European Court of Human Rights
Council of Europe
Strasbourg, France

Application under Article 34 of the European Convention on Human Rights and Rules 45 and 47 of the Rules of the Court

APPLICATION

Procedure

30. On 29 March 2013 (Good Friday) the Prefecture of Seine-Saint-Denis issued a decision[21] ordering the eviction of the Romani families settled in rue Politzer and rue de la Prévoté, La Courneuve within 48 hours from the date when the decision was served. In its decision the Prefecture argued that the Roma were camping without authorisation on a public place without electricity, water and sanitary conditions which caused public disturbance, a climate of insecurity and a threat to public health.

31. The Prefecture enlisted several laws and regulations as a basis of its decision. The main legal basis was, however, the allegation that the Romani residents are members of the French traveller communities, the *gens du voyage*. The argument of the eviction order was based on the Law No 2000-614 of 5 July 2000, the so-called "Besson Law" which applies to the French traveller communities. The decision stated that when travellers park their mobile homes outside of the designated halting sites, in violation of public order, the mayor, the owner or holder of the right to use the land occupied, can ask the prefect to give notice to the occupants to leave. The notice can only occur if the parking is likely to impair the health, safety or public tranquillity. (…) In these instances the prefect can proceed with the forced eviction of mobile residences.[22] Therefore the Prefecture called upon the residents to leave the settlement within 48 hours of the date of giving notice.

32. The prefecture further relied on the Criminal Code that by residing illegally on the public land and "establishing a house, even temporarily, in the case when the municipality has complied with its obligation to provide halting sites for travellers, those settling down without authorisation commits a criminal offence and can be punished with imprisonment or fine."[23] No evidence was provided as to the applicability of these provisions to the present case.

33. The first applicant, Mr Hirtu, appealed the decision to the Administrative Tribunal of Montreuil on 31 March (Easter Sunday), within the given time-limit (i.e. 48 hours), claiming that although he is living in a caravan, he is not a French citizen and is not a traveller (like all Roma living in the camp) therefore he cannot access to traveller sites ("aires d'acceuil") and cannot get with the required document ("livret special de circulation"). He claimed that he is a migrant Roma and he lives a settled life-style therefore the law based on which the Prefecture ordered the eviction is not applicable to him. The applicant argued that the

[21] Arrete No. 2013-0811. See Annex No. 12.
[22] Article 1 of the Law No 2000-614 of 5 July 2000.
[23] Article 322-4-1 of the Criminal Code, available at: http://www.legifrance.gouv.fr/affichCode.do;jsessionid=229274C42AEAE66966E5467090791325.tpdjo10v_1?idSectionTA=LEGISCTA000006165341&cidTexte=LEGITEXT000006070719&dateTexte=20130416.

authorities argument that the applicant and the community which was perceived to be travellers by parking outside of the designated area was impairing health, safety or public tranquillity was not substantiated by the authorities, the community had sanitary conditions and no incident had taken place that would have caused public disturbance. They also argued that this constituted a criminal offence. However, the French Prefecture did not provide any evidence or arguments as to the applicability of these provisions for the present case. In addition the applicant claimed that his eviction would violate his right not to be subjected to inhuman and degrading treatment and his right to family and private right as guaranteed under Articles 3 and 8 of the Convention. Due to the very limited time allocated for appeal, the public holiday and due to the limited access to legal assistance Roma had, only the Mr Hirtu could access a lawyer, who filed over the Easter holiday weekend. However, the notice served referred to a geographical area, not an individual, so Mr Hirtu's appeal sufficed for all the residents, including the other applicants.

34. The appeal hearing took place on 4 April 2013 at 5pm. The appeal was dismissed, effectively based on procedural grounds. That decision was handed down at 6.30pm the same day. The tribunal found that the Mr Hirtu did not provide enough evidence that he lived in the settlement concerned, as his address indicated on the appeal was not an address corresponding to the settlement. This was an absurdity, as (as Mr Hirtu argued) proof was impossible to provide, as who could not have a residence permit for his current address as it was not registered as a recognised postal address.[24] The tribunal found that the address indicated on the residence permit and the address indicated on the appeal (that of his legal representative) was not the same therefore the appeal was dismissed without considering the merits, although the tribunal found that Mr Hirtu would come under jurisdiction of the law on *gens du voyage*. On 4 April the decision on the eviction was final and could be executed.[25]

35. In a parallel procedure to that taken by Mr Hirtu, three of the applicants (Dorina Cirpaci, Virginia Istfan, Stanica Caldaras) also took an injunction procedure (*requete en référé contre l'arrêté* No. 2013-0811, pris le 29 mars), which was heard on 9 April. The case was dismissed on 10 April. However, that process did not have the effect of suspending the eviction order which was confirmed on 4 April and therefore the eviction could take place.[26] An appeal was submitted to the Supreme Court (*Conseil d'Etat*) however it was withdrawn

[24] Article R-313-1 of the French Immigration Code (Code de l'entrée, du séjour et du droit d'asile); available at: http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000019103046&cidTexte=LEGITEXT000006070158.
[25] Decision of the Administrative Tribunal of Montreuil, No. 1303692-7, 4 April, 2013. See Annex No. 13.
[26] Decision of the Administrative Tribunal of Montreuil, 10 April 2013. See Annex No 15.

since in the meantime the eviction occurred and the purpose of the application (to prevent the eviction) could not have been realised by this procedure.[27]

36. Before the eviction happened the seriousness and urgency of the case was underlined by the fact that again the *Défenseur des Droits* has intervened on behalf of the community.[28] The applicants are unaware of any response to the intervention, but note that September's similar correspondence did not have effect. In any case, they were evicted therefore the intervention proved to be ineffective.

III STATEMENT OF VIOLATIONS OF THE CONVENTION

37. The applicants submit that their right to be free from inhuman and degrading treatment, their right to home and to private and family life, and their children's right to education as guaranteed under Articles 3 and 8 of the Convention and Article 2 of Protocol No 1 were violated. In addition, the applicants claim that the intervention by the French authorities was discriminatory regarding their claim under Articles 3 and 8 of the Convention and in breach of Article 14. Furthermore the applicants claim that their right to effective remedy has been also violated guaranteed under Article 13 of the Convention.

ARTICLE 8

38. The applicants submit that their eviction and their subsequent periods of homelessness and precarious living amount to a breach of their rights under Article 8, in particular in respect of their rights to home and to private and family life. They submit that the government has breached its negative obligations in respect of the eviction and its positive obligations in respect of failing to provide homes and access to other services, including education, to the applicants, once they were rendered homeless.

Home

39. The Court has described 'home' as 'the place, the physically defined area, where private and family life develops'.[29] The Court has also long since established that 'home' includes caravans and homes built in contravention of applicable town planning regulations.[30]

40. The applicants submit that the caravans in which they were living in rue Politzer were

[27] Decision of the Supreme Court, 7 May 2013. See Annex No. 24.
[28] Decision of the Défenseur des Droits. See Annex No. 14.
[29] *Moreno Gomez v Spain*, App. No. 4142/02, 16 November 2004, para. 53.
[30] *Buckley v the United Kingdom*, App. No. 20348/92, 25 September 1996; *Chapman v the United Kingdom*, 27238/95, 18 January 2001; *Yordanova and others v Bulgaria*, 25446/06, 24 April 2012.

indubitably their homes. They raised families there, shared communal facilities (toilets, refuse disposal, etc.) and there was an active community life within the small settlement.

41. The notion of protection of 'home' has been developed not only in the jurisprudence of the Court, but also, for example by the UN's Human Rights Committee, which found a violation of right to home in Article 17 of the International Covenant on Civil and Political Rights.[31]

Family and private life

42. The applicants submit that since they were part of a community of around 250 Roma, all of whom were evicted, their forced eviction had repercussions on the applicants' lifestyle, health, social and family ties, as well as it prevented their children's access to school. Therefore the applicants submit that their forced eviction did not affect only their "homes" but also their private and family life.[32]

43. The applicants submit that the interference was unlawful; it was disproportionate, did not pursue a legitimate aim and was not necessary.

Lawfulness

44. Applicants note that the interference was unlawful in itself as the legal basis used for their eviction, namely the law No. 200-614 of 5 July 2000 on gens du voyage aims at regulating those traveller communities for whom traditional habitat is "mobile residences". As noted above the applicants do not belong to traveller communities. Therefore this law could not serve as the legal basis for ordering the eviction of the applicants and then consequently evicting them.

45. The applicants submit that, although they do live in caravans, they do so out of necessity. (Paulina Cirpaci used to live in apartments in France and the Caldaras and Istfan families had both applied for regular social housing in France some time prior to their evictions). They do not belong to traveller communities, i.e. they are not *gens du voyage*; they are EU migrant Roma from Romania living a settled lifestyle. The caravans are static and are not apt for travelling, as demonstrated by the fact that it took them five hours to manage to move their caravans a few streets' distance on the night of 11/12 April 2013.

46. Furthermore, even if they wished to enter the halting sites for the travellers they could not, since they are not travellers and do not bear the identity papers travellers must have to access halting sites.

---

[31] *Naidenova and others v Bulgaria*, CCPR/C/106/D/2073/2011, 27 November 2012.
[32] *Yordanova*, note 29 supra, para 105; Chapman, note 42 supra, para. 73.

47. Yet further, even if this were not the case, there was no halting site with room for them, as the provision of traveller halting sites is well-known to be inadequate.[33] The most recent figures available for provision of halting sites in Seine-Saint-Denis, published by the local administration in 2012, indicate that there are only 23% of the 600 places allocated to the *département* under the Besson Law and that in La Courneuve there are only 30 places.[34]

48. The applicants submit that they have been living in the settlement in the static caravans in the streets concerned since 1 October 2012 and most of them have been living in settlements around Seine-Saint-Denis for more than 10 years. This is evidenced by the fact that they have French residence permits and children born in France, who attend both elementary and secondary schools. The applicants lived in the settlement a "settled" life and they did not wish to move from their settlement unless they were forced to do so. This view of Roma who do not have French citizenship was supported by the Administrative Tribunal of Lille in a decision on 13 May 2013[35], which recognised that the Besson Law did not apply in a case similar to that of the applicants 'en l'absence de tradition et de culture de vie itinérante des Roms'.

49. The applicants submit, in short, that the basis of the eviction order was misconstrued in law and that the French courts – wrongly – did not consider the wider arguments the applicants submitted, particularly on human rights grounds.

50. The applicants also submit that their eviction on the morning of 12 April 2013 was unlawful, insofar as it must be seen as a continuation of the action to evict. The applicants had taken all steps within their power to challenge and halt the eviction: an appeal, injunctions proceedings and finally an application for interim measures to the Court. They would never have left their settlement at rue Politzer, which was settled and relatively well-serviced, but for the threat of a next-day 6.30am eviction and demolition operation announced by police on the evening of 11 April.

51. Additionally and/or alternatively, the applicants note that during their eviction from Bobigny on 12 April: there was no effort to consider the human rights implications of an eviction by police officers; that police officers appeared to rely again on the Besson Law, which is not applicable and therefore unlawful; and that the heavy presence of armed officers and police

---

[33] See Decision of the European Committee of Social Rights, *European Roma Rights Centre v France*, paras 37-41, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC51Merits_en.pdf.
[34] *Le logement et l'hébergement en Seine-Saint-Denis*, page 19, available at: http://www.drihl.ile-de-france.developpement-durable.gouv.fr/IMG/pdf/Logement_et_hebergement_93_-_2012_cle0e8d22.pdf at page 19.
[35] *Université de Lille I Sciences et Technologie c Occupants sans titre*, case number 1302165.

dogs and the aggression displayed by police officers renders the operation, in any event, unlawful due to excessive use of force (psychological and to a lesser extent physical).

Legitimate aim

52. The applicants submit that the removal order did not pursue a legitimate aim, notwithstanding the fact that they maintain that legal basis was unlawful.

53. The law on *gens du voyage* stipulates that if travellers are parking in violation of an order of the mayor, the owner or holder of the right to use the land occupied can ask the prefect to give notice to the occupants to leave. The notice can only occur if parking is likely to impair the health, safety or public tranquility. (…) The prefect can proceed with the forced eviction of mobile residences".[36] Under Article II bis, the law stipulates that the recipients of such an eviction order may challenge it at the court (as Mr Hirtu did). According to the law, this appeal suspends the execution of the eviction order.[37] In case of appeal the residing judge shall decide within 72 hours.[38]

54. The French authorities stated in the eviction order that the community was impairing health, safety or public tranquility. They also stated that this constituted a criminal offence (again, though, with flawed reference to *gens du voyage*). However, the French Prefecture did not adduce any evidence or arguments as to the applicability of these provisions for the present case. No justification was presented as to the allegation that the applicants and the community belonging to the traveller community. Nor was there any evidence provided to the likelihood that they presence was impairing the health, safety or public tranquility as required under the law in order to issue an eviction order.

55. If there had been a legitimate aim, the authorities could have taken proceedings earlier and certainly could have spent the time since the community had been there to collect any appropriate evidence. They did not.

Necessary in a democratic society

56. The Court has already established that an 'interference will be considered 'necessary in a democratic society' for a legitimate aim if it answers a 'pressing social need' and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the

[36] Law 2000-614 of 5 July 2000, Article 9 II.
[37] Ibid., Article 9 II. bis.
[38] Ibid.

reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention.'[39]

57. The applicants reiterate that no 'pressing social need' has been clearly identified and that quoting verbatim (inapt) legislation regarding 'health, safety or public tranquility' cannot suffice to identify a real social need and certainly not that that need is 'pressing'.

58. The Court allows a margin of appreciation that leaves national authorities space for assessing a domestic situation, yet the Court has already stated that the margin of appreciation left to authorities "will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights." The Court also stated that "Since Article 8 concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community, where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicants".[40]

59. In the applicants' case no assessment of the situation was carried out by the French authorities *even though* a recent change in French law[41] requires a social assessment to be carried out before any eviction of Roma. Yet, the French authorities did not conduct any assessment before evicting the community. No alternative housing solutions were offered despite the fact that it is required under domestic law.[42]

Proportionality

60. The Court has already noted that the loss of ones home is a most extreme form of interference with the right under Article 8 and therefore it is crucial that it meets the requirement of proportionality and reasonableness – regardless of the fact that the individual has no right of occupation.[43]

61. The applicants submit that their eviction was in no way proportionate. The applicants reiterate that the French authorities failed to identify the legitimate aim of the eviction and, as such, the eviction cannot be considered proportionate.

---

[39] *Yordanova*, note 29 supra, para. 117.
[40] *Yordanova*, note 29 supra, para. 118(ii).
[41] Circulaire du 26 août 2012, available at: http://www.romeurope.org/IMG/pdf/Circulaire_interministerielle_aout_2012.pdf.
[42] Articles L345-1, L345-2, L345-2-2 of Code de l'action sociale de famille.
[43] *Yordanova*, note 29 supra, para. 118(iv), see also: *Kay and Others v the United Kingdom*, no. 37341/06, 21 September 2010, paras. 67-8 and 74, and *Orlić v Croatia*, no. 48833/07, 21 June 2011, para .65.

62. In any event, the applicants submit that the effect on themselves and their families was enormous, in terms of physical, psychological suffering, including the associated health problems of several of the applicants and the grave negative effect on the children's schooling.

Positive obligations

63. The applicants submit that, in addition to the violation under Article 8 directly linked to their eviction, the French authorities have failed to meet their positive obligations under Article 8 in respect of the continuing breaches of the rights to home and to private and family life of the applicants.

64. The applicants refer to paragraphs 1 to 29 above and note that no effort has been made by the authorities to assist with provision of adequate alternative accommodation and absolutely no attention was paid to the well-developed social structure of the settlement at rue Politzer. The Court has noted that this in itself may amount to a breach of the Article 8.[44] The Court has also established the importance of personal security and well-being in reading the right to respect for home under Article 8.[45] The applicants also recall that France is also party to the UN International Covenant on Cultural, Social and Economic Rights and draw the Court's particular attention to France's obligations under that instrument and, in particular, General Comment No. 7.[46]

65. The applicants submit their enforced continuing homelessness and substandard living conditions on a personal and familial basis, including the suffering of their children both through bullying at school and by not being able to go to school must amount to a breach of the applicants' right to home and to private and family life under Article 8 and in this respect, particularly recall the jurisprudence of the Court which recognises that the guarantees in Article 8 are primarily intended to ensure 'the development, without outside interference, of the personality of each individual in his relations with other human beings'.[47] The Court has also recognised the freedom to associate with others as a social feature of the right to respect for private life, referring to a 'zone of interaction of a person with others, even in a public context, which may fall within the scope of 'private life'.[48]

---

[44] *Gladysheva v Russia*, 7097/10, 6 December 2011, para. 96; *Yordanova*, note 42 supra.
[45] *Gillow v UK*, 24 November 241986, 11 EHRR 335.
[46] Available at: http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50.
[47] *Niemietz v Germany* A251-B (1992), 16 EHRR 97 at para 29; *Botta v Italy* 26 EHRR 241, at para 32; *Van Hannover v Germany* 43 EHRR 1, at para 50.
[48] *PG and JH v UK* 2001-IX, at para 56; Peck v UK 36 EHRR 719, at para 57.

ARTICLE 3

66. The applicants submit that the circumstances of their eviction and the conditions in which they have been living since, separately and/or cumulatively, constitute inhuman and degrading treatment, in breach of Article 3.

67. The Court has stated on many occasions that 'Article 3 enshrines one of the fundamental values of democratic society' and also declared that '…Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15§2 even in the event of a public emergency threatening the life of the nation'.[49] Thus under the Convention, any form of torture and inhuman or degrading treatment or punishment is prohibited in absolute terms irrespective of the victim's conduct.[50]

68. Both the Commission and the Court have made clear that Article 3 prohibits the infliction, not only of physical injury, but also of mental suffering. In the case of *Ireland v United Kingdom*, the Court defined terms used in Article 3 as follows: torture as 'deliberate inhuman treatment causing very serious and cruel suffering'; inhuman treatment or punishment as 'the infliction of intense physical and mental suffering'; degrading treatment as 'ill-treatment designed to arouse in victims feelings of fear, anguish, and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance'. [51]

69. In *The Greek Case*, the European Commission explained: 'The notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, which in the particular situation, is unjustifiable…Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience.'[52] In that case, the Commission found that Article 3 covered 'the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault.'[53]

70. This Court has itself made clear that, in evaluating claims of violation of Article 3, it will take into account a range of factors that bear on the vulnerability of the victim. Thus, in its judgment in *Ireland v United Kingdom*, the Court held: "…ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is in the nature of things, relative; it depends on all the circumstances of the case, such as the

---

[49] *Selmouni v France* [GC], no. 25803/94, para 95, ECHR 1999-V, and the *Assenov and Others v Bulgaria* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, para 93, *Labita v Italy* [GC], no. 26772/95, judgment of 6 April 2000.
[50] *Chahal v United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1855, para 79; *Labita v Italy* [GC], no. 26772/95, judgment of 6 April 2000.
[51] *Ireland v United Kingdom*, A-25 (1978).
[52] Report of 5 November 1969, Yearbook XII; *The Greek Case* (1969), p. 186.
[53] Ibid., p. 461.

duration of the treatment, its physical or mental effects and in some cases, the sex, age, and state of health of the victim, etc."[54]

71. The applicants recall also the findings of the Court in the case of *Moldovan and Others v Romania (No 2)*[55], in which case the continuing conditions of a Romani families following being ousted from their homes is similar to those in the instant case. An element of this finding was the hostile attitude from the Romanian courts and local government authorities, considering the applicants' claims, generated mental suffering and degradation amounting to a breach of Article 3. This case is particularly pertinent to the instant case, given the similarity of the subject matter and in the details of the discrimination. *Moldovan* builds on establish jurisprudence of the Court in which racial discrimination was an affront to dignity to the extent of being 'degrading treatment'.[56]

72. The applicants refer again to the details of their situation in paragraphs 1 to 29 above, and refer specifically to the following elements which, they submit, render their treatment and resultant conditions, individually and / or cumulatively in breach of Article 3:

    i) the excessive use of force and presence of around 50 officers, firearms and police dogs at the early morning eviction on 12 April 2013, where very many young children were present and against a community which had already – driven by fear of a police action – left their homes the night before;

    ii) no housing solutions found or suggested, despite an immediate application for assistance for the applicants on the day of eviction, some of the applicants already being in the social housing system. (The temporary SAMU accommodation found only by Mr Hirtu lasted only two weeks and he had no assistance from the state authorities in finding it.);

    iii) all the applicants being forced to live without any shelter whatsoever, for at least some time, with the attendant extreme difficulty of looking after children, in particular, without any sanitary facilities;

    iv) the humiliation to the applicants and to their bullied children of having to attend school after having spent a night (and then a series of nights) in either a park or an over-crowded caravan with no sanitary facilities or means of washing clothes. According to the testimony of the director Ms Decker children suffer from long lasting trauma once experienced a forced eviction. She noted that 'The evictions are often carried out early in the morning, normally at an hour when children are still asleep, so they are woken up

[54] *Ireland v United Kingdom*, Judgment of 18 January 1978, 2 EHRR 25, para. 162. (See also *Aydin v Turkey*, Judgment of 25 September, 1997, para. 84; *Tyrer v United Kingdom*, 2 EHRR 1 (1978), para. 30; *Costello-Roberts v United Kingdom*, 19 EHRR 112 (1993), paras. 26-28.).
[55] July 12, 2005, at para 113.
[56] *East African Asians* cases, 3 EHRR 76 Com Rep, inter alia.

suddenly and have to observe as their belongings are thrown out, they have to leave behind whatever comforts and belongings they have, they see their parents are crying […]'.[57]

v) the relentlessness of the actions by the French authorities against Roma, in the case of several of the applicants, illustrated by the new threat of eviction of *Les Coquetiers*, where some of the applicants now live;

vi) the element of discrimination which accompanies this treatment, exacerbating the applicants' marginalisation and sense of humiliation.

ARTICLE 14 IN CONJUNCTION WITH ARTICLES 3 AND 8

73. The applicants submit that they were forcibly evicted as a result of their ethnic origin and that their treatment amounts to discrimination in breach of Article 14.
In June 2011 the European Committee of Social Rights (ESCR)[58] found France in violation of the Revised European Social Charter. It concluded in its decision of 28 June 2011 that the 2010 evictions and expulsions of Roma (from Romania and Bulgaria) constituted an 'aggravated violation' of the European Social Charter. The ECSR declared that evicting and returning Romanian and Bulgarian Roma to their countries of origin was based on discriminatory provisions and that these expulsions have a collective nature.[59] On 9 November 2011, the Committee of Ministers of the Council of Europe issued a Resolution taking note of the ECSR.[60]

Background

74. The collective complaint alleged that the situation of Roma in France has significantly deteriorated the forced evictions following the announcements on 21 and 28 July 2010 of Nicolas Sarkozy then president of the French Republic that concentrated policy of forced evictions of the so-called unlawful camps and mass expulsions from France was going to be implemented. Moreover an openly discriminatory circular was issued on 5 August 2010, addressing the police chiefs and instructing them to evict unlawful Roma settlements as a priority, manifesting a clear intention to discriminate Roma. Although the circular was later

[57] Testimony of Véronique Decker Director of Elementary School, See Annex No. 6.
[58] Resolution CM/ResChS(2011)9 Collective Complaint No. 63/2010, *Centre on Housing Rights and Evictions (COHRE) v. France,* available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.
[59] European Committee for Social Rights, Decision on the merits of 28 June 2011, Collective Complaint No. 63/2010*Centre on Housing Rights and Evictions (COHRE) v France*, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC63Merits_en.pdf.
[60] Council of Europe, Committee of Ministers, Resolution CM/ResChS(2011)9, Collective Complaint No. 63/2010, *Centre on Housing Rights and Evictions (COHRE) v. France*, available at: https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResChS(2011)9&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

withdrawn; these activities took place and have been continued since, despite the change of the President.

75. In a statement on 14 September 2010, which followed from outrage over the circular of 5 August 2010 and the rhetoric and practices in France over the summer of 2010 in particular, European Commissioner for Justice Viviane Reding condemned the practice of mass expulsions of Roma from France and stated that the expulsion "[…] gave the impression that people are being removed by a member state in the EU just because they belonged to an ethnic minority"[61] and compared the actions of the French authorities to the ethnic expulsions of the Second World War. She stated "This I thought Europe would not have to witness again after the Second World War," she said. "Discrimination on the basis of ethnic origin or race has no place in Europe."[62]

76. In its 2010 concluding observations, the UN Committee on the Elimination of Racial Discrimination expressed concerns over the fact that "notwithstanding recent policies to combat racial discrimination in housing and employment, persons of immigrant origin or from ethnic groups […] continue to be the target of stereotyping and discrimination of all kinds, which impede their integration and advancement at all levels of French society".[63]

77. Regardless of the decision by ECSR, criticism from the European Commission and from CERD, amongst many, the French authorities continued with their discriminatory practices towards migrant Roma in France and the applicants submit that they are victims of those continuing discriminatory practices. Reports such as Amnesty International's 2012 publications, *Chased Away: Forced Evictions in the Ile de France*, support that submission.[64]

Jurisprudence of the Court

78. The applicants do not here rehearse the entirety of this Court's jurisprudence on discrimination, but recall a number of elements which are key in the present case.

79. As regards the limitations of the concept of discrimination, according to this Court's case law on Article 14, discrimination occurs when, without objective and reasonable justification, persons in relevantly similar situations are treated differently[65] or when States fail to treat

---

[61] Reding slams France on Roma expulsions, EuropeanVoice.com, 14 September 2010, available at: http://www.europeanvoice.com/article/2010/09/reding-slams-france-on-roma-expulsions/68855.aspx.
[62] Ibid.
[63] http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/453/20/PDF/G1045320.pdf?OpenElement.
[64] http://www.amnesty.org/en/library/asset/EUR21/012/2012/en/ef5c3d8e-27df-4963-9b98-3b6209a1bf26/eur210122012en.pdf.
[65] *Willis v the United Kingdom*, no. 36042/97, at para. 48, ECHR 2002-IV; and *Okpisz v Germany*, no. 59140/00, at para. 33, 25 October 2005.

differently persons whose situations are significantly different.[66] The Court has also stated that 'no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.'[67] The Court also clarified that discrimination that is potentially contrary to the Convention may result from a *de facto* situation.[68]

80. The applicants belong to the Romani ethnic minority, a group that enjoys protection under Article 14 of the Convention. The Court has noted in previous cases that Roma do not only enjoy protection from discrimination, but that they also require special protection.[69] As attested by the activities of numerous European and international organisations and the recommendations of the Council of Europe bodies, this protection also extends to the sphere of housing.[70]

81. In *Orsus and Others v Croatia* the Court specified that such special protection includes 'positive measures' to stem the high drop out rate of Romani children from school. The Court in *Orsus and Others v Croatia* concluded that the State failed to have 'sufficient regard to their special needs as members of a disadvantaged group' and found a violation of the anti-discrimination protection of the Convention.[71]

82. The applicants submit that their eviction and subsequent treatment forms part of a systematic treatment of Roma in France, that it was based wholly or substantially on their ethnicity and they note that no other group is targeted specific legislation or for the aggressive treatment that Roma are.

Violation of Article 2 of Protocol No 1: Right to education

83. The applicants submit that in addition to the trauma their forced eviction caused, the children's schooling was interrupted which constituted a violation of their right to education as protected by Article 2 of Protocol No. 1 of the Convention.

---

[66] See: *Thlimmenos v Greece* [GC], no. 34369/97, para. 44, ECHR 2000-IV, See also: *"Case relating to certain aspects of the laws on the use of languages in education in Belgium" v Belgium (Merits)*, judgment of 23 July 1968, Series A no. 6, at para. 10.
[67] *Timishev v Russia*, nos. 55762/00 and 55974/00, at para. 58.
[68] *Zarb Adami v Malta*, no. 17209/02, para. 76.
[69] *Chapman v the United Kingdom*, judgment of 18 January 2001, *Connors v the United Kingdom*, judgment of 27 May 2004.
[70] *Yordanova*, note 29 supra.
[71] *Orsus and Others v Croatia*, no. 15766/03, at para. 177.

84. The Court has time and again noted the barriers that exist for Romani children to access quality inclusive education.[72] The applicants note that most of the children attending school were born in France.[73] Against this background, the applicants note that they had strong support for teachers in their children's school in order to help them access education and they are appreciative of that support. However, the consequence of the eviction was that their children were unable to continue to enjoy education, for some in the short-term following eviction and for others with a longer term impact.

85. No less important is the impact that this experience has had and likely will continue to have on the applicants' children, in terms of the quality of education they can realistically receive in the short-term and the long-term impact of missing school and/or having problems at school associated with the eviction.

86. The applicants note, in particular, the findings of the then Commissioner for Human Rights of the Council of Europe has stated that, where evictions or authorised removals take place, "authorities are urged to pay special attention to the issue of Roma and Sinti children's schooling that is unavoidably disrupted in such circumstances."[74]

87. In addition to the inherent dangers of living on the street, the children of the applicants and the wider community were unable to continue to attend school. In addition to the violation of their right to education, that disruption in schooling compounded the trauma of an eviction and of living homeless. The adverse and irreversible effect on the children was both psychological and educational. This was underlined by the director of the Marie Curie elementary school, who noted that evictions have a serious psychological effect on children as they have to witness violence. She notes 'The evictions are often carried out early in the morning, normally at an hour when children are still asleep, so they are woken up suddenly and have to observe as their belongings are thrown out, they have to leave behind whatever comforts and belongings they have, they see their parents are crying […]'.[75] According to her, this causes a long-lasting trauma for children which often manifests in difficulties in reading, writing or understanding French language.

88. The eviction and subsequent living conditions have meant that all of the children missed some school immediately after the eviction. The children of the Istfan and Caldaras families continue in school, despite bullying and general difficulties in studying when living in such

[72] *DH and others v the Czech Republic*, *Orsus and others v Croatia*, *Sampanis v Greece*, *Sampani v Greece*, *Horvath and Kiss v Hungary.*
[73] Birth Certificates of the Children, See Annex No. 25.
[74] Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009, CommDH(2009)16 (16 April 2009), para. 53.
[75] Testimony of Véronique Decker Director of Elementary School. See Annex No. 6.

precarious situations. The psychological effects attested to by the school director are already mentioned in paragraph 88 above.

89. The enforced homelessness of the Cirpaci and Latcu families have meant that – after managing to get their children to school for some days after the eviction – they are compelled to move away. Their children are therefore no longer able to access the education they have followed for many years.

Violation of Article 13: Right to effective remedy

90. The applicants submit that their rights under Article 13 have been violated insofar as no effective remedy was available to them to challenge their eviction.

91. The applicants submit that the fact that their eviction was based on an inapplicable law and the domestic courts did not recognise this, made it impossible to obtain an effective remedy.

92. Additionally, the applicants submit that the short period of time for appeal of the eviction order (48 hours) did not allow the applicant Mr Hirtu enough time to prepare his case, particularly as this the order was served on Easter Friday. It also meant that the other applicants and others from the settlement were unable to appeal.

93. In view of the applicants the injunctive procedure available to them did not provide an effective remedy to the applicants, as it did not have a suspensive effect. They could – and indeed were – evicted any time from the 48 hours after the date of serving the eviction order. All this, notwithstanding that they filed an appeal to the first injunctive decision to the *Conseil d'Etat*.

94. The applicants finally submit that this process did not allow for proper consideration of their rights under the Convention.

STATEMENT IN RELATION TO ARTICLE 35(1)

95. The applicants refer to paragraphs 30 to 36 above on procedure in the case and note that no further remedies were available to them after the decision of 4 April 2013 and, as regards injunctive proceedings, the evictions of 12 April 2013 as regards any appeal of the dismissal of the injunctive proceedings on the 10 April 2013.

STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

96. No complaint has been submitted under any other international procedure of investigation or settlement.

STATEMENT OF OBJECT OF THE APPLICATION

97. The applicants respectfully seek the following:

i) a declaration that their rights under Articles 3, 8, in conjunction with Article 14 and Article 2 of No Protocol 1 and Article 13 have been violated;

ii) just satisfaction to compensate the applicants for the violations of their rights as set out in i) above;

iii) the provision of adequate alternative and sustainable accommodation close to the children's schools;

iv) general measures to ensure that their experience is never repeated; and

v) the costs of the this application (including the costs of domestic proceedings).

Dezideriu Gergely
Lawyer and Executive Director
European Roma Rights Centre