

# Abortion in Poland and Romania: two former communist countries, completely different experiences

Poland and Romania are two countries that share a lot of similar experiences from a cultural and historical point of view, but as we will see in this article, it is their differences that makes them stand out on the European scene. Both experienced their fair share of occupations, partitions and communist dictatorship and both had a chance of a rebirth after 1989. Despite their similarities, their trajectories were quite different and this is reflected in the way in which the two states also tackle sensitive issues such as abortion. While one country is very pro-life, the other is European champion at abortion. Nevertheless, the two countries have similar birth rates: for the year 2013, it is estimated that the birth rate for Romania was of 9.4 births/1,000 population and in Poland of 9.88 births/1,000 population. ( <http://www.indexmundi.com/>)

The following examination will look at the two countries' overall history of abortion and try to determine possible reasons why they are situated at two opposite poles on this issue. To do this, we will look at the role of the foreign influence, political parties and religion.

## **Abortion in Poland**

Poland is one of the most pro-life oriented countries in Europe, but few know that it hasn't always been like this. Starting in 1932, abortion was legally performed if there were medical reasons indicating that the pregnancy endangered the life of the women. Poland was also the first country to accept abortion in the case of pregnancies which were a result of a criminal act. This law was effective until WWII, when under the rule of Hitler, abortion was possible on demand in Poland. This was not the case in Germany, where it was still considered a crime. At that time, Martin Bormann, Hitler's private secretary and head of the Party chancellery said:

"The Slavs are to work for us. In so far as we do not need them, they may die. Slav fertility is not desirable."( Robert S. Wistrich, *Who's who in Nazi Germany* (New York: Routledge, 2002), p. 19). This quote appears also on pro-life websites and the topic has been brought up recently by Polish pro-life activists in a few interviews.

([https://www.academia.edu/795365/Polish\\_pro-life\\_movement\\_and\\_one\\_of\\_its\\_leaders](https://www.academia.edu/795365/Polish_pro-life_movement_and_one_of_its_leaders))

In May 2010, Polish abortion activists shocked the public opinion by displaying graphic billboards with aborted fetuses and the face of Hitler, in order to remind the Poles of the Nazi rule. Nevertheless, this argument is used by isolated groups who are aiming at putting the equal sign between abortion and murder or abortion and the Nazi regime. The main reason why many Poles oppose the legalization of abortion nowadays has to do with religious convictions mainly.\*

At the end of WWII, things went back to how they were before, but later it was the Communist regime that permitted abortion on demand. Some criteria still had to be met however: the mother had to prove either that she had no means for raising a child or that the future baby was the product of a crime.

In 1980, abortion became possible only with the affidavit of the physician and since there were no regulations restricting it, many abuses took place. Things dramatically changed after the fall of communism in 1989, when new debates on the theme of abortion began. The distribution of the film "the Silent Scream" along with better knowledge on the subject, and also with the teachings of Pope John Paul II, who played an important role in the independence movement made abortion be perceived as a crime

([http://www.sxpolitics.org/frontlines/book/pdf/capitulo5\\_poland.pdf](http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf), p. 191)

The moment when everything changed was 1993, when a new law on family planning was adopted, a law that was also sought to protect the human embryo. A legal abortion is now possible only when the pregnancy endangers the life of the mother, when there are clear indications that the fetus is malformed or when the pregnancy is a result of a criminal act.

## **Abortion in Poland nowadays**

The issue of abortion is difficult to approach because of the emotions and contradicting views involved: while the majority agree that the law needs to be changed and that abortion based on socio-economic factors should be approved, studies show that there is a difference of opinion in feelings towards the law on abortions and the abortions themselves. Some people believe that abortion is murder and this might explain lack of action for reform.

Nowadays, the debate is between those who are pro-life and those who are pro-choice and so far no agreement has been reached between the two extremes. With regard to the pro-choice standpoint, the first argument in this camp pertains to the woman's right to self-determination. The second pro-choice argument has to do with her socio-economic background and her inability to raise another/a child and is also related to avoiding illegal abortions which are riskier for her health. When abortion was legalized in Poland during the 1950's, the reason behind it was that it was needed: a large number of women were dying during underground abortions. But here lies the problem: it was not a right obtained by the women themselves, it had nothing to do with self-determination or any feminist movement, it was simply necessary for the well-being of the entire society. Moreover, the communist egalitarian approach to gender roles provided no actual benefits for the women, as everything was calculated to serve the nation and not certain individuals. The changes took place only in several spheres of the lives of the people, but traditional gender roles had stayed the same and Poland continued to be a patriarchal society. (same thing in Romania, certain rights or benefits were granted, but not because women had fought for them). The fact that women were passive in receiving these "benefits" only means that they had no influence in keeping them and this is exactly what happened later.

*The debates that followed after 1990's focus on the fact that abortion is necessary especially for the impoverished women who will resort to illegal abortions because of a restrictive law that does not allow for a legal one and thus risk their own lives: "Past experiences shows that poor and helpless*

women will use drastic means [because of the restrictive law]...No one promoting the [anti-abortion] law mentions the easily predictable effect of the law, which will be an increase in infanticide, as was the reality before 1956". ([http://www.sxpolitics.org/frontlines/book/pdf/capitulo5\\_poland.pdf](http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf), p. 191)

The problem with this argument, which is in use even nowadays, is that it reinforces the idea that women are helpless and need protection (a notion that is more beneficial to maintaining patriarchy) and that women who decide to have an abortion and who do not want to use the socio-economic background as a reason are excluded from the equation.

On the other hand, the absence of a rights-based approach for so many years (especially during communism) makes it problematic for such notions to be adopted in present-day Poland, as they have not evolved out of a solid basis. The concept of human rights applied in such a fashion is something that emerged only in the last decade and it still requires time to sink in.

*It is also considered that from a historical point of view, the identity of the Polish women became almost synonymous with the fight for independence. They become more than mothers, daughters and wives, they were heroines, especially during the time when Poland was divided between Russia, Austria and Prussia (18930-1864). While men were at war, women stayed home, kept the society and the national identity together. During this time the concept of "Mother Pole" has emerged and this legacy of women as "saints" has become a heavy burden; not fulfilling that role was and still is perceived as betraying the family institution as well as the catholic church.*

([http://www.sxpolitics.org/frontlines/book/pdf/capitulo5\\_poland.pdf](http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf), p. 191)

### **Abortion in Romania**

Before discussing the current situation regarding abortion in Romania, this article will firstly present the historical development of abortion in this state. The victory of Bolshevism in Russia (in 1917) brought with it for the first time in the world a concrete measure of women's emancipation: the legalization of abortion on demand. This law was in effect for 16 years,

until Stalin, in contradiction to the principles he agreed upon 30 years before, forbade abortion. The prime reason for this measure was to counter the low growth of the Soviet population. This law remained in place until his death (1953).

As an Eastern European country, Romania had to abide by Soviet law, a situation that changed when Khrushchev took the power in the Soviet Union. In that period the 1920s law was reinstated. The Romanian government at that time started a pro-soviet propaganda, followed afterwards by the 463 Decree, decree which brought Romania the emancipation much desired. It was this Decree that empowered women and gave them full custody of their own bodies: they could decide if they wanted to keep the baby or not.

(<http://www.soviethistory.org/index.php?page=subject&SubjectID=1936abortion&Year=1936>)

After this period, what followed was a decade of abortion that ended in 1966 when Ceaușescu, the president at that time, prohibited it. The reason for taking this measure was rooted in his fears about the impact and popularity of pregnancy terminations in the long run (abortions were more than 1 million a year). He was also preoccupied, just like Stalin, with the demographic phenomena and the nation's future. Thus the 770/1996 law emerged, which was made to regulate abortions. There were 6 conditions that a pregnant woman had to fulfill in order to get an abortion: if she had at least 4 children (5 starting with 1985); if she was over the age of forty; if she was suffering from a serious disease, which can be transmitted genetically; if she was suffering from a physical disability incompatible with the normal upbringing of a child; if the pregnancy was putting her life at risk; if the pregnancy is the result of rape or incest.

([http://www.ceausescu.org/ceausescu\\_texts/overplanned\\_parenthood.htm](http://www.ceausescu.org/ceausescu_texts/overplanned_parenthood.htm))

Between the years 1966 and 1989, with few exceptions, abortions were strictly prohibited, and contraception as well. However, illegal abortions continued, despite the legal restrictions applied and the serious consequences on health. This law existed until 1989, when Ceausescu lost power and Romanian legislation was changed, with the introduction of a new law making abortion

legal.

Romania is an interesting case to study. It is the only communist country where abortion was prohibited from 1967 to 1989 and which nowadays represents a tragic case. The procedure of having an abortion is a very controversial one, because there are no restrictions concerning the way in which it is performed and the women who go through it do not receive any counseling at any time during this process.

The only institution that is condemning it is the Church, because Christianity sees abortion as one of the biggest sins that one can commit in front of God. The maximum time limit for performing an abortion in Romania is for pregnancies that do not exceed 14 weeks. The abortion is made at the women's request in a medical institution and according to the law, it can be performed later as well, if it is absolutely necessary for therapeutic reasons. A doctor who performs illegal abortions risks suspension.

In the case of this country, abortion can be considered a contraceptive measure, because Romania is the European member with the highest number of abortions per year. This may lead one to the conclusion that abortion is perceived here as a contraceptive measure and not as an extreme, emergency measure. Having the highest rate of abortion in the EU, it is a paradoxical country, which shifted from one extreme to the other.

Romania has to make changes in its legislation concerning abortion. If a woman wants to have this procedure she should benefit from the best medical care, where she is offered therapy before and after the abortion. One might blame the education system for "the normality" of abortions. If people would be more informed on this topic, than the frequency of abortions would likely diminish.

### Conclusions

The two countries are perfect examples of two extreme situations. While in Poland abortion was legalized because of necessity and not because women would have necessarily fought for it, in Romania it was banned because of

Ceaușescu's desire to build a larger nation. The Polish culture was and still is bound to value family traditions, the idea of community and of a unified society and that women are seen as "mothers of the nation." Moreover, the Nazi regime left deep scars that will take several more years to heal.

Romania is at the other extreme, having for 22 years a dictator with grandiose plans for the country: release it from national debt (at his death, in 1989, Romania had zero national debt), increase the natality and have more citizens who "fight" for the communist cause. In order to achieve these goals, he created a nation of impoverished people, who lived in fear of the system and in fear of each other. The Romanian mothers of the nation were compensated the more children they had. The title of "Heroic Mother" was awarded to the women who had at least ten children and it was accompanied by a monthly subvention of 500 Lei. This honorific distinction was not enough motivation for the impoverished families to have more children and illegal abortion were at its peak during this time. Therefore, when communism fell and all the ideals connected to it were rejected, the notion of "Heroic Mother" had no more value as well.

Although the socio-economic background is fairly similar in the two countries, their extreme approaches to abortion might be a result of two factors. First of all, the way in which the countries put an end to their communist regimes was very different: in Romania, the end of 1989 brought a bloody revolution, followed by Ceaușescu's execution. The kangaroo trial that the President faced as well as his shooting were broadcasted on national television. Afterwards, Romania had no viable alternative for the communist party, while in Poland, the anti-communist Solidarity Party won the free Polish elections and communism was overthrown in a democratic way. While Romania was in a period of confusion and sunk even deeper in corruption, Poland was finding its way out of the dark times and adopted good, healthy reforms right from the start.

Second of all, while the Orthodox Church was fairly obedient to the communist state, the Catholic Church was a strong advocate for anti-corruption and anti-communism in Poland. Looking at how different cultures deal with the

issue of abortion, one obvious pattern is that the strong Catholic Church has a clear say in how the legislation is shaped not only Poland, but all the countries in which it is the national religion.

In Romania, after the fall of the communism, the Orthodox Church – dwarfed by Ceausescu's regime – started to get strength again, but not enough to impose its views into politics. On the other hand, Pope John Paul II was not only an international figure, but was and still is one of the most beloved people of Poland. He had a great role in the collapse of Communism and therefore, the Catholic religion in itself was regarded as the savior of the nation. Furthermore, since abortion is considered a sin and feminism an attempt to destabilize family life, women's voices were not heard then and have a hard time being heard nowadays as well.

The two countries have yet to find balance and although they have opposite problems with abortion, it is clear that sexual education needs to be a priority for both of them. Catholic Poland treats sex as a taboo and illegal abortions represent the unseen struggle of Polish women. In Romania on the other hand, the very high number of abortions performed each year shows that people, women and men, are not preoccupied with safe contraception, which also means a lack of concern in regard to the sexually transmitted diseases. Both countries are in a critical time, when things have to change. Only time will tell in what direction things will go and how long it will take to get there.

### **Bibliography:**

<http://biblioteca.regielive.ro/proiecte/sociologie/avortul-21015.html>

<http://www.criticatac.ro/15741/criminalizarea-avortului-lipsa-justiiei-reproductive/>

[http://www.ceausescu.org/ceausescu\\_texts/overplanned\\_parenthood.htm](http://www.ceausescu.org/ceausescu_texts/overplanned_parenthood.htm))

Data from <http://www.indexmundi.com/>, last accessed February 2014

<http://www.soviethistory.org/index.php?page=subject&SubjectID=1936abortion&Ye>



ar=1936

Waniek , Danuta. "The Struggle for abortion Rights in Poland", at  
[http://www.sxpolitics.org/frontlines/book/pdf/capitulo5\\_poland.pdf](http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf).

Wistrich S. Robert S. *Who's who in Nazi Germany* (New York: Routledge, 2002)

\* article updated on 6th of April 2014

---

## The Romanian and German parliamentary electoral system

In a broad sense, we define *Democracy* as the rule of the people. The implementation of this popular sovereignty can be accomplished by varying means. The French philosopher Jean-Jacques Rousseau, for example, perceived democracy as *identity-based* or *participatory*, a system in which the citizens represent themselves and are part of the political legislative process. Another and also the most widespread form of popular sovereignty is the representation of citizens by directly elected representatives. As part of all contemporary democracies, the parliaments embody the most important representative institution. The parliaments of Romania and Germany represent by their structure and composition two characteristic examples of democratically elected institutions. The Romanian Parliament is the political institution first referred to in the Romanian Constitution. It consists of two chambers, the Chamber of Deputies and the Senate. Both chambers are elected in constituencies, by universal, equal, direct, secret and freely expressed suffrage, on the basis of a list system and independent candidatures, according to the principle of proportional representation. The existing option of identical election system of the two chambers of parliament confers them the same legitimacy, as both represent the expression of the will of the same electoral body. The German bicameral system comprises of the German Bundestag and the German Bundesrat. As the only directly

elected institution in Germany, the Bundestag represents the most important institution in the consensus-building and decision-making process. Unique in international comparison, the German Bundesrat is just the second chamber in which the interests of the 16 German States (Bundesländer) are represented on a legislative level. (*Beyme, Klaus von (2010): Das politische System der Bundesrepublik Deutschland. Eine Einführung, 11. vollständig überarbeitete Auflage, Wiesbaden: VS-Verlag.*)

Starting from the premise that democracy reflects the rule of the people, and that the parliaments, in this particular article the Romanian and the German parliament, embody the representative institutions by being directly elected, one question still seems to not have been answered: Do the elected representatives symbolize the popular sovereignty?

When analyzing the situation more deeply, one will see that the two chambers of the Romanian Parliament have different numbers of members; the Chamber of Deputies is composed of 332 Deputies and the Senate of 137 Senators. This differentiation is possible because the representation norm differs from one Chamber to the other. So, for the election of the Chamber of Deputies the representation norm is of one Deputy to 70 000 inhabitants, and for the election of the Senate, of one Senator to 160 000 inhabitants.

The number of Deputies and Senators to be elected in each constituency is determined on the basis of the representation norm, by relating the number of inhabitants in each constituency to the representation principle. In a constituency, the number of Deputies can never be less than 4, and that of Senators less than 2. The number of inhabitants that must be taken into account is the number existing on the 1st of July of the previous year, which is published in the Statistical Year-Book of Romania. If, 5 months before the election date, a general census has taken place, the number of inhabitants which is taken into account is that resulting from the census.

An interesting provision is provided in both the Romanian constitution and the electoral law, which grants special rights to national minorities. Legally constituted organizations that represent national minorities have the

right to at least one Deputy (or Senator) mandate, even in the case of insufficient election results.

When this provision is not considered, a minority organization should have at least 5% of the average number of national votes in order to be entitled to a Deputy mandate. (<http://www.cdep.ro/pls/dic/site.page?id=108>)

With regard to the representation norm, the ( Deputy/ Senator) mandates that are assigned to such minority organizations are equal to conventionally elected (Deputy/Senator) mandates. ([http://www.thediplomat.ro/reports\\_0707\\_1.php](http://www.thediplomat.ro/reports_0707_1.php))

The Federal Republic of Germany is, according to the constitution, a democratic and social federal state where the state sovereignty derives from "the People". The political system is organized according to the pattern of parliamentary democracy, whereby the parliament represents the center of political attention. Directly elected by the people, the German parliament is democratically legitimized and responsible. Furthermore, the Bundestag is also responsible for the election and dismissal of the government.

The German Bundestag must consist of at least 598 members who are elected in a general, direct, free, equal and secret vote for a term of four years. By being elected, the deputies receive the mandate to represent the interests of the electorate and thus to realize the form of representative democracy, namely the rule of the people. After the reunification of Germany in 1990, the electoral law was changed. The deputies are elected from the 299 constituencies. The constituencies are approximately the same size, about 240.000 people entitled to vote. Constituencies that differ by more than 25% from the average have to be recut. In this electoral system, every voter has two votes. The first voice is given to the direct candidate of the constituency, resulting in the direct election of the first 299 deputies. With the second voice, one will vote for the party list. Cumulated with the party lists of all states, these votes will determine the other 299 deputies.

In the German Bundestag, just like in the Romania parliament, the threshold of 5% of the total votes has to be fulfilled, or at least three direct

candidates have to be elected, in order for the party to be represented at the Bundestag. (*Linn, Susanne/Sobolewski, Frank (2012): So arbeitet der Deutsche Bundestag. Organisation und Arbeitsweise. Die Gesetzgebung des Bundes, 25. Auflage, Rheinbreitbach: NDV-Verlag.*)

Once we have established the general framework for the Romanian and the German parliaments, we can start to analyze the actual election process. The Romanian electoral system is a version of a mixed electoral system, which combines a single round of voting in single member constituencies with a two-round system of seat allocation for the parties that surpass an electoral threshold of 5%. Only the candidates who obtained over 50% of the votes in single-member constituencies are automatically elected. The seats that remain are distributed among the political parties first at the county level (by using the Hare quota) and then at the national level (by using the Hondt method), provided that they pass the 5% threshold. The German electoral system is also a version of a mixed electoral system, combining a single round of voting in single member constituencies, but with a two-vote system for one chamber. While the 5% electoral threshold has to be fulfilled in order to be part of the Parliament, the 299 direct candidates can win their constituency even if they do not reach 50% of the votes, but have gathered the most votes in their constituency. The other 299 seats still available are distributed among the political parties at the regional and national level.

The result is that in both the Romanian and German parliament, the number of parliamentary seats is flexible.

Yet in Romania the number of deputies will increase if a party is able to elect its candidates with 50% of the vote in the single-member constituencies. So, the more single member constituencies a party wins, the less likely it is to benefit from the redistribution at the county level and from the supplementation of seats at the national level. This statement is valid as well for the parties that are not able to win the single member constituencies systematically.

In Germany the election law was changed in so far that the redistribution at

the regional and national level will not be affected by the directly elected deputies. In this way, no party can lose a seat in the parliament, because the first or direct vote percentage is better than the second or party lists one.

(*Decker, Frank* (2011): *Brauchen wir ein neues Wahlrecht?*, in: *Aus Politik und Zeitgeschichte, Parlamentarismus*, bpb Bonn, in [URL: <http://www.bpb.de/apuz/33520/brauchen-wir-ein-neues-wahlrecht?p=all>], Stand 07.08.2012.)

When summing up the facts and judging by comparison, one would be likely to say that both the Romanian and German system symbolize popular sovereignty through their elected representatives. However, if we were to consider the possibility that out of the many parties, only few actually manage to reach the 5% threshold, then all of those who are under this 5% remain unrepresented. Continuing on this pattern and looking back on the last elections for the German Bundestag, where two parties reached 4,9% and another 6% went to other parties, we would come to the result that over 15% of the voters are not represented by the elected deputies. Additionally, when it is considered that 50% + 1 are enough for a majority, it would mean that the sovereignty or the rule of the people is not reflecting an actual majority. Following this pattern, one would agree that democracy, carried out through its elected parliamentary form, is not the ruling of the majority, but the ruling of the largest minority which have the same goals and interests.

The parliamentary democracy and the parliamentary elections are without a doubt the best contemporary way to determine and to carry out popular sovereignty. But just like Rousseau's views on democracy are outdated today, one should not settle for an albeit good system, which could be improved.

#### Bibliography:

[http://www.apd.ro/files/publicatii/25plus2\\_Modele\\_electorale\\_I\\_Sisteme\\_electo](http://www.apd.ro/files/publicatii/25plus2_Modele_electorale_I_Sisteme_electo)

rale.pdf

*Beyme, Klaus von* (2010): Das politische System der Bundesrepublik Deutschland. Eine Einführung, 11. vollständig überarbeitete Auflage, Wiesbaden: VS-Verlag.

<http://blogs.lse.ac.uk/europpblog/2012/05/30/romania-elections/>

<http://www.bucharestlife.net/2012/10/18/romanian-electoral-system-explained/#sthash.zDYKylXc.dpbs>

(<http://www.cdep.ro/pls/dic/site.page?id=108>)

*Decker, Frank* (2011): Brauchen wir ein neues Wahlrecht?, in: Aus Politik und Zeitgeschichte, Parlamentarismus, bpb Bonn, in [URL: <http://www.bpb.de/apuz/33520/brauchen-wir-ein-neues-wahlrecht?p=all>], Stand 07.08.2012.

*Linn, Susanne/Sobolewski, Frank* (2012): So arbeitet der Deutsche Bundestag. Organisation und Arbeitsweise. Die Gesetzgebung des Bundes, 25. Auflage, Rheinbreitbach: NDV-Verlag.

*Robbe, Partizia/Wahlen, Dierk* (2012): Aktueller Begriff. Negatives Stimmgewicht und Überhangmandate, Wissenschaftliche Dienste, Deutscher Bundestag, in [URL: [http://www.bundestag.de/dokumente/analysen/2012/Negatives\\_Stimmgewicht.pdf](http://www.bundestag.de/dokumente/analysen/2012/Negatives_Stimmgewicht.pdf)], Stand 10.08.2012.

<http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>

<http://www.osw.waw.pl/en/publikacje/ceweekly/2012-05-23/a-majority-electoral-system-introduced-romania>

<http://www.semipresidentialism.com/?p=2756>

[http://socpol.uvvg.ro/index.php?option=com\\_content&view=article&id=68&Itemid=76](http://socpol.uvvg.ro/index.php?option=com_content&view=article&id=68&Itemid=76)

[http://www.thediplomat.ro/reports\\_0707\\_1.php](http://www.thediplomat.ro/reports_0707_1.php)

---

# Romania`s accession to the European Union and the controversial use of the Mechanism of Cooperation and Verification

In this chapter I will present the requirements imposed to Romania by the European Commission in 2007 when it joined the European Union. These requirements refer to several reforms that Romania should implement in order to fight the existing corruption in the system. The evolution of these reforms is followed by the European Commission through a mechanism entitled the Mechanism of Cooperation and Verification. Thus each year Romania is evaluated through two reports which follow up the changes that Romania has made.

Further on I will also analyse the use of the Mechanism of Cooperation and Verification employed in order to prevent Romania from entering the Schengen space, presenting thus briefly the Schengen as a concept and the conditions that a country must fulfil in order to join the free movement space.

As a conclusion I will underline that the Mechanism of Cooperation and Verification was used as a political tool, by some western countries to prevent Romania from joining the Schengen space.

## **1. Romania`s accession to the European Union and**

## **the creation of the Mechanism of Cooperation and Verification.**

In this part of the paper I will describe the status of Romania in 2007 when it joined the European Union. In addition I will also present the necessity of the creation of the Mechanism of Cooperation and Verification, the reasoning behind it.

As previously mentioned, the year 2007 was highly important for Romania due to the fact that this was the year of Romania`s entrance in the European Union. The national mentality of that period was characterised by dualism, because there were voices that were for change from an institutional point of view and voices that were against it and against the intrusion of the European Community in the Romanian domestic affairs

(<http://www.migrationinformation.org/feature/display.cfm?id=338>)

As an example of this, the international media considered that the old parties were working to push this issue of change under the rug. Even if the EU put pressure on Romania, the Government responded and they responded by passing legislation in the Parliament.

As a consequence of the internal situation, the year 2007 brought two significant changes in Romania that have been suggested and monitored by the European Commission: first of all the creation of the National Integrity Agency (ANI) and second of all the Cooperation and Verification Mechanism (the CVM). Before going deeper and analysing these two concepts and their necessity I will present briefly Romania`s and Bulgaria`s evolution since they became democratic countries. Why did I decide to include Bulgaria as well in this analysis? Bulgaria`s path to the European Union and the Schengen space is very similar to Romania`s path.

([http://www.sieps.se/sites/default/files/2012\\_1epa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_1epa%20EN_A4.pdf))

The revolutions of 1989 in both Romania and Bulgaria can be considered an internal communist coup where opportunists reinvented themselves as transitional democratic leaders, after which they used the state power to win early elections. Most part of the 1990`s there were partial economic reforms



which enriched the elite and contributed to the enlargement of corruption, networks of corruption, while prolonging the economic hardships of the average citizen. In both countries, the communist successor parties were implicated. By 2000 Romania was making some progress. One of the reasons for which Romania made significant institutional reforms is because of its desire to join the European community.

As already mentioned the first major change refers to the creation of the National Integrity Agency (ANI). This agency is characterised by substantial powers that have the ability to force all public servants to reveal their assets, that could investigate individuals who were in the impossibility to explain the origin of their assets, that could seize the unexplained assets and finally that could require the public officials to submit the conflict of interest declarations.

The second huge change refers to the creation of the Cooperation and Verification Mechanism, monitored by the European Commission. In order to better understand this concept a short explanation is required.

When Romania and Bulgaria joined the EU on the 1<sup>st</sup> of January 2007, the European Community considered that these countries still had to progress in making reforms in the fields of judicial reform, corruption and also organised crime.

The EU justified this action by saying that their desire is that these countries develop proper administrative and judicial systems, which they need in order to deliver on their membership, but also for them to enjoy their benefits. They also considered that a progress in judicial reform, corruption and organised crime will allow Bulgarians and Romanians to enjoy their full rights as EU citizens. ([http://ec.europa.eu/cvm/index\\_en.htm](http://ec.europa.eu/cvm/index_en.htm))

The CVM can be defined as a monitoring process that asks for a prompt policy response from the Bulgarian and Romanian governments. The CVM has as its aim the reform in these two countries and also the prevention regarding the reversal of the rule of law reforms which were enacted during the EU accession negotiations.

Every six months, the Council issues a CVM report for both Bulgaria and Romania which evaluates the progress on these established benchmarks and which also have to flag the most pressing issues that should be addressed before the next report. All these monitoring reports have been praised for being highly detailed and also for following the evolution of specific administrative reforms, judicial cases and political developments. In consequence they have played an important role in gathering and disseminating all information about the state of reform in both countries.

([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf))

The most relevant reports have been published in July each year, and the so-called interim *“technical”* reports or updates have come in February. In order to get a grasp of the CVM reports and understand their goal I will shortly present the most important ones.

## **2. The overall assessment of the CVM reports since 2007**

The European Commission started issuing reports since 2007 when Romania joined the European Union. In the early years Romania was still struggling with the reforms that had to be enforced in the countries, so I will not present the early ones. I will start with the CVM from 2010 which was a controversial one after which I will describe the CVM from 2011 which shows an improvement made by Romania and finally the one in 2012. The report from 2012 is the one that arose a lot of problems in the international community, because this was the report used by some western countries to block Romania's accession to the Schengen space.

The CVM report from July 2010 is a very debatable report as well. In this report the European Commission was highly critical, especially because of the abolition of ANI (the National Integrity Agency). The Commission declared that Romania was in breach of its accession commitments and it called on Bucharest to *„re-establish the ANI's powers to propose the effective forfeiture of unjustified wealth”*.

The Commission also noticed that Romania lacks „*broad-based political support in favour of transparency and the effective protection against corruption and conflict of interest*”. As a consequence of this in August 2010, both houses of the Romanian Parliament voted to resurrect a weaker National Integrity Agency, this measure was widely understood to be the direct result of EU pressure. ([http://www.sieps.se/sites/default/files/2012\\_1epa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_1epa%20EN_A4.pdf))

After the report was issued there were several comments made by the European community. The most controversial statement came from Pierre Lellouche who was at that time France`s secretary for European Affairs. Pierre Lellouche was the first one to connect the requirements necessary to join the Schengen space to the Mechanism of Cooperation

and Verification requirements, mostly due to his worries about the Romanian-Moldovian border “*because of the distribution of Romanian passports outside their border*”. As a consequence of this statement, France reunited it`s forces with Germany and declared in a joint letter that the Schengen entry should be postponed until: „ *both members have initiated clear and objective, sustainable and irreversible positive developments in the fight against corruption and organised crime and in reforming the judicial system*”.

( <http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

After the harsh evaluation made by the European Commission in the report from 2010, the report from 2011 shows a different face of Romania. The CVM report from July 2011 acknowledged the fact that Romania had „*responded swiftly to the Commission`s recommendation by adopting a new legal framework for the National Integrity Agency (ANI). The National Integrity Agency was operational under this new legal framework and started to establish again its track record of investigations*”.

(<http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

The Commission also stated the fact that Romania has made significant steps: „*to improve the efficiency of judicial procedures and continued preparations*

*for the entering into force of four new codes that are the foundation for a modern judicial process”.*

*([http://www.sieps.se/sites/default/files/2012\\_1epa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_1epa%20EN_A4.pdf))*

Because of the CVM process, the Commission monitors the progress of important cases and also helps build the pressure both on the judiciary and the Parliament in order to act appropriately. Even with these measures, the Commission considers that progress in fighting corruption remains slow; many cases never go to trial whilst others are dismissed or lost because of the delays during the trial period and sentences are often very light with little effective confiscation of assets and not to mention the fact that Court proceedings often show the defendants raising objections that postpone trials.

The Commission regretted that certain important high-level corruption cases saw little movement in Court during early 2011. This calls for “*urgent action*” to accelerate trials that risk being ended due to the fact that too much time has passed since that alleged crime.

Another report was issued in 2012 in February. In this report Romania received a good feedback from the European Commission. Romania was thus praised for progress made in fighting corruption.

But the most expected report was the one in July 2012, which marked the first five years since the inception of the CVM. After this long period of time the Commission was expected to make an overall assessment of reforms in both countries. Besides the assessment the Commission also had to make recommendations about whether or not the CVM should remain in place.

The following part of the paper I will present the guidelines and recommendations given by the European Commission because I consider it relevant to prove the efforts and progress which were made by Romania since the inception of the CVM.

By presenting these guidelines and recommendations I will also demonstrate the fact that these are different conditions from the ones required to join

the Schengen space, conditions that I will touch upon later in my paper.

The Guidelines imposed to Romania were established in the following four areas:

- judicial reform;
- integrity;
- fight against high-level corruption;
- the prevention and fight against corruption in the public sector.

When the last CVM was issued in 2012 the guidelines given by the European Commission were in the following areas: Regarding the judicial reform the Commission gave the following advice to Romania: " *Ensure a more transparent and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes*".

**Concerning the fight against corruption** the Commission advised Romania to: „ *Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken*".

„ *Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption*".

" *Take further measures to prevent and fight against corruption, in particular*

*within the local government*".

([http://ec.europa.eu/cvm/docs/com\\_2012\\_410\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf))

The Commission considers that in the future Romania could attain the objectives of the CVM, if it guarantees the rule of law, maintains this direction and steps up the implementation of reforms. Romania needs to ensure

respect for the rule of law which also includes independent judicial review.

The Romanian government is committed to ensure respect for the rule of law in line with the recommendations which are listed below. This enforces the conclusion that the progress in the implementation of the benchmarks which would be required for the Commission to decide to end the CVM is not there yet.

More reforms within all branches of government, within its judiciary and also a stronger commitment to integrity and to the fight against corruption is mandatory to fulfil its requirements. Mostly, the Romanian authorities need to prove that a sustainable reform process has taken root in Romania and that the external intervention of the CVM is no longer required.

The experience of the last five years shows that when action is taken, it can bring the expected results. Romania has already made reforms regarding institutions such as DNA (The Anti-Corruption Agency) and ANI (The National Integrity Agency). In the last years the judiciary has been more active regarding its judicial independence

All Member States have obligations concerning an area of freedom, security and justice. The Commission is eager to see Romania completing that particular process of the CVM and also addressing these issues to the other Member States.

Regarding the current situation the Commission will adopt another report under the CVM for Romania, before the end of 2013. In this report, they will analyse if their concerns regarding the rule of law and the independence of the judiciary have been improved and they will also check if the democratic and judiciary system are stable again. The Commission will closely monitor progress, by having regular missions and also by having regular dialogue both with the Romanian authorities and with the other Member States.

As previously mentioned the Commission did not only give guidelines but it also gave recommendations for Romania in some areas. There are still improvements that Romania must fulfil in the following areas:

1. Respect for the rule of law and the independence of the judiciary;
2. Reform of the judicial system;
3. Accountability of the judicial system;
4. Consistency and transparency of the judicial process;
5. Effectiveness of judicial action;
6. Integrity;
7. Fight against corruption.

([http://ec.europa.eu/cvm/docs/com\\_2013\\_47\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf))

**The analysis of the CVM report and its guidelines were necessary in order to explain Romania`s path in the European Union since 2007.**

### **3. How does the Mechanism of Cooperation and Verification assess the progress in a country?**

In this part I will present the practical way in which the CVM works in Romania. It is important to understand the way in which the Mechanism of Cooperation and Verification assesses progress because it is impossible to understand the CVM reports if one does not understand the way in which it works and how it actually measures the reform in the system.

The Mechanism of Cooperation and Verification assess the progress made in both countries through yearly reports. These reports include regular reporting from the Commission and they also provide the fact that the mechanism will continue until the moment when all the CVM objectives are met and all four benchmarks are satisfactorily fulfilled.

These reports analyze what has been achieved so far and what has to be achieved still.

They cover both the legislation and tools; the elements of the legal

framework which still need to be completed and also if ownership is sufficiently embedded to maintain the right direction of reform. The Commission takes into account the sustainability and irreversibility of the reform process as the determining elements of its assessment.

During these five years since the CVM tool was implemented in Romania there have been periods of progress and setbacks, times when cooperation has worked and times when not, these being comments made by the European Commission when analyzing the status of Romania. So this report from 2012 recognizes the entire progress made since accession.

Nevertheless, this report is adopted at a time when relevant questions are raised with regard to respect for the rule of law and also the independence of the judiciary in Romania. The overall progress has to be assessed in the context of the wider social recognition of important principles such as the rule of law and the independence of the judicial process, these being part of a well-functioning democracy. Thus, a well functioning, independent judicial system and also respect for democratic institutions is indispensable for mutual trust within the European Union and for winning the confidence of both citizens and investors.

This report looks at the last five years as an entity, the current controversies pose a serious threat to the progress which has been achieved so far and also raises serious questions as to the future of the reforms which have already been launched. As a consequence this report includes specific recommendations which address the current situation that help restore the respect for principles which are milestones of European democracy.

In the present in the European Union the rule of law represents one of the fundamental principles. The rule of law also represents a particular concern for Romanians because the Eurobarometer polling has shown that 93% of Romanians think that corruption is an important issue for their country and 91% responded the same regarding the shortcomings in the judicial system. The same poll also underlined the fact that 76% of Romanians supported the EU



which was helping to tackle these issues.

This CVM does not demand Romania to achieve higher standards than in other Member States. Its goal is to help Romania achieve a certain standard, which is comparable to other Member States. This objective is also supported by 72% of the Romanians.

The Commission is using in this report points of reference and comparative indicators where they are available. In order to compare the progress made in Romania with the situation in other Member States, the Commission also drew upon senior experts from key professions which are dealing with these issues.

The Commission's assessment of the progress registered by Romania since accession shows that many of the building blocks required are now in place, even though there has been some problems in the country. The CVM has made a huge contribution in Romania. The focus has shifted in order to ensure that the implementation delivers the results required and also that the ownership exists in order to maintain the reform also in challenging all the political circumstances.

Even so, the implementation of this framework with rules by the judiciary and administration has still not met all the objectives mentioned in the CVM. There are cases where implementation has just started, or where there are difficulties.

Ownership and implementation represent thus the key elements in the fulfilment of the CVM benchmarks. They are demonstrated through actions, results and decisions which are taken by those that have the authority to influence both the direction and the speed of change. The future appointments of a new General Prosecutor and a Chief Prosecutor of the DNA (Anti-Corruption Agency) will be crucial indicators of the sustainability of reform.

The Romanian government has responded to the specific demands in the CVM reports, suggesting that in the absence of the CVM there would be less reform. The detailed monitoring and assessment in the CVM reports, coupled

with the political pressure and also some concrete sanctions, can deliver substantial results.

Due to the huge problems regarding the rule of law, judicial quality and the fight against corruption in the Western Balkans states, the EU would do well to set up a CVM structure for each acceding state. In case it is not needed anymore then it can be dismantled. There are also some opinions that state the fact that the behaviour of public officials could change in areas such as accountability, transparency and the fight against corruption once their country has joined the EU. They consider that the CVM structure would help deter backsliding. ([http://europa.eu/rapid/press-release\\_MEMO-08-523\\_en.htm](http://europa.eu/rapid/press-release_MEMO-08-523_en.htm))

Also EU pressure can be powerful when it is mixed with domestic incentives that are related to winning elections and also with holding the power. Civil society groups play a relevant role in highlighting corruption and also regarding the need for judicial reform. The EU needs to rethink civil society funding through government institutions, since this undermines the readiness of civil society groups to highlight corruption.

In addition, the connection made between the CVM process and the EU has motivated the governments to make more effort in order to join the Schengen space (ex: Romania and Bulgaria). From that point of view, we can consider that the decision taken in 2010 and 2011 by most of the EU countries not to allow Romania in the Schengen space, as a sanction for not meeting the CVM benchmarks, has helped trigger reforms in the country, since Schengen membership is valued by citizens.

One of the most significant results of Romania and Bulgaria joining the EU is that it helped put the fight against corruption squarely on the EU agenda – an instance, perhaps, of „ *reverse conditionality*”.

([http://ec.europa.eu/public\\_opinion/flash/fl\\_351\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_351_en.pdf))

## **4. Is Romania catching up with the other countries?**

In this sub chapter I will present the evolution of Romania since the inception of the Mechanism of Cooperation and Verification in 2007. I will present the changes made by Romania and the way in which the changes affect the current situation of the country both internally and internationally.

So the question is: Are Romania and Bulgaria catching up with the other countries? The opinions in this case are divided. Normally success is defined as delivering all the domestic institutional changes which are necessary to create an effective judiciary and also to fight corruption. Also it is important to state the fact that political leaders and parties will persuade their reforms as a response to the forces of both domestic and EU influence. The domestic incentive for all political leaders are firstly the electoral ones and they are related to aspects such as: the salience of judicial and corruption-related reforms to all the voters; other parties position, mostly potential coalition partners and also the role of civic groups which are making public government performance and which are galvanizing the public pressure.

On the other hand the EU incentives stem firstly from the evaluations of each governments performance, which is made public by the Commission in the biannual CVM reports and also the possibility of punitive actions taken by the EU, mostly related to EU funds and to the Schengen accession.

The CVM has been pressuring both Bulgaria and Romania to adopt and implement some relevant reforms. The inception of CVM is also seen with scepticism by some countries and also by EU officials.

Historically speaking, since the fall of communism in 1989, ten states have passed through the EU's accession process. The huge benefits of EU membership created all the political incentives to satisfy the EU's complex membership requirements.

These incentives along with other characteristics of the pre-accession procedure actually create the EU's leverage on domestic reform. EU leverage

has helped compel candidates to reform both the state and the economy, improving thus the quality of democracy and also the efficiency of state institutions in various ways.

*„ By 2005, the eight post-communist states that joined the EU in 2004 were, on average, indistinguishable from the EU's old member states on measures of political rights and civil liberties. However, the two post-communist states that joined in 2007, Bulgaria and Romania, have struggled to achieve the same relative success. Severe problems with corruption, judicial quality and state capacity remain”*

*([http://www.sieps.se/sites/default/files/2012\\_1epa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_1epa%20EN_A4.pdf))*

In the pre-accession process, the strict enforcement in some areas was limited to the adoption of EU rules. In other areas, mostly related to the corruption situation, there were not that many rules to be enforced. After 20 years of democratization, both Bulgaria and Romania are considered to be: semi-consolidated democracies, in contrast to the other eight post-communist EU members that are seen as consolidated.

The domestic conditions in Bulgaria and Romania at this moment of democratization were not as auspicious as in the neighbouring states. Complex literature that analysed the comparative politics of post-communism has shown the importance of communist and also pre-communist legacies in shaping all the political trajectories after 1989.

*„ Bulgaria and Romania suffered under oppressive and highly clientelistic communist regimes that took power in societies that had low levels of industrialization and civil society organization in the pre-communist period”. ([http://www.sieps.se/sites/default/files/2012\\_1epa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_1epa%20EN_A4.pdf))*

There have been attempts from the EU to try to consolidate this democracy since accession. In the last two decades there have been two important changes in these societies: reforming the judiciary and also reforming and trying to control the corruption.

*„While the EU's previous reports on the progress of candidate States were*

*often criticized for being too vague, these CVM reports are remarkably detailed, following the activities of relevant institutions and tracking the outcome of high-level criminal cases". Hinting at the likely longevity of the CVM mechanism, the Council declared in September 2010 that the CVM is an „ appropriate tool" that will stay in place „pending the results expected in this framework" (Council of the European Union 2010)."*

*„ Since accession, we argue that the causal importance of domestic incentives has increased substantially (see also Noutcheva and Bechev 2008). Why? In a variety of ways, EU leverage has helped empower domestic coalitions with liberal democratic aims and undermine illiberal ones (Vachudova 2005)".*

*([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf))*

Domestic incentives to fight corruption are normally tied to elections. Many parties might chose to build their electoral platform on trying to improve the rule of law. From the moment this commitment has been made, the credibility of the political party may hinder its capacity to deliver at its best.

The chance of being re-elected might vanish if the voters no longer have trust in that the party would implement the domestic institutional reforms in order to fight corruption and organised crime. In these cases, there is a stringent necessity for an active civil society which can analyse not only the performances made by the governing political parties but that could also highlight all the important shortcomings. Thus the CVM can only work in connection with strong domestic incentives.

Regarding the National Integrity Agency which identified and investigated cases where there is unexplained financial gain. An important signal was sent to Bucharest, where the Commission said that *„ the potential dissuasive effect of ANI cases is hindered by the delays and lack of consistency in the judicial and administrative follow-up to ANI cases' (European Commission 2012)".* ( [http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf)) Thus the Commission called for bigger political will and also commitment on the part of the judiciary which should fight corruption. In this case, the

Parliament is seen as blocking the progress.

Even if Romania made significant steps still there are still reforms to be undertaken. The report underlined the fact that there has been limited progress in developing the cooperation amongst the government, the civil society and the fight against corruption.

In addition training and recruitment standards need to be improved, alongside with transparency and accountability. „ *As in Bulgaria, a rather large „conservative” faction within the judiciary appears committed to fighting both transparency and accountability as it continues to protect the beneficiaries of widespread corruption in Romania. The performance of government officials in many areas remains poor since accountability is largely absent and political allegiance is the main determinant of success.* ( [http://www.sieps.se/sites/default/files/2012\\_1epa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_1epa%20EN_A4.pdf))

After analysing the CVM reports since its inception in the following part of the paper I will present the inclusion of Schengen in the Amsterdam treaty.

## 5. The inclusion of Schengen in the Amsterdam Treaty

The inclusion of Schengen in the Amsterdam Treaty represents an important moment in the evolution of the Schengen space. With the Amsterdam Treaty, this intergovernmental cooperation was incorporated into the EU framework on 1 May 1999. Besides this, there is also a protocol attached to the Treaty of Amsterdam which incorporates the developments brought about by the Schengen Agreement into the EU framework.

The Schengen area is now within the legal framework of the EU. This means that it comes under both parliamentary and judicial scrutiny and it attains the objective of free movement of person which is enshrined in the Single European Act of 1984.

As it was previously specified, in the Treaty of the Amsterdam, the Council

replaced the Executive Committee which was created under the Schengen Agreements.

The Council implemented a Decision 1999/307/RC of 1 May 1999 which set up a procedure for the incorporation of the Schengen Secretariat into the General Secretariat of the Council, including also the arrangements that are related to Schengen Secretariat staff. As a consequence of this, new working groups were set up to help the Council to manage their work.

One of the Council's most important tasks in incorporating the Schengen area was to identify those provisions and measures which were taken by the signatory States that formed a genuine Acquis and that could serve as a foundation for further cooperation.

A list of the elements that make up this Acquis, which also set out the corresponding legal basis for each of them in the Treaty was adopted by the Council Decisions [1999/435/EC](#) and [1999/436/EC](#) of 20 May 1999. Since that moment the Schengen legislation has been further developed.

Today, the Schengen Area encompasses most EU States, except Bulgaria, Cyprus, Ireland, Romania and the United Kingdom. However, Bulgaria and Romania are currently in the process of joining the Schengen Area. Of non-EU States, Iceland, Norway, Switzerland and Liechtenstein have joined the Schengen Area. ([http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33020\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm))

In this subchapter I will present the conditions required to join the Schengen space, further on in my paper demonstrating thus the fact that there is no legal connection between the CVM conditions and the Schengen requirements.

## **6. Membership of the Schengen space from a Romanian perspective**

Now I will briefly describe the Schengen space as a concept, after which I

will shortly present the conditions that a country must fulfil in order to join the Schengen space. The analysis of the Schengen space is necessary because further on in my paper I will demonstrate the fact that the conditions necessary to fulfill the CVM are not the same conditions necessary to join the Schengen space.

So going back to history, in 1985 when a break-through came that year, when cooperation between individual governments led to the signing in a small village in Luxembourg (Schengen) of the Agreement on the gradual abolition of checks at common borders which was followed by the signing in 1990 of the Convention implementing that Agreement.

The implementation of the Schengen Agreements thus started in 1995, initially involving seven EU States. It was created as an intergovernmental initiative, the developments brought about by the Schengen Agreements have now been incorporated into the body of rules governing the EU. Today, the Schengen Area encompasses most EU States, except for Bulgaria, Cyprus, Ireland, Romania and the United Kingdom. However, Bulgaria and Romania are currently in the process of joining the Schengen Area. Of non-EU States, Iceland, Norway, Switzerland and Liechtenstein have joined the Schengen Area.

What is the Schengen space about? Any person, irrespective of nationality, may cross the internal borders without being subjected to any border checks. However, the competent national authorities can carry out police checks also at the internal borders and in border areas, provided that such checks are not equivalent to border checks. This is valid for cases when, in particular, the checks do not have border control as an objective and which are also based on general police information and experience. It's also valid when the checks are carried out in a manner clearly distinct from systematic border checks and on the basis of spot-checks. Under such circumstances, the police may for example ask you to identify yourself or pose questions regarding your stay, depending on the purpose of the check.

If there is a serious threat to public policy or internal security, a Schengen country may exceptionally reintroduce border control at its internal



borders for, in principle, a limited period of no more than thirty days. If such controls are reintroduced, the other Schengen countries, the European Parliament and the Commission should be informed, as should the public.

Even if Schengen is most of all a political call, there are also some technical conditions that each country must fulfil in order to join the free space:

- each State has to take the responsibility that they will control the external borders on behalf of the other Schengen States and also that they will issue uniform Schengen visas
- that every State will cooperate efficiently with law enforcement agencies in other Schengen States so they can maintain a high level of security
- apply common set of Schengen rules (the so-called “*Schengen Acquis*”), such as controls of land, sea and air borders (airports), visas, police cooperation and also the protection of personal data connect to and use the SIS.

The Schengen Information System is the largest information system for public security in Europe. By allowing for easy information exchanges between national border control, customs and police authorities, it ensures that the free movement of people within the EU can take place in a safe environment. It also contains alerts on missing persons, in particular children, as well as information on certain property, such as banknotes, cars, vans, firearms and identity documents, that may have been stolen, misappropriated or lost. Information is entered into the SIS by national authorities and forwarded via the Central System to all Schengen States. The SIRENE Manual lays down the procedures for EU States’ exchanges of supplementary information on alerts stored in SIS.

On 9 April 2013, the second generation Schengen Information System (SIS II) entered into operation. SIS II has enhanced functionalities, such as the possibility to use biometrics, new types of alerts, the possibility to link different alerts (such as an alert on a person and a vehicle) and a facility

for direct queries on the system. It also ensures stronger data protection.

The development of Schengen III suggests that integration will continue to deepen, especially concerning the efforts to combat both terrorism and illegal migration. As the EU grows and as free movement extends eastward, Schengen will bring the advantages of freedom of movement, but it will also call upon all the European nations to develop increasing trust in each other's ability to control who is allowed to enter and enjoy these advantages.

Applicant countries undergo a „ *Schengen evaluation*” before joining the Schengen Area and periodically thereafter to ensure the correct application of the legislation. At the present there are two countries that want to be part of the Schengen space and so far have been declined: Romania and Bulgaria.

(<http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/>)

For Romanians Schengen membership (if ever they get it) will not bring a major change. They have been able to travel around Europe only with their ID or passport since 2007 when their country became an EU member. Even so, another Schengen membership postponement is a setback for Romania. As long as the Romanian Parliament continues to block the prosecution for corruption charges of high-profile politicians and Romanians rely on bribes to solve their daily problems, the country's integration into the EU will not be completed. (<http://europa.eu/newsroom/calendar/event/421051/progress-report-under-the-cooperation-and-verification-mechanism-for-romania>)

The stake is mostly psychological and it is about Romania's image. Because Romania knows that it has done everything correct from a technical point of view another denial would be a failure for the country.

In the Romanian mentality being part of the Union means having equal rights. With the Schengen dilemma, it is true that the movement rights are not affected but from a psychological point of view, passing through border points in a borderless Union is capable to create an artificial tie-break.

Another thing worth mentioning is the fact that neither the work rights, nor the residence rights are affected by joining the Schengen Space. The most relevant effects are felt at a primary level, especially concerning the business in the field of transportation and tourism. All of these things register additional costs which are induced by the additional time spent at the Western borders.

In other words, Romania and Bulgaria's integration into the Schengen Space actually represents a normal step in their evolution due to the fact that they became EU members since 2007.

These two states have initiated the process together by signing the Accession Treaty and they are also evaluated together. The geographical area they are protecting comes in support of this logic. If one of the two states performs less and if it also registers negative reports from the Schengen Evaluation experts, then both states shall be kept outside of the Schengen Space. After analysing the conditions required to join the Schengen space in the following part I will present the connection made between the CVM and Romania's accession to the Schengen space.

## **7. Connection made between the CVM and Romania's accession to the Schengen space**

In this subchapter I will present the most important views regarding Romania's denial to join the Schengen space and the connection made between it and the CVM report from 2012. I will present several opinions, emphasizing the legal arguments about the above topic that demonstrate the fact that the legal requirements mentioned in the CVM guidelines differ from the legal arguments mentioned in the Schengen Acquis and if the legal conditions differ then tying them represents a controversial action.

The European Union has further delayed a decision on whether Romania and Bulgaria should be admitted to the Union's Schengen area of borderless travel. A meeting of home-affairs ministers from the EU's 27 Member States in Brussels decided that the two were not yet ready to join: *"The Council decided that the issue will again be addressed before the end of 2013 and*

*there are a number of*

states who had a variety of issues of concern”

*([http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf)) said Alan Shatter, Ireland’s minister for justice, equality and defence, who chaired the meeting. Shatter also said that these concerns were of a political nature and that the European Commission had found the two countries to be ready for Schengen membership from a technical point of view.*

In the final statement, the ministers suggested that a two-stage approach might be decided by the end of the year, which means that border controls would be abolished for air travel first after which the checks at land borders will be abolished as well. In addition Shatter also said that opposition to admit the two countries to the Schengen space also extended beyond the Dutch and German governments.

There has been made a connection between the requirements stated in the CVM and the requirements necessary in order to join the Schengen space. About this topic a lot of opinions have been expressed and I will underline the most important ones, from journalists to EU officials, politicians, analysts etc. The reason why I include all these opinions, even if some of them do not have a legal background is to present the overall situation, that many EU issues have a political explanation, so one cannot exclude the other.

Germany declared at the EU Council meeting they would veto Romania’s accession. The Schengen legal framework requires a unanimity of votes from all member countries in order to open their borders to a new country.

Germany’s concern as that of Netherlands and Great Britain is the rise of economic refugees that would come to their country if the borders would be open for Romania. The EU diplomats representing these countries declared that they have registered an increasing number of arrivals from Romania and Bulgaria.

Friedrich, the German Minister of Interior declared repeatedly over time that the influx will only grow once the countries are given full freedom of

movement and access to the labour market across the EU. He added that the „*The time isn't right, there are still weaknesses – especially when it comes to the reliability of the justice system, which prevent us from being able to say: Remove the border controls now*”.

( <http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

The journalists and political analysts in Germany have blamed Hans-Peter Friedrich (German Minister of Interior) for his behaviour saying it's a political decision. They have observed a populist tone in Friedrich's remarks on the wave of migration. In the past weeks, he accused the new immigrants of taking advantage of the German social welfare system through what the British call „*benefits tourism*” and the Germans call „*poverty migration*”. Friedrich is asking at a European level questions such as: *“Does freedom of movement mean we have to assume that people from all over Europe who believe that they can live better on welfare in Germany than they can in their own countries will come to Germany? This danger cannot be allowed to come true”*.

(<http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

Most people are severely criticising Friedrich. They are complaining of the fact that the politician is trying so score votes ahead of September's election by blocking Bulgaria and Romania from entering the Schengen Area.

*For example, Berliner Zeitung writes: “But this doesn't make false arguments correct. Bulgarians and Romanians also require passport controls when they come to Germany. Yes, and among them are people who beg, steal or work as prostitutes. But they are not the majority. Eighty percent are seeking legitimate work. Twenty percent are even highly qualified. They are anything but the freeloaders seeking to profit from the German welfare state that some would make them out to be”*.

*“One can certainly debate whether it was correct or not to allow Bulgaria and Romania into the EU. But now they are now a part of it, even if they don't exercise the same level of rule of law. This delay in allowing both of them*

*into Schengen looks like an attempt to assert pressure but this will not help much. In Romania, people are already saying they can live without Schengen. In other words, there can't be much more to this than a campaign issue for Freidrich."*

The Christian democrat German Parliament ran by Gunther Krichbaum shows the tight connection between Romania joining the Schengen and the reforms made in justice. The CDU member of the Parliament underlined the fact that the evaluation of the progress realised by Romania can take place only after the report will be issued in December 2013. After this, according to him, Romania`s entrance must become reality.

Krichbaum has also mentioned the fact that Germany has no doubts regarding the technical capacity of Romania to ensure the external borders of the EU. On the other hand, the EU has the duty, in his opinion to elaborate on mechanisms to monitor and improve some of the shortcomings of these countries. Contrary to this, some Member States might no longer sustain Romania`s entrance into the Schengen area. In addition, some of the problems are according to Krichbaum „ *actually not created by the Schengen system but by the consequences of the Iron Curtain*".

<http://ancheteonline.ro/2013/03/germania-este-o-legatura-stransa-intre-adera-rea-la-schengen-si-raportul-mcv-o-evaluare-abia-in-2014/>

The reasons why some old member states are opposing Romania`s entrance is also motivated by populism, which represents a risk because the voice of the Schengen space is not a unified voice, but it would be indeed better for Romania to have a unified voice.

As a consequence it would be better for Romania to hear a unified voice from Europe saying that we are not prepared, then just listening to Germany that wants to use its veto right, thus changing the current political situation.

Analyst Elizabeth Collet of Migration Policy Institute, quoted by „ *Evenimentul Zilei*” daily ( Romanian newspaper) stated the real reason behind Romania and Bulgaria`s delayed accession, is another. „*I think that France and Germany, together with a certain number of other countries, are facing*

*political difficulties in proving themselves open to immigration. Even in European framework, this process is controversial during an economic crisis. In the same context of trust, Romanian and Bulgarian authorities are being offered the Greek precedents a counter-argument against quick integration. Greek failed the exam three times before joining the Schengen Space and today, it has the greatest difficulties in guarding the Turkey border".*  
*([http://eupi.osi.bg/fce/001/0066/files/SchengenReport\\_ROMANIA\\_February2011.pdf](http://eupi.osi.bg/fce/001/0066/files/SchengenReport_ROMANIA_February2011.pdf))*

On the other hand even if Great Britain is not part of the Schengen space, they still mention their position regarding Romania`s and Bulgaria`s entrance. Great Britain declared that they are for Romania and Bulgaria joining the Schengen space and that they have adopted this position since 2011. The officials of Great Britain also said that it is in their best interest to have an efficient control system at the borders. UK also mentioned that they were not part of the group that made the connection between the Schengen and the CVM report. Great Britain is taking into consideration the CVM report but they consider the CVM report to be distinct from the Schengen space. But, obviously, there are also other EU partners which have made this connection and which have specifically said that more progress is needed in order to agree with Romania`s accession to the Schengen space.

*(<http://www.revista22.ro/numirea-unor-oameni-independen539i-537i-curajo537i-l-a-parchetul-general-537i-dna-este-o-urgen539a-23305.html>)*

The European Commission was reserved even from the beginning to create a connection between the CVM reports and the admission conditions in the free movement space. The fact that everybody in Brussels is dissociating the CVM report from the Schengen situation is not helping Romania that much.

Traditionally speaking, the Commission has already admitted the fact that CVM and the Schengen have different evaluation criteria and that they cannot be tied one to the other, which did not stop the main occidental powers to take precautionary measures and use the CVM in order to block the Schengen access to Romanian citizens.

We are assisting at an incoherence of the European politics which has its own explanations. The Commission is defending its own authority and is worried about the initiatives of some states to base their policy against immigration. Highly significant is the initiative taken by Internal Affairs ministers to reestablish the control at the national frontiers in certain conditions. With this gathering of the ministers of Internal Affairs in the Schengen space, which was organised in 2012 in Luxembourg, it has arrived to an agreement which allows the states to adopt protection measures from the moment when immigration waves become burdensome.

The idea, launched by the ex-president of France, Nicolas Sarkozy was promoted by the minister of Internal Affairs Claude Guéant, which together with his German colleague Hans-Peter Friedrich have signed a letter in which they request the countries from the Schengen space to allow through a national decision to reintroduce the frontier controls for a period of 30 days with the possibility of an extension, in case needed. After the French elections, the proposal was also promoted by the socialist minister of internal affairs Manuel Valls.

The European Commission never agreed to these initiatives which consolidate the sovereignty of national states. The spokesmen for the EU Commissioner Cecilia Malmstrom declared in 2012 that au contraire: „ *The Schengen space needs more of Europe*”.

The European Commission proposed a solution which meant to limit the abusive use of new powers, requiring the national states which would want the extension of this measure of closing down the frontiers, to request for the help from the Member States. But actually the Commission did not agree at all with the revisal of the Schengen Agreements, hoping to conserve its prerogatives regarding the free movement.

If initially the Schengen space had its framework built through inter-governmental agreements, subsequently it was integrated in the EU treaties. The declarations of the representatives of the Commission regarding the Romanian situation have followed thus the guidelines of its general politics



which have not approved the revision of the Schengen agreements.

The Commission is controversial in its comments due to the fact that on one hand it allows the access of Member States to the free movement and on the other hand it reveals the fact that these states are denying the access of Romania also from reasons which are not contained in the CVM reports.

(<http://www.dw.de/rela%C5%A3ia-dintre-mcv-%C5%9Fi-dosarul-schengen/a-16564550>)

Jose Manuel Barosso, the president of the European Commission declared that he is supporting both Romania and Bulgaria in their process to join the Schengen space and he also added the fact that the decision to allow these two countries is not taken by the European Commission but by the Member States. About the last CVM report he commented: „ *The CVM report acknowledges the fact that progress has been made in the past five years but the report also contains other recommendations in order to finalise the reform process. I have asked for another report before the end of this year*”.

(<http://www.hotnews.ro/stiri-esential-12824890-live-video-text-ora-14-00-comisia-europeana-preznta-raportul-mcv-pentru-romania.htm>)

On the other hand the EU Parliament President Martin Schulz said that Berlin was politicizing Bulgaria and Romania's accession process. Schulz said that it was necessary to wait for the European Commission's progress reports. “*We are a community of rights,*” Schulz said. “*I reject political criteria.*”

(<http://www.dw.de/germany-blocks-schengen-membership-for-bulgaria-romania/a-16656037>)

The European Commission spokesman Jonathan Todd said no EU country has presented „ *Any evidence whatsoever that there is benefit tourism. It is a non-problem. It does not exist. There is a perception in some Member States that has no grounding in reality*”.

(<http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>)

Stefan Fule declared about Romania's accession to the Schengen space „ *is blocked by some considerations of a political nature, mostly related to the*

*fact that in some states which oppose our accession, 2013 is an electoral year and the government from Bucharest cannot change that thing". The EU Commission does not support the tendency of some EU states to create a political connection between Romania`s and Bulgaria`s accession to the Schengen space and the CVM, this being the declaration of the EU commissioner for enlargement.*

*(<http://www.ziarulfaclia.ro/corina-cretu-comisia-europeana-reitereaza-ca-intr-e-aderarea-romaniei-la-spatiul-schengen-si-mcv-nu-exista-legatura/>)*

When Romanians are asked about the connection between Schengen and the CVM they consider the connection made between them as being incorrect. Not even the European Commission is saying out loud there exists a connection between the two. Thus, if this connection is not correct that means that Romania`s refusal to join the Schengen space could be considered as an injustice.

After analysing the Schengen space and the way in which the CVM was used to block Romania`s entrance in the free movement space several questions arise. Why was the CVM tool used the first time in the case of Romania and Bulgaria? When these countries joined the European Union in 2007 the European Commission considered them to have huge problems concerning corruption. But if this was the mentality of the period and these countries were still far away from other EU countries that were stable and where the justice system was more efficient then why were both Romania and Bulgaria accepted in the European Union? By accepting Romania in the European Union Romanian citizens could benefit from all the freedoms enriched in the treaty, the most important ones being the free movement of people and workers, freedoms that I will touch upon later in my paper. My opinion, as a Romanian is that the implementation of the CVM was a good idea, because Romania needed an international body that offered guidelines/ recommendations and the country also needed an international body to follow up those changes and guide the country on the right track. Even if I agree with the implementation of the CVM in Romania I do disagree with the fact that this was used as a political tool by Germany and The Netherlands that did not want Romania in the Schengen space.

Another question that arises is the following: Will the CVM be used again in the future for other countries? Looking at the latest case it would appear no to be the answer, because Croatia joined the European Union on the 1<sup>st</sup> of July 2013 and no CVM was implemented in that country. Even so, maybe Croatia did not have so many corruption problems in order for the European Commission to decide to implement this mechanism in the country. There are still other European countries that will join the European Union in the future, so only time will decide upon this question, if this mechanism will be reused or not, because there are indeed other EU countries that are as corrupted or even more corrupted than were Romania and Bulgaria in 2007 when they joined the European Union.

One of the features of the CVM is represented by its temporary nature. A question that must be asked is then, if this mechanism was introduced in the same year for both Romania and Bulgaria, will it be also removed at the same time for both countries even if one country might progress more and implement all the recommendations faster? So if Romania receives better feedback than Bulgaria or vice versa and the European Commission considers that one country has fulfilled its recommendations then will they keep the CVM in that country until the other country is at the same level? Or will it be just removed in one country? Will these countries also be regarded together by the European community because of their common past or not? Again time will decide on this matter but my opinion is that when they will remove the CVM in the case of Romania they will also do the same thing for Bulgaria. Because both countries were accepted in the European Union at the same time, in both countries the CVM was implemented and both countries were denied access to the Schengen space because of the CVM report from 2012. So in my opinion, when they will remove the CVM for a country they will do the same for the other one as well because they are seen in the same light, as an entity.

This question of interdependence between the two does not only refer to the removal of the CVM but also to the Schengen accession. If Romania receives a better feedback from the European Commission and western countries decide to accept Romania because of that in the Schengen space, what will happen to Bulgaria? Will Romania be rejected because Bulgaria is not prepared yet? Or

will Bulgaria also be accepted because of Romania? Regarding this question I think that when Romania will be accepted in the Schengen space Bulgaria will be accepted as well. Besides corruption and other issues this political move also represents a geopolitical problem, so as a consequence the Schengen community will accept both countries in their community at the same time.

Because of the connection made between the requirements necessary to fulfil the CVM and the requirements necessary to join the Schengen space a new question appears: if the CVM will be implemented in other countries that join the European Union, will it be used again in order to prevent that new countries from joining the Schengen space? I consider that the CVM will be used again by western countries to block a country from joining the free movement space, if that is in the interest of those western countries (being in an electoral year, anti-immigration politics, etc). If it happen once it can happen again because the connection made between the CVM and the Schengen was not recognised anyway by the countries that made the connection.

#### Bibliography:

1. <http://ancheteonline.ro/2013/03/germania-este-o-legatura-stransa-intre-aderarea-la-schengen-si-raportul-mcv-o-evaluare-abia-in-2014/>
2. <http://www.dw.de/germany-blocks-schengen-membership-for-bulgaria-romania/a-16656037>
3. [http://ec.europa.eu/cvm/index\\_en.htm](http://ec.europa.eu/cvm/index_en.htm)
4. [http://ec.europa.eu/cvm/docs/com\\_2012\\_410\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf)
5. [http://ec.europa.eu/cvm/docs/com\\_2013\\_47\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf)
6. [http://europa.eu/rapid/press-release\\_MEM0-08-523\\_en.htm](http://europa.eu/rapid/press-release_MEM0-08-523_en.htm)
7. [http://ec.europa.eu/public\\_opinion/flash/fl\\_351\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_351_en.pdf)

8. [http://eupi.osi.bg/fce/001/0066/files/SchengenReport\\_ROMANIA\\_February2011.pdf](http://eupi.osi.bg/fce/001/0066/files/SchengenReport_ROMANIA_February2011.pdf)
9. [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33020\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm)
10. <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/>
11. <http://europa.eu/newsroom/calendar/event/421051/progress-report-under-the-cooperation-and-verification-mechanism-for-romania>
12. <http://www.hotnews.ro/stiri-esential-12824890-live-video-text-ora-14-00-comisia-europeana-preznta-raportul-mcv-pentru-romania.htm>
13. <http://www.migrationinformation.org/feature/display.cfm?id=338>
14. <http://www.revista22.ro/numirea-unor-oameni-independen539i-537i-curajo537i-la-parchetul-general-537i-dna-este-o-urgen539a-23305.html>
15. [http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf)
16. [http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf)
17. [http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf)
18. [http://www.sieps.se/sites/default/files/2012\\_lepa%20EN\\_A4.pdf](http://www.sieps.se/sites/default/files/2012_lepa%20EN_A4.pdf)
19. <http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>
20. <http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>
21. <http://www.spiegel.de/international/europe/press-review-on-blocking-romania-and-bulgaria-from-schengen-area-a-887668.html>
22. <http://www.ziarulfaclia.ro/corina-cretu-comisia-europeana-reitereaza-ca-in-tre-aderarea-romaniei-la-spatiul-schengen-si-mcv-nu-exista-legatura/>

---

# Expulsion of gypsies

## **1. The status of Romanian gypsies according to EU Law**

After analysing Romania's Accession Treaty to the European Union and all the restrictions concerning the free movement of Romanian workers, I will now discuss the controversial issue of Romanian gypsies. I will analyse the status of Romanian gypsies according to EU law. One might argue that the negative image of Romanians in the Member States and the reason why they at times are discriminated is partly due to the Romanian gypsies. One of the reasons why some EU countries closed their job market to Romanian workers until 2014 might be linked to the fact that among the Romanians benefiting from all the freedoms in the EU treaty, there are the Romanian gypsies. I will first briefly present some facts about the Roma community, before analysing the issue further.

The Roma are one of the oldest surviving minorities in Europe. Linguists demonstrated the fact that the Roma descend from North Indian castes which left to migrate across Europe between the years 500 and AD 1000. The name Gypsy is a name derived from the term –Egyptian. When Gypsies began to arrive in England from Egypt they were identified as being different by the color of their skin and dress so they were attributed to the Egyptian origin. After their settlement in Europe their number started to increase and recent estimates place the Romany population of Europe at around ten million people.

It is hard to speak about the Roma community without talking about racism. The degree of discrimination and hostility they face from the rest of the society is a well known fact. This could be considered the biggest factor in

their identification, that of a transnational minority. The degree of discrimination that they are confronted with does not exist only in a region of Europe, but across Europe: *"The problem of anti-Roma prejudice and discrimination while more acutely felt in Central and Eastern Europe is by no means confined to this region. Indeed, recent inflammatory reports in the British press demonstrate the deep seated hostility towards Gypsies, particularly to those continue to adopt a nomadic way of life in the face of great adversity"*

The Persecution of Roma across Europe is well documented. Alongside Jews, gays and the disabled, they were targeted by the Nazis for extermination. But while European views on Judaism, homosexuality and disability have come on in leaps and bounds in the past six decades, the attitude towards the Roma still drips with prejudice

Josephine Verspaget, a Rapporteur for the Council of Europe, highlighted the position of disadvantage common to most Roma: *"The position of many groups of Gypsies can be compared to the situation in the third world: little education; bad housing; bad hygienic situation; high birth rate; high infant mortality; no knowledge or means to improve the situation; low life expectancy. If nothing is done, the situation for most gypsies will only worsen in the next generation"*. (O`Nions, Helen, *Minority rights, Protection in International Law*, ed Ashgate, 2008.)

Analysing criminality in the Roma community is a very sensitive topic. As previously mentioned, gypsies represent the most discriminated minority group in Europe. One of the explanations given for this hatred towards them is the „*criminal mind*“ they have. People have the impression that gypsies cannot adapt properly in a society this being the reason why they will always try to abuse the system.

Yet, how can people talk about gypsy criminality when there are no numbers, no statistics made about that? As previously mentioned it is hard to track them, because most of them will not admit their culture, they will not reveal it because they are afraid of discrimination. In Europe there is no body of

control, that has numbers regarding gypsies that are beggars, or those who have been imprisoned, so it is actually very hard to say how many of them are actual thieves and how many of them are just victims of an unfair system.

A model that can be set as an example is the American model in my opinion, meaning the BJS ( Bureau of Justice Statistics) which is an interesting system, because it collects, analyses, reports statistical data on activities in the nation`s criminal justice system.

The Bureau of Justice Statistics maintains data on the race and ethnicity of the victims of crime obtained through a national household survey; the race of offenders as reported by victims; and the race of inmates in local jails, state prisons, and federal prisons and Courts. Data are also collected on the race of law enforcement officers through a survey of police agencies. This body of information can be used in policymaking to ensure fairness in justice administration and to develop programs that address the issues, problems or services peculiar to specific groups. (<http://www.bjs.gov/index.cfm?ty=tp&tid=3>)

## **2. The expulsion of gypsies from European countries**

As I previously mentioned another focus in my paper is the status of gypsies as EU citizens, their rights and obligations in the European Union. I will try to answer several questions, such as: Are they still the most discriminated group of Europe? How can their situation improve? I will try to answer these questions by presenting some case law, analysing their experiences in France, Italy and the United Kingdom.

### **2.1. Facts concerning the expulsion of Gypsies from France, Italy and the United Kingdom**

In this subchapter I will present the facts that revolve around the expulsion of Gypsies from countries such as France, Italy and the United Kingdom.

In the situation of France, this case got the international media`s attention. Using the police, the French government in 2011 broke up the gypsy



camps around the country, including areas in Lille, Lyon, Paris, Marseilles and others. As a consequence over 200 gypsies have been deported to Romania in a move, motivated by the Government by health, sanitation and security. The people from the Roma community that actually accepted the repatriation received 300 euros per adult and 150 per child, this also being a controversial measure because a lot of people believed that they would use the money to return to France.

(<http://rt.com/news/france-gypsies-camps-dismantle-406/> )

In the case of Italy, in main cities such as Milan, Rome and Naples the Italian authorities have dismantled Roma camps. As an example, in Milan where local authorities have been evacuating Gypsies from a couple of years, because of upcoming elections, their focus has been now redirected towards the exclusion of Gypsies from their community, which represents a popular action through the community.

(<http://www.csmonitor.com/World/Europe/2010/1013/In-Italy-local-politics-appears-to-drive-latest-round-of-Roma-Gypsy-expulsions>)

In the case of UK, the government has also been criticised for expelling hundreds of gypsies ahead of the opening of the London 2012 Olympics. The National Gypsy Council says yet again they are discriminated, as they were in France under ex-president, Nicolas Sarkozy. The gypsies, mostly from Romania, used to live in East London, near the site of the Games. Right before the opening of London Games, local police invited Romanian police to deport them back to their home country. The main Gypsy population is formed of immigrants who come mostly from Eastern European countries like Romania, usually illegally. Most of the time they are seen begging on the streets of British cities, reason for which a number of British see them as thieves and beggars who represent a threat to social order.

(<http://english.cntv.cn/program/newshour/20120812/103259.shtml>)

## **2.2. The reasons invoked by the parties for the expulsion of the Roma community**

In this subchapter I will present the arguments invoked by the parties to the conflict about the expulsion of gypsies. Regarding the evacuation of gypsies the opinions are of course divided in two, one group that is pro this measure and considers it necessary, whilst there is the other group that considers that this measure is illegal. After presenting the opinions expressed by France, Italy and the United Kingdom I will also express my opinion on the topic.

For France this is not the first time something like this is happening because the first action of this kind started in the period while Nicolas Sarkozy was president, in 2010, when gypsies from 88 camps were expelled in a matter of weeks. At that time Sarkozy's politics were highly criticised and seen as an effort on his behalf to bring in far-right voters in his bid for tough re-election campaign.

One of the most important figures responsible for this measure is Manuel Valls, France's Interior Minister. He declared that these evacuations were necessary due to the possibility of health risks and not only that but also due to the fact that the neighbours of the camps were often complaining about noise, an antisocial behaviour and serious crimes that were coming out from the settlements. Manuel Valls also assured that everything would be done for vulnerable people, mostly for children and pregnant women in order for them to be re-housed as soon as possible underlining the fact that this is a "decent and humane" policy of removing people from deplorable conditions. (<http://www.bbc.co.uk/news/world-europe-11020429>)

*The French government also declared that they only have to give residency permits if they want to settle long-term and work because of the transitory measures in the EU accession agreement, citizens from these countries are not actually allowed to work legally in France until December 31, 2013. "The repatriations do not take the form, in any way, of forced, collective expulsions," said Interior Minister Valls. The government also added that according to EU law gypsies need to have the means to support themselves if they intend to stay for more than three months. The government said travelers camps were sources of „illegal trafficking" and „exploitation of children for*

*begging, of prostitution and crime”.*

France has insisted that the actions „ *fully conform with European rules and do not in any way affect the freedom of movement for EU citizens, as defined by treaties”.*

*Foreign ministry spokesman Bernard Valero told AFP that an EU directive „ expressly allows for restrictions on the right to move freely for reasons of public order, public security and public health”.*

These have been the arguments brought by the people in charge of this measure. Now I will present some of the most important arguments brought against this action. The Romanian president declared about this action: *„We understand the position of the French government. At the same time, we support unconditionally the right of every Romanian citizen to travel without restrictions within the EU”.*

*(<http://rt.com/news/france-gypsies-camps-dismantle-406/>)*

The Roma groups accused Sarkozy of *„ethnic cleaning”*, underlining the fact that gypsies come either from Romania or Bulgaria, countries that are both in the EU since 2007, thus they were benefiting from the free movement principle.

The operation has also been condemned by human rights groups, who say it is deliberately stigmatising a generally law-abiding section of society to win support among right-wing voters.

When this action was taken by the police forces members of the UN’s Committee on the Elimination of Racial Discrimination criticised the tone of political discourse in France on race issues, saying racism and xenophobia were undergoing a *„ significant resurgence”* in this country. Mr Sarkozy’s political opponents have accused him of using the Roma issue to shift public attention away from the corruption in France to the Roma issue.

The row erupted after EU Justice Commissioner Viviane Reding branded the French policy a *„disgrace”* and called for legal action. She said she was *„ appalled”* by the expulsion of thousands of Roma, adding: *‘This is a situation*

*I had thought Europe would not have to witness again after the Second World War”.*

( <http://www.theguardian.com/world/2010/sep/07/barroso-french-anti-gypsy-campaign>) Viviane Reding later said she regretted interpretations of her statement. Reding promised to haul France before the European Court and force it to change its policy. Still France has not only continued the deportation of the Roma, but also extended it. Admittedly its Interior Ministry has stopped circulating documents that mention the Roma by name, now he is using the phrase „ *not exercising treaty rights*” should be deported. The phrase “*not exercising treaty rights*” means “*those who are not in work, or looking for work*”.

After analysing this situation the European Union also took measures to remediate the problem. In a resolution that was passed by 337 votes to 245, the Members of the European Parliament (MEPs) told Paris to „ *immediately suspend all expulsions of Roma*”, saying they „ *amounted to discrimination*”. Although their demands are not legally binding, the MEPs said that “*mass expulsions are prohibited* ” under E.U. law, „*since they amount to discrimination on the basis of race and ethnicity*”.

(<http://www.theguardian.com/world/2010/sep/09/french-anti-gypsy-european-parliament>)

German MEP Martin Schulz, head of the Parliament’s powerful socialist group, lamented, “*The country that gave us liberté, égalité and fraternité has taken a different, regrettable path today*” and President José Manuel Barroso’s described this measure as: “*reawaken the ghosts of Europe’s past*”.

(<http://www.theguardian.com/world/2010/sep/13/sarkozy-roma-expulsion-human-rights>)

The Commission had questioned whether France was actually meeting the E.U.’s legal requirements with its deportations whether case-by-case assessments of the deportees were being made and decided that measures singling out a specific ethnic group are illegal.

There is a little that European institutions can do against such a determined

government because the EU has no authority to actually interfere with the internal affairs of national governments, so far as they do not breach community rights. This is the reason for which EU actions are many times very soft. Because of the situation of the Roma community the measure that Europe took was to create an awareness campaign. This program that received millions of euros in order to help gypsies overcome the problems that they are confronted with, such as discrimination, poverty, bad housing and poor health.

But campaigns against the Roma have spread across Europe. The latest French offensive recalls Italy's „security package” from 2008, which actually led to the dismantling of Roma camps and the deportation of migrants who could not prove that they actually had regular employment. In the past two years countries such as Italy and Great Britain, have also taken actions against the Roma or stated an intention to do that.

As previously mentioned Italy had the same politics as France concerning the Gypsies living in their country. Italy Roberto Malini, a representative from Everyone, an nongovernmental organization that defends minorities declares: *“The strategy is clear and simple: Rather than forcing someone on the airplane, authorities keep demolishing gypsy camps so that eventually Roma people have no place to go and leave the country”* (<http://www.csmonitor.com/World/Europe/2010/1013/In-Italy-local-politics-appears-to-drive-latest-round-of-Roma-Gypsy-expulsions>) Besides Milan, camps have also been evacuated in cities such as Rome, Naples, Venice. Maurizio Paganini, leader of the Opera Nomadi gypsy organization declared on this matter: *“In a sense, Italy has anticipated the French trend in cracking down on Roma”*.

Riccardo De Corato declared to Asca News Agency that: *“We have kicked out 150 squatters in 24 hours and have evacuated 355 people since 2007”*. The campaign under way here is a part of what observers are calling the most intense wave of anti-immigration sentiment to wash over Western Europe in years.

(<http://news.yahoo.com/italy-local-politics-appears-drive-latest-round-roma.html>)

The United Kingdom has taken the same measure as France and Italy, to expel gypsies from the country.

### **3. Is the expulsion of gypsies in breach of the EU legislation?**

First of all, looking at the example of France in my opinion the action taken by France cannot be justified by public order and safety. The gypsies were indeed living in bad conditions, no hygiene, outrageous behaviour and having often a criminal behaviour. But in order to invoke the principle enriched in the Residence Directive, the principle of public order and safety some conditions have to be met, otherwise the principle is not applicable. If those conditions are met expulsion can only be made following the European legislation.

*According to the Residence Directive "Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends".* As a consequence, Member States can restrict the free movement of residence of Union citizens on the grounds above, if this does not follow an economic end. So far the measure taken by France is legal.

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20040430:EN:PDF>)

A relevant phrase from the Residence Directive mentions also the following: *"Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned.*

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20040430:EN:PDF>)

*Previous criminal convictions shall not in themselves constitute grounds for taking such measures".* This article demonstrates the fact that France has committed an abuse. First of all if the measure is taken it must respect the

proportionality principle. In my opinion the measure taken by the French Government did not respect the proportionality principle. Second of all, the Directive mentions in the article the fact that evacuation is possible in some conditions, only if it is based on "*personal conduct*". In this case there is no personal conduct, but a general conduct, because the same measure of expulsion was taken for all the Gypsies living in those camps, so it was a general conduct. Not only this, but the measure is in breach of EU law, because the Residence Directive specifically forbids collective expulsions and this is exactly what happened in this case. So I consider that the action taken by the French government is in breach of EU law. There were without any doubt huge problems with the Roma community living there and the French position is understandable until a certain moment, but even so, the decision is still in contradiction with the EU legislation. The French Government should have proceeded in a different way in my opinion. If they wanted to protect the public order in the country, they should have investigated each and every person living in those camps.

The gypsies living there benefit from European protection, depending on their status. Some of them were living there for less than 3 months, which means that, as EU citizens they benefit from the free movement of people principle. Any EU citizen can travel around and stay in a country for 3 months without having to justify his stay. This is the first category of gypsies that were staying in those camps. The second category of gypsies was represented by workers. Among those people there were surely also gypsies that were workers in France. Those people are entitled to the protection offered by European Union to workers. The third category is probably represented by the jobseekers. If you qualify as a jobseeker, then you are entitled to the same rights as workers.

The last category was formed by gypsies, who were either beggars or thieves, this is the category which worried the French Government and the group that actually caused the French Government to expel them.

The measure to expel the gypsies from the country does not only represent a breach of EU legislation but also a breach of human rights, because the

Government targeted from the first moment a specific group, which is anyway the most discriminated group in Europe. This action thus represents a racist action meant to get rid of the Roma community from the country.

In my opinion, this was a political action which does not resolve immigration problems. Proper knowledge of the existing problem is indeed needed before action is taken and impulsive action such the expulsion might be an easy way to get votes, but not to resolve problems in the long run

Second of all, moving on to the Italian case, I consider the legal situation as being identical to the French one, the only difference between the two countries is the quantity of Roma that they expelled from their country. Because it was at a national level in France there were more gypsies evacuated than in Italy, but the action was the same, racist towards a specific group, measure than is not covered by the public order and public safety principle.

Third of all, analysing the situation in the United Kingdom, I consider the action taken by the UK to be in breach of EU law, because the free movement principle can be restricted only in specific cases, if the action is justified by public order, public safety and health. If none of these exemptions exist then the free movement of principle must be respected, because it represents one of the foundations of the European Union. The action taken against gypsies in UK was taken only to hide the real situation in front of all the personalities and tourists that were coming to London to see the Olympics. The English authorities did not want to paint a grim picture and show that there are also people that are in leaving in this way in those conditions in their country.

Concluding on this issue, I do consider that a state has the positive obligation to look after its citizens but also to try to integrate immigrants into its country. In a case like this, were they might represent a menace to public safety and public order the government`s action can be justified, if taken at the right time and if not targeting a specific ethnic group, but targeting dangerous people, that represent a menace to their society.



After presenting the politics of these countries towards gypsies in the following part of the paper I will briefly also present my conclusions and the migration problem for Romanians.

## **4. Conclusion**

Regarding the expulsion of gypsies from France, Italy, UK, I argued that this did not only breached EU law but also Human Rights. Expulsion can be accepted under the Residence Directive, if protecting public order but that was not demonstrated by the governments of any of these countries. In addition, mass expulsions are specifically prohibited and this is exactly what happened to the Romanian gypsies living in the countries mentioned above. But a big problem still remains: gypsies, still represent the most discriminated group of Europe. How can this problem be solved?

The issue of gypsies might explain why Romania was refused accession the Schengen space and the restrictions on the free movement of Romanian workers. These people are normally identified according to the way they are dressed, they are mostly seen by other Europeans as beggars, thieves, etc. These are the reasons for which they were expelled from the countries mentioned above. In my opinion this behaviour should change. The mentality could change through further discussion between the countries hosting large minorities of Roma people; need for research; more discussion among Romani leaders about the way in which they could interfere integrate/protect Roma people rights ; more objective media coverage because they are often depicted badly in the media, which is not revealing all the time both sides of the story and last but not least, some sort of police training and partnership with the Roma.

It is essential to gather more information about the patterns of migration of Romanians and gypsies because this it is one of the reasons why Romania was denied the access to the Schengen space and why some countries imposed severe restrictions in their countries concerning their job market.

Today the European Commission, E.U. member countries and the Roma themselves all agree that Spain has become the model for integrating Gypsies. Now the

governments of Bulgaria, Slovakia, Hungary, the Czech Republic and even Romania where many Roma come from are looking to Spain for ideas to apply themselves.

Of the 10-12 million Roma living in Europe, Spain has the second biggest community, estimated at 970,000, or about 2% of the total population. And the country spends almost €36 million annually bringing them into the fold. In Spain, only 5% of gypsies live in makeshift camps and about half of Roma have their own houses. Just about all Gypsies in Spain have access to health care and while no recent figures exist, at least 75% are believed to have some sort of steady income.

(<http://www.nytimes.com/2010/12/06/world/europe/06gypsy.html?pagewanted=all&r=0> )

The spokesperson of the Amnesty International in Denmark, Ole Hoff-Lund, said in the newspaper Yesterday's Information that: *"Roma have no peace anywhere in Europe. They are in the most vulnerable population group, which is persecuted and discriminated against in the EU. They have no access to jobs, housing, education or health. This type of discrimination, Roma now encounter also encounter in Denmark and even from the highest place. Even Minister of Justice has pitched in"*.

(<http://content.time.com/time/world/article/0,8599,2019316,00.html>)

Another debate that occurred was related to the costs of this migration waves. Still the Romanians and Bulgarians that wanted to leave the country and work somewhere else did that already. More than 1 million Romanians currently work in Italy, whereas in Spain there are 900 000. These countries have been chosen by Romanians because of the linguistic similarities.

(<http://www.nytimes.com/2010/12/06/world/europe/06gypsy.html?pagewanted=all&r=0>)

The free movement of labour is a fundamental right which is enjoyed by all EU citizens. It represents a core principle that is the cornerstone of a prosperous, peaceful and integrated Europe. As a consequence developing a nationalistic attitude towards the labour market across the continent is a

dangerous attitude. Eroding the foundation for the concept of labour mobility within Europe would set the EU further back in actually meeting the need to grow and ensure the economy on the long run and also its prosperity.

Besides the substantial economic benefit, free movement also paves the road towards a common European identity. Ultimately, just trading goods across borders and integrating any fiscal policies will not be able to complete the required foundation for closer political union.

European citizenship can be understood as a fundamental right given to European citizens to move, work and build their lives in other Member States which also includes establishing families and nurturing friendships, which fosters a true sense of common European citizenship. In the situation where Europeans start closing down their borders to their fellow Europeans today there will remain not that much of "European" to defend.

Even with the current situation Europeans have historically exercised their right to move and reside freely across the EU less than predicted because of all the linguistic and cultural barriers that kept many Europeans tied to their own markets. As a consequence, many governments are fighting with high rates of unemployment and angry electorates, which are scared about migration on their country. This reaction of people is not actually supported by facts because empirical evidence shows that this fear, of foreign workers might crowd out the domestic ones is incorrect. It rarely happens that migrant workers displace the domestic labour force. Instead they do contribute substantially to national economies, through the labour they supply, through the taxes that they pay and also through the services that they consume.

## **Bibliography**

1. <http://www.bbc.co.uk/news/world-europe-11020429>

2. <http://www.bjs.gov/index.cfm?ty=tp&tid=3>

<http://rt.com/news/france-gypsies-camps-dismantle-406/>

3. <http://www.csmonitor.com/World/Europe/2010/1013/In-Italy-local-politics-appears-to-drive-latest-round-of-Roma-Gypsy-expulsions>
4. <http://content.time.com/time/world/article/0,8599,2019316,00.html>
5. <http://english.cntv.cn/program/newshour/20120812/103259.shtml>
6. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20040430:EN:PDF>
7. <http://news.yahoo.com/italy-local-politics-appears-drive-latest-round-roma.html>
8. [http://www.nytimes.com/2010/12/06/world/europe/06gypsy.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/12/06/world/europe/06gypsy.html?pagewanted=all&_r=0)
9. [http://www.nytimes.com/2010/12/06/world/europe/06gypsy.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/12/06/world/europe/06gypsy.html?pagewanted=all&_r=0)
10. Nions, Helen, Minority rights, Protection in International Law, ed Ashgate, 2008.
11. <http://rt.com/news/france-gypsies-camps-dismantle-406/>
12. <http://www.theguardian.com/world/2010/sep/07/barroso-french-anti-gypsy-campaign>