

The Politics of Expulsion: Europe and Efforts to Regulate the Roma

In mid-April 2003, as I write these words, Germany is planning the expulsion of tens of thousands of persons who came to that country from the former Yugoslavia, a very high percentage of them Romani. And Germany is not alone. Jelena Markovic, Deputy Minister on Human and Minority Rights in Serbia and Montenegro, told an OSCE Human Dimension Meeting on Roma and Sinti in April 2003:

Germany will send back more than 50,000 of our citizens. More than 80 per cent of the persons to be sent back from Germany are Roma. We have signed readmission agreements with 13 European Union countries.

Many of the Roma to be returned from Germany – some of whom are already being returned – have been there for more than a decade, sheltered under a temporary protection mechanism called a “toleration order” (*Duldung*). A *Duldung* is not a residence permit; it merely puts a stop to expulsion proceedings, and it must be renewed at frequent intervals, in some instances after only several weeks. The presence of the bearer of a *Duldung* in the country remains illegal. In many cases, people slated for expulsion have children who were born in Germany, who attend German schools, and who may speak only very limited Serbian, if any. These people (and their children) must now all leave.

The German project is not – as is often claimed – primarily about the discretion of states to control their own borders. In any case, the people in question are not attempting to enter the country. They have frequently been in Germany for long periods of time and may have become quite Germanized. The project is rather a deliberate effort to expel an ethnic group – one considered undesirable by the German public. Falling within the highly discretionary range of immigration politics, Roma have been targeted to receive the *Duldung* and thus to be regulated under a system in which no rights accrue in practice. Non-Romani Yugoslavs in Germany, who similarly fled ethnic conflict and the dictatorship in Yugoslavia, have long since moved on, gone home, or – as has happened in most cases – have managed to secure legal residence in Germany.

Not so the Roma, who have been held in a state of artificial bureaucratic suspension from German society for over a decade. During the Milosevic era, it was not possible to expel them, but the *Duldung* system has ensured that, ultimately, they will not stay. What began in late 2002 and is slated to pro-

ceed over the coming months is the single-largest expulsion of one *de facto* long-term resident ethnic group from a country at peace in post-war Europe. The state is using all the means at its disposal to carry out this collective expulsion, and German authorities contend that it is being performed “legally”, significantly degrading that concept.¹

The case of Germany is merely an extreme example of a phenomenon currently haunting most, if not all, European countries, and which is certainly an issue for Europe as a whole. Anti-migrant sentiment is at an extreme high, even by European standards, and has corrupted even the refugee protection system, a legal regime established as an exception to the rule that migration is impermissible to provide shelter to persons in dire need due to the threat of persecution in their home country. Under pressure from xenophobic populations, governments have sought to undertake high-profile measures, such as media-driven and exhaustively publicized expulsions, that will allow them to be seen as “tough on illegal migrants”. Roma make the ideal targets for such measures, since they are frequently viewed as a strange and exotic “other”, inherently alien to the nation states of Western Europe. As somehow less than fully human, Roma are frequently viewed by the bureaucracy as eminently “expellable”.

At present, expulsion is the core of European policy on Roma. In designing positive policy measures, this core needs first to be removed – and to

1 It is not immediately apparent that German authorities are correct. The expulsion of individuals who are *de facto* settled long-term in a given country gives rise to concern under Article 3 (prohibition on cruel and inhuman or degrading treatment or punishment) and Article 8 (right to privacy and family life) of the European Convention on Human Rights (ECHR). The collective expulsion of aliens is further banned under Article 4 of Protocol 4 to the ECHR. Insofar as four out of every five Yugoslav citizens slated for expulsion from Germany are Romani, despite the fact that Roma comprise not more than 30 per cent of asylum seekers from the Federal Republic of Yugoslavia (Serbia and Montenegro) (cf. <http://www.asylforschung.de/aktuelles01.htm>; <http://www.asylforschung.de/aktuelles02.htm>), the German expulsions give rise to the concern that racial discrimination has significantly affected expulsion and other relevant procedures, in violation of a number of treaties under international law to which Germany is a party, including but not limited to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the ECHR. Such expulsions are also inconsistent with Germany’s OSCE commitments. At the 1999 Istanbul Summit, the OSCE Heads of State or Government declared: “We deplore violence and other manifestations of racism and discrimination against minorities, including Roma and Sinti. We commit ourselves to ensure that laws and policies fully respect the rights of Roma and Sinti and, where necessary, to promote anti-discrimination legislation to this effect.” (OSCE, Istanbul Summit Declaration, Istanbul, November 1999, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), OSCE Yearbook 2000, Baden-Baden 2001, pp. 413-424, here: p. 421). In addition, in the Charter for European Security adopted at the same Istanbul Summit, the OSCE participating States declared: “We recognize the particular difficulties faced by Roma and Sinti and the need to undertake effective measures in order to achieve full equality of opportunity, consistent with OSCE commitments, for persons belonging to Roma and Sinti. We will reinforce our efforts to ensure that Roma and Sinti are able to play a full and equal part in our societies, and to eradicate discrimination against them.” (OSCE, Charter for European Security, Istanbul, November 1999, in: *ibid.* pp. 425-443, here: p. 432).

be seen to be removed – before less harmful measures can seriously be expected to have a positive impact.

Roma and Migration

European electorates have increasingly offered their votes to parties offering coded or explicit anti-migrant platforms, and such parties have recently entered government in Austria, France, Denmark, Italy and the Netherlands. Centrist governments have frequently adopted maximally restrictive anti-immigrant rules in an effort to dissuade citizens from voting for the extreme right. Austria, for example, repeatedly amended legislation on individual establishment rights for foreigners throughout the 1990s in a failed effort to keep Jörg Haider's Freedom Party out of office. The result was a legal regime that left little room for greater restriction when the Freedom Party finally did enter government. Even very mild attempts to provide a basis for some legal immigration have often come to nothing. Germany's recent attempt to provide a legal basis for the immigration of highly skilled workers to supplement an aging and shrinking general population has recently been overturned by that country's Federal Constitutional Court. Some observers have posited that the failure to provide an adequate legal framework for immigration is due primarily to the interest of business in preserving a black market for migrant labour, particularly in such industries as agriculture.²

The corpus of restrictive Western European laws and policies has in recent years been exported to Central and Eastern Europe – regions where no adequate legal basis for migration was established in the post-war era, and where migration was kept to a trickle during the Communist period.³ On a number of occasions, it has appeared that Western European governments hope that Central and Eastern Europe will be a new *cordon sanitaire* against what they perceive as a threatened deluge of migrants from the East.

At the same time, Roma are an inherently suspect class of migrants, particularly as a result of deep-seated European myths about "Gypsies". Roma are widely perceived to be "nomads", a mysterious wandering folk with no links or loyalties other than to kin and clan, and a propensity for crime and fraud. A number of current European policy initiatives are based on these kinds of preconceptions. Most notable is Italy, where policies on Roma are literally called "policies on nomads" and are predominantly aimed at racial segregation through the construction of a network of walled-in com-

2 See presentation by Nicholas Bell of the European Civic Forum at joint session of the European Parliament and the Parliamentary Assembly of the Council of Europe on "clandestine migration", 10 March 2002.

3 See Sandra Lavenex, *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*, Budapest 1999.

pounds isolating Roma from the mainstream of Italian society.⁴ It is hard to imagine a less-well-conceived policy, since for the most part the “nomads” in question are Roma from Romania, Bosnia, Macedonia or other parts of South-eastern Europe who have only recently left settlements their people have generally lived in for centuries (and were forced to do so by the twin pressures of ethnic hatred and increasing destitution). These individuals are denied the chance to integrate into Italian society and are instead placed in government-run ghettos, under more-or-less constant surveillance. The police raid such camps on a regular basis with the aim of expelling their inhabitants from the country or at least forcing them to move on. The racist core of the policy is evident in the fact that one occasionally finds *Italian* Roma relegated to “camps for nomads”, as well as ethnic Albanians, Bosnians and other non-Roma. The “Gypsy” is in the eye of the beholder, in this case the state policy created by those who have an interest in perpetuating the Gypsy myth. Italian policies on “nomads” are an extreme case, but are by no means unique.

With all migrants now inherently suspect, only those migrants who conform to “our way of life” are likely to achieve a secure legal status and integration. Roma, giving rise to suspicion from their first contact with officialdom, are extremely unlikely to make the grade.

Policies on Itinerants – Local Expulsion – Racial Segregation

Some policies linking Roma and migration have been born out of a sincere effort to address the issue of itinerant communities in cases where a real overlap may exist between itinerancy and ethnicity.⁵ For example, since the early 1980s, the British government has supported programmes for Traveller education via government agencies such as the Office for Standards in Education (OFSTED) and the Advisory Council for Education of Romany and other Travellers (ACERT). Such policies have focused on outreach to children of itinerants through the provision of supplementary teachers, training and retraining efforts for educators, the introduction of travelling school records and other measures aimed at providing greater flexibility than state-provided educational systems have traditionally shown towards itinerants.⁶ The core of such policies has concerned the provision of halting sites – or rather the obligation on municipalities to provide places for itinerants legally to halt. To date, however, these have not been able to successfully counteract

4 See European Roma Rights Center, *Campland: Racial Segregation of Roma in Italy*, Country Reports Series No. 9, October 2000.

5 In some Western countries, such as France, Netherlands and the UK, Roma comprise a significant portion of all itinerants, although not all Roma are itinerant in practice.

6 For a useful summary of “Traveller policy” in the UK, see Rachel Morris/Luke Clements, *At What Cost: The Economics of Gypsy and Traveller Encampments*, Bristol 2002, pp. 11-28.

the pressure towards expulsion. In recent years, and in particular since legal amendments in 1994, the obligation on municipalities to provide halting sites for itinerants has been eviscerated, and local expulsions are now frequently reported.

The UK is by no means alone in pursuing policies of local expulsion. The European Roma Rights Center (ERRC) and the Greek Helsinki Monitor have recently published a report focusing primarily on policies by local authorities in Greece aimed at expelling Roma from municipalities.⁷ Further, following a general weakening of tenants' rights through legal amendments in a number of countries of Central and Eastern Europe, Roma have, in recent years, often been forcibly evicted from their homes in countries such as the Czech Republic, Hungary, Romania and Slovakia. In some instances, whole Romani communities have been violently expelled. For example, the United Nations Committee Against Torture has recently found Yugoslavia in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in connection with the 1995 expulsion by pogrom of an entire Romani community in Danilovgrad, Montenegro.⁸

In the mildest – but no less egregious – case the authorities refrain from expulsion, but pursue policies of racial segregation to achieve a similar effect: the forcible separation of Roma from non-Roma. Racial segregation is particularly visible in the field of education, and segregation is reported in most if not all of the school systems of Central and Eastern Europe as well as in some countries in Western Europe. The ERRC is currently engaged in litigation with respect to racial segregation in the school systems of Croatia and the Czech Republic.⁹

The Asylum Debate – Roma and Expulsion

When Roma from Central and Eastern Europe have left their homes and gone to Western Europe, they have often been acting exactly like their non-Romani compatriots: responding to the prolonged economic difficulties of the post-Communist transition in Central and Eastern Europe by emigrating in search of better opportunities. Roma and non-Roma have been faced with the difficulties that await all immigrants in foreign countries. However, some Roma have, in addition, been compelled to leave their homes by racially motivated violence and ethnic cleansing: Roma were ethnically cleansed from Kosovo by ethnic Albanians beginning in June 1999, and Roma all over

7 See European Roma Rights Center/Greek Helsinki Monitor, *Cleaning Operations: Excluding Roma in Greece*, Country Reports Series No. 12, April 2003.

8 For details of the ruling, see: http://www.errc.org/publications/letters/2003/montenegro_jan_22_2003.shtml.

9 For details of the legal action in connection with Croatian schools, see Branimir Pleše, *Racial Segregation in Croatian Primary Schools: Romani Students Take Legal Action*, in: *Roma Rights* 3 and 4/2002, at: http://www.errc.org/rr_nr3-4_2002/legal_defence.shtml. On the Czech case, see: http://www.errc.org/publications/letters/2000/cz_april_18_2000.shtml.

Central and Eastern Europe have been the targets of racially motivated attacks. Moreover, a number of Roma who have left their homes in Central and Eastern Europe as a result of economic hardship may also be refugees, insofar as their poverty or extreme poverty is the result of racism and the denial of rights in the East. Against this background, there can be no doubt that some Roma have left their countries of origin as refugees. Frequently, however, policies on the expulsion of Roma are couched in the language of “abuse of the asylum system”.

The right to asylum has been under assault in a number of EU member states since the early 1980s. In Germany, for example, the Kohl governments (1982-1998) expended extensive efforts at both repeatedly reminding the German and non-German public that “Germany is not a country of immigration” and at removing asylum as a right – no easy feat given that asylum was anchored in Germany’s post-war Constitution (*Grundgesetz*) and was widely seen as a key element of German atonement following the Holocaust. Nevertheless, successive generations of Germans have felt less-and-less responsible for the sins of the Nazis and, in 1993, the *Grundgesetz* was amended to tone down the right to asylum. The assault on asylum is currently being played out in the United Kingdom, where, in November 2002, an amended Nationality, Immigration and Asylum Law actually made it a punishable offence to bring a person into the UK (albeit for material gain) if that person is seeking refugee status. This has been able to occur even though in the UK, as in Germany and in fact in nearly all European countries, asylum remains a legal right guaranteed by the 1951 Convention Relating to the Status of Refugees (1951 Geneva Convention). More recently, high-ranking British officials have suggested that the UK may withdraw from the 1951 Geneva Convention and the European Convention on Human Rights, since those laws prevent the UK from swiftly and expediently expelling foreigners.

The attack on the right to asylum has been waged primarily by attempting to whittle it down to the point of meaninglessness. This has been most noticeable in debates concerning who constitutes a refugee, for example in the form of legally dubious efforts to draw distinctions between “genuine refugees” on the one hand, and “(mere) economic migrants” on the other. This distinction has no basis in international law: Under the 1951 Geneva Convention, the term “refugee” applies to any person who is outside the country of his nationality “owing to well-founded fear of being persecuted” for one of the five Convention reasons – race, religion, nationality, political conviction or membership of a social group. The United Nations High Commissioner for Refugees – the guardian of the 1951 Convention – in attempting to elucidate the link between racial discrimination on the one hand and persecution on the other, has observed that “[...] in certain circumstances [...] discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his liveli-

hood, his right to practice his religion, or his access to normally available educational facilities.”¹⁰

It would be difficult today to find a person in Europe who had been recently recognized as a refugee on such grounds. European asylum authorities currently seem loath to recognize as a refugee anyone who will not assuredly die upon arrival in his or her home country. In many cases, asylum adjudicators devote extensive and single-minded efforts to trying to prove that persons requesting refugee status are lying.¹¹ As asylum lawyer Deborah Winterbourne has described, at present, “Western European states strive to achieve a fine balance between demonstrating that they abide by the Convention, while at the same time granting refugee status to an extremely limited number of persons. This is because these governments do not want to anger the resident white population, who often fear that dark-skinned foreigners will absorb scant welfare resources.”¹² Some people working on refugee protection issues have concluded that it may be wise to capitulate on the Romani refugee issue in an effort to preserve the system itself: It is easier to convince the public of the need to protect one or two prominent individual politicians or labour leaders than to protect persons threatened on an ethnic basis, whose refugee claims threaten to be basically identical to thousands of others.

Insofar as Roma are more likely to make use of the asylum regime in Western Europe than non-Roma (because they are more likely to be refugees), and because new Romani arrivals attract attention due to old suspicions about “Gypsies”, migration from Eastern Europe has itself sometimes been stigmatized in Western Europe as “Gypsy migration”, with concomitant panic about threats to the welfare state often driven by the tabloid press. Authorities in Western Europe then typically respond with draconian measures against Roma. A number of European countries, such as Belgium, Denmark, Finland, Italy, Sweden and the United Kingdom, have in recent years seen outbreaks of media-driven anti-Romani sentiment following the arrival of groups of Roma from Central and Eastern Europe. These have frequently been collectively expelled amid panic about “Gypsies out to rip off the sys-

10 Office of the United Nations High Commissioner for Refugees (ed.), *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, reedited, Geneva 1992, para. 54, also at: <http://www1.umn.edu/humanrts/instrree/refugeehandbook.pdf>.

11 In a recent case, a Romani man from Poland was refused asylum in Britain on grounds that his testimony had been inconsistent and was therefore implausible. The inconsistency lay in the fact that during an initial interview, he told asylum authorities in Britain that racist skinheads in Poland had threatened to “kill him slowly, like Hitler”, whereas during a subsequent interview, he stated that they had threatened to “kill him, like Hitler.” His failure on the second occasion to qualify the killing with the adverb “slowly” was deemed to render his testimony as a whole implausible and therefore his claim to refugee status was ruled “unfounded”.

12 Deborah Winterbourne, *Love Thy Neighbour*, in: *Roma Rights* 1/1999, p. 69.

tem”.¹³ Increasingly, the best many Roma can hope is an enforced stay in Eastern Europe, while it is unfortunately becoming more and more common for them to find themselves in exclusionary limbo, with ever more bizarre stories of degradation being reported.¹⁴

Expelling Roma provides governments with the opportunity to illustrate a new ideal: that of appearing to be simultaneously humanitarian and strict on abuse. They argue that, in order to affirm the commitment to providing asylum to refugees, governments must expel persons who would corrode and corrupt the asylum system by bringing bogus claims of needing surrogate international protection. By expelling the “bogus asylum-seeking” Roma, governments would therefore be contributing to the defence of a humane system. This logic is unassailable, taken on its own. However, in order to defend such a position, governments must assert that, in certain countries, there are no human rights issues that might give grounds to flee persecution, disregarding any and all facts that might challenge this claim.¹⁵

13 For details of the Belgian case, see Claude Cahn/Peter Vermeersch, *The Group Expulsion of Slovak Roma by the Belgian Government: A Case Study of the Treatment of Romani Refugees in Western Countries*, in: *Cambridge Review of International Affairs*, Volume XIII/2, pp. 71-82.

14 To cite only one example, throughout 2002 and up to the time of writing, a group of Roma has lived at the Otopeni airport in Bucharest after Germany expelled them prior to the completion of appeals for asylum on the basis of the fact that they were stateless. Upon arrival at the airport in Bucharest, they refused to accept Romanian citizenship, as was their right, or to enter Romania, nor could they manage to get to Germany to hearings in their appeals for asylum. They have therefore lived for months in the “international zone” of the airport.

15 A particularly clear version of this is provided in a letter sent by Prime Minister Tony Blair in July 2002 to Prime Minister Vladimir Spidla of the Czech Republic, the text of which follows: “Dear Vladimir, As you know I attach great importance to our relations with the Czech Republic, I enjoyed our meeting in Prague in April. It was a pleasure to be able to congratulate you on your election victory. I now have to seek your urgent help over the recent surge in asylum claims by Czech citizens. There were 332 claims in May and 878 so far in June. This puts the Czech Republic among the biggest sources of asylum claims in the UK. Abuse on the current scale damages both our countries and undermines the integrity of the asylum system. The UK is proud of its record in providing asylum to those who need it. But the Czech Republic is a valued member of the democratic family, a NATO ally and on the threshold of joining the EU. There are no grounds for Czech citizens to seek protection abroad. Since I wrote to Milos Zeman in September 1999, we have worked closely together to this shared problem. I am very grateful for the help we have had over pre-clearance at Prague airport. While the scheme has undoubtedly helped, claimants have started to get round it by travelling overland to Dover and other UK ports. The number of claims is now higher than it was before pre-clearance. We need to take action. At our end, we are introducing legislation that will give us further powers to combat asylum abuse. This includes to remove claimants before their appeals are heard, when their claims are manifestly unfounded. But this will take until November and we need to bring the problem under control straight away. At present the bulk of the claimants from the Roma community, are arriving in the UK on long-haul coach services. They are clearly well organised and being assisted in taking advantage of our immigration laws. That is unacceptable. So I hope that you will take whatever action is necessary against the coach drivers, to stop this abuse now. In addition the Roma community need to know that unfounded asylum seekers will be returned immediately. We will of course be happy to work with you to ensure that this message is communicated rapidly and clearly. It has always been our policy to work with your government to tackle this shared problem. I hope this approach can be successful again. But I cannot rule out any option for dealing with

Racially Discriminatory Border Policy

The effects of expulsion – the *de facto* exclusion of a person from a country – are reinforced with respect to Roma by racially discriminatory border policies in Europe. Due to the very discretionary nature of procedures such as visa allocation and the decision to allow a person to enter the territory of a state, public written record of such policies is not available, for the most part. However, in some cases, policies are explicit and public. For example, since April 2001, the United Kingdom has pursued a border policy based explicitly on racial discrimination, singling out persons belonging to seven named groups – Kurds, Roma, Albanians, Tamils, Pontic Greeks, Somalis and Afghans – for special measures.¹⁶

Concern by Intergovernmental Organizations

The expulsion of Roma from Western European countries has not escaped the scrutiny of some intergovernmental institutions, most notably the European Court of Human Rights (ECHR). The “collective expulsion of aliens” is banned under Article 4 of Protocol 4 of the European Convention on Human Rights. However, until 2002, the ECHR had never found any state in violation of the provision. In February 2002, ruling very swiftly by its current standards, the Court fined Belgium close to 20,000 euros for collectively expelling a group of Slovak Roma in autumn 1999.¹⁷ Later the same year, the Italian government settled out of court for close to 150,000 euros with a group of Bosnian Roma after the Court ruled in favour of their complaint that they had been expelled collectively in 2000.¹⁸ The Court’s concern has been such that, in *Čonka v. Belgium*, it may have created new evidentiary standards for collective expulsion cases.¹⁹

this unacceptable situation. I wanted to share my concerns with you frankly. I believe that we should be able to end unfounded claims by rapid action. We can then focus on the wider agenda of European reform and renewal, which we share.” (Reprinted in Eva Sobotka, *Romani Migration in the 1990s: Perspectives on the Dynamic, Interpretation and Policy*, in: *Romani Studies*, forthcoming).

- 16 Race Relations Act 1976, Section 19D Ministerial Authorization, Discrimination on Ground of National or Ethnic Origin, 23 April 2001.
- 17 Cf. Judgment in the Case of *Čonka v. Belgium*, Press release issued by the Registrar, No. 069, 5 February 2002, at: <http://www.echr.coe.int/Eng/PRESS/2002/feb/Conkajudepress.htm>.
- 18 Cf. *Sulejmanovic & others and Sejdovic & Sulejmanovic v. Italy* (application numbers 57574/00 & 57575/00), in: Chamber Judgments Concerning Italy and Croatia, Press release issued by the Registrar, No. 561, 8 November 2002, at: <http://www.echr.coe.int/eng/press/2002/nov/8november2002judsepress.htm>.
- 19 See Gloria Jean Garland, Case Note: *Čonka v. Belgium* – Inroads into Fortress Europe?, in: *Roma Rights* 2/2002, pp.30-31.

The post-1989 era has been characterized by ambitious policy efforts aimed at encouraging European integration, predicated upon the free movement of goods, services and people inside the European Union, and the provision of “European citizenship” to all citizens of EU member states. Many have noted that the EU has increasingly taken on the competencies of a nascent state. Since 1999, policies on migration and refugee affairs have been within the EU’s “First Pillar”; in other words, they have been matters for direct European Union governance. The dismantling of internal borders inside the EU has been linked to policies aiming to secure the Union’s external borders.²⁰ At the same time, the EU has led efforts to combat racism and xenophobia in Europe, in particular by the adoption in June 2000 of Directive 2000/43/EC “implementing the principle of equal treatment between persons irrespective of racial or ethnic origin”. The Directive sets out a framework for laws banning racial discrimination, and sets a deadline of 19 June 2003 for existing EU member states to transpose the requirements of the Directive into domestic law, and a deadline of the date of accession for transposition by candidate countries. In early 2002, the EU made explicit that it regarded the Directive as among its primary instruments for addressing issues related to the human rights of Roma in EU candidate states.²¹ Although the EU has not yet made similar pronouncements with respect to the situation of Roma in current member states, a number of international monitoring bodies, including the Council of Europe’s European Commission against Racism and Intolerance (ECRI), the Framework Convention for the Protection of National Minorities and the United Nations Committee on the Elimination of Racial Discrimination (UNCERD) have repeatedly stated that issues facing Roma need to be addressed with anti-racism and anti-discrimination policies and legal measures.

Worryingly, however, the EU has been seen to be erecting a high wall between its efforts to guarantee the right to free movement to persons, and its efforts to combat racial discrimination. Thus, Article 3(2) of Directive 2000/43/EC 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 con-

20 The project of integration inside the EU as it currently exists has been deemed fragile enough that candidate countries for European Union membership have been told that their citizens may have to forego the full benefits of free movement for a number of years after accession, scheduled for a number of candidate states for 2004. This has on a number of occasions heightened anti-Romani tensions in Central and Eastern Europe as, for example, the imposition of visas or other stringent policies on candidate countries such as Slovakia and Romania have been blamed on Romani migrants from those countries organizing “ethno-tourism” in the EU.

21 See http://www.europa.eu.int/comm/enlargement/docs/pdf/brochure_roma_may2002.pdf.

cerned.” By allowing states a free hand to racially discriminate in “any treatment which arises from the legal status” of aliens, the EU has dramatically missed an opportunity to halt the policies of expulsion currently reshaping the demography of Europe’s Roma population. Indeed, the provision hints at a future Europe in which desirable whites move and settle in economically viable and physically safe areas, while the dark-skinned and suspect may be shifted legally and with ease to the margins.

These troubling issues notwithstanding, there are legal instruments at hand that, if endorsed and strengthened, could provide a framework for expanding the rights of migrants and avoiding the debasement of European polities through race-based settlement policies. Both the United Nations and the Council of Europe have developed legal instruments relating to the rights of migrant workers and their families. The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force on 1 July 2003. Thus far, only three OSCE States (Azerbaijan, Bosnia and Herzegovina, Tajikistan) have ratified it. The Council of Europe’s European Convention on the Legal Status of Migrant Workers is in effect but remains similarly under-ratified. Ratification and implementation of both treaties by all European states would provide an important foundation for the rights of migrants.

A potentially more far-reaching legal instrument for the purposes of securing the rights of citizens of one European state factually residing in another is the Revised European Social Charter. The rights guaranteed in the Social Charter, which include access to housing, health care and social services on a non-discriminatory basis, apply to an individual if both country of origin and country of residence have ratified the relevant article of the Charter. Moreover, such rights are in principle actionable in court, and mechanisms exist within the Council of Europe to consider complaints. At present, however, the articles of the Charter are under-ratified, and unlike in the UN system, the social and economic rights protected under the Charter are regarded as second-order and not as fundamental as those protected by the European Convention on Human Rights. The Revised Social Charter review mechanisms are similarly not empowered to reach binding decisions in the same way as the European Court of Human Rights may do in cases of violations of the European Convention. This will need to change if Romani and other migrants are to secure real *de facto* rights in countries of exile.

In addition, recent legal instruments to combat racial discrimination do not explicitly exclude migration issues and migrants (they are excluded from the EU Directive). They may therefore be of use in combating racial discrimination against aliens. For example, in November 2000, the Council of Europe opened for signature Protocol No. 12 to the European Convention on

Human Rights. Once in effect, Protocol No. 12 will expand the ban on discrimination under the European Convention to any right secured by law.²²

Conclusion: Roma and Expulsion

The search for European policies on the Roma currently begins and ends with expulsion. If two questions have haunted European post-war efforts at regulating human behaviour, these have been how to address the lingering issues of race in post-genocidal, post-colonial Europe on the one hand, and how to respond to the movement of people, on the other. The latter has on many occasions been seen as a direct threat to the establishment and maintenance of the comprehensive welfare state – one of post-war Europe’s proudest achievements – as well as other ambitious European policy efforts, notably European integration. Roma have found themselves at the heart of both of those debates, and frequently not for reasons with a harmless or innocent pedigree. Frequently, policy measures on Roma have begun by linking Roma with (domestic or international) migration or itinerancy. In some instances, where goodwill is present (by no means always the case), subsequent policy efforts have grown more nuanced. Nevertheless, under conditions of crisis (something that is ever more frequent in Europe following the end of Communism and the growth of large-scale migration to Europe), policy on Roma is often reduced to its lowest common denominator, namely policy on expulsion. This is usually due to racism or xenophobia and frequently both.

Expulsions of Roma are regularly accompanied by sentiments such as: “Of course, they will have a difficult time in their own countries, but they must go back and fight for their rights at home.” Such views can be heard among the most Roma-friendly quarters of the European public – from the mouths of politicians, journalists, members of intergovernmental organizations and from the lay public. The sentiment wraps the justification for expulsion in civil-rights-friendly packaging: “If we do not expel these Roma, who will go and fight the good civil-rights fight on behalf of all Roma in Eastern Europe?” On the border where paternalism spills over into sheer coercion, such justifications attempt to sell expulsion to Roma in patriotic terms: “You should want to go back to your country of origin, for the sake of your people.”

Efforts to combat the expulsion of Roma are currently very weak. In response to the threatened expulsion of Roma from Germany, in March 2003, the Council of Europe sent a field mission to Serbia and Montenegro. The report of that mission was not yet public as of the date of this writing, but several members of the Parliamentary Assembly of the Council of Europe –

22 European Convention on Human Rights Article 14 – the existing provision banning discrimination under the European Convention – extends only to rights secured under the Convention.

including one member of the delegation that visited Serbia and Montenegro for the Council of Europe – had tabled a motion on the issue.²³

In the past, however, efforts by the international community were significantly stronger. The OSCE was previously a leader in the area of combating the expulsion of Roma. For example, it was especially within the OSCE framework that international efforts were mobilized to amend the 1992 Czech Citizenship Law, a piece of legislation widely viewed as aiming to expel Roma from the Czech Republic.²⁴ The 1999 amendment of the Czech Citizenship Law – amendments that remedied most of the legally problematic areas of the law – was strongly urged in OSCE forums. OSCE efforts are now needed to combat the expulsion of Roma in general, and from Western Europe in particular.

First and foremost, some sanity needs to be introduced to European discourse on refugees and migrants. Most importantly, migration needs to be recognized as a fact, not as a “problem”, and a fact that calls for human rights-based policy-making for the benefit of all. Secondly, refugees need to be provided with the surrogate protection that is their legal right. Finally, anti-Romani animus needs to be extirpated from European discourses on migration and asylum, so that appropriate policies can be applied in a humane fashion.

23 See <http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FWorkingDocs%2FDoc03%2FEDOC9727.htm>.

24 For details of issues related to the expulsion of Roma from the Czech Republic following the adoption of the Czech Citizenship Law, see Beata Struharova, *Disparate Impact: Removing Roma from the Czech Republic*, Roma Rights 1/1999, pp. 47-51.