EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

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Case document no. 3

***Médecins du Monde – International* v. France**
Complaint No. 67/2011

RESPONSE BY MEDECINS DU MONDE TO THE GOVERNMENT'S SUBMISSIONS ON THE MERITS

Registered at the Secretariat on 5 January 2012

Médecins du Monde reiterates hereby the arguments set out in Collective Complaint No. 67/2011 and will reply below to the arguments put forward by the French Government in its observations on the merits.

In the preamble to its observations, the French Government drew attention to the fact that the European Commission had recently established an EU Framework for National Roma Integration Strategies, whose aim was to improve the economic and social situation of Roma at European level. In this connection, the member states had been invited to devise national Roma integration strategies and present them to the Commission by the end of December 2011.

However, the French Government has not yet presented any national strategy. Neither has there been any change in the rhetoric, practices or facts condemned by Médecins du Monde in its initial complaint, which are in breach of Articles 11, 13, 16, 17, 19§8, 30 and 31 of the revised European Social Charter. For instance, the evictions and expulsions from the country have continued unabated, resulting in breakdowns in life-saving treatment, increased financial insecurity and recurring instances of children dropping out of school among Roma populations already living in extreme poverty.

The French Government cannot rely on the European Roma integration strategy to absolve itself of all responsibility as the political matters involved fall within its national responsibilities, and France's treaty obligations, as set out in the Charter, exceed the goals set by the aforementioned European policy.

France also alleges that it takes measures to support vulnerable population groups including the Roma and that they comply with the stipulation of the European Committee of Social Rights (the Committee) that while states must take positive action to guarantee that the rights enshrined in the Charter are respected, they also have a margin of appreciation when attempting to strike a balance between the general interest and the interest of a specific group (European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 35).

However, recently, the Committee also found as follows:

> *"20.* ***This imperative of achieving equal treatment by taking differences into account*** *has been underlined in recent decisions by the Committee. In its decision COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, the Committee explicitly recognised that special consideration should be given to the needs and different lifestyle of Roma, which were a specific type of disadvantaged group and vulnerable minority.*

21. *The European Court of Human Rights is also of the view that **Roma require specific protection measures**. In its judgement Orsus v. Croatia, of 16 March 2010, it stated:*

> *'… as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority …. They therefore require special protection. … special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases … not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community'."*
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> (European Roma Rights Centre v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011, §§ 20 and 21).

Therefore, the French Government does nothing to demonstrate that it has taken the necessary and appropriate measures to improve the living conditions of migrant Roma living in extreme poverty in France in breach of Articles 11, 13, 16, 17, 19§8, 30 and 31 of the revised Charter, read alone or in conjunction with Article E of the revised Charter on non-discrimination.

I – Right to housing: violation of articles 16, 30 and 31, read alone and in conjunction with Article E of the revised Charter

The Committee has repeatedly found that France was violating the housing rights of the Roma populations living in France. Recently, it called France's conduct an aggravated violation of human rights:

> *"53. Having regard to the adoption of measures, which are incompatible with human dignity and specifically aimed at vulnerable groups, and taking into account the active role of the public authorities in framing and implementing this discriminatory approach to security, the Committee considers that the relevant criteria (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 76) have been met **and that there was an aggravated violation of human rights from the standpoint of Article 31§2 of the Revised Charter. In reaching this conclusion, the Committee also takes into consideration the fact that it has already found violations in its decision of 19 October 2009** on the merits of Complaint No. 51/2008, European Roma Rights Centre (ERRC) v. France.*
>
> *54. The measures in question also reveal a failure to respect essential values enshrined in the European Social Charter, in particular human dignity, and the nature and scale of these measures set them apart from ordinary Charter violations. These aggravated violations do not simply concern their victims or their relationship with the respondent state. They also pose a challenge to the interests of the wider community and to the shared fundamental standards of all the Council of Europe's member states, namely those of human rights, democracy*

and the rule of law. The situation therefore requires urgent attention from all the Council of Europe member states (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 78). The Committee invites them to publish its decision on the merits, once it has been notified to the parties and to the Committee of Ministers. Turning more specifically to the respondent Government, ***the finding of aggravated violations implies not only the adoption of adequate measures of reparation but also the obligation to offer appropriate assurances and guarantees of non-repetition and to ensure that such violations cease and do not recur****." (Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011).*

However, the French Government has not announced any compensatory measures or issued any assurance or guarantee that there would be no repeat of these aggravated violations of the human rights of Roma migrants living in extreme poverty.

The Committee has also recently clarified the scope of Article 31 of the revised Charter:

" A. On the scope of Article 31
29. As it had already stated in its grounds of defence in the proceedings concerning International Movement ATD Fourth World and European Federation of National Organisations working with the Homeless (FEANTSA), the Government argued strongly in its written submissions that the Charter's 21 provisions on the right to housing, in particular Article 31, only imposed on states an obligation of means. In other words, so long as suitable measures were taken with a view to securing the right to housing, the situation would be in conformity with the Charter.

30. The Committee refers to its earlier interpretation concerning the scope of Article 31. It notes that there is no obligation on states to produce "results", but ***their obligation consists in taking effective measures so that results are achieved, qualitatively and quantitatively*** *(International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58 to 67, European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §§ 28 to 31)."*

(ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009).

The French Government has failed to achieve any result, either quantitatively or qualitatively, in the implementation of the right to housing as set out in Article 31 of the revised Charter with regard to migrant Roma or of the related rights in Articles 16 – the right of the family to social, legal and economic protection – and 30 – the right to protection against poverty and social exclusion, read alone or in conjunction with Article E.

A – Degrading housing conditions

The French Government denies that there is any discrimination in its regulations and states that "legal action may be brought" to counter any discrimination that exists.

It also claims that it has introduced legal, financial and operational means of ensuring progress towards the goals laid down by the revised Charter with regard to the right to housing and mentions certain existing schemes, which it describes as "ambitious", including the DALO Act of 5 March 2007, the Act on action for housing and against exclusion of 25 March 2009, the national strategy for accommodation and access to housing for the homeless, the regulation on the ERDF and certain local schemes. However, despite all this, it cannot give any examples of quantitative or qualitative results.

The Government has nothing to say about the situation which Médecins du Monde condemns concerning migrant Roma's degrading housing conditions, particularly the fact that thousands of children are living in an extremely insecure and insanitary environment.

Furthermore, whereas the accommodation of migrant Roma is still a genuine, topical issue and has become even more pertinent as the number of evictions has increased, the French authorities provide no evidence that they have taken any legal, financial or operational measures to work towards alleviating these people's homelessness. They have purposely overlooked all of Médecins du Monde's criticisms concerning the rare emergency accommodation facilities that are proposed.

Total public spending on housing by the community (the state, the social partners and the local authorities combined) has declined. Between 2000 and 2011, public spending in this sphere fell from 2% of GDP to 1.72%[1] whereas the housing crisis continued to spread. 133 000 people are now homeless, 85 000 live in makeshift dwellings and, in all, some 10 million people are affected by the housing crisis[2].

Similarly, the new prospects for funding associated with the amendments to the regulation on the ERDF (see the circular of 16 March 2011 cited by the Government) are simply the outcome of a plan that was decided at European Union level. The French Government provides no tangible evidence that funds are being raised.

Lastly, the establishment of integration villages, which are local projects providing simple provisional shelter in a decent dwelling, and the funding of urban and social studies (MOUS) are the outcome of purely local policies, which are extremely limited in number and have only a minor impact. It has also

[1] See, in the appendix, the 16th annual report by the Fondation Abbé Pierre "*L'Etat du mal logement en France*", 2011, http://www.fondation-abbe-pierre.fr/_pdf/rml_11.pdf, housing policy synopsis, page 141.
[2] See, in the appendix, the 16th annual report by the Fondation Abbé Pierre "*L'Etat du mal logement en France*", 2011, http://www.fondation-abbe-pierre.fr/_pdf/rml_11.pdf, figures on inadequate housing, pages 227 and 228.

been pointed out previously that these local solutions can have adverse effects. It should be said that it is not their origin which accounts for the special needs of migrant Roma but their situation of extreme poverty and the fact that they cannot earn an income through work.

At any event, all of these measures were referred to by the Government in its response to Complaint No. 63/2010 by the Centre on Housing Rights and Evictions (COHRE) v. France. In its decision on the merits of 28 June 2011, the Committee already found that **these measures were not such as to guarantee that France was respecting the right to housing as defined in the revised Charter**.

B – Evictions from camps that violate fundamental rights

The French Government points out that under the revised Charter, signatory states are required to ensure that evictions of illegal occupants are carried out in accordance with rules that protect the rights of the persons concerned.

The Committee has also stated as follows:

> *"42. Moreover, when evictions must take place, they must be carried out (i) in conditions that respect the dignity of the persons concerned; (ii) in accordance with rules that are sufficiently protective of the rights of the persons concerned (European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, § 163). The Committee also notes that when evictions are justified by the general interest, the authorities must take steps to rehouse or financially assist the persons concerned (Conclusions 2003, France, Italy, Slovenia, Sweden)."*
> (Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011).

Médecins du Monde has witnessed many cases in which evictions have been carried out in breach of the Committee's requirements, in conditions which failed to protect these people's rights, with no provision for alternative accommodation.

There is no response from the French Government to Médecins du Monde's findings concerning the intimidation, harassment, unjustified force and destruction of personal property which sometimes accompany the eviction of migrant Roma families.

In the Government's view these evictions can be justified as they bring a halt to an infringement of the right to property, as the illegal occupation of land or premises is an offence under Article 322-4-1 of the Criminal Code. However, the Committee states as follows:

> *"Finally, persons or groups of persons who cannot effectively benefit from the rights provided by the legislation may be forced to adopt reprehensible*

behaviour in order to satisfy their needs. However, ***this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights*** *(European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 53)."* (Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011).

Furthermore, with regard to *ex parte* orders (Article 493 of the Code of Civil Procedure), which are the most common procedure used to obtain the expulsion of migrant Roma families without right or title, the Government states that "the case law does, however, require that a bailiff has done everything possible beforehand to trace the identity of the occupants of the dwelling place", including unsuccessful steps taken with the assistance of the police.

Yet, it has to be said, firstly, that migrant Roma's difficulties in gaining access to the courts are compounded by the non-adversarial nature of this procedure and, secondly, that the expulsion measures to which the same Roma families are subjected require the name, date of birth and nationality of each of the persons concerned to be known and there does not seem to be any difficulty in supplying them for this purpose.

Lastly, the pace at which migrant Roma families are being evicted has not diminished and has sometimes even increased, in keeping with the objectives set by the President of the Republic in July 2010 and the instructions contained in the circular of 5 August 2010, which was withdrawn, and that of 13 September 2010, which replaced it. These evictions are being carried out with the same force and having the same impact on these families as those condemned in Médecins du Monde's initial complaint. The French Government is failing seriously in its obligations under Articles 16, 30 and 31 of the revised Charter, read alone or in conjunction with the provisions of Article E relating to discrimination with regard to migrant Roma groups.

II – The right of migrant workers and their families to protection and assistance: violation of Article 19§8

Collective expulsions

In its observations in reply to Médecins du Monde's complaint, the French Government maintains that "France's expulsions of Bulgarian and Romanian nationals fully satisfy the requirements of Article 19§8 in that they relate to foreigners residing in the country illegally or posing (sic) 'a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society'". The expulsions are said to be carried out "in full compliance with the law after a detailed examination of the individual situation of the person concerned and subject to the strict supervision of the administrative courts".

The Government therefore disputes any argument that these are "collective expulsions". In support of this view, it refers to a judgment of the European Court

of Human Rights, Sultani v. France of 20 December 2007, in which it was found that an individual examination of the applicant's situation had indeed been carried out and provided sufficient justification for the disputed deportation.

However, in no respect have the French authorities really responded to our arguments concerning collective expulsions. The European Court of Human Rights was merely ruling on the specific case brought before it and it cannot be inferred at all from its judgment that it considers that France carries out an individual examination of persons against whom an expulsion order has been issued in all cases.

On the contrary, the ECSR very recently came to the following conclusions concerning the evictions and expulsions from France of Bulgarian and Romanian nationals of Roma origin:

> *"… it has been demonstrated that returning Roma of Romanian and Bulgarian origin to their countries of origin was* ***based on discriminatory provisions that directly targeted Roma individuals and families****. The Committee reaches this conclusion for the following reasons:*
>
> *- Firstly, the discrimination involved in the expulsions is characterised by the same features as those considered earlier in connection with Article 31§2 and forced evictions. Thus according to the aforementioned ERRC survey 'all the cases of removal of illegal immigrants reported in the media concerned Roma and the ERRC has yet to identify a single case of a return to Romania or Bulgaria that did not involve this community'. Similarly, ECRI regretted '[learning] from a number of sources that Roma from the countries of central and eastern Europe suffer from a generally hostile climate of opinion, including racist prejudice, which also targets Travellers. ECRI notes that this prejudice is sometimes conveyed by the media. Roma are also sometimes the victims of racial discrimination, and even racist violence. A number of sources consider that the measures taken to combat racism in France do not constitute* a sufficient response to anti-Gypsyism' (4th report on France, § 112).
>
> *- Secondly, the collective nature of these expulsions is apparently confirmed by the examples cited in the ERRC report of mass expulsions with no consideration given to the individual circumstances of those concerned. It refers to dozens of orders to leave French territory, using standard forms with identical content (other than handwritten names and dates of birth), with no account taken of individuals' circumstances or how long they had already been in France. This supporting evidence (appendices 3 to 8 of the ERRC submission of 27 September 2010) has not really been challenged by the Government, which confines itself to stating, without further substantiation, that each order to leave French territory is based on an individual assessment.*
>
> *Thirdly, although the precise number of expulsions of Roma of Romanian and Bulgarian origin is open to dispute, it is not contested that the number of these persons who were returned to their countries of origin increased considerably in the summer of 2010."*

(Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, § 66).

Consequently, the facts that had been referred to the Committee were regarded as "*collective expulsions*" and corresponded to the expulsions that took place following the President's speech of July 2010 known as the Grenoble speech, which had already provided the motivation for Médecins du Monde's complaint.

These facts, which have been described by the various international organisations which have referred cases to the ECSR, are corroborated by other international NGOs such as Human Rights Watch. In a report published in July 2011, Human Rights Watch found, after conducting a painstakingly detailed investigation and analysis of France's expulsion of European citizens belonging to the Roma community, that France's law and practice in this field infringe its obligations under European law and international human rights law. Having examined 198 orders to leave French territory (OQTFs) issued to Romanian Roma between August 2010 and May 2011 by six prefectures spread throughout France, it noted that *"Each prefecture uses a standardized form, and virtually all OQTF orders adopted by a given prefecture are identical. There are some differences, however, between the forms used by different prefectures".*

It went on as follows: *"Seventy-one of the decisions reviewed by Human Rights Watch contained no evidence that the individual had entered France over three months prior to the adoption of the OQTF. In 35 OQTF orders from three different prefectures (Rhône, Haute-Savoie and Loire), the form states simply that the individual 'has not established a presence on French territory of under three months,' placing the onus on the individual to prove the date of entry. The administrative court in Lyon has rightly annulled at least 12 OQTF orders since November 2010 in part because the authorities had not established that the individuals concerned had indeed overstayed the three-month period.*

In 36 OQTF orders from the Val-de-Marne and Seine-Saint-Denis prefectures, the forms affirm that the individual has been in France for over three months without providing supporting evidence"[3].

The Lyon Court of Appeal has found that orders confirming a lack of residence rights and requiring persons to leave French territory (OQTFs) cannot be issued against EU citizens on the sole ground that they can provide no evidence that they satisfy the requirements of Article L. 121-1 of the Code on Entry and Residence of Foreigners and the Right to Asylum (CESEDA) (gainful occupation, sufficient resources or continuing studies). Quite the opposite is true in fact as prefects are required to "*carry out an individual examination of the personal situation of all foreign nationals before taking decisions about them*". Since several decisions "*drafted with the same aim and in the same words*" had been issued on the same day to a group of Romanian nationals who had settled

[3] See Human Rights Watch, France's Compliance with the European Free Movement Directive and the Removal of Ethnic Roma EU Citizens Briefing paper submitted to the European Commission in July 2011, http://www.hrw.org/news/2011/09/28/france-s-compliance-european-free-movement-directive-and-removal-ethnic-roma-eu-citi

[4] See appendix: Lyon Administrative Appeal Court, 28 June 2011, 11LY00023, Marginean.

in a park in Lyon, the Court held that before taking his decision, the prefect had failed to gather the personal information which would have allowed him to decide on the applicants' fate in full knowledge of the facts. As a result, the impugned judgment was set aside[4].

The increasingly broad interpretation of the notion of a "threat to public policy"

To absolve itself of any responsibility for the broad interpretation of the notion of a threat to public policy, the French Government refers to the recent legislative amendment under which EU citizens may now be issued with an expulsion order if their conduct poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society following a detailed investigation of their personal situation, age, family circumstances, degree of integration in the host country, state of health and financial position.

The real reason for the adoption of these amendments was a specific request by the European Commission, which considered that the French authorities had not completely transposed the procedural safeguards in Directive 2004/38/EC into domestic law. Although the legislation now complies with EU law, this does not necessarily imply that its administrative practices do so as well.

Thus, many administrative decisions have been taken in which the notion of a threat to public policy has been mentioned but this has not satisfied the requirement of a "*genuine, present and sufficiently serious threat affecting one of the fundamental interests of society*". One example is a decision by the prefect of Pyrénées Orientales on 17 August 2010 to require a person to leave the country for illegal occupation of land, manifestly unsanitary practices and dumping of refuse and waste on the site, posing a fire hazard. The facts relied on by the prefect, which merely serve to show what an exceedingly precarious situation most Roma families live in, do not in any way amount to a threat to public policy according to the interpretation adopted by the ECSR and the judgments of the Court of Justice of the European Union (CJEU).

The reasons given by the authorities to justify their findings of a threat to public policy are extremely varied and include offences such as attempted aggravated theft, attempted theft committed jointly with others and attempted burglary. According to the CJEU the notion of public policy presupposes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, over and above the social disturbance which any infringement of the law constitutes. A criminal conviction, even if, as in one case, it is for drug trafficking in a foreign country, is not enough in itself to be considered to pose such a threat (CJEU, 17 November 2011, case C-430/10, Gaydarov, and CJEU, 17 November 2011, case C-434/10, Aladzhov).

III – The rights of the child: violation of Article 17

A – Non-effective access to education

The right to education, as defined in Article 17 of the revised Charter, requires that equal access to education is guaranteed for the children of vulnerable people.

The French Government alleges that "*French law does not establish any discrimination against Roma with regard to their education and is therefore in breach neither of Article 17 nor of Article E of the revised Charter*".

However, the absence of any discrimination at legislative level is not enough in that it cannot erase existing discriminatory practices (such as rejections and hold-ups in processing applications for enrolment, unreasonable requests for documents and unjustified delays) or correct the failure to apply the statutory rules in force (such as the failure of mayors to organise censuses of residents).

Yet, these practices continue. For example, there have been complaints about regional education authorities which register children for lower secondary school but fail to assign them a school to attend. At the end of October 2011, six children registered in the city of Lyon in January were still waiting, ten months later, to be assigned a secondary school[5].

The Government does not say anything either about the impact on children's education of the recurring untimely evictions from their living environment. Even today, the level of education of migrant Roma children living in extreme poverty is still very low. The threat of expulsion, the detention of relatives and the presence of the police makes these parents wary of sending their children to primary or secondary school and sometimes causes them to remove them altogether. For example, in December 2011, the parents of a ten-year-old child, Alexandra Cioban, were arrested while she was at school then deported to Romania.

In response to this situation, the Government states that "*every possible step is … taken to enable the children of non-sedentary families to attend schools or other educational establishments*". It claims that stopping places for Travellers are selected according to the availability of school places for children. However, the Government has not taken any special measure to help migrant Roma children to attend school under the same conditions as other children and merely refers to an unsuited measure, which is aimed at non-sedentary groups, not the migrant Roma from Bulgaria and Romania who are the subject of this complaint, who do not have access to stopping places.

The Government also cites the example of the Nantes education authority, where extra resources are allocated to the lower secondary schools which take in the most non-native-speaker children.

[5] Situation des familles rroms dans l'agglomération lyonnaise à la veille du Plan Froid (in French only), press conference of 26 October 2011, the associations, ATD Fourth World, CLASSES, Ligue des Droits de l'Homme, Réseau Education sans Frontières and Secours catholique – http://www.romeurope.org/IMG/pdf/SITUATION_DES_FAMILLES_CONF_DE_PRESSE_DU_26102011.pdf

These measures are not capable of making migrant Roma children's right to education effective. Firstly, in Nantes, Médecins du Monde workers have seen first hand that the single induction class and three classes for non-native speakers that have been set up do not satisfy all the Roma's needs. Furthermore, as in the rest of France, the repeated eviction of migrant Roma families gives rise to interruptions in schooling and major learning difficulties as children are sometimes forced to change school several times a year as a result of evictions. More specifically, changes in municipality require re-enrolment during the academic year and the timescales involved make it impossible for the children's education not to be interrupted; enrolment in the course of the year poses problems as new classes cannot be set up when courses are already under way. In addition, evictions push families ever further away from inhabited areas, and hence from schools, to sites which are not served by public transport.

These are not new findings. In decision No. 2009-372 of 26 October 2009, France's anti-discrimination and equality commission (HALDE) already came to the following conclusions:

> *"All associations confirm that a very large majority of Roma families want their children to go to school. However, there are many obstacles which disrupt these children's education.*
>
> *Under the Act of 1998, primary school enrolment takes place at municipal level and depends on a residence or accommodation certificate. Yet, despite the fact that they are empowered to do so, few municipal or intermunicipal social actions centres (CCASs) agree to issue residence certificates, thus preventing the compulsory education of these Roma children.*
>
> *Following a Ministry of Education circular issued in 2002, school heads may enrol children even if the municipality objects, but they rarely take advantage of this possibility. In addition, the central government authorities at Ministry of Education and prefecture level rarely exercise their right to require that children are enrolled.*
>
> *When it was asked to rule on a mayor's refusal to enrol a group of Roma children in school, the HALDE found, in decision No. 2007-30 of 12 February 2007, that this decision was an abuse of authority and that 'since this measure relates only to the Roma children living in the municipality, it constitutes discrimination against them'. The children were subsequently allowed to attend the school after the intervention of the prefect and the delivery of an urgent interim court ruling.*
>
> *The French Immigration and Integration Agency (OFII) and the prefectural authorities confirm that, in contrast with the measures implemented for undocumented children, no procedure has been introduced to cater for the education of children during the process of eviction and expulsion of Romanian and Bulgarian Roma".*

More recently the national children's advocate (*Défenseur des enfants*) stated as follows:

> *" 5. Some municipalities violate the right of Roma children to compulsory schooling between the ages of 6 and 16 on the false ground of unauthorised encampments. Prefects are forced to ask them to enrol these children immediately in the school corresponding to the land on which they have settled even it is not an authorised site.*
> ***Even if they are enrolled in a school, many Roma children have only a very patchy school career, which rarely goes uninterrupted because of evictions or the local authorities' lack of goodwill**."*[6]

She added:

> *"The same applies to Roma children, on behalf of whom my office has had to take repeated action in response to certain municipalities' persistent and illegal refusal to enrol them at school, not to mention their unhealthy living conditions, the regular evictions of their camps and the failure to offer them proper medical cover. It should be recalled that in its 2009 report, the UN highlighted France's serious failings with regard to the fundamental rights of Roma children. Not only has there been no significant improvement but the situation of these children has deteriorated still further despite the impressive efforts of the associations and some local and regional authorities"*[7]*.*

Roma children's access to education cannot therefore be considered to be effective as France violates Article 17 of the revised Charter, read alone or in conjunction with Article E.

B – Failure to meet children's fundamental needs

Médecins du Monde has highlighted the unhygienic living conditions, the difficulties with transport and with meeting canteen costs and the low level of social assistance for Roma children, all of which contribute to their exclusion from school and the non-effectiveness of their access to education.

In reply, the French Government alleges that "*it is not among the duties of a public education system to provide school catering or school transport*".

Yet, according to the Committee, the right to education, as defined in Article 17 of the revised Charter, requires that equal access to education is guaranteed for the children of vulnerable people. **If necessary, special measures must be**

[6] See appendix: Press release and press file issued by the children's advocate at a press conference of 26 April 2011, p.4, press release.
[7] See appendix: Press release and press file issued by the children's advocate at a press conference of 26 April 2011, p.30-31 of the press file.

introduced to ensure that these children have access to school under the same conditions as other children.

In addition, under Article 17§2 of the revised Charter, the states party undertake, either directly or in cooperation with public and private organisations, to take all appropriate and necessary measures "*to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools*".

France fails completely to show that it has taken effective measures to guarantee Roma children equal access to education in view of the obstacles they face and to help them to attend school regularly.

Consequently, France has violated Article 17 of the Charter, read alone or in conjunction with Article E.

IV – The right to social protection and health: violation of Articles 11 and 13

A – Violation of Article 13: right to social and medical assistance

1) Family benefits and housing assistance

In its initial complaint, Médecins du Monde described the situation in positive law on access for new European nationals to family benefits and housing assistance, pointing out that under current law, the national insurance fund offices (CAFs) did not have to check the right of residence of persons already receiving family allowances.

Médecins du Monde said that these instructions were ignored by many CAFs, which took an entirely discriminatory approach and refused to re-establish Roma families' suspended rights.

The French Government makes no comment on this situation and fails to describe any measure or plan to take positive steps to bring a halt to this discrimination against these Roma families, who are EU citizens from Romania and Bulgaria.

2) State medical assistance

In its initial complaint, Médecins du Monde stressed how difficult it was for Roma families to obtain satisfactory sickness cover and highlighted the particular problems that Roma families have in obtaining state medical assistance, while not in any way claiming, as the Government suggests it was, that Roma are forced to use this scheme.

The Government describes the protection systems that are available to foreign residents. It mentions universal medical cover, state medical assistance, the so-called emergency and life-saving care fund and exceptional medical assistance.

However, despite its humanitarian basis, the exceptional medical assistance granted by the minister responsible for social welfare is relatively inconsequential. Spending in 2009 amounted to about €1 million and covered only a small number of beneficiaries compared to the €587 million spent on State Medical Assistance and the emergency and life-saving care fund alone[8].

On the other hand, the emergency and life-saving care fund is intended for foreigners residing in France who do not meet the residence requirement entitling them to sickness cover on that basis (basic universal medical cover) and have documentation proving that they have applied for AME but their application was rejected[9]. The latter rule forces beneficiaries into systematically preparing applications for AME so that they can be examined whereas they know that they are not eligible because they have not satisfied the residence requirement. Furthermore, the non-effectiveness of the right to a place of residence in the absence of a stable home hampers the examination of AME applications and hence, by extension, entitlement to emergency and life-giving care. These procedures weigh down the emergency arrangements that have been set up and slow down access to them.

Furthermore, the emergency and life-saving care fund is not a sickness insurance scheme; it is simply a means of payment for emergency treatment provided by state hospitals. It is also limited to emergency care whose absence could be life-threatening or lead to a serious, long-term deterioration of the health of the person concerned or the child to be born. It does not guarantee that treatment will continue beyond the single act of care in question.

The Government simply denies that there is anything complex about the procedure to gain access to state medical assistance which may have the effect of restricting the Roma's access to sickness cover.

It argues that issuing a plasticised card to those entitled to AME "makes it possible to increase the security of the system and improve the treatment of foreigners in an irregular situation" and "has the same technical features" as the *carte vitale* issued to all those covered by the ordinary French social insurance

[8] Report by the General Inspectorate of Social Affairs and the General Inspectorate of Finances (IGAS-IGF) on trends in spending on State Medical Assistance, 24 November 2010, pp. 3 and 16, http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics//104000685/0000.pdf

[9] Circular No. DHOS/F4/2008/150 of 2 May 2008 on invoicing and payment of emergency care.

scheme. Yet, the AME card does not allow immediate teletransmission in the same way as the *carte vitale* does and requires health professionals to be aware of and trained in the technical procedures for teletransmission when a patient cannot provide a *carte vitale*.

The Government also states that the introduction of a contribution of €30 to AME has been approved by the Constitutional Council and found to be compatible with French constitutional requirements.

The Government's justification for the introduction of the contribution is that there was "a major increase in spending on AME in 2009 (+13.3%), bringing the total up to €540 million, and this was a significantly higher increase than that in spending on health insurance in general".

However, the report by the General Inspectorates of Social Affairs and of Finance (IGAS-IGF report), requested by the Ministers of Health and the Budget but inaccessible to the members of the French parliament throughout the entire parliamentary debate right up to the final adoption of the Finance Act of 2011 introducing the €30 contribution, states that the average annual spending of an AME beneficiary is equivalent to that of an ordinary social insurance claimant: "in 2008, the average AME beneficiary was reimbursed for €1 741 of treatment whereas the average CMU beneficiary successfully claimed €2 606 and the average standard social insurance claimant was repaid €1 580". Most of the spending on AME was accounted for by a few very sick people and was medically justified. In addition, "the major increase in AME spending was not accounted for by a huge increase in the number of beneficiaries as there was not in fact any significant increase in the number of health care consumers".

Therefore, contrary to what the French Government claims, "the increase in AME spending may be linked primarily to the attempt by hospitals to check people's rights, resulting in a clear increase in reimbursements" and "the manner in which the 'sick foreigner' procedure has been applied has had a direct and immediate impact on the amount of AME spending and there has probably been a transfer of costs to the AME". The authors of the report also consider that the invoicing system based on daily service fees results in an additional cost for the state in the region of €130 million[10]. The system of fees was also modified by the Government when it adopted the 2011 Finance (Amendment) Act.

The French Government claims that the introduction of the AME contribution is a "measure designed to help the government control public spending". Yet, the IGAS-IGF report already included a warning about the harmful effects of introducing such a contribution:

[10] IGAS-IGF report on trends in spending on State Medical Assistance, 24 November 2010, pp. 2, 16 and 17, http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics//104000685/0000.pdf

"In view of its findings, the audit team would not recommend introducing an AME entitlement fee. At the least it would recommend carrying out an impact study before any decision on the matter is taken because:

- the initial effect could be an increase in spending far exceeding the expected savings as the contribution could result in delays in medical treatment and belated hospitalisation, which is considerably more costly than early treatment, or even add to the sums that hospitals are unable to recover where it is difficult to establish people's rights under the AME system;
- the second effect may be one of serious health risks because the persons concerned will take more time before they make use of outpatient services;
- the attempt to prompt a more responsible approach to the use of the health care system is not likely to be very successful among people who are so poorly integrated into society"[11].

The adverse effects of this measure on Roma have therefore been highlighted and shown to have a direct impact on their access to social protection.

Consequently, the existing arrangements in France cannot be said to guarantee the compliance by France with Article 13 of the revised Charter.

3) <u>The non-effective right to a place of residence in the absence of a stable home</u>

In response to Médecins du Monde's complaint that this right is not effective, the French Government merely reiterates the right of everyone to a place of residence.

Yet, the effectiveness of this right is a precondition for the right of access to social and medical assistance, with the result that this right is not respected either.

B – Violation of Article 11: right to protection of health

With regard to the right of migrant Roma to health protection, the French Government simply denies any discrimination against them and replies that "it cannot be held responsible for the initial state of health of Roma immigrants arriving in France".

However, irrespective of migrant Roma's state of health on arriving in France, it should be emphasised that the living conditions of migrant Roma in their camps

in France aggravate or even trigger medical conditions, in breach of paragraphs 1 and 3 of Article 11 of the revised Charter. As the chief medical officer in one of Médecins du Monde's treatment centre's puts it: "The cause of the current dramatic increase in cases of tuberculosis in Ile-de-France is not the arrival of foreigners who already have the illness but the poor accommodation and living conditions that they are forced to endure in France. It is these conditions which make them ill. Tuberculosis is an illness of the poor." For instance, in 2010, a programme run jointly by Médecins du Monde and the *département* of Seine-Saint-Denis's infectious illnesses department enabled an extremely high number of cases of tuberculosis to be diagnosed among Roma who were given a lung X-ray: six of the 240 people examined had tuberculosis, or 2.5%, as opposed to a figure of 0.03% in the overall population of the *département*[12].

The Government does not give any response concerning the facts denounced by Médecins du Monde in its initial complaint relating to:

- the worrying state of health of the Roma and the failure to meet their health care needs as a result in particular of their inadequate access to health care and their living conditions in France;

- the inertia of the French state or even the things it does (repeated evictions leading to breakdowns in medical care), which have adverse effects on the Roma's living conditions.

The mere existence of an emergency medical fund, which is simply a means of paying for emergency treatment provided by state hospitals whose absence could be life-threatening or lead to a serious, long-term deterioration of the health of the person concerned or the child to be born, is not enough for the French Government to comply with Article 11 of the revised Charter.

Furthermore, despite the Government's statements to the contrary, Circular No. 2008-04 of 7 January 2008 amending Circular No. 2005-141 of 16 March 2005 on the implementation of urgent care excluded minor children from this arrangement, taking the view that they should be covered by AME. However, AME does not cover unaccompanied minors without a legal representative who are not in the hands of the child welfare services or children whose parents' incomes are too high for them to be entitled to AME. This meant that such children were excluded from all care systems[13] and it is only since the publication of Circular DSS/2A/2011/351 of 8 September 2011 that minors without a legal representative have been entitled to claim AME in their own name along with all minors whose parents are in an irregular situation irrespective of their parents' incomes. However, what Médecins du Monde's teams have seen on the ground tends to indicate that, in practice, access for minors to AME is not totally effective. Some sickness insurance funds refuse to

[12] Source: Seine-Saint-Denis Anti-Tuberculosis Centre, in the press file and report on a survey on the vaccination cover of Roma met by Médecins du Monde's French team, Médecins du Monde, July 2011, and summary and press file of the report by Médecins du Monde's monitoring centre on access to care, October 2011, see appendices.

[13] See appendix: 2009 report of the Médecins du Monde monitoring centre on access to care, p. 111.

examine applications from minors in their own name and obtaining proof of residence is even more difficult for minors than it is for adults as some CCASs do not consider it to be within their remit to issue residence certificates to minors.

Médecins du Monde has again produced specific, up-to-date evidence in support of its initial complaint and this response[14]. The policies, actions and omissions of the French Government and its agents in the field of health rights amount to a serious breach of its obligations under Article 11 of the revised Charter, read alone and/or in conjunction with Article E on non-discrimination.

V – Conclusion

Médecins du Monde respectfully requests the Committee to consider the facts set down in its initial complaint and this response and declare that France is in breach of the aforementioned articles of the revised Charter.

As already stated, the French Government must adopt a long-term national strategy laying down positive measures to combat the social exclusion of Roma, by improving their housing situation, their access to their rights and to the courts, their children's education, their social protection and, lastly, their health protection.

Médecins du Monde thanks the European Committee of Social Rights for giving attention to these issues.

For Médecins du Monde
Olivier Bernard
President of the association

APPENDICES

Documents submitted previously

1. 2009 report of the Médecins du Monde monitoring centre on access to care

2. Romeurope report on the situation of Roma migrants in France, Romeurope human rights national collective, September 2010

3. Romeurope report on the failure to educate Roma migrant children, Romeurope human rights national collective, February 2010

4. Decision 2009-372 of 26 October 2009 of the French anti-discrimination and equality commission (HALDE)

5. Report "Situation of Roma in Marseille: the legal situation" – September 2010

New documents

6. Press file and report on the vaccination cover of Roma met by Médecins du Monde's French team, Médecins du Monde, July 2011

7. Summary and press file of the report by Médecins du Monde's monitoring centre on access to care, October 2011

8. Judgment of the 5th division of Lyon Administrative Court of Appeal, 28 June 2011

9. Press release and press file issued by the children's advocate at a press conference on 26 April 2011.