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Irregular Migrants in Europe: Roma People and Returnees

Abstract

The author intends to describe two overlapping categories of irregular migrants in contemporary Europe. While Roma people in most European states are facing exclusion and discrimination to different extent in various levels of social, economic and cultural life, as migrants and (forcibly) returned migrants together with stateless persons from ex-Yugoslavia they also have to buffet existential shortages and marginalisation that may push them further to (irregular) migration internally or among states. The Parliamentary Assembly of the Council of Europe makes clear distinction between irregularity and illegality of migratory movements urging a common pan-European approach to protect irregular migrants in need. Despite of a lot of adopted legal and political documents on migration, the human rights of returnees and Roma integration programmes, the stigmatisation of Roma (migrants) is growing in connection to numerous legal techniques attempting at the limitation of lawful migration. Due to lack of efforts for durable solutions in the integration of Roma - irregular migration and increasing violation of human rights is predictable in the near future.

1. Deplorable facts on exclusion

In Europe the number of Roma is estimated at 8 to 12 million, their greatest number lives in Central-Eastern Europe (in particular in Romania, Slovakia, Bulgaria, Hungary and former Yugoslavia). There

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are numerous factors of segregation and non-inclusion of Roma², such as in the labour market (e.g. the unemployment rate in Slovakia is 70 percent, in Czech Republic 85 percent) as well as in housing conditions (for instance, half of Roma in Slovakia is living in exclusively Roma neighbourhoods and 50,000 in 281 segregated settlements, many of which lack water and electricity, or the appearance of loan-sharking frequently ends in loss of housing and usury in Slovakia and Hungary). There are many evidence on unequal access to public education, for instance, half of the Roma population in Romania was illiterate in 2001, 90 percent of Roma in Bulgaria do not have an elementary school education, or more than 52 percent of Roma children in schooling age (7-16) are out of public education³. For this reason in 1998 UN CERD carried out observations in the Czech Republic and *de facto* segregation in education was ascertained (Art. 5 of ICERD).⁴ Due to unregistered birth or persons without identity cards, or any kind of personal documents there are many in fragile legal status including citizenship law (e.g. in 1993 in Czech Republic) that through *de facto* discrimination most Roma were in the position of aliens. Moreover, these inequalities are accompanied with limited civil rights protection by the police and justice, especially if Roma are the victims of racial violence. Although racially-motivated violence including serious actions of police brutality is observed in Slovakia or Hungary, *efficient and retentive sanctions are not implied by courts against racism*, even if there are some accurate investigations and well-founded prosecution of abuse, attack or misused power. For instance, in Bulgaria (13/14 Aug 2007, Sofia, Krasna Poljana district) after a hard skinhead attack against Roma neither ethnic, nor racist motivation was charged by the court, only an array and disturbance of peace.⁵ In Hungary, too, (22 January 2008, Szigetvar) when 5 masked youngsters were beating two Roma women in a park in late evening, the judgement refers to array and attempt of body harm that means 8-12 months imprisonment in suspension or probation period

² Taner, A.: The Roma of Eastern Europe: Still Searching for Inclusion. Migration Policy Institute, Washington DC, May 2005,

³ www.dnes.dir.bg/2007/04/15/news

⁴ See further data in Jan Jarab, Czech Human Rights Commissioner's report, 20 May 2004 (Asylum policy, education of Roma is still problematic)

⁵ Blagovest, Nyjagulov: Roma people in Bulgaria as social and minority issue. Edited by A. Seres, 2008. www.romarights.com

of 1-3 years.⁶ ECRI also calls for a full, transparent and impartial investigation into the recent allegations concerning (forced) sterilisations of Roma women without their full and informed consent in Czech Republic. In the communities visited by the OSCE in Romania, Roma reported that they had been victimized without any possibility of access to justice in their situation, contributing to their negative feelings towards the justice system and police institutions (e.g. an elderly woman, wounded by a rubber bullet, required further medical care but there was no attention taken to this problem by the relevant authorities in the institution which caused the injury). According to the prefect the police action was legitimate and lawful, there were no complaints received from collateral victims who had suffered wounds caused by gun injury nor that such persons were refused medical care, and the regrettable case in question was an exceptional one.⁷ Hungary had to pay 1.5 million HUF in compensation for the violation of Art 3 of ECHR because the investigation in the police brutality case against a Roma man was inadequate, legal remedy and right to legal protection was ineffective⁸.

The European Court of Human Rights (ECtHR) jurisprudence (in Buckley/Chapman/Connors case) the Court ruled that there is “*a positive obligation imposed on the Contracting States ... to facilitate the Gypsy way of life*”. Some discussion of this often-neglected strand of ECtHR jurisprudence might be warranted in this context. Persons has been forced to be nomadic through extreme social exclusion combined with repeated forced expulsion from (usually shanty/informal) housing (Greece, Turkey, France, others).⁹ In its decision on Roma housing in Greece, the European Committee of Social Rights used the following formulation: “*the insufficient number of stopping places for Roma who choose to follow an itinerant lifestyle or who are forced to do so*”¹⁰

⁶ www.stop.hu – 27 Nov 2008

⁷ Office for Democratic Institutions and Human Rights. Field Visit on Police and Roma Relations, Romania (12-15 November 2007) led by Mirga, A., Senior Adviser on Roma and Sinti, ODIHR CPRSI, pp.9

⁸ Kmetty v. Hungary, judgement of ECtHR (16 December 2003). It is cited in Ombudsman Report on missing guarantees in Roma and Police relations and protection of minority rights (No. K2464/2008, Budapest)

⁹ Cahn, Claude - OSCE HCNM/Council of Europe CHR Meeting on Roma Migration in Europe (9 September 2008, Budapest)

¹⁰ Decision 2004, ERRC v. Greece, collective complaint 15/2003

Without justification on the model of “push and pull factors of migration” – Roma communities and individuals can easily be excluded from mainstream society both in sending and destination countries.

2. Irregularity of migration

Although the term of “irregular migrant” is wide spread internationally, there have not been generally adopted definitions that clearly differentiate from or overlap with illegal, unlawful, undocumented, undeclared, overstayed and/or clandestine migrants. Reading the documents of international protection of migrants in the EU and Council of Europe,¹¹ the major components of irregularity can be summed up in three points:

- a. *Migrant remains in the territory of the state and it is not possible to return him/her forcibly or voluntarily to own country of origin (e.g. victims of trafficking);*
- b. *s/he is tolerated but without decisive legal status; and*
- c. *this pending position would have strong effect on shadow (and formal) economy, employment, regular migratory movements and authority measures (attempt for expulsion/deportation, resettlement or voluntary return), legislation (e.g. limitation with reference to public order, including regularisation), legal practice, chance of his/her integration, trafficking of human beings and further non-regular movements. However, these side-effects of “non-status policy” are under- or over-valued depending on political discourses on prohibition, punishment, deterrent or pacification of migrants.*

The above mentioned social and economic facts of exclusion are surrounded by a complexity of migration policy including visa

¹¹ For instance, PACE Recommendation 1633 (2003) on forced return of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro, from COE member states, Committee of the Ministers of COE on 20 guidelines on forced return- first priority is the voluntary return – May 2005, PACE Resolution 1509 (2006) on minimal human rights of irregular migrants that shall be provided until regularisation or return, PACE Recommendation 1807 (2007) on regularisation programmes for irregular migrants, PACE Resolution 1568 (2007) on regularisation programmes for irregular migrants, 2001/40/EC Directive on the mutual recognition of decisions on the expulsion of third country nationals, readmission agreements and others.

system, border controls, labour demands of certain industries that form a comprehensive relationship with employment and migration regulation. This regulation is rather right-based, normative in major destination states in which public order, security, penalising, sanctions, control and policing is more emphasized formally, suppressing the needs of economic and labour market. Irregular migration and irregular employment is in interplay, thus the demand for law skilled workers, cost of transaction of authorisation of entry, residence and migrant labour, permitted move between jobs without applying for a separate job-related work permit, reducing the cost of regular labour in order to make irregular employment less attractive shall be taken into account in its entirety¹². Furthermore, the one-sided public order approach neglects the differences in various countries depending on the size of informal economy and labour migration.

3. Roma migration

Roma migration is *allegedly distinctive in a number of respects*. Firstly, Roma tend to migrate in groups using family, kin, clan or community networks, rather than following the more 'individual' patterns of other migrants. Secondly, Roma migration is claimed to be 'irregular', often accompanied by significant acts of discrimination or particular hostility.¹³ Thirdly, there are less and less legal means of entering the EU including lawful ways for family reunification, highly skilled or professional labour, temporary workers and asylum seekers. Consequently, Roma migrants have recently been left limited regular options, especially as third country nationals (stateless aliens), in the EU or in destinations of forced migration. Since at least the early 1990s, the two primary means available for Roma have been the last two, with asylum an increasingly untenable option. Moreover, a limited number of Roma have used the asylum system supposedly as a means to gaining temporary social assistance,

¹² Andreas, B.- Hancilova, B. – Wickramasekara, P.: Irregular Employment of Migrants: an ILO Perspective. In *Addressing the Irregular Employment of Immigrants in the European Union - Between Sanctions and Rights*. Edited by Kupiszewski, M. and Mattila, H. July 2008, IOM, p. 297-317

¹³ Alexieva, P.: Roma Migration Inequalities in Modern Europe. Department of Anthropology, CSULA <http://repositories.cdlib.org/cgirs/mgi/mgi-11>

applying simultaneously or sequentially to several countries and withdrawing their applications just before decision.¹⁴ Finally, specificity is added to external factors triggering Roma migration, including claims of organized and repeated hostilities against Roma, human rights violations, single acts of violence or a change in their status due to the emergence of new states and/or new citizenship provisions.

However, these features raise the question of the applicability of standard push-pull models of international migration. It is more relevant, how these presumptions and faiths would contribute to the disproportionate attention of the media, the hostility and prejudices toward Roma that their movements spark in host countries. In the absence of ethnic data collection (of migrants) and systematic research on Roma and irregular migration, these assumed features contribute significantly to the *political and symbolic visibility* of Roma migration in contemporary Europe.

What are the major categories of Roma migration? Although data of ethnic origin of applicants, entering migrants or returned persons are not available in a standardized way, through some statistical fragments, daily news and academic papers, the following subgroups can be identified.

- (a) *Asylum seeking.* Roma suffering from open discrimination, racial violence inflicted by government officials including the police are seeking asylum, international protection and refugee recognition. As a temporary strategy they are seeking to improve their economic situation, and a combination of security with better life standards is also detected. However, the most impoverished, illiterate and uneducated Roma do not have the means to leave their countries. Because of these difficulties the total number of Roma asylum seekers from Central Europe is estimated only 12 to 15.000 between 1997 and 2005.¹⁵
- (b) *Migration related to enlargement of the EU and accession.* The movements of new EU citizens were treated as danger,

¹⁴ Kováts, A.: The Opinion of the Hungarian Population on Roma Migration. In: *Roma Migration*. Edited by Kováts, A., Hungarian Academy of Sciences, Budapest, 2002, 138-145.

¹⁵ Migration News, October 2008, Vol.14.No.4, *Roma Migration*. Edited by Kováts, A., Hungarian Academy of Sciences, Budapest, 2002, OSCE HCNM/Council of Europe CHR Meeting on Roma Migration in Europe (9 September 2008, Budapest)

likened to a Roma tsunami in certain member states., e.g. in headlines: e.g. “1.6 million Gypsies are ready to flow in” from Eastern Europe.¹⁶ At the same time the Czech embassy in London rejected reports of ‘Roma siege’, and many Czech Roma were able to apply for asylum in Great Britain before 1st May 2004; they had been looking for jobs in vain and requested help at the embassy to obtain or to be renewed travel documents and to be able to get back to Czech Republic (reasons given were e.g.: they had no money, they had been robbed).¹⁷ There were similar stories about Roma from Hungary¹⁸: e.g. between 1994 and 2000 about 3.800 persons submitted refugee application in Canada despite of low recognition rate (e.g. 153 applications were considered as well-founded in 1998, 74 in 1999 and 343 in 2000).¹⁹ Preventing a new outflow of Roma without proper information on entry, employment and residence in another states (outside the EU), the Ombudsman responsible for minority rights distributed a leaflet on how to obtain relevant information and advice for Roma before they would give up their fragile existence before departure²⁰.

- (c) *Internal migration*: Due to the tradition of mobility, migration between the Czech Republic and Slovakia was continuous, even after the break up of Czechoslovakia. This form of migration has been a significant migration flow since 1945. It was initially a form of chain migration, with continuous flow that resulted in the creation of linked networks of relatives in both the source and target countries. The migration bridge serves a two-way flow of Roma short-term and long-term migration.²¹ In addition to this example there are other patterns of inland Roma migration in other states.

¹⁶ 20 January 2004, Daily Express

¹⁷ 20 May 2004, Mlada Fronta Dnes

¹⁸ Hajnal, L.E.: The Roma in Canada: Emigration from Hungary from the Second Half of the 1990s. . In: *Roma Migration*. Edited by Kovats, A., Hungarian Academy of Sciences, Budapest, 2002, 42-68.

¹⁹ Kovats, A: Migration among the Roma Population in Hungary. In: *Roma Migration*. Edited by Kovats, A., Hungarian Academy of Sciences, Budapest, 2002, p.17.

²⁰ A nemzeti és etnikai kisebbségi jogok országgyűlési biztosa tájékoztatója és tanácsai a kívándorolni szándékozókknak (June 2008, Budapest)

²¹ Uherek, Z.: Roma Migration from Slovakia in the Context of European Migration Trends. *Czech Sociological Review*, 2007/4: 747-774.

- (d) *Returnees/displaced persons from ex-Yugoslavia and citizens of CEE*. Due to gradual pacification in the Balkans and limited migratory movements, there are a lot of formally voluntary or forced migrants in Europe returning to the place of origin, often without genuine contacts and chance to settle down.
- (e) *Other (temporary) migration*, especially as third country nationals' movement, such as visiting family, beggars, seasonal workers, entertainers or prostitutes shall be mentioned.

4. Limits for irregular (Roma) migration

Major destination and transit states (inside and out of the EU) jointly have introduced numerous legal techniques how to hinder short-term, temporary migration because it is considered to be irregular, relating to poor, segregated, unskilled persons possibly endangering public order. For this reason these measures are applicable against Roma migration, too.

- (a) *In asylum*: Roma applicants have to face the safe/third country principle as ground for more stringent procedure and refuse of asylum application. Newly introduced means to deterring economic asylum applications are to replace social benefits (particularly cash benefits) by an in-kind system, while members of kin-group applicants for asylum are separated and accommodated in various places. These changes may dissuade applicants from authority and urge their return or withdrawal of formal claims.
- (b) *Strengthening of border control and public order*: in particular carrier sanctions and external border control have been jointly implemented together with common visa policy or at least by introducing visa restrictions, tighter expulsion procedures and readmission agreements to sieve irregular and illegal migrants²². One of the most effective, fast and sensitive measures which does not require major policy or procedural shifts is the imposition of visas against countries of origin with high numbers of asylum seekers. For instance, in 1997 some 4.000

²² Judit Tóth: Relations of Kin-state and Kin-minorities in the Shadow of the Schengen Regime. *Regio*, 2006/9: 18-46.

Roma arrived in Canada and applied for asylum, prompting the Canadian government to impose visa requirements on Czechs. Canada removed visa requirements for Czechs in October 2007. However, when hundred Czechs applied for asylum per month in late 2007, Canada said it would re-examine the visa free policy, while about half of the asylum applicants have been recognised as refugees.²³ The imposition of visa requirements on the Slovak Republic (1998-2000) by a number of Western European states was very effective in significantly curtailing the number of Roma asylum applications²⁴. Roma from Romania have been migrating in increasing numbers to Italy (in 30-35.000 persons) approximately over the past ten years. The lifting of the visa regime in 2002 and the January 2007 accession of Romania and Bulgaria to the EU means that an increasing number of Roma are exercising their right to freedom of movement within the Union. In 2006-2007 Romanian Roma were publicly accused of two fatal crimes which called forth an uproar of "All Gypsies must go"²⁵ and resulted in discriminating legislation (emergency measures against nomads, extraordinary powers given to officials), practice to conduct censuses in Romani camps, including fingerprinting the inhabitants, physical violence by police officers, expulsion of EU citizens on public security grounds, extreme violence by civil perpetrators (e.g. throwing Molotov cocktails to Romani camp) possible by the failure on the part of state authorities to take any action to protect members of the community or to punish the perpetrators of crimes against Roma.²⁶ After his Italian visit the Commissioner for Human Rights in Council of Europe summarised his legal opinion and

²³ Czech Asylum not a Problem Says Canadian Governor General in Prague. Rosie Johnston, 1 December 2008, www.romove.radio.cz

²⁴ Belgium (13 April – 31 July 2000; 5 September 2000), Denmark (30 November 1999), Finland (7 July – 6 November 1999; 15 January 2000 – 15 July 2000), Ireland (19 October 1998), Luxembourg (20 April – 16 May 2000), Norway (27 July – 6 November 1999; 7 December 1999 – 15 August 2000), UK (7 October 1998) Source: ICMPD 2001

²⁵ Davide Boni, a Northern League representative of the Lombardy Regional Government, 24 May 2008

²⁶ Security a la Italiana: Fingerprinting, Extreme Violence and Harassment of Roma in Italy. ERCC - Romani CRIS - RCR - COHRE - OSI joint project. www.soros.org/initiatives/brussels/articles_publications/publications/fingerprinting_20080715

recommendations in 100 points about how to stop ineffective legal protection against arbitrary interference by authorities and how to respect personal data rights and protection in conformity with the norms adopted by the Council of Europe and EU.²⁷ However, Mr. Hammarberg noted that the impact of restrictive legislative and other measures on irregular migration is much debated, with some experts arguing that in effect they rather ignite irregular migration. For instance, the introduction in 1990 and 1991 of visa requirements for Maghrebis by Spain and Italy has reportedly resulted in the end of the free seasonal and circular labour migration and ignited the irregular migration of these people to Europe.²⁸

- (c) *Labour and social protection of nationals, regular labour forces in destination country* is often supported in (tacit) consent with social partners, such as social allowances provided for workers (not for job-seekers) in order to stop “welfare shopping”, or temporary measures in labour market for A12 workers and a strict family unification practice. These measures may keep away potential (irregular) migrants, too.
- (d) *Enlargement: stick and carrots policy*. Accession criteria include minority issues and non-discrimination provisions, moreover, financial supports to Roma integration programmes have been provided to candidates. On the other hand, the enlarged EU has been reluctant to engage directly in the issue of minority rights and protections²⁹, thus indirect (regional, cohesion, non-discrimination and social inclusion, language, diversity³⁰) policies have developed instead. But these supporting and pilot programmes to improve Roma inclusion are without institutional, financial sustainability and stronger political commitments on the side of the polit-

²⁷ Memorandum by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Italy on 19-20 June 2008. Strasbourg, 28 July 2008

²⁸ De Haas, H.: Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends. IOM, Geneva, 2008.p.32.

²⁹ Halász, I.: National and Ethnic Minorities and Minority Laws in Central Europe, *Minority Research*, 2008/10:131-147.

³⁰ Palermo, F.: Linguistic Diversity within the Integrated Constitutional Space, *Minority Research*, 2008/10:69-108; Vizi, B.: Introduction to the International Protection of Minority Language Rights in Europe, *Minority Research*, 2008/10:149-164

ical elite and have served basically enlargement and external policy purposes. Due to the disintegration process of Roma communities and not to organic, coherent development strategies, during the accession process these financial supports contribute to the strengthening of prejudices towards Roma through the myths of their being “over-supported”.

- (e) *Regularisation actions intend to diminish irregular migrants* through changing their legal status, the recognition of their status and the documents issued to them. The wider evaluation on how this change would establish chances for integration, lawful employment without exploitation as well as debating over regularisation methods is supposed to become a pulling effect for further irregular migration, thus there has been an ambivalent approach to regularisation. In 1982-2007 there were at least 20 regularisation programmes for 4 million irregular migrants including temporary or standard residence and work permits, humanitarian supports for special groups in the EU. These actions mean a legal chance for participation in lawful economy, taxation, social contribution, being paid and furnished with documents may reduce insecurity of migrants.

5. Returnees

Returning migrants can be divided into two major groups on the ground of legal and social positions and combination of disadvantages:

- (a) voluntary or forcibly returned nationals to a consolidated segregation environment. Although voluntary travel is not logical, in legal practice, uninformed, unskilled or poor persons can easily be convinced to move either for self-interest or for some benefit (e.g. support, promised financial allowance). Rejected (illegal) migrants must not re-enter the territory of the state for some years, and fear from consequences of expulsion would induce better informed migrants to leave voluntarily. When Roma return voluntarily or semi-voluntarily to their country of origin prejudices and segregation continues when they try accessing housing, employment, goods and services,

as a result of the interplay of entrenched poverty, racism and discrimination. The investigations of civil organisations conclude that Roma from Central-Eastern Europe are not aware how to obtain legal help and protection against discrimination. E.g.³¹, free legal aid, forum of racial equality in Romania (National Council for Combating Discrimination or Bulgarian Protection Act Against Discrimination (2004) are not known. Due to shortage in trained legal advisers in Slovakia Roma are not clients in discrimination forums, only in some court cases.³² Consequently, their return shall be accompanied with specific social and legal service for communities in need. Complaint from a returnee family from Canada to the Ombudsman in Hungary may represent this continuation of exclusion: „for unemployment and homelessness I need assistance but the local self-government and all the other authorities are totally passive. I have to go away again...”³³

- (b) voluntary but rather forced, (*de jure* or *de facto*) stateless Roma migrants to territories after the war. There has been about 500 000 displaced persons in Serbia, Montenegro and Kosovo (2003), and Roma constitute a particularly vulnerable displaced population. Security, social stability and economic conditions, living conditions are lamentable, they face discrimination and have no permanent status. The majority lives in Germany (25-30 000), the Netherlands (12 000), Belgium, Switzerland and Luxemburg (3-3000). The forced returns of Roma to Serbia started after the democratic changes in Serbia, in September 2000, on the basis of bilateral agreements between Serbia and European states. According to the Report of the Committee on Migration, Refugees and Population (Council of Europe, October 31, 2003): at that time around 1,000 Roma were returned to Serbia, and it was estimated that there was the return of 50-100 000 Roma pending who were awaiting return to Serbia and Montenegro from various member states of the Council of Europe.

³¹ Traveller and Roma Action for the Implementation of Legal and Equality Rights. *TRAILER Project*, 2004-2006. Final Report, European Dialogue, November 2006

³² www.poradna-prava.sk (see Manual for lawyers on anti-discrimination rules and cases)

³³ Case No. OBH 1147/2005 - Ombudsman Yearly Report, 2007, Budapest

The Ecumenical Humanitarian Organisation reported violation of the rights of Roma who returned to Serbia under readmission agreements (2007). Their return was forced by violation or by pressure instead of voluntarily return, expulsion or other form of removal has been executed form of degrading treatment, and when reaching their homeland there is no assistance by national or local institutions. In this way, unemployment, discrimination, no access to education of child, homelessness or inhuman housing conditions are receiving them. Furthermore, there have been provided neither the *publicity of violation of their human rights since removal, nor systematic data collection* or organized approach to the returnees.³⁴ United Nations Committee on Economic, Social and Cultural Rights, and in its session (April and May 2005), the Committee considered the initial report of Serbia and Montenegro on the application of the International Covenant on Economic, Social and Cultural Rights: "The Committee expresses its deep concern about the uncertain residence status and the limited access by [...] returnees from third countries [...] to *personal identification documents* which are a requirement for numerous entitlements, such as eligibility to work, to apply for unemployment and other social security benefits, or to register for school."

The first concrete step in assisting returnees was when the Readmission Office was opened at the Belgrade airport in February 2006, as a project of the Ministry of Human and Minority Rights. Initially the aim of the Readmission Office was to offer legal and urgent humanitarian aid to returnees (3-4 staff members). The Centre for the Integration of Returnees has also been launched in mid-2006, as a project of the Agency for Human and Minority Rights, 64 supported by the Organization for European Security and Cooperation (OSCE) and financed by the European Agency for Reconstruction (EAR). The Centre works jointly with institutions on resolving the issues that affect returnees and protects their rights in a strategic manner, and it also interviews returnees individually. European Roma Rights Centre, Minority Rights Centre collected numerous complaints, cases

³⁴ Ecumenical Humanitarian Organization (EHO): Violations of the Rights of Roma Returned to Serbia under Readmission Agreements (Novi Sad, April 2007) www.ehons.org

in 2002-2007.³⁵ These field reports prove how many problems there are and why urgent actions are necessary:

- legitimacy of expulsion is uncertain (involuntary, judicial review against decision, reasoning of decision, legal representative of migrant is not provided, ban from entering the country must be proportional and individually necessary);
- conditions in which forced returns take place are doubtful or in numerous cases are inhuman (e.g. its immediate enforcement means a degrading treatment, no documentation of identity for person to be removed are supplied, advisory and financial support is not ensured, no individual decision, time spent in the country has not been taken into account, tricky expulsion/deportation practice, appropriate time to leave the country is not provided);
- situation in which forcibly returned Roma find themselves after their return is not projected and calculated in the removal order;
- absence of monitoring system on return and persons in concern should be remedied;
- access to asylum process and fair procedure is uncertain (e.g. the situation of Kosovo Roma deserves special attention according to the UNHCR);
- documentation of birth and identity of (returned) migrants is totally neglected by removal and receiving authorities, however, its absence excludes access to public education, health care, housing, social or family allowances and other administration at local governments;
- readmission agreements do not clearly define the meaning of voluntary return, conditions for the reception of returned persons and do not put responsibility on the receiving state with regard to the reintegration of returnees. For this reason, a well established co-operation among all the responsible ministries, local authorities and NGOs would be necessary in order to reintegrate returned children to school, to prevent violation of ethnic and human rights, statelessness. Naturally, additional

³⁵ See more details on homepage of European Roma Rights Centre www.errc.org

- financial supports from COE funds, World Bank support or other organisations are required; and
- publicity of respected or violated human rights is a necessity, conditions of repatriation/return would be monitored and published in order to prevent possible reasons of re-migratory movements.

6. Proposals as summary

Settled Roma form the overwhelming majority of Roma communities in Europe but today they are considered an important part of irregular migrants due to expulsion and public order actions hindering free movements of European citizens. At the same time, Roma returnees to Kosovo, Serbia and Montenegro including stateless, unregistered children born abroad are also related to public security policy³⁶, while proper conditions of human life are available neither for voluntarily, nor forcibly returned Roma. Inclusion and non-discrimination strategy shall be supported and required in each Roma community and settlement in European states in order to diminish the chance of subsequent or unprotected irregular Roma migrants seeking their only alternative for survival in migration.³⁷ What would be the most important means?

- (a) Analysis, data collection and research of experiences of past regulations in member states and at European level shall be organized involving Roma rights organisations, NGOs, trade unions. It must cover information on the living conditions of irregular migrants, how the change of status and stability of migrants' residence would influence their living standards. This monitoring and regular publicity would be based on experiences of COE, OSCE and FRA in coordination.
- (b) There is no co-operation among pro-Roma and integration-based programmes and policies at regional, national and European level, therefore it is necessary to eliminate the

³⁶ Judit Tóth: Towards a Joint Sweeper of Illegal Migrants. *Central European Political Science Review*, 2005:19; 89-98

³⁷ Migration in an Expanding Europe: EU Enlargement and the Roma Case. Preliminary Draft by Wilkens, E. and Orenstein, M. - Maxwell School, Syracuse University – Prepared for the Conference on *Immigration in a Cross-National Context: What are the Implications for Europe?* July 16-18, 2003, Luxembourg

- isolation policy of employment, facilitate public education and migrants' integration as well as improve housing conditions.
- (c) Roma and police relations should be based on confidence, seek protection of rights and respect for minority rights. In order to prevent police abuse and violence against Roma people, some special measures shall be introduced, such as recruitment Roma into police staff and ensure proper development of their carriers, independent review mechanism for investigation regarding into police matters and the ombudsman's office has to be more active at looking into police interventions.
 - (d) Common European approach is required on irregular migration, regulation including the shift of irregular employment to regular status, return, and informing neighbours/stakeholders on planned regulation. The ILO³⁸ refers to it by the non-building principles and guidelines for a rights-based approach to labour migration. Accordingly, the human rights of all migrant workers should be promoted and respected regardless of their status. Governments and social partners should formulate and implement measures to prevent and eliminate abusive migration conditions, including irregular labour migration, smuggling and trafficking in persons and other abusive practices (e.g. failure to lifting up annual inspection rate of 10 percent of all enterprises has to be evaluated by setting up necessary infrastructure on regular control mechanism).
 - (e) Programmes and guidelines to support Returnees shall be prepared at European level. Besides existing legal documents and manuals on (irregular, illegal) returnees of Roma to the Balkan states and irregular migrants in general, generally accepted and applicable guidelines would be necessary for expelled or voluntarily returned Roma to their country of nationality or habitual residence.
 - (f) Stop double standard within the Union, namely a decisive minority protection for external purposes (in external relations and enlargement, accession criterion) and a soft minority protection for internal purposes. There are two general possibilities for post -EU enlargement when choosing

³⁸ Multiannual Framework on Labour Migration ILO, Geneva, 2006. Principle 8 and 11.

a coherent policy: the *status quo* entailing fragmented, state by state initiatives; or increased EU-wide efforts to further *institutionalize multiculturalism*, including the recognition of Roma as a minority in each member state. Moreover, indirect (anti-discrimination, diversity and language) Union policy is outstanding for all vulnerable groups but is not specific for Roma returnees or irregular migrants.

- (g) Community-wide applicable readmission agreement has to regulate the return of persons from the European Union member states to Serbia. European Union expressed its willingness to financially support the returnee integration process, and after the agreement is signed Serbia will be able to access European Union funds earmarked for returnee integration. It shall replace the text and spirit of 12 bilateral readmission agreements with member states.
- (h) Representatives gathered in Budapest in 2003 and began the initiative to declare the years between 2005-2015 as *The Decade of Roma Inclusion*.³⁹ Its Declaration of the Decade of Roma Inclusion was signed by the Prime Ministers of Romania, Bulgaria, Serbia, Montenegro, Slovakia, Macedonia, Croatia, and the Czech Republic in Sofia on February 2, 2005. The World Bank agreed to administer the Decade Trust Fund financed by the nine participating countries. But it will take the support and participation of the global community to resolve the global problem of the Gypsies. Besides the proper legislative measures, it would be necessary to revive the economy of the East European countries. Only then will it be possible to open new job opportunities for the Roma people in order to break the vicious circle of insufficient education, unemployment, poverty and crime. That will be the best prevention of the irregular migration flows.

Nevertheless, it will take decades for attitudes to change and for living standards to improve. In the near future as today there are Roma from eastern-central Europe migrating, trying to escape discrimination and seeking better opportunities.

³⁹ It is in harmony also with Decision No.6/08 of OSCE Ministerial Council (Helsinki, 2008) on enhancing OSCE efforts to implement the Action Plan on improving the situation of Roma and Sinti within the OSCE area

**The legal and cultural
situation of minority
Hungarian communities
in the Carpathian Basin**

