

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



16 October 2006

**Case document n° 4**

**International Movement ATD Fourth World  
v. France**  
Complaint n° 33/2006

**SUBMISSIONS OF THE GOVERNMENT  
ON THE MERITS**

**registered at Secretariat on 29 September 2006**



**OBSERVATIONS OF THE FRENCH GOVERNMENT  
ON THE MERITS OF  
COLLECTIVE COMPLAINT No. 33/2006  
ATD FOURTH WORLD**

In a decision of 12 June 2006, the European Committee of Social Rights declared admissible the complaint submitted on 26 January 2006 by ATD Fourth World against France, in which the Committee was asked to find that France was not satisfactorily applying Articles 16, 30 and 31 of the revised European Social Charter.

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**I.       GROUNDS FOR THE COMPLAINT**

The complaint lodged by ATD Fourth World relates to what is regarded as inadequate application by France of Articles 16, 30 and 31 of the Charter, which directly concern the protection of the family through the provision of housing, implementation of the right to housing through access to housing of an adequate standard, and a reduction in homelessness, as well as of Article E concerning discrimination.

**II.      DISCUSSION OF THE MERITS OF THE COMPLAINT**

**2.1     The supply of social housing**

- The social cohesion plan

In June 2004 the government introduced a social cohesion plan, the housing component of which encompassed both the financing of 500,000 social housing units for rental (excluding rebuilds under the urban renovation programme) between 2005 and 2009, in order to make up for the building shortfall of the preceding years, and a doubling in the use of private housing as compared to 2004, with an increase from 20,000 to 40,000 homes in the annual building of controlled-rent housing, giving 200,000 new homes over the period of the plan. Act No. 2005-32 of 18 January 2005 on social cohesion programming reiterates the objectives of the social cohesion plan and makes financial provision for the appropriations required for its implementation.

With over 410,000 homes started in 2005, the rate of housebuilding is at its highest for 25 years. The number of social housing units for rent being financed is also at a 10-year peak, with 71,000 units in all financed in 2004, and 81,000 in 2005, the first year of implementation of the social cohesion plan. The number of controlled-rent homes in the private sector also rose strongly in 2005, reaching 28,000. Over 35,000 privately-owned homes with controlled rents should be built in 2006, and some 15,000 vacant homes will be made available for letting again.

This effort will continue over the whole term of the social cohesion plan. The funding allocated to the development of social housing for rent is 9% higher in 2006 than it was in 2005 in terms of commitment authorisations, and 15% in terms of payment appropriations.

- The Act on a national housing commitment

Act No. 2006-872 of 13 July 2006 on a national housing commitment contains significant measures to foster the use of land resources for housing, encourage an increase in the supply of social and controlled-rent housing, give new impetus to assisted home ownership, and promote the access of disadvantaged or modest households to comfortable housing, either publicly or privately owned, at an affordable rent.

- The interministerial delegation for an increase in housing supply (DIDOL)

In order to coordinate all the action taken to increase housing supply, the Prime Minister in October 2005 appointed an interministerial delegate for an increase in housing supply. The delegate's role is to persuade all ministries to make state-owned land available for housing.

## **2.2 The allocation of social housing**

- Delegation of the prefect's quota

The prefect's quota consists of the homes owned by social landlords in respect of which (when they are built or become vacant) the prefect holds a right of reservation from the social housing agencies, for the benefit of persons given priority under the departmental housing action plan for the disadvantaged (PDALPD). This quota may not exceed 30% of each agency's housing stock, 5% of it for the benefit of members of the state's civil and military services. The prefect may make reservations, but the decision is taken by the landlord's allocation committee. Article 60 of Act No. 2004-809 of 13 August 2004 on local freedoms and responsibilities specified that the prefect may delegate his quota, and thus the possibility of exercising this right of reservation and proposal, to the mayor of the municipality or to the chairperson of a public inter-municipal co-operation body (EPCI), in respect of the reserved housing units situated within municipal or EPCI boundaries.

In its conclusions, ATD expresses concern about the risks to the poorest households stemming from this new provision, and suggests annual monitoring of these delegations by the state. But Article L.441-1 of the Building and Housing Code (CCH) already requires provision to be made in delegation agreements for annual assessment arrangements; the few agreements already signed comply with this obligation. Furthermore, the holder of the delegated power is required, by the same text, to respect the objectives of the PDALPD, failing which the delegation may be withdrawn.

The circular of 17 January 2005 reminds prefects that they may delegate the prefect's quota only if this makes the housing service for the most disadvantaged persons at least as efficient as through direct management, and if the state remains the ultimate guarantor of the right to housing.

- The selection criteria applied to those who have priority

ATD alleges that those who have priority are sometimes passed over to the benefit of the better off, in an effort to achieve a social mix.

The government points out that a social mix is a general objective under Article L.441 of the Building and Housing Code. This objective takes no precedence whatsoever over the priority criteria.

In addition, applicants in a very vulnerable situation (especially those at risk of eviction) who believe themselves to be injured parties may apply to the aforementioned mediation committee, without any time limits applying, to contest any refusal of housing.

- Appeals against social housing allocations
- ▶ The allocation process has a legal framework and is under judicial supervision

Although French law does not recognise the right to housing as a fundamental freedom subject to court action, the social housing allocation process is accompanied by a number of rules of varying status, from legislation to the committee's own rules of procedure.

The administrative and ordinary courts ensure that these rules are complied with.

The administrative court, for instance, monitors allocation committees' action under the regulations. It suspended enforcement of the rules of procedure of one OPAC (public planning and building office) on the grounds that allocations were tending to run counter to the CCH and to the departmental regulations on allocation<sup>1</sup>. In a similar vein, an administrative court confirmed the lack of autonomy of the rule under the agreement (the PDALPD) as compared to the legal rule (the Act of 31 May 1990), and set aside the former's adoption for non-conformity with the provisions of the Act. The plan cannot exclude from the category of priority candidates for social housing persons not excluded by the Act<sup>2</sup>.

In certain cases, the administrative court has also ruled that it had jurisdiction to monitor the lawfulness of individual decisions on the allocation of social housing. It thus took the view that, although the said homes were in public bodies' private sphere, decisions on specific persons taken by allocation committees could be separated out from rental contracts, and could therefore be referred to the court dealing with abuses of authority<sup>3</sup>. For private bodies, supervision of the decisions of the allocation committee is a matter for the ordinary court.

For instance, an administrative court set aside a decision not to allocate a home and urged an office to re-examine the applicant's situation, on the grounds that the allocation committee had not conducted a full examination of the applicant's situation<sup>4</sup>. In the same case, the appeal court granted compensation for the damage suffered as a result of an unlawful refusal to allocate<sup>5</sup>.

As the complainant acknowledges, France has implemented legislation which guarantees priority access to social housing for disadvantaged persons. Far from being purely formal, this legislation is applied, under court supervision.

- ▶ There is an effective remedy if allocation takes an excessive amount of time

The European Committee of Social Rights (ECSR), in its case-law, interprets Article 31 of the Charter, on the effective exercise of the right to housing, to mean that: "It is incumbent on states to [...ensure that...] legal remedies [are] available in the event of excessive waiting times"<sup>6</sup>.

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<sup>1</sup> Marseille administrative court, 23/04/2001, Association DAL Marseille Provence

<sup>2</sup> Paris administrative court, 19/10/1994, Association DAL

<sup>3</sup> Nantes administrative court, 14/03/1995, Mlle. Lefauchaux and M. Grange

<sup>4</sup> Versailles administrative court, 06/07/2001

<sup>5</sup> Versailles administrative court of appeal, 10/02/2001

<sup>6</sup> "Digest of the case law of the ECSR", Council of Europe, March 2005.

Mediation committees were set up under the Act of 29 July 1998. Any applicant for social housing who has waited for longer than a period laid down in an agreement between the department's landlords and the prefect may apply to these committees.

An evaluation of this set-up led the government to revise it substantially in the Act on a national housing commitment. This significant reform relates to various points:

- Information for applicants: a right is effective only if its beneficiaries are informed of it. The Act provides that applicants for housing are to be informed of the committee's existence and application system.
- Membership of the committee: it is to be chaired by a qualified personality, a fact which is likely to increase its independence. Representatives of tenants' associations and integration associations are already on the committee.
- Possibility of an immediate application in the event of urgent need: persons at risk of eviction without rehousing, in temporary accommodation or housed in slums or unfit housing may apply to the committee without being denied on the grounds of an unusually long time-lag.
- Reform of the action taken on committee decisions: although the mediation committee remains an advisory body, it will be able to address an opinion to the prefect, who will then have the power to require a landlord to allocate a home to the person whose application had been recognised by the mediation committee as having priority.

Thus the reformed mediation committee does constitute a "legal remedy", in the sense meant by the ECSR, open to the applicant who has been kept waiting for an excessive length of time, or, at any time, to applicants in a particularly urgent situation. The new powers given to the prefect will enable the state to play to the full its role as guarantor of the right to housing.

### **2.3 Departmental housing action plans for the disadvantaged (PDALPDs)**

According to the complaint, action plans are inadequate in terms of finding out disadvantaged persons' housing needs and finding specific and appropriate solutions for these people and their needs.

- PDALPDs under the Act of 31 May 1990 on implementation of the right to housing

The Act of 31 May 1990 on implementation of the right to housing made it compulsory for every department to draw up and implement a departmental housing action plan for the disadvantaged, and to create a housing solidarity fund. The departmental plan is a responsibility of the representative of the state in each department, the prefect, and of the president of the departmental council (*conseil général*). The housing solidarity fund is equally financed by the state and the department. The specific aim of the plan is to help low-income individuals and families whose social and financial situation makes them vulnerable in the housing sphere, as well as specific groups more exposed to housing difficulties (immigrant families, migrant workers, travellers, young people, etc). In accordance with the Act, these action plans "shall give priority to persons and families who are completely homeless, at risk of eviction without rehousing, in temporary accommodation, housed in slums, unfit, uncertain or improvised homes, or faced with a combination of difficulties".

Since they were introduced, departmental housing action plans, although there have been definite difficulties in analysing and registering needs and appraising these at an appropriate geographical level, have been the only institutional measure enabling the most disadvantaged persons' and families' housing needs to be taken into account. PDALPDs are intended to bring together the administrative authorities, local and regional authorities and social partners directly concerned (low-cost housing landlords, associations, family allowance funds) to create and develop housing supply for groups in difficulty. Under almost all such plans, there are committees or other bodies permanently responsible for dealing with the situation of the individuals and families in greatest difficulty.

- PDALPDs after the Act of 13 August 2004 on devolution

Act No. 2004-809 of 13 August 2004 on local freedoms and responsibilities devolved to departmental councils, with effect from 1 January 2005, the housing solidarity funds, merging them with the unpaid utility bills assistance funds, enabling persons in difficulty to turn to a single fund. The departmental plan continues to be jointly run by the state and the department. The solidarity funds, with an intervention budget in 2004 of EUR 260 million, essentially award financial assistance in the form of loans and grants to help households in difficulty either to move into a home or to stay in their home, by meeting outstanding rent and charges. They also finance social support for households and families in difficulty. Their action relates to all kinds of housing, hostels, social housing and private homes. They enabled 270,000 households to receive assistance in 2004.

- The boost given to PDALPDs by Act No. 2006-872 of 13 July 2006 on a national housing commitment

Where ongoing observation and monitoring of the fulfilment of plan objectives are concerned, the Act brings some not inconsiderable innovations, bringing within the scope of the plan or its implementing arrangements a territorial division of activities, the coordination of priority allocations, follow-up of the housing applications of persons and families covered by the plan, the setting up of an unfit housing observatory, and a contribution from the housing solidarity fund to fulfilment of plan objectives. The report on fund activity has to be submitted to the committee responsible for the plan.

Central government must draw conclusions with a view to renewal of the plans, so as to give them a more strategic position by re-emphasising the dimension of control and developing locally-based observatories of demand, particularly in order to negotiate specific objectives when responsibilities are delegated, or to make them known in the context of PLHs (local housing plans), which have to take on board PDALPDs' building objectives.

A very large amount of work has already been done in respect of unfit housing observatories, enabling potentially unfit housing occupied mostly by disadvantaged families and persons, and generally little known to planners and central government departments, to be mapped, in association with the ANAH (national association for assistance to persons with disabilities) and on the basis of FILOCOM records. The development of unfit housing observatories and their integration into PDALPDs should result in better information, not only about the buildings concerned, but also about the populations housed, and also in improved coordination at a single location of action on buildings and steps taken to rehouse and offer support to persons.

Other progress is under way (use of a single registration number for low-cost housing applications, frequent setting up of observatories).

## **2.4 Evictions of tenants**

The government cannot stand in the way of the execution of judicial decisions, such as evictions.

The prevention of eviction is nevertheless a government priority: a circular was issued in May 2005 (see appendix), and a guide to the social inquiries intended to prevent such evictions in March 2005 (see appendix), both widely distributed within prefects' offices.

The difficulty of preventing evictions having been noted, Act No. 2006-872 of 13 July 2006 on a national housing commitment set up a specialised committee on prevention.

Article 60 contains a provision on "the prevention of evictions of tenants, and corresponding social support activities", stating that: "To this end, the committee responsible for the plan may set up a specialised committee to coordinate preventive action on tenant evictions, tasked with providing opinions to the bodies responsible for making decisions on personal housing assistance, the award of financial assistance in the form of loans or grants and social support in the housing sphere, for persons in arrears with their payments. Where such a committee is set up, the responsibilities of the committee for which Article L.351-14 of the Building and Housing Code provides shall be exercised by the bodies which pay the personalised housing assistance. The *modus operandi* and membership of the committee shall be laid down by decree".

These committees derive from government consideration of a proposal made in a report by Mr Vignoble, who represents the Nord in the French parliament, on preventing evictions. He recommended that such committees be set up.

It was noted that better prevention was possible if better coordination took place between various bodies, such as the FSL (housing solidarity fund), the over-indebtedness committee and the bodies which pay housing assistance (particularly family allowance funds).

The role of such committees will be to bring together these decision-making bodies, which will be represented on them, and to present to them the full range of the various kinds of assistance that the committees can provide more efficiently, more rapidly and more effectively to prevent eviction situations.

The Act having been passed very recently, the contribution of the specialised committees responsible for coordinating preventive action on tenant evictions cannot be assessed. The French government nevertheless considers that the setting up of such committees is a vital way of making an effective contribution to reducing tenant evictions.



## **2.5 The specific issue of travellers**

The complaint is based on the lack of a housing solution for families of travellers who have settled down.

### ▶ Travellers who wish to continue their itinerant lifestyle

This lifestyle requires an adequate number of camp facilities. Act No. 2000-614 of 5 July 2000 on the reception and housing of travellers is intended to recognise and guarantee this population's lifestyle by providing for facilities to be set up enabling it to live in mobile homes in decent conditions. On 1 January 2006, virtually all departmental travellers' facilities plans (93 of the 96) had been signed and published. The pace of implementation clearly increased in 2004, a trend which should continue in 2006 and 2007. As at the end of 2005, 18% of the camp facilities provided for in departmental plans had been created, and 25% of the places had benefited from state subsidies (70% of the investment).

### ▶ Travellers wishing to travel for a few months each year and to settle locally, for financial reasons or in order to send their children to school

A large part of this population having limited means, their situation is sometimes very difficult, as when they settle on rented or purchased sites in locations where planning permission cannot be obtained, or sites where their presence is unauthorised.

Generally speaking, settled households' housing needs, like those of any household of limited means, are a matter for the departmental housing action plan for the disadvantaged (PDALPD).

Nevertheless, at the same time as facilities for itinerants have been set up, funding has been provided for local authorities to set up family plots for rental, so that these families can opt either for a type of housing offering conditions similar to those of the itinerant lifestyle or for more conventional housing. Furthermore, recourse to the funding of special social housing under ordinary law enables mixed housing (permanent buildings alongside caravans) to be created. These solutions make it easier for those wishing to do so to make the change from itinerant homes to conventional housing.

It nevertheless happens that de facto settling for many years on plots not destined for such use makes complex the task of creating appropriate housing in the face of the increasing constraints imposed by the rapid development of urban areas. This applies to the case of both the families settled in what is referred to as the Trou de Poulet neighbourhood of the municipality of Herblay, in the department of Val d'Oise, and the families in the municipality of Kaltenhouse, in the department of Bas-Rhin.

When such situations are identified, local solutions are sought, with central government support, but implementation may prove very difficult, especially because of the unlawful nature of the occupation of the plots, the problem of finding answers compatible with households' means, or the scarcity of land in certain residential areas.

In practice, while departmental plans provide for the compulsory creation of sites to house itinerant travellers, settled populations come under ordinary housing law.

In the face of these difficulties, the government wished to involve travellers themselves in the search for solutions. Mrs Vautrin, Minister Delegate for Social Cohesion and Parity, set up a national consultative committee on travellers on 14 March 2006 and asked it to come up with proposals for improving their integration into the national community.

One of the known facts where housing is concerned is the inadequate link between departmental plans on facilities for itinerants and departmental housing action plans for the disadvantaged; proposals are being studied with a view to strengthening this link and promoting an overall policy.

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## **2.6 The situation of the travellers in the municipality of Kaltenhouse and access to housing in Bas-Rhin**

- The case of the populations settled on the airfield site at Kaltenhouse

Kaltenhouse is a small municipality with a population of under 2,000, some 15% of whom are travellers who have settled on two sites:

- the Rosenfeld site, where between 20 and 30 households (150 to 200 persons) are living in houses which have been built on an estate (the residents own their houses, while the municipality owns the land). This site is now at saturation point, as families grow and older children set up homes of their own;
- the Aviation site, where between 15 and 17 households (80 to 90 persons) are living on a municipal site on which building is not allowed, to which access is difficult, and which lacks mains drainage. A drinking water supply has been provided and a proper electricity supply installed. Living conditions nevertheless remain very difficult on the site.

The municipality wishes to improving living conditions on this site, at the same time creating the conditions for extending the built-up area towards it (the only possible way of developing the municipality, given its small size and the restrictions on land use (flood risk zone, constraints associated with the airfield)).

Several options have been under study since 1998, with the help of the departmental directorate of equipment (DDE):

- development of a site near the airfield: a financial study in September 2003 reported a total tax-inclusive cost of EUR 700,000. This project was dropped by the municipality on cost grounds (rehousing in the same place would also have required too great an investment in drainage);
- laying on services to a 1.5 hectare site on the boundary between the municipalities of Kaltenhouse and Haguenau, close to a street where some settled travellers already live, but airfield constraints mean that this site cannot be built on;
- an exchange of land with the town of Haguenau, which would provide a site not far from the current camp: drainage costs would be between EUR 400,000 and 500,000, a sum beyond the means of a small municipality like Kaltenhouse;
- declaring part of Haguenau airfield no longer usable for aviation purposes: an unfavourable opinion was issued by the Civil Aviation Directorate of north-eastern France, for security and noise nuisance reasons;

- rehousing some families very close to the Rosenfeld site: this is the solution currently proposed by the municipality of Kaltenhouse.

This proposed solution, agreed by all PDALPD partners, is nevertheless proving difficult to implement.

The aim is to rehouse the families from the Aviation site close to the Rosenfeld site by building 20 homes. This raises the problem of bringing together on a single site two communities of settled travellers who do not wish to live in close proximity (nobody has forgotten the 20-year feud which eventually led to a murder).

After several meetings arranged by the sub-prefect of Haguenau, which enabled technical and financial details of the project to be fleshed out with all the partners concerned, two public meetings were held, on 11 and 14 May 2004, one with each camp's families, at which the municipality's project was set out. The outcome of these meetings was a categorical refusal of the project by the families from both camps.

**Yet this solution, the planning, technical and financial feasibility of which has been proven, could have been implemented in late 2004.**

The new sub-prefect of Haguenau is currently moving towards new action, to be supported by two instruments:

- a study of the needs of the travellers on the Rosenfeld site is planned, to be financed by the DDE to the tune of EUR 5,000. Road works and the installation of street lighting are also under consideration. The aim is to improve living conditions on the site, so that tension is eased, making it more attractive to the households from the Aviation site;
- a departmental social and housing plan (MOUS), 50% financed by the DDE (EUR 150,000), was launched in May 2006 by the Bas-Rhin departmental council, with the main objective of rehousing the travellers settled on the Aviation site. This plan will first ascertain families' wishes: some would be minded to settle at the Rosenfeld site, while others would prefer the conventional sector (rental or subsidised ownership).

A working group (sub-prefecture, municipality of Kaltenhouse, departmental council, DDE and Departmental Directorate of Health and Social Affairs/DDASS) has been set up to take this matter forward in practical terms. At meetings of an enlarged working group (follow-up committee), a local human rights group, Kaltenhouse – droits de l'homme, is kept regularly informed by the sub-prefect and municipal mayor of the progress made.

- The Bas-Rhin PDALPD: knowledge of the group covered, demand and housing needs

The PDALPD 2000-2004 assessment states, with reference to knowledge of the people covered by the plan, that "the study specifications were written by a working group, and research consultancies were first addressed in 2003. The study, which was to be run by the DDE, was never started, as appropriations from central government were frozen. In the end, the idea of conducting such a study was dropped".

Nevertheless, the PDALPD assessment also offers the prospect of adding a PDALPD section to the departmental housing observatory. This idea is taken up again in the 2005-2009 PDALPD, and several specific meetings on this subject have already enabled the arrangements for implementation to be defined.

ATD's makes an incorrect statement, for the 2005 report on the Bas-Rhin PDALPD mentions progress in the plan's objective of getting to know the group covered. It actually states that "the partnership agreement with ADEUS provided for such an assessment of needs to be made in the framework of the PDALPD with effect from 2006" (ADEUS runs the departmental housing observatory). The specifications for this assessment were confirmed in January 2006, with a quantitative and qualitative assessment of the needs to be made for November 2006.

The problem of housing which is unfit, unsuitable or substandard is now dealt with, following an investigation of the problem by the DDE in October 2003, by the DDELIND (departmental unit for the elimination of unfit and substandard housing), which has been operational for almost a year and has received some financing under a MOUS unfit homes plan. 64 matters have been registered and are being monitored. The DDE wholly finances investigations to ascertain whether homes are unfit or substandard.

A housing improvement programme in the public interest (*programme d'intérêt général, PIG*) was set up on 29 September 2005 to focus on unfit and substandard homes. This supplements the activity of the DDELIND and has been carrying out monitoring and taking initiatives since early in 2006. In this framework, the ANAH and the Bas-Rhin department have set up a higher level of funding than would otherwise have been the case.

**These three mechanisms (DDELIND, MOUS, PIG + investigations) constitute a very full and ambitious departmental plan to deal with unsuitable housing.**

- The prefect's right of reservation

ATD Fourth World looks only at the perception of those involved, whereas the assessment of the 2000-2004 PDALPD offers some fairly encouraging figures: "Since this right came into force, some **6,683 households** have consequently been rehoused in the department's social housing stock, which is an average of **668 households per year...**".

The assessment then concludes with some proposals for improving the system, all of which are to be included in the 2005-2009 PDALPD, namely:

- a better definition of the group with housing priority,
- more operational and locally-based follow-up,
- consideration of the social support linked to housing.

This effort to improve the system is currently being dealt with by central government through a co-operation agreement between the DDE, DDASS and the prefecture, and PDALPD partners were given details of it in June 2006.

- The collective departmental agreement

ATD Fourth World refers to the 2002 review, which dates from a relatively long time ago. The functioning of the system has changed since then. The assessment of the 2000-2004 PDALPD actually states that "One DDE staff member negotiates with the social housing landlords, with a view to the rehousing of the families covered by the agreement. This work with the landlords is generally regarded as being of high quality".

Social landlords who have rehoused a family immediately send to the DDE an allocation slip, enabling a check to be kept on the priority allocation of housing financed by PLAI (assisted rental loans for integration purposes) to families covered by the collective agreement.

The departmental collective agreement has, since its inception, enabled 260 severely disadvantaged families to be rehoused (from 2001 to 2005 inclusive), an average of around 50 a year. The departmental MOUS plan funded by the DDE, scheduled for launch in April 2006, should enable appropriate housing to be designed for those families which have been waiting for rehousing since 2001 or 2002 (mainly families of six persons or more, with a combination of "severe" social problems).

**Any landlords among the signatories of the departmental collective agreement not meeting their objectives are systematically called to the DDE so that their difficulties, and possible solutions, can be examined.**

- Mediation committee

ATD Fourth World considers the mediation committee ineffective, whereas the number of applications has been steadily rising, as the 2005 review figures reveal:

2003: 37 applications, of which 21 were examined by the mediation committee,

2004: 64 applications, 38 examined by the committee,

2005: 80 applications, 54 considered by the mediation committee.

## **2.7 The situation of travellers in the municipality of Herblay and access to housing in the Val d'Oise department**

- The Herblay travellers and the action taken

Some 500 caravans, which are home to over 2,000 people, stand in the municipality of Herblay, making travellers 10% of the municipality's total population. The equivalent figure for the department as a whole is 2%, and for France as a whole 0.5%. Most of the people concerned have been living in Herblay for many years now.

What makes Herblay different is the fact that the great majority of these travellers are virtually settled there. Most of the caravans rarely, if ever, take to the road, and a lot of them have small, flimsy homes built around them. Approximately four-fifths of the 500 caravans are in breach of the land use plan (POS).

Because of these large numbers of settled or settling travellers within the municipality of Herblay, the departmental housing action plan for the disadvantaged does not require the municipality to create sites for travellers, provided that family sites are created. A municipal decree of July 2003 prohibits itinerant travellers from stopping there.

The municipality of Herblay showed willing, from the early eighties onwards, to devise an appropriate policy on the housing of travellers. Central government - mainly through the prefecture and the DDE - has backed the municipality in all its attempts to find a solution to this highly complex situation.

A land consolidation/development operation was thus carried out between 1984 and 1988, while a census of "persons of no fixed address" was conducted between April 1986 and February 1987.

After the census, when the land use plan was revised in 1991, the municipality designated three areas for use by families wishing to settle down. In this same period, a MOUS plan was begun to create a "home base" at a place known as Les Courlains. The intention was to accommodate 25 families living in 70 caravans, but the project was dropped for fear of a possible "ghettoisation" effect on travellers.

A MOUS plan for rehousing the travellers who had settled in Herblay was set up in 2000, jointly funded by the municipality and the state. A social inquiry was conducted in 2002 by an association called ADVOG<sup>7</sup>, a summary of the findings being submitted in May 2003.

The MOUS agreement was signed on 23 November 2004 by the prefect, the president of the departmental council<sup>8</sup> and the mayor of Herblay.

The plan is to develop four sites containing a total of 26 family plots:

Chemin de la Croix-des-Bois	8 family plots (capacity: 24 places)
Chemin de Pontoise	4 family plots (capacity: 12 places)
Chemin de Chennevières	6 family plots (capacity: 18 places)
Chemin de l'Orme Brûlé	8 family plots (capacity: 24 places)

These four sites were the subject in September 2005 of simplified POS revision procedures with a view to their being opened to development.

The DDE financed the 24 caravan positions in the Chemin de la Croix-des-Bois programme in November 2005. **The start of development works is scheduled for July 2006.**

- The specific case of the area known as the Bois du Trou Poulet

42 residents of the area known as the Bois du Trou Poulet in Herblay were brought before the *Tribunal de Grande Instance* in 2004 for unlawful occupation of land in breach of the land use plan (POS).

Those concerned represented 26 households, containing a total of 95 persons: 42 adults and 53 children.

In the court's judgment of 22 November 2004, all of these households were ordered to evacuate all vehicles and demolish all built structures on the areas concerned within three months, and to pay a daily penalty of EUR 70 if they failed to meet this deadline. Once the deadline had passed, the municipality was given the possibility of having the land evacuated and the unlawful buildings demolished, if necessary with the help of the law enforcement agencies.

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<sup>7</sup> Association départementale des voyageurs Gadje (Departmental association of Gadje travellers), which is very active in Val d'Oise.

<sup>8</sup> In May 2004 a feasibility study of a programme for 26 family plots was submitted by the Val d'Oise branch of Pact Arim.

34 of the families concerned appealed. The Versailles appeal court issued its decision on 30 October 2005, confirming the previous decision except in respect of Mr and Mrs Guitton, who effectively owned their plot and had been settled since 1981 in a wooden chalet with foundations, connected to the electricity and water supplies and fitted with a telephone line. They claimed that their occupation was in accordance with the land use plan, a point on which the court called for an expert report.

The prefect, where enforcement of the judgment of 22 November 2004 was concerned, speedily decided that permission would not be given for assistance from the law enforcement agencies before the end of the winter, although this was not normally the case where caravan residents were concerned. The mayor's position has always been that the law enforcement agencies would not be used until the results of the social inquiry were submitted. It should also be pointed out that no request has yet been made for assistance from the law enforcement agencies, nor has the EUR 70 penalty been enforced.

On 16 December 2005, a meeting chaired by the sub-prefect of Argenteuil was held to start to give thought to the rehousing of the travellers living at the Bois du Trou Poulet, the subjects of the judgment of the *Tribunal de Grande Instance*.

It was at that meeting that a decision was taken to carry out, in the context of the PDALPD, **a social inquiry, so as to determine the situation of each household and the feasible options for rehousing**, in the knowledge that a court decision had been issued, that it was undeniably enforceable, and that the court had not deemed it necessary to set up mediation. It was decided to conduct this social inquiry in the framework of a second MOUS plan covering only social aspects. SONACOTRA was commissioned to carry out that inquiry under its *contrat d'objectifs* contract with the state. The cost of the MOUS totals EUR 19,727, fully financed by the state.

The MOUS was jointly signed by the prefect and SONACOTRA's director responsible for the Val d'Oise department on 20 February 2006. The conclusions of SONACOTRA's report were put to the steering committee on 6 June 2006.

The report stated that five households had left of their own accord. The social inquiry therefore covered only 21 households, containing a total of 71 persons, 30 adults, 34 minor children and 7 children already of age. All 71 still living at the Bois du Trou Poulet were reported to be of French nationality.

Where ownership of the occupied plots is concerned, the situation is that:

- three households stated that they owned their plots, but were unable to provide evidence of ownership;
- the other households stated that they were paying monthly rental for their plots to two owners about whom nothing is known but their names.

76% of the households stated that they had occupied their plots for over ten years. Of these, 38% stated that they had settled there over 20 years ago. Four households had arrived less than five years ago. Given that most of the households are neither owners nor tenants of their plots, it is impossible to verify this information with any certainty.

All the plots are in an area not allowed to be developed under the land use plan, so there can be no building on them.

The rehousing wishes expressed by the 21 households are set out below:

- three households are already on the list of persons to be rehoused on family plots at the Chemin de la Croix-des-Bois site during phase one of the first MOUS (these households comprise eight persons: four adults and four children);
- one household has been rehoused in social housing (five persons: two adults and three children);
- one household has an opportunity to be housed outside the department and is awaiting the end of the school year before leaving (five persons: two adults and three children);
- four one-parent households (12 persons: four adults and eight children) have applied for social housing and should be able to be rehoused by the prefecture under the collective agreements. A second part of the MOUS plan is to get under way in the coming weeks to rehouse these four households. SONACOTRA will be responsible for implementing this. (The five households which have left the site will, if applicable, be able to be restored to the MOUS plan if they declare an interest before it expires);
- 12 households (41 persons: 18 adults and 23 children) wish to be rehoused on family plots.

Thus, while solutions should shortly be found for nine of the households, the situation of the 12 which wish to settle on family plots is more difficult to resolve. The list of persons to be rehoused on the Chemin de la Croix-des-Bois site has already been drawn up. The department's other municipalities which have family plot projects – Groslay, Montmagny and Saint-Leu (three family plots representing six caravan positions) - have also already drawn up the list of persons to occupy them.

A working group on the housing of travellers settled in the department is to be set up in the near future<sup>9</sup>, bringing together representatives of the prefecture, DDE, DDASS, departmental council, CAF, social landlords (OPIEVOY, 13F, le Logis Social du Val d'Oise, SONACOTRA, etc), associations (ADVOG, ATD Fourth World, AFFIL, IDL 95, etc) and, possibly, religious bodies.

The case of the 12 aforementioned households from the Bois du Trou Poulet will be examined as a matter of priority by this working group as soon as it has been set up.

Until such time as a definitive solution has been found, the Val d'Oise DDE is studying the scope for rehousing these people temporarily in mobile home-type housing. In this first phase, the aim is to offer "temporary family plot"-style housing.

- The alleged discrimination against families

ATD is wrong to state that these families are victims of discrimination by public services.

National identity cards are issued to travellers in the normal way, in accordance with the regulations, whether they have settled or not. Eight of the persons concerned do hold national identity cards, six of these issued by the Argenteuil sub-prefecture.

Furthermore, there is no evidence corroborating the alleged denial of holiday allowances.

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<sup>9</sup> A similar working group had been set up in 2000 and had reported in 2002.



In the light of the above, it seems that the French authorities are doing everything to ensure that the legislation intended to guarantee decent housing for all is applied, especially in extremely complex situations like those in Herblay and Kaltenhouse. Thus there is no foundation for ATD's allegation that, notwithstanding the existence of favourable legislation on the right to housing, French government practice does not make this right effective.

The government concludes that there has been no violation of Articles 16, 30 and 31 of the revised European Social Charter.

## **APPENDICES**

1. Circular on the prevention of evictions
2. Guide to social inquiries