

# The Human Rights of Eastern European Roma in Norway

*Malcolm Langford, NCHR, Faculty of Law,  
University of Oslo*

# Lens



International and European law as applied to  
Norway.

# Foreigners' Rights in Norway

- Tourist: Minimum Package
  - Civil and property rights, emergency health care, non-discrimination for certain socio-economic rights
- Citizen: Full package
  - Includes voting and all SE and equality rights
- Other Migrants?
  - Varies between and within categories
  - Can be minimum package+ or full package-

# Eastern European Roma



Rights without borders?

# Which category?

- Tourists?
- EU/EFTA Job-Seekers, Self-Employed, Workers?
- National minority?

*There are better opportunities and social circumstances for Roma [in Western Europe] to find work and make a dignified life, unlike in Hungary where everyone spits on us.*

EU FRA (2009), Interview with a

Roma woman, Spain, 23 March 2009.

*D. H. v Czech Republic, European Court of Human Rights:*

- “182. The Court notes that as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority (see also the general observations in the Parliamentary Assembly's Recommendation no. 1203 (1993) on Gypsies in Europe, cited in paragraph 56 above and point 4 of its Recommendation no. 1557 (2002): 'The legal situation of Roma in Europe', cited in paragraph 58 above). As the Court has noted in previous cases, they therefore require special protection (see paragraph 181 above).”

# EU/EFTA *Freedom of Movement*

## *Directive (2004)*

- Preamble: (2) “The free movement of persons constitutes one of the fundamental freedoms of the internal market...2
- Article 6 (1): “Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.”
- Article 7(1): The right of residence can be longer than three months if they:
  - (a) are ***workers*** or ***self-employed persons***
  - (b) have ***sufficient resources*** so as **not to become a burden** on the social assistance system
  - (c) are enrolled for a course of *study*; or
  - (d) are *family members* of the above



# Self-Employed: Wide definition

- European Court of Justice has adopted a very wide definition of self-employed, which has included so called morally 'deviant' activities as prostitution: Case C-268/99, *Jany* (20 Nov 2001).
- The Court has refused to accept Member State definitions that would limit definition of a 'worker' to those with a contract of employment and has favoured a meaning of 'worker' covering all persons engaged in economic activity.
- The Court's case law extended the meaning of '**worker**' beyond 'employee' in order to cover other persons engaged in **economic activity**, even without a contract of employment, and including even those without a contract at all, but who are **seeking work** (*R. v. Immigration Appeal Tribunal, ex parte Antonissen*, Case C-292/89).
- For Roma, selling a newspaper, street music and bottle collecting would seem to fit definition; possibly even begging. Is registration required?

# Sufficient Resources/Burden: Flexibility

## Article 8(4): Sufficient Resources

- States cannot set a fixed amount which they regard as 'sufficient resources'
- They must take into account the personal situation of the person concerned.
- If set, cannot be higher than level for social assistance.

## Article 14(4): Job-Seeking as Exception to Burden Test

- Cannot be expelled if came to seek employment.
- But need to provide evidence of job-seeking and that there is a genuine chance of being engaged.

# Revised European Social Charter

- Contains special provisions on migrant workers in Article 18 and 19.
- Must be “*lawfully resident or working regularly* within the territory” of the State concerned”.

# National Minority?

- Framework Convention for the Protection of National Minorities
- 2010 - Broad Norwegian position: “Når personer kommer til Norge som har bakgrunn fra de samme gruppene som i Norge har fått status som nasjonale minoriteter, vil disse som hovedregel omfattes av tiltak som er utformet for den nasjonale minoriteten (for eksempel språkopplæring), *selv om den enkelte person ikke har langvarig tilknytning til landet.*” (Norges Tredje periodiske rapport om gjennomføringen av rammekonvensjonen, 2010, s. 3)’
- Endorsed by the Convention’s Advisory Committee: «In particular, migrants who belong to ethnic groups with national minority status, although they have arrived recently in Norway, are entitled to benefit from the same measures as those intended for the national minorities.» Resolution CM/Res CMS(2012)11 (App. 6)
- 2012 - Narrow Norwegian position: Letter from FAD 8 August to Roma camping in Sognsvann: “Rom som bor kortvarig i Norge i medhold av EØS-avtalen, hører ikke til den romgruppa som er anerkjent som nasjonal minoritet i Norge. De er dermed heller ikke omfattet av det særskilte vernet som følger av bestemmelsene i Rammekonvensjonen. De personene det gjelder er altså å regne som EØS-borgere på korttidsopphold i Norge.» Departementet krever langvarig tilknytning til Norge.
- Which position is right? Advisory Committee has reminded that a State cannot be the sole arbiter of who is a national minority. The selection must be made in good faith and must adhere to and be consistent with the objectives and purposes of the Convention. The issue will arise during Norway’s next report.

# Category Conclusions

- Roma are *not* tourists even though the directive makes tourism easier for EU/EFTA nationals.
- In essence, the Directive creates a hybrid category of *temporary migrant* and *long-term citizen*. It creates a clear *path* from initial residence through to automatic rights to permanent residence and citizenship after various periods.
- Migrant workers would be a better description of Eastern European Roma who come to Norway. Also fits with Revised European Social Charter.
- For Roma who cannot be classified as self-employed, are they self-employed? Some could be at risk of expulsion if don't show evidence.
- Possibly an argument that they are a national minority.

# What Rights?

- Most Roma fall into a category of *short-term and temporary migrants*.
- This means the package of rights will most likely be 'minimum-plus'.
- Socio-economic rights with positive obligations and local voting rights tend to be attached to more short-term and permanent migrants: i.e., stay than more than 6 months or contribute to social insurance system.

# Summary Conclusions on Rights

- Right to protection against forced evictions: authorities must provide stronger justifications, ensure no discriminatory targeting, and afford improved and proper due process (ECHR, *Connors v UK*; ICESCR – *General Comment No. 7*)
- Right to seek and accept work
- Equal treatment in access to public facilities, private services and labour market/services.
- Provision of access to basic water, sanitation and accommodation may be necessary to stop perpetuation of racial hate and discrimination.
- Right to health services under EU system and at least emergency medical care and housing under ICESCR in serious situations.
- General obligation to remove barriers preventing Roma exercising economic, social and cultural rights.

# EU Directive on Free Movement

Article 24 (1): Shall enjoy **equal treatment** with nationals

Article 24(2): The host State shall **not** be obliged to provide **social assistance** during the first three months or, where appropriate, the longer period provided for in Article 14(4)(b).

- Equal treatment: Covers access to existing public water and sanitation facilities, camping grounds, restaurants etc
- In seeking employment, there must be equal treatment.
- To what extent is there a substantive equality requirement in this equal treatment obligation? For instance the EU FRA (2009) has recommended that national governments help Roma in the labour market and access public services.
- Note that Roma have should full health coverage through EU card but many Roma don't have card from home State.



# Revised European Social Charter

“With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, **treatment not less favourable** than that of their own nationals in respect of the following matters: a. remuneration and other employment and working conditions; b. membership of trade unions and enjoyment of the benefits of collective bargaining; c. **accommodation**;
10. to extend the protection and assistance provided for in this article to **self-employed** migrants insofar as such measures apply;
11. to promote and facilitate the **teaching of the national language** of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.”

•Conclusions of European Committee on Social Rights on Norway’s 2006 Report: Norway pressed on residence requirement for access to housing programmes. But if applies after six months, seems to be reasonable enough for the Committee.

# International Covenant on Economic, Social and Cultural Rights

- Article 11: Right of everyone to an adequate standard of living, including adequate food, clothing and housing. Includes right to water and sanitation (General Comment No. 15, Statement 2010; GA/HRC Resolutions 2010)
- Does the minimum core apply to Roma? Norway has the resources to easily provide water, sanitation, camping places – and this is the barest of minimums.
- Article 4 Limitations: the State may subject the rights to such limitations as are “determined by law”, “compatible with the nature of these rights” and “solely for the purpose of promoting the general welfare in a democratic society.”
- Beyond emergency medical care and perhaps accommodation in life-threatening situations e.g., very cold conditions, is there more?
- Problem: The residence of Roma is based on the presumption of sufficient resources or employment/self-employment: i.e., that they meet the minimum core.
- But if over time the number of Roma is steady and constant each year (the pull factor argument is not so strong) then there may emerge some sort of entitlement to assistance.

# ICERD

- Article 5. States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone... in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: ....
- CERD General Recommendation 30 on Discrimination Against Non-Citizens: «Remove obstacles that prevent the enjoyment of ESC rights by non-citizens, notably in the areas of education, housing, employment and health”
- CERD General Recommendation 27 Discrimination Against Roma: “take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin.”
- Article 2(c): Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or **perpetuating racial discrimination** wherever it exists;
- Poor socio-economic conditions is helping perpetuate racial discrimination, hate speech and even violence against Roma. Has the government taken the action required by Article 2? No seems to be the answer.

# Framework Convention on National Minorities

## Article 4

- 1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
- 2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of **economic, social**, political and cultural life, **full and effective equality** between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

## Article 15

- The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

# Conclusions on Rights

- Right to protection against forced evictions: authorities must provide stronger justifications, ensure no discriminatory targeting, and afford improved and proper due process
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- Provision of access to basic water, sanitation and accommodation may be necessary to stop perpetuation of racial hate and discrimination.
- Right to health services under EU system and at least emergency medical care and housing under ICESCR in serious situations.
- General obligation to remove barriers preventing Roma exercising economic, social and cultural rights.
  
- In addition, some Eastern European Roma may soon become a national minority, even on the Norwegian government's own argument. This requires policymakers to return to the problem of poor performance on socio-economic rights for Norwegian travellers and the lack of effective and appropriate policies.