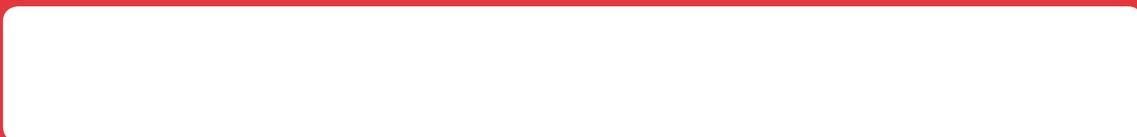


WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING FRANCE

For Consideration by the European Commission on the Transposition and Application of the Race Directive and on the Legal Issues Relevant to Roma Integration.



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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France

CASE REVIEW: FRANCE

This submission focuses on the situation of Roma in France and shortcomings in the transposition and implementation of the Race Equality Directive, which has particular impact on Roma. This review includes broader elements of the anti-discrimination framework in France, but does not purport to be comprehensive.

1 TRANSPOSITION OF RED INTO DOMESTIC LEGISLATION

1.1 THE GENERAL FRAMEWORK ON PROHIBITION OF DISCRIMINATION

In France, fundamental rights are included in the body of Constitutional laws: the Preamble of the current Constitution of 1958¹ directly invokes and preserves the principles and norms of the Declaration of Human and Civic Rights of 26 August 1789² and the Preamble to the Constitution of 27 October 1946.³ Included in this body of constitutional law is the principle of non-discrimination.⁴

However, legal categorisation on the basis of origin does not exist in the French legal system, which adopts a universalistic interpretation. This creates a major obstacle in recognising and addressing racism and discrimination and means that full transposition of the RED is virtually impossible.

Apart from equal treatment between individuals, which stands as a constitutional principle, anti-discrimination provisions can be also found in codified laws, including the Labour, Civil and Penal Codes. It is to be noted that the French approach to tackling discrimination relies heavily on the latter, considering discrimination as a criminal offence that is a violation of human dignity. Given the framework of criminal law, the Penal Code only sanctions direct discrimination when intent to discrimination is proven. This approach presents a number of obstacles such as the reliance on public prosecutors and the inapplicability of the concepts of indirect discrimination and shifting the burden of proof.⁵

1.2 THE FRENCH ANTI-DISCRIMINATION LAW

The EC Race Directive 2000/43 was initially transposed to the national legal system by laws in 2001,⁶ 2002⁷ and 2004.⁸ Following the European Commission's infringement procedure, the French Government introduced Law no 2008-496 of 16 May, 2008 relating to the Adaptation of National Law to Community Law in Matters of Discrimination,⁹ completing the transposition of EC Directives, including the 2000/43 and 2000/78 Directives.¹⁰ This law has subsequently amended several laws accordingly, including the Labour Code and the Penal Code.

Since 2008 the principle of non-discrimination as applicable to administrative, civil and labor law, has theoretically changed the landscape.¹¹ However, administrative law, in particular, is mostly jurisprudential and continues to be based

1 France, Constitution of the Fifth Republic of 1958, available in English at: <http://legislationline.org/documents/action/popup/id/8808/preview>.

2 Declaration of Human and Civic Rights of 26 August 1789, available in English at: <http://legislationline.org/download/action/download/id/1596/file/10d0173e52927fc294d18e29dd2e.htm/preview>.

3 Preamble to the Constitution of 27 October 1946, available in English at: <http://legislationline.org/download/action/download/id/1601/file/6b1891a9a33272f1c7f8a8d0142e.htm/preview>.

4 Article 1 of the Preamble to the Constitution of 27 October 1946.

5 ERRC interviews with French lawyers. Paris, November 2012.

6 Law no. 1006-2001 of 16 November, 2001.

7 Law of Social Modernization no 2002-73 of January 17, 2002.

8 Law no 2004-1486 of 30 December, 2004 on creation of the specialized body.

9 Law no 2008-496 of 16 May, 2008, available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000018877783&fastPos=1&fastReqId=780500433&categorieLien=cid&oldAction=rechTexte>.

10 Latraverse, Sophie, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2011 France, State of affairs 1st January 2012, available at: http://www.non-discrimination.net/content/media/2011-FR-Country%20Report%20LN_final.pdf, page 8.

11 *Ibid.*, page 8.

on a formal theory of equality.¹² In addition, there is further legislation, which includes provisions prohibiting discrimination in specific areas, such as for example the Code of Public Health with respect to the right to medical assistance.¹³

In short, the 2008 amendments placed the French law into line with the Race Directive in terms of the definition of harassment and discrimination. It also defines direct and indirect discrimination, harassment and instruction to discriminate.¹⁴ Large gaps remain, not least with the reliance on criminal law to implement the RED

1.3 COMPLIANCE ISSUES WITH THE RACE DIRECTIVE

Definition of Discrimination

Law no 2008-496 prohibits discrimination based on an individual's real or perceived characteristic thus on an assumed basis, but it does not explicitly refer to discrimination based on association.¹⁵ The law introduced definitions of direct and indirect discrimination.¹⁶ When defining direct discrimination the law indicates a comparability test in regard to actual treatment, but does not indicate the possibility to refer to a hypothetical comparator.¹⁷

Ethnic or racial origin

One of the major obstacles in the law, and subsequently relevant for the implementation of the Race Directive, regards the fact that France does not recognise the concept of ethnic or racial origin. Similarly, according to the French doctrine, any approach to origin must be based on objective indications.¹⁸ As highlighted by experts "national origin" is conceived as objective information on the person's ancestry, and seems to be the only objective reference to origin admissible as per French reluctances.¹⁹ This approach clearly jeopardises the effectiveness of legal protection against discrimination on the grounds of race or ethnic origin. As a positive development, on 15 December 2011 the Court of Cassation recognised that discrimination on the ground of origin can be established by analysing the origin of list of hired personnel on the basis of their surname.²⁰ Also evidence of direct discrimination can be based on the foreign physical appearance of the person or other characteristics attributed to the person.²¹

Burden of proof

Article 4 of Law no. 2008-496 does provide for shifting the burden of proof, however, there is still some ambiguity.²² Under French law the victim must present the facts leading to the presumption of direct or indirect discrimination. However, the definition of the burden of proof only requires that the adverse party establish that the decision is objective and non discriminatory, and does not require that defendant establishes proportionality and necessity.²³ As mentioned above, and very significant in the context of anti-discrimination law in

12 Sophie Latraverse, Report on measures to combat discrimination, Directives 2000/43/ec and 2000/78/ec, Country report 2011, France, page 3., available at: http://www.non-discrimination.net/content/media/2011-FR-Country%20Report%20LN_final.pdf.

13 *Ibid*, page 3.

14 Article 1.

15 See also Latraverse, Sophie, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2011 France, State of affairs 1st January 2012, available at: http://www.non-discrimination.net/content/media/2011-FR-Country%20Report%20LN_final.pdf, page 9.

16 Article 1 par. 1.: "Constitutes a direct discrimination the situation in which, on the basis of the belonging or non belonging, real or assumed, to an ethnic group, a nation, a race or of his or her religion, convictions, age, disability, sexual orientation or sex, a person is treated less favorably than another is, has been or will have been, in a comparable situation."

17 See also Latraverse, Sophie, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2011 France, State of affairs 1st January 2012, page 9.

18 *Ibid* page. 47.

19 Constitutional Court, 15 November, 2007 no 2007-557 DC.

20 See also Latraverse, Sophie, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2011 France, State of affairs 1st January 2012, page 47.

21 *Ibid.*, page 49.

22 *Ibid.*

23 « Toute personne qui s'estime victime d'une discrimination directe ou indirecte présente devant la juridiction compétente les faits qui permettent d'en présumer l'existence. Au vu de ces éléments, il appartient à la partie défenderesse de prouver que la mesure en cause est justifiée par des éléments objectifs étrangers à toute discrimination. »

France, the shifting of burden of proof does not apply in criminal matters. There is no explicit reference in the provision transposing the RED about the use of statistical evidence, and the lack of statistics related to origin (race/ethnicity) creates an obstacle to use statistical evidence in race/ethnic discrimination cases.

Legal standing and associations

In compliance with Article 7 of the RED, NGOs who have a legitimate interest may engage in proceedings on behalf or in support of victims of discrimination. The NGOs also have to comply with certain requirements: they must have been in existence for more than five years and include combating anti-discrimination as one of their stated purposes. The French Code of Civil procedure allows for the standing of any person who has a legitimate interest in the dismissal or granting of the action in all civil cases allowing NGOs to bring cases when facts of the case violate a collective interest.²⁴ On the other hand, the Code of Administrative Justice does not define standing before the courts. Yet, NGO interventions are common practice: administrative courts systematically hold that NGOs have standing to intervene if their associative purpose, as defined in their constitutive statutes, corresponds to the subject matter of the case.²⁵

2 THE FRENCH EQUALITY BODY

2.1 THE ESTABLISHMENT OF THE INITIAL HALDE AND ROMA RELATED ACTIONS

The French equality body was the High Authority against Discrimination and for Equality ('HALDE'), created in 2004 and active since 2005.²⁶ It had competence over all forms of discrimination prohibited by the laws of France. HALDE had competence to investigate individual and collective complaints, whether the investigation was initiated ex officio or following a written request from a claimant, NGOs, trade unions or Members of Parliament.

In terms of Roma and Travellers discrimination issues, HALDE was relatively active and vocal. It adopted two deliberations (2007-372 and 2009-372) addressed to the Government in order to denounce the condition of Travellers, who have a derogatory administrative status that submits them to controls and limits their rights, and Foreign Roma, who are denied the rights of other migrants and European Union citizens. These denials of their fundamental political, civil and social rights violate a number of International conventions and the Directive 2000/43.²⁷

HALDE took a step towards Law 69-3, which creates an obligation on the part of citizens without permanent domicile who are travelling on the National territory to hold special travelling identity papers that must be validated at the Ministry of Interior local office within 48 hours of arriving in the department (préfecture), and can be controlled by the police at any time, concluding that this was a violation of their rights to free circulation and privacy.²⁸ In addition, such regulation openly interfered with Roma people's right to vote. Unfortunately, after a first phase in which the Government announced the due reforms, no substantial steps were taken.

Another issue involving Roma on which HALDE intervened was the collective "voluntary" repatriation scheme put in place by the French Government starting in 2008, which targeted Romani people from Romania and Bulgaria and which was abolished in 2012. In 2009, HALDE concluded that the French government's policy and transitory regime targeted Romanian and Bulgarian Roma and it was as such discriminatory on the ground of race and origin. Roma from Romania and Bulgaria did not benefit from rights of other citizens of the European Union, and they were denied access to rights granted to other migrant populations, some of which were protected under Directive 2000/43 (social security, social protection, education, access to goods and services).²⁹

²⁴ Article 31.

²⁵ Latraverse, Sophie, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2011 France, State of affairs 1st January 2012, page 141.

²⁶ Law no 2004-1486 of 30 December.

²⁷ Latraverse, Sophie, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2011 France, State of affairs 1st January 2012.

²⁸ *Ibid* 5.

²⁹ *Ibid* 5.

HALDE recommended the adoption of a series of measures aimed at ending discriminatory practices towards Roma people, such as to stop the expulsion policy and to ensure access to social rights.

2.2 A NEW OMBUDSMAN: THE DEFENDER OF RIGHTS

In 2011, a new Ombudsman institution was established in France, the ‘Defender of Rights’,³⁰ which replaced and merged into one institution the Médiateur de la République (Mediator of the Republic), the Défenseur des enfants (Defender of Children), the Haute autorité de lutte contre les discriminations et pour l’égalité (HALDE), and the Commission nationale de déontologie de la sécurité (National Commission on the Ethics of Security).³¹ The Defender of Rights uses its investigative powers to disclose any document, to interview individuals and, where necessary, to carry out field investigations. It can favour an amicable resolution of the conflict providing recommendations; it may choose to mediate or, according to the circumstances, it may opt for an equity settlement.³²

The Defender of Rights continued to intervene in matters regarding Roma. HALDE/the Defender of Rights have solved 8500 complaints and rendered 180 decisions. 23% of the claims alleged discrimination based on origin (including race).³³ HALDE has dealt with fewer complaints related to Roma and Travellers, approximately 200, related mostly to the conditions of parking accommodations, their insufficient number, the connection of family land to water, electricity, access to registration in public school, access to car insurance and refusal of the authorities to issue ordinary identity papers.³⁴

3 THE GOVERNMENT POLICY ON ROMA

3.1 ROMA INCLUSION STRATEGY MISSING AN EQUAL TREATMENT APPROACH

Statistics regarding the Romani population in France are limited, not only in terms of total population but also socio-economic data. Estimates indicated that approximately 400,000 live in France, representing approximately 0.64% of the total French population.³⁵ This population includes French Gypsy and Traveller groups³⁶ and migrant Roma, primarily from Romania and Bulgaria.³⁷

The French strategy for Roma inclusion,³⁸ developed under the EU Framework for Roma Integration Strategies, was prepared by the government without the full involvement of civil society.³⁹ The French strategy was not developed exclusively for Roma; it is a policy document targeting social inclusion, which fails to include a human rights approach, to acknowledge the extent of discrimination faced by the Roma population in the country or to identify specific aspects of discrimination to be effectively tackled.⁴⁰ Consequently it does not provide specific measures addressing these issues.

30 Article 71-1, Constitution of the fifth Republic of 1958.

31 Information available in French at: <http://www.defenseurdesdroits.fr/sinformer-sur-le-defenseur-des-droits>.

32 *Ibid.*

33 *Ibid* 5.

34 Latraverse, Sophie, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2011 France, State of affairs 1st January 2012, page 40.

35 The Situation of Roma in France and in Europe; Joint Information Note by Vice-President Viviane Reding, Commissioner Laszlo Andor and Commissioner Cecilia Malmstrom”, 1 September 2010, p. 17.

36 Including groups with self-identify as Sinti, Manouche, Kale, Gitan, Roma, Yenish, Traveller (Gens du voyage) or other. For convenience, although not reflective of the complexities this submission will refer to ‘French Travellers’ and ‘migrant Roma’. Unless obviously different from the context, ‘Roma’ and ‘Romani’ will refer to both groups.

37 It is estimated that over 90% of the migrant Roma living in France are Romanian. Romeurope National Human Rights Collective, “Report on the Situation of Roma Migrants in France”, September 2010, p. 14.

38 Strategy available at: http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_en.htm.

39 ERRC interview with representatives of Romeurope and FNASAT Gens du voyage, Paris, March 2012.

40 ERRC internal document on the preliminary results of the ERRC assessment of national strategies.

It should be noted that in 2012, a National Action Plan against Racism for 2012-2014 was adopted by the Minister of Interior,⁴¹ but it remains to be seen to what extent the plan will effectively be implemented.

In its assessment on the French strategy, the European Commission underlined several shortcomings.⁴² In all areas of the strategy (housing, employment, health and education) the Commission considered that the French policy lacks a clear assessment on the impact of the equal treatment approach on the situation of Roma and Travellers in France. Similarly, the policy does not comprise a strategy concerning migrant Roma. In several areas the strategy lacks targets, indicators, timetables for implementation and most importantly the allocated budget that is needed to secure the efficient implementation of the strategy. The Commission also indicated the need for a strong monitoring mechanism and stronger cooperation with local actors and civil society.⁴³

4 DISCRIMINATION AGAINST ROMA

Romani individuals face regular discrimination across multiple facets of life, and this prohibition and the linked prohibition of collecting data obscures the extent of that discrimination.

In response to a complaint lodged by the European Roma Rights Centre, in March 2010, the Council of Europe's European Committee of Social Rights (ECSR) established that France had violated the Revised European Social Charter by failing to provide adequate accommodation to Travellers.⁴⁴ The ECSR found France to be in breach of Articles 16, 30, 31 and E of the Social Charter, in respect of the housing and social inclusion situation of its Traveller and Romani populations, both itinerant and settled. The decision found that there was discrimination in each of the areas of its findings.⁴⁵

In September 2010, the European Commission launched an investigation into the expulsion of Roma from France and examined whether France had implemented the EC Free Movement Directive ("FMD"). Consequently, France was threatened with legal action from the European Commission for the improper and discriminatory application of the FMD by targeting a specific ethnic group or minority and for failure to offer those expelled "substantive guarantees" to which they were entitled.⁴⁶ Despite assurances from France that the practices would be revised, both to the Commission and in the election pledges of president Hollande, Roma continue to be expelled *en masse* in much the same circumstances as witnessed in 2010.⁴⁷

In a decision brought in 2011, the ECSR again found that France had discriminated against Roma and violated the Social Charter through the forced evictions and mass expulsions of Roma carried out during summer 2010 by the French authorities, violating Articles 19, 31 and E. In its decision the ECSR considered that there was not just a lack of progress since its last decision against France, but evidence showed a clear deterioration in the situation.⁴⁸ The Committee found that "no account taken of individual circumstances or how long those concerned had been in France. To the contrary, these expulsions were based on considerations relating to prevention and ethnic origin."⁴⁹ The Committee also found that in practice the so-called "voluntary" returns were in reality forms of forced collective expulsions, and under no circumstances could be considered voluntary.⁵⁰

41 http://www.interieur.gouv.fr/sections/a_la_une/toute_l_actualite/ministere/plan-national-d-action-contre-racisme/downloadFile/attachedFile/Plan_national_d_action_contre_le_racisme_et_l_antisemitisme_2012_2014_-_version_definitive.pdf?nocache=1329321988.61.

42 Commission staff working document accompanying the document National Roma Integration Strategies: a first step in the implementation of the EU Framework Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, SWD (2012) 133, 21 May 2012, report available at: http://ec.europa.eu/justice/discrimination/files/roma_nat_integration_strat_en.pdf.

43 *Ibid.*, page 38.

44 European Roma Rights Centre v France discriminates against Roma and Travellers in violation of the European Social Charter, March 2010, ERRC, available at: <http://www.errc.org/cikk.php?cikk=3578>.

45 *Ibid.*

46 *Ibid.*

47 ERRC, Parallel report to the Human Rights Council, within its Universal Periodic Review, for consideration at its 15th session (21 January to 1 February 2013), report available at: <http://www.errc.org/cms/upload/file/france-un-upr-submission-9-july-2012.pdf>.

48 Centre on Housing Rights and Evictions (COHRE) v France, Complaint No. 63/2010, para. 45.

49 *Ibid.*, par. 69.

50 *Ibid.*

The Committee found France in violation of the European Social Charter, with reference to ERRC research on mass expulsions and violations of EU Law by France.⁵¹

4.1 HOUSING

The housing situation of both migrant Roma and Travellers are in violation of the RED, and for migrant Roma eviction from their homes is often accompanied by the issuance of expulsion orders and Roma continue to be expelled from France.

Despite the ECSR's decision in March 2010,⁵² the situation for French Travellers in relation to housing has not significantly changed. French Travellers are legally entitled to a certain number of halting sites within each French municipality, according to the Besson Laws (1990 and 2000).⁵³ Although they have been in effect since the 1990s, implementation of the Besson laws has been significantly delayed in many municipalities: the number of stopping-places continues to be insufficient to meet real needs and there are concerns that many are located in inaccessible or unhealthy locations (e.g. next to rubbish dumps or industrial sites).⁵⁴ Due to the lack of spaces, Travellers are sometimes forced to live in areas without access to basic utilities, and, if apprehended by police, risk receiving severe penalties such as prison sentences and having their property confiscated.⁵⁵ Additionally, this spatial segregation places Traveller families outside of transport networks and far from schools and hospitals, therefore leading to effective social segregation.⁵⁶ Information released by the FRA indicates that living conditions for Travellers in France are substandard: sites intended for 100-200 people sometimes have only one water supply point and lack access to electricity or public services.⁵⁷

The majority of migrant Roma live on the outskirts of large cities, such as Paris, Lyon, Lille, Nantes and Marseille.⁵⁸ The settlements can house from one or two families to 800 people. The living conditions are very poor and basic needs are not met. People usually do not have access to water and the collection of rubbish is very rare.

In 2009, the High Judicial Court of Lyon issued an injunction to prevent police evacuating a Romanian Roma group occupying state property on the ground that the prefect did not demonstrate that the conditions of life of the Roma camp were such that they presented particular danger and risks and that the camp constituted their domicile, and as such was protected under article 8 ECHR.⁵⁹ Since property of the state was not jeopardised by this occupation, and in the absence of damage and immediate need for the use of the plot, expulsion was not deemed appropriate.⁶⁰

Since summer 2010, the ERRC has been actively monitoring the evictions and expulsions of mostly Romanian and Bulgarian Roma from France. Despite the introduction of the new law, the systemic eviction and expulsion of Roma did not stop, but has continued over the year of 2011 and is still going on today. While during 2010 ERRC documented at least 545 expulsion orders served to Romanian and Bulgarian Roma, in 2011 the number of served expulsion orders were at around 1690, out of which number around 680 were served after the enactment of the new law. In 2012, before the presidential elections there was a visible decrease; however the practice still continues today. In 2012, the ERRC documented at least 603 expulsion orders until September 2012.

51 ERRC, Submission in Relation to the Analysis and Consideration of Legality under EU Law of the Situation of Roma in France, 27 September 2010, available at: <http://www.errc.org/cms/upload/file/france-ec-legalbrief-27-sept-2010.pdf>.

52 European Roma Rights Centre v France discriminates against Roma and Travellers in violation of the European Social Charter, March 2010, ERRC, available at: <http://www.errc.org/cikk.php?cikk=3578>.

53 Law No. 90-449 of 31 May 1990 implementing the housing rights (1) NOR: EQUX8900132, available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000159413&fastPos=1&fastReqId=1804955080&categorieLien=cid&oldAction=rechTexte>.

54 ECRI, Third Report on France, 2005, available at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/FRA-CbC-III-2005-3-ENG.pdf.

55 ECRI, Third Report on France, 2005, available at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/FRA-CbC-III-2005-3-ENG.pdf.

56 European Union Agency for Fundamental Rights, France RAXEN National Focal Point Thematic Study: Housing Conditions of Roma and Travellers, 2009, available at: http://fra.europa.eu/fraWebsite/attachments/RAXEN-Roma%20Housing-France_en.pdf.

57 European Union Agency for Fundamental Rights, France RAXEN National Focal Point Thematic Study: Housing Conditions of Roma and Travellers, 2009, available at: http://fra.europa.eu/fraWebsite/attachments/RAXEN-Roma%20Housing-France_en.pdf.

58 European Union Agency for Fundamental Rights, France RAXEN National Focal Point Thematic Study: Housing Conditions of Roma and Travellers, 2009, available at: http://fra.europa.eu/fraWebsite/attachments/RAXEN-Roma%20Housing-France_en.pdf.

59 Sala, Covaci et al vs. State, no 2009/02850.

60 Latraverse, Sophie, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2011 France, State of affairs 1st January 2012.

Francois Hollande promised changes in terms of treatment of Roma, and promised a departure from Sarkozy's policy on immigrants, before presidential elections took place.⁶¹ He also promised that evictions would stop unless there alternative accommodation was provided. Hollande's new minister Manuel Valls, Minister of the Interior during his speech at the transfer of power affirmed that his politics will not be a "race for the figures" nor a "stigmatisation of communities".⁶² However, recent statements from Mr Valls saying that the dismantlement of Roma camps will continue raised concerns about the commitment of the Hollande administration to moving on from the approach of the previous administration.⁶³ Indeed since M Hollande's election, the ERRC has recorded at least 243 expulsion orders served in the Paris and Lyon area alone.

In August 2012, the European Commission warned France to closely monitor the country over the wave of expulsions.⁶⁴ The situation for migrant Roma has not improved and the ERRC has recorded the evictions of more than 2,000 Roma (largely families) in the first three winter months of 2013 alone.

4.1.1 Expulsions

In 2011, French authorities did not release official figures regarding expulsions. The Minister of the Interior sent a document to the ERRC on 19 November 2012, which stated that almost 2700 expulsion orders were distributed to Romanians and 340 to Bulgarians in the three first months of 2012. In 2011, more than 7,400 Romanians received an expulsion order and 1250 Bulgarians.⁶⁵ The ERRC has also been gathering data and testimonies reporting systematic evictions and expulsions, particularly Romanian Roma, monitoring the situation of returns before and after the new French bill on immigration entered into force.⁶⁶ Official figures for expulsions for the year of 2012 have not been published yet.

The ERRC also documented expulsion orders issued to Roma from Romania and Bulgaria. This non-exhaustive list documented for 2010 at least 545 expulsion orders served to Romanian and Bulgarian Roma. In 2011 the number of served expulsion orders were at around 1690 (418 copies of OQTFs are on file with the ERRC), out of which around 680 were served after the enactment of the new law (Law No. 2011-672, 16 June 2011). In 2012, around the presidential elections there was a visible decrease, however the practice still continued and ERRC documented in 2012 at least 650 expulsion orders (84 copies of OQTFs are in file with ERRC).

Making use of ERRC research, the Centre on Housing Rights and Evictions (COHRE) submitted a complaint to the European Committee for Social Rights (ECSR).⁶⁷ ECSR 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 returning Romanian and Bulgarian Roma to their countries of origin was based on discriminatory provisions and that these expulsions have a collective nature.⁶⁸ On 9 November 2011, the Committee of Ministers of the Council of Europe issued a Resolution taking note of the European Committee for Social Rights (ECSR).⁶⁹

In 2011 and 2012, the ERRC monitored 66 operations of mass distributions of OQTF. At least 30 of these operations were conducted by police in cooperation with representatives of the Office Français de l'immigration

61 Response sent by Francois Hollande to RomEurope, 27 March 2012, Paris, France.

62 See: <http://www.rtl.fr/actualites/politique/article/passation-de-pouvoir-valls-et-gueant-la-jouent-sobre-place-beauvau-7748271265>.

63 Speaking before the French Senate on Wednesday, Valls said the government was concerned about growing Roma encampments in several cities. "The situation today in Lyon, in Aix-en-Provence and in Seine-Saint-Denis (just northeast of Paris) requires us to take decisions to dismantle," he said. See: http://www.expatica.com/fr/news/french-news/worries-after-france-threatens-to-dismantle-roma-camps_239030.html.

64 See: <http://www.reuters.com/article/2012/08/10/us-france-roma-eu-idUSBRE87912S20120810>.

65 Letter from the Ministry of Interior to the ERRC, 19 November 2012, on file with ERRC.

66 Law No. 2011-672 on Immigration, Integration and Nationality. Available at <http://www.hrw.org/node/101963>.

67 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.

68 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.

69 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](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResChS(2011)9&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

et de l'intégration (OFII). While police were issuing the OQTF, OFII representatives were identifying the eligibility of the migrant Roma for "humanitarian return assistance" (ARH; *aides au retour humanitaire*) and offered assistance in case of eligibility, which raises concerns about the voluntary nature of the return scheme. In a declaration to the press on 7 December 2012, the Minister of Interior announced the end of the "humanitarian return assistance" scheme because of its inefficiency.⁷⁰

Representatives of the OFII offered persons who have not previously received it, return assistance in the form of flight tickets and financial assistance (€ 300 per adult and € 100 per child). Persons, for whom an OQTF has been issued previously, were arrested and placed in immigration detention centres in order to proceed with a forced return (see below for more information).

The operations in general were conducted very fast and seemed to follow a certain pattern: early in the morning, police arrives into the settlement which is surrounded by police forces, so as to prevent anyone from leaving or entering. Families are brought to a car where their identities are verified and documents requested proving the presence of the persons in question in Romania less than three months ago. This can be a travel ticket or any other document that proves that the person concerned left the French territory. If the person is unable to produce such evidence, police issues an OQTF.

ERRC conducted two factfinding missions in March 2011 (South of Paris and Lyon) and in February 2012 (North Paris and Lyon); it also monitored the situation in the camps in the Prefecture Seine-Saint Denis in the North of Paris where large communities of Romani migrants live.⁷¹ The ERRC closely monitored the distribution of expulsions orders, witnessing some cases and collecting testimonials of Roma afterwards, including documents.

According to ERRC monitoring, there is evidence that expulsion orders were produced en masse, without genuine consideration of personal situation, and with other irregularities. For example in an operation on 6 December 2011, in the camp at Rue Pascal in La Courneuve (Northern Paris), police and OFII checked the identity and residence status of more than 200 persons in approximately 3 hours, issued 90 OQTFs and offered voluntary returns to the camp inhabitants.⁷²

During 66 operations of mass distribution of OQTFs ERRC witnessed further problematic elements. Almost all expulsion orders monitored were based on the legal category of lacking economic resources. As a consequence, authorities considered that the affected people did not have the right to stay up to the three-month period. The Roma who were evicted and/or expelled were not informed about the opportunity to ask for legal aid, or their right to appeal against unlawfully served OQTFs. Although this information is available on the back of the expulsion orders, most migrant Roma do not speak French and a significant number have low levels of literacy, which means they have to rely on assistance from NGOs. At least eight operations took place in settlements where children were enrolled in French schools. In at least four operations the distribution of OQTFs overlapped with the actual eviction from camps.

In 2011, the ERRC and local lawyers supported 235 persons in appealing against expulsion orders, mainly from settlements in the Parisian region. Some of the appeals are still pending before the court, but at least 127 OQTFs have been cancelled due to lack of proof of the permanence of more than three months and lack of evidence provided by the French administration issuing the expulsion orders.⁷³ Compared to these 127 victories, only 29 of the appeals the ERRC helped to launch were lost so far.

70 The ARH scheme was put to an end by Interior Minister Manuel Valls on 7 December 2012, judging it was inefficient. <http://www.leparisien.fr/politique/roms-manuel-valls-supprime-l-aide-au-retour-07-12-2012-2388821.php>.

71 According to data from local organisations around 3000 Roma lived in that area in 2009. Seine-Saint Denis District has the highest number of immigrant and one of the youngest and poorest populations in France. Mass expulsion orders have been delivered to Roma since 2008 in this area and here also the expulsion policy in the summer of 2010 started.

72 ERRC research identified several similar operations, e.g., 2 March 2011 in a camp in Valenton in south Paris, 50 OQTFs were issued in an operation lasting for ca two hours. The community had received an eviction order from the Tribunal de Grande Instance of Créteil on the 4 of February. No translators were present and nobody was questioned about their personal situation. Different law enforcement officers filled out paperwork with the names of the Roma and then made them sign the OQTFs forms. 21 April 2011, 63 OQTFs were issued to Roma in the settlement in Passage Dupont, Saint Denis in ca 2.5 hours though the community is part of an integration project. Activists were not allowed inside the camp. Moreover this community previously went through an eviction process in a slum called Hanul, and another mass distribution of OQTFs in the summer of 2010. The expulsion orders were invalidated by the administrative Court of Montreuil in early April 2011.

73 Sentences of the Administrative Court of Paris, Sentence No. 1116001/3-3, 24 January 2012, Sentence No. 1116004/3-3, 24 January 2012, Sentence No. 1116006/3-3, 24 January 2012, (on file with the ERRC).

In 2012, the ERRC assisted 52 people in Seine-Saint-Denis (Noisy le Grand⁷⁴, Bobigny⁷⁵, Saint Denis⁷⁶) and in Paris⁷⁷ who received OQTFs. Out of these 38 appeals were allowed, and 14 appeals are still pending. It is highly likely that up to 150 OQTFs were distributed during the four police interventions in Seine-Saint-Denis but not all the Roma were willing to appeal it before a court or were aware of the possibility to submit an appeal.

4.2 EDUCATION

Although measures aimed at increasing the participation of Romani children into the French education system have been set out in the Circular of 12 September 2012 on the “Organisation of the Schooling of Non-French Speaking Children”⁷⁸, the level of school enrollment of these children is still very low according to local organisations. Limits in the national measures, including lack of domiciliation (registered address),⁷⁹ and training for teachers dealing with different cultures, have not been addressed.

Some municipalities refuse to enrol migrant Romani children. For example, Romani children were unable to access schools in Saint Denis, since they did not have “domiciliation documents”⁸⁰ or applied for enrolment during the school year and were refused.⁸¹ According to local organisations, migrant Romani children of school age represent between a third and a half of the migrant Romani population in France. A Romeurope study estimated that in February 2010, between 5,000 and 7,000 Romani migrant children will reach the age of 16 years without having ever been at school, in France or in their country of origin.⁸² The situation is further compounded by the precarious living conditions and the threat of being evicted.⁸³ The level of school attendance varies in every city. It can be as low as 10% of the school-age children in the Paris region, but can reach much higher levels in cities where the number of Roma is lower (Nantes for example).⁸⁴

The ERRC has also monitored cases of segregation of Romani children in educational settings, which again demonstrate discrimination at a local/mayoral level. For example, in November 2012, in Saint-Fons on the outskirts of Lyons, 25 Romani children were placed in a class in a separate building to other children, which did not have appropriate facilities and where children were excluded from school lunches.⁸⁵

74 Distribution of OQTF on 5 April 2012, OQTFs on file with the ERRC.

75 Distribution of OQTF on 10 May 2012, OQTFs on file with the ERRC.

76 Distribution of OQTF on 18 September 2012, OQTFs on file with the ERRC.

77 Distribution of OQTF on 14 November 2012, OQTFs on file with the ERRC.

78 The Ministry for Success in Education addressed the Circular to all rectors of academies (local education departments), inspectors of academies, and directors of departmental services of the national education system. The Circular recalls that the right to education depends on “the national law of the State, whatever the nationality of the children, the administrative status of their parent or their type of housing”. Available at: <http://www.depechest-siganes.fr/wp-content/uploads/2012/09/CIRC-NORMENE1234231C.pdf>.

79 Roma living in settlements are facing several issues as they cannot provide their address to receive mail. As European citizens, Roma migrant should be able to get a domiciliation at the CCAS (community centre for social action) and receive their mail there, but the CCAS often refuses as they cannot prove that they live in the city. A domiciliation is needed for many administrative reasons (accessing healthcare, voting etc.). To require a domiciliation to access school is anyhow illegal.

80 Médecins du Monde, 29 November 2012. In other municipalities schools rejected the enrolment of Romani children under the pretext that families do not reside in the municipality, that children do not speak French or with the excuse they will be evicted from a land occupied illegally.

81 It is an obligation for children to be in school, and for Mayors and school directors to accept them, even in the middle of the year. A journalist related the story of a young Roma who was refused the access to pre-school because of lack of space in the class. An activist called the same school a few days after to enrol his child to pre-school because he just moved back from New York and succeeded without any problem : see article : <http://mrap.montpellierain.over-blog.com/article-roms-a-la-rue-pourquoi-la-mairie-de-paris-ne-leur-trouve-pas-d-abris-114858409.html>.

82 Assessment carried out by CNDH (Le Collectif National Droits de l’Homme) in Romeurope Report. La non-scolarisation en France des enfants Roms migrants. Étude sur les obstacles à la scolarisation des enfants Roms migrants en France. Available at: <http://www.romeurope.org/IMG/pdf/ETUDESCO-2.pdf>.

83 For more information See: Régis Guyon, Michaël Rigolot, Des écarts entre textes officiels et réalités; Mohamed Boujaddi, Quelles conditions nécessaires à la scolarisation des enfants roms ?; Marie-Claire Simonin, Apprendre à lire, oui, et ensuite... ? in CRAP- Cahiers pédagogiques, À l’école avec les élèves roms, tsiganes et voyageurs. Available at http://www.cahierspedagogiques.com/IMG/pdf/hsn_roms.pdf; See also Romeurope Report . La non-scolarisation en France des enfants Roms migrants. Étude sur les obstacles à la scolarisation des enfants Roms migrants en France. Pp. 23-52 Available at: <http://www.romeurope.org/IMG/pdf/ETUDESCO-2.pdf>.

84 Mattea Battaglia, “Scolarisation des enfants roms : un « mieux »... dans les textes”, Le Monde, 18 September 2012.

85 For more information and a complaint sent to the mayor and local education authority of Saint-Fons, see: <http://www.educationsansfrontieres.org/article45899.html>.

The situation of Traveller children in France is also difficult. In 2009, the Defender of Children⁸⁶ and the National Consultative Commission on Human Rights⁸⁷ drew Government and public attention to the difficult situation of Traveller and Roma children due to the lack of adequate accommodation, and the impact of the precarious means of life of parents on the quality and means of access to education school of the children.⁸⁸

4.3 EMPLOYMENT AND HEALTHCARE

There are no official statistics available concerning the employment of Roma in France. In 2009, the European Agency for Fundamental Rights (FRA) found that the most commonly reported area of discrimination in France was employment.⁸⁹ The landscape has changed somewhat since then in terms of other problems, particularly for migrant Roma; but there appears to be little change in the situation reported by FRA, regarding employment. French law hinders Travellers' access to various forms of financial activity through regulation of recycling activities, diploma requirements and the requirement of a fixed address for legal employment.⁹⁰

As for migrant Roma, transitional measures⁹¹ restricting the exercise of the rights to free movement for work purposes remain in force until 31 December 2013.⁹² Romanian and Bulgarian citizens therefore need to obtain both a work permit⁹³ and a residence permit until the end of 2013.⁹⁴ There is a list containing around 300 diverse areas of work (including construction jobs, hotel and restaurant jobs, butchering, baking, teaching, engineering) where there are recruitment gaps. These areas are open to Bulgarian and Romanian workers⁹⁵, however the majority of these jobs are inaccessible for Roma because of administrative reasons, such as the length of procedure to obtain a work permit.⁹⁶ In order to support themselves, Romanian Roma in France work recovering scrap metals and selling newspapers or scrap clothes. Some Roma have managed to regularise their informal work and have formal self-employed status.

The ERRC has been involved in four cases of discrimination against Romanian Roma in accessing self-employment status, and based on that a residency permit.⁹⁷ In the department of Seine-Saint-Denis the application for residency permits based on such economic activities was turned down. In fact, since December 2010, the Prefecture of Seine-Saint-Denis has decided not to grant any further residency permits to Romanian and Bulgarian citizens who apply as "auto-entrepreneurs".⁹⁸ Judicial review overturned these decisions,⁹⁹ but it is clear that this status is incredibly difficult for Roma to achieve in practice.

86 See: http://www.cncdh.fr/IMG/pdf/08.02.07_Etude_et_propositions_sur_la_situation_des_Roms_et_des_gens_du_voyage_en_France-2.pdf#12, at page 23.

87 See: http://www.cncdh.fr/IMG/pdf/08.02.07_Etude_et_propositions_sur_la_situation_des_Roms_et_des_gens_du_voyage_en_France-2.pdf#12.

88 Latraverse, Sophie, Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2009 France, 2009 December, page 97.

89 European Agency for Fundamental Rights, "Annual Report: 2010", available at: http://www.fra.europa.eu/fraWebsite/attachments/AR_2010-conf-edition_en.pdf.

90 Commission Nationale Consultative des Droits de l'Homme, "Etude et propositions sur la situation des Roms et des gens du voyage en France", 2007.

91 For example in the case of Romania see ANNEX VII List referred to in Article 23 of the Act of Accession: Transitional measures, Romania available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:157:0311:0361:EN:PDF>.

92 Ministère de l'immigration, de l'intégration, de l'identité nationale et du développement, Maintaining transitional measures for workers from Romania and Bulgaria until 31 December, available at: <http://www.immigration-professionnelle.gouv.fr/en/node/503>.

93 In order to obtain a work permit, the workers of Romanian or Bulgarian national need an employer who can submit an application to the local employment offices (Directions Départementales du Travail, de l'Emploi et de la Formation Professionnelle – DDTEFP) together with a list of documents. Furthermore the employer needs to pay a fee raised by the Office français de l'immigration et de l'intégration OFII (French Immigration and Integration Office). The duration of the process and the list of documents to be provided discourage employers to contract Romanian and or Bulgarian nationals.

94 Article L 121-2, paragraph 2 of the Immigration Code provides that "the European citizen, who wishes to work, remains subject to the possession of a residence permit during the time of the validity of transitional measures provided by the treaty of accession of countries to which they belong."

95 The list of 150 works was approved by the Sarkozy government in November 2007 and edited by the Hollande government in August 2012. The list of the 291 works is available at: <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026483654&categorieLien=id>.

96 Romeurope National Human Rights Collective, Report on the situation of Roma Migrants in France, 2009-2010, available at: <http://www.romeurope.org/IMG/Rapport%20en%20anglais-%20sans%20commentaire.pdf>.

97 According to Article L-121-1 of the Code for the Entry and Residence of Foreigners and the Right of Asylum (CESEDA) an EU immigrant has the right to reside in France for more than 3 months when he/she has professional activities.

98 The Auto-Entrepreneur is a type of business involving few administrative and accounting requirements, and the tax income is calculated on the basis of the real income of the people.

99 In these cases the prefecture of Seine-Saint-Denis did not want to grant the resident permit to the Romanian nationals although their professional activities was registered at the Chamber of Trade and Crafts, Chambre des Métiers et de l'Artisanat. Without resident permit these people were not

Healthcare

There are no official statistics available concerning Roma mortality and access to health care in France. Travellers face difficulties in obtaining a health card because relevant authorities refuse to accept their circulation documents as an acceptable identity document; this has been identified as a form of discriminatory treatment.¹⁰⁰ Living conditions and related stress have a harmful impact on the health of Travellers, whose life expectancy is estimated at 20 years less than the national average.¹⁰¹

In a 2010 report, Médecins du Monde estimated that 90% of the immigrant Roma population in France does not have access to the basic health insurance that should be guaranteed to all foreigners.¹⁰² The procedures to obtain even this basic health insurance are complicated. For example individuals must prove they have been in France for more than three months and that they don't have any other European health coverage. There is a long waiting period to access the card, and it has to be renewed every two months.¹⁰³ The same report lists a number of factors increasing the high susceptibility of the Romani population in France to epidemics, due to a lack of prompt medical care, deterioration of acute illnesses and a very low level of vaccination coverage.¹⁰⁴

According to Médecins du Monde, only 38% of the Roma in camps have a vaccination card, and only 8% have all of their required vaccinations.¹⁰⁵ Only 22%, as compared to 90% of the total French population, are vaccinated against measles by the age of two. Despite the obligation for children to be vaccinated against diphtheria, whooping cough and tetanus, which generally occur at the age of two months, only 70% of Romani children under the age of two years in France have received it. Additionally, 2.5% of the Roma living in illegal camps have tuberculosis, as compared to the overall percentage of 0.03% the French population.¹⁰⁶ Médecins du Monde estimates the life expectancy among Roma to be between 50 and 60 years,¹⁰⁷ well below the national average of 81 years.¹⁰⁸

allowed to perform their work as self-employed. As declared by the Administrative Court of Montreuil, n°1107734 of 26 September 2011 ; Administrative Court of Montreuil, n°1107771 of 26 September 2011; Administrative Court of Montreuil n°1104762 of 20 June 2011 ;TA de Montreuil N°1109012 of 3 November 2011(on file with ERRC) this is in violation of article 49 of the "Treaty on the Functioning of the European Union" (TFEU) concerning the freedom of establishment of nationals of a Member State in the territory of another Member State. The freedom of establishment "shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms". And it is in violation of the Article L-121-1 of the Code for the Entry and Residence of Foreigners and the Right of Asylum (CESEDA) which transposes Article 7 of Directive 2004/38 and contain the list of conditions opening up the right of residence on French territory including the registration at an establishment. The former document is available at: http://www.eudemocrats.org/fileadmin/user_upload/Documents/D-Reader_friendly_latest%20version.pdf p. 66 And the latter one is available at: http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=22DE7F2D8E8C9A8DE6DF91B1C8A26790.tpdjo13v_1?idArticle=LEGIARTI000006334964&cidTexte=LEGITEXT000006070158&d.

100 HALDE, Deliberation No. 2009-242 of 15 June 2009.

101 Préfecture de la Gironde and Conseil Général de la Gironde. Schéma Départemental d'Accueil des Gens du Voyage. February 2003, p. 31.

102 Médecins du Monde, "La Santé des Roms en France: Une Urgence Sanitaire?", 2010, available at: <http://www.medecinsdumonde.org/fr/En-France/Roms/Publications/La-sante-des-Roms-en-France-une-urgence-sanitaire>.

103 For more information see Romeurope National Human Rights Collective, Report on the situation of Roma Migrants in France, 2009-2010, p.121, available at: <http://www.romeurope.org/IMG/Rapport%20en%20anglais-%20sans%20commentaire.pdf>.

104 Médecins du Monde, "La Santé des Roms en France: Une Urgence Sanitaire?", 2010, available at: <http://www.medecinsdumonde.org/fr/En-France/Roms/Publications/La-sante-des-Roms-en-France-une-urgence-sanitaire>.

105 G. Viscusi, "Roma Health in France Worsened Since Crackdown, Group Says", 26 July 2011, available at: <http://www.bloomberg.com/news/2011-07-26/roma-health-in-france-worsened-since-crackdown-group-says-1-.html>.

106 G. Viscusi, "Roma Health in France Worsened Since Crackdown, Group Says", 26 July 2011, available at: <http://www.bloomberg.com/news/2011-07-26/roma-health-in-france-worsened-since-crackdown-group-says-1-.html>.

107 Médecins du Monde, "La Santé des Roms en France: Une Urgence Sanitaire?", 2010, available at: <http://www.medecinsdumonde.org/fr/En-France/Roms/Publications/La-sante-des-Roms-en-France-une-urgence-sanitaire>.

108 Central Intelligence Agency World Fact Book, "Life Expectancy at Birth", available at: <https://www.cia.gov/library/publications/the-world-factbook/fields/2102.html>.