

## IN THE EUROPEAN COURT OF HUMAN RIGHTS

Requête n° 27013/07, Laetitia WINTERSTEIN and Others v. France, submitted on 13 June 2007

### WRITTEN COMMENTS OF THE EUROPEAN ROMA RIGHTS CENTER

#### I. Introduction

1. The European Roma Rights Center ("ERRC") hereby respectfully submits written comments by permission of the President of the Chamber of the European Court of Human Rights (the "Court") pursuant to rule 44(2) of the Rules of Court.
2. The ERRC sought and was granted permission to provide its written comments focusing on:
  - Do Roma sheds / caravans qualify as “homes” or “possessions” for the purposes of Article 8 and Article 1, Protocol 1 to the Convention?
  - Under which conditions and subject to which requirements can the demolition of Roma houses similar to the ones described above be effected?
  - Should such demolitions take place, are there available effective national remedies that can address the substance of the applicants’ claim?
  - Should such remedies include a right to alternative accommodation, itself a corollary to the right to housing?
  - What impact do national programs / initiatives regarding housing or Roma have to the questions above?
3. These written comments address the above issues in turn. As directed, they do not include any comments on the facts or merits of the case, but address only those aspects of particular concern to the ERRC. Throughout the text, the term “Roma” should be considered as interchangeable with the term “Travellers”<sup>1</sup> while the term “shed” is used in lieu of the term “chalet.”

#### II. Issues to be addressed

- **Do Roma sheds / caravans qualify as “homes” or “possessions” for the purposes of Article 8 and Article 1, Protocol 1 to the Convention?**
- I. The European Court of Human Rights’ (hereinafter “the Court”) jurisprudence on Article 8 concerning the concept of “home” is guided by purely pragmatic considerations that tend to dispense with formalistic considerations and preconceived notions as to what constitutes home. Thus in the *Moreno Gomez v. Spain* case, the Court defined home as “...the place, the physically defined area, where private and family life develops.”<sup>2</sup> It is noted that that Court

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<sup>1</sup> ERRC is aware of the difference in the context of French between these terms. It believes however that these differences are largely immaterial in the light of the issues addressed in the present brief.

<sup>2</sup> Appl. No. 4143/02). Judgment of 16 November 2004, at paragraph 53. The importance of this definition cannot be overstated, all the more since the preparatory works of the ECHR do not provide guidance on how the concept of home

purposefully omitted from including in this working definition any references to the legal status of the tenancy of the inhabitants or as to the physical characteristics of the home. In adopting such an essentially working and open-ended definition, the Court affirmed its preceding case-law, where it had recognised that even people who are neither the owners nor the tenants of a house can claim that the house in which they lived should be considered as their home.<sup>3</sup> Similarly, in *Prokopovich v. Russia*, neither the applicant claimed nor the Court held that she had any legal title or interest to the apartment; indeed, the Court held that in her case Article 8 was applicable due to the following two reasons: first, that she had “sufficient and continuing links with Mr Filippov’s flat for it to be considered her “home” for the purposes of Article 8 of the Convention.”<sup>4</sup> Second, that although legally registered in another address the Russian Government had failed to adduce evidence to the effect that the applicant actually lived there and not at her late partner’s apartment.<sup>5</sup> Finally, the Court has also recognised that caravans placed on a piece of land without permission were also to be considered as homes and came within the scope of protection afforded by Article 8.<sup>6</sup>

- II. The ERRC does not maintain that the issues of legal title or of lack of planning permission are devoid of importance. Rather, it considers that provided the applicant has established that his / her case meets the two conditions laid down in the *Prokopovich* case (sufficient and continuing links and lack of other accommodation used as a house / primary residence), the issue of legal entitlement should be examined within the context of the test laid down in Article 8.2 and not be used as an argument to totally deny to the applicant the protection afforded under Article 8. Indeed, in *Buckley* the Court rejected the British Government’s contention to the effect that only legally established houses could benefit from the protection afforded by Article 8<sup>7</sup> and admitted instead that her caravan (parked on land she owned) did qualify as a home for the purposes of Article 8. In the end, the Court held that no violation of Article 8 had taken place after it held that the interference with the applicant’s right under Article 8 was necessary in a democratic society.<sup>8</sup> The fact that she owned the plot of land was largely immaterial for the purposes of her application in so far as it related to the refusal of the authorities to provide her with a construction permit and the subsequent fines she incurred when she violated the law: had she parked her caravan on a plot of land she did not own, then she would have been indicted not only for breach of town planning regulations but also for trespass. Similarly in the *Chapman* case, the Court held (and it is interesting to note that the British Government did not dispute it) that Article 8 was applicable and proceeded to apply the tests laid down in Article 8.2. Once again, the Court held that the relevant interference (that had assumed the form of a prohibition of parking the applicant’s caravan on her land and of fines she incurred when he breached the relevant law) was necessary within a

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should be understood. See article by Antoine Buyse, “*Strings Attached: The Concept of “Home” in the Case Law of the European Court of Human Rights*”, 2006 E.H.R.L.R., issue 3, pages 294-307, at page 296.

<sup>3</sup> *Mentes v. Turkey* (1997) 26 E.H.R.R. 595 at paragraph 73.

<sup>4</sup> Appl. No. 58255/00, judgment of 18 November 2004 at paragraph 37.

<sup>5</sup> *Ibid*, paragraph 38.

<sup>6</sup> *Buckley v. United Kingdom* (1996) 23 E.H.R.R. 101 at paragraph 54.

<sup>7</sup> *Buckley v. United Kingdom*, Appl. No. 23/95, judgment of 25 September 1996, paragraph 52: “The Government disputed that any of the applicant’s rights under Article 8 (art. 8) was in issue. In its contention, only a “home” legally established could attract the protection of that provision (art. 8).”

<sup>8</sup> *Buckley v. United Kingdom*, *op. cit.*, paragraph 84.

democratic society.<sup>9</sup> More recently, in a case concerning French Travellers, the French government did not dispute that caravans constitute homes and fall within the ambit of Article 8.<sup>10</sup>

- III. Recognition of Romani caravans/sheds as homes under Article 8 would clearly constitute an important consideration to be taken into account in examining whether Romani caravans/sheds also amount to “possessions” under Protocol 1, Article 1 to the European Convention on Human Rights and Fundamental Freedoms (hereinafter “the Convention”). While this is clearly the case in relation to caravans, Romani sheds also constitute “possessions” and hence domestic courts should award compensation both for the destruction of Romani sheds as well for the loss of household items that they contain.
- IV. Acknowledging that Romani sheds erected without permit on third parties’ land as falling within the ambit of Protocol 1, Article 1 is also important for another reason. According to the second sentence of the first section of the article, “No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” One of the emerging general principles of international law in the field of housing is that evictions (and particularly evictions of vulnerable groups such as the Roma) should only take place if a number of conditions are met, the most important being the provision of an alternative relocation site for the people to be evicted before the eviction takes place.<sup>11</sup> A recognition that Romani sheds are “possessions” under Protocol 1, Article 1, together with the provision of Article 53, would allow the Court to take into account relevant international principles in the field of housing. The ERRC believes that the legal status of a house should not, on its own, be determinative of whether it constitutes a possession for the purposes of Protocol 1, Article 1. The ERRC respectfully refers the Court to the case of *Öneryıldız v. Turkey* where the Court held that in relation to an unauthorised house build on state land “...the applicant’s proprietary interest in his dwelling was of a sufficient nature and sufficiently recognised to constitute a substantive interest and hence a “possession” within the meaning of the rule laid down in the first sentence of Article 1 of Protocol No. 1, which provision is therefore applicable to this aspect of the complaint.”<sup>12</sup> The Court then proceeded to find a violation of Protocol 1, Article 1.

- **Under which conditions and subject to which requirements can the demolition of Roma houses similar to the ones described above be effected?**

- V. Romani sheds/caravans should be subject to demolition or removal under the same conditions that “ordinary” houses are; such conditions should include access to a court/administrative

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<sup>9</sup> *Chapman v. United Kingdom*, Appl. No. 27238/95, judgment of 18 January 2001, at paragraphs 114-115.

<sup>10</sup> See *Gabriel Louis Stenegry et M<sup>me</sup> Sonia Adam c. France*, Appl. no. 40987/05, decision of 22 May 2007, page 12: “La Cour note tout d’abord que le Gouvernement ne conteste pas le fait que l’article 8 de la Convention soit applicable en l’espèce et que le défaut de raccordement de la caravane des requérants au réseau électrique constitue une ingérence dans leur droit au respect de la vie privée et familiale et de leur domicile au sens de l’article 8 § 1 de la Convention. La Cour doit donc rechercher si cette ingérence se justifiait sous l’angle du § 2 de l’article 8, à savoir si elle était « prévue par la loi », poursuivait un ou plusieurs buts légitimes et était « nécessaire dans une société démocratique » pour atteindre ces buts.”

<sup>11</sup> The ERRC will refer in more detail to these principles in paragraph XII et seq. below.

<sup>12</sup> Appl. No. 48939/99, judgment [GC] of 30 November 2004.

body which adjudicates on the legality of the demolition. This would also allow these organs to take into account the ever-expanding body of legal principles relating to the forced evictions of vulnerable groups, the legal safeguards that must accompany such evictions and finally the obligation on the part of the state to provide these vulnerable groups with alternative accommodation.<sup>13</sup> The disparate impact of such evictions on Roma compared to the majority population, combined with the failure to afford Roma, in theory or practice, with such protection, should be considered as a violation of Article 14 of the Convention.

- **Whether there exist available and effective national remedies that can address the substance of the applicants' claim in forced evictions cases involving Roma.**

VI. The ERRC respectfully submits that the forced eviction of Roma from land where they are have not obtained planning permission and the removal or demolition of their caravans/sheds by state officials gives rise to two different issues. The first relates to the destruction of the Roma's homes per se. As the Court has held in the *Seljuk and Asker v. Turkey* case, the destruction of houses can under certain circumstances amount to a violation of Article 3 of the Convention.<sup>14</sup> ERRC believes that the same principles are also applicable in cases where the Roma have been intimidated or forced into abandoning the plot of land where they are residing.<sup>15</sup> The second issue relates to the consequences of the eviction of the Roma and their compensation for the loss of their homes and belongings.

VII. At first glance, it is not clear what could be considered as "adequate compensation" or "redress" for the demolition of Roma houses built on third parties' land or without the requisite planning permission. While clearly the Roma should be compensated for the cost, however modest, of their sheds as well as belongings lost during the demolition, the Roma have not been afforded a remedy that provides them with the shelter that is a basic requirement of human existence. The main substance of the violation they have suffered is that they were evicted from their homes without having been offered any alternative accommodation and now have no possibility of returning there or settling anywhere else, without breaking the law and running the risk of incurring fines or other criminal sanctions. The ERRC would like to refer the Court to Decision No 87/2007 of 15 January 2007 of the Appeals Court of Nancy, France.<sup>16</sup> The ERRC believes that the decision highlights the problems that Roma in the aforementioned situation have to confront. Whereas the Nancy Appeals Court noted that the eviction of the Travellers (who were squatting on a plot of land belonging to the community) was illegal and awarded them the court expenses incurred at both instances, it rejected the plaintiffs' demand to be allowed to re-settle on the plot of land from which they had been evicted, noting that it was not within its mandate to provide the

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<sup>13</sup> See below, paragraph XII *et. seq.*

<sup>14</sup> Appl. No. 12/1997/796/998-999, judgment of 24 April 1998. See also *Yoyler v. Turkey*, Appl. no. 26973/95, judgment of 24 October 2003, *Altun v. Turkey*, appl. no 24561/94, judgment of 1 September 2004.

<sup>15</sup> The ERRC considers that it will be only in highly unlikely circumstances that Roma who in many cases have been living on a plot of land for numerous years will, of their own free will, abandon it. More often than not, this will be the result of intense pressure brought to bear upon them and as a result their departure should not be considered as based on their free and informed choice. On the issue of informed consent, see *D.H. and others v. the Czech Republic*, [GC] app. no. 57325/00, judgment of 13 November 2007, paragraphs 202 – 204.

<sup>16</sup> See exhibit 1, Nancy Appeals Court Decision No 87/2007, dated 15 January 2007.

Travellers with a legal title.<sup>17</sup> In that case although the Travellers were awarded expenses, they could not be provided with the only remedy that would address their homelessness. In the ERRC's opinion, an adequate remedy could, for example have been a judicial decision ordering the relocation of the Travellers either to the plot of land from where they were evicted or to another plot of land.

VIII. The ERRC respectfully submits that the Roma evicted from a plot of land where they were squatting (but which constituted their home) are not afforded with any judicial remedy<sup>18</sup> that could address the substance of their demand, namely the provision of alternative accommodation. As outlined below, such a remedy is suggested not just for violations of the ECHR, but also for France's obligations under the European Social Charter and the International Covenant on Economic, Social and Cultural Rights. In this respect, the ERRC notes the increasing attention paid by the European Court to the findings of the ESC, as both an interpretative aid and a source of inspiration.<sup>19</sup> The absence of such remedies to which the Roma have recourse renders it all the more necessary that they are provided with alternative accommodation **before** their eviction as provided for by the relevant international law standards<sup>20</sup> and that in fact this provision of alternative housing should be considered a precondition for the legality of the judicial decision ordering their eviction.

- **Whether potential remedies to forced evictions could include a right to alternative accommodation, itself a corollary to the right to housing.**

XII. The ERRC notes that on 24 October 2007, the Council of Europe's Commissioner for Human Rights and the United Nations Special Rapporteur on the Right to Adequate Housing, issued a joint public statement calling upon CoE member states to take adequate measures to protect the right to housing of Roma in Europe. In their joint statement, they state that their offices have received an increased number of complaints relating to forced evictions of Roma, including in France.<sup>21</sup> In their joint statement, the two officials called upon CoE member states to apply the Basic Principles and Guidelines on Development-Based Evictions and Displacement prepared by the Special Rapporteur under the auspices of the UN Human Rights Council. The latter are to be found in the Annex to the UN Special Rapporteur's Annual Report. According to paragraph 16 of the Basic Principles, "*All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing*

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<sup>17</sup> Similarly, the court could not order the reinstatement of a person evicted from his land on grounds of his lacking a planning permission, as this would effectively entail the granting of a planning permission by the court.

<sup>18</sup> See below, paragraph XII.

<sup>19</sup> See e.g. *Demir and Baykara v. Turkey*, appl. no. 34503/97, judgment of 12 November 2008. See also two recent speeches delivered by the President of the Court Jean Paul Costa, where he stressed the importance of the RESC in expanding the Court's jurisprudence in the field of social rights. The speeches are available at

[http://www.echr.coe.int/NR/rdonlyres/A6F10408-7A2A-45FA-9CD7-083E7314C55C/0/2009\\_Bruxelles\\_Institut\\_DH\\_du\\_barreau.pdf](http://www.echr.coe.int/NR/rdonlyres/A6F10408-7A2A-45FA-9CD7-083E7314C55C/0/2009_Bruxelles_Institut_DH_du_barreau.pdf)

and

[http://www.echr.coe.int/NR/rdonlyres/42BD71A1-099A-4B88-B907-185CFF3B3968/0/2008\\_Strasbourg\\_colloque\\_d%C3%A9claration\\_universelle\\_16\\_10.pdf](http://www.echr.coe.int/NR/rdonlyres/42BD71A1-099A-4B88-B907-185CFF3B3968/0/2008_Strasbourg_colloque_d%C3%A9claration_universelle_16_10.pdf)

<sup>20</sup> The ERRC will refer in more detail to these principles in paragraph XII *et seq.*

<sup>21</sup> Joint Statement by Council of Europe Commissioner for Human Rights Thomas Hammarberg and UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari, dated 24 October 2007, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH/Speech\(2007\)16&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH/Speech(2007)16&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

*that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education*". The principles place great emphasis on extensive prior consultation with the persons that stand to be affected from the eviction. Two of the most important principles are the following:

"38. States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

[...]

41. Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.

[...]

43. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.

44. All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling."<sup>22</sup>

XIII. The ERRC respectfully notes that the three decisions of the ECSR in relation to the three

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<sup>22</sup> Basic Principles and Guidelines on Development-Based Evictions and Displacement prepared by the Special Rapporteur under the auspices of the UN Human Rights Council, UN Doc A/HRC/4/18, dated 5 February 2007, available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/4/18&Lang=E> The Guidelines are reproduced in the Annex, page 13 *et seq.*

Collective Complaints the ERRC has filed against Greece, Italy and Bulgaria (Collective Complaints No 15/2003, 27/2004 and 31/2005 respectively) contain an almost exhaustive list of the obligations of states in the field of Roma housing. Indeed, the ECSR in its latest decision regarding the Collective Complaint against Bulgaria consolidated its findings in the previous decisions. Thus according to the ECSR, even equal treatment of Roma with other citizens in the field of housing could be considered as discriminatory:

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

43. The Committee therefore holds that the situation concerning the inadequate housing of Roma families and the lack of proper amenities constitutes a violation of Article 16 taken together with Article E.”

XIV. Of particular interest is the response of the ECSR to the argument put forward by the Bulgarian government to the effect that inhabitants of illegal dwellings could be held to be entitled to compensation for the demolition of their houses since that would amount to recognizing a right flowing out of essentially illegal conduct. The ECSR found the argument unconvincing, noting that:

“53. [...] a person or a group of persons, who cannot effectively benefit from the rights provided by the legislation, may be obliged to adopt reprehensible behaviour in order to satisfy their needs. However, this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights.

55. The Committee finds that the current legislation on the legalisation of dwellings affects Roma families in a disproportionate manner. By strictly applying the rules on legalisation to Roma, whose situation also differs as a consequence of the state non-intervention over a certain period (regarding property documents, or the respect of construction safety and hygiene rules), Bulgaria has discriminated against Roma families by failing to take due consideration of the specificity of their living conditions.

56. As regards eviction, which is the consequence of the non-legalisation of dwellings, the Committee finds that while it is true that legislation exists and it includes judicial redress, it does not address properly the specific situation of the Roma families [...] The Committee recalls that it is the responsibility of the state to ensure that evictions, when carried out, respect the dignity of the persons concerned even if when they are illegal occupants, and that alternative accommodation or other compensatory measures are available. By failing to

take into account that Roma families run a higher risk of eviction as a consequence of the precariousness of their tenancy, Bulgaria has discriminated against them.”<sup>23</sup>

XV. The fact that the Roma constitute, due to a number of historical factors, a group entitled to a special “duty of care” and should therefore benefit from positive discrimination measures is also encountered in a variety of instruments. Thus, Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe, (Adopted by the Committee of Ministers on 23 February 2005 at the 916th meeting of the Ministers’ Deputies), provides *inter alia* that

“24. The public authorities should make every effort to resolve the undefined legal status of Roma settlements as a precondition for further improvements. Where Roma camp illegally, public authorities should use a proportionate response. This may be through negotiation or the use of legal action. However, they should seek, where possible, solutions, which are acceptable for all parties in order to avoid Roma from being excluded from access to services and amenities to which they are entitled as citizens of the state where they live.”<sup>24</sup>

XVI. Finally, other principles that are related to the above (and indeed served as a source of inspiration) are contained in the Committee on Economic Social and Cultural Rights’ two General Comments on Article 11.1 of the International Covenant on Economic Social and Cultural Rights, General Comment 4, adopted by the Committee on 13/12/1991 and General Comment General Comment 7 adopted on 20/5/1997. Three particularly important principles enunciated therein are that of legal security of tenure even in relation to trespassers, the short-terms measures to be taken by governments and finally of the positive obligation incumbent on member states to provide alternative accommodation to persons or groups that cannot provide for themselves. Thus, according to Article 7(a) of General Comment 4,

“8 (a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing **and informal settlements**, including occupation of land or property. **Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.** States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups; (emphasis added).” [emphasis added]  
[...]

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a

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<sup>23</sup> Decision on the Merits Collective Complaint No 31/2005 ERRC v Bulgaria, dated 18 October 2006, available at [http://www.coe.int/t/e/human\\_rights/esc/4\\_collective\\_complaints/list\\_of\\_collective\\_complaints/CC31Merits\\_en.pdf](http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/list_of_collective_complaints/CC31Merits_en.pdf)

<sup>24</sup> The Recommendation is available at <http://wcd.coe.int/ViewDoc.jsp?id=825545&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

[...]

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.<sup>25</sup>

XVII. The ERRC respectfully contends that, in the face of persistent failure by a number of states, including France, to provide adequate housing to the Roma, then the erection of sheds by the Roma or the parking of caravans in plot of land in order to shelter themselves and their families should be considered as a "self-help" measure to which the Roma resort not by choice but in the absence of any other alternative.

- **What impact do national programs / initiatives regarding housing or Roma have to the questions above?**

XVIII. The ERRC is aware that many Council of Europe / European Union member states have adopted ambitious and wide-ranging programmes. France is one of them, having since 2000 starting implementing such a programme, designed to meet primarily the needs of itinerant Travellers.

XIX. The ERRC has brought a comprehensive complaint against France regarding the issue of housing of Roma / Travellers; it is pending before the European Committee on Social Rights (ECSR).<sup>26</sup> In its collective complaint, the ERRC is critical of the failure of the French state to address adequately the housing problems of Roma and Travellers in France. Prestigious bodies, such as the Commission nationale consultative des droits de l'homme, have recently also expressed their criticism of the housing situation of Roma / Travellers as well as the problems in the application of the 2000 Loi Besson.<sup>27</sup> The existence and implementation of such programmes ought to be taken into account by both the domestic courts as well as the European Court of Human Rights in cases concerning evictions of Roma, provided however that their exact impact to the case in question can be demonstrated.

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<sup>25</sup> The General Comment is available at

[http://sim.law.uu.nl/SIM/CaseLaw/Gen\\_Com.nsf/6a53968e2906c409c12568870055fbbe/2ca67e300c752ba58025686900558574?OpenDocument](http://sim.law.uu.nl/SIM/CaseLaw/Gen_Com.nsf/6a53968e2906c409c12568870055fbbe/2ca67e300c752ba58025686900558574?OpenDocument)

<sup>26</sup> See Collective Complaint No 51/2008, *ERRC v. France*, declared admissible on 23 September 2008. The text of the complaint is available at [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC51CaseDoc1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC51CaseDoc1_en.pdf)

<sup>27</sup> See *Etude et propositions sur la situation des Roms et des gens du voyage en France* that was adopted by the Plenary Assembly of the Commission nationale consultative des droits de l'homme on 7 February 2008, available at [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](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), particularly p. 13 *et seq.*

XX. An identical issue has arisen in cases from Turkey concerning violations of Article 1, Protocol 1 relating to the existence of government programs and initiatives to provide housing and compensation to individuals who lost their property (in the Turkish context, usually following security operations in the south eastern part of the country). These cases are also relevant for similar issues raised under Article 8. In these cases the Turkish government claimed that it was implementing measures to provide assistance to internally displaced persons (in the form of compensation and/or housing and mainly by the means of the “return to the village” rehabilitation project), hence the interference with their property rights was both serving the general interest (fight against terrorism) and was proportionate.<sup>28</sup> Although the Court acknowledged that the existence of such programs was relevant, it rejected the government’s contentions by noting that the government had failed to point to any concrete example of adequate assistance to the applicants in the framework of these various programs. Thus, according to the Court, the Turkish authorities had not only failed to provide the applicants with alternative housing and employment,<sup>29</sup> the limited financial assistance given to only some of them was also held to be insufficient and could not guarantee an “adequate standard of living or a sustainable return process.”<sup>30</sup> The Court also noted that “*the authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow the applicants to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country (see in this respect Principles 18 and 28 of the United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, dated 11 February 1998).*”<sup>31</sup>

### Conclusion

XXI. The ERRC believes that it has adduced enough evidence to the effect that Romani “sheds and caravans,” being in fact primary residences, come within the scope of Article 8 and Protocol 1, Article 1 of the Convention. The domestic legal system in France is inadequate to address the unique circumstances of housing for many Roma / Travellers (sheds erected without permit on third parties’ land, caravans parked without planning permission etc.) French obligations under the ECHR, the RESC and the ICESCR require that Roma to be afforded an increased level of protection in the area of housing. This can be accomplished by providing Roma with both proactive and retroactive domestic remedies in cases of forced evictions. In particular, ERRC considers that no evictions of Roma / Travellers (and especially of those living for many years in a plot of land) should take place without the relevant authorities providing alternative accommodation.

XXII. The ERRC submits these comments for the Court’s consideration and urges the Court to take them into account when deciding on the issues in this case.

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<sup>28</sup> See *Dogan and others v. Turkey*, Appls. no. 8803-8811/02, 8813/02 and 8815-8819/02, paragraph 151.

<sup>29</sup> *Ibid*, paragraph 154.

<sup>30</sup> *Ibid*.

<sup>31</sup> *Ibid*.