EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

10 November 2011

Case Document No.2

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

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 31 October 2011

OBSERVATIONS BY THE GOVERNMENT OF THE FRENCH REPUBLIC
ON THE MERITS OF
COMPLAINT No. 67/2011
MÉDECINS DU MONDE v. FRANCE

In a decision of 13 September 2011, the European Committee of Social Rights declared admissible the complaint lodged on 26 January by Médecins du Monde requesting that the Committee find that France has not satisfactorily implemented Articles 11, 13, 16, 17, 19§8, 30 and 31 of the revised European Social Charter, read alone or in conjunction with Article E.

The French Government would like to submit the following observations to the Committee on the merits of the complaint.

I. THE COMPLAINTS

1. The organisation Médecins du Monde argues that groups of Roma, mostly from European Union countries, are living in France in extreme poverty and that their rights under the Social Charter to housing, education for their children, social protection and health care are not respected, in breach of Articles 11, 13, 16, 17, 19§8, 30 and 31. Médecins du Monde criticises both the current regulations, claiming that they fail to take account of the specific situation of Roma, and administrative practices which they consider to constitute discrimination, as prohibited by Article E of the Charter.

2. Médecins du Monde therefore considers that the Roma's right to housing is not respected, in breach of Articles 16, 30 and 31 of the Social Charter. It also criticises the expulsion measures taken against Roma families, which, in its view, take the form of collective expulsions in breach of Article 19§8. It considers that Roma children's right to education and the access of all Roma to social protection and health care are not guaranteed, in breach of Articles 17, 11 and 13.

3. Lastly, it asserts that all these matters constitute clear discrimination against Roma, in breach of Article E of the Charter.

II. THE MERITS OF THE COMPLAINT

4. The Government has had to respond to several complaints about the situation of Roma who are nationals of Council of Europe member states. In its decision on COHRE's complaint against France, the European Committee of Social Rights (ECSR) found that the situation of Roma with regard to housing was in breach of Articles 16, 30 and 31 of the Charter. The Government takes due note of this decision. The Government notes that the complaint relates to effective access to guaranteed social rights such as housing, education and access to health. These social issues are highly complex and require the establishment of a comprehensive, long-term national strategy. They concern all population groups in vulnerable situations, including Roma, and the issues relate not just to France but to all the European Union countries.

5. The Government would point out that the European Commission has just established an EU framework for national strategies to integrate Roma, which sets targets for improving the quality of life of Roma at European level including, in particular, measures to bridge the socio-economic gaps which separate them from the rest of society. Goals include ensuring that every Roma child at least finishes primary school, providing equal access to health care and eliminating discrimination in the housing field, including social housing. This strategy is directly related to the matters raised in Médecins du Monde's complaint. On the basis of these guidelines, the member states will be invited to prepare their national strategies for the integration of Roma by the end of the year. The Commission will follow the progress of these strategies, using the EU Fundamental Rights Agency in particular as an intermediary, and will present an annual report to the Parliament and the Council. France will, of course, make proposals as part of this process.

6. The Government would like to begin by drawing a distinction between two types of criticism made by Médecins du Monde in its complaint. The first relates to ineffective access to guaranteed social rights. The second relates to the existence of systematic discrimination against Roma. In its defence, the Government would point out from the outset how difficult it has become in the current climate of budgetary constraint to guarantee the effectiveness of social rights such as those enshrined in the Charter for all groups in vulnerable situations. Médecins du Monde's complaint refers to several reports and, in particular, to that of Romeurope, which clearly shows the difficult living conditions of migrant Roma, and the Government would not dispute the truth of this portrayal. It would point out, however, that the difficulties faced by Roma as regards effective access to the right to housing, education, social insurance and health are accounted for primarily by their extremely vulnerable position and on no account by any discrimination against them in the sphere of public policy.

7. The Government disputes Médecins du Monde's complaint on the ground that procedures have now been put in place in France to alleviate situations of vulnerability, to which Roma have full access, and that these procedures, though far from perfect, do provide a means of

dealing with the crisis situations and states of total destitution in which these defenceless people often find themselves. The Government notes that, while the Committee does not apply a "results-based" approach to its findings with regard to the Charter, the states party do have a duty to "adopt the necessary legal, financial and operational means of ensuring steady progress towards the goals laid down in the Charter". In this light, the Government would like to draw attention to the improvements it has made to the relevant regulations and administrative practices in France.

8. In this connection, France has aligned itself with the Committee's recommendations, accepting the idea that the situation of the Roma requires "*positive intervention*" by the state, combined nonetheless with some margin of appreciation as to what constitutes a **proper "*balance*" between the general interest and fundamental rights**:

> "The Committee considers that the effective enjoyment of certain fundamental rights requires a **positive intervention** by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. States enjoy a **margin of appreciation** in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to **the balance to be struck 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).

9. The Government points out, nonetheless, that in accordance with its republican traditions, it draws no distinction between categories of the population on an ethnic basis. The result is that its work to assist Roma forms part of the more general range of measures to help all disadvantaged or marginalised people.

10. The Government will now respond to the specific allegations made in the complaint, namely those of breaches of the right to housing (II.1), the right to protection and assistance (II.2), the right of Roma children to education (II.3) and the right to social protection and health care (II.4).

II.1. The situation of Roma with regard to the right to housing

Degrading housing conditions

11. Médecins du Monde highlights the degrading housing conditions of Roma and claims that this is accounted for by discrimination in access to social housing, emergency accommodation and other housing and integration measures. It considers that the Roma's effective right to housing is not guaranteed, in breach of Articles 16, 30 and 31 of the Social Charter.

12. The Government disputes the idea that housing regulations are discriminatory. If Médecins du Monde identifies discriminatory practices on the ground from which Roma are suffering specifically, then such discrimination, if confirmed, is illegal and legal action may be brought. The Government recognises how difficult it is to secure the effective right to housing for all people in highly precarious situations, and the Roma

undoubtedly form part of these, but it would point out that it has set itself ambitious goals in this area, which are evidence of how much store it sets by this matter.

13. It is worth mentioning at this juncture that according to the Committee, the provisions of the Charter concerning housing (namely Article 31) cannot be interpreted "*as imposing on states an obligation of results*". Instead, for the rights enshrined in the Social Charter to take a practical and effective form, the states party must "adopt the necessary legal, financial and operational means of ensuring **steady progress towards achieving the goals laid down by the Charter"** (*International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-71).

14. Through the Act of 5 March 2007 establishing an enforceable right to housing and concerning various measures to foster social cohesion (the "DALO Act"), the Government introduced a fully-fledged housing strategy for the poorest households. The DALO Act's success is based on a policy of increasing supply and efficient management of social housing provision. This legislative groundwork was completed by the Act of 25 March 2009 on action for housing and against exclusion then by a national strategy for the accommodation and access to housing of the homeless (2009-2012).

15. As part of the strategy, new tools will be adopted by 2013 providing a new framework for arrangements for the reception, accommodation and integration of the homeless. The first example of this is an integrated reception and advice service which co-ordinates the work of all those working on accommodation and housing in the *départements* and led to the preparation, in 2010, of *département* plans for the reception, accommodation and integration of homeless or poorly housed persons (PDAHIs) in consultation with local stakeholders. One of the main goals of the PDAHIs is to organise housing provision to cater for poor people's needs more effectively and improve the way in which people who make use of the accommodation facilities are handled. In 2011, an exploratory process has been launched with the aim of producing a roadmap identifying priority activities and targets.

16. Lastly, the amendments that have been made to the regulations on the ERDF have opened up new prospects in the sphere of economic and social cohesion, through which financial support may be provided for national welfare and poverty reduction policies. On 16 March 2011, France sent out a circular on the funding through the ERDF of housing for marginalised communities, signalling its intention to seize this opportunity to mobilise funds to renovate housing or convert buildings so that they can be used by people in the most precarious circumstances.

17. Some local authorities have adopted their own measures to alleviate the precarious situations of EU citizens, mostly of Roma origin, who settle without authorisation on undeveloped sites in their jurisdiction. 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" in places including Saint Denis, Aubervilliers, Saint Ouen, Bagnolet and Montreuil for people who intend to live in France for a long time. These projects have entailed major state investment in co-operation with the local authorities concerned. 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 state has intervened in particular 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.

18. Bordeaux municipality also provided funding in 2010 for 40 wooden chalets providing accommodation for a group of Roma who had been occupying a site illegally as well as an urban and social study costing some € 150 000 to devise a plan for some 400 to 600 people. Two ERDF funding packages, providing a total budget of € 470 184 were approved for use to fund the 40 chalets at the Regional Planning Committee meeting of 8 April 2011. The cities of Lille, Marseille and Lyon are also considering the possibility of establishing integration villages.

19. The Government acknowledges that these activities only have a local impact on a nationwide problem, but also sees them as the sign of a true commitment on the part of the state and the local authorities and a desire to find new solutions geared to real needs. The Government disputes Médecins du Monde's assertion that integration villages may amount to the "transformation of a humanitarian response into projects designed to meet the particular housing needs of an ethnically determined group of the population".

20. The Government would also like to point out that the DALO Act includes provision for a two-stage appeal system, the first being a friendly settlement procedure before the Mediation Committee and the second an appeal to the administrative court. Applicants who have been both recognised by the mediation committee as a priority, needing to be accommodated as a matter of urgency, and have not received an offer of accommodation meeting their specific needs within the three-month time limit, may lodge an appeal with the administrative court for it to order a housing or rehousing order. The court may combine its injunction with a coercive fine, which is paid into the regional urban development fund referred to in Article L 302-7 of the Building and Housing Code. On 17 December 2010, the Paris Administrative Court, ruling on a complaint that the authorities had failed to find alternative accommodation for persons who had brought an action for damages, pointed out in three decisions (Nos. 1004946, 1005678 and 1001317) that the state had an obligation to achieve a result for people who could claim to have a right to adequate housing. In Decision No. 1004946, the court found that the failure to act was a fault and held the state responsible for a breach of its obligation to provide alternative accommodation.

<u>The evictions from camps that violate fundamental rights</u>

21. In its decision of 19 October 2009 on the merits of Complaint No. 51/2008, ERRC v. France, the Committee made the following points: "illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned."

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22. In France the right to property is protected by Article 17 of the Declaration of the Rights of Man and of the Citizen, which states: "since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified".

23. It should be pointed out firstly that the eviction orders to which Médecins du Monde objects in its complaint relate only to illegally occupied sites. The aim of the evictions was to bring an end to an unlawful infringement of the right to property and in some cases to breaches of law and order (living conditions incompatible with the principle of human dignity and public health requirements).

24. The illegal occupation of a site or building is an offence under Article 322-4-1 of the Criminal Code, as validated by the Constitutional Council (Decision No. 2003-467 DC of 13 March 2003).

25. The Government wishes to clarify some matters relating to the legislation cited by Médecins du Monde. In its complaint, the organisation mentions that Act No. 2011-267 of 14 March 2011 on internal security "established a new criminal offence of occupying the residence of another person without his or her authorisation (this adds a new sub-paragraph to Article 226-4 of the Criminal Code…)" and questions whether this provision is compatible with the Charter. On this issue, it should be pointed out that in Decision No. 2011-625 DC of 11 March 2011, the Constitutional Council found this provision to be incompatible with the Constitution because the procedure by which it had been adopted by parliament was unconstitutional. As a result, the provision is not currently in force.

26. Lastly, the complainant organisation states that "a relatively recent development allows land owners to ask the courts for eviction orders for illegal occupants under a very simplified procedure involving a single judge. Under the procedure, the owner is not required to notify each individual concerned of the order. This means that the occupants are unaware of the proceedings and therefore cannot enforce their rights."

27. Article 493 of the Code of Civil Procedure defines these *ex parte* orders (*ordonnances sur requête*) as a "provisional order given without trial in cases where the petitioner has good reason for not summoning the opposing party". This is not a recent procedure but it can be used to obtain the eviction of occupants without right or title whose identity is not known to the owner. 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.

28. Accordingly, in a decision of 18 September 2007 on the case of SA Electricité de France EDF v. The State (Juris-Data No. 2007-343020), the Chambéry Court of Appeal found that, for want of being able to identify them, EDF was justified in using the *ex parte* order procedure provided for by Article 493 of the new Code of Civil Procedure to obtain an order for the eviction of occupants without right or title. The Court of Appeal noted that it was clear from the bailiff's report that the latter had taken many steps and been assisted in some of these by the police but had not been able to meet the occupiers of the building. It considered therefore that EDF could substantiate its claim that it had taken all the

necessary steps to try to find out the identity of the occupants and attempt to initiate adversarial proceedings.

II.2. The situation of Roma with regard to their right to assistance and protection

29. Article 19§8 of the Charter provides: "with a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake: … to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality".

30. Médecins du Monde asserts that "the expulsions of Roma families do not comply with the procedural safeguards in the revised Charter" (Article 19§8). It considers the expulsions to be collective expulsions because the authorities do not examine individuals' specific situations. It points to the very brief time period allowed for an appeal against a prefectural order to be conducted to the frontier (APRF). It also complains that an increasingly broad interpretation is being made of the notion of a threat to public order, particularly under the new Immigration, Integration and Nationality Act.

31. In the instant case, 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 "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society".

32. In the area of residence rights, Bulgarian and Romanian nationals are subject to the provisions in Chapter II of Book I of the Code on Entry and Residence of Foreigners and the Right to Asylum (CESEDA), which transposes the rules contained in Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States into domestic law. If they do not satisfy the residence requirements set by this directive and transposed in this code, they may be expelled from France.

33. The Government maintains that these expulsions are being 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 complaints concerning collective expulsions

34. The Government strongly disputes the allegations of "collective expulsions". In its Conka v. Belgium judgment of 5 February 2002, the European Court of Human Rights reiterates that "collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as 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". The Government specifies that each expulsion measure is adopted following an examination assessing the personal circumstances of the applicant, who may subsequently dispute the decision in the administrative courts. In its Sultani v. France judgment of 20 December 2007, the Court found that the expulsion procedure which applied in France was compatible with the rules prohibiting collective expulsions and that in the case in question, the domestic authorities had taken account both of the overall context in the country of destination and the

applicant's statements concerning his personal situation. The Court noted that the "applicant's situation was indeed examined individually and provided sufficient grounds for the contested expulsion".

The claim that an increasingly broad interpretation is made of the notion of a threat to public order

35. In the decision of 16 July 2010 cited above on Complaint No. 58/2009 by COHRE against Italy, the Committee states that "expulsion for offences against public order or morality shall only be in conformity with the revised Charter if they constitute a penalty for a criminal act, imposed by a court or a judicial authority, and are not solely based on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of their presence in the territory of the State. States must ensure that foreign nationals served with expulsion orders have a right of appeal … to a court or other independent body, even in cases where national security, public order or morality are at stake."

36. In the instant case, 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 a threat to public order.

37. The Government strongly disputes Médecins du Monde's assessment of the Immigration, Integration and Nationality Act and asserts that it takes account of the criticism expressed by the Committee in previous decisions.

38. In its decision of 13 July 2011 on COHRE v. France, the ECSR highlights the need for a strict interpretation of the concept of a threat to public order in order to justify the expulsion of migrants residing lawfully in a country, stating as follows: "However, the Committee recalls that expulsion for offences against public order or morality can only be considered to be in conformity with the Charter if the offences have given rise to a penalty for a criminal act, imposed by a court or a judicial authority".

39. Clearly, Act No. 2011-672 of 16 June 2011 has taken up some of the ECSR's recommendations by amending Article 521-5 of the CESEDA, which now reads: "The expulsion measures provided for in Articles L.521-1 to L.521-3 may be taken against nationals of a European Union member state, another state party to the Agreement on the European Economic Area or Switzerland, or a member of their family, if their personal conduct poses a **genuine, present and sufficiently serious threat affecting one of the fundamental interests of society**".

40. Of course, decisions to expel persons because they posed a threat to public order were already subject to supervision by the courts, but the concept of a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" now means that an EU citizen may only be expelled in cases that are so serious that it is

justified to withdraw the fundamental freedom of movement. This concept was already applied by the administrative courts, which were required to apply the provisions of the European directive even before they had been transposed. Its inclusion in the relevant domestic legislation does nonetheless represent an unquestionable enhancement of the rights of EU citizens in expulsion cases.

41. Furthermore, in its decision on COHRE v. France, the ECSR notes as follows: "the decision to expel cannot be based solely on the mere existence of a criminal conviction but must take into account all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of their presence in the territory of the State".

42. On this point, Act No. 2011-67 of 16 June 2011 amplifies Article 521-5 of the CESEDA as follows: "When taking such measures, **the administrative authority shall take account of all of the circumstances of their situation**, particularly the length of their residence in the country, their age, their state of health, their family and financial situation, their social and cultural integration in French society and the strength of their ties with their country of origin". Although this provision was already applied by the administrative courts in practice, its incorporation into the law enhances the rights of EU citizens with regard to expulsion.

43. France has introduced all the requisite reforms to ensure that its legislation does not infringe European law and, in particular, to ensure that the EU Directive of 29 April 2004 on freedom of movement is transposed as fully as possible into its domestic law. In a press release dated 25 August 2011 (IP/11/981), the European Commission stated that "in the French case, on 16 June the government adopted the legislative amendments required by the Commission to ensure compliance with the Free Movement Directive, including the safeguards that protect EU citizens against arbitrary expulsions or *discriminatory treatment*".

II.3. The situation with regard to the education rights of Roma children

44. Under Article 17 of the Charter: "the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed … to ensure that children and young persons, taking account of the rights and duties of their parents, have … the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose" (paragraph 1.a.) and "to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools".

45. Médecins du Monde relies on Article 17 read in conjunction with Article E, which provides: "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

46. According to the complainant organisation, France fails to provide effective access to education for Roma children. It claims that there are both administrative obstacles to their education and financial ones resulting from the costs associated with sending children to school.

The allegations of discriminatory delays and formalities imposed by the authorities when processing applications to enrol children from Roma families in school

47. Firstly, the legislation on the right to education and the duty to attend school does not provide for any difference in treatment on grounds of the children's nationality, the situation of their parents or the lawfulness or uncertain status of their family's residence within the jurisdiction of a municipality.

48. Article L. 111-1 of the Education Code provides: "The right to education is secured to all so as to allow all individuals to develop their personality, increase their level of initial and further training, take their place in society and the world of work, and exercise their citizenship".

49. To achieve this, French law applies the principle of compulsory education without distinction "for French and foreign children of both sexes between the ages of six and sixteen" (Article L. 131-1 of the Education Code). Furthermore, under Article L. 131-6 of the Code, the mayor, acting on behalf of the state, must establish a list of all the children residing in his or her municipality who are subject to compulsory schooling. Between the ages of two and six, on the other hand, children do not have any right to attend nursery school (Articles L. 113-1 and D. 113-1 of the Education Code; Versailles Administrative Court of Appeal, 15 July 2010, No. 09VE01330). An application for a child to attend nursery school may be rejected because there are not enough places (Lyon Administrative Court, 12 November 1997, Ms Riquin, No. 9701854). Article L. 122-2 of the Education Code, on the other hand, grants all unemancipated minors the right to continue their schooling after the age of sixteen. It also allows all pupils to continue their studies when they have not reached a recognised level of academic training at the end of their compulsory schooling. In such cases, the state is required to make all the necessary arrangements within its power for the continued instruction that this entails.

50. Consequently, 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. Every possible step is also taken to enable the children of non-sedentary families to attend schools or other educational establishments. With this goal in mind, one of the factors that is taken into account when drawing up *département* plans and deciding where stopping places for Travellers will be set up is the education facilities on offer in the vicinity[1].

51. According to Circular No. 2002-101 of 25 April 2002, if for any reason it is completely impossible for a school head to accept a new pupil because of a lack of places in the school (for example, if anticipated pupil numbers are exceeded because non-sedentary

1 "Paragraph II of section 1 of the Reception and Accommodation of Travellers Act (Act No. 2000-614 of 5 July 2000) states that "in each département an assessment shall be made of current needs and facilities, focusing in particular on the frequency and the length of stays by Travellers, the arrangements for getting children into school, access to health care and involvement in economic activities and, on this basis, a département plan shall be drawn up setting out the geographical sectors in which stopping places are to be set up and the municipalities in which this is to happen".
Département plans shall be drawn up by the state's representative in the département and the Chair of the general council of the département." (paragraph III of section 1 of the Reception and Accommodation of Travellers Act (No. 2000-614 of 5 July 2000).

families have settled on sites other than the stopping places provided for by the *département* plan), then within three days a report must be sent via the normal hierarchical channels to the *département's* chief education officer, who must notify the prefect of the problem and "[take] all the necessary steps to be able to accept the pupil".

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52. In Médecins du Monde's view, the practice adopted by schools of asking for a certificate of residence from non-sedentary persons who are incapable of providing such a document, despite the fact that this document is not compulsory under Article 6 of Decree No. 200-1277 of 26 December 2000 on the simplification of administrative formalities and the abolition of the civil-status certificate, amounts to discrimination. The Government points out that the response to such requests in no way affects the right to education of the child concerned as they are intended only to determine which establishment the child must be admitted to (Articles L. 131-5 and L. 131-6 of the Education Code and Article D. 211-11 on lower and upper secondary school catchment areas). In no respect therefore can this be viewed as a formality which is applied specifically to Roma families with the aim of dissuading them from sending their children to school.

53. With regard to itinerant families, there are no rules prohibiting the consultation of the elected representatives of the local authorities concerned or meetings with families and children prior to the enrolment of children in a school or other educational establishment. Despite Médecins du Monde's assertions to the contrary, these measures are not in violation of Article E of the revised Charter. Under Part V of the Appendix to the revised Charter, "differential treatment based on an objective and reasonable justification shall not be deemed discriminatory".

54. The differences in the way in which applications made in the course of the academic year and those made in accordance with the school calendar are treated reflects an objective difference in the situation, stemming from the constraints of school intake capacity. If the school in the sector in which the child's family lives has reached full capacity when the application is made, the pupil has to be enrolled in another establishment.

55. The mediation carried out in each *département* by the education authority's centres for the schooling of new arrivals and Travellers (CASNAVs) with families and local partners from institutions and associations (including local councillors, social workers, youth workers and association members) helps to ensure that mayors do not attempt to offload responsibility on to one another for registering families who cannot provide evidence that they live in their municipality.

56. By asking to meet families, national education services are also attempting to ensure that the people concerned are properly informed and to establish which body is most suited to the child's specific needs in view of his or her academic level and language profile. For instance, it may be best to steer the child towards specific mechanisms designed to help non-native speakers in the form of specialised classes such as the induction classes for non-native speakers (CLIN) and introductory classes for pupils who have never been to school before (CLA-NSA).

57. Lastly, Médecins du Monde quotes from the 2009 activity report of its branch in Nantes (p.21). This extract does not show clearly why the responsiveness of certain municipal departments – which it does not name – might be questioned, as the facts are described somewhat sketchily. Yet, the *département* of Loire-Atlantique, in which the Nantes

education authority is situated, is by no means lagging behind in setting up the systems recommended by the Ministry of Education.

58. For example, in this *département*, additional human resources are allocated (in the form of standard teaching hours, overtime hours calculated over the year or actual overtime) to those lower secondary schools attended by the most non-native speakers to enable special modules or remedial sessions to be set up. Teachers are also trained to meet the educational needs of non-native-speaker pupils and may be assisted by resource teachers from the local CASNAV.

59. The exact way in which non-native-speaker pupils are to be catered for is decided on by each school or establishment. Furthermore, like any other pupil with learning difficulties, these pupils may be entitled to personal assistance with their primary education (under Article D. 521-10 of the Education Code) or lower secondary learning support (under Circular No. 2008-080 of 5 June 2008).

The claim that the incidental costs of schooling such as canteen and transport costs are a financial obstacle to school attendance by Roma children.

60. Médecins du Monde considers that canteen and transport costs are obstacles to school attendance and result in the de facto exclusion of Roma children from the education system.

61. The organisation does not provide any valid arguments as to why this situation constitutes a violation of Article 17 of the revised Charter, the 2nd paragraph of which states that the states party undertake "to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools". Nor does the organisation show in what way these transport and canteen costs discriminate against Roma families.

62. Moreover, it is not among the duties of a public education system to provide school catering or school transport. At primary level, municipalities are not even bound to organise a school catering service, which is described as an optional public service (Article L. 212-5 of the Education Code; confirmed by *Conseil d'Etat*, Litigation Division, Decision No. 47875 of 5 October 1984). At secondary level, on the other hand, the *départements* are responsible for providing school catering services in lower secondary schools (Article L. 213-2 of the Education Code) while the regions are responsible for those in upper secondary schools (Article L. 214-6).

63. Following the principles established by the Genevilliers Municipality judgment of 29 December 1997, differences in fees are allowed for optional municipal services such as school canteens provided that such differentiation is compatible with the public interest and is not intended to bar access for certain users and none of the fees are clearly disproportionate. The Decree of 29 June 2006 on the price of school catering for state school pupils establishes the following principle: "Prices may not be higher than the cost per user resulting from the costs borne by the catering service after the deduction of subsidies of any kind awarded to this service, taking account of any fee adjustments that are applied".

64. The *Conseil d'Etat* also allows for the possibility that access to such a service may be restricted, provided nonetheless that in so doing, the authorities do not apply standards which are "incompatible with the aim of the public service in question". In its FCPE Rhône judgment of 23 October 2009 (No. 329076), it found that a municipal council's decision to restrict access to a state school catering service to children both of whose parents worked was illegal.

65. It can be concluded from the above arguments that it is not compulsory to provide canteen services at schools and that, where there are differences in the prices charged for meals, they are strictly controlled by the courts. The Government notes, moreover, that anyone who disagrees with the prices charged may challenge them in the administrative courts. Consequently, Médecins du Monde's allegations that school catering arrangements form a discriminatory obstacle to the right to free education are unfounded.

66. With regard to the other objection, it is *départements* which are responsible for organising and running school transport (Article L.213-11 of the Education Code). School transport services are a local public service and the administrative courts check that they are run in compliance with the principle of equality. While it is not out of the question for the authorities to establish differences in treatment between users, they must stem either from objective differences in their situations or from public interest considerations linked to the way in which the service operates. Distinctions between pupils residing within a school's catchment area and those living outside are considered to be compatible with the principle of equality. As a result, a *département* was found by the courts to be entitled to refuse to pay a grant to a pupil residing outside the catchment area of the private school he attended (*Conseil d'Etat*, No. 19, June 1992, Département de Puy de Dôme v. Bouchon). However, the principle of equality was found to be violated if different fees were applied depending on whether pupils were attending state or private schools (*Conseil d'Etat*, 4 May 2011, Sanchez v. Département des Ardennes, No. 322901). Differences in school transport fees are therefore closely supervised by the administrative courts. Consequently, Médecins du Monde's allegations that current school transport arrangements discriminate against Roma are unfounded.

67. As a result, Médecins du Monde's arguments that the French authorities' practices fail to secure the right of Roma to education are without foundation. It may therefore be concluded that there has been no violation of Articles 17 and E of the revised Social Charter taken together.

II.4. The situation of Roma with regard to their right to social protection and health care

1) The alleged violation of the right to social and medical assistance (Article 13)

68. Médecins du Monde considers that the refusal to grant social assistance and the problems that the Roma have in gaining access to social insurance cover constitute a breach of the right to social and medical assistance.

69. Firstly, the Government confirms that lawful residence is a requirement to be entitled to social assistance and housing and has a direct impact on health care arrangements. This principle, which applies to all social protection in France, can in no way be considered to

be discriminatory because it is based on an objective circumstance. Roma people residing lawfully in France have the same rights and the same access to social benefits as other lawfully residing foreign nationals and French citizens.

70. There are three different social protection arrangements for foreign residents in France – universal sickness cover (CMU), state medical assistance (AME) and an emergency fund.

71. Legal migrants are entitled to sickness and maternity insurance under the same conditions as French citizens. This insurance covers all employed persons and persons treated as such (the socio-professional criterion) or, otherwise, anyone residing in France "stably and legally". To be affiliated to the general insurance scheme by virtue of the universal sickness cover arrangement, persons must be able to prove that they have been residing in mainland France or an overseas *département* for an uninterrupted period of over three months. Foreigners in an irregular situation who have been residing in France for three months or more are entitled to AME (under Article L 251-1 of the Social Welfare and Family Code). AME gives the right to 100% cover of medical care and coverage of hospital charges without the beneficiary having to advance any money except in cases where the medical service provided is regarded as a minor intervention. There is also a system of exceptional medical assistance, which enables people who do not reside in France but are present in the country to request a one-off reimbursement. This arrangement is not automatic, however. It is subject to the discretionary power of the minister in charge of social welfare. Lastly, to cater for foreigners in an irregular situation who have been residing in France for less than three months and are therefore not entitled to AME, there is a so-called emergency and life-saving care fund. Article 254-1 of the Social Welfare and Family Code defines the type of care covered by this arrangement as follows: "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".

72. The result of this is that, contrary to what Médecins du Monde claims, Roma are not restricted to using the emergency medical assistance systems. They also have access to universal medical cover after three months' residence in France provided that this residence is lawful.

73. The complainant organisation begins by highlighting the supposed complexity of the procedure to apply for AME. It points out that very often, because of their precarious situation and the absence of a stable living environment, Roma are unable to provide evidence of the three months' presence in France required. However, Decree No. 2005-859 of 28 July 2005, which lists the documents that can be used as proof of three months' presence makes express provision for homeless people, stipulating that they may ask an approved body under Article L. 252-2 of the Social Welfare and Family Code to issue them with an official residence certificate. Residential social reintegration centres may also issue certificates of this type.

74. Médecins du Monde also complains that evidence of entitlement to AME is no longer a simple paper document but a laminated card that cannot be forged. It regrets this change, which requires claimants to go to a social security centre and provide an identity photo to obtain their card. The Government would stress that this procedure in no way constitutes an obstacle to access to care because of its complexity. It was recommended in a report by the General Inspectorate of Social Affairs in 2007 and makes it possible to increase the security of the system and improve the treatment of foreigners in an irregular situation. The AME card is the equivalent of the card issued to all those covered by the

ordinary French social insurance scheme (the *carte vitale*) and has the same technical features.

75. Médecins du Monde also criticises the legislative amendment made on 1 March 2011, which was intended to introduce an annual contribution of €30 to be entitled to AME. The Government would point out, firstly, that the Constitutional Council found that section 188 of the 2011 Finance Act complied with the constitution for the following reason: "payment of the contribution introduced by section 188 of the Act in question is not a condition for free access to the emergency care provided for in Article L. 254-1 cited above. In view of its size, this contribution is compatible with the constitutional requirements of the eleventh paragraph of the Preamble to the 1946 Constitution". The Government would also stress that minors do not have to pay this contribution.

76. The contribution is a measure designed to help the Government control public spending. The Government would like to insist on these constraints, which have also prompted it to propose savings in the context of the social security finance bill for 2012 including a decrease in compensation for sick leave in the order of €220 million. As the savings that are proposed cover all aspects of social security, it seemed only fair to ask for a contribution to offset the major increase in the care provided under the AME scheme. There was indeed 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. The General Inspectorate of Social Affairs' report of November 2010 noted that this increase had not abated in the first six months of 2010 (+12.3%).

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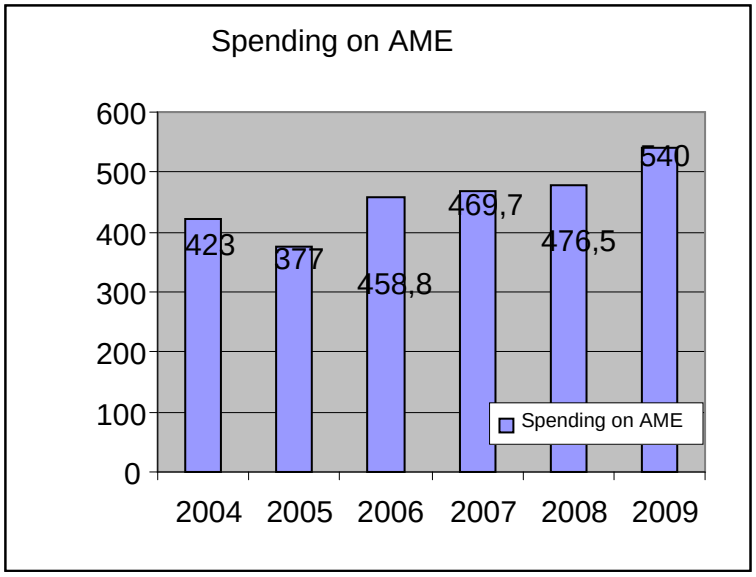

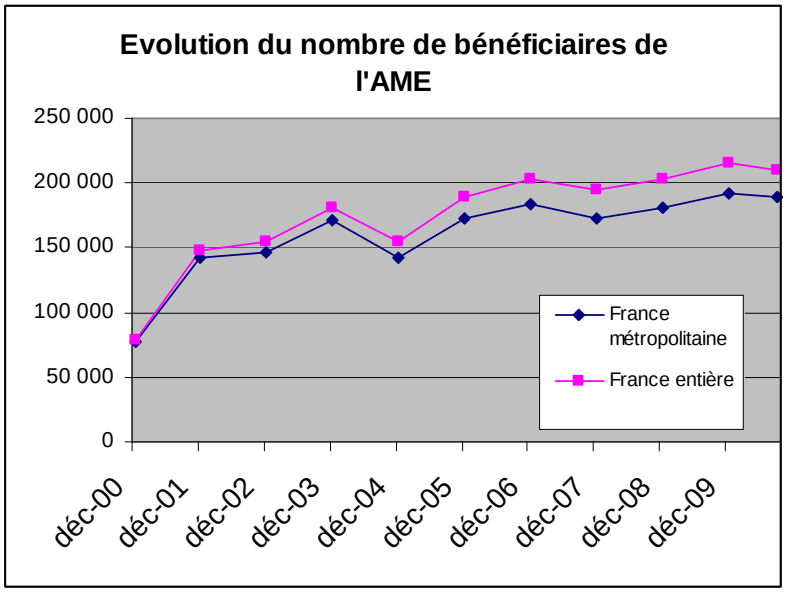

The number of beneficiaries of AME in December of each year between 2000 and 2009 in mainland France (blue) and France as a whole (magenta)

77. Lastly, the Government wishes to point out that according to a comparative survey, France is one of the European countries which provides the most extensive access to health care for illegal immigrants.

2) The alleged violation of the right to protection of health

78. Médecins du Monde considers that the right to health protection of Roma is not respected. Appalling living conditions and the constant fear of expulsion prompt a large proportion of the Roma population not to seek treatment.

79. The Government does not dispute the poor state of health of illegal migrants but it strongly rejects the accusation of systematic discrimination against Roma with regard to access to health care. Médecins de Monde also asserts that the poor state of health of Roma on their arrival in France is aggravated by their reluctance to visit care establishments for fear of expulsion. The Government states that while it shares the desire to improve the state of health of people in situations of extreme vulnerability, as reflected by the social measures described above, it cannot be held responsible for the initial state of health of Roma immigrants arriving in France.

80. The Government draws attention once again to the existence of the emergency care fund, which makes it possible to cater for the immediate needs of people not covered by CMU or AME. The fund offers a means, in particular, of tackling the most serious problems referred to by Médecins du Monde in its complaint, such as the health of pregnant women, childhood illnesses and serious infectious diseases. According to circular DHOS/DSS/DGAS No. 141 of 16 March 2005 the following should be regarded as emergency care:

- treatment designed to prevent the spread of illnesses to the person's entourage or to the community (communicable infectious diseases such as tuberculosis or AIDS);
- care of minors;

- care associated with pregnancies (antenatal and post-natal examinations, care for pregnant women and newborn children);
- abortions and terminations of pregnancy for medical reasons.

81. The Government would also point out that minor children of illegal migrants are not subject to the condition of three months' presence in the country to be entitled to AME. This rule is compatible with the ECSR's finding in the case of FIDH v. France on the conformity with Article 17 of the Social Charter of the three-month delay applied to minors before health care costs would be reimbursed.

In the light of the foregoing, it is clear that the French authorities are taking major steps to ensure that the Roma have proper access to their rights under the Charter and, in so doing, have shown a constant desire for improvement, which the Committee must acknowledge. The Government therefore concludes that there is no violation of Articles 11, 13, 16, 17, 19, 30 and 31 of the Revised Social Charter, read in conjunction with Article E.