

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



28 March 2011

**Case Document No. 2**

**Centre on Housing Rights and Evictions (COHRE) v. France**  
Complaint No. 63/2010

**WRITTEN SUBMISSIONS  
FROM THE GOVERNMENT  
ON THE MERITS**

(TRANSLATION)

**registered at the Secretariat on 10 March 2011**



**MINISTRY OF FOREIGN AND  
EUROPEAN AFFAIRS**

Paris, 10 March 2011

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**LEGAL AFFAIRS  
DIRECTORATE**  
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*Sub-directorate of human rights*  
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The Ministry of Foreign Affairs

to

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the Executive Secretary of the European Social  
Charter

No. DJ/DDL

Council of Europe  
Directorate General of Human Rights

**Subject: Collective Complaint no. 63/2010 – Centre on Housing Rights and Evictions (COHRE) v. France**

1. In a letter of 28 January 2011, the European Committee of Social Rights notified the French Government of Collective Complaint no. 63/2010, as lodged by the Centre on Housing Rights and Evictions (COHRE) in accordance with Article 7§1 of the Additional Protocol to the European Social Charter, and asked the Government to submit observations on the merits of the complaint.
2. These observations constitute the French Government's reply to the COHRE's allegations, seeking to show that its arguments should be dismissed.

**I. The complainant's allegations**

3. The complainant organisation alleges that the forced eviction of Roma from illegal camps and the expulsions of Romanian and Bulgarian citizens unlawfully present in France were incompatible with the European Social Charter.
4. More specifically, the COHRE considers that, as a result, France is not satisfactorily implementing **Articles 19§8 and 31 of the revised European Social Charter**, which relate to the following matters:
  - the expulsion of migrant workers;
  - **access to an adequate standard of housing;**
5. Lastly, it refers, in conjunction with these provisions, to **Article E of the Charter on non-discrimination**.

## II. The French Government's reply to the complainant's allegations

6. Firstly, the Government would like to clarify the rules that apply to the expulsion of illegal aliens from France so as to avoid the confusion that may arise from the way in which the COHRE's complaint is worded.
7. The rights of entry and residence of citizens of the European Union and members of their families are governed by Directive 2004/38/EC.
8. Under Article 5 of Directive 2004/38/EC, Union citizens have the right to enter another member state and no entry visa or equivalent formality may be imposed on them.
9. Furthermore, under Article 6 of Directive 2004/38/EC, Union citizens have the right to reside on the territory of another member state for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.
10. However, under Article 7 of Directive 2004/38/EC, the right of residence of Union citizens for more than three months is subject to certain conditions. **It is enjoyed only by workers or self-employed persons in the host member state, persons with sufficient resources not to become a burden on the social assistance system of the host member state or those with sickness insurance and sufficient resources who are enrolled at a teaching establishment.**
11. As a result, Union citizens may be expelled if they no longer fulfil the conditions assigning them a right of residence.
12. **Accordingly, if, having regard in particular to the transitional provisions of the act of accession, a Romanian or Bulgarian citizen no longer fulfils these conditions, he or she may be expelled.**
13. Furthermore, the freedoms of residence and of movement, which are essential in any state governed by the rule of law, must nonetheless be circumscribed so that they do not infringe other individual freedoms or undermine the public interest. In this connection, paragraph II.3 of Recommendation (2005)<sup>4</sup> of the Committee of Ministers on improving the housing conditions of Roma and Travellers in Europe states, with regard to "*choice of lifestyle*" that, while "*all conditions necessary to pursue these lifestyles should be made available to them by the national, regional and local authorities*", this has to be done "*in accordance with the resources available and ... the rights of others and within the legal framework relating to building, planning and access to private land*".
14. Consequently, provision can be made for eviction, particularly in the event of illegal occupation of a site or infringements of individual or collective interests. In its decision of 8 December 2004 on the merits of Complaint No. 15/2003 (European Roma Rights Centre v. Greece), the Committee stated that "*illegal occupation of a site or dwelling may justify the eviction of the illegal occupants*". This is subject to the proviso, however, that "the criteria of illegal occupation must not be unduly wide" and that eviction takes place "*in accordance with the applicable rules of procedure and these [are] sufficiently protective of the rights of the persons concerned*" (§ 51).

## Housing provision for legal Roma migrants:

15. A number of Roma, mostly from Romania and Bulgaria, recently moved to France. Their situation varies. Some have residence permits, some do not, some are asylum seekers while others are “undocumented”. It is estimated that they number about ten thousand.
16. The migrant Roma groups living in France are subject to differing rules depending on their country of origin. Since 1 January 2007, when their countries joined the European Union, Romanian and Bulgarian nationals have enjoyed the right to freedom of movement and residence in all the member states, provided, as with all nationals of EU member states, that they meet the requirement under European regulations of having sufficient resources and social insurance cover<sup>1</sup>. **Legally resident Roma may therefore take advantage of the reception arrangements set up by France on its territory on an equal footing with French nationals.**
17. It should be pointed out however that **many Roma migrants in France are in an unlawful situation**. Where the EU nationals concerned do not have sufficient resources to avoid becoming – in the words of Directive 2004/38/EC, as transposed into the Code on the admission of foreigners and the right to asylum (CESEDA) – an unreasonable burden on the social assistance system of the host member state, they lose all residence rights. **These rules do of course apply in the same way to all EU nationals.**
18. The presence of such people in France when they do not have any means of subsistence raises obvious problems as they do not satisfy residence requirements. As they are not supposed to remain in the country, prefectures are liable to take decisions obliging them to leave. However, when an expulsion order is issued, humanitarian and financial support is provided for the individuals concerned.
19. For instance, humanitarian repatriations have been organised by the National Agency for the Reception of Foreigners and Migration (ANAEM) for the benefit of Romanians and Bulgarians who were living in France in situations of extreme uncertainty<sup>2</sup>. These procedures, carried out in co-operation with such bodies as the embassies of the countries concerned and voluntary associations, have made it possible to provide those concerned with assistance under the humanitarian repatriation programme run by the ANAEM, which is available to any foreigner in a destitute state (and includes financial support of €300 per adult and €100 per child).
20. Along with this repatriation assistance, the persons concerned are informed about the ANAEM’s economic reintegration support programme in Romania, which gives migrants returning under the scheme the right to welfare support on their arrival and, for those wishing to engage in an economic activity, financial assistance with setting up and funding microprojects of up to € 660 per project.

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<sup>1</sup> In the case of non-EU nationals, entry to the Schengen area for a short period is subject to more extensive formalities (in particular, a valid passport, a "Schengen visa" and sufficient financial resources).

<sup>2</sup> The circular of 7 December 2006 on assistance for voluntary or humanitarian repatriation introduces a so-called "humanitarian" repatriation procedure. It allows foreigners in a situation of destitution or extreme uncertainty, including EU nationals, to be offered repatriation to their country of origin. Where they are repatriated by the ANAEM, transport costs are paid.

21. Clearly, there can be no long-term solutions to improve the situation of these people unless their countries of origin pursue an active social integration policy. France therefore encourages any initiatives to support the efforts of the countries in question. In this connection, several European programmes have been launched to provide financial support and stimulate social advancement.
22. Nonetheless, although integration policies are chiefly the responsibility of the states of which they are nationals, the French authorities have introduced several schemes to support these people.
23. Very often, foreign Roma, even when they are in the country lawfully, park without authorisation on undeveloped sites. Their living conditions are very poor. Faced with these difficult situations, some determined authorities have come up with their own solutions. In the Ile-de-France region, the *département* of Seine St Denis, where there are several camps set up of their own accord by Roma families, has supported the development of “integration villages” for people who intend to live in France for a long time. These families’ vulnerable living conditions posed security and law and order, as well as hygiene and public health, problems. Integration villages have been opened in Saint Denis, Aubervilliers, Saint Ouen, Bagnolet and Montreuil. This has entailed major state investment in co-operation with the local authorities concerned.
24. This co-operation has made it possible to implement several projects for the long-term integration of families, both economically and socially and in terms of housing. The first essential step was to organise their temporary accommodation. The state intervened by providing funding for urban and social studies (MOUS) to assess families’ social circumstances and identify long-term housing solutions. In 2010, six studies of this sort were launched in Seine Saint Denis for the purposes of its integration villages, costing €844 000 altogether. The cities of Lille, Marseille and Lyon are also considering the possibility of establishing integration villages.
25. European structural funds, particularly the European Regional Development Fund (ERDF), may be used to foster the integration of marginalised communities. Regulation (EU) No. 437/2010 of the European Parliament and of the Council of 19 May 2010 amending the regulation on the ERDF opens up new prospects in terms of economic and social cohesion, making use of the ERDF to fund housing for vulnerable groups to tackle their exclusion. The action in the housing field forms part of an integrated approach, being combined with other types of activity in the spheres of education, health, social integration and employment.
26. **At all events, these measures can only be applied to Roma in lawful situations. In this case, it is acknowledged that the Romanian and Bulgarian nationals who were expelled could not produce evidence that they were legally present in France.**

## The allegation of mass expulsion:

27. Firstly, the French authorities would reiterate that all the measures to evict the Roma from the illegal camps or expel them were carried out in strict accordance with the law and under the close supervision of the courts. These measures were taken with the aim of maintaining law and order and safeguarding internal security within the limits of the state's responsibilities and in accordance with Article 72 TFEU. These measures are therefore in accordance with Article 19§8 of the Charter, whose aim is to ensure "that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality".
28. It should be pointed out that some 80 000 expulsion orders are issued every year with regard to all types of foreign nationals unlawfully present in France including both EU nationals and national of other countries. In 2009, **80 522** such orders were issued and in the first six months of 2010 the figure was **38 501**. Bulgarian and Romanian nationals accounted for 5.2% of these orders in 2009 and 6.42% in 2010.
29. With regard more specifically to the complainant organisation's allegation concerning the prohibition of collective expulsion, the Government would point out that in its case-law the European Court of Human Rights has already given the following definition of collective expulsion within the meaning of Article 4 of Protocol No. 4 to the European Convention on Human Rights: "any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group".
30. However, the fact that similar decisions have been taken with regard to a number of aliens does not in itself lead to the conclusion that there is a collective expulsion when each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis (*Andric v. Sweden* (dec.), no. 45917/99, 23 February 1999; *Sultani v. France*, no. 45223/05, 20 December 2007; *Ghulami c France*, no. 45302/05, 7 April 2009).
31. In this case, the fact that the Roma who were expelled were given personal assistance for their return shows that their cases were dealt with individually.
32. At all events, unlawfully present Roma enjoy the same procedural safeguards as nationals who are expelled or evicted.
33. The Committee is reminded that under French law, the prefect is the authority empowered to expel foreign nationals (and hence to issue deportation or removal orders or orders to leave French territory).
34. Before taking such a decision, **the authorities conduct a detailed individual review of the foreign national's situation, based mainly on:**
  - hearings by the police officers or gendarmes who apprehended the person in question combined with the person's statements, if they were apprehended on the public highway;
  - data recorded in the national aliens register if the foreign national is already known to the authorities and has been entered on the register (data include whether the person has applied for a residence permit, whether a previous application has been rejected, what the person's situation is with regard to asylum and whether he or she has been expelled before).

35. All removal orders are issued in writing, signed by the prefect or an officer appointed by the prefect and delegated to do so, and communicated to the foreign national, with the assistance of an interpreter if necessary.
36. These rules are subject to judicial safeguards, particularly the possibility of referring the case to the administrative courts, where necessary using the urgent procedure.
37. Prefectoral deportation orders and orders to leave French territory are tried under the urgent procedure by the administrative courts, which rule on the merits of the case.
38. In court, foreigners placed in detention centres are assisted by legal persons, which are, in practice, associations that have entered into an agreement with the state and that assist foreigners by helping them to secure their rights, especially in the administrative courts. Foreigners are also entitled to apply for an officially assigned defence counsel if they do not have their own lawyer.
39. Formalities for applications to the administrative courts are very minimal. Court proceedings are both written and oral. Foreigners, who must be assisted by an interpreter at the hearing free of charge if they so request, may bring all the evidence they wish to the attention of the court during the hearing.
40. Applications are made regularly to the administrative courts and they rule in the presence of both parties after a public hearing based on the application lodged and any oral submissions made by the foreigner and the submissions of the prefect (who is also summoned to the hearing). Prefects may, of their own accord or in response to an order by the judge by virtue of his or her investigating powers (in inquisitorial proceedings), produce various pieces of evidence from the documents in the file on the foreign national on which the expulsion order was based. These can then be discussed by both parties at the hearing. There is no restriction on the kind of evidence that may be adduced in the administrative courts.
41. Based on the arguments brought before it, the administrative court assesses:
  - the lawfulness of the procedure leading up to the expulsion decision (namely whether the correct consultative procedures were followed) and the lawfulness of the decision itself (namely whether sufficient reasons are given to understand the decision and whether the authority which signed the decision had the legal jurisdiction to do so);
  - **whether the authorities conducted an individual examination of the foreigner's situation before the decision was taken;**
  - the merits of the decision itself (including confirmation that there was no abuse of procedure, that the legal requirements for a removal order to be issued were complied with, especially restrictions on the removal of people requiring special protection linked in particular with their state of health, that the person concerned was not entitled to automatic delivery of a residence permit<sup>3</sup>, that the right to a normal private and family life was not excessively infringed, that there was no risk that the person would be ill-treated on returning home and that the best interests of children were taken into account).

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<sup>3</sup> If the removal order follows the rejection of an application for a residence permit, the foreigner may dispute the lawfulness and the merits of the order in the administrative courts through an emergency procedure. Even if they have not applied for a residence permit, foreigners may argue that they are legally entitled to one because they fulfil the relevant legal conditions and if this is so, the court will set aside the removal order.

42. **It should be noted therefore that all removal orders are preceded by a detailed examination of each person's situation, showing due regard for the principle of proportionality and under the strict supervision of the courts.**

**The allegation of racial discrimination and segregation:**

43. **On the basis of a circular of 5 August 2010, the complainant organisation submits that the French authorities have taken discriminatory measures against Roma, who were the main target of this circular on the evacuation of illegal camps.**
44. The Government draws the Committee's attention to the fact that this circular was immediately withdrawn and replaced by a new one of 13 September 2010, signed by the Minister of the Interior.
45. Since August, over 550 illegal camps have been evacuated. The illegal camps of Travellers or "persons whose housing traditionally consists of mobile homes" (Act No. 2000-614) who are French accounted for 2/3 of these evacuations and a little over 80% of the persons concerned. Seven of the operations in question affecting about a hundred people targeted the illegal camps of nationals of third-country nationals (from countries including Vietnam, Sudan, Iran, Iraq and Afghanistan). All of these operations to evacuate illegal camps were conducted under judicial supervision.
46. **The aim was to maintain law and order and safeguard internal security within the limits of the French Government's responsibilities without targeting people because of their ethnic origin.**
47. **It is worth noting that when this case was referred to the European Commission, it found that the eviction and expulsion measures affecting the Roma in summer 2010 complied with the relevant norms.**

In the light of the foregoing, the Government concludes that there has been no violation of Articles 19§8 or 31 of the revised Social Charter, read in conjunction with Article E, in view of the fact that the Roma were expelled from French territory through separate individual procedures and that, as they were in the country illegally, they were not covered by the provisions of the Charter on the right to housing.

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