

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



2 February 2009

Case document No. 2

European Roma Rights Centre v. France
Complaint No. 51/2008

SUBMISSIONS OF THE FRENCH GOVERNMENT ON THE MERITS

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OBSERVATIONS BY THE GOVERNMENT OF THE FRENCH REPUBLIC
ON THE MERITS OF
COMPLAINT no. 51/2008
EUROPEAN ROMA RIGHTS CENTRE v. FRANCE

In a decision of 23 September 2008, the European Committee of Social Rights declared admissible the complaint lodged on 17 April 2008 by the European Roma Rights Centre (ERRC) requesting that the Committee find that France has not satisfactorily implemented Articles 16, 19§4.c, 30 and 31 of the revised European Social Charter, alone or read in conjunction with Article E.

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

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I. THE COMPLAINTS

1. Although they are based on a highly broad-ranging view of the rules concerning Travellers in France, the main focus of the arguments presented in the complaint is the matter of these citizens' **access to housing**. This therefore is the aspect on which the Government will attempt to concentrate in its observations.
2. As pointed out in the decision on the admissibility of the complaint, the ERRC submits that in France, Travellers are treated unjustly where access to housing is concerned, the main problems being social exclusion and forced evictions, as well as residential segregation, substandard housing conditions and lack of security. It also alleges that France has failed to take measures to improve the living conditions of Roma from other Council of Europe member states.
3. Consequently, the ERRC considers that France is not satisfactorily implementing **Articles 16, 19§4.c, 30 and 31 of the revised European Social Charter**, which relate to the following matters:
 - **protection of family life**, *inter alia* by **providing housing**;
 - a guarantee, to **foreign workers lawfully within French territory**, that they will be treated no less favourably than French nationals with regard to **housing**;
 - **protection against poverty and social exclusion** through, *inter alia*, effective access to **housing**;
 - **access to an adequate standard of housing**;
4. Lastly, it refers, in conjunction with these provisions, to **Article E of the Charter on non-discrimination**.

II. THE MERITS OF THE COMPLAINT

5. The ERRC gives a very full description in its complaint of the domestic law provisions on Travellers. Its presentation, however, is biased, and riddled with sometimes contradictory criticism, wavering between demands for due regard for cultural particularism and condemnation of differences in treatment in the approach to Travellers' specific requirements. These contradictions reflect how very difficult it is to implement a specific policy geared to Travellers' needs without singling this group out from the rest of the population and running the risk that real instances of discrimination will arise.
6. **It is this delicate balance that the Government is currently attempting to strike by implementing a policy which has changed and progressed a great deal over recent years and, although still requiring some improvement, reflects a genuine national effort in this sphere stemming from an in-depth review of the issues involved.**
7. In this connection, France has aligned itself with the Committee's recommendations, accepting the idea that the situation of Travellers requires "*positive intervention*" by the state, combined nonetheless with some latitude (or "margin of appreciation") as to what constitutes a **proper "balance" between the general interest and fundamental rights**:

*"The Committee considers that the effective enjoyment of certain fundamental rights requires a **positive intervention** by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. States enjoy a **margin of appreciation** in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to **the balance to be struck between the general interest and the interest of a specific group** ..." (European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 35).*

8. To describe this "positive intervention", we will focus initially on the situation of itinerant Travellers (II.1), then that of sedentary Travellers (II.2), before moving on to the situation of migrants (II.3) and answering the allegations of discrimination (II.4).

II.1. Access to housing for itinerant Travellers:

9. The arrangements for the **reception of Travellers** relate to non-sedentary persons, mainly of French nationality, who belong to the community of people travelling around France without a fixed address or residence, living permanently in a vehicle, a trailer or any other form of mobile home.
10. **This way of life requires the provision of sufficient numbers of stopping places.** The aim of the Reception and Accommodation of Travellers Act (No. 2000-614 of 5 July 2000, known as the "Besson Act") is to acknowledge and safeguard the way of

life of these people by making arrangements for their reception, allowing them to live in their mobile homes in satisfactory conditions.

A/ Progress on the implementation of the Besson Act:

11. It is worth mentioning at the outset that according to the Committee, the provisions of the Charter concerning housing (namely Article 31) cannot be interpreted “*as imposing on states an obligation of results*”. Instead, for the rights enshrined in the Social Charter to take a practical and effective form, the states party must “*adopt the necessary legal, financial and operational means of ensuring **steady progress towards achieving the goals laid down by the Charter***” (*International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-71).
12. This kind of progress is clearly reflected in the recent implementation of the Besson Act. Over a year ago the Committee noted that the Act had only been implemented “*in a minority of the municipalities concerned*” (*International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 151), but **the more rapid implementation of the Besson Act in 2007 and 2008 now makes it possible to paint a more positive picture.**

Reminder of the relevant legislation:

13. Contrary to what is stated by the ERRC on page 16 of its complaint, the French state does not subscribe to the “*romantic*” notion of the “*eternally wandering Traveller*”. Instead it shows due regard for the specific nature of these people and their free choice of an itinerant lifestyle. As many Travellers have chosen a lifestyle in which traditional dwelling is a mobile home, how they are accommodated is a key issue for the public authorities.
14. **The Reception and Accommodation of Travellers Act of 5 July 2000** acknowledges Travellers’ itinerant lifestyle and gives the state a major role in the arrangements for their reception by local authorities, unlike legislation in many European countries where the provision of stopping places is left entirely to the municipalities.
15. The Besson Act sets out an ambitious plan, which has required numerous implementing regulations including, in particular:
 - Decree No. 2001-568 of 29 June 2001 on assistance for authorities and organisations managing stopping places for Travellers and amending the Social Security Code, followed by the order of 28 May 2004 on increases in housing benefits;
 - Decree No. 2001-569 of 29 June 2001 on the technical standards applying to stopping places for Travellers;
 - Decree No. 2001-540 of 25 June 2001 on the membership and functioning of *département* Consultative Commissions on Travellers;
 - Decree No. 2001-541 of 25 June 2001 on the financing of stopping places for Travellers.

16. Section 28 of Act No. 90-449 of 31 May 1990 on implementation of the right to housing already made provision for measures for the reception of Travellers, including arrangements for schooling and engaging in economic activities, to be included in **département action plans**. However, in view of the disappointing outcome of this legislation in terms both of the number of plans adopted and their limited implementation, the Government has attempted to implement a “*new strategy*”¹. Under the Act of 5 July 2000, section 28 was repealed and replaced by **new and more binding requirements to establish permanent stopping places and large-scale transit areas**.
17. The Act of 2000 establishes the principle that municipalities will be involved in the reception of Travellers and stipulates that municipalities with over 5 000 inhabitants must be included in *département plans*². Municipalities’ obligations are outlined in the plan (including the number and capacity of areas). Government policy is to organise local facilities for these people by supporting the authorities concerned (municipalities or public establishments for intermunicipal co-operation (EPCIs)) and awarding grants to project developers³, subject to compliance with statutory completion deadlines.
18. There are clear reasons for the exceptions provided for by national legislation. In particular, in order to avoid the concentration of social problems in the most vulnerable municipalities, section 15 of Act No. 2003-710 of 1 August 2003 provides that municipalities with fewer than 20 000 inhabitants, half of whom or more live in “sensitive” urban areas have the right to be excluded at their request from the scope of the Act of 5 July 2000. It is interesting to note that, of the thirty-two municipalities covered by this provision, half did not wish to take advantage of it.
19. The Committee has already had occasion, when examining complaints by the ERRC against other countries, to emphasise that the state needs to ensure that local authorities are fulfilling their obligations (see, for example, *European Roma Rights Centre v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005).
20. The Besson Act therefore grants the state certain **compulsory powers**. In particular, in addition to financial penalties and in accordance with section 3 of the Act, the prefect may take over from a municipality or an EPCI that is failing to act and requisition land to create a stopping place (the costs arising are automatically charged to the budget of the municipality or the EPCI concerned).
21. In addition to these coercive methods, there is a need for **incentives and education**. For instance, paragraph II.9 of Recommendation (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe says that the state must “*encourage local authorities to meet their obligations with regard to Roma ... in the area of housing*”.

¹ Expression borrowed from Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe, adopted on 23 February 2005.

² Municipalities with fewer than 5 000 inhabitants are required to provide sites for Travellers only if a review of needs shows that this is necessary.

³ Under the Act, the state covers 70% of the cost of setting up or rehabilitating sites; it also awards a standard-rate grant for the management of stopping places.

22. In this connection, the Ministry of Housing and Urban Affairs regularly points out in its circulars and letters to elected representatives that they must comply with the Besson Act and ensure that it is properly applied. Since the adoption of the Act of 5 July 2000, the Government's decentralised agencies, which examine applications for grants and advise municipalities, have worked hard to ensure its successful implementation.
23. More recently, on 3 August 2006, a circular on the implementation of the *département* plans for the reception of Travellers drew attention to the main provisions to expedite the establishment of stopping areas. There was also an appendix on the reception and accommodation of Travellers in the circular of 4 July 2008 on the implementation of housing policy and the programming of state-subsidised funding for 2008.

Involving Travellers:

24. Paragraph II.6 of Recommendation (2005)4 of the Committee of Ministers, cited above, stresses the need to “*provide Roma communities and organisations with the means to participate in the process of conceiving, designing, implementing and monitoring policies and programmes aimed at improving their housing situation*”.
25. It should therefore be emphasised that the implementation of national policies in this area is based on the conclusions of consultative bodies working with Travellers. Travellers' representatives and associations were in favour of the Besson Act when it was adopted on 5 July 2000. Since then they have been involved in the preparation and implementation of *département* plans through ***département-level advisory committees***.
26. These committees, which are made up of representatives of the municipalities concerned, the Travellers themselves and associations working with them, are chaired jointly by the representative of the state in the *département* and the Chair of the council of the *département* (the *conseil général*) (or their representatives). They give Travellers a voice and the power to make proposals at local level. The Government notes moreover that no national association has joined the ERRC in its complaint.
27. A **National Advisory Commission for Travellers** was also set up in 2003. It is made up of representatives of government, elected representatives, Travellers themselves and associations working with Travellers, as well as leading specialists. Its role is to study the specific problems that these people experience and make proposals to the Government to help to improve their integration into the national community. It is consulted on draft statutes and regulations and action programmes relating to Travellers.
28. These associations of stakeholders also play an essential part in monitoring the results achieved. This reflects the Committee's view that states have a duty to “*pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable*” (*International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-71).

29. Every year therefore the *département*-level advisory committees prepare a review assessing the application of their *département*'s plan. They may appoint a mediator to look into any difficulties with the implementation of plans and make proposals as to how these might be remedied. Mediators report on their activities to the advisory committee.
30. Recent progress in the implementation of the law shows that these increased efforts, made in consultation with the main stakeholders, are already yielding results.

More rapid introduction of département plans:

31. The ERRC complains that the Besson Act is not being implemented properly. While it is true that the new accommodation policy did take some time to come into operation, the current picture is one of considerable progress.
32. For instance, since 2000, ***département plans have been adopted in all of France's 96 mainland départements***. They have been signed and ***published in the prefecture's digest of official administrative documents***, and now serve as reference documents both for the authorities and for Travellers ⁴.
33. A legal framework of this type obviously requires considerable funding. In its *ERRC v. Bulgaria* decision of 18 October 2006 (Complaint No. 31/2005, decision on the merits), the Committee found that the Government programmes were not adequately funded. Yet, it has to be said that in France the authorities have been assisted in the implementation of their plans by a ***growing financial commitment from the state*** since 2000.

CAPITAL FINANCE PROVIDED BY THE STATE (in millions of Euros)								
Year	2000	2001	2002	2003	2004	2005	2006	2007
Amount (€ M)	6.7	6.03	14.65	23.00	26.80	35.40	42.46	64.00

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34. For the period from 2000 to 2007, capital investment by the state amounted to € 219 million. As the graph above shows, state funding increased significantly from 2003 onwards. ***In 2007, there was a very definite acceleration***, as the amount of spending rose to € 64 M, over a third more than in 2006. As a result funding was provided for many stopping place projects.

⁴ Some plans were declared null and void by the administrative courts because they failed to comply with the formalities imposed by the law (Moselle, Val d'Oise, Pyrénées Orientales, Yvelines, Seine Saint Denis, Val de Marne and Pas de Calais). Since then, these *départements* have either adopted new plans or, in the case of three of them, will shortly be doing so.

35. By the end of 2007, the number of state-funded spaces at stopping places amounted to 21 165 out of a total of 41 480, or 50% of the total number of spaces provided for by *département* plans. This figure should increase substantially again for 2008 as authorities are entitled to special state funding under the Act up to 31 December 2008. Furthermore, intermunicipal co-operation, through the transfer of responsibility for the reception of Travellers to an EPCI, makes it easier to pool funds and co-ordinate reception policies.
36. The number of sites already operating is still lower than the number of funded sites but significant progress has also been made in this field. Thus, 570 sites were already operating in 2007 (offering 13 583 spaces) and a further 152 sites (offering an additional 3 504 spaces) were opened in 2008, meaning that there was a substantial advance over the last year⁵.

Quality of sites:

37. The authorities must see to it that the accommodation made available is of an adequate standard. As the Committee has said (see Conclusions 2003, Article 31§2, France), *“public authorities should make every effort to seek solutions acceptable for all parties in order to avoid Roma from being excluded from access to services and amenities to which they are entitled as citizens of the state where they live”*.
38. Under the rules on the reception of Travellers, the grant for the development of a stopping place will only be paid if the relevant technical standards are met. These standards, set by Decree No. 2001-569 of 29 June 2001, require there to be at least one sanitary block comprising at least one shower and two lavatories for every five caravan spaces. As a result, each caravan space has access to sanitary facilities, as well as a drinking water and electricity supply. Many authorities have chosen to exceed these minimum standards and provide each caravan space with its own individual sanitary facilities. Lastly, a grant may be awarded for plans to bring sites existing before 2000 into line with the new standards.
39. Under the aforementioned Decree of 29 June 2001 on the technical standards applying to stopping places for Travellers, each site must have a management and security system to ensure that it is properly run.
40. On the whole, the occupiers are satisfied with the stopping places that are already operating. The solid base that these sites provide for families makes it easier to establish contacts through social operators and instigate a process of integration. If associations working with Travellers report anomalies or problems on certain sites, the authorities intervene and do what is needed to rectify the situation.

Reviews:

41. A thorough review system has been set up under the Besson Act. This aspect is a particularly crucial factor for the effective implementation of the rights concerned. It should be pointed out that the Committee considers that states have a duty to

⁵ For the purpose of calculating these numbers, it should be noted that authorities may offer temporary sites pending the creation of a permanent site. These temporary sites are not subsidised and so they are not included in the figures.

“maintain meaningful statistics on needs, resources and results” and “undertake regular reviews of the impact of the strategies adopted” (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-71).

42. **Every year the authorities prepare an overall review of operational sites and places, by region and by *département*.** This focuses exclusively on state-funded sites set up in accordance with the standards enshrined in the Decree of 29 June 2001.
43. Many *département* plans are scheduled for revision in 2009 to take account of new needs and developments that have arisen since they were adopted. This revision will be a key moment as it will give rise to a review of the current reception arrangements in all the *départements* concerned and a survey of the housing needs of Travellers who wish to settle. It will also be an opportunity to conduct an in-depth diagnosis of changes in Travellers’ camping needs.
44. Paragraph II.16. of Recommendation (2005)4 of the Committee of Ministers states that *“Roma representatives should be involved on an equal footing in any monitoring and evaluation process”*. We can confirm that in each *département* the Advisory Commission for Travellers will be involved in the revision of the plan.

B/ Eviction

45. The freedoms of residence and of movement, which are essential in any state governed by the rule of law, must nonetheless be circumscribed so that they do not infringe other individual freedoms or undermine the public interest. In this connection, paragraph II.3 of Recommendation (2005)4 of the Committee of Ministers states, with regard to *“choice of lifestyle”* that, while *“all conditions necessary to pursue these lifestyles should be made available to them by the national, regional and local authorities”*, this has to be done *“in accordance with the resources available and ... the rights of others and within the legal framework relating to building, planning and access to private land”*.
46. Consequently, provision can be made for eviction, particularly in the event of illegal occupation of a site or infringements of individual or collective interests. In its decision of 8 December 2004 on the merits of Complaint No. 15/2003 (*European Roma Rights Centre v. Greece*), the Committee stated that *“illegal occupation of a site or dwelling may justify the eviction of the illegal occupants”*. This is subject to the proviso, however, that *“the criteria of illegal occupation must not be unduly wide”* and that eviction takes place *“in accordance with the applicable rules of procedure and these [are] sufficiently protective of the rights of the persons concerned”* (§ 51).
47. According to the Government, these protective rules are provided for in French law.
48. For information, it should be pointed out firstly that municipalities which have set up or funded stopping areas may issue orders prohibiting Travellers from camping outside the areas provided for the purpose, and under such orders mayors may institute judicial proceedings even where the person concerned has camped without permission on private land. Unauthorised camping is also punished under Internal Security Act

No. 2003-239 of 18 March 2003⁶. The penalties only apply, however, to Travellers residing on land belonging to municipalities that comply with the Besson Act.

49. However, what the ERRC disputes more specifically in this respect is the **procedure for serving notice to quit and for forced eviction of illegal occupants from a plot of land**, provided for by section 9 of the Act of 5 July 2000 on the Reception and Accommodation of Travellers. These provisions, introduced by Crime Prevention Act No. 2007-297 of 5 March 2007, read as follows:

“ I. – Provided that a municipality has satisfied its obligations under section 2, its mayor or, in Paris, the metropolitan police commissioner, may issue an order prohibiting the parking of the mobile homes referred to in section 1 in places in the municipality other than properly equipped sites. These provisions shall also apply to municipalities which are not covered by the département plan but have a stopping area nonetheless and to those which decide of their own accord to contribute to the funding of such a site or belong to a consortium of municipalities which has given itself the authority to implement the département plan.

The same provisions shall apply to municipalities entitled to the extra time provided for in part III of section 2 up to the expiry of this period, together with municipalities with a temporary site certified by the prefect, within a time limit set by the prefect which may not exceed six months after the date of the certification.

Certification shall be issued subject to the location, capacity and standard of equipment of the site, under the conditions laid down by decree.

Certification of a temporary site shall not free the municipality of the obligations it must fulfil within the time limit set by section 2.

II. – Where vehicles are parked in breach of the order described in I above, the mayor, the owner or the person with the right to use the occupied land may ask the prefect to serve the occupants with notice to quit.

Notices to quit may only be served if occupation of the site is likely to jeopardise public health, safety or order.

Notices to quit shall be subject to an enforcement deadline of no less than twenty-four hours. They shall be served on the occupants and published in the form of a notice to be displayed at the town hall and on the site concerned. Where appropriate they shall also be served on the owner or the person with the right to use the land.

⁶ See Article 322-4 of the Criminal Code: “The act of collectively settling with the aim of establishing residence, even temporarily, on land belonging either to a municipality which has complied with the obligations incumbent on it under the *département* plan provided for by section 2 of Act no. 2000-614 of 5 July 2000 on the Reception and Accommodation of Travellers, or which is not included in this plan, or to any other owner apart from a municipality, without being able to prove the owner's permission or the permission of whoever holds the right to use the land, shall be punished by six months' imprisonment and a fine of €3,750.

Where the settlement was carried out using motor vehicles, these vehicles may be seized, unless they are designed for residential purposes, with a view to their confiscation by the criminal courts.”

Where a notice to quit is not obeyed within the established time limit and has not been appealed against in accordance with the requirements set in part II bis., the prefect may resort to the forced eviction of the mobile homes unless the owner or the person with the right to use the land objects before the expiry of the time limit set for the enforcement of the notice.

If the owner or the person with the right to use the land impedes the enforcement of the notice to quit, the prefect may ask him or her to take all the necessary measures to remove the threat to public health, safety or order within a time limit set by the prefect.

Failure to comply with the order issued pursuant to the preceding paragraph shall be punished by a fine of € 3 750.

II bis. – Persons served with the notice to quit referred to in II above, as well as the owner or the person with the right to use the land, may apply to the administrative court to set aside the notice within a time limit specified therein. Applications of this sort shall suspend the enforcement of the prefect's decision against the applicants. The president of the court or his or her representative shall give a ruling within seventy-two hours of the application.

III. – The provisions in I, II and II bis above shall not apply to the parking of mobile homes belonging to the persons referred to in section 1a of this act if the following circumstances obtain:

1° The persons own the land on which they have parked;

2° They have a permit issued in accordance with Article L. 443-1 of the Town Planning Code;

3° They are parked on land that has been developed in accordance with Article L. 443-3 of the Town Planning Code;

IV. – Where occupation of a private plot of land assigned for economic activity continues, in breach of the order described in I above, and the occupation is of such a nature as to hamper that activity, the owner or the person with the right in rem to use the land may apply to the president of the regional court for an order for the forced eviction of the mobile homes to be made. In such cases, the court ruling shall take the form of a summary order and its decision shall be enforceable on a provisional basis. Where necessary, the court may order that its ruling shall be enforceable immediately. In urgent cases, the second paragraph of Article 485 of the Code of Civil Procedure shall be applied.”

50. While it is true that the forced eviction procedure described in part II of the section of the act cited above grants prefects the authority to serve notice to quit on illegal occupants, it may only be applied if the illegal camp jeopardises public health, safety or order. Furthermore, the enforcement deadline may not be less than 24 hours after the notice has been served.
51. Notices to quit are also subject to certain conditions. They can only be applied if the municipalities concerned have fulfilled their duties to set up and maintain stopping places. Consequently, the procedure can be seen as a reasonable and balanced form of

compensation for the efforts made by municipalities and further encouragement for those that have not yet set up stopping places to fulfil their obligations.

52. Their application is also strictly limited so as to ensure that the public freedoms and rights of those concerned are respected. Under part II bis of the aforementioned section 9, persons on whom notices to quit are served may **appeal against the decision to the administrative court** and, contrary to what the ERRC claims, such appeals have a **suspensive effect**.
53. The court must then give a ruling within 72 hours. Proceedings are free of charge, adversarial and organised to ensure that the rights of both parties to put forward their case are respected. This is indeed an affordable, impartial judicial remedy, which meets the requirements on which the Committee would usually insist.
54. Lastly, the Government would like to point out that the Constitutional Council, which gave its decision on the draft Crime Prevention Act on 3 March 2007, has not been asked to rule on the constitutionality or otherwise of the legislation cited above and has not, as it is quite entitled to do, raised of its own accord the slightest objection against it (DC No. 2007-553).
55. This legislation is therefore in keeping with an approach to the genuine interests of Travellers which attempts to be as consistent as possible. Moreover, the increased protection it provides against the untimely installation of caravan and trailer camps may encourage the municipalities concerned to fulfil their obligation to set up proper reception facilities in accordance with their *département's* plan.

II.2. Access to housing for sedentary Travellers:

56. As a result of economic and social developments, there has been a clear change in the lifestyles of Travellers in France in recent years. This situation has led them to adopt an **increasingly sedentary lifestyle** and altered their housing needs.
57. The Government has been keeping a particularly close eye on this trend and helping local authorities financially to come up with housing solutions. An appraisal of the system for the reception of Travellers under the Act of 5 July 2000, carried out in 2008 by the Directorate General of Town Planning, Housing and Construction (DGHUC), confirms the increasing desire among Travellers to settle somewhere, particularly on “family plots”. Therefore, in addition to setting up stopping places, there is a need to satisfy the desires expressed by families who would like some form of geographical base without necessarily giving up travelling.
58. Sometimes, however, *de facto* settlement for many years on sites not intended for this purpose complicates the provision of suitable accommodation, which is increasingly constrained by a rapidly evolving urban environment.
59. For the most part, the housing needs of settled households, like those of any low-income household, are covered by the *département's action plan for the disadvantaged* (PDALPD). However, in order to allow for an integration process that

gives these families a choice between a form of accommodation close to that of an itinerant lifestyle and more conventional housing, funding has been set aside for local authorities to set up **rented family plots**. Furthermore, the use of funding for **special social housing under ordinary law**⁷ makes it possible to provide mixed accommodation (combining permanent structures and mobile homes). These solutions make it easier for Travellers to move from an itinerant lifestyle to life in a conventional home when they so wish. Lastly, the most recent progress in this field can be found in the **Act of 5 March 2007 establishing an enforceable right to housing**.

A/ A common framework - Département action plans for the disadvantaged

60. As the *département* housing action plan for the disadvantaged (PADLPD) is supposed to take account of the needs of disadvantaged families, it must give priority to sedentary families of Travellers through activities designed to promote suitable housing and social and urban project management (MOUS). These are partnership-driven plans, whose flexibility makes it possible to cater for highly varied local situations. Their implementation depends on the state of the land and property market, the level at which they are applied (*département*, metropolitan area, municipality or neighbourhood) and the expertise of the operators (on the social, technical or property management front). Activities connected with housing for Travellers are included in several PADLPDs, particularly in the *départements* of Haut Rhin, Charente Maritime and Haute Savoie.
61. It should be reiterated that the Act of 31 May 1990 on implementation of the right to housing made it compulsory for every *département* to draw up and implement a *département* housing action plan for the disadvantaged, and to create a housing solidarity fund. The *département* plan is one of the responsibilities of the representative of the state in each *département*, the prefect, and of the chair of the *département* council (*the conseil général*). The housing solidarity fund is financed equally by the state and the *département*. The specific aim of the plan is to assist low-income individuals and families whose social and financial situation makes them vulnerable in the housing sphere, as well as specific groups more exposed to housing difficulties, including Travellers but also young people, immigrant families and migrant workers. According to the Act, these action plans “*shall give priority to persons and families who are completely homeless, at risk of eviction without rehousing, in temporary accommodation, housed in slums, or unfit, insecure or makeshift accommodation, or faced with a combination of difficulties*”.
62. *Département* plans are intended to make government bodies, local and regional authorities and the most directly affected social partners (social housing lessors, associations, family benefit funds) work together to establish and develop a supply of housing for vulnerable target groups. They practically all provide for committees or bodies charged permanently with handling the situation of people and families in the most difficult circumstances.
63. Act No. 2004-809 of 13 August 2004 on local freedoms and responsibilities devolved responsibility for housing solidarity funds to *département* councils, with effect from 1 January 2005, merging them with the unpaid utility bills assistance funds, thus

⁷ Aimed at the most socially disadvantaged people.

enabling persons in difficulty to turn to a single fund. *Département* plans continue to be jointly run by the state and the *département* concerned.

64. Act No. 2006-872 of 13 July 2006 on a national housing commitment introduced significant new measures for the observation and monitoring of the fulfilment of plan objectives, including increased local and regional involvement in activities, co-ordination of priority tasks, follow-up of housing applications by persons and families covered by the plan, the setting up of an unfit housing observatory and a contribution by the housing solidarity fund to fulfilment of plan objectives. The report on fund activity has to be submitted to the committee responsible for the plan.
65. Much has already been done to identify unfit housing, and this has made it possible, on the basis of municipal housing records, to draw up a map of potentially unfit dwellings, which are mostly occupied by disadvantaged families and persons about whom government schemes and services generally know very little. The development of unfit housing observatories and their incorporation into *département* plans should also provide more information about such housing, not just its structural condition but also the people living in it, and help to co-ordinate activities connected with the condition of buildings and with rehousing and support for their inhabitants by bringing them under one roof.

B/ Solutions geared to Travellers' specific needs – promotion of family plots

66. **Rented family plots** can be set up by local authorities, providing an intermediate solution between simple reception in the strictest sense and social housing under ordinary law.
67. As long as it provides decent living conditions and respects inhabitants' rights, this form of housing is worth promoting as it represents a combination of mobile housing and permanent housing on private land. It is one way of fostering integration into host communities and improving school attendance.
68. Several *départements* have already been awarded grants for the establishment of plots of this type for family groups. They are fully equipped and connected to distribution networks but no housing is actually built on them. They are privately-owned, and enable families to live permanently in their caravans, but in decent conditions. By way of example, rented family plots have been established in Savoie, Haute Savoie, Morbihan, Loire Atlantique, Hérault, Doubs, Vienne and Seine et Marne.
69. Experiments are being carried out with other forms of intermediate settlement. For instance, the *département* of Seine Saint-Denis, where nearly 40% of the Travellers in the Ile de France region live, has taken action to improve the living conditions of people in vulnerable circumstances. A scheme has been devised to set up so-called **integration villages**. To date, there are three: one in Aubervilliers for 16 families, one in Saint-Denis for 21 families and one in Saint Ouen for 25 families. As well as providing accommodation, these schemes make it possible to identify families who agree to take part in an integration programme including social assistance. The experiment has been yielding satisfactory results in terms of support, education for young people and housing. The state's intervention takes the form of urban and social studies (analysing the situations of individual families and identifying problems) and

assistance with tenancy management (rental mediation assistance, managed by the Directorate General of Social Welfare).

70. It is also possible to provide permanent housing solutions. **Conventional social housing** intended for households with combined economic and social problems is financed using assisted rental loans for integration purposes (PLAIs). These may also be used for minor alterations (such as lavatories with doors opening on to the inside and the outside and canopies for caravans) so as to take account of changes in Travellers' lifestyles. The households concerned may claim **personalised housing assistance** (APL).
71. One example of a *département* which has completed a construction project of this type can be found in Alsace, where a social housing lessor built 37 houses to High Environmental Quality (HQE) standards in 2007. In Savoie, two houses were rehabilitated for this purpose while six new houses were built in Chambéry. In Aquitaine 25 new homes were built in Dax (Landes) in 2004 and eight in Orthez (Pyrénées Atlantiques). In Charente, eight homes were built in Saint Yriex in 2003. In Seine Maritime, five homes were built in Offranville. In Essonne, six homes with caravan spaces were built in Breuillet in 2001.
72. Where people are settled in unfit housing, an assessment of the overall situation has to be made. As especially unacceptable living conditions cannot be allowed to continue, every effort must be made to remedy such situations. Where housing conditions are clearly and irredeemably substandard, a remedial programme can be set in motion in co-operation with the *Département's* Directorate of Health and Social Affairs to provide assistance to those concerned.
73. This was how difficult situations in Bas Rhin and Alpes de Haute Provence were dealt with. In Strasbourg, a programme to improve substandard housing was launched on the Neuhoef Polygone site, where Travellers are permanently settled. Social housing is going to be built for these families and welfare support will also be provided. In Manosque, a programme has been devised for the La Loubière site, involving the construction of 22 individual houses and the establishment of nine family plots.
74. Activities and new ideas about support for sedentary communities abound. A **handbook on housing for Travellers** is due to be published, listing good practices and giving advice, illustrated by concrete examples from several *départements*. It will be circulated widely in 2009, to local authorities, government offices and associations, both to help these bodies and to stimulate project organisers.

C/ A recent step forward: the enforceable right to housing

75. Like any other citizen, Travellers have a right to ordinary housing and so are covered by the new statutes and regulations establishing an **enforceable right to housing**. Act No. 2007-290 of 5 March 2007, known as the "DALO Act", has recently established such a right through a highly ambitious set of measures, of which the French Government believes the only equivalent is in Scotland.
76. The act lays down the principle that the right to decent, independent housing, referred to in section 1 of Act No. 90-449 of 31 May 1990, will be guaranteed by **two possible**

remedies, one through friendly settlement, the other through litigation, and describes the related procedural arrangements.

77. Cases may be referred to a **mediation committee** without any qualifying period by any applicants who are deprived of accommodation, threatened with eviction without rehousing, housed or accommodated temporarily in a transitional establishment or dwelling or premises that are unfit or dangerous, or well housed in manifestly overcrowded premises or ones that fail to meet the requirements of decent housing and have at least one under-age child, are disabled themselves or care for at least one person with a disability.
78. By 2012 the new law should give all housing applicants **access to a judicial remedy** in the administrative courts if the response to their application fails to meet their needs or take account of their capacities. This remedy has already been available since 1 January 2008, under certain circumstances, to persons with major housing problems.
79. Since the beginning of 2008, appeals have been coming in at a rate of about 5 000 per month, with the result that a total of 47 183 had been lodged by the end of October 2008 (13 176 of which met with a favourable decision). In total, 3 857 households have been accommodated as a result of the DALO procedure.
80. **From all of the foregoing, it can be seen that France is doing everything within its power to promote the implementation of *département* plans for the reception of Travellers and that increasingly diverse arrangements, some general, some more specific, are being set up to cater for the housing needs of groups which have adopted sedentary lifestyles. These varied schemes show that France acknowledges the particular lifestyle of these people and is making active efforts to ensure that they enjoy an effective right to housing.**

II.3. Housing provision for legal Roma migrants:

81. This part of the complaint, which the ERRC does not pursue very far, nevertheless warrants some comment on the part of the Government.
82. Alongside the Traveller population, a number of Roma, mostly from Romania, Bulgaria, Hungary and the Balkans, have recently moved to France. Their situation varies. Some have residence permits, some do not, some are asylum seekers while others are “undocumented”. It is estimated that they number about ten thousand.
83. The migrant Roma groups living in France are subject to differing rules depending on their country of origin. Since 1 January 2007, when their countries joined the European Union, Romanian and Bulgarian nationals have enjoyed the right to freedom of movement and residence in all the member states, provided, as with all nationals of EU member states, that they meet the requirement under European regulations of

having sufficient resources and social insurance cover⁸. **Legally resident Roma may therefore take advantage of the reception arrangements set up by France on its territory on an equal footing with French nationals.**

84. To paint the full picture, it should be pointed out however that many Roma migrants in France are in an unlawful situation. Where the EU nationals concerned do not have sufficient resources to avoid becoming – in the words of Directive 2004/38/EC, as transposed into the Code on the admission of foreigners and the right to asylum (CESEDA) – an unreasonable burden on the social assistance system of the host member state, they lose all residence rights. **These rules do of course apply in the same way to all Romanian and Bulgarian nationals.**
85. The presence of such people in France when they do not have any means of subsistence raises obvious problems as they do not satisfy residence requirements. As they are not supposed to remain in the country, prefectures are liable to take decisions obliging them to leave. However, when an expulsion order is issued, humanitarian and financial support is provided for the individuals concerned. For instance, humanitarian repatriations have been organised by the National Agency for the Reception of Foreigners and Migration (ANAEM) for the benefit of Romanians and Bulgarians who were living in France in situations of extreme uncertainty⁹. These procedures, carried out in co-operation with such bodies as the embassies of the countries concerned and voluntary associations, have made it possible to provide those concerned with assistance under the humanitarian repatriation programme run by the ANAEM, which is available to any foreigner in a destitute state (and includes financial support of € 300 per adult and € 100 per child).
86. Along with this repatriation assistance, the persons concerned are informed about the ANAEM's economic reintegration support programme in Romania, which gives migrants returning under the scheme the right to welfare support on their arrival and, for those wishing to engage in an economic activity, financial assistance with setting up and funding microprojects of up to € 3 660 per project. Clearly, there can be no long-term solutions to improve the situation of these people unless their countries of origin pursue an active social integration policy. France therefore encourages any initiatives to support the efforts of the countries in question. In this connection, several European programmes have been launched to provide financial support and stimulate social advancement.

II.4. The allegation of racial discrimination and segregation:

87. As the Committee points out “*Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in [the] absence of objective and*

⁸ In the case of non-EU nationals, entry to the Schengen area for a short period is subject to more extensive formalities (in particular, a valid passport, a "Schengen visa" and sufficient financial resources).

⁹ The circular of 7 December 2006 on assistance for voluntary or humanitarian repatriation introduces a so-called "humanitarian" repatriation procedure. It allows foreigners in a situation of destitution or extreme uncertainty, including EU nationals, to be offered repatriation to their country of origin. Where they are repatriated by the ANAEM, transport costs are paid.

reasonable justifications ..., any group with particular characteristics, including Roma, benefit in practice from the rights in the Charter” (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 36).

88. These rights are clearly enjoyed in practice in France, where Travellers benefit both from the rights enjoyed by all citizens and from the specific measures introduced to safeguard their choice of lifestyle.

A/ The absence of any discrimination in the implementation of general public policies:

89. The ERRC alleges that Travellers are subject to racial discrimination, particularly as regards access to social housing and benefits.
90. Besides the fact that no serious evidence is provided to support these very general allegations, the Government would like to point out that in its national policies, the needs of Travellers are viewed as those of a group defined by social, economic and cultural, but certainly not racial, characteristics. Moreover, the notion of race is entirely alien to French domestic law, the only exception being the rule that all discrimination on this ground is prohibited, as enshrined in Article 1 of the Constitution:

*“France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, **without distinction of origin, race or religion**”.*

91. Looking beyond racial discrimination alone, it should be stressed that domestic law prohibits any form of discrimination at all in access to housing. For example, section 158 of the Social Modernisation Act of 17 January 2002, amending section 1 of Act No. 89-642 of 6 July 1989 on improvements to tenancy relations, provides:

*“No one may be refused a tenancy on grounds of origin, family name, physical appearance, sex, family situation, state of health, disability, morals, sexual orientation, political opinions, trade union activities or **real or supposed membership or non-membership of a specified ethnic group, nation, race or religion**.*

In the event of a dispute concerning the application of the preceding paragraph, the person who has been refused the tenancy shall present evidence to support the presumption of direct or indirect discrimination. In the light of this information, the respondent must establish that the decision was justified. The court shall reach a decision after ordering any investigations it may deem necessary”.

92. As explained above, Travellers do have access to conventional housing. Like any other citizen, they are covered by the new statutes and regulations establishing an enforceable right to housing which, by 2012, will afford all applicants a judicial remedy if the response to their application fails to meet their needs or take account of their capacities. This remedy has already been available since 1 January 2008 to persons with major housing problems.

93. Lastly, the Government would point out that under Articles 225-1 and 225-2 of the Criminal Code, criminal proceedings may be instituted in the event of discrimination in access to housing. The relevant provisions read as follows:

Article 225-1: “*Discrimination comprises any distinction applied between natural persons by reason of their origin, sex, family situation, pregnancy, physical appearance, family name, state of health, disability, genetic characteristics, morals, sexual orientation, age, political opinions, trade union activities or **real or supposed membership or non-membership of a specified ethnic group, nation, race or religion.** ...*”.

Article 225-2: “*Discrimination as defined by Article 225-1, committed against a natural or legal person, shall be punished by three years’ imprisonment and a fine of € 45,000 where it consists:*

1° of refusal to supply goods or services;

2° of obstructing the normal exercise of any given economic activity;

3° of refusal to hire, sanction or dismiss a person;

4° of subjecting the supply of goods or services to a condition based on one of the features referred to in Article 225-1;

5° of subjecting an offer of employment, placement or work experience to a condition based on one of the features referred to in Article 225-1;

6° of refusal to admit a person to one of the training courses described in part 2° of Article L. 412-8 of the Social Security Code. ...”.

B/ Implementation of policies aimed specifically at Travellers:

94. While the general policies which may meet their needs are applied correctly to Travellers without discrimination, it should be recalled that there are also particular measures which are designed to meet their specific needs.
95. Paragraph II.1 of Recommendation (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe states that “*member states should ensure that, within the general framework of housing policies, integrated and appropriate housing policies targeting Roma are developed*”. This is the case in France, where specific measures have been taken and are being increasingly incorporated into general housing policy.

Specific measures catering for the lifestyle of Travellers

96. The Government has attempted to take appropriate action in response to the findings of the decision on the merits of Complaint No. 33/2006 of 5 December 2007 (*International Movement ATD Fourth World v. France*, §§ 154-155), according to which “*despite the efforts of central and local authorities in this area and the positive results that have been achieved at times, there appears to have been a long period during which local authorities and the State have failed to take into account to a sufficient degree the specific needs of the Roma/Traveller community*”. When this

decision was taken, the Committee's view was that the deficient implementation of legislation on stopping places for Travellers warranted the finding of a violation of Article 31§3 of the revised Charter, read in conjunction with Article E.

97. **It seems to the Government, however, that in view of the recent progress in the implementation of the Besson Act, combined with the efforts to address the problems of settled families, a finding of this type would no longer be warranted.**
98. There will be no further discussion here of the new statutory and regulatory measures already described in some detail above, or the financial efforts that have been made over the last two years. Among the other examples of recent measures introduced specifically to address the problems of Travellers is the progress made in the sphere of establishing **official places of residence**. Section 51 of the Act of 5 March 2007 on the enforceable right to housing provides Travellers with improved guarantees of access to social benefits by making it possible for them to establish their official residence with a certified body (or a municipal social welfare centre) like any other person without a stable home. This reform should also make it possible to dispel the difficulties that Travellers currently encounter when negotiating bank loans or insurance (for cars and caravans).
99. These improvements in the policies designed specifically for the needs of Travellers are evidence of a new approach, which can still be improved but should no longer incur a finding of a violation under Article E.

Attempts to co-ordinate targeted measures and general policies:

100. In the decision of 5 December 2007 cited above, the Committee stated as follows: “*As regards housing for Travellers, the Committee refers to Committee of Ministers Recommendation No. (2005) 4 on improving the housing conditions of Roma and Travellers in Europe, which states, inter alia, that Member States should ensure that, within the general framework of their housing policies, integrated and appropriate housing policies targeting Roma and Travellers are developed*” (*International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits, §§ 149-155).
101. Travellers are already covered by the provisions of *département* housing action plans for the disadvantaged (PDALDP), under which they have access to social housing under ordinary law if, for various reasons, they wish to settle in one place. In this connection, their housing and accommodation needs need to be taken into account in conjunction with the *département* plans for the reception of Travellers, which identify the needs of itinerant Travellers. **Ways are therefore being considered of strengthening the link between PDALDP and *département* plans for Travellers, with a view to fostering a more integrated policy.**

In view of the foregoing, the French authorities appear to be doing everything possible to ensure that the legislation intended to guarantee access to adequate housing for Travellers grants them effective rights. The Government therefore concludes that there is no violation of Articles 16, 19, 30 and 31 of the revised Social Charter, read in conjunction with Article E.