

# Devised to punish: Policing, detaining and deporting Romanians from France

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## Abstract

The criminalization and de-criminalization of foreign nationals is performed by the French state through legal and institutional means in order to increase the deportability of unwanted EU citizens. By policing petty criminals and then instrumenting administrative coercion as a form of punishment, France opts to detain, deport and ban the entry of undesirable EU citizens, mostly Romanian citizens. Moreover, under a bilateral state agreement, France also engages Romanian police agents to help identify ‘their own’ nationals. This article uncovers, problematizes and explains the relationship between state (de-)criminalization practices and the forced removal of EU citizens. In doing so, it aims to respond to the following questions: What is the role of the Franco-Romanian police alliance in the criminalization of migration? What are the legal mechanisms advancing the de-criminalization of migration and how do they influence deportation processes? What is the meaning of punishment for EU deportable/deported citizens?

## Keywords

Crimmigration, deportation, detention, EU citizens, mobility, punishment

## Introduction

France has set in motion an extensive repressive apparatus of policing, incarceration and deportation of non-citizens (Fassin, 2013; Fischer, 2013; Cimade et al., 2012, 2017), deportation relying on international cooperation. Various forms of state collaboration have been encouraged via a shift in migration management towards policing, control and surveillance of aliens (Block, 2012; Ellermann, 2008; El Qadim, 2014).<sup>1</sup> One of these political alliances is the Franco-Romanian bilateral police agreement, which allows Romanian police officers to work together with French police agents in the French

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territory. The outcome is the maintenance of an oversized deportation apparatus and an ‘implementation surplus’ against Romanian citizens, which results in the policing and deportation of more EU citizens than France’s average deportation of migrants. Furthermore, within the framework of deportation mechanisms (Bosworth et al., 2018; Drotbohm and Hasselberg, 2015), bilateral police collaboration sheds light on how two states agree to apply exceptional measures to vulnerable, poor and racialized EU citizens who are disproportionately affected by administrative sanctions, especially deportation. This article aims to show the ways in which the declared goal of deportation conceals and facilitates procedures that are punitive in character and directed at undesirable mobile EU citizens.

Two allegedly distinct domains of public order – criminal law and immigration law – increasingly overlap (Aas and Bosworth, 2013; Bosworth, 2012), leading to unpredictable outcomes for both migrants and citizens (Aas, 2014; Aliverti, 2016). A new stream of social and legal investigation, ‘cimmigration’ (Stumpf, 2006), describes the ways in which the criminalization of mobility is coupled with the administrative punishment of foreigners who are found without the right documents to reside on a sovereign territory (Aliverti, 2012; Stumpf, 2013). The criminalization of foreigners and the management of migration through crime control have been tackled by several scholars (Chacón, 2009; Dow, 2013; Legomsky, 2007) who particularly question the condition of ‘double-punished’ foreign criminals (Boe Sanchez, 2016; Bosworth, 2014, 2017; Turnbull and Hasselberg, 2017), in which prisoners are not released but are deported at the end of their sentence (Hasselberg, 2016). In addition, the deportation from European territories of ex-offenders who are long-term residents raises the alarm on the limits of access to citizenship and the increased deportability of citizen offenders (Bosworth et al., 2016). In this context, deportation as Hasselberg defines it ‘is a practice of state power embedded in anxiety, uncertainty and unrest that elicits different perceptions of (un)justice and deservedness’ (2016: 40). In particular, administrative punishment or ‘removal’ enacted due to the petty criminality of non-citizens problematizes the role of administrative authority in managing migration (Eule et al., 2018; Zedner, 2016). These specific enquiries are relevant for the present case study of EU citizens: ‘illegalized’ irregular mobile subjects, petty criminals deemed ‘deportable’ even when no judicial charges have been brought against them, and ex-offenders who are submitted to double incarceration plus deportation (see De Genova, 2002).

Deportation as punishment has been theorized by scholars who explain the punitive dimension of state repressive mechanisms enacted towards racialized, securitized and criminalized aliens (Bleichmar, 1999; Chin, 2010; Cornelisse, 2010; Kanstroom, 2000; Waltes, 2010). Mainly tackled within British and US literature (Armenta, 2017; Chacón and Coutin, 2018; Golash-Boza, 2015), the racialization of cimmigration is an outcome of deportation. Nevertheless, little has been done to expose the European conundrum of deportation (Aas, 2014; Barker, 2017; Kalir, 2019; Kalir and Wissink, 2016; Khosravi, 2009, 2017). Khosravi (2017) provocatively highlights the limitations of deportation studies that often stop at the borders of the nation-state. Deportation incorporates the governmental technologies of securitization, racialization and criminalization, enacting several state bureaucracies, from the police to the judicial and administrative system. This article argues that certain stages of deportation proceedings are used with punitive

intent (for example, detention), or at least as a means of intimidating non-citizens into submission to abusive state practices. Using the logic of disparity between the asserted goal and real scope of state policies (Kalir, 2019), I emphasize non-penal punishment practices entangled within the deportation apparatus in France.

The argument is laid out in three sections. First I contextualize the deportation of Romanians from France before 2007 and soon after Romania's accession to the EU. I enquire into French legal procedures and political strategies that exemplify the historical trajectory of Romanians' deportation from France. The legal procedures used against undesirable EU citizens are expulsion and deportation orders (*Ordre de quitter le territoire français*),<sup>2</sup> while the political strategy is played out through the bilateral police alliance between France and Romania. The second section explains the Franco-Romanian bilateral police alliance and the ways in which it enables mobile EU citizens' criminalization, as well as validating the political will for the expulsions and deportations. At the same time, the rising trend towards crimmigration points to the limits of migration control from a one-state perspective and demonstrates the crucial role of bilateral and international collaboration. In the third section I document state mechanisms of de-criminalization for deportation. Despite the crimmigration logic that contributes to the policing of some EU citizens, French authorities must 'clear up' the police files of Romanian citizens in order to deport them (see also Burrows and Tarling, 1982). This demonstrates a trend towards pushing these groups (Romanians being just one example of a larger group of undesirable mobile EU citizens) into administrative procedures instead of building a judicial case against them. France prefers to apply administrative laws that enable administrative courts to actively contribute to the state management of migration. The punitive effects of judicial trials and administrative courts are played out through the practices of handing down sentences of (prolonged) detention, enacting (express) deportation, or limiting re-entry in the sovereign territory.<sup>3</sup> Highlighting the contribution of the police alliance to the implementation surplus in deporting Romanian citizens, this article engages in the debates on the criminalization of migration, the deportation apparatus and non-penal punishment.

### *Methodology note*

During 2016–2017 I conducted eight months of non-consecutive and multi-sited fieldwork in France and Romania. The qualitative data gathered include participant observations, focus groups and 100 in-depth semi-structured interviews with individuals working alongside the deportation apparatus: civil servants, police officers and non-state agents – for example, lawyers, interpreters, journalists, legal advisers, workers with non-governmental organizations (NGOs). In this article I draw upon data from interviews I conducted with the French and Romanian police liaison officers who work under the Franco-Romanian bilateral agreement. I conducted interviews and two focus groups with almost all of the Romanian liaison police officers on mission in Paris at the time, two interviews with representatives of the French police in Romania, two interviews with high-ranking civil servants in the Romanian Ministry for the Interior, and four interviews with high-ranking civil servants in the French Ministry for the Interior and in prefectures. Moreover, I take stock of recent scholarly research, thoroughly problematizing access to

fieldwork within the deportation apparatus, a topic of investigation that is advancing debates on state structures of security, migration management and ethnographic research challenges (Kalir et al., 2019). Given that my access to state institutions and their practices was somewhat conditioned and constrained, I acknowledge the limitations of this study (Vrăbiescu, 2019a).

I chose France as the case study on the one hand because it is a notorious case of an EU state that deports EU citizens (Cimade et al., 2012, 2017), notably of Roma ethnicity (Kelley and Edwards, 2016), and on the other hand because the political and institutional relationship between Romania and France led to the implementation of a new model of bilateral police collaboration. Most mass eviction orders, expulsion orders and ‘voluntary’ return programmes have been directed especially at the Roma population (Breazu and Machin, 2018; ERRC, 2017; Vrăbiescu, 2019b). Scholars and advocates for Roma rights have tackled these issues, analysing the policies against ‘Roma camps’ and the excessive issuing of expulsion orders to camp dwellers (Cousin and Legros, 2014; Gould, 2015). Although these phenomena are entangled within the deportation apparatus, this article limits analysis to state practices towards Romanians as EU citizens in general, and state and non-state agents’ contributions to the deportation mechanisms. Adding to this, as I will show, the bilateral police agreement was instituted as a pilot programme and was considered by both states to be a reasonable and efficient collaboration.

## The deportation apparatus inside the EU

France deported Romanian citizens before Romania was an EU member state. Before 2007, Romanians constituted the majority of deportable non-EU citizens in France, although the deportation rates of some other nationals, such as Bulgarians, came close. Back then, Romanians in France had the largest deportation rate among deported third-country nationals (Cimade, 2007; Maslowski, 2015).

Currently, data show that Romanian citizens have an 88.5 percent deportation rate from administrative detention centres and make up 14.8 percent of all the deportations carried out in France (Cimade et al., 2012, 2017). Constituting the most commonly deported EU nationality, Romanians receive between 4000 and 10,000 expulsion orders per year in France, often in doubtful legal circumstances. In the case of Romanians, France prioritizes domestic law for foreigners (*Code de l’Entrée et du Séjour des Etrangers et du Droit d’Asile*, CESEDA)<sup>4</sup> over the limited right to expulsion stipulated in European laws and the Return Directive 2008/52/EC (Bennett, 2011; Dimitrova, 2014).<sup>5</sup> In order to facilitate and expedite the deportation of Romanians, most removal orders are given without allowing time for voluntary return or house arrest (*Assignment à résidence*).<sup>6</sup> The deportation is executed either from detention centres (*Centres de Rétention Administrative*) or from police jail (*Locaux de Rétention Administrative*),<sup>7</sup> where deportees are kept in police custody and then directly accompanied to the (air) border.

The available data on Romanians’ detention and deportation from France have been partially documented and analysed (Cimade et al., 2012, 2017). Analysing Romanians’ deportation patterns over a 10-year span from 2006 to 2016, we can observe how

expulsions and deportation practices are entangled with bureaucratic exclusions in the form of mass evictions and repatriation policies. Immediately after 2007, deportations registered a downward trend, whereas ‘voluntary returns’ increased spectacularly.<sup>8</sup> NGO reports have pointed out that, whereas forced removals from France increased by 15 percent from 2012 to 2013, voluntary returns dropped by 58 percent. This decrease is due to the fact that Romanians registered only 1487 requests for voluntary return, compared with 9282 cases in 2012, representing 84 percent fewer voluntary returns. Despite the changing statistics, the expulsions and repatriations of Romanians reflect a normalized politics of deportation towards a particular group of EU citizens. In 2006, the year before Romania’s EU accession, almost 4000 Romanians were deported from France, whereas in 2016 official data show that removal orders had stabilized at about 4000–4500. When I asked about precise numbers, being aware of the general accusation against the Ministry of Interior that it follows a politics of numbers, or *fait du chiffre* (de Maillard and Mouhanna, 2016), a high-ranking official reacted:

I was expecting this question. I don’t know it by heart ... [taking a couple of papers he had on the table, he continued] The removal orders made against Romanians in 2016 have been, in general, 4357, out of which 2646 were executed. This is a very good rate of execution. More than half. The rest ... we don’t know [he laughs]. For all nationalities we make 100,000 orders a year and we execute 15,000. So, 15 per cent. It is also because Romanians do not put up any obstacles in letting themselves be deported. We can even say that we pay their return to Romania, then they come back ... one day. But we had a period when this circular phenomenon was growing because before, in 2012, we had 10,000 removal orders against Romanian citizens – well, the majority were Roma who really did round-trips, who took a break to benefit from the financial aid. When we stopped that in 2013 the rate [of expulsions] decreased instantly. In 2013 it fell to 8900, in 2014 to 6500 and in 2015 to 4600.

Three factors justify deportation orders issued to EU citizens: over-staying on French territory beyond the legal EU right of freedom of movement (90 days) and being at risk of becoming an unreasonable charge on the welfare state; presenting a threat to public order; and having received a sentence of more than three months in prison.<sup>9</sup> Nowadays the French authorities opt to categorize Romanians as ‘a real, existing and serious threat to the vital interest of society’, or as ‘a serious threat to public order, domestic security or international relations of France’ (CESEDA L214-1 and L214-2). This categorization leads to more frequent deportation orders without delay, executed from detention centres. This is the outcome of an increased politics of policing migration, as I will explain further.

Scholars have debated the role of policing in managing migration and have shown how police activities go beyond the declared scope of the institution (Garland, 1996, 2013). In France as elsewhere, policing non-documented migrants becomes more and more the task of local police (Bonnet and Caillault, 2015; De Maillard, 2005; Fassin, 2013) and actions inland by border police (Bosworth et al., 2018). Moreover, an almost imperceptible shift has taken place from policing foreign nationals and petty criminals to policing EU citizens by combining the forces of two nation-state police institutions. Bilateral agreements end up complementing and partially replacing other state strategies for excluding undesirable foreigners (Favell, 2016). Importantly, this exclusion is based on EU citizenship status.

## **‘Window criminality’ and policing in another state’s territory**

The Franco-Romanian bilateral police collaboration became a feasible and workable governance tool after EU enlargement and during the integration process. This type of state alliance was designed to respond to state-framed fears and securitization issues directed to intra-EU mobility. Under this constellation, police legitimacy and loyalties must be explained in terms of the intersection of joint police practices (De Maillard and Smith, 2012), migration control and deportation regimes in Europe. This politico-police alliance demonstrates how policing practices, together with detention and deportation, can be enacted as punishment tools applied to EU citizens who have not passed through the criminal justice system.

When Romania joined the EU, the number of deported people dropped significantly, with only a few hundred deported in 2007 and 2008 (Cimade et al., 2012, 2017). In addition to the voluntary return programme, the bilateral agreement for police collaboration between Romania and France was sealed.<sup>10</sup> Under the leadership of Michel Godin at the Paris Prefecture de Police (2007–12),<sup>11</sup> the agreement between the Parisian metropolitan police and the head of regional police in Bucharest had the authority to delegate temporary Romanian police forces to French territory, especially in the Paris region but also in a few other cities in France. Two types of police forces have the task of helping French police officers to identify Romanian nationals. One group patrols together with French police agents in the most touristy places in Paris. Twice a year, units of 20 Romanian liaison officers work temporarily for a couple of months. The other group is formed of long-term police liaison officers who are delegated and distributed to several police units where their support is needed.

During cultural events, European regulations permit the exchange of police officers/agents between member states’ territory to protect and support their own citizens. For example, French police officers might go to Romania during the ‘International Francophone Day’ event, when allegedly more French citizens are in Romania and their help would or might be needed. In the same vein, Romanian officers are sent to Paris to supposedly protect Romanian tourists against robbery. However, in my conversation with the high-ranking police officer who worked on the design and implementation of this alliance, he revealed a twist that the political direction took in practice. Instead of helping Romanian citizens on French territory, the Romanian liaison officers helped French police to identify Romanian citizens. As he explained: ‘Only that for us the programme was upside down... Our police officers helped French police agents to identify the petty criminals with Romanian citizenship.’

Initially intended to operate only in exceptional situations, the collaboration was confirmed by a permanent contract in 2008. From 2010 onwards, Romanian officers started to work at police stations in several Parisian districts, as well as in other cities where Romanians were commonly stopped on suspicion of petty criminality. This bilateral police collaboration has been purportedly determined by two factors: the international obligation that Romania had as a new member of the EU, and attempts by French migration management and national security to prevent the highly mediatized ‘Roma migration problem’ (see Parker, 2012; Parker and Catalán, 2014). None of these arguments



were mentioned in the contract. Instead, the alliance supports and complements French immigration policy against Romanian ethnic Roma (Weber, 2013), in spite of consistent protests from civil society.<sup>12</sup> The bilateral collaboration thus transforms state policies of mass eviction directed against ‘Roma camps’ and their dwellers into neutral practices of policing petty criminals and subjecting them to several forms of punishment.

However, despite the police collaboration setting the trend in criminalizing undesirable migrants, confusion persists with respect to the costs and benefits of such an endeavour. During an interview with a Romanian police liaison officer in Paris, the officer commented on the difficulties of transnational police work:

I told them a million times that there are people behind the beggars because somebody who is illiterate, has no income, without any possibility to travel on his own cannot just come to France. ... These are criminal acts of human trafficking. I told them a million times that they [the French police] can bring penal charges if they look for those who are bringing [the beggars], who are bringing them back during the night and who are coming during the day to take the money. There is no will, in my opinion. A criminal file on human trafficking is very difficult to build.

This statement represents not so much a lack of understanding, as rather a different perspective on the matter. The role of the police is not only to fight criminality but also to establish social order (Bierschenk, 2016). The political interest of the Romanian state has another rationale, as the same interviewee detailed further:

This is *window criminality* – as we call it [my emphasis]. A visible criminality. It is the most disturbing and it affects the image of Romania very much. Window criminality. The problem is that [the local French citizen] leaves his building, today, tomorrow, the day after and he sees the same guy over there with his wife and child sitting on a mattress in front of his house. That annoys him. And he knows this is a Romanian.

In my conversations with Marian,<sup>13</sup> a Romanian liaison officer, I was told that the French police no longer fingerprint deported Romanians: ‘They used to do it, but now, after a protest started by civil society, police had to drop this procedure.’ Despite this official statement, Romanians who are detained to be deported have been, and still are, fingerprinted twice: once at the police station when they are brought in to have their identity checked and whether they have an expulsion order, and again when they enter the detention centre. Fingerprinting is a legal police practice. The Romanian police officer knew that this was still done, but tried to dismiss it. His tone and words conveyed another meaning: that it would be a pity to drop such a good police method. Intriguingly, he insisted that there is actually an available database of fingerprints, although nobody knows, either in France or in Romania, how or if it can be used.

Often, Romanian citizens who are stopped and searched by the police for misdemeanours receive a deportation order without delay. The allegations contain charges of begging,<sup>14</sup> false charity, pick-pocketing or public gambling.<sup>15</sup> None of these wrongs constitutes sufficient grounds for a penal trial. One example is gambling. When authorized by the state, gambling has to take place under strict conditions, as written in the law: ‘[Gambling] is strictly regulated regarding public order, public security, health protection and the

protection of minors.<sup>16</sup> Using a double logic of protection – of public order and of the social order – gambling is prohibited in principle and authorized by exception, meaning with a special licence. Begging is another justification for the French authorities to chase Romanian citizens. The law does not condemn begging, but it does condemn exploitation within begging, such as ‘aggressive begging’.<sup>17</sup> In response to the apparent inadequacy of the law, the authorities have introduced ‘begging-free zones’ in Paris by way of prefectural orders or decisions made by the local mayor.

However, these prefectural orders or decisions made by the local mayor must be issued on ‘reasonable grounds’ and justified as being necessary to maintain public order. Otherwise, they will not be considered legal by the Conseil d’Etat and subsequently not qualified as disproportionate measures by the Administrative Court. Thus, such orders to restrict begging in public spaces are limited in space and time. By contrast, the railway stations are under the direct authority of the Prefect, and do not require special authorization for the police to carry out ‘stop and search’ activities or to enforce orders against begging, shoplifting or gambling. The police can act against these activities at all times.

## Migration control and non-penal punishment

The French legal framework and bureaucratic implementation of migration policies reveal the flip side of the criminalization of migration: the state rationale of administrative punishment. Fischer and Darley (2010) argue that the administrative system was not ‘repressive’ before, but has recently been obliged to change its practices and professional ethos. The criminalization of migrants is not new; rather, migrants, vagrants and racialized aliens have always been placed in the same state category of the suspicious ‘other’ for whom appropriate institutional actions range from policing to deportation.

In France, state immigration control uses a purportedly non-coercive policy of voluntary return and four coercive tools: expulsion order, detention, deportation and entry ban. Although deportation may or may not be contested in French civil society, detention is condemned as straight-forward human rights abuse (Baumard, 2015; O’Brien, 2014). In fact, a deportation order is not only given to allegedly criminal offenders who are EU citizens and who will be deported rather than criminally prosecuted. It is also given to those who do not have residency documents or are suspected of ‘rights abuse’ and burdening the welfare state (CESEDA, 2018). The deportation order (*expulsiore*)<sup>18</sup> given to migrants in irregular situations requires them to leave French national territory within 30 days, via their own means. This type of deportation order (with a delay) originates from eviction orders, false police proceedings or mis-used identification (Nguyen, 2016).

Administrative detention occurs instantly in one of two situations: first, when a deportation order is given without delay, and, second, when an EU citizen already has a deportation order and is found in France without proof that they will depart within the permitted period of time. In either situation, the EU citizen will be sent to the detention centre. Another instance of administrative detention occurs when a prisoner has been released and is awaiting deportation. For all convictions of more than three months, EU citizens will be deported to their country of origin at the end of the sentence. This rule permits French authorities to abuse the rights of prisoners and keep them detained beyond their official sentence on the pretext of ‘booking the flight’ to deport them to Romania. In fact



they are punished twice: once by deportation, and again with extra time in a detention centre.

Several times during my fieldwork I encountered Romanian detainees who complained about the 'extended' time they were left in the detention centre rather than being immediately put on a flight. The average time for the deportation of Romanians from France is five days. I noticed that it was not unusual for people to be detained for longer periods without any judicial grounds for this being provided. Crucially, administrative detention can be prolonged even if the detainee is never actually deported, but is rather eventually released on French territory.

Ionut, another Romanian I met in a detention centre for men and who has been living in Paris for the last 10 years, was told that he would spend one month in the detention centre before his flight. I met him after one week of detention, and he told me his story about how he was stopped on a Friday afternoon at the Ménilmontant metro station while he was selling in the flea market. The police accused him of shoplifting a police jacket that he had found in a trash bin and wore as protection against the cold. He was arrested on a Friday at 5pm and put in a police jail, and the police took him to the detention centre only 48 hours later. It was discovered that the owner of the frayed jacket had thrown it into the garbage. Ionut was discharged but the Prefect ordered his detention and deportation because he did not have his original ID card. When I met Ionut, the consulate had already issued a *laissez-passer*, but Ionut appealed to the administrative judge and had his deportation order cancelled, the judge declaring that there was no reason for his arrest (phone conversation with the detainee after his release). NGO workers confirmed the new policy of prolonging detention targeting Romanians, especially in the case of women. The state would prolong their detention in order to arrange for their deportation together with their children. From a state perspective, deportation is more efficient when Romanian citizens are more likely to stay in Romania than to return to France as soon as possible after deportation.

Maria, a mother of two, had been in a detention centre for nine days and she had been told that she must spend 20 more days in detention. She was impatient and told me that she did not understand why they were keeping her there because she had her ID card and she had not done anything wrong. Her small children were left alone with their father, and she wanted to return as soon as possible to take care of them. It was late November and in their improvised shack there was a lot of work to be done to make it comfortable for the winter.

Romanian detainees often refuse to appeal against the administrative sentence of deportation or the judicial verdict for detention, fearing that any contestation would result in a longer period of detention. This was one of the reasons why NGO workers complained about the failure of Romanian detainees to protect their rights:

Honestly, I was very surprised by the Romanians I met in the detention centre. I had serious talks with them, discussions, many of them political precisely over their perception in France being ... and to understand the system they are dealing with. The French system. ... Nobody wants to face the judge. Almost. We started to work on this issue, especially that now there is the interdiction on circulation, in fact, an entry ban. It's like, tomorrow I go to Romania but I cannot return [to France]. Well, they can return because the borders are open. But instead if they

[come to France and] the police stops them the consequence might be a prison sentence and all that. Meaning that they will fall into another category of judicial penalties that are even stronger. We warn them about that: ‘be careful!’ because they should pay attention. We try to appeal, [a procedure] which doesn’t really function – but that is already another discussion – to make them appeal to both courts. The Administrative Court is very important for us because it is the administrative judge who has the power to cancel the decision – the entry ban and the deportation order. We try to explain why this is important for us, as legal advisers, and for them. But it is always the fear of the judge. Really. It is the fear that this will prolong the detention. This is a myth but everybody believes that ‘if I go before a judge this [the detention] will last longer’.

As much as detainee’s fears were not valid from a legal point of view, they were confronted with the discretionary power of the Prefect and the clerks who book the flight. It is up to these officials to book a flight in two days or to postpone the deportation to a later date within 28 days, when the Judge for Liberties and Detention would see them again to decide whether their detention would be prolonged to the maximum period.<sup>19</sup>

The domestic management of migration has recently gained an extra tool to constrain the mobility of EU citizens on French territory. In 2016, France exploited the failure of NGOs to appeal to EU institutions and reinforced their strategy against Romanian citizens by complementing the law for foreigners with a compulsory entry ban directed against EU citizens (GISTI, 2017, 2019). During an interview, the high-ranking clerk in the French Ministry of Interior explained to me the role of the entry ban and the instrumentality of its implementation:

This is not in the Return Directive because it is not applicable to European citizens, but there is [in the text] a clause only in the French [language version of the EU law] that allows it to predict the possibility that a removal order given to a European citizen can be augmented by what we call ‘interdiction on circulation’ that is, *mutatis mutandis*, the equivalent of an entry ban. . . .<sup>20</sup> This interdiction on circulation on French territory by a EU citizen is available only in France because it is difficult to forbid this person to move to another EU country. In this case the measure [entry ban] indicates those persons who have signs of criminality. The fight against irregular migration is undertaken by adding small obstacles rather than finding a miraculous solution. [The entry ban] is one tool among others at the Prefect’s disposal to manage this migrant population.

The French state uses petty criminality in the case of EU citizens as reasonable grounds to support a deportation order and an entry ban. Some say that France’s move towards an entry ban on certain EU citizens represents the end of the right of freedom of movement (GISTI, 2017).

Romanian detainees often asked me rhetorically, ‘But why can they [the French police] do that to us? Aren’t we European citizens?’ The feeling of being subjected to unlawful punishment prevails among the detainees. A woman who was brought to the Administrative Court asked, ‘If I am not a criminal how come they take me like that with handcuffs and put me in that police van like a criminal?’ Usually Romanian detainees claim that the French system works against them, and they rarely have the strength, money and energy to oppose it. They simply stated, ‘I don’t know the laws of this country, but I know I am innocent.’ This knowledge is confirmed by some lawyers and NGO

workers who have defended them and lost their appeals. One lawyer told me that he had worked on the cases of many Romanians, but he had never won a single case.

However, others did not hesitate to identify Romanians as criminals who should be punished in one way or another. One of the judges whom I interviewed defended the French state, arguing that it should not pay for these petty criminals and that administrative punishment is desirable, especially since the addition of the entry ban. He did not think the entry ban was a harsh punishment: 'No, after all they are criminals.' NGO workers' perception of Romanians in detention centres was that 'they had done something', even if they had not been legally convicted. This reflects the criminalization inherent in administrative punishment. Shifting the status of people from petty criminal to deportable foreigner recalls what Zedner (2016) described as the state's intention to evade the protections that criminal processes offer to the accused.

In addition, the practice of deporting ex-offenders encounters no opposition in the case of EU citizens, particularly Romanians. For example, there was only one case known to NGO workers in detention centres of an ex-offender who appealed against the deportation order he had received in prison. The young man had been born and lived his whole life in France, he had no Romanian ID and he was married and had a child of his own who was a French citizen, but he himself was considered Romanian according to his birth certificate. The procedure demands that the Prefect issues the deportation order at the end of the sentence, not earlier. The inmate is informed on the last day of their prison term and immediately transferred to a detention centre to await deportation. According to *L'Observatoire international des prisons* (2017), this procedure makes it impossible to appeal against the deportation order in court. However, the law in its current form forbids the issuing of the deportation order before the sentence is completed.

Hasselberg (2014) and Coutin (2015) remark on a shift towards the normalization of deportation as an appropriate response to crime. In an interview with a police liaison officer, deportation as a punishment tool became visible:

We have thieves back home as well, we know them. Here the authority is stronger. Because they are aware that if they do not respect us and they make trouble they think we can harm them and send them back home. And this would be really painful for them. They struggle to get here and ... 'Are you crazy, do you want to get back home?' 'No, I don't want that chief!' 'Then let's collaborate, give your data and that's it. Do you want to get to your kid tonight? I want that too. Well, you give your data, I go away, you go and that's it.' There is a negotiation there to obtain [personal] data.

Both in the mind of those detained and deported and in the practices of police officers, deportation is punishment. Hasselberg quotes a deportee saying, 'So yes, they should deport people, but dangerous people, people who already have records of being criminal' (2016: 135). Statements like these suggest that the negative image of migrants is internalized and sometimes promulgated by the migrants themselves. The messiness of the deportation apparatus creates confusion within the cohort of detainees and deportees, while serving the state's moral argument for deportations. The detention and deportation of EU citizens who are either ex-prisoners or 'illegalized' petty criminals stigmatize deportees as a group and normalize deportation as an act of punishment against foreigners. In contrast,

'innocent' deportees complain that they are treated unlawfully and contest their criminalization on the basis that they had not committed any crime. Thus crimmigration stretches the limits of the law by punishing petty crimes and encouraging the unlawful treatment of foreigners.

## **Conclusion**

In a classic definition, Anderson et al. call deportation 'an exercise of state authority that aims definitively to end the relationship of responsibility between the state and the non-citizen by forcing the non-citizen beyond the sphere of the state's authority' (2014: 1). This definition points to the state's option to use deportation as a remedy against social harm. In this vein, the bilateral politico-police agreement evades the national immigration law: first by sidestepping EU regulations that limit the entitlement of the state to expel people, and second by elevating a domestic issue to a transnational affair. France recasts the issue of migration as an internal affair by means of criminalizing foreign nationals. The article has shown how policing foreign petty criminals with the support of the Franco-Romanian bilateral police collaboration helps to legitimize the deportation apparatus and increase its efficiency. The deportation apparatus is a mechanism of punitive procedures enacted towards unwanted mobile EU citizens.

This article has illustrated the situation of the EU citizen who passes through the deportation apparatus. The deportable subject is first criminalized then de-criminalized in order to be deported. However, despite being de-criminalized, s/he is left with the stigma and markers of criminality. France uses administrative punitive actions in order to expel and deport EU citizens who fall into one or more legal categories of bureaucratically excluded citizens, petty criminals or undesirable camp dwellers. Through transforming the suspected criminal felony into an administrative offence, the foreign national becomes a deportable subject. By drawing upon the concept of crimmigration, which explains the criminalization of mobility in Europe, I have conclusively shown the shift in police procedures towards bilateral agreements that facilitate the identification of foreign nationals in France. At the same time, law enforcement agents no longer contribute to the framework of the criminal justice system, but rather help to enact punitive administrative measures.

In applying an ethnographic approach, this article has demonstrated the mechanisms by which court practices, state expulsion mechanisms and the police alliance contribute to the high rate of deportation of Romanian citizens. All stages of the deportation procedures have revealed their punitive intent. Echoing Hasselberg's definition of deportation as the practice of state power, the injustice and deservedness imagined by deportable EU citizens and the perpetrators of their deportation (two nation-states) restructure not only ideas of belonging to the European 'family' but also the very idea of criminal justice and punishment. In particular, I engage in crimmigration research debates by tackling the blurred boundaries between the administrative sphere and criminal justice, and problematizing the practice of state structures adapting their migration control through law enforcement agents and administrative procedures of punishment, but evading criminal justice requirements (for further elaboration on this issue, see Bowling and Sheptycki, 2015).

Recasting punishment within the deportation apparatus extends the debate on sovereignty and citizenship in the European context. My analysis at the meso-level of the deportation apparatus reveals ethical issues relating to the present political configurations as well as patterns of police practices and law enforcement. Within the EU framework of supranational and transnational alliances, the potential for punishment resides at the state level. The bilateral police collaboration and the enforcement of deportation against some mobile EU citizens reflect the intensifying trend of overlooking criminal law and its requirements, instead implementing administrative procedures that include punitive consequences for undesirable citizens. Furthermore, these state practices targeting EU citizens of Roma ethnicity in particular point to the importance of studying the ways in which these procedures institutionalize racism. Although states' investments in identifying, arresting, detaining and deporting EU citizens remain largely hidden and unaccountable, they cite moral and political benefits that justify this expensive and violent act of state sovereignty.

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### Notes

1. Police and judicial joint cooperation within the European Union is not only not a novel practice (introduced since the Amsterdam Treaty) but encourages bilateral and multilateral cooperation between the member states besides the existing framework of Europol, Eurojust or Frontex.
2. The *Ordre de quitter le territoire français* (OQTF) is an expulsion order, valid for one year, served by the French authorities on any non-citizen who does not conform to the residency requirements or whose visa has expired.
3. Administrative interdiction on the territory (*Interdiction administrative du territoire*, initially called *Interdiction de circulation sur le territoire français*) is an entry ban applicable only to EU citizens introduced with Law 272/2016, Art. L511-3-1 and further amended by Law L214-1/2019.
4. For the entire text of the law see URL (accessed 11 June 2019): [https://www.legifrance.gouv.fr/telecharger\\_pdf.do?cidTexte=LEGITEXT000006070158](https://www.legifrance.gouv.fr/telecharger_pdf.do?cidTexte=LEGITEXT000006070158).
5. European Directive EC/38/2004 on the Freedom of movement allows EU citizens to move and reside freely on the territory of another state, but France did not fully implement it in its domestic law. EC/115/2008 shapes a common approach of the member states 'for returning illegally staying third-country nationals' and does specify that it cannot apply to EU citizens.
6. *Assignation à résidence* (commonly translated as 'house arrest' in English) specifies that the person should be found at any time at his/her residence in order to be deported when the state arranges it.
7. *Centres de Rétention Administrative* are migrant detention centres. *Locaux de Rétention Administrative* (LRAs) are places used for 'garde à vue', which specifies precisely the police jail. The same places can be used to detain temporarily arrested people who have not yet been charged with a crime, then they become LRAs. However, migrants who are kept in an LRA are incarcerated not because they are suspected of having committed a crime but to determine their administrative status.

8. The 'assisted voluntary return' policy was implemented for Romanians (and Bulgarians) by the Office Français pour l'Intégration et l'Immigration (OFII) under 'Le dispositif d'aides au retour et à la réinsertion' and further complemented by the agreement 'L'Accord-cadre initial entre l'OFII, le Ministère du Travail, de la Famille et de la Protection Sociale et le Ministère de l'Administration et de l'Intérieur de la Roumanie' signed on 12 September 2012. OFII is the department in the Ministry of Interior in charge of the voluntary return of immigrants.
9. See *Journal Officiel de la République Française*, governmental decision no. 2018-1159 of 14 December 2018 for the implementation of the National Code for Foreigners 778/2018 ('pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie et portant diverses dispositions relatives à la lutte contre l'immigration irrégulière et au traitement de la demande d'asile'). This law renews and modifies Law 274/2016 implemented in France during my fieldwork, and all the previous ones.
10. The document is an administrative agreement between the two states and it has not been made public either by France or by Romania. The Romanian Police website has a short description of the programme and the task of the liaison officers on the French territory. URL (accessed 11 June 2019): <https://politiaromana.ro/ro/structura-politiei-romane/unitati-centrale/directia-afaceri-europene-misiuni-si-relatii-internationale/biroul-afaceri-europene-si-relatii-internationale/compartimentul-relatii-internationale/franta>.
11. Michel Godin was the chief of the French National Police between 2002 and 2007 and led the Prefecture de Police in Paris from 2007 to 2012.
12. The European Commission (EC/837/2013) and the European Parliament (PE/578/2015) refused to pursue France for abusive legislation and practices against ethnic Roma from Romania .
13. To maintain anonymity, all the names have been changed.
14. Criminal Code, Art. 312-12-1. See also URL (accessed 11 June 2019): [www.legifrance.gouv.fr/affichSarde.do?reprise=true&page=1&idSarde=SARDOBJT000007112683&ordre=null&nature=null&g=ls](http://www.legifrance.gouv.fr/affichSarde.do?reprise=true&page=1&idSarde=SARDOBJT000007112683&ordre=null&nature=null&g=ls).
15. See the jurisprudence: Conseil d'Etat, 5ème et 7ème sous-sections réunies, du 9 juillet 2003, 229618, mentionné aux tables du recueil Lebon. URL (accessed 11 June 2019): <https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000008183112&dateTexte=>.
16. *Jeux de hasard* is regulated by Law 476/2010, Art. 1, consolidated 2017.
17. See several jurisprudences arguing when begging becomes criminalized in the law: <http://www.jurislogement.org/wp-content/files/Arrêtés%20anti-mendicité.pdf>; <http://www.affaires-publiques.com/point/gp/mend.htm>.
18. In Romanian slang the expulsion or deportation order is called '*explodare*', which literally means 'explosion' and it is used in a mocking way by those who receive it, pointing to its effects and the way they should respond to this mistreatment by the state.
19. Since 1 January 2019, the law in France permits the detention of irregular migrants or EU citizens for up to 90 days. During my fieldwork the maximum detention period was 45 days.
20. Since December 2018 this ban on movement on the French territory has been called '*Interdiction administrative du territoire*' (CESEDA, 2018).

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