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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

13 November 2024

Case Document No. 6

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

**RESPONSE FROM ERRC
TO THE GOVERNMENT'S SUBMISSIONS
ON THE MERITS**

Registered at the Secretariat on 20 September 2024

European Committee of Social Rights
Council of Europe
By email only: social.charter@coe.int
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EUROPEAN COMMITTEE OF SOCIAL RIGHTS

COLLECTIVE COMPLAINT NUMBER 230/2023

EUROPEAN ROMA RIGHTS CENTRE (ERRC)

V.

FRANCE

Response to the Government's Observations on the Merits of the Collective
Complaint

Number of pages: 8

I. Introduction

1. The European Roma Rights Centre (hereafter: "the ERRC") submits this response to the submissions on the merits of the abovementioned complaint

prepared by the Government of France (hereafter: “the Government”), registered by the Committee on 01 July 2024 and received by the ERRC on 11 July 2024.

2. Pursuant to Rule 31§2 of the Rules of the European Committee of Social Rights, the President of the Committee invited the ERRC to submit a response to these submissions by 20 September 2024.

3. The ERRC will address the merits only to the extent that they (as set forth in the collective complaint) need to be clarified, refined, or enlarged upon in light of the Government’s Observations. The fact that the ERRC, as a complainant organisation, will not address all the issues and omit some of the questions means only that the relevant issues were extensively addressed in the original complaint and therefore the organisation has nothing substantially new to add to that analysis. Hence, the ERRC asks the Committee not to interpret its silence on any of the questions as consent with the Government’s position.

II. Procedural Shortcomings of the Tortious Fixed Fine System and Compliance with the SDAGDV

4. As detailed in the collective complaint, the tortious fixed fine (“AFD”) system is a prosecutor-driven process, relying on electronic fines issued by law enforcement without any judicial review or adversarial proceedings. Travellers face significant barriers when attempting to challenge these fines, such as strict time limits and the requirement to deposit €500. The Défenseur des droits raised concerns about the lack of procedural safeguards in Decision No. 2022-004, dated 24 January 2022 (see Annex 5 to the collective complaint).

5. A mere compliance with the SDAGDV (Departmental Plans for the Reception of Travellers) does not ensure Travellers' access to adequate housing, thereby

failing to prevent illegal parking and subsequent fines under the AFD. Several factors contribute to this issue:

- **Insufficient and overcrowded sites:** The 2017 report by the Court of Auditors noted a 7% national decline in the number of available spaces.
- **Temporary site closures:** Sites are often closed for renovations, as seen in regions like Dole (June 2024) and Sète (February 2024), without alternative legal options provided.
- **Loopholes in compliance:** Municipalities can comply with the SDAGDV by financially contributing to facilities in other areas, leading to large regions without any legal halting areas for Travellers.
- **Outdated plans:** Departmental plans, meant to be reviewed every six years, are often outdated, and Travellers are not always included in the revision process.

6. Municipalities that demonstrate efforts to comply with the SDAGDV, such as identifying land for future halting sites, are considered to be acting in good faith. These municipalities can prohibit Travellers from settling, even if authorised sites are not yet operational (Article 9, Law No. 2000-614, 5 July 2000). However, the development of these sites can take years.

7. Many municipalities, particularly those with fewer than 5,000 inhabitants, are not included in the SDAGDV, even though they make up the majority of French municipalities (33,000 out of 35,497). In these areas, any Traveller installation is automatically deemed illegal.

8. Reports from the ODCI and FNASAT underscore the inadequate housing conditions faced by Travellers in France, a concern also highlighted in the latest Concluding Observations by the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR), 30 October 2023.¹ The Committee expressed

¹ UNCESCR, Concluding observations on the fifth periodic report of France, available on: <https://documents.un.org/doc/undoc/gen/g23/218/13/pdf/g2321813.pdf>.

ongoing concern about the persistent shortage of adequate housing for Travellers, noting issues such as the insufficient number of halting sites, which are often in poor conditions and lack essential services. Furthermore, the lack of recognition of caravans as dwellings impacts Travellers' access to rights, including education. The Committee recommended that France take effective measures to improve housing conditions for Travellers and address the issues with halting sites. It also suggested recognizing caravans as dwellings to ensure that living arrangements do not obstruct access to rights. In terms of education, the Committee emphasized the need for France to address barriers faced by Traveller children ensuring they receive quality, culturally appropriate education. Instead of addressing these concerns, the French State has used the AFD to penalize Travellers for illegal settlement, worsening their housing difficulties.

III. Alleged Low Number of Fines

9. While the Government describes the number of fines as "low," these fines still have significant consequences for the affected families. Those fined struggle with payment, potentially resulting in a criminal record. Meanwhile, other families avoid detection by settling further from public services in precarious conditions, exacerbating their isolation.

10. Additionally, the alleged relatively low number of fines issued for illegal settlement during the trial phase of the AFD procedure does not provide an accurate forecast of its future use once the trial period ends and the system is implemented nationwide. The Government's data only covers cases up until 31 December 2022, with new fines issued since then.²

² For instance, only in May 2024 four new fines were reported to ODCI in the Aubagne region.

IV. Financial Burden of the Fixed Fine

11. The AFD imposes a fixed fine without considering individual financial circumstances. Travellers, many of whom are among the poorest in France—60% relying on the Revenu de Solidarité Active (RSA)—are disproportionately impacted by this rigid penalty system. The RSA for a single person is €635.71, far below the €1,000 penalty that can result from late payment of an AFD fine.

12. In a 2022 letter to associations, the Défenseur des droits highlighted how the high fines and deposit required to challenge these notices disproportionately burden Traveller families. Travellers often face increased penalties due to administrative difficulties, such as:

- **Late notifications:** Fine notices can be sent up to six years after the offense.
- **Address complications:** Travellers frequently move and may not receive notices in time, especially given delays in obtaining official addresses from overloaded CCAS offices.
- **Ordinary mail delivery:** Notices are sent via standard mail, not registered, making it difficult to prove receipt.

13. The lack of authorised sites forces Travellers into illegal settlements, leading to fines they cannot afford. Paying these fines further depletes their already limited resources, making it even harder for them to afford halting fees or other basic needs. This is compounded by the fact that caravans are not recognised as housing, making Traveller's ineligible for social housing benefits.

V. Discrimination Against Travellers

14. The offence of illegal installation, unlike other offences covered by the AFD procedure, primarily impacts the Traveller community. Article 322-4-1 of the Criminal Code, amended by Law 2018-957 of 7 November 2018 on the reception of Travellers and the fight against illegal settlements, specifically targets

Travellers and increases the penalties for unlawful installations.³ This shows that the legal framework underpinning the AFD procedure is intrinsically linked to Traveller practices. This view was also echoed by the *Défenseur des droits* in Decision No. 2022-004 of 24 January 2022.

15. Article 322-4-1 has been applied exclusively to Travellers, with no evidence showing its use against any other ethnic or social group. Organizations such as Gisti, La Voix des Roms, and Romeurope have confirmed that no fines have been imposed on non-Travellers, further demonstrating that this penalty is specifically directed at the Traveller community.

16. Several factors support this conclusion: the law explicitly states that municipalities meeting their obligations for Traveller sites can impose the fine, the AFD provisions target illegal installations on land commonly associated with Traveller settlements, and President Macron's speech on September 14, 2021, explicitly focused on illegal land occupations by Travellers as the main reason for these fines, highlighting their targeted nature.

17. If the Committee is unsure whether this constitutes direct discrimination, it should still recognize that the law disproportionately affects the Traveller community, thus constituting indirect discrimination. Indirect discrimination occurs when a seemingly neutral rule disproportionately impacts a specific group without a valid justification. Should the Committee have any doubts about the discriminatory nature of this procedure, it should require the Government to

³ Article 322-4-1

The act of settling in a group, with a view to establishing a dwelling, even temporary, on land belonging either to a municipality which has complied with the obligations incumbent upon it under the departmental plan provided for in Article 1 of Law No. 2000-614 of 5 July 2000 **relating to the reception and housing of travellers** or which is not registered in this plan, or to any other owner other than a municipality, without being able to provide proof of 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 provided for 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 reduced fixed fine is €400 and the amount of the increased fixed fine is €1,000.

When the installation is carried out using motor vehicles, they may be seized, with the exception of vehicles intended for habitation, with a view to their confiscation by the criminal court.

provide proof that Article 322-4-1 affects non-Travellers in the same way, which the Government failed by far.

18. Finally, the AFD procedure fails to accommodate the traditional lifestyle of Travellers, who face systemic barriers in securing housing. Unlike non-Travellers, who can access alternative housing solutions such as flats, social housing, or emergency accommodation to resolve their illegal settlement situation, Travellers would have to abandon their cultural way of life in order to avoid these penalties. This creates an unequal burden and forces them into a position of relinquishing their cultural traditions to avoid prosecution.

VI. The CNCGDV's Role, Traveller Representation, and Failure of Educational Support

19. The collective complaint is based on information and testimonies the ERRC received from the Observatory for the Rights of Itinerant Citizens (ODCI). The ODCI is a French association tasked with supporting Travellers in defending their rights. It works closely with a national network of seven NGOs—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. Together, these organizations advocate for Travellers' right to effective access to housing in France and campaign against the imposition of fixed fines by national authorities for the criminal offense of halting in order to set up a home, even temporarily.

20. The collective experience of these NGOs with the National Commission for the Support of Travellers (CNCGDV) reveals that the commission's role largely serves governmental policy rather than truly representing Traveller interests. The underrepresentation of Traveller organizations on the commission has resulted in their limited influence, rendering the commission ineffective in preventing the enforcement of repressive measures, such as fixed fines.

21. Moreover, the commission has failed to address key issues such as the difficulties Travellers face in enrolling their children in distance education programs like CNED, further exacerbated by the 2021 Anti-Separatism Act, which has intensified the marginalization of the Traveller community. Contrary to the Government's previous claims, no budget has been allocated for school mediation programs, and no such program has been launched for the 2024 school year—an initiative that could have significantly supported Traveller children.

22. Lastly, in the context of the Roma Integration Strategy 2020-2030, Traveller organizations had minimal involvement during its finalization. Despite presenting various proposals, most were excluded from the final strategy, and the pervasive issue of institutional anti-nomadism remains unaddressed.

Conclusion

The ERRC considers that the Government has failed to respond to its well-founded allegations of non-conformity with the Revised European Social Charter. It therefore respectfully calls upon the Committee to hold that the French government have failed to take all the necessary measures towards addressing the issues raised in its Collective Complaint.

The European Roma Rights Centre
20 September 2024