**Resolution CM/ResChS(2013)6  *Médecins du Monde – International* v. France,
Complaint No. 67/2011**

*(Adopted by the Committee of Ministers on 27 March 2013
at the 1166th meeting of the Ministers' Deputies)*

The Committee of Ministers,[1](https://wcd.coe.int/ViewDoc.jsp?id=2051673&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383" \l "P10_229" \t "_self)

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 19 April 2011 by *Médecins du Monde – International* against France;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

**I. ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 31 OF THE CHARTER**

**i. Violation of Article E taken in conjunction with Article 31§1 by reason of non-access to housing of an adequate standard and degrading housing conditions (unanimous)**

The wording of Article 31 cannot be interpreted as imposing on States Parties an obligation of “results”. However, the rights recognised in the Charter must take a practical and effective, rather than a purely theoretical, form.

Given that it is exceptionally complex and particularly expensive to realise the rights enshrined in Article 31§1, States Parties must take measures allowing them to achieve the objectives of the Charter within a reasonable time, making measurable progress and to an extent consistent with the maximum use of available resources.

Under Article 31§1, persons legally residing or regularly working in the territory of the State Party concerned who do not have housing of an adequate standard must be offered such housing within a reasonable time.

Given the different means made use of by the government in the field of housing, it is considered that plans, declarations of intention, exploratory processes, roadmaps to identify the main objectives and other “special tools” for the future may be necessary to achieve the targeted results but cannot be deemed as efficient and sufficient measures, while their elaboration seems to use up a considerable part of the budgetary resources to the detriment of concrete action.

It is recalled that pursuant to Article 31§1, in order for housing to be considered to have reached the level of adequacy, it must be in a location which allows access to public services and where there are possibilities of employment, health care services, schools and other social services. States should be vigilant when implementing housing policies so as to prevent spatial or social segregation of ethnic minorities or migrants. The complainant organisation has not demonstrated the existence of social exclusion of the Roma[2](https://wcd.coe.int/ViewDoc.jsp?id=2051673&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383" \l "P31_3409" \t "_self) living in integration villages. Nevertheless, a balance needs to be found between the creation of such villages and the place where they are located. With regard to alleged discrimination in the selection of Roma families wishing to have access to housing in an integration village, there is in the end no other satisfactory selection mechanism than the voluntary participation of those concerned.

Nevertheless, the integration villages offer a housing solution to only a very limited number of the Roma, while the living conditions of the others continue to be in non-conformity with Article 31§1.

The government has omitted to take into account the differences in situation of the Roma migrants who reside lawfully or work regularly in France, as well as to take measures adapted to improve their housing situation. The means made available by the government for the purpose of taking concrete action within this area are too limited to change the poor living conditions of a large number of Roma. Therefore they have been subjected to discriminatory treatment.

**ii. Violation of Article E taken in conjunction with Article 31§2 by reason of the eviction procedure of migrant Roma from the sites where they are installed (unanimous)**

It has been recognised that the illegal occupation of a site may justify the eviction of the occupants. However, the criteria of illegal occupation should not be interpreted too widely. Therefore, persons or groups of persons who cannot effectively benefit from the rights enshrined in national legislation, such as the right to housing, may be forced to take up reprehensible behaviour in order to satisfy their needs. This circumstance in itself cannot be used to justify any sanction or enforcement concerning these persons, nor a continued deprivation of their recognised rights.

It is recalled that in order to comply with the Charter, legal protection for persons threatened with eviction must be prescribed by law and include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- access to judicial legal remedies;
- access to legal aid; and
- compensation in case of illegal evictions.

Furthermore, when evictions do take place, they must be:

- carried out in conditions respecting the dignity of the persons concerned;
- governed by rules sufficiently protective of the rights of the persons; and
- accompanied by proposals for alternative accommodation.

The conditions of the eviction procedure described above apply to all migrants, irrespective of their legal situation in France, since these are rights linked to life and dignity.

According to several sources, the evictions of migrant Roma are conducted without respect of the basic conditions prescribed by the Charter, in particular in breach of the dignity of the persons concerned (for example, without consideration of the presence of children, pregnant women, elderly, sick or disabled persons; destroying possessions).

The legal protection afforded to the Roma under threat of eviction is insufficient and eviction procedures can take place at any time of the year including winter and at night or during the day. This does not ensure the respect of human dignity.

Evictions must not render the persons concerned homeless. The principle of equal treatment implies that the State should take measures that are appropriate in the particular circumstances of the Roma in order to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless.

France has failed to demonstrate that offers of appropriate alternative accommodation of a sufficiently long-term are made to the Roma urged to leave, or evicted from, an illegally occupied site. Under such circumstances, urging them to leave sites on which they have settled – even illegally – and evicting them if they refuse to comply while not offering suitable long-term alternative accommodation, contributes to the non-respect of these people’s right to housing. In the light of these criteria, the Committee has held that the situation in France constituted a breach of Article E read in conjunction with Article 31§2 of the Charter in its decision of 24 January 2012 on the merits in complaint European Roma and Travellers’ Forum (ERTF) v. France, No. 64/2011, §§130-135.

With regard to their eviction from sites where they have settled illegally, the situation of migrant Roma has not improved.

**iii. Violation of Article E taken in conjunction with Article 31§2 by reason of a lack of sufficient measures to provide emergency accommodation and reduce homelessness (unanimous)**

They are differences between the right to housing (provided by Article 31§1) and the right to shelter (provided by Article 31§2). A finding of violation regarding the right to shelter with regards to Roma of Romanian and Bulgarian origin has been established in the decision on the merits in complaint European Roma and Travellers’ Forum (ERTF) v. France, No. 64/2011, decision of 24 January 2012, §§126-129. It has previously been considered that the housing conditions described in the present complaint failed to comply with the requirements of Article 31§1 concerning housing.

As regards the right to shelter and to Article E (non-discrimination), notably to establish whether the housing conditions take into account the specific situation of the groups of people concerned, the situation has not changed since the above-mentioned decision and that the violation persists.

**II. ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 16 OF THE CHARTER (UNANIMOUS)**

Roma of Romanian and Bulgarian origin referred to in this complaint include families. In accordance with the principle of equal treatment, Article 16 requires States Parties to ensure the protection of vulnerable families, including Roma families. Consequently, the finding of a violation of Article E taken in conjunction with Article 31 concerning the right to housing of the Roma of Romanian and Bulgarian origin either lawfully residing or working regularly in France also brings about a violation of Article E taken in conjunction with Article 16.

It is noted that the issue raised by the complainant organisation with regard to family benefits concerns exclusively migrant Roma not lawfully resident in France. Article 16 is not applicable to them due to the limitations in the Appendix to the Charter and there is therefore no violation of Article 16 on this matter.

**III. VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 30 OF THE CHARTER (UNANIMOUS)**

With a view to ensuring the effective exercise of the right to protection against social exclusion, Article 30 requires States Parties to adopt an overall and co-ordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access to fundamental social rights. Also control mechanisms should be put in place involving all relevant persons, including civil society representatives and individuals affected by exclusion. This approach must link and integrate policies in a consistent way. Adequate resources are one of the main elements of the overall strategy to fight social exclusion, and should be allocated to attain the objectives of the strategy. Finally, the measures should be adequate in their quality and quantity to the nature and extent of social exclusion in the country concerned. Living in a situation of social exclusion undermines human dignity.

It follows from the conclusions under Article 31 that the housing policy in favour of the migrant Roma lawfully residing or regularly working in France is insufficient. Consequently, France has not demonstrated a co-ordinated approach to promoting effective access to housing for these persons who live or risk living in a situation of social exclusion.

No specific measures have been taken in this field towards the migrant Roma population. Treating them in the same manner as the rest of the population when they are in a different situation constitutes discrimination.

**IV. VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 19§8 OF THE CHARTER (UNANIMOUS)**

Article 19§8 applies only to migrant workers lawfully residing within the territory of States Parties and not to migrants in an irregular situation.

Migrant workers residing lawfully within the territory of a State Party cannot be deported unless they endanger national security or contravene public interest or morality. A decision on a deportation may be made only on the basis of a reasonable and objective examination of the particular situation of each individual. A possibility to appeal against the deportation decision in courts is not sufficient to fulfil this obligation.

It appears that only a small proportion of the migrant Roma of Romanian and Bulgarian origin seems to reside legally in France. No distinction seems, however, to be made among them on the basis of the legality of their residence upon their deportation. In fact, neither *Médecins du Monde* nor the government provide documents demonstrating that the legal French residence status of the person deported is taken into consideration. In particular, the length of residence within the territory is not mentioned in the orders to leave the country.

Article 19§8 is a provision imposing an obligation of result, guaranteeing the right to protection for each individual of the affected group. Moreover, in cases where a fundamental right such as the right of residence is at stake, it is up to the government to demonstrate that a person does not reside legally on its territory (in the instant case for longer than three months).The government states, having submitted no evidence thereof, that each deportation measure is adopted following an examination assessing the personal circumstances of the applicant. It appears from other sources however, that expulsion procedures have been launched without any evidence of the person having entered the French territory for more than the period of three months. As a consequence, there has been no real individual examination of the situations but, in fact, collective deportations.

In the decision on the merits of Complaint No. 64/2011 (European Roma and Travellers’ Forum (ERTF) v. France) adopted on 24 January 2012, the Committee held that there was a violation of Article E taken in conjunction with Article 19§8. Basing its consideration on the case file, there has been no change in the situation.

**V. VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 17 OF THE CHARTER (UNANIMOUS)**

Access to education is considered as crucial for every child's life and development. Its denial will exacerbate the vulnerability of a child who is unlawfully resident. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, a child who is denied access to education will suffer the consequences in his or her life. States Parties are therefore required, under Article 17§2 of the Charter, to ensure that children unlawfully resident in their territory have effective access to education like any other child.

Article 17 as a whole requires States to establish and maintain an educational system that is both accessible and effective.

The legal texts referred to by the government seem to be in conformity with the requirement of the Charter. Nevertheless, they have not been implemented in a satisfactory manner, in particular concerning the effective access to education for Roma children of Romanian and Bulgarian origin, as demonstrated by various studies and several decisions of the French Equal Opportunities and Anti-Discrimination Commission (“HALDE”).

According to the 10th report of France on the implementation of the Charter, the enrolment rate in schools for the general population is 100%. This differs appreciably from the information provided by the complainant organisation on the school enrolment figures of Roma children of Romanian and Bulgarian origin.

It appears from the case file that the government does not take special measures for the benefit of members of a vulnerable group in order to ensure equal access to education for Roma children of Romanian and Bulgarian origin. The French education system is not sufficiently accessible to these children.

**VI. VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 11 OF THE CHARTER**

**i. Violation of Article E taken in conjunction with Article 11§1 by reason of difficulties of access to health care (unanimous)**

The health care system must be accessible to everyone, in particular to disadvantaged groups which should not be victims of discrimination. The right of access to health care requires that the cost of health care should be borne, at least in part, by the community as a whole. This also requires that the cost of health care does not represent an excessively heavy burden for the individual. Steps must therefore be taken to reduce the financial burden on patients, in particular those from the most disadvantaged sections of the community.

When ruling on situations where the interpretation of the Charter concerns the rights of a child, the Committee considers itself bound by the internationally recognised principle of the best interests of the child. In this regard, it refers to the Convention on the Rights of the Child of 20 November 1989, in particular to Article 24 thereof on the enjoyment of the highest attainable standard of health by children.

The allegations by *Médecins du Monde* on breakdowns in medical care and treatment due to evictions are not contested by the government. In addition, they are underlined by the HALDE, noting that the State authorities confirm that during the eviction operations, the personal situation of the individual, from the standpoint of the continuation of their health treatment, is not taken into consideration or monitored. The HALDE also underlines that the migrant Roma of Romanian and Bulgarian origin residing in France for less than three months do not benefit from any social protection and that, despite the fact that minor children may benefit from State medical assistance without restrictions, in practice their requests are usually rejected. Also the Council of Europe Commissioner for Human Rights has found that the Roma in France have in practice little access to medical care.

The State has failed to meet its positive obligation to ensure that migrant Roma, whatever their residence status, including children, enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often insalubrious living conditions and difficulties they encounter accessing health care.

**ii. Violation of Article E taken in conjunction with Article 11§2 by reason of a lack of information and awareness-raising for the migrant Roma and of counselling and screening on health issues (unanimous)**

It is recalled that free consultations and screening must be provided for pregnant women and children throughout the country.

National rules must provide for the provision of information to the public, as well as its education and participation, with a view to developing a sense of individual responsibility in health matters. States must also, through concrete measures, demonstrate that they implement a public health education policy for the benefit of the population in general and the population groups affected by specific problems in particular.

It has been found that the situation was in conformity with the Charter with regard to the awareness-raising of the general population. However, special attention should be paid to the migrant Roma population due to their particular vulnerability on health issues resulting from their poor living conditions.

Free and regular consultation and screening for pregnant migrant Roma women and for children may be provided on the basis of a circular of the Ministry of Labour, Employment and Health. However, it follows from the information communicated by *Médecins du Monde* and not called into question by the government that the real possibilities of benefitting from such consultations and screenings are insufficient. The government does not mention any concrete action directed at the migrant Roma population in order to inform them of and raise their awareness on health issues.

**iii. Violation of Article E taken in conjunction with Article 11§3 by reason of a lack of prevention of diseases and accidents (unanimous)**

The poor living conditions of the migrant Roma demonstrate that Roma communities do not live in a healthy environment.

States Parties have to take appropriate measures to prevent, as far as possible, epidemic, endemic and other diseases, as well as accidents. Article 11§3 requires States to ensure high immunisation levels, in order to not merely reduce the incidence of these diseases, but also to neutralise the reserves of viruses and thus to reach the objectives set by the World Health Organisation (WHO). Vaccinations on a large scale are recognised as the most efficient and most economical means of combating infectious and epidemic diseases. This concerns the population in general, but with special attention directed at the most vulnerable groups.

A high proportion of infectious diseases, in particular tuberculosis, has been noted among migrant Roma. The Health Observatory Authority of the Ile-de-France region gives explanations on the difficulties encountered by the people working in the health sector, such as a lack of health education provided to Roma, their distrust towards institutions, their limited use of health apparatus and the fact that repeated evictions contribute to weaken access to care and support. On this point, an example is given on the eviction of a Roma camp by police forces on the eve of a vaccination campaign planned in co-operation with the Administrative Department in the context of a measles epidemic.

Infectious diseases and risk of domestic accidents largely results from the poor living conditions in the migrant Roma camps. There is a very low vaccination coverage among the migrant Roma. The government provides no information on preventive measures taken for migrant Roma to address these problems, but refers only to the emergency care which is not sufficient. The particular situation of migrant Roma requires the government to take specific measures in order to address their particular problems. Treating the migrant Roma in the same manner as the rest of the population when they are in a different situation constitutes discrimination.

**VII. ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 13 OF THE CHARTER**

**i. Violation of Article E taken in conjunction with Article 13§1 by reason of a lack of medical assistance for migrant Roma lawfully resident or working regularly in France for more than three months (unanimous)**

Legislation or practice denying entitlement to medical assistance from foreign nationals in the territory of a State Party is contrary to the Charter. It is recalled that Article 13§1 provides that in the event of sickness, people without adequate resources should be granted financial assistance for the purpose of obtaining medical care or provided with such care free of charge.

According to French legislation, migrants lawfully resident or working regularly in France benefit from sickness and maternity insurance in the same conditions as the French population. In order to be affiliated to the general scheme of the universal sickness coverage (CMU), it is nevertheless necessary to justify having resided in France for an uninterrupted period of over three months.

Even though the legislation is applied to the migrant Roma residing lawfully or working regularly in France for more than three months, it emanates from the case file that the implementation of the legislation is problematic and is insufficient.

**ii. Violation of Article 13§4 by reason of a lack of medical assistance for migrant Roma lawfully resident or regularly working in France for less than three months (unanimous)**

As stated above, the universal sickness coverage (CMU) is not applicable to the migrant Roma having resided in France lawfully or worked there regularly for less than three months. This constitutes an unjustified difference in treatment in comparison to nationals.

**iii. Non violation of Article 13§4 by reason of the failure to provide emergency medical assistance to migrant Roma not residing lawfully or not working regularly in France (unanimous)**

Under Article 13§4, States are required to provide appropriate short-term assistance (such as accommodation, food, emergency medical care and clothing) to those in immediate and urgent need. The beneficiaries of this right include foreign nationals who are lawfully present in the territory of a given State but do not have resident status, as well as foreign nationals unlawfully present in the country.

It has already been stated that the situation in France with regards to emergency medical assistance for non-residents is in conformity with Article 13§4 because all foreigners present in the French territory, whether lawfully or unlawfully, are entitled to emergency medical assistance.

Having regard to the information communicated by the delegation of France during the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 15 January 2013,

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights (see Appendix to this resolution) and welcomes the measures already taken by the French Government;

2. calls for to France to report, on the occasion of the submission of the next report concerning the relevant provisions of the Revised European Social Charter, on the implementation of the measures adopted, and keeping, within this framework, the Committee of Ministers informed of all progress made.

*Appendix to Resolution CM/ResChS(2013)6*

**Observations by France on the conclusions of the European Committee of Social Rights (ECSR), submitted by the Representative of France at the GR-SOC meeting of 15 January 2013**



PERMANENT REPRESENTATION OF FRANCE TO THE COUNCIL OF EUROPE

**GR-SOC meeting of 15 January 2013**

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

**Submissions by the government in reply to the ECSR’s report**

It should first be pointed out that the "Roma" are foreign migrants, originating in the main from central and eastern Europe, and are sedentary in their countries of origin. They come under the legislation governing the entry and residence of foreign nationals in French territory. They are different from "Travellers" ("Gens du voyage"), a designation used in French law for a population group, mainly of French nationality, characterised by its specific lifestyle, namely a tradition of living in mobile dwellings.

In the case of the population qualified as "Roma", the French authorities address the situation without regard to their ethnic origin and solely in the light of their status as migrant EU nationals. In accordance with Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective or racial or ethnic origin, French law moreover prohibits all forms of discrimination on grounds of ethnic origin.

The French authorities have implemented a general policy aimed at taking into account the specific problems linked to these migrant population groups.

Concerning those living in camps, since the summer of 2012 the French Government's action has consisted in applying the interministerial circular of 26 August 2012 on forward planning and support for operations to dismantle illegal camps. This instrument marked a new stage in the policy implemented by France. The operational measures taken must be perceived as part of an overall framework aimed at integrating the population groups concerned through employment, housing, access to health care and education.

Other measures are under way: an interministerial inspection has been launched to review the existing arrangements in terms of specific and general social support and welfare measures and regarding schooling.

The task of co-ordinating the action taken by the different ministries concerned and providing an interface with the voluntary sector has also been entrusted to the interministerial delegate for accommodation and access to housing (DIHAL), who reports direct to the Prime Minister.

In practical terms the participants' work involves:

- Mobilising and co-ordinating the various ministerial departments concerned through the creation of an **interministerial steering committee.** This committee, which held its founding meeting on 1 October 2012, was convened for the second time on 12 November 2012.

- Consultation with associations working in the camps and in contact with the groups concerned, as well as with those groups themselves. The DIHAL has established a **national monitoring group**, bringing together associations, field workers and representatives of the ministries concerned. This body, which has held two meetings, on 22 October and 18 December 2012, is a forum for debate and consensus-seeking concerning the measures to be proposed. It carries out collective expertise work to identify, develop and enrich the ingredients of the policy to be pursued and submits proposals to the interministerial steering committee. At its first meeting it decided to set up four working groups:

o Group 1 "Cultural enhancement and the right to culture", the main aim of which is to promote knowledge of the historical and sociological aspects so as to make it possible to improve the work done for and with the populations concerned;

o Group 2 "Accommodation / housing";

o Group 3 "Access to rights" so as to consider means of effectively securing lasting access to the rights generally enjoyed by everyone, in all situations;

o Group 4 "Forward planning and co-ordinated management prior to evacuation of camps".

- The motivation and involvement of the decentralised state agencies through the creation of a **network of *département* level correspondents, appointed by the prefects.** The DIHAL organised a first meeting of these correspondents on 20 November 2012. Their role consists, *inter alia*, in informing the DIHAL of the various situations, initiatives, needs and expectations noted in the field and of good practice and experience existing at that level. They are tasked with rapidly taking stock of the situations existing in their geographical areas (number of camps, of families and of persons concerned, number of school places proposed for the children, number of accommodation or housing solutions offered, number of medical check-ups, number of offers of integration through employment). This inventory will make it possible to gauge the impact of the measures implemented. The correspondents are also responsible for organising consultations with local stakeholders.

- Involvement of local authorities and **establishment of a local government network**, through the creation of a group of volunteer local elected representatives, which met on 3 December 2012 and which aims to pool experience, improve practices at local level and implement decentralised forms of co-operation with the countries of origin.

**I. Housing [§§ 43 to 66; §§ 67 to 82; §§ 83 to 91; §§ 92 to 101; §§ 102 to 108]**

The European Committee of Social Rights considered that Articles 16, 30 and 31, §§ 1 and 2 had been violated on account of the inadequate housing solutions offered to migrant groups originating from central and eastern Europe.

1) The government points out that the **right to housing as provided for in the Charter is intended to apply to French citizens and foreigners residing lawfully** in French territory.

In this connection, it should be noted that foreigners with documented status can apply for social housing subject, under Article R. 441-1 of the Building and Housing Code, to a lawful and permanent residence requirement. The Act of 5 March 2007 establishing an enforceable right to housing provides that the right to decent and independent housing shall be secured by the State to all persons who, while residing lawfully and on a permanent basis in French territory, themselves have insufficient resources to obtain or keep such housing. A decree of 30 October 2012 lays down the criteria for determining the permanency of residence of beneficiaries of the right to decent housing: citizens of European Union member States are not required to hold a residence permit, except for citizens of a member State subject to transitional measures, such as Bulgaria and Romania, who must prove they have a gainful occupation.

The requirements concerning gainful occupations held by persons originating from Bulgaria and Romania have been considerably relaxed. The transitional measures restricting access to salaried employment for nationals of these countries have been eased. Firstly, the list of accessible occupations has been expanded with effect from 1 October 2012, and the new list includes 291 occupations, compared with 150 on the previous list, representing over 72% of the job offers sent to job centres. Secondly, the fee payable by the employer to the French Immigration and Integration Office (OFII) has been eliminated.

In addition, vocational integration measures are being studied. In particular, instructions are being prepared so as to open up to Romanian and Bulgarian nationals the benefits of the "single integration contract" (a State subsidised contract combining vocational training and salaried employment) and of work permits entitling the holder to live in France and work under State subsidised contracts, which thus entails a waiver of the hitherto more stringent legal requirements applicable during the transitional period.

**These measures are intended to foster the integration of migrants originating from Bulgaria and Romania and to ensure that they can become lawfully resident in France, a requirement conditioning their entitlement to housing.**

2) At the same time all the ordinarily available resources can be mobilised to facilitate access to housing for those living in the camps:

- utilisation of so-called ordinary public or private housing stock, along with social support adapted to these households' needs where necessary. Such solutions must be sought through the existing ordinarily applicable arrangements: use of the reserved housing contingents, the *département*-level action plan for the disadvantaged (PDALPD), collective agreements, local partnerships with landlords, and so on.

- recourse to the supported housing sector: temporary furnished social housing, intermediation with landlords, "sliding leases", and so on. This field offers a range of solutions making it possible to provide both housing and services: appropriate forms of tenancy management, assistance with finding and keeping housing, liaison with the environment agency's services.

3) Apart from these binding measures intended to secure housing for persons with lawful residence status, in accordance with the objectives of the European Social Charter, mention must also be made of the fact that, confronted with situations of extreme vulnerability among members of Roma groups occupying undeveloped sites, many local authorities have implemented a deliberate policy of **support regardless of requirements linked to the lawfulness of the recipients' immigration status** by developing "integration villages", of which examples can be found in Saint Denis, Aubervilliers, Saint Ouen, Bagnolet and Montreuil. This has necessitated large-scale government investment in co-operation with the local authorities concerned. This co-operation 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 first essential step was to organise their temporary accommodation. The State intervened 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, costing €844 000 altogether. Similarly, in Bordeaux, financing has been made available for 40 wooden chalets to be used to re-house Roma who were squatting a site, and for a MOUS study costing €150 000 to prepare a diagnosis concerning a community estimated at between 400 and 600 individuals. Two ERDF funding packages, providing a total budget of €470 184 were approved for use to fund the 40 chalets at the Regional Planning Committee meeting of 8 April 2011. The cities of Lille, Marseille and Lyon are also considering building such "integration villages".

A scheme for building low-rent housing has also been launched, in addition to development of the existing social rental housing offer and the building of dwellings suitable for people needing social assistance. The means of supporting social housing tenants will be reinforced. In the same vein, an emergency plan – notably for the Ile-de-France region – will be implemented to re-house a further 15 000 households recognised as having priority status under the Act establishing an enforceable right to housing.

**II. Emergency accommodation [§§ 83 to 91]**

The European Committee of Social Rights considered that the measures taken to provide emergency accommodation and reduce homelessness were inadequate. In this respect it concluded that there had been a violation of Article 31§2 of the Charter.

**The compulsory requirement to provide emergency accommodation involves no condition of lawful presence in France.** This accommodation must enable the household to make use, in conditions showing due regard for human dignity, of “*services providing board and lodging and sanitary facilities and an initial medical, psychological and social welfare evaluation, conducted either within the accommodation facility itself or, through an agreement, by external professionals or bodies, and to be referred to any professional or body capable of affording them the assistance warranted by their state, including residential social reintegration centres, stable accommodation centres, boarding houses, hostels, establishments for dependent elderly persons, short-stay medical care beds or hospital services.”* The Roma population has access to these general means of accommodation where places are available.

The number of places in emergency accommodation reached 83 000 in 2010, having risen by 32 000 places since 2004, corresponding to a 62.2% increase in capacity. Spending on gateway social support services, accommodation solutions and suitable housing increased by 50% over the period 2006 to 2010.

Under the five-year plan to combat poverty and promote social inclusion, to be presented in January 2013, 9 000 places in emergency accommodation will be created or placed on a permanent footing so as to ensure continuity of support, equal treatment and unconditional access. 5 000 of these places will be destined to meet the needs arising from the numerous calls made to the telephone hotline run by the gateway social support services (number 115) and 4 000 places to house asylum seekers.

Moreover, a circular of 23 October 2012 on implementation of accommodation, housing and integration measures during the 2012-13 winter season stipulates that, when the weather conditions are such as to increase the health risk factors for homeless persons, care must be taken to ensure that no one is refused access to accommodation for lack of places.

As for any other population group, the integrated reception and counselling system (SIAO) can be contacted as soon as a need for shelter becomes apparent. It must play its liaison and co-ordination role. The SIAO has to ensure that contact is maintained with persons given shelter so as to prepare for their orientation, following a social evaluation, towards long-term housing solutions or, failing that, provisional accommodation facilities.

**III. Conditions for eviction from illegally occupied sites [§§ 67 to 82]**

The interministerial circular of 26 August 2012 made it possible to adopt a new approach based on a reference framework which was distributed to prefects placing emphasis on the need for forward planning and individual tailoring of the solutions proposed when illegal camps were being dismantled. At local level, operations to dismantle camps take place after an assessment involving the local authorities and relevant associations and are run by a project implementation team, with the participation of mediators from the camps concerned.

The DIHAL supports the public services in this respect by providing them with reference points and methodological tools, helping them to identify technical engineering and financial solutions for the implementation of workable schemes for suitable housing on the ground and, lastly, proposing a multidimensional work programme for the support of the populations concerned.

The **practical results** of this can already be seen, such as the eviction of a camp occupied by over 150 people on the banks of the Garonne in Toulouse on 22 November 2012. This operation followed on from a judicial decision of May 2012. On this occasion, the time was taken for consultation and diagnosis, and individual and differentiated solutions were applied, including voluntary return for five families and access to housing, accommodation and vocational integration for others. The eviction took place peacefully and involved both the police force and State social welfare officers.

**IV. Examination of the personal circumstances of each individual concerned before deciding to issue a deportation order [§§ 109 to 117]**

According to the Committee *“No distinction seems … to be made among the migrant Roma of Romanian and Bulgarian origin on the basis of the legality of their residence in France upon their expulsion”* (depending on whether they have been residing in France for more or less than three months). From this, the Committee infers that there was no real examination of individual circumstances and hence that there was a collective expulsion procedure.

1°) With regard to the procedure, the finding of a violation seems to be based exclusively on a document drawn up by an NGO stating that, out of 198 orders to leave the country served on Romanian Roma between August 2010 and May 2011, 71 contained no evidence that the person concerned was residing illegally in France. The government considers that this evidence on which the Committee bases its finding is fragmentary and unverifiable. The Committee recognises moreover in paragraph 113 that at no time was it shown documents demonstrating that the legal residence status in France of the persons concerned was taken into consideration or not. The government points out that it is willing to provide the Committee with any documents that may be useful for the investigation of the complaint, particularly the disputed administrative decisions, whose existence would bear out the allegations of practices that were incompatible with the Charter. In order to do this, it would, however, need to be given information that would enable it to identify the decisions concerned, such as the identity of the persons and the date and place of the events in question. Unless it obtains this information, the government is completely incapable of providing the documents enabling it to demonstrate that “legal residence status” was “taken into consideration” and can but reiterate the applicable legislation. At no point, moreover, does the Committee state exactly what kind of documents it would have liked to receive from the government.

2°) On the merits, the government would like to point out that there is a proper judicial review in France of expulsion measures taken against foreign nationals. The administrative courts will cancel an expulsion order if the authorities cannot show that they carried out a specific investigation of the situation of the person concerned. With regard to the burden of proof, the *Conseil d’Etat* found, in its Silidor decision of 26 November 2008, that “where there is a dispute on the length of residence of a European Union citizen whom it has been decided to expel, it is for the authorities which took the decision to present the evidence on which they based their finding that the person no longer met the requirements to reside in France”. This shows that, in the administrative courts, the authorities must prove that the foreigner has been residing in France for more than three months, which is in line with the Committee’s arguments in paragraph 114 with regard to the burden of proof.

**V. Education [§§118 to 133]**

While the Committee considered the existing legislation on education to be in conformity with the Charter, it found that there had been a violation of Article 17§2 of the Charter because the measures taken to provide a proper education for Roma children were inadequate.

It should be pointed out that Article L. 111-1 of the Education Code establishes the principle of the right to education for all, without any discrimination, and Article L. 131-1 makes education compulsory “for French and foreign children of both sexes between the ages of six and sixteen”. Under Article L. 131-6, it is for mayors to draw up a list of all the children in their municipality who are subject to compulsory schooling.

In the sphere of education, three new circulars have been issued which make a series of recommendations on arrangements for schooling of children from itinerant and Traveller families and newly arrived non-native-speaker pupils, supervision of arrangements, combating absenteeism and non-attendance, suitable educational provision and the acquisition of elementary knowledge. The circular of 2 October 2012 on the education and schooling of children from itinerant and Traveller families states that even if they do not have any documents authorising them to reside in France, children may be enrolled provisionally in an elementary school and that, at secondary school level, children from an itinerant family are assigned to a school by the education authorities.

At national level, a co-ordinated network of Education Authority Centres for the schooling of new arrivals and Travellers (CASNAVs) has been set up in order to co-ordinate national policies and the general schooling conditions of these pupils and to facilitate the pooling of educational experience.

Under the CASNAV system, the chief education officer of each region appoints a person in charge of “pupils from itinerant and Traveller families” and another in charge of “newly arrived non-native-speaker pupils” and co-ordinates activities in the *départements*.

At *département* level, each education director appoints an officer in charge of “schooling for pupils from itinerant and Traveller families”, whose role is described in the letter of appointment. These officers work in close co-operation with the education inspectors in charge of primary school districts and head teachers in order to facilitate the organisation and co-ordination of all activities relating to the schooling of these children.

At local level, closest to the people concerned, there is thorough supervision to ensure that full and effective schooling is provided, particularly in the three priority areas of schooling for girls, primary schools and lower secondary schools. There should be a genuine local and regional network between district education inspectors, head teachers, local government representatives and the State’s other decentralised services.

The aim of these new measures is to prevent any problems with schooling on the ground and to identify the most suitable solutions as quickly as possible.

In addition, the interministerial circular of 26 August 2012 asks prefects to take measures relating to the material aspects of school which have an impact on school attendance, namely school transport, canteens and stationery supplies. These objectives are taken up in the circular of 2 October 2012. The result is that both prefects and chief education officers must ensure that local authorities, which have the main responsibility for these practical aspects as well as their own services, facilitate access for Roma children to these public services, which, although optional, still have an impact on school attendance.

**VI. Access to health care, screening and prevention [§§ 134 to 182]**

The Committee considered that the measures taken by the national authorities in relation to access to health care, screening, vaccination and prevention were inadequate. It found therefore that there had been violations of Articles 11 and 13 of the Charter.

With regard to health care it should be pointed out that State medical assistance (AME) makes it possible to cover the health costs of persons who are unable to benefit from health insurance. This is the case with unlawfully resident foreigners. The care covered is the same as for people with social insurance.

**AME is accessible to foreigners without residence permits** who are not currently involved in a regularisation procedure. There are two residence requirements however:

o the person needs to have been present in France for three consecutive months or more (this requirement does not apply to children, who are entitled to AME immediately);

o the person must reside in France on something other than a purely occasional basis, showing at least some stability. The only persons excluded are persons passing through France without any plans to settle or those who have come to France specifically to receive medical care.

Since 2011, the ministry in charge of health (Directorate General of Health) has been supporting an experimental health mediation programme whose aim is to promote the health of women and young children living in France in squats and shanty towns. It is co-ordinated by the Association for the Reception of Travellers (ASAV) and is designed to help 150 women and their children and families (1 000 people in all) living in squats and on sites in four *départements*, with the support of other associations. The four health mediators (one per site) are employed by these associations. At local level, the programme is supported by regional health agencies and regional authorities. An initial review has highlighted improvements in access to an official residence, health care and prevention. In 2012 support for the programme and its development cost the ministry in charge of health €55 000. It is planned to continue or even to extend the programme in 2013 in the context of activities supervised by the DIHAL.

Lastly, mothers and children living in camps have free access with no nationality requirements to the services provided by the mother and child welfare centres (PMIs) run by the *départements* (through their councils). It has been confirmed that children supervised by these centres show an improved state of health compared to other children living in camps, particularly in terms of vaccination rates.

In paragraph 176, the Committee states that “*universal sickness coverage (couverture maladie universelle – CMU) is not applicable to the migrant Roma having resided in France lawfully or worked there regularly for less than three months. The Committee considers that this constitutes an unjustified difference in treatment with nationals”* and finds that there has been a violation of Article 13§4.

The government points out that, to be eligible for CMU, claimants are required to have been in the country for three months or more and this applies as much to nationals as it does to legally resident foreigners. Accordingly, a French national returning from a period abroad must also prove that he or she has been in the country for three months or more to be eligible for CMU. Contrary to what the Committee seems to infer in paragraph 176, there is no difference in treatment in this respect.

**VII. The discriminatory nature of the violations**

The ECSR found that the violations of Articles 11, 16, 17, 19§8, 30 and 31 were of a discriminatory nature in breach of Article E of the Charter. The government notes, however, that the ground on which the Committee found that there was discrimination was the lack of any specific measures for Roma people in particularly vulnerable situations. According to the ECSR’s interpretation, **it is discriminatory to treat people in the same way when they are in a different situation.** The ECSR infers from this that the lack of positive discrimination vis-à-vis the Roma population in France constitutes discrimination.

The government notes with satisfaction that the ECSR’s decision does not identify any applicable legal provisions or practices which would limit the access of Roma people to their guaranteed rights solely on the basis of their ethnic origin.

The government would point out, moreover, that while the wording of Article E is identical to that of Article 14 of the European Convention on Human Rights, the very broad interpretation by the ECSR of Article E of the Social Charter differs substantially from the narrower interpretation of Article 14 by the European Court of Human Rights. The government also notes that the ECSR’s very broad interpretation of Article E of the Social Charter prompts it almost systematically to hold that the violations of the Charter it has found are discriminatory whenever this complaint is raised by the complainant organisation.

**The government points out that French national law does not recognise the principle of positive discrimination on the basis of membership of an ethnic group.** Article 1 of the Constitution of 4 October 1958 declares that the Republic must ensure equality before the law without distinction of origin, race or religion. The French Government therefore rejects any differentiation of rights (or positive discrimination) on the ground of ethnic origin. Likewise, the authorities must respect the constitutional principles laid down in the decision of the Constitutional Council of 15 November 2007, in which it was held that the collection of objective ethnic data is an infringement of Article 1 of the Constitution.

[1](https://wcd.coe.int/ViewDoc.jsp?id=2051673&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383" \l "P10_230" \t "_self) In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

[2](https://wcd.coe.int/ViewDoc.jsp?id=2051673&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383" \l "P31_3410" \t "_self) The term “Roma” used at the Council of Europe refers to Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as Gypsies.