EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DECISION ON THE MERITS

Adoption: 5 December 2007

Notification: 4 February 2008

Publicity: 5 June 2008

International Movement ATD Fourth World v. France

Complaint no. 33/2006

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 226th session attended by:

Ms Polonca KONČAR, President
Messrs Andrzej SWIATKOWSKI, First Vice-President
Tekin AKILLIOĞLU, Second Vice-President
Jean-Michel BELORGEY, General Rapporteur
Alfredo BRUTO DA COSTA
Nikitas ALIPRANTIS
Stein EVJU
Ms Csilla KOLLONAY LEHOCZKY
Messrs Lucien FRANCOIS
Lauri LEPPIK
Colm O'CINNEIDE
Ms Monika SCHLACHTER
Ms Birgitta NYSTROM

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter

Having deliberated on 18 September and 4 and 5 December 2007;

On the basis of the report presented by Mr Alfredo BRUTO DA COSTA,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint lodged by ATD Fourth World was registered on 26 January 2006. It alleges that France is in violation of Articles 16, 30 and 31 of the revised European Social Charter (the "revised Charter"), alone or taken in conjunction with Article E.

The Committee declared the complaint admissible on 12 June 2006.

2. In accordance with Article 7§§1 and 2 of the Protocol providing for a system of collective complaints ("the Protocol") and the Committee's decision on the admissibility of the complaint, the Executive Secretary communicated the text of the admissibility decision on 15 June 2006 to the French Government ("the Government") and ATD Fourth World, and on 21 June to the States party to the Protocol, the States having ratified the revised Charter and having made a declaration under Article D§2 of the revised Charter, the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the International Organisation of Employers (IOE).

3. In accordance with Rule 31§1 of the Committee's Rules of Procedure, the Committee fixed a deadline of 30 September 2006 for the presentation of the Government's written submissions on the merits. The submissions were registered on 29 September 2006.

4. In accordance with Rule 31§2, the President set 10 November 2006 as the deadline for ATD Fourth World to present its response to the Government's submissions. The response was registered on 10 November 2006.

5. The Committee set 30 September 2006 as the deadline for any observations from the States party to the Protocol as well as from the ETUC, UNICE and the IOE. The ECTU submitted its observations on 3 October 2006. It supported ATD Fourth World's complaint.

6. At its 221st session (19-23 March 2007), in accordance with Rule 33§1 of its Rules of Procedure, the Committee decided to hold a joint public hearing with representatives of the parties to collective complaints Nos. 33/2006 ATD Fourth World v. France and 39/2006 European Federation of National Organisations Working with the Homeless (FEANTSA) v. France.

7. At the Government's request, the initial deadline for written submissions on the merits of the complaint (18 May) was extended to 1 June 2007 and, as a result, the date of the public hearing was put back.

8. The public hearing took place in the Human Rights Building in Strasbourg on 25 June 2007.

9. The ATD Fourth World was represented by:

Mr Paul BOUCHET, honorary Counsellor of State and former President of ATD Fourth World,

Mrs Cécile REINHARDT, ATD Fourth World activist,

and Mrs Madeleine WEISS, inhabitant of Kaltenhouse aerodrome.

10. The European Federation of National Organisations working with the Homeless (FEANTSA) was represented by:

Mr Robert ALDRIDGE, President,

Mr André GACHE President of FAPIL (Fédération des Associations pour la Promotion and l'Insertion par le Logement), member of FEANTSA,

Mr Marc UHRY, expert in housing law, FEANTSA,

and Mr Claude CAHN, external expert.

11. The French Government was represented by:

Mrs Anne-Françoise TISSIER, Sub-Director of Human Rights, Ministry for Foreign Affairs, Directorate of Legal Affairs,

Mrs Marianne ZISS, Ministry for Foreign Affairs, Directorate of legal Affairs, Sub-Directorate of Human Rights,

Mrs Hélène DADOU, Sub-Directorate of Urban Development and Housing, Ministry of Ecology, Development and Sustainable Development, Directorate General of Town Planning, Housing and Construction, Housing Department,

and Mr François FASSY, Head of the Anti-Exclusion Office, Ministry of Labour, Social Affairs and Solidarity, Directorate General of Social Action, Sub-Directorate of Integration and Anti-Exclusion Policies.

12. In accordance with Rule 33§4 of its Rules of Procedure, the Committee invited the ETUC to attend the hearing. However, ETUC informed the Committee that they were unable to participate in the hearing.

13. In accordance with Rule 33§4 of its Rules of Procedure, the Committee invited the Finnish Government, which had indicated that it wished to intervene to call for the rejection of the FEANTSA v. France complaint, to participate in the hearing. The Finnish Government was represented by:

Mr Arto KOSONEN, Government Agent, Ministry for Foreign Affairs, Legal Department,

and Mr Peter FREDRIKSSON, principal adviser, Ministry of the Environment, Housing and Buildings Department.

14. The Committee was addressed by Ms REINHARDT, Mr BOUCHET, Mr ALDRIDGE, Mr UHRY, Mrs TISSIER and Mr KOSONEN and received answers to questions from its members.

15. Following the hearing, the Committee gave the government time to respond to some of these matters.

16. The replies were registered on 3 October 2007 and communicated to ATD Fourth World and FEANTSA.

SUBMISSIONS OF THE PARTIES

A – ATD Fourth World

17. ATD Fourth World asks the Committee to find that France is in violation of Articles 16, 30 and 31 of the revised Charter, alone or taken in conjunction with Article E.

B – The Government

18. The Government considers that the French authorities are doing everything possible to ensure that the legislation intended to guarantee decent housing for all is applied, especially in extremely complex situations like those in Herblay and Kaltenhouse. It therefore maintains that ATD's allegation that, notwithstanding the existence of favourable legislation on the right to housing, French government practice does not make this right effective is unfounded and considers that there has been no violation of Articles 16, 30 and 31 of the revised Charter.

RELEVANT DOMESTIC LAW

19. The main pieces of legislation concerning housing to which the parties have referred to comprises:

a) Legal basis of the right to housing
b) The right to decent housing
c) The right to housing fit for human habitation
d) Measures to combat eviction
e) Reducing the number of homeless and the number of people in emergency accommodation
f) Rehabilitation accommodation
g) Social housing construction
h) Conditions for the allocation of social housing
i) Means of appeal
j) Assistance with access to and retention of housing
k) Prohibition of discrimination in access to housing

a) Legal basis of the right to housing

20. **The Tenancy Act, No. 89-462 of 6 July 1989, reads:**

> "Section 1: The right to housing is a fundamental right; it shall be exercised in accordance with the laws to which it is subject.
>
> This right implies freedom for all to choose a dwelling through the provision and development of rented and owner-occupied sectors open to all social groups. […]".

21. **The Right to Housing Act, No. 90-449 of 31 May 1990, reads:**

> "Section 1: Securing the right to housing is a duty for the entire nation."

22. **Constitutional Council Decision No. 94-359 DC of 19 January 1995 on the Diversity of Housing Act reads:**

> "Considering that, by virtue of these principles, the opportunity for everyone to have decent housing is an objective with the force of constitutional law" and "that it is for Parliament and the Government to determine, in accordance with their respective remits, arrangements for achieving this objective with the force of constitutional law" [...].

23. **The Anti-Exclusion Act, No. 98-657 of 29 July 1998, as codified in Article L.115-2 of the Social and Family Action Code, reads:**

> "Section 1: Combating exclusion is a national challenge, based on the principle of equal dignity for all human beings, and is a national policy priority.
>
> The Act seeks to ensure universal access to fundamental rights in the fields of employment, housing, health, justice, education, training and culture, and family and child protection.
>
> Central government, local and regional authorities and other public bodies such as municipal and joint municipal social services departments, social security bodies and other social and medical institutions shall contribute to implementing these principles.
>
> They should implement policies designed to identify, prevent and remedy situations that might lead to exclusion.
>
> They shall take the necessary steps to inform everyone of the nature and extent of their rights and help them, where necessary through personal assistance, to complete the necessary administrative and social procedures in the shortest possible time."

b) The right to decent housing

24. **The Tenancy Act, No. 89-462 of 6 July 1989, reads:**

> "Section 6: The landlord shall provide the tenant with decent housing with no manifest risks to the latter's physical safety and health, fitted out in such a way as to make it habitable."

25. **Decree No. 2002-120 of 30 January 2002 concerning the features of decent housing, implementing Section 187 of the Urban Solidarity and Renewal Act, No. 2000-1208 of 13 December 2000, reads:**

> "Section 3: The accommodation shall comprise the following fixtures and fittings:
> 1. Facilities for proper heating, with arrangements for the supply of energy and the evacuation of combustion products suited to the features of the dwelling. […]
> 2. A drinking water supply ensuring that water is supplied within the dwelling with a pressure and flow sufficient for normal use by tenants;
> 3. Facilities for disposing of household waste water and domestic sewage, preventing the return of odours and effluent and equipped with a U- bend;
> 4. A kitchen or kitchenette designed to accommodate a cooking appliance and including a sink with hot and cold running water and waste water disposal facilities;
> 5. A sanitary facility inside the dwelling including a toilet separated from the kitchen and from the room in which meals are eaten, and facilities for washing, comprising a bath or shower, designed to ensure privacy, with hot and cold running water and sewage disposal facilities. The sanitary facility of a one-room dwelling may be confined to a toilet outside the dwelling provided it is in the same building and readily accessible;
> 6. An electrical system providing adequate lighting in all rooms and including sockets, suitable for common household appliances essential to everyday life."

c) The right to housing fit for human habitation

26. **The Public Health Code reads:**

> "*Article L.1331-22: Cellars, basements, attics, rooms with no outside window and other premises inherently unfit for human habitation may be not be made available for habitation, either free of charge or in return for money*."

> "*Article L.1331-23: Premises may not be made available for habitation, either free of charge or in return for money, under conditions that will manifestly lead to their being overcrowded*."

d) Measures to combat eviction

27. **The Tenancy Act of 6 July 1989 reads:**

> "Section 24: Any clause providing for the automatic termination of the lease in the event of failure to pay the agreed rent, supplementary charges or a deposit shall not take effect until two months after notice to comply has remained without effect.
> On penalty of inadmissibility, the bailiff shall give notice of termination to the State representative in the département, by registered letter with a request for acknowledgement of receipt, at least two months before the hearing, so that the latter may, as necessary, refer to the bodies providing housing assistance, the housing support fund or the competent social services.
> The court may, even of its own motion, grant extra time for payment […]"

28. **The Civil Enforcement Procedure [Reform] Act, No. 91-650 of 9 July 1991, reads:**

> "Section 61: Unless otherwise provided, eviction or evacuation from a building or inhabited premises may take place only pursuant to a court decision or registered enforceable friendly settlement, and after formal notice to quit the premises […]"

"Section 62: If the eviction concerns premises used as the principal residence of the person being evicted or anyone occupying them on the latter's initiative, it shall not take place […] until the expiry of a period of two months after formal notice has been served. […]
The court ordering the eviction […] may, even of its own motion, decide that the order or judgment shall be forwarded by the registry to the State representative in the département so that the occupant's request to be rehoused may be addressed under the département's housing action plan for disadvantaged persons, provided for in the Right to Housing Act, No. 90-449 of 31 May 1990.

As soon as formal notice to quit the premises has been served, the bailiff responsible for enforcing the eviction order shall, on penalty of an extension of the period of time before which eviction may not take place, inform the State representative in the département so that the occupant's request to be rehoused may be addressed under the département plan referred to in the preceding paragraph."

29. **The Building and Housing Code reads:**

"Article L.613-3: Notwithstanding any final eviction order and despite the expiry of the period of time specified in the preceding Articles, any eviction order that has not been enforced by 1 November of any year shall be suspended until 15 March of the following year, unless the persons concerned are rehoused under adequate conditions, such that the family is kept together and its needs are met."

30. **Circular UHC/IUH 1 No 2005-32 of 11 May 2005 on the prevention of tenant evictions reads:**

"The prevention of evictions is one of the government's priorities for combating exclusion."

e) <u>Reducing the number of homeless (and the number of people in emergency accommodation)</u>

31. **The Social and Family Action Code reads:**

"Article L.345-2: A social surveillance unit shall be set up in each département, on the initiative of the State representative in the département, to inform and advise people in difficulty. It shall operate continuously, every day of the year, and any individual, body or local authority may apply to it.
It shall be responsible for:
1. Assessing the urgency of the situation of the individual or family in difficulty;
2. Suggesting an immediate solution, in particular by indicating an establishment or service that can receive the individual or family concerned and arranging without delay for the effective implementation of this solution, in particularly with the help of the social services;
3. Keeping records of the various accommodation facilities in the département up to date. […]"

32. **The Housing Act, No. 94-624 of 21 July 1994, reads:**

"Section 21 (as amended by Act No 2007-290 of 5 March 2007): A plan for emergency accommodation for homeless persons shall be devised in each département
[…] and prepared by the State representative in conjunction with the local and regional authorities and groupings of such authorities responsible for housing. […]
The département plan shall analyse requirements and provide for emergency accommodation in premises where hygiene conditions and standards of comfort are in keeping with human dignity.
The capacity required shall be at least one place per 2,000 inhabitants in the case of municipalities that are members of a joint municipal public body and whose population

exceeds 50,000 inhabitants and municipalities with a population of at least 3,500 inhabitants which are included, according to the population census, in an urban area with more than 50,000 inhabitants including at least one municipality with more than 10,000 inhabitants. This capacity shall be increased to one place per 1,000 inhabitants in all municipalities in an urban area with more than 100,000 inhabitants. […]"

f) Rehabilitation accommodation

33. **The Social and Family Action Code reads:**

"Article L.345-1: Individuals and families experiencing serious difficulties, in particular financial, family, housing, health or integration problems, shall receive, on request, social assistance so that they may be housed in public or private social rehabilitation accommodation and thus be helped to acquire or recover personal independence and social autonomy."

g) Social housing construction

34. **The Social Cohesion Act, No. 2005-32 of 18 January 2005, reads:**

"Section 87: Disregarding the national urban renewal programme specified in Sections 6 to 9 of the Urban Renewal Act, No. 2003-710 of 1 August 2003, 500,000 social housing units for rent shall be financed over the period 2005 to 2009, according to the following schedule:

YEARS	2005	2006	2007	2008	2009	TOTAL
Dwellings financed by loans for the construction of « highly social" housing……..	58 00	63 000	63 000	63 000	63 000	310 000
Dwellings financed by loans for the construction of other social housing…….	22 000	27 000	27 000	32 000	32 000	140 000
Dwellings constructed by the authorised association specified in section 116 of the Finance Act 2002 (N° 2001-1275 of 28 December 2001)……	10 000	10 000	10 000	10 000	10 000	50 000
Totals	90 000	100 000	100 000	105 000	105 000	500 000

"Section 107: To finance the renovation of 200,000 private rented dwellings with controlled rents and help restore vacant dwellings to the housing market, the Budget Acts 2005 to 2009 have made additional funding available to the national housing improvement agency, over and above that corresponding to its normal activities. This amounts to the following sums, at 2004 prices:
1. € 70 million for programmes authorised in 2005 and € 140 million for ones authorised in the following four years;
2. In terms of payments authorised, € 70 million in 2005 and € 140 million for each of the following four years."

35. **Decree No. 2005-1243 of 29 of September 2005 setting up an inter-ministerial committee and an inter-ministerial representative for the expansion of the housing supply reads:**

"Section 1: There shall be an inter-ministerial committee for expanding the housing supply.. […]
The committee shall establish guidelines for government policy on expanding the supply of housing. It shall deal with the various aspects of this policy, in particular the policy for making more building land available."
"Section 2: An inter-ministerial office for expanding the housing supply shall be answerable to the minister responsible for housing. […]"

36. **The Building and Housing Code reads:**

> "Article L302-5 (as amended by Act No. 2007-290 of 5 March 2007) : These provisions shall apply to municipalities with a population of at least 1,500 in Ile-de-France and 3,500 in the other regions that are included, according to the population census, in an urban area with more than 50,000 inhabitants with at least one municipality with more than 15,000 inhabitants, and in which the total stock of social housing for rent on 1 January of the previous year constituted fewer than 20% of principal residences. These provisions do not apply to municipalities in urban areas whose population declined between the last two censuses and that belong to a formal grouping of municipalities in either large or medium-sized urban areas or a grouping of other municipalities with local housing programme responsibilities, once such a programme has been adopted.
> From 1 January 2008, these provisions shall also apply, in accordance with the first sub-paragraph, to municipalities that are members of a joint local authority body with its own tax-raising powers with a population of more than 50,000 inhabitants and at least one municipality with more than 15,000 inhabitants, if the municipality in question has a population of at least 1,500 in Ile-de-France and 3,500 in the other regions and its total stock of social housing for rent on 1 January of the previous year constituted fewer than 20% of principal residences. The levy specified in Article L. 302-7 shall be operative from 1 January 2014."

> "Article L302-6 (as amended by Act No. 2007-290 of 5 March 2007): In municipalities situated in urban areas covered by this section, legal persons that are owners or managers of social housing within the meaning of Article L. 302-5 are required, each year before 1 July, to supply the prefect with a list, by municipality, of the social housing they owned or managed on 1 January of the current year. […]."

> "Article L302-7 (as amended by Act No. 2007-290 of 5 March 2007): From 1 January 2002, a levy shall be imposed on the tax income of municipalities specified in Article L. 302-5, other than ones that receive the urban solidarity and social cohesion allowance specified in Article L. 2334-15 of the Local and Regional Authorities Code when their stock of social housing exceeds 15% of principal residences.
> The levy shall be 20% of the per capita tax-raising potential, as defined in Article L. 2334-4 of the Local and Regional Authorities Code, multiplied by the difference between 20% of the principal residences and the number of social housing units in the municipality concerned in the previous year, as defined in Article L. 302-5, but may not exceed 5% of the municipality's real operating expenditure as recorded in the last but one financial year.
> The levy shall not be imposed if it less than € 3,811.23."

37. **The Right to Housing Act, No. 90-449 of 31 May 1990, reads:**

> "Section 2, inserted pursuant to Section 65 of the Local Responsibilities and Freedoms Act, No.2004-809 of 13 August 2004:
> Each département shall draw up a housing action plan for the disadvantaged, setting out the planned measures to enable persons specified in section 1 to obtain or retain decent and independent housing with water and energy supplies and telephone services."

> "Section 3, as amended by Act No. 2006-872 of 13 July 2006, Section 60 I: Housing action plans shall be drawn up and implemented by the State and the département. Municipalities and their groupings shall be consulted, together with other legal persons concerned, in particular associations whose objectives include the integration or housing of disadvantaged persons and associations that defend persons who are excluded from housing, family allowance and agricultural mutual funds, water and energy suppliers, telephone operators, public and private landlords and those responsible for collecting employers' contributions to housing construction. Plans shall be drawn up for a minimum of three years.[…]"

"Section 4, as amended by Act 2006-872 of 13 of July 2006 , Section 60 II: Département plans shall be based on a qualitative and quantitative assessment of needs in the area concerned and shall take account of the boundaries of any joint municipal public housing bodies. Plans shall specify the needs arising from the application of Section 1 and shall distinguish between situations where individuals' or families' difficulties in obtaining or retaining housing arise purely from financial circumstances and those connected with a combination of financial circumstances and problems of social integration.

Action plans shall give priority to persons and families who are completely homeless, at risk of eviction without rehousing, in temporary accommodation, housed in slums, or unfit, uncertain or improvised homes, or faced with a combination of difficulties.

Plans shall specify the local bodies responsible for identifying the needs specified in the first paragraph of this Section and, where appropriate, for implementing all or part of the relevant plan's provisions. The geographical jurisdiction of these bodies must take account of the joint municipal bodies responsible for town planning and housing established under part 5 of the Local and Regional Authorities Code.

Plans shall lay down, by geographical sector and having regard to local housing programmes and "housing basins", the objectives to be achieved to ensure that individuals and families concerned by the relevant plan have long-term access to housing and that there is an adequate social mix in cities, towns and neighbourhoods. They shall therefore lay down appropriate measures, concerning:
a. The response to requests for housing from individuals and families concerned by the relevant plan;
b. The construction or provision of additional dwellings covered by so-called "social agreements";
c. Principles governing the priority allocation of housing;
d. The prevention of tenant evictions, and accompanying social support. […]
e. The accommodation of persons placed in temporary or transitional dwellings;
f. The contribution of the housing solidarity fund to achieving the objectives of the plan;
g. The identification of unfit dwellings and premises unsuitable for accommodation, and action to absorb the corresponding requirements for rehousing, together with dwellings deemed to be substandard following inspections by bodies paying housing assistance."

h) Conditions for the allocation of social housing

38. **The Building and Housing Code reads:**

"Article L.411 (inserted pursuant to Act No. 98-657 of 29 July 1998): The construction, fitting out, allocation and management of social housing for rent shall be designed to improve the living conditions of persons on low incomes and other disadvantaged persons. These operations shall contribute to the implementation of the right to housing and help to meet the need for social mix in the towns and neighbourhoods concerned."

"Article L.441: The allocation of social housing shall contribute to implementing the right to housing by meeting the needs of those on low incomes and other disadvantaged persons.

The allocation process must take account of the variety of local demand and the need for equal opportunities for applicants and social mix in the towns and neighbourhoods concerned.

Local and regional authorities shall contribute, in accordance with their powers and responsibilities, to achieving the objectives specified above.
Social landlords and letting agencies shall allocate social housing in accordance with the provisions of this sub-section.
The State shall ensure that the rules governing the allocation of social housing are complied with."

"Article L.441-1: The order of the Conseil d'Etat specified in Article L. 441-2-6 shall lay down the rules governing the allocation of dwellings built, improved or acquired and improved with State financial support or giving entitlement to personalised housing assistance and belonging to or managed by social housing agencies. The order shall require allocation procedures to take account of households' assets, composition, income and current housing circumstances, distance from their place of work and the availability of local facilities reflecting applicants' needs. If any household members are employed as registered maternal or family assistants this shall also be taken into account.
The order shall establish the general criteria for the allocation of housing, with priority given to:
a. persons with disabilities or families caring for a person with a disability;
b. persons who are poorly housed, disadvantaged or otherwise experiencing housing problems for financial or social reasons;
c. persons housed or accommodated temporarily in a transitional dwelling or establishment;
d. persons who are poorly housed and are resuming work after a period of long-term unemployment.
The order shall determine the arrangements for consulting mayors of municipalities where social housing is located on the principles governing its allocation and the consequences of their application.
The order shall also specify the conditions governing, and restrictions on, social housing agencies' right to reserve certain initial and subsequent lettings of dwelling specified in the previous sub-section for particular categories of applicant, in exchange for the provision of land, financing or a financial guarantee. Reservation agreements that fail to comply with the restrictions specified in this sub-section shall be null and void.
The order shall specify the procedure for concluding such reservation agreements, in exchange for the provision of land, financing or a financial guarantee by a municipality or a joint municipal public body. These reservation arrangements shall continue for five years after loans contracted by letting agencies and guaranteed by municipalities or joint municipal public bodies have been fully repaid. […]"

"Article L 441-1: [The order] shall also specify the conditions governing, and restrictions on, the right of State representatives in départements to reserve dwellings for priority applicants, particularly those who are poorly housed or disadvantaged.
State representatives in départements may reach an agreement with any mayor to delegate to that mayor or, with the mayor's agreement, to the chair of the joint municipal public body responsible for housing, all or part of their reserved quota of dwellings in the area of the municipality or joint municipal public body concerned.
The agreement shall establish the obligations of the assignee concerning the application of the right to housing, the procedure for assessing the delegation once a year and the procedure for terminating it should the assignee fail to comply with the obligations.

If a State representative finds that the previous year's objectives in the housing action plan for the disadvantaged have not been fulfilled and a notice to comply has remained without effect for three months, he or she shall replace the mayor or the chair of the joint municipal public body and decide directly on the allocation of reserved dwellings."

“Article L.441-1-1: Joint municipal public bodies with housing responsibilities that have approved a local housing programme may invite bodies with social housing within their geographical jurisdiction to enter into three-year joint municipal agreements with them.
Such agreements, which must observe the principle of social mix in the towns and neighbourhoods concerned and take account, by geographical sector, of the capacity of and living conditions in the buildings owned or run by the various bodies, shall specify:
- for each body, a quantified annual commitment to allocate housing to persons experiencing financial and social difficulties, particularly the individuals and families specified in section 4 of the Right to Housing Act, No. 90-449 of 31 May 1990, whose needs are identified in the département housing action plan for the disadvantaged;
- the support measures and other necessary arrangements for fulfilling and monitoring this annual commitment.
Each agreement shall be submitted for consultation to the committee responsible for the département housing action plan for the disadvantaged. If the committee has not responded within two months of receiving the agreement, it shall be deemed to have given its approval.
Joint municipal agreements shall also stipulate the establishment of a co-ordinating committee chaired by the chair of the joint municipal public body concerned. Each committee shall be composed of the State representative in the département, the mayors of the municipalities that are members of the joint municipal public body, and representatives of the social letting agencies operating in the relevant area, the département, any body with reservation rights and recognised associations working in the département whose objectives include the integration or housing of disadvantaged persons. The Committee shall consider applications for social housing concerned by the joint municipal agreement. The co-ordinating committee shall not take decisions that are the responsibility of the letting committees specified in Article L. 441-2, but shall issue opinions on the appropriateness of allocating social housing units in the public body’s geographical jurisdiction. Committees shall establish their own rules of procedure […]”

“Article L.441-2: Each social housing agency shall establish a letting committee to allocate individually each dwelling. Letting committees shall comprise six members, one of whom they shall elect as chair. […]
Such committees shall allocate housing in accordance with the objectives specified in Article L. 441 and the priorities laid down in Article L. 441-1, on behalf of disadvantaged persons and those experiencing housing difficulties.
Letting committees shall include, as specified in a decree, a representative appointed by associations previously recognised by the State representative in the département, excluding any letters or managers of housing for disadvantaged persons, that are actively concerned with the integration or housing of disadvantaged persons in the area where the dwellings concerned are located. This representative shall participate, in an advisory capacity, in the committee's letting decisions […]”

“Article L.441-2-1: The conditions governing applications for social housing to offices, organisations or other legal persons shall be specified in an order of the Conseil d'Etat. There shall be a single département registration number for each application. Offices or organisations receiving applications shall communicate the relevant département number to applicants within a month of the application’s being lodged […]Applications shall also be advised of the periods specified in Article L. 441-1-4 beyond which they can refer their case to the mediation committee specified in Article L. 441-2-3, together with the referral procedure.
The purpose of the registration system, managed jointly by the State and the social letting agencies operating in the département concerned, is to secure applicants’ rights and ensure that priority is given to considering applications that have not been dealt with satisfactorily in the periods specified in Article L. 441-1-4. […]”

“Article L. 441-2-2: Decisions to refuse applications for social housing must be notified to the applicant, in writing, accompanied by the reason or reasons for refusal.”

“Article L. 441-2-3-2 (inserted pursuant to Act No. 2007-290 of 5 March 2007): State representatives in départements, in consultation with organisations, associations and public authorities contributing to achieving their département's housing policy objectives, shall ensure that persons covered by the first two paragraphs of Article L. 441-2-3 II shall have access to information on the right to housing.”

“Article L.641-1: At the suggestion of the municipal housing department and after consulting the mayor, the State representative in the département may, for a maximum period of one year renewable, requisition all or part of habitable premises that are vacant, unoccupied or insufficiently occupied, in order to assign them to the persons specified in Section L. 641-2.
This power shall extend to the total or partial requisition of hotels, lodging houses and similar premises, with the exception of hotels and lodging houses used for tourism.
As a transitional measure, the State representative in the département may, after consulting the mayor, exercise the requisition right provided for in this Section in any municipality in which there is a housing crisis.”

“Article L.641-2: Only the following shall be entitled to benefit from the provisions of this chapter:
Homeless persons or persons housed under manifestly inadequate conditions;
Persons subject to a final court eviction order.”

“Article L.642-1: In order to safeguard the right to housing, the State representative in the département may requisition, for a minimum of one year and a maximum of six years, premises which a legal person has a right in rem to use and which have been vacant for more than eighteen months, in municipalities where there is a substantial imbalance between housing supply and demand that adversely affects persons on low incomes and other disadvantaged persons.”

“Article R.441-1: Social housing agencies shall allocate the housing specified in Article L. 441-1 to the following persons:
1. Natural persons of French nationality and natural persons lawfully resident on French territory […] whose income does not exceed certain limits set for the entire household, account being taken of dependants.”

“Article R.441-5: The state, local authorities, their public institutions, joint municipal public bodies, employers, those responsible for collecting employers’ contributions to housing construction, chambers of commerce and industry and certain non-profit making organisations may all be beneficiaries of the housing reservations specified in the second paragraph of Article 441-1.
Any housing reservation agreement entered into under this paragraph shall be notified to the prefect of the département where the dwellings concerned are located.
Agreements shall specify the period within which the body concerned must respond to the nomination of candidates by the beneficiary of the reservation and the arrangements for allocating the housing if no offer is made within that period.
The total number of dwellings reserved for local authorities, groupings of such authorities and chambers of commerce and industry in exchange for financial guarantees for loans may not exceed 20% of the stock of housing in each programme.
Prefects may exercise their right of reservation under paragraph 3 of Article L. 441-1 when dwellings are first offered for rent or as they become vacant. Such reservation shall be the subject of an agreement with the social housing agency. In the absence of an agreement, it shall be regulated by a prefectoral order.
The total number of dwellings reserved by prefects for priority applicants may not represent more than 30% of the total stock of housing of each body, including 5%

for civil and military state personnel. Exceptionally, prefects may issue an order overriding these limits for a specific period, to permit the accommodation of persons performing public safety duties or in response to economic needs. […]"

39. **The Circular of 17 January 2005 implementing Section 60 of the Local Responsibilities and Freedoms Act, No. 2004-809 of 13 August 2004, concerning the possibility of delegating prefectoral reservations of social housing for rent, reads:**

"The State shall remain the ultimate guarantor of the right to housing. The [reservation] quota shall not be delegated unless […] this will be at least as efficient in housing the most disadvantaged members of the community as would direct management of the quota."

40. **Circular UHC/FB 3 No. 2006-90 of 12 December 2006 concerning the means-testing of beneficiaries of social housing legislation and the new forms of government aid in the rental sector sets out the scale applicable to the allocation of social housing:**

CATEGORY OF HOUSEHOLDS	PARIS And surrounding municipalities (in euros)	ILE-de-FRANCE Other than Paris and surrounding municipalities (in euros)	OTHER REGIONS (in euros)
1……	18 463 €	18 463 €	16 052 €
2……	27 593 €	27 593 €	21 435 €
3……	36 172 €	33 169 €	25 778 €
4……	43 187 €	39 730 €	31 119 €
5……	51 382 €	47 033 €	36 608 €
6……	57 819 €	52 926 €	41 256 €
Per additional Person	6 442 €	5 897 €	4 602 €

41. **The Planning Code reads:**

"Article L.121-1: Regional, local and municipal land use and development plans shall establish suitable conditions for ensuring […]:

2. A diversity of urban functions and social mix within urban and rural environments, including sufficient provision for new build and refurbishment to satisfy, without discrimination, present and future needs for housing, economic, especially commercial, activities, sporting, cultural and public-interest activities and public amenities with due regard in particular for a balance between employment and housing, means of transport and water management."

i) Means of appeal

42. **The Building and Housing Code reads:**

"Article L.300-1 (inserted pursuant to Act No. 2007-209 of 5 March 2007): The State shall secure the right to decent and independent housing, as embodied in section 1 of the Right to Housing Act, No. 90-449 of 31 May 1990, for all persons residing in French territory lawfully and on a permanent basis, as defined in an order of the Conseil d'Etat, who have insufficient resources to obtain or retain such housing themselves.

This right shall be exercised through a conciliation procedure followed, if necessary, by a judicial appeal as specified in this Article and in Articles L. 441-2-3 and L. 441-2-3-1.”

“Article L.441-1-4: After consulting the committee responsible for the département housing action plan for the disadvantaged, joint municipal public bodies that have concluded an agreement specified in Article L. 441-1-1 and representatives of social letting agencies in the département, the State representative in the département shall, having regard to local circumstances, issue an order specifying the period beyond which persons who have applied for social housing may refer the matter to the mediation committee specified in Article 441-2-3.”

“Article L.441-2-3 (as amended by Act No. 2007-290 of 5 March 2007):

I. The State representative in each département shall establish, by 1 January 2008, a mediation committee and appoint a qualified person to chair it.
As specified in an order of the Conseil d'Etat, such committees shall be composed of equal numbers of:
1. State representatives;
2. representatives of the département, joint municipal public bodies specified in Article L. 441-1-1 and municipalities;
3. representatives of letting agencies and bodies responsible for managing any of various forms of short term or transitional housing, hostel or hotel-type accommodation for social purposes operating in the département;
4. representatives of tenants’ associations and recognised associations working in the département whose objectives include the integration or housing of disadvantaged persons.

II. Cases may be referred to mediation committees by persons meeting the statutory eligibility criteria for social housing who have not received a suitable offer of housing in response to their request within the period laid down in accordance with Article L. 441-1-4.
Cases may also be referred without any qualifying period by applicants who, in good faith, are deprived of accommodation, threatened with eviction without rehousing, housed or accommodated temporarily in a transitional dwelling or establishment or accommodated in premises that are unfit for habitation or otherwise unhealthy or dangerous.

Cases may also be referred without any qualifying period by applicants who are accommodated in manifestly overcrowded premises or ones that fail to meet the requirements of decent housing and who have at least one under-age child, are disabled, as defined in Article L. 114 of the Social and Family Action Code, or have at least one dependent household member with such a disability.
Applicants may be assisted by an association whose objectives include the integration or housing of disadvantaged persons or an association that defends the socially excluded and is recognised by the State representative in the département.
The letting agency or agencies to whom such applications have been made shall supply committees with all relevant information on applicants’ status and why no offer has been made.
Within a period specified in a decree, mediation committees shall designate applicants whom they consider to be priority cases and who must be offered housing as a matter of urgency. They shall specify for each applicant the nature of this housing, having regard to their needs and their abilities. Applicants shall be notified in writing of the decision, for which reasons must be given. Committees may make proposals for dealing with applications that they do not consider to be priorities.
Mediation committees shall transmit to the State representative in their département, a list of applicants who must be offered housing as a matter of urgency.

After consulting the mayors of the municipalities concerned and having regard to the social mix objectives specified in the joint municipal or département collective agreement, the State representative shall allocate each applicant to a social letting agency with accommodation corresponding to the application. State representatives shall specify the geographical area within which such

accommodation must be located. They shall also set deadlines within which letting agencies are required to house applicants. Any such housing allocated shall be offset against the reservation rights of the State representatives in the départements. […]
State representatives shall supply persons who receive offers of housing with written information on the social support facilities and arrangements in the département concerned.
Should letting agencies refuse to house applicants, the State representative in the département concerned shall allocate accommodation corresponding to their needs from his or her reservation rights. […]

III. References may also be made to mediation committees without any qualifying period by persons who have received no suitable offers in response to their applications for one of various forms of short-term or transitional housing, hostel or hotel-type accommodation for social purposes. […]

IV. When an application for accommodation is referred to a mediation committee under the conditions specified in II and it considers that the application is a priority but that the offer of accommodation is not suitable, it shall transmit the application to the State representative in the département concerned and the applicant shall be offered accommodation in a form of short-term or transitional housing, hostel or hotel-type accommodation for social purposes. […]"

"Article L.441-2-3-1 (inserted pursuant to Act No. 2007-290 of 5 March 2007):
I. Applicants who are recognised by a mediation committee as being priorities and requiring emergency accommodation, and have not received, within a period specified in a decree, an offer of housing that has regard to their needs and their abilities may apply to the administrative court for an order that they be housed or rehoused.
Applicants may be assisted by an association whose objectives include the integration or housing of disadvantaged persons or an association that defends the socially excluded and that is recognised by the State representative in the département.

From 1 December 2008 this remedy shall be available to persons specified in the second paragraph of II of Article L. 441-2-3 and, from 1 January 2012, to those specified in the first paragraph.
In the absence of a mediation committee in the département concerned, applicants may exercise the remedy specified in the previous paragraph if, after referring the matter to the State representative in the département, they have not received an offer of housing that has regard to their needs and their abilities within a period specified in law.
The president of the administrative court concerned or a judge nominated by him or her shall rule on the matter under the urgent procedure within two months of referral. Unless the case is heard by a bench of judges, the hearing shall take place without the submissions of the government law officer.
If the president of the administrative court or the judge nominated by him or her finds that the mediation committee has recognised the application as a priority that requires an urgent response and that the applicants have not received an offer of housing that has regard to their needs and their abilities, he or she shall order the applicants' housing or rehousing by the State, and may order a penalty for failure to comply.
The proceeds of such fines shall be paid into the funds specified in the last paragraph of Article L. 302-7 in the region of the mediation committee concerned.

II. Applicants who are recognised by a mediation committee as being priorities for accommodation in a form of short-term or transitional housing, hostel or hotel-type accommodation for social purposes and have not been accommodated, within a period specified in a decree, in such a facility may apply to the administrative court for an order that they be found a place in such a facility.
This remedy shall be available from 1 December 2008. […]

III. Administrative courts to whom applications are made under I may order that a place be found in a form of short-term or transitional housing, hostel or hotel-type accommodation for social purposes."

j) Assistance with access to and retention of housing

43. **The Right to Housing Act, No. 90-449 of 31 May, 1990 reads:**

"Section 1: Any person or family experiencing particular difficulties on account of inadequate resources or unsuitable living conditions shall be entitled to public assistance, in accordance with the provisions of this Act, in obtaining or retaining decent and independent housing and the supply of water and energy and telephone services.
The National Housing Council shall report annually on action taken, and this shall be published."

"Section 6: There shall be a housing solidarity fund in each département.

Solidarity funds shall allocate, in accordance with their rules of procedure, financial assistance in the form of repayable deposits, loans or advances, guarantees and grants to persons meeting the conditions laid down in Section 1 who take up a tenancy, who as existing tenants, sub-tenants or residents of hostel accommodation are unable to meet the cost of their rent, supplementary charges or tenants' insurance or who as the normal occupants of their accommodation are unable to meet the cost of their water or energy supplies or telephone bills.

Debts for unpaid rent or energy, water or telephone bills may be paid from the housing solidarity fund if their settlement is a condition of rehousing. […]
Solidarity funds meet the cost of individual and group support to enable persons and families benefiting from département plans to be housed or remain in their accommodation, whether they be tenants, sub-tenants, owners of their dwelling or seeking a home. They may also provide financial guarantees to associations offering accommodation or guarantees to disadvantaged persons covered by Section 1. […]"

"Section 6-3 (introduced pursuant to Act No. 2004-809) of 13 August 2004): Housing solidarity funds shall be financed by départements."

44. **National Housing Commitment Act 2006-872 of 13 July 2006:**

"Article 60: To this end, the committee responsible for the plan may set up a specialised committee to co-ordinate preventive action on tenant evictions, tasked with providing opinions to the bodies responsible for making decisions on personal housing assistance, the award of financial assistance in the form of loans or grants and social support in the housing sphere, for persons in arrears with their payments. Where this committee is set up, the responsibilities of the committee provided for in Article L.351-14 of the Building and Housing Code shall be exercised by the bodies which pay the personalised housing assistance. The *modus operandi* and membership of the committee shall be laid down by decree".

45. **The Building and Housing Code reads:**

"Article L.351-2: Personalised housing assistance shall be granted in respect of the principal residence, regardless of where it is located on national territory. It shall cover:
1. Owner-occupied housing built, purchased or improved, as of 5 January 1977, with the help of specific forms of State aid or loans whose characteristics and conditions of award are laid down by decree;

2. Rented housing belonging to social housing agencies or managed by them or belonging to landlords in the rental sector […]"

46. **The Social Security Code reads:**

"Article L.542-1: Housing shall be allocated in accordance with the conditions laid down in the following Article to:
1) persons receiving, on any grounds, any of the following:
a. family allowances;
b. family income supplement;
c. the family support allowance;
d. the education allowance for a child with a disability;
2) households or individuals not entitled to any of the benefits referred to in sub-section 1 but with a dependent child within the meaning of Article L. 512-3;
3) couples without a dependent child, for a fixed period as from their marriage, provided the marriage took place before the spouses reached a specified age limit;
4) households or individuals with a dependent ascendant over a specified age living with them;
5) households or individuals with a dependent ascendant or descendent or person of common descent but by a different line to the second or third degree, living with them and suffering from a permanent disability to an extent at least equal to a percentage laid down by decree or who has, on account of the disability, been acknowledged by the technical guidance and vocational rehabilitation committee specified in Article L.241-5 of the Social and Family Action Code to be unable to obtain employment;
6) single persons with no dependants from the first day of the calendar month following the fourth month of pregnancy until the calendar month in which the child is born."

k) Prohibition of discrimination in access to housing

47. **The Tenancy Act, N° 89-462 of 6 July 1989 reads:**

"Section 1 […] No one may be refused rental of a dwelling on account of his or her extraction, surname, physical appearance, sex, family status, state of health, disability, morals, sexual orientation, political opinions, trade union activities and actual or presumed membership or non-membership of a particular ethnic group, nation, race or religion.
In the event of a dispute in connection with the application of the preceding paragraph, the person who has been refused rental of a dwelling shall submit factual information pointing to the existence of direct or indirect discrimination. In the light of this information, it shall be up to the defendant to prove that the decision was justified. The court shall reach its conclusion after ordering, if necessary, all the investigative measures it considers necessary."

48. **The Discrimination Act, No. 2001-1066 of 16 November, 2001 reads:**

"Section 9: There shall be a telephone helpline to help prevent and combat discrimination. It shall be responsible for receiving calls from persons who consider that they have been victims of discrimination and responding to requests for information and advice about discrimination and the conditions of referral to the Discrimination and Equality Commission. If necessary, it shall refer callers to other competent bodies or services."

49. **The Discrimination and Equality Commission Act, No. 2004-1486 of 30 December 2004, reads:**

> "Section 4: Anyone who considers himself or herself to have been a victim of discrimination may apply to the Commission, under conditions laid down an order of the Conseil d'Etat."

50. **The Criminal Code reads:**

> "Article 225-1: The following shall constitute discrimination: any distinction made between natural persons by reason of their extraction, sex, family status, pregnancy, physical appearance, surname, state of health, disability, genetic characteristics, morals, sexual orientation, age, political opinions, trade union activities, or actual or presumed membership or non-membership of a particular ethnic group, nation, race or religion."
> "Article 225-2: Discrimination as defined in Article 225-1 against a natural or legal person is punishable by three years' imprisonment and a fine of € 45,000 when it involves:
> 1. Refusal to supply a good or service […]"

51. **The Reception and Accommodation of Travellers Act, No. 2000-614 of 5 July 2000, reads:**

> "Section 1
>
> I. Municipalities shall provide facilities for so-called travellers whose traditional accommodation is mobile homes.
>
> II. Following a preliminary assessment of existing needs and provision, in particular the frequency and duration of travellers' visits and the opportunities for their children to attend school, for access to care and for paid employment, each département shall prepare a plan specifying the geographical location of permanent camp sites and the municipalities in which these must be established.
>
> Municipalities with more than 5,000 inhabitants must be included in the département plans. They shall specify the location and capacity of permanent sites. They shall also specify the types of social provision arranged for travellers […].
>
> Section 2
>
> I. Municipalities specified in their département plan in accordance with paragraphs II and III of Section 1 are required, within two years of the plan's publication, to take part in its implementation. They shall do so by making available one or more properly equipped and maintained sites for travellers. They may also transfer this duty to a joint local authority body responsible for implementing the département plan or contribute financially to equipping and maintaining these sites as part of joint municipal agreements. […]
>
> III. The two-year deadline specified in I shall be extended by two years, from the date of expiry, if the municipality or joint local authority body concerned has, within the initial period, demonstrated its commitment to complying with its obligations by:
>
> - transmitting to the State representative in the département a formal decision or letter of intent specifying the location of a site to be established or upgraded for the use of travellers;
>
> - or, acquiring land or starting the procedure for acquiring land on which it is planned to establish a site;

- or, completing a feasibility study.

The deadline for granting subsidies, whether unilaterally or subject to an agreement, concerning municipalities or joint local authority bodies meeting the aforementioned requirements, shall be extended by two years."

THE LAW

FIRST PART: PRELIMINARY ISSUES

i. Individual aspects of the complaint

52. ATD Fourth World illustrates its complaint with individual accounts of persons or families in great distress, in particular families from Herblay (Val d'Oise) and Kaltenhouse (Bas-Rhin), coupled with eyewitness accounts from Lille, Reims, Saint-Ouen l'Aumône, Pézenas and Strasbourg. Some of these individuals and families have been homeless for decades and have experienced considerable difficulty securing recognition of their fundamental rights, particularly those embodied in the revised Charter. In this context, the Committee was particularly attentive to the evidence given by Mrs Cécile Reinhardt at the public hearing.

53. The Committee attaches great importance to this information, which highlights the difficulties faced by all those concerned, as well as the value of the activities undertaken by ATD Fourth World. It hopes that rapid solutions will be found that are fully consistent with the dignity of each individual concerned. However, it must stress that the complaints procedure is, by its very nature, a collective one that entails examination of general situations. The Committee therefore has no authority to entertain individual situations nor to make any assessment or impose measures on the Government.

ii. The state of domestic law at the time of adoption of the Committee's decision

54. As to the new law on the enforceable right to housing adopted in France in 2007 ("DALO Act"), the Committee recalls that within the scope of the collective complaints procedure it bases its assessment of conformity with the Charter on the domestic law and practice applicable on the date of the decision on the merits of the complaint (European Council of Police Trade Unions v. Portugal, Complaint No. 11/2001, decision on the merits of 21 May 2001).

55. In the present case, given that the measures foreseen in the new Act will enter into force on 1 December 2008 (for certain categories of persons) and on 1 January 2012 (for other categories of persons), the Committee will only take into account the currently applicable regulations on housing and refrain from assessing the measures contained in the new Act.

iii. The subject of the complaint.

56. The Committee considers that, in substance, the complaint includes the following aspects:

- alleged violation of Article 31§2, because of the eviction procedures and their application;
- alleged violation of Article 31§3:

  . because of the inadequate supply of affordable housing,
  . because of the methods used to allocate social housing to the least well off,
  . because of the inadequate remedies in response to excessive waiting times for allocation of housing;
- alleged violation of Article 31 in conjunction with Article E;
- alleged violation of Article 16;
- alleged violation of Article 30;
- alleged violation of Article 30 in conjunction with Article E.

SECOND PART: ON THE ALLEGED VIOLATION OF ARTICLE 31 OF THE REVISED CHARTER

57. Article 31 of the Revised Charter reads as follows:

> " Part I: Everyone has the right to housing."
>
> " Part II: With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:
> 1. to promote access to housing of an adequate standard;
> 2 to prevent and reduce homelessness with a view to its gradual elimination;
> 3. to make the price of housing accessible to those without adequate resources."

A. Preliminary comments

a) Scope of Article 31

58. The Government argued strongly in its written submissions and at the hearing that the Charter's provisions on the right to housing, in particular Article 31, only imposed on states an obligation of means. In other words, so long as suitable measures were taken with a view to securing the right to housing, the situation would be in conformity with the Charter.

59. The Committee agrees that the actual wording of Article 31 of the Charter cannot be interpreted as imposing on states an obligation of "results". However, it notes that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

60. This means that, for the situation to be in conformity with the treaty, states party must:

a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;

b. maintain meaningful statistics on needs, resources and results;

c. undertake regular reviews of the impact of the strategies adopted;

d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

61. In connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein (Autisme Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

62. When one of the rights in question is exceptionally complex and particularly expensive to implement, states party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources (Autisme Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

63. The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity. However statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs.

64. The Committee refers in this context to the Guidelines on Access to Housing for Vulnerable Groups, of which the Committee of Ministers took note at the Deputies' 995th meeting on 16 May 2007. According to paragraph 11 of the Guidelines:

> "Housing policies should be evidence based, and therefore the knowledge base should be improved through research and regular data collection. Adequate knowledge of housing situation, especially statistical information, is a prerequisite for effective housing policy design and implementation. Regular collection of relevant statistical information on housing issues, including housing needs assessment should be carried out."

65. The Committee notes that in several areas the Government fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks do

not appear to be carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights specified in the Charter are likely to remain ineffective.

66. In connection with timetabling – with which other regulatory bodies of international instruments are also very concerned – it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely.

67. The authorities must also pay particular attention to the impact of their policy choices on the most vulnerable groups, in this case individuals and families suffering exclusion and poverty (Autisme Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

b) Interpretation of Article 31 in the light of other international instruments

68. The Committee considers that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied.

69. This applies above all to the European Convention on Human Rights. The Committee is particularly concerned that its interpretation of Article 31 is fully in line with the European Court of Human Rights' interpretation of the relevant provisions of the Convention.

70. Further, the United Nations Covenant on Economic, Social and Cultural Rights is a key source of interpretation. Article 11 recognises the right to housing as one element of the right to an adequate standard of living:

> "Article 11
> 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

71. The Committee also attaches great importance to General Comments 4 and 7 of the UN Committee on Economic, Social and Cultural Rights. The Committee has also paid close attention to and greatly benefited from the work of the United Nations Special Rapporteur on the Right to Adequate Housing, Miloon Kothari.

B. <u>On the alleged violation o Article31§2 of the Revised Charter on the grounds of the eviction procedures and their implementation</u>

A. Arguments of the parties

a) ATD Fourth World

72. ATD Fourth World considers that the procedure for preventing evictions has shortcomings and does not comply with Article 31§2. In the event of the eviction of persons with no right of occupation, there is no authority responsible for trying to negotiate to obtain accommodation for the families in advance of the eviction. Although such evictions are carried out through the courts, they inevitably prompt the people concerned to wander from place to place. No special priority is given to arrangements for finding cheaper accommodation once eviction had been ordered. Efforts need to be made locally to improve co-ordination of policy on the prevention of evictions with policy on access to housing for disadvantaged persons.

73. Moreover the number of disputes over rent arrears – like the number of notices to quit, sometimes which involve with recourse to the police – has increased appreciably since 1999, despite the Act n° 98-657 of 1998 Anti-Exclusion Act (see §33), which laid down guidelines for a policy for preventing evictions. The Act has, unfortunately, failed to produce tangible results in most cases.

b) The Government

74. The Government states that the authorities may not stand in a way of court decisions such as evictions. A circular on the prevention of tenant evictions was, however, issued on 11 May 2005 (see §30), and a guide to social inquiries intended to prevent such evictions in March 2005. Both were widely distributed within prefects' offices.

75. In addition, under Act No. 2006-872 of 13 July 2006 on a national housing commitment (see §44), a specialised committee on the prevention of tenant evictions was set up to improve co-ordination among various bodies such as the FSL (housing solidarity fund), the over-indebtedness committee and the bodies which pay housing assistance (particularly family allowance funds).

76. As the law was passed only recently, it is not possible to assess the contribution of the specialised committees co-ordinating action to prevent tenant evictions. The Government nevertheless considers that the appointment of such committees is a vital way of making an effective contribution to reducing such evictions.

B. Assessment of the Committee

77. The Committee points out that States must put in place procedures to limit the risk of evictions and to ensure that, when these do take place, they are carried out under conditions which respect the dignity of the persons concerned (Conclusions 2003, Sweden, p. 653).

78. Eviction may be defined as the deprivation of housing which a person occupied, on account of insolvency or wrongful occupation (Conclusions 2003, Sweden, p. 653). Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the affected parties in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions carried out at night or during winter and provide legal remedies and offer legal aid to those who are in need so they may seek redress from the courts. Compensation for illegal evictions must also be provided. Even when an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

79. The Committee considers that certain elements of the French system on evictions, for example, the two month period after formal notice has been served before eviction can take place, or the suspension of evictions in winter, comply with the guiding principles laid down by it.

80. However, it observes that the French system does not, either in law or in practice, offer the required safeguards, particularly as regards rehousing. Indeed, the Anti-Exclusion Act of 29 July 1998 contains no guarantees that a person subject to eviction will be rehoused. The Committee observes the increasing number of eviction cases, including of persons evicted from homes in substandard conditions, who are not rehoused. Therefore, given the high number of eviction judgments which are issued in France every year, and taking into account the risk of eviction leading to situations of precariousness, the Committee considers that the lack of guarantees ensuring stable and accessible re-housing options before eviction takes place amounts to a breach of Article 31§2.

81. The Committee has in the past noted failures as regards the financial measures to prevent evictions (see Conclusions 2005, France, Article 31§2). In particular, it noted from a report by the High Committee for the housing of disadvantaged persons “that debt clearing plans drawn up by the debt assistance boards (*commissions de surendettement*) were not always compatible with the requirement that unpaid arrears must be repaid within two years, which was the *sine qua non* if the judge was to grant a grace period rather than rule that the lease was terminated.” Therefore, again taking into account that the number of tenants subject to eviction judgments is very high the Committee considers that the situation in respect of financial measures designed to prevent eviction is also not in conformity with Article 31§2 of the Revised Charter.

82. The Committee also noted the loose coordination among all actors involved in the prevention procedure: local authorities, the housing solidarity fund (FSL), over-indebtness committee, etc. (see Conclusions 2003, France,

Article 31§2). Although the specialised committees on the prevention of evictions, created by Act No. 2006-872 of 13 July 2006 on a national housing commitment (see §44), aim at improving co-ordination among these different bodies, the Committee is unable to assess the contribution of such specialised committees in co-ordinating action to prevent tenant evictions as the law has only been recently passed.

83. The Committee therefore holds that the unsatisfactory implementation of the legislation on the prevention of evictions and the lack of measures to provide re-housing solutions for evicted families constitute a violation of Article 31§2 of the Revised Charter.

C. On the alleged violation of Article 31§3 of the Revised Charter

84. The complaint concerns:

i. the shortage of affordable housing
ii. he arrangements for allocating social housing to the most deprived members of the community and of the inadequate appeal procedures in the event of an excessive waiting list for the allocation of housing

i. As to the alleged shortage of affordable housing

A. Arguments of the parties

a) ATD Fourth World

85. ATD Fourth World considers that there is a shortage of social housing, as ascertained by numerous official reports, and that disadvantaged persons are the first to suffer from a malfunctioning housing market. There is a reluctance to build sufficient social housing to meet needs. The *Conseil Economique et Social* (Economic and Social Council) has criticised the fact that fines for non-compliance with Section 55 of the Solidarity and Urban Renewal Act are not a sufficient disincentive.

86. The State does not have tools enabling it to give impetus to local policies when these are inadequate.

87. The Government announced the funding of 81,000 social housing units in 2005. These are of several types:
- PLAI: Assisted Rental Loans for Integration Purposes, with an income ceiling (annual taxable income) of € 9,861 for a single person in Paris;
- PLUS: Rental Loans for Social Purposes, with an income ceiling of € 17,927;
- PLS: Social Rental Loans, with an income ceiling of € 23,305.

88. Clearly, only the so-called “very social” PLAI housing, intended “for households with a range of financial and social difficulties”, is designed for the most disadvantaged households. The fact that, as of the year 2000, at least 30 % of the PLUS-financed housing units must be occupied by households

whose income does not exceed 60 % of the PLUS ceiling (as required by Article R 331-12 of the Building and Housing Code) means that they can not be described as “very social” housing: this lower ceiling - € 10,756 for a single person in Paris - is still much more than the annual amount of the RMI (minimum social income) (€ 5,196 a year since 1 January 2006 for a single person).

89. According to the report on social protection and social inclusion strategies for 2006 to 2008 in France, only 9 % of social housing built in 2005 was of the PLAI type, whereas the percentage was 12 % in 2000 and 30 % in 1998. If 30 % of the PLUS-financed housing is counted in addition to the PLAI type, the percentage of new social housing reserved for those on low incomes was 26 % in 2005, compared with 35 % in 2000.

90. It therefore seems clear that, although the policy of building social housing has been re-launched, it is less and less targeted at people living in extreme poverty.

91. Furthermore, the Government figures for the construction of social housing provide no information about how this housing was actually allocated. They do not answer the key question of whether families in a situation of extreme poverty benefit from such housing. There are no specific measures to ensure that, in the allocation of this new housing, priority is actually given to “persons and families who are completely homeless, at risk of eviction without rehousing, in temporary accommodation, housed in slums, or unfit, uncertain or improvised homes” in accordance with Section 4 of the Act of 31 May 1990 (see §37).

b) The Government

92. Refuting the arguments of ATD Fourth World, the Government refers to the Social Cohesion Plan of June 2004 and Act No. 2006-872 of 13 July 2006 on a national housing commitment. It states, in particular, that, with over 410,000 homes started in 2005, the rate of house-building is at its highest for 25 years. The number of social housing units for rent being financed is also at a 10-year peak, with 71,000 units in all financed in 2004, and 81,000 in 2005, the first year of implementation of the social cohesion plan. The number of controlled-rent homes in the private sector also rose strongly in 2005, reaching 28,000. Over 35,000 privately-owned homes with controlled rents were to be built in 2006, and some 16,000 vacant homes made available for letting again. This effort will continue over the whole term of the social cohesion plan. The funding allocated to the development of social housing for rent was 9% higher in 2006 than it was in 2005 in terms of commitment authorisations, and 15% in terms of payment appropriations.

In order to co-ordinate all the action taken to increase housing supply, the Prime Minister in October 2005 appointed an inter-ministerial delegate for an increase in housing supply. The delegate’s role is to persuade all ministries to make state-owned land available for housing.

93. In the replies to the questions posed during the Public Hearing, the Government clarified that, as a result of the Law of 5 March 2007, the budgetary means were increased. The objectives of the Social Cohesion Plan of June2004 were increased; originally it provided for the construction of 500,000 social housing for rent between 2005 and 2009, this was increased to 591,000. The number of social houses constructed in 2005 was 80,000 and 96,200 in 2006.

B. Assessment of the Committee

94. The Committee recalls that there must be an adequate supply of affordable housing. Housing is deemed to be affordable when the household can pay the initial costs (deposit, advance rent), the current rent and/or other costs (utility, maintenance and management charges) on a long-term basis and still be able to maintain a minimum standard of living, as defined by the society in which the household is located (Conclusions 2003, Sweden, p. 655).

95. Governments must adopt appropriate measures to encourage the construction of housing, in particular social housing (Conclusions 2003, Sweden, p. 656).

96. In Conclusions 2005, the Committee found that the stock of social housing in France was manifestly inadequate. According to the report there were 1 300 000 applications in the period from 1 July 2002 to 30 June 2003. The National Plan of Action on Social Inclusion (PNAI) estimated that there were 1 640 000 applications for social housing outstanding on 1 June 2002, whereas 80 000 dwellings were scheduled for construction in 2004.

97. Since then, the Government has taken a number of steps to improve the situation. The Committee has considered all the information presented and notes in particular:

- a significant increase in new starts in 2005,
- various measures in the 2006 legislation that have not yet had their intended effect,
- the provisions of the Act of 5 March 2007.

98. However, the Committee notes that even if all these objectives were achieved, that is 591 000 new social housing units were built by 2009, there would still apparently be a considerable shortfall compared with needs, insofar as needs can be measured by the amount of applications made for access to social housing. There would also appear to be no clear policy mechanism in place to ensure that due priority is given to the provision of housing for the most deprived members of the community, and that the assessment of the needs of the most deprived is built into the programme of providing social housing.

99. Moreover in answer to questions raised at the public hearing the Government, which has not directly responded in its written submissions to ATD Fourth World's arguments concerning housing for the most disadvantaged, stated that the apparent trend towards the construction of more expensive social housing could be explained by the fact that they were responding to a broad range of demand. The provision of such housing was concerned not only with the most disadvantaged but also with a wide spectrum of the population in need of decent housing on account of short-term financial difficulties or local housing crises.

100. The Committee considers that the implementation of this policy does not by itself constitute a sufficient step or a sufficient justification for the ongoing manifest inadequacy of the existing policy mechanisms for ensuring due priority for the provision of of social housing for the most socially deprived. The situation therefore constitutes a violation of Article 31§3.

ii. On the alleged violation stemming from the arrangements for allocating social housing to the most deprived members of the community and of the inadequate appeal procedures in the event of an excessive waiting time for housing

A. Arguments of the parties

a) ATD Fourth World

101. ATD Fourth World contends that arrangements for allocating social housing to the most deprived members of the community constitute a violation of Article 31 on the following grounds:

- *There is incompatibility between different eligibility criteria for social housing*

102. Two-thirds of the French population meet the criteria for entitlement to social housing. The objectives of achieving a social mix and of providing for priority groups often clash in a way that conflicts with the spirit of the law. Applications for social housing are increasingly being turned down on the grounds that a social balance must be maintained in particular neighbourhoods.

- The *départements*' housing action plans for disadvantaged persons (PDALPDs) do not work properly.

103. The plans' impact on the supply of social housing is limited to setting objectives for specific programmes. They are impotent when faced with inadequate financing, a shortage of social housing and local hostility to such housing.

104. Some *départements* make little effort to establish priorities in this area. For example, successive official appraisals of the Bas-Rhin (Strasbourg area) housing action plan have drawn attention to inadequate information on needs, unawareness of the inter-related problems of substandard, inappropriate and indecent housing in the *département* and the need for more information on

those concerned by the Plan, by means of a planned survey that was subsequently abandoned.

105. Elsewhere, as in the Pas de Calais plan, information on needs is at best empirically based. The non-existence of timetables for achieving the objectives reflect these plans' lack of ambition regarding a group of persons whom the law has identified as a priority.

106. As a result, despite the fact that housing action plans for the disadvantaged are mandatory, they are repeatedly modified, are assessed and all highlight the inadequacy of resources and outcomes, but they have no binding force.

- *Risks for the least well off in the management of the prefectoral housing quota*

107. A quota of social housing is set aside for prefects to allocate "to priority groups, in particular the poorly housed and disadvantaged families". They may allocate it direct or transfer their quota to mayors under Section 60 of the Act of 13 August 2004 – Section L441-1 of the Building and Housing Code (see §38). However, in cases where social landlords refuse to offer tenancy, it is not possible for prefects to enforce allocation in accordance with what they consider to be a legal and humanitarian priority.

108. ATD Fourth World considers that the "municipal protectionism" that is such a characteristic of letting committees' practice means that the possibility of delegating this responsibility is an obstacle to the right to housing of the most deprived members of the community.

- *The procedure for allocating social housing lacks transparency*

109. The problems attached to the arrangements for allocating social housing to priority groups stem from the lack of transparency in the selection of applicants for consideration by letting committees and the difficulties experienced by the most vulnerable families in renewing their applications within the deadline of a year from the lodging of their original applications.

- *Inadequate appeal procedures in the event of excessive waiting time for housing*

110. The operating methods of the mediation committees act as a disincentive to highly disadvantaged families facing emergencies. Even if they are in difficulty, applicants who are not registered on the lists submitted to letting committees have no right of appeal. The only appeals procedure, which was introduced by the 1998 Act, concerns cases where the "normal allocation period", based on the single *département* registration number, has been exceeded. The mediation committees that have been established have been slow to come into operation and are little known to the general public, and their opinions are not binding.

111. In most *départements*, families applying to the mediation committee must first provide evidence that they have applied for housing two years in a row and then wait for the committee to rule on their application. If their application is accepted, they will be recommended to a letting committee for allocation. This is no guarantee that their case will then be accepted.

112. It is admittedly possible, in this field, to appeal under ordinary law to the administrative courts, However, it is particularly difficult for disadvantaged, homeless people to obtain access to these courts and the chances of having a decision refusing to allocate them housing set aside are virtually nil, as is borne out by the small number of favourable decisions mentioned.

113. If they are to constitute a genuine means of "legal redress", these committees would have to be set up in all *départements*, they would have to meet, and the "manifestly excessive waiting time" would have to be reasonably defined. This is not the case:
- in the *département* of Meurthe-et-Moselle, the mediation committee was set up by the prefect two or three years ago, but it has never met: the members have never been convened.
- in the Ile-de-France region, the appendix, entitled "Housing for the most disadvantaged to the report by the prefect of the Ile-de-France region to the Regional Housing Committee dated 22 November 2005 reveals that, although two mediation committees have been set up in Val d'Oise and Seine et Marne respectively, they have never met either. The same document reveals that the manifestly excessive waiting time for an offer of housing has been defined by collective agreements as three years in Ile-de-France and between six and ten years in Paris.

b) The Government

- *As to the selection criteria applied to those who take priority*

114. The Government points out that, while a social mix is a general objective under Article L.441 of the Building and Housing Code, this objective takes no precedence whatsoever over the priority criteria.

- *As to the* départements*' housing action plans for disadvantaged persons (PDALPDs)*

115. The Right to Housing Act of 31 May 1990 made it compulsory for every *département* to draw up and implement a housing action plan for the disadvantaged, and to set up a housing solidarity fund. The *département*'s plan is the responsibility of the representative of the State in each *département*, the prefect and the president of the *département* council (*conseil général*). The housing solidarity fund is financed equally by the State and the *département*. The specific aim of the plan is to help low-income individuals and families whose social and financial situation makes them vulnerable in the housing sphere, as well as specific groups more exposed to housing difficulties (immigrant families, migrant workers, travellers, young people, etc). In accordance with the Act, these action plans are required "to give priority to persons and families who are completely homeless, at risk of eviction without rehousing, in temporary accommodation, housed in slums,

unfit, uncertain or improvised homes, or faced with a combination of difficulties".

116. The Local Freedoms and Responsibilities Act No. 2004-809 of 13 August 2004 (see §37) devolved to *département* councils, with effect from 1 January 2005, the housing solidarity funds, merging them with the unpaid utility bills assistance funds, enabling persons in difficulty to turn to a single fund. The *département* plan continues to be jointly run by the State and the *département*.

117. Where ongoing observation and monitoring of the fulfilment of plan objectives are concerned, the Act on a national housing commitment brings some not inconsiderable innovations, bringing within the scope of the plan or its implementing arrangements a territorial division of activities, the co-ordination of priority allocations, follow-up of the housing applications of individuals and families covered by the plan, the setting up of an unfit housing observatory, and a contribution from the housing solidarity fund to fulfilment of plan objectives. The report on fund activity has to be submitted to the committee responsible for the plan.

118. Central government must draw conclusions with a view to renewal of the plans, so as to give them a more strategic position by re-emphasising the dimension of control and developing locally-based observatories of demand, particularly in order to negotiate specific objectives when responsibilities are delegated, or to make them known in the context of PLHs (local housing plans), which have to take on board PDALPDs' building objectives.

- *As to the delegation of the prefect's quota*

119. Article L.441-1 of the Building and Housing Code requires provision to be made in delegation agreements for annual assessment arrangements; the few agreements already signed comply with this obligation. Furthermore, the holder of the delegated power is required, by the same text, to respect the objectives of the PDALPD, failing which the delegation may be withdrawn. In addition, the circular of 17 January 2005 reminds prefects that they may delegate the prefect's quota only if this makes the housing service for the most disadvantaged persons at least as efficient as it would be if it were managed direct, and if the State remains the ultimate guarantor of the right to housing.

- *As to the allocation procedure*

120. Rising property prices mean that people who, only a few years ago, would soon have left social housing are staying in it. In practice, the fall in turnover excludes the most vulnerable potential tenants, as social landlords find enough middle-class families among the applicants to fill the few vacancies that arise without incurring a financial risk.

121. The crisis is so acute that the priority system introduced for the most deprived members of the community is becoming increasingly inoperative: contrary to what was still the case in 2002 or 2003, registration under the collective agreements no longer guarantees the allocation of housing, for

priority groups are becoming increasingly diversified and the cohort of families made vulnerable by unemployment or an uncertain existence is growing. Landlords are therefore snowed under with priority applications and they reproduce, among this category, the selection criteria that apply to ordinary applicants: guarantees of work and income, family stability, and so on.

122. Applicants in a highly vulnerable situation (particularly those at risk of eviction) who consider themselves to have been unfairly treated can, however, apply to the mediation committee without a qualifying period to contest a refusal to allocate them housing.

- *As to the means of appeal in the event of excessively long waits for housing*

123. The Government contends that the allocation process has a legal framework and is under judicial supervision. In particular, the administrative courts review the decisions of allocation committees. In a similar vein, an administrative court confirmed that the PDALPD was autonomous from the legislation (the Act of 31 May 1990), and set aside the former's adoption for non-conformity with the provisions of the Act. The plan cannot exclude from the category of priority candidates for social housing persons not excluded by the Act.

124. In certain cases, the administrative court also ruled that it had jurisdiction to monitor the lawfulness of individual decisions on the allocation of social housing. It thus took the view that, although the homes in question were in public bodies' private sphere, decisions on specific persons taken by allocation committees could be separated out from rental contracts, and could therefore be referred to the court dealing with abuses of authority[1]. For instance, an administrative court set aside a decision not to allocate a home and urged an office to re-examine the applicant's situation, on the grounds that the allocation committee had not conducted a full examination of that situation[2]. In the same case, the appeal court granted compensation for the damage suffered as a result of an unlawful refusal to allocate[3].

125. Moreover, there is an effective remedy if allocation takes an excessive amount of time. Mediation committees were set up under the Act of 29 July 1998. Any applicant for social housing who has waited for longer than a period laid down in an agreement between the *département*'s landlords and the prefect may apply to these committees.

126. In addition, the Act on a national housing commitment reformed the system in the following respects:
- Applicants for housing are to be informed of the committee's existence and application system.
- Membership of the committee: it is to be chaired by a qualified personality, a fact which is likely to increase its independence. Representatives of tenants' associations and integration associations are already on the committee.

[1] Nantes administrative court, 14/03/1995, Melle Lefaucheux and M Grange.
[2] Versailles administrative court, 06/07/2001.
[3] Versailles administrative court of appeal, 10/02/2001.

- Possibility of an immediate application in the event of urgent need: persons at risk of eviction without rehousing, in temporary accommodation or housed in slums or unfit housing may apply to the committee without being turned down on the grounds of an unusually long time-lag.
- Reform of the action taken on committee decisions: although the mediation committee remains an advisory body, it will be able to address an opinion to the prefect, who will then have the power to require a landlord to allocate a home to the person whose application had been recognised by the mediation committee as taking priority.

127. Thus the reformed mediation committee does provide "legal redress", in the sense meant by the ECSR, for an applicant who has been kept waiting for an excessive length of time, or, at any time, for applicants in a particularly urgent situation. The new powers given to the prefect will enable the State to play to the full its role as guarantor of the right to housing.

B. Assessment of the Committee

128. In general terms, none of the observations submitted by the Government – which basically consist in a description of the regulatory and organisational efforts undertaken – are of such a nature as to counter the key arguments presented by ATD Fourth World that refer to these issues.

129. The Committee notes that the Anti-Exclusion Act of 1998 constitutes an effort to improve the system of allocating social rental housing. However, there is clear evidence that the system is still not functioning well, which is illustrated by the fact that a large part of the demand for social housing remains unsatisfied (only 5-10% of the poorest households obtain social housing), and that average waiting-times for allocation are still too long (around 2 years and 4 months).

130. The Committee considers that the allocation procedure does not ensure sufficient fairness and transparency, since social housing is not reserved for the poorest households. The application of the concept of "social mix" in the 1998 Act, which is often used as the basis for refusing social housing, often leads to discretionary results excluding the poor from access to social housing. The major problem stems from the unclear definition of this concept in the law, and in particular, from the lack of any guidelines on how to implement it in practice. Therefore, the Committee considers that the inadequate availability of social housing for the most disadvantaged persons amounts to a breach of the Revised Charter.

131. In addition, the system of legal redress for people who are denied social housing, is also subject to serious shortcomings, namely: the mediation commissions foreseen by the Act to examine applications which are pending after an excessive waiting time have only been created in a minority of municipalities. The Committee considers that this remedy is not sufficiently efficient, and therefore that the situation on this point is not in conformity with Article 31§3 of the Revised Charter.

132. The Committee notes another particularly important problem in the allocation system: according to the relevant legislation prefects are entitled to allocate a certain contingent of social housing to persons considered by the law as being in a priority situation of need (Article L 441-1 of the Building and Housing Code, see §38 above), but this procedure does not appear to be used to a significant extent in practice.

133. Therefore, the Committee holds that the malfunctioning of the social housing allocation system, and of the related remedies, constitute a violation of Article 31§3 of the Revised Charter

THIRD PART : ON THE ALLEGED VIOLATION OF ARTICLE 31 OF THE REVISED CHARTER, TAKEN IN CONJUNCTION WITH ARTICLE E OF THE REVISED CHARTER, ON THE GROUNDS OF DISCRIMINATION AGAINST ROMA AND TRAVELLERS

134. Article E of the European Social Charter reads as follows:

> "*The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status*."

A. Arguments of the parties

a) ATD Fourth World

- Itinerant travellers

135. ATD Fourth World highlights the discrepancy that exists in practice between the provisions of the *départements*' plans and the proportion of camp sites actually set up (only 18 %). The complainant organisation also draws attention to the fact that the National Association of Catholic Travellers (ANGVC) has reported to the HALDE (Discrimination and Equality Commission) the discriminatory order issue by the mayor of the municipality of Herblay on 17 January 2005, on the grounds that it prohibits (Article 1), throughout municipal territory, the parking of mobile homes belonging to "so-called itinerant travellers" and makes it more difficult for the children to go to school.

- Settled travellers

136. The regulations implementing the Travellers Act of 5 July 2000 stipulate that housing arrangements must be adapted to the cultural and occupational features and family situation of travellers, with due regard for specific constraints (inadequate income, desire for schooling: Circular UHC/IUH1/12 No. 2001-49 of 5 July 2001).

137. ATD Fourth World argues that the Government is wrong to contend (submissions of the Government on the merits, p. 12) that the integration of travellers depends essentially on the funding provided for local authorities to set up family plots for rent (under the aforementioned Act) and the funding of special social housing under ordinary law. The complainant organisation argues that what is mainly needed is willingness on the part of the local authorities to take action, given that the establishment of family plots is optional and that a shortage of suitable housing is not punishable by law.

- The shortage of suitable housing

138. In practice, it emerges that there is a shortage of family plots for rent, given the needs of the population concerned. The Government does not, moreover, indicate how many family plots for rent have been set up.

139. The complainant organisation quotes the Circular of 17 November 2003 making the PDALPDs responsible for setting up family plots for rent. According to ATD Quart-Monde, "*it is therefore regrettable that the shortage of such plots has led to the introduction of a category 'temporary family plot', for which there is no provision whatever in the legislation"*, when "*very poor families are calling for the same rights to be applied to every citizen*". The risk, therefore, is either that the temporary solution will be prolonged or that makeshift housing will be provided, leading in practice to *de facto settling* on plots not intended for the purpose.

- Shortcomings constituting discrimination

140. As it is impossible to force local authorities to implement the arrangements for rehousing travellers' families and, more generally, families living in extreme poverty, most of them are left to lead a vulnerable existence. For example, in Herblay, because of the uncertainty, and despite the prefect's decision not to call in the police before the end of the winter and the mayor's decision not to enforce the fine of € 70 a day pending the results of the social inquiry and of the meetings of the committee responsible for the municipal social and housing plan (MOUS), families in the so-called "Trou Poulet" wood left before the ultimatum without any rehousing arrangements having been made. These particular families were subjected to pressure reflecting the municipality's determination to force them to move or a lack of information about their situation. According to the complainant organisation, "*their return to the misery of moving from place to place is a response to the humiliation they have suffered and to the absence of communication*."

b) The Government

141. The Government states that the lifestyle of travellers requires an adequate number of camp facilities. The Reception and Accommodation of Travellers Act No. 2000-614 of 5 July 2000 is intended to recognise and guarantee this population's lifestyle by providing for facilities to be set up enabling them to live in mobile homes in decent conditions. On 1 January 2006, virtually all the *département* plans for travellers' facilities (93 of the 96)

had been signed and published. The pace of implementation clearly increased in 2004, a trend which should continue in 2006 and 2007. As at the end of 2005, 18% of the camp facilities provided for in *département* plans had been set up, and 25% of the places had benefited from state subsidies (70% of the investment). As a large part of this population has limited means, their situation is sometimes very difficult, as is the case when they settle on rented or purchased sites in locations where planning permission cannot be obtained, or sites where their presence is unauthorised.

142. Generally speaking, settled households' housing needs, like those of any household of limited means, are a matter for the *département*'s housing action plan for the disadvantaged (PDALPD).

143. Nevertheless, at the same time as facilities for itinerants have been set up, funding has been provided for local authorities to set up family plots for rent, so that these families can opt either for a type of housing offering conditions similar to those of the itinerant lifestyle or for more conventional housing. Furthermore, recourse to the funding of special social housing under ordinary law enables mixed housing (permanent buildings alongside caravans) to be created. These solutions make it easier for those wishing to do so to make the change from itinerant homes to conventional housing.

144. It nevertheless happens that the fact that families have, in practice, been settled for many years on plots not destined for such use complicates the task of creating appropriate housing, given the increasing constraints imposed by the rapid development of urban areas. This applies to the case of both the families settled in what is referred to as the Trou Poulet wood in the municipality of Herblay, in the *département* of Val d'Oise, and the families in the municipality of Kaltenhouse, in the *département* of Bas-Rhin.

145. When such situations are identified, local solutions are sought, with central government support, but implementation may prove very difficult, especially because of the unlawful nature of the occupation of the plots, the problem of finding answers compatible with households' means, or the scarcity of land in certain residential areas. In practice, while *département* plans provide for the compulsory establishment of sites to house itinerant travellers, settled populations come under ordinary housing law.

146. In the face of these difficulties, the Government wished to involve travellers themselves in the search for solutions. The competent Minister set up a national consultative committee on travellers on 14 March 2006 and asked it to come up with proposals for improving their integration into the national community.

147. One of the known facts where housing is concerned is the inadequate link between *département* plans for facilities for itinerants and *département* housing action plans for the disadvantaged. Proposals are being studied with a view to strengthening this link and promoting an overall policy.

B. Assessment of the Committee

148. The Committee recalls that all the rights set out in the Charter, including the right to adequate housing, must be ensured without discrimination on any ground.

149. As regards housing for Travellers, the Committee refers to Committee of Ministers Recommendation No. (2005) 4 on improving the housing conditions of Roma and Travellers in Europe, which states, *inter alia*, that Member States should ensure that, within the general framework of their housing policies, integrated and appropriate housing policies targetting Roma and Travellers are developed.

150. The Committee also recalls that as regards evictions these must be justified and carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation should be made available (see Conclusions 2003, Article 31§2, France). When confronted with Roma or Traveller settlements of undefined legal status, public authorities should make every effort to seek solutions acceptable for all parties, in order to avoid situations in which Roma and Travellers are in danger of being excluded from access to services and amenities to which they are entitled as citizens of the state where they live.

151. The Committee notes that legislation on settlements/stopping places for Travellers was adopted in 2000 (the Reception and Accommodation of Travellers Act, No. 2000-614 of 5 July 2000). The legislation requires municipalities with over 5,000 residents to prepare a plan for the setting up of permanent camp sites for Travellers. However, the Committee also notes that the Act has only implemented in a minority of the municipalities concerned. The Government in its written submissions acknowledges that there is a delay in the implementation of the departmental schemes for the reception of Travellers and estimates that there is a deficit of around 41 800 places. The Committee finds that the delay in implementing the above-mentioned Act is regrettable, since it compels Travellers to make use of illegal sites and therefore exposes them to the risk of forcible eviction under the 2003 Act on internal security.

152. In this respect, the Committee notes from a recent joint statement by Council of Europe Commissioner for Human Rights Thomas Hammarberg and UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari, that there has been an increasing number of complaints on the abuse of housing rights of Roma in several European countries, including in France. Most of the complaints are related to evictions of Roma communities and families which have been carried out in violation of human rights standards especially as regards the right to adequate housing and privacy, procedural guarantees and remedies.

153. The Committee notes that a 2005 report by the *Conseil National de l'Habitat* (CNH) (National Council for Housing) on the "Fight against discrimination in access to housing" confirms that the great majority, if not all, discriminatory practices on access to housing are based on nationality or origin of applicants (the name, or racial/ethnic features of the applicant being decisive factors for a refusal). The Committee furthermore notes from another source that there have been a number of cases of eviction of Roma in which the response of the French authorities has been alleged to be not in conformity with human rights standards, namely the clearing of around 600 Roma gypsies from a shantytown where they had been living for more than a year in the north Paris suburb of Saint-Denis in September 2007. The source indicates that the families were moved in a "very brutal way", at least 400 of them had disappeared and would probably resurface in other shanties north of Paris with no electricity or water.

154. In general, the Committee observes that the Government has not provided any substantial counter arguments to the complainant organisation's analysis and that its own submissions often contain a certain number of arguments which point to the inability or persisting failure of the local authorities to redress the problems that exist in respect of the housing of Traveller groups. Despite the efforts of central and local authorities in this area and the positive results that have been achieved at times, there appears to have been a long period during which local authorities and the State have failed to take into account to a sufficient degree the specific needs of the Roma/Traveller community.

155. The Committee therefore holds that the deficient implementation of legislation on stopping places for Travellers constitutes a violation of Article 31§3 of the Revised Charter in conjunction with Article E.

FOURTH PART : ON THE ALLEGED VIOLATION OF ARTICLE 16 OF THE REVISED CHARTER, ALONE OR TAKEN IN CONJUNCTION WITH ARTICLE E OF THE REVISED CHARTER

156. Article 16 of the revised European Social Charter reads as follows:

> "Part I: The family has a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development"
>
> " Part II: With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means."

157. Article E of the Charter reads as follows:

> "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

158. The Committee considers that ATD Fourth World's complaints in respect of Article 16 of the revised Charter, in isolation or taken in conjunction with Article E of the revised Charter, overlap by and large with the complaints in respect of Article 31, that there is therefore no need to examine them again with reference to Article 16.

FIFTH PART : ON THE ALLEGED VIOLATION OF ARTICLE 30 OF THE REVISED CHARTER

159. Article 30 of the revised European Social Charter reads as follows:

> "Part I: Everyone has the right to protection against poverty and social exclusion."
>
> "Part II: With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:
> a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
> b to review these measures with a view to their adaptation if necessary."

A. Arguments of the parties

a) ATD Fourth World

160. ATD Fourth World considers that the lack of housing has consequences for families and their access to rights. The umbrella organisation *Pour un Droit au Logement Opposable* (For an Enforceable Right to Housing), of which ATD Fourth World is a member, estimates that there are currently three million people lawfully in France who are homeless or badly housed. The families in the *Cité de promotion familiale* and those who have applied for a place have all experienced this ordeal and can bear witness to the process of exclusion that follows. Loss or lack of housing creates a form of residential insecurity that reinforces their social insecurity. Failure to enforce their right to housing has serious, multiple and mutually reinforcing consequences in terms of growing exclusion.

161. Lack of decent housing also has numerous consequences for individuals . The first concern family ties, with the risk of break-up between spouses or between parents and children, and of the family's relations with the world outside. It also affects the ability to find and keep a job – no employment is possible without an address – thus reinforcing individuals' vulnerability. There are consequences for health, since badly housed families often suffer deteriorating health, while lack of proper sanitation makes it difficult to maintain a satisfactory level of hygiene. There is also an educational effect, since the schooling of disadvantaged children is often disturbed, intermittent and discontinuous, and hindered by their instability as they share their parents' pain and distress. Finally there are consequences for

their access to rights and to administrative procedures. “Without a home you are nothing. You cease to exist.”

b) The Government

162. The Government contests ATD Fourth World’s submissions and considers that the situation does not amount to a violation of Article 30.

B. Assessment of the Committee

163. The Committee considers that the fact of living in a situation of poverty and social exclusion violates the dignity of human beings (Conclusions 2003, Statement of Interpretation on Article 30, all countries). Poverty means deprivation due to a lack of resources (Conclusions 2005, Statement of Interpretation on Article 30, all countries).

164. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. There should also exist monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion (Conclusions 2003, Statement of Interpretation on Article 30). This approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach.

165. The measures taken for such a purpose must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance (Conclusions 2003, Statement of Interpretation on Article 30, all countries).

166. The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions (Conclusions 2003, Statement of Interpretation on Article 30, all countries). Access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken (Conclusions 2005, Norway, p. 580).

167. Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy (Conclusions 2005, Slovenia, p. 674).

168. Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned (Conclusions 2003, Statement of Interpretation on Article 30, all countries). In assessing compliance with the Charter, the Committee systematically reviews the definitions and measuring methodologies applied at the national level and the main data consequently made available. Also, the

at-risk-of-poverty rate before and after social transfers (Eurostat), is used as a comparative value to assess national situations.

169. The Committee considers that it follows from its conclusion in respect of Article 31 that the policy in respect of housing for the poorest is insufficient. Therefore, it finds a lack of a co-ordinated approach to promote the effective access of persons who live or risk living in a situation of extreme poverty to housing.

170. The committee therefore holds that the situation amounts to a violation of Article 30.

SIXTH PART : ON THE ALLEGED VIOLATION OF ARTICLE 30 OF THE REVISED CHARTER, TAKEN IN CONJUNCTION WITH ARTICLE E OF THE REVISED CHARTER

A. Arguments of the parties

a) ATD Fourth World

171. ATD Fourth World alleges that families living in poverty are discriminated against in respect of effective access to their rights. In particular, it points out that the people concerned do not have a national identity card: they are refused such a card on the grounds that they have no address. Yet the families concerned receive mail, electricity bills and tax demands. This practice is discriminatory and is clear evidence of a refusal to treat these families as citizens of the municipality. It makes it even more difficult for them to obtain access to other social rights, which require possession of an identity card.

b) The Government

172. The Government contends that families living in poverty are not victims of discrimination on the part of public services.

173. National identity cards are issued to travellers in the normal way, in accordance with the regulations, whether they have settled or not. Eight of the persons concerned do hold national identity cards, six of these issued by the Argenteuil sub-prefecture.

B. Assessment of the Committee

174. The Committee considers in the light of the arguments presented in §§ 169-170, that the situation amounts also to a violation of Article 30 of the Revised Charter taken in conjunction with Article E.

CONCLUSION

For these reasons, the Committee concludes:

- unanimously that there is a violation of Article 31§2 of the revised Charter on the grounds of the eviction procedures and their implementation;

- unanimously that there is a violation of Article 31§3:
  i) on the grounds of a shortage of affordable housing;

- ii) on the grounds of the arrangements for allocating social housing to the poorest members of the community and of the inadequacy of the means of appeal in the event of excessively long waits for housing;

- unanimously that there is a violation of Article 31, taken in conjunction with Article E on the grounds of the deficient implementation of the legislation on stopping places for Travellers constitutes;

- by 11 votes to 2 that it is not necessary to examine the complaint in the light of Article 16, in isolation and taken in conjunction with Article E, of the revised Charter;

- by 11 votes to 2 that there is violation of Article 30 of the revised Charter because of the lack of coordinated approach to promote the effective access to housing to persons being or risking to find themselves in a situation of social exclusion or poverty;

- by 9 votes to 4 that there is a violation of Article 30, taken in conjunction with Article E, of the revised Charter.

Alfredo Bruto Da Costa	Polonca Koncar	Regis Brillat
Rapporteur	President	Executive Secretary