

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



27 March 2009

Case document No. 3

European Roma Rights Centre v. France
Complaint No. 51/2008

**RESPONSE FROM
ERRC TO THE GOVERNMENT'S SUBMISSIONS ON THE
MERITS**

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Observations by the European Roma Rights Centre on the French Government's Submissions on the Merits of Collective Complaint No. 51, ERRC v. France

General remarks regarding the failure of the French Government's Submissions to address an important part of the Collective Complaint

1. The ERRC notes that the French Government ("Government") adopted a very selective approach to the complainant's submission and unilaterally decided to focus on the part of the complaint regarding the housing situation of Travellers.¹ More specifically, by focusing exclusively on the issue of housing, the Government has failed to comment on an important part of the Collective Complaint regarding the social exclusion of Travellers in France due to the restrictive policies regarding the issuing of circulation documents and electoral rights.² In this respect, the ERRC reiterates that it considers that the limitations imposed on the electoral rights of Travellers have a detrimental effect both on their participation in political life, especially local, preventing them from expressing their views on e.g. housing issues, **and** are in and of themselves evidence of the institutional exclusion of Travellers from mainstream French society.³

2. This failure is rendered all the more inexplicable by the fact that the Government did not raise any inadmissibility arguments in relation to these allegations at the admissibility stage – indeed, in its comments on the admissibility of the ERRC complaint they noted that they would address them on the substance should the complaint be declared admissible.⁴ It is also inexplicable in light of the enactment of Law 2008-776 of 4 August 2008 that foresees the modification of Sections I and II of Law 1969-3 (but which seems to have left untouched the 3% threshold).

¹ See *Submissions of the French Government on the Merits*, Case document No.2, Registered at the Secretariat on 9 January 2009, § 1 ("Submissions"). Throughout the present submission, references to the Government's Submissions are to the English version of the document.

² See ERRC Collective Complaint dated 17 April 2008, Section III.1.

³ Ibid, paragraph III.1.11.

⁴ See Government's letter dated 23 June 2008, ref. no. 1611/DJ/MM. See also ECSR Decision on Admissibility, Complaint No. 51/2008, 23 September 2008, § 2.

3. Furthermore, the ERRC notes that the Committee attaches great importance to the issue of political participation and has often criticised State Parties to the Charter for limiting their citizens' electoral and voting rights. Thus in the case of Latvia, the Committee requested information that "being or having been in receipt of social assistance does not lead to restrictions on voting rights or access to employment in the public service."⁵ It was only when the Committee received information to that effect that it held that the situation was in conformity with the pertinent Article.⁶ Similarly, the Committee requested Bulgaria to provide it with information both in law and in practice, regarding whether receiving social assistance could lead to any diminution of voting / electoral rights.⁷

4. The above clearly indicate that the Committee considers as highly prejudicial any limitation of voting rights. In this respect, ERRC reiterates that not only has the Government failed to address this issue⁸ but also that prestigious domestic bodies such as the *Commission nationale consultative des droits de l'homme* (CNCDH) and *Haute autorité de lutte contre les discriminations et pour l'égalité* (HALDE)⁹ have amply and authoritatively demonstrated why the present system is discriminatory vis-à-vis Travellers and needs to be reformed. More recently, the Council of Europe's Commissioner for Human Rights ("CHR") also repeated his and his predecessor's criticism of these measures, explicitly stating that these measures amounted to discrimination against Travellers.¹⁰

5. In the light of the above, ERRC respectfully calls upon the European Committee of Social Rights ("the Committee") to find these allegations well founded and conclude that the situation is not in conformity with Article 30, in conjunction with Article E.

Specific remarks regarding the Government's Submissions on Traveller/Roma access to housing

6. The ERRC welcomes the Government's self-critical remarks regarding the problems in the implementation of the 2000 Besson Law and especially the numerous references to **Recommendation Rec(2005)** of the Committee of Ministers to Member States on improving the housing conditions of Roma and Travellers in Europe. The ERRC also welcomes the Government's references to recent decisions on the two collective complaints that dealt *inter alia* with the issue of Travellers' housing¹¹ as well as the frequent references to other collective complaints dealing with Roma housing issues. Whereas the ERRC respectfully disagrees with the conclusions drawn by the Government on the basis of the aforementioned material, it also considers that the Government is keeping pace with the relevant developments and demonstrate their willingness, at least in principle, to incorporate these developments into their national policies.

7. The ERRC notes that the Government's Submissions consist to a large extent of a mere recantation of the pertinent laws and regulations, together with the philosophy underlying them. These issues, however, as the Government itself admits,¹² have been adequately and objectively set out in

⁵ See ESCR Conclusions XVII-2 (Latvia), p. 55.

⁶ Ibid., p. 31.

⁷ European Social Charter (revised) Conclusions 2004, Volume 1 (Bulgaria, Cyprus, Estonia, France, Ireland), p. 72.

⁸ See *mutatis mutandis* ECSR Decision on the Merits regarding Collective Complaint no. 15/2003, ERRC v. Greece, § 50.

⁹ See respectively exhibits 3 and 4 to the Collective Complaint filed by ERRC.

¹⁰ Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008 CommDH (2008)34, Strasbourg, 20 November 2008, §§ 135 – 141, available at

<https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1159474&SecMode=1&DocId=1370480&Usage=2>.

¹¹ Movement ATD Fourth World v France, Collective Complaint 33/2006 and European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Collective Complaint 39/2006.

¹² See Submissions, op. cit., § 5.

ERRC's submission. As a result, the ERRC respectfully contends that the Government has failed to address the main aspects of its Collective Complaint and calls upon the Committee to render a decision of non-conformity with the relevant Articles of the RESC on all grounds mentioned in the Collective Complaint.

8. The ERRC nevertheless considers that the Government did raise some new issues in their submission that merit a comprehensive answer. In providing its comments, the ERRC will follow the order used in the Government's Submissions. Thus the ERRC will first address the issue of "itinerant" Travellers, followed by that of sedentary Travellers and finally that of migrant Roma. The issue of discrimination will be raised in the context of each case.

Itinerant Travellers

9. The main crux of the Government's observations in this context is essentially twofold. Thus, the Government claims that following the Committee's decision in the other two collective complaints,¹³ the implementation of the 2000 Besson Law has been accelerated¹⁴ and that by the end of 2007, 21,165 stopping places had been funded, while by the end of 2008 17,087 stopping places were operational.¹⁵ The ERRC would like to note again the lingering confusion regarding the true number of stopping places; in its National Action Plan for Social Inclusion 2008-2010, submitted in September 2008, the Government noted that 333 halting sites, corresponding to 8,432 places, were in operation.¹⁶

Number and quality of stopping places at halting sites

10. Despite these positive developments, the ERRC would still like to point out that by the end of 2008, namely eight years following the enactment of the 2000 Besson Law (and 18 years following the enactment of the first Besson law in 1990), only one third of the envisaged halting sites is in operation. The ERRC also notes that mere reference to numbers does not provide any insight as to, for example, which departments have fully met their objectives under the departmental plans and which have not. As a result, Travellers living and/or travelling in departments which have failed to meet their objectives still do not enjoy any access to housing.¹⁷ At the same time, many Travellers who have become sedentary are forced to live on halting sites for lack of alternatives.¹⁸ As a result, the real number of stopping places available to Travellers might be even lower.¹⁹

¹³ Collective Complaint Nos. 33/2006 and 39/2006, op. cit.

¹⁴ See Submissions, op. cit., § 12.

¹⁵ Ibid, §§ 35-36.

¹⁶ Available at http://ec.europa.eu/employment_social/spsi/docs/social_inclusion/2008/nap/france_fr.pdf, p. 20.

¹⁷ See in this respect Direction générale de l'Urbanisme, de l'Habitat et de la Construction, *Circulaire de Programmation 2008, Circulaire UHC/IUH de 4 Juillet 2008 Relative a la mise en œuvre de la politique du logement et a la programmation des financements aides de l' Etat pour 2008*, available at http://www.dguhc-logement.fr/infolog/circprog/circ_prog_2008.php, Annexe 2 - L'accueil et l'habitat des gens du voyage: "Ce taux, en forte progression depuis 2 ans, reste encore insatisfaisant dans certains départements pour couvrir les besoins identifiés et fait apparaître des disparités territoriales susceptibles de créer des tensions locales en matière d'occupations illégales ou de fonctionnement des aires ouvertes et des effets de reports de charge préjudiciables à l'équité vis à vis des gens du voyage et des collectivités locales ayant rempli leurs obligations." See also *Projet de Loi de Finances Initial pour 2009*, Mission Ville et Logements, Programme « Développement et Amélioration de l' offre de logement », Question No. DL49, available at http://www.logement.gouv.fr/IMG/pdf/DL49_GDV_cle5bbb14.pdf, p. 4: "Le taux de réalisation des prescriptions des schémas est encore insuffisant et inégal selon les départements (cf. carte en annexe)"

¹⁸ Direction générale de l'Urbanisme, de l'Habitat et de la Construction, *Circulaire de Programmation 2008, Circulaire UHC/IUH de 4 Juillet 2008 Relative a la mise en œuvre de la politique du logement et a la programmation des financements aides de l' Etat pour 2008*, op. cit, p. 10.

¹⁹ See Minutes of the Senat, Séance du 14 octobre 2008 (compte rendu intégral des débats), available at http://www.senat.fr/seances/s200810/s20081014/s20081014_mono.html According to Mr. Herisson, "À défaut de rotation, l'aire devient un espace « réservé » à une certaine catégorie de gens du voyage qui se sédentarisent. Dès lors, elle n'est plus en mesure d'assurer sa mission d'accueil des itinérants. Dans cette hypothèse, l'aire aménagée risque d'être disqualifiée comme aire d'accueil et considérée comme terrain familial, ce qui peut

11. The ERRC does not share the Government's optimism regarding further positive developments in the future. As the Government itself admits (but fails to elaborate on), the funding for the establishment of halting sites will no longer be available after the end of 2008.²⁰ This means that any projects for which no proposal was filed by the end of 2008 will no longer be entitled to the relevant state subsidy. There are also indications that the Government is not planning to continue financing the construction of halting sites: in the first draft of the Budget for 2009, it was mentioned that in 2010 and 2011 only the most important projects will be financed as the majority of the needs are deemed to have been satisfied between 2000 and 2008.²¹ If one adds to this the fact that in 2008 and 2009 work on halting sites would be somewhat limited in those departments whose plans would be subject to revision following the expiry of the six year implementation period after their adoption,²² then it is reasonable to expect that the pace of construction of new halting sites / improvement of already existing sites will slow down rather than pick up. The fact that the relevant budget line for 2009 foresaw the expenditure of 40 million EUR²³ (as opposed to 64 million in 2007 and 53.8 in 2008)²⁴ is another piece of evidence to the effect that the funding for halting sites is being gradually reduced. Given that state funding has been in most cases the only reason why many authorities have proceeded to the set up halting sites, it is rather improbable that municipalities who to this day have not made use of this funding will now use their own funds for this purpose. In this respect, the ERRC notes that the French authorities have failed to this day to make use of their coercive power and seem to limit themselves to merely urging local authorities, by pointing to the available funding, to meet their obligations under the 2000 Besson Law.²⁵

12. The Government also failed to provide any substantial response to ERRC's other concrete allegations, based among other sources on official or semi-official information. In relation, for example, to the highly important issue of the quality of the sites,²⁶ the Government merely set out the legislative framework.²⁷ In this respect, it should be noted that the CHR has also referred to the issue of localisation of halting sites²⁸ while in its June 2008 Concluding Observations on the 3rd Periodic Report of France, the UN Committee on Economic, Social and Cultural Rights expressed its concern over

“[...]the persistent de facto discrimination that Gypsies and Travellers experience in the field of housing, due to the shortage of serviced parking areas for caravans and to the sub-standard living conditions existing in many of the stopping areas designated by local authorities, often situated far

contraindre la collectivité concernée à aménager une nouvelle aire d'accueil, entraînant de nouvelles dépenses souvent contestées.”

²⁰ Submissions, § 35. It is reminded that originally such funding would have ceased by the end of 2007 but in light of the lack of progress in the implementation of the 2000 Besson Law, a one year extension was granted (with the subsidy available being reduced from 70% to 50%).

²¹ See *Projet de Loi de Finances Initial pour 2009*, Mission Ville et Logements, Programme « Développement et Amélioration de l' offre de logement », Question No. DL01, available at http://www.logement.gouv.fr/IMG/pdf/DL01_presentation_generale_des_credits_cle5d535a.pdf, p.1. This also includes proposals who were filed by the end of 2008 but which will be implemented in 2009.

²² This would include the majority of the departments; it is reminded that out of the 96 departmental plans, 25 were adopted in 2002 and 54 in 2003, 14 in 2004, 1 in 2005 and 2 in 2006. See *Projet de Loi de Finances Initial pour 2007*, Mission Ville et Logement, Question No. DL 63, available at <http://www.logement.gouv.fr/IMG/pdf/DL63-3.pdf> p. 2.

²³ Budget 2009 du ministère du logement et de la ville Conférence de presse du 26 septembre 2008, available at http://www.logement.gouv.fr/IMG/pdf/budget_logement_et_ville_2009_1_cle7cc9a1.pdf, p. 16.

²⁴ *Projet de Loi de Finances Initial pour 2009*, Mission Ville et Logements, Programme « Développement et Amélioration de l' offre de logement », Question No. DL49, op. cit., p. 4.

²⁵ See also below, paragraph XIV.

²⁶ See ERRC Collective Complaint, op. cit., sections III.2.5.C – D.

²⁷ See Submissions, op. cit. §§ 37 – 40.

²⁸ Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008 CommDH (2008)34, op. cit., § 132.

away from residential areas and in locations lacking basic infrastructures and inadequate environmentally.”²⁹

13. A potential indicator as to how many places in halting sites might not be meeting the relevant standards is the following: Article 5 of the 2000 Besson Law provides for the allocation of a maintenance subsidy for each stopping place, provided it meets the relevant norms set out in Decree 2001-569 of 29 June 2001. According to official estimates, 13,460 were expected to benefit from this aid in 2008.³⁰ Yet a total of 17,087 stopping places were in operation by the end of 2008, indicating a shortfall of 3,627 stopping places not benefiting from this subsidy. Considering it rather unlikely that the local authority or legal entity managing the site would not be interested in being so funded, one of the potential explanations for this shortfall could be that these sites do not meet the infrastructure requirements of the aforementioned decree and hence are not eligible for funding. Another possible explanation however could be that for a number of reasons (that could include lack of infrastructure or proper maintenance thereof), these sites do not meet the occupancy requirements set in the Decree 2001-568 of 29 June 2001.³¹ It should be noted that, as Mr. Pierre Herisson, chairman of the NCCT noted in his speech before the Senat, if a halting site effectively shelters sedentary Travellers it risks losing its status as a halting site and will not therefore be entitled to a number of subsidies.³²

14. Lastly, the ERRC notes that the Government failed to comment on either the issue of draconian internal regulations³³ or the discrimination encountered by Travellers in accessing already operating camping sites.³⁴ The ERRC would also like to note that to this day, it has not received any answer to its letter dated 18 November 2008 to the Minister for Housing, in which many questions relating to the issues regarding the housing of itinerant / sedentary Travellers as well as Romani migrants were raised.³⁵

Exercise by the Prefects of their powers of substitution

15. Another very crucial point raised only superficially by the Government in their Submissions relates to the substitution powers of Prefects in relation to municipalities failing to meet their obligations under the 2000 Besson Law.³⁶

16. However, as noted in ERRC’s complaint,³⁷ there is no evidence that any Prefect of the 96 departments that have adopted a plan under the 2000 Besson Law has made use of his/her powers of substitution in order to force the recalcitrant local authority to meet its obligations. Nor does the Government refer to any such example in its submission. As a result, and although the 2000 Besson

²⁹ UN E/C.12/FRA/CO/3, 9 June 2008, available at <http://www2.ohchr.org/english/bodies/cescr/docs/co/E.C.12.FRA.CO.3.doc>, § 24.

³⁰ *Projet de Loi de Finances Initial pour 2009*, Mission Ville et Logements, Programme « Développement et Amélioration de l’ offre de logement », Question No. DL49, op. cit., p. 5.

³¹ The President of the NCCT, Mr. Herrison, had since August 2006 noted that certain sites had an occupancy rate of less than 50% and might actually close down. See ERRC Collective Complaint, op. cit., section III.2.5.J.

³² See Minutes of the Senat, Séance du 14 octobre 2008 (compte rendu intégral des débats), op. cit.

³³ See ERRC Collective Complaint, op. cit., sections III.2.5.E – G. See also Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008CommDH (2008)34, op. cit., §§ 128-129.

³⁴ See ERRC Collective Complaint, op. cit., section III.2.5.I. See also Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008CommDH (2008)34, op. cit., § 129: “This requirement to move on causes obvious difficulties insofar as there is a shortage of available places. Given the lack of alternatives, many Travellers are forced to live in caravans that are parked illegally. This failure to comply with the Besson Act exacerbates tensions, **since Travellers are not allowed to park at camp sites**. Moreover, the penalties for camping on unauthorised sites are particularly harsh”. Emphasis added.

³⁵ See Annex 1, 18 November 2008 letter by the ERRC to Madame Christine BOUTIN, Ministre du Logement et de la Ville. The letter was sent by both email and registered post on the same date.

³⁶ See Submissions, op. cit., § 20.

³⁷ See ERRC Collective Complaint, op. cit., section III.2.6.B.a

Law effectively introduced a “stick and carrot” approach in relation to municipalities, the Government appears to have made use exclusively of the latter,³⁸ with rather mediocre results. Whereas the ERRC endorses the Government’s suggestion that an approach focusing on “incentives and education” should be adopted, in line with paragraph II.9 of Recommendation (2005)4 of the Committee of Ministers,³⁹ it also notes that paragraphs III.17 and IV.22 of the same text clearly provide for the institution of a controlling and sanctioning mechanism in relation to local authorities who fail to respect the Travellers’ access to housing, “in any way.” The ERRC also notes that in the previous two collective complaints that dealt with the issue of access of Travellers to housing, the Committee expressed its criticism not only in relation to the protracted period of implementation of the 2000 Besson Law but also in relation to the failure of the central authorities to ensure that local authorities complied with it.⁴⁰

A conceptually incoherent approach regarding the legal status of caravans

17. Another issue not addressed by the Government relates to the legal status of the Travellers’ caravan / mobile home in the domestic legal order. Whereas the Government reacted to the ERRC’s statement regarding its subscribing to a “romantic” notion of the “eternally wandering Traveller” and contend that it shows due regard to the Travellers’ preferences,⁴¹ the validity of this assertion is undermined by two salient issues.

18. The first relates to the almost exclusive focus on halting sites; although ERRC will address this issue below,⁴² it should be noted that even before the adoption of the 2000 Besson Law, there was an increasing body of evidence suggesting that the majority of Travellers in France were either sedentary or semi-sedentary.⁴³ Nevertheless the creation of “terrains familiaux”, a form of housing preferred by most Travellers, was included in the 2000 Besson Law merely as a footnote and their establishment was considered discretionary (as opposed to the establishment of halting sites which was, at least nominally, mandatory). As a result, by the end of 2007, only 274 such sites had been financed, with another 10 to be financed in 2008.⁴⁴ Whereas the ERRC does not suggest, as the Government seem to imply, that no halting sites should be constructed, it does consider that a full mapping of the needs and preferences of Travellers should have been carried out and it should not be in 2008 that the French authorities would, as if all of the sudden, realise that Travellers are becoming increasingly sedentary.⁴⁵

³⁸ Ibid. Similarly, in his interview in *Le Croix*, issue of 13 June 2008, Mr. Herrison noted that “Selon la loi, les préfets ont la possibilité d’inscrire d’office la dépense au budget de la commune et de réaliser l’aire d’accueil. Mais dans la réalité, cela ne marche pas car les préfets ne disposent pas du foncier ni de toutes les clés nécessaires pour modifier le plan local d’urbanisme. Il faut privilégier l’incitation, sur le plan financier et par la garantie que l’État assume correctement ses responsabilités d’ordre et de justice.” The interview is available at <http://www.ump-senat.fr/Pierre-Herisson-II-faut-inciter.html>

³⁹ See Submissions, op. cit., § 21.

⁴⁰ See e.g. ESCR Decision on the Merits, dated 5 December 2007, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Collective Complaint 39/2006, § 167.

⁴¹ See Submissions, op. cit., § 12. In his memorandum, the CHR talked about local officials who were “hostile to implement the Act [the 2000 Besson Law]”. See Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008 CommDH (2008)34, op. cit., § 131.

⁴² See below, paragraph 37 *et seq.*

⁴³ See ERRC Collective Complaint, op. cit., section III.4.A

⁴⁴ *Projet de Loi de Finances Initial pour 2009*, Mission Ville et Logements, Programme « Développement et Amélioration de l’offre de logement », Question No. DL49, op. cit., p. 4

⁴⁵ Thus in his 2008 report to the Prime Minister, the President of the NCCT, Mr. Herrison would note that “Les élus, les responsables associatifs et les services de l’Etat constatent un ancrage territorial de plus en plus marqué. L’évolution des modes de vie, la paupérisation croissante de cette population exposée plus que d’autres aux difficultés économiques impliquent des voyages de moins en moins fréquents et de plus en plus courts. La mise en œuvre progressive des schémas départementaux par la création des aires « d’accueil », contribue à l’évolution de l’image identitaire des gens du voyage, construite pour partie sur le rejet qui leur a été longtemps opposé. » See *Le Stationnement des Gens du Voyage*, Rapport au Premier Ministre (“Herisson Report”), May 2008, available at http://pierreherisson.typepad.fr/pierre_herisson/files/rapport_gdv_22_mai_1.doc, p.6.

19. The second relates to the persistent failure of the French state to recognise Travellers' caravan or mobile home as a home and not only as a "domicile". This reticence on the part of the French state is the best proof that Travellers are treated as "wandering nomads" since clearly the latter do not have or are not in need of a home but merely a place of abode. This is corroborated by the fact that under French law, should Travellers remove the wheels from their caravans, then the latter are suddenly transformed into "light homes" and their owners are entitled to housing related social benefits or even to social housing. Should they choose not to remove the wheels though, they are not so entitled.⁴⁶ In this respect, the ERRC considers it rather odd that despite the numerous references to **Recommendation (2005)4**, the French government failed to take into account the fact that according to the Recommendation, the term "Housing" should be construed as including different modes of accommodation such as houses, caravans and mobile homes.⁴⁷ Similarly, it should not be forgotten that **Recommendation Rec(2004)14** of the Committee of Ministers to Member States on the movement and encampment of Travellers in Europe provides explicitly in paragraph III.12 that member states should "...give Travellers' mobile homes or, where relevant, the place of residence to which the Traveller is linked, the same substantial rights as those attached to a fixed abode, particularly in legal and social matters."

Revision of the Departmental Plans

20. The ERRC welcomes the Government's intention to proceed to an in-depth evaluation of the departmental plans, assess their impact and identify new trends.⁴⁸ It also welcomes the (somewhat belated) realisation by French authorities that an increased number of Travellers are becoming sedentary.⁴⁹

21. As noted above, it is logical under such circumstances to expect that the tempo in constructing / rehabilitating halting sites will be reduced and in some cases local authorities might even decide not to proceed to any such work. While this is clearly not objectionable (it is logical for a department where the majority of Travellers are sedentary and no important migrations take place to reduce the number of halting sites to be constructed), the ERRC is concerned that Travellers will continue facing shortages in available halting sites. This in turn will entail that they will be subjected to penal proceedings and summary evictions, an issue that will be addressed in more detail below.

22. The ERRC is, however, also concerned by the emerging failure of the Government to proceed with the drafting of a comprehensive plan regulating all aspects of housing for Travellers. While it is true that the Government refer in their Submissions to measures undertaken by certain departments in addressing the issue of sedentary Travellers within the context of their PDALPDs,⁵⁰ the ERRC notes that such initiatives are not taking place in an organised and comprehensive manner and that such measures are at times the outcome of the sensitivity and professionalism of local officials, rather than the result of a concrete and thought-out policy on the issue⁵¹ and despite the frequent reminders by higher echelons of the administration to the effect that local authorities should deal with these issues.⁵² The ERRC respectfully believes that a policy allowing for more synergies between the agencies and

⁴⁶ *Projet de Loi de Finances Initial pour 2009*, Mission Ville et Logements, Programme « Développement et Amélioration de l'offre de logement », Question No. AL 10, available at http://www.logement.gouv.fr/IMG/pdf/AL10_categories_beneficiaires_APL_cle0914ba.pdf, p. 5.

⁴⁷ Recommendation (2005)4, op. cit., section I Definitions.

⁴⁸ See Submissions, op. cit., §§ 41-44.

⁴⁹ Ibid, §§ 56 -57. See also Herisson Report, op. cit., p. 6.

⁵⁰ See Submissions, op. cit., § 59.

⁵¹ See ERRC Collective Complaint, op. cit., section III.4.O.

⁵² See Direction générale de l'Urbanisme, de l'Habitat et de la Construction, *Circulaire de Programmation 2008, Circulaire UHC/IUH de 4 Juillet 2008 Relative a la mise en œuvre de la politique du logement et a la programmation des financements aides de l'Etat pour 2008*, op. cit., p. 11 : « En tout état de cause, il ne peut être admis qu'aucune action ne soit entreprise, dans le cadre du schéma et/ou du PDALPD, afin de supprimer les situations des personnes sédentarisées qui vivent actuellement dans des conditions de vie inacceptables. »

authorities involved in the issues relating to itinerant Travellers and those dealing with sedentary ones should be developed.

Consultation with Travellers' associations and other expert bodies

23. The Government notes in its Submissions that policies and measures regarding Travellers are the product of consultation with Travellers' associations as well as the NCCT and that this consultation has already produced positive outcomes. They also note that no national organisation has joined the ERRC in its collective complaint.⁵³

24. The ERRC reminds the Committee it has already noted in this Collective Complaint that numerous Travellers have complained about the lack of real consultation.⁵⁴ The failure of the Government to have noticed and taken measures in relation to the increased level of sedentarisation of Travellers might also be the outcome of lack of effective consultation while the Government is certainly aware that numerous Travellers associations protested against the adoption of the new summary eviction procedure.⁵⁵ In any case, the ERRC notes that the Government has decided to overhaul the whole system of consultation in the public sphere. Thus, as of 9 June 2009, all bodies with consultative status granted before 9 June 2006 by means of a decree, circular or decision will be deprived of it; Ministries are enjoined to submit to the Prime Minister, by the end of February 2009, their proposals as to how they will heretofore designate such bodies.⁵⁶ The ERRC awaits with interest the outcome of this process in relation to Travellers issues.

25. Additionally, the ERRC notes that often the Government failed to take into account even the recommendations put forward by prestigious bodies, such as the NCCT. The ERRC notes that one of the most important problems faced by the Travellers relates to the reluctance of insurance companies to insure their caravans.⁵⁷ Exploring the issue, the NCCT noted that the problem did not lay so much (if at all) in that they might not pay their insurance fees but rather that insurance companies are simply discriminating against them; according to the NCCT, 30% of Travellers have not managed to have their caravans insured. In his capacity as chairman of the NCCT, Mr Herrison therefore suggested a legislative amendment explicitly outlawing any direct or indirect discrimination on the access of Travellers to insurance. The importance that the NCCT attaches to this problem can be attested by the fact that Mr. Herrison has, to this day, made this suggestion three times, only to see it rejected all three of them.⁵⁸

26. Finally, as the Government is surely aware, France has not agreed under Article 2.1 of the *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints* to allow domestic NGOs to file collective complaints. Considering that only those INGOs with consultative status with the Council of Europe and registered in the relevant list can submit such complaints, the Government should not be questioning why the ERRC alone filed such a complaint.

Summary evictions

27. When addressing the issue of the summary eviction procedure, the Government effectively claims that such measures are on the one hand necessary in order to protect the rights of others and that the procedure in question takes into accounts the rights of Travellers on the other, thereby striking

⁵³ See Submissions, op. cit., §§ 24-30.

⁵⁴ See ERRC Collective Complaint, op. cit, sections III.2.4.B – C.

⁵⁵ Ibid, section III.3.I.

⁵⁶ See Circulaire du 8 décembre 2008 relative à la modernisation de la consultation, available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019900712&fastPos=1&fastReqId=1405356727&categorieLien=id&oldAction=rechTexte>

⁵⁷ See ERRC Collective Complaint, op. cit, section III.4.M..

⁵⁸ See Minutes of the Senat, Séance du 9 avril 2008 (compte rendu intégral des débats), available at http://www.senat.fr/seances/s200804/s20080409/s20080409_mono.html

a fair balance.⁵⁹ They also consider as erroneous the ERRC's claim to the effect that appeals against the prefects' decisions before the administrative court have no suspensive effect.⁶⁰

28. Once again, the ERRC notes the highly selective reading of **Recommendation (2005)4**, to which the Government frequently refer. Paragraph V.26 of the Recommendation explicitly states that Travellers should be provided with alternative accommodation when evicted, as well as with effective legal aid.

29. Turning to the former, the paucity of halting sites renders it impossible that Travellers who are trespassing would be provided with alternative accommodation in a halting site; indeed, as the Committee has already noted, "...the delay in implementing the above-mentioned Act is regrettable, since it compels Travellers to make use of illegal sites and therefore exposes them to the risk of forcible eviction under the 2003 Act on internal security."⁶¹ In this respect, the ERRC cannot see where the assertion by the director of the Ministry of Interior's office to the effect that Travellers are always directed to another halting site in cases of judicially sanctioned eviction,⁶² is based.

30. The ERRC also fails to see how the Government can reasonably claim that the summary eviction procedure strikes a fair balance between the competing interests in question; it is reminded that the local authorities who failed to conform with their obligations under the 2000 Besson Law, were granted extensions in doing so and were never subjected to any kind of administrative or other sanctions. On the contrary, they were granted (in the form of the summary eviction procedure) an added weapon in evicting Travellers, for a certain period of time even without having proceeded to the setting up of halting sites.⁶³ In this respect, the ERRC considers that the underlying idea for this *quid pro quo* (namely that authorities who respected their obligations should be granted with a means of effecting a summary eviction of Travellers) is problematic insofar as it appears to be premised on the conception that even if halting sites are available Travellers will choose not to stay there but park illegally.

31. Even admitting however that authorities who have finally fulfilled their obligations under the 2000 Besson Law and have set up halting sites, the ERRC considers that the eviction of Travellers should not be automatic; these is because as noted above, in many cases there might be no available space in the halting sites (or the site might be closed for repairs or it might be improperly maintained and hence the Travellers might not want to join it etc) and as a result the Travellers do not have *in practice* access to alternative accommodation. Nevertheless these considerations do not appear to come into play and it appears that as long as a halting site has been constructed, then the eviction of Travellers who are trespassing elsewhere will be automatic.⁶⁴

32. Turning to the Government's criticism of ERRC's assertion, the ERRC would like to repeat the relevant excerpt from the Collective Complaint. Thus according to ERRC, "*In terms of remedies, the*

⁵⁹ See Submissions, op. cit., §§ 45-55.

⁶⁰ Ibid, § 52.

⁶¹ ESCR Decision on the Merits, dated 5 December 2007, European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Collective Complaint 39/2006, § 164. See also See Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008 CommDH (2008)34, op. cit., § 129.

⁶² See Annex 2 to the present submission, letter by Mr. Michel Delpuech to the ERRC, dated 11 February 2009. The letter sent by the ERRC is reproduced as Annex 3.

⁶³ See ERRC Collective Complaint, op. cit, section III.3.N.

⁶⁴ See in this respect Resolution CM/ResChS(2008)8, Collective Complaint No. 39/2006 by the European Federation of National Organisations working with the homeless (FEANTSA) against France, (*Adopted by the Committee of Ministers on 2 July 2008 at the 1031st meeting of the Ministers' Deputies*), Appendix, Reply by France to the conclusions of the European Committee of Social Rights, § 10: "The government would also point out that the offence of illegal occupation of land described in Article L.322-4-1 of the Criminal Code and criticised by the Committee applies only when the sites provided for by the 2000 Act have actually been constructed in the municipality concerned."

ERRC notes that Travellers can challenge the decision of the Prefect in front of an administrative tribunal and that, if the verdict of the court is not to their favour, they can appeal it within one month. Their appeal would have no suspensive effect however and by the time it would have been brought before the Appeals Court, they would have been evicted.”⁶⁵

33. The above renders it clear that ERRC was not referring to the challenge of the prefect’s decision before the court (which does have suspensive effect) but to the appeal against the administrative court’s decision. As noted in the July 2007 Circular to Prefects setting out the modalities for the summary eviction of Travellers, “*Dès qu’un recours est déposé, l’exécution de la mise en demeure est suspendue jusqu’à ce que le président du tribunal ou son délégué ait statué. Les dispositions de l’article 9 de la loi donnent un délai de 72 heures à la juridiction pour statuer. **Le rejet de la requête vous permettra de mettre à exécution la mise en demeure.***”⁶⁶

34. The ERRC repeats the allegations laid down in its Collective Complaint; the period from the serving of a notice to the issuing of a decision might be as short as 24 hours and as long as 72 hours; under this circumstances, it is almost impossible for Travellers to find counsel, collect information as to the availability of alternative accommodation or not in the area and present it, in a coherent way, before the court. As a result, it might well be that only before the appeals court they might be able to adequately present their case, when they might have been already evicted and as a result, even if they are vindicated, this will have no practical consequences other than the payment of some compensation.⁶⁷

35. Additionally, the ERRC would like to reiterate that no similar procedure is envisaged for any other category of squatters / trespassers. Thus, for example this summary eviction procedure cannot be applied to French citizens travelling in camping cars who are trespassing on private land⁶⁸ or squatters. It should be mentioned, for example, that the Travellers and Romani migrants do not seem to benefit from the “trêve hivernale”⁶⁹ and can be evicted with impunity.⁷⁰ It is interesting in this respect to notice the letter dated 12 March 2009 by the Minister for Housing; noting that the staggering of evictions during winter was soon coming to an end, she called upon the prefects to take measures to prevent the eviction of families who could not afford to pay their rent. Failing that, the prefects were requested to inform the persons under eviction of their rights under the DALO procedure, as well as take the necessary measures to ensure that should the eviction take place, that those evicted be provided at least with temporary shelter.⁷¹ The ERRC respectfully contends that the difference in treatment between categories of persons in effectively the same situation is rather striking. It should be noted also that although the Government in their submission refer to the fact that already 3,857

⁶⁵ See ERRC Collective Complaint, op. cit, section III.3.K.

⁶⁶ Circular No NOR INT/d/07/00080/C “Travellers: procedure of serving notice to quit and forced eviction of illegal occupants from a plot of land”, dated 10 July 2007, p. 5. Emphasis added. See also Article R779-7 of the Code of Administrative Justice, which provides solely that the deadline for the lodging of an appeal is one month; no mention it having suspensive effect is mentioned.

⁶⁷ See in this respect *Bączkowski and Others v. Poland*, appl. no. 1543/06, judgment of 3 May 2007, §§ 82-83.

⁶⁸ See ERRC Collective Complaint, op. cit, section III.3.K.

⁶⁹ Thus according to Article L613-3 of the Code of Construction and Accommodation, no evictions should take place between the 1 November and 15 March of the following year unless alternative accommodation can be provided.

⁷⁰ See article *Gens du voyage : des associations s’élèvent contre les coupures d’électricité*, dated 27 February 2009, available at <http://www.gensduvoyage.fr/documentation/actualite.htm?detail=166> : «L’habitat caravane n’étant pas reconnu comme un logement, il n’est pas protégé par la trêve hivernale et nous devons évoquer des “motifs humanitaires” pour éviter des coupures ou réactiver des branchements par -5 ou -10 degrés pour des personnes vivant sur des terrains familiaux depuis de nombreuses années», remarque Marc Beziat, délégué général de l’association.» Similarly, there have been report of Roma migrants being evicted not only from sheds but also from buildings they squatted; see also press release by Romeurope, dated 20 December 2007, available at <http://www.romeurope.org/wp-content/uploads/2007/12/cp-hiver-2012071.pdf> , referring to three evictions of Roma migrants on the 17 and 18 December 2007.

⁷¹ See Instruction pour prevention des expulsions locatives, 12 mars 2009, available at http://www.juri-logement.org/les_textes/2009/12mars2009Prevention_des_expulsions_locatives.pdf

households have been accommodated thanks to the DALO procedure,⁷² it is not indicated if any of them were Travellers.

36. Concluding, the ERRC would like to comment on an argument raised by the Government in the wake of the Committee's Decisions on the Merits in relation to Collective Complaints 22/3006 and 33/2006; one of the arguments put forward by the Government was that the Committee's conclusions to the effect that tenants should not be easily evicted sat at odds with the judgment of the European Court of Human Rights in the case of *Matheus c. France*.⁷³ The ERRC respectfully disagrees with the Government's understanding of the Court's rationale: the Court clearly did not suggest that evictions should not be postponed or that those under eviction should not be provided with alternative accommodation but rather noted that the failure, for 16 years, of the French authorities to conform to a final judicial decision ordering an eviction, without an adequate reason being suggested for this inordinate delay, was in violation of Article 6 and Article 1 Protocol 1 to the Convention.⁷⁴ Finally, it should also be mentioned that one of the main reasons why the European Court of Human Rights rendered an inadmissibility decision in the case of *Stenegry et Adam c. France* was precisely the provision, if temporary, of alternative accommodation to the Traveller's family.⁷⁵

Sedentary Travellers

37. The ERRC agrees in general lines with the rationale put forward by the Government in relation to the measures implemented or envisaged for sedentary Travellers and does consider some of them to be positive.⁷⁶

38. It cannot however fail to note that these measures do not appear to form part of a comprehensive strategy but are rather the outcome of positive initiatives by local state officials.⁷⁷ The ERRC believes that the inclusion of sedentary / semi-sedentary Travellers in the PDALPDs should be made obligatory and specific and binding instructions and guidelines to that effect be issued. Whereas it is true that for a number of years such instructions are issued,⁷⁸ these are hortatory in nature and given the paucity of relevant initiatives so far, appear to be not acted upon by the relevant authorities.

⁷² See Submissions, op. cit., § 79.

⁷³ Resolution CM/ResChS(2008)8, Collective Complaint No. 39/2006 by the European Federation of National Organisations working with the homeless (FEANTSA) against France, op. cit., § 8.

⁷⁴ See appl. no. 62740/00, *Matheus c. France*, judgment of 31 June 2005, at § 59: "La Cour observe que les motifs avancés par les autorités nationales pour différer en fin de compte *sine die* l'expulsion de l'occupant illégal ne répondaient pas au souci d'éviter des troubles à l'ordre public. Ceux-ci furent seulement évoqués par le préfet mais n'étaient pas clairement identifiables et manifestement pas la cause de l'inaction de l'Etat. Les motivations d'ordre social, louables en leur temps, ne justifiaient pas non plus seize années d'occupation illégale, le temps écoulé aurait du permettre de trouver une solution au relogement de la famille concernée, qui ne méritait pas, semble-t-il, une protection particulièrement renforcée."

⁷⁵ Appl. no. 40987/05, admissibility decision of 22 May 2007, p. 13: "La Cour constate que les requérants se sont installés sur le terrain qu'ils avaient acquis en pleine connaissance de son caractère agricole, et donc non constructible, et que c'est cette situation du terrain qui a motivé les refus des autorités de procéder au raccordement électrique. Par ailleurs, elle relève que les refus des autorités ont été accompagnés, au moins à partir du courrier du préfet d'Ille-et-Vilaine du 12 mars 2004, de propositions de solutions alternatives d'hébergement permettant de respecter à la fois les impératifs liés à l'état de santé du requérant en permettant un accès à l'électricité et, au moins pour certaines des solutions proposées, le mode de vie des requérants"

⁷⁶ See Submissions, op. cit., §§ 56-80.

⁷⁷ See ERRC Collective Complaint, op. cit., § III.4.O.

⁷⁸ Thus once again in 2008 the Direction générale de l'Urbanisme, de l'Habitat et de la Construction reiterated its pertinent recommendations issued in 2007 and called upon the authorities to take all necessary measures to address the problems faced by sedentary / semi sedentary Travellers. See *Circulaire de Programmation 2008, Circulaire UHC/IUH de 4 Juillet 2008 Relative a la mise en œuvre de la politique du logement et a la programmation des financements aides de l' Etat pour 2008*, op. cit., Annex 2, section 3 L'habitat des gens du voyage en voie d'ancrage territorial ou de sédentarisation

39. The ERRC would also like to note that in its submissions, the Government make no reference to an issue affecting numerous Travellers, namely the issue of non-constructible plots of land. The ERRC has already note the very positive initiatives of a number of municipalities which proceeded to revise their urban town plans and include such plots, thereby making it possible to regularise them.⁷⁹ Whereas such regularisation might not be possible or considered appropriate in all cases, the ERRC considers that certain deviations from the Urban Code, accompanied by appropriate legislative measures, are necessary in order to address this situation which is affecting only Travellers (hence being de facto discriminatory) and is in many respects the outcome of the lack of concrete policy on the issue of housing.⁸⁰

Romani migrants

40. In its Submissions, the Government claimed that the ERRC does not address this issue in a substantive way⁸¹ and that in any case, foreign Roma legally residing in France are treated on an equal footing with French nationals.⁸² The Government then conclude their observations on this issue by noting that even in cases where the expulsion from French soil of Roma is ordered, all necessary humanitarian and other measures are taken.⁸³

41. The ERRC notes that in its Collective Complaint, it stated that Romani migrants living under appalling conditions, are subjected to violent forced evictions, their repatriation has been denounced as not all too voluntary in many cases and that France has failed to adopt a comprehensive policy on this issue, notwithstanding the recommendations by Mr. Herrison.⁸⁴ Practically identical observations are contained in the most recent CHR report on France.⁸⁵ In its Submissions, the Government is not effectively disputing any of these allegations. Most importantly, it does not contain any information as to measures undertaken by authorities towards the social inclusion of Romani migrants. The ERRC finds this failure on the part of the Government particularly regrettable since there exist very positive and commendable initiatives by local authorities towards this objective (something acknowledged both by the ERRC in its collective complaint and the CHR), while recently an increasing number of elected local officials are joining an appeal towards the adoption of a policy in relation to Romani migrants.⁸⁶

42. Turning to the issue of equal treatment of Romani migrants legally residing in France with Travellers having French nationality, the ERRC would like to note that the former are explicitly precluded from benefiting from any measures taken under the 2000 Besson Law; responding to a question tabled in the Senat, the Minister of Interior noted that “*Ce sont deux catégories différentes [the Travellers and the Roma], et les Roms ne relèvent donc pas du dispositif d'accueil des gens du voyage qui a été prévu par la loi du 5 juillet 2000.*”⁸⁷

Conclusion

⁷⁹ See ERRC Collective Complaint, op. cit., §§ III.4.P – R, III.4.T – V.

⁸⁰ See in this respect ECSR Decision on the Merits, 18 October 2006, Collective Complaint No. 31/2005, *European Roma Rights Centre (ERRC) v. Bulgaria*, §§ 40, 42, 53 and 55.

⁸¹ See Submissions, op. cit., § 81.

⁸² Ibid, § 83.

⁸³ Ibid, §§ 85-86.

⁸⁴ See ERRC Collective Complaint, op. cit., §§

⁸⁵ Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008CommDH (2008)34, op. cit., §§ 146 – 159.

⁸⁶ See Romeurope press release dated 19 March 2009 and entitled “APPEL DES ELUS - Pour une politique d'accueil et d'accès aux droits en direction des Rroms d'Europe de l'Est installés en France”, available at <http://www.romeurope.org/?m=200903&paged=2> The Romeurope website contains numerous articles in relation to both bad and good practices by local authorities towards Roma migrants.

⁸⁷ See Herisson Report, op. cit., p. 4.

43. The ERRC considers that the Government has failed to respond to its well-founded allegations of non-conformity with the Revised European Social Charter. It therefore respectfully calls upon the Committee to hold that the French government have failed to take all the necessary measures towards addressing the issues raised in its Collective Complaint.

