

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



European
Social
Charter

Charte
sociale
européenne



27 September 2023

Case Document No. 1

European Roma Rights Centre (ERRC) v. France
Complaint No. 230/2023

COMPLAINT

Registered at the Secretariat on 18 September 2023

European Committee of Social Rights
Council of Europe
By email only: social.charter@coe.int
18 September 2023

EUROPEAN ROMA RIGHTS CENTRE v FRANCE

Dear Sir/Madam,

In accordance with Rule 23 of the Rules of the European Committee of Social Rights, the European Roma Rights Centre (hereafter: the ERRC) as a complainant organization, is writing to introduce a new collective complaint against France. The complaint raises particular concerns over the introduction of a procedure for imposition of fixed fines on Travellers in France for the criminal offense of "illegal halting in order to set up a home even temporarily" (amende forfaitaire délictuelle pour installation illicite en vue d'établir une habitation même temporaire).

The French State, through the imposition of fixed fines for illegal halting to set up a home even temporarily, is putting the consequences of its own continuous failure to provide effective access to housing for Travellers in violation of the fundamental rights on its first victims – Travellers themselves. Therefore, the complainant organization alleges a violation of **Articles 16, 30 and 31 of the Revised Charter, taken on their own and/or in conjunction with Article E.**

This complaint is closely related to a complaint the ERRC submitted ten years ago against France, when the State-party was condemned by the European Committee for Social Rights for the failure to provide effective access to housing for Travellers. In the collective complaint no. 51/2008 European Roma Rights Centre (ERRC) v. France (Resolution CM/ResChS(2010)5 on 30 June 2010), the Committee found that France violated the Revised Charter as eight years following the adoption of the Besson Act of 2000, only a minority of relevant municipalities had implemented it, leaving a shortage of halting spaces for Travellers in the country (ERRC v. France, §§ 38-39). Hence, there had been "a long period during which local authorities and the state [had] failed to take sufficient account of

the specific needs of Travellers” (ERRC v. France, § 40). The Committee also found that, Travellers’ specific differences were not considered and thus they were discriminated against (ERRC v. France, § 84). In conclusion, the Committee also stated that France “failed to adopt a coordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion” (ERRC v. France, § 95)

The current complaint includes the following sections:

- a. Admissibility**
- b. Summary of the Facts**
- c. Traveller testimonies**
- d. Relevant domestic legislation**
- e. Violations of the European Social Charter (Revised)**

a. Admissibility

1. France is a High Contracting Party to the Revised European Social Charter (hereafter “RESC”) since 7 May 1999; accepted supervision under the collective complaints procedure provided for in Part IV, Article D, paragraph 2 of the Charter in accordance with the Additional Protocol to the ESC providing for a system of collective complaints from May 1999. It should be noted that France considers itself bound by all articles of Part II of the Revised Charter and has not entered any reservation / declaration in relation to any of those articles.¹
2. This complaint is brought by the European Roma Rights Centre, AISBL (hereafter: “ERRC”), a Roma-led international public interest organization based in Brussels, Belgium with a consultative status with the Council of Europe and entitlement to submit collective complaints under Article 1(c) of the Additional Protocol of 1995.
3. The ERRC has a standing with the RESC collective complaint mechanism since June 2002 and is currently registered in the list of international NGO’s entitled to submit a collective complaint for a period of 4 years: 1 July 2022 – 30 June 2026, See GC(2022)26.² The complaint has been duly signed by Mr. Dorde Jovanovic, the President of the ERRC, who according to the attached Statute of the organization (Annex 1), is entitled to sign on its behalf.
4. The standing of the ERRC before the Committee it is well established in several complaints previously brought before the Committee and specifically related to violations of the rights of Traveller communities, including Complaint no.51/2008 European Roma Rights Centre (ERRC) v. France, Complaint no. 100/2013 European Roma Rights Centre (ERRC) v. Ireland, Complaint no.

¹ See list of Accepted Provisions of the Revised European Social Charter by France at http://www.coe.int/t/e/human_rights/esc/1_general_presentation/Provisions_en.pdf See also List of Reservations / Declarations available at: <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=163&CM=7&DF=26/10/2005&CL=ENG &VL=1>

² See : <https://rm.coe.int/gc-2022-26-bil-list-ingos-01-01-2023/1680a99bfc>.

185/2019 European Roma Rights Centre v. Belgium, Complaint no.195/2020 European Roma Rights Centre v. Belgium, etc.

5. The complaint is based on information the ERRC received by the end of 2022 from the Observatory for the Rights of Itinerant Citizens (L'Observatoire pour les Droits des Citoyens Itinérants (hereafter: the ODCI). The ODCI is a French association mandated to support Travellers in the defense of their rights. The ODCI is working closely with a national network of seven NGO's (A.S.N.I.T. Association Sociale Nationale Internationale Tzigane; A.G.P. Action Grand Passage; A.N.G.V.C. Association Nationale des Gens du Voyage Citoyens; A.P.A.T.Z.I. - Association Protestante des Amis des Tziganes; F.N.A.S.A.T. Gens du Voyage – Fédération Nationale des Associations Solidaires d'Action avec les Tziganes et Gens du Voyageurs; France Liberté Voyage and CNDH ROMEUROPE), to defend the right to effective access to housing of Travellers in France by advocating against fixed fines imposed by the national authorities for the criminal offense of illegal halting in order to set up a home even temporarily. These national NGO's have issued reports (Annex 2), legal briefs (Annex 3), and even undertaken legal actions to challenge the procedure for introduction of fixed fines before domestic courts and bodies such as the Constitutional Council (Conseil Constitutionnel) and the State Council (Conseil d'Etat), unfortunately without success (Annex 4).

b. Summary of the Facts

6. The terms 'itinerant citizens' or 'Travellers' refer to individuals and groups who are often French citizens, and who have, for generations, played a key role in French society and history. This includes people from diverse cultures, who identify themselves as 'Sinti', 'Manouche', 'Kale', 'Gypsy', 'Roma', 'Yenish', 'Traveller', or other, and for whom caravan dwellings are an important part of their lives. These groups are often lumped together under generic terms and categories such as 'Gens du Voyage' (in France), 'Gypsies' (in the Anglo-Saxon states), 'Tziganes' or "Roma" (more widely in Europe). Their presence in France is attested to since at least the 15th century under the terms "Gypsies" or "Romanichal's". From that time onwards, they have been subject to systemic discrimination and specific forms of racism, fuelled by negative stereotypes of them as criminal, dangerous, dirty, and impossible to integrate - making them eternal strangers in their own state. And although Travellers are the most discriminated minority in France,³ public policies and legislation put in place for them create their further invisibilities and exclusion. They are

³ See Commission Nationale Consultative des Droits de l'Homme (CNCDH), La lutte contre le racisme, l'antisémitisme et la xénophobie, Rapport 2019, p. 39. According to CNDH 2019 survey, 69.4% of the French population considered 'Gens du Voyage' as a special group apart from the French society (only 36.2% express the same thing regarding Muslims and 29.8% regarding Maghrebi).

ultra-repressive and criminalise their presence and their daily lives outside of segregated spaces far from the city centre and the rest of the population. In fact, 71% of the stopping places reserved for Travellers are both outside residential areas and a long way from town centres.⁴ This criminalisation is particularly strong for the poorest Travellers, who can end up with a criminal record simply for being homeless. According to the Cour des Comptes, in 2017, approximately 60% of people classified as "Travellers" were dependent on the Revenu de Solidarité Active (RSA), an income for unemployed people.⁵

7. In France, the law differentiates the housing of Travellers from that of the rest of the population (including other people living in mobile housing). People categorized as "Travellers" can only live in places that specifically authorize their "traditional" mobile habitat. However, there are very few of these sites and they are unevenly distributed throughout the French territory: There are only 1,358 public sites known as "reception areas" (177 of which are large-scale areas open only for part of the year, generally from May to October), spread over 1,255 municipalities out of the nearly 35,000 in France. Only seventeen departments are complying with the commitments made in the Schéma Départemental d'Accueil des Gens du Voyage in terms of the number of authorized sites. Nearly 96% of French municipalities do not have any land authorizing mobile residence for itinerant citizens; There are only a few hundred rental sites for itinerant citizens (adapted housing, family sites) in the whole of France; access to private property is complicated for Travellers (pre-emption, difficulty in accessing real estate credit, etc.)⁶ or they may be evicted from their own land due to bans on mobile residences in local urban rules, forcing people to find accommodation elsewhere.⁷
8. Although it is clear that the quantitative and qualitative objectives set in the departmental plans for the reception and housing of Travellers, more than twenty years after the adoption of the Besson Act of 5 July 2000, have still not been achieved and as a consequence there are not enough reception sites or areas in good condition to park, criminal sanctions exclusively targeting Traveller communities have been reinforced by introduction of the fixed fine procedure for the criminal offense of "illegal halting in order to set up a home even temporarily" (amende forfaitaire délictuelle pour installation illicite en vue d'établir une habitation même temporaire).
9. Fixed fines are a criminal tool created in 2016 by the law 2016-1547 on the modernization of justice in the 21st century. This law puts in place an exceptional procedure for some offenses (délits) called Amende Forfaitaire Délictuelle (hereafter : AFD). Initially reserved for traffic offenses (driving without insurance or without a license), these fines are being developed in new

⁴ See William Acker "Où sont les "gens du voyage" ? Inventaire critique des aires d'accueil" editions du commun, 2021. And Gaella Loiseau, "La localisation de l'offre publique d'accueil et d'habitat des gens du voyage", FNASAT, 2022, P. 119, available at : <http://www.fnasat.asso.fr/Lalocalisationdeloffrepubliqued'accueilletdhabitatdesgensduvoyage2022.pdf>

⁵ Cour des Comptes, Rapport 2017, Tome II, p. 215.

⁶ William ACKER, Où sont les gens du voyage ? Inventaire critique des aires d'accueil, Editions du Commun, mars 2021.

⁷ Fondation Abbé Pierre, *L'état du mal logement en France 2022*, 27ème rapport, pp. 289-292

sectors following the 2018-2022 programming law for justice reform such as for illegal drug use and halting in an unauthorized area. When a police officer identifies an adult committing one of the offenses to which a fixed fine can be applied, he draws up an electronic report. The entire procedure is based on this report. AFD notices are sent by simple letter. The payment of the fine extinguishes the public action: there is no further prosecution. The fine is reduced if it is paid immediately or within fifteen days, and increased if it is paid after forty-five days. Paying the AFD equals recognizing to be guilty of the offense. The offense is then automatically written in the person's official criminal record (B1 record) at the end of the delay to challenge the charges (30 days after the sending of the AFD notice), even if the person has not received the letter. The person is convicted of the criminal offense without having been tried. They have not been able to explain their situation in a fair hearing in front of a judge.

10. The idea of a fixed fine for illegal installation on someone else's land was set in a bill proposed by Senators from the political party Les Républicains back in 2017. This bill aimed at "strengthening and making more effective the penalties for illegal installations of Travellers on public or private land. The fixed fine is included in Article 4 of this bill, which became Law n°2018-957 of 7 November 2018 on the reception of Travelers and the fight against illegal settlement, amending Article 322-4-1 of the Penal Code. The AFD implemented since 19 October 2021 is therefore the result of a legislative text specifically reinforcing criminal sanctions against Travellers. This exclusive targeting of Travellers was confirmed by the President of the Republic, Emmanuel Macron, during his closing speech at the Beauvau Security Conference on 14 September 2021, in which he announced that "[...] we will save a lot of time for many people, we will lighten the procedure, but we will also make it possible to respond to unacceptable situations on the ground by having the same approach, by means of lump-sum criminal fines for the illegal occupation of land by Travellers." The words of the President of the Republic leave no room for doubt: the new AFD for "illegal installation on the land of others" is aimed first and foremost at a specific population, that of Travellers.
11. On October 19, 2021, the experimental fine for "illegal halting in order to set up a home even temporarily" was introduced in six municipalities in France: Créteil, Foix, Lille, Marseille, Reims and Rennes. However, the ODCI has received reports from Travellers in other municipalities that they have been threatened with such a fine if they do not leave the premises. This fine concerns people who "settle in groups with a view to establishing a dwelling, even temporarily, on land belonging to a municipality or to any other owner without being able to justify their authorization" and is set at €500 (reduced to €400 if paid within 15 days, increased to €1,000 if paid after 45 days) and, like all tortious fixed fines, leads to registration in the criminal record.
12. The French Défenseur des Droits (French Ombudsman) in a letter dated 18 February 2022 (Annex 5) stated that the procedure of a fixed fine for the offence of "illegal halting in order to set up a home even temporarily", can only further weaken the situation of Travellers, adding that it is to be feared that members of this community will be fined on this basis without verification whether the municipality concerned respects the obligations incumbent upon

it by virtue of the departmental plan being carried out beforehand, as provided for in Article 322-4-1 of the Penal Code, which stipulates that the offence of “illegal halting in order to set up a home even temporarily” is only constituted if the municipality concerned does indeed respect the departmental plan or is not included in it. Moreover, the Ombudsman highlighted that the concrete offence requires in principle, in application of Article 121-3 of the Penal Code, “the characterization of an intentional element”, which does not fit a priori with a procedure based on the purely material observation of the occupation facts. Indeed, experience in practice shows that the illegal occupation of another person's land is sufficient to impose a fixed fine, regardless of the occupants' intention. Beyond these elements, this system raises questions regarding the right to an effective remedy and a fair trial for the affected Travellers.

c) Traveller testimonies

13. Testimonies collected via telephone interviews with affected Travellers (between February 16th and 22nd 2022) provide the following information :

Testimony no.1

14. It was my father-in-law and my wife who were fined about two months ago. I was on a parking lot that I have been using regularly for the last six years, when there are no more places on Fougères' Travellers site. The owners had told me verbally that I could move in. We just had to place the caravans away from the doors. In exchange, since this is a place where many truckers come and throw their rubbish, we clean up the place. We make sure that it stays clean. The police came to see us several times when we were there during the last six years, but they never fined us. They even told us that we were not bothering anyone by staying on this site. That day, we learned that there was a free space on the halting site of Fougères. I called the manager, and he told me that we could come. We went there with the first caravans. I did the entry documents for the site at 3pm. Then we went back to get the other caravans. The gendarmes then arrived, four or five cars of them. They were not insulting or violent. However, they said that they were going to fine us because we had no right to be there. I explained that we were leaving and that we had permission from the owners to be here. They replied that we didn't have any paperwork proving the authorisation, and that there was a new law, that "President Macron had said that there should be fines". My wife did not want to sign on the electronic box. The gendarmes then said that they were not only

going to fine two people but everyone, our children, the other families. My wife had no choice. Under this threat, she signed. The letter following the fine arrived about two weeks later. We didn't know what we should do, to contest or defend ourselves. We contacted an association. Today, we have not paid the fine, we are waiting to find out what will happen to us. We left the place where we were fined immediately after the gendarmerie passed by, since we were in the middle of setting up on Fougères' halting site, even though the grounds are indecent. There is no heating in the showers. The electrical outlets don't work. There are rats as big as my little dog. But we don't have a choice because if we move out of this field, we get fined. In the area there are not enough places for Travellers. For example, there is a transit site in a town nearby Fougères, but it is never open because it is always flooded. So maybe on paper everything is OK, but in reality, nothing is OK. Above all, we are told "why don't you go to such and such a town? You're Travellers, you just have to move! My children go to school here, they take lessons to get their driving license here. My wife is under medical care here. We've been in the area for over thirty years. We are from this town and we want to stay here.

Testimony no.2

15. It was during the holidays season, the last week of December. We set up in a spot where we usually go. There are not many designated sites available around here. We settle in this spot regularly. We had never had any problems. When we were setting up, two gendarmes came by. We asked them if we could stay, at least until the next day. It was the weekend; we had no other option. They told us it was possible. We are used to staying in this place, they know us. They know that when we are told to leave, we leave. Here, they did not tell us to leave. For us, it was good to stay for the night and leave the next day. In the evening, the gendarmes came back. They were not the same. There were many of them. The chief told us that we had no right to be there and that we would be fined. They asked for my uncle's identity. He had just come out of hospital; he gave them his identity card. They asked two other people who refused to give them their ID card. I was the third person to refuse. They told me that since the misdemeanour concerned several people, they needed two identity cards and that I had to give them mine. I refused again, saying that there was no way I was taking for the others. They replied that this was the law and that the whole community would help me with the trial anyway. I explained that it was each one's caravan and that if I was fined, I would be the one concerned by the procedure, who would have to pay the fine, etc. I was the third person to refuse. And then they told me they were going to take me into custody. I don't know, maybe it's because I have a big mouth. There were four of them dragging me to take me into custody. I have the videos. I didn't stay in custody very long. I had a problem with my teeth, I was in pain, I wanted to leave. Moreover, I was working at night, I didn't want to be absent from work. I didn't ask for a lawyer. I just wanted to leave the police station. We left after being fined. It was complicated because there were no places available on official halting sites. And we couldn't go very far. I have already lost my job

because of the repeated evictions. We went to another place. There the gendarmes came back a few days later. It was a gendarme we had seen before. He told us that we were not allowed to stay there and that we had to leave. He didn't write us up. We left. Today, we are settled in an official site. It's an area where there's often room. But it's 40 km away. And on top of that, the site is very expensive, with water and electricity... You know, it's complicated around in the department of Ille-et-Vilaine and in the city of Fougères. There are no places available. They should create family sites, but they don't do anything. There aren't many places for Travellers and yet they give us tickets. We have no solution. I don't know what will happen next. I have received a judicial summons following my time in custody. My summons is in June 2022. I suppose they will fine me. But I don't know.

Testimony no.3

16. It was December 2021. We had just arrived at the car park of a shop that had been closed for years. They put blocks of stones and earth all around the car park to prevent us from setting up, but we took a small path that allowed us to pass anyway. We were there for about 30 minutes, maximum 1 hour. It was about 10am. We were not bothering anyone. We hadn't even made any connections or anything. The gendarmerie arrived with a vehicle. They told us we had to leave. I explained that we had nowhere else to go. I have been trying for 3 months to get permission from a nearby town to put up the caravans for 3 weeks. The request is constantly refused. The designated sites are full. The people who are there are not moving. I don't blame them. I understand them, there is no room elsewhere, so they stay! The gendarmes said that we would be fined and that we had to leave. I told them "But what about us? What do we do? They answered that it was the law and that we had to leave. They asked the identity of two people. I showed my identity card and my daughter hers. They then asked us to sign the report. I refused. They said they were going to take me into custody. A gendarme was walking around me, his hands on his handcuffs. This happened in front of my 8-year-old son, my daughter and her two young children. I said I would rather go to court than be fined. This fine, €500, is what I have to live on with my husband and three children a month! How do we live after that? I prefer to go and explain myself to the judge. It's my right as a French citizen to be able to explain my situation before the courts. The police called for reinforcements. There were three or four vehicles. They said, "We'll call the prosecutor". Finally, they told me that I would not be held in custody, but that I had to accompany them in their van for a free hearing at the gendarmerie. My daughter, the second person they had asked for her identity card, also. They told me that I could not go in my own vehicle, I had to go in their van. I did not resist. When we arrived at the police station, they took our photo, then the fingerprints, the DNA... I told them "But in that case I want a lawyer, all this for a car park? They replied, "It's the law". As I have nothing to reproach myself for, it was even the first time I had been fined, I gave my

fingerprints and my DNA sample. In the end I did not take a lawyer, the gendarmes having simply informed me that I would have a hearing later in the spring 2022 and that the lawyer would be there. My daughter is also summoned on the same date. All this lasted from 10am to about 2pm. Then we had to leave the car park. We went a bit further. Three days later we tested positive for COVID19. The same day or the next day, a bailiff came with a writ of summons for eviction. I told the bailiff that we all had COVID. He didn't believe me, he seemed to think that was an excuse not to receive the summons. He gave me the summons. So, we had to leave the premises. We moved to another car park. We were then able to negotiate with the owner who accepted that we stay for one month. At the end of the month, we left as planned. But there was still no authorised place available. Again, we moved a little further away. The gendarmes came straight away. They told us to leave. We were not fined. But they followed us and every time we wanted to stop, they told us that we had no right and that we had to leave. Each time we had to leave quickly. It lasted three days like that. We didn't have an authorised place nearby. The animals are treated better than we are. When we tell people, they don't believe us. You have to see it to believe it. What about the people who go camping? They have car parks, places where they can stay. And often when they put themselves in other places, they are not bothered. We don't have authorised parking spaces and when there are some, they are far away, near waste disposal sites. This is discrimination.

Testimony no.4

17. There were several of us on a field not too far from Fougères. We were to leave the next day, as planned. The gendarmes had already been to see us and had simply checked our identities. At that time, there were two or three of them. That day, the gendarmes arrived in great numbers. They even had the dogs with them. They were not violent or insulting. They asked us for our identity cards. We gave it to them. They then said, "Sign here". They didn't explain anything to us. At first, we didn't want to sign. But they told us that if we didn't sign, we would be taken into custody. So, we signed. We didn't know what we had signed. I didn't understand that we had been fined. We left the next day as planned.

About ten days later, we received the fine of €400. I regularly pick up my mail, to the CCAS. I sent the documents to a local NGO; I didn't know what to do. I can't pay this amount. I haven't paid it. I am waiting, because I don't know what to do.

d. Relevant domestic legislation

18. Article 322-4-1 of the Criminal Code

The fact of settling together, with a view to establishing a dwelling, even temporarily, on a piece of land belonging either to a municipality that has complied with its obligations under the departmental plan provided for in Article 1 of Law n° 2000-614 of 5 July 2000 relating to the reception and housing of Travellers or which is not included in this plan, or to any other owner other than a municipality, without being able to prove their authorisation or that of the holder of the right to use the land, is punishable by one year's imprisonment and a fine of €7,500.

Under the conditions set out in Article 495-17 of the Code of Criminal Procedure, public action may be extinguished by the payment of a fixed fine of €500. The amount of the fixed fine is €400, and the amount of the fixed fine is €1,000.

Where the installation is carried out by means of motor vehicles, they may be seized, with the exception of vehicles intended for residential use, with a view to their confiscation by the criminal court.

19. Article 495-17 of the Code of Criminal Procedure (modified by Law n°2022-52 of 24 January 2022, art. 29)

Where the law so provides, the public prosecution shall be extinguished by the payment of a fixed fine set by law, which may not exceed the amount provided for in the first paragraph of Article 131-13 of the Criminal Code, under the conditions set out in this section.

However, the fixed fine procedure shall not apply if the offence has been committed by a minor or if several offences, at least one of which cannot give rise to a fixed fine, have been recorded simultaneously. It is also not applicable if the offence is a repeat offender, except where the law provides otherwise.

20. Article 495-18 of the Code of Criminal Procedure (created by Law n°2016-1547 of 18 November 2016)

The fixed fine must be paid within forty-five days of the discovery of the offence or, if the notice of offence is sent to the person concerned at a later date, within

forty-five days of the sending of the notice of offence, unless the person concerned submits a request for exemption to the service indicated in the notice of offence within the same period. This request is forwarded to the public prosecutor.

However, the fixed fine is reduced if the person concerned pays the amount either to the ticketing officer when the offence is established or within fifteen days of the offence being established or, if the notice of offence is sent to the person concerned at a later date, within fifteen days of it being sent.

In the absence of payment or of a request presented within the time limit provided for in the first paragraph, the fixed fine is automatically increased and recovered for the benefit of the Treasury by virtue of a writ of execution issued by the public prosecutor.

21. Article 495-19 of the Code of Criminal Procedure (modified by Law n°2019-222 of 23 March 2019)

The writ of execution referred to in the last paragraph of Article 495-18 shall be enforced in accordance with the rules laid down in this Code for the enforcement of criminal judgments. The statute of limitations on the sentence shall begin to run from the date of signature by the public prosecutor of the enforcement order, which may be individual or collective.

Within thirty days of the dispatch of the notice inviting the offender to pay the increased fixed fine, the latter may lodge a reasoned complaint with the public prosecutor's office, the effect of which is to annul the enforcement order in respect of the contested fine. This complaint remains admissible as long as the penalty is not time-barred, if it does not result from an act of execution or any other means of proof that the person concerned was aware of the increased fixed fine.

22. Article 495-20 of the Code of Criminal Procedure (modified by Law n°2019-222 of 23 March 2019, art. 58)

The request for exoneration provided for in Article 495-18 or the complaint provided for in Article 495-19 is only admissible if it is sent by registered letter with acknowledgement of receipt, using the form attached to the fixed fine or increased fixed fine notice, and if it is accompanied either by a document showing that a prior deposit of an amount equal to that of the fixed fine has been paid, in the case provided for in the first paragraph of Article 495-18, or that of the increased fixed fine, in the case provided for in the second paragraph of Article 495-19, or by the receipt for the complaint lodged for the offence of identity theft provided for in Article 434-23 of the Criminal Code.

The public prosecutor shall check that the conditions for admissibility of the request or complaint provided for in this article have been met.

The requests and complaints provided for in this article may also be sent by electronic means, in accordance with the procedures specified by order.

23. Article 495-21 of the Code of Criminal Procedure

In the light of the request made pursuant to the first paragraph of Article 495-18 or the complaint made pursuant to the second paragraph of Article 495-19, the public prosecutor may either waive the prosecution or proceed in accordance with Articles 389 to 390-1, 393 to 397-7, 495 to 495-6 or 495-7 to 495-16, or notify the interested party of the inadmissibility of the unmotivated challenge or of the fact that it has not been made using the form attached to the fixed fine notice or to the notice of increased fixed fine. The prosecutor's decision of inadmissibility can be challenged before the president of the correctional court, or a judge designated by the president of the judicial court.

In the event of conviction, the fine imposed may not be less than the amount of the fixed fine in the case provided for in Article 495-18, nor may it be less than the amount of the increased fixed fine in the case provided for in Article 495-19.

In the event of dismissal or acquittal, the amount of the deposit shall be repaid to the person to whom the notice of payment of the fixed fine was sent or who was prosecuted. The terms of this reimbursement are defined by regulation. In the event of a conviction, the fine imposed may not be less than the amount provided for in the second paragraph of this Article, increased by a rate of 10%.

By way of derogation from the second and third paragraphs, the court may, exceptionally, by a specially reasoned decision with regard to the person's expenses and income, not impose a fine or impose a fine of an amount lower than those provided for in the same paragraphs.

24. Article 495-22 of the Code of Criminal Procedure

For the purposes of this section, the place of automated processing of nominative information concerning offences recorded in a report drawn up in digital form shall be considered to be the place where the offence is recorded.

25. Article 495-24 of the Code of Criminal Procedure

When the person who has been fined a higher fixed fine does not contest the reality of the offence but requests, because of financial difficulties, a delay in payment or a grace period, he or she sends a reasoned request to the competent public accountant.

In this case, Article 495-20 is not applicable. If he considers the request justified, the competent public accountant may then grant time limits or issue a decision for partial or total remission, if necessary by applying a reduction of 20 % of the sums due, pursuant to Article 707-4.

26. Article D45-4 of the Code of Criminal Procedure (in force since August 21th 2021 – modified by decree n°2021-1093 of August 18th 2021 on the procedure for tortious fixed fines)

After the offence has been detected, a notice of offence, a payment notice and a request for exoneration form are sent to the person's home address by ordinary letter.

When the offence is detected, the person is informed that he or she will receive a fixed fine notice at the address he or she has declared. This notice is mentioned in the electronic report drawn up in accordance with Article D. 45-3.

When the fixed fine procedure is applied to the offence of driving without insurance, provided for in Article L. 324-2 of the Highway Code, and when this offence has been recorded, without the driver being intercepted, in accordance with the procedures provided for in Article L. 130-9 of the same Code, by or from an automatic control device, these documents are sent to the holder of the registration certificate.

e. Violations of the European Social Charter

Violation of Article 31 taken alone and in conjunction with Article E

Article 31 imposes on states an obligation of means, meaning they must take “suitable measures” toward securing access to housing (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 29). They need not *necessarily* produce results but take effective measures so that the results of housing access are achieved (ERRC v. France, § 30 [citing International Movement ATD

Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58 to 67; European Federation of National Organisations working with the Homeless v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §§ 28 to 31)). Article 31 § 1 requires the promotion of housing of an adequate standard; § 2 requires the prevention and reduction of homelessness; and § 3 requires the price of housing to be accessible.

In the ERRC v. France case from 2008, the Committee held that France's failure to provide enough halting sites, failure to maintain halting sites in adequate condition, and failure to provide access to housing for settled Travellers formed violations of Article 31 § 1. As of the latest Committee follow-up, the Committee has noted that these circumstances have still not been brought into conformity with the Charter (Assessment of follow-up: European Roma Rights Centre (ERRC) v. France, Collective Complaint No. 51/2008, §§ A1 - C3). The Summary of Facts of this Complaint provides further information on the current situation regarding halting sites. Given the vast discrepancy of available authorized halting sites, the high costs for accessing the already existing ones, and the inadequate living conditions in most of them, it is necessary for there to be other means of legally halting in order to provide housing of an adequate standard, prevent and reduce homelessness, and make housing accessible to all Travellers in France. The introduction of fixed fines without procedural stipulation ensuring that these fines only occur in municipalities that are fulfilling their obligations under the departmental plans provided for in Article 1 of Law n° 2000-614 of 5 July 2000, results in illegalizing and fining Traveller families (especially the poorest) with no other physical options.⁸ Thus, the situation cuts off access to housing for large numbers of Travellers and is in violation of Article 31 § 1.

In the ERRC v. France case from 2008, the Committee held that France's eviction procedures formed a basis for a violation of Article 31 § 2. In doing so, the Committee noted that illegal occupation may indeed justify eviction when the criteria for illegal occupation are not unduly wide, the requisite procedures are followed, and the procedures are sufficiently protective of the rights of the persons concerned (ERRC v. France, § 67 [citing ERRC v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006]). Much of the Committee's analysis in that case involved noting the particularities required for eviction procedures and the "particularly problematic" aspects of eviction (ERRC v. France, §§ 68-69). Fines, on their own, do not carry the exact same issues as evictions (plunging residents immediately into homelessness, often enforced with physical violence). Nevertheless, the fines challenged in this Complaint are exorbitant, entail the establishment of a criminal record, and, given the lack of other options furnished by the state, are especially likely to result in recidivism. Travellers who face them will likely see their financial situation deteriorate as seizures drain their bank accounts. The consequences will be the criminalization and massive impoverishment of the Traveller population, and all this will occur with even fewer procedural safeguards than the evictions described in ERRC v. France (2008). The situation will invariably promote homelessness in violation of Article 31 § 2.

Article 31 § 3 of the Charter requires the price of housing to be accessible. Given the number of Travellers in France and the paucity of halting sites, it is not possible for all

⁸ Note that only 22 of the 95 départements met the requirements set out in the departmental plans for the reception and housing of travellers in 2020. That's 20 years after the 2nd Besson law, <https://www.ecologie.gouv.fr/sites/default/files/enqu%C3%AAte%20dhup%20gdv%202020.pdf>.

Travellers to be housed in halting sites and family plots. Without the necessary procedures prior to fining in order to confirm that municipalities are holding up their obligations under the department plans and to confirm the intentional aspect of illegal settlement, it is essentially certain that Travellers will be forced into situations where they are subject to fines without any “legal” settlement to turn to. As the testimonies of the Travellers confirm, even the consent of property owners will not always shield Travellers from fines if the gendarmes insist upon the illegality of their settlement. Thus, the price of these fines to some extent is realistically and unavoidably factored into the price of housing for Travellers in France. The price of these fine (500 - 1000 EUR per person) is not affordable for most people in France and, especially considering the special situation of marginalisation that the Committee has acknowledged that Travellers face in Europe, not affordable for much of the Traveller community. Thus, the State-party is also in violation of Article 31 § 3.

Article E of the European Social Charter requires that “[t]he enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground”, including belonging to the Traveller community. In the *ERRC v. France* case in 2008, the Committee determined that lack of stopping places, poor living conditions, evictions, and the fact that caravans were not recognized as a form of housing all comprise discrimination in the implementation of Article 31 towards Travellers (*ERRC v. France*, § 80). The Committee outlined the necessity for people in different situations to be treated with, “discernment in order to ensure real and effective equality” (*ERRC v. France*, § 83). In the 2008 case, France was failing in that respect in its obligation towards Travellers: “the specific differences of Travellers are not sufficiently taken into account at and that, as a result, they are discriminated against when it comes to implementing the right to housing” (*ERRC v. France*, § 84). France’s fixed fine procedure added by Article 4 of Law n°2018-957 of 7 November 2018 discriminates against Travellers in much the same way. As mentioned above, it hampers their right to access effective housing. And, as mentioned in the Summary of Facts, the Senators who proposed the legislation aimed it at, “strengthening and making more effective the penalties for illegal installations of Travelers on public or private land”. Also mentioned in the Summary of Facts, President Macron himself has noted, “we will save a lot of time for many people, we will lighten the procedure, but we will also make it possible to respond to unacceptable situations on the ground by having the same approach, by means of lump-sum criminal fines for the illegal occupation of land by Travellers”. The legislation is clearly directed specifically at Travellers, and it fails to take into consideration the different situation that Travellers face. Travellers in France face a documented insufficiency of legal housing sites, and so targeting that precarious housing situation with criminal and financial sanction certainly fails to consider the special circumstances they face in a discriminatory manner.

Violation of Article 16 taken alone and in conjunction with Article E

Article 16 of the Charter affirms that the family is, “a fundamental unit of society” that has the right to economic, legal, and social protection by provision of social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means. Despite this, instead of putting in place measures benefiting Traveller families, the State-party, through the introduction of a procedure for imposition of fixed fines for the criminal offense of “illegal halting in order to set up a home

even temporarily" (amende forfaitaire délictuelle pour installation illicite en vue d'établir une habitation même temporaire), has directly increased the economic, legal, and social risks for these families.

The fixed fines raise serious problems in terms of economic, social and legal protection. First of all, it should be noted that the fine notice is sent by ordinary mail to the person who allegedly committed the offence. The 45-day period for contesting the fine starts to run when the letter is sent. The letter also contains a "request for exoneration" form, which is an essential document for contesting the fine: without this document, any challenge is inadmissible. For Travellers, there is a dichotomy between their place of residence and their address. Few people receive their mail directly at home, and they may be hundreds of kilometres away from their place of residence, preventing them from regularly collecting their mail. In addition, in France there are refusals of direct debit. Some people therefore do not receive notices in time - or at all. They are therefore not informed of the charges against them and are unable to contest and defend themselves from the allegations for having committed the offence. This lack of notice and the possibility of challenging it are even more serious as the fine amount is fixed and automated i.e. there are no safeguards ensuring that fines are proportional to the individuals concerned. The consequences of this fixed fine are dramatic: families find themselves over-indebted, with direct seizures of money from their bank accounts or their family social benefits. They then find it difficult to meet their most basic needs, let alone access authorised housing; people find themselves wandering, without authorised accommodation, looking for remote and hidden places in order not to be fined. This has also important consequences on children's schooling, access to health care and public services. It risks the end of the way of life of the different itinerant groups and represents a real culturicide.

In this context, it should be reiterated that Traveller caravans are still not considered as housing under French law. Thus, Travellers do not benefit from the protective status of housing: no winter moratorium on evictions, no ban on water and electricity cuts, and no access to housing-related social assistance (such as Aide Personnalisée au Logement [APL], energy vouchers, etc). Added to this is the cost of pitches and authorised land. Indeed, a pitch on a designated site (such as a "reception area") is not free. The cost varies greatly from one site to another. On average, it is €300 per month, but can reach more than €500 on some pitches due to local pricing, to this must be added the price of a deposit that must generally be paid in cash (often €100 to €300) and the cost of utilities (water and electricity), which are more expensive than for other inhabitants. Families who cannot afford to buy their own land in an area where caravans are allowed have no choice but to move to these so-called 'reception areas', despite their costs. However, people who are unable to pay the price of the pitch and/or utilities are either obliged to leave the site because they cannot continue to pay or are evicted due to non-payment. No rehousing solution is provided for these families. These people - with no housing solution - then settle in unauthorised areas, parking in what is considered "illegal" parking. They then risk fines, imprisonment, seizure of their caravans and eviction. In the *ERRC v. France* case from 2008, the Committee asserted that violations of Article 31 and Article E in conjunction with 31, in populations involving families, generally also amount to

violations Article 16 and of Article E in conjunction with Article 16. The population affected by the fixed fines unquestionably includes families. The testimonies specifically involve family hardship and even multiple family-members being targeted by the same fines. And as aforementioned, the failure to provide access to effective housing to Traveller families is undertaken discriminatorily in violation of Article E. The European Court of Human Rights has condemned France, notably in the Winterstein judgment of 17 January 2014, for violating Article 8 of the ECHR. In this judgment, the Court stated: "The Court recalls that caravan life is an integral part of the identity of Travellers, even when they no longer live nomadically, and that measures relating to the parking of caravans affect their ability to maintain their identity and lead a private and family life in accordance with that tradition (see Chapman, § 73, Connors, § 68, and Wells v. the United Kingdom (dec.))" and recalled: "that it has already held that the vulnerability of Gypsies and Travellers requires special attention to be paid to their needs and their particular way of life, both in the planning regulatory framework and when taking decisions in individual cases (see Connors § 84, Chapman § 96 and the Stenegry and Adam decision)."

Violation of Article 30 taken alone and in conjunction with Article E

Through its repressive legislation and practices towards Travellers, (especially the poorest), the French state, far from taking measures to decriminalise homelessness and extreme poverty, reinforces the impoverishment and vulnerability of these already discriminated people. Indeed, the rejection and exclusion of travelling populations leads to spatial exclusion through the criminalisation of their presence in the public space. They can only live their daily lives in very precisely authorised areas and are criminally sanctioned when they leave these areas. These criminal sanctions are accompanied by eviction without any alternative accommodation. People are then left homeless and at the mercy of further criminal convictions. The European Committee of Social Rights has already established that states violate the fundamental rights of Travellers through its criminalising policy, in particular in a decision of 24 January 2012 which states: "The Committee recalls that, when a person or a group of persons are unable to benefit in practice from the rights recognised by the legislation (in this case the right to park in an area provided for this purpose), the persons concerned are forced, in order to satisfy their needs (in this case, the right to park in an area provided for this purpose), the persons concerned are obliged, in order to satisfy their needs, to adopt reprehensible behaviour (in this case, irregular parking), this circumstance alone cannot be considered such as to justify any sanction or enforcement measure against them, nor the continued deprivation of the rights granted to them (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 53)". The Committee added that: "[...] in practice, the execution of the contested evacuation procedure exposes Travellers more than anyone else to the risk of becoming homeless because the conditions for regular parking are too limited, and consequently, housing that takes into account their specific way of living is not offered to them." A vicious circle

of criminalisation, exclusion and poverty is created: poor families without access to authorised land are criminally convicted, have to pay heavy fines and suffer eviction after eviction. The repeated fines lead them into over-indebtedness, making it even more difficult for them to access decent housing. They then find themselves wandering, forced to live more and more hidden and invisible to avoid being fined. These families are then effectively excluded from social policies and practices, which has an impact on their ability to meet their most basic needs: water and sanitation, food, heating, etc. It is therefore a spiral of exclusion and violations of the most basic rights that is in place through the criminalisation of Travellers and their way of life.

Article 30 of the Charter affirms the right to protection from poverty and social exclusion and includes the promotion of housing for those facing social exclusion. In the 2008 case, it was clear from the Committee's conclusions regarding Article 31 that housing policy for Travellers was inadequate, and thus France had failed to promote "effective access to housing for persons who live or risk living in a situation of social exclusion" (ERRC v. France, § 95). Here the argument is quite similar. Roma and Travellers face widespread discrimination and exclusion. Recommendation (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe notes specifically that they "continue to be among the most disadvantaged population groups in Europe". That has not changed materially, and since the fines added by Article 4 of Law n°2018-957 of 7 November 2018 impact the right to housing for Travellers in France as set out in the above argument on Article 31, it follows that France violates the guarantee of access to housing for Travellers in a situation of social exclusion. In the 2008 case, the Committee noted that "measures taken to adopt an overall and co-ordinated approach to combating social exclusion must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance" (ERRC v. France, § 99). Additionally, that list should not be read exhaustively or narrowly. Discriminating in the violation of other fundamental rights against socially excluded populations may also constitute a violation of Article E taken in conjunction with Article 30. The right to housing in combating social exclusion is clearly applied discriminatorily by the relevant fine regime, as it has been specifically mentioned by the legislative and executive actors to be targeting Travellers. Furthermore, testimonies of the Travellers interviewed confirm that other homeless or camping individuals undertaking the same physical actions of "illegal" settlement that the Travellers undertaken are not exposed to the same treatment by gendarmes and fined as Travellers are. Since the culture and lifestyle of many Travellers are uniquely tied to itinerancy, they are explicitly discriminated against in the securing of access to their culture as a socially excluded people through the relevant fixed fine system for the same reasons. Lastly, the fines added by Article 4 of Law n°2018-957 of 7 November 2018, as aforementioned, are uniquely likely to result in financial down spiral, bankruptcy, and criminal recidivism. This is due to the inherent incapability of many disadvantaged Travellers to comply with the requirements of the law given the shortage of legal halting spaces and the failure of the state to enforce the departmental plans provided for in Article 1 of Law n° 2000-614 of 5 July 2000. Again, given that the new fine system is explicitly targeted at the Traveller community, it discriminatorily hampers the

access to rights likely to be burdened by financial burden and criminal records, like employment.

Summary of violations of Articles 31, 16 and 30, combined with Article E of the Charter

In addition to the above arguments, it is worth highlighting the systemic way in which the legal and judicial systems and practices relating to the AFD, a criminal procedure that derogates from ordinary French law, create situations that violate these articles. This derogatory procedure, based on the lump-sum payment for offences, deprives users of access to justice⁹ and is particularly detrimental to the rights of Travellers. This procedure results in a disconnection with the justice system from the moment the offence is recorded. In a face-to-face meeting with the police, who are in no way accountable to the public prosecutor (Procureur de la République).¹⁰ However, the offence of unlawful installation as defined in article 322-4-1 of the French Penal Code requires complex verification to ensure that the offence has been characterised and legally assessed. Added to this is the increasing complexity of compliance by local authorities with the obligation to set up reception areas as a result of relaxations in the Law of 5 July 2000. As the Défenseure des droits observes (Annex 6), *"despite the efforts made to train ticket inspectors, they are often insufficiently coached and supervised, and may make mistakes in classifying and characterising offences, with harmful consequences for users"*. Moreover, the structural shortfall in the provision of accommodation and housing for travellers would theoretically be likely to lead the public prosecutor's office to file a case with no further action, even in the case of illegal occupation of private land. It is very rare for landowners to issue written authorisation, which travellers will almost never be able to produce. This authorisation is therefore very often verbal, or even the result of a simple tolerance - recognised by French civil law - and presupposes and presupposes, in either case, a detailed check which, in the absence of recourse to the AFD, should have been carried out under the supervision of the public prosecutor.

Finally, as the testimonies gathered show, the fines are always accompanied by eviction without any adversarial procedure. However, the criteria for illegal occupation can be understood very broadly by the police and, above all, the circumstances associated with the AFD procedure deprive people of eviction conditions that respect human dignity, respect people's rights and ensure rehousing solutions.¹¹

⁹ See Défenseur des droits décision cadre du 31 mai 2023 (JORF n° 0124 du 31 mai 2023)

¹⁰ See for instance circulaire 6 juillet 2023 - CRIM 2023 – 9 / E1 – 05/07/2023 « *La procédure d'amende forfaitaire, qui exclut toute prise d'attache avec la permanence du parquet pour assurer l'orientation à la suite de la constatation de l'infraction, conduit à un traitement plus rapide des procédures.* »

¹¹ See ERRC v. Bulgaria, réclamation n° 31/2005, decision 18 october 2006, § 51, and ERRC v. France, Réclamation n° 51/2008, 19 october 2009

The persistent failure to implement the Law of 5 July 2000 means that Travellers are exposed to the illegal occupation of sites and to the penalties set out in Article 322-4-1 of the Criminal Code. The fact that this offence is automatically punished by the AFD, without any judicial review, undermines their right to housing, especially as this punishment is accompanied by hasty evictions with no alternative accommodation. The conditions under which this eviction was carried out without any adversarial procedure and without any offer of rehousing, provoked solely by the security forces using the criminal AFD procedure described above, necessarily lead to homelessness. People who are forced to park illegally because there are no accessible authorised spaces face severe penalties and are deprived of their most fundamental rights.

The mechanisms described above demonstrate that, in law and in practice, the application of the simplified and automatic AFD procedure to Travellers exposes them more than anyone else to the risk of not having access to housing adapted to their lifestyle and, also, of finding themselves homeless :

- sending notices of fixed fines by ordinary post to home addresses for people whose lifestyle is itinerant is necessarily detrimental to their primary interests. As described above, there is a dichotomy between their place of residence and their actual address, which, incidentally, is generally mobile.
- To contest the AFD, the person concerned must deposit the amount of the contested fine. The AFD concerning the offence of unlawful installation is not one of the offences exempted from consignment (loi n° 2023-22 du 24 janvier 2023). While other offences are exempt, this deposit requirement is not only a major obstacle to the possibility of contesting the AFD, but also targets a particularly vulnerable population, even though the offence in question targets their specific habitat.
- The slide into poverty of the already vulnerable Traveller population is undoubtedly encouraged by the mechanisms of automaticity without control by the Public Prosecutor's Office that result from the procedural characteristics described above. Yet €500 - a simple fixed fine - corresponds to the social minimum for the most humble, and many are facing a €1.000, the amount of the increased fine in the event of non-payment on time or failure to contest. it reduces the possibility of people being able to pay the fees for access to reception areas and the associated charges, which can lead to homelessness

This population is therefore exposed more than anyone else to the risks referred to in the first paragraph, and the same violations must be found: violation of Article 30 of the revised European Social Charter and of Article E in conjunction with Article 30, violation of Article 31 and of Article E in conjunction with Article 31, and also violation of Article 16 and of Article E in conjunction with Article 16.

At the end of this summary, it should be pointed out that the fact that it was impossible for the Travellers to have access to a judge prevented them from challenging the AFD's procedure before the ECtHR.

Conclusion

The current procedure for imposition of fixed fines on Travellers in France for the criminal offense of "illegal halting in order to set up a home even temporarily" (amende forfaitaire délictuelle pour installation illicite en vue d'établir une habitation même temporaire) allows for real discrimination and results in housing segregation and strong criminalisation of these populations (in particular the poorest who do not have the means to access authorised housing). Such criminalisation further violates the fundamental rights of those concerned as it targets a specific group that is highly discriminated against on racist grounds, a group that is seen as undesirable, with the intention of seeing them disappear from the public sphere. The fixed fine for illegal halting completes the legislative arsenal that contributes to the systemic discrimination of Travellers. This expeditious procedure, which does not take into account the situation of the affected persons, will result in further exclusion of Travelers. Travellers will be considered as criminals and their way of life will be even more stigmatized. In addition to creating a feeling of injustice and distrust in institutions, the registration of the offense in the criminal record - a consequence of the fixed fine - will prohibit convicted Travellers from entering certain professions. Above all, people will be fined once and then, without a solution for housing on an authorized site, they will be fined again and in a state of recidivism. They will then risk very heavy penalties, including prison sentences. The escalation of penalties and sanctions can be very rapid due to the scarcity of authorized land. This is in addition to the fact that the Travelers concerned by this offense are the most vulnerable people: those who cannot find authorized land to settle on, who cannot buy land or who cannot access the so-called "reception areas" because of the tariffs that can be prohibitive. These people will see their financial situation deteriorate as a result of fines to be paid and direct seizures on their bank accounts. The consequences will be the criminalization and massive impoverishment of the traveling population. To avoid bankruptcy or imprisonment, the only solution for those who cannot find authorized land will be to stop traveling. The fixed fines are therefore a new way of forcing Travellers to abandon their way of life. It is a real threat to the itinerant lifestyle and to living in mobile and light housing. Hence, the ERRC is of the position that there is an urgent need to put an end to the procedure for imposition of fixed fines on Travellers in France for the criminal offense of "illegal halting in order to set up a home even temporarily" (amende forfaitaire délictuelle pour installation illicite en vue d'établir une habitation même temporaire), which discriminates against and infringes upon the fundamental rights of Travellers in France.

Thank you for your consideration of these matters.

On behalf of the European Roma Rights Centre,

Dorde Jovanovic, President



