

Human Rights Watch
LIBE Hearing on Fundamental Rights
November 10, 2011

Madam Chairwoman, thank-you for organizing this important discussion and inviting Human Rights Watch to participate.

The creation of a new EU human rights architecture at the time of the Lisbon treaty, with the Charter of Fundamental Rights, the new EU commissioner for fundamental rights, and a greater role for the Parliament, prompted optimism among human rights groups. Fundamental human rights would take a prominent place, not only in EU policy and legislative processes, but also with respect to enforcement at the national level. Indeed, Commissioner Reding promised a “zero tolerance” policy for EU states violating the Charter.

Reality has tempered that optimism. The commission’s first annual report on rights inside the EU shied away from criticizing members states, and emphasized the limitations, rather than the promise, of the Charter. Commissioner Reding stressed that the Charter for Fundamental Rights was a “compass” rather than a “stick.”

The actions of the European Commission in response to French policies and legislation regarding Roma European citizens from Eastern Europe illustrate our concerns. Commissioner Reding took a strong stance in 2010, in the wake of a highly-publicized campaign in France to dismantle informal Roma settlements and expel Roma from Romania and Bulgaria. At the time, Reding reacted forcefully to an administrative circular from the Interior Ministry, dated August 5, and leaked to the press in early September 2010, that ordered prefects to take “systematic action to dismantle illegal camps, priority given to those of Roma” and associated these measures with the “immediate expulsion of irregular foreigners.”

It should be noted that expulsions of European Roma citizens from France without appropriate safeguards did not begin in 2010. Indeed, a coalition of French NGOs seized the European Commission of the issue in a formal complaint in 2008. To our knowledge, no action was taken at that time. What was new in 2010 was the high visibility campaign, and the deeply troubling political discourse that accompanied it.

This time, the Commission did respond, threatening France with infringement proceedings and demanding clarification of whether France’s actions complied with the Free Movement Directive. France responded by pledging to amend its laws to correctly transpose the Freedom of Movement Directive. Amendments were introduced in September to a draft government-sponsored immigration bill already in the works. These amendments were adopted, and enacted in June 2011.

Despite deep flaws in the legislation (which I will outline in a moment) and evidence of ongoing discrimination against Roma by France, the European Commission issued a statement on August 25 of this year indicating it was satisfied with the steps the government has taken. Human Rights Watch has not had access to the Commission’s detailed analysis of the law, if such an analysis exists. When we asked whether there was anything more comprehensive than the press statement,

we were told that “we hadn’t missed anything.”

Human Rights Watch does not share the Commission’s assessment that the problems have been addressed either in the law or in practice.

First, the new law contains provisions that directly contravene the directive and appear designed to facilitate the removal of Roma from France. The law allows authorities to order EU citizens to leave the country for “abuse of rights” if they have been in France on repeat short-term stays or are in France “for the fundamental purpose” of benefitting from the social assistance system. Authorities around the country have long made it a practice to expel Roma on a mere presumption they might one day receive social benefits. Since June 2011, Roma have been ordered to leave France for the simple reason they had been present in France before, even though their current stay was under three months. This flies in the face of EU law, which allows citizens of member countries to stay in any EU country for up to three months without conditions.

Our second concern is that the procedural safeguards are inconsistent with the requirements of the directive, and amount to a failure to transpose it. One of the fundamental concerns with French procedures has always been, and remains, the lack of an individual assessment. The new law rightly requires authorities to conduct such an assessment, taking into account the person’s age, health, economic, and family situation, as well as integration in France, before taking any steps to order someone to leave the country or forcibly remove them. The law does not, however, include all of the necessary criteria, such as the impact of an expulsion on the economic, personal, and family life of the individual, and the hardships the spouse or partner and children risk in the country of origin. The Commission set out these criteria in its 2009 guidance.

Finally, there is ample evidence that in practice the French authorities continue to discriminate against ethnic Roma EU citizens contrary to EU and human rights law. Statements by high-level officials and government circulars all illustrate a concerted administrative policy of targeting Roma for camp evictions and removal from France. While the openly discriminatory circular was subsequently withdrawn, in practice Roma remain the target of such expulsions in the absence of individual assessments. It is deeply troubling that the Commission focused almost exclusively on the incorrect transposition of the Free Movement Directive, failing to address adequately and forcefully the discrimination concerns.

The Commission’s actions in response to rights crises in Hungary and Greece also demonstrate a reluctance to use all of its enforcement tools. The Commission and the Parliament deserve credit for acting swiftly to press Hungary to change a highly-problematic media law after it was enacted in January of this year. Media Commissioner Neelie Kroes threatened infringement proceedings if amendments did not address all of its concerns. Yet the changes implemented in March in response to this pressure left in place the most significant problems, including overly broad and vague restrictions on media reporting, with violations punishable by large fines, and regulatory powers in the hands of government-appointed bodies. Instead of demanding full reform, the Commission accepted the new media law and said it

would monitor its implementation. (To its credit, the European Parliament protested, adopting a new resolution in March stating that Hungary had not gone far enough.)

Faced with a profound migration and asylum crisis in Greece, the Commission has brought pressure to bear, but has failed to follow through conclusively. While it has initiated proceedings against Greece in relation to its dysfunctional asylum system, including abusive detention conditions, issuing letters of formal notice in several cases, the Commission has failed to pursue vigorously these cases despite ongoing violations, preferring instead to focus only on technical assistance.

These are not isolated incidents, there is a pattern here. What we see is a reluctance, a hesitation, on the part of the Commission to use all of the tools at its disposal. This stands in stark contrast to other areas of EU law, such as trade policy and competition law, where the Commission has shown a repeated willingness to hold member states to account for breaches, including through litigation at the Court of Justice.

The Commission should give genuine effect to its proclaimed “zero tolerance” policy and demonstrate concretely its willingness to hold Member States to account, with recourse to infringement proceedings when warranted. Monitoring and enforcement on fundamental rights issues should be a core activity of the Commission.

When seized of serious rights concerns in a given Member State, the Commission should take proactive steps. In cases such as the France situation I have described, the Commission could have given concrete effect to its monitoring role by commenting on proposed measures concerning removal of EU citizens while the bill was undergoing parliamentary scrutiny. Such engagement would also be justified where the Fundamental Rights Agency, LIBE or civil society organizations raise fundamental rights concerns with proposed legislation or policies.

In this testimony, I have focused on the Commission, as the guardian of EU law. But the Council and the Parliament have key roles to play. The Council should strengthen the Working Group on Fundamental Rights, Citizens Rights and Free Movement of Persons to make it a credible and effective forum for analyzing human rights concerns in specific Member States. The Working Group—FREMP—should function like its counterpart on EU human rights policy in external relations—COHOM—with a broad mandate to discuss country situations.

The Parliament, which showed great leadership in pressing the Commission to create the post of fundamental rights commissioner, should redouble its efforts to ensure that the new human rights architecture delivers real protection for people in EU member states. That includes pressing the Council and individual Member States to support a strengthened FREMP, and by ensuring that the Commission performs its role as guardian of the Charter.

Thank-you.