



Bucharest, November 2010

Informative note

On November 3rd, Romani CRISS participated in the “Mind the gap – Towards better enforcement of European citizens’ movement rights” forum organised by European Citizen Action Service (ECAS), in Brussels. The event was attended by important European officials, such as Viviane Reding, Vice President of the European Commission responsible for justice, fundamental rights and citizenship and P. Nikiforos Diamandouros, European Ombudsman.

On this occasion, Romani CRISS and ECAS made public the open statement submitted to the European Commission in relation to the expulsions of Roma people from France (http://www.romanicriss.org/index.php?option=com_content&task=view&id=297&Itemid=89). Thus, the two organisations expressed their reluctance on the fact that the French authorities carried out a satisfactory case by case examination of each individual.

The signatory organisations are particularly concerned that throughout the discussions between the European Commission and the French government, regarding the Roma, commentators and policy-makers are concentrating more on the way the exceptions to European rights are being applied rather than on their scope and meaning of those rights.

ECAS and Romani CRISS also showed that, considering the commitments made under the Lisbon treaty, more concretely the signing of the European Convention of Human Rights by the European Union, investigations conducted by the European Commission, particularly when violation of fundamental rights is at stake, must be effective and impartial¹. Further, this is also in line with the request made by the European Parliament which asked the Commission “to respond promptly with a full analysis of the situation”².

While reminding that mass expulsions are banned by the European legislation and the scope for expelling an individual is extremely limited, Romani CRISS and ECAS proposed that the investigation on expelling cases should, at the very least, comply with the following standards:

- Analyse not only the legal framework, but, more importantly, the practical measures taken by the French authorities, the patterns of their actions and their legal implications;

¹ More concretely, the investigation should follow the standards designed by the European Court of Human Rights (e.g. Nachova v. Bulgaria, Pantea v. Romania)

² See para. 12 of the Resolution of the European Parliament of September 9, 2010.

- Address all substantial inconsistencies and contradictions in the information presented directly and indirectly by the French government, Roma and human rights NGOs and other interested parties;
- Decide based on all relevant information. In this regard, the Commission should obtain all relevant documents from the French Government (e.g. the full contents of all files of persons who benefited the OFII program and not just the registration document or the entire files leading to an expulsion order and not only the orders themselves). The Commission should also engage in a consistent dialogue with human rights NGOs and more particularly with Roma NGOs as well as those individuals affected;
- On 19th October the Commission announced that it would not pursue infringement procedures against France in view of the governments' commitment to introduce legislation to improve procedural safeguards. Where does this leave the examination of current and future complaints it has registered? There is no reason for thousands of European citizens to accept that violations of their free movement rights now should be accepted as a unjust trade-off for better respect of those rights in future for the benefit of others;
- The Commission should pursue the examination of complaints and explain their follow-up with the all interested parties;
- We urge that the Commission should not only examine the draft legislative texts for better transposition of Directive 2004/38 but also ask for evidence of the implementing instruments, because there is often a gap between the two, so that the law may be fine but the way it is put into practice is not. As the ECHR jurisprudence shows, the merely formal protection of fundamental rights does not suffice, but rather this protection should be effective in practice;
- It is paramount the Commission's investigation address critical issues, such as establishing if the French authorities did in fact carry out individual case-by- case substantial examinations.

The presentation of the two organisations ended by urging for follow up of the Resolution of the European Parliament of September 9, 2010 and in particular paragraph 12, but also of obligations undertaken by the European Union through the Lisbon Treaty.

During the period of 19-25 November 2010, a delegation of Romani CRISS organisation is undertaking a fact-finding mission regarding the situation of the Roma in France.