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

16 September 2011

Case Document No 2 rev

European Roma and Travellers Forum v. France
Complaint No 64/2011

**SUBMISSIONS BY THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 15 September 2011

**OBSERVATIONS BY THE GOVERNMENT OF THE FRENCH REPUBLIC
ON THE MERITS OF
COMPLAINT No. 64/2011,
EUROPEAN ROMA AND TRAVELLERS FORUM v. FRANCE**

In a decision of 10 May 2011, the European Committee of Social Rights declared admissible the complaint submitted on 26 January by the European Roma and Travellers Forum (“the ERTF”), in which the Committee was asked to find that France was not satisfactorily applying Articles 16, 19, 30 and 31 of the revised European Social Charter, read alone or 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. The ERTF claims that Travellers in France are victims of injustice with regard to access to housing, inter alia social exclusion, forced eviction as well as residential segregation, substandard housing conditions and lack of security. It argues that conditions of access to housing must be looked at in the overall context of a deterioration in Travellers’ living conditions and discriminatory policies by the Government. The ERTF sees evidence of this in the restrictions on these people’s civil rights, particularly their right to vote, and in the discriminatory nature of the expulsions of Roma migrants by the Government in summer 2010.
2. Consequently, the ERTF considers that the whole situation that Travellers and Roma migrants are currently experiencing constitutes a violation by France of **Articles 16, 19, 30 and 31 of the revised European Social Charter** and still poses problems in the following three areas:
 - effective access to housing (Articles 16, 19, 30 and 31 of the Charter);
 - political rights, particularly the right to vote, in breach of Article 30 of the Charter;
 - the systematic expulsion from France of Roma migrants (Article 19§8 of the Charter).
3. Lastly , it refers, in conjunction with these provisions, to **Article E of the Charter on non-discrimination**.

II. DISCUSSION OF THE MERITS OF THE COMPLAINT

4. The Government has been called upon to respond to several complaints concerning the situation of Travellers and Roma who are nationals of Council of Europe member states. Insofar as this complaint does not differ substantively from others on which the committee has been asked to rule, and in which the complainant organisation has been involved, the Government will reiterate the points that it made before.
5. In particular, like the European Roma Rights Centre before it, the ERTF is somewhat contradictory in the criticisms that it makes, wavering between demands for due regard for cultural particularism and condemnation of differences in treatment in the approach to Travellers' specific requirements. These contradictions show 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 **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. The Government will aim to respond to each of the grounds for the complaint, namely the situation of itinerant Travellers (II.1), the evictions targeting Roma camps specifically (II.2), the ensuing expulsions of migrants (II.3), discrimination with regard to access to housing (II.4) and Travellers' right to vote (II.5).

II.1. The situation of itinerant Travellers

9. In its complaint the ERTF claims that the situation in this respect has not just stagnated, it has even deteriorated since the ECSR's decision of 2008 on the complaint by the ERRC against France and that this constitutes a violation of Articles 30 and 31 of the European Social Charter: *"In its decision the ECSR condemned France for failing to create a sufficient number of stopping places, poor living conditions at these sites, lack of access to housing for settled Travellers ..."*.
10. **It will be recalled that 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.
11. **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.

Progress on the implementation of the Besson Act:

Reminder of the relevant legislation:

12. The French state 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.
13. **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.
14. 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.
15. 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**.

16. 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 plans². 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.
17. 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.
18. 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).
19. 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).
20. 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*”.
21. 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

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.

July 2000, the Government's decentralised agencies, which examine applications for grants and advise municipalities, have worked hard to ensure its successful implementation.

22. 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:

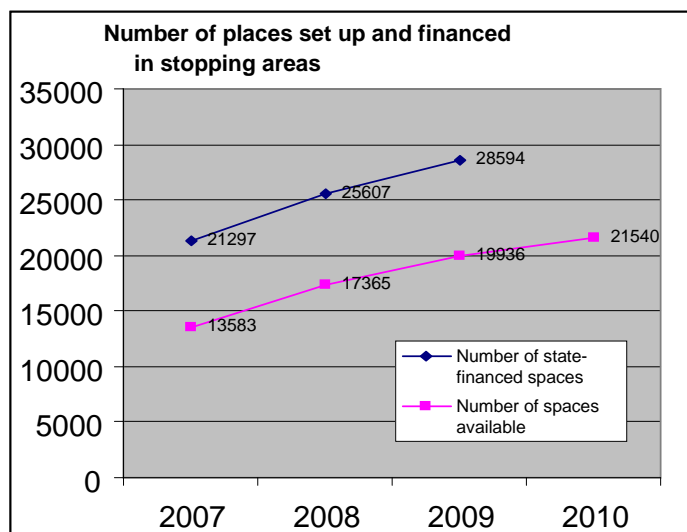
23. Paragraph II.6 of Recommendation (2005)4 of the Committee of Ministers, cited above, stresses the need to “*provide Roma communities and organisations with the means to participate in the process of conceiving, designing, implementing and monitoring policies and programmes aimed at improving their housing situation*”.
24. 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**.
25. 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.
26. 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 facing Travellers 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.
27. 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).

28. 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.
29. 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:

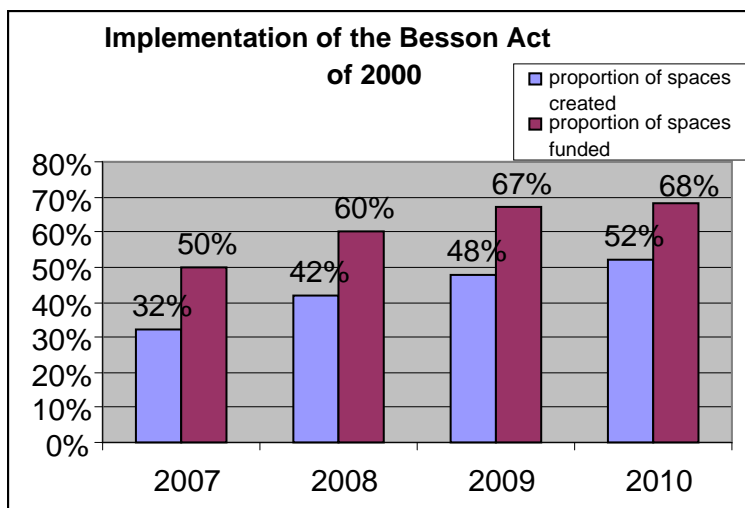
30. The ERRC complains that the Besson Act is not being implemented properly. While it is true that the new accommodation policy did take some time to come into operation, the current picture is one of considerable progress.
31. For instance, since 2000, ***département* plans have been adopted in all 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 Travellers⁴.
32. 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. By the end of 2009, the state had allocated a total of €288 million to the funding of stopping places for Travellers.
33. By the end of 2010, the number of state-funded spaces at stopping places amounted to 21 540 out of a planned total of 41 569, or 52% of the total number of spaces provided for by *département* plans. This represented considerable progress compared to the situation in 2007, when only 32% of the spaces provided for by *département* plans were actually available.

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.



34. It is worth mentioning at this juncture 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).

35. This kind of progress is clearly reflected in the recent implementation of the Besson Act. In 2009, the Committee noted that “*the Act has only been implemented in a minority of the municipalities concerned*” and found that “*the inadequate implementation of the legislation on stopping places for Travellers constitutes a violation of Article 31§1 of the Revised Charter*” (*ERRC v. France*, Complaint No. 51/2008). At that time, the Committee based its finding on the figures for 2007, which were the most recent available and according to which only 32% of the spaces provided by the *département* plans had been created and only 50% were state-funded. The table below shows the considerable progress made by France since 2007.



Quality of sites:

36. 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”*.
37. 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.
38. 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.
39. 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:

40. 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 *“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).
41. **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.
42. 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.

43. 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.
44. The Government notes that the ERTF's complaint simply refers to the ECSR's decision of 2008 without giving any details of the alleged violations. In view of the evidence provided, the situation with regard to the number of stopping places and the quality of these sites has markedly improved since 2007, which totally contradicts the organisation's statement that “*existing policies are leading to substandard and deteriorating residential conditions*” (page 42). The Committee must recognise the extent and the consistency of the Government's efforts in this field.

II.2 The eviction of Roma from illegal camps without providing alternative accommodation

45. The ERTF considers that “the French Government continues to forcibly evict Roma without providing suitable alternative accommodation”. It submits that the Roma in France continue to suffer discrimination in access to housing in breach of Article 31 of the Charter.
46. Firstly, it should be pointed out that all the measures to evict Roma from illegal camps or expel them were carried out without targeting any particular population group, in strict accordance with the law and under the close supervision of the courts. The measures to evict people from camps related only to illegally occupied sites.
47. In France the right to property is constitutionally protected by Article 17 of the Declaration of the Rights of Man and of the Citizen, which states: “since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified”.
48. Illegal occupation of land is therefore an offence under the Criminal Code. Where the illegally occupied land is publicly owned, the public body which owns the property concerned or to which it has been allocated may apply to the urgent applications judge of the appropriate administrative court for him or her to order an end to the occupation in accordance with Article 521-3 of the Code of Administrative Justice.
49. On the other hand, where the occupation without legal title relates to private land, it is for the person who owns the property or has the right *in rem* to use it to apply to the relevant ordinary court, in this case the *Tribunal de Grande Instance* (Regional Court).

50. There is also an administrative procedure which applies only to the occupation of sites by mobile homes. It is governed by sections 9 and 9-1 of the Reception and Accommodation of Travellers Act (No. 2000-614 of 5 July 2000). These provisions have been found explicitly to comply with the constitution by the Constitutional Council (Decision No. 2010-13 of 9 July 2010 (preliminary ruling on constitutionality)): *“forced evictions from mobile homes in accordance with the impugned provisions may be carried out by the representative of the state only in the event of unlawful parking liable to adversely affect public health, security or peace and solely at the request of the mayor or the owner or legal occupier of the land after the occupants have been given notice to leave... . Bearing in mind all of the conditions and safeguards it has established and the objective it has set itself, the legislature has adopted measures ensuring that the need to protect public order and the requirements of other rights and freedoms are reconciled in a manner that is not manifestly unbalanced”*.
51. Furthermore, faced with the sometimes highly uncertain circumstances of Roma groups, some determined authorities have come up with their own solutions. In the Ile-de-France region, the *département* of Seine St Denis, where there are several camps set up of their own accord by Roma families, has supported the development of “integration villages” for people who intend to live in France for a long time in places including Saint Denis, Aubervilliers, Saint Ouen, Bagnolet and Montreuil. This scheme has required a major effort on the part of the state in co-operation with the local authorities concerned and has made it possible to implement several projects for the long-term integration of families, both economically and socially and in terms of housing. The state has intervened in particular by providing funding for urban and social studies (MOUS) to assess families’ social circumstances and identify long-term housing solutions. In 2010, six studies of this sort were launched in Seine Saint Denis for the purposes of its integration villages, at a total cost of €844 000. The cities of Lille, Marseille and Lyon are also considering introducing schemes of this sort.

II.3 The alleged discrimination linked with expulsions from France specifically targeting Roma and “collective expulsions”

52. Article 19§8 of the Charter provides: “with a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake: ... to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality”.
53. On page 12 of its complaint, the ERTF claims that “the wave of expulsions from France, which began on 19 August 2010 ... is an undoubtedly discriminatory action, performed by the French authorities, and directly contradicting France’s obligations under international and European law”. On page 14 it submits that “the actions of the French authorities also violate the legal prohibition on collective expulsion”.
54. The Government takes careful note of the decision of 13 July on the complaint by COHRE against France, in which it was found that the circular of 5 August 2010 and the ensuing expulsions constituted a violation of Article 19§8 of the European Social Charter: *“The Committee therefore believes that it has been demonstrated that returning Roma of Romanian and Bulgarian origin to their countries of origin was*

based on discriminatory provisions that directly targeted Roma individuals and families”.

55. In its decision of 13 July 2011, the ECSR considered that the expulsions of summer 2010 carried out in accordance with the circular of 5 August 2010 constituted a violation of Article 19§8 of the Charter. The circular was immediately withdrawn and replaced by a new circular of 13 September 2010. In its *Association SOS racism* judgment of 7 April 2011 (application no. 343387), the *Conseil d’Etat* held that the new circular of 13 September was fully consistent with the provisions of the Convention and of the Constitution and hence that “*the applicant association had no good cause to request the withdrawal of the circular of 13 September 2011*”. It also made the following specific points in this connection:
56. “*While the circular of 13 September 2010 states that the policy of evicting people from illegal camps must continue, it also states that such operations must be carried out within a legal framework and that this must apply to all illegal settlements whoever the occupiers are. **Consequently, this circular cannot be viewed as repeating the illegal provisions of 5 August 2010.** It does not enact any rule or include **any provision which is inconsistent with Article 6 of the Declaration of the Rights of Man and of the Citizen of 1789, Article 1 of the Constitution, Articles 20 or 21 of the Charter of Fundamental Rights of the European Union, the general legal principles of non-discrimination, the principle of equality or Articles 1 or 7 of the Universal Declaration of Human Rights of 10 December 1948.***
57. *This circular was not drafted with the intention and could not legally have the effect of authorising the expulsion of foreigners without prior examination of each of their individual situations. Consequently, the argument that it contains provisions which are inconsistent with Article 4 of Additional Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on the prohibition of collective expulsions of aliens must be rejected”.*
58. At all events, the Government has the greatest difficulty in understanding the actual grounds of the complaint by the ERTF calling for a finding of a violation of Article 19§8 of the Social Charter. In its decision on *COHRE v. France*, the ECSR found that the circular of 5 August 2010 was in violation of Article 19§8. The circular was withdrawn and replaced by another on 13 September, which the *Conseil d’Etat* has found to comply with the principle of legality and does not seem to be the subject of any detailed criticism by the complainant organisation. Since it does not contain any new facts, merely allegations, the Government considers the complaint of a violation of Article 19§8 to be ill-founded.

59. The Government strongly disputes the allegations of “collective expulsions”. In its *Conka v. Belgium* judgment of 5 February 2002, the European Court of Human Rights stated that “*collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group*”. The Government wishes to make it clear that each expulsion measure is only adopted after an examination of the personal circumstances of the individual concerned, who may subsequently challenge the decision in the administrative courts. In its *Sultani v. France* judgment of 20 December 2007, the Court found that the expulsion procedure which applied in France was compatible with the rules prohibiting collective expulsions and that in the case in question, the domestic authorities had taken account both of the overall context in the country of destination and the applicant’s statements concerning his personal situation. The Court noted that the “*applicant's situation was indeed examined individually and provided sufficient grounds for the contested expulsion*”. The Conseil d’Etat also found in the decision cited above that the circular of 13 September did not contain any provisions that were incompatible with Article 4 of Protocol No. 4 to the Convention on collective expulsions.
60. Lastly, France has introduced all the requisite reforms to ensure that its legislation does not infringe European law and, in particular, to ensure that the EU directive of 29 April 2004 on freedom of movement is transposed as fully as possible into its domestic law. In a press release dated 25 August 2011 (IP/11/981), the European Commission stated that “*in the French case, the government adopted the legislative amendments required by the Commission to ensure compliance with the Free Movement Directive on 16 June, including the safeguards that protect EU citizens against arbitrary expulsions or discriminatory treatment*”.
61. In its decision of 13 July 2011 on *COHRE v. France*, the ECSR highlights the need for a strict interpretation of the concept of a threat to public order in order to justify the expulsion of migrants residing lawfully in a country, stating as follows: “*However, the Committee recalls that expulsion for offences against public order or morality can only be considered to be in conformity with the Charter if the offences have given rise to a penalty for a criminal act, imposed by a court or a judicial authority*”.
62. Clearly, Act No. 2011-672 of 16 June 2011 has taken up some of the ECSR’s recommendations by amending Article 521-5 of the CESEDA, which now reads: “*The expulsion measures provided for in Articles L.521-1 to L.521-3 may be taken against nationals of a European Union member state, another state party to the Agreement on the European Economic Area or Switzerland, or a member of their family, if their personal conduct poses a **genuine, present and sufficiently serious threat affecting one of the fundamental interests of society***”.
63. Of course, decisions to expel persons because they posed a threat to public order were already subject to supervision by the courts, but the concept of a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society” now means that an EU citizen may only be expelled in cases that are so serious that it is justified to waive the fundamental principle of freedom of movement. This concept was

already used by the administrative courts, which were required to apply the provisions of the European directive even before they had been transposed. Its inclusion in the relevant domestic legislation does nonetheless represent an unquestionable enhancement of the rights of EU citizens in expulsion cases.

64. Furthermore, in its decision on COHRE v. France, the ECSR notes as follows: *“the decision to expel cannot be based solely on the mere existence of a criminal conviction but must take into account all aspects of the non-nationals’ behaviour, as well as the circumstances and the length of time of their presence in the territory of the State”*.
65. On this point, Act No. 2011-67 of 16 June 2011 amplifies Article 521-5 of the CESEDA as follows: **“When taking such measures, the administrative authority shall take account of all of the circumstances of their situation,** particularly the length of their residence in the country, their age, their state of health, their family and financial situation, their social and cultural integration in French society and the strength of their ties with their country of origin”. Although this provision was already applied by the administrative courts in practice, its incorporation into the law enhances the rights of EU citizens with regard to expulsion.
66. The Government notes that the ERTF’s complaint only refers to the circular of 5 August and does not provide any new evidence to support its allegations concerning the possible violation of Article 19§8. Through the Act of 16 June 2011, the Government has shown its desire to transpose the European directive of 29 June 2004 on freedom of movement, some of whose provisions tally directly with the ECSR’s considerations in its decision on COHRE v. France, more fully into domestic legislation.

II.4 Discrimination with regard to housing

67. 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 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).

Discrimination with regard to housing

68. 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.

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

69. The ERTF alleges that Travellers are subject to racial discrimination.
70. 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**”.

71. With regard to the situation of the Roma, the Government wishes to reiterate that the circular of 5 August has been withdrawn and cannot therefore be a cause for complaint under Article E.
72. 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 cover⁵. **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.**

Specific measures catering for the lifestyle of Travellers

73. 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.
74. **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.**
75. There will be no further discussion here of the specific 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 remove the difficulties that Travellers currently encounter when negotiating bank loans or insurance (for cars and caravans).

⁵ 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).

76. 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:

77. 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).

78. 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.**

II.5 Discrimination with regard to the right to vote

79. While the problems are very real, the state’s actions, in keeping with the republican model, are directed at facilitating Travellers’ integration into the national community by giving them access to the fundamental rights enjoyed by all citizens.

80. The ERTF considers that the exceptions to the ordinary law which are applied to Travellers with regard to the right to vote constitute a violation of Article 30 of the revised European Social Charter, which provides

"Everyone has the right to protection against poverty and social exclusion."

"With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b to review these measures with a view to their adaptation if necessary."

81. The Act of 3 January 1969 relating to the exercise of itinerant trades and the regime applicable to persons travelling around France without a fixed domicile or residence lays down special rules on voting rights for Travellers catering for their particular situation in terms of their residence. There are two ways in which they can be entered in the electoral roll:
- the first is governed by the Act of 3 January 1969, under which the person concerned must be officially assigned to a municipality for an uninterrupted three-year period before being entitled to register;
 - the second is based on Article 15-1 of the Electoral Code and applies to persons of “no fixed abode”, who are entitled to register on the electoral roll of the municipality in which a welfare centre or a body certified for this purpose with which they have been registered for six months or more is located.
82. Relying in particular on a finding of 6 April 2009 by the French anti-discrimination and equality commission (HALDE), the ERTF argues that section 10 of the Act of 3 January 1969 constitutes clear discrimination against Travellers in the sphere of political rights as it establishes a qualifying period of three years for them to be registered on the electoral roll, which is more restrictive than the qualifying period of six months under ordinary law, whereas there is no difference in the situation of Travellers in practice which might justify the difference in treatment in law.
83. The Government would like to emphasise that the persons covered by the Act of 3 January 1969 referred to above can adopt a social welfare centre or body certified for the purpose as their official address, as stated in Article 15-1 of the Electoral Code, in which case the standard six-month qualifying period for registration on the electoral roll will be applied to them. Section 51 of Act No. 2007-290 of 5 March 2007 amending section 79 of Social Modernisation Act No. 2002-73 of 17 January 2002 provides: *“Notwithstanding the provisions of section 10 of Act No. 69-3 of 3 January 1969 relating to the exercise of itinerant trades and the regime applicable to persons travelling around France without a fixed domicile or residence, the persons to which the said law applies may, if they wish, adopt an official address under the terms provided for by Chapter IV, Part VI, Book II of the Social Welfare and Family Code in order to be entitled to the social benefits referred to in the first paragraph of Article L. 264-1 of that Code”*.
84. Therefore by asking to be officially assigned to the social welfare centre of their municipality, Roma and Traveller families may be covered by Article 15-1. If they do so, they will be governed by the same rules on registration on the electoral roll as the rest of the population. Taken as a whole, these provisions, which take account of the particular situation of Travellers, do not disproportionately undermine their right to vote. In any event the legislation currently in force cannot be said to create a situation where Roma families are *“often denied in practice the most basic public services and benefits (even the right to vote) on the grounds of race and/or ethnicity”*. At no point has French legislation established special rules which depart from the ordinary law on the right to vote based on people’s ethnic backgrounds.
85. While the Government firmly rejects all accusations of systematic discrimination against Travellers with regard to the right to vote, it recognises nonetheless that the Act of 3 January 1969 has become dated and needs to be revised. This is what prompted the

Prime Minister, in a letter of 25 January 2011, to ask Senator Herrisson, the Chair of the Advisory Commission for Travellers, to report on the state of legislation on Travellers, particularly with regard to voting rights, and to propose the necessary statutory and regulatory changes. The letter reads as follows: “Travellers are currently subject to old legislation, which the Government, acting on a proposal by the Minister of the Interior, Overseas Territories and Local and Regional Authorities, now wishes to update and relax. ... Questions also remain about the arrangements for Travellers to register on the electoral rolls of the municipalities to which they are attached ... *You are asked to consult the heads of relevant government departments and associations of local and regional authorities along with bodies representing Travellers*”.

86. The debate launched by the Government on the reform of the legal status of Travellers has resulted in wide-ranging consultations with all the bodies concerned, particularly representatives of the Traveller community⁶.
87. The report, entitled “Travellers – working towards ordinary law status”, was submitted in July 2011. Pierre Herrisson considers that “the special rules requiring Travellers to be registered with a municipality for three years before they can apply to be entered on the electoral roll are no longer justified” and recommends the repeal of section 10 of the Act of 3 January 1969.
88. The appraisal of how the legal status of Travellers can be reformed, which has drawn on the broadest possible consultation of representatives of the Traveller community, clearly shows how much importance the Government attaches to this controversial issue.

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The Government would like to stress that the imprecise and unsubstantiated nature of this complaint puts it in a difficult position when it comes to framing its defence, as it is having trouble establishing the link between the complainant organisation’s assertions and the allegations of violations of Articles 16, 19, 30 and 31 of the Charter.

In the light of the foregoing, it is clear that the French authorities are taking major steps to ensure that Travellers have proper access to their rights under the Charter and, in so doing, have shown a constant desire for improvement, which the Committee must acknowledge. 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.

⁶ Particularly Denis Klump, Director of the Regional Association for Studies and Projects with Gypsies, Fernand Delage, Chair of the association *France Liberté Voyage*, Michel Dethier, Vice-Chair of the association *France Liberté Voyage*, Emile Scheitz, Vice-Chair of the French Federation of Gypsy Associations (UFAT), Laurent El Ghozy, Chair of the National Federation of Associations supporting projects for Gypsies and Travellers (FNASAT), Désiré Vermeersch, Chair of the International Gypsy Welfare Association (ASNIT), Alice Januel, Chair of the National Catholic Travellers Association (ANGVC), Father Christophe Sauve, Vice-Chair of the ANGVC, and Maurice Ruiz, Chair of the Confederation of Travellers and Gypsies of France.