IN THE EUROPEAN COURT OF HUMAN RIGHTS

HIRTU AND OTHERS

Applicants

v

FRANCE

Respondent State

Application Number 24720/13

Applicants' Observations on the Government's Observations

1. The applicants submit the following observations on the observations ('GO') submitted by the French Government ('the Government'), dated 16 September 2014. For ease of reference, the applicants follow the structure of the Government's observations.

I. Facts

2. At § 2 GO, the Government assert that the applicants were living in mobile homes. This is incorrect. The caravans in which the applicants were living were not mobile or, at best, were barely mobile. The applicants have already submitted colour photographs to the Court of these caravans (see application, annexes 4 and 20, showing caravans without tyres). The authorities made no attempt to verify whether the applicants' residences were mobile. The applicants' situation is not distinguishable, for the purposes of domestic law or the Convention, from that of people living in any kind of immobile, informal structure. The applicants are not Travellers and do not lead an itinerant lifestyle (except to the extent that they have been forced to do so). The fact that they moved from Romania to France does not make it appropriate to view them as Travellers; they are no different from the many European Union citizens exercising their right to move freely within the Union. The applicants note that the Istfan family applied for social (i.e. stationary) housing in March 2013 (see application, § 27 and annex 22); the Caldaras family applied for social housing in June 2012 (see application, § 16 and annex 18) and are now living in a social-housing flat (see below, § 9). These social housing applications were not made as an

alternative to a travelling lifestyle, but in line with the applicants' wishes to live in ordinary homes.

3. The Government provide no explanation at § 3 GO as to why the mayor waited four months before contacting the Prefect. There is also no indication of any steps that were taken in that period to assist the applicants, who were manifestly in a situation of distress.

4. Likewise, the Government provide no explanation at § 4 GO as to why the Prefect waited two months before issuing an eviction order. There is, again, no indication of any steps taken prior to issuing the eviction order to assist the applicants. As to the date at which the order was officially notified to the applicants, it may be that technically notice was not given, and the forty-eight hours did not begin to run, until 2 April 2013. However, the notice, dated 29 March (Good Friday), was posted in the settlement on 30 March, as the Government admit (§ 75 GO), and there was no indication that the 48-hour deadline would only start to run two days later. The applicants had the reasonable impression that the deadline began to run on Good Friday and would expire on 31 March (Easter Sunday).

5. In relation to the judgment of the tribunal adminstratif de Montreuil, which the Government describe at § 5 GO, the applicants draw the Court's attention to § 34 of the full application: the domestic court did not believe there was enough evidence to demonstrate that Mr Hirtu lived on the site. The Government themselves reject this finding (see § 2 GO). The Government do not explain why the defendant before the tribunal administratif de Montreuil – the Préfet de Seine-Saint-Denis – did not concede before that court that Mr Hirtu lived on the site and so had standing (*intérêt à agir*) in those proceedings.

6. While the Government were correct to note that Mr Hirtu's appeal was still pending before the cour administrative d'appel de Versailles at the time their observations were submitted (§ 5 GO, *in fine*), on 7 October 2014 that court delivered its judgment (Annex 1). The Court of Appeal found, as the Government anticipated (§§ 78-80 GO), that the tribunal administratif de Montreuil was wrong to dismiss Mr Hirtu's complaint for lack of standing:

> *…sa qualité d'occupant sans titre du terrain visé par l'arrêté litigieux, qui l'a conduit à élire domicile au cabinet de son conseil en cours d'instance pour les besoins de l'instance, n'est pas sérieusement contestée ; qu'il a ainsi intérêt à agir contre l'arrêté du 29 mars 2013 du préfet de la Seine-Saint-Denis….* (Annex 2, § 2)

7. The Court of Appeal nonetheless rejected the merits of the appeal. The court found that belonging to the Roma community did not mean Mr Hirtu fell outside the personal scope of the law of 5 July 2000 on Travellers. The court also found, in the following terms (cited at full length), that the impugned order was not contrary to the Convention:

12. Considérant, d'une part, qu'un arrêté de mise en demeure de quitter les lieux ne constitue pas, en lui-même, un traitement contraire aux stipulations de l'article 3 de la convention précitée, de sorte que M. HIRTU n'est pas fondé à soutenir que le préfet de la Seine-Saint-Denis aurait méconnu lesdites stipulations ;

13. Considérant, d'autre part, que si M. HIRTU soutient que le préfet aurait méconnu les stipulations de l'article 8 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et mettant en demeure les occupants du terrain litigieux de le quitter dans un délai de quarante-huit heures, il ressort de ce qui a été dit précédemment que cette occupation sans droit ni titre constitue une atteinte à la tranquillité, la salubrité et la sécurité publiques ; que par suite, l'arrêté du 29 mars 2013, eu égard à l'atteinte à l'ordre public ainsi constituée, n'a pas porté au droit au respect de la vie privée et familiale de M. HIRTU, une atteinte disproportionnée aux buts en vue desquels il a été pris ; qu'ainsi, le moyen tiré de la méconnaissance des stipulations précitées ne peut être qu'écarté ;

8. The applicants note, in response to § 6 GO, the Government's admission at § 83 GO that the judgment of the juge du référé of 10 April 2013 was contrary to the applicable case law of the Conseil d'Etat.

9. The applicants also note that some of them have been forcibly evicted from their homes again since the eviction of 12 April 2013. The applicants ask the Court to consider their complaint related to that second eviction (application number 58553/14) when considering this complaint. As the applicants indicated in that complaint, they are not opposed to the two matters being joined in accordance with Rule 42 of the Rules of Court. The applicants also note that the Caldaras family are now living in social housing; their earlier request for social housing was granted in July 2013, following which they were offered a flat, to which they moved, in February 2014 (Annex 2).

II. Statement of Complaints

10. The applicants have no comments on §§ 7-10 GO.

III. Applicable Law

11. In addition to the provisions of the law of 5 July 2000 cited by the Government at § 13 GO, the applicants note the following provisions of that law:

> Article 1-I : *Les communes participent à l'accueil des personnes dites gens du voyage et dont l'habitat traditionnel est constitué de résidences mobiles.*
>
> …

Article 9-I : *Dès lors qu'une commune remplit les obligations qui lui incombent en application de l'article 2, son maire ou, à Paris, le préfet de police peut, par arrêté, interdire en dehors des aires d'accueil aménagées le stationnement sur le territoire de la commune des résidences mobiles mentionnées à l'article 1er.*

12. An order under Article 9-I can only be issued to people if they are living in mobile residences and if they are *gens du voyage*, that is, if their traditional abode is a mobile home. The law does not give the authorities the power to make orders against people who happen to be in mobile homes if those homes are not their traditional abode (or whose homes are not mobile). For example, a person who has fallen on hard times and happens to be living in her car, having been evicted from her (stationary) home, cannot be the subject of an order made under Article 9-I. The Conseil d'Etat, in a recent judgment cited by the Government at § 47 GO, confirmed this interpretation in a case remarkably similar to the applicants' case (judgment no.372422 of 5 March 2014):

> *2. Considérant qu'entrent dans le champ d'application de la loi du 5 juillet 2000 les gens du voyage, quelle que soit leur origine, dont l'habitat est constitué de résidences mobiles et qui ont choisi un mode de vie itinérant ; qu'en revanche, n'entrent pas dans le champ d'application de cette loi les personnes occupant sans titre une parcelle du domaine public dans des abris de fortune ou des caravanes délabrées qui ne constituent pas des résidences mobiles ;*
>
> *…*
>
> *6. Considérant, en premier lieu, qu'il résulte de l'instruction, d'une part, qu'une quarantaine de personnes, dont des enfants, se sont installés sur le terrain litigieux après que la serrure du portail a été forcée ; que sont présents sur le site, à usage d'habitat, des caravanes dont la plupart ne sont pas en état de circuler et que des cabanons en bois ont été construits ; qu'il suit de là que les occupants du site ne peuvent être regardés comme des gens du voyage dont l'habitat est constitué de résidences mobiles et qui ont choisi un mode de vie itinérant ;*

13. The applicants note the Government's assertion at § 18 GO that domestic law provides a remedy before the juge du référé liberté. The applicants draw the Court's attention in this respect to the Government's admission, at § 83 GO, that the juge du référé liberté who handled the applicants' case acted contrary to the case law of the Conseil d'Etat when rejecting their claim on procedural grounds.

14. The applicants draw the Court's attention to Article L.345-2-2 of the Code de l'action sociale et des familles:

> *Toute personne sans abri en situation de détresse médicale, psychique ou sociale a accès, à tout moment, à un dispositif d'hébergement d'urgence.*

Cet hébergement d'urgence doit lui permettre, dans des conditions d'accueil conformes à la dignité de la personne humaine, de bénéficier de prestations assurant le gîte, le couvert et l'hygiène, une première évaluation médicale, psychique et sociale, réalisée au sein de la structure d'hébergement ou, par convention, par des professionnels ou des organismes extérieurs et d'être orientée vers tout professionnel ou toute structure susceptibles de lui apporter l'aide justifiée par son état, notamment un centre d'hébergement et de réinsertion sociale, un hébergement de stabilisation, une pension de famille, un logement-foyer, un établissement pour personnes âgées dépendantes, un lit halte soins santé ou un service hospitalier.

15. The applicants also draw the Court's attention to Article L.300-1 of the Code de la construction et de l'habitation:

Le droit à un logement décent et indépendant, mentionné à l'article 1er de la loi no 90-449 du 31 mai 1990 visant à la mise en œuvre du droit au logement, est garanti par l'Etat à toute personne qui, résidant sur le territoire français de façon régulière et dans des conditions de permanence définies par décret en Conseil d'Etat, n'est pas en mesure d'y accéder par ses propres moyens ou de s'y maintenir.

IV. Law

1) Admissibility

16. The applicants reject the Government's assertion that they have not exhausted domestic remedies (§§ 19-28).

17. The applicants, like the Défenseur des droits in his third-party intervention ('DDD') in this case, assert that in order for a remedy against a forced eviction to be compatible with Article 13, it must have automatic suspensive effect (DDD, page 10). To the extent that the applicants had an arguable claim under Article 3, they were entitled to such a remedy. See *Gebremedhin v France* (2007), § 66; see also DDD, page 10. The applicants maintain their claim that the eviction was contrary to Article 3 (see below, §§ 21-26). Even if the Court finds that the applicants only had an arguable claim under Article 8, the applicants submit that their case falls within that class of Article 8 cases where the harm is potentially irreversible, also entitling them to a remedy with automatic suspensive effect: the applicants, families with children and all members of a particularly vulnerable group, were forcibly evicted and left to sleep rough. See, mutatis mutandis, *Al-Sadoon and Mufti v United Kingdom* (2010), § 160 ('*While there is no specific provision in the Convention concerning the domains in which Rule 39 will apply, requests for its application usually concern the right to life (Article 2), the right not to be subjected to torture or inhuman treatment (Article 3) and, exceptionally, the right to respect for private and family life (Article 8)*' (emphasis added)). The need for remedies with automatic suspensive effect in cases

of evictions, particularly where those being evicted are Roma, is also implicit in the Court's case law. See, e.g., *Yordanova and others v Bulgaria* (2012), § 118 (iv); *Winterstein and others v France* (2013), §§ 148(δ) and 159; see also *Rousk v Sweden* (2013), §§ 137-139.

18. None of the remedies available to the applicants and described at §§ 13-18 GO had automatic suspensive effect except for the challenge under Article 9.II bis of the law of 5 July 2000. Mr Hirtu exercised that suspensive appeal but, as explained above, he was refused on the erroneous procedural basis that he did not have standing. The other applicants could not be expected to exercise the same remedy and expect a different result; in any event, they believed that they only had 48 hours (including Holy Saturday and Easter Sunday) to do so. If the only remedy with automatic suspensive effect against treatment arguably contrary to Article 3 must be exercised within 48 hours (especially over a holiday weekend), that remedy is not sufficient to meet the requirements of Article 13. See *I.M. v France* (2012), § 120. The remedy was therefore ineffective and did not have to be exhausted. None of the other remedies (notably the remedy before the juge du référé liberté) had automatic suspensive effect, nor did Mr Hirtu's appeal to the Court of Appeal against the decision of 4 April 2013. There was therefore no effective remedy and so no remedy that the applicants were required to exhaust before complaining to the Court.

19. The applicants invite the Court to declare their case admissible.

2) The violations of Articles 3, 8 and 13

a. The admissibility of the complaints under Articles 3 and 8

20. In response to §§ 29-32 GO, the applicants maintain that the appeal before the cour d'appel administratif de Versailles was ineffective. As set out above (§§ 17-19), the applicants were only required to exhaust remedies with automatic suspensive effect, as any other remedy is not effective. That appeal did not have automatic suspensive effect. The same is true for any further appeal against the judgment of 7 October 2014.

b. The violation of Article 3

i. The Court's Case Law

21. The applicants offer two observations in response to the Government's overview of the Court's case law on Article 3 (§§ 34-36 GO).
    a. The Government confuse Roma and Travellers when citing *Moldovan and others (no.2) v Romania* (2005) at § 36 GO ('*Concernant plus précisément la situation des gens du voyage…*'). There is no indication in that case (*Moldovan*) that the applicants considered themselves Travellers or that they led the itinerant lifestyle ordinarily associated with Travellers. The Government's slip is significant; like the prefect who delivered the order

of 29 March 2013 and the Court of Appeal of Versailles in its judgment of 7 October 2014, the Government conflate Roma who do not necessarily make mobile residences their traditional form of housing with Travellers (who may or may not be Roma). While the Court has rightly associated the difficulties that the two groups face in cases such as *Winterstein and others v France* (2013), not all Roma are Travellers. The French authorities did not understand that distinction in this case, which led to a violation of domestic law and, ipso facto, the Convention: the French authorities erroneously applied a law meant to deal with Travellers to Roma who do not travel. See above, §§ 11-12, and below, §§ 28-30.

b. The Government have not included a reference to a key Article 3 judgment cited by the Défenseur des droits (page 9, DDD): in *M.S.S. v Belgium and Greece* (Grand Chamber, 2011), §§ 249-264, the Court found that leaving members of a 'particularly vulnerable group' homeless, in violation of their right to social support under national and EU law, amounts to a violation of Article 3.

ii. Application to the Present Case

22. The applicants maintain their complaint that they suffered treatment incompatible with Article 3. The Government base their defence against this complaint on the fact that the applicants left the settlement on the night of 11 April 2013 (§ 38 GO). The Government's observations do not convey a complete understanding of the sequence of events that occurred that night. As set out at § 9 of the application, the applicants left the site during the night of 11 April following threats made by the police earlier that day that they would be evicted. The applicants settled nearby. Police officers carrying firearms and accompanied by dogs came to where the applicants were staying, shouted at the applicants, threatened them, and impounded most of their caravans, leaving most of the applicants, as stated in the application, 'quite literally on the street'. The applicants submit that they were in a position comparable to that of the applicant in *M.S.S. v Belgium and Greece* (Grand Chamber, 2011), §§ 249-264 in two key respects that led to a finding of a violation of Article 3 in that earlier case.

    a. Like the applicant in *M.S.S.*, the applicants in the present case had a right under European Union law to receive social support. They enjoyed that right thanks to the residence permits they hold. See Case C-456/02 *Trojani*, judgment of the Court of Justice of the European Communities of 7 September 2004, § 43 ('*a citizen of the Union who is not economically active may rely on Article 12 EC [right to non-discriminatory treatment in relation, inter alia, to social assistance] where he has been lawfully resident in the host Member State for a certain time or possesses a residence permit*'). The applicants were also entitled to support as a matter of domestic law: under the so-called *droit à l'hébergement*, people facing homelessness and '*en situation de détresse médicale, psychique ou sociale*' (see above, § 14), are entitled to shelter; and, as holders of residence permits, under the so-called *droit au logement* (see above, § 15), they were entitled to social housing. However, no steps were taken to assist them in asserting those rights before evicting them.

b. Like the applicant in *M.S.S.*, the applicants are members of a '*particularly vulnerable group*', as that term is used in the Court's case law. See, e.g., *Horváth and Kiss v Hungary* (2013), § 110.

23. The Government also disregard the situation of the applicants' children (see application, § 73(iv)). In similar circumstances, where children have been faced with their parents' powerlessness to look after them because of the actions of the authorities, the Court has found a violation of Article 3. See, e.g., *Muskhadzhiyeva and others v Belgium* (2010), §§ 61-63.

24. The fact that the applicants had only been on the site for six months before the eviction (§ 39 GO) cannot affect the applicability of Article 3; what matters, following the Court's case law, is the fact that the applicants were members of a particularly vulnerable group and were left homeless (see above, § 22). In any event, the applicants note that they had been living in La Courneuve for several years before this eviction. As explained at § 4 of the application, the applicants had previously been living at a site, established in May 2011, on the rue du Moulin Fayvon; they left after a similar threat of eviction. The Court will find at Annex 3 a newspaper article about the earlier eviction after which, despite the intervention of the Défenseur des droits, the applicants were left homeless.

25. In response to the Government's claim that the applicants have not shown that they suffered psychological consequences or feelings of humiliation and debasement (§ 40 GO), the applicants draw the Court's attention to § 73(iv) of and annex 6 to the application: Véronique Decker, the director of the school the applicants' children attended in Bobigny, has given evidence about the trauma that the eviction caused the children. In any event, it is clear following the judgment in *M.S.S. v Belgium and Greece* (Grand Chamber, 2012) that Article 3 prohibits leaving members of a particularly vulnerable group street homeless when there is an obligation under domestic law to provide them with social support. The Court's case law does not place any additional burden of proof on Roma to prove their need for special protection. See *Horváth and Kiss v Hungary* (2013), § 102 ('*The Court has further established that, as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection*.').

26. The applicants urge the Court to find a violation of Article 3.

c. Violation of Article 8

27. The applicants note the Government's admission that there has been an interference with their Article 8 rights (§ 43 GO). The applicants maintain their claim that none of the requirements of Article 8 § 2 of the Convention were met.

i. In accordance with the law

28. The applicants maintain that the interference was not in accordance with the law. As the Government point out, the law of 5 July 2000 only applies to people whose 'traditional abode' (*habitat traditionnel*) consists of mobile homes (§ 47). That is not the case of the applicants. Except for those who were offered (and gladly accepted) social housing, the applicants now live in immobile shacks in a slum. Caravans and other mobile homes are not the applicants' traditional abode. They were living in caravans because of poverty. The Government misapply the law of 5 July 2000; they conclude that the existence of motor wheels is enough to make the law applicable (§ 49 GO). This is not true: as the Conseil d'Etat judgment they cite points out, it must also be shown that that the people concerned have chosen an itinerant lifestyle (§ 47 GO and § 7 above). This has never been shown in the applicants' case. Indeed, the report the Government produce as evidence that the applicants were Travellers – a police report dated 25 November 2012 – indicates that not all of the caravans were mobile: '*Stationnées rue Georges Pulitzer et rue de la Prévôté, les residences mobiles sont au nombre de 43. Toutes ne semblent pas pourvues de véhicule tracteur*' (GO annex 3). As a result, neither of the two conditions necessary for the application of the law of 5 July 2000 was present: mobile homes are not the applicants' traditional form of abode, and, as set out above (see above § 2), their caravans were immobile.

29. The applicants appreciate that it is not the Court's place to interpret domestic law: '*the Court will limit its examination to whether the interpretation of the legal provisions relied on by the domestic authorities was arbitrary or unreasonable*'. *Rusu v Austria* (2008), § 55. The applicants have set out above why the application of the law in this case was unreasonable: no steps were taken to determine whether the applicants led a travelling lifestyle or whether their caravans were in fact mobile. The application of the law was also arbitrary. The Court, when considering whether the interference was in accordance with the law, should pay particular consideration to the fact that neither of the domestic courts seized of the matter prior to the eviction considered the substance of the compatibility of the eviction with the law of 5 July 2000.
    a. In Mr Hirtu's case, challenging the eviction order, the domestic court dismissed the case on the basis that Mr Hirtu was not affected by the eviction order (see above, § 5) and so did not have standing. It is noteworthy that the Government admit that the applicant was living on the site (§ 2 GO) and anticipated that this finding would be reversed on appeal (§§ 78-79 GO).
    b. In relation to the case before the juge du référé liberté, the Government have admitted that the judge, when deciding to reject the case on procedural grounds, ignored case law from the Conseil d'Etat dictating the opposite result (§ 83 GO).

30. This approach of the domestic courts prevented the applicants from testing the compatibility of the eviction with the law of 5 July 2000 before the eviction took place. As a result, the first court to rule on the applicability of the law of 5 July 2000 was the cour administrative d'appel de Versailles, which ruled on 7 October 2014, some eighteen months after the eviction took place.

This lack of prior judicial review made the application of the law arbitrary. The applicants recall that '*the wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention and inherent in the object and purpose of Article 8. The law must thus be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct*'. *Munjaz v United Kingdom* (2012), § 88. In this case, the Government can hardly claim that the applicability of the law of 5 July 2000 was foreseeable: the applicants do not identify as Travellers and could not predict that the fact that they were living in broken-down caravans would expose them to that law's urgent-evictions procedure. They also could not predict that the two domestic courts considering their case would refuse on procedural grounds to examine the applicability of the law of 5 July 2000 and that they would be evicted before a domestic court has considered the substance of their claim as to the applicability of that law.

ii. Legitimate aims

31. The Government base their claim that the eviction had a legitimate aim on accusations of criminal activities in the settlement (§§ 51-58 GO). The report found at annex 3 GO refers in particular to an accusation of sexual assault by a resident of the site, as well as to accusations of brawls and begging. The applicants find it scarcely credible that the French authorities' response to such serious accusations would be to order an eviction, as opposed to carrying out an investigation into these alleged criminal acts (particularly the sexual assault). Instead of investigating these alleged offences, which bear the hallmarks of the stereotypes commonly spread about Roma,[1] the authorities chose to evict the community, inflicting what appears to be collective punishment. If there was indeed a sexual predator in the community, the applicants expect that the authorities would have taken action to find him, as their obligations under the Convention require. See, e.g., *M.C. v Bulgaria* (2003), § 153. Instead, they forcibly evicted an entire community based on accusations which read like nothing more than a rehearsal of common stereotypes about Roma. See, mutatis mutandis, *Konstantin Markin v Russia* (Grand Chamber, 2012), § 143 ('*The Court agrees with the Chamber that gender stereotypes… cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation*.').

iii. Necessary in a democratic society

32. The Government cite the appropriate case law at §§ 59-62 GO, but leave out important aspects of that case law, particularly of the Court's judgment in *Winterstein and others v France* (2013).

[1] Council of Europe Commissioner for Human Rights, 'Irresponsible media reporting on Roma propagates negative myths', 24 October 2014: '*Although the Roma are no more inclined to criminal behaviour than anybody else, media insistence on mentioning ethnicity in news reports gives credence to the myth that Roma are by nature criminals. This is not only false, but also dangerous as it risks heightening the already tense relations between the Roma and the majority population all over Europe*'.

The Government disregard the Court's observation at *Winterstein* § 159 : '*La Cour souligne à cet égard que de nombreux textes internationaux ou adoptés dans le cadre du Conseil de l'Europe insistent sur la nécessité, en cas d'expulsions forcées de Roms et gens du voyage, de leur fournir un relogement, sauf en cas de force majeure*'. The applicants submit that this amounts to a requirement under the Convention to ensure that Roma who will be forcibly evicted are provided with rehousing, unless the circumstances are so urgent that this is impossible. The authorities were aware of the applicants' presence for months before the eviction took place yet took no measures to ensure they would be rehoused (despite their entitlement to shelter and social housing under domestic and EU law).

33. The Government rely heavily on the short period of time for which the applicants had been living at the site (§§ 63-65 GO). As set out above (see § 24), the only reason for the applicants' recent arrival at the site was that they had been subjected to a forced eviction previously. The applicants have been resident in France for many years and have resided in the area for a long time (see above § 24). The case law of the Court of Justice of the European Communities cited above makes clear that EU citizens residing in another Member State and who have a residence permit are to be treated like citizens of the host Member State for all purposes coming within EU law, including social support such as social housing (see above, § 18). Having bestowed such residence permits on the applicants, it is disingenuous for the Government now to claim that the applicants do not have durable ties with France in general and the area in which they have been living for several years in particular. The fact that the applicants had residence permits also shows that another possibility was open to the authorities: instead of evicting the applicants and leaving them street homeless, the authorities could have provided them with social support, including rehousing, prior to the eviction.

34. The applicants would gladly have accepted to be housed if suitable housing had been offered to them under the *droit à l'hébergement* and/or the *droit au logement* in national law (see above, §§ 14-15); this was not the case. Indeed, the Caldaras and Istfan families had applied for social housing and they were still waiting for a response at the time of the eviction (see application, § 27). It is unclear why the authorities could not have arranged for the applicants to receive social housing, or at least some form of shelter, before the eviction took place. The applicants note in particular that the Caldaras family received social housing several months after the eviction (see above, § 9 and Annex 2). This shows that the applicants (who are all in the same position) were entitled to social housing and that durable solutions were in theory available to all of them. However, the failure of the authorities responsible for the eviction to work with those responsible for social housing at the time of the eviction meant that the authorities did not comply with their obligation under Article 8 to rehouse all Roma forcibly evicted. See, mutatis mutandis, *Carlson v Swizterland* (2008), § 79 ('*it is for the Contracting States to organise their services and train their personnel in such a way that they can meet the requirements of the Convention*').

35. The Government (ignoring the fact that the Caldaras family were deemed eligible for social housing a few months after the eviction) assert that the applicants were not entitled to rehousing because they already had mobile homes (§ 67 GO). The Government's observations are again out of line with the sequence of events that occurred on 11-12 April 2013. The Hirtu family caravan was impounded, as described at § 14 of the application, and immediately following the eviction, Mr Hirtu and his family (his wife, his parents-in-law, and the ten children of the latter) had to sleep rough in a park. The Caldaras family caravan was also impounded during the eviction, as described at § 17 of the application, and the family had to sleep in a car immediately following the eviction. The Cirpacis' caravan was also impounded, as described at § 22 of the application. Although the Istfan family did not have their caravan impounded, they nonetheless considered themselves homeless and turned to the authorities (the SAMU social). As explained in the application (§ 26), the SAMU social turned them away, not because they considered the family to have a home, but because the family was too large to be housed. In these circumstances, the Government cannot seriously maintain that the applicants were ineligible for rehousing because they already had adequate homes.

36. Although the judgment of the cour administrative d'appel de Versailles was delivered after the eviction and therefore, for the reasons set out above, was not effective, the applicants note that that court did not consider the proportionality of the eviction (see above, § 7); '*une fois constatée la non-conformité de leur présence au plan d'occupation des sols, [la cour d'appel a] accordé à cet aspect une importance prépondérante, sans le mettre en balance d'aucune façon avec les arguments invoqués par les requérants*'. *Winterstein and others v France* (2013), § 156.

d. Article 13

37. The applicants maintain their claim that they did not have access to an effective remedy.

i. The challenge to the lawfulness of the eviction orders

38. As explained above, while the notification of the eviction order may technically have taken place on 2 April 2013, the applicants reasonably believed that the 48 hours had already begun to run on 29 March 2013, the date indicated on the order. The applicants therefore found themselves with little time (48 hours including Holy Saturday and Easter Sunday), placing them in a position similar to the applicant in *I.M. v France* (2012), §§ 150-152. The manifest illegality of the decision of the tribunal administratif de Montreuil also deprived them of an effective remedy, by depriving them of access to a tribunal capable of examining the lawfulness of the eviction and its compatibility with the Convention prior to the eviction. See, mutatis mutandis, *Metropolitan Church of Bessarabia v Moldova* (2001), § 139 ('*the Supreme Court of Justice did not reply to the applicants' main complaints*'). The applicants therefore reject the Government's arguments at §§ 74-77 GO.

39. The appeal before the Court of Appeal did not have automatic suspensive effect. For the reasons outlined above, it was therefore incapable of curing the defects in the original appeal to the tribunal administratif de Montreuil, contrary to the Government's claims at §§ 78-80 GO. The same is true for any further appeal to the Conseil d'Etat.

ii. **The référé liberté procedure**

40. As explained above (see § 17), because the référé liberté procedure lacked automatic suspensive effect, it did not provide an effective remedy against the eviction. The applicants had an arguable claim that the eviction would violate their Article 3 rights, meaning that they were entitled to a remedy with automatic suspensive effect. *Gebremedhin v France* (2007), § 66. The nature of the Article 8 rights at issue was also such as to require a remedy with automatic suspensive effect. See, mutatis mutandis, *Al-Sadoon and Mufti v United Kingdom* (2010), § 160. The Government reject this assertion by noting that the juge du référé had a discretionary power to suspend enforcement of the impugned order (§ 81 GO). However, the Court's case law is clear on this point: '*it is not possible to exclude the risk that in a system where stays of execution must be applied for and are discretionary they may be refused wrongly*…. *[T]he requirements of Article 13, and of the other provisions of the Convention, take the form of a guarantee and not of a mere statement of intent or a practical arrangement*'. *Čonka v Belgium* (2002), §§ 82-83.

41. The Government's own arguments demonstrate why a remedy with automatic suspensive effect is necessary where families who form part of a particularly vulnerable group face the potentially irreversible effects of being left homeless. At § 82 GO, the Government speculate that although the juge du référé rejected the applicants' request to suspend the eviction, the Conseil d'Etat would have handled the issue differently. This cynical suggestion ignores the fact that the applicants were left street homeless before they could take their case to the Conseil d'Etat, which would have taken many months, as the Government know well: the applicants would first have had to ask for legal aid, an application which usually takes a minimum of six months. In the meantime, the applicants, and notably their children, were left to sleep on the street. The applicants also note that they received advice from counsel that they lacked standing (*intérêt à agir*) before the Conseil d'Etat once the eviction had taken place: the purpose of a référé liberté is to stop a violation of fundamental rights, and once the eviction had happened, it could no longer serve that purpose. See Annex 4 (letter from the applicants' lawyer in the référé proceedings, indicating the advice received from counsel before the Conseil d'Etat that the applicants did not have standing to lodge an appeal).

42. The Government's admission at § 83 that the juge du référé acted unlawfully (that is, contrary to the case law of the Conseil d'Etat) is therefore not evidence of a failure to exhaust domestic remedies, but of a failure to respect the applicants' Convention rights. According to the Government's theory, it is acceptable under Article 13 for the juge du référé to have made an error, resulting in Roma families with children being left to sleep rough, as long as the Conseil

d'Etat could confirm months or years later that it was indeed an error (but not, of course, rectify the potentially irreversible damage done). Such an argument amounts to reducing the content of Article 13 (taken with Articles 3 and 8) to '*a mere statement of intent or a practical arrangement*', as opposed to a guarantee rooted in the rule of law. *Čonka v Belgium* (2002), § 83.

43. The applicants, in conclusion, invite the Court to declare their application admissible and invite the Court to find violations of Articles 3 and 8 of the Convention, taken on their own and with Articles 13 and 14.

List of Annexes

1. Judgment of the cour administratif d'appel de Versailles of 7 October 2014, following Mr Hirtu's appeal against the judgment of the tribunal adminsitratif de Montreuil

2. Social housing proposal to the Caldaras family and accompanying documents, 13 February 2014

3. *Le Parisien*, "Roms : le Défenseur des droits interpelle le préfet", 28 September 2012

4. Letter from the applicants' lawyer in their référé complaint explaining the advice of counsel before the Conseil d'Etat that they did not have standing to appeal to the Conseil d'Etat

The European Roma Rights Centre
4 November 2014