



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate C : Fundamental Rights and Union Citizenship
Unit C1 : Fundamental Rights and Rights of the Child
Head of Unit

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Ms Magda Matache
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Dear Ms Matache,

Thank you for your letters of 30 July, 17 September and 28 September 2010 addressed to President Barroso, which have been forwarded to me. Please accept my apologies for this late reply.

In your letter of 28 September 2010, you have sent us six documents regarding the Roma situation. We have carefully read and taken note of the information contained in those documents, especially the more recent reports by Romani CRISS from September 2010 on the situation of Roma repatriated from France to Romania and on their integration.

In your letters, you claim that France has committed three main violations: a violation of EU legal standards in terms of freedom of movement, a violation of Union law with regard to the protection of personal data and a violation of EU anti-discrimination legislation when French authorities started expelling Roma individuals.

The events, which took place in France this summer, have led to a detailed exchange between the Commission and the French authorities on the transposition and application of EU law. The Commission acted swiftly and with determination to obtain quickly all the information that was necessary to assess whether the measures taken by the French authorities with respect to EU citizens living in illegal settlements were in compliance with Directive 2004/38/EC on free movement and the EU Charter of Fundamental Rights..

Member States are in charge of ensuring the respect of public policy. Directive 2004/38/EC on free movement allows, under certain strict conditions, the expulsion of EU citizens on grounds of public policy, security or public health or if they do not meet the residence conditions in Directive 2004/38/EC.

The safeguards of Directive 2004/38/EC on the right of free movement must be respected whenever the right of EU citizens to free movement is restricted by national authorities. The material and procedural safeguards, as laid down in Directive 2004/38/EC, serve to protect EU citizens against arbitrary, discriminatory or disproportionate decisions. This was reiterated publicly by the Commission on 29 September last.

Since France had not transposed Directive 2004/38/EC on the right of free movement in national law in a manner that rendered those rights completely effective, the Commission asked the French government to ensure that those safeguards were included in French legislation and that this legislation was adopted swiftly. The Commission also asked the French authorities to provide a detailed documentation in order to verify the application of Directive 2004/38/EC in practice and of the political assurances given by the French

authorities on 22 September 2010. The Commission asked France to reply to its requests by 15 October last.

On 15 October, France provided detailed documentation demonstrating their willingness to transpose Directive 2004/38/EC correctly. The documentation submitted included draft legislative measures and a precise calendar for putting the safeguards required under Directive 2004/38/EC into French legislation.

France also provided samples of decisions taken by the national authorities in the relevant period of time as well as statistical material related thereto.

The Commission services have analysed this material, including the documentation sent by various Non-Governmental Organisations.

With regard to the expulsion measures, notably those taken on the basis of insufficient resources, the analysis showed that an individual examination of the personal circumstances had not been carried out systematically in all cases. Furthermore, it seemed that expulsion measures taken on grounds of public policy did not systematically include an individual assessment of the seriousness of the threat constituted by the persons concerned in accordance with the provisions of Directive 2004/38/EC.

A rigorous and complete transposition of the material and procedural safeguards in Directive 2004/38/EC by France should bring an end to the practice identified. It therefore appears essential that this transposition intervenes by spring 2011.

On 26 November last, the Commission informed France that, in the meantime, the adoption of appropriate administrative measures to ensure that the provisions of the Directive are systematically followed by the competent authorities in practice would be desirable.

In their reply of 7 December last, the French authorities have reaffirmed their commitment regarding the transposition of Directive 2004/38/EC. They took note of other points raised by the Commission and confirmed the intention to ensure compliance with the principles laid down by the Directive, including the examination of individual situations.

Secondly, regarding the possible violation of EU Data Protection law by France with regard to collection of fingerprints by French authorities in the OSCAR database, the Commission has asked the French data protection authority (CNIL) to inform it about the lawfulness of this database according to French data protection law. The CNIL has informed DG JUSTICE that it has given a positive opinion, considering that it is in line with the French law.

Regarding the other undeclared systems and files that were recently found at the OCLDI (l'office central de lutte contre la délinquance itinérante), the Commission requested information from the CNIL and French Authorities. The CNIL conducted an inspection and released a preliminary report¹ which concluded that those files and systems had not been properly declared, thereby violating French law. In a parliamentary hearing on 13 October 2010, the French gendarmerie undertook to regularise the files. The Commission has not been informed of any further developments since then.

Thirdly, I would like to stress that the Commission has, on several occasions expressed its strong commitment to fight against racism and xenophobia. As President Barroso pointed out when addressing the European Parliament in early September this year, "everyone in Europe

¹ <http://www.cnil.fr/la-cnil/actu-cnil/article/article/conclusions-du-rapport-preliminaire-des-controles-effectues-aupres-de-la-gendarmerie-nationale/>

must respect the law, and governments must respect human rights, including those of minorities. Racism and xenophobia have no place in Europe."

It is obvious that deeply entrenched problems which have not just one root cause, but a whole series of interdependent, mutually reinforcing reasons cannot be solved with simple solutions. It is also evident that any sustainable solution needs the full cooperation of national governments, local authorities, other key players as well as the Roma.

The Commission adopted a Communication in April this year on the social and economic integration of Roma which sets out an ambitious plan for action for the next years. It is now analysing the follow-up given by the Member States and in particular the use and the effectiveness of EU funds by all Member States for Roma integration.

On the basis of this analysis, the Commission intends to present an EU Framework for National Roma Integration Strategy in April 2011.

I can assure you that the Commission will remain firmly committed to promoting the social and economic integration of the Roma in all Member States with all instruments within the remit of our competence.

Finally, as guardian of the Treaties, the Commission will continue to monitor the situation in France – as in all other EU Member States – as regards full compliance with EU rules on free movement, the Charter of Fundamental Rights and the Data Protection legislation.

Yours sincerely,



Ernesto BIANCHI