *ROMA MOVEMENT*].

9. *Id.*

10. *See* Bruno Waterfield & Henry Samuel, *Europe Compares France Roma Expulsion to Nazi Deportations*, TELEGRAPH, Sept. 15, 2010, <http://www.telegraph.co.uk/news/worldnews/europe/france/8002518/Europe-compares-France-Roma-expulsion-to-Nazi-deportations.html>.

11. *See* Kim Willsher, *Orders to Police on Roma Expulsions from France Leaked*, GUARDIAN, Sept. 13, 2010, <http://www.guardian.co.uk/world/2010/sep/13/sarkozy-roma-expulsion-human-rights>.

12. *See* ROMA MOVEMENT, *supra* note 8, at 28–29.

13. *See id.*; *see also Factsheet*, *supra* note 7.

program, which repatriates 2,500 Roma per year, as a “gradual return” rather than a mass deportation.¹⁴ Italy, however, has fully supported France’s actions. In 2008, Italy declared a state of emergency and embarked on its own aggressive campaign to break up Roma settlements and expel Roma.¹⁵ The Italian interior minister has even suggested automatic expulsion of European Union (EU) citizens from foreign states who do not meet a minimum income level—a program indirectly targeted at the Roma, among others.¹⁶

Public officials have justified these practices by citing deep concern about criminal and antisocial behavior of the Roma population.¹⁷ Spanish President José Luis Rodríguez Zapatero asserted that measures by France comported with EU law, citing the need to preserve public order in suburban settlements lacking sanitary or security conditions.¹⁸ The European community and many non-governmental organizations, however, have expressed profound concern about such drastic and discriminatory measures.¹⁹

France’s repatriation program came under fierce criticism from the Commission²⁰ whose leader, Viviane Reding, denounced the deportation policy as “disgraceful” and in breach of EU law.²¹ Reding commented that the situation was one that she believed “Europe would not have to witness again after the Second World War,” referring to the devastation that befell the Roma during that time.²² The UN High Commissioner for Human Rights also voiced concern, stating, “[s]uch measures can only exacerbate the stigmatisation of Roma and the extreme poverty and exclusion in

14. Valentina Pop, *French Expulsions Row Doing Nothing to Help the Roma*, EUOBSERVER.COM (Sept. 20, 2010), <http://euobserver.com/851/30841>.

15. See *Factsheet*, *supra* note 7. In the Italian city of Pisa, Romani were paid approximately €511 per person to return to Romania. See *Italy: Mayor 'Pays' Roma-Gypsies to Leave the City*, ADN KRONOS INT'L (May 21, 2010), <http://www.adnkronos.com/AKI/English/Security/?id=3.0.3342187830>.

16. Leigh Phillips, *Prospect of French 'Anti-Roma' Summit Disturbs EU Presidency*, EUOBSERVER.COM (Aug. 24, 2010), <http://euobserver.com/22/30668>.

17. See *Factsheet*, *supra* note 7.

18. Santiago Pérez, *Europe Debt Crisis Is Over, Declares Spanish Leader*, WALL ST. J. (Sept. 22, 2010), <http://online.wsj.com/article/SB100014240527487041292045755?06182829904198.html>.

19. In response to Italy’s action, Michael Roth, a parliamentary spokesman on European policy for Germany’s ruling Social Democrats remarked: “The pogrom-like attacks on Roma and other minorities give grounds for great concern.” See Elizabeth D. MacGillivray, H. Juanita M. Beecher, & Deirdre Golden, *Legal Developments—Equality and Diversity Developments in Europe*, 28 GLOBAL BUS. & ORGANIZATIONAL EXCELLENCE 60, 62 (2008), available at <http://onlinelibrary.wiley.com/doi/10.1002/?joe.20251/pdf>.

20. Under the treaties (Treaty on the Functioning of the European Union and the Euratom Treaty), the Commission of the European Communities (EC) is responsible for ensuring that Member States correctly apply EU law. The EC maintains the power to take action against a Member State for non-compliance, and, when necessary, refer a case to the European Court of Justice. See *Infringements of EU Law*, EUR. COMMISSION (Aug. 17, 2011), http://ec.europa.eu/community_law/infringements/?infringements_en.htm.

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

22. *Id.*

which they live.”²³

Upon implementation of the repatriation program, France was accused of violating several fundamental rights guaranteed to all citizens of EU member nations.²⁴ Among these are the right to freedom of movement and residence,²⁵ as well as the right to freedom against discrimination based on nationality.²⁶ On September 29, 2010, the European Commission (Commission) announced its decision to begin an infraction proceeding against France for violating EU laws on freedom of movement.²⁷ This was a retreat from its initial position—that France had violated both discrimination and free movement laws. On October 19, 2010, the European Commission (Commission) withdrew the proceeding entirely after France promised to amend national legislation to ensure protection of the right to free movement.²⁸

In this Note, I will first discuss the history of the Roma, including the persecution they have continuously faced. Second, I will outline the development of an international body of law in Europe and corresponding human rights obligations. Third, I will discuss whether France has violated international law by infringing on the Roma’s freedom of movement and freedom from discrimination. Within this discussion, I will focus on three relevant sources of international law: EU law, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights. As stated in a recent report on the Roma situation, “[t]he case of the Roma serves as a litmus test”²⁹ because problems suffered by this minority group reflect a broader social problem that lingers throughout Europe. Finally, I will comment on the outcome of the repatriation program.

23. *France’s Roma Repatriation Drive Slammed by UN*, EURONEWS (Sept. 13, 2010), <http://www.euronews.net/2010/09/13/france-s-roma-repatriation-drive-slammed-by-un>.

24. The body of law that constitutes European law, including European citizens’ rights, is drawn from myriad sources, including international treaties (the Treaty on European Union, the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union, the treaty establishing the Atomic Energy Community, and the Treaty of Lisbon), international agreements, and case law. See *Collections*, EUR-LEX: ACCESS TO EUR. LAW, available at <http://eur-lex.europa.eu/en/index.htm> (last visited Jan. 29, 2012).

25. Council Directive 2004/38/EC, 2004 O.J. (L 158) 77, 78 [hereinafter Freedom of Movement Directive]; see generally BUTTERWORTH’S EXPERT GUIDE TO THE EUROPEAN UNION 172 (Jörg Monar et al. eds., 1996) [hereinafter BUTTERWORTH’S].

26. Convention for the Protection of Human Rights and Fundamental Freedoms art. 14, Nov. 4, 1950, 213 U.N.T.S. 221, available at <http://conventions.coe.int/treaty/en/?treaties/html/005.htm> [hereinafter Human Rights Convention].

27. *France Slapped for EU Free Movement Infraction, Not Discrimination*, EURONEWS (Sept. 29, 2010), <http://www.euronews.net/2010/09/29/france-slapped-for-eu-free-movement-infraction-not-discrimination>.

28. Valentina Pop, *EU Drops Charges Against France on Roma*, EUOBSERVER (Oct. 19, 2010), <http://euobserver.com/24/31074>.

29. ROMA MOVEMENT, *supra* note 8.

I. Background

A. History of Persecution

The known origin of the Roma people dates back to the fourth century BCE.³⁰ The Roma, who are said to have migrated from India, settled in present-day Romania from the 14th to 19th centuries, where they were enslaved and regarded as “no more than cattle.”³¹ In regions where the Roma were not enslaved, they were significantly limited in their activities, leading many to adopt a nomadic way of life.³²

When the abolitionist movement took hold in the United States, the notion of freedom as an inherent right spread to Eastern Europe.³³ By the mid-nineteenth century, virtually all Roma had been freed from slavery.³⁴ Still, the Roma did not find themselves on a road toward equal and humane treatment.³⁵ With the onset of World War II, they became targets of ethnic cleansing.³⁶ The Roma holocaust, also known as *Baro Porrajmos*, or “great devouring” in the Roma language, claimed an estimated 1.5 million Roma lives.³⁷ From 1933 to 1945, myriad Romani women were victims of forced sterilization.³⁸

After World War II, many of the Roma in Eastern Europe came under Soviet domination.³⁹ Once again, Roma women were subjected to forced sterilization, a practice promoted to combat the allegedly “high, unhealthy birth rate” of the Roma.⁴⁰ Although government-sanctioned sterilization in countries such as the former Czechoslovakia ended in 1990, evidence suggests that the practice continued well beyond that date.⁴¹ Cases have been reported in the Czech Republic as recently as 2007.⁴² The European Roma Rights Centre has documented cases of sterilization in Hungary in 2008.⁴³

Under Soviet domination, Roma suffered oppressive conditions, including a lack of access to education, and were largely confined to unskilled labor.⁴⁴ After the fall of communism, the Roma were left without the necessary education or skills to thrive in a market system.⁴⁵ Thus, given the current situation of the Roma, it would seem that many Romani

30. See Jack Greenberg, *Report on Roma Education Today: From Slavery to Segregation and Beyond*, 110 COLUM. L. REV. 919, 923–34 (2010).

31. See *id.*

32. See *id.*

33. See *id.*

34. See *id.*

35. See *id.* at 925.

36. See *id.*

37. *Id.*

38. See Elizabeth K. Tomasovic, *Robbed of Reproductive Justice: The Necessity of a Global Initiative to Provide Redress to Roma Women Coercively Sterilized in Eastern Europe*, 41 COLUM. HUM. RTS. L. REV. 765, 770 (2010).

39. See Greenberg, *supra* note 30, at 925.

40. See Tomasovic, *supra* note 38, at 770.

41. See *id.* at 765.

42. *Factsheet*, *supra* note 7.

43. See *id.*

44. See Greenberg, *supra* note 30, at 926.

45. See *id.*

fares better economically during the days of Soviet control. Indeed, a recent study reported by the UNODP found that 46.8% of Roma families are currently receiving social assistance.⁴⁶

Unsurprisingly, the economically disadvantaged situation of the Roma has been accompanied by housing conditions that fall well below the standards of the general population.⁴⁷ Indeed, the Roma have resided in sub-standard communities on the periphery of mainstream society since the Middle Ages.⁴⁸ Today, throughout Europe, a large percentage of Roma continue to live in segregated communities.⁴⁹ A 2009 report of the European Union Agency for Fundamental Rights found such segregation existed throughout numerous EU nations, including Bulgaria, the Czech Republic, Greece, Spain, France, Hungary, Poland, Portugal, Romania, and Slovakia.⁵⁰ In many cases, these housing arrangements are a direct result of national government policies.⁵¹ In others, they result from administrative decisions.⁵² For example, local authorities may allocate housing to Roma in specific areas.⁵³ In addition, public attitude—such as displeasure with Roma settlements near major areas—shapes housing practices.⁵⁴

Furthermore, these communities are drastically different from neighboring non-Roma areas. Health hazards abound due to the location of Roma housing in low-value sites, often in close proximity to dumps or motorways.⁵⁵ Many of these “shanty towns” lack electricity and running water, are largely composed of makeshift homes constructed from flimsy materials, and lack basic features such as doors or glass windows.⁵⁶

In turn, the Roma living in these substandard housing conditions are plagued by higher rates of disease and significant health deficiencies in general. To begin with, the mortality rate among infants is approximately 27.1 per 1000—markedly higher than the non-Roma population.⁵⁷ The average Roma has a lower life expectancy than the general population in the same area, due to myriad health afflictions including diabetes, coro-

46. See *id.* at 929. But see FUNDACIÓN SECRETARIADO GITANO, HEALTH AND THE ROMA COMMUNITY, ANALYSIS OF THE SITUATION IN EUROPE 25 (2009), available at <http://ec.europa.eu/social/BlobServlet?docId=4309&langId=en> [hereinafter HEALTH] (noting that housing conditions for the Roma population vary among EU countries, with countries such as Spain showing relatively favorable conditions as compared to Portugal or Slovakia, where the majority of the Roma population live in shanty towns or sub-standard housing).

47. See EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, HOUSING CONDITIONS OF ROMA AND TRAVELLERS IN THE EUROPEAN UNION 5 (Oct. 2009), available at http://www.fra.europa.eu/fraWebsite/research/publications/publications_?per_year/2009/pub-cr-roma-housing_en.htm [hereinafter HOUSING].

48. See Greenberg, *supra* note 30, at 931.

49. See *Factsheet*, *supra* note 7.

50. See *id.*

51. See *id.*

52. See HOUSING, *supra* note 47, at 7.

53. See *id.*

54. See *id.*

55. See *id.*

56. See Greenberg, *supra* note 30, at 932.

57. See *id.* at 931.

nary artery disease, obesity, and limited access to medical care in general.⁵⁸

In addition to practical difficulties that the Roma endure, Roma are the target of rampant prejudicial treatment and physical abuse by their non-Roma counterparts.⁵⁹ Media and non-governmental organizations have reported a slew of violent attacks against Roma, many of which go unpunished.⁶⁰ In 2009, for instance, a mob of 200 to 300 Italians attacked a Roma settlement in Alba Adriatica.⁶¹

Finally, the Roma education level is strikingly inferior to that of the general European population.⁶² A 2006 report entitled 'Roma and Travelers in Public Education' stressed that Roma "continue to be subject to direct and systemic discrimination and exclusion in education resulting from a variety of interrelated factors including poor conditions of life, especially high unemployment, substandard housing conditions and poor access to health services."⁶³ In fact, a study by the Roma Education Fund found that 70 to 80% of Romani possess less than a primary school level education.⁶⁴ Roma children who do attend school are often subject to de facto segregation; this may result from Roma children being sent to "special" schools based on diagnosed learning disabilities.⁶⁵ In other instances, de facto segregation is due to the "white flight" phenomenon that occurs once Roma children begin attending a non-Roma school.⁶⁶

The author had a first-hand glimpse of an "integrated" public school while teaching in a public elementary school in Madrid. Despite the presence of Roma and non-Roma children, there was clearly stratification within the school. Most Roma children had been grouped together in a class alongside other children who had learning difficulties. The "advanced" classes, which had no Roma children, moved at a faster pace and were taught by more experienced and more qualified teachers. Many Roma children who enrolled upon commencement of the school year either attended part-time, rarely returning after the midday lunch break, or stopped coming within the first few weeks.

B. A Traveling People

Various factors contribute to the nomadic nature of the Roma.⁶⁷

58. *See id.*

59. The rise of anti-immigrant action seems to correlate with conservative movements. For statistics regarding attacks in various European countries against Roma and immigrants in general, see Mark Tran, Paddy Allen & Jo Blason, *Europe: Immigrants Under Pressure: Flashpoints*, *GUARDIAN* (Nov. 16, 2010), <http://www.guardian.co.uk/world/interactive/2010/nov/15/europe-far-right-wing-politics>.

60. *See Factsheet, supra* note 7.

61. *See id.*

62. *See ROMA MOVEMENT, supra* note 8, at 17.

63. *Id.*

64. *See Greenberg, supra* note 30, at 933.

65. *See Factsheet, supra* note 7.

66. *See Greenberg, supra* note 30, at 936.

67. *See, e.g.,* JEAN-PIERRE LIÉGEAIS, *ROMA IN EUROPE* 164 (2007). 'Gypsies' were once defined as "persons of nomadic life, whatever their race or origin, but [did] not include

These factors have been identified as “push” and “pull” forces. The former are unfavorable circumstances that push the Roma to leave their countries of origin. The latter consist of favorable conditions or family that pull the Roma to foreign countries. Poverty and racism are the principal elements that push many Roma from their home countries.⁶⁸ On the other hand, the primary factors that pull Roma include family and friends already established in their destination countries, economic opportunities, and less discriminatory treatment.⁶⁹ In general, it seems that Roma are motivated by the same desires that have motivated people to come to the United States—economic prospects and a better life.

Due to the traveling nature of the Roma people, the paucity of ethnic statistics in Eastern Europe, and perhaps a level of Romani mistrust of inquiring authorities, precise demographic information is difficult to acquire.⁷⁰ Thus, most statistics are mere approximations of the conditions of Roma life, and may fail to adequately capture the entire picture.⁷¹ Nonetheless, even allowing for a margin of error, the demographics clearly demonstrate that this historically mistreated group continues to endure profound inequities.⁷² The Roma have subsisted in these conditions in the midst of fellow EU citizens who are accustomed to a comfortable quality of life. One naturally wonders how this situation persists in modern society, and why a national or international law has not effectively alleviated it.

II. Creation of the European Union and EU Law

In 1957, the Treaty of Rome established the European Economic Community (EEC).⁷³ Founded by six nations (Belgium, France, Germany, Italy, Luxembourg, and the Netherlands), the Treaty of Rome created a common market between Member States.⁷⁴ After years of devastating wars on the continent of Europe, the weary nations went beyond tearing down economic walls, and included in the Treaty of Rome a prohibition against discrimination based on nationality.⁷⁵ Moreover, they affirmed in the preamble the essential objective of “the constant improvement of the living

members of organised group of travelling showmen or of persons engaged in travelling circuses, travelling together as such.” *See id.* at 67 (discussing the difference between the objective fact of travelling—actual movement—and nomadism, which is a state of mind).

68. One Roma man reported that he left Romania because he found it impossible to manage on a mere 100 Euro per month, with a family of four people, including himself, to support. A Roma woman living in the United Kingdom said that she left Romania because the amount of discrimination that her sons felt at school, based on their having a “gypsy” mother, was unbearable. *See ROMA MOVEMENT, supra* note 8, at 18.

69. *See id.*

70. *See Greenberg, supra* note 30, at 926.

71. *Id.*

72. *See generally Factsheet, supra* note 7.

73. *See THE LAW OF THE EUROPEAN UNION AND THE EUROPEAN COMMUNITIES* 16 (Paul J.G. Kapteyn et al. eds., 4th ed. 2008) [hereinafter EU LAW].

74. Treaty of Rome art. 2, Mar. 25, 1957, 298 U.N.T.S. 3 (also known as the Treaty Establishing the European Economic Community).

75. *Id.*, art. 7.

and working conditions of their peoples.”⁷⁶ Thus, the Treaty of Rome promised citizens various rights, including freedom of movement.⁷⁷ At the outset, however, this right was limited to workers alone.⁷⁸

In 1992, after the fall of Communism in Eastern Europe, EEC nations wanted to strengthen their international position, and expand the competences of the EEC.⁷⁹ Thus came the Treaty of Maastricht, which introduced the concept of the EU and EU citizenship.⁸⁰ With this novel status, a national of any Member State automatically acquired EU citizenship, as well as the right to move and reside within any Member State.⁸¹ The EU expanded its reach into the social domain, as well, and the treaty included a provision to “respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.”⁸²

Since 1992, the EU has amended the Treaty of Maastricht through several treaties, which have enhanced the power of the EU, and attempted to resolve the resulting institutional problems.⁸³ Most recently, the EU enacted the Treaty of Lisbon, which completely replaced the European Community with the EU.⁸⁴ The new treaty recites human rights, freedom, democracy, equality, and rule of law as core values of the EU.⁸⁵ Furthermore, in Article 6, the Treaty of Lisbon recognizes the freedoms set forth in the Charter of Fundamental Rights, which also contains a provision regarding freedom of movement.⁸⁶ This inclusion strengthens the legal obligations of Member States in the realm of international human rights.

Article 45(1) of the Treaty on the Functioning of the European Union states that “[f]reedom of movement for workers shall be secured within the Union.”⁸⁷ As such, if an EU citizen is not employed and wishes to reside in a foreign EU State for more than three months, the individual must show that she has sufficient resources to avoid becoming a burden on the host

76. *Id.*, p.mbl.

77. *Id.*, art. 48.

78. *Id.*

79. See *Treaty of Maastricht on European Union*, EUROPA: SUMMARIES OF EU LEGISLATION, http://europa.eu/legislation_summaries/institutional_affairs/treaties/?treaties_maastricht_en.htm (last visited Oct. 16, 2011).

80. Treaty on European Union tit. I, art. B, Feb. 7, 1992, 1992 O.J. (C 191) 1, 31 I.L.M. 253 [hereinafter TEU] (also known as the Maastricht Treaty).

81. *Id.*, art. 8.

82. *Id.*, tit. I, art. F.

83. See *Treaty Establishing the European Economic Community, EEC Treaty - Original Text (Non-Consolidated Version)*, EUROPA: SUMMARIES OF EU LEGISLATION, http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm.

84. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community arts. 1, 2(b), Dec. 13, 2007, 2007 O.J. (C 306) 1.

85. *Id.*, arts. 1, 1(a).

86. TEU, *supra* note 80; Charter of Fundamental Rights of the European Union, Dec. 18, 2000, 2001 O.J. (C 364) 1, 8.

87. Treaty on the Functioning of the European Union art. 122, para. 2, Sept. 5, 2008, 2008 O.J. (C 115) 47.

State.⁸⁸ In its current version, the right has been extended to include workers' families, as well as students and retirees.⁸⁹

Free movement has become one of the most significant freedoms included in the Treaty of Lisbon. The EC has lauded the right to free movement as "one of the most important and cherished individual rights of EU citizens."⁹⁰ In fact, in 2009, an estimated 11.7 million EU citizens were living in another Member State, demonstrating the importance of this right.⁹¹

On January 1, 2007, Romania and Bulgaria became the 26th and 27th Member States of the EU.⁹² The Romanian president regarded this event as an "enormous chance for future generations."⁹³ Bulgaria's leader remarked that it was a "heavenly moment."⁹⁴ Romanian and Bulgarian citizens automatically acquired the same rights afforded to all EU citizens, including freedom of movement. The enthusiasm for the new additions to the EU, however, was not shared by all member states. Fifteen Member States placed restrictions on the free movement of workers from Romania and Bulgaria, reflecting the anxiety of old Member States, such as France, about an influx of poor migrants.⁹⁵

III. Additional Sources of International Law

France is a signatory to other international agreements, including the European Convention on Human Rights (the Convention) and the International Covenant on Civil and Political Rights (ICCPR), which contain the principles of non-discrimination and free movement.⁹⁶

The Convention, enacted in 1953, has been perhaps the most significant treaty to effectively combat anti-Roma discrimination.⁹⁷ Drawing on principles set forth in the Universal Declaration of Human Rights,⁹⁸ the Convention not only reinforced the European continent's dedication to

88. Council Directive 2004/38/EC, art. 7, 2004 O.J. (L 158) 77, 93, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en?:PDF>.

89. *Id.*, art. 3.

90. *EU Citizenship Report 2010: Dismantling the Obstacles to EU Citizens' Rights*, COM (2010) 603 final (Oct. 27, 2010).

91. *See id.*

92. P.S.R.F. MATHIJSEN, *A GUIDE TO EUROPEAN UNION LAW* 25 (9th ed. 2006).

93. *Romania and Bulgaria Join the EU*, BBC NEWS (Jan. 1, 2007), <http://news.bbc.co.uk/2/hi/europe/6220591.stm>.

94. *Id.*

95. *See id.*

96. Human Rights Convention, *supra* note 26.

97. *See, e.g., D.H. v. Czech Republic*, 47 Eur. Ct. H.R. 3 (2008), available at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

98. The Universal Declaration of Human Rights, adopted on December 10, 1948, came as a response to the atrocities committed during the World War II. It was the first international expression of fundamental rights belonging to all individuals. *See The Universal Declaration of Human Rights: History of the Document*, UNITED NATIONS, <http://www.un.org/en/documents/udhr/history.shtml> (last visited Nov. 26, 2011).

human rights protection, it also established the European Court of Human Rights (ECtHR). A groundbreaking case at the ECtHR, *D.H. v. Czech Republic*, involved a family's challenge to the city's use of "special schools"—in which Roma children were disproportionately placed, as compared with similarly-situated non-Roma children—to enforce segregation in the Czech Republic.⁹⁹ This case definitively established that indirect discrimination against Roma children constituted a breach of the Convention, and that intent is not required to find a violation.¹⁰⁰ Additionally, the Court affirmed that an individual's right to be free from discrimination is not waivable (that is, by voluntarily agreeing to attend "special schools").¹⁰¹

Moreover, the ECtHR is uniquely accessible to individuals as well as states.¹⁰² The ECtHR permits complaints where a State has allegedly violated the rights of an individual, group, company, non-governmental organization (NGO) or another State.¹⁰³ Importantly, the Convention ensures "easy" access to the ECtHR, opening the door to remote or "penniless" individuals to bring a case, without requiring legal assistance.¹⁰⁴

Another promising feature of the Convention is its flexibility. Protocols can be added to the Convention to secure additional rights.¹⁰⁵ Protocol 14, for example, was a recent addition that aims to increase efficiency of the Court and provide a streamlined process for dealing with the tremendous caseload.¹⁰⁶ Indeed, the Court has reported that it receives over 50,000 new applications each year.¹⁰⁷

The Convention, however, faces barriers to full compliance. Even where the judicial mechanism functions smoothly, and a complainant successfully brings a claim before the ECtHR, there is no guarantee that the violation will cease. For example, in *D.H. v. Czech Republic*, where the court awarded monetary damages to the victim's family for discriminatory treatment of Roma children in public schools, the Court's decision failed to

99. *D.H. v. Czech Republic*, *supra* note 97.

100. Research by the ERRC found that Roma students in the Czech city of Ostrava were twenty-seven times more likely than their non-Roma counterparts to be placed in special schools. For other major conclusions of the judgment and their meaning within the Roma human rights movement, see *D.H. v. Czech Republic: Major Conclusions of the Judgment*, OPEN SOCIETY JUSTICE INITIATIVE & THE EUROPEAN ROMA RIGHTS CENTRE (Nov. 14, 2007), www.errc.org/cms/upload/media/02/85/m00000285.pdf [hereinafter *Major Conclusions*].

101. *See id.*

102. Human Rights Convention, *supra* note 26, art. 34.

103. *See EUROPEAN COURT OF HUMAN RIGHTS, THE ECHR IN 50 QUESTIONS 7* (2010), available at http://www.echr.coe.int/NR/rdonlyres/5C53ADA4-80F8-42CB-B8BD-CBBB781F42C8/0/FAQ_COUL_ENG_A5_OCT2010.pdf [hereinafter *ECHR QUESTIONS*].

104. *See id.* at 8.

105. *See, e.g.*, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 5, 213 U.N.T.S. 262.

106. *See ECHR QUESTIONS*, *supra* note 103, at 12.

107. *See id.*

ensure that de facto segregation would end.¹⁰⁸ Although the court ordered the Czech Republic to adopt measures to end discrimination, information collected in the wake of *D.H.* suggests that the segregation persisted despite the judgment.¹⁰⁹ Indeed, the monitoring body with the responsibility of ensuring enforcement of anti-segregation provisions did little more than report that discrimination continued.¹¹⁰ Thus, the issue remains: How can the international community enforce EU law within member nations? Even if a court finds a violation and awards monetary damages, how can courts and the current legal framework actually halt rights violations?

IV. Did France's Actions Violate International Law?

Repatriation programs do not appear to violate freedom of movement per se. In fact, many Roma report that they confront little, if any, trouble entering foreign countries within the EU.¹¹¹ On the contrary, some Roma allege that they encounter more difficulty leaving their country of origin.¹¹² Freedom of movement, however, does not solely consist of free entrance into a country. Certainly, considering the widespread and severe poverty among the Roma people, an opportunity to leave in exchange for a lump sum of money may amount to a coerced departure. Coercive action by the state that aims to remove certain individuals from within national borders is potentially a means of infringing upon one's freedom of movement. Therefore, repatriation programs may violate international laws prohibiting discrimination and unjustified restrictions of free movement.¹¹³

A. European Law and the Court of Justice

1. Procedure

The Commission is responsible for ensuring that EU law is correctly applied.¹¹⁴ If the Commission feels that a State is not complying with EU law, it may refer a case to the European Court of Justice (ECJ).¹¹⁵ Prior to formally initiating a suit, however, the Commission may bring a pre-litiga-

108. See generally *D.H. and Others v. Czech Republic*, OPEN SOCIETY JUSTICE INITIATIVE, <http://www.soros.org/initiatives/justice/litigation/czechrepublic> (last visited Jan. 23, 2011) [hereinafter *D.H. and Others*].

109. See *id.* The Open Society Justice Initiative claims that government statistics demonstrate that nearly 30% of Roma continue to be placed in "special schools," compared with 2% of non-Roma children. New laws that have been introduced since the judgment have failed to significantly curb de facto segregation.

110. See *id.*

111. See ROMA MOVEMENT, *supra* note 8, at 31.

112. See *id.*

113. *D.H. v. Czech Republic* alleged to establish that both indirect and direct discrimination was prohibited under the Convention. See *Major Conclusions*, *supra* note 100.

114. *European Commission*, EUROPA: GATEWAY TO THE EUROPEAN UNION, http://europa.eu/about-eu/institutions-bodies/european-commission/index_en.htm (last visited Nov. 18, 2011).

115. *Id.*

tion infringement proceeding, which essentially gives the alleged violator an opportunity to correct its behavior before standing trial.

A case may also come before the ECJ as a preliminary ruling.¹¹⁶ This entails a request from a Member State that the ECJ interpret a provision of EU law, or evaluate the validity of an act adopted by an EU institution.¹¹⁷ Thus, where EU law is unclear, a national court may desire the ECJ's interpretation before rendering its own decision in a particular case.

With regard to France's repatriation program, the Commission initiated an infringement proceeding against France, alleging a violation of the freedom of movement.¹¹⁸ Soon after, France submitted plans to amend its legislation to comport with the freedom of movement.¹¹⁹ Satisfied with France's response, the Commission discontinued the infringement proceeding against France.¹²⁰ Some expressed disappointment about the termination of the proceeding, asserting that it "sends a mixed signal" about the Commission's commitment to pursuing EU law violations.¹²¹ In light of the fact that other countries have waged similar programs, and other repatriation campaigns may arise in the future, it is worthwhile to explore whether the ECJ would have likely found France in violation of EU law.

2. *Case Law*

Through its case law, the ECJ has established several principles: "direct effect," through which European citizens can rely directly on rules of EU law before their national courts,¹²² and "primacy" of Community law over domestic law.¹²³ As a result, the ECJ's judgments have a real impact on issues in the lives of citizens of the EU.¹²⁴

The ECJ has made it clear that citizenship of the EU is intended to be a fundamental status of nationals of the Member States.¹²⁵ In effect, this means that Member States are prohibited from taking actions that deprive EU citizens of "genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union."¹²⁶ Thus, a Member State cannot act in a way that prevents the genuine enjoyment of an EU citizen's right to free movement.

Although the right to free movement may not carry the same moral weight as other rights deemed fundamental, it must be read in conjunction

116. TEU, *supra* note 80, art. 19(3)(b).

117. *Id.*

118. *France Slapped for EU Free Movement Infraction, Not Discrimination*, *supra* note 27.

119. *Pop*, *supra* note 28.

120. *Id.*

121. *Id.*

122. *See* Case C-26/62, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration*, 1963 E.C.R. 1.

123. *See* Case C-6/64, *Flaminio Costa v. E.N.E.L.*, 1964 E.C.R. 585.

124. *Id.*

125. *See, e.g.*, Case C-34/09, *Zambrano v. Office national de l'emploi*, 2011 E.C.R. ____ (not yet published, decided Mar. 8, 2011), available at <http://curia.europa.eu/jurispl/?cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-34/09>.

126. *Id.*

with other rights.¹²⁷ In particular, the ECJ has viewed freedom of movement in conjunction with freedom from discrimination.¹²⁸ Discrimination on the grounds of nationality against EU citizens who have exercised their free movement rights is prohibited.¹²⁹ This applies to both direct and indirect discrimination. For example, benefits afforded to national citizens cannot be automatically denied based on an EU citizen's non-national citizenship. In *F.C. Terhoeve v. Inspecteur*, the ECJ held that receiving social assistance may be a factor leading to the withdrawal of a non-national student's residence permit, but a Member State cannot automatically revoke a permit just because a student has become reliant on the Member State's social assistance system.¹³⁰ Likewise, in the case of Joao Filipe da Silva Martins, the ECJ ruled that employment benefits available to nationals cannot be less favorable to non-nationals.¹³¹

The freedom of movement may only be restricted "on grounds of public policy, public security or public health."¹³² Any restrictions based on these grounds must be based exclusively on the personal conduct of the individual concerned.¹³³ Furthermore, a restriction must comply with the proportionality principle, which requires that a measure taken by the government be appropriate for securing the objective pursued, and must not go beyond what is necessary in order to attain the objective.¹³⁴ For example, a Member State's automatic expulsion of a national of another Member State for failing to provide a certain type of proof of the existence of financial resources is disproportionate.¹³⁵ On the other hand, curtailing the freedom of movement of an individual who had been imprisoned for conspiring to disturb the public order by intimidation or terror is proportionate.¹³⁶

3. Analysis: Did France Violate Either the Fundamental Right to Freedom of Movement or Freedom from Discrimination?

The repatriation program, which entailed offering money to Roma to return to their countries of origin, does not appear to be a restriction of free movement. After all, it would seem as though the Roma were free to decide whether or not to accept the payment. Further, as one French par-

127. See, e.g., Case C-184/99, *Rudy Grzelczyk v. Centre Public d'Aaide Social d'Ottignies-Louvain-la-Neuve*, 2001 E.C.R. I-6229.

128. See, e.g., Case C-18/95, *F.C. Terhoeve v. Inspecteur van de Belastingdienst Particulieren/Ondernemingen Buitenland* 1999 E.C.R. I-345 [hereinafter *F.C. Terhoeve*].

129. See *Rudy Grzelczyk*, *supra* note 127.

130. *F.C. Terhoeve*, *supra* note 128.

131. Case C-388/09, *Joao Filipe da Silva Martins v. Bank Betriebskrankenkasse - Pflegekasse*, 2011 E.C.R. ____ (not yet published, decided June 30, 2011), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0388:EN:HT?ML> [hereinafter *Joao Filipe da Silva Martins*].

132. Council Directive 2004/38/EC, *pmb.*, ¶ 22, 2004 O.J. (L158/77).

133. *Id.*, art. 3.

134. Case C-100/01, *Ministre de l'Intérieur v Aitor Oteiza Olazabal*, 2002 E.C.R. I-10981 [hereinafter *Aitor*].

135. Case C-408/03, *Comm'n v. Belgium*, Case C-408/03, 2006 E.C.R. I-2647.

136. See *Aitor*, *supra* note 134.

liamentarian emphasized, France was “giving the Roma money so they can invest it in their country.”¹³⁷ On the other hand, there has been some dispute as to whether the Roma were truly given the option to stay. One Roma man claimed, “the police told us to choose: either we willingly left now, or we would be forcibly removed later.”¹³⁸ If true, this story would certainly cast doubt on the voluntariness of the departures. Given the impoverished state of many Roma, one could argue that a Roma person’s decision to accept the monetary payment is not actually entirely free.

The ECJ has identified indirect restrictions on the freedom of movement, including loss of a benefit as a consequence of one’s exercise of the right to freedom of movement, and regarded these as infringements of EU law.¹³⁹ Moreover, France’s monetary reward to EU citizens from other Member States for returning to their place of origin—essentially an inducement to not exercise one’s right to free movement throughout the EU—arguably amounts to depriving EU citizens of the full enjoyment of their rights.

In the case that such action is deemed to be a restriction on the free movement of the Roma, France would have the burden of justifying the restrictions. The restrictions would also have to cohere with the principle of proportionality.

French officials have asserted different goals for the repatriation program. One is to integrate Roma into European society, beginning with their home country.¹⁴⁰ Although integration seems like a legitimate goal, encouraging Roma to return to their country of origin with a small sum to assist them is ineffective and appears to go beyond what is necessary to achieve that aim. France has also asserted that the program is related to efforts to reduce Roma-related crime.¹⁴¹ Because the repatriation program is an option to receive cash in exchange for leaving France, rather than actual expulsion, one could argue that the program is in fact proportionate to the goals of the French government. On the other hand, the Roma seem to have been indiscriminately subjected to this program, regardless of whether they were found guilty of a crime. Thus, because the program was not based on evaluations of each individual’s conduct, the repatriation program was disproportionate to the goal of crime reduction.

B. European Convention on Human Rights

Although the Commission has suspended action against France, it would still be possible for an individual, NGO, or state to bring an action in the ECtHR.¹⁴² Importantly, Article 46 of the Convention provides that

137. *French Cash for Evicted Roma Perverse, Says MEP*, EURONEWS (Sept. 2, 2010), <http://www.euronews.net/2010/09/02/french-cash-for-evicted-roma-perverse-says-mep>.

138. Leigh Phillips, *Barroso and Fillon to Hold Roma ‘Workshop’*, EUOBSERVER (Aug. 27, 2010), <http://euobserver.com/22/30687>.

139. See Joao Filipe da Silva Martins, *supra* note 131.

140. Leigh Phillips, *supra* note 138.

141. See Moffet, *supra* note 3.

142. Human Rights Convention, *supra* note 26, arts. 33–34.

contracting states must abide by the ECtHR's final judgment in any case to which they are parties.¹⁴³ Prior decisions involving distinct parties, however, do not bind future litigants.¹⁴⁴ Nonetheless, case law provides insight into how the Court would likely interpret and apply the Convention in other cases.

Article 14 guarantees all rights and freedoms of the Convention without discrimination, and therefore creates no separate rights on its own.¹⁴⁵ Rather, it must be examined in conjunction with other rights and freedoms safeguarded by the ECHR.¹⁴⁶ For example, in cases in which Roma were forced to leave land where they had stationed their caravans, the Court examined whether the authorities' actions violated Article 14 in conjunction with Article 8, which guarantees the right to respect for private and family life and home.¹⁴⁷

Article 14 does not prohibit all differential treatment—only differential treatment based on identifiable, objective or personal characteristics, and without reasonable justification. If an applicant establishes discriminatory treatment beyond a reasonable doubt, the State may avoid a violation by demonstrating that such treatment was reasonable—in pursuit of a legitimate aim—and proportionate to that aim.¹⁴⁸ Importantly, in cases of “vulnerable groups” that have experienced a history of discrimination and social exclusion, the State has a lower allowance and must provide significant reasons for the restriction.¹⁴⁹ The ECtHR has determined that the Roma are a vulnerable group.¹⁵⁰ It has also established that indirect discrimination will not be tolerated.¹⁵¹

Another relevant provision of the Convention is Article 4 of Protocol No. 4, which prohibits collective expulsion of aliens.¹⁵² In *Conka v. Belgium*, the ECtHR found that Belgium's expulsion procedure of Slovakian nationals of Roma origin did not eliminate all doubt that the expulsions were collective, rather than based on individual evaluations.¹⁵³ Therefore,

143. *Id.*, art. 46.

144. *Id.*

145. *See id.*, art. 14.

146. *Kiyutin v. Russia*, App. No. 2700/10, 2011-____ Eur. Ct. H.R. ____ (not yet published, decided Mar. 10, 2011), available at http://www.ilo.org/wcmsp5/groups/?public/-ed_protect/--protrav/--ilo_aids/documents/legaldocument/wcms_152988.pdf.

147. *See Chapman v. United Kingdom*, 2001-I Eur. Ct. H.R. 43; *Coster v. United Kingdom*, App. No. 24876/94, 33 Eur. Ct. H.R. 18, 479 (2001); *Beard v. the United Kingdom*, App. No. 24882/94, 33 Eur. Ct. H.R. 18, 442 (2001); *Lee v. the United Kingdom*, App. No. 25289/94, 33 Eur. Ct. H.R. 29, 677 (2001); *Jane Smith v. the United Kingdom*, App. No. 25154/94, 33 Eur. Ct. H.R. 30 (2001).

148. *Anguelova v. Bulgaria*, App. No. 38361/97, 2002-IV Eur. Ct. H.R.

149. *Kiyutin*, *supra* note 146.

150. *See D.H. v. Czech Republic*, *supra* note 97.

151. *Id.*

152. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto art. 4, Sept. 16, 1963 [hereinafter Protocol No. 4].

153. *Conka v. Belgium*, App. No. 51564/99, Eur. Ct. H.R. ¶ 61 (2002).

the ECtHR found Belgium's actions in violation of Article 4.¹⁵⁴

To begin, it must be established that the French government's actions come within the ambit of one of the rights guaranteed by the ECHR, aside from discrimination. One possibility is Article 8, which guarantees the right to respect for one's private and family life and home.¹⁵⁵ One could argue that, by offering Roma monetary compensation to leave the homes they have chosen, the French government has demonstrated a lack of respect for the Roma's chosen home. Article 3 of Protocol No. 4 to the ECHR, which prohibits expulsion of nationals, would likely preclude France from subjecting French citizens to a similar program.¹⁵⁶ Furthermore, could the Roma really feel at home, and believe that their right to reside in France has been protected, where the government's actions clearly send the message that their presence is resented? Thus, France's actions may be indirectly contravening Article 8.

Even if France has violated Article 8, it could still argue that it has done so in pursuit of a legitimate aim. Article 8 provides that an interference with the right to respect for one's private and family life and home can only be justified if it is in accordance with the law and "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."¹⁵⁷ As stated above, French officials have asserted various reasons for the program. Prime Minister Francis Fillon insisted that the program was intended to help integrate the Roma socially and economically, first in their country of origin.¹⁵⁸ France's Immigration minister, Eric Besson, has also stated that only individuals caught stealing or engaging in "aggressive begging" have been expelled.¹⁵⁹

France's argument, that its actions are proportionate by offering money for Roma to voluntarily return to their country of origin, has some merit. Nonetheless, it is difficult to see how merely relocating Roma to another EU Member State will further the Roma's integration into society. The fact that the repatriation program indiscriminately targeted Roma communities suggests that the measures were disproportionate, especially if the targeted Roma targeted were neither residing in illegal camps, nor guilty of a crime. Moreover, because the ECtHR has deemed the Roma a "vulnerable" group, France has less leeway to restrict their rights.

Finally, the ECtHR may find that France contravened Article 4 of Protocol No. 4, which prohibits collective expulsions of aliens.¹⁶⁰ It is unlikely that France will be able to eliminate all doubt that Roma were

154. *Id.* ¶ 93.

155. Human Rights Convention, *supra* note 26, art. 8.

156. Protocol No. 4, *supra* note 152, art. 3.

157. Human Rights Convention, *supra* note 26, art. 8(2).

158. Phillips, *supra* note 138.

159. Leigh Phillips & Valentina Pop, *French Ministers Lash Out at 'Grotesque' Criticisms of Roma policy*, EUOBSERVER.COM (Aug. 31, 2010), <http://euobserver.com/851/30705>.

160. Protocol No. 4, *supra* note 152, art. 4.

removed based on individual circumstances.¹⁶¹ Therefore, it is highly probable that the ECtHR would indeed find a violation.

C. International Covenant on Civil and Political Rights

France has also signed and ratified the International Covenant on Civil and Political Rights (ICCPR), which is monitored by the Human Rights Committee.¹⁶² Pursuant to Article 2, France has a legal duty to both respect *and* assure to all individuals within its territory the rights recognized in the Covenant, without discrimination.¹⁶³ Although there is no court system in place to monitor compliance with the ICCPR, there are various implementation mechanisms available. The Human Rights Committee may request that a State party submit a report on “the progress made in the enjoyment” of the rights guaranteed by the Covenant.¹⁶⁴ One state may communicate to the Human Rights Committee that another State is failing to fulfill its obligations under the Covenant.¹⁶⁵ Or, after exhausting all domestic options, an individual who claims to be a victim of a violation may submit a complaint to the Human Rights Committee.¹⁶⁶

Article 12 of the ICCPR guarantees the liberty of movement and freedom to choose one’s residence.¹⁶⁷ Paragraph 3 authorizes a State to restrict this right only to protect national security, public order, public health or morals, and the rights and freedoms of others.¹⁶⁸ In its General Comments, the Human Rights Committee elaborated further on the meaning of this right.¹⁶⁹ Any limitation on the freedom of movement must be provided by law, necessary in a democratic society, and consistent with other rights recognized in the Covenant.¹⁷⁰ Moreover, everyone who is lawfully within a territory has the right to move freely within that territory. Although each State may determine the bounds of lawful residence, a State must provide justification for any difference in the treatment of resident aliens.¹⁷¹ The principle of proportionality pertains to any restriction of the right to free movement as well. The General Comments provide that restrictive measures must be the least intrusive means of achieving the desired result.¹⁷² They also provide:

161. See Conka, *supra* note 153, ¶ 61.

162. International Covenant on Civil and Political Rights arts. 28-45, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

163. *Id.*, art. 2.

164. *Id.*, art. 40.

165. *Id.*, art. 41.

166. Optional Protocol to the International Covenant on Civil and Political Rights arts. 1-2, Mar. 23, 1976, 999 U.N.T.S. 302.

167. ICCPR, *supra* note 162, art. 12.1.

168. *Id.*, art. 12.3.

169. UN Human Rights Committee, *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, Nov. 2, 1999, U.N. Doc. CCPR/C/21/Rev.1/Add.9, available at <http://www.unhcr.org/refworld/docid/45139c394.html>.

170. *Id.*

171. *Id.*

172. *Id.*

A major source of concern is the manifold legal and bureaucratic barriers unnecessarily affecting the full enjoyment of the rights of the individuals to move freely, to leave a country, including their own, and to take up residence.¹⁷³

This suggests that the Human Rights Committee contemplated the possibility of States utilizing indirect means to hinder the freedom of movement, and has criticized the use of such means.

The requirement that restrictions be consistent with other rights in the Covenant incorporates the Article 2 obligation that all rights in the Covenant be ensured without discrimination. Therefore, any restriction based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, would clearly violate the ICCPR.¹⁷⁴

Looking at the repatriation program, offering monetary payment to the Roma in exchange for their return to their country of origin is not a blatant violation of the right to free movement. Still, such an action may fall within the indirect means of restricting a right contemplated by the Human Rights Committee, through intimidation, and arguably coercion. That is, some may regard an offer of cash to an impoverished person as a coercive means of removing him or her from the country.

If the repatriation program were considered a restriction of the right, France would have to justify the restriction, and establish that the program relied on the least intrusive measure of achieving its desired result.¹⁷⁵ Regardless of the legitimacy of France's goals, it would be hard to imagine that uprooting Roma from the homes they have established is the least intrusive means of helping the Roma, or curbing Roma-related crime.

V. Moving Forward

*"Participation requires real involvement; the problems of the Roma can only be solved with the support of the Roma."*¹⁷⁶

—Teodor Baconshi, State Secretary, Ministry of Foreign Affairs of Romania

The Commission suspended its infringement action against France. Although France had promised to introduce new legislation to ensure the right to free movement, the repatriation program continued, and an estimated 9,000 Roma returned to their countries of origin.¹⁷⁷ But the joke was on the French, who achieved little more than providing the Roma with paid vacations home. As one Roma stated, "I went to visit my family and

173. *Id.*

174. *Id.*

175. *Id.*

176. Teodor Baconshi, State Sec'y of Ministry of Foreign Affairs of Romania, Remarks at the International Conference on the Implementation and Harmonization of National Policies for Roma, Sinti, and Travellers (May 4-5, 2006).

177. John Lichfield, *Sarkozy Under Fire as Roma Crackdown Fails*, INDEPENDENT (Aug. 3, 2011), <http://www.independent.co.uk/news/world/europe/sarkozy-under-fire-as-roma-crackdown-fails-2330877.html>.

then got the bus back.”¹⁷⁸ Thus, even if a court were to find that the program was not illegal, it was ultimately futile.

There are various mechanisms in place to protect the Roma from discriminatory and wrongful actions by European states. Nonetheless, the aftermath of *D.H. v. Czech Republic* demonstrates that even if a court finds a violation based on international law, the wrongful behavior may persist. Moving forward, these institutions must develop more effective monitoring bodies to enforce judgments once violations have been found.

Regardless of its legality, the repatriation program feels intuitively wrong, and sends a strong message of “we don’t want you here” to the Roma people. Some have even suggested that this type of government program creates a “licence to kill” atmosphere.¹⁷⁹ Moreover, it arouses fears of a new wave of economic crises and anti-immigration sentiments. As head of the Council of Europe Thorbjorn Jagland stated, “when we have an economic crisis, minorities are the worst hit. . . . These are quite dangerous times.”¹⁸⁰ Although removing the Roma from sight may satisfy some parties, such actions only exacerbate the stigmatization of this group, and do little to solve the underlying problems.

More recently, the EU launched a new framework for national Roma strategies.¹⁸¹ Although it provided that EU Member states should enact programs for Roma social inclusion, it lacked any concerted approach, and, rather, left each State to deal with its own discrimination problem.¹⁸² As Jagland expressed, it is time to “start doing something real for this minority.”¹⁸³

In her speech on the imperative of Roma integration, EU Commissioner Viviane Reding stressed, “the integration of Roma requires the active and concerted participation of several actors at different levels, both in countries of origin and in host countries.”¹⁸⁴ Although a discussion of a Roma rights movement exceeds the scope of this note, one thing is clear: The actors—the Roma themselves—must be sufficiently discontented with the status quo and generate the will to take action, including education and leadership. Only then will the atmosphere be ripe for change.¹⁸⁵ Furthermore, the European community must realize that the Roma situation is a litmus test for the status of all minority groups in Europe. Their struggles represent the state of the EU, in terms of its dedication to human rights protection, and the existence of racism and xenophobia.

178. *Id.*

179. Phillips & Pop, *supra* note 159.

180. Valentina Pop, *Roma Expulsions Are Sign of ‘Dangerous Times’ in Europe*, Human Rights Chief Says, EUOBSERVER.COM (Sept. 30, 2010), <http://euobserver.com/?22/30928>.

181. Valentina Pop, *EU’s Roma Blueprint ‘Disappointing’*, EUOBSERVER.COM (Apr. 5, 2011), <http://euobserver.com/9/32126>.

182. *Id.*

183. Pop, *supra* note 180.

184. Viviane Reding, Eur. Union Comm’r, *The Imperative of Roma Integration: More Than Just a ‘Summery Story’* (Oct. 20, 2010), available at http://www.europa-eu-un.org/articles/en/article_10243_en.htm.

185. *Id.*

Based on the case law of the European Court of Justice,¹⁸⁶ and the European Court of Human Rights,¹⁸⁷ France's repatriation program would likely have been found to violate its international legal obligations. Both courts have affirmed that state parties to their respective conventions must indiscriminately respect certain fundamental rights. Although a case involving paid repatriation of a vulnerable minority has not come before either the ECJ or ECtHR in the past, case law suggests that France's actions would constitute an indirect, yet nonetheless prohibited infringement on the rights of EU citizens.

186. See, e.g., Rudy Grzelczyk, *supra* note 127.

187. See e.g., Chapman, *supra* note 147; see also Conka, *supra* note 153.

