

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



16 May 2011

**Case Document No. 1**

***Médecins du Monde - International v. France***  
Complaint No. 67/2011

**COMPLAINT**

**(Translation)**

**Registered at the Secretariat on 19 April 2011**



This complaint concerns Roma, mainly of east European and above all Romanian and Bulgarian origin<sup>1</sup>, living in France in great poverty, whose situation with regard to housing, children's education and social and health protection is the consequence of France's manifest failure to comply with several provisions of the revised European Social Charter.

## **I. ADMISSIBILITY OF THE COMPLAINT**

### **A. The state party**

France is a contracting party to the 1996 revised European Social Charter (hereafter the revised Charter). On 7 May 1999, France accepted the supervisory machinery of the collective complaints procedure, provided for in Part IV Article D of the revised Charter, in accordance with the 1995 Additional Protocol providing for a system of collective complaints France. has not entered any reservations or declarations concerning any of these articles.

This complaint is directed against the French state. However, under the decentralisation legislation, certain local and regional authorities are responsible for social policy, particularly the *départements* with regard to child protection. Nevertheless, as the Committee noted in the European Roma Rights Centre (ERRC) v. Greece case, *"even if under domestic law local or regional authorities .... are responsible for exercising a particular function, states party to the Charter are still responsible, under their international obligations, to ensure that such responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the .... state"* (8 December 2004, decision on the merits, complaint 15/2003, §29).

### **B. Locus standi of Médecins du Monde**

*Médecins du Monde* was founded in 1980 as an association based on the principle of international solidarity and drawing on its medical experience. It is fully independent and cares for the most vulnerable groups of the population when faced with crisis and exclusion, throughout the world and in France.

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<sup>1</sup> The term "Roma" is not used in this report in its generic sense but with reference to those of them settled in the Balkans and central Europe, some of whom have emigrated either more or less recently to the countries of western Europe. The term "migrant Roma" in France is therefore taken to mean persons living in France who are mainly from the countries of central and eastern Europe and who consider themselves to be Roma.

The international network of *Médecins du Monde* has 14 members: Germany, Argentine, Belgium, Canada, Spain, France, Greece, Italy, Japan, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland.

All the international network's member associations carry out programmes on behalf of the most vulnerable groups in the community, in their own countries and internationally.

The association identifies potential crises and threats to health and dignity, to help prevent them. Based on its personal observations and experience, it draws attention to human rights abuses, in particular obstacles to access to care.

To achieve its objectives, *Médecins du Monde* encourages doctors, other health professionals and members of other relevant professions to undertake voluntary action in this area.

Its headquarters are in Paris and it publishes an annual report. Additional information is available on its Internet site: [www.medecinsdumonde.fr](http://www.medecinsdumonde.fr).

As part of its activities in France, *Médecins du Monde* has taken action to assist Roma migrants in Saint-Denis, Bordeaux, Marseille, Lyon, Nantes, Grenoble, Valenciennes, Montpellier, Aix-en-Provence, Nancy, Toulouse and Strasbourg.

The aim is to improve their access to care through activities concerned with health promotion, vaccination and mother and child health, but it also helps them to secure their rights through administrative support or, as in Saint-Denis for example, preparing applications for state medical assistance. In 2009, the six main programmes on behalf of Roma resulted in 9 000 contacts and more than 4 100 medical consultations.

*Médecins du Monde* submits this complaint to the Executive secretary, acting on behalf of the Secretary General of the Council of Europe, in accordance with the collective complaints procedure established by the Council of Europe on 9 November 1995 to give full effect to the principle of social rights for all.

Under Article 1 b of the Additional Protocol, the contracting parties recognise the right of international non-governmental organisations with participatory status with the Council of Europe to submit collective complaints.

*Médecins du Monde* has participatory status with the Council of Europe and as such appears on the Governmental Committee list of international non-governmental organisations entitled to submit collective complaints.

This complaint is signed by Mr Olivier Bernard, President of *Médecins du Monde*, whom the organisation's articles of association authorise to act on its behalf.

## **II. PURPOSE OF THE COMPLAINT**

### **A. The facts**

The complaint concerns the situation of Roma, mostly from countries of the European Union, living in France in extreme poverty, whose rights to housing, education for their children, social protection and health care are not respected by France, in breach of articles 11, 13, 16, 17, 19§8, 30 and 31 of the revised Charter.

The complaint has been drawn up in consultation with the immigrants' information and support group (GISTI) and is based largely on information collected by volunteers and employees of *Médecins du Monde* in the course of their activities. The information appears mainly in the 2009 reports produced by the branches working with Roma in France, but also in the 2009 report of *Médecins du Monde's* French monitoring centre on access to care.

Other information is taken from the September 2010 report of the Romeurope national human rights collective, which is based on evidence supplied by its member associations working with Roma right across France (see appendices).

Taken as a whole, the information in these reports shows that the housing, educational, social protection and health care situations of Roma migrants in France, not to mention their employment prospects, amount to extreme social exclusion. In violation of the aforementioned articles of the revised Charter, France has failed to take the necessary steps to rectify their appalling living conditions.

Indeed, following the French President's announcement in July 2010 of a more repressive policy towards Roma, their situation has deteriorated still further. There has been a major increase in enforced evictions from their camps and mass expulsions.

*Médecins du Monde* considers that the relevant articles of the revised Charter may be taken alone and/or in combination with Article E on non-discrimination.

### **B. Relevant articles of the Charter**

The situation of Roma of foreign origin living in France has to be considered with regard to articles 11, 13, 16, 17, 19§8, 30 and 31 of the revised Charter.

### **Article 11 – The right to protection of health**

"With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents."

### **Article 13 — The right to social and medical assistance**

"With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953."

### **Article 16 – The right of the family to social, legal and economic protection**

"With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means."

**Article 17 – The right of children and young persons to social, legal and economic protection**

"With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1.a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
  - b. to protect children and young persons against negligence, violence or exploitation;
  - c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools."

**Article 19§8 — The right of migrant workers and their families to protection and assistance**

"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:

8. 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";

**Article 30 – 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."

### **Article 31 – The right to housing**

"With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources."

Taken alone and/or in combination with;

### **Article E – Non-discrimination**

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

### **C. Prohibition of discrimination in the light of the Preamble to and Article E of the revised Social Charter**

The European Committee of Social Rights has discussed the scope of the Preamble to the revised Charter and its Article E on a number of occasions.

In decision 51/2008 of 19 October 2009 it stated that:

"Article E complements the other substantive clauses of the revised Charter. It has no independent existence as it applies only to "the enjoyment of the rights" safeguarded by these clauses. Although the application of Article E does not necessarily presuppose a breach of these clauses – and to this extent it has an autonomous meaning – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter" (CFDT v. France, complaint 50/2008, decision on the merits of 9 September 2009, § 37).

Moreover, in its report of 8 December 2004 on the merits of collective complaint 15/2003, brought by the European Roma Rights Centre (ERRC) against Greece, the European Committee of Social Rights stated that: "the principle of equality and non-discrimination form an integral part of Article 16 as a result of the Preamble [to the Charter]".

More recently, in its decision of 18 October 2006 on collective complaint 31/2005, brought by the ERRC against Bulgaria, the ECSR stated:

"40. Article E prohibits discrimination and hence establishes an obligation to ensure that, in the absence of objective and reasonable justifications, any individual or groups with particular characteristics enjoys in practice the rights secured in the revised Charter. In the present case this reasoning applies to Roma families.

Moreover, as the Committee stated in the Autism-Europe decision (Autism-Europe v. France, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 52): Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all."

"42. In all its submissions the Government emphasised that Bulgarian legislation provides adequate safeguards for the prevention of discrimination. However, the Committee finds that in the case of Roma families, the simple guarantee of equal treatment as the means of protection against any discrimination does not suffice. As recalled above, the Committee considers that Article E imposes an obligation of taking into due consideration the relevant differences and acting accordingly. This means that for the integration of an ethnic minority as Roma into mainstream society measures of positive action are needed."

Most recently, in collective complaint 51/2008, ERRC v. France, the European Committee of Social Rights found that France was in breach of articles 16, 30 and 31 combined with Article E of the revised Charter. This was noted by the Committee of Ministers in its Resolution CM/ResChS(2010)5 of 30 June 2010.

Other standards and rulings of the Council of Europe and the European Court of Human Rights also prohibit racial discrimination and this area of law has been extended on a number of occasion.

Thus, in 1994 the Council of Europe adopted the Framework Convention for the Protection of National Minorities, though this has not subsequently been signed or ratified by France.

Then in 2000, the Council of Europe opened Protocol 12 of the European Convention on Human Rights for signature. The protocol explicitly prohibits discrimination in the enjoyment of any right laid down in law. Unlike many member countries France has again chosen not to sign or ratify it.

### **III. VIOLATIONS OF ROMA RIGHTS UNDER THE REVISED CHARTER, IN COMBINATION WITH ARTICLE E**

The revised Charter lays down various fundamental rights relating to housing, health, education, social and legal protection and non-discrimination that the states party have undertaken to enforce for all their citizens. Nor may anyone be deprived of rights laid down in the Charter that concern their life and human dignity (International Federation of Human Rights Leagues (FIDH) v. France, complaint 14/2003, decision on the merits of 8 September 2004 § 32, and Defence for Children International (DCI) v. the Netherlands, complaint 47/2008, decision on the merits of 20 October 2009 §37). This means that no one can be refused urgent medical assistance and no one can be evicted, even from an illegally occupied site, unless their dignity is respected and alternative accommodation is offered. Everyone is entitled to some form of dwelling and to procedural safeguards in the event of eviction.

#### **A. Right to housing: violation of articles 16, 30 and 31, in combination with Article E of the revised Charter**

In two decisions (European Federation of National Organisations Working with the Homeless (FEANTSA) v. France of 4 February 2008 and European Roma Rights Centre (CEDR) v. France of 26 October 2009) the European Committee of Social Rights has ruled on the effectiveness of housing law in France, particularly as it affects the Roma population.

Moreover, the Committee has also clarified the notion of adequate housing. It means "a dwelling which is safe from a sanitary and health point of view, that is, possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity; is structurally secure; not overcrowded ..." (FEANTSA v France, complaint 39/2006, decision on the merits of 5 December 2007 §76).

In its decision of 19 October 2009 on the merits of complaint 51/2008, CEDR v France, the Committee confirmed that the right to housing in Article 31 "consists in [the state] taking effective measures so that results are achieved, qualitatively and quantitatively." It also considered that "implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein" (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 61).

Finally, the Committee has ruled on a number of occasions that the poor housing conditions of Roma in camps were in breach of Article 31§1 (COHRE v Italy, complaint 58/2009, decision on the merits of 10 July 2010 §59, CEDR v France, complaint 51/2008, decision on the merits of 19 October 2009 § 50).

### **1) Degrading housing conditions**

Partly because of the lack of accessible accommodation for persons on low incomes and partly because of the discrimination they suffer in gaining access to housing, Roma families take various steps themselves to create accommodation:

- old dilapidated caravans that cannot move, installed on plots they do not own;
- makeshift dwellings made of planks, old sacks, cardboard, tarpaulins and other materials to hand, sometimes backing on to caravans, creating genuine shanty towns;
- squats, sometimes in buildings declared unfit for habitation.

These living conditions that Roma are forced to suffer because of their non-access to housing are degrading because they fail to meet proper health and sanitary standards and are incompatible with human dignity.

The result is that thousands of children are living in these extremely precarious and insanitary living conditions.

These living environments are almost invariably characterised by:

- lack of sanitary facilities in camps;
- only one if any drinking water tap serving hundreds of people;
- dangerous forms of electricity supply and heating;
- lack of essential public services such as rubbish collection, leading frequently to infestations of rats;

(see appended Romeurope report, pages 64 à 66, Marseille branch 2009 report, p.25, Lyon branch 2009 report, p. 57 ff).

All these circumstances constitute violations of Article 31§1 of the Charter.

Similarly, it is almost impossible for Roma to gain access to social housing for persons on low incomes.

All the social housing authorities make presentation of a European Union residence permit a required eligibility condition. Yet, although European citizens are entitled to a residence permit if they request it they are not required to do so in order to be eligible for all the rights that are subject to a lawful residence condition.

While they have to show that they meet the conditions for lawful residence relating to means and sickness insurance, they should not, in contrast, be required to present a residence permit.

The result of this practice is that in most *départements* their applications are not even considered or receive no reply (see appended Romeurope report, page 91).

The Romeurope and the *Médecins du Monde* inner city group have issued joint appeals on behalf of Roma families to local prefects for the urgent allocation of accommodation under the Act of 5 March 2007, which established an enforceable right to housing and a right to accommodation. All have been rejected on the grounds that there was no evidence of any "115" calls. This is the telephone number of the centre responsible for finding and placing people in emergency accommodation. Such evidence is impossible to obtain.

The absence of any political commitment to integrating Roma from central and eastern Europe into the traditional housing system, using the normal legal means of access to accommodation, renders their right to housing under Article 30§1 of the revised Charter ineffective.

On the rare occasions that the authorities do offer solutions, these do not reflect the normal legal definition of housing but rather that of emergency accommodation.

Such accommodation is very ill suited to their needs because family members are often separated and it is for a very short time – often three to four nights in a hotel in which families are not allowed to prepare meals for their children. Those concerned are then put back on to the street. Families therefore often reject this solution and prefer to look for another place to live themselves, even if they again risk eviction.

Such offers of emergency accommodation therefore do nothing to prevent and reduce homelessness, as required by Article 31§2 of the revised Charter, indeed quite the contrary. Public authorities that evict families without rehousing them therefore bear immediate and total responsibility for their actions.

The violation of Article 31§2 is combined with a violation of Article E. Associations working with Roma have observed that "the principle that there should be no element of selection of those admitted to emergency accommodation is far from respected in practice. Firstly, there is discrimination based on place of origin, with in certain cases differences in the service provided. This is often linked to individuals' names and accents, particularly when the latter suggests someone of Romanian origin. Secondly, although emergency accommodation is not legally subject to any conditions regarding length of stay, practices often differ from one region to another" (see appended Romeurope report p. 74).

When emergency accommodation is offered, this should be a prelude to the integration of Roma families into more permanent dwellings.

The only genuine housing solutions on offer are the so-called integration villages, of which there are very few. Such an approach is in itself debateable, since it might amount to the possible transformation of a humanitarian response into projects designed to meet the particular housing needs of an ethnically determined group of the population (see appended Romeurope report September 2010, page 81).

Generally speaking, integration villages encourage social exclusion when they are located away from urban areas on land that is difficult to access and is often enclosed behind high fences. Nor is Roma freedom always guaranteed, given such strict management practices as doormen controlling those coming in and out, non-residents subject to prior authorisation to enter and only at certain times and so on (Romeurope report, page 82 and 83).

New experiments are under way in Montreuil and Lille that try to take account of these criticisms. However, this is a process that is at variance with the ordinary law.

At all events, access to such housing is not effective because it is discriminatory. Roma families are selected according to a discretionary allocation procedure that does not offer sufficient guarantees of equity and transparency (Romeurope report, page 83). *Médecins du Monde* strongly condemns any selection process and notes that it is often the most vulnerable who are pushed aside.

The so-called residential social reintegration centres operate admissions policies that take account of the prospects for entering employment and establishing one's own home. Since Roma families are reputed not to satisfy these criteria, the centres rarely admit them. This clearly constitutes discrimination (see appended Romeurope report, page 89).

The policy on the housing of Roma is thus inadequate. It results in *de facto* social exclusion, with all the inevitable consequences in terms of employment, training, education, social and legal protection and health.

Moreover, the Roma population that suffers these violations is composed largely of families. The result is that the necessary conditions for the full development of the family are not met, in breach of Article 16 of the Charter.

## **2. Evictions from camps that violate fundamental rights**

The Committee has already ruled that evictions "must be justified and carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation should be made available" (FEANTSA v France, complaint 39/2006, decision on the merits of 5 December 2007 §163).

In its decision of 19 October 2009 on the merits of complaint 51/2008 CEDR v France, the Committee repeated what it had said in its decision of 18 October 2006 on the merits of complaint 31/2005 CEDR v Bulgaria § 51: "illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned".

The Committee has also ruled that: "The law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided." (CEDR v Italy, complaint 27/2005, decision on the merits of 7 December 2005 § 41).

In practice, evictions of Roma families in France are often accompanied by intimidation and harassment by the police. The daily presence of law enforcement agencies in camps, and false deadlines before evictions form part of such a strategy (see appended Romeurope report, pages 67 and 69 and *Médecins du Monde* report "Situation of Roma in Marseille: the legal situation" – September 2010, 2009 report of the Lyon group p. 63 ff, report of the inner city group p. 55 ff, 2009 report of the Strasbourg group p. 39).

In addition, there have been numerous reported cases of unjustified force and destruction of personal property and makeshift dwellings. Caravans are sometimes confiscated, even though these are protected as persons' homes (Romeurope report, pages 71 and 72).

*Médecins du Monde's* Il-de-France inner city group reported the following events at Bondy on 11 June 2009: "The police intervened early in the morning to evict some forty persons who had settled on a plot after their eviction from Saint-Denis two days before. One of the tents that the families had just bought for shelter was torn. This scene was filmed. Once out on the streets, those concerned were followed and prevented from settling elsewhere, a frequent event after evictions. As the families were also prevented from recovering their food, the children went hungry all the day.

The same group was again evicted on 15 June from a new site where they had settled in Bondy, after suffering daily police harassment and without any prior order issued to quit the site."

Evictions are a regular event. It is not unusual for a particular family to be evicted from its site every month. These evictions take place without any offers of rehousing.

Finally, the winter "truce" whereby tenants cannot be evicted between 1 November and 15 March does not apply to occupants with no rights or title of

property. As a result, such evictions often take place in the middle of winter.

Neither the police nor the owners of illegally occupied land can evict those installed there without a court order.

In practice though, when the correct procedure is followed, most of the time the occupants are unable to enforce their rights.

Thus, a relatively recent development allows land owners to ask the courts for eviction orders for illegal occupants under a very simplified procedure involving a single judge. Under the procedure, the owner is not required to notify each individual concerned of the order. This means that the occupants are unaware of the proceedings and therefore cannot enforce their rights.

As Romeurope has reported: "The most commonly used procedure currently is one that is directed at persons whose identity is not specified. This is an order made by a single judge, which can be implemented without notifying those concerned. They are not therefore summoned to appear before the court. Such proceedings are used when the bailiff cannot identify the occupants of the site (see appended Romeurope report, page 68).

In decision 2009-372 of 26 October 2009, the French high anti-discrimination authority (HALDE) stated that these evictions were not compatible with the minimum procedural safeguards enshrined in the European Convention on Human Rights and were in breach of their specific protection against expulsion as citizens of the European Union.

Recent legislation, Act 2011-267 of 14 March 2011 on internal security, established a new criminal offence of occupying the residence of another person without his or her authorisation (this adds a new sub-paragraph to Article 226-4 of the criminal code, making it an offence punishable by one year's imprisonment and a fine of € 15 000 to occupy the residence of another person without the owner's or tenant's permission and not to leave it immediately on that owner's or tenant's request).

Hitherto, such occupiers risked eviction proceedings and an order to pay financial compensation for any damage suffered by the owner. Under the new article, those concerned now also risk a year in prison and a €15 000 fine if they fail to leave the property concerned.

This raises the issue of the new law's compatibility with the European Social Charter.

With the aid of reports from its local groups and other eyewitness accounts included in the September 2010 Romeurope report, *Médecins du Monde* has assembled a considerable body of practical, circumstantiated and extremely diverse evidence of violations of Roma's right to housing. The policies, actions and omissions of the French government and its agents amount to a serious

breach of its obligations under articles 16, 30 and 31 of the revised Charter, taken alone and in combination with Article E on non-discrimination.

## **B. The right of migrant travellers and their families to protection and assistance: violation of Article 19§8**

The expulsions of Roma families do not comply with the procedural safeguards in the revised Charter.

As well as being evicted from their camps many Roma are then expelled from the country. These are usually collective expulsions.

Police officers visit the camps with completed expulsion orders with just the names missing.

They check the identity of individuals then complete the forms and issue the orders, without checking individuals' specific situation or circumstances. All the decisions are therefore identical except for the identity of the individuals to whom they are issued.

In its decision on the merits of 6 July 2010 in complaint 58/2009 Centre on Housing Rights and Evictions (COHRE) v. Italy, the Committee ruled that "collective expulsion" 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..

It therefore has to be concluded that by issuing expulsion orders (obligation to leave French territory (OQTFs) or prefectural orders to be conducted to the frontier (APRFs)) to several dozen persons in camps at the same time, without at any moment conducting an objective examination of the specific situation of each individual, France is acting in breach of Article 19§8 of the revised Charter, alone and in combination with Article E.

Moreover, to be in compliance with the Revised Charter, the Committee considered in the aforementioned COHRE v. Italy decision on the merits that expulsion for offences against public order or morality had to constitute a penalty for a criminal act, imposed by a court or a judicial authority.

Certain expulsion orders issued against Roma families – the prefectural orders - are administrative decisions against which there is an appeal, but only within the very brief period of 48 hours.

These expulsion decisions are based on the notion of a threat to public order, interpreted very broadly, that does not constitute a criminal offence.

Thus, the simple fact of illegally occupying a site is considered by the police to be a threat to public order that justifies expulsion from France.

In its Immigration, Integration and Nationality Bill currently before parliament, the French government wishes to extend the notion of public order still further by establishing the principle that once a person constitutes "an unreasonable burden on the social assistance system", he or she constitutes a threat to public order.

So the simple fact of not having stable resources is deemed to be a threat to public order that justifies expulsion, irrespective of how long the individual has been in the country.

French law and administrative practice therefore constitute a flagrant breach of Article 19§8, as interpreted by the European Committee of Social Rights.

*Médecins du Monde* have therefore adduced evidence to show that the policies, actions and omissions of the French government and its agents amount to a serious breach of its obligations under Article 19§8 of the revised Charter, taken alone and/or in combination with Article E on non-discrimination.

### **C. The rights of the child: violation of Article 17**

Several violations of children's rights are established here, such as failure to ensure effective access to education, failure to meet the fundamental needs of children living in unhygienic conditions and inadequate child protection.

Article 17 of the revised Charter establishes a general right to education. States are required to establish and maintain a free education system. The ECSR considers that there should be compulsory schooling for a reasonable period, generally up to the minimum age for employment.

In particular, the Committee thinks that steps must be taken to ensure that vulnerable groups benefit from the right to education and enjoy equal access to it. This particularly concerns children from minorities, the children of asylum seekers and refugee children. If necessary, special measures must be introduced to ensure that all children have access to education under the same conditions. It has also stated that in the case of Roma children, any special measures must not lead to their separation or segregation in schools.

France has still made inadequate progress in this regard.

#### **a. Non-effective access to education**

In this regard, refusals to register or delays in the registration of children for school are frequent (see appended the Romeurope February 2010 report on "the education of Roma migrant children in France").

When they are registered, families are often faced with unreasonable requirements for documentation, including an administrative certificate of residence, when the only documents needed are the child's birth certificate and health record. Yet, families living in squats or makeshift dwellings are almost systematically required to produce an administrative certificate of residence issued by an approved body.

Admittedly, Article 6 of decree 2000-1277 of 26 December 2000 specifies that proof of residence *may* be required for the registration procedure for schools and higher education establishments. However, the principle of immediate enrolment must take precedence, and the authorities are not obliged to ask for this additional document.

Attention must also be drawn to unjustified delays in the registration and allocation procedures. Prior appointments – which do not apply to the other children – may be required and elected members may have to be consulted. These are abnormal and discriminatory procedures. In this case, such differences of treatment are in violation of Article E of the revised Charter.

Nor is effective access to education guaranteed if mayors take no active steps to establish the number of children who are not being educated.

This is despite the fact that Article R.131-3 of the Education Code makes it the responsibility of the mayor of each municipality to list all the children who are subject to compulsory schooling.

Finally, repeated evictions of children from their place of residence inevitably have harmful consequences for their educational opportunities. This mobility explains the reluctance of certain school inspectorates to open classrooms and provide resources for children who are likely to leave the school shortly after arriving. Certain families sometimes themselves refuse to have their children educated, for fear of being identified and once more expelled (see appended Romeurope report, page 101).

The *Médecins du Monde* Nantes branch describes this situation in its 2009 report:

"After each move, the children's education is at least suspended and at worst ceases, particularly in primary schools. Once they have left a municipality the children no longer have a place of residence and may be removed from school. The registration procedures in other municipalities then entail delays that vary in length according to how quickly the relevant departments respond. Finally, small municipalities find it impossible to provide the necessary material resources when a significant group arrives. The older children who are in secondary school do the maximum to attend the establishments where they are enrolled, often at the cost of considerable travelling time, which does not encourage regular attendance. Those who are furthest away have been forced to forfeit their education. In this context, how can we ensure that Roma children have the access to knowledge that the Convention on the Rights of the Child should entitle them to?"

It is clear then that Roma children's access to education is far from effective and as such is in breach of Article 17 of the revised Charter.

## b. Failure to meet children's fundamental needs

Particular issues concerning the failure to respond to the basic needs of children living in unhygienic conditions include difficulties with transport and with meeting canteen costs and the low level of social assistance for children and their education.

Schools are often situated far from children's living environment and geographical criteria are no longer taken into account for this group because of their families' mobility. The cost of school transport is also an obstacle to access to school.

The provision of school transport and its cost do not match the special needs of these Roma children, who are thus excluded from the school system.

Nor are canteen charges appropriate. Indeed "while certain municipalities provide free meals or charge the minimum because the families lack the means to pay, others charge the maximum because the families have no documentary proof of their lack of resources" (see appended Romeurope report, page 110).

Finally, the majority of families living in squats or makeshift dwellings are not eligible for benefits from the family allowance fund (CAF). Education and appropriate transport arrangements and financial assistance are essential for meeting these children's fundamental needs. So in violation of Article 17 of the revised Charter, Roma children's fundamental needs are still not being met satisfactorily.

All this adds up to their exclusion from school and the non-effectiveness of their access to education.

With the aid of the Romeurope report of September 2010 and the observations of its field teams set out in its reports, *Médecins du Monde* has produced a considerable body of evidence to support its claims of a failure to respect the rights of the child.

The policies and omissions of the French government and its agents described above amount to a serious breach of its obligations under Article 17 of the revised Charter, taken alone and in combination with Article E on non-discrimination.

## **D. The right to social protection and health: violation of articles 11 and 13**

### **1. Violation of Article 13: The right to social and medical assistance**

In its decision of 18/02/2009 on the merits of complaint 48/2008 by the European Roma Rights Centre (ERRC) v. Bulgaria, the European Committee of Social Rights stated:

"The Committee, by way of introduction, emphasises the fundamental right of individuals to be able to access sufficient resources and social assistance in order to live in a manner compatible with human dignity. The Committee also emphasises that recognition of this basic right is an essential ingredient of any strategy which is intended to combat social exclusion in a substantive and meaningful manner. The inclusion of Article 13§1 in the European Social Charter, which requires States to guarantee minimum income and social assistance for persons without adequate resources, must be understood in this context.

The Committee recalls that under Article 13§1 adequate benefits must be payable to "any person" who is without adequate resources and in need. The text of Article 13§1 clearly establishes that this right to social assistance takes the form of an individual right of access to social assistance in circumstances where a basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person."

Several violations of the right to social protection of Roma from the countries of central and eastern Europe have been observed in France:

- refusal to continue with social assistance,
- discrimination in access to sickness coverage.

The result is a significant deprivation of the resources necessary to live in a manner compatible with human dignity.

#### a. Family benefits and housing assistance

An initial internal circular of the national family insurance fund (CNAF) of 16 January 2007 extended to Bulgarians and Romanians the family benefits to which the new European nationals are entitled and no reference was made to any residence condition. However, the 2008 Social Security Financing Act introduced several restrictions and limited eligibility for family benefits to European nationals who satisfied the lawful residence condition.

This stricter approach was clarified in the CNAF circular of 18 June 2008 on the right of residence of Community nationals and led several local family allowance funds (CAFs) to interrupt benefit payments to non-working Community nationals, without first checking their financial situation or sickness coverage. Certain funds even required the repayment of "excess" benefits paid.

And yet local authorities and other agencies wishing to provide Roma with suitable housing often make receipt of family and housing benefits a precondition.

Appeals have been lodged in several *départements* to the appeals commissions of the family allowance funds against these interruptions to benefits, based on the principle of Community law that when Union citizens have been granted benefits subject to the lawful residence condition, that right cannot be withdrawn just because their legal situation has changed.

Ministry of Labour Circular DSS/2B/2009/146 of 3 June 2009 finally removed these restrictions and new instructions that appeared in CNAF circular 2009-022 of 21 October 2009 stated that CAFs did not have to check the right of residence of persons already receiving family allowances.

Yet despite the October 2009 circular re-establishing suspended rights, it appears that numerous CAFs still refuse to reverse decisions to suspend Roma families' benefits and prefer to risk appeals to the courts. This discrimination is so firmly rooted in the administrative mentalities of certain *départements* that the CAFs ignore these new instructions. Examples are the *départements* of Val-d'Oise and Yvelines, where the circular is not being applied, with the result that cases still cannot be re-examined.

These multiple changes of policy have led to a certain number of Roma families losing their home because they lacked the necessary assistance to pay their rents, and the withdrawal of their children from school.

#### b. State medical assistance

It is often difficult for Roma to get satisfactory sickness cover, particularly owing to the complexity of the procedure for claiming it.

This is accentuated by recent changes to the legislation designed to make the eligibility criteria for this benefit stricter by increasing the number of conditions that must be met.

The difficulty of establishing their precise rights and the lack of guidance on or assistance with completing the complex procedures for applying for state medical assistance (AME) are the main reasons for the very low Roma take-up of this benefit.

In the absence of a stable living environment, it is particularly difficult to establish evidence of more than three months' presence in France, which is one of the eligibility conditions for AME.

Those concerned have to make an appointment with an association or social service department to apply for AME before or at the expiry of the three month period and then request another appointment two months before their rights expire in order to renew them. The lack of information on their rights and their enforced unstable existence make it difficult for them to keep to this timetable.

It is particularly difficult to prove that the condition of three months' prior residence in France has been met because the insecure nature of these Roma families' living conditions does not normally enable them to secure proof of residence.

Those of them who are European nationals also find it difficult to prove when they entered France because of the freedom of movement within the European Union.

As a result, applications for AME are often made in response to an illness that requires rapid treatment and sometimes without the supporting documents needed to initiate the procedure.

Moreover, since 1 January 2010, evidence of entitlement to AME is no longer a simple paper document but a laminated card that cannot be forged. To obtain this card, those concerned need to visit one of the limited number of social security centres with identity photos and then return to the centre to collect the card. The complexity of these procedures increases the number of persons who forego their entitlement to AME.

In addition, in connection with the co-ordination arrangements between European Union insurance schemes, certain local sickness insurance funds require the applicants themselves to prove that they have no cover in their countries of origin.

This still further delays the processing of applications, or makes it impossible. The effectiveness of access to sickness cover is thus again thrown into doubt.

Recent changes to the legislation<sup>2</sup> will make entitlement to AME even more complicated from 1 March 2011 by introducing an additional eligibility condition, namely an annual contribution of €30, a sum that is beyond the reach of most Roma families, who live in extreme poverty.

This growing complexity – particularly the need to demonstrate three months' prior presence in the country and the time therefore required to get access to care, and the new financial contribution – all contributes to delays in receiving care.

Finally, the arrangements for free treatment to be provided to foreign nationals in France who cannot demonstrate three months' presence and thus entitlement to AME – the so-called urgent and emergency treatment fund – is still under-used.

Circular DSS/2A/DGAS/DHOS/2008/04 of 7 January 2008 states that Community nationals in an irregular situation who are not eligible for AME may make use of the urgent care arrangements, like foreign nationals from other countries. However, it appears from the Romeurope report of September 2010 (appended) that certain hospitals still do not use this scheme and continue to send bills to poor and even insolvent families.

### c. Right to a place of residence in the absence of a stable home

The right to be recognised as having administrative residence (in French *domicile administratif*) is still applied unsatisfactorily.

Most foreign Roma are considered to be irregular migrants and do not in practice have the right to a place of residence, although Community nationals

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<sup>2</sup> 2011 Finance Act of 31 December 2010

are not normally subject to the lawful residence condition (under Article L. 264-2 of the social action and family code, which only requires non-Community nationals to be lawfully resident in order to be formally recognised as having a place of residence).

However a circular of 25 February 2008 states that Community nationals who are unlawfully resident are covered by another procedure - *domiciliation AME* – under which it is very difficult to obtain recognition of place of residence.

In addition, municipal social action centres (CCASs) are authorised to make recognition of residence conditional on proof of a link with the municipality concerned. Since it is difficult for persons living in squats and other makeshift dwellings to provide evidence of such links, the condition prevents any possibility of recognition of residence.

Often, as a result, Roma are referred by the CCASs to recognised associations to establish their place of residence. However, most associations lack the resources to deal with the scale of the demand and are unable to perform this task.

In fact, local authorities often unlawfully make a recognised place of residence a condition for admitting the children of families with no fixed abode to school. The result is a vicious circle in which presentation of a school attendance certificate is the only way Roma families can establish their links with a municipality in order to have their residence recognised by the CCAS, while the municipality's school authorities require a certificate of residence in the area before registering and enrolling the children.

Similarly, applications for legal aid raise problems because those concerned have to present a certificate of choice of jurisdiction to the legal aid office to be eligible for such assistance. Roma families' right to legal protection is therefore in turn put at risk.

The result is that many Roma families choose not to enforce their rights, which have been rendered ineffective by these unlawful administrative requirements.

With the aid of eyewitness accounts from its teams working with Roma groups and those of other associations in the field, which appear in the 2009 report of its monitoring centre on access to care and the Romeurope 2010 report, *Médecins du Monde* has produced substantial evidence of this violation of the right to social protection. The unsatisfactory way in which the right to social protection is applied, and the actions and omissions of the French government and its agents amount to a serious breach of its obligations under Article 13 of the revised Charter, taken alone and/or in combination with Article E on non-discrimination.

## **2. Violation of Article 11: Right to protection of health**

The right to health protection of Roma migrants living in poverty in France is not respected. This applies particularly to their children, as shown by their extremely worrying state of health and the fact that their treatment needs are not met.

As well as their inadequate access to care, which serves to aggravate their

state of health, the latter is also directly threatened by their environment.

The environmental risks to which this group are exposed are without question all linked to their living conditions in the camps.

Infectious diseases are encouraged by hygiene conditions that may be described as degrading, since it is quite common to see harmful and polluting piles of rubbish and waste in camps while access to drinking water is almost non-existent. The result is that associations that run surgeries for this group frequently identify cases of infectious respiratory, cutaneous and gastro-intestinal diseases and even of scabies. Other factors that pose threats to the health of those concerned include the general state of dampness, poor ventilation and the harmful effects of improvised forms of heating, resulting from the authorities' failure to ensure proper electricity supplies (see appended Romeurope report, page 140).

There are also numerous domestic accidents, such as burns, gas poisoning and fires, once more linked to the dangerous living conditions (see appended Romeurope report, page 140).

The permanent stress associated with likely future police operations is an aggravating factor for the psychological state of camp inhabitants.

Evictions also force families to go to ground, making them inaccessible and thus leading to breakdowns in medical care and treatment. Links that health professionals have painstakingly established, even with persons who despite everything have registered for treatment, are broken by each police operation or eviction. Following evictions and arrests, appointment dates and times, letters, health records and documents needed to establish sickness coverage are frequently lost or destroyed, thus breaking all the previously and difficultly established medical links.

Roma's living conditions in camps are therefore aggravating, or even triggering, factors for a series of medical conditions, in breach of paragraphs 1 and 3 of Article 11 of the revised Charter.

Regarding access to care, it should first be noted that Roma's state of health is generally a cause for concern, because they arrive in France having already suffered from lack of medical care, leading to aggravated medical conditions. They then face numerous difficulties of access to health services.

In a decision dated October 2009, the French high anti-discrimination authority (HALDE) stressed the need for Roma to receive medical care and treatment. This was all the more important because *"these groups suffer from very poor health conditions when they arrive in France"* and *"access to care is hindered by language barriers, lack of knowledge of health and social services and their unstable living conditions, linked in particular to the numerous evictions to which they are subject"*. It continues *"this makes Romanian and Bulgarian Roma the most closely supervised and least cared-for migrant group and the only one for which there is no targeted humanitarian policy to ensure their access to health and education"* (see appendices).

For example, 82% of the Roma seen by the *Médecins du Monde* Marseille, Nantes, Strasbourg and Ile-de-France teams were not currently registered for AME, and 68% of their illnesses should have been treated earlier. Certain major conditions, such as hypertension, diabetes and lung diseases, were not being treated.

Vaccination coverage is low and only concerns 12 to 20% of patients according to vaccine, and 18 to 30% of children under 7 (see appended 2009 report of the *Médecins du Monde* monitoring centre on access to care, pp 150 to 154).

The women's health is a particular cause for concern, above all from the standpoint of mother and child health, including multiple unsupervised pregnancies, repeated abortions, again with no follow up, and the complete failure to use contraceptives.

In Ile-de-France *Médecins du Monde* finds that only one woman in ten is monitored during her pregnancy and also only one woman in ten of child-bearing age uses contraception.

Prevention of childhood illnesses and rickets is very fragmentary.

Lack of knowledge of the health system is thus a major obstacle to any form of treatment.

Similarly, police pressure and evictions make Roma very reluctant to visit care establishments for fear of arrest.

There is a marked lack of information from the authorities about their rights and the organisation of the health system. The result is a failure to respect Roma's right to health protection. Yet such a right is embodied in Article 11 of the Charter, paragraph 2 of which requires states to *"provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health"*.

Such action as is taken is the work of voluntary associations and is almost never conducted by the authorities. The result is a high level of misunderstanding between health professionals and the Roma population, mainly due to lack of knowledge of the latter's living conditions. Even when public bodies do take action, there is an evident lack of co-ordination and they are rapidly overwhelmed by the urgent need for support.

Finally, lack of stability and multiple evictions cause breakdowns in medical follow-up. The sometimes institutional links that have been formed – with difficulty if at all – with partner associations are broken. Those concerned are then in danger of seeing their medical conditions deteriorate, sometimes even at risk to their lives.

With the aid of the 2009 report of its monitoring centre on access to care and the Romeurope 2010 report, *Médecins du Monde* has again assembled a considerable body of concrete evidence to support its allegations. The policies, actions and omissions of the French government and its agents in the field of health amount to a serious breach of its obligations under Article 11 of the revised Charter, taken alone and in combination with Article E on non-discrimination.

## **E. Violation of the non-discrimination principle: Article E**

*Médecins du Monde* maintains that, in both its scale and its effects, the range of problems identified above – composed of a whole series of actions and omissions on the part of the French state – amounts in practice to a violation of articles 11, 13, 16, 17, 30 and 31 of the revised Charter, taken alone and in combination with Article E on non-discrimination.

An overall examination of the situation of Roma migrants living in poverty in France, the government's social integration policies and the relevant legislation shows clearly that these individuals are the victims of systematic breaches of their right to housing of an adequate standard, normal schooling for their children, social and health protection and respect for their minimum procedural safeguards.

The French government's approach to this subject constitutes indirect discrimination that helps to exclude this group and marginalise it using various means.

Thus Roma families are frequently refused entitlement to the most elementary social services and benefits, based solely on the criteria of race and/or ethnic origin.

Sadly, Roma families are not the only ones to suffer discrimination in access to various rights, but attention must be drawn to the cumulative effect of all the discrimination they face.

Médecins du Monde wishes to point out that this view is shared by the European Commission against Racism and Intolerance (ECRI), whose report on France adopted on 29 April 2010 states:

*"ECRI regrets to note that many Roma from the countries of central and eastern Europe, remain in an extremely precarious situation as regards access to decent housing and health care. Throughout France there are cases of Roma living in very rudimentary camps, mostly on the outskirts of cities, with sometimes disastrous consequences for their health. ECRI is concerned that a number of sources have pointed out that there is still a problem of brutal forced evictions from these camps involving the confiscation or destruction of personal belongings. In addition, in some cases the persons concerned are allegedly not necessarily being offered any decent alternative housing solution.*

...

*Schooling of migrant Roma children remains a problem, not only on account of the obstacles encountered by their families in terms of housing and living conditions, which make access to education difficult, but also because some municipalities refuse to enrol them in school. A number of sources have indicated that these refusals are primarily linked to the children's ethnic origin and are completely unlawful.*

*ECRI regrets to learn from a number of sources that Roma from the countries of central and eastern Europe suffer from a generally hostile climate of opinion, including racist prejudice, which also targets Travellers. ECRI notes that this prejudice is sometimes conveyed by the media. Roma are also sometimes the victims of racial discrimination, and even racist violence. A number of sources consider that the measures taken to combat racism in France do not constitute a sufficient response to anti-Gypsyism.*

*ECRI recommends that the French authorities continue and reinforce their efforts, in consultation with Roma and civil society representatives, to identify solutions for improving the unacceptable living conditions of the Roma families by finding decent housing arrangements and pay special attention to access to health care and education. In particular, an assessment should be made of the measures already implemented, such as assistance with voluntary return or the "integration housing", with the aim of ensuring that they are fully consistent with the needs of the persons concerned and taking rapid remedial action to correct any counter-productive impacts if necessary.*

*ECRI again strongly recommends that the French authorities take steps to prevent all illegal, forcible expulsions of Roma families from their homes that place Roma families in a desperate position. In particular it warns against any excessive use of force during such expulsions.*

*In general, ECRI recommends that the French authorities take additional measures to improve the situation of Roma from the countries of central and eastern Europe, in consultation with the representatives of these communities, so as to combat and prevent racism and racial discrimination towards them. It again draws the authorities' attention to its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies, which proposes a series of legislative measures and policy initiatives that governments can take to this end." (Paragraphs 109, 111, 112, 113, 114 and 115 p. 35 and 36 of the report).*

*Médecins du Monde* respectfully requests the European Committee of Social Rights to consider the facts set down in this complaint and declare that France is in breach of the aforementioned articles of the revised Charter. The French government must adopt a long-term national strategy laying down positive measures to combat the social exclusion of Roma, by improving their housing situation, their access to their rights and to the courts, their children's education, their social protection and, lastly, their health protection.

*Médecins du Monde* thanks the European Committee of Social Rights for giving attention to these issues.

For *Médecins du Monde*  
Olivier Bernard  
President of the association

## Appendices

1. 2009 report of the *Médecins du Monde* monitoring centre on access to care
2. Romeurope report on the situation of Roma migrants in France, Romeurope human rights national collective, September 2010
3. Romeurope report on the failure to educate Roma migrant children, Romeurope human rights national collective, February 2010
4. Decision 2009-372 of 26 October 2009 of the French high anti-discrimination authority (HALDE)
5. Report "Situation of Roma in Marseille: the legal situation" – September 2010