

6-2019

# Roma in the European Union: Structural Barriers to Fundamental Rights

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Roma in the European Union:  
Structural Barriers to Fundamental Rights

By

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Submitted in partial fulfillment  
of the requirements for  
Honors in the Departments of Political Science and  
Russian and Eastern European Studies

UNION COLLEGE

June, 2019

## ABSTRACT

LOVETERE, MARIA      Roma in the European Union: Structural Barriers to Fundamental Rights. Departments of Political Science and Russian and Eastern European Studies, June 2019.

ADVISOR: David Siegel and Kristin Bidoshi

This thesis focuses on the effects of European Union expansion on Roma populations throughout Europe. The EU instituted a number of policies intended to help European Roma, one of the most persecuted minority groups on the continent, but rather than significantly improving quality of life for this population, in many places relations between Roma and greater European society have worsened. I introduce the topic by reviewing the legal frameworks created for this purpose, and discussing existing literature that examines the pitfalls of EU Roma policies.

Next, I argue that through europeanization and profit-oriented migration policies, the EU has furthered the marginalization of Roma across Europe and created an atmosphere unsympathetic to Roma issues. I analyze the identity frame of Roma promoted by europeanization, which allows states and EU administrative bodies to divert responsibility for helping Roma populations. I then illustrate the ways in which EU migration policy sidelines impoverished groups in favor of skilled workers. This practice disproportionately harms Roma migrants, who commonly work within the scope of the informal economy, and allows for expulsions and other discriminatory practices to persist. I conclude my argument by reiterating the ways in which EU Roma policy has had the opposite of its intended effect, and suggest ways to correct the deficiencies of current measures.

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## I. Introduction

The Roma people are historically one of the most persecuted populations in Europe. During the Holocaust between 220,000 and 500,000 Roma were exterminated in Eastern and Central Europe under the Nazi regime, and thousands more were targeted in Western Europe under collaborationist regimes.<sup>1</sup> Racially based prejudice was bolstered by scientific research that determined the Roma to be inherently criminal in nature, “primitive,” and “incapable of real social adaptation.”<sup>2</sup> After the Holocaust, animosity towards the Roma did not weaken, and similar racialized sentiments continued to pervade European society. In Central and Eastern Europe, where the majority of Roma populations resided, communist governments instituted strict assimilation and integration policies aimed at subduing the ethnic conflicts that riddled post-war Europe.<sup>3</sup> These policies, far from eliminating racial prejudice, quelled tensions to a manageable level until the late 1980s and early 1990s, when communism in the region began to disintegrate. In the post-communist period, Central and Eastern Europe’s Roma were subjected to violent discrimination under the newly established governments, further marginalizing them from greater society.<sup>4</sup>

With the expansion of the European Union (EU) to include more Central and Eastern European nations, community relations with the Roma were expected to improve, based on initiatives put in place to combat racial and ethnic discrimination and steep

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<sup>1</sup> United States Holocaust Memorial Museum, “Sinti and Roma: Victims of the Nazi Era,” Washington D.C.: 10, 11.

<sup>2</sup> Ibid, 7.

<sup>3</sup> Z. Barany, “Politics and the Roma in state-socialist Eastern Europe,” *Communist and Post-Communist Studies* 33, (2000): 422.

<sup>4</sup> D. M. Crowe, “The Roma in Post-Communist Eastern Europe: Questions of Ethnic Conflict and Ethnic Peace,” *Nationalities Papers* 36, no. 3 (2008): 521.

human rights contingencies for membership.<sup>5</sup> However, EU efforts to address the “Roma problem” have had limited success, and in many ways have aggravated tensions between Roma and other Europeans.

Early on in the EU’s expansion process, the race equality directive and the citizens’ rights directive were instrumental in securing fundamental rights for European Roma, as well as a myriad of other minority groups across Europe. After the accession of prominent Eastern European states between 2004 and 2007, strategies intended specifically for ameliorating Roma hardships saturated EU discourse. A 2010 communication from the European Commission (EC) on the Social and Economic Integration of the Roma in Europe galvanized member states’ concern for Roma matters, and was followed in 2011 by an EU framework for national Roma integration strategies (NRIS).

The race equality directive required that all EU member states put into place regulations prioritizing the prevention of racial and ethnic discrimination, and provide avenues for victims of discrimination to seek recompense. The document stipulates that employment, education, housing, healthcare, and access to social programs—among other public services—must be available to all persons regardless of racial origin. Additionally, the directive obliges member states to establish legal structures devoted to the protection of victims’ rights and national administrative bodies charged with carrying out the EU’s requirements.<sup>6</sup>

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<sup>5</sup> P. Vermeersch, “How Does the EU Matter for the Roma? Transnational Roma Activism and EU Social Policy Formation,” *Problems of Post-Communism* 64, no. 5 (2017): 220.

<sup>6</sup> The Council of the European Union, “Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Directive 2000/43/EC),” Directive, 2000.

While the language of the race equality directive does not explicitly single out the Roma, the EU announced in 2002 that a main goal of the directive was to combat widespread discrimination against Roma in candidate countries.<sup>7</sup> Later, in 2013, the Council of the European Union issued a recommendation for the directive to be expanded upon, in order to better cater to the needs of the Roma people and to better ensure implementation of directive policies.<sup>8</sup> Since its creation, the race equality directive has been cited readily in the European Court of Human Rights (ECHR) to identify discriminatory practices against Roma in member states.<sup>9</sup>

Amidst the successes of this directive, there were also deficiencies within the document that left spaces for member states to persist with anti-Roma legislation.

Chapter 1, Article 3(2) states:

This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.<sup>10</sup>

This provision has negative ramifications for the treatment of all immigrants and stateless people, but especially so for the Roma due to the ambiguous nature of their citizenship within the EU.<sup>11</sup>

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<sup>7</sup> C. Cahn, "Racial Preference, Racial Exclusion: Administrative Efforts to Enforce the Separation of Roma and Non-Roma in Europe through Migration Controls," *European Journal of Migration and Law* 5, (2004): 488.

<sup>8</sup> The Council of the European Union, "On effective roma integration measures in the Member States," Recommendation, 2013.

<sup>9</sup> B. K. Blitz, "Evaluating Transitions: Human Rights and Qualitative Democracy in Central and Eastern Europe," *Europe-Asia Studies* 63, no. 9 (2011): 1748.

<sup>10</sup> Directive 2000/43/EC, article 3(2).

<sup>11</sup> Cahn, 489.

Where the race equality directive lacked traction in the realm of migration, the citizens' rights directive focused primarily on securing individuals' rights to free movement within the territories of the EU. This directive differentiates between the requirements for residence of employed and unemployed persons, outlines the conditions for family members of Union citizens to sustain residence, specifies the grounds on which residence rights can be restricted, clarifies the proper uses for visas, identity cards, and passports, explains the requirements for obtaining the status of a permanent resident, and guarantees the equal treatment of residents abiding by the rules of the directive.<sup>12</sup> The most consequential aspect of the citizens' rights directive for European Roma has been the protections it offers against forced and automatic expulsions. Under the directive, expulsions can only take place on an individual basis, and only after the individual in question is proven to pose a substantial threat to the society in which he/she resides. This key component is included to combat mass expulsions based on national identification, an occurrence that disproportionately endangers Roma.<sup>13</sup>

The EU framework for national Roma integration strategies (NRIS) up to 2020 codified the requirement that all EU member states and candidate countries individually develop plans for integrating their Roma populations. The EC reiterated the rights ensured by the race equality directive—equal access to education, employment, healthcare, housing, utilities, and social services—but with special emphasis on the distinct problems faced by Roma, including forced evictions and segregation of children

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<sup>12</sup> The European Parliament and the Council of the European Union, "On the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Directive 2004/38/EC)," Directive, 2004.

<sup>13</sup> J. S. Gehring, "Free Movement for Some: The Treatment of the Roma after the European Union's Eastern Expansion," *European Journal of Migration and Law* 15, (2013): 15.

within school systems. The communication in which NRIS's were proposed specifies that member states appoint Roma representatives and civil society organizations as advisors to the development and implementation of each respective strategy. Moreover, the EC asked that states identify sources from where funding would be allocated, and ordered members to provide the EU with regular progress reports and submit to monitoring by administrative bodies.<sup>14</sup> The establishment of binding mandates for the protection of Roma rights in member states represent an important step in the process towards equality, but significant improvements in Roma life have been scarce.

The purpose of this thesis is to determine why the systems put in place by the EU to protect Roma have failed. In the subsequent chapters, I will first give an overview of existing rationales for the EU's failures, and propose two alternative explanations that I will then analyze more thoroughly. In the first chapter, I will argue that EU expansion—in concert with the popularization of post-national Roma citizenship—has led member states to take less responsibility for Roma migrants and citizens residing in their territory. In addition to perceiving themselves as absolved of responsibility, member states outsource blame for abuses of Roma fundamental rights to poorer member states, where Roma originate, and the EU itself. This is true of the most prominent member states in the EU, including France, Italy, and Sweden. Furthermore, I will show how the assumption that the EU should adopt full responsibility for Roma migrants—and Union citizens in general—is groundless, through court cases heard in the ECHR. These include *Aydarov and Others v. Bulgaria*, *Kósa v. Hungary*, and *Cazacliu and Others v. Romania*. In my second chapter, I will turn to the economic motivation behind the citizens' rights

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<sup>14</sup> European Commission, "An EU framework for national Roma integration strategies up to 2020," Communication, Brussels, 2011.

directive, to illustrate how it is designed to be advantageous for wealthy Union citizens, and disadvantageous for poor Union citizens. More specifically, I will focus on the restrictions on social welfare systems for Union citizens and the ways it indirectly targets Roma, using cases from Germany and Belgium. Then, I will look at how begging is interpreted as a threat to public safety, security, and health, and consequently justifies expulsion of impoverished migrants, including Roma. To do this I will analyze begging bans in Austria and Denmark. Finally, I will discuss the implications of EU failures to protect Roma rights, in light of the explanations I provide.

## II. Failures to Protect Roma Rights in the EU

While disagreeing on the reasons that EU efforts have yielded subpar results for Roma, authors generally explain these failures within the scope of five main analytical frames: weak implementation of directives, weak Western European models, deficiency of Roma political participation, ingrained prejudice and the rise of nationalism, and the weakening of the human rights regime. After outlining the main ideas of each of these frameworks, I will introduce two—more systemic—problems that have resulted in these failures. First, I will argue that the expansion of the EU and creation of Union citizens has facilitated the abuse of Roma nationals by their respective states. Next, I will argue that the economic motives fueling free movement have created avenues for states to neglect Roma migrants who claim residence under the precipices of the citizens' rights directive.

### *Existing Frameworks*

#### Weak Implementation of Directives in Member States

Although there are many protocols in place and various minority rights organizations to assist with the development of Roma equality, implementation of transnational frameworks at the national level has consistently been a hindrance to the achievement of this goal. Authors examining the effectiveness of EU anti--discrimination and Roma integration policies have remarked, across the board, that lack of implementation has precluded the success of these strategies.

In her analysis of the 2010 mass Roma expulsions by the French government, Jacqueline Gehring focuses on how the citizens' rights directive failed to protect the rights of Roma migrants from Romania and Bulgaria that were deported. She argues that

the EU has been unable to ensure full implementation of EU directives by member states, resulting in the continuation of discriminatory practices. Gehring writes, “In particular, many Member States have not fully implemented proper processes for expulsion. Instead, some Member States use cash payments to encourage individuals to voluntarily leave the country, or task local governments with enacting expulsions,” as was the case in France.<sup>15</sup> In spite of this, EU officials have publicly announced that implementation of the citizens’ rights directive and other frameworks in member states has been successful thus far. Gehring further claims that full implementation of anti-discriminatory frameworks would require continual oversight by EU administrative bodies, which—while promised—“has rarely been uniformly or vigorously pursued.”<sup>16</sup> Brad Blitz similarly shows evidence of this in Slovakia and Slovenia, where norms and standards of democratic human rights protection imposed by the EU were established at the national level, but lacked adherence and actualization in the justice sector.<sup>17</sup>

In addition to lackluster implementation procedures, the conditionality approach to candidate states has muddied the effectiveness of directive transposition. Blitz and Peter Vermeersch contend that conditionality agreements further human rights norms in acceding countries, while simultaneously allowing violations to persist after accession dates and within existing member states. Blitz explains:

Some scholars question governmental willingness to promote substantive political change, charging that once the incentives had been met for EU membership and countries had acceded to the European Union, momentum for reform was lost. Rather, conditionality was arguably seen as a short-term approach which became less effective once the accession date was set and the EU accepted the candidate’s set of reforms as sufficient.<sup>18</sup>

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<sup>15</sup> Gehring, 19.

<sup>16</sup> Ibid, 20.

<sup>17</sup> Blitz, 1763.

<sup>18</sup> Ibid, 1748, 1749.

Vermeersch emphasizes another difficulty with conditionality, owing the meager adherence to human rights norms to the uneven requirements varying between candidate states. He explains that EU directives were more successful in states that already had pre-existing strategies for addressing human rights violations, and remained neglected in states that had no prior concern for such issues.<sup>19</sup> Along with drawing conditionality into question, Vermeersch and Blitz's points give weight to Gehring's scrutiny of the EU's enforcement of appropriate implementation.

#### Weak Western European Models

In this same article Gehring also postulates that low standards set by more established Western European members minimize the pressure placed on transitioning states to devote resources to human rights concerns—especially in the case of Roma rights. As evidence, she continues to expand on the failures of the EU in the wake of France's 2010 expulsions, pointing directly to the European Commission's decision to not follow through with infringement procedures against the French government.<sup>20</sup> Instead, the Commission vehemently condemned France's actions in the public sphere, and declared the issue resolved when the national government agreed to fully implement their transposed citizens' rights directive. Gehring comments:

Indeed, it would appear that many non-governmental actors were pleased the Commission had taken such a public stand against France, even if it was unable to guarantee full compliance with the free movement directive. This reaction underlines both the relatively weak position that minority groups claiming rights against powerful Member States hold, as well as the limited

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<sup>19</sup> Vermeersch (2017), 220.

<sup>20</sup> Gehring, 18.

expectations, and actual power of the Commission when confronting powerful Member States.<sup>21</sup>

Along the same lines, Melanie Ram suggests that the abysmal treatment of Roma in Central and Eastern Europe—especially in candidate and recently acceded states—is not the result of discrepancies between these states and the values of the EU, but are instead a mirroring of the policies and practices that are dominant in Western Europe. In a clear example of this, Ram remarks on the conspicuous similarities between rhetoric used to decry Roma during 2011 demonstrations in the Czech Republic, and the language used to identify Roma in France’s most recent election cycle. In both cases, the word ‘undesirables’ was used interchangeably with ‘Roma.’<sup>22</sup>

#### Deficiency of Roma Political Participation

Although numerous forums for Roma political participation have been instituted at the transnational, national, and local levels, inadequate representation by Roma delegates and the marginalization of Roma concerns present obstacles to Roma integration via authentic political involvement. In their analysis of Slovenia’s inclusion of Roma councillors in local governance, Irena Baclija and Miro Haček touch on both of these hindrances. They note the internal conflicts caused by rivalries among competing clans, and the resulting antagonisms among appointed officials that diminish their ability to represent a locality’s Roma constituency.<sup>23</sup> Zoltan Barany similarly emphasizes the discrepancies among Roma representatives, and traces this back to the diversity of Roma

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<sup>21</sup> Ibid, 20.

<sup>22</sup> M. H. Ram, “Europeanized Hypocrisy: Roma Inclusion and Exclusion in Central and Eastern Europe,” *Journal of Ethnopolitics and Minority Issues in Europe* 13, no. 3 (2014): 34.

<sup>23</sup> I. Baclija and M. Haček, “Limited Opportunities for Political Participation: A Case Study of Roma Local Councillors in Slovenia,” *Romani Studies* 5, no. 17 (2007): 173.

populations within municipalities and states.<sup>24</sup> Moreover, these authors point out that Roma people have traditional ways of appointing leaders that do not correspond with the election of political representatives, and a deep-rooted mistrust of authority that makes individuals reluctant to engage with government officials. Barany writes, “Most traditional leaders have been reluctant to interact with white politicians, primarily for cultural reasons. They prefer to communicate with the gadge (non-Roma) through intermediaries, educated Roma who have proved to be successful in both cultures.”<sup>25</sup>

Even in situations where Roma representatives are supported by the electorate, the percentage of these officials in power compared to non-Roma representatives is still extremely low. This is especially true in states with large Roma populations like Bulgaria and Slovakia.<sup>26</sup> Ram contends that these small percentages and weak efforts to increase the number of Roma representatives are hallmarks of tokenism within EU Roma policy. She notes that in some instances, Roma delegates are not even elected by Roma populations themselves, bringing their legitimacy into question.<sup>27</sup> Baclija and Haček also include in their study a survey of Roma councillors and their non-Roma counterparts, regarding the nature of discussion about Roma issues within local councils. The results of this survey show a disinterest among non-Roma about acting on behalf of Roma causes, and the corresponding inability of the few Roma officials to affect change for their constituents.<sup>28</sup> Konstantia Koutouki and Doris Farget take this observation a step further, arguing that the structure of democratic decision making bodies inherently aid the

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<sup>24</sup> Z. Barany, “Ethnic Mobilization and the State: the Roma in Eastern Europe,” *Ethnic and Racial Studies* 21, no. 2 (1998): 315.

<sup>25</sup> *Ibid.*, 316.

<sup>26</sup> Vermeersch, (2017), 219.

<sup>27</sup> Ram, 30.

<sup>28</sup> Baclija and Haček, 169.

exclusion of Roma opinions from discourse, because of the disproportionate amount of power allocated to majority groups. They explain:

The legal normativity that establishes a right to participation in political decision making for minority and indigenous peoples tends to reproduce the illusion of inclusion within democratic societies. In actuality, however, the overriding importance conferred on the interests of the dominant group confines participation by marginalised groups to the periphery of the system.<sup>29</sup>

Roma officials and civil society actors have protested this facade of participation by resigning from their respective deliberative bodies and making public objections to EU administration.<sup>30</sup>

#### Ingrained Prejudice and the Rise of Nationalism

Many authors also highlight the presence of anti-Roma sentiments at all levels of the political process in Europe, connecting historically ingrained prejudices to present-day impediments to Roma equality. Negative portrayals of Roma in the media and by government officials proliferate hostility towards this population within member states, at the levels of the citizenry and administration. Anti-Roma propaganda readily fosters an image of Roma as criminals, whose lifestyles exist in opposition to that of other Europeans—not unlike the way they were depicted during the Holocaust. The dispersal of this propaganda has been exasperated with the rise of ethnic nationalism in Europe.

At the lowest level, citizens regularly protest Roma inclusion in every aspect of social life, severely pitting integration strategies against the wishes of the general majority. Numerous surveys taken by Roma activist groups and EU organizations report

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<sup>29</sup> K. Koutouki and D. Farget, “Contemporary Regulation of Public Policy Participation of the Saami and Roma: A Truncated Process,” *International Journal on Minority and Group Rights* 19, (2012): 429.

<sup>30</sup> Ram, 30.

high percentages of hostility towards Roma across Europe. Beyond just public opinion, non-Roma citizens often support political leaders and parties that promote the marginalization of Roma. Ram gives the example of a Czech initiative to eliminate segregated schools for Roma children, to which the public responded with a petition against the measure.<sup>31</sup> Furthermore, resentment towards Roma within the general population has facilitated the rise of nationalist political parties that directly and indirectly promote violence against Roma by ordinary citizens and nationalistic paramilitary organizations—predominantly in Eastern Europe.<sup>32</sup> Ataka, for example, is a far-right political party in Bulgaria that regularly leads protests and demonstrations against the inclusion of Roma. Drawing attention to the incendiary slogans employed by such groups, Ram writes, “In 2011 in Bulgaria, anti-Roma protests led by the right-wing Ataka party took place in over a dozen cities with banners proclaiming ‘Death to the Roma people!’ and ‘Turn the Roma people into soap.’”<sup>33</sup>

More generally, Margareta Matache argues that public hostility towards Roma has created a political atmosphere where all political actors, regardless of party affiliation, can successfully gain following with an anti-Roma platform. She observes that, when coupled with media portrayals that make the Roma out to be a danger to the public, anti-Roma platforms are interpreted as protective rather than discriminatory.<sup>34</sup> Vermeersch similarly discusses how anti-Roma ideas are complemented by nationalism in the political realm. He writes:

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<sup>31</sup> Ibid, 32, 33.

<sup>32</sup> M. Matache, “The Deficit of EU Democracies: A New Cycle of Violence Against Roma Population,” *Human Rights Quarterly* 36, no. 2 (2014): 345.

<sup>33</sup> Ram, 34.

<sup>34</sup> Matache, 341.

Reinforced political nationalism can create exclusions in a double way: it preemptively cancels out any external criticism on a human rights record, because that criticism can be framed as an attack on the nation and hence as an argument for inward-looking national protection (the argument that “they” are against “us”); and it foregrounds the idea of ethnonational belonging as a basis for citizenship at the expense of cultural “others.”<sup>35</sup>

Regarding the Roma, he notes that the nationalistic preference for state security over human rights is best illustrated by expulsions, evictions, and—in extreme cases—the emergence of internment camps to hold unwanted populations.<sup>36</sup>

In many communities, law enforcement officials are also reported to instigate and participate in physical assaults against Roma, aided by complacent local politicians and courts. Blitz cites examples of this in Slovakia and Slovenia, emphasizing police mistreatment of Roma suspects and the tendency of local courts to overlook and neglect acts of prejudice and violence against Roma.<sup>37</sup> Matache additionally draws attention to the complicity of political officials, giving numerous examples of police attacks against Roma that resulted in few ramifications from state or local governments. Of one incident in Romania she writes:

In the case of *Stoica v. Romania*, one of the sergeants involved stated that “the deputy mayor asked the police officers and the public guards to teach [the Roma boy] and the other Roma a lesson.” (...) While F.L., a young Roma adolescent was just leaving the bar, the sergeant, D.T. asked him if he was a “Gypsy (tigan) or Romanian.” F.L. said he was a Gypsy and in order to teach him “a lesson,” they beat him and the other Roma in the bar or near the bar. The applicant, C.D.S., a fourteen-year-old Roma boy was beaten until he lost consciousness by D.T. even though the young boy told the sergeant that he had just undergone a head surgery.<sup>38</sup>

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<sup>35</sup> Vermeersch (2017), 223.

<sup>36</sup> Ibid.

<sup>37</sup> Blitz, 1755.

<sup>38</sup> Matache, 335, 336.

The officials involved did not receive any punishments at the local or national level, but Romania was criticised in the ECHR for the actions.

In this example, actors at the transnational level supported the Roma citizens' case, but EU actors are similarly tinged with the same prejudice that facilitates violence and exclusion at the local level. Ram underlines the ways that EU officials have added to the normalization of anti-Roma attitudes by discussing statements made by Viviane Reding, the European Commissioner for Justice, Fundamental Rights, and Citizenship. Ram writes that in response to a question asking how the EC intended to facilitate dialogue between member states and Roma civil society, Reding replied that, "Roma communities must [also] help themselves get out of this difficult situation."<sup>39</sup> Because of Reding's elevated position in the EU, her statements give legitimacy to the harmful propaganda that blames anti-Roma discrimination on the inability of Roma themselves to correct the problem.

### Weakening of the Human Rights Regime

Other authors argue that the weakening of the global human rights regime<sup>40</sup> is largely responsible for the failure of Roma integration strategies in the EU. Vermeersch highlights how the emergence and strengthening of global human rights standards during the late 20th and early 21st centuries gave a voice to marginalised groups that had been continually silenced by their national governments. He explains that, "Over the course of the 1990s, one could observe the importance of the normative idea that an individual

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<sup>39</sup> Ram, 29, 30.

<sup>40</sup> Human rights regime refers to the treaties, institutions, and norms charged with protecting human rights globally. See "The Global Human Rights Regime," *Council on Foreign Relations*, May 11, 2012, <https://www.cfr.org/report/global-human-rights-regime>.

state's human rights record is of concern not only to that individual state and its national citizens, but to the whole world, and that human rights protection is therefore enforceable across borders through 'naming and shaming.'"<sup>41</sup> For the Roma, especially, this paradigm shift played a key role in the development of Roma-centered EU directives, but Vermeersch shows that prolonged reliance on human rights norms has now put the Roma in a precarious position. Rising nationalist sentiments open up the possibility for the human rights regime to be framed as an opponent to state sovereignty, which in turn transforms the rejection of human rights into a useful political tool.<sup>42</sup>

Moreover, Claude Cahn argues that manipulation of the global human rights regime has created avenues for states to maintain an appearance of human rights, while in actuality, they promote exclusion and hostility towards Roma.<sup>43</sup> As an example, in the midst of EU expansion 'white lists' were used to determine the viability of asylum claims of individuals coming from other EU states and the ten countries that were up for candidacy. 'White lists' were made up of states determined to be safe for residents, and asylum claims of migrants coming from these states could be denied on the grounds that they were unwarranted. Cahn writes, "As the argument goes, in order to affirm the commitment to providing asylum to refugees, governments must expel persons who would corrode and corrupt the asylum system by infecting it with bogus claims to the need for surrogate international protection."<sup>44</sup> Even populations that faced persistent discrimination in these states—like Roma in Bulgaria and Romania—could have their asylum claims denied on this basis.

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<sup>41</sup> Vermeersch (2017), 222.

<sup>42</sup> Ibid, 223.

<sup>43</sup> Cahn, 486.

<sup>44</sup> Ibid, 486.

*Systemic Impediments to Roma Equality*

Union Citizens and Roma Identity

Vermeersch first discusses Roma in terms of post-national citizenship in 2003, in his article “Ethnic minority identity and movement politics: The case of the Roma in the Czech Republic and Slovakia.”<sup>45</sup> In this account he analyzes three different frames of Roma identity used by activists to promote Roma equality and integration, as well as the drawbacks and advantages of each frame. He explains that the idea of post-national Roma citizenship emerged out of a push towards more transnational methods of activism, and is inextricably linked to transnational organizations and protections. He also explains that activists who adopted the post-national frame to advocate for Roma rights readily made reference to the Roma as their own individual nation.<sup>46</sup> Furthermore, Vermeersch identifies two potential consequences of Roma post-national citizenship that are especially relevant in terms of EU expansion. First, he writes, “Another contention relates to the symbolic consequences of considering the Roma a separate nation. Some have wondered what it would mean to be treated as a nation *within* another nation. As one activist asked, ‘Would this mean that, in the Czech Republic, for example, the Roma are no longer Czechs?’”<sup>47</sup> Secondly, he observes that referring to Roma citizenship as post-national semantically absolves states of responsibility for their Roma citizens.

In an article written in 2017, Vermeersch reaffirms these points, and conceptualizes them within the scope of EU expansion. His main argument equates EU

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<sup>45</sup> P. Vermeersch, “Ethnic minority identity and movement politics: The case of the Roma in the Czech Republic and Slovakia,” *Ethnic and Racial Studies* 26, no. 5 (2003): 879-901.

<sup>46</sup> *Ibid*, 887.

<sup>47</sup> *Ibid*, 889.

institutions with the transnational rights protecting bodies needed for post-national activism to be successful. He points out the same consequences of framing Roma as post-national citizens that were discussed in “Ethnic minority identity and movement politics.”

Vermeersch argues:

Such a post-national conceptualization of a group’s identity should, in theory, perhaps not be entirely problematic, yet, in the absence of a substantial legal and political European citizenship regime, it can, in practice, be used to frame the Roma as *only* European, and therefore not national or local. This informal status reifies the Roma as a group that is somehow separate from the national population of a state and does not share interests with so-called “regular” citizens of that state, who are still overwhelmingly viewed and defined on the basis of their national citizenship.<sup>48</sup>

At the level of member states, national governments are able to apply this concept of post-national citizenship to both their Roma nationals and Roma migrants. In this way, they can conflate the two groups, and recognize all Roma residents as “other,” which then justifies policies that neglect Roma citizens, “even in cases where they have been, in historical terms, part of the national population.”<sup>49</sup> At the transnational level, the assumption that the EU should be the foremost protector of Roma rights, based on their post-national citizenship,<sup>50</sup> often leads Roma activists to disappointment. EU expansion, coupled with a heavy focus on improving Roma relations in candidate countries, placed high expectations on the capabilities of the EU in this regard.<sup>51</sup> Additionally, states have also situated their neglect of Roma residents in terms of expectations that the EU should

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<sup>48</sup> Vermeersch (2017), 222.

<sup>49</sup> Ibid, 223.

<sup>50</sup> When discussing Roma in the EU, post-national citizenship is almost synonymous with EU or Union citizens. While Union citizens are explicitly afforded fundamental rights in EU law, the term similarly suggests that the Roma are “only European, and therefore not national or local,” as stated by Vermeersch (2017), 222.

<sup>51</sup> Ibid, 220.

be primarily responsible for post-national citizens. Ultimately, as Vermeersch contends, “The structures that are needed to improve the situation on the ground for the Roma (social welfare systems, redistribution mechanisms, and anti-discrimination policies) fall primarily under the authority of national states, not the European institutions.”<sup>52</sup>

In the following chapter, I will use the cases of Italy, France, and Sweden as evidence to show that this concept of Roma post-national citizenship facilitates member state mistreatment of Roma residents. Moreover, I will explain how expectations that the EU provide protections for Roma—especially in terms of Union citizenship—are unfounded, by highlighting the rulings in three ECHR cases.

#### Economic Growth and Free Movement

In her article, “Are There Fundamental Rights for Roma Beggars in Europe,” Virpi Makinen analyzes the implementation of the citizens’ rights directive in member states, relating the economic motives behind the directive to national policies that neglect poor migrant populations—mainly Roma.<sup>53</sup> She highlights how the conditions for restricting free movement are more frequently applied to Roma migrants than other Union citizens, specifically citing exclusion from social welfare programs and begging bans as policies that target poor migrants.

Fundamentally, Makinen states that “the directive is based on the notion that [Union] citizens<sup>54</sup> can support themselves and do not rely on the host country for

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<sup>52</sup> Ibid, 222.

<sup>53</sup> V. Makinen, “Are There Fundamental Rights for Roma Beggars in Europe,” *Political Theology* 14, no.2 (2013): 212.

<sup>54</sup> Union citizens exercising their right to free movement and residence in host member states.

subsistence.”<sup>55</sup> However, Roma from poor member states like Romania and Bulgaria see the right to free movement as a way to escape the harsh economic conditions and widespread discrimination within their home states. On the other hand, as Makinen comments, “The liberty to move to another country to beg there does not solve the underlying problem of the need to beg.”<sup>56</sup> To combat the use of the citizens’ rights directive by economically undesirable migrants, member states adopt policies in accordance with the directive that simultaneously allow them to ostracize poor migrants. The “unreasonable burden” clause is applied readily when migrant populations have a large need for social assistance—which the Roma generally do: member states reject migrant claims to social welfare programs and expel them on the grounds that their use of social welfare places an undue burden on the state’s social assistance system. In denouncing begging and related behaviors as criminal, expulsion can be justified on the condition for residence that specifies that an individual should not disrupt public order, security, or health.

Furthermore, the exclusion of Roma migrants on the basis of their low socioeconomic status can be understood within the frame of transnational European capitalism. The social exclusion of beggars and criminalization of the poor that perpetuates their inability to access the labor market resembles the “bloody legislation against the expropriated,” that Karl Marx writes about in *Capital*. He writes:

The proletariat created by the breaking up of the bands of feudal retainers and by the forcible expropriation of the people from the soil, this ‘free’ proletariat could not possibly be absorbed by the nascent manufactures as fast as it was thrown upon the world (...) They were turned *en masse* into

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<sup>55</sup> Ibid, 207.

<sup>56</sup> Ibid, 215.

beggars, robbers, vagabonds, partly from inclination, in most cases from stress of circumstances.<sup>57</sup>

In this case, the collapse of the feudal system and replacement with capitalist structures, forced people who had previously sustained themselves through agrarian production to adapt to the wage labor of an industrialized market. Those who could not do so were further punished for existing in opposition to the capitalist economy,—the ‘free’ proletariat—with “legislation against vagabondage.”<sup>58</sup> In the case of the Roma, through practices of discrimination and exclusion from social assistance, Roma are sidelined from the capitalist labor markets of EU member states. Through the criminalization of begging, Roma face greater oppression for not benefiting the capitalist class.

I will use the arguments of Makinen and Marx to show that the economically driven components of the citizens’ rights directive disproportionately disadvantage Roma migrants and other poor Union citizens. In the case of social assistance stipulations, I will illustrate how exclusion of Roma from these programs in Germany and Belgium reinforce their socioeconomic status and further marginalize them from greater European society. Regarding begging bans, I will similarly show how this type of legislation facilitates the cycle of poverty that isolates Roma to the peripheries of Austria and Denmark.

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<sup>57</sup> K. Marx, “Bloody Legislation Against the Expropriated, from the End of the 15th Century. Forcing Down of Wages by Acts of Parliament,” in *Capital: A Critique of Political Economy*, vol. 1(1), Moscow: Progress Publishers (2015): 522.

<sup>58</sup> Ibid.

### III. EU Expansion and Confusing Roma Citizenship

In this chapter, I will illustrate how EU expansion and Roma post-national citizenship have facilitated state neglect of Roma, worsened by weak responses from the EU. The first section focuses on state responsibility and the influence of EU expansion on national government approaches to Roma policy. Using the distinct cases of Italy, France, and Sweden, I will argue that by manipulating the idea of post-national Roma citizenship, member states are able to persist with Roma abuses. In the second section of this chapter I will turn to three ECHR cases—*Aydarov and Others v. Bulgaria*, *Kósa v. Hungary*, and *Cazacliu and Others v. Romania*—to highlight the difficulty of protecting Roma rights from the perspective of transnational bodies like the EU and ECHR. I will argue that high expectations for EU intervention in cases of Roma abuse have neglected to acknowledge the fundamental power structures that constitute the relationship between the EU and its member states, and that prohibit the EU from assuming complete responsibility over Union citizens.

#### *State Neglect of Roma Residents*

The tendency of member states to disregard their responsibility to Roma residents is best illustrated by the manner in which national governments organize and promote mass Roma expulsions. In states where Roma are perceived as a problem by the public or the government, expulsion of Roma migrants is often promoted as a solution. State capacity for expelling Roma is bolstered by the ambiguity of their citizenship status. By considering the Roma to be post-national citizens, member states are able to pursue

expulsion measures on the basis that Roma problems are best solved in the transnational realm—by either the states from which they migrate or EU institutions directly.

The citizens' rights directive defines a Union citizen as "any person having the nationality of a Member State," and specifies that "Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence."<sup>59</sup> When Roma are distinguished as post-national citizens, the term "Union citizen" is more widely applicable, because regardless of where they reside or migrate, they are never within the bounds of their own state. Framing Roma as post-national citizens makes overlooking individual Roma citizenship possible, and beneficial for states with large Roma populations. In equating their Roma nationals to post-national citizens, states confuse Roma nationals and migrants. Ignorance of this distinction is detrimental to all Roma living in a particular state, because it allows the state to pursue policy decisions that focus on one characteristic of the two divergent groups (Roma nationals and Roma migrants) while neglecting all others. In the cases of France and Italy, by applying post-national Roma citizenship to all Roma residents, regardless of their state of origin, both states are able to approach Roma problems with solely migrants in mind. Consequently, member states adopt strategies that focus on hindering Roma migration, while forsaking their Roma nationals, who then continue to face domestic oppression.

By zeroing in on Roma migrants' motivations for moving to Western nations, states in which they reside can implement policies that deflect responsibility back to states where the majority of migrant Roma originate. In doing so, states can then justify

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<sup>59</sup> (Directive 2004/38/EC), (1).

expulsions, an absence of internal protections for Roma, and repressive methods that are aimed at impeding future migration. Both France and Sweden take advantage of post-national Roma citizenship to transfer accountability for Roma to poorer Eastern and Southern European states.

Lastly, states can also manipulate the concept of Union citizenship<sup>60</sup> to reject state obligations to Roma altogether. By emphasizing the crucial role that the EU plays in the existence of post-national Roma citizenship, states are able to contend that the job of guaranteeing Roma integration and rights protection inherently falls on the shoulders of the EU. Even the term itself, “Union citizen,” suggests that the party primarily responsible for the citizens in question is the EU. The Swedish government, in particular, has readily used this reasoning to publicly rationalize its treatment of Roma migrants.

## Italy

The Italian government notoriously confronts the state’s Roma problem through forced expulsions and the destruction of settlements, all under the auspices of national security.<sup>61</sup> The hardships faced by Roma in Italy echo the hostility that the general public feels for them. According to the Pew Research Center, “82% of Italians have an unfavorable view of Roma,”<sup>62</sup> which previous leadership addressed by creating segregated ghettos.<sup>63</sup> Living conditions in ghettos and illegal encampments are unsafe

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<sup>60</sup> Here the term Union citizenship is used to emphasize the importance of EU institutions to post-national Roma citizenship.

<sup>61</sup> S. Erlanger, “Expulsion of Roma Raises Questions in France,” *the New York Times*, Aug. 20, 2010, <https://www.nytimes.com/2010/08/20/world/europe/20france.html>.

<sup>62</sup> S. Bettiza, “‘Treated like Dogs’: Italy’s Roma Minority on Society’s Fringe,” *BBC News*, June 29, 2018, <https://www.bbc.com/news/world-europe-44632472>.

<sup>63</sup> E. Povoledo and G. Piangiani, “Italian Minister Moves to Count and Expel Roma, Drawing Outrage,” *the New York Times*, June 19, 2018, <https://www.nytimes.com/2018/06/19/world/europe/italy-roma-matteo-salvini.html>.

and degrading, with cramped trailers,—and other makeshift housing—scarce electricity and running water, and an absence of proper sanitation.<sup>64</sup> For the alleged purpose of improving standards of living, Italy’s more recent ruling parties have consistently pursued a strategy focused on dismantling Roma settlements. Notably, in 2018 a camp in Rome was razed despite repeated petitions to halt the process from Roma residents, the EU, and the ECHR.<sup>65</sup> Protesters objected on the grounds that city officials had not established substantial plans for rehousing the camp’s residents, and contested that demolition would result in their displacement. The Italian government moved forward with the destruction, and—as predicted by protesters—many Roma were left without a place to go. In footage recorded of residents evacuating the camp, they can be heard contemplating what to do next, “some saying they were headed to Romania, others saying they were going back to look for the next place to squat, probably under a bridge.”<sup>66</sup>

At the same time that this camp was being dismantled, Italy received even more condemnation from the international community because of statements made by Interior Minister Matteo Salvini. Salvini, who is well known for his uncompromising approach to immigration, called for a census of Roma residents to be conducted. The purpose of the census would be to identify Roma migrants living illegally in Italy, as a prelude to their expulsion. Of Roma with Italian citizenship, Salvini lamented, ““And Italian Roma? Unfortunately, we have to keep them.””<sup>67</sup> In actuality, over half of the total Roma

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<sup>64</sup> A. Giuffrida, “Italian Police Clear Roma Camp Despite EU Ruling Requesting Delay,” *the Guardian*, July 26, 2018, <https://www.theguardian.com/world/2018/jul/26/italian-police-clear-roma-camp-despite-eu-ruling-requesting-delay>.

<sup>65</sup> Povodelo and Piangiani.

<sup>66</sup> Giuffrida.

<sup>67</sup> Povodelo and Piangiani.

population in Italy are Italian citizens, with some whose families migrated as far back as the 14th century.<sup>68</sup> In response to the Interior Minister's demands, a spokesperson for a civil society organization that works to protect Roma rights in Italy noted that, "six out of seven Roma pay taxes, [and] most own homes or pay rent."<sup>69</sup> Salvini's census proposal and the public support it garnered, reflect the overwhelming support for expulsions, despite the fact that they would not apply to the majority of Roma residing in Italy. This conflation of citizen and non-citizen Roma has resulted in repressive domestic efforts coupled with an erroneous push for migrant expulsions.

Reactions of Italian Roma to the census allude to the influence that post-national and Union citizen characterizations of Roma have on the state's approach to such problems. One Roma citizen, Zanepa Mehmeti, told reporters "I feel 100% Italian, but I regret being born here."<sup>70</sup> While associating themselves with Italian culture and nationality, Italian Roma increasingly feel alienated from their home state, and internalize the foreign identity imposed on them by their government and fellow citizens.

## France

Similar to the situation in Italy, the French government has also appropriated Union citizenship and post-national Roma citizenship to minimize their responsibility for Roma citizens in France. Additionally, officials have also used these citizenship frames to justify outsourcing integration efforts to Roma migrants' home states.<sup>71</sup>

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<sup>68</sup> Bettiza.

<sup>69</sup> Povoledo and Piangiani.

<sup>70</sup> Bettiza.

<sup>71</sup> In this context, home states can be defined as the states from which Roma migrated, where they hold (state, not Union) citizenship.

In 2010 the French government of Nicolas Sarkozy came under fire from the European Commission and human rights groups across Europe for expelling thousands of Roma migrants from Romania and Bulgaria. While Sarkozy's administration claimed these expulsions were carried out for national security purposes, the move was widely understood to be an act of ethnic discrimination.<sup>72</sup> Although the events of 2010 received a significant amount of media attention, they were not anything out of the ordinary for the French government, which had been conducting expulsions of Roma regularly for the past few years. Supplementing expulsions, government-sanctioned raids on encampments and shantytowns are regularly conducted to weed out migrant Roma. Spokespeople for the French government contested that in 2009 they had returned 10,000 migrant Roma to their home states without any public outcry.<sup>73</sup> In response to the widespread criticism they received, Sarkozy's administration sought to assure the public that their actions were justified, and in accordance with EU human rights norms. Instead of acknowledging the mass expulsions as such, they reasoned that the Roma affected had voluntarily repatriated, with the nudging of free airfare and negligible subsidies provided by the French government.<sup>74</sup> Sarkozy also entered into negotiations with Romanian officials in order to better coordinate Roma integration initiatives within Romania.<sup>75</sup>

The more liberal administration of François Hollande that followed Sarkozy's employed the same strategy, despite Hollande's fervent denunciation of Sarkozy's

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<sup>72</sup> S. Erlanger, "Document Cites French Bid to Oust Roma," *the New York Times*, Sept. 12, 2010, <https://www.nytimes.com/2010/09/13/world/europe/13france.html?rref=collection%2Fbyline%2Fsteven-erlanger>.

<sup>73</sup> Erlanger (Aug. 20, 2010).

<sup>74</sup> S. Erlanger, "Treatment Still Harsh for Roma in France," *the New York Times*, June 3, 2013, <https://nyti.ms/18K6Ffg>.

<sup>75</sup> Erlanger (Sep. 12, 2010).

methods during the months leading up to the 2012 presidential election. Hollande's Interior Minister relayed that repatriation bribes<sup>76</sup> had been reduced in price, while France's involvement in Romania's internal Roma integration efforts had increased significantly. Steven Erlanger writes that the Interior Minister reported France to be "financing '80 microprojects' in Romania 'to improve living conditions.'"<sup>77</sup> In 2013, a year after Hollande's presidential term began, the executive director of the European Roma Rights Centre stated that, "We expected a different approach, to reduce social exclusion and economic problems, instead of taking a problem and moving it from one place to another."<sup>78</sup>

The way that the French government—under both Sarkozy and Hollande—chose to address France's Roma problem has done little to combat anti-Roma discrimination. The frequency of expulsions and preoccupation with promoting Roma inclusion in Romania are indicative of policy decisions that confuse distinctions between French Roma nationals and Roma migrants. France is home to approximately 400,000 Roma with French citizenship, who are equally as affected by the government's actions as those who are subject to expulsion. Camps are raided indiscriminately, resulting in the displacement of French Roma—a consequence of which officials have consistently failed to attend. After eviction, French Roma are also often denied housing, because of anti-Roma prejudice that is deeply ingrained in French society.<sup>79</sup> Rather than addressing the widespread discrimination that isolates Roma to a cycle of poverty, the French government has chosen to focus only on those Roma that they can expel. In doing so, the

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<sup>76</sup> Subsidies given to migrant Roma to facilitate voluntary repatriation.

<sup>77</sup> Erlanger (June 3, 2013).

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

French Roma are forgotten by the institutions charged with protecting their rights and freedoms. Instead, French Roma and Roma migrants living in France are combined into one homogeneous amalgamation in the public consciousness. France's aversion to properly distinguishing French Roma policy from migrant policy is owed to the far-reaching espousal of Roma as post-national citizens, rather than citizens of individual states. The French government also uses the idea of post-national Roma citizenship to further separate itself from any potential allocation of responsibility. The push by both Sarkozy and Hollande to facilitate coordination between France and member states from which Roma migrate, mainly Romania and Bulgaria, signifies the focus placed on Union citizens over their own Roma nationals.

## Sweden

Roma residing in Sweden, unlike in Italy and France, are predominantly Union migrants from Southern and Eastern Europe. Because of this, individual citizenship of Roma migrants is generally ignored, except when used to promote integration strategies in these states. Notably, the Swedish government manipulates Union citizenship in a way that implicates the EU in state oppression of Roma, and justifies their internal neglect of Roma migrants.

Until large waves of Roma migration began after the EU's expansion, Sweden had very few Roma and was particularly accepting of immigrants. However, in the face of large influxes of Roma—who are highly visible in Swedish society as beggars—xenophobic attitudes proliferated in political and public life.<sup>80</sup> Roma in Sweden have

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<sup>80</sup> S. Castle, "Poor E.U. Migrants Test Limits of Swedish Tolerance," *the New York Times*, Aug. 8, 2015, <https://www.nytimes.com/2015/08/09/world/poor-eu-migrants-test-limits-of-swedish-tolerance.html>.

little access to housing, like those in Italy and France, due to discriminatory practices. As a result, they live predominantly in illegal settlements where there is almost no access to running water, electricity, or sanitation.<sup>81</sup> More and more frequently, Roma have become targets of violent attacks, like Gheorge Rancu, who was drenched in chlorine while sleeping in a park. Swedish police do little to combat attacks on Roma, reportedly giving “low priority to attacks on the beggars.”<sup>82</sup> Amnesty International has also confirmed that the police readily treat Roma with disdain and aggression, often harassing them and chasing them from begging locations.<sup>83</sup>

In order to combat the growth of impoverished Roma populations, the Swedish government appointed Martin Valfridsson as the National Coordinator for Vulnerable EU Citizens. While Valfridsson’s main responsibility was to ensure the protection of Roma rights in Sweden, he has instead focused on the improvement of social integration in Romania. Regarding the deplorable conditions Roma face in Sweden, Valfridsson commented that the home states of these migrants should be the parties responsible for providing them with aid and resources.<sup>84</sup> In 2015, the national governments of Sweden and Romania came to an agreement that was intended to solidify Swedish assistance to Romanian social programs. The “Joint Declaration” was signed into effect on June 5th, by the Ministry of Health and Social Affairs of Sweden and the Ministry of Labour, Family, Social Protection and Elderly of Romania. However, the document only

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<sup>81</sup> “Sweden: Homeless Roma and other EU Migrants Face Widespread Discrimination and Dangerous Conditions,” *Amnesty International*, Nov. 23, 2018, <https://www.amnesty.org/en/latest/news/2018/11/homeless-roma-and-other-eu-migrants-face-widespread-discrimination-and-dangerous-conditions-in-sweden/>.

<sup>82</sup> Castle.

<sup>83</sup> Amnesty International (Nov. 23, 2018).

<sup>84</sup> Castle.

stipulated that the two countries share “best practices” for the protection of children’s rights, improvement of social welfare and social security, and the improvement of gender equality. There were no concrete guidelines for how Sweden should assist Romania; the document explicitly stated, “The declaration is not intended to create any legally binding rights or obligations.”<sup>85</sup> The lack of substantive content in the declaration suggests that the Swedish government’s attempts to subdue anti-Roma discrimination in Romania is not grounded in genuine concern for their rights. Mirroring comments made about Hollande and Sarkozy’s efforts in France, a Swedish civil society volunteer, Josh Levi, argued that the tactic only served “to move the problem somewhere else.”<sup>86</sup> Highlighting the transnational movement of Roma migrants in relation to their Union citizenship allows the Swedish government to figuratively “move the problem” to a different state.

Moreover, Valfridsson has also prioritized reforming existing Swedish policies that pertain to Roma rights. He has essentially rolled back programs that were introduced to expand Roma access to social services, which had actually improved living conditions. As a result, the Swedish government has shifted towards an approach that favors Roma oppression over emancipation. Valfridsson’s new policies have made housing difficult to sustain, decreased access to education, social programs, and health resources, and reinforced public discrimination of Roma. In terms of housing, Valfridsson made it illegal for localities to offer campsites at a reduced rate, called for the dismantling of

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<sup>85</sup> The Ministry of Health and Social Affairs of Sweden and the Ministry of Labour, Family, Social Protection and Elderly of Romania, Joint Declaration, Bucharest, 2015, <https://www.regeringen.se/49b6a1/contentassets/6e49f2e3da874525bac4f056550f4292/samarbetsavtal-med-rumanien.pdf>.

<sup>86</sup> Castle.

illegal settlements, and broadened the authority of landowners so they can more easily evict unemployed Roma. Regarding education, Amnesty International reported that, “[Valfridsson] also advised schools in Sweden not to accept children from these communities, on the grounds that this could encourage parents to pull their children out of school in their home countries.”<sup>87</sup> Lastly, he reaffirmed that unemployed migrants were not allowed access to the social services allocated to Swedish citizens, and noted publicly that people should refrain from giving money to beggars, as it would further compel Roma to take advantage of Swedish society. The goal of removing existing protections, according to Valfridsson, was to dissuade Southern and Eastern European Roma from migrating to Sweden.<sup>88</sup>

By framing their overall Roma integration strategy as focused predominantly on improving living conditions in Union citizens’ home states, the Swedish government can excuse the abandonment of internal protections as a method for urging other member states to make social change. Moreover, in Swedish discussion of Roma migrants, Roma are almost ubiquitously referred to as Union citizens or European Union migrants. When defending the state’s decision to limit Roma access to healthcare, Valfridsson argued that “Sweden cannot afford to extend [healthcare] to all 500 million European Union citizens.”<sup>89</sup> Even the title of his position, “National Coordinator for Vulnerable EU Citizens,” negates the national identity and state citizenship of Roma. The manner in which Valfridsson discusses Sweden’s responsibility—or lack thereof—to Union citizens

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<sup>87</sup> “Sweden: A Cold Welcome,” *Amnesty International*, Nov. 2018: p. 19, <https://www.amnesty.org/download/Documents/EUR4294032018ENGLISH.PDF>.

<sup>88</sup> *Ibid.*

<sup>89</sup> Castle.

and the co-opting of this sentiment by the general public, suggest an expectation that the EU play a greater role in the protection of Union citizens, and Roma in particular.

### *Conceptualizing Ineffectual EU Responses*

The way that the EU functions as a transnational body requires that states themselves take responsibility for enforcing the directives created by the EU. Rather than all members abiding by a uniform set of laws, each is required to transpose directives into national legislation that caters to the complexities of each individual state, while still upholding the main tenets of the directives. With the expansion of the EU, Roma gained access to new transnational platforms from which they could advocate for their own rights, without having to navigate oppressive state governance structures.<sup>90</sup> Roma activism has become very closely tied to EU bodies, and has diverted attention from national and local efforts towards transnational undertakings. Steady commitment to transnational activism has led to the development of a post-national Roma identity, which relies predominantly on EU institutions rather than state or local ones.<sup>91</sup> Vermeersch explains that, “In a way, the EU became for the Roma the most self-evident post-national avenue toward minority activism and ‘claims making.’ And the EU has indeed more or less accepted this role.”<sup>92</sup> On the other hand, the EU is unable to offer protections and freedoms to Roma, regardless of whether or not they’re framed as Union citizens, because this responsibility still belongs to the states.<sup>93</sup> As a result, Roma rights groups

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<sup>90</sup> Vermeersch (2017), 219.

<sup>91</sup> Ibid, 222.

<sup>92</sup> Ibid, 219.

<sup>93</sup> Ibid, 222.

expect the EU to more aggressively enforce directive policies that benefit Roma, and become disillusioned when it fails to do so.

The constraints placed on the EU in its efforts to protect Roma rights can be illustrated by rulings of the ECHR in cases brought by wronged Roma. European courts are the premiere rights-protecting apparatus that the EU has at its disposal, and the only avenue through which they can directly protect Roma rights. The Court of Justice of the European Union (CJEU) rules on EU law directly, so if a directive has been violated by a member state, the European Commission can pursue infringement proceedings through the CJEU. On a more practical level, the ECHR ensures that individual Roma are able to seek justice in the event that they are mistreated by state institutions.<sup>94</sup>

While the ECHR is not an EU institution itself, it rules on the European Convention of Human Rights, which all EU member states are party to. Moreover, rulings of the ECHR on cases of Roma discrimination are instrumental in CJEU decisions to indict states for violating directives. Adam Weiss, a representative for the European Roma Rights Centre (ERRC), argues that “The European Commission is alone able to bring such litigation, but it will never police Member States’ violations of the EU law rights of Roma by itself.”<sup>95</sup> As an example, the ECHR’s rulings on *D.H. and Others v. Czech Republic* precipitated the pursuit of litigation against the Czech Republic, and other states guilty of segregating Roma children within school systems, by the CJEU.<sup>96</sup>

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<sup>94</sup> A. Weiss, “Can we Litigate Strategically in the Court of Justice of the European Union,” the European Roma Rights Centre, Mar. 14, 2019, <http://www.errc.org/news/can-we-litigate-strategically-in-the-court-of-justice-of-the-european-union>.

<sup>95</sup> Ibid.

<sup>96</sup> I. Chopin, C. Germaine, and J. Tanczos, “Roma and the Enforcement of Anti-Discrimination Law,” Report for the European Commission, Luxembourg: Publications Office of the European Union, 2017: 15.

Moreover, the restrictions placed on the ECHR when litigating offenses of European states against individuals, demonstrate the constraints placed on transnational frameworks of human rights protection more generally—like those faced by the EU—when confronting state sovereignty. ECHR dismissal of Roma cases exhibits the overall limitations of the EU’s ability to protect Roma, even as they become increasingly awarded the blanket status—Union citizens. The three cases I will focus on were litigated on behalf of Roma constituents by the ERRC, which is a strategic law organization that pursues cases in domestic and international courts “designed to expose and eliminate discriminatory structures that violate the rights of Roma” in Europe.<sup>97</sup> In each case, the ECHR cites various procedural violations to rule the applicants’ complaints inadmissible, which consistently contradict one another. In the case of *Aydarov and Others v. Bulgaria*, the court reasoned that defendants had both not “exhausted domestic remedies,”<sup>98</sup> and failed to bring their complaint to the ECHR within the allotted time frame, after domestic remedies had been exhausted.<sup>99</sup> In the second case, *Kósa v. Hungary*, the court also rejected the applicant’s complaints because she had failed to exhaust domestic remedies. However, a human rights NGO had pursued litigation in Hungarian courts on her behalf, which was ultimately dismissed, complicating the ECHR’s argument.<sup>100</sup> In the last case, *Cazacliu and Others v. Romania*, the ECHR applied the exhaustion of domestic remedies argument differently to two groups of applicants party to the same case, so that both of

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<sup>97</sup> “Strategic Litigation,” the European Roma Rights Centre, Mar. 18, 2019, <http://www.errc.org/what-we-do/strategic-litigation>.

<sup>98</sup> Domestic remedies refer to legal recourse at the local and state levels.

<sup>99</sup> “Aydarov and Others v. Bulgaria (Third-Party Intervention, 2018),” the European Roma Rights Centre, Mar. 14, 2019, <http://www.errc.org/cikk.php?cikk=4522>.

<sup>100</sup> “Kósa v. Hungary (Third-Party Intervention, 2017),” The European Roma Rights Centre, Mar. 14, 2019, <http://www.errc.org/cikk.php?cikk=4527>.

their claims were found inadmissible.<sup>101</sup> Furthermore, in all three cases, the rulings followed either the same, or similar logic, as the state's submission of facts to the court. This shows that, as a default, transnational bodies must bow to the sovereignty of states, even when cases clearly disprove their innocence with regard to human rights violations.

In all three cases, that the decisions of the court were based on the "exhaustion of domestic remedies," shows the inclination of transnational bodies to rely on state apparatuses for protecting Roma rights. Furthermore, the dismissal of each case based on arbitrarily applied procedural violations, rather than substantive analyses of both parties' claims, is a testament to the EU's (and transnational bodies' in general), deference to state legislation on these matters. Acceptance of member state testimonies over those of the defendants, coupled with diversion of responsibility back to national courts, show that the EU has not adapted to its new responsibilities created with the development of Union citizenship. Instead, the EU must abide by the hierarchical order of responsibility that prioritizes member state rights over those of disadvantaged individuals within the EU system, including the Roma. A majority of the cases litigated by the ERRC on behalf of EU Roma included an inadmissible ruling that favored the testimony of the states, the occurrence is not just isolated to these cases. Additionally, in the cases where states were found to have violated the fundamental rights of a Roma applicant, the assertion that such a violation constitutes ethnic or racial discrimination is regularly dismissed by the court.<sup>102</sup> This also shows preference to state sovereignty, because of the high standard of proof associated with claims of racial discrimination.

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<sup>101</sup> "Cazacliu and Others v. Romania (2017)," the European Roma Rights Centre, Mar. 14, 2019, <http://www.errc.org/cikk.php?cikk=4607>.

<sup>102</sup> "European Court Cases," the European Roma Rights Centre, Mar. 14, 2019, <http://www.errc.org/what-we-do/strategic-litigation/european-court-cases>.

### Aydarov and Others v. Bulgaria

This case was brought to the ECHR on behalf of two Roma families—the Aydarov family and the Iliev family—whose homes had been targeted for demolition by the Bulgarian government, resulting in the destruction of the Aydarov family’s home. Both homes had been unlawfully built, like the majority of houses located in the Kremikovtsi settlement, which is located in the Garmen municipality and consists of mostly Roma. Demolition orders came in 2011, after the families had previously been assured “under the transitional provisions of the Territorial Organisation Act 2001,” that their homes could remain intact, despite the illegality of their construction.<sup>103</sup> At the same time, “the National Building Control Directorate’s regional office apparently issued a total of 124 similar demolition orders in relation to houses in the Kremikovtsi settlement.”<sup>104</sup> The Aydarov family had five people living in their home, including three children, and the Iliev home housed eight people, including six children. Both families have children with disabilities, including one from the Iliev family who has cerebral palsy and suffers from complete paralysis. The date of demolition was continually pushed back by the National Building Control Directorate’s office due to the absence of accommodations available for the families following the destruction. In July 2015, the Aydarov family’s home was hastily demolished following anti-Roma rallies in a neighboring community that protested the settlement in Kremikovtsi.

When the two homes were initially ordered for demolition in 2011, the Aydarov family pursued judicial review based on the assurances of the Territorial Organisation

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<sup>103</sup> Aydarov and Others v. Bulgaria, no. 33586/15, (ECHR Sec. 4 2017): part A, section 2, (10).

<sup>104</sup> Ibid, part A, section 3, (17).

Act of 2001, but their claims were dismissed by the local court. The Iliev family did not seek review of the demolition orders. The order for demolition was suspended, nevertheless, because a solution had not been developed for rehousing the residents who would be displaced. After the rallies against the Kremikovsti settlement in 2015, regional authorities pushed for the enforcement of demolition orders to be expedited. In response, both the Aydarov family and Iliev family “sought judicial review of the enforcement of the orders.”<sup>105</sup> Their claims were denied by the Blagoevgrad Administrative Court, at which point the two families appealed to the Supreme Administrative Court. This court denied two aspects of the appeal, but ordered the lower court to review a third aspect based on a procedural error that had been made the first time. During this hearing the Blagoevgrad Administrative Court again denied the two families’ cases. The Aydarovs and Ilievs made another appeal to the Supreme Administrative Court, which ruled that the Iliev family’s claims could be dismissed, but the Aydarov family’s case was eligible for review by the lower court. In the final iteration of these proceedings, the Blagoevgrad Administrative Court rejected the Aydarovs’ claims and decided that this “judgement was not amenable to appeal.”<sup>106</sup>

The applicants made three main complaints to the ECHR. The first argued that consequences of the demolition would exceed the severity of the families’ crimes—building and living in unlawful residences.<sup>107</sup> Secondly, they contended that the order to demolish their homes constituted racial discrimination because the proceedings were influenced by anti-Roma sentiments of the neighboring community, other unlawful

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<sup>105</sup> Ibid, part A, section 4, article b(30)

<sup>106</sup> Ibid, part A, section 4, article b(35)

<sup>107</sup> Ibid, complaints, (52).

residences not belonging to Roma were not targeted, the authorities did not acknowledge the inability of the families to acquire other housing accommodations, orders persisted despite not having established accommodations for the displaced, and the authorities' approach to legal proceedings was inconsistent.<sup>108</sup> The third complaint entered by the families argued that the forced evictions that occurred in 2015 violated their right to protection against inhuman and degrading treatment.<sup>109</sup>

The ECHR ultimately determined all of the applicants' claims to be inadmissible. For the first claim, the court argued that because the case was brought to the ECHR in 2015, claims that referenced events that had happened when the demolition was initially ordered in 2011 were out of time.<sup>110</sup> In other words, the applicants should have sought redress for this claim immediately after initial requests for judicial review were denied by local courts.<sup>111</sup> In this case, the court did not acknowledge the postponement of demolition proceedings, which likely gave applicants a false sense of security and kept them from pursuing higher order litigation. Regarding the second complaint, the ECHR also decided that this claim was inadmissible. They reasoned that domestic remedies had not been exhausted for pursuing claims of racial discrimination.<sup>112</sup> Here, the court's ruling ignores the many other requests for judicial review by the applicants that were repeatedly rejected. Although none of the domestic complaints the families had filed pertained explicitly to racial discrimination, the consistent dismissal of their other requests could easily make pursuing recourse on these grounds seem futile. Lastly, the

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<sup>108</sup> Ibid, complaints, (55).

<sup>109</sup> Ibid, complaints, (56).

<sup>110</sup> The ECHR only accepts complaints within six months from the time that all domestic remedies have been exhausted.

<sup>111</sup> "Aydarov and Others v. Bulgaria (Third-Party Intervention, 2018)."

<sup>112</sup> Ibid.

ECHR ruled the third complaint inadmissible, also because it came “out of time.”<sup>113</sup>

However, the evictions occurred in the midst of the ECHR litigation, at which time both families were preoccupied with seeking judicial review in domestic courts and keeping up with the European Court’s proceedings.<sup>114</sup> In the Bulgarian government’s submission to the court, they claimed that the applicants had not exhausted domestic remedies, and that their complaint was out of time, which is congruent with the ECHR’s rulings. The ECHR even cites the Bulgarian government’s testimony in their assessment of the case.<sup>115</sup>

### Kósa v. Hungary

The applicant in this case was a young student—Kósa—who complained to the ECHR that she had been unlawfully discriminated against in the form of school segregation. In September 2011, following the closure of a primary school in the Huszár township, the Greek Catholic Church opened a school in the same area, unaffiliated with state sponsored primary schools. The Huszár township is a community of primarily Roma people in Nyíregyháza, Hungary. Prior to this, the Hungarian government had provided bussing for students who had been disadvantaged by the closing of the Huszár township’s school, so they could attend other schools within Nyíregyháza. Once the Church’s school—the Sója Miklós School—opened, the bussing was discontinued and replaced with government subsidies to pay for students’ transportation. Kósa began attending the Sója Miklós School, but after two years she transferred to one that was farther away, with

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<sup>113</sup> *Aydarov and Others v. Bulgaria*, the law, section B, article 2(81).

<sup>114</sup> “*Aydarov and Others v. Bulgaria (Third-Party Intervention, 2018)*.”

<sup>115</sup> *Aydarov and Others v. Bulgaria*, the law, section B, article 2(83).

the help of the Chance for Children Foundation (CFCF)—a Hungarian NGO.<sup>116</sup>

However, even with the subsidies provided, the cost of transportation to and from Kósa's school outside of Huszár makes up approximately 40% of her family's monthly income.<sup>117</sup>

Kósa complained to the ECHR that her right to equal education had been infringed upon, arguing that the discontinuation of state funded busses forced her to attend the Sója Miklós School, which was segregated.<sup>118</sup> Before Kósa brought her case to the ECHR, the CFCF pursued litigation in Hungarian court contesting the nature of school segregation, as experienced by Kósa and other Roma students. The CFCF's claims made against the Municipality and the Greek Catholic Church's two primary schools were substantiated by the Nyíregyháza High Court, but not its claims against the Klebelsberg Institution Management Centre (KLIK)—the state apparatus responsible for ensuring equal access to public schooling. However, the decisions of the Nyíregyháza High Court were later overturned by the Supreme Court of Hungary, and the CFCF's case was completely dismissed.<sup>119</sup>

Regarding Kósa's individual case, the ECHR ruled that her complaints were inadmissible because she had not exhausted domestic remedies. This ruling mirrored the submission of the Hungarian government to the ECHR: "The Government raised an objection of non-exhaustion of domestic remedies. They argued that the public action brought by the CFCF had not exempted the applicant from the obligation to bring an

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<sup>116</sup> "Kósa v. Hungary (Third-Party Intervention, 2017)."

<sup>117</sup> Kósa v. Hungary, no. 53461/15, (ECHR Sec. 4 2017): article A.

<sup>118</sup> Ibid, complaints, (37)

<sup>119</sup> Ibid, article B.

action concerning her own specific circumstances.”<sup>120</sup> They argued that the CFCF’s case was litigated in their own name, and applied more broadly to school segregation than her individual complaints. Although the CFCF’s claims were rejected at the level of the Supreme Court, the ECHR contended that if Kósa had pursued legal recourse pertaining only to her personal grievances at the domestic level, Hungarian courts may have ruled in her favor. In turn, Kósa argued that components of the CFCF’s case were influenced by her specific circumstances, and that she had assumed the Supreme Court’s dismissal to constitute exhaustion of domestic resources.<sup>121</sup>

#### Cazacliu and Others v. Romania

Lastly, in this case, the ERRC brought claims to the ECHR on behalf of seventy-six Roma who had been forcefully evicted from their shared residence in 2006. The housing subsequently offered by the state consisted of a deteriorating army barrack or mobile homes located in close proximity to a waste dump. The second location lacked water and sanitation, and was riddled with harmful pollutants from the dump.<sup>122</sup> A portion of the Roma affected pursued recourse in domestic courts, while the rest were only represented in the ECHR case. Those who had brought the issue to Romanian courts were given €450 as compensation for the state’s violation of their human rights.<sup>123</sup>

In 2006, when the applicants were evicted, “Romanian law did not provide adequate remedies against this kind of eviction.”<sup>124</sup> The ERRC argued that because there

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<sup>120</sup> Ibid, the law, article A(1).

<sup>121</sup> “Kósa v. Hungary (Third-Party Intervention, 2017).”

<sup>122</sup> Cazacliu and Others v. Romania, no. 63945/09, (ECHR Sec. 4 2017): part A, section 2, (18).

<sup>123</sup> “Cazacliu and Others v. Romania (2017).”

<sup>124</sup> Ibid.

were no clear domestic avenues to pursue the residents' complaints, it was not necessary for them to have exhausted all domestic remedies before bringing the case to the ECHR. In their ruling, the court manipulated the ERRC's domestic remedy argument to determine the claims of all seventy-six applicants inadmissible. Regarding the Roma who had been awarded compensation in Romanian courts, the ECHR concluded that the money they had been repaid was a sufficient resolution to the human rights violations they had suffered. As a result, no further legal action against the Romanian government could be taken. Moreover, because these applicants' grievances had been redressed, the court denounced the ERRC's argument that the "exhaustion of domestic remedies" was inapplicable to this particular case. The complaints of Roma who did not take up domestic litigation were then ruled inadmissible on the grounds that they "should have done so."<sup>125</sup> Again, like the previous two cases, the ruling of the ECHR almost exactly followed the logic of the Romanian government's submission of the facts.<sup>126</sup>

### *Conclusion*

In all three cases, the ECHR's reference to each member state's testimony reaffirms that transnational institutions like the ECHR and EU—while championing the rights of minorities across states—still must bow to the discretion of states for the preservation of state sovereignty. The narrow reach of the EU in this regard, and concepts of Union citizenship and post-national Roma citizenship that allow states to disregard their Roma citizens, proliferate abuses of Roma in the EU and provide few avenues for substantive change to be pursued by Roma themselves.

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<sup>125</sup> Ibid.

<sup>126</sup> Cazacliu and Others v. Romania, the law, part c, article 1(a).

#### IV. Free Movement for Capitalism

In this chapter, I will provide evidence to show that the expansion of the European Union for fundamentally capitalistic purposes has seriously disadvantaged Europe's poorest populations—especially the Roma. There are two components of the citizens' rights directive that member states consistently exploit to target unwanted Roma migrants. First, under the directive, states reserve the right to withhold social assistance to any unemployed resident, and expel migrants who place an undue burden on the social assistance system of the state. Using the cases of Germany and Belgium, I will illustrate how these stipulations put Roma migrants in a particularly precarious position regarding their right to residence. Second, the directive also allows states to expel migrants who pose a threat to public policy, security, or health. The public activities of impoverished Roma—such as begging, squatting, and rough sleeping<sup>127</sup>—are regularly represented as threats to public order. In Austria and Denmark, this manipulation of the citizens' rights directive is used to expel migrant Roma and criminalize their presence in the public sphere. To explain the specific policy measures that states have adopted on this issue, I take data primarily from the first and second monitoring reports on the National Roma Integration Strategies (NRIS) of member states.<sup>128</sup>

#### *“Unreasonable Burden” and Social Welfare Conditionality*

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<sup>127</sup> The act of sleeping in public places. See Camilla Ida Ravnbøl, “Civil society monitoring report on implementation of the national Roma integration strategies in Denmark,” Report for the European Commission, Luxembourg: Publication Office of the European Union, 2018: 19.

<sup>128</sup> “Civil society monitoring reports,” Center for Policy Studies: Central European University, Mar. 20, 2019, <https://cps.ceu.edu/roma-civil-monitor-reports>.

The right to movement and residence of Union citizens is endowed upon any national of an EU member state and their family.<sup>129</sup> However, the preservation of right to residence within a particular member state is subject to different conditions depending on the length of stay. For the first three months of a Union citizens' residence in a host state, the only requirement is that they can provide the relevant authorities with a passport or identification card from another member state.<sup>130</sup> Within this time frame, Union citizens can be expelled if the state can reasonably prove that they are "an unreasonable burden on the social assistance system of the host Member State."<sup>131</sup> After a period of three months, Union citizens who are employed or self-employed automatically retain their residence. Unemployed persons can remain in their host state after three months if they can provide evidence that they are seeking employment and "have a genuine chance of being engaged,"<sup>132</sup> "have sufficient resources for themselves and their family members not to become a burden on the social assistance system (...) and have comprehensive sickness insurance cover in the host Member State."<sup>133</sup> Provisions for access to social assistance are more dependent on the employment status of the Union citizen in question. For the entirety of their residence, employed or self-employed Union citizens are guaranteed social assistance by host member states. Regarding the unemployed, social assistance is not guaranteed by the citizens' rights directive and falls under the discretion

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<sup>129</sup> The European Parliament and the Council of the European Union, "On the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Directive 2004/38/EC)," Directive, 2004: (1).

<sup>130</sup> Ibid, Article 6(1).

<sup>131</sup> Ibid, Article 14(1).

<sup>132</sup> Ibid, Article 14(4)(b).

<sup>133</sup> Ibid, Article 7(1)(b).

of member states.<sup>134</sup> Accordingly, member states have adopted different requirements for access to social assistance based on the specific circumstances of each state.

In states where social assistance is completely restricted, or based on other conditions that are notably harder for Roma to satisfy, a tremendous amount of strain is placed on Roma migrants' ability to secure housing, access healthcare and childcare services, enroll their children in school, and obtain steady employment. In Germany, Union citizens' rights to social assistance are determined by a combination of employment, income level, and length of time lived in Germany. These conditions hinder Roma access to healthcare, childcare, and services that provide assistance to job seekers. Moreover, lack of employment for an extended period of time has been cited as cause for deportation of Union citizens.<sup>135</sup> In Belgium, legal status is a precondition for social housing and healthcare. Inability to secure these two necessities, in turn, makes access to other social programs more complicated for Roma and increases the potentiality for expulsion.<sup>136</sup>

## Germany

Since 2014 the German government has consistently implemented policies that have expanded restrictions on access to social programs for Roma migrants. Like other Western European nations, Germany saw an influx of Roma migrants from Bulgaria and

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<sup>134</sup> Ibid, (21).

<sup>135</sup> Sozialfabrik/Research and Policy Analysis, Central Council of German Sinti and Roma, and Documentation and Cultural Centre of German Sinti and Roma, "Civil society monitoring report on implementation of the national Roma integration strategies in Germany," Report for the European Commission, Luxembourg: Publications Office of the European Union, 2018.

<sup>136</sup> Roma and Travellers Mediation Center, "Civil society monitoring report on implementation of the national Roma integration strategies in Belgium," Report for the European Commission, Luxembourg: Publications Office of the European Union, 2018.

Romania after the expansion process to these countries was completed in 2007. Prior to this, Germany also had a large population of Roma residents from the western Balkans, who face an incredible amount of discrimination due to the new policies as well.

However, for the purpose of this chapter I will only be discussing those that migrated from states within the EU, and which the citizens' rights directive applies to.<sup>137</sup>

According to these new policies, Union citizens can only receive social assistance after a certain period of residence in Germany. For the first five years, they are subject to approval for programs based on the discretion of the state, which is determined by other factors such as employment and income level.<sup>138</sup> In the case *Dano v. Jobcenter Leipzig* (2014), the Court of Justice of the European Union (CJEU)<sup>139</sup> ruled that these policies were in compliance with EU law.<sup>140</sup> In their judgement, the court cites the stipulation in the citizens' rights directive that considers the "unreasonable burden" of unemployed Union citizens, in order to demonstrate the legality of the legislation in question. In the summary of their findings the CJEU states:

In the case of economically inactive Union citizens whose period of residence in the host Member State has been longer than three months but shorter than five year, it must be examined whether their residence complies with the conditions in Article 7(1)(b) of Directive 2004/38, which include the requirement, intended to prevent economically inactive Union citizens from using the host Member State's welfare system to fund their means of subsistence, that the economically inactive Union citizen must have sufficient resources for himself and his family members. Pursuant to that provision, a Member State must have the possibility of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member

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<sup>137</sup> Sozialfabrik, 26.

<sup>138</sup> Ibid, 10.

<sup>139</sup> The CJEU oversees the transposition of EU directives into national legislation. See "Court of Justice of the European Union (CJEU)," European Union, Mar. 20, 2019, [https://europa.eu/european-union/about-eu/institutions-bodies/court-justice\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en).

<sup>140</sup> Sozialfabrik, 25.

State's social assistance although they do not have sufficient resources to claim a right of residence.<sup>141</sup>

This policy is pursued more vigorously in the case of Roma migrants because of their low socio-economic status and prejudiced attitudes against Union citizens from Romania and Bulgaria.<sup>142</sup> Romanian and Bulgarian migrants are equated with Roma in German media and are regularly accused of partaking in “poverty migration.”<sup>143</sup>

Exclusion from state funded healthcare, childcare, and social integration programs are the most detrimental effects of these policies for Roma migrants in Germany. In terms of healthcare, the German state does not have a uniform set of guidelines for how municipalities should regulate access to healthcare for vulnerable Union citizens. As a result, eligibility requirements for social healthcare vary drastically across the country, with a generally low level of devotion to ensuring Roma social support across the board. The 2018 monitoring report on implementation of the German NRIS notes, “The practical consequences of this policy are that in many cities (for example in Frankfurt, Hamburg and Dortmund) immigrants are now also denied emergency aid as support is now dependent on employment status.”<sup>144</sup> Inability to obtain consistent healthcare coverage also complicates the right to residence of Roma after their first three months.<sup>145</sup> Restrictions added in 2014 also require that applicants provide a tax identification number in order to receive childcare assistance from the state.<sup>146</sup> This policy negatively

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<sup>141</sup> Summary of *Elisabeta Dano and Florin Dano v. Jobcenter Leipzig*, Case C-333/13, (CJEU Grand Chamber 2014), <https://eur-lex.europa.eu/legal-content/EN/SUM/?uri=CELEX:62013CJ0333>.

<sup>142</sup> Sozialfabrik, 24 and 25.

<sup>143</sup> “Poverty migration” is a term used to delineate the migration of poor Union citizens for the perceived purpose of abusing social welfare systems of wealthier member states. *Ibid.*, 8.

<sup>144</sup> *Ibid.*, 12.

<sup>145</sup> Directive 2004/38/EC: Article 7(1)(b).

<sup>146</sup> Sozialfabrik, 25.

affects the children of unemployed Roma, which perpetuates the cycle of poverty and need for social assistance that Roma experience.

Paradoxically, specifying employment as a precondition to social assistance bars Roma from social services that are meant to help them find and sustain employment. About these types of programs and the discrimination within them, Germany's 2018 NRIS report explains:

Given that ESF<sup>147</sup> support measures often target participants with higher formal qualifications there was a shortage of low-threshold support measures. The new restrictions on newcomers accessing welfare support, which entered into force in 2017, have created further barriers, as they de facto exclude them from many measures that, like literacy and language courses, could increase their employment options.<sup>148</sup>

Lack of employment not only disqualifies Roma migrants from social welfare programs, but has also been used to justify expulsion in some cities: "In Hamburg, people who have not taken up work after three months are required to immediately leave the country."<sup>149</sup> Consequently, unemployment and reliance on social assistance programs<sup>150</sup> that could help remedy unemployment are both cause for deportation of Roma migrants in Germany.

## Belgium

Belgium is home to around 10,000 Roma of Belgian nationality and approximately 30,000 Roma migrants. For the purpose of this chapter, I will focus only on Roma that maintain the title of Union citizen. Most Roma migrants that reside in

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<sup>147</sup> European Social Fund

<sup>148</sup> Ibid, 17.

<sup>149</sup> Ibid, 12

<sup>150</sup> Directive 2004/38/EC: Article 7(1)(b).

Belgium are originally from Eastern Europe and began immigrating after the collapse of the Soviet Union.<sup>151</sup>

As a general rule, the majority of social assistance programs in Belgium are restricted to Union citizens with legal status. Similar to the case of Roma migrants in Germany, this qualification—although seemingly innocuous—is incredibly difficult for Roma to meet. This is largely due to discrimination in the housing sector; to obtain legal status in Belgium, Roma migrants must “have an actual residence in Belgium,” which is further complicated “because landlords are reluctant to the accommodation of large families.”<sup>152</sup> Moreover, evictions are common, and a law prohibiting the act of squatting that was instituted in 2017 made eviction easier, quicker, and less expensive for landlords.<sup>153</sup> In the case that Roma migrants do find housing, authorities are reported to “[deny Roma] enrolment on municipal registers,” resulting in “withdrawals of residence permits.”<sup>154</sup>

Ironically, access to social housing for Union citizens is contingent on their legal status (i.e. their acquisition of legal residence). Social housing also has added stipulations based on the length of a Union citizen’s proposed residence in Belgium and the type of visa he/she carries.<sup>155</sup> Like in Germany, regions and municipalities are granted the right to institute additional conditions on social housing; in Flanders, for example, recipients must be able to speak basic Dutch.<sup>156</sup> Outside of specific eligibility requirements, social

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<sup>151</sup> Roma and Travellers Mediation Center, 9.

<sup>152</sup> Ibid, 28.

<sup>153</sup> CMGVR - Centre de Médiation des Gens du Voyage et des Roms, “Civil society monitoring report on implementation of the national Roma integration strategy in Belgium,” Report for the European Commission, Luxembourg: Publications Office of the European Union, 2018: 18, footnote 18.

<sup>154</sup> Ibid, 23, footnote 33, quoted from CoE Commissioner for Human Rights Nils Muiznieks.

<sup>155</sup> Ibid, 22, footnote 32.

<sup>156</sup> Ibid, 22.

housing and emergency shelters in Belgium are insufficiently equipped to accommodate large families of Roma migrants. Shelters created for mitigating homelessness were mandated to cater to individuals, and have not been adequately updated with the emergence of large groups of homeless Roma.<sup>157</sup> In the absence of a permanent place of residence—either social or private—the ability of Roma migrants to enroll their children in school is significantly constrained. Children who are subject to perpetual migration are unable to consistently attend one specific educational institution, and the families’ of homeless children lack the resources to maintain their attendance. For wanderers, strict adherence to enrollment policies in Belgian schools make it nearly impossible to achieve a sufficient level of education without living a sedentary lifestyle.<sup>158</sup> Regarding homeless Roma children, the second 2018 monitoring report on the implementation of Belgium’s NRIS explains:

The General Delegate for the Rights of the Child (GDRC) notes a periodical increase of school dropouts amongst Roma when comes the end of winter. This period coincides with the end of “winter plans” and hence, with an increased number of homeless families. For these families newly deprived of a shelter, it gets a lot more difficult to ensure their children’s presence in school.<sup>159</sup>

Inaccessible education further inhibits the integration of young Roma migrants into Belgian society.

The difficulties created for Roma migrants by tenuous access to social assistance programs are augmented when the “unreasonable burden” stipulation of the citizens’ rights directive is applied to them. In Belgium, Roma are readily accused of posing an

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<sup>157</sup> Ibid, 17.

<sup>158</sup> Roma and Travellers Mediation Center, 25.

<sup>159</sup> CMGVR - Centre de Médiation des Gens du Voyage et des Roms, 27, footnote 47.

“unreasonable burden” when they seek social assistance, and are subsequently targeted for expulsion.<sup>160</sup> Belgium’s first 2018 NRIS report notes:

They are in a deadlock as long as they do not own a residence permit, they cannot benefit from social support, and when they apply for social assistance, the Foreigners Office is likely to withdraw their residence permit. According to CIRE,<sup>161</sup> there is presently a latent fight against social immigration of EU citizens, in cause of which Roma also risk losing their residence permit when they obtain work through inclusion programs led by public social assistance centres or municipalities.<sup>162</sup>

These two components of the citizens’ rights directive are manipulated in concert with one another to marginalize and expel Roma migrants.

### *Criminalization of Poverty through Begging Bans*

Like the exploitation of the “unreasonable burden” identifier, the restriction of the right to residence based on public security, policy, and health is dependent on a combination of employment status and length of residence. During the first three months of residence and after, until a Union citizen obtains the status of permanent resident, expulsion measures can under no circumstances be taken against workers, self-employed persons, or job-seekers who can prove “that they are continuing to seek employment and that they have a genuine chance of being engaged.”<sup>163</sup> The citizens’ rights directive does, however, clarify that in order to prevent the abuse of this clause, member states must consider the principle of proportionality and the individual circumstances of the Union citizen in question when ordering an expulsion.<sup>164</sup> More explicitly, the directive asserts

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<sup>160</sup> Roma and Travellers Mediation Center, 28.

<sup>161</sup> Coordination and Initiatives for Refugees and Foreigners

<sup>162</sup> Ibid, 28.

<sup>163</sup> Directive 2004/38/EC: Article 14(4)(b)

<sup>164</sup> Ibid, (23).

that these conditions are intended for the protection of Union citizens that have successfully integrated into their host member state:

Expulsion of Union citizens and their family members on grounds of public policy or public security is a measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the Treaty, have become genuinely integrated into the host Member State.<sup>165</sup>

Accordingly, the greater the degree of integration of Union citizens and their family members in the Member State, the greater the degree of protection against expulsion should be.<sup>166</sup>

These clauses are generally not applicable to Roma migrants—or any impoverished migrants—as they are consistently marginalized through other means and commonly viewed as incompatible with the culture of member states.

Furthermore, although the directive explicitly states that expulsion on the grounds of public disturbance “[should] not be invoked to serve economic ends,”<sup>167</sup> this provision has been used to justify laws that criminalize poor Union citizens—especially Roma—and to expel residents that are not contributing to the economy. Begging bans are most commonly instituted on these grounds, but states also place bans on squatting, rough sleeping, and other visible activities of homeless migrants. The prohibition of the public activities of impoverished people ensures their exclusion from the greater capitalist European society, as punishment for not participating in the labor markets of member states. Roma absence in the labor market, however, is facilitated first by discrimination within the market and exclusion from helpful social assistance programs. In this way,—similar to how Marx describes the collapse of the feudal system—states push Roma out of the formal economy by catering only to the needs of wealthy Union citizens, and

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<sup>165</sup> Ibid.

<sup>166</sup> Ibid, (24).

<sup>167</sup> Ibid, Article 27(1).

subsequently frame Roma as criminals for existing outside the bounds of capitalist society.<sup>168</sup>

Many member states have laws banning aggressive begging,<sup>169</sup> but more have begun to adopt stricter constraints on passive begging.<sup>170</sup> Local governments in Sweden, Finland, and Norway have proposed such policies, with varying amounts of success.<sup>171</sup> Austria and Denmark both have more robust laws pertaining to these actions. In Austria, supplemented by a tremendous amount of anti-Roma propaganda, cities have developed individual legislation to combat Roma begging.<sup>172</sup> In Denmark, penalties were recently raised for instances of begging, streamlining expulsion measures in the case of public disturbances.<sup>173</sup>

#### Austria

Following the pattern of Germany and Belgium, Austria saw an influx of Roma migrants from Romania and Bulgaria after the expansion of the EU, and has responded with repressive policies targeted at the poorest of these Union citizens. In the public sphere, Roma migrants are widely viewed as little more than beggars, and vilified for their perceived intent to take advantage of Austria's social welfare system. This stigmatization of Roma migrants is promoted by politicians at the local level. For example, "The governor of the province of Vorarlberg, Markus Wallner, stated in

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<sup>168</sup> Marx, 522.

<sup>169</sup> Begging that involves the use of direct or indirect threats. See Makinen, 205.

<sup>170</sup> Begging that is non-confrontational and involves little or no interaction between parties. Ibid.

<sup>171</sup> Ibid, 210 and 211.

<sup>172</sup> Romano Centro, "Civil society monitoring report on implementation of the national Roma integration strategies in Austria," Report for the European Commission, Luxembourg: Publications Office of the European Union, 2018.

<sup>173</sup> Ravnbøl.

December 2015 that none of the Roma groups in Vorarlberg ‘are interested in learning the language, no one is interested in real integration, no one is really interested to participate with regard to work.’”<sup>174</sup> This rhetoric fuels support for begging bans, and prejudice against Roma migrants more generally. Regarding begging specifically, in 2014 Johann Gudenus, a 2017 national parliament elect, and his party publicized— fraudulently—the epidemic of begging gangs. According to newspapers aligned with his party that published the propaganda, there were “bosses of a so-called begging mafia living in palaces in Romania and exploiting beggars in the streets of Austrian cities.”<sup>175</sup> Although this is an extreme case, the media in Austria, in concert with government officials, portrays Roma migrants in a manner that proliferates defamatory conceptions of Roma beggars as criminals.<sup>176</sup>

Austria does not have a federal law that specifically prohibits begging or rough sleeping, but at the local level these behaviors are regulated with varying degrees of severity.<sup>177</sup> Individuals arrested for begging or rough sleeping are fined or imprisoned in accordance with the punishments established in individual city legislation. For begging, fines range from €360 to €2,000, and for rough sleeping the maximum fine amount is €700. There is no secondary punishment for rough sleeping if the fine cannot be paid, but for violations of the begging ban, inability to pay fines can result in imprisonment, ranging from one week to four weeks.<sup>178</sup> Roma migrants convicted for these acts are put at a serious disadvantage. In the event that they would be able to pay the allotted fines,

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<sup>174</sup> Centro, 11.

<sup>175</sup> Ibid, 10.

<sup>176</sup> Ibid, 21.

<sup>177</sup> Housing Rights Watch, “Austria,” part of the Poverty is Not a Crime campaign, 2012: 1.

<sup>178</sup> Ibid, 5.

this would most likely impair them economically. If they cannot pay and are imprisoned, this further criminalizes them in the eyes of the Austrian state—putting them at greater risk for expulsion based on presumptions about their threat to public safety.

## Denmark

Denmark has more aggressive policies restricting begging and rough sleeping than Austria, and has received support for their harsh legislation from the Supreme Court with regard to its compliance with the citizens' rights directive.<sup>179</sup> In 2017 the expansion of a law banning begging instituted a penalty of "two weeks' unconditional imprisonment upon a first-time offence."<sup>180</sup> In relation to Denmark's Roma migrants, the conditions of this provision specify that its preferred use is against migrants. Legislation restricting rough sleeping has also been expanded, and was used in 2017 to arrest and deport a Union citizen from Romania. This case was reviewed at the level of the Danish Supreme Court, which determined that it was in compliance with the citizens' rights directive, in that the act of rough sleeping was determined to be a threat to public safety. Camilla Ida Ravnbøl remarks that, "This opens the question as to whether this recent ruling may potentially set a new line of precedence that increases the legal possibilities for expulsions of such citizens on the grounds of camping in public places."<sup>181</sup>

## *Conclusion*

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<sup>179</sup> Ravnbøl, 19.

<sup>180</sup> Ibid, 18.

<sup>181</sup> Ibid, 19.

Germany, Belgium, Austria, and Denmark provide just four examples of how states conflate the economic benefits of the citizens' rights directive to target Roma migrants. Many other member states have policies on Union citizen migration that produce similar effects, including Sweden<sup>182</sup> and Finland.<sup>183</sup> The restrictions that states place on social assistance, and their authority to expel immigrants on the basis that they are an "unreasonable burden" to the social assistance system, or threats to public security, are mutually reinforcing. They keep Roma impoverished by not allowing sufficient social help that could assist them in sustaining employment, gaining wealth, and acquiring housing, and then expel them on the grounds that their unemployment, poverty, and homelessness are undue burdens on the state or cause a public disturbance. These restrictions make sustaining residence in member states incredibly difficult for Roma migrants. Even in situations where Roma are able to remain in their host state for longer than three months, their quality of life is significantly diminished and they have few available for trying to reduce the precariousness of their circumstances.

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<sup>182</sup> Castle.

<sup>183</sup> Makinen, 212.

## V. Conclusion

In my introduction, I asked the question: Why has the EU consistently failed to protect Roma rights after its expansion into Eastern Europe? Popularization of post-national Roma citizenship, as well as the capitalistic derivatives of the citizens' rights directive are both key contributing factors to the EU's failures. The proliferation of post-national Roma citizenship that coincided with expansion allowed states to appropriate the concept of a Union citizen to neglect their responsibility to Roma residing within their country. Italy, France, and Sweden have consistently demonstrated the ease with which this can be done within the frame of EU policies. Furthermore, the EU is not able to make up for the absence of state responsibility, because it is constricted by its responsibility to ensure the sovereignty of member states. A review of ECHR court cases involving Roma defendants shows the high level of EU support for state autonomy in legal matters, often with disregard for underlying racist intents of state officials. In the citizens' rights directive, stipulations that cite the creation of an "unreasonable burden" or threat to public safety as grounds for expulsion, isolate Roma from the labor market and greater society. Exclusion from social assistance programs and begging bans mutually reinforce the economic turmoil that Roma experience.

In order to address these systemic obstacles to Roma equality in the European Union, first, member states must acknowledge the national citizenship of the Roma within their countries, and honor the diversity within the Roma community itself, so as not to treat all Roma within the frame of mass migration. Second, the EU must reframe their devotion to free movement in terms that are not economic. Only then will the EU be better equipped to protect Roma and other poor Union citizens from the discriminatory

treatment of member states, which continues the cycle of poverty and perpetuates their social exclusion.

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