

Resolution CM/ResChS(2018)4 European Roma and Travellers Forum (ERTF) v. France, Complaint No. 119/2015

*(Adopted by the Committee of Ministers on 4 July 2018
at the 1321st meeting of the Ministers' Deputies)*

The Committee of Ministers,¹

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint registered on 19 October 2015 by the European Roma and Travellers Forum (ERTF) against France;

Having regard to the report by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- **by 14 votes to 1, that there is a violation of Article 17 § 2 of the Charter;**

The right of access to primary and secondary education is a fundamental right enshrined in international law, particularly in Article 17 § 2 of the Charter. In France, this right is enshrined in the constitution. In order to implement it as an actual, effective right, a general environment must be created in which it can be enjoyed, namely through the stable accommodation of relatives and families in housing of a reasonable standard, ease of access to establishments (transport and proximity), a protective legal framework and security. Frequent evictions of families do not provide this secure environment.

In the instant case, the complainant organisation notes the low number of Roma children attending school in the examples of camps referred to. In this connection, reference is made to the joint statement by the Office of the UN High Commissioner for Human Rights (UNHCHR), the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the Council of Europe, the EU Agency for Fundamental Rights (FRA), the European Network of National Human Rights Institutions (ENNHRI) and the European Network of Equality Bodies (Equinet) of 28 June 2016, in which the signatories called on national, regional and, in particular, local authorities to find sustainable solutions to the housing problems that many Roma and Travellers face, in order to avoid evictions. They also strongly condemned forced evictions without due process and provisions of adequate alternative housing, adding that such evictions violate international human rights obligations.

The main question raised by this complaint was whether eviction orders (particularly those in the area of Aix-en-Provence) were accompanied by the measures and safeguards needed, such as:

¹ In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

- prior dialogue with the persons concerned;
- the possibility of issuing a warning that a camp or site is to be evacuated within a reasonable time limit;
- consultation on rehousing possibilities (see, mutatis mutandis, ECtHR, judgment of 11 October 2016 in the case of *Bagdonavicius and Others v. Russia* (paragraphs 106 to 108) or the proposal of an authorised alternative camp;
- the temporary maintenance of services and facilities during the transition;
- possible support and information from the relevant welfare centres to provide useful assistance;
- guaranteed rights of appeal against decisions or of due process.

If one or other of these safeguards is not verified in every circumstance, the insecurity of evictions, whether legitimate or abusive, undermines the application of the right to education because of the complications and difficulties to which evictions will inevitably give rise.

Moreover, successive eviction decisions within a short time lapse increase the difficulties for the groups concerned and make their situation and living conditions worse. They contribute to permanent instability which in turn jeopardises schooling.

- ***unanimously, that there is no violation of Article 10 § 3 of the Charter;***

The ERTF did not substantiate the particular difficulties that would hinder the access of adult workers to vocational training because of the lack of appropriate and easily accessible measures.

- ***unanimously, that there is no violation of Article 10 § 5 of the Charter;***

The ERTF has not substantiated the particular difficulties impeding the exercise of the right to vocational training allegedly arising from possible failure to grant financial assistance or withdrawal of the latter, nor commented on the measures available in the context of the circumstances of the evictions in the instant case.

- ***by 12 votes to 3, that there is a violation of Article E taken in conjunction with Article 10 §§ 3 and 5 of the Charter;***
- ***by 14 votes to 1, that there is a violation of Article E taken in conjunction with Article 17 § 2 of the Charter;***

In France, despite a legal framework which complies even formally with the law of the European Union and the Council of Europe, discrimination always derives from particular formal or non-formal acts – decisions, words or measures – whose effect is to identify one group in relation to another and make it difficult for it to obtain a right or deprive it thereof, directly or indirectly.

There are still mayors who, “despite the existing legal provisions”, especially in cases of “imminent danger”, carry out immediate evictions even where the legal or internationally acknowledged requirements to proceed under the right conditions have not been met, or take “discriminatory positions of which the children of the Roma community are, directly or indirectly, the first victims.” The margin of discretion enjoyed by local authorities, even under the law, in spite of the national legal framework condemning acts of discrimination, creates risks, from an objective viewpoint, of discriminatory conduct in breach of Article E of the Charter.

The authorities’ acts which engendered discrimination through social rejection had the effect or consequence of impeding access to schooling for the children concerned or impeding or preventing access by young adults to vocational training and depriving them of support in access to employment or employment policy measures, thereby placing them in a less favourable position than non-Roma persons.

- ***unanimously, that there is no violation of Article E taken in conjunction with Article 16 of the Charter;***

The ERTF has not proved that the effect of the impugned law, regulation, measure or conduct was to deprive the beneficiaries of the social and family benefits to which they were entitled, a dwelling adapted to the family’s needs, benefits for the newly married or all other appropriate measures whose goal is to contribute to the economic, legal and social protection of the life of families.

- ***by 11 votes to 4, that there is a violation of Article E taken in conjunction with Article 31 of the Charter;***

A violation of Article E taken in conjunction with Article 31 of the Charter will be established if the effect of the impugned law, regulation, measure or conduct is to block access for the persons concerned to housing of a sufficient standard.

“Adequate housing” means (Conclusions 2003, Article 31 § 1, France):

1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc., and where specific dangers such as the presence of lead or asbestos are under control;
2. a dwelling which is not overcrowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence;
3. a dwelling with secure tenure supported by the law.

The group of persons concerned by the complaint does not in practice enjoy these rights provided by the Charter, and this without a valid justification, and are therefore victims of a discriminatory treatment.

- ***by 13 votes to 2, that there is a violation of Article E taken in conjunction with Article 30 of the Charter.***

Article 30 requires States Parties to give effect to the right to protection against poverty and social exclusion by adopting measures aimed at preventing and removing obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance (Statement of interpretation on Article 30, Conclusions 2003).

Article 30 must itself be considered in conjunction with the other articles of the Charter. The file shows that as the safeguards needed to accompany eviction orders did not function or did not function properly in the impugned circumstances and the lack of prior consultation with the persons concerned to foster their participation in the choice of the most appropriate measures has been established, the persons concerned consequently encountered difficulties, in particular in terms of housing and schooling, which worsened their living conditions and prevented or reduced their enjoyment of social rights.

Having regard to the information communicated by the French delegation at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 3 April 2018 (see the appendix to the resolution),

1. takes note of the commitment of the French Government to bring the situation into conformity with the Charter and the information it has communicated in this regard (see the appendix to this resolution);
2. looks forward to France reporting, at the time of the submission of the next report concerning the relevant provisions of the Charter, on any new developments regarding their implementation.

*Appendix to the Resolution CM/ResChS(2018)4***Address by the Representative of France at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 3 April 2018*****The European Roma and Travellers Forum (ERTF) v. France, Complaint No. 119/2015***

See reference document: DD(2018)227

On 5 December 2017, the European Committee of Social Rights (the "ECSR") communicated its report containing the decision on the merits of Collective Complaint No. 119/2015 lodged on 19 October 2015 by the European Roma and Travellers Forum (the "ERTF") to the French Government.

In the decision, the ECSR concluded that there had been a violation of Article 17 § 2 of the revised European Social Charter (the right of children and young persons to social, legal and economic protection) and Article E (non-discrimination) read in conjunction with Articles 10 §§ 3 and 5 (the right to vocational training), 17 § 2, 30 (the right to protection against poverty and social exclusion) and 31 (the right to housing) of the Charter.

The government takes note of the decision and wishes to make the following observations on the ECSR report of 5 December 2017.

The government notes firstly that in its decision on the merits of 5 December 2017, the ECSR ruled on the alleged violation of provisions of the Charter which were not mentioned in its decision on admissibility of 27 January 2016.

On 27 January 2016, the ECSR declared admissible the complaint of the ERTF which alleged that there had been "a violation of Articles 10 § 5 and 17 § 2, and Article E read in conjunction with Articles 16, 30 and 31 of the Charter". However, in its decision on the merits of 5 December 2017, the ECSR examined the complaints concerning alleged violations of Articles 17 § 2, 10 §§ 3 and 5 and Article E read in conjunction with Articles 10 §§ 3 and 5, 17 § 2, 16, 30 and 31 of the Charter.

Although the ECSR states that "*the parties to the complaint are bound by the Committee's decision on admissibility, particularly as regards the provisions of the Charter to which the complaint relates*",² the government notes that the ECSR never invited it to present its submissions on the complaint made under Article E read in conjunction with Articles 10 §§ 3 and 5, and 17 § 2 of the Charter.

Moreover, the government notes that in support of its decision on the merits, the ECSR mentions a letter submitted by the ERTF President on 6 September 2017 indicating that there were new cases of evictions, to which the Government was not invited to reply (§ 115 of the decision on the merits).

Therefore, while accepting the conclusions of the ECSR, the government can only regret that the principle of adversarial proceedings was not more fully implemented.

a) The safeguards provided for by French law with regard to the evacuation of unlawful camps

The government would point out that, when camps are set up illegally on public or private land or sites, they are systematically dismantled in accordance with the laws of the Republic, following a court decision or a decision by the administrative police.

On 26 August 2012, an Interministerial Circular on the anticipation and support of evictions from unlawful camps formalised these dismantling operations. It was completed by an instruction of 8 June 2016 addressed to the prefects on information about operations to dismantle unlawful camps.

The circular strikes a balance between the need to evacuate unlawful camps following a court decision or when health or security conditions require it, and the need to anticipate evictions and assist camp dwellers.

Locally, it is for State services, in partnership with local and regional authorities and associations, to provide a comprehensive and detailed response suited to the situation of the persons and the families concerned.

² European Committee of Social Rights, *Confédération française démocratique du travail (CFDT) v. France* (Complaint No. 50/2008), decision on the merits of 9 September 2009, § 18.

As soon as a camp has been set up, the local prefects (representatives of the State in the regions) must prepare a diagnosis on the health and employment situation of the inhabitants and the schooling of their children. They must also provide for emergency accommodation before dismantling an illegal settlement.

Regarding accommodation and housing, all the existing instruments can be brought into play, ranging from emergency arrangements, particularly for the most vulnerable people, to potentially setting up temporary accommodation facilities in liaison with the local and regional authorities.

In this context, Article L. 345-2-2 of the Social Welfare and Family Code provides, in particular, for the emergency accommodation of any vulnerable person in a situation of medical, psychological or social hardship.³

Moreover, the government would like to stress that the nature of the State's response depends on how urgent the evictions are, local partnership dynamics and available resources, particularly with regard to housing. When the conditions are met, long-term solutions are found, as in Strasbourg, where from 2012 to 2017 nearly all camps were cleared (of approximately 300 persons in total), or in Toulouse, which has devised a site-by-site clearing strategy, making it possible to assist 931 people since 2012.

Since 2013, the French State has supported measures to clear the camps through a national annual allocation of earmarked funds (€4 million in 2013 and 2014 and €3 million since 2015). In most cases, these are comprehensive assistance programmes geared towards integration through schooling, employment and housing, but there are also more targeted measures for integration and access to citizenship, such as the "Romcivic" programme which was set up in 2013 to offer young people living in camps the opportunity to perform civic service.

Ultimately, as a result of these measures, from 2012 to 2016, nearly 9 000 people were able to access housing or accommodation, more than 1 700 persons found employment and nearly 5 800 children were schooled, demonstrating thereby that it is actually possible to integrate camp dwellers.

Lastly, in drawing on local experiments which have proven efficient, the French authorities have aimed to highlight their resolve to make this balanced legal and regulatory framework work properly.

For instance, on 25 January 2018, an instruction aiming to give fresh impetus to the clearance of shanty towns and unlawful camps was published and signed by eight ministers (Attachment No. 1 – DD(2018)227). It is a follow-up to the Circular of 26 August 2012, and reaffirms the principles of humanity and respect for the laws of the Republic which must guide it, while also requiring effectiveness.

One of the goals of this new instruction is to set up a local authority and partnership strategy for the treatment of unlawful camps and shanty towns in order to clear them, react differently according to the characteristics of the camps and the persons concerned, counter extreme hardship, ensure respect for the laws of the Republic, raise State funding and identify sources of co-financing. To achieve this objective, the Ministers asked the prefects in particular to start clearance measures "as soon as possible, and if possible as soon as camps have been set up, irrespective of whether or not legal proceedings have been initiated to evacuate them."

b) The effectiveness and monitoring of the safeguards regarding eviction operations

The French Government would stress that the safeguards regarding eviction operations are effective because of the existing judicial and non-judicial mechanisms and the thorough oversight of the judicial authorities.

With regard to non-judicial mechanisms, the persons concerned may file an application with the Defender of Rights (*Défenseur des droits*), who, moreover, submitted observations during the proceedings before the ECSR.

³ Article L. 345-2-2 of the Social Welfare and Family Code:

"All homeless persons in situations of medical, psychological or social hardship shall have access at all times to emergency accommodation.

This accommodation must enable such persons to make use, in conditions showing due regard for human dignity, of services providing board and lodging and sanitary facilities and an initial medical, psychological and social welfare evaluation, conducted either within the accommodation facility itself or, through an agreement, by external professionals or bodies, and to be referred to any professional or body capable of affording them the assistance warranted by their state, including residential social reintegration centres, stable accommodation centres, boarding houses, hostels, establishments for dependent elderly persons, short-stay medical care beds or hospital services."

As to judicial mechanisms, effective legal remedies are available to the persons concerned.

In the event of an appeal against a decision to evict, the national courts assess whether the authorities have organised the eviction operation in conditions allowing "*insofar as possible*" the individual situation of the persons concerned to be preserved (Conseil d'État, Order of 19 November 2012, No. 364444) and whether they can be accused of a manifest failure to act.

When carrying out their review, the administrative courts take the following into account in every case:

- the resources at the authorities' disposal and whether they exercised due diligence;
- whether the persons who have been evicted exercised due diligence;
- the age, health status and family situation of the persons concerned;
- whether any new accommodation is suited to the situation of these persons.

Moreover, the government would like to point out that the persons evicted from unlawful camps may file an application before the European Court of Human Rights, particularly through the procedure provided for by Rule 39 of the Rules of Court.

Furthermore, the European Court of Human Rights regularly receives requests for interim measures in this area.

Since January 2018, the European Court of Human Rights has communicated three preliminary requests for information to the French authorities in the context of applications concerning the dismantling of camps occupied by Roma families.⁴ In the three cases, the Court eventually decided not to request the French Government to take the interim measure sought.

Therefore, the persons in the Roma community concerned by eviction operations have access to useful and effective remedies enabling them to assert their rights.

c) *The issue of the enrolment of Roma children in school*

The government would point out that responsibility for ensuring children's enrolment lies primarily with their families.⁵

Each year, the mayor makes a list of all the children residing in their municipality who are of school age and the persons responsible for these children must ensure that they are entered on the list (Article L. 131-6 of the Education Code).

French legislation states that the status or housing arrangements of families living in a municipality may not be a reason for refusing to enrol a child who is of school age (Article L. 131-5 of the Education Code).

Should the mayor fail to draw up such a list (through refusal or negligence), a court warning may be issued and the representative of the State in the *département* may, after having made a request to the mayor, enrol the child of his/her own accord or through a special delegate (Article L. 2122-34 of the General Code on Local and Regional Authorities).

Moreover, if cases of discrimination or exclusion occur and are proven, penalties are based on the provisions of ordinary law, which penalises any discrimination between natural or legal persons under Articles 225-1, 225-2 and 432-7 of the Criminal Code.

The government would also point out that in addition to the issue of any potential failure to enrol children, assisting very poor families living in camps to enrol their children and allow them to attend school regularly is also a major concern.

Accordingly, the French authorities have worked with associations to set up a system of mobile classrooms. Circular No. 2012-142 of 2 October 2012 on the education and schooling of children from itinerant and Traveller families, which provides for this system, states that where mobile classrooms are provided, they play a temporary role in affording schooling and contacts with schools for pupils and families whose links with the school system are unstable.

⁴ Application No. 1377/18, *Constantin and Others v. France*, decision of 11 January 2018; Application No. 3983/18, *Ghita and Others v. France*, decision of 25 January 2018; Application No. 7103/18, *Preda and Others v. France*, decisions of 9 and 21 February 2018.

⁵ Article L. 131-5 of the Education Code: "The persons responsible for a child who is of school age as set out in Article L. 131-1 shall ensure that they are enrolled in a public or private school, or declare to the mayor or the State authority in charge of education that they will arrange home schooling. (...)"

Circular No. 2012-142 of 2 October 2012 also provides that "even if families are not in a position to present the required documents for enrolment, pupils must be temporarily enrolled pending the presentation, as soon as possible, of the documents which will make it possible to enrol them. If the head teacher finds him or herself unable to accept the pupil owing to a lack of places, he/she shall immediately submit a report to the director of the national education services (DASEN), acting under the delegation of the regional education officer, who shall inform the prefect and take all the necessary measures to make it possible to enrol the pupil."

Finally, in accordance with the Interministerial Circular of 26 August 2012 (NOR INTK1233053C) on the anticipation and support of evictions from unlawful camps, the co-ordinator of the academic centre for the schooling of newly arrived non-native speakers and children from Traveller and itinerant families (CASNAV) in the education authority concerned will take part in any meetings held by the prefecture on the clearance of unlawful camps.

d) *The specific situation of the members of the Roma community in the region of Aix-en-Provence*

A mention should be made of the safeguards provided for the Roma community living in unlawful camps in the region of Aix-en-Provence during eviction operations.

In this connection, the ECSR criticises France for failing to prepare the evacuation of a camp sufficiently in advance, but it should be pointed out that, in accordance with the measures put in place by the prefect of the Bouches-du-Rhône on 18 September 2012, the sub-prefect of Aix-en-Provence regularly convenes the committee in charge of monitoring the situation of people living in unlawful camps in the municipalities of the district of Aix-en-Provence, whose tasks are the following:

- monitoring measures implemented by the local authorities concerned (water supply, waste disposal and temporary sanitary facilities);
- summarising and disseminating the available information to the various local stakeholders;
- ensuring that those residing near an unlawful camp have received the necessary information.

The following are invited to the consultation meetings:

- the various State agencies (Ministry of Education, social cohesion office of the département, the national police and gendarmerie);
- the municipalities concerned;
- the département council;
- the associations concerned (Secours Catholique, ADDAP13, Rencontres tsiganes, Associations des cités du Secours Catholique).

The aim of these committee meetings is to take stock of the situation in the camps and to propose solutions to those concerned, whether a decision on eviction has been made or not.

The conclusions drawn up at the end of the meetings of the steering committee on measures to adjust the residence conditions of persons from the Roma community (Attachment No. 2 – DD(2018)227) are tangible proof that a comprehensive and multidisciplinary approach to the situation is adopted in all the unlawful camps when dealing with problems encountered and implementing measures.

As indicated in these conclusions, the stakeholders concerned carefully examine the situation of the persons in the various camps, focusing on identifying vulnerable persons and on health and hygiene issues.

As to the matter of schooling, it is clear that special care is taken to ensure that evictions will take place after the end of the school year (see, in particular, the conclusions drawn up after the meeting of 20 June 2016).

Lastly, the government would point out that before deciding to request the assistance of law enforcement agencies, a diagnosis is made by the association AMPIL, which makes it possible to assess each situation individually and make appropriate proposals.

In addition to the monitoring mechanism set up by the prefect of the Bouches-du-Rhône in 2012, other local measures adopted in the region of Aix-en-Provence should be mentioned.

In Aix-en-Provence, in 2014, the Association des Cités du Secours Catholique submitted a shanty town clearance scheme which would enable the integrated rehousing of 12 families from two camps, including that of Trois Pigeons. This scheme, which was co-financed by the State and the municipality of Aix-en-Provence as part of its town planning policy, with sums of €10 000 in 2014 (€5 000 from the municipality

and €5 000 from the State) and €30 000 in 2015 (€10 000 from the municipality and €20 000 from the state), was deemed a success (Attachment No. 3 – DD(2018)227).

In 2012, in Gardanne, the municipal council organised the "spontaneous" encampment of approximately 70 people who had set up camp around a former mine shaft, "Z shaft". The municipal council provided them with water, electricity and waste disposal facilities. It organised transport for the children to school and to leisure centres and appointed a social worker to deal exclusively with the people concerned. In exchange, the inhabitants signed a charter of good conduct with the local authorities.

This camp was not meant to last and measures were taken to rehouse all the families wishing to integrate. The camp was dismantled in 2016 after all the families had been rehoused, as confirmed in a review by social services on 21 December 2016 (Attachment No. 4 – DD(2018)227).

Lastly, the government would like to point out that all the measures it has put in place to enable Roma families to be offered housing and stable living conditions and to ensure that their children can attend school can sometimes be scuppered by the failure of families to submit the documents needed for access to housing under the prefectural quota, such as their tax exemption certificates. In addition, some families continued to bury waste on the camp site despite the fact that rubbish bins had been made available on the Chemin des Flâneurs in Aix-en-Provence.

Consequently, the French authorities consider that the decisions made regarding these particularly sensitive situations, which struck an effective and proportionate balance between the rights of the evicted people, the owners' rights and the safeguarding of public order, are in compliance with the national legislation in force and the rights set out in the Revised European Social Charter.

List of attachments

See reference document: DD(2018)227 (French only)

Attachment No. 1: Government instruction aiming to give fresh impetus to the clearance of unlawful camps and shanty towns of 25 January 2018 NOR: TERL1736127J

Attachment No. 2: Conclusions of the committee of the district of Aix-en-Provence in charge of monitoring measures taken to adjust the residence conditions of Roma in the camps set up in the municipalities of Aix-en-Provence

Attachment No. 3: 2015 activity report of the association *Cités du Secours Catholique*

Attachment No. 4: Assessment of the rehousing of the families that had settled around mine shaft Z in Gardanne.