

## Chapter 17

# Inequality in the Freedom of Movement in the Union: An Analysis of Roma's Deportation by France

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### ABSTRACT

*New member States of the Union are under gradually more strict transitional agreements that limit the freedom of movement of their citizens. In the case of Romania and Bulgaria, the latest admitted countries, this denied equality has had serious consequences in terms of human rights and application of the EU laws. Because freedom of movement is not protected enough by the texts and the institutions, States now represent a growing threat to this fundamental freedom of the Union. In a dramatic move over the 2010 summer, the French government took advantage of this insufficient protection to deport members of the Roma minority to Romania and Bulgaria, thus creating a precedent of massive deportations of Union citizens to a member State of the Union.*

### INTRODUCTION

The European Community and then the European Union were built in part to allow all citizens of the Member States to travel freely, settle, and live in a country different from their country of origin. The removal of effective borders has

been the most visible and important effect of the European integration. The Treaty of Rome of 1957 reflects this importance given to the loosening of frontiers, if not yet materially, at least administratively. The title III of its second part, "The Free Movement of Persons, Services, and Capital," contains 2 chapters and a total of 11 articles related to the freedom of movement of persons. This first treaty however did not result

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in an immediate freedom of movement; neither this freedom is today complete and undisputed. Rather, it recognizes first of all the very limit of the freedom of movement, since it provided a transitional period for the implementation of the free movement of workers within the Community (Treaty of Rome, article 48).

Workers had to wait 1985 and the signature of the Schengen agreement to see the suppression of border controls. This agreement evolves into a treaty, in 1990, fully incorporated into the European Communities *acquis* with the Treaty of Maastricht, in 1997. This notion of the removal of frontiers as part of the European construction is naturally at the heart of the freedom of movement within the Union. Interrogations remain nonetheless, over the reality of this freedom, and the conditions of its exercise. It is not complete nor absolute, in part because states keep a strong control over two elements that, politically, prove sensible at the municipal level: their territory and access to their job market.

A double movement can be observed in the evolution of the freedom of movement inside the Union: first, a movement of politicians, authorities, medias, and populations gradually hostile to migration, in a general context of perceived fears over the job market, endangered living of standards and threatened cultural values. Second, while the freedom of movement inside the Union and for citizen of member-states became easier, no consistent movement of population occurred inside the Union: the freedom of move has not been followed by an important geographic mobility.

Some restrictions therefore apply, in the form of the possibility for the states to deport citizen of the Union, for security and public health motives. In addition, new Member States have almost always experienced delays in their full incorporation in the Communities and then in the Union. These delays, that old Member States justify based on the necessity to protect and adjust their job market, take the form of restrictions on the freedom of move of newcomers' workers, during a certain

period. When the removal of frontiers, thereafter "Schengen," was an autonomous agreement, the limitation of new members' rights did not represent an uneven treatment between the countries as regards the European institutions and rights attached to the membership. Today, however, accession to the membership of the Union without a full access for the citizens of the newcomer to the rights of the European Union takes a different look. The total removal of all administrative barriers to travel and establishment for the citizens of the five Member States constitutes an important piece of the early European Community, an element that fostered the formidable attractiveness of what was about to become the most advanced, integrated, regional organization. Freedom of movement, not totally complete for the small group of Europe's founders, however grew up with gradual removal of barriers. However, while the right to move in the Community was becoming a reality for the original members, recently integrated members saw their rights and freedom limited under temporary agreements.

I argue in this chapter that the transition regulation used in the last European enlargements is, contrarily to the prior similar regulations, a violation of the equality between States, and a violation of human rights of the citizen of Bulgaria and Romania. This culminated with the deportation of members of the Roma minority last summer by France and current attacks to the Schengen system by several European leaders. I argue that that political fears, translated into deportations of European citizen to their home country is a setback in the European construction, and that this action is not legally justified. In part 1, I review the past transition measures for admitted countries, which were a denial of equality between States, but not an outright violation of the European principles. In Part 2, I address the issue of the last transition regulations, applicable to Romania and Bulgaria. Although these instruments seem to be modeled after the previous ones, they contain far more restrictions to the freedom of movement for the

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