



European  
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

## **FOLLOW-UP TO DECISIONS ON THE MERITS OF COLLECTIVE COMPLAINTS**

Findings 2020

*This text may be subject to editorial revision*

## GENERAL INTRODUCTION

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, certain countries were exempted from reporting on the provisions subject to assessment in the framework of the Conclusions 2020. These countries were invited, instead, to provide information on the follow-up given to the decisions on the merits of collective complaints in which the Committee had found violations.

This document presents the findings of the Committee adopted at the 318<sup>th</sup> session in January 2021 concerning the follow-up of decisions. The following countries are concerned:

- Belgium
- Bulgaria
- Finland
- France
- Ireland
- Italy
- Greece
- Portugal

## **BELGIUM**

### **3<sup>rd</sup> Assessment of the follow-up: International Federation for Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2012, Resolution CM/ResChS(2013)8**

#### ***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded that there had been several violations of Article 16 of the Charter read in conjunction with Article E on the following grounds:

- the failure to recognise caravans as dwellings in the Walloon Region and the lack of housing quality standards relating to health, safety and living conditions that are adapted to caravans and the sites on which they are installed in the Flemish and Brussels Regions;
- the lack of sites for Travellers and the State's inadequate efforts to rectify the problem;
- the failure to take account of the specific circumstances of Traveller families when drawing up and implementing planning legislation;
- the situation of Traveller families with regard to eviction from sites on which they have settled illegally;

The Committee also found that there was a lack of a co-ordinated and overall policy, in particular in housing matters, with regard to Travellers in order to prevent and combat poverty and social exclusion (violation of Article E read in conjunction with Article 30 of the Charter).

#### ***2. Information provided by the Government***

*A. Failure to recognise caravans as dwellings in the Walloon Region and the lack of housing quality standards relating to health, safety and living conditions that are adapted to caravans and the sites on which they are installed in the Flemish and Brussels Regions;*

With regard to the Walloon Region, the report provides no information.

In the Brussels Region, the Directorate of Subsidised Initiatives (Brussels local authorities) manages two subsidies aimed at Travellers: (i) a general subsidy for direct social assistance for migrants, homeless persons, Roma and Travellers; and (ii) a call for projects specifically aimed at Roma and Travellers, described by the report as relating to social welfare projects aimed at providing direct or indirect social assistance to the two target audiences. The examples of eligible initiatives for the (possibly temporary) reception of Travellers include: the purchase or rental of an encampment area; encampment site development, technical facilities (water supply, toilets, waste water and sewage disposal); operating arrangements for organising reception (management, co-ordination at the level of municipal departments); pilot scheme for (temporary) reception.

The report refers to the previous report, which stated that the Flemish Region had developed quality standards for guidance purposes for trailers.

#### *B. Number of sites for Travellers*

The report provides information on ongoing projects aimed at providing social assistance for Roma and Travellers in the Brussels Region (see above).

With regard to the Walloon Region, the report provides no information.

Where the Flemish Region is concerned, the report states that, in 2019, there were 514 places (for 545 families) on residential sites and 74 places on transit sites. The report states that the Flemish Government grants subsidies to municipalities, provinces, public social protection centres and housing associations for the construction, extension, renovation and purchase of land for caravan sites. Those launching initiatives may receive subsidies of up to 100% for the building of new sites and extension of existing sites. The report lists ongoing and finalised projects.

*C. Taking account of the specific circumstances of Traveller families in planning legislation*

The report provides no information on this point.

*D. Situation of Traveller families with regard to eviction from sites on which they have settled illegally*

The report states that, at federal level, Article 439 of the Criminal Code criminalising trespassing was amended by Law of 18 October 2017 on the illegal entry and occupation of or residence in another person's property, in order to broaden the offence to cover the possible cases of occupation of and residence in another person's property. A new Article 442/1 has been inserted into the Criminal Code to criminalise the act of occupying or residing in uninhabited premises (§ 1er). The same law stipulates that the crown prosecutor is authorised to order eviction from the property at the request of the person having a right or a deed to the property concerned, within eight days dating from the serving of the order, and to have this decision enforced. The order may be appealed against before the justice of the peace under an accelerated procedure. Non-enforcement of a crown prosecutor's eviction order is an offence, as is the non-enforcement of a decision of the justice of the peace either on the crown prosecutor's order or in a civil lawsuit (Article 442/1, § 2). The owner therefore has the choice of referring the matter to the justice of the peace or applying to the crown prosecutor for an eviction order.

Where the Flemish Region is concerned, the report states that when Travellers occupy a site illegally, they can be ordered to leave that site, either by the mayor (if there is a threat to public safety or public health) or by a judge (following an application from the owner of the site).

*E. Co-ordinated overall policy, in particular in housing matters, with regard to Travellers in order to prevent and combat poverty and social exclusion*

The report states that the Brussels and Walloon Regions have not provided any information on this point.

In the Flemish Region, the Flemish Government has commissioned a study on the housing and living conditions of Travellers, with a view to producing policy recommendations (in the areas of housing, poverty, social exclusion and welfare). The study's findings were to be submitted by 28 February 2020. Other Government-funded initiatives related to a research project focusing on the needs of Travellers and the setting up of the B-Reyn network ("Belgian Romani Early Years Network") so that Traveller families with young children can receive maximum support. Finally, a "Travellers and education" working group has been set up within the Ministry of Education to consider how the schooling of Traveller children could be improved.

### **3. Assessment of the follow-up**

*A. On the recognition of caravans as dwellings in the Walloon Region and the lack of housing quality standards adapted to caravans and the sites on which they are installed in the Flemish and Brussels Regions (Article E read in conjunction with Article 16 of the Charter)*

The Committee previously noted that the question of the recognition of caravans as dwellings is a regional responsibility. In the Flemish and Brussels Regions, caravans are recognised as dwellings in legislation (Flemish Housing Code, Article 2, 33; Brussels Housing Code of 27 January 2012, Article 2, 28°). In the Walloon Region however, caravans are not recognised as “housing”. The Committee has pointed out that this constitutes indirect discrimination as it means that the specific situation of Traveller families is not taken into account (see Findings 2018).

The Committee notes that the present report does not provide any information regarding the Walloon Region.

Where the Brussels Region is concerned, the Committee previously noted that the Brussels Housing Code stipulated that the Government must establish by decree the minimum safety, health and equipment requirements to be met specifically by itinerant homes and the sites made available for such homes by the authorities (see Findings 2018). It further noted that although caravans were legally recognised as dwellings, the housing quality standards in force (on health, safety and living conditions) were still those which had been drawn up before caravans were recognised as dwellings and were not therefore adapted to them. If these standards were applied strictly, a large majority of caravans might be declared uninhabitable (see Findings 2018). The information provided in the report relates solely to ongoing projects (see paragraph 4 above). The Government does not say whether such a decree specifying minimum safety, health and equipment requirements has been adopted. The Committee asks that the next report provide detailed information on the minimum safety, health and equipment requirements to be met by itinerant homes and the sites made available for such homes by the authorities.

The Committee noted in its previous findings that the Flemish Region had developed quality standards for trailers for guidance purposes (see Findings 2018).

In the light of the information provided, the Committee finds that no improvements have been made regarding the recognition of caravans as dwellings in the Walloon Region. Similarly, no information has been provided concerning housing quality standards relating to health, safety and living conditions that are adapted to caravans and the sites on which they are installed in the Brussels Region.

The Committee concludes, therefore, that the situation has not been brought into conformity as there is no recognition of caravans as dwellings in the Walloon Region and there are no housing quality standards relating to health, safety and living conditions that are adapted to caravans and the sites on which they are installed in the Brussels Region.

*B. On the lack of sites for Travellers and the State’s inadequate efforts to rectify the problem (Article E read in conjunction with Article 16 of the Charter)*

Where the Brussels Region is concerned, the Committee takes note of the information that projects are ongoing, but there is nothing to indicate an increase in the number of sites available to Travellers.

The Committee also notes the lack of information on this point with respect to the Walloon Region.

The Committee takes note of the ongoing and finalised projects in the Flemish Region that have made it possible to create new sites for caravans. It notes that, in 2019, there were 514 places (for 545 families) on residential sites and 74 places on transit sites. The Committee wishes to receive information on the total number of Traveller families needing places and the number of sites and places available in the Flemish Region, with a view to assessing whether there is an adequate number of places available on public sites to enable Traveller families to park their caravans.

The Committee reiterated the positive obligation incumbent upon the State to ensure that a sufficient number of residential sites are made available for Travellers to park their caravans (§ 112 decision on the merits). This means that public sites for Travellers must be properly fitted out with the basic amenities necessary for a decent life. Such sites must possess all the basic amenities, such as water, waste disposal, sanitation facilities, electricity, and must be structurally secure, not overcrowded and with secure tenure supported by law. It is also important, in order to secure social integration and, in particular, access to employment and education that sites are located in an appropriate environment offering easy access to public services, where there are employment opportunities, health care services, schools and other social facilities (§ 114 of the decision on the merits).

Given the lack of information on the number of sites available to Travellers in the Brussels and Walloon Regions in particular, the Committee considers that the situation has not been brought into conformity with Charter on this point.

*C. On the failure to take account of the specific circumstances of Traveller families when drawing up and implementing planning legislation (Article E read in conjunction with Article 16 of the Charter)*

The Committee previously asked that the next report provide detailed information on the documents required for a planning application and also on the durations of the permits issued to Traveller families (see Findings 2018).

Given the lack of any information on this point, the Committee concludes that the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter.

*D. On the situation of Traveller families with regard to eviction from sites on which they have settled illegally (Article E read in conjunction with Article 16 of the Charter)*

The Committee notes that no information has been provided by the Walloon and Brussels Regions regarding the situation of Traveller families with regard to eviction from sites on which they have settled illegally. The Committee notes that when Travellers illegally occupy a site in the Flemish Region, they can be ordered to leave that site, either by the mayor or by a judge.

The Committee takes note of the changes made at federal level by the Law of 18 October 2017 on the illegal entry and occupation of or residence in another person's property, which relates to the rights and remedies afforded to land-owners in criminal and civil law. The Committee notes that the eviction order may be appealed against before the justice of the peace under an accelerated procedure (see paragraph 10 above).

In its previous findings, the Committee reiterated the Charter's requirements regarding legal protection for persons threatened with eviction and asked for confirmation that the procedural safeguards introduced to limit the risk of expulsion

are respected (see Findings 2018). The present report does not provide the information requested regarding, for example, the obligation to fix a reasonable notice period before eviction; the prohibition from carrying out evictions at night or during winter; access to legal remedies and access to legal aid; compensation for illegal evictions; or the obligation to consult the affected parties to find alternative solutions to eviction or rehousing solutions. The Committee reiterates its request for information on the aspects mentioned above.

In the absence of such information, the Committee considers that the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter.

*E. On the lack of an overall co-ordinated policy, in particular in housing matters, with regard to Travellers in order to prevent and combat poverty and social exclusion (Article E read in conjunction with Article 30 of the Charter)*

The Committee notes the lack of information on this point with respect to the Brussels and Walloon Regions.

The Committee takes note of the steps taken by the Flemish Government and asks that the next report provide information on the results of these measures, notably where housing is concerned.

However, in the light of the information provided, the Committee notes that, as a vulnerable group, Travellers do not sufficiently benefit from a co-ordinated overall policy to combat the poverty and social exclusion from which they suffer in Belgium although their situation requires differentiated treatment and targeted measures to improve their circumstances.

The Committee therefore considers that the situation has not been brought into conformity with Article E read in conjunction with Article 30 of the Charter.

### **3<sup>rd</sup> Assessment of the follow-up: International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision on the merits of 18 March 2013, Resolution CM/ResChS(2013)16**

#### ***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded for a violation of Article 14§1 of the Charter because of the significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs. The Committee also concluded that Article 14§1 of the Charter had been violated because of the lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels Region.

The Committee further concluded that there had been a violation of Article 16 of the Charter on the ground that the shortage of care solutions and of social services adapted to the needs of persons with severe disabilities caused many families to live in precarious circumstances, undermining their cohesion, and amounted, on the part of the defendant State, to a lack of protection of the family as a unit of society.

The Committee finally concluded that there had been a violation of Article 30 of the Charter on the ground that the State's failure to collect reliable data and statistics throughout the metropolitan territory of Belgium in respect of highly dependent persons with disabilities prevented an "overall and co-ordinated approach" to the social protection of these persons and constituted an obstacle to the development of targeted policies concerning them.

#### ***2. Information provided by the Government***

The Government's report provides information on the measures taken by the three regions to remedy the situation of non-conformity, including:

- *On the obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs (violation of Article 14§1)*

In the Walloon Region, the Agency for Quality of Life (*Agence pour une Vie de Qualité – AVIQ*) drew up two calls for projects, one of which focuses on "Autism" and the other on "Multiple disabilities and Brain damage". The report states that these calls will make it possible to create 192 new places for highly dependent people. Furthermore, in 2018, 129 places for specified individuals were created for persons with a priority disability urgently requiring support. The report states that as of 4 December 2019 there were 1,628 persons (adults) registered on the unified list of adults with disabilities awaiting a solution in day care and night accommodation facilities.

In the Flemish Region, the Flemish Agency for persons with disabilities introduced a new funding system giving persons with disabilities control over the prioritizing of assistance and care provided to them. This system has been in operation as of 1 January 2017. The report states that, as of 31 December 2018, there were 24,677 persons (adults) benefiting from the new funding system. Bearing in mind the budget available at the macro level, a system of prioritizing has been introduced to ensure that budget funding goes firstly to those who are most in need of support.

Where the Brussels Region is concerned, budget permitting, those who have been granted highly dependent status receive care in a centre, irrespective of its

authorized capacity, under a priority agreement entailing the granting of a subsidy to that centre for a specified individual. The centres must be officially approved and subsidized by the PHARE Service or by the AVIQ in the Walloon Region or be licensed to dispense such care. Since 2008, 54 agreements have been concluded for the care of specified individuals. In 2018, seven priority agreements were signed with Walloon licensed care centres. The report states that, at 31 December 2018, 350 people were on the PHARE Service list of persons with highly dependent status, of whom 268 were adults and most were without satisfactory care. The number of people cared for in centres depends on the funding available to the PHARE Service: seven highly dependent individuals in 2018 and one individual in 2019 had access to care in a centre.

- *On the lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels Region (violation of Article 14§1)*

The report states that in the Brussels Region, the PHARE multidisciplinary team, comprising a doctor, psychologists and an administrative manager, analyses all applications made to the PHARE service (for admission to or care in a centre, among others). A specialized unit within PHARE, known as the Priority situations interface, manages the list of Brussels Region residents having highly dependent status and assists these individuals in their efforts to find care solutions.

- *On the shortage of care solutions and of social services adapted to the needs of persons with severe disabilities which caused many families to live in precarious circumstances, undermining their cohesion, and amounted, on the part of the defendant State, to a lack of protection of the family as a unit of society (violation of Article 16).*

The report provides no information on this point.

- *On the State's failure to collect reliable data and statistics throughout the metropolitan territory of Belgium in respect of highly dependent persons with disabilities which prevented an "overall and co-ordinated approach" to the social protection of these persons and constituted an obstacle to the development of targeted policies concerning them (violation of Article 30).*

Where the Walloon Region is concerned, the report provides information on four projects ongoing within the AVIQ aimed at improving statistics on highly dependent adults with disabilities. Furthermore, as from 1 January 2017, the AVIQ introduced a unified list for prioritizing access to accommodation for people with disabilities requiring urgent assistance, notably those suffering from a mental impairment, a disorder on the autistic spectrum, physical impairments (cerebral palsy), cranial trauma, multiple disabilities or dual diagnosis (mental impairment plus psychiatric and/or behavioural disorder). The chief aim of this list is to inventory requests from adults with disabilities seeking a solution in day care and night accommodation facilities. The report specifies that as of 4 December 2019, there were 1,628 persons (adults) on this list.

The report states that in the Brussels Region, the gathering of information is based solely on those registered by the PHARE service, who apply for highly dependent

status. There are currently no arrangements to gather information on a broader scale. According to the report, analysis of these applications reveals: (i) a massive demand for places in day centres for adults with multiple disabilities; and (ii) a demand for places in accommodation centres for adults with brain damage or a dual diagnosis. The report adds that the new government agreement of the French Community Commission (COCOF) provides for collaboration with the Brussels Health Observatory and *Perspectives Bruxelles* (a regional statistics body) with a view to drawing up a precise inventory of the current offer of places and the needs to be covered in the interests of objective planning for the creation of additional places.

### **3. Assessment of the follow-up**

The Committee takes note of the measures taken and finds that progress has been made towards equal and effective access for highly dependent adults with disabilities to social welfare services, notably in the Flemish Region through the new funding system. However, as stated by the report, some of the measures envisaged have not yet been implemented, particularly in the Walloon Region where projects to create new places for highly dependent adults with disabilities are under way. The Committee asks for information on the implementation and outcomes of the measures announced in all the Belgian regions.

The Committee notes in particular that the authorities have failed to answer the question as to the percentage of highly dependent adults with disabilities without access to social welfare services (see Findings 2018). In this connection, the Committee notes that the Brussels Region has limited capacity to care for all the people applying for it (as of 31 December, 268 adults listed as having highly dependent status, most of whom were without satisfactory care arrangements; only seven highly dependent persons in 2018 and one in 2019 had access to care in a centre). It further notes the large number of people (adults) on the unified list of adults with disabilities awaiting a solution in day care and night accommodation facilities in the Walloon Region, of whom there were 1,628 as of 4 December 2019.

While the Committee does see progress in the different parts of the country, it considers that the shortcomings in access to social services for highly dependent adults with disabilities show that many families continue to live in precarious circumstances.

Concerning the collection of data and statistics on highly dependent persons with disabilities, the Committee takes note of the projects developed by the Walloon Region, including the creation of a unified list for registering applications from adults with disabilities awaiting a solution in day care and night accommodation facilities. The Committee notes that in the Brussels Region the gathering of information is based solely on those registered by the PHARE service who apply for highly dependent status and that there are currently no arrangements to gather information on a broader scale. The Committee notes that it is planned to draw up a precise inventory of the current offer of places and the needs to be covered.

The Committee takes note of the progress made by some regions in collecting data and information on highly dependent persons with disabilities. It considers, however, that the State's continued failure to collect reliable data and statistics throughout the metropolitan territory of Belgium prevents an "overall and co-ordinated approach" to the social protection of these persons and constitutes an obstacle to the development of targeted policies concerning them.

The Committee encourages the authorities to persevere in their efforts to implement the measures planned. It will assess whether the measures taken ensure access for all the members of this group in the light of the information to be submitted in the next report.

Meanwhile, the Committee considers that the situation has not been brought into conformity with Articles 14§1, 16 and 30 of the Charter.

**2<sup>nd</sup> Assessment of the follow-up: Association for the Protection of all  
Children Ltd (APPROACH) Ltd v Belgium, Complaint No. 98/2013,  
decision on the merits of 20 January 2015, Resolution  
CM/ResChS(2015)12**

***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded that there had been a violation of Article 17§1 of the Charter on the ground that none of the relevant domestic legal provisions, taken together or in isolation, is set out in sufficiently precise terms to enable parents and "other persons" to model their conduct on Article 17 of the Charter which requires States' domestic law to prohibit and penalise all forms of violence against children, i.e. acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

***2. Information provided by the Government***

The Government considers that the prohibition of all forms of violence against children is in keeping with the development of Belgian society and reflects public opinion in this area. The Government further states that the use of violence for educative purposes is unacceptable, regardless of the circumstances.

The report states that, although Belgium has not yet laid down a full and express prohibition on all forms of corporal punishment inflicted on children, a bill was tabled on 24 September 2019 with a view to amending the Civil Code in respect of the right of children to non-violent education and the prohibition of all forms of violence against them. The intention is to enshrine the right of children to non-violent education and expressly prohibit all forms of violence, physical or psychological, against them. This point has been written into the Government Agreement, which should enable the next government to continue work along these lines.

The report also points to a recent judgment of Antwerp Appeals Court of 30 January 2019 holding that corporal punishment of a child is punishable under Article 398 of the Criminal Code.

The report also provides information on specific measures and initiatives taken as regards policy on prevention of ill-treatment and support for parenting in the regions, such as helplines for children and young people.

***3. Assessment of the follow-up***

The Committee takes note of the Belgian authorities' commitment to bringing the situation into conformity with Article 17§1 of the Charter and asks the authorities to keep it informed of the legislative changes envisaged in this respect, particularly the bill aimed at amending the Civil Code.

The Committee also takes note of the observations produced by Defence for Children International, including a survey showing that punishment (psychological and physical) is commonly used by the vast majority of parents in the upbringing of their children, despite the fact that most of them do not think it beneficial. It was also reported that this appears to be even more of an issue now in the context of the lockdown resulting from the Covid-19 pandemic, given that call services and helplines received far more calls relating to situations involving domestic violence and ill-treatment of children.

Noting that there is still not a sufficiently clear and precise prohibition of corporal punishment in Belgian legislation, the Committee finds that the situation has not been brought into conformity with Article 17§1 of the Charter.

**1<sup>st</sup> Assessment of the follow-up: Mental Disability Advocacy Centre (MDAC) v. Belgium, Complaint No. 109/2014, decision on the merits of 28 March 2018, Resolution CM/ResChS(2018)3**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee concluded that there had been:

- a violation of Article 15§1 of the Charter on the ground that the right to inclusive education of children with intellectual disabilities was not effectively guaranteed in the Flemish Community of Belgium;
- a violation of Article 15§1 of the Charter owing to the lack of an effective remedy against refusal of enrolment in mainstream schooling for children with intellectual disabilities;
- a violation of Article 17§2 of the Charter on the ground that mainstream educational institutions and curricula are not accessible in practice to the children concerned.

**2. Information provided by the Government**

The report states that the Decree of 6 July 2018 made several amendments to the M-Decree that are relevant to pupils with intellectual disabilities (type 2). The definition of type 2 (intellectual disabilities) was amended to include children with an IQ of above 60 but below 70 for example. The report also states that, for type 2, 4, 6 and 7 pupils, a new mechanism for supporting them in the mainstream education system was planned for 2019-2020. One measure transitory had been taken for the 2018-2019 school year, with the granting of additional assistance and operational resources to those pupils.

The report adds that since 1 September 2019 the mechanism for supporting type 2, 4, 6 and 7 pupils in the mainstream education system has been changed. For the pupils who follow an individually tailored curriculum within the mainstream education system ("pupils on a report"), the same assistance and operational resources are available as in the special education system. For the pupils who follow the normal curriculum with reasonable adjustments ("pupils on a report giving reasons"), a number of "guidance units" and operational resources have been assigned. The guidance units can be transposed into educational or paramedical staff.

Finally, the report states that in the coalition agreement of the new Flemish Government (2019-2024), it was decided to repeal the M-Decree and replace it with a guideline decree, comprising a final support model. It is pointed out that the Flemish Government wishes to take an approach based on pragmatism and realism: special education if necessary, inclusive education where possible, with a view to generating adequate public support and teaching uptake. The move towards inclusive education will have to be step by step and at a feasible pace. The Flemish Government continues, therefore, to ensure that the system of special education has its place and improve on it wherever necessary. It is stated that the guideline decree and the final support model will enter into force on 1 September 2021 at the earliest.

The statistics provided by the Flemish Government show that in 2019 there were 429 pupils with intellectual disabilities in mainstream basic education (compared with 339 pupils in 2018) and 10 167 pupils in special education (compared with 10 122 in 2018). The Government points out that the changed description of the target group (see above) may be one reason why the figures were higher in 2019 than in 2018.

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Flemish Government which states its intention to repeal the M-Decree and replace it with a guideline decree. However, this guideline decree will not enter into force until 1 September 2021 at the earliest. The Committee asks the authorities to keep it informed of legislative changes envisaged in this respect and any measures taken to implement them.

The Committee also takes note of the observations produced by *Validity Foundation* (formerly *Mental Disability Advocacy Centre*) and *Equal Rights for Every Person with a disability (GRIP)*. These observations point out that some 500 children with complex support needs are still flatly refused education and some 500 others cared for in residential centres receive only "home schooling". These non-governmental organisations point out that the data provided by the Government (429 pupils in mainstream education and 10,167 pupils in special education) confirm that the overwhelming majority of children with intellectual disabilities continue to be educated in specialised schools, and the figure is actually rising.

The Committee reiterates its finding that the eligibility requirements for admission to mainstream education under the M-Decree, particularly Article 37 *undecies* §§1 and 2, are based on the notion of integration rather than inclusion. The Committee holds that integration is when the child is required to adapt to the mainstream system while inclusion means the child's right to participate in ordinary schooling and the school's obligation to accept the child, taking account of the best interests of the child as well as their abilities and educational needs (decision on the merits, §66).

The Committee also noted that in the Flemish education system there are serious and multiple restrictions on the right to inclusive education excluding pupils who are "unable to follow the common curriculum" (decision on the merits §69). The Committee also held that discrimination based on intellectual disabilities also stems from the refusal to introduce reasonable adjustments (decision on the merits, §73).

As regards taking special account of children with disabilities, the Committee reiterates that the inclusion of children with disabilities in mainstream schooling in which arrangements are made to cater for their special needs should be the norm, and teaching in specialised schools must be the exception (decision on the merits, §104).

Furthermore, the Committee notes that the Government has provided no information regarding the lack of an effective remedy against refusal of enrolment in mainstream schooling for children with intellectual disabilities.

In the light of the above, the Committee notes that sufficient steps have not been taken by the Government to remedy the violations found by the Committee. Consequently, it concludes that the situation has not been brought into conformity with Articles 15§1 and 17§2 of the Charter.

## **BULGARIA**

**3<sup>rd</sup> Assessment of the follow-up: European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 octobre 2006, Resolution CM/ResChS(2007)2**

***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded that there was a violation of Article 16 of the Charter taken in conjunction with Article E on the following grounds:

- the inadequate housing of Roma families and the lack of proper amenities;
- the lack of legal security of tenure and the non-respect of the conditions applicable to eviction of Roma families from dwellings unlawfully occupied by them.

***2. Information provided by the Government***

The report indicates that in the framework of the Operational Programme “Regions for Growth” (OPRG) 2014-2020, which contributes to the implementation of the National Integration Strategy, especially in its priority on “Improving the housing conditions”, the following activities were undertaken both as regards the inadequate housing of Roma families and the lack of proper amenities and concerning the lack of legal security of tenure and the non-respect of the conditions applicable to the eviction of Roma families from dwellings unlawfully occupied by them.

*Inadequate housing of Roma families and the lack of proper amenities*

The authorities indicate that, under the Operational Programme “Regions in Growth” (OPRG) 2014-2020, social housing projects were envisaged and implemented, under the scheme “Implementation of Integrated Plans for Urban Regeneration and Development 2014-2020”. The investments are to be realised on the territory of 39 towns and are targeted at a better urban environment, renovating the educational, social and cultural infrastructure, energy efficiency of buildings, and developing urban transport systems.

The report states that all schemes implemented under the OPRG 2014 – 2020 concern all marginalised groups, and this includes Roma who are considered as such.

The result achieved is that currently 1,987 persons, representatives of the marginalized groups, including Roma, are using the modernised educational infrastructure.

According to the social housing construction plans included in the Integrated Plans for Urban Regeneration and Development 2014-2020, the envisaged funding amounts to almost 55 millions BGN. The number of rehabilitated accommodation units in the urban areas is planned to reach 1,140 by 2023. To the date of the report, 9 (nine) grant contracts have been concluded, for a value of BGN 28.9 million. With their help 632 homes will be repaired and 1,035 representatives of marginalised groups, including Roma, will live in improved housing conditions. 183 social housings in the Blagoevgrad municipality are reported to be repaired. Under the project “Support for the Vocational Schools in the Republic of Bulgaria”, the result achieved is that currently 1,717 persons, representatives of the marginalised groups, including Roma, are using the modernised educational infrastructure and 9 grant agreements were implemented.

Under the scheme “Support for Higher Education Institutions in the Republic of Bulgaria”, 13 higher education institutions are specific beneficiaries and the results

achieved are the following: 155 persons, representatives of the marginalized groups, including Roma, use the modernised educational infrastructure.

As regards the scheme "Reconstruction of social infrastructure sites for the purposes of education, culture, etc.", of the National Action Plan 2015 – 2020 for the implementation of the Strategy of the Republic of Bulgaria for Roma Integration 2012 – 2020, the report states that 7 grant agreements with a total value of BGN 9.1 million were concluded. It is envisaged that 2,523 representatives of marginalised groups, including Roma, will benefit from the modernised social infrastructure realised under them. Currently, 1 grant contract is being implemented and it is expected that 300 persons – representatives of marginalised groups, including Roma – will benefit from the modernised social infrastructure.

The report acknowledges that it is necessary to continue the coordination efforts for providing full and comprehensive support to the target groups of the marginalised communities, including Roma communities. Creating mechanisms and conditions for active inclusion of the Roma is a key prerequisite and essential for their subsequent socio-economic integration. After a process of pre-selection, the Government invited 52 municipalities to submit integrated project proposals for the direct award of grants entitled "Socio-economic integration of vulnerable groups". After completion of the evaluation, there were 48 project proposals for funding.

By the beginning of 2019 the following data were reported in relation to the Roma persons included in the OPRG: *New alternatives* – 792 Roma; *Independent Living* – 1,124 Roma; *Accept Me 2015* – 1,674; *Early Childhood Development Services* – 14,193 Roma; *Active Inclusion* – 429 Roma.

The total number of people enrolled by 1 January 2019 reached 18,510 Roma compared to 1,559 in 2018. More than 85% of all the included Roma are children between the ages of 0 and 18 as part of the two operations: "Early Childhood Development" and "Accept Me 2015".

The report further presents statistics for the period of 1 January 2017 to 30 June 2019, indicating that more than 114,000 people were included in various activities supporting the integration of unemployed persons self-identifying as Roma.

*On the lack of legal security regarding the ownership of a property and non-compliance of the conditions applicable to the removal of Roma families from their illegally occupied houses*

The information provided in the report relates to the implementation of the *Yordanova and others v. Bulgaria* rulings of the European Court of Human Rights (hereinafter the ECtHR), which concern the removal of illegal houses or the seizure of misused state and municipal properties, including by persons belonging to ethnic minorities.

The decision in *Yordanova and others v. Bulgaria* (application no. 25446/06) states that there is a violation of Article 8§2 of the ECHR, the right to respect for private and family life and housing, in the event that the municipal property on which the applicants' houses were built is seized. The Court held that the order of the mayor for the seizure of municipal property and the subsequent removal of the applicants from their homes were lawful and pursued a legitimate aim, but in the specific case they were a disproportionate interference with the rights under Article 8§2 of the ECHR. The order was issued on the basis of a law that does not require a study of its proportionality. For this reason, the competent authorities, the mayor of the area and the administrative courts did not assess whether the seizure of the properties, which are a property of the Municipality, on which the applicants' houses were located and the conditions of that seizure violated the rights protected by Article 8§2 of the ECHR.

For the first time, in decision No. 11731 of 3 October 2018, the Supreme Administrative Court (SAC) referred directly to Article 8 of the ECHR, to Article 6 of the Administrative Procedural Code and to the case of *Ivanova and Cherkezov v. Bulgaria*, No. 46577/15 (included in the group of the decision of the *Yordanova and others* case for the purposes of their implementation), accepting that, due to the fact that in this specific case no assessment of proportionality was made by the competent administrative authority, the order for the removal of the building was cancelled. In this decision, the SAC states that a number of circumstances must be examined and discussed during the assessment, including whether the disputed person belongs to a disadvantaged social group.

In view of this practice and the need to harmonise the approach of the national courts, an inter-ministerial working group was set up. This group will analyse the current regulation and propose legislative changes, introducing a compulsory assessment of the proportionality of the interference with the right to private and family life and the inviolability of the housing when issuing orders for the seizure of property, state and municipal property, as well as to eliminate illegal construction. As a result of the group's activity, specific proposals for amendments were made. They state that the competent administrative authority is required to carry out an analysis of the proportionality of the intervention by examining certain non-exhaustive circumstances, where there is evidence that the property to be seized or removed is someone's only home. No new grounds for legalization of illegal construction are foreseen, beyond those already existing in the present legislation on lifelong education and training. The bill for public consultation will be published soon.

In addition, there is an increasing number of cases of appeals or suspension of enforcement after a court analysis, which conclude that enforcement actions amount to disproportionate interference with the personal situation of residents of the housing to be removed or seized.

In June 2019 the Committee of Ministers of the Council of Europe published its decision regarding the implementation of the *Yordanova and others* group of decisions of the ECHR. Paragraph 3 of this decision notes with interest the draft law and considered that it seems to provide an adequate basis for assessing proportionality when issuing orders for the removal of illegal structures.

### **3. Assessment of the follow-up**

#### *(a) As to the inadequate housing of Roma families and the lack of proper amenities*

The Committee takes note of the measures taken through the Operational Programmes OPRG 2014-2020, which were already announced in the previous information submitted in December 2018. It notes that some of the projects under OPRG 2014-2020 are still in the implementation phase.

With regard to the practical impact of these Programmes on the housing situation of Roma, the Committee notes that according to the information provided by the authorities, there are a group of measures developed for building an integrated approach. This implies not only improving housing conditions, but also modernising educational institutions, social services and other. However, as regards housing, the report states that 1 140 people will live in improved conditions by 2023. By the date

of the report, 9 (nine) grant contracts were concluded, for a value of BGN 28.9 million. The information provides further figures concerning larger initiatives, also in the field of employment and education, but it does not specify the percentage of Roma population and specifically how many Roma families were provided with adequate housing.

The Committee notes that according to the Report by Dunja Mijatović, Council of Europe Commissioner for Human Rights, following her visit to Bulgaria from 19 to 25 November 2019, CommDH(2020)8, 31 March 2020, regarding the housing situation of Roma in general, the Commissioner noted that nearly 30% of Roma reside in segregated neighbourhoods such as Stolipinovo. While the EU-MIDIS II survey shows that gaps between Roma and non-Roma in respect of housing indicators are smaller than in other countries with large Roma minorities, the housing conditions of Roma in Bulgaria are clearly worse than those of the majority population. This is demonstrated, notably, by the limited access of Roma to tap water and sanitation in their dwellings. According to the information available to the Commissioner, in 2017-18 there was an evident deterioration in the implementation of policies under the National Roma Integration Strategy (2012-2020) regarding the area of housing.

The Commissioner observed during her visit that many municipalities do not have social housing available and that they are not under a legal obligation to set aside funds for this purpose. Only a few municipalities are in the process of building new social housing, funded from the EU operational program (Regions in Growth). In 2015-16, 414 social homes were completed, however, this is far from meeting existing needs. Furthermore, although local authorities are responsible for initiating social housing projects, many of them reportedly lack the technical capacity to carry them out. The authorities were yet to adopt the new National Housing Strategy, presented for discussion in 2018, when the report was adopted in 2019. No information on the new strategy beyond 2020 appears in the information submitted by the authorities.

The Commissioner was concerned that the lack of social housing is a problem which affects Roma disproportionately. Municipalities are free to establish their own eligibility criteria for social housing, which may be an obstacle to access for Roma to social housing, as well as public opposition at local level, and has prompted some municipalities to cancel construction projects.

The Committee has noted that the housing situation has led to serious social exclusion, and is connected to other problems including: poor infrastructure (or the absence of infrastructure); poor transport links; low levels of access to public services (electricity, water supply, sewerage, street lighting, refuse); absence of official plans and opportunities for legal construction.

In the light of this information, the Committee invites the authorities to present their strategy for the coming years and to provide information on the results achieved in the implementation of the various projects in progress, with regard to ensuring adequate housing conditions and proper amenities for Roma. It also asks for up-to-date figures on the availability of social housing for Roma (supply and demand) as well as the number of Roma persons/families provided with social housing.

In the meantime, the Committee considers that the situation has not been brought into conformity with the Charter.

*(b) As to the lack of legal security of tenure and the non-respect of the conditions applicable to eviction of Roma families from sites or dwellings unlawfully occupied by them*

The Committee notes the information provided by the Bulgarian authorities on the issues of legalising the housing of Roma and forced evictions, mainly as regards the implementation of ECHR judgements.

According to the report of the Commissioner cited above, the Government's attempts to legalise houses in informal settlements have overall been unsuccessful, although legalisation was achieved in some pilot projects. Moreover, the legislation requires that the applicant either be the owner of the land or have a legal right to build on the land. Other factors, including strict building and planning requirements and the complexity and high costs of the procedures have also contributed to the poor outcome of legalisation efforts.

According to NGO reports, around 97% of the orders for the demolition of dwellings issued in 2010-2012 by the Directorate for National Construction Control and 89% of the demolition orders issued by local authorities in 2012-2016 in a sample of 61% of municipalities related to Roma dwellings. The Commissioner emphasised that irrespective of the lack of legal recognition of Roma people's dwellings, the retaliatory demolition of their homes, with no assessment of proportionality and no provision for adequate alternative solutions where needed, is not only unlawful, but contributes to the further stigmatisation and marginalisation of Roma. Moreover, such practices run counter to the efforts made at national level to improve Roma's access to adequate housing and more generally, to improve their living conditions. The Commissioner considered that the Bulgarian authorities should act swiftly to improve the legal safeguards covering evictions; in particular, they should promptly finalise the legislative amendments providing for the application of the principle of proportionality in the context of evictions, in line with the Court's specific findings in this case and taking into consideration the applicable international standards; ensure that courts and other authorities consistently apply proportionality criteria when assessing cases of (potential) evictions; etc.

The Committee recalls that in its decision on the merits, it held that the situation constituted a violation of Article 16 taken in conjunction with Article E because Roma families were disproportionately affected by the legislation limiting the possibility of legalising illegal dwellings; and the evictions carried out did not satisfy the conditions required by the Charter, in particular that of ensuring persons evicted were not rendered homeless. It further recalls that it is the responsibility of the state to ensure that evictions, when carried out, respect the dignity of the persons concerned even when they are illegal occupants, and that alternative accommodation or other compensatory measures are available (ERRC v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §56 and §57). The Committee held that the law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided" (ERRC v. Italy, Complaint No. 27/2005, decision on the merits of 7 December 2005, §41).

The Committee invites the authorities to provide in the next report information on:

- the situation (in law and in practice) regarding the legalisation of dwellings of Roma families;
- legislation and practice regarding the evictions of Roma, including updated information on the conditions and number of eviction procedures affecting Roma, legal remedies and compensation granted in case of such evictions.

On the basis of all the information provided, and in particular the fact that: evictions are still frequent and there is a problem of insecurity of tenure, which makes it very difficult for Roma to be protected from forced evictions; legislative changes in this sense and compliance with the *Yordanova and others* case are still pending; the domestic courts' case-law is still not applying the principle of proportionality when assessing cases of evictions as established by the ECtHR; and the current rules make it impossible in practice for Roma to access municipal housing, the Committee considers that the situation has not been brought into conformity with the Charter as regards the lack of legal security of tenure and the non-respect of the conditions accompanying eviction of Roma families.

**3<sup>rd</sup> Assessment of the follow-up: Mental Disability Advocacy Centre (MDAC)  
v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008,  
Resolution CM/ResChS(2010)7**

***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded that there was a violation of Article 17§2 of the Charter on the ground that children with moderate, severe or profound intellectual disabilities residing in homes for mentally disabled children (HMDC) did not have an effective right to education.

The Committee also held that the situation in Bulgaria constituted a violation of Article 17§2 of the Charter taken in conjunction with Article E because of the discrimination against children with moderate, severe or profound intellectual disabilities residing in HMDCs as a result of the low number of such children receiving any type of education when compared to other children.

***2. Information provided by the Government***

The report indicates that several measures and plans have been adopted concerning the education of children with disabilities as described below.

As of 2016, the homes for mentally disabled children (HCMD) no longer exist in Bulgaria. All homes for children with physical and intellectual disabilities have been closed during the first stage of the childcare deinstitutionalisation reform. Children and young people with disabilities from these specialised institutions have been removed and are already using community services. Some were reintegrated into their biological families or adopted, and others were placed in residential community-based social services, such as family-type accommodation centres or sheltered homes.

According to the report, the implementation of the principle that the family is the best environment for the upbringing and development of each child remains at the heart of children and family support policies and the ongoing process of deinstitutionalization of childcare in the implementation of the 2010 National Strategy "Vision for Deinstitutionalization of Children in the Republic of Bulgaria" and the Updated Action Plan for the Implementation of the National Strategy (Updated Plan) adopted in 2016.

The report states that substantial results have been achieved in implementing the childcare deinstitutionalisation: a significant decrease in the number of children in specialised institutions by over 93% (from 7,587 children in 2010 to 526 children at the end of June 2019) and a decrease in the number of specialised institutions for children by more than 83% (from 137 specialised institutions in 2010 to 23 at the end of June 2019). The quality of life of children removed from specialised institutions has also improved. The number of community-based social services for children in the country has grown significantly (see figures in the report).

The report points out that children with disabilities have been identified as a separate priority group in the deinstitutionalisation process, both during the first and current stages of the process. A wide range of measures and activities are being implemented to support children with disabilities and their families, including an integrated approach to the provision of early childhood development services and early disability intervention and measures related to the employment of children/youth leaving the care system (including for children with disabilities). The Updated Plan provides measures to support the educational process for children involved in the deinstitutionalisation process (including for children with disabilities) and to support students and young people when applying to higher education institutions.

These measures will be implemented with the funding of the Operational Program "Science and education for smart growth" 2014-2020. The reform of the services provided in the day care centres for children with disabilities (DCCCD) and the centres for social rehabilitation and integration (CSRI) envisages upgrading the activities in these services and implementing separate programs for "Early Disability Intervention" and "Individual Pedagogical Support for Children with Disabilities".

The Law on Social Services (LSS) was adopted in 2019. The law stipulates that by 1 January 2021 all existing specialised institutions for children – HCDPC, which are managed by the municipalities, and HMSCC, which are managed by the Ministry of Health – will be closed. A ban on the creation of new specialised institutions for children has already been adopted. The LSS regulates the "substitute care" as a specific activity that will provide support for parents of children with permanent disabilities, relatives or foster families, families and carers for adults with permanent disabilities who are unable to care for themselves and for old people who are unable to care for themselves. The LSS also introduces "early intervention for children with disabilities". This is specialized support for children with disabilities and children at risk of developmental delay up to 7 years old and their families, which includes early identification of child health and development risks, implementation of early impact measures to improve the wellbeing and development of the children and to build skills for their upbringing. No fee is charged for the social services through which these measures are provided.

The report notes that the placement of a child outside the family is a last resort, implemented after all options for protection in the family have been exhausted. Children with disabilities can be placed in different residential social services, for example the family-type accommodation centres for children with disabilities, or the family-type accommodation centres for children/youth with disabilities. The development and status of the children accommodated in social services is monitored, and within the limits of their competence and powers, the parties involved in the different sectoral systems undertake the necessary and timely actions to meet their needs and to respect their rights, including the access to education, healthcare, protection against violence and all forms of abuse, etc. No educational process takes place in social services of the residential community, which also are places of residence for children and young people.

The main aspects of the Updated Action Plan for the implementation of the National Strategy "Vision for Deinstitutionalisation of Children in the Republic of Bulgaria" 2016 – 2020 include:

- measures to provide social and integrated services for early intervention and prevention in family environment;
- measures to provide care in a family environment for children at risk who are not being raised by their biological parents and the progressive closure of the homes for medical and social care for children;
- measures for the provision of social services and community support for children placed in homes for children deprived of parental care and those leaving the care system;
- measures to provide social and integrated health and social services for children with disabilities;
- measures to increase the effectiveness of the system for guaranteeing children's rights;
- building the necessary infrastructure for child services.

The analysis of the data in 2018 shows a decrease in the number of children accommodated in the existing 27 specialised institutions on the territory of the country. The total number of children and young people in institutional care is 633. 452 of them are placed in homes for medical and social care for children (HMSSC) and 210 in homes for children deprived of parental care (HCDPC). For comparison, at the beginning of the process in 2010 there were 137 specialised institutions for children operating in the country and more than 7,500 children lived in them.

In 2018, seven homes for children deprived of parental care were closed in different towns and regions.

The report also gives specific data on the number of children/youth placed in the different accommodation centers .

In 2018, a working group at the SACP (State Agency for Child Protection) developed proposals for amendments in the Ordinance on the Criteria and Standards for Social Services for Children, with the aim of ensuring a higher quality of social services for children by introducing an assessment of the professional competence of the employees, who work in them. It has issued 136 licenses for providing 136 social services for children, 25 of them are for innovative services. The active licenses as of December 2018 are 338 and they provide 340 social services for children.

In 2018, the first Centre for Complex Services for Children with Disabilities and Chronic Diseases (CCSCDCD) was opened. With the opening of this innovative health facility, support will be provided to families to prevent the abandonment of children with disabilities and their placement in specialised institutions, as well as coordination and integration of child care in the healthcare system, and with services in other sectors – social, educational and others, in addition to improving the health status of children with disabilities and chronic diseases and ensuring their access to all medical and social services they need.

Regarding the right to education of children with disabilities, the Law on Persons with Disabilities (LPD), which entered into force on January 2019, governs public relations related to the exercise of the rights of persons with disabilities and their support for social inclusion, and outlines the horizontal state policy on the rights of persons with disabilities. It extends the responsibilities of the central government and the local authorities in coordinating the policy in this area. Section II "Education and Vocational Training" of Chapter Four "Support for Social Inclusion" of the LPD regulates the engagements of the state and local authorities and their structures and the providers of social services to children and students with disabilities, including children and students with special educational needs that have support for personal development in the pre-school and school education system. The support is general and additional and is implemented in accordance with the individual assessment of each child and student with disabilities, it is prepared under the conditions and in accordance with the Law on Pre-school and School Education (LPSE) and the state educational standards.

The Law also provides conditions for equal access to quality education and inclusion of children and students by giving additional support for the personal development of children and students with disabilities. This support is provided through a plan drawn up on the basis of an individual needs assessment of each child or student and the assessment is carried out by a personal development support team in the kindergarten or school. The institutions in the pre-school and school education system provide access and attendance to assistants of children or students with disabilities when the support plan states that the child or student needs the support of an assistant.

According to data from the Ministry of Education and Science, as of 30 June 2019, support is provided for a total amount of 20,368 children and students with special educational needs (SEN) by specialists assigned in the educational institutions.

Regarding the policy of inclusive education for children and students with special educational needs for the period of 2017 – 2019, with the entry into force of the Law on Pre-school and School Education (LPSE) from 1 August 2016 the inclusive education has been a priority education policy. This requires that the school takes initiative, responsibility and leadership for inclusive education implementation. This means that individual support is the responsibility of kindergartens and schools and is provided not only for children and students with special educational needs, but for all children and students.

19 state educational standards have been developed and approved, one of which is for inclusive education. The regulation arranges the public relations related to the provision of inclusive education for children and students in the pre-school and school education system, as well as the activities of the institutions in this system for providing support for the personal development of children and students. According to the Ordinance on inclusive education the institutions in the pre-school and school education system – kindergartens, schools, centres for personal development support and the specialized service units – provide general and additional support for the personal development of children and students and their provision by teachers and other pedagogical specialists (psychologists, pedagogical counsellors, speech therapists) and other professionals (social workers, kinesitherapists, etc.).

Education as a national priority is implemented in accordance with the principles of equal access to quality education and inclusion for every child and every student; equality and non-discrimination in pre-school and school education; orientation to the interest and motivation of the child and the student, to the age and social changes in his/her life; preservation of the cultural diversity and inclusion through the Bulgarian language.

Another major priority is the systematic training of experts from the regional education departments, of directors and pedagogical specialists related to the inclusive education and the work with children and students with special educational needs, as well as with the early assessment of children's needs.

### **3. Assessment of the follow-up**

#### *(a) Violation of Article 17§2 of the Charter*

The Committee takes note of the legislation and measures that have been adopted with regard to the education of children with disabilities. According to the information provided by the authorities, all homes for children with disabilities have closed down or are in the process of closing down as part of the deinstitutionalisation process. Children with disabilities were accommodated in Family-type Centres for Disabled Children and Young People.

The Committee understands that homes for mentally disabled children (HMDC) were closed down in Bulgaria and they were replaced by the Centres for Disabled Children and Young People. Residential care providers seek partnership with the educational system to ensure successful integration of children and young people into school by placing them in appropriate forms of inclusive education.

However, there is no specific information or statistics on intellectually disabled children or children with severe mental disabilities and the percentage of their placement in education centres. The report indicates that, according to the existing legislation, children and students with disabilities can be provided with additional support, on the basis of an assessment of the individual needs of each child or student. The report does not contain any precise figures concerning children with intellectual disabilities.

The Committee recalls that educational institutions and curricula have to be accessible to everyone without discrimination and teaching has to be designed to respond to children with

special needs. Mainstream educational institutions and curricula must be accessible in practice to children with intellectual disabilities. Schools need to be suited to meet the needs of children with intellectual disabilities i.e. teachers have to be trained sufficiently to teach intellectually disabled children and teaching materials have to be adequate (Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, § 37, § 43 and § 44).

The Committee invites the authorities to provide in the next report information on:

- the situation in practice as well as data/statistics on the percentage of the *intellectually disabled children* living in Family-type Centres for Disabled Children and Young People or other types of accommodation which replaced the homes for mentally disabled children (HMDC) educated in mainstream schools and/or special schools;
- whether the mainstream schools/special schools are equipped in practice to suit the needs of intellectually disabled children – the situation in practice with regard to the training of teachers and other specialists involved in education and the teaching materials;
- measures taken to implement the policy of “inclusive education” and outcomes realised in case of children with moderate, severe or profound intellectual disabilities [residing in Family-type Centres for Disabled Children and Young People or other types of accommodation which replaced the homes for mentally disabled children (HMDC)]

The Committee also notes the importance of legislative reforms and action plans and asks therefore information on the implementation in practice of the legislation and relevant projects/action plans on inclusive education in order to assess the effectiveness of the measures taken.

In the meantime, the Committee considers that the situation has not been brought into conformity with the Charter.

*(b) Violation of Article E taken in conjunction with Article 17§2 of the Charter*

The Committee recalls that it held that the situation in Bulgaria constituted a violation of Article 17§2 of the Charter taken in conjunction with Article E because of the discrimination against children with moderate, severe or profound intellectual disabilities residing in HMDCs as a result of the low number of such children receiving any type of education when compared to other children.

The Committee invites the authorities to provide in the next report updated information on the percentage of children with moderate, severe or profound intellectual disabilities (living in Family-type Centres for Disabled Children and Young People or other types of accommodation which replaced the homes for mentally disabled children) who are educated in mainstream schools and special schools and the percentage of all other children who have access to education.

The Committee considers that the situation has not been brought into conformity with the Charter.

**3<sup>rd</sup> Assessment of follow-up: European Roma Rights Centre (ERRC)  
v. Bulgaria, Complaint No. 46/2007, decision on the merits of  
3 December 2008, Resolution CM/ResChS(2010)1**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee concluded that there was a violation of Article 13§1 of the Charter on the ground that the measures adopted by the Government did not sufficiently ensure health care for poor or socially vulnerable persons who became sick.

The Committee also concluded that there was a violation of Article E in conjunction with Article 11§§1, 2 and 3 of the Charter on the ground that there was a failure of the authorities to take appropriate measures to address the exclusion, marginalization and environmental hazards which Roma communities were exposed to in Bulgaria, as well as the problems encountered by many Roma in accessing health care services.

**2. Information provided by the Government**

*a) Regarding the lack of sufficient health care for poor or socially vulnerable persons who became sick*

The report states that according to Article 82 of the Health Act, there are medical activities outside the scope of the compulsory health insurance, which are provided to Bulgarian citizens, regardless of their health insurance status. In addition to emergency, obstetric and hospital treatment, the Ministry of Health also finances a series of medical services listed in the report.

Apart from the mentioned medical activities, Bulgarian citizens are entitled to payment for medical and other services related to their treatment in the country or abroad, for which there are no other funding mechanisms with funds from the state budget, municipal budgets and/or from the budget of the National Health Insurance Fund. In these cases, persons up to the age of 18 are entitled to medical care beyond the scope of compulsory health insurance. This medical care includes payment with funds from the state budget for medical devices, highly specialized apparatus for individual use, dietary foods for special medical purposes and medicinal products, not included in the Positive Medication List.

The legislation also allows municipalities, with their own resources, to support the prevention and treatment of socially disadvantaged, unemployed and other persons with permanent residence in the respective municipality.

The report further states that the conditions and procedure for the use of the assigned funds for diagnosis and treatment in hospitals for the care of persons without income and/or personal property are established in the decree from 31 January 2007.

In addition, the Social Assistance Agency (SAA), as the institution providing financial support to families with children under the Law on Family Allowances for Children (LFAC), provides for family allowances is to raise children in a family environment. The Law on the State Budget of the Republic of Bulgaria for 2017 introduced amendments and supplements to the LFAC, which, as of 1 January 2017, introduced a new type of monthly allowance for raising a child with permanent disability up to 18 years old and until the completion of secondary education, but not later than 20 years of age.

b) *Regarding Article E in conjunction with Article 11§§1, 2 and 3*

The implementation of the “National Program for Improving Maternal and Child Health 2014–2020” continues to be a priority.

More than 100 hospitals receive funding under the programme for activities outside the scope of health insurance, which have significant effects on early diagnosis and comprehensive treatment of certain diseases for which no funding is provided from other sources. 31 maternity and child health advisory centres were opened in all regional cities .

Under Ordinance No. 26/2007, the Ministry of Health provides funding for activities related to pregnancy and childbirth of women without health insurance, as well as for examinations beyond the scope of compulsory health insurance for all newborns for phenylketonuria, congenital adrenal hyperplasia and congenital hypothyroidism. Within the framework of the “Public Health Initiatives” program, Bulgaria has implemented projects aimed at improving the access for adolescents (between 10 and 19 years old) to sexual and reproductive health services. The projects are focused on vulnerable groups.

8,022 home visits with free medical examinations and consultations for pregnant women and children up to 3 years of age were carried out. They were focused on the at-risk groups, especially the Roma population. More than 1,600 parents were trained, allowing many women and children from the Roma population to receive timely medical care and treatment.

For the implementation of the National Strategy of the Republic of Bulgaria for Roma Integration, under the Health priority, obstetric and gynaecological examinations are carried out in mobile offices in settlements with compact Roma population. In 2018, a total of 2,346 examinations were carried out in the four mobile gynaecological offices. Bulgaria provides prophylactic examinations for Roma patients without health insurance and for people with difficult access to healthcare facilities. During the reporting period, the mobile gynaecological offices were divided into four areas: Blagoevgrad, Burgas, Sliven and Pazardzhik. The performed prophylactic obstetric and gynaecological examinations in the settlements were carried out after prior coordination with, help and organizational assistance from the mayors of the municipalities and health mediators in Roma neighbourhoods. Some meetings were held in the municipalities with the mayors of the settlements in order to inform the target population in the Roma neighbourhoods. All patients examined were advised on proper monitoring in case of pregnancy and associated risks, and received recommendations for the periodic examinations of women who have already given birth and methods of preventing pregnancy at a later age.

A network of health mediators (in 2018 there were 230 health mediators funded by the state budget) that support both the population in the Roma neighborhoods and the healthcare professionals serving it. They contribute significantly to optimize the scope of prevention programs among the Roma population. Namely, they support health education and health awareness of the Roma persons and carry out active social work within the community. They also establish sustainable partnerships between Roma groups and local structures. Each calendar year, newly appointed health mediators go through introductory training. The initiative is funded by the Ministry of Health. In 2017, according to the approved estimate, the financial resources amounted to BGN 8,500, and in 2018 – to BGN 6,900.

Mobile offices where doctors provide free examinations and vaccinations are used to provide adequate access to healthcare for at-risk groups and disadvantaged people belonging to ethnic minorities. The offices also conduct immunizations in implementing the National Strategy of the Republic of Bulgaria for Roma Integration. As regards the registered measles outbreaks among the minority groups of the population in 2017, the regional health inspections and the health mediators actively sought and further immunized against measles 8,317 children, prioritizing children up to 5 years old. The National Program for HIV/AIDS prevention and control and sexually transmitted infections for the period of 2017 – 2020 was adopted with a decision of the Council of Ministers of 2017. Thanks to the implementation of the activities under this program for at risk groups, Bulgaria remains a country with low HIV incidence – 3.4 per 100,000 people in 2017, being 6.2 per 100,000 people for the EU Member States. The activities under the National Program aim at reducing the vulnerability of the Roma persons to HIV.

### **3. Assessment of the follow-up**

#### *a) Violation of Article 13§1 of the Charter*

The Committee recalls that Article 13§1 of the Charter provides that persons without adequate resources, in the event of sickness, should be granted financial assistance for the purpose of obtaining medical care or provided with such care free of charge (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 46/2007, decision on the merits of 3 December 2008, § 44).

The Committee previously noted that the Health Insurance Act links eligibility for 'non-contributory' state health coverage to being a recipient of social assistance benefits and that the types of medical services available to all citizens outside the scope of mandatory health insurance were mainly confined to emergency care and obstetrical care for women (ERRC) v. Bulgaria, Complaint No. 46/2007, decision on the merits of 3 December 2008, § 43). It also noted that the scope of Decree No. 17 of 31 January 2007 was limited to covering expenses for hospital treatment and did not include primary or specialised outpatient medical care that such persons might require (Conclusions 2009, Bulgaria, Article 13§1).

According to the European Commission 2014 report on the health of the Roma population across Europe, unemployment rates among Roma are twice as high as the general population in Bulgaria and 1 in 3 Roma interviewees report discrimination at job interviews. The Report points out that this, together with the greater risk of Roma communities of living in poverty, the fact that they live typically further away than the general population from medical facilities (partly because of living in segregated neighbourhoods), and reported discrimination when using those medical services, have an impact on the lack of access to medical services. According to the European Commission Country Health Profile prepared on Bulgaria in 2017, the number of citizens that remain uninsured is high, as citizens who fail to pay three monthly contributions in the previous 36 months lose coverage and this has special repercussions for disadvantaged groups, including long-term unemployed and the poor. This report also showed that infant mortality is 80% higher in Bulgaria than the European average, and that there are also relatively high maternal mortality rates. Other sources, such as the [Fundamental Rights Agency of the European Union's research programme LERI \(Local Engagement for Roma Inclusion\)](#), which used as a [case study the situation of Roma in the city of Pavlikeni](#) (Bulgaria) in 2017, identified as main challenges for access and quality of health

care services for Roma the fact that service providers – such as general practitioners, doctors – often request informal additional payment.

The Committee further takes note that in its [Resolution CM/ResCMN\(2018\)2](#) of 7 February 2018 on the implementation of the Framework Convention for the Protection of National Minorities by Bulgaria, the Committee of Ministers of the Council of Europe expressed concerns that the overall health status of Roma is significantly lower than that of the rest of the population and recommended that the Bulgarian authorities pursue and intensify efforts to address the socio-economic problems confronting persons belonging to minorities, particularly Roma, in fields such as housing, employment and health care.

The Committee has also considered that, taking into account the “overall discrimination that Roma still suffer in accessing health care, which has not been redressed during the 10 years following the ECSR’s decision in *ERRC v. Bulgaria (ERRC) v. Bulgaria*, Complaint No. 46/2007, *op.cit.*), as established in the Committee’s follow up to that decision, the overall lower health status of Roma reflected in official statistics, the higher amount of uninsured Roma as compared to the rest of the population and the difficulties in accessing public hospitals as a consequence of geographical distance and other barriers, [...] health care for Roma is inferior to that of the rest of the population. The State has not fulfilled its obligations in respect of guaranteeing equal access to medical services for Roma, and in particular Roma women’s access to maternity services” (*ERRC v. Bulgaria*, Complaint No. 151/2017, decision on the merits of 5 December 2018, §85).

The information provided by the authorities does not refer to any new elements demonstrating that persons not receiving social assistance are entitled to medical assistance, other than emergency care, obstetrical and hospital treatment. Therefore, the Committee considers that the situation has not been brought into conformity with Article 13§1 the Charter.

*b) Violation of Article E taken in conjunction with Articles 11§§1, 2 and 3*

With regard to health education, the Committee notes that the network of health mediators has expanded. The increase in the number of health mediators contributes to improving awareness and access to health and social services of Roma, overcoming cultural barriers in communication between the Roma population and local medical staff and overcoming existing discriminatory attitudes in the field of health services for the Roma on the ground. The Committee asks to be kept informed on the progress done by the health mediators and the impact of their activities on improving the health situation of Roma population. There are also free vaccination schemes and a national program for the prevention of AIDS, which remains low.

However, based on information previously submitted, as well as the Committee of Ministers resolution mentioned above, the European [Report](#) on the health status of the Roma population prepared by the European Commission and the remaining challenges for the poor access and the quality of health care services for Roma : the lack of health insurance as many Roma use only the emergency services, the Committee considers that the situation has still not been brought into conformity with the Charter.

Moreover, the Committee notes that the Commissioner for Human Rights of the Council of Europe stated as regards access to health concerning Roma in Bulgaria that “Roma have been scapegoated and targeted by hate speech in different places in the context of the COVID-19 pandemic. In Bulgaria, for instance, politicians and some media have referred to Roma people as a threat to public health and requested special measures targeting them on this basis. Local authorities have set up police checkpoints around Roma settlements to enforce quarantine measures and, in one place, erected a fence around a Roma settlement to better control movements. While

action to ensure adherence to confinement rules can be justified in the present circumstances, these cannot be selectively applied to people, neither fully nor partially, on the basis of ethnicity.” (see statement, 7 April 2020, [Governments must ensure equal protection and care for Roma and Travellers during the COVID-19 crisis - View \(coe.int\)](#)).

The Committee invites the authorities to provide updated information and data on the measures taken by the authorities with regard to:

- measures to ensure effective access of Roma population to health care services;
- concrete campaigns/activities on health education and awareness raising activities specifically targeting the health behaviours of Roma (on topics like sexual and reproductive health, prevention of sexually transmitted diseases, healthy diet and physical activities, smoking, alcohol and drugs, health and environment);
- updated information on monitoring and screening the health status of Roma pregnant women and children;
- information on screening available to Roma for diseases that constitute the principal causes of death (e.g. cancer);
- measures to prevent and to cope with infectious diseases/ epidemics among Roma and vaccines available for Roma children (including the coverage rates), specially regarding the COVID 19 situation and reported discrimination;
- measures to overcome environmental hazards which Romani communities are exposed to, namely measures to improve the living conditions in Roma neighbourhoods, related to, for example, clean water supply, electricity supply, sewerage, garbage collection.

Meanwhile, the Committee considers that the situation has not been brought into conformity with the Charter.

**FINLAND**

### **3<sup>rd</sup> Assessment of the follow-up: Association of Care Giving Relatives and Friends v. Finland, Complaint No. 70/2011, decision on the merits of 4 December 2012, Resolution CM/ResChS(2013)12**

#### ***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded that there was a violation of Article 23 of the Charter on the ground that the legislation allowed practices that led to a part of the elderly population being denied access to informal care allowances or other alternative support.

#### ***2. Information provided by the Government***

The Government refers to the information provided in its previous report on the follow-up to this decision.

With regard to the number of recipients of support for informal care and of informal carers responsible for them, it is reported that, for example, in 2018 a total of 49,680 persons received support for informal care and the number of informal carers responsible for them was 47,504. The number of recipients of support grew by 3.0% from 2016 to 2017 and by 3.7% from 2017 to 2018.

It is further stated that support for informal care is a statutory service provided by all municipalities, but its coverage of the population varies. The general criteria for granting the support are laid down by law, but the detailed criteria still vary by municipality and region. The Government indicates that in recent years, however, the trend has been toward harmonised criteria and amounts of care allowance at regional level. It states that many of the 18 regions in Finland have already introduced uniform criteria for granting the support and uniform amounts of care allowances.

The Government further reports on the results of the key project on home care and informal care for 2016-2018. During the key project, each region had an agent of change whose task was to ensure that a coordinated service package would be provided for the elderly in the region. The service package includes measures concerning informal care in the region and the regions continue to work on the implementation and elaboration of the plans. Moreover, the key project included regional sub-projects to develop services. Eight comprehensive regional trials were conducted to reform home care and informal care and they covered more than 40% of all municipalities.

The Government further refers to a survey carried out by the Finnish Institute for Health and Welfare which studied the impact in municipalities, in 2017, of the amendments made to the Act on Support for Informal Care and the Family Care Act and of the additional appropriation reserved for the development of informal care and family care (EUR 49.3 million in 2016, EUR 90 million in 2017 and EUR 95 million in 2018). According to the same survey, support for informal care most often replaces services of home care (34%) or intensive home care (more than 60 visits/month) (29%). Municipalities estimate that, if no support for informal care were available, 28% of the recipients of the support would be cared for in service housing with 24 hour assistance, 5% in family care and 4% in homes for elderly persons or other institutional care without support for informal care.

The Government states that municipalities are responsible for providing informal carers with days off, coaching and training as well as health and wellbeing checks, where needed. It is recalled that the provision of checks for health and wellbeing became a statutory obligation as of 1 July 2016, while the provision of coaching became it as of beginning of 2018.

According to the survey by the Finnish Institute for Health and Welfare, as many as 84% of all municipalities carried out health and wellbeing checks in 2017, but only slightly more than one third (39%) provided training that year. It is reported that 68% of all municipalities had made a plan to coach informal carers for 2018. A total of 68% of all municipalities offered a cost-free health and wellbeing check to all informal carers at least every second year, and 25% offered it to part of the informal carers. The same survey showed that only about half of all informal carers take their statutory days off, although all of them have been entitled to days off since 1 July 2016.

The Government also refers to a study on the reconciliation of informal care and gainful employment published in January 2019 which pointed out that successful day off arrangements are important for ensuring that informal carers' can cope. It further pointed out that legislative amendments are needed, which mainly relate to compensation for informal carers' loss of income during short periods of informal care and to unemployment security/benefits for informal carers.

The Government finally provides information on the measures taken to reform services for the elderly in general. It is stated that the Government is preparing a comprehensive structural reform of public social welfare and health care services whereas the responsibility for arranging these services would be transferred from municipalities to the 18 regions. The reform includes support for informal care and it would harmonise the criteria for granting the support at least at regional level.

### **3. Assessment of the follow-up**

The Committee notes that the development of informal care is a priority for the Finnish Government and that under the Government's key project on home care and informal care for 2016-2018, services of home care and informal care were reformed at the regional level. Agents of change were appointed in each region and eight regional trials covering more than 40% of all municipalities were conducted in order to reform home care and informal care.

The Committee also notes that informal carers are entitled to days off and health and wellbeing checks as of July 2016 as well as coaching and training as of the beginning of 2018. In this respect it notes the 2018 survey of the Finnish Institute for Health and Welfare which indicated that only about half of the informal caregivers used their statutory days off.

While noting the information provided by the Government, the Committee observes the lack of specific information on informal care allowances and their availability across municipalities and regions. The Government only mentions that "many" of the 18 regions in Finland have already introduced uniform criteria for granting the support and uniform amounts of care allowances. While the general criteria for granting the support are laid down by law, the detailed criteria still vary by municipality and region.

The Committee takes note of the measures taken by the Government to reform services for the elderly, including the support for informal care. It notes that the responsibility for arranging these services would be transferred from municipalities to the 18 regions – which, according to the Government, would harmonise the criteria for granting the support at least at regional level. The Committee notes, however, that, according to the report, the non-governmental organisations have drawn attention to inequality among the informal carers on grounds of their place of residence.

The Committee recalls that the lack of uniformity in the services provided for elderly persons throughout Finland resulting from differences in the funding of such services by municipalities does not as such violate Article 23 of the Charter. However, the fact that the legislation allows practices leading to a part of the elderly population being denied access to informal care allowances or other alternative support constitutes a violation of this Article (see §60 of the decision on the merits).

In the Committee's view, the progress reported in the government's report is significant but has not fully remedied the fact that the discretionary power of municipalities and the absence of a general obligation to provide an allowance for non-professional care or other alternative service for the elderly, leads to an overall unsatisfactory situation in some of these municipalities.

The Committee invites the Government to submit updated information on the situation with respect to informal care allowances throughout the country/regions (including data on the criteria for granting the allowance and the amount of the care allowance) and data on recipients of support for informal care and of informal carers responsible for them, as well as on any legislative amendments and the impact of the above mentioned reforms on the support for informal care.

Meanwhile, the Committee considers that the situation has not been brought into conformity with Article 23 of the Charter.

### **3<sup>rd</sup> Assessment of the follow-up: Association of Care Giving Relatives and Friends v. Finland, Complaint No. 71/2011, decision on the merits of 4 December 2012, Resolution CM/ResChS(2013)13**

#### ***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded that there was a violation of Article 23 of the Charter on the ground that insufficient regulation of fees for service housing and service housing with 24-hour assistance combined with the fact that the demand for these services exceeded supply:

- created legal uncertainties to elderly persons in need of care due to diverse and complex fee policies. While municipalities may adjust the fees, there are no effective safeguards to assure that effective access to services is guaranteed to every elderly person in need of services required by their condition;
- constituted an obstacle to the right to “the provision of information about services and facilities available for elderly persons and their opportunities to make use of them” as guaranteed by Article 23b of the Charter.

#### ***2. Information provided by the Government***

The Government refers to the information provided in its previous report on the follow-up to this decision. It also states that a Government Proposal for a new Act on Client Charges in Health and Social Services was submitted to the Parliament in December 2018, but it did not result in new legislation because the previous Government resigned in March 2019, before Parliament could approve the above mentioned Proposal.

It is further stated that under the Programme of the new Government, the Act on Client Charges in Health and Social Services would be reformed to remove barriers to treatment and to increase equality in health by introducing more cost-free services and by making client charges more equitable. According to the Government, a new Government Proposal reforming the above mentioned legislation will be submitted to Parliament in 2020.

#### ***3. Assessment of the follow-up***

The Committee takes note that the Government intends to amend the Act on Client Charges in Health and Social Services. According to the Government, the amended legislation would aim to remove barriers to treatment and to increase equality in health by introducing more cost-free services and by making client charges more equitable.

The Committee asks the Government to provide updated information on any developments in the next report. Meanwhile, as the legislative and regulatory situation has not yet changed, the Committee considers that the situation has not been brought into conformity with the Charter.

**2<sup>nd</sup> Assessment of the follow-up: Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, Resolution CM/ResChS(2015)8**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee concluded that there was a violation of Article 12§1 of the Charter with regard to the minimum level of:

- sickness, maternity and rehabilitation allowances (29% of median equivalised income);
- basic unemployment allowance (29% of median equivalised income) and;
- guaranteed pension (38% of median equivalised income)

It had concluded that there was a violation of Article 13§1 of the Charter with regard to:

- social assistance, on the ground that even if social assistance could reach the level of 50% of median equivalised income for certain recipients under certain circumstances when various additional benefits were taken into account, it had not been demonstrated, based on the information provided, that all persons in need were granted sufficient social assistance;
- labour market subsidy, on the ground that it was insufficient (29% of median equivalised income).

**2. Information provided by the Government**

*With regard to the benefits under Article 12§1 of the Charter*

- **Sickness, parental allowance:** The authorities refer to the content of their previous report and add that the minimum amount of allowances was increased in 2019 to €696.50 per month and that it was proposed to increase them again in 2020 to bring them up to €716.50 per month.

- **Unemployment:** In its data, the government lumps basic unemployment allowance together with labour market subsidy, which constitutes social assistance, coming under Article 13. It states that benefits are increased for those “participating in services that promote employment” by €4.74 per week day (covering both labour market subsidy and basic unemployment allowance) for up to 200 days. During such participation, they are also entitled to an additional sum to cover expenses (€9 per weekday). Persons with a dependant child are entitled to an additional sum of €5.23 per weekday; for two dependant children, this sum is increased to €7.68 per week day, and for three to €9.90.

The Government also states that the allowance will increase by €20 per month from 2020 onwards.

- **Guaranteed pension:** The amount was increased progressively over 3 years to reach €784.52 in 2018. On 4 December 2019, Parliament accepted a Government proposal for a general increase in guaranteed pension to come into effect on 1 January 2020.

*With regard to the benefits under Article 13§1 of the Charter*

- **Labour market subsidy:** This has been increased since 2012 by about €100 per month and spouses’ incomes are no longer taken into account for means testing. Means testing has also been abandoned for persons over 55 who have satisfied working time requirements before being unemployed or during participation in services promoting employment. The national authorities argue that it should also be taken into account that this benefit is payable for an unlimited period.

- **Social assistance:** Since 2017 this has no longer been paid by municipalities, but by the national Social Insurance Institution. The amount is linked to the national pension index and was €497.89 in 2017. The report lists the expenses covered by this assistance (food, personal hygiene, housing and house cleaning, local transport, health care, leisure, various day-to-day costs).

The municipalities may provide additional support in the event of an unforeseen need or special circumstances such as serious illness, or to prevent social exclusion, for instance in the event of a sharp drop in income or over-indebtedness.

### **3. Assessment of the follow-up**

The Committee notes from the Eurostat database that in 2019 median equivalised income was €2,073 per month and therefore the 40% threshold was €829 per month.

*As for the violations of Article 12§1 of the Charter*

- **sickness, parental and rehabilitation allowances:** the report states that minimum sickness allowance is €27.86 per day or €696.50 per month (i.e. 33.59% of median equivalised income), which is an insufficient amount in relation to Article 12-1, even taking into account the sum of €716.50 per month planned for 2020.

- **basic unemployment allowance:** according to the Government report, this amounts to €32.40 per day, or about €680 per month, which is 32.8% of median equivalised income. It may be increased for persons participating in services to promote employment by up to €13.74 per weekday for a single person – a sum which covers both unemployment allowance and labour market subsidy. In such cases, combined benefits can reach up to €46.14 per weekday or about €922 per month (over 40% of median equivalised income). However, bearing in mind the requirements for entitlement to this additional sum, which is regarded both as unemployment allowance and as labour market subsidy, and its limited duration of 200 days, the Committee considers that it does not have sufficient information, particularly in relation to the number of people entitled to these increases compared to the total number of persons entitled only to the basic allowance, to find that the amount of unemployment allowance awarded has been brought into conformity with Article 12§1.

- **guaranteed pension:** the Committee notes that according to the report, the total amount was raised to €784.52 per month, which amounted to 37.8% of median equivalised income in 2019, in other words an insufficient amount in relation to Article 12§1.

The Committee notes from relevant databases (Eurostat, MISSOC) that the minimum amount of social security benefit mentioned above is lower than 40% of median equivalised income and therefore insufficient to meet the requirements of Article 12§1 of the Charter. It concludes that for these benefits, the situation has not been brought into conformity with the Charter.

*As for the violations of Article 13§1 of the Charter*

- **social assistance benefits:** the amount seems low (24.4% of median equivalised income) but the Committee had acknowledged that in some cases the level could reach 50% when other potential additional benefits were factored in. However, it had pointed out that some allowances were discretionary in nature and there was no precise information on the actual amounts paid to persons in need. The information provided in the Government report does not supply any more detail, although it does list various basic costs which may be covered. Consequently, although basic benefit may be supplemented by various other types of support, the Committee cannot conclude that the situation has been brought into conformity in this respect because it has not been provided with sufficiently detailed information.

- **labour market subsidy**: the Committee notes from the MISSOC database that it amounts to €34.20 per day and is paid five days a week, meaning that it comes to about €680 per month, or 32.8% of median equivalised income. It is still insufficient to meet the requirements of Article 13§1 of the Charter.

The Committee concludes that although the amount of the benefits covered by Article 12§1 has been regularly increased; they are still insufficient in relation to median equivalised income and therefore are not always in conformity with the Charter.

As to the benefits covered by Article 13§1, it notes that the labour market subsidy is still inadequate and that it has not been provided with the necessary detail to ascertain that the social assistance benefits paid to persons in need are sufficient.

The Committee repeats its request for the national authorities to provide information in future reports on measures taken to follow up on the decision on the merits, giving examples supported by figures of the various categories of recipients, showing that the main benefits at issue, when combined with other supplementary benefits, reach a sufficient level to meet the requirements of Article 12 and Article 13 of the Charter respectively.

In view of the above and despite the improvements made by Finland, the Committee considers that the situation has not been brought into conformity with Articles 12§1 and 13§1 of the Charter.

**2<sup>nd</sup> Assessment of the follow-up: Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on the merits of 8 September 2016, Resolution CM/ResChS (2017)7**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee concluded that there was a violation of Article 24 of the Charter on the grounds that:

- the upper limit on compensation in cases of unlawful dismissal provided for by the Employment Contracts Act may result in situations where the compensation awarded is not commensurate with the loss suffered;
- under Finnish legislation reinstatement is not made available as a possible remedy in cases of unlawful dismissal.

**2. Information provided by the Government**

The Government refers to the information provided in its previous report on the follow-up to this decision. It further states that there has been no new development.

**3. Assessment of the follow-up**

The Committee takes note of the views of the Confederation of Finnish Industries (EK), the Federation of Finnish Enterprises (FFE), the Finnish Confederation of Professionals (STTK), the Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA) and the Central Organisation of Finnish Trade Unions (SAK).

As regards the views expressed by certain organisations regarding reinstatement, the Committee recalls its decision on the merits where it held that while Article 24 does not explicitly refer to reinstatement, it refers to compensation or *other appropriate relief*. The Committee considered that *other appropriate relief* should include reinstatement as one of the remedies available to national courts or tribunals (see Conclusions 2003, Bulgaria). The possibility of ordering reinstatement recognises the importance of placing the worker back into an employment situation no less favourable than he/she previously enjoyed. Whether reinstatement is appropriate in a particular case is a matter for the domestic courts to decide (see § 55 of the decision on the merits).

The Committee notes that there is no indication of any measures taken to give follow-up to the decision on the merits, both as regards compensation and reinstatement.

Consequently, the Committee considers that the situation has not been brought into conformity with the Charter.

**2<sup>nd</sup> Assessment of the follow-up: Finnish Society of Social Rights v. Finland, Complaint No. 108/2014, decision on the merits of 8 December 2016, Resolution CM/ResChS(2017)8**

***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded that there was a violation of Article 13§1 of the Charter on the ground that the level of the labour market subsidy, even in its combination with other benefits such as housing allowance and social assistance to cover excess housing cost, was not sufficient to enable its beneficiaries to meet their basic needs.

***2. Information provided by the Government***

The Government firstly refers to the information provided in its previous report on the follow-up to this decision and to the information provided concerning Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014. It recalls that in Finland, the social security system does not only consist of individual monetary benefits, but constitutes an aggregate of minimum benefits payable in money and their different components, of earnings-related benefits and services supplementing them and of payment ceilings.

It is further reported that the system of general housing allowance was reformed as of 1 January 2015. The maximum income limits for housing allowance were adjusted by removing the effect of size, age, equipment level and heating system of the residence. The only factors affecting the maximum housing costs at present are the location and number of household members. The definition of the earnings deduction was also simplified and the regional grading of the deductible was abandoned. Moreover, the maximum housing costs were increased by €50, and the deductible decreased by 8%. To lower the threshold for accepting work, the level of earned income and entrepreneurial income affecting the amount of housing allowance was lowered by €300 as of 1 September 2015. This corresponds to the unemployment security system, where unemployed jobseekers can earn €300 per month on top of the full unemployment benefit.

The Government also states that pursuant to a legislative amendment that took effect on 1 August 2017, students studying in Finland were transferred to the general housing allowance scheme.

***3. Assessment of the follow-up***

The Committee refers to its assessment in respect of Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, concerning the labour market subsidy.

The Committee considers that it has not been demonstrated that action has been taken to bring the labour market subsidy to an adequate level whether alone or in combination with the housing allowance, nor has it been shown with any degree of precision that the effect of possible supplementary social assistance benefits, such as housing benefit and income support, is sufficient to decisively improve the situation for all the recipients of labour market subsidy concerned.

Consequently, the Committee considers that the situation has not been brought into conformity with the Charter.

**FRANCE**

**3rd Assessment of the follow-up: Autism-Europe v. France, Complaint  
No. 13/2002, decision on the merits of 4 November 2003, Resolution  
CM/ResChS(2004)1**

***1. Decision of the Committee on the merits of the complaint***

The Committee's decision concerns violations of Articles 15§1 and 17§1 on the grounds that:

- the proportion of autistic children in relation to the total number of children in the group, whether in mainstream or specialised schools, remained extremely low and significantly lower than the proportion found for other children, whether disabled or not.
- there was a chronic shortage of care or support structures for adult autistic people.

The Committee also found a violation of Article E read in conjunction with Articles 15§1 and 17§1 on the grounds that the proportion of autistic children attending ordinary or specialised schools remained extremely low and significantly lower than the proportion found for other children, whether disabled or not.

***2. Information provided by the Government***

In the report, the French authorities stated that the number of pupils with autism spectrum disorders (ASD) enrolled in school at the start of the 2018 school year was 36 000, of which 24 000 were in primary education and 12 000 in secondary education. 13 000 pupils are in medical-social establishments and services (ESMS). This means that approximately 73.5% of pupils with ASD are in ordinary schools and 24.5% in medico-social establishments.

Chapter IV of Law No. 2019-791 of 26 July 2019 for a school of confidence reinforced the inclusive school. It aims to improve the quality of schooling for pupils with disabilities, particularly by strengthening the cooperation of stakeholders working with pupils and providing better support for families. It extended and enriched the provisions of the law of 11 February 2005 on equal rights and opportunities and the participation of disabled people in citizenship, which has led to major advances in the policy for the education of pupils with disabilities. The public education service must ensure the inclusion of all children in school, without any distinction. A new approach is enshrined: whatever the pupil's special needs, it is up to the school to ensure that the environment is adapted to his or her schooling. In order to achieve this objective, the Ministry of National Education and Youth is radically transforming the support provided to pupils with disabilities. Indeed, faced with the constant increase in the number of pupils concerned, the school is placing proximity and responsiveness at the heart of the organisation of support. Simplifying the procedures for families and personalising the students' career paths are two other pillars of this transformation plan, which is based on seven key areas:

- 1) To set up a support service for pupils with disabilities;
- 2) To better welcome parents and students and to simplify the procedures;
- 3) Training and support for teachers;
- 4) Professionalising the carers of pupils with disabilities;
- 5) Adapting to the special educational needs of pupils;

6) Structuring cooperation between professionals from the national education and medical-social sectors in schools;

7) To pilot and evaluate the deployment of measures.

As regards specialised institutions for autistic children, the Ministry of Education and Youth delegates teaching resources to specialised institutions (approximately 7000 Full Time Equivalent (FTE), all disabilities combined). There is a movement to outsource teaching units from the medico-social sector to mainstream schools. In terms of the schooling of autistic children, this movement is reflected, within the framework of the autism strategy, by 180 new autism teaching units (UEMA) in nursery schools (in addition to the 112 created during the previous plan), and 45 autism teaching units (UEEA) in elementary schools. These systems operate with the teaching resources allocated by the national education system and resources implemented by the medico-social sector.

As regards the budget, the report refers to the strong commitments in terms of schooling: 180 UEMAs programmed correspond to a financial commitment from the Ministry amounting to €11M; the UEEAs represent €3.82M; the creation of specific or generalist local units for school inclusion (ULIS), which are likely to support the pathways of pupils with ASD in ordinary schools represent an effort of €10.6M all levels combined.

In addition to this effort to create classes, there is also an effort to support teachers with 101 professionals for a budget of €6.1M (until September 2018).

### **3. Assessment of the follow-up**

The Committee notes the budgetary efforts made to support the schooling of young autistic children. In the follow-up evaluation in 2018, the Committee noted the existence of an autism plan, which includes a budget of €344 million over five years (2018-2022) to improve research, screening and care for autism, compared with €205 million for the previous plan (2013-2017).

The Committee had also requested information during the last follow-up, in particular on:

- the conditions laid down by the legislation in force for access to mainstream education. In this respect, the report indicates that the law of 26 July 2019 ensured the inclusion of all children in school, without any distinction. The Committee takes note of this development, but requests information in the next report on how the law is implemented and how special needs are monitored;
- the percentage of autistic children enrolled in ordinary and special education establishments: the report provides information on the overall number of autistic children enrolled in school at the start of the 2018 school year, of which 73.5% are in ordinary schools and 24.5% in special establishments.
- the number of autistic children who are exempted from compulsory schooling and who do not receive any education: there is no information on this subject, so the Committee reiterates its request.
- effective appeals against the refusal of enrolment in general education for autistic children: the report only indicates that the possible appeals are those of ordinary law (ex gratia or hierarchical appeals, mediation, litigation). The Committee requests information on what appeals have been lodged against the refusal of schooling for autistic children and their success rate.

The Committee considers that the situation has not yet been brought into conformity with the Charter, neither as regards Articles 15 and 17 of the Charter, in view of the low proportion of autistic children attending school and the chronic inadequacy of care or support facilities for autistic adults, nor as regards the violation of Article E read in conjunction with Articles 15§1 and 17§1.

### **3<sup>rd</sup> Assessment of the follow-up: International Movement ATD Fourth World (ATD) v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, Resolution CM/ResChS(2008)7**

#### **1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found violations of the following articles of the Charter:

- Article 31§2 on the grounds that the legislation on the prevention of evictions was unsatisfactory and that there was a lack of measures to provide rehousing solutions for evicted families.
- Article 31§3, on the grounds that there was a clear shortage of social housing at an affordable price for the poorest and that the arrangements for allocating social housing to the most deprived members of the community and the available remedies in the event of excessive waiting times for housing were inadequate.
- Article E read in conjunction with Article 31 on the ground of the inadequate implementation of legislation on stopping places for Travellers.
- Article 30 read alone or in conjunction with Article E on the ground that there was no co-ordinated approach to promoting effective access to housing for persons who lived or risked living in a situation of social exclusion or poverty.

In its Findings 2018, the Committee decided to assess jointly the measures taken in several decisions (Collective Complaints Nos. 33/2006; 39/2006; 51/2008; 63/2010; 64/2011; 67/2011) in response to violations of the social and economic rights of Roma migrants and Travellers. It therefore decided to limit the scope of the follow-up of the current collective complaint by asking the Government to provide information solely on this issue.

#### **2. Information provided by the Government**

##### *Implementation of legislation on stopping places for Travellers*

A previous report pointed out that there were five types of sites intended for extended stays in mobile homes:

- Encampment areas for mobile home stays of up to and over three months.
- Large-scale transit sites which are intended to temporarily accommodate large groups with up to 200 caravans travelling together to traditional or occasional gathering sites.
- Small-scale transit sites which are low capacity and intended to accommodate lone families or a few caravans travelling as a group for short stays. They can be made available by local elected officials and although this is not compulsory, it is advisable because it helps relieve the pressure on other sites.
- Stopover sites which enable municipalities with fewer than 5 000 inhabitants to fulfil their established legal obligations to accommodate Travellers. For stopovers only, these sites are not part of the *Département* Traveller Reception Plan (SDAGV) and enable municipalities to respect the right of Roma and Travellers to freedom of movement.
- Sites for large religious or traditional gatherings of Travellers which enable several thousand caravans to park for a week or two and fall under the State's responsibilities owing to their size.

The report underlined that the State contributes to the funding of the *Département* reception plans, for example by bearing the operating costs of large-scale transit sites. This also

enabled 682 pitches on rented family plots to be made available from 2006 to 2012. It was also recalled that the new provisions of Law No. 2017-86 on Equality and Citizenship of 27 January 2017 aimed to diversify the range of Traveller stopping places and housing. The Government conceded that France had a chronic shortage of pitches available on residential sites.

The present report draws attention to the general policy framework regarding Travellers (Law No. 2000-614 of 5 July 2000). It emphasises that *Département* reception plans act as the linchpin of the specific measures to be implemented to organise reception and accommodation and enable consultation between the various stakeholders involved so that the assessment of needs and appropriate solutions strikes the broadest possible consensus.

In this connection, the report underlines the elements to be included in the *Département* reception plans, namely residential sites with a fixed capacity (75% of the target number of sites had been set up under the plans so far); rented family plots for the long-term installation of mobile homes; large-scale transit sites with a fixed capacity, intended for use at specified periods of the year by Travellers touring in groups for traditional or occasional gatherings (50% of which had been set up).

The authorities conduct regular inspection visits to verify the quality of the sites. According to the report, the sites are constantly improving and are often equipped with facilities that go beyond regulatory requirements (e.g. plots which are accessible to people with disabilities; sanitary facilities; on-site premises provided to accommodate social workers).

The report indicates that the issue to address going forward is that a growing number of families have decided to settle on the sites. The Law No. 2017-86 on Equality and Citizenship of 27 January 2017 requires that specially designed accommodation i.e. rented family plots also be included in the *Département* reception plans. TFLs caters for a demand from Travellers who wish to put down roots through the enjoyment of a fixed, equipped and private pitch without having to give up travelling for part of the year. These pitches come with sanitary facilities (a toilet, shower and washbasin) and in some cases even with a one-roomed structure which can be used as a kitchenette or laundry room but is not a house: the caravan remains the place of residence. TFLs belong to the municipality or intermunicipal consortium. The occupants sign a tenancy agreement and pay rent. Travellers can also own a site; in which case it is referred to as a private-owned site.

State subsidies can be granted for the construction of such facilities. Social housing operators may set up and operate TFLs, which can in turn help intermunicipal bodies to implement them. Local and regional authorities may therefore count these pitches as social housing units under the law on solidarity and urban renewal and social housing operators have the possibility to set up, provide and operate these sites.

Some Travellers wish to move into housing. They may move into mainstream social housing or into bungalow-style housing which includes a special parking space for caravans. Publicly funded, these bungalow-style housing projects include ongoing support for the families concerned: ranging from an initial needs assessment to help with formalities once they have moved in. Households can also lodge an appeal to be granted priority access to housing, which is subject to an assessment of their social and economic situation (i.e. income, family size and current residence).

*Planning and support for eviction operations on illegally occupied land and the measures taken to prevent undue violence during evictions.*

In a previous report, the authorities emphasised that operations to dismantle unlawful camps were conducted with a legitimate aim (to end the illegal occupation of land and, in some cases, situations of danger or immediate health hazards), i.e. Interministerial Circular of 26 August 2012. It was the role of 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 (as soon as a camp has been set up, the local prefect must carry out an assessment of the inhabitants' situation regarding health care, employment and schooling. It is also necessary to provide for emergency accommodation before dismantling an illegal settlement).

Regarding accommodation and housing, the authorities said that all the existing instruments could 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 particular, the Government had a duty to provide emergency accommodation to all vulnerable persons in situations of medical, psychological or social hardship. The domestic 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 and whether they can be accused of a manifest failure to act.

The Government provided several examples to demonstrate that, conditions permitting, long-term solutions were found. The authorities also stated that although the solutions could be more short-term in areas that had scant resources or in cases of emergency and imminent danger, they always included proposals for shelter based on an assessment of families' social circumstances.

In 2016, in the 23 *départements* concerned, these measures, which were for the most part implemented by associations in partnership with regional authorities, made it possible, among other things, to rehouse 3,600 people, to ensure that 1,800 children could attend school and to help 1,700 jobseekers along the path to employment. In 2017, a budget of €3 million was earmarked by the Interministerial Office for Accommodation and Access to Housing (DIHAL) for projects to assist persons affected by the dismantling of camps, in particular for assessments of individual situations.

The present report underlines that state action to dismantle illegal camps had been formally prescribed in the Government Circular of 25 January 2018 aiming to give fresh impetus to the clearance of shanty towns by advocating a comprehensive approach to combating extreme hardship. This instruction aims to go beyond a narrow focus on dismantling camps by making public intervention part of a broader approach reaching from the setting up of a camp to its clearance, by preventing encampment from occurring, providing programmes to facilitate integration in France while ensuring respect for the laws of the Republic and residence rights, and including action plans for resettlement in the country of origin and transnational cooperation. This is a comprehensive approach because it tackles all the issues at stake: access to rights, school attendance and access to employment, housing and health care.

In the 42 *départements* concerned in 2019, measures that were for the most part implemented by associations in partnership with regional authorities in particular made it possible for 1,584 children to attend school and for 3,678 people to have access to health care. As regards access to housing, 369 people moved into housing and 212 into accommodation. Concerning employment and training, these measures provided support for 1,946 jobseekers and helped 938 people find a job.

In addition, the Government drew attention to a doubling of the allocation of earmarked funds in 2020 from €4 million to €8 million with the aim of halving the number of people living in shanty towns by 2022.

Furthermore, no transgressions of constitutional rights and freedoms had been found in the procedure in force which authorises the eviction of Travellers who have settled illegally (Constitutional Council, 27 September 2019, UDAF and Others, No. 2019-805 QPC).

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

- *Implementation of legislation on stopping places for Travellers*

In this complaint, the violations found by the Committee related to the particular circumstances of Travellers, mainly on the grounds of the unsatisfactory implementation of legislation on stopping places for Travellers, i.e. the Law No. 2000-614 of 5 July 2000 on the reception and accommodation of Travellers, and in particular, of the legal requirement for municipalities with over 5 000 residents to prepare a plan to set up residential sites for Travellers.

The Committee notes that in their reports submitted on 27 November 2017 and 2 January 2020, the authorities described the different types of sites intended for extended stays in mobile homes and the pivotal role of Traveller reception and accommodation plans at *département* level.

The Committee welcomes the wider range of stopping sites and housing that has been made available to Travellers since the new regulations came into force under Law No. 2017-86 of 27 January 2017 on Equality and Citizenship. In addition to residential sites, (partially state-funded) large-scale transit sites and rented family plots must now also be provided for in the *Département* reception plans.

The Committee also notes that 75% of the target number of residential sites have now been set up. The authorities also reported that half of the target number of large-scale transit sites had been set up and that 1,388 pitches for the long-term installation of mobile homes (on rented family plots) had been provided (compared to 682 pitches from 2006 to 2012).

In addition, the Committee observes that the quality of the amenities available on the sites is constantly improving (e.g. the availability of plots which are accessible to people with disabilities; sanitary facilities; on-site premises provided to accommodate social workers).

The Committee notes the pragmatic measures which have been adopted to set up these sites (e.g. providing state subsidies, enabling social housing operators to set up and operate TFLs and allowing pitches to count as social housing units under the law on solidarity and urban renewal). It also notes the different options open to Travellers wishing to move into housing (e.g. mainstream social housing or bungalow-style housing in light of their social and economic situation: income, family size and current residence).

The Committee takes note of the publication in the Official Gazette of Decree No. 2019-1478 of 26 December 2019 on residential sites and rented family plots for Travellers. It notes with interest the various rules for providing, operating or even using such sites and on the facilities to be made available.

In the light of the information provided by the Government, the Committee asks that the next report include up-to-date statistics, in terms of the number and percentage of the target figure, on residential sites, large-scale transit sites and pitches for extended stays in mobile homes that have been made available. These issues will continue to be assessed in the next relevant part of the reporting procedure (Thematic group 4: children, families and migrants).

- *Planning and support for eviction operations on illegally occupied land and the measures taken to prevent undue violence during evictions.*

In its decision in this complaint the Committee found that there was a violation of Article 31§2 on the ground that the implementation of the legislation on the prevention of evictions was unsatisfactory and that there was a lack of measures to provide rehousing solutions for evicted families. The violations noted by the Committee did not relate exclusively to the particular circumstances of Travellers. However, following its decision to limit its assessment to violations affecting the social and economic rights of Roma migrants and Travellers (Findings 2018), the Committee will only examine information on these issues.

- *Clearance of shanty towns*

The Committee notes that in the present report the Government states that it has moved away from a narrow focus on dismantling camps by making public intervention part of a broader approach reaching from the setting up of a camp to its clearance, by preventing encampment from occurring, providing programmes to facilitate integration in France while ensuring respect for the laws of the Republic and residence rights and including action plans for resettlement in the country of origin and transnational cooperation. This is a comprehensive approach because it tackles all the issues at stake: access to rights, school attendance and access to employment, housing and health care.

In particular, these developments were formally prescribed in the Government Circular of 25 January 2018 which replaced the Interministerial Circular of 26 August 2012 with the aim of giving fresh impetus to the clearance of shanty towns by advocating a comprehensive approach to combating extreme hardship.

The Committee takes note of the various examples demonstrating efforts to find long-term solutions when certain conditions were met and notes that more short-term solutions would be found in areas that have scant resources and in cases of emergency and imminent danger.

The Committee notes from the DIHAL report providing an update on recent efforts to clear shanty towns (*“Point d'étape sur la nouvelle impulsion donnée en 2018”*) that as of 1 July 2019, 17,619 people were identified as living on 359 shanty towns and squats in mainland France, of whom 12,088 were European nationals spread across 254 sites. In 2018, state-funded measures enabled 1,840 people to be rehoused (an increase of 39% compared with 2017), 974 people to find a job (a 10% increase on 2017), 80% of the children to attend school (three times more than children on sites without government support) and 3,845 people to have access to health care (an increase of 120% compared with 2017).

The Committee notes that the Government has estimated that clearing a shanty town which is home to 12 families (i.e. approximately 50 people) costs €346,000: €50,000 for measures to ensure basic living standards (with access to water and electricity, fire prevention and pest control); €80,000 to provide assistance and social care for the inhabitants; €216,000 to house and support 12 families, i.e. a daily cost of €6 per person over a three-year period. The Committee notes the Government's cost-benefit analysis which demonstrates the advantages of such action to clear shanty towns permanently and foster integration, which benefits local authorities and ends the costly cycle of evictions. The Committee notes that, in comparison, the Government estimated a daily cost of €25 per person for providing alternative accommodation while dismantling this kind of settlement costs more than €100,000.

The Committee notes with interest the significant increase in the DIHAL's earmarked budget for projects to assist persons affected by the dismantling of camps, in particular for assessments of individual situations, and the goals it had set, namely to: halve the number of European nationals living in shanty towns by 2022 (i.e. a reduction of roughly 6,000 people), double the number of people receiving support measures (from approximately 20% at present) and the number of children attending school and being monitored during their school years (currently 1,750 children), ensure that all children of school age who are receiving support

measures attend school (80% do so today) and provide access to employment for more than 4,000 people over 3 years (2020-2022).

In the light of the above information, the Committee considers that, in principle, the Government's approach is incompatible with the requirements laid down by the Charter. The Committee asks that the next thematic report include up-to-date statistics on the measures that have been implemented, with a view to establishing that concrete results are achieved in practice in conformity with the Charter's requirements. These issues will continue to be assessed in the next relevant part of the reporting procedure (Thematic group 4: children, families and migrants).

- *Evictions of Travellers from illegally occupied land*

The Committee notes that in its report, the Government states that no transgressions of constitutional rights and freedoms had been found in the procedure in force which authorises the eviction of Travellers who have settled illegally (Constitutional Council, 27 September 2019, UDAF and Others, No. 2019-805 QPC).

The Committee also notes that in the case of *Winterstein and Others v. France*, the European Court of Human Rights did not rule on the laws then in force on operations to evict Travellers from illegal settlements, but rather on their application in practice by the Government and the review of the case carried out by national courts. The Committee notes the developments in national case law since this decision was handed down: respect for the requirements to protect the right to private and family life has been improved by introducing a measure to assess the proportionality of an eviction order (distinguishing between private and public land) and also by setting a timeframe for the eviction, in particular to enable the state services to carry out an assessment and to provide support.

In view of the above, the Committee considers that the procedure in force which authorises the eviction of Travellers who have settled illegally is compatible with Article 31§2 of the Charter.

The Committee therefore decides to close the follow-up to the decision in this complaint.

### **3<sup>rd</sup> Assessment of the follow-up: European Council of Police Trade Unions (CESP) v. France, Complaint No. 38/2006, decision on the merits of 3 December 2007, Resolution CM/ResChS(2008)6**

#### **1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee held that the French system of compensation for overtime worked by active members of the national police force did not comply with Article 4§2 of the Charter.

The flat-rate compensation scheme for extra services for all active personnel of the national police force is such as to deprive all active personnel of the actual increase required by the said Article. In particular, the Committee concluded that the functions of officers and commanders are not in all cases equivalent to design and management functions.

#### **2. Information provided by the Government**

The report indicates that the situation regarding the increased compensation for overtime worked by active personnel and the working time of officers for whom, henceforth, all additional services are compensated (call-back, on-call duty, on-call duty, overtime, postponed rest) has been brought into conformity.

The report highlights that there have been far-reaching reforms in the organisation of working time in the national police force since the Order of 5 September 2019 on the organisation of working time (APORTT, NOR : INTC1921011A) in the national police force, applicable from 1 January 2020.

The aim of this order is:

- to bring the working time regulations of the national police force into line with the standards of Directive 2003/88/EC (respecting, monitoring and providing for minimum rest time and limiting maximum working time).

In this respect, a reorganisation of the work cycles has been operated by replacing the "4/2 toggle" cycle, which does not comply with daily rest periods, with new cycles such as the "strong shift", the introduction of which has been stopped to allow experimentation, currently under way, of binary cycles in 11:08 and 12:08 with a view to their generalisation for public road units;

- to update and bring the regulations on working time in the national police force into line with each other.

The report stresses that in the context of the application of the order of 5 September 2019, police officers are subject to a specific instruction according to which personnel of the command corps who are not covered by Article 10 of Decree 2000-815 will benefit from new provisions:

- compensation for call-backs (abolished since April 2008);
- the recognition of overtime and the establishment of a special restitution mechanism, via a specific instruction on the organisation of working arrangements for officers outside Article 10.

Finally, with regard to compensation for overtime worked and overtime bonuses, the authorities indicate that in order to clear the large stock of overtime held in particular by active personnel, compensation campaigns for the stock and the flow are planned. From December 2019, a budget of €50 million has been released to allow a first wave of compensation for overtime and overtime bonuses.

In a previous report (for Findings 2018), the Government argued that police officers should be granted the status of professional and managerial staff because of the responsibilities they exercise in their command and expertise function, their

positioning within the services and the definition of their pay and compensation scale. According to the authorities, police officers were covered by the special cases mentioned in Article 4§2 of the Charter which did not give rise to an increase in overtime worked.

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

- *On the structural dysfunctions at the origin of overtime accumulation*

The Committee recalls that Article 4§2 is intrinsically linked to Article 2§1 of the Charter, which guarantees the right to reasonable daily and weekly working hours. Overtime means hours worked in addition to normal working hours (Conclusions I (1969), Statement of interpretation on Article 4§2).

The Committee notes that in its latest report of October 2020 "*Overtime in the civil service*", which covers the financial years 2010-2018, the French Court of Auditors noted that the uncontrolled accumulation of overtime in the police is a sign of "*structural dysfunctions*". Among its recommendations, the Court of Auditors calls for a change in work cycles (in particular for the "strong shift" work cycle) and for priority to be given to the payment of overtime, with an improvement in the amount of compensation.

The Committee notes that in their report, the Government refers to far-reaching reforms in the organisation of working time in the national police, in particular by the Order of 5 September 2019 (APORTT, NOR: INTC1921011A) applicable as of 1 January 2020.

The Committee notes that the authorities are taking steps to take into account the impact of work organization on the generation of overtime. In this respect, experiments in the course of the work cycles (replacement of the "4/2 toggle" cycle by the "strong shift" and then by binary cycles) are interesting avenues for remedying the structural dysfunctions that are at the root of the heavy recourse to overtime.

However, the Committee considers that it is not in a position to assess the situation in this respect, since the steps taken by the Government are only at the experimental stage. In order to be able to assess the situation, the Committee requests that the Government indicate in their next report the various approaches envisaged and/or adopted to resolve this problem and the results obtained.

Pending receipt of the requested information, the Committee reserves its position on this point.

- *On the situation of officers in the command corps*

The Committee recalls that the principle enshrined in Article 4§2 of the Charter is that work performed in addition to normal working hours requires an increased effort on the part of the worker, who must therefore be remunerated at a higher rate than the normal rate of pay (Conclusions XIV-2 (1998), Statement of interpretation on Article 4§2).

The Committee notes with interest that several orders and decrees have strengthened the status of police officers, who have been granted managerial status, both in terms of the responsibilities they exercise, their position within the services and the definition of their pay and compensation scale. Nevertheless, the Committee considers that the organic status and responsibilities entrusted to officers in the command corps continue to differ from the status and responsibilities of officers constituting the design and management corps of the French police. In this sense, the Committee considers

that the officers of the national police command corps do not, as a whole, fall within the exceptions provided for in Article 4§2 of the Charter.

This change in the Articles of Association, which resulted in particular in the abolition of the command bonus and its replacement by responsibility and performance allowances, should not change the Committee's position that these different emoluments are not intended to compensate for overtime.

Nevertheless, the Committee must assess the situation in the light of these developments.

The Committee notes that in their last report, the Government indicates that they have brought themselves into line with the increased compensation for overtime worked by active personnel and the working time of officers, for whom, henceforth, all additional services are compensated (call-back, on-call duty, call-back on call, on-call duty, overtime, postponed rest). However, the Government does not go into detail about the content of the provisions of the specific instruction issued in the framework of the Order of 5 September 2019.

Consequently, the Committee considers that it is not in a position to assess the situation in this respect and cannot say whether the situation has been brought into conformity with Article 4§2 on this point. The Government is invited to detail the content of the relevant provisions of the specific instruction for police officers in its next report.

- *On compensation for overtime worked by active personnel*

The Committee recalled that the overtime premium should apply in all cases (European Council of Police Trade Unions (CESP) v. France, Complaint No. 68/2011, decision on the merits of 5 November 2012). The Committee was also able to indicate that in the case of lump-sum compensation, neither the amount of the lump-sum compensation nor its effects on the purchasing power of the persons concerned are assessed. Only the actual increase in overtime pay compared to the worker's normal rate of pay is assessed (European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of December 2010).

The data made available to the Committee show that the volume of overtime in stock is increasing sharply. In 2018, the Court of Audit counted 23 million hours of unpaid and unrecovered overtime; in 2019, the Ministry of the Interior had counted almost 21 million hours of overtime and expected to exceed 30 million in 2020.

The Committee notes that in its latest report of October 2020 on "*Overtime in the civil service*", which covers the financial years 2010-2018, the French Court of Audit acknowledges that the pressure on staff numbers does not allow staff to recover their hours and is concerned about the risk of their accumulation, both financially, operationally and in terms of human resources. In its guidelines, the Court of Auditors calls for a review of practices to limit the storage phenomenon, notably by encouraging recoveries during the year and compensation for a higher proportion of overtime to dry up the flow of stored hours. It also calls for better and more systematic compensation for overtime from the outset.

In their report, the Government indicates that in order to clear the large stock of overtime held in particular by active personnel, compensation campaigns for the stock and flow are planned. From December 2019, a budget of €50 million has been released to allow a first wave of compensation for overtime worked.

The Committee also notes the willingness of the Government to address the problem of unpaid overtime accumulated over many years in the national police force. It notes that a memorandum of understanding was negotiated on 19 December 2018 with the

trade unions and that since 2020 a specific budget line has been devoted to this issue in the Finance Act.

The Committee takes note of the revaluation of the hourly rate of the additional services allowance as of 1 December 2020 by the adoption of Decree No. 2020-1398 of 17 November 2020 (revaluation of the flat hourly rate of the additional services allowance by the modification of the gross reference index from 342 to 372).

Also, the amount of compensation paid for an overtime hour will increase from 12.47€ gross to 13.25€ gross per hour. As regards overtime with an extra charge (50% increase for working at night, on Sundays or public holidays), the compensation will increase from 18.70€ gross to 19.90€ gross.

In the Committee's view, this exceptional compensation rate, although flat-rate, must be considered in the light of the specific context and other specificities of these employees as active personnel, taking into account their constraints and compensation. Account should also be taken of the recognition by the authorities of the status of professional and managerial staff for police officers by virtue of the responsibilities they exercise, their position within the services and the definition of their salary and compensation scale. The compensation they receive in this context should also include special police hardship allowance, the level and status of which are largely derogatory, rules for increasing the number of hours worked and tax exemptions for compensated overtime.

The Committee takes note of the Government's strategy of paying the stock of overtime over several years due to the impossibility, for service reasons, of recovering it through compensatory rest.

In the light of these elements, the Committee considers that the current arrangements for compensating the stock and flow of overtime are provided for by law, pursue a legitimate aim and are proportionate to that aim, and therefore justify the existence of restrictions on overtime pay (*Confédération Générale du Travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010).

Consequently, the Committee considers that the situation has been brought into conformity on this point.

**3rd Assessment of the follow-up: European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, Resolution CM/ResChS(2008)8**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found violations of the following articles of the Charter:

- Article 31§1, on the ground of insufficient progress as regards the eradication of substandard housing and lack of proper amenities for a large number of households.
- Article 31§2, on the grounds of (i) the unsatisfactory implementation of the legislation on prevention of evictions and the lack of measures to provide rehousing solutions for evicted families; (ii) the inadequacy of measures to reduce homelessness, both in quantitative and qualitative terms.
- Article 31§3, on the ground of the malfunctioning of the social housing allocation system, and the related remedies.
- Article 31§3 in conjunction with Article E on the ground of the deficient implementation of legislation on stopping places for Travellers.

In its Findings 2018, the Committee decided to assess jointly the measures taken in several decisions (Collective Complaints Nos. 33/2006; 39/2006; 51/2008; 63/2010; 64/2011; 67/2011) in response to violations of the social and economic rights of Roma migrants and Travellers. It therefore decided to limit the scope of the follow-up of the current collective complaint by asking the Government to provide information solely on this issue.

**2. Information provided by the Government**

*On the implementation of legislation on stopping places for Travellers (Article 31§3 taken in conjunction with Article E); on the malfunctioning of the social housing allocation system, and the related remedies (Article 31§3); on the eradication of substandard housing and lack of proper amenities for a large number of households (Article 31§1).*

A previous report pointed out that there were five types of sites intended for extended stays in mobile homes:

- Encampment areas for mobile home stays of up to and over three months.
- Large-scale transit sites which are intended to temporarily accommodate large groups with up to 200 caravans travelling together to traditional or occasional gathering sites.
- Small-scale transit sites which are low capacity and intended to accommodate lone families or a few caravans travelling as a group for short stays. They can be made available by local elected officials and although this is not compulsory, it is advisable because it helps relieve the pressure on other sites.
- Stopover sites which enable municipalities with fewer than 5 000 inhabitants to fulfil their established legal obligations to accommodate Travellers. For stopovers only, these sites are not part of the *Département* Traveller Reception Plan (SDAGV) and enable municipalities to respect the right of Roma and Travellers to freedom of movement.

- Sites for large religious or traditional gatherings of Travellers which enable several thousand caravans to park for a week or two and fall under the State's responsibilities owing to their size.

The report underlined that the State contributes to the funding of the *Département* reception plans, for example by bearing the operating costs of large-scale transit sites. This also enabled 682 pitches on rented family plots to be made available from 2006 to 2012. It was also recalled that the new provisions of Law No. 2017-86 of 27 January 2017 on Equality and Citizenship aimed to diversify the range of Traveller stopping places and housing. The Government conceded that France had a chronic shortage of pitches available on residential sites.

The present report draws attention to the general policy framework regarding Travellers (Law No. 2000-614 of 5 July 2000). It emphasises that *Département* reception plans act as the linchpin of the specific measures to be implemented to organise reception and accommodation and enable consultation between the various stakeholders involved so that the assessment of needs and appropriate solutions strikes the broadest possible consensus.

In this connection, the report underlines the elements to be included in the *Département* reception plans, namely residential sites with a fixed capacity (75% of the target number of sites had been set up under the plans so far); rented family plots for the long-term installation of mobile homes; large-scale transit sites with a fixed capacity, intended for use at specified periods of the year by Travellers touring in groups for traditional or occasional gatherings (50% of which had been set up).

The Government conducts regular inspection visits to verify the quality of the sites. According to the report, the sites are constantly improving and are often equipped with facilities that go beyond regulatory requirements (e.g. plots which are accessible to people with disabilities; sanitary facilities; on-site premises provided to accommodate social workers).

The report indicates that the issue to address going forward is that a growing number of families have decided to settle on the sites. The Law No. 2017-86 on Equality and Citizenship of 27 January 2017 requires that specially designed accommodation i.e. rented family plots also be included in the *Département* reception plans. TFLs caters for a demand from Travellers who wish to put down roots through the enjoyment of a fixed, equipped and private pitch without having to give up travelling for part of the year. These pitches come with sanitary facilities (a toilet, shower and washbasin) and in some cases even with a one-roomed structure which can be used as a kitchenette or laundry room but is not a house: the caravan remains the place of residence. TFLs belong to the municipality or intermunicipal consortium. The occupants sign a tenancy agreement and pay rent. Travellers can also own a site; in which case it is referred to as a private-owned site.

State subsidies can be granted for the construction of such facilities. Social housing operators may set up and operate TFLs, which can in turn help intermunicipal bodies to implement them. Local and regional authorities may therefore count these pitches as social housing units under the law on solidarity and urban renewal and social housing operators have the possibility to set up, provide and operate these sites.

Some Travellers wish to move into housing. They may move into mainstream social housing or into bungalow-style housing which includes a special parking space for caravans. Publicly funded, these bungalow-style housing projects include ongoing support for the families concerned: ranging from an initial needs assessment to help with formalities once they have moved in. Households can also lodge an appeal to be granted priority access to housing, which is subject to an assessment of their social and economic situation (i.e. income, family size and current residence).

*On the anticipation and support of operations to evacuate illegally occupied land and the mechanisms for proposing re-housing solutions to evicted families (Article 31§2)*

In a previous report, the Government emphasised that operations to dismantle unlawful camps were conducted with a legitimate aim (to end the illegal occupation of land and, in some cases, situations of danger or immediate health hazards), i.e. Interministerial Circular of 26 August 2012. It was the role of 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 (as soon as a camp has been set up, the local prefect must carry out an assessment of the inhabitants' situation regarding health care, employment and schooling. It is also necessary to provide for emergency accommodation before dismantling an illegal settlement).

Regarding accommodation and housing, the authorities said that all the existing instruments could 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 particular, the Government had a duty to provide emergency accommodation to all vulnerable persons in situations of medical, psychological or social hardship. The domestic courts assess whether the Government has organised the eviction operation in conditions allowing "insofar as possible" the individual situation of the persons concerned to be preserved and whether they can be accused of a manifest failure to act.

The Government provided several examples to demonstrate that, conditions permitting, long-term solutions were found. The authorities also stated that although the solutions could be more short-term in areas that had scant resources or in cases of emergency and imminent danger, they always included proposals for shelter based on an assessment of families' social circumstances.

In 2016, in the 23 *départements* concerned, these measures, which were for the most part implemented by associations in partnership with regional authorities, made it possible, among other things, to rehouse 3,600 people, to ensure that 1,800 children could attend school and to help 1,700 jobseekers along the path to employment. In 2017, a budget of €3 million was earmarked by the Interministerial Office for Accommodation and Access to Housing (DIHAL) for projects to assist persons affected by the dismantling of camps, in particular for assessments of individual situations.

The present report underlines that state action to dismantle illegal camps had been formally prescribed in the Government Circular of 25 January 2018 aiming to give fresh impetus to the clearance of shanty towns by advocating a comprehensive approach to combating extreme hardship. This instruction aims to go beyond a narrow focus on dismantling camps by making public intervention part of a broader approach reaching from the setting up of a camp to its clearance, by preventing encampment from occurring, providing programmes to facilitate integration in France while ensuring respect for the laws of the Republic and residence rights, and including action plans for resettlement in the country of origin and transnational cooperation. This is a comprehensive approach because it tackles all the issues at stake: access to rights, school attendance and access to employment, housing and health care.

In the 42 *départements* concerned in 2019, measures that were for the most part implemented by associations in partnership with regional authorities in particular made it possible for 1,584 children to attend school and for 3,678 people to have access to health care. As regards access to housing, 369 people moved into housing and 212 into accommodation. Concerning employment and training, these measures provided support for 1,946 jobseekers and helped 938 people find a job.

In addition, the authorities drew attention to a doubling of the allocation of earmarked funds in 2020 from €4 million to €8 million with the aim of halving the number of people living in shanty towns by 2022.

Furthermore, no transgressions of constitutional rights and freedoms had been found in the procedure in force which authorises the eviction of Travellers who have settled illegally (Constitutional Council, 27 September 2019, UDAF and Others, No. 2019-805 QPC).

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

*On the implementation of legislation on stopping places for Travellers (Article 31§3 taken in conjunction with Article E); on the malfunctioning of the social housing allocation system, and the related remedies (Article 31§3); on the eradication of substandard housing and lack of proper amenities for a large number of households (Article 31§1).*

In this complaint, the violations found by the Committee related to the particular circumstances of Travellers, mainly on the grounds of the unsatisfactory implementation of legislation on stopping places for Travellers, i.e. the Law No. 2000-614 of 5 July 2000 on the reception and accommodation of Travellers, and in particular, of the legal requirement for municipalities with over 5,000 residents to prepare a plan to set up residential sites for Travellers.

The Committee notes that in their reports submitted on 27 November 2017 and 2 January 2020, the Government described the different types of sites intended for extended stays in mobile homes and the pivotal role of Traveller reception and accommodation plans at *département* level.

The Committee welcomes the wider range of stopping sites and housing that has been made available to Travellers since the new regulations came into force under Law No. 2017-86 of 27 January 2017 on Equality and Citizenship. In addition to residential sites, (partially state-funded) large-scale transit sites and rented family plots must now also be provided for in the *Département* reception plans.

The Committee also notes that 75% of the target number of residential sites have now been set up. The Government also reported that half of the target number of large-scale transit sites had been set up and that 1,388 pitches for the long-term installation of mobile homes (on rented family plots) had been provided (compared to 682 pitches from 2006 to 2012).

In addition, the Committee observes that the quality of the amenities available on the sites is constantly improving (e.g. the availability of plots which are accessible to people with disabilities; sanitary facilities; on-site premises provided to accommodate social workers).

The Committee notes the pragmatic measures which have been adopted to set up these sites (e.g. providing state subsidies, enabling social housing operators to set up and operate TFLs and allowing pitches to count as social housing units under the law on solidarity and urban renewal). It also notes the different options open to Travellers wishing to move into housing (e.g. mainstream social housing or bungalow-style housing in light of their social and economic situation: income, family size and current residence).

The Committee takes note of the publication in the Official Gazette of Decree No. 2019-1478 of 26 December 2019 on residential sites and rented family plots for Travellers. It notes with interest the various rules for providing, operating or even using such sites and on the facilities to be made available.

In light of the information provided, the Committee considers that the situation has been brought into conformity with the relevant articles of the Charter. The Committee requests that the Government provides it, in the framework of the next relevant part of the reporting procedure (Thematic group 4: children, families and migrants), with updated statistical information on the rate of completion of permanent reception areas, large-scale transit sites and pitches for extended stays in mobile homes that have been made available.

*On the anticipation and support of operations to evacuate illegally occupied land and the mechanisms for proposing re-housing solutions to evicted families (Article 31§2)*

In its decision in this complaint, the Committee found that there was a violation of Article 31§2 on the ground that the implementation of the legislation on the prevention of evictions was unsatisfactory and that there was a lack of measures to provide rehousing solutions for evicted families. The violations identified by the Committee did not relate exclusively to the particular circumstances of Travellers. However, following its decision to limit its assessment to violations affecting the social and economic rights of Roma migrants and Travellers (Findings 2018), the Committee will only examine information on these issues.

- *Clearance of shanty towns*

The Committee notes that in its report, the Government states that it has moved away from a narrow focus on dismantling camps by making public intervention part of a broader approach reaching from the setting up of a camp to its clearance, by preventing encampment from occurring, providing programmes to facilitate integration in France while ensuring respect for the laws of the Republic and residence rights and including action plans for resettlement in the country of origin and transnational cooperation. This is a comprehensive approach because it tackles all the issues at stake: access to rights, school attendance and access to employment, housing and health care.

In particular, these developments were formally prescribed in the Government Circular of 25 January 2018 which replaced the Interministerial Circular of 26 August 2012 with the aim of giving fresh impetus to the clearance of shanty towns by advocating a comprehensive approach to combating extreme hardship.

The Committee takes note of the various examples demonstrating efforts to find long-term solutions when certain conditions were met and notes that more short-term solutions would be found in areas that have scant resources and in cases of emergency and imminent danger.

The Committee notes from the DIHAL report providing an update on recent efforts to clear shanty towns (*"Point d'étape sur la nouvelle impulsion donnée en 2018"*) that as of 1 July 2019, 17 619 people were identified as living on 359 shanty towns and squats in mainland France, of whom 12,088 were European nationals spread across 254 sites. In 2018, state-funded measures enabled 1,840 people to be rehoused (an increase of 39% compared with 2017), 974 people to find a job (a 10% increase on 2017), 80% of the children to attend school (three times more than children on sites without government support) and 3,845 people to have access to health care (an increase of 120% compared with 2017).

The Committee notes that the Government has estimated that clearing a shanty town which is home to 12 families (i.e. approximately 50 people) costs €346,000: €50 000 for measures to ensure basic living standards (with access to water and electricity, fire prevention and pest control); €80,000 to provide assistance and social care for the inhabitants; €216,000 to house and support 12 families, i.e. a daily cost of €6 per person over a three-year period. The Committee notes the Government' cost-benefit analysis which demonstrates the advantages of such action to clear shanty towns permanently and foster integration, which benefits local authorities and ends the costly cycle of evictions. The Committee notes that, in comparison, the Government estimated a daily cost of €25 per person for providing alternative accommodation while dismantling this kind of settlement costs more than €100,000.

The Committee notes the significant increase in the DIHAL's earmarked budget for projects to assist persons affected by the dismantling of camps, in particular for assessments of individual situations, and the goals it had set, namely to: halve the number of European nationals living in shanty towns by 2022 (i.e. a reduction of roughly 6,000 people), double the number of people receiving support measures (from approximately 20% at present) and the number of children attending school and being monitored during their school years (currently 1,750 children), ensure that all children of school age who are receiving support measures attend school (80% do so today) and provide access to employment for more than 4,000 people over 3 years (2020-2022).

In the light of the above information, the Committee considers that, in principle, the Government's approach is compatible with the requirements laid down by the Charter. The Committee asks that the next thematic report include up-to-date statistics on the measures that have been implemented, with a view to establishing that concrete results are achieved in practice in conformity with the Charter's requirements. These issues will continue to be assessed in the next relevant part of the reporting procedure (Thematic group 4: children, families and migrants).

- *Evictions of Travellers from illegally occupied land*

The Committee notes that in the report submitted on 2 January 2020, the authorities stated that no transgressions of constitutional rights and freedoms had been found in the procedure in force which authorises the eviction of Travellers who have settled illegally (Constitutional Council, 27 September 2019, UDAF and Others, No. 2019-805 QPC).

The Committee also notes that in the case of *Winterstein and Others v. France*, the European Court of Human Rights did not rule on the laws then in force on operations to evict Travellers from illegal settlements, but rather on their application in practice by the Government and the review of the case carried out by national courts. The Committee notes the developments in national case-law since this decision was handed down: respect for the requirements to protect the right to private and family life has been improved by introducing a measure to assess the proportionality of an eviction order (distinguishing between private and public land) and also by setting a timeframe for the eviction, in particular to enable the state services to carry out an assessment and to provide support.

In view of the above, the Committee considers that the procedure in force which authorises the eviction of Travellers who have settled illegally is compatible with Article 31§2 of the Charter.

The Committee therefore decides to close the follow-up to the decision in this complaint.

### **3<sup>rd</sup> Assessment of the follow-up: European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, Resolution CM/ResChS(2010)5**

#### **1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found violations of the following articles of the revised Charter:

- Article 31§1, on the ground of the inadequate implementation of legislation on stopping places for Travellers, poor living conditions and operational failures at the sites and lack of access to housing for settled Travellers;
- Article 31§2, on the ground of the conditions in which eviction procedures are carried out by law enforcement agencies;
- Article E read in conjunction with Article 31, on the ground of the failure to take account of the specific differences of Travellers in the implementation of the right to housing;
- Article 16 and Article E read in conjunction with Article 16, on the ground of the lack of family housing for Travellers;
- Article 30, on the ground of the lack of a co-ordinated approach to promoting effective access to housing for Travellers who live or risk living in a situation of social exclusion;
- Article E read in conjunction with Article 30, on the ground of the difference in treatment between Travellers and homeless people regarding eligibility to vote and of the quota of circulation document holders of no fixed abode or residence who may be attached to the municipality in order to vote (limited to 3% of the municipal population);
- Article 19§4c, on the ground of the less favourable treatment in access to housing of Roma migrants residing legally in France.

In its Findings 2015, the Committee concluded that the situation which had led to the findings of violations of Article E read in conjunction with Articles 16 and 31 had been brought into conformity. The Committee also found that the difference in treatment between Travellers and homeless people with regard to their eligibility to vote had been abolished (Decision of the Constitutional Court of 5 October 2012 declaring that the requirement for administrative attachment to a municipality for a three-year period was unconstitutional).

In its Findings 2018, the Committee noted that the 3% limit on the number of voters of no fixed abode or residence in each municipality had been entirely lifted since the adoption of the Law No. 2017-86 on Equality and Citizenship of 27 January 2017.

#### **2. Information provided by the Government**

*Implementation of legislation on stopping places for Travellers, poor living conditions and operational failures at such sites and lack of access to housing for settled Travellers (Article 31§1); lack of family housing for Travellers (Article 16 taken alone and in conjunction with Article E); lack of a co-ordinated approach to promoting effective access to housing for Travellers who live or risk living in a situation of social exclusion (Article 30 taken alone and in conjunction with Article E) and the less favourable treatment in access to housing of Roma migrants residing legally in France (Article 19§4c) ; failure to take account of the specific differences of Travellers in the implementation of the right to housing (Article 31 taken in conjunction with Article E).*

A previous report pointed out that there were five types of sites intended for extended stays in mobile homes:

- Encampment areas for mobile home stays of up to and over three months.

- Large-scale transit sites which are intended to temporarily accommodate large groups with up to 200 caravans travelling together to traditional or occasional gathering sites.
- Small-scale transit sites which are low capacity and intended to accommodate lone families or a few caravans travelling as a group for short stays. They can be made available by local elected officials and although this is not compulsory, it is advisable because it helps relieve the pressure on other sites.
- Stopover sites which enable municipalities with fewer than 5 000 inhabitants to fulfil their established legal obligations to accommodate Travellers. For stopovers only, these sites are not part of the *Département* Traveller Reception Plan (SDAGV) and enable municipalities to respect the right of Roma and Travellers to freedom of movement.
- Sites for large religious or traditional gatherings of Travellers which enable several thousand caravans to park for a week or two and fall under the State's responsibilities owing to their size.

The said report underlined that the State contributes to the funding of the *Département* reception plans, for example by bearing the operating costs of large-scale transit sites. This also enabled 682 pitches on rented family plots to be made available from 2006 to 2012. It was also recalled that the new provisions of Law No. 2017-86 of 27 January 2017 on Equality and Citizenship aimed to diversify the range of Traveller stopping places and housing. The Government conceded that France had a chronic shortage of pitches available on residential sites.

The present report draws attention to the general policy framework regarding Travellers (Law No. 2000-614 of 5 July 2000). It emphasises that *Département* reception plans act as the linchpin of the specific measures to be implemented to organise reception and accommodation and enable consultation between the various stakeholders involved so that the assessment of needs and appropriate solutions strikes the broadest possible consensus.

In this connection, the report underlines the elements to be included in the *Département* reception plans, namely residential sites with a fixed capacity (75% of the target number of sites had been set up under the plans so far); rented family plots for the long-term installation of mobile homes; large-scale transit sites with a fixed capacity, intended for use at specified periods of the year by Travellers touring in groups for traditional or occasional gatherings (50% of which had been set up).

The Government conducts regular inspection visits to verify the quality of the sites. According to the report, the sites are constantly improving and are often equipped with facilities that go beyond regulatory requirements (e.g. plots which are accessible to people with disabilities; sanitary facilities; on-site premises provided to accommodate social workers).

The report indicates that the issue to address going forward is that a growing number of families have decided to settle on the sites. The Law No. 2017-86 on Equality and Citizenship of 27 January 2017 requires that specially designed accommodation i.e. rented family plots also be included in the *Département* reception plans. TFLs caters for a demand from Travellers who wish to put down "roots" through the enjoyment of a fixed, equipped and private pitch without having to give up travelling for part of the year. These pitches come with sanitary facilities (a toilet, shower and washbasin) and in some cases even with a one-roomed structure which can be used as a kitchenette or laundry room but is not a house: the

caravan remains the place of residence. TFLs belong to the municipality or intermunicipal consortium. The occupants sign a tenancy agreement and pay rent. Travellers can also own a site; in which case it is referred to as a private-owned site.

State subsidies can be granted for the construction of such facilities. Social housing operators may set up and operate TFLs, which can in turn help intermunicipal bodies to implement them. Local and regional authorities may therefore count these pitches as social housing units under the law on solidarity and urban renewal and social housing operators have the possibility to set up, provide and operate these sites.

Some Travellers wish to move into housing. They may move into mainstream social housing or into bungalow-style housing which includes a special parking space for caravans. Publicly funded, these bungalow-style housing projects include ongoing support for the families concerned: ranging from an initial needs assessment to help with formalities once they have moved in. Households can also lodge an appeal to be granted priority access to housing, which is subject to an assessment of their social and economic situation (i.e. income, family size and current residence).

*Conditions in which eviction procedures are carried out by law enforcement agencies (Article 31§2)*

In a previous report, the Government emphasised that operations to dismantle unlawful camps were conducted with a legitimate aim (to end the illegal occupation of land and, in some cases, situations of danger or immediate health hazards), i.e. Interministerial Circular of 26 August 2012. It was the role of 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 (as soon as a camp has been set up, the local prefect must carry out an assessment of the inhabitants' situation regarding health care, employment and schooling. It is also necessary to provide for emergency accommodation before dismantling an illegal settlement).

Regarding accommodation and housing, the authorities said that all the existing instruments could 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 particular, the Government had a duty to provide emergency accommodation to all vulnerable persons in situations of medical, psychological or social hardship. The domestic 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 and whether they can be accused of a manifest failure to act.

The Government provides several examples to demonstrate that, conditions permitting, long-term solutions were found. The authorities also stated that although the solutions could be more short-term in areas that had scant resources or in cases of emergency and imminent danger, they always included proposals for shelter based on an assessment of families' social circumstances.

In 2016, in the 23 *départements* concerned, these measures, which were for the most part implemented by associations in partnership with regional authorities, made it possible, among other things, to rehouse 3,600 people, to ensure that 1,800 children could attend school and to help 1,700 jobseekers along the path to employment. In 2017, a budget of €3 million was earmarked by the Interministerial Office for Accommodation and Access to Housing (DIHAL) for projects to assist persons affected by the dismantling of camps, in particular for assessments of individual situations.

The present report underlines that state action to dismantle illegal camps had been formally prescribed in the Government Circular of 25 January 2018 aiming to give fresh impetus to the clearance of shanty towns by advocating a comprehensive approach to combating extreme hardship. This instruction aims to go beyond a narrow focus on dismantling camps by making public intervention part of a broader approach reaching from the setting up of a camp to its

clearance, by preventing encampment from occurring, providing programmes to facilitate integration in France while ensuring respect for the laws of the Republic and residence rights, and including action plans for resettlement in the country of origin and transnational cooperation. This is a comprehensive approach because it tackles all the issues at stake: access to rights, school attendance and access to employment, housing and health care.

In the 42 *départements* concerned in 2019, measures that were for the most part implemented by associations in partnership with regional authorities in particular made it possible for 1,584 children to attend school and for 3,678 people to have access to health care. As regards access to housing, 369 people moved into housing and 212 into accommodation. Concerning employment and training, these measures provided support for 1,946 jobseekers and helped 938 people find a job.

In addition, the authorities drew attention to a doubling of the allocation of earmarked funds in 2020 from €4 million to €8 million with the aim of halving the number of people living in shanty towns by 2022.

Furthermore, no transgressions of constitutional rights and freedoms had been found in the procedure in force which authorises the eviction of Travellers who have settled illegally (Constitutional Council, 27 September 2019, UDAF and Others, No. 2019-805 QPC).

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

- *Implementation of legislation on stopping places for Travellers, poor living conditions and operational failures at such sites and lack of access to housing for settled Travellers (Article 31§1); lack of family housing for Travellers (Article 16 taken alone and in conjunction with Article E); lack of a co-ordinated approach to promoting effective access to housing for Travellers who live or risk living in a situation of social exclusion (Article 30 taken alone and in conjunction with Article E) and the less favourable treatment in access to housing of Roma migrants residing legally in France (Article 19§4c); failure to take account of the specific differences of Travellers in the implementation of the right to housing (Article 31 taken in conjunction with Article E).*

The Committee notes that in its last reports (submitted on 27 November 2017 and 2 January 2020), the Government describes the different types of sites intended for extended stays in mobile homes and the pivotal role of Traveller reception and accommodation plans at *département* level.

The Committee welcomes the wider range of stopping sites and housing that has been made available to Travellers since the new regulations came into force under Law No 2017-86 of 27 January 2017 on Equality and Citizenship. In addition to residential sites, (partially state-funded) large-scale transit sites and rented family plots must now also be provided for in the *Département* reception plans.

The Committee also notes that 75% of the target number of residential sites have now been set up (compared to 18% when the Committee's decision was published on 5 June 2008). The Government also reported that half of the target number of large-scale transit sites had been set up and that 1,388 pitches for the long-term installation of mobile homes (on rented family plots) had been provided (compared to 682 pitches from 2006 to 2012).

In addition, the Committee observes that the quality of the amenities available on the sites is constantly improving (e.g. the availability of plots which are accessible to people with disabilities; sanitary facilities; on-site premises provided to accommodate social workers).

The Committee notes the pragmatic measures which have been adopted to set up these sites (e.g. providing state subsidies, enabling social housing operators to set up and operate TFLs and allowing pitches to count as social housing units under the law on solidarity and urban renewal). It also notes the different options open to Travellers wishing to move into housing (e.g. mainstream social housing or bungalow-style housing in light of their social and economic situation: income, family size and current residence).

The Committee takes note of the publication in the Official Gazette of Decree No. 2019-1478 of 26 December 2019 on residential sites and rented family plots for Travellers. It notes with interest the various rules for providing, operating or even using such sites and on the facilities to be made available.

In the light of the information provided by the Government, the Committee asks that the next report include up-to-date statistics, in terms of the number and percentage of the target figure, on residential sites, large-scale transit sites and pitches for extended stays in mobile homes that have been made available. These issues will continue to be assessed in the next relevant part of the reporting procedure (Thematic group 4: children, families and migrants).

- *Conditions in which eviction procedures are carried out by law enforcement agencies (Article 31§2)*

In its decision, the Committee found that there was a violation of Article 31§2 of the Charter on the ground that evictions had been carried out by law enforcement agencies in a way that failed to respect the dignity of those concerned.

- *Clearance of shanty towns*

The Committee reiterates its position that it is clear from the actual wording of Article 31 that it cannot be interpreted as imposing on States an obligation to achieve results. However, the Committee notes that the rights of the Charter must take a practical and effective, rather than purely theoretical, form. Therefore, with a view to ensuring real progress towards achieving the goals laid down by the Charter, States Parties are required not merely to take legal initiatives but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.

This means that, for the situation to be in conformity with the treaty, States Parties must:

- a) implement the necessary legal, financial and operational means;
- b) keep meaningful statistics on needs, resources and results;
- c) undertake regular reviews of the impact of the strategies adopted;
- d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- e) be particularly mindful of the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

The Committee also points out that when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take

measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. In connection with timetabling, it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves may not be deferred indefinitely. The authorities must also be particularly mindful of the impact of their policy choices on the most vulnerable groups, in this case individuals and families living in exclusion and poverty.

The Committee notes that in the report submitted on 2 January 2020, the Government states that it has moved away from a narrow focus on dismantling camps by making public intervention part of a broader approach reaching from the setting up of a camp to its clearance, by preventing encampment from occurring, providing programmes to facilitate integration in France while ensuring respect for the laws of the Republic and residence rights and including action plans for resettlement in the country of origin and transnational cooperation. This is a comprehensive approach because it tackles all the issues at stake: access to rights, school attendance and access to employment, housing and health care.

In particular, these developments were formally prescribed in the Government Circular of 25 January 2018 which replaced the Interministerial Circular of 26 August 2012 with the aim of giving fresh impetus to the clearance of shanty towns by advocating a comprehensive approach to combating extreme hardship.

The Committee takes note of the various examples demonstrating efforts to find long-term solutions when certain conditions were met and notes that more short-term solutions would be found in areas that have scant resources and in cases of emergency and imminent danger. The Committee notes from these examples that ways to provide alternative accommodation, enable school attendance and help jobseekers along the path to employment have been found.

The Committee notes from the DIHAL report providing an update on recent efforts to clear shanty towns (*“Point d'étape sur la nouvelle impulsion donnée en 2018”*) that as of 1 July 2019, 17,619 people were identified as living on 359 shanty towns and squats in mainland France, of whom 12,088 were European nationals spread across 254 sites. In 2018, state-funded measures enabled 1 840 people to be rehoused (an increase of 39% compared with 2017), 974 people to find a job (a 10% increase on 2017), 80% of the children to attend school (three times more than children on sites without government support) and 3,845 people to have access to health care (an increase of 120% compared with 2017).

The Committee notes that the Government has estimated that clearing a shanty town which is home to 12 families (i.e. approximately 50 people) costs €346,000: €50,000 for measures to ensure basic living standards (with access to water and electricity, fire prevention and pest control); €80,000 to provide assistance and social care for the inhabitants; €216,000 to house and support 12 families, i.e. a daily cost of €6 per person over a three-year period. The Committee notes the Government's cost-benefit analysis which demonstrates the advantages of such action to clear shanty towns permanently and foster integration, which benefits local authorities and ends the costly cycle of evictions. The Committee notes that, in comparison, the Government estimated a daily cost of €25 per person for providing alternative accommodation while dismantling this kind of settlement costs more than €100,000.

The Committee notes the significant increase in the DIHAL's earmarked budget for projects to assist persons affected by the dismantling of camps, in particular for assessments of individual situations, and the goals it had set, namely to: halve the number of European nationals living in shanty towns by 2022 (i.e. a reduction of roughly 6,000 people), double the

number of people receiving support measures (from approximately 20% at present) and the number of children attending school and being monitored during their school years (currently 1,750 children), ensure that all children of school age who are receiving support measures attend school (80% do so today) and provide access to employment for more than 4,000 people over 3 years (2020-2022).

In the light of the above information, the Committee considers that, in principle, the Government's approach is compatible with the requirements laid down by the Charter. The Committee asks that the next thematic report include up-to-date statistics on the measures that have been implemented, with a view to establishing that concrete results are achieved in practice in conformity with the Charter's requirements. These issues will continue to be assessed in the next relevant part of the reporting procedure (Thematic group 4: children, families and migrants).

- *Evictions of Travellers from illegally occupied land*

The Committee notes that in the report submitted on 2 January 2020, the Government states that no transgressions of constitutional rights and freedoms had been found in the procedure in force which authorises the eviction of Travellers who have settled illegally (Constitutional Council, 27 September 2019, UDAF and Others, No. 2019-805 QPC).

The Committee also notes that in the case of *Winterstein and Others v. France*, the European Court of Human Rights did not rule on the laws then in force on operations to evict Travellers from illegal settlements, but rather on their application in practice by the Government and the review of the case carried out by national courts. The Committee notes the developments in national case-law since this decision was handed down: respect for the requirements to protect the right to private and family life has been improved by introducing a measure to assess the proportionality of an eviction order (distinguishing between private and public land) and also by setting a timeframe for the eviction, in particular to enable the state services to carry out an assessment and to provide support.

In view of the above, the Committee now considers that the procedure in force which authorises the eviction of Travellers who have settled illegally is compatible with Article 31§2 of the Charter.

The Committee decides to close the follow-up to the decision in this complaint.

### **3<sup>rd</sup> Assessment of the follow-up: European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010, Resolution CM/ResChS(2013)9**

#### **1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee held that the French system of compensation for overtime worked by active members of the national police force did not comply with Article 4§2 of the Charter.

In particular, the Committee concluded that police officers are treated differently depending on whether they belong to the command corps or the "*corps d'encadrement et d'application*". In any case, the functions of officers and commanders are not assimilated to functions of conception and direction.

#### **2. Information provided by the Government**

The report indicates that the situation regarding the increased compensation for overtime worked by active personnel and the working time of officers for whom, henceforth, all additional services are compensated (call-back, on-call duty, on-call duty, overtime, postponed rest) has been brought into conformity.

The report highlights that there have been far-reaching reforms in the organisation of working time in the national police force since the Order of 5 September 2019 on the organisation of working time (APORTT, NOR : INTC1921011A) in the national police force, applicable from 1 January 2020.

The aim of this order is:

- to bring the working time regulations of the national police force into line with the standards of Directive 2003/88/EC (respecting, monitoring and providing for minimum rest time and limiting maximum working time).

In this respect, a reorganisation of the work cycles has been operated by replacing the "4/2 toggle" cycle, which does not comply with daily rest periods, with new cycles such as the "strong shift", the introduction of which has been stopped to allow experimentation, currently under way, of binary cycles in 11:08 and 12:08 with a view to their generalisation for public road units.

- to update and bring the regulations on working time in the national police force into line with each other.

The report stresses that in the context of the application of the order of 5 September 2019, police officers are subject to a specific instruction according to which personnel of the command corps who are not covered by Article 10 of Decree No. 2000-815 will benefit from new provisions:

- compensation for call-backs (abolished since April 2008);
- the recognition of overtime and the establishment of a special restitution mechanism, via a specific instruction on the organisation of working arrangements for officers outside Article 10.

Finally, with regard to compensation for overtime worked and overtime bonuses, the authorities indicate that in order to clear the large stock of overtime held in particular by active personnel, compensation campaigns for the stock and the flow are planned. From December 2019, a budget of €50 million has been released to allow a first wave of compensation for overtime and overtime bonuses.

In a previous report (for Findings), the authorities had argued that police officers should be granted the status of professional and managerial staff because of the responsibilities they exercise in their command and expertise function, their positioning within the services and the definition of their pay and compensation scale. According to the authorities, police officers were covered by the special cases mentioned in Article 4§2 of the Charter which did not give rise to an increase in overtime worked.

### **3. Assessment of the follow-up**

The Committee takes note of all the information provided by the Government.

- *On the structural dysfunctions at the origin of overtime accumulation*

The Committee recalls that Article 4§2 is intrinsically linked to Article 2§1, which guarantees the right to reasonable daily and weekly working hours. Overtime means hours worked in addition to normal working hours (Conclusions I (1969), Statement of interpretation on Article 4§2).

The Committee notes that in its latest report of October 2020 "*Overtime in the civil service*", which covers the financial years 2010-2018, the French Court of Auditors notes that the uncontrolled accumulation of overtime in the police is a sign of "*structural dysfunctions*". Among its recommendations, the Court of Auditors calls for a change in work cycles (in particular for the "strong shift" work cycle) and for priority to be given to the payment of overtime, with an improvement in the amount of compensation.

The Committee notes that in their report, the Government refers to far-reaching reforms in the organization of working time in the national police, in particular by the Order of 5 September 2019 (APORTT, NOR: INTC1921011A) applicable as of 1 January 2020.

The Committee notes that the authorities are taking steps to take into account the impact of work organization on the generation of overtime. In this respect, experiments in the course of the work cycles (replacement of the "4/2 toggle" cycle by the "strong shift" and then by binary cycles) are interesting avenues for remedying the structural dysfunctions that are at the root of the heavy recourse to overtime.

However, the Committee considers that it is not in a position to assess the situation in this respect, since the steps taken by the Government are only at the experimental stage. In order to be able to assess the situation, the Committee requests that the Government indicate in their next report the various approaches envisaged and/or adopted to resolve this problem and the results obtained.

Pending receipt of the requested information, the Committee reserves its position on this point.

- *On the situation of officers in the command corps*

The Committee recalls that the principle enshrined in Article 4§2 is that work performed in addition to normal working hours requires an increased effort on the part of the worker, who must therefore be remunerated at a higher rate than the normal rate of pay (Conclusions XIV-2 (1998), Statement of interpretation on Article 4§2).

The Committee notes with interest that several orders and decrees have strengthened the status of police officers, who have been granted managerial status, both in terms of the responsibilities they exercise, their position within the services and the definition of their pay and compensation scale. Nevertheless, the Committee considers that the organic status and

responsibilities entrusted to officers in the command corps continue to differ from the status and responsibilities of officers constituting the design and management corps of the French police. In this sense, the Committee considers that the officers of the national police command corps do not, as a whole, fall within the exceptions provided for in Article 4§2 of the Charter.

This change in the Articles of Association, which resulted in particular in the abolition of the command bonus and its replacement by responsibility and performance allowances, should not change the Committee's position that these different emoluments are not intended to compensate for overtime.

Nevertheless, the Committee must assess the situation in the light of these developments.

The Committee notes that in their last report, the authorities indicate that they have brought themselves into line with the increased compensation for overtime worked by active personnel and the working time of officers, for whom, henceforth, all additional services are compensated (call-back, on-call duty, call-back on call, on-call duty, overtime, postponed rest). However, the Government does not go into detail about the content of the provisions of the specific instruction issued in the framework of the Order of 5 September 2019.

Consequently, the Committee considers that it is not in a position to assess the situation in this respect and cannot say whether the situation has been brought into conformity with Article 4§2 on this point. The Government is invited to detail the content of the relevant provisions of the specific instruction for police officers in its next report.

- *On compensation for overtime worked by active personnel*

The Committee recalled that the overtime premium should apply in all cases (European Council of Police Trade Unions (CESP) v. France, Complaint No. 68/2011, decision on the merits of 5 November 2012). The Committee was also able to indicate that in the case of lump-sum compensation, neither the amount of the lump-sum compensation nor its effects on the purchasing power of the persons concerned are assessed. Only the actual increase in overtime pay compared to the worker's normal rate of pay is assessed (European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010).

The data made available to the Committee show that the volume of overtime in stock is increasing sharply. In 2018, the Court of Audit counted 23 million hours of unpaid and unrecovered overtime; in 2019, the Ministry of the Interior had counted almost 21 million hours of overtime and expected to exceed 30 million in 2020.

The Committee notes that in its latest report of October 2020 on "*Overtime in the civil service*", which covers the financial years 2010-2018, the French Court of Audit acknowledges that the pressure on staff numbers does not allow staff to recover their hours and is concerned about the risk of their accumulation, both financially, operationally and in terms of human resources. In its guidelines, the Court of Auditors calls for a review of practices to limit the storage phenomenon, notably by encouraging recoveries during the year and compensation for a higher proportion of overtime to dry up the flow of stored hours. It also calls for better and more systematic compensation for overtime from the outset.

In their report, the authorities indicate that in order to clear the large stock of overtime held in particular by active personnel, compensation campaigns for the stock and flow are planned.

From December 2019, a budget of €50 million has been released to allow a first wave of compensation for overtime worked.

The Committee also notes the willingness of the French authorities to address the problem of unpaid overtime accumulated over many years in the national police force. It notes that a memorandum of understanding was negotiated on 19 December 2018 with the trade unions and that since 2020 a specific budget line has been devoted to this issue in the Finance Act.

The Committee takes note of the revaluation of the hourly rate of the additional services allowance as of 1 December 2020 by the adoption of Decree No. 2020-1398 of 17 November 2020 (revaluation of the flat hourly rate of the additional services allowance by the modification of the gross reference index from 342 to 372).

Also, the amount of compensation paid for an overtime hour will increase from 12.47 euros gross to 13.25€ gross per hour. As regards overtime with an extra charge (50% increase for working at night, on Sundays or public holidays), the compensation will increase from 18.70€ gross to 19.90€ gross.

In the Committee's view, this exceptional compensation rate, although flat-rate, must be considered in the light of the specific context and other specificities of these employees as active personnel, taking into account their constraints and compensation. Account should also be taken of the recognition by the authorities of the status of professional and managerial staff for police officers by virtue of the responsibilities they exercise, their position within the services and the definition of their salary and compensation scale. The compensation they receive in this context should also include special police hardship allowance, the level and status of which are largely derogatory, rules for increasing the number of hours worked and tax exemptions for compensated overtime.

The Committee takes note of the Government's strategy of paying the stock of overtime over several years due to the impossibility, for service reasons, of recovering it through compensatory rest.

In the light of these elements, the Committee considers that the current arrangements for compensating the stock and flow of overtime are provided for by law, pursue a legitimate aim and are proportionate to that aim, and therefore justify the existence of restrictions on overtime pay (*Confédération Générale du Travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010). Consequently, the Committee considers that the situation has been brought into conformity on this point.

### **3d Assessment of the follow-up: Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, Decision on the merits of 28 June 2011, Resolution CM/ResChS(2011)9**

#### **1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found violations of the following articles of the Revised Charter:

- Article E in conjunction with Article 31§2, because of the conditions in which the forced evacuations of Roma of Romanian and Bulgarian origin took place in the summer of 2010;
- Article E in conjunction with Article 19§8, due to the collective expulsions of Roma in the summer of 2010 to Romania and Bulgaria.

In the context of its Findings 2018, the Committee found that the situation which had led to the finding of a violation of Article E in conjunction with Article 19§8 had been brought into conformity.

#### **2. Information provided by the Government**

The report indicates that the State's action in terms of evacuating illegal camps is part of the 25 January 2018 Circular aimed at giving a new impetus to the reduction of shantytowns by advocating a comprehensive approach in the fight against extreme precariousness.

This instruction aims to go beyond the approach centred on evacuations and to place public intervention in a broader dimension, from the establishment of the camp to its disappearance, through the prevention of installations, and combining at the same time integration programmes in France, respect for the laws of the Republic and the right of residence, resettlement actions in the country of origin and transnational cooperation. The approach is global since it covers all issues: access to rights, schooling, access to employment, housing and care.

The authorities indicate that they are receiving increased requests for financial support at a time when co-financing from local and regional authorities is being mobilised. They specify that the territories that receive credits commit to objectives for 2022 (number of sites and people covered by an action, number of sites absorbed without resettlement, number of sites, governance and steering arrangements).

In 2019, in the 42 departments concerned, these actions, mostly implemented by associations in partnership with local authorities, will have resulted in the schooling of 1,584 children and health support for 3,678 people. In terms of access to housing, 369 people have gained access to accommodation and 212 to housing. In terms of training and employment, these actions have enabled 1,946 people to receive support in finding employment and 938 people to gain access to employment.

In addition, the report stresses the doubling of funding for 2020, increasing this envelope from 4 to 8 million euros, with the aim of halving the population living in shantytowns by 2022.

In addition, with regard to re-housing, Law No. 2017-86 on Equality and Citizenship of 27 January 2017 requires that adapted housing, i.e. rental family land (TFL), must now be taken into account in departmental schemes. They specify that State subsidies are granted for the construction of this type of equipment. Social landlords can create and manage TFLs, which can help intermunicipal authorities to build them. The local authorities have the possibility to count these plots of land under the law on solidarity and urban renewal (one plot of land is equivalent to one social housing unit) and by the law giving social landlords the right to create, develop and manage these plots of land. In addition, Travellers always have the

possibility of integrating into mainstream social housing or integrating into a housing estate type accommodation allowing them to have space to park their caravan.

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government. The Committee also refers to its previous findings and conclusions.

In its Conclusions 2019 in respect of France, the Committee concluded that Article 31§2 (in conjunction with Article E) was not in conformity, inter alia, due to the unsatisfactory implementation of legislation on the prevention of evictions, the lack of a mechanism to provide relocation solutions to evicted families and the failure to respect the rights of Roma and Travellers in the implementation of eviction procedures.

With regard to the modalities for implementing the evacuation of illegal camps as defined in the Circular of 25 January 2018, the Committee notes that the objective stated by the authorities now goes beyond the approach focusing on the evacuations as such and places public intervention in a broader dimension, from the establishment of the camp to its disappearance, including the prevention of facilities, and combining a whole range of issues such as access to rights, schooling, access to employment, housing and care. This new dynamic is intended to apply to all territories, through national credits conditional on the making of specific commitments for 2022.

The Committee takes note of the various examples demonstrating that solutions for re-housing, schooling of children and support for employment have been found in 2019. It notes that the document "*Progress report on the new impetus given in 2018*" published by DIHAL shows that on <sup>1</sup> July 2019, there were 12,088 European nationals living in 254 sites in metropolitan France among the 17,619 people registered in 359 shantytowns and squats. 1,840 people gained access to housing thanks to the actions financed in 2018 (i.e. 39% more than in 2017). 974 supported people obtained employment (10% more than in 2017). 80% of the children concerned by the resorption actions are in school (i.e. 3 times more than in the camps without support). 3,845 people have benefited from health support (120% more than in 2017).

The Committee notes that the authorities have estimated the cost of closing down a shanty town where 12 families (around 50 people) live at €346,000 (€50,000 to provide minimum living conditions [measures to provide access to water, electricity, fire prevention, protection against pests]; €80,000 to supervise and monitor people on site; €216,000 to house and support the 12 families), i.e. €6 per day and per person over 3 years. The Committee notes with interest the cost/benefit analysis carried out by the authorities, as this action will enable the shantytown to disappear once and for all, the integration of the people, the gains for the community and the end of repeated evacuations. The Committee notes that, for comparison, the authorities estimate the cost of accommodation at €25 per day per person and the cost of evacuation at over €100,000 for a camp of this type.

The Committee notes with interest the significant increase in the budget allocated by the DIHAL to support projects to accompany the dismantling of settlements, in particular individualised diagnoses, as well as the objectives for 2022 to halve the European population living in shantytowns (i.e. around 6,000 people), to double the number of people concerned by a support action (today 20%), to double the number of children enrolled and supported in their schooling (today 1750 children), to enrol all children in school within the framework of support actions (today 80%) and to provide access to employment for more than 4,000 people over 3 years (2020, 2021, 2022).

The Committee notes that the authorities have taken into account positively the differences in the population concerned in terms of the re-housing solutions proposed. In addition to the different possibilities for some Travellers to integrate housing (ordinary or suburban social housing with regard to their social and economic situation: income, family composition, residence), the Committee notes that family rental land (TFL) has been integrated into the departmental reception and housing scheme for Travellers with the entry into force of the law No. 2017-86 on Equality and Citizenship of 27 January 2017. In this respect, the Committee notes with interest the pragmatic solutions deployed to create this type of facility (State subsidies; possibility for social landlords to create and manage TFLs; counting of this land under the Solidarity and Urban Renewal Act).

In the light of these elements, the Committee considers that the approach adopted by the Government is now compatible with the requirements of the Charter. Nevertheless, the Committee requests that the Government provide it with updated statistical information on the concrete results achieved in relation to the objectives set for next relevant cycle of the reporting procedure (Thematic group 4: children, families and migrants).

The Committee decides to close the follow-up to the decision in this complaint.

### **3<sup>rd</sup> Assessment of the follow-up: European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011 v. France, decision on the merits of 24 January 2012, Resolution CM/ResChS(2013)1**

#### **1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found violations of the following articles of the Charter:

- Article E combined with Article 19§8, in that the administrative decisions ordering, after summer 2010, Roma of Romanian and Bulgarian origin to leave the French territory on which they resided were not based on an individual examination of their situation, did not respect the principle of proportionality, and were discriminatory in nature since they targeted the Roma community;
- Article E in combination with Article 30, as regards the right of Travellers to vote;
- Article E in combination with Article 31§1, on the grounds that the implementation of the legislation on reception areas for Travellers and Roma of Romanian and Bulgarian origin was insufficient;
- Article E in combination with Article 31§2, due to the execution of the forced evacuation procedure governed by Articles 9 and 9-I of the Law No. 2000-614 of 5 July 2000 and due to the conditions under which forced evacuations from Roma settlements take place;
- Article E combined with Article 31§3 on the grounds that access to social housing for Travellers and Roma wishing to live in mobile homes was not effective;
- Article E in conjunction with Article 16, in connection with the finding of a violation of Article E in conjunction with Article 31 (1), (2) and (3).

In the context of its Findings 2018, the Committee stated that the situations which had led to the findings of violations of Article E in conjunction with Articles 19§8 and 30 had been brought into conformity.

#### **2. Information provided by the Government**

*On the implementation of the legislation on reception areas for Travellers, (Article E in combination with Articles 31§1 and 16); on the lack of effective access to social housing for Travellers and Roma wishing to live in mobile homes (Article E in combination with Articles 31§3 and 16).*

The present report recalls the general framework of policy on Travellers (Law No. 2000-614 of 5 July 2000). The *Département* reception plans act as the linchpin of the specific measures to be implemented to organise reception and accommodation and that it allows consultation between the various players involved in order to arrive at the most common possible assessment of needs and appropriate solutions. In this connection, the report underlines the elements to be included in the *Département* reception plans, namely residential sites with a fixed capacity (75% of the target number of sites had been set up under the plans so far); rented family plots for the long-term installation of mobile homes; large-scale transit sites with a fixed capacity, intended for use at specified periods of the year by Travellers touring in groups for traditional or occasional gatherings (50% of which had been set up).

The reception areas are regularly visited by the State services in order to assess their quality. According to the Government, these are constantly being improved and the areas often have facilities that go beyond what is required by the regulations (e.g. location accessible to people with disabilities; sanitary blocks; presence of premises on the areas to accommodate social workers). In the event of non-compliance with the regulations, management aid paid by the State is suspended.

The Government notes that the problem now concerns the phenomenon of sedentarisation in the areas. The Law n° 2017-86 on Equality and Citizenship of 27 January 2017 requires that

adapted housing, i.e. family rental land, be taken into account in future plans. This system responds to a demand from Travellers who wish to have a territorial anchorage through the enjoyment of a stable, equipped and private place without having to give up travelling for part of the year. These plots benefit from a sanitary block (WC, shower, washbasin), or even a room on the plot (which can be used as a kitchen or laundry area). But this is not accommodation. The residence remains the caravan. The TFL is the property of the commune or the inter-communal association. The occupants have a lease and pay rent. Travellers can also own land, in which case it is privately owned.

State subsidies are granted for this type of equipment. Social landlords can create and manage TFLs, which can help intercommunal bodies to build them. The local authorities are thus able to count these plots of land under the law on solidarity and urban renewal (one plot of land is equivalent to one social housing unit), and the social landlords can create, develop and manage these plots of land. According to the report, having a plot of land can enable Travellers to continue to travel, particularly in the summer, without fear of not having a place to stay or not being able to stay there (reception areas are facilities intended for a stay generally of around 3 months).

Travellers that wish to integrate accommodation can be integrated into mainstream social housing or they can integrate a detached house type accommodation allowing them to have a space to park their caravan. The latter type of housing is publicly funded. Families are supported during the project in order to take their needs into account and then after entering the premises in order to help them with their procedures. A household can also appeal to be recognised as a priority household to be rehoused. Its social and economic situation (income, family composition, residence) will be duly examined.

*On the execution of the forced evacuation procedure governed by Articles 9 and 9-1 of Law No. 2000-614 of 5 July 2000 and due to the conditions under which forced evacuations from Roma settlements take place (Article E combined with Articles 31§2 and 16)*

The report indicates that the State's action in terms of evacuating illegal camps is part of the 25 January 2018 Circular aimed at giving a new impetus to the reduction of shanty towns by advocating a comprehensive approach in the fight against extreme precariousness. This instruction aims to go beyond the approach centred on evacuations and to place public intervention in a broader dimension, from the establishment of the camp to its disappearance, through the prevention of installations, and combining at the same time integration programmes in France, respect for the laws of the Republic and the right of residence, resettlement actions in the country of origin and transnational cooperation. The approach is global since it covers all issues: access to rights, schooling, access to employment, housing and care.

In 2019, in the 42 departments concerned, these actions, mostly implemented by associations in partnership with local authorities, will have resulted in the schooling of 1,584 children and health support for 3,678 people. In terms of access to housing, 369 people have gained access to accommodation and 212 to housing. In terms of training and employment, these actions have enabled 1,946 people to receive support in finding employment and 938 people to gain access to employment.

In addition, the Government has stressed the doubling of funding for 2020, increasing this envelope from 4 to 8 million €, with the aim of halving the population living in shantytowns by 2022.

Moreover, the procedure in force allowing the expulsion of Travellers who are illegally stationed had been recognised as being in conformity with constitutionally guaranteed rights

and freedoms (Constitutional Council, 27 September 2019, UDAF and others, No. 2019-805 QPC).

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

- *On the implementation of the legislation on reception areas for Travellers, (Article E in combination with Articles 31§1 and 16); on the lack of effective access to social housing for Travellers and Roma wishing to live in mobile homes (Article E in combination with Articles 31§3 and 16).*

The Committee notes the diversification of the reception and housing offer for Travellers since the entry into force of the new regulatory provisions pursuant to Act No. 2017-86 of 27 January 2017 on Equality and Citizenship. From now on, not only permanent reception areas, but also areas of high traffic (for which the State participates in financing) and family rental land must be included in departmental plans.

In its Conclusions 2019, the Committee concluded that Articles 31§1 and 16 were not in conformity due to insufficient access to housing for settled Roma (Travellers), while noting the State's efforts and the positive results achieved, and Article 31§3 due to the insufficient implementation of legislation relating to Traveller reception areas and the lack of effective access to housing assistance for Travellers and Roma wishing to live in mobile homes.

The Committee notes, however, that the completion rate for permanent reception areas is now 75%. In addition, the Government indicates that the completion rate for high-traffic areas is 50% and that 1,388 extended parking spaces for mobile homes (as part of family rental plots) have been developed (682 spaces developed between 2006 and 2012).

In addition, the Committee notes that the quality of facilities in reception areas continues to improve (presence of sites accessible to people with disabilities; sanitary blocks; presence of premises in the areas to accommodate social workers) and notes with interest the pragmatic solutions deployed to build this type of facility (State subsidies; possibility for social landlords to create and manage TFLs; counting of these plots under the Solidarity and Urban Renewal Act). It also notes the different possibilities for some Travellers to integrate into housing (common law social housing or suburban housing with regard to the social and economic situation: income, family composition, residence).

The Committee takes note of the publication in the Official Journal of Decree No. 2019-1478 of 26 December 2019 on permanent reception areas and family rental plots for Travellers. It notes with interest the various rules applicable in terms of development, equipment, management and use.

In the light of the information provided, the Committee considers that the situation has been brought into conformity with the provisions of Article E in conjunction with Articles 31§1, 31§3 and 16 of the Charter. The Committee requests that the Government provides it with updated statistical information on the rate of realisation of permanent reception areas, high-traffic areas and the number and percentage of extended parking spaces for serviced mobile homes in the next relevant part of the reporting procedure (Thematic group 4: children, families and migrants).

- *On the execution of the forced evacuation procedure governed by Articles 9 and 9-1 of Law No. 2000-614 of 5 July 2000 and due to the conditions under which forced evacuations from Roma settlements take place (Article E combined with Articles 31§2 and 16)*
- *With regard to slum clearance*

The Committee notes that the Government indicates that it has changed its approach, focusing on evacuations and placing public intervention in a broader dimension, from the establishment of the camp to its disappearance, including prevention of installations, and combining integration programmes in France, respect for the laws of the Republic and the right to residence, resettlement actions in the country of origin and transnational cooperation. The approach is global since it covers all issues: access to rights, schooling, access to employment, housing and care.

This development was notably reflected in the Circular of 25 January 2018 aimed at giving a new impetus to the reduction of shanty towns by advocating a global approach in the fight against extreme precariousness. This instruction replaced the interministerial circular of 26 August 2012.

The Committee takes note of the various examples illustrating the search for long-term solutions, where several factual conditions are met, or failing that, solutions that are more short-term in nature in tense areas and in situations of emergency and imminent danger to persons. The Committee notes that in these examples, solutions for re-housing, schooling of children and support for employment have been found.

The Committee notes that the document "*Progress report on the new impetus given in 2018*" published by DIHAL shows that on 1 July 2019, there were 12,088 European nationals living in 254 sites in metropolitan France among the 17,619 people registered in 359 shanty towns and squats. 1,840 people gained access to housing thanks to the actions financed in 2018 (i.e. 39% more than in 2017). 974 supported people obtained employment (10% more than in 2017). 80% of the children concerned by the resorption actions are in school (i.e. 3 times more than in the camps without support). 3,845 people have benefited from health support (120% more than in 2017).

The Committee notes that the Government has estimated the cost of closing down a shantytown where 12 families (around 50 people) live at €346,000 (€50,000 to provide minimum living conditions [measures to provide access to water, electricity, fire prevention, protection against pests]; €80,000 to supervise and monitor people on site; €216,000 to house and support the 12 families), i.e. €6 per day and per person over 3 years. The Committee notes the cost/benefit analysis carried out by the Government, as this action will enable the shanty town to disappear once and for all, the integration of the people, the gains for the community and the end of repeated evacuations. The Committee notes that, for comparison, the Government estimates the cost of accommodation at €25 per day per person and the cost of evacuation at over €100,000 for a camp of this type.

The Committee notes the significant increase in the budget allocated by the DIHAL to support projects to accompany the dismantling of settlements, in particular individualised diagnoses, as well as the objectives for 2022 to halve the European population living in shanty towns (i.e. around 6,000 people), to double the number of people concerned by a support action (today 20%), to double the number of children enrolled and supported in their schooling (today 1,750 children), to enrol all children in school within the framework of support actions (today 80%) and to provide access to employment for more than 4,000 people over 3 years (2020, 2021, 2022).

In the light of these elements, the Committee considers that the approach adopted by the Government is in line with the requirements of the Charter. The Committee requests that the Government provides it with updated statistical information on the concrete results achieved

in relation to the objectives set for the next relevant part of the reporting procedure (Thematic group 4: children, families and migrants).

- *With regard to the expulsion of illegally stationed Travellers*

The Committee notes that in its report submitted on 2 January 2020, the Government indicates that the procedure in force allowing the expulsion of Travellers who are illegally stationed had been recognised as being in conformity with constitutionally guaranteed rights and freedoms (Constitutional Council, 27 September 2019, UDAF and others, No. 2019-805 QPC).

The Committee also notes that, in the case of *Winterstein and Others v. France*, the European Court of Human Rights did not come to censure the state of the law relating to the evacuation of illegal Travellers' installations in force at the material time, but rather the practical application of that law by the Government and the supervision carried out in the case by the national court. The Committee notes the evolution of national case-law since the date of delivery of this judgment towards taking better account of the requirements for the protection of the right to respect for private and family life by carrying out a proportionality check not only on the measure of enforced execution (distinguishing between private and public land) but also on the period within which that measure must be taken, in particular to enable the State services to carry out a diagnosis and provide support.

In view of the above, the Committee considers that the existing procedure allowing for the expulsion of Travellers who are illegally stationed is compatible with the requirements of Article 31§2 Charter.

The Committee therefore decides to close the follow-up to the decision in this complaint.

**3<sup>rd</sup> Assessment of the follow-up: Médecins du Monde - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, Resolution CM/ResChS(2013)6**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found violations of the following articles of the Charter:

- Article E in combination with Article 31§1, due to the too limited access of migrant Roma legally residing or working legally in France to adequate housing and due to substandard housing conditions;
- Article E in conjunction with Article 31§2, due to the procedure for the expulsion of migrant Roma from the sites where they are settled and the lack of sufficient measures to provide emergency accommodation and reduce the homeless status of migrant Roma;
- Article E in combination with Article 16, due to a lack of sufficient measures to provide housing for Roma migrant families legally residing or working legally in France;
- Article E in conjunction with Article 30, due to a lack of sufficient measures to promote effective access to housing for Roma migrants legally residing or working legally in France;
- Article E in combination with Article 19§8, due to shortcomings in the procedure for the expulsion of Roma migrants;
- Article E in combination with Article 17§2, due to a lack of accessibility of the French education system to migrant Roma children;
- Article E in combination with Article 11§1, due to difficulties in accessing health care for Roma migrants, whether in a regular or irregular situation;
- Article E in combination with Article 11§2, due to a lack of information and awareness among migrant Roma and a lack of consultation and screening for diseases at their destination;
- Article E in combination with Article 11§3, due to a failure to prevent illness and accidents of migrant Roma;
- Article E combined with Article 13§1, due to a lack of medical assistance for Roma migrants who have been legally residing or working legally in France for more than three months;
- Article 13§4, due to a lack of medical assistance for migrant Roma who have been legally residing or working legally in France for less than three months.

In the context of its Findings 2015, the Committee held that the situation which had led to a violation of Article E read in conjunction with Article 17§2 had been brought into conformity.

Moreover, in the context of its Findings 2018, the Committee considered that the situation which had led to violations of Articles 13§1, 13§4 and 19§8 had been brought into conformity.

**2. Information provided by the Government**

*On the too limited access of migrant Roma legally residing or working regularly in France to housing of a sufficient standard and due to substandard housing conditions (Article E combined with Article 31§1); on the lack of sufficient measures to provide housing for Roma migrant families legally residing or working regularly in France (Article E combined with Article 16); on the lack of sufficient measures to promote effective access to housing for migrant Roma legally residing or working regularly in France (Article E combined with Article 30).*

The present report recalls the general framework of policy on Travellers (Law No. 2000-614 of 5 July 2000). The *Département* reception plans act as the linchpin of the specific measures to be implemented to organise reception and accommodation and that it allows consultation between the various players involved in order to arrive at the most common possible assessment of needs and appropriate solutions. In this connection, the report underlines the elements to be included in the *Département* reception plans, namely residential sites with a fixed capacity (75% of the target number of sites had been set up under the plans so far); rented family plots for the long-term installation of mobile homes; large-scale transit sites with a fixed capacity, intended for use at specified periods of the year by Travellers touring in groups for traditional or occasional gatherings (50% of which had been set up).

The reception areas are regularly visited by the State services in order to assess their quality. According to the Government, these are constantly being improved and the areas often have facilities that go beyond what is required by the regulations (e.g. location accessible to people with disabilities; sanitary blocks; presence of premises on the areas to accommodate social workers). In the event of non-compliance with the regulations, management aid paid by the State is suspended.

The Government notes that the problem now concerns the phenomenon of sedentarisation in the areas. The law No. 2017-86 on Equality and Citizenship of 27 January 2017 requires that adapted housing, i.e. family rental land, be taken into account in future plans. This system responds to a demand from Travellers who wish to have a territorial anchorage through the enjoyment of a stable, equipped and private place without having to give up travelling for part of the year. These plots benefit from a sanitary block (WC, shower, washbasin), or even a room on the plot (which can be used as a kitchen or laundry area). But this is not accommodation. The residence remains the caravan. The TFL is the property of the commune or the inter-communal association. The occupants have a lease and pay rent. Travellers can also own land, in which case it is privately owned.

State subsidies are granted for this type of equipment. Social landlords can create and manage TFLs, which can help intercommunal bodies to build them. The local authorities are thus able to count these plots of land under the law on solidarity and urban renewal (one plot of land is equivalent to one social housing unit), and the social landlords can create, develop and manage these plots of land. According to the report, having a plot of land can enable Travellers to continue to travel, particularly in the summer, without fear of not having a place to stay or not being able to stay there (reception areas are facilities intended for a stay generally of around 3 months).

Travellers that wish to integrate accommodation can be integrated into mainstream social housing or they can integrate a detached house type accommodation allowing them to have a space to park their caravan. The latter type of housing is publicly funded. Families are supported during the project in order to take their needs into account and then after entering the premises in order to help them with their procedures. A household can also appeal to be recognised as a priority household to be rehoused. Its social and economic situation (income, family composition, residence) will be examined.

*On the procedures for the expulsion of migrant Roma from the sites where they are settled and the lack of sufficient measures to provide emergency accommodation and reduce the homeless status of migrant Roma (Article E in combination with Article 31§2)*

The report indicates that the State's action in terms of evacuating illegal camps is part of the 25 January 2018 Circular aimed at giving a new impetus to the reduction of shantytowns by advocating a comprehensive approach in the fight against extreme precariousness. This instruction aims to go beyond the approach centred on evacuations and to place public intervention in a broader dimension, from the establishment of the camp to its disappearance, through the prevention of installations, and combining at the same time integration programmes in France, respect for the laws of the Republic and the right of residence,

resettlement actions in the country of origin and transnational cooperation. The approach is global since it covers all issues: access to rights, schooling, access to employment, housing and care.

In 2019, in the 42 departments concerned, these actions, mostly implemented by associations in partnership with local authorities, will have resulted in the schooling of 1,584 children and health support for 3,678 people. In terms of access to housing, 369 people have gained access to accommodation and 212 to housing. In terms of training and employment, these actions have enabled 1,946 people to receive support in finding employment and 938 people to gain access to employment.

In addition, the Government has stressed the doubling of funding for 2020, increasing this envelope from 4 to 8 million euros, with the aim of halving the population living in shantytowns by 2022.

*On the difficulties of access to health care for migrant Roma, whether in a regular or irregular situation (Article E in combination with Article 11§1); on the lack of information and awareness of migrant Roma and a lack of consultations and screening for diseases at their destination (Article E in combination with Article 11§2); on the lack of prevention of diseases and accidents of migrant Roma (Article E in combination with Article 11§3).*

A previous report (for Findings 2018) indicated that as part of actions to support populations living in illegal camps and shantytowns, a health mediation programme has been set up to reach out to these isolated populations and enable them to access their rights. The Government indicated that the project should in particular enable pregnant women and children to be brought to the Maternal and Child Protection (PMI) structures, which will be able to provide, on the one hand, vaccinations for young children and, on the other hand, the necessary consultations and screening for both mother and child. The mediators will also be able to help these people in their efforts to access their rights with the relevant organisations. In 2015, there were 7 such structures and 14 mediators.

A new 3-year agreement was to be signed between 2017 and 2019 with FNASAT (National Federation of Solidarity Associations for Action with Gypsies and Travellers) to continue health mediation actions for migrant populations living in camps and for Travellers. The grant allocated by the Directorate General of Health was intended to support the actions of the national health mediation programme: networking of local projects, support for the development of local dynamics, training and professionalisation of mediators with continuous training and exchange of practices, promotion of health mediation for vulnerable populations.

On the other hand, the report specified that the law of 26 January 2016 on the modernisation of the health system had introduced mediation and interpretation into the public health code. At the national level, the national health strategy (SNS) for the period 2017-2022 includes 4 axes, including prevention and health promotion and the fight against social and territorial inequalities in access to health. Taking into account the health of the Roma is one of the priorities selected, in particular with a view to improving the clarity and coherence of the care pathway for the most vulnerable people. At the regional level, these policies are implemented by the Regional Health Agencies (ARS), in particular through their Regional Programmes for Access to Prevention and Care (PRAPS).

The present report recalls that a working group on health has been set up within the framework of the National Commission for Slum Clearance. This working group, steered by the central administrations and composed of field actors and health professionals, has produced a methodological sheet aimed at taking into account the health dimension in territorial strategies for slum clearance. This sheet encourages the development of "health" action plans and makes several recommendations.

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

*On the too limited access of migrant Roma legally residing or working regularly in France to housing of a sufficient standard and due to substandard housing conditions (Article E combined with Article 31§1); on the lack of sufficient measures to provide housing for Roma migrant families legally residing or working regularly in France (Article E combined with Article 16); on the lack of sufficient measures to promote effective access to housing for migrant Roma legally residing or working regularly in France (Article E combined with Article 30).*

The Committee notes the diversification of the reception and housing offer for Travellers since the entry into force of the new regulatory provisions pursuant to Act No. 2017-86 of 27 January 2017 on equality and citizenship. Henceforth, not only permanent reception areas, but also areas of high traffic (for which the State participates in financing) and family rental land must be included in departmental plans.

In its Conclusions 2019, the Committee concluded that Articles 31§1 and 16 were not in conformity due to the insufficient access to housing of settled Roma (Travellers), while noting the State's efforts and the positive results achieved.

The Committee notes, however, that the completion rate for permanent reception areas is now 75%. In addition, the Government has indicated that the completion rate for high-traffic areas is 50% and that 1,388 extended parking spaces for mobile homes (as part of family rental plots) have been developed (682 spaces developed between 2006 and 2012).

In addition, the Committee notes that the quality of facilities in reception areas continues to improve (presence of sites accessible to people with disabilities; sanitary blocks; presence of premises in the areas to accommodate social workers) and notes with interest the pragmatic solutions deployed to build this type of facility (State subsidies; possibility for social landlords to create and manage TFLs; counting of these plots under the Solidarity and Urban Renewal Act). It also notes the different possibilities for some Travellers to integrate into housing (common law social housing or suburban housing with regard to the social and economic situation: income, family composition, residence).

The Committee takes note of the publication in the Official Journal of Decree No. 2019-1478 of 26 December 2019 on permanent reception areas and family rental plots for Travellers. It notes the various rules applicable in terms of development, equipment, management and use.

In the light of the information provided, the Committee considers that the situation has been brought into conformity with the provisions of Article E in conjunction with Articles 30, 31§1 and 16 of the Charter.

Nevertheless, the Committee requests that the Government provide it with updated statistical information on the rate of completion of permanent reception areas, high-traffic areas and the number and percentage of extended parking spaces for serviced mobile homes in the next relevant part of the reporting procedures (Thematic group 4: children, families and migrants).

*On the procedures for the expulsion of migrant Roma from the sites where they are settled and the lack of sufficient measures to provide emergency accommodation and reduce homelessness among migrant Roma (Article E in conjunction with Article 31§2)*

The Committee notes that the Government indicates that it has changed its approach, focusing on evacuations and placing public intervention in a broader dimension, from the establishment of the camp to its disappearance, including prevention of installations, and combining integration programmes in France, respect for the laws of the Republic and the right to residence, resettlement actions in the country of origin and transnational cooperation. The approach is global since it covers all issues: access to rights, schooling, access to employment, housing and care.

This development was notably reflected in the Circular of 25 January 2018 aimed at giving a new impetus to the reduction of shanty towns by advocating a global approach in the fight against extreme precariousness. This instruction replaced the Interministerial Circular of 26 August 2012.

The Committee takes note of the various examples illustrating the search for long-term solutions, where several factual conditions are met, or failing that, solutions that are more short-term in nature in tense areas and in situations of emergency and imminent danger to persons. The Committee notes that in these examples, solutions for re-housing, schooling of children and support for employment have been found.

The Committee notes that the document "*Progress report on the new impetus given in 2018*" published by DIHAL shows that on <sup>1</sup> July 2019, there were 12,088 European nationals living in 254 sites in metropolitan France among the 17,619 people registered in 359 shanty towns and squats. 1,840 people gained access to housing thanks to the actions financed in 2018 (i.e. 39% more than in 2017). 974 supported people obtained employment (10% more than in 2017). 80% of the children concerned by the resorption actions are in school (i.e. 3 times more than in the camps without support). 3,845 people have benefited from health support (120% more than in 2017).

The Committee notes that the Government has estimated the cost of closing down a shanty town where 12 families (around 50 people) live at €346,000 (€50,000 to provide minimum living conditions [measures to provide access to water, electricity, fire prevention, protection against pests]; €80,000 to supervise and monitor people on site; €216,000 to house and support the 12 families), i.e. €6 per day and per person over 3 years. The Committee notes the cost/benefit analysis carried out by the Government, as this action will enable the shantytown to disappear once and for all, the integration of the people, the gains for the community and the end of repeated evacuations. The Committee notes that, for comparison, the Government estimates the cost of accommodation at €25 per day per person and the cost of evacuation at over €100,000 for a camp of this type.

The Committee notes the significant increase in the budget allocated by the DIHAL to support projects to accompany the dismantling of settlements, in particular individualised diagnoses, as well as the objectives for 2022 to halve the European population living in shanty towns (i.e. around 6,000 people), to double the number of people concerned by a support action (today 20%), to double the number of children enrolled and supported in their schooling (today 1,750 children), to enrol all children in school within the framework of support actions (today 80%) and to provide access to employment for more than 4,000 people over 3 years (2020, 2021, 2022).

In the light of these elements, the Committee considers that the approach adopted by the Government is in line with the requirements of the Charter and that the situation has been brought into conformity with Article E combined with 31§2. The Government will continue to inform the Committee on the concrete results achieved by DIHAL in relation to the objectives it has set for 2022 in the framework of the next relevant part of the reporting procedure (Thematic group 4: children, families and migrants).

*On the difficulties of access to health care for migrant Roma, whether in a regular or irregular situation (Article E in combination with Article 11§1); on the lack of information and awareness of migrant Roma and a lack of consultations and screening for diseases at their destination (Article E in combination with Article 11§2); on the lack of prevention of diseases and accidents of migrant Roma (Article E in combination with Article 11§3).*

The Committee observes that in its last report the Government did not provide additional information on the implementation of the relevant aspects of the national health strategy, both at national and regional level, and in particular on the results of the health mediation programme. The Committee would also like to obtain information on the number of mediators participating in the health mediation programme and the practical consequences of the methodological sheet produced by the working group on health of the National Commission for Slum Clearance.

The Committee notes that several actions are carried out in the framework of regional plans (regional programmes for access to prevention and care for the most disadvantaged, regional health and environment programme, etc.) by associations, municipal social action centres (CCAS), hospitals, regional education and health promotion bodies (LREPS) or local authorities working with Travellers (consultation of the database "Observation and cartographic monitoring of regional health actions (Oscar2)"). The Committee notes that the health issues addressed include problems relating to sexual health, hepatitis, violence, vaccinations, but also nutrition, mental health and addictive behaviour. The Committee asks whether there is any feedback at national level on the actions carried out by the LRAs through their PRAPS programmes and whether there is any collection of good practices carried out at local level.

Furthermore, the Committee notes that a study on the health of Travellers has been conducted in New Aquitaine between 2019 and 2020. This study is considered by *Santé publique France Nouvelle-Aquitaine* to be the first of its kind and scope in France. Its objective is to identify people's health needs, to assess the vaccination coverage of measles and other vaccine-preventable infectious diseases, particularly among children, and to evaluate the links between living and housing conditions and the health of Travellers. The Committee requests that the authorities inform it of the results of this study and of the manner in which the authorities intend to respond to it, if appropriate.

In addition, the Committee notes that the departmental reception and housing schemes for Travellers now include health recommendations on the layout and location of future reception areas and living areas for Travellers. On the other hand, the Committee observes that the integration of a "health" component into departmental reception and housing schemes for Travellers is not systematic. The Committee asks whether the authorities intend to introduce such a mechanism in the future.

In the light of the information provided by the Government, the Committee considers that the situation has still not been brought into conformity with Articles 11§1, 2 and 3 of the Charter.

**3<sup>rd</sup> Assessment of the follow-up: European Council of Police Trade Unions (CESP) v. France, Complaint No. 68/2011, decision on the merits of 23 October 2012, Resolution CM/ResChS(2013)10**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee held that the French system of compensation for overtime worked by active members of the national police force did not comply with Article 4§2 of the Revised Charter.

The flat-rate compensation scheme for extra services for all active personnel of the national police force is such as to deprive all active personnel of the actual increase required by the said Article. In particular, the Committee concluded that the functions of officers and commanders are not in all cases equivalent to design and management functions.

**2. Information provided by the Government**

The report indicates that the situation regarding the increased compensation for overtime worked by active personnel and the working time of officers for whom, henceforth, all additional services are compensated (call-back, on-call duty, on-call duty, overtime, postponed rest) has been brought into conformity.

The report highlights that there have been far-reaching reforms in the organisation of working time in the national police force since the Order of 5 September 2019 on the organisation of working time (APORTT, NOR : INTC1921011A) in the national police force, applicable from 1 January 2020.

The aim of this order is to:

- to bring the working time regulations of the national police force into line with the standards of Directive 2003/88/EC (respecting, monitoring and providing for minimum rest time and limiting maximum working time).

In this respect, a reorganisation of the work cycles has been operated by replacing the "4/2 toggle" cycle, which does not comply with daily rest periods, with new cycles such as the "strong shift", the introduction of which has been stopped to allow experimentation, currently under way, of binary cycles in 11:08 and 12:08 with a view to their generalisation for public road units.

- to update and bring the regulations on working time in the national police force into line with each other.

The report stresses that in the context of the application of the order of 5 September 2019, police officers are subject to a specific instruction according to which personnel of the command corps who are not covered by Article 10 of Decree No. 2000-815 will benefit from new provisions:

- compensation for call-backs (abolished since April 2008);
- the recognition of overtime and the establishment of a special restitution mechanism, via a specific instruction on the organisation of working arrangements for officers outside Article 10.

Finally, with regard to compensation for overtime worked and overtime bonuses, the authorities indicate that in order to clear the large stock of overtime held in particular by active personnel, compensation campaigns for the stock and the flow are planned. From

December 2019, a budget of €50 million has been released to allow a first wave of compensation for overtime and overtime bonuses.

In a previous report (for Findings 2018), the authorities had argued that police officers should be granted the status of professional and managerial staff because of the responsibilities they exercise in their command and expertise function, their positioning within the services and the definition of their pay and compensation scale. According to the authorities, police officers were covered by the special cases mentioned in Article 4§2 of the Charter which did not give rise to an increase in overtime worked.

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

- *On the structural dysfunctions at the origin of overtime accumulation*

The Committee recalls that Article 4§2 is intrinsically linked to Article 2§1, which guarantees the right to reasonable daily and weekly working hours. Overtime means hours worked in addition to normal working hours (Conclusions I (1969), Statement of interpretation on Article 4§2).

The Committee notes that in its latest report of October 2020 "*Overtime in the civil service*", which covers the financial years 2010-2018, the French Court of Auditors notes that the uncontrolled accumulation of overtime in the police is a sign of "*structural dysfunctions*". Among its recommendations, the Court of Auditors calls for a change in work cycles (in particular for the "strong shift" work cycle) and for priority to be given to the payment of overtime, with an improvement in the amount of compensation.

The Committee notes that in their report, the authorities refer to far-reaching reforms in the organisation of working time in the national police, in particular by the Order of 5 September 2019 (APORTT, NOR: INTC1921011A) applicable as of 1 January 2020.

The Committee notes that the authorities are taking steps to take into account the impact of work organisation on the generation of overtime. In this respect, experiments in the course of the work cycles (replacement of the "4/2 toggle" cycle by the "strong shift" and then by binary cycles) are interesting avenues for remedying the structural dysfunctions that are at the root of the heavy recourse to overtime.

However, the Committee considers that it is not in a position to assess the situation in this respect, since the steps taken by the Government are only at the experimental stage. In order to be able to assess the situation, the Committee requests that the Government indicate in their next report the various approaches envisaged and/or adopted to resolve this problem and the results obtained.

Pending receipt of the requested information, the Committee reserves its position on this point.

- *On the situation of officers in the command corps*

The Committee recalls that the principle enshrined in Article 4§2 is that work performed in addition to normal working hours requires an increased effort on the part of the worker, who must therefore be remunerated at a higher rate than the normal rate of pay (Conclusions XIV-2 (1998), Statement of interpretation on Article 4§2).

The Committee notes with interest that several orders and decrees have strengthened the status of police officers, who have been granted managerial status, both in terms of the responsibilities they exercise, their position within the services and the definition of their pay

and compensation scale. Nevertheless, the Committee considers that the organic status and responsibilities entrusted to officers in the command corps continue to differ from the status and responsibilities of officers constituting the design and management corps of the French police. In this sense, the Committee considers that the officers of the national police command corps do not, as a whole, fall within the exceptions provided for in Article 4§2 of the Charter.

This change in the Articles of Association, which resulted in particular in the abolition of the command bonus and its replacement by responsibility and performance allowances, should not change the Committee's position that these different emoluments are not intended to compensate for overtime.

Nevertheless, the Committee must assess the situation in the light of these developments.

The Committee notes that in its last report, the Government indicates that it has brought itself into line with the increased compensation for overtime worked by active personnel and the working time of officers, for whom, henceforth, all additional services are compensated (call-back, on-call duty, call-back on call, on-call duty, overtime, postponed rest). However, the Government does not go into detail about the content of the provisions of the specific instruction issued in the framework of the Order of 5 September 2019.

Consequently, the Committee considers that it is not in a position to assess the situation in this respect and cannot say whether the situation has been brought into conformity with Article 4§2 on this point. The Government is invited to detail the content of the relevant provisions of the specific instruction for police officers in their next report.

- *On compensation for overtime worked by active personnel*

The Committee recalled that the overtime premium should apply in all cases (European Council of Police Trade Unions (CESP) v. France, Complaint No. 68/2011, decision on the merits of 5 November 2012). The Committee was also able to indicate that in the case of lump-sum compensation, neither the amount of the lump-sum compensation nor its effects on the purchasing power of the persons concerned are assessed. Only the actual increase in overtime pay compared to the worker's normal rate of pay is assessed (European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010).

The data made available to the Committee show that the volume of overtime in stock is increasing sharply. In 2018, the Court of Audit counted 23 million hours of unpaid and unrecovered overtime; in 2019, the Ministry of the Interior had counted almost 21 million hours of overtime and expected to exceed 30 million in 2020.

The Committee notes that in its latest report of October 2020 on "*Overtime in the civil service*", which covers the financial years 2010-2018, the French Court of Audit acknowledges that the pressure on staff numbers does not allow staff to recover their hours and is concerned about the risk of their accumulation, both financially, operationally and in terms of human resources. In its guidelines, the Court of Auditors calls for a review of practices to limit the storage phenomenon, notably by encouraging recoveries during the year and compensation for a higher proportion of overtime to dry up the flow of stored hours. It also calls for better and more systematic compensation for overtime from the outset.

In its report, the Government indicates that in order to clear the large stock of overtime held in particular by active personnel, compensation campaigns for the stock and flow are

planned. From December 2019, a budget of €50 million has been released to allow a first wave of compensation for overtime worked.

The Committee also notes the willingness of the Government to address the problem of unpaid overtime accumulated over many years in the national police force. It notes that a memorandum of understanding was negotiated on 19 December 2018 with the trade unions and that since 2020 a specific budget line has been devoted to this issue in the Finance Act.

The Committee takes note of the revaluation of the hourly rate of the additional services allowance as of 1 December 2020 by the adoption of Decree No. 2020-1398 of November 17, 2020 (revaluation of the flat hourly rate of the additional services allowance by the modification of the gross reference index from 342 to 372).

Also, the amount of compensation paid for an overtime hour will increase from 12.47€ gross to 13.25€ gross per hour. As regards overtime with an extra charge (50% increase for working at night, on Sundays or public holidays), the compensation will increase from 18.70€ gross to 19.90€ gross.

In the Committee's view, this exceptional compensation rate, although flat-rate, must be considered in the light of the specific context and other specificities of these employees as active personnel, taking into account their constraints and compensation. Account should also be taken of the recognition by the authorities of the status of professional and managerial staff for police officers by virtue of the responsibilities they exercise, their position within the services and the definition of their salary and compensation scale. The compensation they receive in this context should also include special police hardship allowance, the level and status of which are largely derogatory, rules for increasing the number of hours worked and tax exemptions for compensated overtime.

The Committee takes note of the Government's strategy of paying the stock of overtime over several years due to the impossibility, for service reasons, of recovering it through compensatory rest.

In the light of these elements, the Committee considers that the current arrangements for compensating the stock and flow of overtime are provided for by law, pursue a legitimate aim and are proportionate to that aim, and therefore justify the existence of restrictions on overtime pay (*Confédération Générale du Travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010).

Consequently, the Committee considers that the situation has been brought into conformity on this point.

**3<sup>rd</sup> Assessment of the follow-up: *Action européenne des handicapés (AEH) v. France*, Complaint No. 81/2012, decision on the merits of 11 September 2013, Resolution CM/ResChS(2014)2**

**1. Decision of the Committee on the merits of the complaint**

The Committee's decision in *Action européenne des handicapés (AEH) v. France* concerns violations of the right of autistic children and adolescents to be educated as a priority in mainstream schools and the right to vocational training for young autistic people (Article 15§1 of the Charter).

The decision also concerns the direct discrimination of families forced to leave the national territory in order to send autistic children to school, as well as the restricted budgetary means allocated to the Autism Plan concerning the schooling of autistic children and adolescents, which indirectly disadvantages these disabled persons (violations of Article E combined with Article 15§1).

**2. Information provided by the Government**

In the report, the Government submits information on the number of autistic children attending school and on legislative developments in this regard (see further information in the evaluation of the follow-up to Decision 13/2002).

As regards vocational training for young people with autism, data from several ministerial departments are not centralised. Nevertheless, the report highlights the government's strategy for the employment of people with disabilities by specifying the reform of the employment obligation for disabled workers (OETH), and in particular the changes introduced by the law for the freedom to choose one's professional future. This revised strategy will be steered at the national level by a monitoring-evaluation committee launched on 18 November 2019, according to a logic of continuous improvement, and deployed at the territorial level, with the mobilisation and cooperation of local stakeholders. In practice, the aim is to foster a positive attitude of companies to recruit people with disabilities and eliminate the preference for paying penalties. The law for the freedom to choose one's professional future, promulgated by the President of the Republic on 5 September 2018, which reformed apprenticeship and vocational training, also reformed the way in which the obligation to employ people with disabilities is calculated as of 1 January 2020, in order to strengthen it.

With the adoption of the law for the freedom to choose one's professional future, the government has also committed itself to developing access to learning pathways for people with disabilities:

- increase in the number of jobs created in social enterprises supporting the employment of people with disabilities (adapted enterprises) from 40,000 to 80,000 by 2022;
- universal accessibility of the apprentice training centre (CFA) (since 1 January 2019, each of the 965 apprentice training centres must designate a disability referent);
- offer joint intervention in the territories to support the development of pathways to employment for people with disabilities. The content of the programme and jobs will be adapted accordingly;
- increase the level of financial support for apprenticeship contracts (e.g. people with disabilities will have a supplement in their Personal Training Account (PTA). This account, whose smartphone application has been operational since 21 November 2019, will enable the holder, throughout his or her working life, to acquire additional training rights each year, to accumulate them and to finance actions to maintain or increase qualifications.

With regard to facilities for the care or support of adult autistic persons, although there are a number of statistical sources that provide data on medico-social facilities and services, these data were not sufficient to provide a complete picture of the care and support of autistic persons; France has made provision for the establishment of other information collection systems, which are currently being developed. However, according to an extraction from the directory carried out in October 2019, there are :

- 784 establishments and medico-social services for adults, exclusively or partially approved for the support of people with autism (excluding inclusive housing, supported employment, mutual aid groups);
- 8,291 places installed in medico-social structures for adults.

### **3. Assessment of the follow-up**

The Committee takes note of the efforts made, both in terms of the budget allocated to ensure the enrolment of autistic children and young people in mainstream schools and the information on enrolment in specialized institutions. On these specific points, the Committee refers to the follow-up assessment carried out to the decision in *Autism Europe v. France*, Complaint No. 13/2002.

With regard to the right to vocational training for young people with autism, the Committee had also requested, during the last follow-up in 2018, information on the concrete measures taken to guarantee this right. The Committee takes note of the reference to actions to help enterprises to recruit autistic persons and assistance to ensure the professional integration of these persons, but notes that there is no information on the measures adopted in the specific framework of vocational training and requests the next report to include this information.

Finally, with regard to the violation of Article 15§1 on account of the lack of a predominantly educational character in specialised institutions caring for autistic children and adolescents, the Committee notes that no information has been provided on this subject.

The Committee therefore considers that the situation has not been brought into conformity with the Charter, neither with Article 15§1 on the right to vocational training for autistic young people or the lack of predominance of an educational character in specialised institutions caring for autistic children and adolescents, nor with Article E in conjunction with Article 15§1 concerning the budget allocated and the disadvantages resulting in schooling of autistic children.

**2<sup>nd</sup> Assessment of the follow-up: APPROACH v. France, Complaint  
No. 92/2013, decision on the merits of 12 September 2014,  
Resolution CM/ResChS(2015)6**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee concluded that there was a violation of Article 17§1 of the Charter owing to the lack of a sufficiently clear, binding and precise prohibition on corporal punishment in French law. The Committee noted that the relevant provisions of the Criminal Code prohibited serious acts of violence against children and that national courts would convict those guilty of corporal punishment of a certain degree of severity. However, none of the legislation referred to by the government set out an explicit and full prohibition on all forms of corporal punishment of children that was likely to affect their physical integrity, dignity, development or psychological well-being. Furthermore, it was unclear whether there was still a judicially recognised “right of correction”, and there was no clear and detailed case-law fully prohibiting the practice of corporal punishment.

**2. Information provided by the Government**

In the report, the authorities point out that Law No. 2019-721 of 10 July 2019 on the prohibition of corporal punishment modified Article 371-1 of the Civil Code by adding a new sub-paragraph providing that: “*Parental authority shall be exercised without recourse to physical or psychological violence*”.

The Government specifies that this law, which came into force on 12 July 2019, determines that corporal punishment cannot be used because it goes against the best interests of the child and prevents proper child development. From the end of 2019, this clear, binding and specific ban on corporal punishment will be added to the family record book given to married couples and new parents.

In its previous report of 29 November 2017, the Government had already stated that France had adopted criminal legislation prohibiting and punishing any type of violence against minors, including psychological violence. It was specified that the penalties incurred varied according to the effects of the offences on victims, and also according to the number of aggravating circumstances (if the victim is a minor under 15, the violence is routine, the offences are committed at school or the perpetrator is an ascendant or a person with legal or de facto authority over the victim). Ritual initiation (*bizutage*) ceremonies in schools or in socio-educational institutions or acts of neglect like failing to care for persons who are incapable of protecting themselves, particularly owing to their age, can also constitute criminal offences.

**3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government in the report.

Article 371-1 of the Civil Code, as amended, provides that “*parental authority shall be exercised without recourse to physical or psychological violence*”. Although no mention of penalties is made, this article may be read together with Article 222-13 of the Criminal Code, which provides that “*acts of violence causing an incapacity to work of eight days or less [...] shall be punished by three years’ imprisonment and a fine of 45,000 € where they are committed against a minor under fifteen years of age*”.

The Committee notes that the entry into force of this law means that corporal punishment can no longer form part of parents' "right of correction". In this respect, the prosecutor has the power to refer the case to the children's court and bring the case to trial should any reports of physical punishment be made. The Committee notes that several cases have recently been brought before the criminal courts, with the imposition of penalties where appropriate, reflecting an evolution in case-law in line with the new judicial framework.

Furthermore, the Law of 10 July 2019 also amended Article 421-14 of the Social Work and Family Code. From now on, it will be compulsory for childminders to complete "*training on first aid, the prevention of corporal punishment in the home and the organisation of collective childcare arrangements.*"

In its report on corporal punishment presented to Parliament in August 2019, the Government took stock of corporal punishment in homes and childcare settings in France and of the support already provided to parents and professionals or that should be provided to prevent corporal punishment. The report sets out the various aspects of the Government's National Parenthood Support Strategy.

It is clear from the document that the parenthood support policy is implemented through a range of measures aiming to assist parents in their role as educators, including through Parental Advice, Support and Guidance Networks (REAAPs); Local Educational Support Contracts (CLASs); Child-Parent Centres (LAEPs); family mediation organisations; Family Information Points (PIFs) and meeting places; and home help services. In a wider sense, this policy also includes measures taken by community centres to support families, collective action by social workers responsible for family welfare benefits, and holiday allowances awarded to low income families.

Initial and continuous staff training in child development and proper treatment of children is also central to the strategy. The National Framework for Care in Early Childhood, published in 2017, sets the standards for all professional training in early childhood care. The Committee takes note of plans to set up a platform for professionals and volunteers providing parental support that were put forward in the course of discussions about the National Parenthood Support Strategy.

The Committee notes that the adoption of the Law No. 2019-721 of 10 July 2019 on the prohibition on corporal punishment now provides for a sufficiently clear, binding and precise prohibition on corporal punishment in France. The Committee observes that the new legislation which has come into force is accompanied by a significant range of supporting measures, particularly for parents and professionals caring for children, which help ensure its effective application in practice.

The Committee therefore finds that the situation has been brought into conformity with Article 17§1 of the Charter since the entry into force of the Law No. 2019-721 of 10 July 2019 and decides to close the follow-up to the decision in this complaint.

**2<sup>nd</sup> Assessment of the follow-up: European Council of Police  
Trade Unions (CESP) v. France, Complaint No. 101/2013, decision  
on the merits of 27 January 2016, Resolution CM/ResChS(2016)5**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found a violation of Article 5 of the Charter ("right to organise") when the *Gendarmerie Nationale* is functionally equivalent to a police force.

Members of the police force must be free to form or join genuine organisations for the protection of their material and moral interests, and these organisations must be able to enjoy the bulk of trade union prerogatives.

These constitute minimum guarantees relating to (i) the formation of their professional associations; (ii) the prerogatives of a trade union nature which they may exercise; and (iii) the protection of their representatives.

The decision also concerns a violation of Article 6§2 ("right to collective bargaining"). National professional associations of military personnel (NPMs) are not equipped to effectively defend the moral and material interests of their members in all respects.

**2. Information provided by the Government**

In a previous report (Findings 2018), the Government indicated the normative provisions that frame the role and missions of the national gendarmerie recalling that it is an armed force and specified the nature of its missions. The Government contested the reasoning adopted by the Committee and had denounced the risk of confusion and illegibility that would result from a variable-geometry application of Articles 5 and 6 depending on the missions performed. It pointed out that the rights recognised for all French military personnel (including military personnel of the national gendarmerie) had undergone profound changes in recent years, in particular as regards the right to organise, following the decisions of the European Court of Human Rights (judgments of 2 October 2014, *Matelly v. France* and *ADEFROMIL v. France*). The Government indicated that Law No. 2015-917 of 28 July 2015 had granted the right to military personnel to set up and join national professional associations of military personnel (APNM), which, under certain conditions of representativeness, are entitled to participate in military consultative bodies (Articles 5 to 8 of the Law).

In its present report, the Government recalls the constituent elements of the Law of 28 July 2015, which establishes a legal regime specific to national professional associations of military personnel (cf. Articles L.4126-1 et seq. of the Defence Code), set out at regulatory level (Articles R4126-1 et seq. of the Defence Code, and the Instruction of 24 July 2019 relating to the resources granted to national professional associations of military personnel).

*On the measures put in place to meet the provisions of Article 5 of the Charter*

- *Freedom to form associations and to pursue trade union prerogatives*

The report recalls that the decree of 21 October 2016 distinguishes three categories of national military professional associations (APNM): 1) declared APNMs; 2) declared APNMs, recognised as representative in respect of one or more Armed

Forces and attached formations (FAFR); 3) declared APNMs, recognised as representative in respect of one or more FAFR, which sit on the *Conseil supérieur de la fonction militaire* (CSFM).

The report states that the APNMs exercise their right of professional association in accordance with the provisions of Articles R4126-10 and R4126-15 of the Defence Code. These provisions allow members of these associations to benefit from a credit for associative time (managed by the Directorate of Human Resources of the Ministry of the Armed Forces (DRH-MD)) to devote themselves to associative activity. They can also collect membership forms and subscriptions within the military fora.

In addition, the members of the representative APNMs sitting on the CSFM may speak on behalf of the APNM to which they belong. The communiqués and reports of the CSFM and the Conseil de la fonction militaire gendarmerie (CFMG) are accessible to the APNMs.

- *The need to see its members protected*

In order to respect the principle of non-discrimination between members and non-members of the APNM, military personnel receiving communications from the APNM may not be questioned about their situation with regard to the APNM, let alone be the subject of files.

*On the measures put in place to meet the provisions of Article 6§2 of the Charter*

- *Subsidies allocated to APNMs*

The report states that representative NMAs may benefit from subsidies distributed in proportion to the number of members, in the case of all representative NMAs, and/or in proportion to the number of seats on the CSFM in the case of NMAs sitting on that body. Each association applies for a subsidy from the DRH-MD of the Ministry of the Armed Forces.

- *Provision of premises*

As soon as an APNM is recognised as representative under one or more Armed Forces and attached formations (FAFR), each of these FAFRs must provide the association, free of charge, with permanent premises, including the equipment necessary for the pursuit of the association's activities.

They can organise meetings outside service hours. They may also request services such as the loan of equipment and the provision of premises, which are made available free of charge.

- *The means of communication dedicated to APNMs*

The APNMs may create their own communication media and, as part of their internal communication, they may use the administration's digital means of communication (in accordance with the provisions of Article R4126-11 of the Defence Code).

In addition, they benefit from a dedicated space on APG Connect, managed by the HRD-MD.

At the local level, the documents emanating from the APNM are displayed on boards arranged in such a way as to ensure the conservation of these documents. These panels must be placed in premises (corridors in particular) which are easily accessible to staff, except in premises which are specially assigned to receiving the public. The posted documents are handed over simultaneously to the administrative training commander or head of organisation. They must bear the name of the issuing association and the date.

### 3. Assessment of the follow-up

The Committee takes note of the information provided by the authorities.

*On the measures put in place to meet the provisions of Article 5 of the Charter*

- *Freedom to form associations and to pursue trade union prerogatives*

The Committee notes that Law No. 2015-917 of 28 July 2015 granted the right to military personnel to create and join national professional associations of military personnel (APNM). The right to form an APNM is governed by articles R4126-1 to R4126-17 of the Defence Code (legal capacity; representativeness; exercise of the right of professional association). The Decree of 21 October 2016 distinguishes three categories of APNMs:

1. the declared NMAs ;
2. declared, recognised as representative for one or more Armed Forces and related formations (FAFR) ;
3. the declared APNMs, recognised as representative under one or more of the FAFR, which sit on the *Conseil supérieur de la fonction militaire* (CSFM).

The Decree of December 11, 2019 (n° ARMH1936184A) shows that six APNMs have been recognised as representative under one or more FAFRs.

The relevant provisions of the Defence Code emphasise that the purpose of the APNM is to preserve and promote the interests of the military with regard to the military condition (Article L. 4126-2). As defined in Article L. 4111-1 of the Defence Code, *'Military status covers all the obligations and constraints specific to the military state, as well as the guarantees and compensation provided by the Nation to military personnel. It includes statutory, economic, social and cultural aspects likely to have an influence on the attractiveness of the profession and career paths, the morale and living conditions of military personnel and their dependents, the professional situation and environment of military personnel, support for the sick, wounded and families, as well as conditions of departure from the armed forces and employment after the exercise of the military profession'*.

The Committee notes that the APNM have in practice the possibility of appealing and intervening before the competent courts against any regulatory act relating to military status and against individual decisions affecting the collective interests of the profession (Article L. 4126-3). In this sense, the national professional associations of military personnel (APNM) now have a framework and resources dedicated to the exercise of their activities, which guarantee that the freedom of professional association of military personnel is taken into account.

The Committee notes that the CSFM is the institutional framework within which the military can express their opinions on matters of a general nature to the Minister of the Armed Forces and within which the constituent elements of the status of the military as a whole are examined. The CSFM must be consulted on draft texts of statutory, index or indemnity scope. According to the CSFM website, the entire military community is represented (all military ranks, each of the armies, directorates and services, including military pensioners).

While the Committee notes that 16 seats are reserved for members of the representative APNMs, unions or federations in the CSFM, the conditions for allocating the 16 seats for the representative APNMs make it impossible in practice for them to participate in this body. According to the provisions of Article L 4126-8-II, only APNMs recognised as representative of at least three armed forces and two attached formations may sit on the CSFM.

In the light of the provisions of Article L3211-1 of the Defence Code, which state that "the armed forces include: 1) The army, the national navy and the air force, which constitute the armies within the meaning of this code; 2) The national gendarmerie; 3) Joint support services", this criterion means in practice that only one and only one "*Union of the APNM*" could theoretically come to sit on the CSFM because of the number of existing armed forces.

A reading of the decrees of 12 August 2016 (repealed) and 25 September 2020 shows that in practice, the 16 seats reserved for members of the APNM have to date always remained vacant.

The Committee notes that in response to a written parliamentary question, published in the Journal Officiel on 25 June 2019, the Minister of the Armed Forces announced that a reflection on the conditions of representativeness of the MNPAs would be conducted from 2021. The Committee requests that the authorities inform it of the outcome of the work of reflection to be conducted on the conditions of representativeness of the MNPAs.

The Minister also reiterated that the PALMs must have significant influence to be entitled to sit on the CSFM, i.e. the overall membership must be equal to a minimum percentage of the total membership of the FAFR and the membership in each rank group must be equal to a minimum percentage of the total membership in that rank group. The Committee notes that, as a transitional measure until 1 January 2021, this minimum percentage has been set at 1% but that it should reach the 5% threshold from that date.

While the Committee considers that the double percentage of 1% required is reasonable and proportionate, it nevertheless notes that, due to the specificities of certain groups of ranks, whose numbers are sometimes very volatile (e.g. the volunteer Assistant Gendarmes), it may be difficult to achieve if the APNMs do not have suitable means of communication, and in particular the administration's digital means of communication (e.g. access to the Ministry's intranet pages; authorisation to use the mailing technique; installation of signs easily accessible to staff).

In the light of these various elements, the Committee considers that the APNM, while enjoying the freedom to form associations, are not in practice able to sit on the CSFM, the representative body at the heart of military consultation, and therefore unable to ensure the preservation and promotion of the interests of the military with regard to the military condition.

It emerges from the information available to the Committee that the Government, contrary to the provisions of Article 12 of the Law of 28 July 2015, has not submitted to Parliament within 18 months of its promulgation a report on the implementation of all the provisions relating to consultation and social dialogue among the military.

In the light of these elements, the Committee considers that the situation has not been brought into conformity on this point and that the rights guaranteed by the Charter are not guaranteed in a concrete and effective manner.

*On the need for protection of MNPA members*

The authorities state that in order to respect the principle of non-discrimination between members of the MNPAs and non-members, military personnel who receive communications from the MNPAs cannot be questioned about their situation with regard to the MNPAs, *let alone be the* subject of files.

The Committee notes that Article R 4126-8 of the Defence Code stipulates that each time the CSFM is renewed, the Minister of Defence shall draw up a list of representative national military professional associations and shall also determine which ones may sit on it. The article stipulates that the number of members declared

by the associations is first verified by a commission provided for in Article R. 4124-22 and that the personal information relating to the members of these associations is sent to the chairman of the commission for the sole purpose of verifying that they meet the conditions set out in 4° of I and II of Article L. 4126-8.

The regulatory provision specifies that the processing of the information contained in the membership lists and the storage of this information are carried out in compliance with the security and confidentiality obligations laid down by Law No. 78-17 of 6 January 1978 relating to information technology, files and freedoms.

Article R4124-22, amended by a Decree of 27 February 2020, stipulates that the members of the Commission are appointed by order of the Minister of Defence. The Commission is composed of a State Councillor, chairman, two members of the military corps of the general control of the armed forces, including the Secretary General of the Conseil supérieur de la fonction militaire, as well as an officer, a non-commissioned officer or naval officer and a non-commissioned member, chosen from among the members of the Conseil supérieur de la fonction militaire. The article further specifies that the members of the commission and its secretariat are bound by a strict obligation of confidentiality and professional discretion with regard to all information of which they have knowledge.

The Committee also notes that the decision of the Council of State of 9 February 2018 (No. 406742) annulled certain provisions of the Order of 21 October 2016 which obliged the APNMs requesting recognition of their representativeness to transmit to a body directly under the authority of the Ministry a list of their members, detailing their rank, surname, first names, armed force or formation attached and the defence identification number (NID) of each member.

The Committee requests that the authorities inform it how the control of membership lists declared by the APNMs is now carried out and to what extent this data is kept or, where appropriate, returned to the APNMs.

Consequently, the Committee considers that the situation has not been brought into conformity on this point and that the rights guaranteed by the Charter are not guaranteed in a concrete and effective manner.

- *On the participation of retired members in APNMs*

The Committee notes that in its current composition, the CSFM includes three representatives of military pensioners. Consequently, the Committee considers that the situation complies with Article 5 of the Charter on this point.

*On the measures put in place to meet the provisions of Article 6§2 of the Charter*

- *Subsidies allocated to APNMs*

In its communication, the Government specifies that the representative APNMs may benefit from subsidies distributed in proportion to the number of members, in the case of all the representative APNMs, and/or in proportion to the number of seats on the CSFM in the case of the APNMs sitting on that body. Each association applies for a subsidy from the DRH-MD of the Ministry of the Armed Forces.

The Government refers here to the provisions of Article R4126-14 of the Defence Code and Article 5 of the Order of 21 October 2016.

The Committee notes that the Minister of Defence allocates subsidies within the limits of the appropriations made available for that purpose in the budget programmes for the "defence" mission.

The Committee notes, however, that the viability of some MNCs representing services that are by nature small in size may depend on the allocation of such subsidies.

Consequently, the Committee requests that the Government specifies the calculation methods used to allocate subsidies to the six APNMs recognised as representative by the decree of 11 December 2019 and the amounts actually paid. The Government should also specify whether the credits opened in the budget programmes of the "defence" mission are intended to be continued.

It follows from the above analysis that, under the current provisions, only a "Union of MMFNs" could theoretically come to sit on the CSFM because of the number of existing armed forces. Therefore, in the event that such a "Union of the MNCs" were to become a member of the CSFM, the Committee requests that the Government indicates how the amount of the grant funds would then be distributed.

Pending receipt of the requested information, the Committee considers that the situation has not been brought into conformity on this point.

- *Provision of premises*

The Government indicates that when an APNM is recognised as representative under one or more Armed Forces and Attached Formations (FAFR), each of these FAFRs must provide the association, free of charge, with permanent premises, including the equipment necessary for the pursuit of the association's activities. They may organise meetings outside service hours. They may also request services such as the loan of equipment and the provision of premises, made available free of charge.

- *The means of communication dedicated to APNMs*

It emerges from the report provided by the Government that the APNMs can create their own communication media and, as part of their internal communication, they can make use of the administration's digital means of communication. The Government also points out that they benefit from a dedicated space on APNM Connect, a space managed by the HRD-MD.

The Committee notes that Article R4126-11 specifies that the dissemination of MNA communications must be compatible with the requirements of the proper functioning of the computer network, must not hinder the performance of the activity and must preserve the freedom of choice of military personnel to accept or refuse a message. The modalities of such dissemination shall, in such cases, be specified by the military authority.

The Committee considers that the APNM, in order to effectively defend the moral and material interests of its members in all respects, must have adequate means of communication, and in particular the administration's digital means of communication, including access to the Ministry's intranet pages and the possibility of using the "mailing" technique. The Committee requests that the Government clarifies whether such possibilities are enjoyed in practice by the APNMs.

Therefore, the Committee considers that the situation has not been brought into conformity on this point.

**1<sup>st</sup> Assessment of the follow-up: European Committee for Home-Based  
Priority Action for the Child and the Family (EUROCEF) v. France, Complaint  
No.114/2015, decision on the merits of 24 January 2018, Resolution  
CM/ResChS(2018)8**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found violations of the following provisions of the Charter:

- Article 17§1 of the Charter due to the shortcomings noted in the national shelter, assessment and guidance system for unaccompanied foreign minors; delays in the appointment of an ad hoc administrator for unaccompanied foreign minors; the detention of unaccompanied foreign minors in waiting areas and hotels; the use of bone testing to determine the age of unaccompanied foreign minors considered inappropriate and ineffective; legal insecurity surrounding access to an effective remedy for unaccompanied foreign minors;
- Article 17§2 of the Charter due to the lack of access to education for unaccompanied foreign minors aged between 16 and 18;
- article 7§10 of the Charter because of inappropriate accommodation of minors or their exposure to life on the street;
- Article 11§1 of the Charter due to the lack of access to health care for unaccompanied foreign minors;
- Article 13§1 of the Charter due to the lack of access to social and medical assistance for unaccompanied foreign minors;
- Article 31§2 of the Charter due to the failure to provide shelter for unaccompanied foreign minors

**2. Information provided by the Government**

*On the violation of Article 17§1 of the Charter*

- *on the shortcomings identified in the national system for the sheltering, assessment and guidance of unaccompanied foreign minors*

The report mentions the entry into force of Decree No. 2019-57 of 30 January 2019 on the procedures for assessing persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family and authorising the creation of personal data processing relating to these persons. It recalls that this decree sets out the modalities for the application of Article L. 611-6-1 of the Code on the Entry and Residence of Foreigners and the Right of Asylum, introduced by the Law of 10 September 2018 for controlled immigration, an effective right of asylum and successful integration, which has been recognised as being in conformity with the Constitution by the Constitutional Council (decision no. 2019-797 QPC of 26 July 2019).

It emerges from the report that this provision, with the aim of better guaranteeing child protection and combating the illegal entry and residence of foreigners in France, allows fingerprints and a photograph of foreign nationals declaring themselves to be minors temporarily or permanently deprived of the protection of their family to be taken, stored and processed automatically under the conditions laid down by Law No. 78-17 of 6 January 1978 relating to information technology, files and freedoms.

The implementing decree now allows the departmental councils responsible for assessing the state of isolation and minority status of persons declaring themselves to be minors and applying for child welfare (ASE) to ask the State services (departmental prefect and, in Paris, the police prefect) to verify information in order to facilitate the assessment.

In particular, the new file enables the departmental councils to find out whether the person declaring himself a minor has already been assessed by another department. This tool therefore makes it possible to avoid reassessments that are detrimental to the care system. By making the assessment of the minority more reliable and easier, this system makes it possible to better guarantee child protection, by reducing the burden and congestion of the ASE, in order to refocus it on the people who are actually eligible.

The conditions of access to the file and data storage are governed by the General Data Protection Regulations (RGPD). In addition, the file has been submitted for a reasoned opinion to the *Commission Nationale de l'Informatique et des Libertés* (CNIL). This authority considered that the methods of access and transmission of data relating to the processing of persons covered by the decree were legitimate and adequate and that the decree met the obligations set out in the RGPD.

The report states that an inter-ministerial guide to good practice in assessing the situation of minors temporarily or permanently deprived of the protection of their families is currently being drawn up. This guide is intended for professionals who may need to be familiar with the situation of persons presenting themselves as UFM (such as the assessment services of the ESA and the Judicial Youth Protection Service, magistrates, health professionals, public officials, social workers, etc.).

The report states that in order to harmonise practices for the assessment of minority and isolation, training (one to two sessions per year) for professionals responsible for assessing the situation of UFM has been conducted since 2016 by the national training centre for the territorial civil service (CNFPT) and the national school for the judicial protection of youth (ENPJJ). This training is based on conferences, round tables, testimonies from professionals (in particular agents of departmental councils, magistrates, border police officers, members of associations, etc.), exchanges, case studies and theoretical teaching.

In addition, the report presents the functioning of the Ministry of Justice's Mission for Unaccompanied Minors (MMNA), as well as data on the operation and objectives of its national guidance and support unit for judicial decision-making, which provides the judicial authorities - public prosecutor, children's judge, judge at the court of appeal - with a proposal for the guidance of a young person recognised as an MMNA.

The report highlights the publication of the national strategy for prevention and child protection 2020-2022. With regard to UFM, this strategy proposes to better anticipate the examination of the conditions for residence permits (which young foreigners must hold on reaching the age of majority) from the age of 17 in order to secure integration pathways, to include support for young people over the age of majority in the distribution key for young people entrusted to child welfare, to guarantee the continuity of the pathway and access to care for young people who have reached the age of majority, and to support experiments to facilitate their social and professional integration.

- *on delays in the appointment of an ad hoc administrator for unaccompanied foreign minors*

The report specifies the procedures for appointing and compensating *ad hoc* administrators, in the *light of the provisions of the Act of 4 March 2002 on parental authority*, 388-2 of the Civil Code and L 221-5 of the Code on the Entry and Residence of Foreigners and the Right of Asylum (CESEDA). The report states that in two rulings dated 22 May 2007 and 6 May 2009, the Court of Cassation established the principle of the nullity of maintaining a person in a waiting zone if the *ad hoc* administrator was not appointed immediately. In a decision of 25 December 2012, the Paris Court of Appeal recalled that the function of the *ad hoc*

administrator is not limited to representing the minor in administrative and jurisdictional bodies but also includes assisting the minor during his or her stay in the waiting zone.

The report also recalls the ordinary law provisions provided for by the Civil Code and which may apply to UFM's with regard to the appointment of a legal representative: guardianship (Articles 390 et seq. of the Civil Code); delegation of parental authority (Article 377(2) of the Civil Code); partial delegation of parental authority (Article 375-7 of the Civil Code). It provides details on their application. The report also specifies the conditions for performing an act falling under the exercise of parental authority in the event of criminal placement.

- *on the use of bone tests to determine the age of unaccompanied foreign minors considered inappropriate and ineffective*

The report recalls the provisions of Article 388 of the Civil Code and the guarantees it provides (recourse to tests only in the absence of valid identity documents and when the alleged age is not likely; only to be carried out by decision of the judicial authority and after obtaining the agreement of the person concerned; conclusions which must specify the margin of error and which alone cannot make it possible to determine whether the person concerned is a minor). The report states that this article also provides that doubt is to the benefit of the person concerned and prohibits the use of an examination of the pubertal development of primary and secondary sexual characteristics.

The report highlights that since the ECSR decision, the guarantees surrounding the use of these examinations have been further strengthened by the Constitutional Council in its decision n°2018-768 of 21 March 2019 (<https://www.conseil-constitutionnel.fr/decision/2019/2018768QPC.htm>). In this decision, the Constitutional Council recalled the guarantees to be provided in the context of recourse to these examinations and enshrined for the first time a constitutional value to the principle of the requirement to protect the best interests of the child.

- *on the legal insecurity surrounding access to an effective remedy for unaccompanied foreign minors*

The report indicates that the Interministerial Circular of 25 January 2016 on the mobilisation of State services at the departmental councils concerning minors temporarily or permanently deprived of the protection of their family and persons presenting themselves as such provides that the young person is given a document attesting to the assessment in the event of proven majority. In practice, this consists of a notification of the decision, stating the reasons for the decision and mentioning the deadlines and procedures for appeal (Article R 223-2 of the Social Action and Family Code). The individual can thus access all the rights granted to him or her. In addition, consultation of the assessment by the person concerned is possible, as provided for in Article 4 of the Law of 17 July 1978 on improving relations between the administration and the public.

The Order of 17 November 2016 (No. JUSF1628271A), issued in application of the Decree of 24 June 2016 relating to the procedures for assessing minors temporarily or permanently deprived of the protection of their family, confirmed this in its Article 9: "*When the person is not recognised as a minor temporarily or permanently deprived of the protection of his/her family, the President of the Departmental Council shall notify the person concerned of a reasoned decision to refuse care, mentioning the applicable appeal procedures and deadlines. He or she is then informed of the rights recognised for adults, particularly with regard to emergency accommodation, medical assistance, asylum applications and residence permits.*"

*On the violation of Article 17§2 of the Charter due to the lack of access to education for unaccompanied foreign minors aged between 16 and 18.*

The report recalls the compulsory nature of education from the age of three to 16 for each child and the right to continue studying beyond the age of 16 provided for in Article L. 122-2 of the Education Code. It specifies that from September 2020, education will become compulsory for all young people until the age of majority (Law No. 2019-791 of 26 July 2019 for a school of confidence, article 15).

The report emphasises that any young person arriving regularly from abroad (regardless of their status, including unaccompanied minors) who has not been educated in an approved French establishment is admitted, in conjunction with the services of the Departmental Councils, for a diagnostic assessment by the CIOs or CASNAVs (depending on the academy) to define their previous level of education and their level of mastery of the French language. On the basis of the results of this assessment, the DSDEN services proceed to assign the pupil to an establishment. If the pupil is allophone, French as a second language (FSL) tutoring as part of a teaching unit for incoming allophone pupils (UPE2A) may be offered in addition to enrolment in a regular class.

Some pupils may have a difficult relationship with the written word or even be illiterate. For these very specific profiles in a situation of great fragility with regard to access to academic knowledge, UPE2A schemes intended for pupils who have not previously attended school (NSA) can be created (Circular No. 2012-141 of 2-10-2012, Organisation of the schooling of newly arrived allophone pupils).

The academic and departmental services more particularly mobilised for these groups are :

- social and medical services for pupils
- CASNAVs (academic centres for the education of allophone pupils and children from itinerant and travelling families)

Unaccompanied minors aged between 16 and 18, whether French-speaking or not, must, before they leave the ASE protection system, have access to qualifying training to become socially autonomous. Collaboration with the MLDS (*missions de lutte contre le décrochage scolaire*), attached to the National Education guidance services, can help to support them towards qualifying training, sometimes in apprenticeships, and thus prevent these young people from becoming economically and socially precarious.

*On the violation of Article 11§1 of the Charter due to the lack of access to health care for unaccompanied foreign minors*

The report states that the High Council of Public Health has been asked to produce national recommendations on health check-ups for unaccompanied minors (UFMs). It states that these recommendations will be available very soon. It would logically be up to the Departments in charge of child welfare (ASE), but also of the assessment and sheltering of young people presumed to be minors, to implement this specific assessment. The same would apply to access to social and medical assistance and the opening up of social rights for these young people.

*On the violation of Article 13§1 of the Charter due to the lack of access to social and medical assistance for unaccompanied foreign minors*

- *At the time of the evaluation*

The report recalls that the State makes a financial contribution to the départements which includes the carrying out of an initial assessment of health needs from the shelter and minority and isolation assessment phase. This contribution concerns young people assessed since 1 January 2019 (Decree no. 2019-670 of 27 June 2019 relating to the State's flat-rate contribution to the sheltering and assessment phase for persons declaring themselves to be

minors and temporarily or permanently deprived of the protection of their family and to the committee provided for in Article R. 221-15 of the Social Action and Family Code).

The report also states that, in addition to the national recommendations relating to the health check-up, a national reference framework currently being developed will make it possible to harmonise practices in terms of health care for young people during the assessment and isolation phase (content of the assessment of initial health needs, methods of referral to ordinary health structures, liaison tools, etc.).

- *At the end of the assessment for UFM in care of child welfare services*

The report states that unaccompanied minors fall under the general law of child protection. As such, as soon as they are admitted to ESA, they benefit from full health coverage (universal health protection and complementary health care). Their care needs are integrated into the Child Project (PPE), a document which structures their support. In addition, the national prevention and child protection strategy announced in October 2019 aims to systematically provide a comprehensive health check-up for children and adolescents when they enter child protection systems. This check-up should make it possible to initiate regular and coordinated medical monitoring, and will be covered by health insurance from 2020.

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

*On the violation of Article 17§1 of the Charter*

- *on the shortcomings identified in the national system for the sheltering, assessment and guidance of unaccompanied foreign minors*

The Committee takes note of the information according to which the Government created, by an implementing decree of 30 January 2019 of Article L 611-6-1 of the CESEDA, a file containing several data (fingerprints; photograph) of foreign nationals declaring themselves to be minors. It emerges from the information provided that the departmental councils responsible for assessing the state of isolation and minority status of persons declaring themselves to be minors and applying for child welfare (ASE) can now ask the State services (departmental prefect and, in Paris, the police prefect) to verify information in order to facilitate the assessment.

While the Committee understands that this new file makes it possible to avoid re-evaluations that are detrimental to the care system and makes it possible to provide greater clarity at national level, it asks the authorities to specify the methods by which the data of young people who have reached the age of majority who have been evaluated are entered in the file of foreign nationals (AGDREF) and to what extent the latter can be examined before their situation is referred to the judge. The Committee asks for details of the arrangements for consulting the file at the same time as the "Visabio" file.

The Committee also wishes to obtain data disaggregated by department on the refusal rates of applications from persons claiming to be minors applying for child welfare.

Finally, the Committee notes a growing increase in the number of temporary placement orders issued without prior request from the national unit attached to the Directorate of Judicial Youth Protection, which is responsible for keeping data on placements in each department up to date.

The Committee takes note of the Government's willingness to draw up an inter-ministerial guide to good practice in assessing the situation of minors temporarily or permanently deprived of the protection of their families and asks the Government to inform it of the action taken, including the way in which this guide will continue to be fed. The Committee also asks the Government to specify whether this guide will be used as part of the training courses held

for professionals responsible for assessing the situation of UFM by the CNFPT and the ENPJJ.

It emerges from the report that the national strategy for prevention and child protection 2020-2022 proposes to better anticipate the examination of the conditions of the residence permit that young foreigners must hold on reaching the age of majority from the age of 17. The Committee requests statistical information on this issue, in particular on the results achieved.

Meanwhile, the Committee considers that the situation has not been brought into conformity on this point.

- *on delays in the appointment of an ad hoc administrator for unaccompanied foreign minors*

In its report, the Government recalled the provisions in force concerning the implementation of the right to a legal representative, and in particular ad hoc directors. The report also recalls the common law provisions provided for by the Civil Code and which may apply to UFM with regard to the appointment of a legal representative: guardianship (Articles 390 et seq. of the Civil Code); delegation of parental authority (Article 377(2) of the Civil Code); partial delegation of parental authority (Article 375-7 of the Civil Code). It provides details on their application. Finally, the report specifies the conditions for carrying out an act relating to the exercise of parental authority in the event of criminal placement.

The Committee recalls that the relevant provisions of the CESEDA do not distinguish between minors and adults with regard to their being kept in the waiting zone, except for the immediate appointment of an ad hoc administrator by the Public Prosecutor. For the Committee, the proper implementation of Article L221-5 of the CESEDA is of paramount importance in these circumstances. The Committee notes that the Government has not reported any change in the conditions under which UFM are handled in the holding area, in particular at Roissy-Charles de Gaulle and Orly airports, where the Committee had highlighted several shortcomings.

The Committee considers that the situation has not been brought into conformity on this point.

- *on the detention of unaccompanied foreign minors in waiting areas and hotels*

The Committee notes that the Government has not provided any information on this issue, in particular concerning the care arrangements at Roissy-Charles de Gaulle and Orly airports, which do not allow sufficient consideration to be given to the specific needs of these minors.

The Committee points out that the accommodation of minors living together with adults and the accommodation of minors in hotels are contrary to the Charter.

Therefore, the Committee considers that the situation has not been brought into conformity on this point.

- *on the use of bone tests to determine the age of unaccompanied foreign minors considered inappropriate and ineffective*

The Committee takes note of the information provided and the strengthening of the guarantees surrounding the use of bone age tests by the decision of the Constitutional Council of 21 March 2019.

However, the Committee reiterates its position that such age assessments, based on bone examination, can have serious consequences for the juvenile and are inappropriate and ineffective. Consequently, the Committee considers that the situation has not been brought into conformity on this point.

- *on the legal insecurity surrounding access to an effective remedy for unaccompanied foreign minors*

The Committee notes that the inter-ministerial circular of 25 January 2016 (confirmed by the order of 17 November 2016) provides for the submission of a document attesting to the assessment that established the proven majority of a person who has presented himself as a minor temporarily or permanently deprived of the protection of his family. According to the report provided by the Government, the document consists of a notification of the decision, stating the reasons for the decision and mentioning the deadlines and procedures for appeal (Article R 223-2 of the Social Action and Family Code). The Committee also notes that consultation of the assessment by the person concerned is possible in accordance with the provisions of Article 4 of the Law of 17 July 1978. Consequently, the Committee considers that the situation has been brought into conformity on this specific point.

The Committee notes however that the report, which sets out the existing general law provisions on the right to a legal representative, does not contain any information in response to the Committee's conclusions on delays in appointing a legal representative to represent a juvenile in court proceedings. Consequently, the Committee considers that the situation has not been brought into conformity on this point.

*On the violation of Article 17§2 of the Charter due to the lack of access to education for unaccompanied foreign minors aged between 16 and 18.*

The Committee notes that since the start of the school year in September 2020, training is now compulsory for all young people up to the age of majority, in accordance with the provisions of Article L114-1 of the Education Code, created by Law No. 2019-791 of 26 July 2019.

The Committee notes the specific arrangements made for young people arriving from abroad, including UFM, who have not been educated in an approved French establishment (reception for a diagnostic assessment by the CIOs or CASNAVs to define their previous level of education and their level of mastery of the French language; assignment of the pupil to an establishment; specific programmes for allophone persons).

The Committee also notes the measures planned with the missions to combat early school leaving (MLDS), attached to the National Education guidance services, to enable UFM to be supported in obtaining qualifications, sometimes in apprenticeships.

In the light of the information provided, the Committee considers that the situation has now been brought into conformity on this point.

*On the violation of Article 7§10 of the Charter due to the inappropriate accommodation of minors or their exposure to life on the street*

The Committee notes that the Government has not provided any information in response to the shortcomings observed in the care of unaccompanied minors at Roissy-Charles de Gaulle and Orly airports.

The Committee points out that the accommodation of minors living together with adults and the accommodation of minors in hotels are contrary to the European Social Charter.

Furthermore, the Committee notes that the report does not contain any response to the Committee's findings that, due to overcrowded reception centres and the lack of shelters, a number of minors live on the streets where their physical and moral integrity is threatened.

Consequently, the Committee considers that the situation has not been brought into conformity on this point.

*On the violation of Articles 11§1 and 13§1 of the Charter due to the lack of access to health care for unaccompanied foreign minors and the lack of access to social and medical assistance for unaccompanied foreign minors.*

The report shows that the High Council for Public Health has been asked to produce national recommendations on the health check to be carried out on unaccompanied minors (UFMs). According to the report, these recommendations will be available very soon. In addition, since 1 January 2019, at the time of the minority assessment, the State has been making a financial contribution to the departments which includes the carrying out of an initial assessment of health needs from the sheltering and assessment phase of the minority and isolation.

The Committee notes that persons recognised as unaccompanied minors are subject to ordinary child protection law and, as such, are entitled to full health coverage (universal health protection and complementary health care) from the moment they are admitted to ESA. Their care needs are integrated into the Child Project (PPE), a document that structures their support.

The Committee also notes that the national strategy for prevention and child protection aims to make systematic a comprehensive health check-up for children and adolescents on entry into child protection systems and to make it possible to initiate regular and coordinated medical monitoring, which will be covered by health insurance as of 2020.

The Committee requests that the Government informs it of the recommendations proposed by the High Council of Public Health and of the manner in which the Government intends to implement them, providing, where appropriate, statistical data, disaggregated by department. Information is also expected on the modalities of access to social and medical assistance, as well as on the opening of social rights for these young people.

The Committee also requests information on the access to health services of persons who have not been recognised as UFMs and who have initiated legal proceedings to challenge this assessment. In particular, the Committee requests specific information on the situation of persons declared to be of full age who do not meet the three-month residence requirement in the territory.

Meanwhile, the Committee considers that the situation has not been brought into conformity on this point.

*On the violation of Article 31§2 of the Charter due to the failure to provide shelter for unaccompanied foreign minors*

The Committee notes that the report contains no information in response to the violation found of Article 31§2.

The Committee recalls that Article 31§2 requires that homeless people be offered shelter as an emergency solution. Moreover, in order to respect the dignity of the persons accommodated, shelters must meet adequate health, safety and hygiene standards.

Aware that the arrivals of unaccompanied foreign children in France are steadily increasing and that the reception capacities of the current child protection system are saturated, the Committee recalls that where the realisation of any of the rights recognised by the Charter is exceptionally complex and particularly costly, the State party must endeavour to achieve the objectives of the Charter within a reasonable time frame, at the cost of measurable progress, by making the best use of the resources it can mobilise (*Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

Accordingly, the Committee requests that the Government specify in its next report how it intends to guarantee the right to shelter for unaccompanied minors, and in particular by what means and in what time frame it intends to prevent and reduce the condition of homeless foreign minors with a view to its elimination.

Meanwhile, the Committee considers that the situation has not been brought into conformity on this point.

**1<sup>st</sup> Assessment of the follow-up: Confédération Générale du Travail Force Ouvrière (FO) v. France, Complaint No. 118/2015, decision on the merits of 3 July 2018, Resolution CM/ResChS(2019)4**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found a violation of Article 6§2 in that the general prohibition of clauses designating supplementary pension schemes in collective agreements and their replacement by recommendation clauses is not proportionate to the legitimate aim pursued, namely the protection of the contractual freedom of undertakings. Such a restriction cannot therefore be considered necessary in a democratic society within the meaning of Article G of the Charter.

**2. Information provided by the Government**

The report points out that the introduction of a recommendation clause (Article L. 912-1 of the Social Security Code) enables the social partners to recommend one or more insurance bodies. The recommended bodies may not refuse membership to a company falling within the scope of the agreement and are required to apply a single tariff and to offer identical guarantees for all companies and for all employees concerned.

For the authorities, the recommendation allows all enterprises and all employees in a sector to have access to a single tariff and a high level of protection regardless of their characteristics (age, sex, geographical location, etc.).

The recommendation also allows companies with a higher level of risk (high proportion of older employees, women or disabled workers, location in vulnerable geographical areas, sector of activity more exposed to unemployment) to benefit:

- coverage estimated on the basis of an average risk, whereas in the absence of such a system, they would incur a very significant additional cost, even prohibitive for some of them;
- non-contributory benefits (benefits with a high degree of solidarity within the meaning of Articles R. 912-1 et seq. of the Social Security Code).

The authorities also rely on an opinion dated 23 March 2013 from the competition authority (Opinion No. 13-A-11 of 29 March 2013 on the effects on competition of the generalisation of supplementary collective employee pension cover) to point out that the recommendation is advantageous for all companies in a sector, a reduction in the costs associated with finding an insurance body and negotiating contracts, since a "standard" contract negotiated by the social partners in a branch is offered on a "turnkey" basis and following in-depth expertise to all companies, without being imposed.

The authorities consider this point to be of particular importance for small enterprises (VSEs), which would not necessarily be able to implement such a scheme on their own, or with high management costs.

It should also be noted that Article L. 912-1 of the Social Security Code, as amended by the Social Security Financing Act for 2014, merely opens up and regulates the possibility for the social partners to recommend one or more insurers. When the social partners mobilise the recommendation tool, it is because they consider it to be a useful lever for building complementary social protection for employees in the sector. Although the recommendation only has an "indicative scope" since companies are free to take out a contract with the

operator of their choice, it is likely to attract a significant proportion of companies in the sector.

As proof, since 1 January 2014, the date of entry into force of the provisions of Article L. 912-1 of the Social Security Code resulting from the Social Security Financing Act for 2014, approximately 70 recommendation clauses relating to supplementary social protection schemes for health and provident schemes have been examined by the *Commission des accords de retraite et de prévoyance* (Comarep) provided for in Article L. 911-3 of the same Code (creation of new collective schemes or recommendation of an insurer for the management of existing schemes).

Consequently, the recommendation mechanism has met a twofold objective: to enable collective bargaining to set up risk pooling at branch level in terms of complementary social protection for employees, while preserving the contractual freedom of companies, thus meeting the need for proportionality of the measure.

### **3. Assessment of the follow-up**

The Committee takes note of the information provided in the report.

The Committee notes that the introduction of a recommendation clause (Article L. 912-1 of the Social Security Code) enables the social partners to recommend one or more insurance bodies, the latter not being able to refuse membership to an undertaking falling within the scope of the agreement and being required to apply a single tariff and to offer identical guarantees for all undertakings and for all employees concerned.

The Committee notes that the authorities, on the basis of an opinion of 23 March 2013 from the competition authority (Opinion No. 13-A-11 of 29 March 2013 on the effects on competition of the generalisation of supplementary collective employee pension cover), stressed that recommendation clauses have the advantage, like designation clauses, of reducing for all companies in a branch (particularly very small companies) the costs associated with finding an insurance body and negotiating contracts. The Committee notes that a "standard" contract negotiated by the social partners in a branch is offered on a "turnkey" basis and following an in-depth expert appraisal to all companies, without however being imposed.

The Committee also notes the role played by the *Commission des accords de retraite et de prévoyance* (Comarep) in examining the recommendation clauses relating to supplementary social protection schemes in the areas of health and welfare (see Article L. 911-3 of the Social Security Code).

The Committee recalls that the purpose of Article 6§2 is to promote free and voluntary collective bargaining, in which parties representing free and properly informed organisations participate. As the Committee has recalled, the right to collective bargaining, guaranteed by Article 6§2 of the Charter, is not absolute and may be restricted if the restriction fulfils the conditions set out in Article G of the Charter, namely (i) be prescribed by law, (ii) pursue a legitimate aim and (iii) be necessary in a democratic society.

In its decision, the Committee considered that the general prohibition of clauses designating supplementary provident institutions in collective agreements and their replacement by recommendation clauses was provided for by law (Article L. 912-1 of the Social Security Code) and pursued a legitimate aim, namely the protection of the contractual freedom of undertakings.

On the other hand, the Committee considered that the restriction was not proportionate to the legitimate aim pursued and could not be regarded as necessary in a democratic society

within the meaning of Article G of the European Social Charter since there was no fundamental reason to attach greater importance to freedom of contract to the detriment of the right to collective bargaining.

The Committee notes that Decree No. 2017-162 of 9 February 2017 relating to the mutual financing and management of the benefits referred to in IV of Article L. 912-1 of the Social Security Code was issued in addition to a decree No. 2014-1498 of 11 December 2014 relating to collective guarantees offering the high degree of solidarity referred to in Article L. 912-1 of the Social Security Code.

This decree provides that professional or inter-professional agreements may establish collective guarantees of supplementary social protection with a high degree of solidarity and, as such, including benefits of a non-contributory nature. The social partners may decide that guarantees will be managed on a mutual basis for all companies in the sector. The purpose of this decree is to define the terms and conditions under which this mutualised management is implemented.

An amount equal to or greater than 2% of the premium is thus provided for the financing of social actions with the recommended organisation.

In addition, collective agreements or arrangements must include a clause setting out the conditions and frequency of review of the recommendation (this may not exceed 5 years).

The Committee takes note of the Court of Cassation's decision of 9 October 2019 (Cass. soc., No. 18-13.314). In this decision, the Social Chamber considered that no public policy provision prohibits representative trade union and employers' organisations in the scope of the agreement from providing by collective agreement for a system of mutualisation of the financing and management of certain non-mandatory social security benefits even in the absence of a legal provision to this effect (in the case in point, the decree No. 2017-162 in the Council of State of 9 February 2017 had not yet been issued at the time the agreement was concluded).

The judges of the Court of Cassation complete their argument by specifying that the signing of a branch agreement or a professional agreement by the representative trade union and employer organisations in the field of the agreement commits the signatories of the agreement as well as the members of the cross-industry organisations signing the agreement. In this respect, it applies Article L.2221-1 of the Labour Code, which defines the purpose of collective agreements and agreements and covers social guarantees.

In the light of these elements, the Committee considers that the situation has been brought into conformity with Article 6§2 of the Charter, taking into account the provisions of Article G of the Charter.

The Committee therefore decides to close the follow-up to the decision in this complaint.

**1<sup>st</sup> Assessment of the follow-up: European Roma and Travellers Forum (ERTF) v. France, Complaint No. 119/2015 decision on the merits of 5 December 2017, Resolution CM/ResChS(2018)4**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found violations of the following provisions of the Charter:

- Article 17§2 of the Charter, taken alone and in combination with Article 17§2, due to the lack of guarantees ensuring the application of the right to education in the context of expulsion procedures;
- Article E in combination with Article 10§§3 and 5 of the Charter, due to the failure to comply with the positive obligation of trafficking in a different way to persons in a different situation;
- Article E combined with Article 31 of the Charter;
- Article E combined with Article 30 of the Charter.

**2. Information provided by the Government**

*On the violation of Article E in conjunction with Article 31 of the Charter*

A previous report pointed out that there were five categories of areas intended for the extended stay of mobile homes: "reception" areas; "areas of great passage"; "areas of small passage"; "areas for stopping places" and "areas for large religious or traditional gatherings". The report indicated that the State participates in the financing of departmental schemes for the reception of Travellers (SDAGV), for example by bearing the operating expenses of areas of high traffic. Between 2006 and 2012, 682 places on family rental plots have thus been developed.

The present report recalls the general framework of the policy on Travellers (Law No. 2000-614 of 5 July 2000). It emphasises that the departmental plan is the linchpin of the specific arrangements to be implemented to organise reception and accommodation and that it allows consultation between the various players involved in order to arrive at the most common possible assessment of needs and appropriate solutions. Departmental plans must include: permanent reception areas (75% completed); family rental plots intended for the long-term parking of mobile homes; high-traffic areas, intended for the reception of Travellers travelling collectively on the occasion of traditional or occasional gatherings, as well as the capacity and periods of use of these areas (50% completed).

The reception areas are regularly visited by the State services in order to assess their quality. According to the authorities, these are constantly being improved and the areas often have facilities that go beyond what is required by the regulations (e.g. location accessible to people with disabilities; sanitary blocks; presence of premises on the areas to accommodate social workers). In the event of non-compliance with the regulations, management aid paid by the State is suspended.

According to the report, the problem relates to the phenomenon of sedentarisation in the areas. The Law No. 2017-86 on Equality and Citizenship of 27 January 2017 requires that adapted housing, i.e. family rental land, be taken into account in future plans. They indicate that several decrees are currently being studied by the Council of State on permanent reception areas and family rental land. A Decree on high-traffic areas was published on 5 March 2019.

In order to respond to the problem of access to housing, the report reveals the introduction of the system of rented family land (TFL), which responds to a demand

from Travellers who wish to have a territorial anchorage through the enjoyment of a stable, equipped and private place without having to give up travelling for part of the year. These plots benefit from a sanitary block (WC, shower, washbasin), or even a room on the plot (which can be used as a kitchen or laundry area). But this is not accommodation. The residence remains the caravan. The TFL is the property of the commune or the inter-communal association. The occupants have a lease and pay rent. Travellers can also own land, in which case it is privately owned.

State subsidies are granted for this type of equipment. Social landlords can create and manage TFLs, which can help intercommunal bodies to build them. The local authorities are thus able to count these plots of land under the law on solidarity and urban renewal (one plot of land is equivalent to one social housing unit), and the social landlords can create, develop and manage these plots of land.

Having a plot of land can allow Travellers to continue to travel, especially in the summer, without fear of not having a place on the areas or not being able to stay there (reception areas are generally intended for a stay of around 3 months).

Some Travellers wish to integrate accommodation. They can be integrated into mainstream social housing or they can integrate a detached house type accommodation allowing them to have a space to park their caravan. The latter type of housing is publicly funded. Families are supported during the project in order to take their needs into account and then after they have entered the premises in order to help them with their procedures. A household can also appeal to be recognised as a priority household to be rehoused. Its social and economic situation (income, family composition, residence) will be examined.

*On the violation of Article 17§2 and Article E in conjunction with Articles 10§3, 10§5, 17§2 and 30 of the Charter*

The report indicates that the State's action in terms of evacuating illegal camps is part of the 25 January 2018 Circular aimed at giving a new impetus to the reduction of shanty towns by advocating a comprehensive approach in the fight against extreme precariousness.

This instruction aims to go beyond the approach centred on evacuations and to place public intervention in a broader dimension, from the setting up of the camp to its disappearance, through the prevention of installations, and combining at the same time integration programmes in France, respect for the laws of the Republic and the right of residence, resettlement actions in the country of origin and transnational cooperation. The approach is global since it covers all issues: access to rights, schooling, access to employment, housing and care.

In 2019, in the 42 departments concerned, these actions, mostly implemented by associations in partnership with local authorities, will have resulted in the schooling of 1,584 children and health support for 3,678 people. In terms of access to housing, 369 people have gained access to accommodation and 212 to housing. In terms of training and employment, these actions have enabled 1,946 people to receive support in finding employment and 938 people to gain access to employment.

In addition, the report indicates a doubling of funding for 2020, from €4 million to €8 million, with the aim of halving the population living in shanty towns by 2022.

In addition, the report indicates that the Directorate General of School Education (DGESCO) sent a letter on 10 October 2018 to draw the attention of rectors to the

implementation of the Ministerial Circular of 25 January 2018 on the schooling of children living in illegal camps.

The report, which provides information on the general framework for education, states that territorial dialogues already exist most often in the sectors concerned, involving the social action services of the National Education system and the referents of the academic centres for the schooling of newly arrived allophone pupils (EANA) known as CASNAV (cf. the examples of Aix Marseille, Lille, etc.).

Within the framework of the National Commission for Slum Clearance, a working group on "schooling and children's rights" was initiated on 14 March 2019.

Led by the Interministerial Delegation for Housing and Access to Housing (DIHAL) with the participation of the DGESCO, it brings together associations and professionals from the French National Education system (CASNAV trainers, teachers, school heads, headmasters, etc.) to exchange and testify about innovative systems or approaches.

In this context, several workshops have been planned until the end of 2019 with the following themes:

1. Identification of children, accompaniment to school and mediation;
2. Administrative procedures for registration and positioning of the student ;
3. Parenting: raising awareness among families, linguistic and "cultural" support for parents, "Opening the School to Parents for the Success of Children" (OEPRE) operation;
4. Attendance, continuity of courses and tutoring, support from the school;
5. Living and material conditions at school: transport, scholarships, canteen, school materials, uniforms.

The assessments presented by the DIHAL show that access to schooling is greatly facilitated in the context of an overall approach to the social inclusion of families entrusted to an operator-coordinator (housing; social; medical; support towards employment). Within the framework of these actions, 80% of children have been able to attend school.

At the same time, awareness-raising actions aimed at a better understanding of the difficulties of life in illegal camps are beginning to develop at the initiative of the CANOPE networks of the French National Education Ministry (*Réseau de création et d'accompagnement pédagogiques*), and in partnership with the CASNAV. They are aimed at educational staff, but also at all pupils and their parents in the context of workshops, debates, conferences and film screenings spread over several days. An action of this type, "school and shanty towns", took place for example in Lille from 30 January to 13 February 2018 and from 21 to 25 January 2019 at the initiative of the departmental CANOPE branches in partnership with the CASNAVs and UNICEF ("child-friendly cities" network).

### **3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

*On the violation of Article E in conjunction with Article 31 of the Charter*

The Committee notes the diversification of the reception and housing offer for Travellers since the entry into force of the new regulatory provisions pursuant to Law No. 2017-86 of 27 January 2017 on Equality and Citizenship. From now on, not only permanent reception areas, but also areas of high traffic (for which the State

participates in financing) and family rental land must be included in departmental plans.

The Committee notes that these developments follow the recommendations of the Court of Auditors, which in a 2017 report on "Reception and support for Travellers" noted "slow and uneven progress" and called for a "redefinition of objectives". In this report, the Court of Auditors, while drawing up a "satisfactory overall assessment" of the situation, with a continuous increase in the number of places created in reception areas despite certain "significant" regional disparities, invited consideration to be given to the development of the supply of adapted housing.

The Committee notes that the completion rate for permanent reception areas is now 75%. In addition, the completion rate for high-traffic areas is 50% and 1,388 extended parking spaces for mobile homes (as part of family rental properties) have been developed (682 spaces developed between 2006 and 2012).

The Committee notes that the quality of facilities in reception areas continues to improve (presence of sites accessible to people with disabilities; sanitary blocks; presence of premises in the areas to accommodate social workers) and notes with interest the pragmatic solutions deployed to build this type of facility (State subsidies; possibility for social landlords to create and manage TFLs; counting of these plots under the Solidarity and Urban Renewal Act). It also notes the different possibilities for some Travellers to integrate into housing (common law social housing or suburban housing with regard to the social and economic situation: income, family composition, residence).

The Committee notes that the Family Allowance Fund may pay a "*temporary housing allowance (Alt 2)*" to organisations managing one or more Traveller reception areas (municipalities, inter-municipalities, or legal entities), depending on the total number of places and their actual occupation.

The Committee takes note of the publication in the Official Gazette not only of the Decree relating to areas of major traffic (published on 5 March 2019), but also of the Decree of 26 December 2019 relating to permanent reception areas and rental family plots for Travellers. It notes with interest the various rules applicable in terms of development, equipment, management and use.

The Committee also notes that court decisions may have enjoined certain local authorities to comply with the obligation to open reception areas (e.g. Marseille Administrative Court of Appeal, 5<sup>th</sup> Chamber, 30 September 2019).

In the light of the information provided, the Committee considers that the situation has been brought into conformity with the Charter on this point.

*On the violation of Article 17§2 and Article E in conjunction with Articles 10§3, 10§5, 17§2 and 30 of the Charter*

The Committee recalls that the right of access to education, if it is to be implemented in a concrete and effective manner, must be part of a general environment that makes its enjoyment possible (stabilisation of parents and families in quality housing, easy access to establishments (transport and proximity), a legal framework for protection and safety). In this respect, it considered that eviction decisions should be accompanied by the necessary measures and guarantees to reduce the impact on the children concerned and their families.

The Committee notes that the Government indicates that it has changed its approach focusing on evacuations and placing public intervention in a broader dimension, from the establishment of the camp to its disappearance, including prevention of installations, and combining integration programmes in France, respect for the laws of the Republic and the right to residence, resettlement actions in the country of origin and transnational cooperation. The approach is global since it covers all issues: access to rights, schooling, access to employment, housing and care.

This development was notably reflected in the Circular of 25 January 2018 aimed at giving a new impetus to the reduction of shanty towns by advocating a global approach in the fight against extreme precariousness. This instruction replaced the Interministerial Circular of 26 August 2012.

The Committee takes note of the various examples illustrating the search for long-term solutions, where several factual conditions are met, or failing that, solutions that are more short-term in nature in tense areas and in situations of emergency and imminent danger to persons. The Committee notes that in these examples, solutions for re-housing, schooling of children and support for employment have been found.

The Committee notes that the document "*Progress report on the new impetus given in 2018*" published by DIHAL shows that on 1 July 2019, there were 12,088 European nationals living in 254 sites in metropolitan France among the 17,619 people registered in 359 shanty towns and squats. 1,840 people gained access to housing thanks to the actions financed in 2018 (i.e. 39% more than in 2017). 974 supported people obtained employment (10% more than in 2017). 80% of the children concerned by the resorption actions are in school (i.e. 3 times more than in the camps without support). 3,845 people have benefited from health support (120% more than in 2017).

The Committee notes that the Government has estimated the cost of closing down a shantytown where 12 families (around 50 people) live at €346,000 (€50,000 to provide minimum living conditions [measures to provide access to water, electricity, fire prevention, protection against pests]; €80,000 to supervise and monitor people on site; €216,000 to house and support the 12 families), i.e. €6 per day and per person over 3 years.

The Committee notes the cost/benefit analysis carried out by the Government, as this action will enable the permanent disappearance of the shanty town, the integration of people, the gains for the community and the end of repeated evacuations. The Committee notes that, for comparison, the Government estimates the cost of accommodation at €25 per day per person and the cost of evacuation at over €100,000 for a camp of this type.

The Committee notes the significant increase in the budget allocated by the DIHAL to support projects to accompany the dismantling of settlements, in particular individualised diagnoses, as well as the objectives for 2022 to halve the European population living in shanty towns (i.e. around 6,000 people), to double the number of people concerned by a support action (today 20%), to double the number of children enrolled and supported in their schooling (today 1750 children), to enrol all children in school within the framework of support actions (today 80%) and to provide access to employment for more than 4,000 people over 3 years (2020, 2021, 2022).

The Committee notes, in this context, that under the "access to schooling" component of the overall approach now adopted by the Government, DGESCO sent a letter in October 2018 to draw the attention of the Rectors to the implementation of the Ministerial Circular of 25 January 2018.

It emerges that, in practice, there is territorial consultation in this area, involving the social action services of the National Education system and the referents of the academic centres for the schooling of newly arrived allophone pupils (EANA) known as CASNAV.

Since March 2019, the "Schooling and the Rights of the Child" working group of the Interministerial Commission for the slum clearance has been bringing together all the associative and professional actors of the National Education system (CASNAV trainers, teachers, head teachers, school headmasters, etc.) to exchange and testify about innovative systems or approaches.

The Committee takes note of the awareness-raising activities carried out at the initiative of the CANOPE networks of the French Ministry of Education (*Réseau de création et d'accompagnement pédagogiques*), and in partnership with the CASNAVs.

The Committee notes that in a 2017 report on "*Reception and accompaniment of Travellers*", the Court of Auditors had indicated that progress was still needed in the area of schooling and noted "an *insufficient response to the difficulties in schooling for Travellers' children*". In particular, it noted that the evolution of schooling for Traveller children was "*favourable at the primary schools level, but [much less] at the nursery and secondary school levels*".

Although the information provided by the Government shows that access to schooling has improved, the Committee nevertheless notes that the document "*Progress report on the new impetus given in 2018*" published by DIHAL reminds us that the 80% schooling rate only concerns sites that receive support (i.e. 254 sites out of the 359 shanty towns and squats with more than 10 people registered), a figure that is three times lower in camps that do not receive support.

The Committee recalls that where the realisation of one of the rights recognised by the Charter is exceptionally complex and particularly costly, the State party must endeavour to achieve the objectives of the Charter within a reasonable time-frame, at the cost of measurable progress, by making the best use of the resources it can mobilise (*Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

The Committee asks whether the Government now intends to extend the 2022 targets for school enrolment and support for children's schooling to all the shantytowns identified. The Government is also asked to specify how the stated objectives are to be implemented and what concrete results have been achieved. Details are also requested on the exact number of children out of school in these sites (in absolute numbers and percentages).

Meanwhile, the Committee considers that the situation has still not been brought into conformity.

**GREECE**

**3<sup>rd</sup> Assessment of the follow-up: European Roma Rights Center v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, Resolution ResChS(2005)11, and International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece Complaint No. 49/2008, decision on the merits of 11 December 2009, Resolution CM/ResChS(2011)8**

***1. Decision of the Committee on the merits of the complaint***

**European Roma Rights Center v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004 (Resolution ResChS(2005)11)**

The Committee concluded that that there was a violation of Article 16 of the 1961 Charter on the following grounds:

- the insufficiency of permanent dwellings;
- the lack of temporary stopping places;
- the forced eviction of Roma families.

**International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece Complaint No. 49/2008, decision on the merits of 11 December 2009 (Resolution CM/ResChS(2011)8)**

The Committee concluded that there was a violation of Article 16 of the 1961 Charter on the following grounds:

- the particular situation of Roma families is not sufficiently taken into account with the result that a significant number of Roma families continue to live in conditions that fail to meet minimum standards;
- Roma families continue to be forcibly evicted in breach of the Charter and the legal remedies generally available are not sufficiently accessible to them.

***2. Information provided by the Government***

The Government provided information concerning the following:

*Sub-standard dwellings*

As regards measures for improving the living conditions of Roma families, the Government indicates that within the context of housing care and settlement of Roma in Greece, the former Special Secretariat for Roma Social Inclusion adopted in 2017 Section 159 of Law No. 4483/2017 in which the procedures for the creation of Organised Areas for Temporary Relocation, as well as the procedures for the Improvement of Living Conditions are provided for.

For the purpose of specifying and describing in details the conditions for the implementation of the temporary relocations, as well as for the improvement of living conditions, the Joint Ministerial Decision No. PO/64/18 "Determining the terms, conditions, technical issues, necessary details and procedures for the temporary relocation of special social groups-Improvement of Living Conditions" (OG412/B/12-02-2018) was issued, as amended by Joint Ministerial Decision No.28586/283 (OG1924/B/30-05-2018) and currently in force.

The Joint Ministerial Decision defines the general framework-purpose of interventions, the organisation of areas for the temporary relocation of specific social groups, the bodies for the implementation of interventions, the managing and operating bodies, the procedure for request submission and the necessary supporting documents, the establishment of a technical support team for the Temporary Relocation Committee, the terms and criteria for selecting beneficiaries, the rules for managing the areas of temporary relocation, the beneficiaries' obligations, the time for supply of services, the sanctions, the resources and the technical

support of municipalities. The Joint Ministerial Decision also includes a standard internal regulation for the management and operation of an organized area for temporary relocation as well as a standard private agreement as this is signed between the beneficiaries and the implementation body.

Pursuant to Section 159 of Law No. 4483/2017 in settlements and enclaves with unacceptable living conditions and in cases where there is still no readiness for relocation, the municipality has to provide emergency support measures. The implementation of the intervention requires the preparation of Health Recognition Reports by the relevant Directorates of Public Health and Social Welfare of the Regions. The action includes Teams for the Improvement of Living Conditions and personal hygiene structures. The personal hygiene structures include Personal Hygiene Facilities (prefabricated containers). Additionally, there will be cleaning-clothing facilities. Moreover, there will be areas for activities: rooms/containers that will support learning activities, provision of services to children of preschool age and their mothers, creative activities for children and adolescents, etc.

The Teams for the Improvement of Living Conditions are expected to assist the operation of personal hygiene structures, the implementation of environmental hygiene interventions, the security of the specific areas, the surveillance of common infrastructure and areas, the coordination of actions for the waste collection, disinfection, gravel coating, pest control, connection of utility networks, installation of the necessary drainage systems, management of inert/ solid waste, etc.

The Government also maintains that the rent subsidy aims at the Roma relocation from existing settlements to autonomous housing solutions and the population's dispersion within the urban fabric, based on relevant criteria that the beneficiaries must meet and with the assistance of the Municipality which is the beneficiary of this specialized action.

As regards temporary stopping facilities, according to the Government, municipalities shall ensure the overall social inclusion of moving populations in an extremely disadvantaged situation, within the administrative limits of their competence, in the light of the Joint Ministerial Decision No. 23641/03 (O.G.B/973/2003) amending the Sanitary Regulation A5/696/83 "on the organized settlement of travellers". The former Special Secretariat for Roma was in consultation with the Municipality of Lamia on the creation of an organized area for the settlement of travellers (camp type). Organized Areas of Temporary Relocation for special social groups.

For the development of Organized Areas for Temporary Relocation, Joint Ministerial Decisions have been issued in accordance with Section 159 of Law No. 4483/2017 and the following municipalities shall immediately initiate the implementation procedure:

- the Municipality of Farsala for the relocation of 31 Roma families under the Joint Ministerial Decision No. 2587/EF 352, OG2199-07.06.2019.
- the Municipality of Katerini under the Joint Ministerial Decision No. 30151/EF434, OG2887/B'5-7-2019 and OG3811/B'.

#### *Forced eviction of Roma families*

The Committee notes from the information provided by the Government that the former Special Secretariat on Roma Social Inclusion sent a document outlining the current institutional framework, European and national, to the Decentralised Administrations, municipalities and regions, in order to prevent forced evictions/ violent expulsions if housing assistance was not assured, especially by municipalities, which should ensure that all local affairs are settled and regulated in accordance with the principles of subsidiarity and proximity "with a view to protecting, developing and consistently improving the local society's interests and quality of life".

Municipalities should also systematically assist in the social inclusion of vulnerable groups residing in their area of responsibility, at all levels of individual and social life, ensuring decent housing and living conditions, access to health and education services, employment promotion services, etc. (Law 3463/2006, Article 75 and Law No. 3852/2010, Section 94, para. 3B and Law No. 3905/2010, Section 51, para.a, subpara.3).

Furthermore, in a related document of the Ombudsman (226272/17030/2017), explicit reference is made to the municipalities' obligation to ensure the overall social inclusion of moving populations in a situation of extreme disadvantage, within their administrative jurisdiction, in the light of the Joint Ministerial Decision No. 243641/03 (O.G.B/973/2003), amending the Sanitary regulation A5/696/83 "on the organized settlement of travellers", Article 4, para. 1 "The organization and supervision of the approved settlement sites' operation shall be carried out by the Municipality or the Community".

Therefore, according to the Government, the violent expulsion as a measure of removal/expulsion of Roma from their areas of settlement cannot be proposed as a solution by the local self-government agency, except in special cases under the current legislation, while a critical element sine qua non is that the competent municipalities shall find and recommend facilities with at least basic standards of decent living, in order to achieve a smooth and peaceful relocation for the benefit of social cohesion and guarantee the rights of all those in need of protection by the State (children, families, persons with disabilities etc.) focusing on the value of the human being (principle of the inviolability of human value, Article 2, para.1 of the Constitution).

### **3. Assessment of the follow-up**

#### *Sub-standard dwellings*

In its Findings 2018 the Committee considered that the situation had not been brought into conformity with the Charter as despite the progress made, there remained many families who still lived in dwellings that fail to meet minimum standards. In this respect, the Committee also refers to its conclusion on Article 16 of the Charter (Conclusions 2019, Greece), where the Committee took stock of the progress made, in particular of the measures taken by the Special Secretariat for Roma in mapping and classifying the Roma settlements and camps, and of the programmes and legal measures aimed at improving the housing conditions of Roma, including the operation of transitory relocation areas.

The Committee considers that despite the progress made, there is still an important number of existing settlements with unacceptable living conditions or with partial access to infrastructure. The Committee asks the Government to provide further information on the measures taken by public authorities to improve the substandard housing conditions of Roma. In particular, it asks for detailed information concerning the implementation of the National Strategy for the Social Integration of Roma in respect of housing conditions of Roma and on the number of relocations into transitory relocation areas and of interventions for the improvement of living conditions of existing settlements.

Meanwhile, the Committee considers that the situation has not been brought into conformity with Article 16.

#### *Forced eviction of Roma families*

In its Findings 2018, The Committee found that the situation had not been brought into conformity with the Charter. The Committee asked for information on the legal remedies available in case of forced evictions. It also asked the authorities to confirm that procedures such as prior consultation with Roma families, adequate notice or provision of alternative accommodation in case of eviction existed in the national legislation.

In its most recent conclusion on Article 16 (Conclusions 2019, Greece) the Committee noted that the United Nations Committee on Economic, Social and Cultural Rights recommended in 2015 that Greece should take steps to ensure that Roma communities were consulted through

eviction procedures, afforded due process guarantees and provided with alternative accommodation or compensation (Concluding observations on the second periodic report of Greece, adopted on 9 October 2015). In addition, the United Nations Human Rights Committee held in 2016 that Greece would violate the right of the residents of a Roma settlement located in Halandri (greater Athens) to their home and family life if it enforced eviction and demolition orders against their lodgings so long as satisfactory replacement housing was not available to them (views adopted on 3 November 2016, concerning Communication No. 2242/2013).

The Committee notes from the information provided by the Government that the municipalities are under an obligation to ensure the overall inclusion of moving populations, provide emergency support and ensure that violent expulsions as a measure of removal of Roma families cannot be proposed as a solution, if an alternative facilities are not available. However, the Committee observes that from the information provided by the Government, it has not been demonstrated that there is adequate legal protection for persons threatened by eviction and that evictions are carried out in conditions respecting the dignity of the persons concerned.

Therefore, the Committee considers that the situation has not been brought into conformity with Article 16 the Charter.

**3<sup>rd</sup> Assessment of the follow-up: The Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, Resolution CM/ResChSxxxx**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found the following violations:

*A. Violation of Article 11§1 to 3*

The Committee considered that there was a violation of Article 11§1 to 3 of the Charter on the ground that Greece had not managed to strike a reasonable balance between the interests of persons living in the lignite mining areas and the general interest. In particular, the Committee found a series of failures in the institutional framework of environmental controls such as modest and low-deterrent sanctions, insufficient number of inspections and insufficient information for populations living in lignite-mining areas.

*B. Violation of Article 2§4*

The Committee found a violation of Article 2§4 of the Charter that requires States to grant workers exposed to occupational health risks compensation in the form of time off. In this case, however, Greek law does not provide for such compensation nor does it require collective agreements to provide for it.

*C. Violation of Article 3§2*

The Committee also found that there was a violation of Article 3§2 of the Charter due to its failure to properly monitor the enforcement of regulations on health and safety at work, given that the Government acknowledged the shortage of supervisory staff and did not submit precise data on the number of accidents in the mining sector.

**2. Information provided by the Government**

*A. As regards Article 11§1 to 3*

As regards the fines imposed on lignite mining companies in the event of environmental damage, the Government states that 65 cases of fine imposition in 2015 were infringements of the quarrying and mining works regulation (KMLE) as well as a non reasonable exploitation found following inspections of the Mining Inspections of Northern and Southern Greece, for which 12 and 53 fine decisions were issued respectively and for a total amount of € 851,500 (namely not related to breaches of environmental legislation). Of the 53 cases of fines imposed by the Mining Inspection Department of the Inspectorate of Southern Greece in 2015, two concerned the Hellenic Public Power Corporation (HPPC-DEI)/ Megalopolis Lignite Centre. According to the Government, these fines have a deterrent effect. Under the then existing legal framework (year of fine imposition 2015), each infringement of KMLE article ranged from 1.000-3.000€, doubling the price in case of a repeated infringement.

The Government further indicates that under the current legal framework of Law 4512/2018 and specifically Article 59 thereof, the legislator imposes stricter penalties on the operator. According to Article 59 of Law 4512/2018, in the case where the health or safety of workers, locals, passers-by, buildings etc. is endangered, it is possible to temporarily or permanently

interrupt part of or the entire research work or quarry exploitation (including lignite mines). The Government maintains that all these measures and sanctions therefore have a deterrent effect.

As regards the number of mining inspectors, the Government indicates that there has been an decrease and there are three Mining Inspectors responsible for inspections in Southern Greece and for all quarrying and mining activities. As a more recent element, during 2018 there were 12 accidents and one pathology incident of employees in the Megalopolis Lignite Centre of Arcadia.

Finally, since 2018, the Southern Greece Inspectorate has been recording statistical parameters for occupational accidents and fatal accidents in accordance with Eurostat's ESAW-2013 methodology. The recording of the parameters of the said methodology will enable the Agency to process and analyze data for the risks assessment, as well as to optimize the work exercise and the allocation of its resources. At the same time, the Service's objective is to annually publish the processed aggregates (excluding confidential data about persons or companies) so that these can be exploited by social bodies, including associations and enterprises of the mining sector.

As regards inspections at the Western Macedonia Lignite Centre of DEI S.A, the Government states that the Mines Inspection Department of the Inspectorate of Northern Greece (TEM/EBE), after the investigations carried out by engineers, during which infringements of the mining and quarrying regulation were found, proceeded to the imposition of financial penalties. In 2018, the total amount of such penalties stood at € 31,000.

According to the Government possible problems arising with regard to the control and supervision not only of the lignite mines of the Western Macedonia Lignite Centre, but also of all Mines-Quarries located in the areas of competence of the SEVE (Greek Exporters Association), namely the Regions of Epirus, Western Macedonia, Central Macedonia, Eastern Macedonia-Thrace, Thessaly and North Aegean, pursuant to the Presidential Decree 132/2017, are mainly due to the lack of personnel (particularly of Mining Engineers together with the very vast territorial scope 6 Regions, 27 Regional Units) as well as to the size and complexity of the mining and quarrying operations in Macedonia and Thrace.

For this reason, the Government believes that the reinforcement of the Mining Inspections Department is the most appropriate solution to address the issues arising during the exploitation of Mines-Quarries in relation to the implementation of the provisions of the Mining and Quarrying Operations Regulation. The Government admits that the institution of Mining Inspections exists for many decades and its effectiveness depends on the integrated and uniform treatment of mining and quarrying companies and the know-how deriving from the comparative view of similar holdings in different regions of the country.

Regarding the important issue of SEVE staffing in general, the Government states that that the procedure of transfer of employees" is expected to be completed under Law 4440/2016 "Unified Mobility System in Public Administration and other provisions" to cover four Environmental University graduates posts and two Geotechnical University graduates posts in the Department of Environmental Inspection of SEVE; Environmental Inspections are therefore expected to be reinforced.

The Government also provides an update on the data from the Public Power Corporation SA (DEI) as regards occupational health and safety, including recording of occupational accidents, preventive medical checkup, information campaigns.

These measures are aimed at ensuring that health and safety activities are carried out in the best possible way (staffing of Services with Safety Technicians and Labour Physicians and supervision of their work, regular workplace inspections, corrective actions implementation control, Occupational Risk Assessment Surveys and Emergency Plans Preparation, Detection and Measurement of damage factors, Institutions and Technical Staff training in OSH issues, procurement and supply of work posts with the appropriate individual and team protection means, supply and maintenance of fire equipment, statistical analysis of accidents, investigation of the causes of accidents and appropriate prevention measures, preventive medical checkup of personnel, provision of social services to workers etc.

*B. As regards Article 2§4*

The Committee notes that the Government does not provide any information concerning violation of Article 2§4 of the Charter.

*C. As regards Article 3§2*

See information provided under Article 11

**3. Assessment of the follow-up**

*A. Violation of Article 11§1 to 3*

As regards violations of Article Article 11§1 to 3, in its Findings 2018 the Committee noted that the Government did not provide sufficient information demonstrating the deterrent nature of fines imposed on lignite mining companies in the event of environmental damage. The Committee also wished to obtain information on measures taken or envisaged to increase the number of inspectors who monitor the application of the rules on protection of health of the population living in regions of ignite exploitation. Finally, it invited the authorities to provide details on the number of inspectors who are monitoring the application of occupational health and safety regulations for lignite mine workers.

The Committee considers that in the areas such as the right to safety and health at work, which are so intimately linked with the physical integrity of individuals, the state has a duty to provide precise and plausible explanations and information on developments in the number of occupational accidents and on measures taken to ensure the enforcement of regulations and hence to prevent accidents.

The Committee notes that the Government has provided some updates as to the actual state of health and safety in the field of lignite-mining. It also observes that there is a better recording of statistical parameters for occupational accidents. The Committee also considers that the occupational health and safety measures that were implemented in the Public Power Corporation SA (DEI) represent progress.

However, as the Government itself recognises, the problems arising with regard to control and supervision are due to the lack of personnel and therefore, the reinforcement of the Mining Inspections Department would be the most appropriate solution.

In order to fulfil their obligations, national authorities must therefore:

- develop and regularly update sufficiently comprehensive environmental legislation and regulations (Conclusions XV-2, Addendum, Slovakia);
- take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale (Conclusions 2005, Moldova, Article 11§3);

- ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery;
- assess health risks through epidemiological monitoring of the groups concerned.

The Committee recalls that in the areas such as the right to safety and health at work, which are so intimately linked with the physical integrity of individuals, the state has a duty to provide precise and plausible explanations and information on developments in the number of occupational accidents and on measures taken to ensure the enforcement of regulations and hence to prevent accidents.

The Committee considers that despite the progress that the Government has shown in the information it has provided, it has not been demonstrated that all the above obligations imposed by Article 11 have been fulfilled. Therefore, the Committee considers that the situation has not been brought into conformity with Article 11.

*B. Violation of Article 2§4*

The Committee recalls that compensation measures such as one additional day as holiday and a maximum weekly working time of 40 hours are considered inadequate in that they do not offer workers exposed to risks regular and sufficient time to recover. It also recalls that under no circumstances can financial compensation be considered a relevant and appropriate measure to achieve the aims of Article 2§4.

In the absence of any information in the report, the Committee finds that the situation has not been brought into conformity with Article 2§4 of the Charter.

*C. Violation of Article 3§2*

The Committee considers that the situation has not been brought into conformity with Article 3§2 of the Charter.

**3<sup>rd</sup> Assessment of the follow-up: General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, Resolution CM/ResChS(2013)2**

***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded that there was a violation of Article 4§4 of the 1961 Charter on the ground that the Section 17§5 of Law No. 3899 of 17 December 2010 did not make provision for notice periods or severance pay in cases where an employment contract, which qualified as “permanent” under the law, was terminated during the probationary period set at one year by the same law.

***2. Information provided by the Government***

The Government states that there have been no legislative or other developments as regards the issue under consideration (a reasonable period of notice before the termination of employment)

***3. Assessment of the follow-up***

The Committee considers that in the absence of any legislative developments, the situation has not been brought into conformity with Article 4§4. of the Charter.

**3rd Assessment of the follow-up: General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012, Resolution CM/ResChS(2013)3**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee held that there the following violations:

*A. Violation of Article 4§1 of the Charter*

- the provisions of Section 74§8 of Law No. 3863/2010 and Section 1§1 of Ministerial Council No. 6 of 28-2-2012 constitute a violation of Article 4§1 of the 1961 Charter insofar as the minimum wage paid to all workers below the age of 25 is below the poverty level (fair remuneration).
- the extent of the reduction in the minimum wage, and the manner in which it is applied to all workers under the age of 25, is disproportionate and represents discrimination on the ground of age (age discrimination).

*B. Violation of Article 7§7*

The Committee considered that the young persons concerned are excluded from the scope of the labour legislation and are not entitled to three weeks' annual holiday with pay. Therefore, the Committee held that there was a violation of Article 7§7 of the 1961 Charter.

*C. Violation of Article 12§3*

The Committee considered that the highly limited protection against social and economic risks afforded to minors engaged in 'special apprenticeship contracts' under Section 74§9 of Law No. 3863/2010 had the practical effect of establishing a distinct category of workers who were effectively excluded from the general range of protection offered by the social security system at large and that this represented a deterioration of the social security scheme which did not fulfil the criteria to be compatible with Article 12§3 of the 1961 Charter.

The Committee thus considered that there is a violation of Article 12§3 of the 1961 Charter.

**2. Information provided by the Government**

*A. As regards Article 4§1 of the Charter*

*Fair remuneration*

According to the Government, upon completion of the Economic Adjustment Programme on 20/8/2018, a new minimum wage and salary setting system was introduced. Article 103 on "Provisions on minimum salary" of Law No. 4172/2013 (O.G. A'167) as amended and in force today by virtue of Section 1, subpara.IA.6 case 2 of Law No. 4254/2014 (O.G.A'85) and Section 2 of Law No. 4564/2018 (O.G. A'170) sets the statutory minimum wage and salary is set for full-time employment, for white and blue collar workers throughout the country, whose pay is not regulated by a Labour Collective Agreement. More specifically, according to Section 103, para.3 of Law No. 4172/2013, the amount of the statutory minimum wage and salary shall be set by taking account of the state of Greek economy and

its prospects for growth in terms of productivity, prices, competitiveness, employment, unemployment rate, income and salaries. Moreover, para.4.a., Section 103 of Law No. 4172/2013 stipulates that «in order to define the statutory minimum wage and salary, consultations shall be held between the social partners and the Government, with the technical and scientific assistance of specialized scientific, research and related institutions and experts on financial issues. Section 103 of Law No. 4172/2013, provides that on behalf of workers throughout the country, the following shall participate in these consultations: a) the Confederation of Greek Workers (GSEE) and b) other secondary sectoral or occupational trade union organisations representing workers of the private sector at national level, proposed by the GSEE and called upon by the consultation's Coordinating Committee.

The Government indicates that with the adoption of Ministerial Decision No. 4241/127/2019, the new increased statutory minimum wage and salary amounts were set as of 01/02/2019, for full-time employment, for white and blue collar workers throughout the country, without any discrimination on the grounds of age as follows:

- (a) For white collar workers the minimum salary shall be set at € 650,00;
- (b) For blue collar workers the minimum wage shall be set at € 29.04.

#### *Age discrimination*

According to the Government, the restructuring of collective bargaining in the context of the economic crisis and of economic and fiscal adjustment programmes, has led both to their decentralisation as regards the conclusion of Labour Collective Agreements as well as to significant amendments to the minimum wage setting mechanism.

More specifically, under para. 2 of Circular No. 7613/395/2019 of the Minister of Labour, Social Security and Social Solidarity, from the entry into effect of the new statutory minimum wage and salary, any reference made in the current legislation to the minimum wage and salary that concerns/introduces discrimination on the grounds of age shall be considered abolished, i.e., discrimination on the grounds of age introduced by virtue of Law No. 4093/2012 shall be revoked.

#### *B. As regards Article 7§7*

The Government states that no amendments have been made to the provisions of Section 74, para.9 of Law No. 3863/2010 on the social security protection of minors who conclude special apprenticeship contracts.

#### *C. As regards Article 12§3*

The Government indicates that there have been no developments concerning Section 74§9 of Law No. 3863/2010.

### **3. Assessment of the follow-up**

#### *A. Violation of Article 4§1 of the Charter*

##### *Fair remuneration*

The Committee recalls that in its decision it considered that provisions of Section 74§8 of Law No. 3863/2010 and now Section 1§1 of Ministerial Council Act No 6 of 28-2-2012 constituted a violation of Article 4§1 of the 1961 Charter insofar as they provided for

the payment of a minimum wage to all workers below the age of 25 which is below the poverty level. In particular, the Committee noted that the at-risk-of-poverty threshold (defined as 60% of the Eurostat median equivalised income) stood at around € 580 in 2011 and the minimum wage was set at € 780. The Committee considered that insofar as young workers were paid only 32% of the minimum wage, its amount fell below the poverty line and therefore could not be considered as fair. Since the minimum wage which in 2019 stood at € 650 remains above the poverty threshold (€ 488) and as it is now also paid to workers under 25, the Committee considers that the situation has been brought into conformity with the Charter in this respect.

#### *Age discrimination*

The Committee recalls that in its decision it considered the question of fair remuneration separately from the question of age discrimination. The Committee considered that it is open to a state to demonstrate objective justification for the payment of a lower minimum wage to younger workers, if this can be shown to further a legitimate aim of employment policy and be proportionate to achieve that aim. Applying this test to the facts at issue, the Committee is of the view that the less favourable treatment of younger workers at issue is designed to give effect to a legitimate aim of employment policy, namely to integrate younger workers into the labour market in a time of serious economic crisis. However, the Committee considers that the extent of the reduction in the minimum wage, and the manner in which it is applied to all workers under the age of 25, is disproportionate even when taking into account the particular economic circumstances in question.

The Committee notes from the information provided by the Government, that the Circular No. 7613/395/2019 removed the difference in wage and the new statutory minimum wage and salary set for full-time employment applies to all workers, irrespective of age.

The Committee therefore considered that also the situation relating to age discrimination has been brought into conformity.

#### *B. Violation of Article 7§7*

The Committee recalls that in its Findings 2018 it noted that the provision of Section 74§9 of Law No. 3863/2010, according to which apprentices with the exception of provisions on the health and safety of workers, were not subject to the labour law provisions, was still in force. According to this legislation the apprentices were not entitled to a three weeks' annual holiday with pay within the one year of their special apprenticeship contract.

The Committee considers that in the light of the fact that the provision of Section 74§9 of Law No. 3863/2010, according to which apprentices with the exception of provisions on the health and safety of workers, are not subject to the labour law provisions, is still in force, the situation has not been brought into conformity with the Charter.

#### *C. Violation of Article 12§3*

Article 12§3 requires state parties to 'endeavour to raise progressively the system of social security to a higher level'. In this respect, the Committee recognises that it may be necessary to introduce measures to consolidate public finances in times of economic crisis, in order to ensure the maintenance and sustainability of the existing social security system.

In its Findings 2018 the Committee noted that protection against social and economic risks afforded to minors engaged to in special apprenticeship contracts, continues to be limited

and leads to the establishment of a distinct category of workers who are effectively excluded from the general range of protection offered by the social security system at large.

The Committee considers that in the absence of any developments in this regard, the situation has not been brought into conformity with Article 12§3 of the Charter.

**3<sup>rd</sup> Assessment of the follow-up: Complaints Nos. 76-80/2012,  
decisions on the merits of 7 December 2012, Resolution  
CM/ResChS(2014)7-11**

***1. Decision of the Committee on the merits of the complaint***

**Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)7**

**Panhellenic Federation of Public Service Pensioners (POPS) v. Greece, Complaint No. 77/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)8**

**Pensioner's Union of the Athens – Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)9**

**Panhellenic Federation of pensioners of the Public Electricity Corporation (POS – DEI) v. Greece, Complaint No. 79/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)10**

**Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)11 .**

In these decisions, the Committee concluded that there was a violation of Article 12§3 of the 1961 Charter on the ground that the cumulative effect of the restrictive measures and the procedures adopted in respect of pension entitlements did not permit to maintain a sufficient level of protection for the pensioners in question. The cumulative effect of the restrictions, as referred to by the complainant trade union, and which was not contested by the Government, is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned.

***2. Information provided by the Government***

The Government states that it reserves the right to express its position until the adoption of a decision by the European Committee of Social Rights in the pending complaint, Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece, Complaint No. 165/2018.

***3. Assessment of the follow-up***

The Committee recalls that in its Findings 2015 the Committee found that the situation had not been brought into conformity with the 1961 Charter, as the restrictive measures at issue, introduced in 2010-2012, were still in force.

In its conclusion on Article 12§3 in respect of Greece (Conclusions 2017) the Committee pointed out that in order to assess their scope in relation to Article 12§3 and thus assess whether they involve improvements to the system or restrictions, it must be informed of their impact (categories and numbers of people concerned, levels of allowances before and after alteration). The report also refers to certain measures adopted outside the reference period, such as the extension of healthcare in 2016. The Committee asked the next report to provide information on the implementation and impact of these measures, as well as of the steps taken to identify and moderate the possible negative impact of restrictive measures as regards the scope and level of the social security benefits.

In its Findings 2018 the Committee reserved its position until a decision was taken in the Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece, Complaint No. 165/2018, registered on 30 April 2018, which relates to Articles 12§2, 12§3 (right to social security) and 23 (right of elderly persons to social protection) of the Revised European Social Charter.

As the aforementioned complaint is still pending, the Committee again reserves its position concerning the follow-up to the decisions in Complaints Nos. 76-80/2012.

**3<sup>rd</sup> Assessment of the follow-up: International Federation for Human Rights (FIDH) v. Greece, Complaint No. 72/2011, decision on the merits of 23 January 2013, Resolution CM/ResChS(2013)15**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee concluded that there was a violation of Article 11§§1 and 3 of the 1961 Charter on the ground that in view of the pollution of the Asopos River authorities had failed to take appropriate measures to remove as far as possible the causes of ill-health and to prevent as far as possible diseases.

**2. Information provided by the Government**

According to the Government, the agencies responsible for environmental licensing, in cooperation with the Special Environmental Inspectors' Service (now Inspectorate Body), carry out inspections concerning installation of the relevant technological equipment and the adoption and proper implementation of prescribed measures.

In this context, applications were filed to the relevant Directorate of the Ministry (former Directorate for Control of Air and Noise Pollution– Now Directorate for Environmental Licensing) together with attached dossiers concerning reviews of Decisions on Environmental Terms Approval (AEPO), the environmental licensing of which fell under the area of competence of the Directorate for Control of Air and Noise Pollution. The review of the relevant AEPOs has been finalised for industrial activities and the conduct of relevant inspections provided for in the Joint Ministerial Decision (JMD) 20488/10. By document No. 3814/21.3.2018 of the Tanagra Municipality, Department for Technical Services, the Environmental Impact Study (EIS) for the project «Water supply in urban and industrial areas of Tanagra Municipality» was filed with the Directorate for Environmental Licensing.

The Coordination Office for Remediation of Environmental Damage (SYGAPEZ) monitors the implementation of a pilot project concerning remedial action for the underground aquifer at the plot of land where an industrial metal processing plant is located at Oinofyta, Boeotia Region (Asopos River Basin), due to hexavalent chromium (Cr+6) groundwater contamination. In 2018, the evaluation of the in situ pilot project was completed for contaminated borehole rehabilitation, while request was made to apply this method also to other Cr+6 contaminated boreholes at the plot of the plant. Moreover, the groundwater monitoring project is continuing and has expanded in order to include exploratory drillings carried out at the plot of the plant, drillings carried out in the broader region, within the framework of the pilot LIFE CHARM project (Chromium in Asopos groundwater body: Remediation technologies and Measures), as well as contaminated pits located at an adjacent plot of land that was acquired by the said plant in 2017. The cost of the above-mentioned project shall be borne by the responsible operator.

As regards the application of JMD 20488/2010, and in particular Article 7 that prescribes a review report of Decisions on Environmental Terms Approval for the industrial activities in the area that dispose their waste water in Asopos River, although it falls under the jurisdiction of the licensing authority as appropriate, in any case, however, the Environmental Inspection Department (TEP) examines whether

the inspected activities comply with this requirement and, in case of an infringement, it informs the licensing authority and proposes the prescribed administrative sanctions. According to the Government, during the inspections conducted from 2018 till today, no activity was found that did not comply with this requirement.

In 2018, TEP conducted inspections in three activities, located in the area adjacent to Asopos River, for compliance with the current environmental legislation and approved environmental terms. It also conducted sampling and inspections in eighteen activities that dispose their waste water in Asopos River to determine compliance with emission limit values laid down in Annex B' to JMD 20488/2010. The results obtained from those samples showed that three activities had exceeded emission limit values and thus they were included in the scheduling of regular inspections for this year. In 2019, three (3) regular inspections were conducted in activities located in the area, including two of the above mentioned activities where it was found that limit values were exceeded, while relative number of samplings has been scheduled.

According to the Government, with a view to increasing human resources of the Environmental Inspectorate, Call No.ΥΠΕΝ/ΔΔΥ/19570/3338/25-06-2018 (ΑΔΑ: 6ΞΥΚ4653Π8-Σ2Ν) was published for expressions of interest in order to recruit 83 civil servants (permanent and bound by an open ended working relationship under private law), as Inspectors of the Special Secretariat for Inspectors, Ministry of Environment and Energy, in accordance with article 19, para.1d of Law 4440/2016 on the Mobility System for civil servants. Following the assessment of applications lodged to date, three applicants have been selected as Environmental Inspectors, yet, their posting is still pending.

According to the 1st Review of the River Basin Management Plan, Water District, Eastern Sterea Ellada (EL07), that was prepared in accordance with the requirements of Directive 2000/60/EC, surface water bodies (rivers) included in the Asopos River Basin (EL0725) are classified as having moderate to poor ecological status and good chemical status (but with low confidence), based on data from the National Water Status Monitoring Network. In these river bodies high-intensity anthropogenic pressures were recorded that are associated with priority substances, specific pollutants, etc., as well as high abstraction rates.

The chemical status of the groundwater body (EL0700210/Thebes - Asopos - Schimatari), which is mainly related to the surface water bodies of Asopos River Basin, is bad while the quantitative status is good. A large number of monitoring stations (of the National Network) i.e., 28%, were found to be in bad status, due to exceeding higher acceptable values primarily of nitrate concentrations and secondarily of metals. The cause is significant pressures on the water body from intense farming activities with use of fertilizers and pesticides, from industrial activities in the area of Schimatary – Asopos and from sewage. The chemical (and quantitative) status of the remaining associated groundwater bodies of the area is good and local problems of salinity were observed.

The National Monitoring Network continues to monitor the status of surface water and groundwater bodies of Asopos River Basin ensuring thus continuous recording of trends in measured parameters, with a view to assessing the status of all water

bodies, based on the latest data, in the 2nd Review of the Management Plan.

According to information provided by the Municipality of Tanagra, actions referred to in the 28<sup>th</sup> report on the application of the Charter (July 2018) are still ongoing. As regards water for human consumption, water supply in the entire administrative region of the Municipality is undertaken by the EYDAP. Water quality is continuously monitored and the number of inspections exceeds those prescribed by the legislation in force. According to the results of these inspections, the quality of drinking water fully meets the requirements set by the legislation in force.

In December 2015, the Commission and the WHO Regional Office for Europe concluded the “Drinking Water Parameter Cooperation Project”, the final report of which was published in 2018. The objective of the project was to provide policy-relevant advice to enable informed, science-based decision making for the potential revision of Annex I to the Directive on quality parametric values. More specifically, the WHO regional office for Europe conducted a detailed review of the list of parameters and parametric values set in Directive 98/83/EC in order to find out whether it must be adjusted in the light of scientific and technological progress.

Regarding the parameter for chromium, in particular, the WHO report notes that the value for chromium is under review and recommends maintaining the current parametric value till the evaluation is completed. Nevertheless, the Commission’s Directive Proposal seeks to reduce the current parametric value of total chromium by 50% to 25µg/l after a transition period of 10 years from the entry into force of the Directive. The Directorate of the Ministry of Health is constantly monitoring the international developments and will bring our national legislation in line with the new Directive as soon as the review of Directive 98/83/EC is completed.

### **3. Assessment of the follow-up**

The Committee recalls that in its decision it considered that the violation of Article 11§§1 and 3 of the Charter was due to deficiencies in the implementation of existing regulations and programmes regarding the pollution of Asopos River and its negative effects on health .

In its Findings 2018 the Committee asked what measures were taken to ensure legislative establishment of a threshold for Cr-6 in drinking water and the standardisation of the Cr-6 analysis method to address measurement weaknesses. It also asked the Government to provide information on measures taken to strengthen the human resources of the Environmental Inspectorate and ensure a better coordination with other concerned bodies.

The Committee notes that as regards the legislative establishment of a threshold for Cr-6 in drinking water, water supply in the entire administrative region of the Municipality is undertaken by the EYDAP. Water quality is continuously monitored and the number of inspections exceeds those prescribed by the legislation in force. According to the results of these inspections, the quality of drinking water fully meets the requirements set by the legislation in force. The Committee also takes note of the ‘Drinking Water Parameter Cooperation Project’, within which a detailed review of the list of parameters and parametric values was conducted set in Directive 98/83/EC in order to find out whether it must be adjusted in the light of scientific and technological progress. Nevertheless, the Commission’s Directive Proposal seeks to reduce the current parametric value of total chromium by 50% to 25µg/l after a

transition period of 10 years from the entry into force of the Directive. The Committee notes in this respect that legislative establishment of a threshold for Cr-6 in drinking water and the standardisation of the Cr-6 analysis has not been completed.

As regards the human resources of the Environmental Inspectorate, the Committee takes note of the expressions of interest to post civil servants. However, it notes that their posting is still pending.

The Committee also takes note of the supplementary measures taken in the framework of the First Management Plan. It considers that these measures represent progress and are aimed at reducing the negative effects on health that result from the pollution of Asopos River. However, with a view to assessing whether these measures have been adequate to bring the situation into conformity with the Charter, the Committee considers that it should be demonstrated that the measures are carried out within a reasonable timeframe and with the maximum use of available resources, both human and financial. Moreover, the Government must prove that there has been a measurable progress. The Committee asks the next report on Findings to provide information in this respect.

In view of the above, the Committee considers that the situation has not been brought into conformity with Article 11§§ 1 and 3 of the Charter.

**1<sup>st</sup> Assessment of the follow-up: Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, Resolution CM/ResChS(2017)9**

***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee found the following violations:

*A. Violation of Article 1§2 and 4§1*

The Committee held that there was a violation of Article 4§1 of the 1961 Charter on the ground that the reduction of the minimum wage for workers under 25 years was excessive and constituted discrimination on grounds of age. As regards Article 1§2 the Committee considered that the reduction in the minimum wage, and the manner in which it is applied to all workers under the age of 25, was disproportionate even when taking into account the particular economic circumstances in question and therefore there was a violation of this provision of the Charter.

*B. Violation of Article 2§1*

The Committee considered that there was a violation of Article 2§1 of the Charter on the ground 1) of the excessive length of weekly work 143rganizati and 2) due to the lack of sufficient collective bargaining guarantees

*C. Violation of Article 4§1*

In its decision the Committee held that there was a violation of Article 4§1 of the 1961 Charter on the ground that fair remuneration was not guaranteed.

In particular, the Committee considered that that the gross minimum wage including bonuses corresponds to approximately 46% of gross average wage and the reduced minimum wage of workers under 25 years to only about 41% of gross average wage, which is far below the thresholds established by the Committee.

*D. Violation of Article 4§4*

The Committee concluded that there was a violation of Article 4§4 of the 1961 Charter on the ground that the Section 17§5 of Law No. 3899/2010 did not make a provision for notice periods or severance pay in cases where an employment contract, which qualified as “permanent” under the law, was terminated during the probationary period set at one year by the same law.

*E. Violation of Article 7§5*

The Committee considered that there was a violation of Article 7§5 of the 1961 Charter as the minimum wage of young workers aged 15 to 18 years was not fair.

*F. Violation of Article 7§7*

The Committee held that the young persons concerned were excluded from the scope of the labour legislation and are not entitled to three weeks’ annual holiday with pay. Therefore, the Committee held that there was a violation of Article 7§7 of the Charter.

*G. Violation of Article 3 of the Additional Protocol to the 1961 Charter*

The Committee held that there was a violation of Article 3 of the 1988 Additional Protocol to the 1961 Charter due to the fact that the previously applicable collective

bargaining system was abolished and the effective exercise of the right of workers to participate in the determination and improvement of working conditions was not ensured.

## **2. Information provided by the Government**

### *A. As regards Article 1§2 and 4§1*

The Government indicates that legislation has been adopted in order to safeguard the right to work and prohibit any form of discrimination in occupation. The new increased minimum wage and salary, without any discrimination on the grounds of age, has been set by law and applies as of 1 February 2019, following the conduct of a social dialogue and contributions received by scientific bodies. More specifically, under paragraph 2 of Circular No. 7613/395/2019 of the Minister of Labour, Social Security and Social Solidarity, from the entry into effect of the new statutory minimum wage and salary, any reference made in the current legislation to the minimum wage and salary that concerns/introduces discrimination on the grounds of age shall be considered abolished, i.e., discrimination on the grounds of age introduced by virtue of Law No. 4093/2012 shall be revoked.

### *B. As regards Article 2§1*

The Government maintains that by virtue of Section 1, subparagraph IA.14.2 of Law No. 4093/2012, a minimum daily rest period of 11 consecutive hours was established for every 24 hours. The period of 24 hours starts at 00:01 and ends at 24:00. This regulation on the minimum daily rest period for workers, which is explicitly provided for by Directive 93/104/EC (now 2003/88/EC), also applies to shifts as these are considered to be a method of organizing work in Presidential Provision (P.D) 88/99. Hence, for workers employed in shifts, a daily rest period of 11 consecutive hours should be allowed between the end of a shift and the beginning of the next one, which should not be limited within the twenty four (24) hours period that starts at 00.01' and ends at 24.00'.

According to the Government, it is evident that the daily rest period of 11 consecutive hours is in line with Section 6 of P.D.88/99 according to which per not more than a four-month period, the weekly working time of salaried workers may not exceed 48 hours on average, including the hours of overtime work. The annual paid leave and sickness leave periods shall not be taken into account when calculating the average.

As regards the lack of sufficient collective bargaining guarantees, the Government states that according to the National General Labour Collective Agreement (NGLCA) of 1975 the implementation of a five-day working week is at the employer's discretion. According to the NGLCA of 1984 the weekly working time of workers employed with any employer bound by a working relationship under private law throughout the country is set at 40 hours, a five- or six-day working week may be agreed upon between the employer and newly recruited salaried workers, as a term in their individual working contracts.

The Government also indicates that by virtue of Section 63 on Extending the validity of the NGLCA dated 28 March 2018 of Law No. 4635/2019 "Invest in Greece and other provisions" (O.G.167/A'/30.10.2019), the validity of the National General Labour Collective Agreement signed on 28 March 2018 shall be extended from its expiry date (30 June 2019) till the conclusion of a new National General Labour Collective Agreement, but not beyond 31 December 2019.

### *C. As regards Article 4§1*

According to the Government, upon completion of the Economic Adjustment Programme on 20/8/2018, a new minimum wage and salary setting system was introduced. Section 103 on “Provisions on minimum salary” of Law No. 4172/2013 (O.G. A’167) as amended by virtue of Section 1, subpara.IA.6 case 2 of Law No. 4254/2014 (O.G.A’85) and Section 2 of Law No. 4564/2018 (O.G. A’170) sets the statutory minimum wage and salary is set for full-time employment, for white and blue collar workers throughout the country, whose pay is not regulated by a Labour Collective Agreement. More specifically, according to Section 103, para.3 of Law No. 4172/2013, the amount of the statutory minimum wage and salary shall be set by taking account of the state of Greek economy and its prospects for growth in terms of productivity, prices, competitiveness, employment, unemployment rate, income and salaries. Moreover, para.4.a., Section 103 of Law No. 4172/2013 stipulates that «in order to define the statutory minimum wage and salary, consultations shall be held between the social partners and the Government, with the technical and scientific assistance of scientific, research and related institutions and experts on financial issues. Section 103, para.4b.aa) of Law No. 4172/2013, provides that on behalf of workers throughout the country, the following shall participate in these consultations: a) the Confederation of Greek Workers (GSEE) and b) other secondary sectoral or occupational trade union organisations representing workers of the private sector at national level, proposed by the GSEE and called upon by the consultation’s Coordinating Committee.

The Government indicates that with the adoption of Ministerial Decision No. 4241/127/30.1.2019 (O.G.B’173), the new increased statutory minimum wage and salary amounts were set as of 1 February 2019, for full-time employment, for white and blue collar workers throughout the country, without any discrimination on the grounds of age as follows:

- (a) for white collar workers the minimum salary shall be set at € 650,00;
- (b) for blue collar workers the minimum wage shall be set at € 29.04.

*D. As regards Article 4§4*

The Government states that there have been no legislative or other developments as regards the issue under consideration (a reasonable period of notice before the termination of employment)

*E. As Article 7§5*

According to the Government, as regards measures taken in order to protect working children and young persons and safeguard their right to a fair wage, the readjustment of minimum wage and salary that are in force and the abolition of age discriminations as of 1 February 2019 have increased the rate paid to apprentices, in accordance with Article 7 paragraph A of Decision No. 26385/2017 of the Ministers of Economy and Development, of Education, Research and Religious Affairs, of Labour, Social Security and Social Solidarity and of Finance on “Quality Framework for Apprenticeships” (B’491). This rate is now set at 75% of the minimum wage and amounts to 21.78€ per day of apprenticeship training carried out at the workplace.

Under Article 2 of the above-mentioned Decision No. 26385/2017 “Quality Framework for Apprenticeships” (B’491), apprentices are fully covered by the Unified Social Security Fund (EFKA) during the apprenticeship.

Moreover, Section 52 of Law No. 4611/2019 (A’73) stipulates that as of 1 July 2019, where provision is made for rates and social security contributions for apprentice students who undertake an internship or apprenticeship in private sector enterprises, these shall be paid by the enterprises into payment accounts and shall be transferred by the relevant payment service provider to the accounts of the above beneficiaries

and Social Security Funds respectively. This provision establishes the same obligation both for interns and apprentices, in order to facilitate inspections on compliance with both the legislation on internships and apprenticeships and the terms of the relevant apprenticeship contract concluded between the parties. Furthermore, according to the Government, this provision helps eliminate infringements of the law on internships and apprenticeships, thus, upgrading the institution and improving students' working terms and conditions. F. As regards Article 7§7

The Government states that no amendments have been made to the provisions of Section 74, para.9 of Law No. 3863/2010 on the social security protection of minors who conclude special apprenticeship contracts.

*G. As regards Article 3 of the Additional Protocol to the 1961 Charter*

The Government indicates that every single worker in all enterprises even in those where there are no unions or works councils, has the right to take part in the improvement of working conditions, either through their selected representatives having special responsibility for issues relating to workers health and safety, or directly on their own initiative. Consequently, according to the national legislation and practice, all workers are covered by Article 3 of the Additional Protocol. Moreover, no change has occurred in the legal framework applying to workers in public services and public bodies as regards their right to take part in the determination and improvement of their working conditions and environment described in P.D.17/1996 and Sections 2 and 3 of Law 2738/1999, according to which health and safety measures are the subject of collective bargaining and are specified in labour collective agreements.

**3. Assessment of the follow-up**

*A. Violation of Article 1§2 and 4§1*

The Committee notes that Circular No. 7613/395/2019 removes the difference in wage and the new statutory minimum wage and salary set for full-time employment applies to all workers, irrespective of age.

The Committee therefore considers that the situation relating to age discrimination has been brought into conformity with Articles 1§2 and 4§1 of the Charter.

*B. Violation of Article 2§1*

In its decision, the Committee observed that Greece had transposed the EU working time directive (Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time), providing for an upper limit of 48 hours per week, including overtime, on average calculated over a four-month reference period. However, the Committee considered that this rule did not preclude working time longer than 48 hours in individual weeks during the reference period. It followed that even assuming that a weekly rest day is systematically granted, the employees concerned could be required to work up to 78 hours per week.

The Committee notes from the information provided by the Government that there have been no changes to this situation and therefore, considers that the situation has not been brought into conformity as regards excessive length of working time.

As regards collective bargaining guarantees, in its decision the Committee recalled that in order to be considered to be in conformity with the Charter, domestic law and regulations must also operate within a precise legal framework which clearly delimits the scope left to employers and employees to modify, by collective agreement, working time. It considered that the law itself did not define the scope available to the negotiating parties. Moreover, the national collective agreements which alone determined the arrangements in this field had been terminated in application, *inter alia*, of the Council of Ministers Act No. 6/2012.

The Committee notes from the information provided by the Government that the validity of the NGLCA was extended until the end of 2019. However, the Committee considers that it has not been demonstrated by the Government that the agreements, either collective or concluded at the company level, can ensure that the maximum weekly working time is respected. The Committee asks the next report to indicate how it is ensured that the workers have sufficient collective bargaining guarantees to protect them against excessive weekly working time.

The Committee considers that the situation has not been brought into conformity on both counts.

### *C. Violation of Article 4§1*

The Committee recalls that to be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. The Committee's assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the States Parties concerned to conduct the needed enquiries or to provide estimates.

In its decision, the Committee observed that the gross minimum wage including bonuses corresponded to approximately 46% of gross average wage, which is below the threshold established by the Committee. Therefore, the Committee considered that there was a violation of Article 4§1 of the Charter as fair remuneration was not guaranteed.

The Committee notes from the information provided by the Government that the new levels of the minimum wage were set in 2019 at € 650 for white collar workers and € 29 for blue collar workers. The Committee notes from Eurostat ([http://appsso.eurostat.ec.europa.eu/nui/show.do?wai=true&dataset=earn\\_nt\\_net](http://appsso.eurostat.ec.europa.eu/nui/show.do?wai=true&dataset=earn_nt_net)) that in 2019 the net earning of a single person earning 100% of average wage stood at € 15,802 per year or € 1,316 per month. The Committee notes that the minimum wage for white collar workers as indicated by the Government is a gross amount. The gross minimum wage represents around 50% of the next monthly average earning. The Committee also refers to its conclusion on Article 4§1 in respect of Greece (Conclusions 2014) where it considered that the minimum wage applicable to contractual staff in the civil service and to private sector workers was not sufficient to ensure a decent standard of living.

The Committee notes that the Government does not provide the information concerning the values of the minimum wage after deduction of social security contributions and income tax. Nevertheless, with the information at its disposal, the Committee considers that the minimum wage falls below the Committee's threshold and accordingly does not constitute fair remuneration. Therefore, the situation has not been brought into conformity with the Charter.

*D. Violation of Article 4§4*

The Committee considers that in the absence of any legislative developments, the situation has not been brought into conformity with Article 4§4 of the Charter.

*E. Violation of Article 7§5*

In its decision, the Committee considered that in view of its decision on Article 4§1 of the 1961 Charter and in view of the extent to which this minimum wage falls below the established threshold for adult workers, the wage paid to workers aged 15-18 was not fair in the meaning of Article 7§5 of the 1961 Charter either.

The Committee refers to its conclusion on Article 7§5 (Conclusions 2019) where it considered that any difference between young workers' and adult workers' wages must be reasonable and the gap must close quickly. For 15/16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16/18 year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

The Committee notes from the information submitted by the Government that the wage of young workers and apprentices is now set at 75% of the minimum wage. However, given that the Committee has considered that the reference wage is not fair, the wage paid to workers aged 15-18 cannot be considered fair either. Therefore, the Committee considers that the situation has not been brought into conformity with the Charter.

*F. Violation of Article 7§7*

The Committee refers to its assessment of the follow-up to *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, Complaint No. 66/2011, where it considered that the provision of Section 74§9 of Law No. 3863/2010, according to which apprentices with the exception of provisions on the health and safety of workers, were not subject to the labour law provisions, was still in force. According to this legislation the apprentices were not entitled to a three weeks' annual holiday with pay within the one year of their special apprenticeship contract.

The Committee considers that in the light of the fact that the provision of Section 74§9 of Law No. 3863/2010, according to which apprentices with the exception of provisions on the health and safety of workers, are not subject to the labour law provisions, is still in force, the situation has not been brought into conformity with the Charter.

*G. Violation of Article 3 of the Additional Protocol to the 1961 Charter*

The Committee recalls that in its decision it concluded that there was a violation of Article 3 of the 1988 Additional Protocol to the 1961 Charter (Article 22 of the

Revised Charter by which Greece is now bound) as even if, as a result of the reforms carried out, there is no longer any general legislative framework or branch-level collective bargaining in Greece which could be deemed to provide a general framework for labour relations, it was not possible to examine the GSEE's allegations relating to collective bargaining in general and, in particular, the way in which such bargaining can deal with specific matters (wage fixing, arbitration, extension of collective agreements), since these matters fall within the scope of Articles 5 and 6 of the 1961 Charter which Greece had not accepted at the time of registration of the present complaint.

As regards the determination and improvement of the working conditions, work organization and working environment, the Committee recalls that Article 3 of the 1988 Additional Protocol obliges States to ensure that procedures other than those referred to in Articles 5 and 6 are implemented with a view to ensuring the effective exercise of the right of workers to participate in the determination and improvement of working conditions. The Committee notes in this respect that the Government has not demonstrated that the measures have been adopted or encouraged enabling workers or their representatives, in accordance with national legislation and practice, to contribute to the determination and the improvement of the working conditions.

Therefore, the Committee considers that the situation has not been brought into conformity with Article 3 of the Additional Protocol (Article 22 of the Revised Charter by which Greece is now bound).

**IRELAND**

**2<sup>nd</sup> Assessment of the follow-up: European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, Resolution CM/ResChS(2014)12**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee concluded that there was a violation of Article 5 of the Charter on the grounds of the prohibition against police representative associations from joining national employees' organisations, having the factual effect of depriving them to negotiate on pay, pensions and service conditions represented by national organisations.

The Committee also found that there was a violation of Article 6§2 of the Charter on the ground that the police representative associations were not provided with a means to effectively represent their members in all matters concerning their material and moral interests.

The Committee also found that there was a violation of Article 6§4 of the Charter on the ground that the domestic legislation amounted to a complete abolition of the right to strike as far as the police is concerned.

**2. Information provided by the Government**

The report recalls the information indicated already in the previous report (2017). The report further states that as of October 2019, the *An Garda Síochána* representative bodies continue to have full and equal access to national public service pay negotiations. Preliminary discussions in this regard commenced in July 2019 with these bodies, along with workers' representatives from all other sectors, on the terms of the collective bargaining process for future negotiations on the continuation of the Lansdowne Road Agreement, with further engagement in December 2019.

Following amendments to the Industrial Relations Acts signed into law in July 2019, members of *An Garda Síochána* and their representative bodies may now access the services of the Workplace Relations Commission (WRC) and the Labour Court to resolve collective issues. The legislation allows for professional relations issues in *An Garda Síochána* to be dealt with in a timely and professional manner by the institutions of State set up for that purpose.

To give effect to the provisions of the new legislation, agreed changes to the internal *An Garda Síochána* dispute resolution mechanisms are currently being implemented. These changes, which are the subject of an agreement between the WRC, *An Garda Síochána* management and the representative bodies, will provide procedures for the resolution of collective disputes, and underpin formal access to the WRC and the Labour Court for disputes which cannot be resolved internally. The WRC is currently engaging with the *An Garda Síochána* representative bodies and management to provide training and support with a view to having the new industrial relations structures in place and operational by early 2020, to coincide with the entry into force date of the legislative changes.

The introduction of the new internal dispute resolution mechanisms also gives effect to the recommendation of the Working Group on Industrial Relations Structures in *An Garda Síochána* regarding the organisation of trade union actions. According to the report, in implementing the new mechanisms, every effort was made to identify and agree on processes that eliminate the need to seek trade union actions, and reduce the impact of any of these actions on the most essential services provided by *An Garda Síochána*.

Industrial relations legislation in Ireland does not extend to the granting of, or the abolition of the right to strike to any workers or groups of workers. In recommending that the members of *An Garda Síochána* continue to be constrained from withdrawing their labour in any strike action likely to impact their work, State security or the maintenance of public authority, the report recognises both the unique position of *An Garda Síochána* and the particular obligation to ensure that the dispute resolution and negotiation processes put in place are robust and effective, and that the members of *An Garda Síochána* are not disadvantaged.

### **3. Comments by the Irish Human Rights and Equality Commission**

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014.

In a submission registered in June 2020, it provides comments on the Government's follow up given to the Committee's decision.

The Commission welcomed the reviews conducted by the State into the operation of industrial relations within *An Garda Síochána*, which led the State to permit Garda Associations to take part in national public service pay negotiations. The Commission also welcomed the State enshrining in legislation access of Garda Associations to the Workplace Relations Commission and the Labour Court. Notwithstanding these developments the Commission noted that the Committee in its 2018 Findings stated that the State had not brought the situation into conformity with Articles 5, 6§2, and 6§4 of the Charter due to the State failing to address the abolition of the right to strike and therefore calls on the State to remove the complete prohibition on members of *An Garda Síochána*'s right to strike in order to bring the current legislative framework into conformity with Articles 5, 6§2 and 6§4 of the Charter.

### **4. Assessment of the follow-up**

The Committee takes note of the measures described, which constitute progress. As indicated in the information submitted by the Irish Human Rights and Equality Commission in June 2020, the reviews conducted by the State into the operation of industrial relations within *An Garda Síochána* led to the State permitting Garda Associations to take part in national public service pay negotiations. The State has also enshrined in legislation Garda Associations access to the Work Place Relations Commission and the Labour Court.

However, the Committee also acknowledges that, in spite of the progress, the legislative changes announced have not yet been implemented and are still under development. Therefore, there are still restrictions in allowing *An Garda Síochána* to fully participate in negotiations regarding its services and they are not provided with a means to effectively represent their members in all matters concerning their material and moral interests. Moreover, as stated by the Government's report, the domestic legislation still prescribes to a complete abolition of the right to strike as far as the police is concerned.

The Committee asks for information to be included in the next report on the development and implementation of all the measures announced in order to remedy the situation and asks particularly on the measures taken to address the abolition of the right to strike.

The Committee finds that the situation has not been brought into conformity with Articles 5, 6§2 and 6§4 of the Charter.

**2<sup>nd</sup> Assessment of the follow-up: European Roma Rights Center (ERRC) v. Ireland, Complaint No. 100/2013, decision on the merits of 1 December 2015, Resolution CM/ResChS(2016)4**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee concluded that there was a violation of Article 16 of the Charter on the following grounds:

- insufficient provision of accommodation for Travellers;
- many Traveller sites are in an inadequate condition;
- the Criminal Justice (Public Order) Act 1994 (as amended) provides for inadequate safeguards for Travellers threatened with eviction;
- the Housing (Miscellaneous Provisions) Act 1992 (as amended) provides for inadequate safeguards for Travellers threatened with eviction;
- evictions are carried out in practice without the necessary safeguards.

**2. Information provided by the Government**

The report indicates that the Government has embarked on a number of initiatives since the decision of the Committee in 2015.

The National Traveller Accommodation Consultative Committee (NTACC), the statutory body appointed to advise the Minister in relation to any matter concerning accommodation for Travellers, recommended that an Independent Expert Group be established to examine and make recommendations on issues regarding Traveller accommodation policy, strategy and implementation. That Expert Group on Traveller Accommodation was established in September 2018 and was tasked with reviewing the Housing (Traveller Accommodation) Act 1998 and all other legislation that impacts the delivery of Traveller accommodation. The Expert Group had to present recommendations that will improve the delivery of Traveller accommodation nationally.

The Expert Group completed their report and presented it to the Minister on 22 July 2019. Subsequently, the report was presented to the NTACC. The recommendations in the report of the Expert Review Group on Traveller Accommodation addressed the items specifically raised in the complaint and in the Committee's decision. The recommendations were comprehensive and ranged from changes to procedures or policy, to changes to legislation. The 32 recommendations contained in the report are divided into four categories: Delivery Reflecting Need, Planning, Capacity and Resources and Governance.

The recommendations focused on how to increase provision and maintain Traveller-specific accommodation, as well as on the issue of evictions, trespass laws and reforms in governance to ensure that Travellers' accommodation needs are met.

Members of the NTACC, following consideration of the Expert Group report, made submissions to the Minister. Other interested parties, including Traveller representative organisations and local authorities can make submissions.

As regards the timeframe, the report states that it is in Phase 1 on the project at present, which includes gathering the information required and consulting with stakeholders on each of the 32 recommendations. DHPLG are waiting for input from some of the stakeholders. Once this phase is completed, a report will be submitted to the Minister in January 2020 before proceeding with the project planning.

Funding for the provision of Traveller-specific accommodation has been increasing year on year with a dedicated budget of €13 million allocated for capital projects in 2019 increasing

to €14.5 million for 2020. The Ministry works in conjunction with local authorities to ensure full use of the increased level of funding available for investment in Traveller accommodation.

### **3. Comments by the Irish Human Rights and Equality Commission**

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014.

In a submission registered in June 2020, it provides comments on the Government's follow up given to the Committee's decision.

It indicates that while noting in the State's report that the budget for Traveller-specific accommodation has increased from €13 million in 2019 to €14.5 million in 2020, the Commission is concerned about the low level of funding that has been allocated by each local authority in recent years for the purpose of Traveller accommodation. By November 2019, only 31.5% of the Travellers specific accommodation budget for 2019 had been allocated. As of early March, €694,000 of the 2020 budget had been allocated b, which represent less than 5% of the total budget.

A review of the Traveller Accommodation Programmes of the local authorities reveal the common reasons given by the local authority for failing to allocate funds and provide accommodation include:

- political and local opposition in the planning process;
- waiting for approval or the funds to be allocated from the State for a project;
- because of lack of Department of Housing, Planning and Local Government multi-annual budget cycle, currently all funds must be drawn down within one year;
- delays in securing planning permission;
- land availability, issues with finding appropriate sites;
- difficulty of agreeing specifics of projects (design and type of accommodation) with Travellers.

In a number of Traveller Accommodation Programmes, the local authorities state that Travellers prefer standard social housing to Traveller-specific accommodation. Standard social housing does not fall under the Traveller-specific accommodation budget. These submissions do not reflect past analysis and the longstanding views of Traveller groups of the need for the provision of culturally-appropriate accommodation. The annual estimate of Traveller families conducted in 2018 by local authorities found that 2,468 families live in Traveller-specific accommodation which represents 22% of all Traveller families. The Commission is concerned that the high number of families currently living in rented accommodation does not reflect the preferences of the Traveller community, and it does not fulfil the State's obligation to provide culturally appropriate accommodation to Travellers. The current accommodation provisions do not respect the culture and identity of Travellers including nomadism, living in extended family groups, keeping horses, and other social and economic activities.

The Commission is also concerned about the level of overcrowding in Traveller households, nearly 40% of Traveller households have more persons than rooms compared with less than 6% of all households. Traveller households have on average 5.3 persons per household in comparison to 4.1 persons per household for the general population. One in four Traveller households have six or more people living there in comparison to one in twenty households for the general population. Almost one in three Travellers households with children have six or more people living there. 10% of Traveller families share an accommodation in stopping sites with another household.

Moreover, the Commission is further concerned by the continued problem of homelessness of Traveller family, with Traveller children comprising 12% of the homeless children residing

in emergency accommodation despite Travellers only comprising 1% of the population. It is also concerned that the State is not meeting the needs of those who would prefer to live in culturally appropriate Traveller-specific accommodation, nor those who would prefer to live in standard housing.

#### *Traveller Accommodation Expert Group*

The most significant development since previous submission is the publication of the independent Traveller Accommodation Expert Group's report. The Expert Group acknowledged that there are no reliable data on current accommodation policies due to shortcomings in the quality of data and information on the size, characteristics, and accommodation of Travellers. While local authorities contend that Travellers express a preference for standard social housing, submissions by representatives of the Traveller community to the Expert Group state that Travellers feel pressured to apply for standard social housing. Travellers feel that they will not be able to secure Traveller-specific accommodation such as shared housing, transient or permanent stopping sites due to the low number of Traveller-specific accommodation available. On this basis the Expert Group concluded that the current system for assessing accommodation needs is not working as it does not reflect the preferences of the Traveller community.

The Expert Group expressed concerns over the adequacy of the budget provided to local authorities to provide Traveller accommodation and the funds drawn down by local authorities over the last number of years. Between 2008 and 2018, of the total allocated budget of €168.8 million for the provision of Traveller accommodation only 66% (€110.6 million) was drawn down by local authorities.

Between 2006 and 2018, 54.1% of the capital spent on Traveller-specific accommodation was spent on refurbishing or extending existing Traveller sites rather than on providing new units. The Expert Group found that the lack of provision of new sites is due to a planning system which blocks the deliverance of Traveller-specific accommodation. There is lack of monitoring of local authorities implementation of Traveller Accommodation Programmes and a lack of sanctions when local authorities do not meet targets. The Expert Group recommended that the National Traveller Accommodation Consultative Committee plays a role in overseeing the implementation of the local authority Traveller Accommodation Programmes, which would allow it to take action when the implementation of the programmes is inadequate.

#### *Seanad Public Consultation Committee*

Seanad Éireann, the upper house of the Irish parliament, invited members of the Traveller community and the wider public to examine and identify key issues faced by the Traveller Community after the recognition of Traveller ethnicity by the State. On the basis of consultations and submissions, the Seanad Public Consultation Committee recognised that over three years after the State formally recognised Traveller ethnicity, there has been 'little tangible difference' in transforming the lives of Travellers for the better.

The Consultation Committee stated that Travellers continue to be affected by legislation and policies which do not respect their distinct culture and history, in particular nomadism. The report calls for the overhaul of the *Traveller Accommodation Act 1998* and other legislative frameworks as they have failed to address the accommodation needs of the Traveller community. This is due to the extremely high rate of homelessness amongst Travellers, the increase in the number of Traveller families sharing accommodation and living in

overcrowded conditions, and the inconsistent record of delivery of Traveller-specific accommodation by local authorities and voluntary sector approved housing bodies.

### *Equality Reviews*

In addressing the failure of local authorities to draw down funds from the budget for Traveller-specific accommodation, the Commission requested in June 2019 every local authority to conduct an equality review under Section 32(1) of the *Irish Human Rights and Equality Commission Act 2014* on its practices and procedures related to the continued liaison with local authorities for follow-up and clarification purposes. The Commission is not in a position to comment further on the review until the process is completed.

### *Adequacy of existing sites*

The Commission recalls that the majority of money drawn down by local authorities has been spent on refurbishing and extending existing sites. While welcoming the State's efforts to renovate sites, it notes that in 2019 the Minister of State for Housing and Urban Development stated that the living conditions in Traveller sites were 'disgraceful' and 'not conditions for families to be living in'.

### *The Impact of Covid-19*

The effect of these inadequate conditions on the health of Travellers became more pronounced recently due to the threat of Covid-19. A lack of running water affected Travellers' ability to practice good hygiene habits and overcrowded and cramped conditions made it difficult for people to self-isolate. The already higher levels of chronic illness amongst Travellers make them more vulnerable to Covid-19. The Commission notes the Department of Housing, Planning and Local Government's circular which requested local authorities to provide if needed additional accommodation on or off site, extra toilets, access to running water, and extra refuse collections to limit the spread of virus in Traveller accommodation.

The Irish Traveller Movement stated that the implementation by local authorities of the Department's circular was mixed and that more than 2,000 families were living in inadequate, unsafe and impermanent conditions. In particular, concern was raised about the lack of provisions for Traveller families living on unauthorised sites with no facilities.

### *Legislative framework governing evictions and evictions in practice*

The State's report expressed its commitment to look at the law governing evictions under Section 10 of the *Housing (Miscellaneous Provisions) Act 1992* (as amended) and Section 19 of the *Criminal Justice (Public Order) Act 1994* (as amended) in light of the Expert Group's recommendations.

The Expert Group stated that due to the State's recognition of Traveller ethnicity and the importance of nomadism to Traveller ethnicity, any legislation which criminalised this way of life should be reviewed and repealed. The Expert Group recommended that the provisions of Section 19 of the *Criminal Justice (Public Order) Act 1994* (as amended) governing trespass should be repealed or should be limited by the creation of an independent oversight mechanism to ensure evictions carried out under the Act are monitored and that adequate procedural safeguards are incorporated.

The Expert Group expressed concern about the unrestricted and unmonitored use of Section 10 of the *Housing (Miscellaneous Provisions) Act 1992* (as amended) particularly in cases where the local authority failed to meet targets for the provision of accommodation. Of particular concern is the lack of restriction on evictions without the requirement to provide alternative accommodation to families who have been assessed as in need of

accommodation under the Traveller Accommodation Programme of a local authority and are awaiting the provision of accommodation. The Expert Group recommends that when a removal notice is issued to families, there should be an internal appeals procedure available for them to appeal the decision in a formal manner to the housing bodies concerned. Local authorities should be obliged to be cognisant of submissions to an appeals mechanism particularly where the families concerned have been assessed and are awaiting the provision of permanent accommodation or where there is specific needs of the occupants (children, pregnant women, disabled or older people) of the caravans concerned.

There has been a sharp increase in the use of Section 10 of the *Housing (Miscellaneous Provisions) Act 1992* notices by the four Dublin councils. There has been a near quadrupling of the issuance of notices between 2017 (42) and 2019 (159). The notices are primarily being issued under the third subsection of Section 10, where there is no requirement to provide adequate alternative accommodation. Travellers who are issued with these notices often have no option of alternative accommodation and are left with nowhere else to go. Traveller advocacy groups have stated that overcrowded accommodation and a lack of housing is forcing Travellers to move into caravans which is putting them at risk of eviction notices. Eviction notices can have a significant impact on the mental health of families and children, who are already in a vulnerable position.

The legal aid scheme does not extend to eviction proceedings, which can have a disproportionate impact on Travellers. Furthermore, evictions can often take place in the evening, which means that Travellers cannot access legal advice in a timely manner. The Free Legal Advice Centre (FLAC) has stated that most eviction notices only give Travellers 24 hours to comply which means it is difficult if not impossible to obtain legal representation, receive legal advice, and challenge the notice in court in this timeframe.

In the context of the vulnerability of Travellers, the Commission welcomes the protection from evictions offered to Travellers in the midst of the Covid-19 situation. Under Section 5(7)(c) of the *Emergency Measures in the Public Interest (Covid-19) Act 2020* Travellers who are currently resident in any location will not be evicted, except where movement is required to ameliorate hardship and provide protection and subject to consultation with the Travellers involved.

#### **4. Assessment of the follow-up**

The Committee notes that Ireland has made progress in the provision of accommodation for Travellers, access to housing and refurbishment of Traveller accommodation. However, despite this progress there is still a substantial shortfall in the provision of accommodation for Travellers. The main positive development was the creation of the Experts Group, but this Group made a series of recommendations which have not yet been fully implemented.

As indicated in the comments provided by the Irish Human Rights and Equality Commission, a number of sites are in poor condition, lack maintenance and are badly located.

The legislation permitting evictions fails to provide for consultation with those affected and also does not ensure reasonable notice of and information on the eviction. Nor does all the legislation require the provision of alternative accommodation or provide for adequate legal remedies. Moreover, as regards legal remedies, there is no legal aid for those threatened with eviction.

The Committee asks for information on the follow-up given to its decision that will be submitted in the next report on the adoption and implementation of all the measures envisaged in order to remedy the situation.

Meanwhile, the Committee finds that the situation has still not been brought into conformity with Article 16 of the Charter.

**2<sup>nd</sup> Assessment of the follow-up: International Federation for Human Rights (FIDH) v. Ireland, Complaint No. 110/2014, decision on the merits of 12 May 2017, Resolution CM/ResChS(2018)1**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee concluded that there was a violation of Article 16 of the Charter on the following grounds:

- a significant number of local authority tenants reside in poor housing conditions amounting to housing that is inadequate in nature.;
- persistent conditions like sewage invasions, contaminated water, dampness and mould went “to the core of what adequate housing means”;
- although many local authority estates were ear-marked for regeneration in 2002, a significant number of regeneration programmes adopted by the Government for local authority had not been completed.

Despite a large number of people remained in substandard housing conditions, no complete statistics on the condition of local authority housing have been collected since 2002 by the Irish authorities. No national timetable existed for the refurbishment of local authority housing stock. For these reasons, the Committee found that the Government had failed to take sufficient and timely measures to ensure the right to housing of an adequate standard for not an insignificant number of families living in local authority housing, and therefore Ireland had violated Article 16.

**2. Information provided by the Government**

The report indicates that the Government has taken certain measures to implement the Committee’s 2017 decision.

In relation to concerns around the adequacy of certain local authority housing, the report states that the Government is committed to ensuring that tenants in social housing are provided with adequate housing that meets the standards most recently laid down in the Housing (Standards For Rented Houses) Regulations 2019. During the implementation of *Rebuilding Ireland*, the Government’s Action Plan on Housing and Homelessness, over €6 billion is being provided to support the delivery of over 50,000 new high quality social housing homes, with over €200 million being made available under the National Regeneration Programme to support the direct delivery of over 1,000 new, high quality social homes in regeneration areas. This regeneration programme includes the specific areas mentioned in the original complaint of Dolphin House and St. Teresa’s Gardens. The Government currently supports large-scale regeneration projects in Dublin, Cork and Limerick and smaller projects in Tralee, Sligo and Dundalk.

Moreover, the Government is actively engaging with the local authority sector to promote the preventative maintenance of local authority housing stock and provides significant funding for stock improvement works. Details of the various actions taken by the State since the findings were made are included below and work will remain ongoing in the future.

*Preventative maintenance*

Local authorities are responsible for the management and maintenance of their own housing stock under the Housing Acts, including responsive and planned maintenance and the identification of housing in need of upgrade, regeneration or adaptation. Increasing numbers of local authorities have undertaken stock condition surveys. The City and County Management Association (CCMA), on behalf of local authorities, is driving a shared approach to the planned maintenance of social housing, including stock condition surveys, building on the work that several local authorities have already launched in that regard and there is ongoing dialogue between the CCMA and the Department in order to advance reform in the area.

Ireland's national plan, "Rebuilding Ireland", committed all local authorities to adopt a preventative maintenance approach to housing stock management, including consistent standards and the adoption of a common national standard for relocation performance. In this regard, the Department introduced a regulation, S.I. No. 137 of 2019, which came into effect on 1 May 2019 and which updated the minimum standards for rental accommodation that local authorities are required to adhere to in respect of social housing.

#### *Stock Improvement Works*

In addition to funding provided by the local authorities themselves in respect of their own housing stock (around €350m per annum), the Irish Government provides funding across a number of programmes to support the work of local authorities and to maintain and improve their social housing stock but, in all cases, are the local authorities that identify priorities. Equally, the continued work of local authorities in undertaking stock condition surveys, their responsive and planned maintenance programmes, as well as important programmes such as the Energy Retrofitting and Voids Programmes, also address the issues raised with the European Committee of Social Rights.

The Energy Retrofitting programme has seen over 70,000 social houses and apartments being retrofitted to date, through some €135m of investment. The programme aims to improve energy efficiency and comfort levels in social houses and addresses issues around fuel poverty. The Department also funds a programme, which provides exchequer funding to support local authorities in remediating vacant homes, as distinct from local authorities own refurbishment works; with a strong emphasis on Insulation Retrofitting. The funding provided by the Irish Government is additional to the investment that local authorities provide themselves towards such work and the authorities contribute additional investment. Since 2014, exchequer investment of some €145.5m has been provided to local authorities to refurbish / upgrade almost 11,000 social homes.

Specifically, with regard to Dublin City Council, (DCC), the local authority is building upon its experience of regenerating housing/apartment complexes to examine options to address issues arising with older apartment complexes (those over 40 years old, of which there are over 6,000 apartments). DCC seeks to ensure renewal of housing areas, reorganise estates at increased sustainable densities and build upon established principles of community-based, tenant-led approaches to estate regeneration, ownership and management.

DCC adheres to the Housing (Standards for Rented Houses) Regulations 2019 (which replaced the previous 2017 Regulations). To work towards the applicable standards, DCC has been carrying out condition surveys on their properties since May 2018. These surveys provide DCC with information on the condition of their existing housing stock. In light of these surveys and as part of the Council's continuous planned maintenance works, they have undertaken the following:

- Energy Efficiency Works: the work involves upgrading properties with external wall insulation and other measures - 485 social homes were upgraded in 2018. To date in 2019, 393 units have been completed. This includes the replacement of windows/doors on 145 social housing units under the Energy Efficiency Retrofitting Programme;

- Boiler Replacement Programme: replacement of old inefficient boilers with 1,172 replaced in 2018 and the programme is ongoing;
- Better Energy Communities/SEAI: upgrading residential and communal buildings with measures such as external wall insulation, heating etc.
- Vacant Units: since 2015 to 2019, 4,205 vacant social homes were refurbished and upgraded;
- Maintenance Works/Roof Repairs: in 2015, DCC commenced a programme to fix social homes with roofs in most need of repair. Since then, the authority has replaced roofs on 17 apartment complexes, covering 1,449 social apartments;
- Regulatory Building Standards: DCC has brought over 4,000 social homes where intervention was needed to bring them up to current standards.
- Condensation Works: DCC commenced a programme of works in 2018, to provide improved ventilation, alleviate dampness and condensation issues and reduce relative humidity in social homes. Works to 600 social homes were completed in 2018, while over 400 have been completed to date in 2019.
- Windows/Doors: since 2018, DCC has completed the replacement of doors/windows in 605 social homes, in addition to those included in the Energy Efficiency Retrofitting Programme.

The Capital works programme for DCC housing stock is significant and will continue over the next 5-10 years. The improvement works will provide accommodation for the tenants of the City Council that meets the requirements of modern living standards.

#### *Regeneration*

Over the lifetime of Rebuilding Ireland, over €200 million is being made available under the National Regeneration Programme to support the direct delivery of over 1,000 new, high quality social homes in the regeneration areas. The Department of Housing, Planning and Local Government currently supports a programme of large-scale regeneration projects in Dublin, Cork and Limerick and smaller projects in Tralee, Sligo and Dundalk. Together with providing a significant number of new homes, and upgrading of existing homes in the areas, the regeneration projects seek also to address causes of disadvantage in these communities through support for a programme of physical, social and economic regeneration.

The very significant investment currently being made in Regeneration projects such as Dolphin House, which was specifically referenced in the complaint regarding social housing conditions in Ireland made to the European Committee of Social Rights, is a key element of the Irish Government's commitment to these issues. In the case of Dolphin House, in 2018 63 of the existing apartments were fully refurbished and 37 social homes were built for the residents of the area, with over €25 million in investment. The regeneration programme there will continue in 2020 and beyond; most recently Phase 1B of the project was approved and this will provide further 35 apartment in the area, supported by exchequer funding in the region of €12 million.

A regeneration project moves through a number of phases: the initial master-planning stage; demolition works; enabling works; refurbishment and/or consolidation works (in some cases) and construction. The project undergoes a number of approval processes, with funding being approved for the different phases as required. There may be significant investment in

a regeneration project over a number of years before housing units are delivered and ready for occupation.

Social regeneration activities are also funded by the Department of Housing, Planning & Local Government for the duration of each regeneration project as it is understood that regeneration goes beyond mere bricks and mortar. In order to be successful and sustainable in the long term, a regeneration project requires the re-building of a community and a strengthening of community bonds, which is where social regeneration projects and community groups have a role to play.

### **3. Comments by the Irish Human Rights and Equality Commission**

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014.

In a submission registered in June 2020, it provided comments on the Government's follow up to the Committee's decision.

The Commission recalled the Committee's finding in 2017, as well as the Conclusions for 2019, where the Committee concluded that the State was not in conformity under Article 16 as it had not been established that there is a sufficient supply of adequate housing for vulnerable families.

The Commission highlighted the inadequate access to social housing as well as the State's slow progress in responding to the housing crisis, lack of access to housing and housing support for minority and vulnerable groups, and the rise of family homelessness.

#### *Public Sector Duty*

The Public Sector Duty, as set out in Section 42 of the Irish Human Rights and Equality Commission Act 2014, requires all public bodies in the performance of their functions to eliminate discrimination, promote equality of opportunity and treatment, and protect the human rights of its members, staff, and the persons to whom it provides services.

Public bodies are required to assess human rights and equality issues relevant to their functions in their strategy statements and are required to provide an update on their activities in each annual report. In its *Statement of Strategy 2017-2020*, the Department of Housing, Planning and Local Government identified the issue of access to housing and the impact of the housing crisis on particular segments as 'the most pertinent aspects of its business to which human rights and equality considerations apply'.

The Commission had previously recommended that the Department of Housing, Planning and Local Government in its review of *Rebuilding Ireland* should conduct an assessment of human rights and equality issues in line with its public sector duties under Section 42. The Commission reaffirms its position.

#### *Access to adequate local authority housing*

Researches showed that some local housing estates became some of the most deprived urban areas in Ireland. The Department of Employment Affairs and Social Protection's *Social Inclusion Monitor* for 2017 shows the consistent poverty rate for local authority tenants was 16.6% in that year. The 2018 study on discrimination and inequality in housing published by the ESRI (Economic and Social Research Institute) and the Commission found that 38% of those living in local authority housing experience housing deprivation (one or more of: leaking roof, damp walls, floor or foundation, rot in windows frames or floor; dark rooms; no

central heating; and no double glazing). The study showed that 28% of local authority houses are overcrowded, and local authority tenants are 5.6 times more likely than owner-occupiers to live in overcrowded accommodation.

While noting in the State's report the commitment under the *Rebuilding Ireland* plan to deliver high quality social housing homes, undertake regeneration projects, promote the preventative maintenance of local authority housing, and provide funding for stock improvement works, the Commission is concerned about the implementation of these commitments in practice.

The regeneration programmes and stock improvements are also not subject to any strict timetable. In 2017, only 15 local authorities reported that they had ever conducted stock conditions surveys and among them only 5 conducted these surveys at regular intervals. While the State report notes that an increasing number of local authorities are conducting stock conditions surveys, the Commission is concerned that this is not a consistent approach, which means inadequate conditions may be left unidentified and unaddressed.

#### *Conditions within local authority housing*

In relation to the conditions of local authority housing, the Commission is concerned that the poor quality of the houses can have a negative physical and mental effect on families.

#### *Covid-19*

The Commission is concerned that the overcrowded accommodation and lack of adequate sanitation and other essential facilities within a number of social housing units exposes people to a greater risk of contracting Covid-19 due to the difficulties of self-isolating and social distancing in these conditions. Lack of social housing supply is placing people that are homeless, or in emergency accommodation, or living in overcrowded accommodation at a higher risk of exposure to Covid-19.

#### *Supply of local authority housing*

The Commission has previously highlighted its concerns with the slow progress of the State in dealing with the housing and homelessness crisis, and the human rights and equality considerations in relation to the ongoing crisis. This has disproportionate and negative impact on vulnerable groups of the society including children, Travellers, Roma, refugees, victims of domestic violence, and people with disabilities. The Commission is also concerned that there is a significant gap between the demand for social housing and the available local authority housing stock, as fewer than 10% of the population live in social housing.

#### *Housing supports*

The Commission is particularly concerned with the shift in the State's policy focus from the provision of secure and high quality social housing to the provision of supported temporary accommodation such as family hubs and greater reliance on housing supports. A consequence of the low supply of local authority housing is the increased reliance on the private rental market. The State's housing policy is heavily dependent on the use of the private housing market to meet social housing needs, this is apparent in the importance of HAP (Housing Assistance Payment) to the State's social housing strategy. Rent supplement has become a default long-term housing support in the absence of adequate social housing to accommodate the significant number of households in need of assistance.

The decision to withdraw from building social housing and to instead provide rent supplement for private renters has made low-income households extremely vulnerable to shocks in the housing market. The Commission is increasingly supporting individuals who are experiencing discrimination accessing housing due to their receipt of housing assistance.

Those in receipt of rent supplement are also more likely to face housing deprivation and overcrowding. EEA and non-EEA nationals can also face discriminatory barriers in accessing social housing supports.

#### *Family homelessness*

The Commission has repeatedly expressed concern about the rise in family homelessness over the last years. There is a disproportionate number of migrant families at risk or experiencing homelessness, and the homeless crisis has a gendered nature as the majority of families presenting to homeless services are female-headed single-parent families. A report by the Irish NGO, Focus Ireland, found that young families are particularly vulnerable to homelessness due to difficulties of accessing housing, including social housing, and housing supports.

The instability of HAP and lack of available social housing have meant families have relied on emergency accommodation to meet their housing needs. The Commission has expressed concern about the conditions of emergency accommodation and family hubs, and their potential negative impact on families' physical and mental health due to the length of time families have to reside in these types of accommodation. Families in emergency accommodation can experience excessive noise, lack of access to services such as cooking and laundry facilities, and lack security of tenure. In 2019, a report by the Ombudsman for Children's Office highlighted the challenges of stigma, lack of privacy, excessive noise, and lack of normal family life faced by children living in family hubs.

The Commission calls on the State to take sufficient and timely measures to ensure the right to housing of an adequate standard, with regard to habitability and access to essential services, for families living in local authority housing; and to provide a sufficient supply of adequate housing for vulnerable families in order to bring the situation into conformity with Article 16 of the Charter.

#### **4. Comments by the Community Action Network and Centre for Housing Law, Rights and Policy Research, NUI Galway**

*The Community Action Network and Centre for Housing Law, Rights and Policy Research, NUI Galway (CAN)* is a social justice NGO dedicated to working with communities to create a more equal and just society.

In a submission registered on 11 August 2020, it provides comments on the Government's follow-up to the Committee's decision.

#### *Preventive maintenance*

The Government report outlines certain 'preventative maintenance' measures taken, or that the Government committed to, in response to *FIDH v Ireland* the Government. However, the report places undue prominence on the actions of some local authorities and thus fails to reflect the overall situation within the State. It is important to point out that, as regards the responsibility for adequate housing, it is for the State to undertake general supervision at national level to ensure in a consistent manner that all local authority dwellings across Ireland are of adequate quality. CAN submits that:

- There is a failure to complete nationwide stock condition surveys: the Government report makes no reference to the commitment, nor to the specified time frame. This is

despite the fact that in 2017, the National Oversight and Audit Committee found that only 15 local authorities (out of 31 local authorities) reported that they had ever conducted stock conditions surveys and of these 15 only 5 conducted these surveys at regular intervals. It is unclear that, even in the Dublin City Council (DCC) area, effective housing condition surveys have been carried out on social housing outside of the flats' complexes;

- Inadequate commitment to a “preventative maintenance approach”: the CAN Collective Complaint monitoring survey 2020 revealed that 71% of respondents reported that maintenance and repairs are not carried out in reasonable timely manner according to their level of urgency; 71% reported that when maintenance and repairs are of poor quality when they are carried out; 29% reported that they have not made a complaint about their housing standards because they don't believe anything will be done. CAN states that despite the commitments on this point in the Government report, there are inadequate resources committed to ‘preventative maintenance’.
- Inadequate housing standards for local authority housing tenants: CAN states that this Regulation creates a lower standard for local authority tenants than other tenants. Furthermore, unlike private renters who have access to low cost dispute resolution mechanisms, local authority tenants do not have any legally enforceable rights to ensure the enforcement of these standards. This creates a major gap in the legal framework and means that local authority tenants face lower housing standards while also being denied effective legal remedies. In *FIDH v Ireland* the Committee drew particular attention to the sewage invasions, contaminated water, dampness, persistent mould etc. experienced by many local authority households. Despite the Committee decision in *FIDH v Ireland*, a significant number of local authority households continue to reside in poor housing conditions. Direct evidence of tenants but also evidence from architects and engineers indicate problems with mould, dampness, sewage invasions indicating that for many housing conditions continue to be unsafe and unhealthy.

#### *Stock improvement works*

The Government report outlines a number of measures, under the title of ‘stock improvement works’, as part of the response to *FIDH v. Ireland*. These measures comprise State expenditure on maintenance of social housing, actions taken by some individual local authorities to address poor housing conditions, an Energy Retrofitting Programme. CAN indicates that this section of the report omits important information. Furthermore, these measures do not adequately protect the human right to housing of households living in local authority housing and that there has been insufficient progress in remedying the poor housing conditions at the heart of the violation of Article 16 in *FIDH v. Ireland*.

CAN points out that although significant financial resources are available to carry out management and maintenance, and yet substandard housing is provided by local authorities. It would appear that many local authorities are using their tenants' rents to subsidise other activities for the general population. The Government's report does not detail

how the Energy Retrofitting programme will address damp, condensation and persistent mould, and thus this cannot be regarded as a concrete and effective measure. CAN further submits that the measures taken by Dublin City Council to address poor housing conditions have been ineffective.

#### *Regeneration programmes*

CAN states that the Government report refers to a number of commitments made under the National Regeneration Programme. The report refers to a number of “large scale regeneration projects” and outlines that these programme will “seek to also address causes of disadvantage in these communities through support for a programme of physical, social and economic regeneration”. However, as a result of the economic crisis in Ireland, the original regeneration programmes were delayed or halted, with a deterioration of conditions in some cases. The Regeneration projects dating back to before the economic collapse (e.g. Fatima, St Michaels, St Teresas, Dolphin, Charlemont, O Devanney, Croke villas) are now all deemed to be finished or in wind-up phases – despite the serious concerns of many residents. The poor housing conditions experienced by local authority tenants living in these estates were at the centre of *FIDH v. Ireland*.

These projects have in effect only benefitted a fraction of those they were intended to benefit. As noted above, Dolphin House, the last remaining substantial regeneration project, is much delayed with only phase one completed, and a substantial realtering of the planned agreed through extensive consultation will delay further work even more leaving large numbers of families living in the poor conditions that were at the heart of the complaint *FIDH v. Ireland*. CAN claims that many more complexes require regeneration in Dublin, but the estate renewal scheme, has not been implemented. CAN further states that there is no national plan for regeneration and no national tenant participation mechanism. In addition, the noise of regeneration work also affects the families who live in local authority housing. As a result, a significant number of local authority tenants remain living in substandard housing conditions.

Since the Committee decision in *FIDH v. Ireland*, little progress has been made by the Government, and there are still a large number of families living in substandard local authority housing conditions. In Balgaddy in the South Dublin Council area for example, where there are many homes constructed in very poor standard during the economic boom, consideration has only been given earlier this year to moving families from the flats ‘suffering from exceptional maintenance issues’ to the ‘next available suitable property’.

#### **5. Assessment of the follow-up**

The Committee finds that Ireland has made progress in the adoption of measures to ensure an adequate standard of living in local authority housing. Indeed, the Government report states that certain ‘preventative maintenance’ measures have been taken, or committed to, in response to the decision in this complaint. The Government report further provides information on State expenditure on maintenance of social housing, the actions taken by certain individual local authorities to address poor housing conditions and the Energy Retrofitting Programme. The report refers to a number of “large scale regeneration projects” and states that these programme will “seek to also address causes of disadvantage in these communities through support for a programme of physical, social and economic regeneration”, commitments made under the National Regeneration Programme.

However, despite this progress there is still substantial limitations in providing adequate accommodation to a large number of families, who continue living in substandard local authority housing conditions.

As indicated in the comments provided by the Irish Human Rights and Equality Commission and by CAN, the legal framework for the right to housing for families in Ireland is insufficient, local authority housing tenants continue to live with inadequate housing standards and there are no national statistics on the conditions of local authority housing stock. There is no national timetable for the refurbishment of local authority housing stock, the Government has not fulfilled its obligation in ensuring community safety for local authority housing tenants; there is no meaningful participation of all those affected in the design, implementation and monitoring of housing policies, programmes and strategies.

The legislation permitting evictions fails to provide for consultation with those to be affected, as well as for reasonable notice of and information on the eviction and there is not always the provision of alternative accommodation or adequate legal remedies. As regards legal remedies, there is no legal aid for those threatened with eviction.

The Committee asks for information on the follow-up given to its decision that will be submitted in the next report on the adoption and implementation of all the measures envisaged in order to remedy the situation.

Meanwhile, the Committee finds that the situation has not been brought into conformity with Article 16 of the Charter.

**1<sup>st</sup> Assessment of the follow-up: European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017, Resolution CM/ResChS(2018)2**

***1. Decision of the Committee on the merits of the complaint***

In its decision, the Committee concluded that there was a violation of Article 5 of the Charter on the grounds that the complete prohibition against military representative associations from joining national employees' organisations was not necessary and proportionate.

The Committee also found a violation of Article 6§2 as military representative associations are unable to meaningfully participate in national pay agreement discussions.

***2. Information provided by the Government***

In respect of the finding of a violation of Article 5 of the Charter, the Government states that Section 2(3) of the Defence (Amendment) Act 1990 prohibits the Defence Forces representative associations from being associated with or affiliated to any trade union or any other body, without the consent of the Minister. Members of the Permanent Defence Forces also cannot become members of a trade union and are prohibited from taking union actions.

To compensate for these limitations there are a range of statutory redress mechanisms available to serving members, including a redress of wrongs scheme, a Defence Forces Ombudsman and a Conciliation and Arbitration scheme for members of the Permanent Defence Force.

The Conciliation and Arbitration scheme for members of the Permanent Defence Force provides a formal mechanism for the Permanent Defence Force Representative Associations, to engage with the official counterpart. As regards the commitments under pay agreements, members of the Permanent Defence Forces can make representations in relation to their pay and conditions of service through their representative bodies.

A review of the Conciliation and Arbitration (C&A) scheme for members of the Permanent Defence Force was conducted in 2018. The terms of reference for the review included consideration of the findings of the European Committee of Social Rights in the case of the European Organisation of Military Associations (EUROMIL) v. Ireland. One of the recommendations from the analysis was that the official side should, with the consent of the Minister, engage in discussions with the ICTU to explore practical aspects of a PDF representative association forming association/affiliation with the ICTU, while giving due consideration to any likely conflict that might arise between such an arrangement and the obligations of military service.

Defence management (civil and military) have engaged in discussions with ICTU and these discussions are ongoing.

In relation to Article 6§2 of the Charter, the right to bargain collectively, the report refers to the fact that the Government established an independent Public Service Pay Commission in 2016, which was tasked with providing objective analysis and advice on the most appropriate pay levels for the public service, including the Defence Forces.

Similar to all other public sector unions, the Permanent Defence Force Representative Associations, (i.e. PDFORRA (PDF) who represent enlisted personnel and RACO who represent Commissioned Officers) were invited to make a submission to the Commission. The submissions were considered in the development of the

subsequent report prepared by the Commission. Following publication of the report of the Commission on 9 May 2017, the Irish Government commenced negotiations on a new national public sector pay agreement.

Whereas previous negotiations were conducted in a parallel process with the PDFORRA, these arrangements were superseded in the negotiations on the latest and current public service pay agreement, which was facilitated by the Workplace Relations Commission. The PDFORRA attended and participated at all plenary sessions which included public sector trade unions, non-Irish Congress of Trade Unions (ICTU) affiliated unions and representative bodies. The issues raised by the Representative Associations were considered in tandem with those raised by other public sector representative associations and trade unions.

The negotiations on pay culminated in a new agreement which contains increases in pay ranging from 6.2% to 7.4% over the agreement, from 2018 to 2020, with the larger percentage increases focussed on the lower paid. The proposals arising from the negotiations were accepted by ballot of the members of the PDFORRA.

### ***3. Comments by the Irish Human Rights and Equality Commission***

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014.

In a submission registered in June 2020, it provided comments on the Government's follow up to the Committee's decision.

The Commission notes the progress as stated in the Government report.

While acknowledging these developments, the Commission notes that the Permanent Defence Force Other Ranks Representative Association (PDFORRA), following its long-standing position of supporting an affiliation with ICTU, formally requested an associate membership with ICTU in July 2019. ICTU has agreed in principle to accept PDFORRA as an associate member. PDFORRA has sought an association with ICTU so as to provide the best opportunity to secure advances in pay remuneration for its members as they will be collectively represented rather than excluded in national pay talks. The Commission asked the State to remove the complete prohibition against military representative associations from joining national employees' organisations in order to bring the current legislative framework into conformity with Article 5 (the right to organise) of the Charter.

### ***4. Comments by the European Organisation of Military Associations and Trade Unions (EUROMIL), on behalf of PDFORRA***

EUROMIL, on behalf of PDFORRA, sent a submission registered on 7 January 2020, which provides comments on the Government's follow up to the Committee's decision.

The Government, as a follow up to the findings of the Committee in 2017, announced a review of the Conciliation and Arbitration Scheme (C&A Scheme) for members of the Irish Defence Forces. Following the publication of the Terms of Reference, PDFORRA, in light of the recommendations of the Committee, sought the inclusion of the finding in the Terms of Reference for the Independent Review body. This was subsequently agreed by the Minister.

However, it is worth noting that the Chief of Staff of the Defence Forces has strenuously rejected the idea of allowing PDFORRA to be granted Associate status of ICTU. In order to dispel any potential belief that ICTU would not accept PDFORRA's application for Associate status, the Association formally applied to the Irish Congress of Trade Unions for membership on 31 July 2019. The General Secretary of Congress subsequently announced on 20 September 2019 that PDFORRA's application had been accepted in principle, subject to confirmation by the Minister for Defence.

Presently, PDFORRA is awaiting the formation of Government in order to advance its claim for the grant of Associate status to the next Minister for Defence.

Apart from the complexities stemming from the prohibition to adhere to ICTU, PDFORRA highlights that the dispute resolution body overseeing the Public Sector Stability Agreement 2018-2020 has no representatives from the armed forces.

There has been widespread disappointment among members of the Defence Forces at the findings of the aforementioned Pay Commission and recommendations made within its report have not been implemented .

Moreover, PDFORRA undertook legal action, as the mechanism for the payment of outstanding independent adjudications, which were part of the national pay negotiations, was never agreed in advance of the decision to only pay these awards with effect from October 2018. Consequently, PDFORRA filed a number of court actions and petitions to the Committee for Freedom of Association of the International Labour Organisation.

These elements, according to EUROMIL, underline that PDFORRA has found the "parallel process" in national pay negotiations did not constitute a genuine effort at negotiation. Moreover, complementary legislation has further disenfranchised members through effectively denying them the ability to demonstrate their dissatisfaction with current pay rates and conditions without penalisation.

### **5. Assessment of the follow-up**

With respect to Article 5 of the Charter, the Committee notes that Ireland, has not removed the complete prohibition against military representative associations from joining national employees' organisations. The Government refers to a a review of the Conciliation and Arbitration (C&A) scheme for members of the Permanent Defence Forces which was conducted in 2018. The terms of reference for the review included assessing the decision to involve the ICTU to explore the practical aspects of a PDF representative association forming an association/affiliation with the ICTU, while giving due consideration to any conflict that might arise between such an arrangement and the obligations of military service. However, discussions are still ongoing and the statutory limitations are maintained and the situation has not yet been brought in conformity with Article 5 of the Charter.

As regards Article 6§2 of the Charter, the Committee takes note of the inclusion of the Permanent Defence Forces Associations in public service pay negotiations alongside public sector trade unions, non-Irish Congress of Trade Unions (ICTU) affiliated unions and representative bodies. However, PDFORRA highlights that "side deals" were agreed between other areas of the public sector and the government during national paynegotiations in 2017. PDFORRA was informed

during the aforementioned “parallel discussions” at the national pay negotiations that this would not occur. It further states that the legislation published to underpin the Public Sector Stability Agreement 2018-2020, had the potential to impact sectors that did not agree to the terms of the agreement through the withholding of increases and increments for specific durations. In addition, the dispute resolution body overseeing the Public Sector Stability Agreement 2018-2020 has no representatives from the Defence Forces or PDFORRA.

While noting the above concerns, the Committee considers that with the de facto inclusion of the PDFORRA in public service pay negotiations alongside public sector trade unions, non-Irish Congress of Trade Unions (ICTU) affiliated unions and representative bodies, the situation in practice is now compatible with Article 6§2 of the Charter.

On this basis, the Committee considers that the situation has not yet been brought entirely into conformity with Article 5 of the Charter, but is now in conformity as regards Article 6§2 of the Charter.

**ITALY**

**3<sup>rd</sup> Assessment of the follow-up: European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, Resolution ResChS(2006)4**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found the following violations:

*A. Violation of Article E taken together with Article 31§1 of the Charter*

The Committee concluded that there was a violation of Article E taken in conjunction with Article 31§1 on account of the inadequate living conditions in camps or similar settlements for Roma who choose to follow an itinerant lifestyle or who are forced to do so (§12 of the decision). In particular, the Committee found that Italy failed to show that it had taken adequate steps to ensure that Roma are offered housing of a sufficient quantity and quality to meet their particular needs and that it had ensured or had taken steps to ensure that local authorities are fulfilling their responsibilities in this area (§37 of the decision).

*B. Violation of Article E taken together with Article 31§2 of the Charter*

The Committee concluded that there was a violation of Article E taken in conjunction with Article 31§2 on the grounds that Italy had failed to establish that the evictions procedures of Roma were adequate and had not provided credible evidence to refute the claims that Roma had suffered unjustified violence during such evictions. As regards the adequacy of eviction procedures, the Committee recalled that evictions must be justified, carried out in conditions that respect the dignity of the persons concerned, and alternative accommodation should be available. Furthermore, eviction procedures must be established by the law, which must also specify when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts, and provide compensation for illegal evictions (§41 of the decision).

*C. Violation of Article E taken together with Articles 31§1 and 31§3 of the Charter*

The Committee concluded that there was a violation of Article E taken in conjunction with Articles 31§1 and 31§3 because of the lack of permanent dwellings of an acceptable quality to meet the needs of Roma wishing to settle. The Committee found in particular that Italy had failed to provide any information to show that the right of access to social housing is effective in practice or that the criteria regulating access to social housing are not discriminatory. The Committee recalled in this respect that the principle of non-discrimination in Article E includes also indirect discrimination and considered that the failure to take into consideration the different situation of Roma or to introduce measures specifically aimed at improving their housing conditions, including the possibility for an effective access to social housing, meant that Italy was in violation of the Charter (§46 of the decision).

**2. Information provided by the Government**

*A. Violation of Article E taken together with Article 31§1 of the Charter*

In its report, registered on 10 March 2020, the Government refers to the information previously provided concerning the National Strategy for the Inclusion of Roma, Sinti and Caminanti (RSC) for 2012-2020 and to the further initiatives taken by the National Office against Racial Discrimination (UNAR), in the framework of the National Operational Programme (NOP) Inclusion 2014-2020 funded by the European Social Fund.

In particular, according to the report, a new statistical survey is under way to monitor the transition of RSC communities from settlements to other forms of housing, so as to enable central and local administrations to be aware of and overcome the difficult housing

conditions of these communities. In this connection, examples of good practices developed at local level are listed in the report, concerning measures taken to facilitate the transfer of households from camps to housing units, the purchasing of lands in view of settling there, or their access to social housing. Details of the results achieved and further measures under way are provided in the appendix to the report.

The report also refers to the annual meetings held since 2016 by the Inter-Institutional table on the RSC housing issue to implement the Strategy, notably through "Local Action Plans" and "Regional Action Plans", which were launched respectively in 2018 and 2019. Thematic objectives aimed at reducing extreme marginalisation and promoting inclusion in favour of homeless RSC are also included in a programme aimed at improving social inclusion in main urban areas (NOP Metro 2014-2020).

In addition, the report mentions a decision of 30 May 2015 whereby the First instance court of Rome, taking into account inter alia the decision of the European Committee of Social Rights in European Roma Rights Centre v. Italy, Complaint No. 27/2004 (decision on the merits of 7 December 2005), concluded that the allocation of a camp to RSC would constitute a discrimination. Considering the fact that only 2% of the RSC populations in Italy led a nomadic life, the court found that *"any large housing solution exclusively destined to people belonging to the same ethnic group must be considered discriminatory, even more if it is implemented [as in the case at issue] in order to restrict the effective coexistence with the local population, the access to school and social-health services under conditions of real equality and if it is located in an area where people's health is seriously at risk"*.

#### *B. Violation of Article E taken together with Article 31§2 of the Charter*

The report explains that two circulars, issued respectively on 1 September 2018 and 15 July 2019, have defined some guidelines to be followed when carrying out evictions. These guidelines explicitly provide that the Prefect must identify priorities related to the protection of families in situations of economic and social hardship, taking into account the need to protect minors and other vulnerable persons, in addition to the need to verify the regularity of the conditions of access to and stay on the national territory. As regards specifically the RSC settlements, the circular of 2019 aims at preventing situations of risk for the public order, safety and health, on account of the degraded conditions of some settlements. Prefects are required to recense spontaneous settlements, with the aims 1) to better identify interventions needed to support persons in vulnerable conditions, while activating positive dynamics of relocation of the interested parties and 2) to verify that foreigners in the settlement are regularly present on the national territory and assess the individual situations, in compliance with the provisions of the Consolidated Law on Immigration. These tasks involve different responsibilities, at local or regional level, in order to ensure access to social, health, care and school services to those who are entitled to them. The report indicates that the relevant associations and non-institutional stakeholders are involved in the definition of strategies, and aim at overcoming specific situations of degradation and restore lawfulness.

#### *C. Violation of Article E taken together with Articles 31§1 and 31§3 of the Charter*

The housing policies taken in favour of RSC are described in the report in connection with the abovementioned information concerning the National Strategy for the Inclusion of RSC for 2012-2020 (see above). The report mentions examples of municipalities or departments (Massa Carrara, Avellino, Pordenone, Ravenna, Faenza, Reggio Emilia, Bologna, Padua, Teramo, La Spezia, Florence, Ferrara) which allocated social housing to RSC households or

where projects are under way to this effect. According to the report, each municipality addresses its housing policies to the entire municipal population, without distinction of ethnicity, nationality or religion so as to grant the same conditions for social housing to the RSC communities. However, the report indicates that in some cases the RSC families renounced access to social housing ; it adds that there are no pending disputes at municipal level concerning the allocation of housing to RSC.

The report also recalls that the Constitutional Court, in its judgment No. 166 of 20 July 2018, found that the conditions of access applied to third-country nationals with regard to housing benefits granted for the payment of rent (bonus affitti) were unconstitutional. The Constitutional Court held that it was manifestly unreasonable and arbitrary to set a ten-year national residence requirement or a five-year regional residence requirement for third-country nationals to be entitled to housing benefits of this type, as had been stipulated by Article 11, paragraph 13, of Decree-Law No. 112 of 25 June 2008.

### **3. Assessment of the follow-up**

#### *A. Violation of Article E taken together with Article 31§1 of the Charter*

The Committee refers to its previous findings in 2015 and 2018, as well as to its latest Conclusion concerning Article 31§1 (Conclusions 2019), where it maintained that the situation in Italy was not in conformity with the Charter because of the inadequate living conditions of Roma and Sinti in camps and similar settlements. It asked for information on the practical impact of the implementation of the National Strategy for the Inclusion of RSC for 2012-2020 with regard to housing, and on other measures planned to improve the situation, as well as on the follow-up to the decision of the Rome Civil Court of 30 May 2015 and the subsequent case law on the subject.

The Committee takes note of the detailed information provided in the report on the implementation of the National Strategy for the Inclusion of RSC Communities 2012-2020 (see also previous findings of 2015 and 2018) and in particular of the examples provided concerning the measures taken by certain municipalities and those still under way. It notes with interest that progress is being made at local level in finding housing solutions but finds that, on the one hand, there is no coherent and coordinated national approach towards inclusion and, on the other hand, in practice segregation of RSC communities has not yet been overcome.

It notes in this respect that, according to the 2020 Country report issued by the European Equality Law Network, *"In Italy, there are trends and patterns of housing segregation and discrimination against the Roma. Public administrations spend a huge amount of money on Roma camps without making significant improvements in the living conditions of the Roma community. On the contrary, the camps contribute to their segregation. There is a growing debate on the segregation of Roma people through their placement in 'camps', together with the harsh policies that are currently implemented against Roma settlements. However, there has not yet been any significant attempt to place the existence of the camps themselves within the framework of anti-discrimination law, with the exception of a case brought to the Court of Rome concerning a large settlement on the outskirts of the city"*.

As regards the follow-up to the above-mentioned decision of the First Instance court of Rome in 2015, the report indicates that "the problem concerning the settlement at issue remains under the attention of the competent authorities". Despite the setting up of the Inter-Institutional Table in 2016 and the subsequent decisions reflected in the report concerning the settlements in the outskirts of Rome, the Committee notes from the report that the interventions carried out have mostly an "experimental" or an "emergency" character, but have so far failed to provide a long-term solution to segregation of RSC.

In the light of the foregoing, the Committee asks the next report to provide updated information on the questions raised in Conclusions 2019 and in the meantime finds that the situation has not been brought into conformity with the Charter.

*B. Violation of Article E taken together with Article 31§2 of the Charter*

The Committee refers to its previous findings in 2015 and 2018, as well as to its latest Conclusion concerning Article 31§2, where it noted that other international bodies and actors continued to report cases of forced eviction of RSC (see for details Conclusions 2019 on Article 31§2). It recalls in this connection that on 4 July 2019 it declared admissible a new complaint (Amnesty International vs. Italy, Complaint No. 178/2019) concerning notably allegations of forced evictions of RSC and decided that Italy should immediately adopt all possible measures to eliminate the risk of serious and irreparable harm to which the persons evicted and concerned by that complaint were exposed, in particular: to ensure that persons evicted are not rendered homeless and to ensure that evictions do not result in the persons concerned experiencing unacceptable living conditions. It furthermore notes from the annual report (2019) issued by Associazione 21 Luglio, a NGO operating on the issue of RSC in Italy, that the number of forced evictions of RSC settlements passed from 250 in 2016 to 145 in 2019 and that at least in some cases these evictions were allegedly conducted without respecting the rights and dignity of the persons concerned and without offering alternative accommodation.

As regards the adoption of new guidelines in 2018 and 2019 concerning the carrying out of evictions, the Committee notes that it is not clear from the report whether, in law and in practice, the Charter's requirements are respected. In particular, the report does not clarify what restrictions apply to evictions, what remedies and legal aid is available to prevent and to contest them and whether alternative accommodation is provided to the persons evicted. The report furthermore does not explain how these guidelines have been applied in the evictions of RSC settlements, how many persons have been concerned by such evictions and what steps have been taken to ensure the effective investigation and sanctioning in cases of unjustified violence. The Committee asks therefore the next report to clarify these points.

In the light of the foregoing, the Committee finds that the situation has not been brought into conformity with the Charter.

*C. Violation of Article E taken together with Articles 31§1 and 31§3 of the Charter*

The Committee refers to its previous findings in 2015 and 2018, as well as to its latest Conclusion concerning Article 31§3, where it found that it had not been established that sufficient resources had been invested throughout the country to improve access for RSC to social housing without discrimination in practice (see Conclusions 2019) and asked for updated information on the measures taken throughout the country in relation to access for RSC to social housing.

The Committee takes note with interest of the increasing number of municipalities where RSC households have been able to access social housing and of the Constitutional Court's judgment concerning the criteria of entitlement to housing benefits. It asks the next report to provide further information on access of RSC households to housing benefits and social housing and to any further case-law development which might be relevant to the situation of RSC households in this respect.

In the light of the information available and of its finding above (violation of Article E taken together with Article 31§1 of the Charter) related to the persistent patterns of segregated housing, the Committee considers that the situation has not been brought into conformity with the Charter.

**3<sup>rd</sup> Assessment of the follow-up: Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, Resolution CM/ResChS(2010)8**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found the following violations:

*A. Violation of Article E taken in conjunction with Article 31§1*

The Committee concluded that there was a violation of Article E taken in conjunction with Article 31§1 on account of the inadequate living conditions of Roma and Sinti in camps or similar settlements in Italy. In particular, the Committee found that the living conditions of Roma and Sinti in camps had worsened following the adoption of certain “security measures” between 2006 and 2009 which, on the one hand, directly targeted these vulnerable groups and, on the other hand, were not accompanied by adequate steps to take due and positive account of the differences of the population concerned, thus leading to stigmatisation, amounting to discriminatory treatment (§58 of the decision).

*B. Violation of Article E taken in conjunction with Article 31§2*

The Committee concluded that there was an aggravated violation of Article E taken in conjunction with Article 31§2 because of the continuing practice of evicting Roma and Sinti without respecting the dignity of the persons concerned and without alternative accommodation being made available, with the aggravating factor that such evictions had involved unjustified violence towards Roma, including by the police, without leading to systematic investigations and sanctions for the perpetrators and without any concerted action by the Government to counter stigmatisation (§§73-79 of the decision).

*C. Violation of Article E taken in conjunction with Article 31§3*

The Committee concluded that there was a violation of Article E taken in conjunction with Article 31§3 because of the lack of effective access to social housing and resulting segregation of Roma and Sinti in camps. In particular, the Committee held that notwithstanding the complex distribution of competences between the national level and the Regions, the ultimate responsibility for policy implementation, involving a minimum of oversight and regulation of local action lay with the State (§§86-91 of the decision).

*D. Violation of Article E taken in conjunction with Article 30*

The Committee concluded that there was a violation of Article E taken in conjunction with Article 30 on account of the situation of poverty and social exclusion of Roma and Sinti, notably due to their substandard housing conditions and discriminatory restrictions to the exercise of their civil and political rights.

In particular, the Committee found that Italy had failed to adopt an overall and co-ordinated approach to promote effective access to housing and to prevent or eradicate the poverty situation affecting especially Roma and Sinti people who were evicted and rendered homeless without any social assistance from the Italian authorities and adequate access to public infrastructure or services. Furthermore, the Committee observed that the segregation and poverty situation affecting most of the Roma and Sinti population in Italy (especially

those living in the camps) was linked to a civil marginalisation due to the failure of the authorities to address the Roma and Sinti's lack of identification documents, implying their discriminatory restriction of access to residency and citizenship and, accordingly, to participation in decision-making processes (§§98-110 of the decision).

*E. Violation of Article E taken in conjunction with Article 16*

The Committee concluded that there was a violation of Article E taken in conjunction with Article 16 on the grounds that, on the one hand, Roma and Sinti families did not have access to adequate housing and, on the other hand, they were not protected against undue interference in family life.

*F. Violation of Article E taken in conjunction with Article 19§1*

The Committee concluded that there was an aggravated violation of Article E taken in conjunction with Article 19§1 on account of the use of xenophobic political rhetoric or discourse against Roma and Sinti, which was indirectly allowed or directly emanating from the Italian authorities (§§136-140 of the decision).

*G. Violation of Article E taken in conjunction with Article 19§4 c)*

The Committee concluded that there was a violation of Article E taken in conjunction with Article 19§4 c) because of the violation of Article E taken in conjunction with Article 31. The Committee found in this respect that the shortcomings related to the housing conditions of Roma and Sinti in general constituted also a specific violation of the rights of Roma and Sinti migrant workers from other States Parties to the Charter, who are in a legal situation and should therefore not be discriminated in their access to public and private housing or to housing aids (§§145-147 of the decision).

## **2. Information provided by the Government**

*A. Violation of Article E taken in conjunction with Article 31§1*

In its report, registered on 10 March 2020, the Government refers to the information previously provided concerning the National Strategy for the Inclusion of Roma, Sinti and Caminanti (RSC) for 2012-2020 and to the further initiatives taken by the National Office against Racial Discrimination (UNAR), in the framework of the National Operational Programme (NOP) Inclusion 2014-2020 funded by the European Social Fund.

In particular, according to the report, a new statistical survey is under way to monitor the transition of RSC communities from settlements to other forms of housing, so as to enable central and local administrations to be aware of and overcome the difficult housing conditions of these communities. In this connection, examples of good practices developed at local level are listed in the report, concerning measures taken to facilitate the transfer of households from camps to housing units, the purchasing of lands in view of settling there, or their access to social housing. Details of the results achieved and further measures under way are provided in the appendix to the report.

The report also refers to the annual meetings held since 2016 by the Inter-Institutional table on the RSC housing issue to implement the Strategy, notably through "Local Action Plans" and "Regional Action Plans", which were launched respectively in 2018 and 2019. Thematic objectives aimed at reducing extreme marginalisation and promoting inclusion in favour of homeless RSC are also included in a programme aimed at improving social inclusion in main urban areas (NOP Metro 2014-2020).

In addition, the report mentions a decision of 30 May 2015 whereby the First instance court of Rome, taking into account inter alia the decision of the European Committee of Social

Rights in European Roma Rights Centre v. Italy, Complaint No. 27/2004 (decision on the merits of 7 December 2005), concluded that the allocation of a camp to RSC would constitute a discrimination. Considering the fact that only 2% of the RSC populations in Italy led a nomadic life, the court found that "*any large housing solution exclusively destined to people belonging to the same ethnic group must be considered discriminatory, even more if it is implemented [as in the case at issue] in order to restrict the effective coexistence with the local population, the access to school and social-health services under conditions of real equality and if it is located in an area where people's health is seriously at risk*".

#### *B. Violation of Article E taken in conjunction with Article 31§2*

The report explains that two circulars, issued respectively on 1 September 2018 and 15 July 2019, have defined some guidelines to be followed when carrying out evictions. These guidelines explicitly provide that the Prefect must identify priorities related to the protection of families in situations of economic and social hardship, taking into account the need to protect minors and other vulnerable persons, in addition to verifying that the persons concerned are regularly present on the national territory.

As regards specifically the RSC settlements, the circular of 2019 aims at preventing situations of risk for the public order, safety and health, on account of the degraded conditions of some settlements. Prefects are required to recense spontaneous settlements, with the aims 1) to better identify interventions needed to support persons in vulnerable conditions, while activating positive dynamics of relocation of the interested parties and 2) to verify that foreigners in the settlement are regularly present on the national territory and assess the individual situations, in compliance with the provisions of the Consolidated Law on Immigration. These tasks involve different responsibilities, at local or regional level, in order to ensure access to social, health, care and school services to those who are entitled to them. The report indicates that the relevant associations and non-institutional stakeholders are involved in the definition of strategies, and aim at overcoming specific situations of degradation and restore lawfulness.

#### *C. Violation of Article E taken in conjunction with Article 31§3*

The housing policies adopted in favour of RSC are described in the report in connection with the abovementioned information concerning the National Strategy for the Inclusion of RSC for 2012-2020 (see above). The report mentions examples of municipalities or departments (Massa Carrara, Avellino, Pordenone, Ravenna, Faenza, Reggio Emilia, Bologna, Padua, Teramo, La Spezia, Florence, Ferrara) which allocated social housing to RSC households or where projects are under way to this effect. According to the report, each municipality addresses its housing policies to the entire municipal population, without distinction of ethnicity, nationality or religion so as to grant the same conditions for social housing to the RSC communities. However, the report indicates that in some cases the RSC families renounced access to social housing ; it adds that there are no pending disputes at municipal level concerning the allocation of housing to RSC.

The report also recalls that the Constitutional Court, in its judgment No. 166 of 20 July 2018, found that the conditions of access applied to third-country nationals with regard to housing benefits granted for the payment of rent (*bonus affitti*) were unconstitutional. The Constitutional Court held that it was manifestly unreasonable and arbitrary to set a ten-year national residence requirement or a five-year regional residence requirement for third-country nationals to be entitled to housing benefits of this type, as had been stipulated by Article 11, paragraph 13, of Decree-Law No. 112 of 25 June 2008.

*D. Violation of Article E taken in conjunction with Article 30*

With regard to housing, the Government refers to the information provided above in connection with Article E taken in conjunction with Article 31 of the Charter (notably concerning the National Strategy for the Inclusion of RSC for 2012-2020, Regional and Local Action Plans, NOP Inclusion 2014-2020, NOP Metro 2014-2020).

As regards other aspects of social inclusion of RSC and their participation in the decision-making process, the report refers to the information previously provided (assessment 2018) concerning the setting up by the UNAR on 8 April 2016 of a National RSC Platform, which constitutes an operational tool for dialogue between RSC representatives, sector associations and central and local public administrations involved in the abovementioned National Strategy. The report lists the Platform's objectives, as defined in 2017, which include the objective "to facilitate and formalise the dialogue and cooperation between institutions and the RSC sector associations" as well as to promote networks, federations and the RSC Communities Forum, which will constitute the central core of the Platform.

The Forum is made up of 25 NGOs that have self-declared to be mainly composed of RSC people and to convey a common position on some relevant issues to be discussed with the competent institutions. The report refers to the activities of the Platform in 2017 and points out that representatives of RSC associations have taken part in meetings of the National Roma Contact Point, the European Roma Platform and national Tables set up in the framework of the National Strategy.

According to the report, in almost all municipalities, tables and venues for discussions and consultations between public actors, third sector and RSC families are widely established and active. The report mentions, among the most important initiatives taken at local level, the setting up of a special RSC Office by the Municipality of Rome, directly reporting to the Mayor and aimed at ensuring the strategic implementation coordination of the interventions of the "Rome Capital" Plan for the Inclusion of RSC populations and other related initiatives. In this connection, the report recalls that an important vaccination campaign has taken place in the framework of socio-health prevention measures taken in 2016 by the Municipality of Rome.

Under another project, started in September 2019, eight provincial or regional capitals (Bari, Catania, Cagliari, Genua, Messina, Milan, Naples, Rome) are expected to draw up Local Action Plans within 12 months, which include specific management models aimed at the participation of RSC to social, political, economic and civic life. Other examples of good practices implemented at local level (Vicenza, Guastalla), in order to encourage the participation of RSC communities, with positive practical outcomes are also mentioned.

The report furthermore presents inclusion measures taken to support the social and educational inclusion of RSC minors, notably in the framework of the National Project for the inclusion and the integration of the RSC children. The general aims of this project are to encourage the inclusion processes of the RSC children and adolescents, promote the diffusion of job good practices and know-how and build a collaborative network between the municipalities which participate in the experimentation.

The report recalls that inclusion of RSC populations is a priority of the NOP Inclusion 2014-2020 (see also assessment 2018) and the experimental projects launched in this connection are still under way. In particular, the report presents in detail a school-inclusion project in 2018-2020 which concerns 600 RSC pupils, 266 classes, 81 schools in 13 metropolitan

cities (Bari, Bologna, Catania, Florence, Genua, Messina, Milan, Naples, Palermo, Reggio Calabria, Rome, Turin and Venice). This three-years project involves an activity focused on school, housing and the local services network which aims to promote the children's overall wellbeing related to their families by encouraging their active participation and access to local services and health protection.

*E. Violation of Article E taken in conjunction with Article 16*

With regard to housing, the Government refers to the information provided above in connection with Article E taken in conjunction with Article 31 of the Charter.

*F. Violation of Article E taken in conjunction with Article 19§1*

According to the report, the national regulatory framework governing the prevention and control of hate crimes is already solid and consistent with the international instruments that protect individuals from all forms of discrimination.

It refers in this respect to the information already provided concerning the Observatory for Security against Discriminatory Acts (OSCAD) set up in 2010, its objectives, tasks and activities (see the report for details) and points out that one of the OSCAD's priority mission is the collection and analysis of the discriminatory offenses' allegations, with a view to contrasting the under-reporting or under-recording of such discriminatory offenses. The report indicates that the cases reported have increased, due to a greater awareness of this type of protection.

The report also refers to the training and awareness-raising activities organised by the OSCAD for the State Police personnel, at all levels, and judges and to the collaboration of the OSCAD at international level with the Office for Democratic Institutions and Human Rights (ODIHR), the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (reference is made in this connection to a meeting of 2015 on Roma and Sinti issues). The report furthermore recalls the setting up in 2017, within the Ministry of Justice, of a working group called "*Permanent Council for the fight against hate crimes and speeches*", which mainly carries out consultative activities regarding initiatives and interventions related to the contrast of hate crimes and speeches and can also present reports and proposals drawn up on the basis of monitoring and analysis of the phenomena of discrimination in all areas, with particular regard to the content of hate online, in order to offer elements of evaluation of their impact in contrasting discriminatory conduct.

*G. Violation of Article E taken in conjunction with Article 19§4 c)*

With regard to housing, the Government refers to the information provided above in connection with Article E taken in conjunction with Article 31 of the Charter.

**3. Assessment of the follow-up**

*A. Violation of Article E taken in conjunction with Article 31§1*

The Committee refers to its previous findings in 2015 and 2018, as well as to its latest Conclusion concerning Article 31§1 (Conclusions 2019), where it maintained that the situation in Italy was not in conformity with the Charter because of the inadequate living conditions of Roma and Sinti in camps and similar settlements. It asked for information on the practical impact of the implementation of the National Strategy for the Inclusion of RSC for 2012-2020 with regard to housing, and on other measures planned to improve the situation, as well as on the follow-up to the decision of the Rome Civil Court of 30 May 2015 and the subsequent case law on the subject.

The Committee takes note of the detailed information provided in the report on the implementation of the National Strategy for the Inclusion of RSC Communities 2012-2020 (see also previous findings of 2015 and 2018) and in particular of the examples provided concerning the measures taken by certain municipalities and those still under way. It notes with interest that progress is being made at local level in finding housing solutions but finds that, on the one hand, there is no coherent and coordinated national approach towards inclusion and, on the other hand, in practice segregation of RSC communities has not yet been overcome.

It notes in this respect that, according to the 2020 Country report issued by the European Equality Law Network, *"In Italy, there are trends and patterns of housing segregation and discrimination against the Roma. Public administrations spend a huge amount of money on Roma camps without making significant improvements in the living conditions of the Roma community. On the contrary, the camps contribute to their segregation. There is a growing debate on the segregation of Roma people through their placement in 'camps', together with the harsh policies that are currently implemented against Roma settlements. However, there has not yet been any significant attempt to place the existence of the camps themselves within the framework of anti-discrimination law, with the exception of a case brought to the Court of Rome concerning a large settlement on the outskirts of the city"*. According to the same report, the National Strategy adopted in 2012 *"has not brought about any relevant results, in particular in housing. One of the reasons for this is the absence of activity promoted by UNAR, which had been identified as the national focal point" (...)* *"the national strategy provides incentives and promotes coordination without setting binding targets to be met by the regions. At national level, the Government could promote a law setting a minimum level of services, including housing, to be provided, but no such law is on the agenda of any political party"*.

As regards the follow-up to the above-mentioned court decision of 2015, the report indicates that *"the problem concerning the settlement at issue remains under the attention of the competent authorities"*. Despite the setting up of the Inter-Institutional Table in 2016 and the subsequent decisions reflected in the report concerning the settlements in the outskirts of Rome, the Committee notes from the report that the interventions carried out have mostly an "experimental" or an "emergency" character, but have so far failed to provide a long-term solution to segregation of RSC.

In the light of the foregoing, the Committee asks the next report to provide updated information on the questions raised in Conclusions 2019 and in the meantime finds that the situation has not been brought into conformity with the Charter on this point.

#### *B. Violation of Article E taken in conjunction with Article 31§2*

The Committee refers to its previous findings in 2015 and 2018, as well as to its latest Conclusion concerning Article 31§2, where it noted that other international bodies and actors continued to report cases of forced eviction of RSC (see for details Conclusions 2019 on Article 31§2). It recalls in this connection that on 4 July 2019 it declared admissible a new complaint (Collective Complaint No. 178/2019, Amnesty International vs. Italy) concerning notably allegations of forced evictions of RSC and decided that Italy should immediately adopt all possible measures to eliminate the risk of serious and irreparable harm to which the persons evicted and concerned by that complaint were exposed, in particular: to ensure that persons evicted are not rendered homeless and to ensure that evictions do not result in the persons concerned experiencing unacceptable living conditions. It furthermore notes

from the annual report (2019) issued in 2020 by Associazione 21 Luglio, a NGO operating on the issue of RSC in Italy, that the number of forced evictions of RSC settlements passed from 250 in 2016 to 145 in 2019 and that at least in some cases these evictions were allegedly conducted without respecting the rights and dignity of the persons concerned and without offering alternative accommodation.

As regards the adoption of new guidelines in 2018 and 2019 concerning the carrying out of evictions, the Committee notes that it is not clear from the report whether, in law and in practice, the Charter's requirements are respected. In particular, the report does not clarify what restrictions apply to evictions, what remedies and legal aid is available to prevent and to contest them and whether alternative accommodation is provided to the persons evicted. The report furthermore does not explain how these guidelines have been applied in the evictions of RSC settlements, how many persons have been concerned by such evictions and what steps have been taken to ensure the effective investigation and sanctioning in cases of unjustified violence. The Committee asks therefore the next report to clarify these points.

In the light of the foregoing, the Committee finds that the situation has not been brought into conformity with the Charter on this point.

#### *C. Violation of Article E taken in conjunction with Article 31§3*

The Committee refers to its previous Findings 2015 and 2018, as well as to its latest Conclusion concerning Article 31§3, where it found that it had not been established that sufficient resources had been invested throughout the country to improve access for RSC to social housing without discrimination in practice (see Conclusions 2019) and asked for updated information on the measures taken throughout the country in relation to access for RSC to social housing.

The Committee takes note of the increasing number of municipalities where RSC households have been able to access social housing and of the Constitutional Court's judgment concerning the criteria of entitlement to housing benefits. It asks the next report to provide further information on access of RSC households to housing benefits and social housing and to any further case-law development which might be relevant to the situation of RSC households in this respect.

In the light of the information available and of its finding above (violation of Article 31§1 of the European Social Charter taken together with Article E) related to the persistent patterns of segregated housing, the Committee considers that the situation has not been brought into conformity with the Charter on this point.

#### *D. Violation of Article E taken in conjunction with Article 30*

The Committee refers to its latest conclusion concerning Article 30, where it maintained that Italy was not in conformity with the Charter on the ground that there was no adequate overall and coordinated approach to combating poverty and social exclusion (see Conclusions 2017) as well as to its latest assessment (2018) of the follow-up to the decision in the present complaint. It takes note of the developments described in the report, but notes that most of the measures referred to in the report are still under way and do not allow to conclude that the situation of marginalisation and social exclusion of Roma and Sinti has been remedied. It accordingly asks the next report to continue to provide up-to-date information on the results achieved in this respect and to clarify whether and how the initiatives taken at local level are coordinated and monitored at national level.

It notes that according to the 2020 Country report issued by the European Equality Law Network, "With regard to the national Roma strategy (...) there is still a lack of effective implementation following its adoption. Moreover, UNAR's lack of independence means that it is merely an office operating within the Department for Equal Opportunities without any significant autonomy. As confirmed by the ECRI report published in 2019, UNAR is clearly and

completely linked to the executive and cannot perform any independent activity whatsoever, despite the fact that it has at times adopted a critical position in relation to the Government".

In the light of the information available on social inclusion and participation and of the findings concerning the housing situation (see above), the Committee considers that the situation has not been brought into conformity with the Charter on this point.

*E. Violation of Article E taken in conjunction with Article 16*

The Committee refers to its previous findings in 2015 and 2018, as well as to its latest Conclusion concerning Article 16, where it found that it had not been established that sufficient resources had been invested throughout the country to improve access for RSC to social housing without discrimination in practice (see Conclusions 2019) and asked for updated information on the measures taken throughout the country to this effect.

Since the information provided in respect of Article E taken in conjunction with Article 31 did not make it possible to conclude that the situation had been brought into conformity with the Charter, the Committee finds that the situation has also not been brought into conformity with Article E taken in conjunction with Article 16.

*F. Violation of Article E taken in conjunction with Article 19§1*

The Committee refers to its previous findings in 2015 and 2018, as well as to its latest conclusion concerning Article 19§1 where it maintained that the situation was not in conformity with the Charter on the ground that the measures against misleading propaganda concerning emigration, in particular to prevent racism and xenophobia in politics, and, more particularly, misleading propaganda against Roma and Sinti migrants, were not sufficient and asked for detailed, updated information on measures taken in this respect (see Conclusions 2019).

It notes that the report does not provide any new element on this point. According to the annual report (2019) issued in 2020 by *Associazione 21 Luglio*, the Observatory of hate speech set up by this NGO recorded 102 incidents of hate speech against RSC in 2019, representing 18% less than in 2018, including some 39 cases which were considered to be "more serious". It notes that, according to the 2020 Country report issued by the European Equality Law Network, hostility against the Roma is becoming an increasingly heated issue, with several politicians openly supporting policies of segregation in housing and education. The Committee asks the next report to comment these allegations in the light of updated and more detailed data about the measures taken to prevent misleading, racist and xenophobic propaganda as well as about the measures effectively taken to sanction such propaganda, notably in relation to institutional and political speech.

In the meantime, the Committee considers that the situation has not been brought into conformity with Article E taken in conjunction with Article 19§1 of the Charter.

*G. Violation of Article E taken in conjunction with Article 19§4 c)*

The Committee refers to its previous findings in 2015 and 2018, as well as to its latest Conclusion concerning Article 19§4 c), where it found that it had not been established that Italy had taken adequate practical steps to eliminate all legal and de facto discrimination concerning the access to accommodation (see Conclusions 2019). It notes from the abovementioned annual report (2019) issued in 2020 by *Associazione 21 Luglio* that out of the 12 700 RSC living in formal settlements (i.e. 63% of all the RSC in Italy, in 2019), 47% were Italian nationals, 42% were nationals from the former Yugoslavia and 11% were nationals from other European Union states. (<https://www.peridirittiumani.com/2020/06/24/rapporto-annuale-di-associazione-21-luglio-scende-a-20-000-il-numero-di-rom-in-emergenza-abitativa-in-italia/>).

Since the information provided in respect of Article E taken in conjunction with Article 31 did not make it possible to conclude that the situation had been brought into conformity with the

Charter, the Committee finds that the situation has also not been brought into conformity with Article E taken in conjunction with Article 19§4 c).

**2<sup>nd</sup> Assessment of the follow-up: International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, Complaint No. 87/2012, decision on the merits of 10 September 2013**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found the following violations:

*A. Violation of Article 11§1 of the Charter*

The Committee found a violation of Article 11§1 of the Charter because, with respect to the women who decide to terminate their pregnancy, the competent authorities did not take the necessary measures to ensure that, as provided by Section 9§4 of Law No. 194/1978, abortions requested in accordance with the applicable rules are performed in all cases, even when the number of objecting medical practitioners and other health personnel is high (see notably §§169-177 of the decision).

*B. Violation of Article E read in conjunction with Article 11 of the Charter*

The Committee found a violation of Article E read in conjunction with Article 11 of the Charter because of the discrimination suffered by women wishing to terminate their pregnancy, who are forced, at risk to their health, to move from one hospital to another within the country or to travel abroad because of a lack of non-objecting health staff in a number of hospitals in Italy (see notably §§190-194 of the decision). The Committee considered in particular that there was a discrimination on the grounds of territorial and/or socio-economic status between women who have relatively unimpeded access to lawful abortion facilities and those who do not and a discrimination on the grounds of gender and/or health status between women seeking access to lawful termination procedures and men and women seeking access to other lawful forms of medical procedures which are not provided on a similar restricted basis.

**2. Information provided by the Government**

*A. Violation of Article 11§1 of the Charter*

In its report, registered on 10 March 2020, the Government refers to the relevant legislation and confirms its commitment to ensure its implementation. It insists in this connection on the limits provided to conscientious objection of healthcare professionals in relation to termination of pregnancy, as confirmed by the case-law (Court of Cassation, Sixth Criminal Section, judgment No. 14979 of 2 April 2013).

Data on voluntary termination of pregnancy (VTP), including conscientious objection, are monitored since 1980 by the Epidemiological Surveillance System of VTP, which involves the Ministry of Health, the Superior Health Institute (*Istituto Superiore di Sanità* - ISS), the National Statistics Institute (ISTAT), contact centres from all the Regions, the Autonomous Provinces of Trento and Bolzano and the network of hospital and territorial assistance. In addition, a permanent "Technical Table" has operated since 2013 with the Regional Administrations representatives in order to identify any critical issues and monitor the full implementation of Law No. 194/1978 at local level, on the basis of specific monitoring indicators concerning each hospital and family planning services (see the report as regards the provisions detailing the role and tasks of the family planning services). A project aimed at updating the mapping of the locations and activities of family planning services was launched in 2018, in collaboration with the ISS and within the program of the National Centre for Disease Prevention and Control (CCM). Furthermore, new legislation was adopted in 2017 (Decree of the President of the Council of Ministers of 12 January 2017), which provide that outpatient specialist services for the protection of maternity offered by public and private accredited health structures are free of charge, including family planning services and periodic obstetric-gynaecological visits.

According to the report on VTP submitted to the Parliament in 2018 and referring to data of 2017:

- the number of structures offering VTP services has slightly increased: at national level, VTP was available in 64.5% of the hospitals with a department of obstetrics and gynaecology (381 out of 591). Only in the Campania region and the Autonomous Province of Bolzano the hospitals carrying out VTP were less than 30%;

- the VTP service offer in relation to the female population in childbearing age and to maternity wards indicates that while the number of VTP represents 17.6% of the number of births, 87.8% of maternity wards have VTP services which, according to the report, confirms that the offer of VTP services is adequate to the number of VTP carried out;

- the waiting time between the issue of the certification by the healthcare personnel and the abortion has shortened: in 2017, 68.8% of VTP were carried out within 14 days from the release of the documents (they were 66.3% in 2016, 65.3% in 2015 and 59.6% in 2011) and only 10.9% were carried out after three weeks (they were 12.4% in 2016, 13.2% in 2015 and 2014 and 15.7% in 2011);

- the number of VTP decreased by 5% in 2017 (80 733 cases), compared to 2016. The report explains that this is partly due to a larger use of emergency contraception, which no longer requires medical prescription for women aged 18 and over. The Government also maintains that the decrease in the number of abortions is partly related to the successful efforts of the family planning services to prevent unwanted pregnancies and VTP, as testified by the fact that in 2017 the number of VTP interviews (48 769) exceeded the number of VTP carried out (34 800) and confirms its intention to strengthen and enhance family planning services.

According to the report, the fact that 82% of women undergo VTP during the first 10 weeks of gestation, combined with the very low incidence of complications (5.6 complications per 1000 abortions), indicate that the VTP has not been a danger to women's health. The report also states that the level of conscientious objection is partially balanced with the staff mobility, agreements with specialists in obstetrics and gynaecology and the introduction of pharmacological abortion.

As regards in particular the impact of the exercise of the right to conscientious objection on women's access to VTP, the report refers to the weekly average workload for the VTP of non-objecting gynaecologist, registered over 44 working weeks per year. The national data for 2017 shows a workload of 1.2 VTP per non-objecting gynaecologist per week (with a 25% decrease compared to 2014) with a minimum of 0.2 cases in Valle d'Aosta to a maximum of 8.6 cases in Molise, and exceptional peaks at subregional level in Sicily, with 18.2 VTP per week, and in Campania, with 13.6 VTP per week (the regional averages in these cases are however much lower, respectively 2.4 and 3.5 VTP per week). The report points out that VTP procedures were also performed in 13 units which did not have any non-objecting gynaecologist in their staff, but could nevertheless ensure the procedure through temporary mobility of non-objecting staff from other units. Furthermore, the 2017 data indicate that some 146 non-objecting gynaecologists in 2017 (i.e. 9.8% of all non-objecting gynaecologists) in eight different regions were not assigned to VTP procedures. The report stresses the importance of the monitoring tools applied, as a support for the regional planning of VTP services.

*B. Violation of Article E read in conjunction with Article 11 of the Charter*

See above.

**3. Assessment of the follow-up**

*A. Violation of Article 11§1 of the Charter*

The Committee takes note of the information provided in the report, as well as the information concerning *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 91/2013, decision on the admissibility and the merits of 12 October 2015 and the comments submitted on 2 July 2020 by the CGIL.

It also refers to its previous finding in 2018, where it noted that, despite certain signs of improvement, there were still major disparities at local and regional level as regards access to VTP services and it asked for information on the measures taken to reduce such disparities and the results obtained, in the light of updated data.

In this respect, the Committee finds that the information submitted does not show that the disparities at local and regional level have been reduced and that the number of dedicated healthcare personnel available is adequate. In fact, although the report states that the available monitoring tools allow the regions to ensure an efficient planning of their VTP services, it does not explain whether and to what extent regions are effectively regulating their healthcare services in such a way as to ensure that all women can have access to VTP in their region under safe and efficient conditions. In addition, the Government's report does not provide any information concerning the number or percentage of VTP requests which could not be performed in a given hospital or region because of the insufficient availability of non-objecting doctors and supporting staff.

It notes in this connection from the comments submitted by CGIL, based on the data of 2018 (which were published in June 2020, after the Government had submitted its report) that the number of objecting gynaecologists continued to increase: they were 68.4% in 2017 and 69% in 2018 at national level - with regional averages over 70% in all the southern regions and up to 92.3% in the Molise region. Rates of 60% or more objecting anaesthesiologists (with regional averages of 75% in Molise and 76.8% in Sicily, while the national average was 46.3%) were furthermore registered in the same southern regions, which could significantly impair access to VTP, considering that general anaesthesia was used in over 52% of VTP in Italy in 2018 (and up to 92.3% in Molise).

The Committee also notes that, according to CGIL's comments, there are no data on clandestine abortions, nor on the number of objectors among pharmacists and family planning centres staff and the impact that this can have on effective access to VTP. It also appears from the official data that, while the number of VTP carried out in the first eight weeks of gestation increased (from 48.9% in 2017 to 50.9% in 2018), so did the number of VTP carried out under emergency procedures (from 19.2% in 2017 to 21.3% in 2018, and up to 42.7% in Apulia, a region where, in addition, no data was available in 2018 on the gestation timing of 16.3% of VTP). Furthermore, according to Human Rights Watch (<https://www.hrw.org/news/2020/07/30/italy-covid-19-exacerbates-obstacles-legal-abortion>) Covid-19 exacerbated obstacles to access to VTP, due to a lack of clear guidance as to the rules applicable to VTP during the pandemics, the maintaining of restrictive rules regarding access to medical abortion and the suspension of VTP services in many hospitals.

The Committee asks the next report to comment on these allegations and to provide relevant data on these issues.

In the meantime, the Committee considers that the situation has not yet been brought into conformity with the Charter with regard to women's right to access to VTP in accordance with the applicable rules in all cases, even when the number of objecting medical practitioners and other health personnel is high (Article 11§1).

*B. Violation of Article E read in conjunction with Article 11 of the Charter*

The Committee notes from the official data available that the VTP carried out on women not residing in the region represented 4.9% in 2017 (while 92.1% of VTP were carried out within the same region, including 87% in the same province) and 5% in 2018 (while 92.3% of VTP were carried out within the same region, including 87% within the same province). It asks the next report to clarify what measures exist to monitor the number of cases where women could not avail themselves of VTP services in their region due to obstacles related to the lack of non-objecting health staff.

The Committee refers to its assessment above, concerning Article 11 of the Charter and finds, for the same reasons, that the situation has not yet been brought into conformity with the Charter as regards the discrimination against women wishing to terminate their pregnancy and violation of their right to health because of problems with access to abortion services (Article E, read in conjunction with Article 11§1).

**2<sup>nd</sup> Assessment of the follow-up: *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, decision on admissibility and the merits of 12 October 2015, Resolution CM/ResChS(2016)3***

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found the following violations:

*A. Violation of Article 11§1 of the Charter*

The Committee found that there was a violation of Article 11§1 of the Charter because of shortcomings in the services for the termination of pregnancies in Italy, which make access to these services difficult for the women concerned despite the applicable legislation, and force them in some cases to seek alternative solutions, at risk to their health.

*B. Violation of Article E read in conjunction with Article 11 of the Charter*

The Committee found that there was a violation of Article E read in conjunction with Article 11 of the Charter because of the discrimination suffered by women wishing to terminate their pregnancy, who are forced, at risk to their health, to move from one hospital to another within the country or to travel abroad because of shortcomings in the implementation of Law No. 194/1978. The Committee considered in particular that there was a discrimination on the grounds of territorial and/or socio-economic status between women who have relatively unimpeded access to lawful abortion facilities and those who do not and a discrimination on the grounds of gender and/or health status between women seeking access to lawful termination procedures and women seeking access to other lawful forms of medical procedures which are not provided on a restricted basis.

*C. Violation of Article 1§2 of the Charter, first ground*

The Committee found that there was a violation of Article 1§2 of the Charter, first ground (discrimination), because it considered that there was no reasonable or objective reason justifying the difference in treatment between objecting and non-objecting medical practitioners, namely the cumulative disadvantages the latter suffered at work, both directly and indirectly, in terms of workload, distribution of tasks, career development opportunities etc.

*D. Violation of Article 26§2 of the Charter*

The Committee found that there was a violation of Article 26§2 of the Charter because of the failure of the Government to take any preventive training or awareness-raising measures to protect non-objecting medical practitioners from moral harassment.

**2. Information provided by the Government**

*A. Violation of Article 11§1 of the Charter*

In its report, registered on 10 March 2020, the Government refers to the relevant legislation and confirms its commitment to ensure its implementation. It insists in this connection on the limits provided to conscientious objection of healthcare professionals in relation to termination of pregnancy, as confirmed by the case-law (Court of Cassation, Sixth Criminal Section, judgment No. 14979 of 2 April 2013).

Data on voluntary termination of pregnancy (VTP), including conscientious objection, are monitored since 1980 by the Epidemiological Surveillance System of VTP, which involves the Ministry of Health, the Superior Health Institute (*Istituto Superiore di Sanità* - ISS), the National Statistics Institute (ISTAT), contact centres from all the Regions, the Autonomous Provinces of Trento and Bolzano and the network of hospital and territorial assistance. In addition, a permanent "Technical Table" has been activated since 2013 with the Regional Administrations representatives in order to identify any critical issues and monitor the full implementation of Law No. 194/1978 at local level, on the basis of specific monitoring indicators concerning each

hospital and family planning services (see the report as regards the provisions detailing the role and tasks of the family planning services). A project aimed at updating the mapping of the locations and activities of family planning services was launched in 2018, in collaboration with the ISS and within the program of the National Centre for Disease Prevention and Control (CCM). Furthermore, new legislation was adopted in 2017 (Decree of the President of the Council of Ministers of 12 January 2017), which provide that outpatient specialist services for the protection of maternity offered by public and private accredited health structures are free of charge, including family planning services and periodic obstetric-gynaecological visits.

According to the report on VTP submitted to the Parliament in 2018 and referring to data of 2017:

- the number of structures offering VTP services has slightly increased: at national level, VTP was available in 64.5% of the hospitals with a department of obstetrics and gynaecology (381 out of 591). Only in the Campania region and the Autonomous Province of Bolzano the hospitals carrying out VTP were less than 30%;
- the VTP service offer in relation to the female population in childbearing age and to maternity wards indicates that while the number of VTP represents 17.6% of the number of births, 87.8% of maternity wards have VTP services which, according to the report, confirms that the offer of VTP services is adequate to the number of VTP carried out;- the waiting time between the issue of the certification by the healthcare personnel and the abortion has shortened: in 2017, 68.8% of VTP were carried out within 14 days from the release of the documents (they were 66.3% in 2016, 65.3% in 2015 and 59.6% in 2011) and only 10.9% were carried out after three weeks (they were 12.4% in 2016, 13.2% in 2015 and 2014 and 15.7% in 2011);- the number of VTP decreased by 5% in 2017 (80,733 cases), compared to 2016. The report explains that this is partly due to a larger use of emergency contraception, which no longer requires medical prescription for women aged 18 and over. The Government also maintains that the decrease in the number of abortions is partly related to the successful efforts of the family planning services to prevent unwanted pregnancies and VTP, as testified by the fact that in 2017 the number of VTP interviews (48,769) exceeded the number of VTP carried out (34,800) and confirms its intention to strengthen and enhance family planning services.

According to the report, the fact that 82% of women undergo VTP during the first 10 weeks of gestation, combined with the very low incidence of complications (5.6 complications per 1,000 abortions), indicate that the VTP has not been a danger to women's health. The report also states that the level of conscientious objection is partially balanced with the staff mobility, agreements with specialists in obstetrics and gynaecology and the introduction of pharmacological abortion.

As regards in particular the impact that the exercise of the right to conscientious objection can have on women's access to VTP, the report refers to the weekly average workload for the VTP of non-objecting gynaecologist, counted over 44 working weeks per year. The national data for 2017 shows a workload of 1.2 VTP per non-objecting gynaecologist per week (with a 25% decrease compared to 2014) with a minimum of 0.2 cases in Valle d'Aosta to a maximum of 8.6 cases in Molise, and exceptional peaks at subregional level in Sicily, with 18.2 VTP per week, and in Campania, with 13.6 VTP per week (the regional averages in these cases are however much lower, respectively 2.4 and 3.5 VTP per week). The report

points out that VTP procedures were also performed in 13 units which did not have any non-objecting gynaecologist in their staff, but could nevertheless ensure the procedure through temporary mobility of non-objecting staff from other units. Furthermore, the 2017 data indicate that some 146 non-objecting gynaecologists in 2017 (i.e. 9.8% of all non-objecting gynaecologists) in eight different regions were not assigned to VTP procedures. The report stresses the importance of the monitoring tools applied, as a support for the regional planning of VTP services.

*B. Violation of Article E read in conjunction with Article 11 of the Charter*

The Government refers to the information provided in respect of Article 11§1 of the Charter (see above).

*C. Violation of Article 1§2 of the Charter, first ground*

The Government points out that Legislative decree No. 216 of 9 July 2003 (which has transposed the EU Council directive 2000/78/EC concerning equal treatment in terms of employment and working conditions) provides for equal treatment and protection from discrimination on ground *inter alia* of personal beliefs. Article 2§3 of this Decree provides that harassment constitutes a discrimination and is defined as "those unwanted behaviours, carried out due to one of the reasons listed above, having the purpose or effect of violating the dignity of a person and to create an intimidating, hostile, degrading, humiliating or offensive climate". The principle of equal treatment is applicable to both the public and the private sectors and is under judicial protection also where direct or indirect discrimination concerns employment and working conditions, including career advancement, remuneration, conditions of dismissal or access to all types of professional orientation and training, as well as professional development and requalification, including traineeships. Therefore, anyone who believes to have been discriminated against on any of the grounds indicated by the law can use the conciliation procedures provided for by the collective labour contracts or through the trade unions associations, or take legal action before a court. The judge will assess the evidence brought by the applicant in the form of serious, precise and concordant factual elements, including statistical data and, where applicable, will order the compensation of any pecuniary and non-pecuniary damage, the cessation of the discriminatory act or conduct and the removal of the remaining effects.

Article 26 of Legislative Decree No. 198/2006 (Code of equal opportunities) also provides for protection against (moral and sexual) harassment, which it considers to be a form of discrimination and protects (under Article 26§3bis, as amended in 2017) victims of harassment against retaliation. Article 2103 of the Civil code also provides that the change of duties, as well as any other retaliatory or discriminatory measure adopted against the complainant are null and void. Furthermore, pursuant to Article 2087 of the Civil Code, the employer is required to protect the physical integrity and moral personality of the workers as well as to assess and prevent the potential risks of harassment and violence in the workplace as well as to ensure that it does not occur, as required by Legislative Decree No. 81/2008 ("*Consolidated Law on health and safety at work*").

In the light of this, the Government considers that the Italian legal framework contains adequate tools to protect workers against any form of discrimination and harassment.

*D. Violation of Article 26§2 of the Charter*

The Government refers to the information provided in respect of protection against discrimination and harassment under Article 1§2 of the Charter (see above).

**3. Assessment of the follow-up**

*A. Violation of Article 11§1 of the Charter*

The Committee takes note of the information provided in the Government's report concerning the current complaint and the comments submitted on 2 July 2020 by the CGIL, as well as the information submitted by the parties concerning *IPPF v. Italy*, complaint No. 87/2012, decision on the merits of 10 September 2013.

It also refers to its previous finding in 2018, where it noted that, despite some possible signs of improvement, there were still major disparities at local and regional level as regards access to VTP services and asked for information on the measures taken to reduce such disparities and the results obtained, in the light of updated data.

In this respect, the Committee finds that the information submitted does not show that the disparities at local and regional level have been reduced and that the number of dedicated healthcare personnel available is adequate. In fact, although the report states that the available monitoring tools allow the regions to ensure an efficient planning of their VTP services, it does not explain whether and to what extent regions are effectively regulating their healthcare services in such a way as to ensure that all women can have access to VTP in their region under safe and efficient conditions. In addition, the Government's report does not provide any information concerning the number or percentage of VTP requests which could not be performed in a given hospital or region because of the insufficient availability of non-objecting doctors and supporting staff.

It notes in this connection from the comments submitted by CGIL, based on the data of 2018 (which were published in June 2020, after the Government had submitted its report) that the number of objecting gynaecologists continued to increase: they were 68.4% in 2017 and 69% in 2018 at national level - with regional averages over 70% in all the southern regions and up to 92.3% in the Molise region. Rates of 60% or more objecting anaesthesiologists (with regional averages of 75% in Molise and 76.8% in Sicily, while the national average was 46.3%) were furthermore registered in the same southern regions, which could significantly impair access to VTP, considering that general anaesthesia was used in over 52% of VTP in Italy in 2018 (and up to 92.3% in Molise). The Committee also notes that, according to CGIL's comments, there are no data on clandestine abortions, nor on the number of objectors among pharmacists and family planning centres staff and the impact that this can have on effective access to VTP. It also appears from the official data that, while the number of VTP carried out in the first eight weeks of gestation increased (from 48.9% in 2017 to 50.9% in 2018), so did the number of VTP carried out under emergency procedures (from 19.2% in 2017 to 21.3% in 2018, and up to 42.7% in Apulia, a region where, in addition, no data was available in 2018 on the gestation timing of 16.3% of VTP). Furthermore, according to Human Rights Watch (<https://www.hrw.org/news/2020/07/30/italy-covid-19-exacerbates-obstacles-legal-abortion>) Covid-19 exacerbated obstacles to access to VTP, due to a lack of clear guidance as to the rules applicable to VTP during the pandemics, the maintaining of restrictive rules regarding access to medical abortion and the suspension of VTP services in many hospitals.

The Committee asks the next report to comment on these allegations and to provide relevant data on these issues.

In the meantime, the Committee considers that the situation has not been brought into conformity with the Charter with regard to women's right to access to VTP in accordance with the applicable rules in all cases, even when the number of objecting medical practitioners and other health personnel is high (Article 11§1).

*B. Violation of Article E read in conjunction with Article 11 of the Charter*

The Committee notes from the official data available that the VTP carried out on women not residing in the region represented 4.9% in 2017 (while 92.1% of VTP were carried out within the same region, including 87% in the same province) and 5% in 2018 (while 92.3% of VTP were carried out within the same region, including 87% within the same province). It asks the next report to clarify what measures exist to monitor the number of cases where women could not avail themselves of VTP services in their region due to obstacles related to the lack of non-objecting health staff.

The Committee refers to its assessment above, concerning Article 11 of the Charter and finds, for the same reasons, that the situation has not been brought into conformity with the Charter as regards the discrimination against women wishing to terminate their pregnancy and violation of their right to health because of problems with access to abortion services (Article E, read in conjunction with Article 11§1).

*C. Violation of Article 1§2 of the Charter, first ground*

The Committee takes notes of the information provided in the report concerning the legal framework providing for protection against discrimination and harassment. It asks the next report to provide further information on how these provisions are applied in practice, in particular as regards discrimination on account of conscience objection. It furthermore asks for information about any measure taken to raise the awareness of medical and non-medical staff about discrimination on account of personal belief, including conscience objection, and train them in order to prevent direct or indirect discrimination and harassment towards non-objecting practitioners. As regards CGIL's allegations that there is no monitoring of the working conditions and career progression of non-objecting medical practitioners in comparison to objecting practitioners, it asks the next report to provide information on these points, with a view to assessing whether in practice there is or not direct or indirect discrimination in the workload and career perspectives of non-objecting health staff in comparison to objecting health staff.

In the meantime, the Committee considers that the situation has not been brought into conformity with the Charter with regard to discrimination against non-objecting medical practitioners.

*D. Violation of Article 26§2 of the Charter*

The Committee refers to its assessment above, concerning Article 1§2 of the Charter and finds, for the same reasons, that the situation has not been brought into conformity with the Charter as regards protection of non-objecting medical practitioners from moral harassment.

**2<sup>nd</sup> Assessment of the follow-up, Associazione Nazionale Giudici di Pace v. Italy, Complaint No. 102/2013, decision on the merits of 5 July 2016, Resolution CM/ResChS(2017)3**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found that there was a violation of Article E read in conjunction with Article 12§1 of the Charter against persons who performed the duties of Justice of the Peace and had no alternative social security coverage, insofar as some of them, while performing duties equivalent to those of tenured judges and other categories of lay judges, were denied social security protection (for sickness, maternity and old-age pension).

**2. Information provided by the Government**

In its report, registered on 10 March 2020, the Government recalls (see also Findings 2018) that, under Article 25 of Legislative decree No. 116 of 13 July 2017, Justices of the Peace (serving lay judges) who were not covered by the National Lawyers' Welfare and Assistance Fund (*Cassa Forense*) are now affiliated to the Separate Management Scheme of the National Social Welfare Institute (INPS) and benefit from an insurance coverage comparable to that of self-employed workers. To qualify, those concerned must have paid a 3 months minimum contribution at the full rate in the previous 12 months and their maximum annual income must not exceed 70% of the contribution ceiling. The contribution rate corresponds to 25.72% and the amount of the benefits depends on the length of contribution (for example, in case of hospitalisation, the daily benefit will range between 8% and 16% of the reference contribution amount and will be paid for a maximum of 180 days - see details in the report). In case of maternity, the benefit will amount to 80% of the Average Daily Income, payable for 2 months prior to the expected date of birth and 3 months after the childbirth (see other details in the report, also as regards paternity and parental leaves). The report also explains that, when the lay judges do not qualify for maternity allowance, they can still claim either a contributory based Maternity allowance for atypical and discontinuous workers (so-called State maternity allowance) or a non-contributory based Basic Maternity Allowance (so-called Municipalities Maternity Allowance), which is granted on condition of resources.

In light of these measures, the report argues that there is no discrimination or unequal treatment for lay judges with respect to the other workers registered in the Separate Management Scheme. As regards the different economic treatment and the different protections recognised to ordinary judges compared to lay judges, the report points out that such differences reflect those that exist in all sectors of activity between employees and self-employed workers and considers that these differences are proportionate and justified by the diversity of their employment contracts (full-time and exclusive for ordinary judges; part-time and without an obligation of exclusivity for lay judges), also taking into account the modalities of access to relative positions (public competition based on exam for the ordinary judges, selection based only on qualifications for lay judges).

**3. Assessment of the follow-up**

The Committee takes note of the information provided in the report and, in particular, of the explanations provided about the coverage in respect of maternity and sickness (see also Findings 2018). It notes that, as from 2017, Justices of the Peace who were not covered by the National Lawyers' Welfare and Assistance Fund (*Cassa Forense*) or other social

insurance schemes benefit from an insurance coverage equivalent to that of self-employed workers, under the Separate Management Scheme of the National Social Welfare Institute (INPS), unlike tenured judges and other categories of lay judges.

The Committee recalls in this respect that it has already found that "*the grounds put forward to justify such differential treatment (in particular the selection procedure, the fixed term in office, part-time work, honorary service or remuneration by compensation and the fact that persons who perform the duties of Justice of the Peace are appointed as service providers while tenured judges and the other categories of lay judges such as the giudici onorari aggregati perform their duties in a stable, continuous and exclusive manner) concerned mere modalities of work organisation and did not constitute an objective and reasonable justification of the differential treatment of persons whose functional equivalence had been recognised*" (§82 of the decision). It notes that the Court of Justice of the European Union has also considered, in its judgment of 16 July 2020 (case UX v. Italy, C-658/18), that Justices of the Peace in Italy might be considered "fixed-term workers", inasmuch as they perform "*real and genuine services which are neither purely marginal nor ancillary, and for which they receive compensation representing remuneration*" and that therefore should not be treated differently than ordinary judges, "*unless such a difference of treatment is justified by the differences in the qualifications required and the nature of the duties undertaken by those duties*".

In view of the above, the Committee notes that the introduction of compulsory insurance coverage solves the main problem at stake, namely the total lack of coverage for some Justices of the Peace (those who did not have other side activities or whose side activities did not allow them to qualify for an insurance scheme). The Committee will, however, continue to monitor the implementation of the Separate Management Scheme in the context of the ordinary reporting procedure (thematic reports on Article 12).

The Committee considers that the situation has been brought into conformity and therefore decides to close the follow-up to the decision in this complaint.

**2<sup>nd</sup> Assessment of the follow-up: “La Voce dei Giusti” v. Italy,  
Complaint No. 105/2014, decision on the merits of 18 October 2016,  
decision on the merits of 18 October 2016, Resolution  
CM/ResChS(2017)4**

**1. Decision of the Committee on the merits of the complaint**

In its decision, the Committee found that there was a violation of Article E read in conjunction with Article 10§3 a) and b) of the Charter on the ground that teachers in the third category on aptitude lists (i.e. those without a teaching qualification) suffered indirect discrimination with regard to access to specialist training in support teaching. The Committee noted that, although teachers with or without a teaching qualification exercised in practice equivalent teaching duties, those who had not a teaching qualification could not access specialist training in support teaching, unless they first acquired a teaching qualification, through additional training courses (TFA and PAS). In this respect, the Committee held that the terms of admission to the training courses (TFA or PAS) leading to the teaching qualification, the way in which this training was organised and the lack of recognition of prior work experience disproportionately affected the capacity of supply teachers to acquire the teaching qualification, and subsequently pursue the specialist training in support teaching, guaranteed under Article 10 § 3 a) of the Charter, thus creating a situation of indirect discrimination in comparison with teachers who held the teaching qualification and did not therefore have to complete the TFA or the PAS prior to exercising their right to vocational training.

**2. Information provided by the Government**

In its report the Government refers to the relevant provisions governing respectively access to teaching qualifications (Article 3 of Ministerial Decree No. 249/2010) and to support teaching (pursuant to Law No. 104/1992), as amended in 2013 (Ministerial Decree No. 81/2013) and 2014 (Ministerial Decree No. 312/2014). It recalls that further legislation was adopted in 2017-2018 dealing respectively with access to specialisation in support teaching in nursery and primary schools (Legislative Decree No. 66/2017) and access to permanent teaching positions in lower and upper secondary schools (Legislative Decree No. 259/2017, Legislative Decree No. 59/2017 as amended by Law No. 145/2018). In addition, the report points out that a further decree was adopted in 2019 (Ministerial Decree No. 92/2019, "*Provisions concerning the specialization procedures on support teaching*") concerning specialist training in support teaching for all educational levels and specifying the conditions of access to such training (see details in the report).

**3. Assessment of the follow-up**

The Committee notes that the report does not fully clarify, as requested (Findings 2018), to what extent the measures taken facilitate the access to the teaching qualification for the teachers concerned by this complaint and hence their access to specialist training in teaching support.

It notes however from the information available that, in the meantime, the Council of State accepted that teachers without the teaching qualification be admitted to TFA training and have their professional experience recognized, with a view to qualify as support teachers (see *inter alia* the precautionary order No. 4940 of 4 October 2018, decision No. 8601 of 7 November 2019 and decision No. 4167 of 30 June 2020, whereby the Council of State recognised that a professional experience of three years could be considered to be equivalent to the teaching qualification). Furthermore, the requirements to obtain a teaching qualification (*abilitazione*) have in the meantime been modified and do not any longer necessarily require to undergo further training

(see *Confederazione Generale Sindacale (CGS) v. Italy*, Complaint No. 144/2017, decision on the merits of 9 September 2020).

In view of this information, the Committee considers that the situation has been brought into conformity with the Charter.

Therefore, the Committee decides to close the follow-up to the decision in this complaint.

**PORTUGAL**

**3rd Assessment of the follow-up: European Roma Rights Centre  
(ERRC) c. Portugal, Complaint No. 61/2010, Resolution  
CM/ResChS(2013)7**

***1. Decision of the Committee on the merits of the complaint***

The Committee concluded that there was a violation of Article E taken in conjunction with Articles 31§1 and 16 on the following grounds:

- the continuing precarious housing conditions for a large part of the Roma community, coupled with the fact that the Government had not demonstrated that it had taken sufficient measures to ensure that Roma live in housing conditions that met minimum standards;
- the implementation of re-housing programmes by municipalities had often led to segregation of Roma, and, had on other occasions been tainted by discrimination, without finding lasting solutions to the deteriorating residential conditions in informal Roma neighbourhoods.

The Committee also concluded that there was a violation of Article E taken in conjunction with Article 30 on the ground that there was a lack of an “overall and coordinated approach” in respect of housing programmes.

***2. Information provided by the Government***

Portugal submitted the following information in its report.

The right to social security for all is established in Law No. 4/2007 of January 16 2007. The social protection system of citizenship, provided by the law has the objectives of guaranteeing basic rights of citizens and equal opportunities, as well as promoting well-being and social cohesion.

The National Strategy for the Integration of Roma communities articulates the existing but scattered public policies, it seeks to correct social problems and inequalities as well as to put forward specific measures that promote the integration of these citizens while also taking into account the real needs of Roma communities. This plan was conceived with the assumption that it is fundamental that the majority respect the traditions and values of Roma communities and that the minority conform to the essential principles and duties of the rule of law, which can be accompanied by the full enjoyment of the rights that Portuguese citizenship attributes to them. According to the report, given the transversal nature of the Strategy, together with the intervention it advocates in multiple dimensions and the priorities it identifies, meet the demands of the European Committee of Social Rights.

***A. National Roma Communities Integration Strategy (ENICC)***

The National Strategy for the Integration of Roma Communities (ENICC) 2013-2020 has been drafted taking into consideration the "European Framework for National Strategies on Roma Integration to 2020".

An evaluation carried on between 2013 and 2016 showed that changes are needed to clarify the measures, to insist on equality between women and men, knowledge about Roma people and their participation in ENICC's implementation. Therefore, the Government decided to review and extend the validity of the Strategy until 2022 and introduced further measures after a broad consultation process.

The priorities of the strategy are as follows:

I. Fighting prejudice, discrimination and hostility towards Roma, mainly through funding programmes for this purpose.

II. Education and training for employability, in order to curb early school leaving through funded scholarship and training programme for young university students from Roma communities. In the 2016/2017 school year, 25 students (11 men and 14 women), received this support. In the 2017/2018 school year, there were 32 scholarships, with 28 supported grantees completing the process. The final phase of the third edition supported 33 students (17 women and 16 men).

Concerning students pursuing higher education, for the 2019/2020 school year, 100 scholarships should be awarded to Roma students (applications were under review when the Government submitted the report).

Regarding the integration of Roma people, measures were implemented, such as ensuring greater autonomy to the community as regards services and training, enhancing access to employment and job creation and increasing professional qualifications. Different employment and training responses have also been mobilised.

### III. Housing

The new generation of housing policies, approved by the Council of Ministers Resolution No. 50-A/2018 of 2 May, has created various policy programmes and instruments:

The programme *1.º Direito* aims to promote access to adequate housing for people who live in inadequate housing situations and do not have the financial capacity to find a decent housing solution. As the ethnicity of families is not a criterion to access the Programme, the law covers cases of precarious and/or informal housing, which are mostly inhabited by members of the Roma community. The Institute of Housing and Urban Rehabilitation (IHRU) indicates that the share increased by 10%.

By the end of November 2019, the IHRU signed collaboration agreements with some municipalities, covering 5,432 families.

The programme *From Housing to Habitat*, created in 2018, is based on pilot interventions centered around innovative solutions of integrated and participatory management, of discussion of objectives and articulation of the actions of the different government areas and entities present in the neighbourhoods concerned. These solutions aim to promote cohesion and socio-territorial integration of public rental neighbourhoods in order to improve the overall living conditions of its residents. This programme is already being implemented in 3 neighbourhoods owned by IHRU.

The recent reform of the urban lease, particularly the Decree-Law adopted in 2017, created three new rent limitations at the expense of the tenant during an eight-year period, determined according to the household gross annual corrected Income (RABC).

In turn, Law No. 13/2019 aims to correct unbalanced situations between tenants and landlords, to reinforce the security and stability of the urban lease and to protect tenants in a situation of special fragility.

### *B. Social Protection*

In terms of social protection and in complementarity with the above clarifications, within the scope of social assessments, social support to persons and families in vulnerable situations, the technical teams of the Social Action Service of the Social Security Institute (ISS) of the Ministry of Labour Solidarity and Social Security

(MTSSS) address difficult situations concerning housing and identify suitable measures in this context. The following measures are not specific to Roma communities alone, but cover all citizens within the scope of social protection in situations of fragility and vulnerability. In order to prevent possible homelessness or even emergency support, they provide a set of cash benefits of an eventual nature. Furthermore, the technical teams of the ISS/MTSSS are always aware of the situations of eventual or future homelessness: a. They carry out assessment and social evaluation of the situations; b. They connect with the local network, namely with the municipalities (City Councils and Parish Councils); c. They request house assignment to IHRU, IP and IGFSS.

At the end of 2019, an instrument was elaborated to collect quarterly statistical information, in the 18 Social District Centres, on the social assistance/social monitoring of Roma beneficiaries within the scope of social action and RSI, which will make it possible to obtain appropriate responses that facilitate the inclusion of Roma communities in the areas of education, employment, health and housing.

### **3. Assessment of the follow-up**

The Committee takes note of the measures adopted in the framework of the National Strategy.

However, the Committee refers to the Opinion of the Advisory Committee to Framework Convention on the Protection of National Minorities (FCPNM) on Portugal of 2020 (<https://rm.coe.int/4th-op-portugal-en/1680998662>), it stated that the authorities have further developed and adjusted their policies so as to improve the living conditions of the Roma communities, as well as improved their coordination and enhanced their cooperation with the latter. Nevertheless, many persons belonging to the Roma communities continue to be subject to direct and indirect discrimination and continue to live at the margins of the society, sometimes in very poor housing conditions, with lower life expectancy than the rest of the population, with a lower school enrolment and educational performance, in particular for Roma girls, and with high level of unemployment. The report further stated that policy makers must rely on data made available through research , which estimated that the number of Roma varies from 24 000 to 40 000 persons. However, the estimate of 45 000 - 50 000 remains a more realistic figure because “invisible” Roma families who are not in contact with public institutions on the one hand and the estimated 4 200 Roma without a fixed residence on the other hand, are not necessarily covered. The number of non-Portuguese Roma present in Portugal is unknown as no such information is collected.

The Committee also acknowledges that an estimated 37% of the Portuguese Roma population live in shanty towns. These shanty towns can be found in more than 70 municipalities. Other studies revealed that an important number of Roma lives in precarious living conditions and these data were used by the State to update the Roma Integration Strategy. Thanks to this, a significant number of Roma families have benefited from rehousing programmes in social housing, even though over 20% of Roma families have not benefited yet from these programmes, and are still living in slum areas and are subject to forced evictions.

The Advisory Committee to the FCPNM raised major concerns related to the reallocation of families almost entirely to social housing, leaving aside other possible alternatives; due to the location of these social housing units outside city centres, social housing policies have resulted in spatial segregation in different

municipalities, thus reinforcing stigma against Roma among the local population and to some extent creating other social problems. Children from these families tend to be all enrolled in the closest school, leading to *de facto* “gypsy schools”. Social housing units tend to get easily overcrowded since housing policies did not take into consideration family expansion.

Therefore, the Committee, while acknowledging the efforts made by the authorities, notes that further improvement is needed and that there are still obstacles related to lack of reliable quantitative and qualitative data, to absence of an earmarked budget for line ministries, by relying too heavily on a project-based approach which may negatively affect the sustainability of actions taken, and by scattered anti-discrimination complaints bodies.

The Committee also refers to its previous findings and the ECRI report <https://rm.coe.int/13th-report-from-portugal/16807b6c7e> published on 2 October 2018, “a”

In light of this information, the Committee considers that, despite the progress made, the situation has still not been brought into conformity with Articles 31§1, 16 and 30 of the Charter.