



European
Social
Charter

Charte
Sociale
Européenne



COUNCIL
OF EUROPE

CONSEIL
DE L'EUROPE

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

DECISION ON THE MERITS

Adoption : 11 September 2012

Notification : 20 September 2012

Publicity : 27 March 2013

***Médecins du Monde – International
v. France***

Complaint No. 67/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 259th session attended by:

Luis JIMENA QUESADA, President
Colm O’CINNEIDE, Vice-President
Monika SCHLACHTER, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Csilla KOLLONAY LEHOCZKY
Andrzej SWIATKOWSKI
Lauri LEPPIK
Birgitta NYSTRÖM
Rüçhan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Elena MACHULSKAYA
Giuseppe PALMISANO
Karin LUKAS

Assisted by Régis BRILLAT, Executive Secretary,

Having deliberated on 27 June and on 11 September 2012,

On the basis of the report presented by Csilla KOLLONAY LEHOCZKY,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint presented by *Médecins du Monde* – International (“*Médecins du Monde*”) was registered on 19 April 2011. *Médecins du Monde* alleges that the Roma, mostly from countries of the European Union, living in France in extreme poverty, are denied the rights to housing, education for their children, social protection and health care, in breach of articles 11, 13, 16, 17, 19§8, 30 and 31 of the Revised European Social Charter (“the Charter”) read alone and/or in conjunction with Article E.
2. The Committee declared the complaint admissible on 13 September 2011.
3. In accordance with Article 7 §§1 and 2 of the Protocol providing for a system of collective complaints (“the Protocol”) and with the Committee’s decision on the admissibility of the complaint, on 16 September 2011 the Executive Secretary communicated the text of the admissibility decision to the French Government (“the Government”) and to *Médecins du Monde*. On 21 September 2011, the decision was also sent to the states parties to the Protocol and the states that have made a declaration in accordance with Article D§2 of the Charter, and to the organisations referred to in Article 27§2 of the European Social Charter (“the 1961 Charter”).
4. In accordance with Rule 31§1 of its Rules, the Committee set 28 October 2011 as the deadline for the Government to present its submissions on the merits of the complaint. The Government’s submissions on the merits were registered on the same date and transmitted to *Médecins du Monde* on 10 November 2011.
5. The complainant organisation was invited to submit a response by 6 January 2012. The response was registered on 5 January 2012 and sent to the Government on 11 January 2012.

SUBMISSIONS OF THE PARTIES

A – The complainant organisations

6. The Complaint concerns migrant Roma, mostly from Romania and Bulgaria, living in France in great poverty. In *Médecins du Monde*’s view, their rights to housing, education for their children, social protection and health are not respected by France. In addition, following the announcement of the President of France in July 2010 of a more repressive policy towards the Roma, their situation has deteriorated further. There has been a major increase in forced evictions from their camps and mass expulsions.

7. *Médecins du Monde* requests the Committee to find that there has been a violation of several provisions of the Charter (read alone or in conjunction with Article E) with regards to the following rights: right to housing (Articles 16, 30 and 31), right of migrant workers and their families to protection and assistance (Article 19§8), rights of the child (Article 17), right to social protection and health (Articles 11 and 13).

B – The Government

8. The Government accepts that the migrant Roma live in difficult conditions. According to it, the French authorities are taking major steps to ensure that the Roma have proper access to their rights under the Charter and, in so doing, have shown a constant desire for improvement, which the Committee must acknowledge. It points out that the difficulties faced by the Roma are accounted for primarily by their extremely vulnerable position and on no account by discrimination against them in the sphere of public policy.

9. The Government therefore asks the Committee to find that there has been no violation of the Articles invoked.

RELEVANT DOMESTIC LAW AND INTERNATIONAL STANDARDS

A – Domestic law

10. The main legal texts relevant for the present complaint relate to the following issues:

- The right to housing
- Forced evictions
- The right to entry and residence of foreign nationals / expulsion from the country
- Schooling of children
- Medical assistance

The right to housing

11. Act 2007-290 of 5 March 2007 establishing an enforceable right to housing and introducing various measures to promote social cohesion, known as “the DALO Act”:

“Section 1:

The state shall secure the right to decent and independent housing, as referred to 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 Section and in Articles L. 441-2-3 and L. 441-2-3-1.”

12. Social Welfare and Family Code:

“Article L. 345-2-2

(as established by Act No. 2009-323 of 25 March 2009 – Section 73)

All homeless persons in situations of medical, psychological or social hardship shall have access at all times to emergency accommodation.

This accommodation must enable such persons to make use, in conditions showing due regard for human dignity, of services providing board and lodging and sanitary facilities and an initial medical, psychological and social welfare evaluation, conducted either within the accommodation facility itself or, through an agreement, by external professionals or bodies, and to be referred to any professional or body capable of affording them the assistance warranted by their state, including residential social reintegration centres, stable accommodation centres, boarding houses, hostels, establishments for dependent elderly persons, short-stay medical care beds or hospital services.

Article L. 345-2-3

(as established by Act No. 2009-323 of 25 March 2009 – Section 73)

All persons admitted to an emergency accommodation facility must have access to personalised care and remain in the facility for as long as they wish until they are presented with a proposal directing them to a body providing stable accommodation or appropriate health care or to housing suited to their situation.”

Forced eviction

13. In its decision No. 1005246 of 27 August 2010, the Administrative Tribunal of Lille stated that the unlawful occupation of land belonging to the municipality of Lille by a Romanian national, who had entered France less than three months before an expulsion measure was issued against her, did not constitute in itself and in the absence of any particular circumstances a threat of a sufficiently serious nature for the fundamental interest of society and therefore could not be considered as a threat to public security within the meaning of Article L. 121-4 and Article L. 511-1 of the Code governing the entry and residence of foreign nationals and the right of asylum (CESEDA), which transposes Article 27 of directive 2004/38/CE. The expulsion order was thus annulled.

The right to entry and residence of foreign nationals / expulsion from the country

14. Code governing the entry and residence of foreign nationals and the right of asylum (CESEDA):

“Article L. 121-1

(as amended by Act No. 2006-911 of 24 July 2006 – Section 23)

Unless their presence poses a threat to the public order, all citizens of the European Union or nationals of another State Party to the Agreement on the European Economic Area or of Switzerland shall be entitled to reside in France for more than three months provided that they satisfy one of the following conditions:

- 1. They engage in an occupational activity in France;*
- 2. They have, for themselves and the members of their family referred to in paragraph 4 below, sufficient resources not to become a burden on the social assistance system and have health insurance;*

3. They are enrolled in an establishment operating in accordance with current statutory provisions and regulations with the principal purpose of following a course of study or, within this framework, a vocational training course, and can guarantee that they have health insurance and sufficient resources for themselves and the members of their family, referred to in paragraph 5 below, so as not to become a burden on the social assistance system;
4. If they are a direct descendant and are dependent or under the age of 21, a dependent direct ascendant, a spouse or a spouse's dependent direct ascendant or descendant accompanying or joining a national who satisfies the conditions set out in paragraphs 1 and 2 above;
5. If they are a spouse or a dependent child accompanying or joining a national who satisfies the conditions set out in paragraph 3 above."

"Article L. 121-4-1

(as established by Act No. 2011-672 of 16 June 2011 – Section 22)

Provided that they do not become an unreasonable burden on the social assistance system, citizens of the European Union and nationals of other States Party to the Agreement on the European Economic Area or of Switzerland and members of their family as described in paragraphs 4 and 5 of Article 121-1 shall be entitled to reside in France for a maximum period of three months without fulfilling any other condition or formality than those that apply for admission to France (...)."

"Article L. 511-3-1

(as established by Act No. 2011-672 of 16 June 2011 – Section 39)

The relevant administrative authority may, by means of a reasoned decision, require nationals of a member State of the European Union, another State Party to the Agreement on the European Economic Area or Switzerland or members of their family to leave French territory in the following instances:

1. *The persons concerned can no longer prove that they have a right of residence as provided for in Articles L. 121-1, L. 121-3 or L. 121-4-1;*
2. *Their residence constitutes an abuse of rights. An abuse of rights occurs when periods of residence of less than three months are renewed in order to stay in the country whereas the requirements for a period of residence of more than three months have not been fulfilled. Residence in France with the main aim of profiting from the social assistance system also constitutes an abuse of rights.*
3. *During the three-month period following admission to France, the personal conduct of the person concerned poses a genuine, present and sufficiently serious threat to one of the fundamental interests of French society.*

The relevant administrative authority shall take account of all the circumstances of such persons' situations, particularly the length of their residence in France, their age, their state of health, their family and financial situation, their social and cultural integration in French society and the strength of their ties with their country of origin.

Foreign nationals who are required to leave French territory are given thirty days following notification to do so except in cases of emergency. In exceptional circumstances the administrative authority may grant a period for voluntary departure of more than thirty days.

The order to leave French territory shall determine the country to which persons are sent in the event of compulsory enforcement. (...)"

"Article L. 521-5-1

(as established by Act No. 2011-672 of 16 June 2011 – Section 63)

The expulsion measures provided for in Articles L. 521-1 to L. 521-3 may be taken against nationals of a European Union member state, another State Party to the Agreement on the European Economic Area or Switzerland, or a member of their family, if their personal conduct poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

When taking such measures, the administrative authority shall take account of all the circumstances of their situation, particularly the length of their residence in the country, their age, their state of health, their family and financial situation, their social and cultural integration in French society and the strength of their ties with their country of origin". (...)

"Article L. 533-1

(in force since 18 July 2011)

The relevant administrative authority may, by means of a reasoned decree, decide that an alien is to be deported in the following instances, unless he or she falls within one of the categories described in Article L. 121-4:

1. *His or her behaviour poses a threat to public order.
Threats to public order may be inferred where persons commit offences subject to criminal proceedings based on the articles of the Criminal Code cited in the first paragraph of Article L. 313-5 of this code or on paragraphs 1, 4, 6 and 8 of Article 311-4 and Articles 322-4-1, 222-14, 224-1 and 227-4-2 to 227-7 of the Criminal Code;*
2. *The alien has infringed Article L. 5221-5 of the Labour Code.
This article shall not apply to aliens who have been residing lawfully in France for more than three months."*

15. Circular No. NOR: INT/D/06/00115/C of the Ministry of the Interior of 22 December 2006 to prefects of regions and *départments* and police commissioners, describing the procedure for the admission as residents and the expulsion of Romanian and Bulgarian nationals from 1 January 2007 onwards:

"(...) 1 – The laws on residence (...)

1.1 – Periods of residence of less than three months:

Nationals of these countries residing in France for a period of less than three months have the same freedom of movement as other European Union citizens. As there has been no change in the conditions to exercise this right, a valid passport or identity card is still the only document required. (...)

The French authorities may, however, impose restrictions on freedom of movement and residence where the persons concerned pose a threat to law and order or place an unreasonable burden on the French social assistance system. (...)

In practice, you will have to provide proof of the date of entry into France, making use where necessary of documents provided by bodies providing assistance proving that the beneficiary has been present in France. (...)

2 – The laws on expulsion (...)

2.3 – The procedure for deportation and the obligation to leave French territory may be implemented subject to the following conditions: (...)

- An assessment of the extent to which the Romanian or Bulgarian national concerned may constitute an unreasonable burden during the first three months of his or her residence (...)

The appropriate expulsion measure in such situations is an obligation to leave French territory based on the second paragraph of part I of Article L. 511-1 of the CESEDA, provided that the decision stems from a finding, following an examination of the specific situation and based on a series of strong and concordant inferences, that the person concerned can no longer prove that his or her right of residence still applies. (...)"

Schooling of children

16. The Equal Opportunities and Anti-Discrimination Commission's deliberation (HALDE) No. 2009-233 of 8 June 2009:

"(...) By a letter dated 31 October 2008, two associations complained to the Equal Opportunities and Anti-Discrimination Commission (HALDE) about refusals to admit the children of Roma families from Romania to school.

(...)

Under Article L.113-1 of the Education Code 'nursery and infants schools, in both rural and urban areas, shall be open to children who have not yet reached the compulsory school age.

Any child having reached the age of three must be able to attend a nursery or infants school as near as possible to his/her home if his/her family so requests. (...)

(...)

As the HALDE already noted in its deliberations Nos. 2007-30 of 12 February 2007 and 2007-372 of 17 December 2007 such refusals of admission to school are illegal. The regulations concerning registration with a school and those concerning town planning, housing and parking are entirely separate. The right to education is a fundamental right over which a municipality has no discretion. The mayor's refusal accordingly constitutes a blatant abuse of authority.

(...)

A number of circulars stipulate that all children present in French territory absolutely must be admitted to school, regardless of their nationality, their immigration status in France or the lawfulness of their presence on a site in the light of the planning rules.

(...)

The repeated refusal to admit these children to school, in clear violation of the Education Code and based on their residence conditions, is accordingly blatantly unlawful and constitutes discrimination on grounds of origin.

(...)

Lastly, the Commission brings this deliberation to the attention of the Prefect of V, requesting him, if appropriate, to utilise the powers conferred on him under Articles L 2122-27 and L.2122-34 of the General Code of Local Government, whereby, when a mayor is clearly not fulfilling his or her duties as the state's agent, the Prefect may designate a representative having binding authority to register the children at the town hall and with the schools concerned."

17. The Rights Defender's decision No. MLD/2012-33:

"Observations before the P Administrative Court submitted under Article 33 of Law No. 2011-333 of 29 March 2011

1. On 4 March 2011 V and A complained to the Equal Opportunities and Anti-Discrimination Commission (HALDE) about a refusal to admit their son T to school, considering themselves victims of discrimination on account of A's Bulgarian nationality and their membership of the Roma community.

(...)

19. All children's fundamental right to education is guaranteed by both national and international law.

(...)

25. Furthermore, Articles L. 131-1 and L. 131-6 of the Education Code provide that, at the start of a new school year, a mayor shall draw up a list of all the children resident in his/her municipality who are subject to compulsory schooling, and therefore of all children aged between six and sixteen of either gender, whether they are French or foreign.

(...)

30. In the case of children of foreign origin, for whom education is all the more important, the Education Ministry's Circular No. 91-124 of 6 June 1991 provides 'in accordance with the general

principles of law, no discrimination may be made regarding foreign children's admission to nursery school”.

(...)

44. In view of the evidence adduced by the applicants, which points to a discriminatory refusal of admission to school, they may moreover rely on Article 4 of Law No. 2008-496 of 27 May 2008 providing 'all persons who consider themselves to have suffered direct or indirect discrimination may submit the evidence establishing a presumption that discrimination has occurred to the relevant judicial authority. In the light of this information, the onus is on the defendant to prove that the measure in question was justified by objective circumstances in which discrimination played no part.'

45. In the light of the above, the mayor failed to advance objective reasons for the refusal of admission to school, which is clearly unlawful, violates the Education Code and the child's best interests and is of a nature to suggest that the refusal was in fact based on other considerations, such as this family's nationality and/or Roma origin.

46. On a number of occasions the HALDE has deemed that refusals of admission founded, whether or not directly, on the origin and/or nationality of the persons concerned, are discriminatory (Deliberation No. 2007-30 of 12 February 2007). Such a difference of treatment on grounds of origin may constitute discrimination as prohibited, inter alia, by Article 2 of the Law of 27 May 2008.

47. The Rights Defender notes that the refusal of admission to school in the summer of 2010 appears to have been based on the child's origin and decides to submit observations to this effect to the P Administrative Tribunal.”

Medical assistance

18. Social Action and Family Code:

“Article L. 251-1

(amended by Law No. 2012-958 of 16 August 2012 – Article 41 (V))

All foreign nationals who have resided in France for an interrupted period of at least three months without meeting the legal requirement referred to in Article L. 380-1 of the Social Security Code and whose incomes do not exceed the ceiling referred to in Article L. 861-1 of the said Code shall be entitled to state medical assistance, for themselves and their dependents, as defined in Article L. 161-14 and parts 1° to 3° of Article L. 313-3 of the said Code.

In addition, anyone who does not reside in France but is present on French territory and whose state of health so warrants may, by a one-off decision of the minister responsible for social welfare, be granted state medical assistance (...).”

“Article L. 254-1

(as established by Law No. 2003-1312 of 30 December 2003 – Article 97)

The costs of emergency care whose absence could be life-threatening or lead to a serious, long-term deterioration of the health of the person concerned or a child to be born and is provided by medical establishments to foreign nationals residing in France who fail to meet the legal requirement referred to in Article L. 380-1 of the Social Security Code and are not entitled to state medical assistance under Article L. 251-1 shall be borne in accordance with the arrangements described in Article L. 251-2. A flat-rate grant for this purpose shall be paid by the state into the national health insurance fund for employees.”

19. Social Security Code:

“Article L. 380-1

(as established by Law No. 99-641 of 27 July 1999 – Article 3, JORF, 28 July 1999, in force from 1 January 2000)

All persons residing in mainland France or an overseas département in a settled and lawful manner shall be covered by the general scheme if they are not in any way entitled to benefits in kind from another sickness and maternity insurance scheme.

The residence requirement referred to in this article shall be clarified by an order of the Conseil d'Etat.”

“Article R. 380-1

(as established by Decree No. 2009-404 of 15 April 2009 – Article 4)

I.- To be affiliated to the general scheme or attached to it as entitled persons, the persons referred to in Article L. 380-1 must be able to prove that they have been residing in mainland France or an overseas département for an uninterrupted period of at least three months. (...)”

B – International standards

20. Recommendation No R (2000) 4 of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe, adopted on 3 February 2000:

“The Committee of Ministers, (...)

Considering that the education of Roma/Gypsy children should be a priority in national policies in favour of Roma/Gypsies;

Bearing in mind that policies aimed at addressing the problems faced by Roma/Gypsies in the field of education should be comprehensive, based on an acknowledgement that the issue of schooling for Roma/Gypsy children is linked with a wide range of other factors and pre-conditions, namely the economic, social and cultural aspects, and the fight against racism and discrimination; (...)

Recommends that in implementing their education policies the governments of the member states:

- be guided by the principles set out in the appendix to this Recommendation;*
- bring this Recommendation to the attention of the relevant public bodies in their respective countries through the appropriate national channels.*

Appendix to Recommendation No. R (2000) 4

Guiding principles of an education policy for Roma/Gypsy children in Europe

I. Structures (...)

4. In order to secure access to school for Roma/Gypsy children, pre-school education schemes should be widely developed and made accessible to them. (...)

6. Appropriate support structures should be set up in order to enable Roma/Gypsy children to benefit, in particular through positive action, from equal opportunities at school.

7. The member states are invited to provide the necessary means to implement the above-mentioned policies and arrangements in order to close the gap between Roma/Gypsy pupils and majority pupils. (...)

V. Consultation and co-ordination

19. The involvement of all parties concerned (ministry of education, school authorities, Roma families and organisations) in the design, implementation and monitoring of education policies for Roma/Gypsies should be promoted by the state.

20. Use should also be made of mediators from within the Roma/Gypsy community, in particular to ease the contacts between Roma/Gypsies, the majority population and schools and to avoid conflicts at school; this should apply to all levels of schooling. (...)"

21. Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe, adopted on 23 February 2005:

"The Committee of Ministers, (...)

Recognising that there is an urgent need to develop new strategies to improve the living conditions of the Roma/Gypsy and Traveller communities all over Europe in order to ensure that they have equality of opportunities in areas such as civic and political participation, as well as developmental sectors, such as housing, education, employment and health;

Bearing in mind that policies aimed at addressing the problems faced by Roma/Gypsies and Travellers in the field of housing should be comprehensive, based on an acknowledgement that the issue of housing for Roma/Gypsies and Travellers has an impact on a wide range of other elements, namely the economic, educational, social and cultural aspects of their lives, and the fight against racism and discrimination; (...)

Recommends that, in designing, implementing and monitoring their housing policies, the governments of member states:

- be guided by the principles set out in the Appendix to this Recommendation;*
- bring this Recommendation to the attention of the relevant public bodies in their respective countries through the appropriate national channels.*

Appendix to Recommendation Rec(2005)4

(...)

II. General principles

Integrated housing policies

1. Member states should ensure that, within the general framework of housing policies, integrated and appropriate housing policies targeting Roma are developed. Member states should also allocate appropriate means for the implementation of the mentioned policies in order to support national poverty reduction policies.

Principle of non-discrimination

2. Since Roma continue to be among the most disadvantaged population groups in Europe, national housing policies should seek to address their specific problems as a matter of emergency, and in a non-discriminatory way. (...)

Adequacy and affordability of housing

4. Member states should promote and protect the right to adequate housing for all, as well as

ensure equal access to adequate housing for Roma through appropriate, proactive policies, particularly in the area of affordable housing and service delivery.

Prevention of exclusion and the creation of ghettos

5. In order to combat the creation of ghettos and segregation of Roma from the majority society, member states should prevent, prohibit and, when needed, revert any nationwide, regional, or local policies or initiatives aimed at ensuring that Roma settle or resettle in inappropriate sites and hazardous areas, or aimed at relegating them to such areas on account of their ethnicity. (...)

III. Legal framework

(...)

Legal framework for related rights

11. Within this framework, member states should develop mechanisms with a view to ensuring the access of Roma to related rights, such as water supply, electricity and other forms of relevant infrastructure, such as education, medical care, social support, etc., as enshrined and articulated in international human rights laws and related standards. (...)

IV. Preventing and combating discrimination

(...)

Preventing segregation in environmentally hazardous areas

21. Member states should take measures to combat any forms of segregation on racial grounds in environmentally hazardous areas. This includes investing in the development of safe locations and taking steps to ensure that Roma communities have practical and affordable housing alternatives, so as to discourage settlements in, near or on hazardous areas. (...)

V. Protection and improvement of existing housing

Security of land, housing and property tenure

23. Member states, bearing in mind that the right to housing is a basic human right, should ensure that Roma are protected against unlawful eviction, harassment and other threats regardless of where they are residing. (...)

Legal protection from unlawful evictions and the procedure for legal evictions

26. Member states should establish a legal framework that conforms with international human rights standards, to ensure effective protection against unlawful forced and collective evictions and to control strictly the circumstances in which legal evictions may be carried out. (...)

Provision of adequate services

27. Member states, through their relevant authorities, should provide the same adequate level of services to Roma settlements and camp sites as to other groups of the population, while keeping in mind the need for sustainable solutions. Moreover, authorities should be aware that, beyond the delivery of adequate services, they should act so as to improve the overall quality of life in Roma settlements and camp sites by promoting better management of daily life, that is: area-based administrative, commercial, social and sanitary services, public transportation, refuse disposal, the upkeep of public apartments, buildings or camp sites and their surroundings, (...).

VI. Framework for housing policies

Policies to promote access to housing

28. The member states should make the improvement of Roma housing conditions one of their priority areas for action. They should promote equal opportunities for Roma as regards access to the private or public property markets, particularly through non-discriminatory policies and criteria for the allocation of housing, and through a legal and political framework that is consistent

nationwide and is binding on local authorities, since they have prime responsibility for housing issues.

Comprehensive and integrated housing policies

29. Member states, taking into account the potentially synergetic links between housing policies and other socially-oriented policies concerning access to welfare, employment, health and education, should encourage public authorities, at all levels, to adopt comprehensive approaches and policies.

Participation in the preparation of housing policies

30. (...) Member states should also ensure that Roma residing on their territory – whether sedentary, nomadic or semi-nomadic – are given an appropriate assistance to define their specific needs in terms of housing, as well as access to appropriate welfare and social services (health, education, employment, culture, and so on). (...)

Access to health and sanitary services

34. (...) Roma who are permanently and legally settled in derelict or unhealthy surroundings should receive assistance in order to improve the sanitary conditions of their homes (help for repairs, assistance in improving their living conditions and environment, measures to allow them better access to short-term loans for acquiring better housing, mediation in their relations with administrations or public services). (...)

VIII. Housing standards

(...)

Standard for housing location and surroundings

48. Member states, through their relevant authorities, should ensure that Roma housing is located in areas that are fit for habitation or suitable for construction under current legislation, and in ecologically healthy surroundings. (...) The existing settlements which cannot be removed from unsuitable locations should be improved by appropriate and constructive environmental measures.

Legal standards for public and social services

49. Legal standards applying to public services – water, electricity, street cleaning, sewage systems, refuse disposal, and so on – should equally apply to Roma settlements and camp sites. Public transportation should be a part of area-based facilities. The authorities should also make sure that public services, such as health care facilities, access to education, police stations, post and telecommunication offices, are available in these areas. Authorities should pay specific attention to the physical distance between Roma settlements and camp sites and schools, as it is an important factor in fighting against the creation of ghettos. (...)

22. Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008 (commDH(2008)34, 20 November 2008):

“(...) 2. Migrant Roma

146. In addition to the Traveller community, a roma community mainly from Romania, Bulgaria, Hungary and the Balkans has recently settled in France. Its members are in different situations. They may or may not have a residence permit, be asylum seekers or have entered the country without any documentation. There are an estimated 10,000 such people living in France in extremely uncertain conditions. Many Roma camps are comparable to shanty towns. (...)

b. Economic and social discrimination

151. *The introduction of state Medical Aid (AME) was designed to provide access to health cover for irregular residents not entitled to any social protection who have been living in France continuously for more than three months. Notwithstanding this cover, for which children qualify immediately, the Commissioner found that Roma in France have little access to medical care in practice. According to Médecins du Monde, the situation of women is of particular concern. It appears that the average age at which they first become pregnant is 17, with only 8.3% of women monitored during pregnancy. The situation of children is also very disturbing. Very few are up to date with their vaccinations, and tuberculosis cases continue to be reported. (...)*

153. *In theory, the situation is different for those Roma who are EU nationals, since the principle of free movement of workers applies. Nevertheless, nationals of the 12 new member states enjoy only restricted access to the labour market in the 15 "old" member states of the European Union(...) Romanian and Bulgarian nationals will still need residence and work permits in order to secure employment in France, however. Since 2007, a list of 150 occupations in seven economic sectors has specified the jobs accessible to nationals of the new member states. Employers taking on a worker from a new member country have to pay a tax of € 893, however. Scope for working in France consequently remains extremely limited for the new entrants, which is one reason why some Roma resort to undeclared work.*

154. *On the whole, Roma families are keen for their children to attend school. Under the 1998 Act, however, primary school enrolments take place at municipal level and require proof of address or an accommodation certificate, few of which are issued. It is possible to find a way round this problem; school heads can enrol a child even if the municipality is opposed. This option is rarely used, however. In addition, the financial insecurity of Roma families and the regular evictions to which they are subjected are an impediment to school attendance. (...)*

c. Living conditions

157. *Most Roma groups in France live in squalid, shanty towns, often without access to water or electricity, as the Commissioner found during his visits. Rubbish is collected only sporadically. Hygiene conditions are often deplorable. Some camps do not even have toilets. According to a survey conducted by Médecins du Monde, about 53% of Roma live in caravans, many of which are not mobile, 21% in converted squats and 20% in huts. In his 2006 report, the Commissioner had already voiced alarm about such conditions. The general situation does not appear to have improved. These appalling living conditions must therefore be brought to an end.*

158. *Evictions are a particularly problematic issue, plunging families into a climate of fear. Generally speaking, relations between these groups and the police are not always satisfactory. In addition, the Internal Security Act of March 2003 allows the police to intervene within 48 hours, without any need for a ruling by the administrative court or for the landowner's explicit agreement, where such intervention is warranted by "interference with law and order, hygiene or public peace and safety". Such expulsions often involve brutal methods, tear gas and the destruction of personal property. Following some evictions, the National Commission for Police Ethics (CNDS) has found that unjustified and disproportionate acts of violence were committed. Evictions are not usually subject to any prior negotiation, and Roma do not receive any warning. The Commissioner wishes to voice his disapproval of such practices. (...)*

VII. Conclusions and recommendations (...)

Protection of the fundamental rights of Travellers and Roma (...)

20. *The Commissioner recommends calculating the school enrolment rate, developing measures to facilitate access to education and setting more flexible site time limits for families with children at school. (...)*

22. The Commissioner invites the French authorities to secure better access to health care and assistance, education and employment for Roma groups. Solutions must be found with a view to guaranteeing respect for the dignity of those living in squalid shanty towns. Evictions from Roma sites should be subject to prior negotiation, and should not give rise to acts of brutality or to the destruction of property.

Annex

Réponse de la France
au mémorandum du Commissaire aux droits de l'homme du Conseil de l'Europe,
M. Thomas Hammarberg, faisant suite à sa visite en France du 21 au 23 mai 2008¹

(...)

Point 2 relatif aux Roms migrants. (...)

§ § 151 relatif à l'accès à une protection sociale :

L'aide médicale de l'Etat constitue un dispositif de prise en charge particulièrement protecteur pour les besoins de soins des Roms étrangers et en situation irrégulière.

L'aide médicale de l'Etat (AME) a pour finalité essentielle de protéger la santé des personnes étrangères résidant en France de manière ininterrompue depuis plus de trois mois mais ne remplissant pas la condition de régularité du séjour exigée pour l'admission à la couverture maladie universelle (CMU). L'AME est accordée pour une durée d'un an renouvelable, sous condition de ressources, avec un plafond identique à celui de la CMU complémentaire (CMUc).

Par ailleurs, les patients étrangers qui résident en France en situation irrégulière sans bénéficier de l'AME (condition de résidence de 3 mois non remplie), ont droit à des soins hospitaliers gratuits dès lors que l'absence de ceux-ci mettrait en jeu le pronostic vital ou pourrait conduire à une altération grave et durable de leur état de santé.

A l'instar de la CMU et de la CMU complémentaire, l'AME assure à ses bénéficiaires une prise en charge intégrale des dépenses de soins avec dispense d'avance des frais. Alors qu'un assuré social doit avoir recours à une mutuelle ou un organisme d'assurance complémentaire pour la prise en charge de la part des frais de soins qui n'est pas couverte par l'assurance maladie, l'AME prend en charge 100 % de la dépense.

La seule différence entre le champ de la prise en charge de la CMU-CMUc et celui de l'AME consiste en la prise en charge des dépassements de tarifs pratiqués pour les soins dentaires, prothétiques ou d'orthopédie dento-faciale ainsi que sur l'optique et les audioprothèses. Pour ces frais de soins, les bénéficiaires de l'AME ont les mêmes droits que les autres assurés sociaux, mais ne bénéficient pas des avantages particuliers des bénéficiaires de la CMU.

Il est en revanche un point sur lequel les bénéficiaires de l'AME jouissent d'un traitement plus favorable que ceux de la CMU-CMUc, c'est la date d'effet de l'admission à l'AME des enfants des demandeurs de l'AME qui ne remplissent pas la condition de trois mois de résidence ininterrompue en France. Cette condition n'est pas opposée aux enfants mineurs. Leurs droits à l'AME prennent effet du jour même de la demande de leurs parents, même si ceux-ci ne remplissent pas la condition de trois mois de résidence. Pour chaque demande d'aide médicale familiale est ainsi garantie une prise en charge immédiate et intégrale des frais de soins des enfants mineurs.

¹ Made available in French only on the website of the Commissioner.

Il reste que les populations nouvellement arrivées sur le territoire français peuvent souvent, de par leur situation d'errance et de précarité, ignorer l'étendue des droits qui leur sont garantis par la loi. L'accès aux soins des Roms en France passe également par l'intermédiaire d'une information constamment renouvelée de cette population. Pour cette information et pour permettre aux services de l'Etat responsables de la surveillance de la santé des populations résidentes, des associations telles Médecins du monde ou Comité aide médicale (CAM) reçoivent des financements de l'Etat de façon à maintenir des permanences médicales ou à assurer le passage de bus sanitaires dans les camps, à repérer les besoins sanitaires des familles et à les accompagner vers les structures de soins où elles sont aidées à établir leurs demandes administratives de couverture de santé.

§ § 158 relatif aux conditions d'expulsion de certains campements sauvages :

L'intervention des forces de l'ordre pour expulsion de camps de Roms obéit à des règles strictement encadrées et ces actions nous semblent légitimes au regard des troubles à l'ordre public que génèrent ces campements sauvages.

Cette action s'accompagne d'une proposition d'aide au retour. (...)

23. With regard to the situation of the Roma, the European Court of Human Rights held as follows in the case of *Oršuš and others v. Croatia* (application no. 15766/03; judgment of 16 March 2010 [GC]):

"(...) as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority (...). They therefore require special protection. (...) special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (...) not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community" (§§ 147-148).

24. The European Commission against Racism and Intolerance (ECRI), Report on France (fourth monitoring cycle), adopted on 29 April 2010, CRI(2010)16:

"(...) Roma from the countries of central and eastern Europe

106. In its third report ECRI recommended that solutions be found to the problems encountered by Roma from the countries of Central and Eastern Europe regarding housing, health care and access to education. It also recommended that the necessary measures be taken to combat all manifestations of racism against Roma.

107. Roma of Romanian or Bulgarian nationality, who constitute a large proportion of migrant Roma in France, have had access to employment since 2007, but limited to a list of 150 occupations only, following the extension of the EU transitional arrangements with respect to free movement of persons. They cannot be employed unless the employer pays taxes in the form of a fixed sum of approximately 900 EUR. (...)

109. ECRI regrets to note that many Roma from the countries of Central and Eastern Europe remain in an extremely precarious situation as regards access to decent housing and health care. Throughout France there are cases of Roma living in very rudimentary camps, mostly on the outskirts of cities, with sometimes disastrous consequences for their health. ECRI is concerned that a number of sources have pointed out that there is still a problem of brutal forced evictions from these camps involving the confiscation or destruction of personal belongings. In addition, in some cases the persons concerned are allegedly not necessarily being offered any decent alternative housing solution. (...)

111. *Schooling of migrant Roma children remains a problem, not only on account of the obstacles encountered by their families in terms of housing and living conditions, which make access to education difficult, but also because some municipalities refuse to enrol them in school. A number of sources have indicated that these refusals are primarily linked to the children's ethnic origin and are completely unlawful.*

112. *ECRI regrets to learn from a number of sources that Roma from the countries of Central and Eastern Europe suffer from a generally hostile climate of opinion, including racist prejudice, which also targets Travellers. ECRI notes that this prejudice is sometimes conveyed by the media. Roma are also sometimes the victims of racial discrimination, and even racist violence. A number of sources consider that the measures taken to combat racism in France do not constitute a sufficient response to anti-Gypsyism.*

113. *ECRI recommends that the French authorities continue and reinforce their efforts, in consultation with Roma and civil society representatives, to identify solutions for improving the unacceptable living conditions of the Roma families by finding decent housing arrangements and pay special attention to access to health care and education. In particular, an assessment should be made of the measures already implemented, such as assistance with voluntary return or the "integration housing", with the aim of ensuring that they are fully consistent with the needs of the persons concerned and taking rapid remedial action to correct any counter-productive impacts if necessary.*

114. *ECRI again strongly recommends that the French authorities take steps to prevent all illegal, forcible expulsions of Roma families from their homes that place Roma families in a desperate position. In particular it warns against any excessive use of force during such expulsions. (...)*

25. The Strasbourg Declaration on Roma, adopted by the member states of the Council of Europe at a High Level Meeting on Roma, Strasbourg, 20 October 2010:

"(5) (...) the member states of the Council of Europe have adopted the following "Strasbourg Declaration": (...)

(14) Recalling the obligations of states parties under all relevant Council of Europe legal instruments which they have ratified, in particular the European Convention on Human Rights and the Protocols thereto, and, where applicable, the European Social Charter and the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages;

(15) Recommending that states parties take fully into account the relevant judgments of the European Court of Human Rights and relevant decisions of the European Committee of Social Rights, in developing their policies on Roma; (...)

(18) The member states of the Council of Europe agree on the following non-exhaustive list of priorities, which should serve as guidance for more focused and more consistent efforts at all levels, including through active participation of Roma:

Non-discrimination

(19) Adopt and effectively implement anti-discrimination legislation, including in the field of employment, access to justice, the provision of goods and services, including access to housing and key public services, such as health care and education. (...)

Children's rights

(24) *Promote through effective measures the equal treatment and the rights of Roma children especially the right to education (...).*

Education

(33) *Ensure effective and equal access to the mainstream educational system, including pre-school education, for Roma children and methods to secure attendance, including, for instance, by making use of school assistants and mediators. Provide, where appropriate, in service training of teachers and educational staff.*

Employment

(34) *Ensure equal access of Roma to employment and vocational training in accordance with international and domestic law, including, when appropriate, by using mediators in employment offices. Provide Roma, as appropriate, with possibilities to validate their skills and competences acquired in informal settings.*

Health Care

(35) *Ensure equal access of all Roma to the healthcare system, for instance, by using health mediators and providing training for existing facilitators.*

Housing

(36) *Take appropriate measures to improve the living conditions of Roma.*

(37) *Ensure equal access to housing and accommodation services for Roma.*

(38) *Provide for appropriate and reasonable notice and effective access to judicial remedy in cases of eviction, while ensuring the full respect of the principle of the rule of law. (...)*

LIST OF ABBREVIATIONS USED IN THE PRESENT DECISION

AME:	<i>Aide Médicale d'Etat</i> ; State medical assistance
CAF:	<i>Caisse d'allocations familiales</i> ; State assistance fund for families
CCAS:	<i>Centres communaux d'action sociale</i> ; communal centres for social activities
CESADA:	<i>Code de l'entrée et du séjour des étrangers et du droit d'asile</i> ; code governing the entry and residence of foreign nationals and the right of asylum
CMU:	<i>Couverture maladie universelle</i> ; universal sickness coverage
CNAF:	<i>Caisse nationale d'assurance familiale</i> ; national insurance fund for families
DALO:	<i>Droit au logement opposable</i> ; enforceable right to housing
ERDF:	European Regional Development Fund
HALDE:	<i>Haute autorité de lutte contre les discriminations et pour l'égalité</i> ; Equal Opportunities and Anti-Discrimination Commission
PDAHI:	<i>Plans départementaux pour l'accueil, l'hébergement et l'insertion des personnes sans abri ou mal logées</i> ; departmental plans for the reception, accommodation and integration of those without shelter or in poor accommodation

THE LAW

PRELIMINARY OBSERVATIONS

The "Roma" to whom the complaint relates

26. The Committee raises, firstly, that the present complaint follows up on a series of three decisions on the merits in complaints, in which the Committee has examined, in total or in part, allegations raised by *Médecins du Monde* on the situation of Roma in France:

- European Roma Rights Centre (ERRC) v. France, complaint no. 51/2008, decision on the merits of 19 October 2009 (concerning the situation of the travellers and migrant Roma): violations of Articles 16, 19§4c, 30 and 31§§1 and 2 and of Article E taken together with Article 16, 30 and 31 (only the allegations concerning Article 19§4c concerned migrant Roma, the rest of them concerned travellers);
- Centre on Housing Rights and Evictions (COHRE) v. France, complaint no. 63/2010, decision on the merits of 28 June 2011 (concerning the situation of the Roma): violation of Article E taken together with Article 19§8 and 31;
- European Roma and Travellers Forum (ERTF) v. France, complaint no. 64/2011, decision on the merits of 24 January 2012 (concerning the situation of the travellers and migrant Roma of Romanian and Bulgarian origin): violation of Article E taken together with Article 16, 19§8, 30 and 31 (the violation of Article 30 concerned the situation of travellers; the violation of Article 31§3 concerned people choosing to live in caravans; the other violations concerned Roma of Romanian and Bulgarian origin).

27. The Committee notes that this complaint mostly concerns migrant Roma of Romanian and Bulgarian origin, i.e. who come from states parties to the Charter and, more specifically, that the term "Roma" is used with reference to those of them settled in the Balkans and central Europe, some of whom have more or less recently emigrated into western European countries. The term "migrant Roma in France" is therefore taken to mean persons living in France who are mainly from the countries of central and Eastern Europe and who consider themselves as Roma.

28. According to several sources (in particular to the opinion of the French national consultative commission, Commission Nationale Consultative des Droits de l'Homme, *Avis sur le respect des droits des "gens du voyage" et des Roms migrants au regard des réponses récentes de la France aux instances internationales*, adopted in the plenary session on 22 March 2012, §7), there are about 15.000 to 20.000 migrant Roma in France (this figure has been stable for several years). More than 90% of them come from Romania, several groups from Bulgaria and a few families from countries of the former Yugoslavia. Most of these Roma live with their families, including children. According to Romeurope, one-third to a half of the Roma living in squats and shanty

towns are school-age children (Collectif National Droits de l'Homme Romeurope, *Rapport 2009-2010 sur la situation des Roms migrants en France*, footnote No. 162, p.98).

29. The Committee underlines that, as EU citizens, migrant Roma of Romanian and Bulgarian origin have the right to enter the French territory and the right to reside in France for up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport (Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states, Art. 6). After three months, their right of residence continues only if they are workers or self-employed persons, have student status or have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host member state and have medical insurance. With regard to the access to the labour market and the freedom of movement, Romanian and Bulgarian citizens are subjected to restrictive measures during a transitional period running from the date of the membership to the European Union by their countries of nationality (to 1 January 2014). Since 2007, the jobs accessible to nationals of the new member states have been specified in a list of 150 occupations in seven economic sectors. In addition, employers taking on a worker from a new state party had to pay until 26 August 2012 a tax of € 893. Therefore, access to formal employment in France is for these nationals being particularly difficult, therefore they have very limited income and, as a consequence, lose their right of residence. The Committee highlights also that, among the migrant Roma, some reside lawfully or work regularly in France, even if they are only a small proportion of the 15.000 to 20.000 migrant Roma living in France.

30. The Committee notes the interministerial Circular NOR INTK 1233053C of 26 August 2012 which announces, in particular, the abolition, with immediate effect, of the tax that employers had to pay as well as the promise to enlarge the list of occupations open to Romanian and Bulgarian citizens. The Committee also notes the announcement made by the Government on 22 August 2012 according to which the Government will examine the possibility of abolishing the transitional measures limiting access to the French labour market for Romanian and Bulgarian citizens. Since, on the one hand the impact of the suppression of the tax on the access to official employment in France for Romanian and Bulgarian citizens cannot be established at the day of the present decision and, on the other hand, the other measures have not yet been implemented, the Committee considers that the situation of the Romanian and Bulgarian citizens remains that as described above.

31. The Committee notes that, in the complaint, *Médecins du Monde* does not differentiate between migrant Roma of Romanian and Bulgarian origin lawfully residing on the French territory and those who are in an irregular situation.

32. It however recalls that the Appendix to the Charter states that:

“1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.”

33. The Committee follows the same reasoning as in its decision in the complaint on Centre on Housing Rights and Evictions (COHRE) v. Italy (Complaint No. 58/2009, decision on the merits of 25 June 2010, §33) and notes that it is extremely complex, in the circumstances of the present complaint, to distinguish to whom the protection guaranteed by the Charter and its Appendix applies without restrictions. The Committee considers that the lack of identification possibilities should not lead to depriving persons fully protected by the Charter of their rights under it. The Committee notes that the Government does not raise any argument on the scope of the complaint in the light of the Appendix to the Charter.

34. The Committee also reiterates that those who do not fall within the definition in the Appendix cannot be deprived of their rights linked to life and dignity under the Charter (International Federation of Human Rights Leagues, FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 32; Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §37, and Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §33). In fact, it reiterates that the restriction in paragraph 1 of the Appendix attaches to a wide variety of social rights and impacts on them differently and that such a restriction should not end up having unreasonably detrimental effects where the protection of vulnerable groups of persons is at stake (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §37).

35. The Committee also recalls that special attention is to be given to the specific situation of children (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§23-29).

Prohibition of discrimination (Article E)

36. The Committee recalls that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. It also recalls that discrimination may arise either in situations where people in the same situation are treated differently or where people in different situations are treated identically. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §35).

37. Thus, states Parties may treat differently foreigners lawfully and unlawfully present on their territories. However, in so doing, human dignity, which is a recognised fundamental value at the core of positive European human rights law, must be respected (*Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, §73). Moreover, a state must ascertain that foreigners legally present are not treated in a discriminatory manner compared to its nationals.

38. The Committee further reiterates that in respect of complaints alleging discrimination, the burden of proof should not rest entirely on the complainant organisation, but should be shifted appropriately (*Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No. 41/2007, decision on the merits of 3 June 2008, §52).

39. With regard to racial discrimination, the Committee recalls having already considered that the interpretation of racial discrimination by the European Court of Human Rights is valid for the interpretation of the Charter as well (see *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§37-38): “Discrimination on account of one’s actual or perceived ethnicity is a form of racial discrimination (...). Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of enrichment. (...) no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (*mutatis mutandis* *Timishev v. Russia*, judgment of 13 December 2005, §§ 56 and 58)”.

40. The Committee notes that the Government does not dispute that the living conditions of migrant Roma are difficult. It accounts their difficulties concerning effective access to the right to housing, education, social insurance and health primarily to their extremely vulnerable position and on no account to any discrimination against them in the sphere of public policy. The Government points out that, in accordance with its republican traditions, France draws no distinction between categories of the population on an ethnic basis and, as a consequence, its work to assist the Roma forms part of a more general range of measures to help all disadvantages or marginalised people. Regardless of any traditions of the states parties, the Committee underlines the imperative of achieving equal treatment by taking differences between individuals into account. It recalls that it recognised that special consideration should be given to the needs and different lifestyle of the Roma, which are a specific type of disadvantaged group and a vulnerable minority (see *inter alia*, *European Roma Rights Centre (ERRC) v. Portugal*, Complaint No. 61/2010, decision on the merits of 30 June 2011, §20).

41. The Committee therefore examines the allegations raised by the complainant organisation from the perspective of whether the specific disadvantages faced by the Roma population have been sufficiently taken into consideration and responded to by the authorities. It considers the alleged discrimination in the enjoyment of the rights guaranteed under the Charter as inseparable from the other violations alleged, given the claim that the alleged discrimination specifically concerned persons because of their ethnic origin.

42. The Committee examines the alleged violations in the following order:

- Article E in conjunction with Article 31 (right to housing);
- Article E in conjunction with Article 16 (right of the family to social, legal and economic protection);
- Article E in conjunction with Article 30 (right to protection against poverty and social exclusion);
- Article E in conjunction with Article 19§8 (right of migrant workers and their families to protection and assistance – guarantees concerning deportation);
- Article E in conjunction with Article 17 (right of children and young persons to social, legal and economic protection);
- Article E in conjunction with Article 11 (right to protection of health);
- Article E in conjunction with Article 13 (right to social and medical assistance).

ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 31 OF THE CHARTER

Article E – Non-discrimination

“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.”

Article 31 – The right to housing

Part I: “Everyone has the right of 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.”

Alleged violation of Article E taken in conjunction with Article 31§1 by reason of non-access to housing of an adequate standard and degrading housing conditions

A – Submissions of the parties

1. The complainant organisation

43. *Médecins du Monde* denounces the lack of accessible accommodation for persons with a low income and the discrimination suffered by Roma families in gaining access to housing.

44. *Médecins du Monde* recalls that, because of the very restrictive rules on the accession into the labour market by Romanian and Bulgarian citizens during the transition period (running until 1 January 2014) after the EU accession (see §29 above), most of them cannot access official employment, have very limited income and, as a consequence, cannot accede to the private sector housing market.

45. According to *Médecins du Monde*, Roma families take various steps themselves to create accommodation in old dilapidated caravans, makeshift dwellings or squats. These living conditions that Roma are forced to suffer because of their non-access to housing degrading, fail to meet proper health and sanitary standards and are incompatible with human dignity. Their living conditions are almost invariably characterised by:

- lack of sanitary facilities in camps;
- only one, if any, drinking water tap serving hundreds of people;
- dangerous forms of electricity supply and heating;
- lack of essential public services such as rubbish collection, leading frequently to appearances of rats.

46. *Médecins du Monde* adds that the only genuine housing solutions on offer are the so-called integration villages, of which there are very few. Generally speaking, integration villages encourage social exclusion when they are located away from urban areas on land that is difficult to access and, given such strict management practices as controls at the entrance of the villages, the freedom of the Roma is not always guaranteed. *Médecins du Monde* argues that access to such housing subjects the Roma to discriminatory treatment because the Roma families to whom this type of housing is offered are selected according to a discretionary allocation procedure that does not include sufficient guarantees of equity and transparency.

2. The Government

47. The Government recognises the difficulty of securing an effective right to housing for all people in highly precarious situations. It admits that the Roma is one of such population groups. The Government underlines, nevertheless, that within this domain, it has set out ambitious objectives for itself, which indicates the importance attached to the question.

48. The Government recalls that Article 31 cannot be interpreted “as imposing on states an obligation of results”. In order for the rights enshrined in the Social Charter to take a practical and effective form, the states parties are instead obliged to “adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter” (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 59-60).

49. The Government disputes the idea that the housing regulations in force were discriminatory. If *Médecins du Monde* would further specify any discriminatory practices of which the Roma population has fallen victim, such instances of discrimination, if confirmed, were illegal and legal action could be brought against them.

50. The Government refers to Act of 5 March 2007 establishing an enforceable right to housing and introducing various measures to promote social cohesion (“the DALO Act”), which introduced a fully-fledged housing strategy for the poorest households. This legislative groundwork has been completed by Act of 25 March 2009 on action for housing and against exclusion, followed by a national strategy for the accommodation and access to housing of the homeless (2009-2012). As part of the strategy, the Government underlines that new tools will be adopted by 2013, providing a new framework for the arrangements for the reception, accommodation and integration of the homeless. It makes reference, as an example, to the departemental plans for the reception, accommodation and integration of homeless or poorly housed persons (PDAHI), put in place in 2010 with the primary objective of organizing the supply of housing to correspond better to the needs of the poor, as well as improving the way in which people making use of these accommodation facilities are received.

51. The Government points out that the DALO Act includes provisions on a two-stage appeal system, the first being a friendly settlement procedure before the Mediation Committee followed by, secondly, an appeal to an administrative court. Applicants who have, on the one hand, been given priority status by the Mediation Committee, needing to be accommodated as a matter of urgency, and have, on the other hand, not received an offer on accommodation meeting their specific needs within the three-month time limit, may lodge an appeal before an administrative court for it to make a housing or rehousing order.

52. Finally, the Government refers to the measures adopted by certain local authorities to alleviate the urgent situation often faced by citizens of the European Union, mostly of Roma origin, who settle without authorisation on undeveloped sites. In particular, they have been promoting the development of “integration villages”, which have necessitated major state investment and that of the local authorities concerned. It thus emphasises the funding of urban and social studies (Mous) to assess families’ social circumstances and identify long-term housing solutions, amounting to about € 1 million in 2010 for the sole *Département* of Seine Saint-Denis and the city of

Bordeaux. The Government acknowledges that these activities are nothing but a local solution to a nationwide problem, but also sees them as a sign of a true commitment on the part of the state and the local authorities and of a desire to find new and appropriately adapted solutions to the problem.

B – Assessment of the Committee

53. The Committee recalls that persons, including children, unlawfully present on the territory of a state party do not come within the personal scope of Article 31§1 of the Charter (*Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, §45; *European Roma and Travellers Forum v. France (ERTF)*, Complaint No. 64/2011, decision on the merits of 24 January 2012, §111). However, since it has been established that certain migrant Roma are lawfully present in France, even though it is extremely complex to clearly distinguish to whom the protection guaranteed by the Charter and its Appendix applies without restrictions, the Committee considers that this should in any case not lead to a situation where individuals fully protected by the Charter are deprived of their rights under it (see §34 above). As a consequence, it decides to consider the issue under Article 31§1 with regard to the migrant Roma lawfully present in France.

54. Under Article 31§1, states parties shall guarantee to everyone the right to housing and promote access to housing of an adequate standard. The Committee recalls that states must take the legal and practical measures which are necessary and adequate with a view of ensuring the effective protection of the right in question. They enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group and the choices to be made in terms of priorities and resources (*European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006, §35).

55. The Committee recalls that the wording of Article 31 cannot be interpreted as imposing on states an obligation of “results”. However, it notes that the rights recognised in the Charter must take a practical and effective, rather than purely theoretical, form (*International Movement ATD Fourth World v. France*, complaint No. 33/2006, decision on the merits of 5 December 2007, §59).

56. Given that it is exceptionally complex and particularly expensive to realise the rights enshrined in Article 31§1, states parties must take measures allowing them to achieve the objectives of the Charter within a reasonable time limit, making measurable progress and to an extent consistent with the maximum use of available resources (*European Roma and Travellers Forum (ERTF) v. France*, Complaint No. 64/2011, decision on the merits of 24 January 2012, §96).

57. The Committee also recalls that, under Article 31§1, persons legally residing or regularly working in the territory of the Party concerned who do not have housing of an

adequate standard must be offered such housing within a reasonable time (Conclusions 2003 and 2011, France, Article 31§1; European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §112).

58. The Committee reiterates that housing of an adequate standard under Article 31§1 means a dwelling which is safe from the point of view of sanitation and health, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (see Conclusions 2003, Article 31§1, France; European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §76).

59. The Committee notes, moreover that the Government does not reply to the arguments made by *Médecins du Monde* on the degrading housing conditions of the Roma. It refers to its Conclusions 2011, Article 31§1, France, where it found that :

“The Committee also notes the findings of the Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008, in which he noted that most of the Roma in France live in squalid shanty towns, often without access to water or electricity and with only sporadic refuse collection. Hygiene conditions are often deplorable and some camps do not even have toilets. According to a survey by *Médecins du Monde* cited by the Commissioner, about 53% of Roma live in caravans, many of which are immobile, 21% in converted squats and 20% in huts. In the light of the foregoing, the Committee considers that the living conditions of many Roma fail to comply with the requirements of Article 31§1.”

60. The Committee takes note of the different means made use of by the Government in the field of housing, in particular the DALO Act of 2007, the Act on action for housing and against exclusion of 2009 and the national strategy for the accommodation and access to housing of the homeless (2009-2012). With regard to the implementation of the DALO Act, the Committee points out that the DALO procedure for accessing to housing is limited to nationals and migrants residing legally in France. The Committee considers that plans, declaration of intention, exploratory processes, roadmaps to identify primary targets, “special tools” for the future may be necessary to achieve the targeted results but cannot be deemed as efficient and sufficient measures – while their elaboration seem to use considerable part of the budgetary resources to the detriment of concrete actions.

61. As concerns the argument of *Médecins du Monde* that integration villages encourage social exclusion, the Committee recalls that pursuant to Article 31§1, in order for housing to be considered to have reached the level of adequacy, it must be in a location which allows access to public services, employment, health-care services, schools and other social services. States should be vigilant when implementing housing policies so as to prevent spatial or social segregation of ethnic minorities or migrants (European Roma Rights Centre (ERRC) v. Portugal, Complaint No. 61/2010, decision

on the merits of 30 June 2011, §41). The Committee adds that a balance needs to be found between the creation of such villages and the place where they are located, a balance between a housing solution and a risk of social exclusion, and that *Médecins du Monde* has not demonstrated the existence of social exclusion of the Roma living in integration villages.

62. In any case, the Committee notes that the integration villages offer a housing solution to only a very limited number of the Roma, while the living conditions of the others continue to be in non-conformity with the requirements of Article 31§1.

63. As to the possible discriminatory treatment on grounds that Roma families wishing to have access to housing in an integration village were selected according to a discretionary allocation procedure that fails to offer sufficient guarantees of equity and transparency, the Committee notes that the Romeurope Report (Collectif National Droits de l'Homme Romeurope, *Rapport 2009-2010 sur la situation des Roms migrants en France*, September 2010, p.83), referring to the situation for only three such villages, does not mention any discriminatory treatment. The report indicates that the way the criterion have been applied has reinforced the feeling of arbitrariness. It is added that, as the most consideration should be given to human dignity of the people, there is in the final end no other satisfactory selection mechanism than the voluntary participation of those concerned. Whatever criterion is employed and whichever diagnostic methods applied, selecting some families and evacuating others will always be felt as discretionary and iniquitous.

64. The Committee stresses that it is acknowledged that the Roma suffer from a generally hostile climate against them, and of racist prejudice (see in particular European Commission against Racism and Intolerance (ECRI), Report on France, Fourth monitoring cycle, adopted on 29 April 2010, CRI(2010)16, §112, that demonstrates discriminatory treatment).

65. The Committee underlines that the Government has omitted to take into account the differences in situation of the Roma migrants who reside lawfully or work regularly in France, as well as to take measures adapted to ameliorate their housing situation. It notes that the means placed at disposal by the Government for the purpose of taking concrete action within this area are too limited in nature to alter the unworthy living conditions of a large number of the Roma. The Committee concludes therefore that they have been subjected to discriminatory treatment.

66. Consequently, the Committee holds that there is a violation of Article E read in conjunction with Article 31§1.

Alleged violation of Article E taken in conjunction with Article 31§2 by reason of the eviction procedure of migrant Roma from the sites where they are installed

A – Submissions of the parties

1. The complainant organisation

67. According to *Médecins du Monde*, evictions of Roma are a regular event. It is not unusual for a particular family to be evicted from its site every month. These evictions take place without any offers of rehousing.

68. These evictions are often accompanied by intimidation and harassment by the police. The daily presence of law enforcement forces in camps and the indication of false deadlines before evictions form part of such a strategy. There have been numerous reported cases of unjustified use of force, as well as destruction of personal property and makeshift dwellings.

69. Finally, the winter "truce" whereby tenants cannot be evicted between 1 November and 15 March does not apply to occupants with no right or title to property. As a result, such evictions often take place in the middle of winter.

70. Neither the police nor the owners of illegally occupied land can evict those installed there without a court order. In practice though, when the correct procedure is followed, most of the time the occupants are unable to enforce their rights. Thus, a relatively recent development allows land owners to ask the courts for eviction orders for illegal occupants under a simplified procedure involving a single judge. Under the procedure, the owner is not required to notify each individual concerned with the order. This means that the occupants are unaware of the proceedings and therefore cannot enforce their rights (see Collectif National Droits de l'Homme Romeurope, *Rapport sur la situation des Roms migrants en France*, 2009-2010, September 2010, p.68).

2. The Government

71. The Government has pointed out, firstly, that the eviction orders to which *Médecins du Monde* objects in its complaint relate only to illegally occupied sites. The aim of the evictions is to bring an end to an unlawful infringement of the right to property and in some cases to breaches of law and order (living conditions incompatible with the principle of human dignity and public health requirements).

72. In addition, Article 493 of the Code of Civil Procedure defines the *ex parte* orders (*ordonnances sur requête*) as a "provisional decision rendered in a non-contradictory manner in cases where the petitioner has good reason for not summoning the opposing party". The Government states that this is not a recent procedure but one that can be used to obtain the eviction of occupants without a right or title to the piece of property whose identity is not known to the owner. The case law does, however, require that the

bailiff in charge of the expulsion has done everything in his power in order to trace the identity of the occupants of the dwelling place (see in particular Chambéry Court of Appeal, SA Electricité de France EDF v. The state, decision of 18 September 2007, Juris-Data No. 2007-343020).

B – Assessment of the Committee

73. The Committee notes that the situation regarding the evictions of Roma of Romanian and Bulgarian origin described in this complaint is very much the same as the situation considered in the complaints Centre on Housing Rights and Evictions (COHRE) v. France (Complaint No. 63/2010, decision on the merits of 28 June 2011, §§35-55) and European Roma and Travellers Forum (ERTF) v. France (Complaint No. 64/2011, decision on the merits of 24 January 2012, §§126-135).

74. The Committee refers to its decision on the merits of 21 March 2012 in the case of International Federation of Human Rights Leagues (FIDH) v. Belgium (complaint No. 62/2010, §161 and §§163-165) where it recognises that illegal occupation of a site may justify the eviction of the occupants. However, the criteria of illegal occupation may nevertheless not be understood in an unduly wide manner (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §51). Therefore, persons or groups of persons who cannot effectively benefit from the rights enshrined in national legislation such as the right to housing may be forced to take up reprehensible behaviour in order to satisfy their needs. Such a circumstance alone cannot be held to justify any sanction or measure of execution directed towards these persons, neither a continued deprivation of rights that have been ascertained to them (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 53).

75. The Committee recalls that in order to comply with the Charter, legal protection for persons threatened with eviction must be prescribed by law and include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- access to legal remedies;
- access to legal aid;
- compensation in case of illegal evictions.

Furthermore, when evictions do take place, they must be:

- carried out under conditions respecting the dignity of the persons concerned;
- governed by rules sufficiently protective of the rights of the persons;
- accompanied by proposals for alternative accommodation

(European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §41, and Conclusions 2011, Turkey, Article 31§2).

76. The Committee recalls that the conditions of the eviction procedure described above apply to all migrants, irrespective of their legal situation in France, since these are rights linked to life and dignity (see above, §34).

77. The Committee refers to several sources, according to which the evictions of migrant Roma are conducted without respect of the basic conditions prescribed by the Charter, in particular in breach of the dignity of the persons concerned (for example, without consideration of the presence of children, pregnant women, elderly, sick or disabled persons; destructing possessions) (see Collectif National Droits de l'Homme Romeurope, Rapport 2010-2011, "*Les Roms, boucs-émissaires d'une politique sécuritaire qui cible les migrants et les pauvres*", February 2012, sp. pp.17-18).

78. The Government does not reject the arguments of *Médecins du Monde* on intimidation, harassment, unjustified instances of violence and destruction of personal property that often accompany the evictions of migrant Roma families. It explains the manner in which evictions are conducted with the intention of "bringing to an end" the unlawful situation infringing upon the rights of property owners, as well as the rights of the Roma themselves living in conditions incompatible with dignity and public health requirements.

79. In the instant case, the Committee notes that the legal protection afforded to the Roma under threat of eviction is insufficient and that eviction procedures can take place at any time of the year including winter and night or day. It considers that this situation does not ensure the respect of human dignity.

80. The Committee points out that evictions must not render the persons concerned homeless (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §57) and that the principle of equal treatment implies that the state should take measures that are appropriate in the particular circumstances of the Roma in order to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless (see, *mutatis mutandis*, European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §21). The Committee considers that France has failed to demonstrate that offers of appropriate alternative accommodation of a sufficiently long-term are made to the Roma urged to leave, or evicted from, an illegally occupied site. Under such circumstances, urging them to leave sites on which they have settled – even illegally – and evicting them if they refuse to comply while not offering suitable long-term alternative accommodation, adds to the failure to respect these people's right to housing. The Committee stresses that, in the light of these criteria, the Committee has held that the situation in France constituted a breach of Article E read in conjunction with Article 31§2 of the Charter in its decision of 24 January 2012 on the merits in complaint European Roma and Travellers Forum (ERTF) v. France, No. 64/2011, §§ 130-135.

81. The Committee holds that, with regard to their expulsion from sites where they have settled illegally, the situation of migrant Roma has not improved since its finding of a violation of Article 31§2 (see Commission Nationale Consultative des Droits de l'Homme, *Avis sur le respect des droits des "gens du voyage" et des Roms migrants au regard des réponses récentes de la France aux instances internationales*, adopté en assemblée plénière le 22 mars 2012, §§54-55; Collectif National Droit de l'Homme Romeurope, *Rapport 2010-2011, Les Roms, boucs-émissaires d'une politique sécuritaire qui cible les migrants et les pauvres*, février 2012, sp. pp. 17-18; Observatoire régional de santé d'Ile-de-France, *Situation sanitaire et sociale des "Roms migrants" en Ile-de-France*, janvier 2012, p. 27). It therefore considers that the violation of Article E read in conjunction with Article 31§2 persists.

82. Consequently, the Committee holds that there is a violation of Article E read in conjunction with Article 31§2.

Alleged violation of Article E taken in conjunction with Article 31§2 by reason of a lack of sufficient measures to provide emergency accommodation and reduce homelessness

A – Submissions of the parties

1. The complainant organisation

83. *Médecins du Monde* gives the example of systematic refusals to grant Roma families accommodation under the Act of 5 March 2007 establishing an enforceable right to housing (the DALO Act) on the grounds that there was no evidence of "115" calls (the telephone number of the centre responsible for finding and placing people in emergency accommodation), which evidence, according to *Médecins du Monde*, is impossible to obtain.

84. *Médecins du Monde* stresses that the solutions rarely offered by the public authorities do not correspond to the common legal definition of housing but rather to that of emergency accommodation. Such an accommodation is very ill suited to the needs of these people because the members of a family are often separated and the housing is offered for a very short time (from three to four nights). Afterwards, the people are returned to the street. Such offers of emergency accommodation therefore fail to prevent and reduce homelessness, as required by Article 31§2 of the Charter. According to *Médecins du Monde*, the granting of emergency accommodation entails discriminatory treatment on the basis of origin.

2. The Government

85. The Government does not make any additional arguments relating to the nature of the emergency accommodation and the reduction of homelessness other than those made under Article 31§1 concerning access to housing. It adds only that the

amendments made to the regulation on the European Regional Development Fund (ERDF) have opened up new possibilities to mobilise funds for the purpose of renovating housing or converting buildings to be used by people in the most precarious circumstances.

B – Assessment of the Committee

86. The Committee underlines the differences between the right to housing (provided by Article 31§1) and the right to shelter (provided by Article 31§2).

87. The Committee points out that *Médecins du Monde* does not question the DALO Act as such, but its application to migrant Roma with regards to the right to shelter. It notes that the right to shelter is no longer provided by the DALO Act, but since the enactment of Act No. 2009-323 of 25 March 2009, by Articles 345-2-2 and 345-2-3 of the Code of Social Work and Families.

88. The Committee takes note of *Médecins du Monde*'s arguments that evidence of the "115" calls is impossible to obtain, which, as a consequence, brings about systematic refusals to grant accommodation to the Roma pursuant to the DALO Act. It notes, however, that, even when taking into account the principle of the shift of the burden of proof, *Médecins du Monde* does not substantiate its allegations sufficiently on this issue.

89. The Committee recalls its findings concerning the right to shelter with regards to Roma of Romanian and Bulgarian origin in its decision on the merits in complaint European Roma and Travellers Forum (ERTF) v. France, No. 64/2011, decision of 24 January 2012, §§126-129:

“126. As mentioned above, since the right to shelter is closely connected to the right to life and to the right to respect of every person's human dignity, states parties are required to provide shelter to persons unlawfully present in their territory for as long as they are in their jurisdiction (Conclusions 2011, France).

127. The Committee moreover recalls that to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 62).

128. It can be seen from a wide number of recent sources (European Roma Rights Centre (ERRC) submissions to the European Commission on the legality of the situation of Roma in France dated September 2010, the Amnesty International report of 2011 and a report of July 2011 by *Médecins du Monde* concerning the living conditions of the Roma in France) that a large share of the Roma camp sites do not meet these requirements and have not done so since at least 2006 when the Council of Europe Commissioner for Human Rights noted, in a report of 15 February, that these camp sites were squalid, often without access to water or electricity, wedged under bridges or located between motorways and railway lines only a few metres away from a major ring-road.

129. Having regard to the continuing substandard housing conditions on these camp sites and since the Government has not established that it has taken sufficient measures to guarantee the Roma living there housing conditions meeting minimum standards, the Committee holds that the situation is in breach of Article E taken in conjunction with Article 31§2.”

90. The Committee recalls having considered that the housing conditions described in the present complaint failed to comply with the requirements of Article 31§1 on part of housing (see §66 above). As for the determination of whether these conditions comply with the requirements of Article 31§2 as regards the right to shelter and with Article E (non-discrimination), notably for the determination of whether the housing conditions take into account the specific situation of the groups of people concerned that calls for appropriate responses, the Committee notes that the situation has not changed since its abovementioned decision of 24 January 2012 in complaint No. 64/2011 (see Commission Nationale Consultative des Droits de l’Homme, *Avis sur le respect des droits des “gens du voyage” et des Roms migrants au regard des réponses récentes de la France aux instances internationales*, adopté en assemblée plénière le 22 mars 2012, §53; Observatoire régional de santé d’Ile-de-France, *Situation sanitaire et sociale des “Roms migrants” en Ile-de-France*, janvier 2012, p. 26-27) and that the violation persists.

91. As a consequence, the Committee holds that there is a violation of Article E taken in conjunction with Article 31§2.

ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 16 OF THE CHARTER

Article E – Non-discrimination

“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.”

Article 16 – The right of the family to social, legal and economic protection

Part I: “The family as 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.”

A – Submissions of the parties

1. The complainant organisation

92. *Médecins du Monde* underlines that the Roma population, whom the complaint concerns, is largely composed of families.

93. *Médecins du Monde* requests the Committee to find a violation of the Charter on account of the withdrawal of family benefits previously distributed to certain migrant Roma. While the claim is submitted under Article 13§1, the Committee decides to consider it under Article 16, since it is the provision of the Charter establishing the right of the family to social, legal and economic protection.

94. *Médecins du Monde* stresses that, at first, family benefits were granted to all Romanian and Bulgarian nationals with no condition of a legal residence on the basis of an internal circular of the national family insurance fund (CNAF) of 16 January 2007. By means of a new CNAF circular (of 18 June 2008), the eligibility for family benefits has been limited to nationals of the European Union who satisfy the lawful residence condition. Several local family allowance funds (CAFs) have therefore interrupted the benefit payments to inactive nationals of the European Union. Despite another circular (CNAF circular 2009-022 of 21 October 2009) specifying that the CAFs were not entitled to verify the right to residence of persons already receiving family allowances, it appears that many of the CAFs continue to refuse to reverse the decisions suspending Roma families' benefits, which is, according to *Médecins du Monde*, not in conformity with the Charter.

95. *Médecins du Monde* reiterates, secondly, from the viewpoint of Article 16, the grounds set out under Article 31 concerning the entitlement to housing of Roma families of Romanian and Bulgarian origin.

2. The Government

96. As concerns family benefits, the Government underlines that lawful residence is a requirement of eligibility for social assistance and housing and has a direct impact on the health care scheme. This is a general principle of all social protection in France and may in any case not be considered discriminatory because it is based on an objective evaluation of the circumstances. It adds that Roma populations with lawful residence in France have the same rights and access to social benefits as other lawfully resident foreign nationals or French citizens.

97. The Government does not make different arguments on the issue of families and their housing than those made under Article 31 on the right to housing.

B – Assessment of the Committee

98. The Committee observes that the Roma of Romanian and Bulgarian origin referred to in this complaint include families.

99. The Committee notes that the first issue raised by *Médecins du Monde* with regards to family benefits concerns exclusively migrant Roma not lawfully resident in France. It recalls that Article 16 is not applicable to them due to the limitations in the Appendix to the Charter and there can therefore be no violation of Article 16 on this matter.

100. As for the other issue raised by *Médecins du Monde* is concerned, the Committee recalls that, in accordance with the principle of equal treatment, Article 16 requires states parties to ensure the protection of vulnerable families, including Roma families (see *European Roma and Travellers Forum (ERTF) v. France*, Complaint No. 64/2011, decision on the merits of 24 January 2012, §143). Consequently, the Committee holds that the finding of a violation of Article E taken in conjunction with Article 31 concerning the right to housing of the Roma of Romanian and Bulgarian origin either lawfully residing or working regularly in France brings about also a violation of Article E taken in conjunction with Article 16.

101. As a conclusion, the Committee holds that there is a violation of Article E taken in conjunction with Article 16.

ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 30 OF THE CHARTER

Article E – Non-discrimination

“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.”

Article 30 – The right to protection against poverty and social exclusion

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 – Submissions of the parties

1. The complainant organisation

102. *Médecins du Monde* infers, from the situation described under Article 31, an absence of any political commitment to integrate the Roma from central and eastern Europe into the traditional housing system, using the common legal means of accessing accommodation. It concludes that their access to housing under Article 30§1 is therefore ineffective.

2. The Government

103. The Government maintains that significant steps are being taken by the authorities in order to ensure that the Roma of Romanian and Bulgarian origin have effective access to their rights under the Charter.

B – Assessment of the Committee

104. The Committee underlines that *Médecins du Monde* refers to Article 30 only with regard to the effective access to housing.

105. The Committee recalls having considered that living in a situation of social exclusion undermines human dignity. With a view to ensuring the effective exercise of the right to protection against 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 to social fundamental rights. Also control mechanisms involving all relevant actors, including civil society and persons affected by exclusion should be put in place. This approach must link and integrate policies in a consistent way. Adequate resources are one of the main elements of the overall strategy to fight social exclusion, and should be allocated to attain the objectives of the strategy. Finally, the measures should be adequate in their quality and quantity to the nature and extent of social exclusion in the country concerned (*European Roma Rights Centre (ERRC) v. France*, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§ 93-94).

106. The Committee takes note of the Strategy of the French Government for the inclusion of Roma (received by the European Commission on 8 February 2012) in the context of the EU Framework for National Roma Integration Strategies up to 2020 (document COM(2011)173 final). The Committee nevertheless considers that it clearly results from its conclusions under Article 31 that the housing policy in favour of the migrant Roma lawfully residing or regularly working in France is insufficient. It

accordingly finds that France has failed to adopt a coordinated approach to promoting effective access to housing for these persons who live or risk living in a situation of social exclusion.

107. It also notices that the Government has failed to take specific measures in this field towards the migrant roma population when it should have. Treating the migrant Roma in the same manner as the rest of the population when they are in a different situation constitutes discrimination.

108. Consequently, the Committee holds that there is a violation of Article E taken in conjunction with Article 30.

ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 19§8 OF THE CHARTER

Article E – Non-discrimination

“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.”

Article 19 – The right of migrant workers and their families to protection and assistance

Part I: “Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.”

Part II: “With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:
(...)”

8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
(...)”

A – Submissions of the parties

1. The complainant organisation

109. *Médecins du Monde* considers that the expulsions of Roma families of Romanian and Bulgarian origin are in breach of Article 19§8 of the Charter since they are collective expulsions. It underlines that the authorities do not examine the specific situations of individuals and police officers visit camps with completed expulsion orders with nothing missing but names. It also notes the very brief time period allowed for a judicial appeal against a prefectural order to be escorted to the border. *Médecins du Monde* also

criticises the too broad interpretation given to the notion of a threat to public order, particularly under the new Immigration, Integration and Nationality Act (Act 2011-672 of 16 June 2011).

2. The Government

110. The Government considers that the expulsions fully satisfy the requirements of Article 19§8 in that they relate to foreigners unlawfully residing in the country or posing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The Government maintains that the expulsions are being carried out after a detailed examination of the individual situation of the person concerned and subject to the strict supervision by an administrative judge. The Government strongly disputes *Médecins du Monde's* assessment of the Immigration, Integration and Nationality Act and asserts that it takes account of the criticism expressed by the Committee in its previous decisions.

B – Assessment of the Committee

111. The Committee underlines that Article 19§8 applies only to migrant workers lawfully residing within the territory of states parties and not to migrants in an irregular situation. It recalls that migrant workers residing lawfully within the territory of a state party cannot be expelled unless they endanger national security or offend against public interest or morality.

112. The Committee recalls that a decision on an expulsion may be made only on the basis of a reasonable and objective examination of the particular situation of each individual (see *Centre on Housing Rights and Evictions (COHRE) v. Italy*, complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 155-156). The Committee considers that the possibility to appeal against the expulsion decision before courts is not sufficient to fulfil this obligation.

113. The Committee notes that only a small proportion of migrant Roma of Romanian and Bulgarian origin seem to be legally residing in France. No distinction seems, however, to be made among the migrant Roma of Romanian and Bulgarian origin on the basis on the legality of their residence in France upon their expulsion. In fact, neither *Médecins du Monde* nor the Government provide documents demonstrating that the legal residence status in France of the person expelled is taken into consideration. In particular, the length of residence within the territory is not mentioned in the orders to leave the country.

114. The Committee emphasises that Article 19§8 is a provision imposing an obligation of result, guaranteeing the right to protection for each individual of the affected group. Furthermore, the Committee considers that in cases where a fundamental right such as the right of residence is at stake, the burden of proof lays on the Government, i.e. that it is up to the Government to demonstrate that a person does not reside legally

on its territory (in the instant case for longer than three months), and not up to the person in question. The Government states, having submitted no evidence thereof, that each expulsion measure is adopted following an examination assessing the personal circumstances of the applicant. It appears, on the contrary, that expulsion procedures have been launched without any evidence of the person having entered the French territory for longer than for a period of three months (see Human Rights Watch, France's Compliance with the European Free Movement Directive and the Removal of Ethnic Roma EU Citizens. A Briefing Paper Submitted to the European Commission in July 2011, which shows that, out of 198 orders to leave the country served on Romanian Roma and examined between August 2010 and May 2011, 71 (i.e. 35.85%) contained no evidence of the individual having entered France over three months prior to the adoption of the order). The Committee notes that, as a consequence, there had been no real individual examination of the situations but, in fact, collective expulsions.

115. Since the authorities do not themselves examine the legal situation of the migrant Roma at the end of their residence in France, the Committee considers that the present complaint offers the possibility of applying the rule mentioned in §112 above to cover all migrant Roma of Romanian and Bulgarian origin, affected by an expulsion procedure from the French territory.

116. In this context, the Committee recalls its previous decision on the merits in complaint No. 64/2011 (European Roma and Travellers Forum (ERTF) v. France) adopted on 24 January 2012 where it held that there were a violation of Article E taken in conjunction with Article 19§8 (see §§51-67).

117. The Committee considers, basing its consideration on the case file, that there has been no change in the situation since that decision. Consequently, it holds that there is a violation of Article E taken in conjunction with Article 19§8.

ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 17 OF THE CHARTER

Article E – Non-discrimination

“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.”

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: “Children and young persons have the right to appropriate social, legal and economic protection.”

Part II: "With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b) to protect children and young persons against negligence, violence or exploitation;

c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools."

A – Submissions of the parties

1. The complainant organisation

118. According to *Médecins du Monde*, France does not provide effective access to education for Roma children. It refers to a report of February 2010 by Romeurope entitled "*La non-scolarisation en France des enfants roms migrants*" and to its own observations.

119. *Médecins du Monde* notes in particular that, when registering children for school, families are often faced with unreasonable requirements for documentation, including an administrative certificate of residence, even though the only documents required by law are the child's birth certificate and health record. It also draws attention to unjustified delays in the registration and allocation procedures. Prior appointments – which are not required in the case of the other children – may be required and elected members of the municipality may have to be consulted. According to *Médecins du Monde*, this is a question of abnormal and discriminatory procedures in violation of Article E. It adds that mayors do not take any active steps to establish the number of children who are not being educated, contrary to Article R 131-3 of the Education Code, obliging the mayor of each municipality to list all the children subject to compulsory schooling. Finally, repeated evictions of children from their place of residence inevitably have harmful consequences for their educational opportunities.

120. In addition, *Médecins du Monde*, underlines that schools are often situated far from Roma children's living environment and that the provision of school transport, as well as its cost, do not match the special needs of these Roma children. It adds that canteen charges are not adapted as certain municipalities charge the maximum amount because the families have no documentary proof of their lack of resources.

2. The Government

121. Firstly, the Government states that the legislation on the right to education and on compulsory education does not provide for any difference in treatment on grounds of a child's nationality, the situation of the parents or the lawfulness or uncertain status of the family's residence within the jurisdiction of a municipality.

122. In French law, the principle of compulsory education is applied without distinction "to French and foreign children of both sexes between the ages of six and sixteen" (Article L. 131-1 of the Education Code). Furthermore, under Article L. 131-6 of the Code, the mayor, acting on behalf of the state, establishes a list of all the children residing in his or her municipality subjected to compulsory schooling. According to the Government, however, children aged between two and six do not have a right to attend nursery school (Articles L. 113-1 and D. 113-1 of the Education Code; Versailles Administrative Court of Appeal, 15 July 2010, No. 09VE01330). An application for a child to attend nursery school may be rejected on grounds of unavailability of places (Lyon Administrative Court, 12 November 1997, Ms Riquin, No. 9701854).

123. The Government further refers to the situation of children of non-sedentary families, i.e. travellers.

124. As for the certificate of residence required from parents of Roma children, the Government replies that such a request in no way affects the right to education of the child concerned as it is intended to determine the competent establishment to which the child must be admitted to in accordance with Articles L. 131-5 and L. 131-6 of the Education Code and Article D. 211-11 on lower and upper secondary school catchment areas.

125. As to the difference in treatment between Roma children and other children, the Government states that differences may exist with regard to enrolment applications made in the course of the academic year and those made in accordance with the school calendar, which reflects an objective difference in the situation, stemming from the constraints of school intake capacity. If the school in the sector of residence has reached full capacity by the date of the application, the pupil has to be enrolled in another establishment. It adds that mediation carried out in each administrative department by the education authority's centres for schooling of new arrivals and travellers (CASNAVs) with families and local partners from institutions and associations (including local councillors, social workers, youth workers and association members) helps to ensure that mayors do not avoid their responsibility for registering families who cannot provide evidence of residing in their municipality. By asking to meet the families, national education services likewise attempt to ensure that the people concerned are properly informed, as well as to establish which body suits best to the child's specific needs in view of his or her academic and language level.

126. Finally, according to the Government, the mission of a public education system does not extend to the provision of school catering or transport. The Government adds that anyone disagreeing with the meal charges may challenge them in the administrative courts, as well as the differences in school transport fees.

B – Assessment of the Committee

127. First, the Committee observes that *Médecins du Monde* invokes Article 17 as a whole. Having examined the submissions, the Committee considers that the allegations raised by *Médecins du Monde* relate, more precisely, to Article 17§2 (Free primary and secondary education and regular attendance at school).

128. The Committee considers access to education as crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2, General Introduction, Conclusions 2011, §10).

129. The Committee also recalls that Article 17 as a whole requires states to establish and maintain an educational system that is both accessible and effective (see Conclusions 2003, France, Article 17§1 which provides explanatory observations on the whole Article 17 after its revision with the entry into force of the Revised European Social Charter).

130. The Committee notes that, on many aspects, the Government refers to the situation concerning travellers' children, which is not of relevance with regard to the present case concerning Roma children of Romanian and Bulgarian origin. The legal texts referred to by the Government seem, however, to be in conformity with the requirement of the Charter. The Committee underlines nevertheless that they have not been implemented in a satisfactory manner, in particular concerning the effective access to education for Roma children of Romanian and Bulgarian origin, as demonstrated by various studies, such as the report of February 2010 by Romeurope, titled "*La non-scolarisation en France des enfants roms migrants*", decision No. MLD/2012-33 by the *Défenseur des droits* and several decisions of the French Equal Opportunities and Anti-Discrimination Commission (HALDE), in particular the decisions No. 2009-233 and No. 2009-372.

131. The Committee notes also that, according to the 10th national report of France on the implementation of the European Social Charter (revised), the enrolment rate in schools for the general population is 100 per cent (see Conclusions 2011, France, Article 17§2). This differs appreciably from the information provided by *Médecins du Monde* that has not been questioned by the Government on the school enrolment figures of Roma children of Romanian and Bulgarian origin. For instance, a study presented in the report of February 2010 by Romeurope titled “*La non-scolarisation en France des enfants roms migrants*” (p. 14) shows that, for the school year 2008-2009, out of the 1132 school-aged Roma children living in Marseille, Lyon and Nantes, only 335 (29.59%) were registered for school and 168 (14.84%) of them did go to school.

132. The Committee underlines that it appears from the case file that the Government does not take special measures, which should be taken for the benefit of members of a vulnerable group, in order to ensure equal access to education for Roma children of Romanian and Bulgarian origin. It concludes that the French education system is not sufficiently accessible to these children.

133. The Committee therefore holds that there is a violation of Article E taken in conjunction with Article 17§2.

ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 11 OF THE CHARTER

Article E – Non-discrimination

“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.”

Article 11 – The right to protection of health

Part I: “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”

Part II: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.”

Alleged violation of Article E taken in conjunction with Article 11§1 by reason of difficulties of access to health care

A – Submissions of the parties

1. The complainant organisation

134. *Médecins du Monde* underlines that the state of health of the Roma is generally a cause for concern due, in particular, to the numerous difficulties they encounter when accessing health services in France.

135. It refers to decision No. 2009-372 of 26 October 2009 of the French Equal Opportunities and Anti-Discrimination Commission (HALDE), which stressed the need for the Roma population to receive medical care and treatment. According to the HALDE, this is all the more important because these populations suffer from very poor health conditions upon their arrival in France and because the access to care is hindered by language barriers, lack of knowledge by health and social services and their unstable living conditions, linked in particular to the numerous evictions to which they are subjected. The HALDE adds that this makes Romanian and Bulgarian Roma the least cared-for migrant group and the only one for which there is no targeted humanitarian policy ensuring their access to health and education.

136. *Médecins du Monde* stresses that evictions lead to breakdowns in medical care and treatment and that links painstakingly established by health professionals, even with persons who despite everything have registered for treatment, are broken by each police operation or eviction. Following evictions and arrests, appointment dates and times, letters, health records and documents which are essential to establish sickness coverage are frequently lost or destroyed, thus breaking all the medical links that have been established previously with difficulty.

2. The Government

137. The Government does not dispute the poor state of health of migrants in an irregular situation but rejects the accusation of systematic discrimination against the Roma with regard to access to health care. It states that while it shares the desire to improve the state of health of all population groups in situations of extreme vulnerability, it cannot be held responsible for the initial state of health of Roma migrants upon their arrival in France.

138. The Government stresses the existence of the emergency care funds, which enable the Government to respond to immediate needs of people not covered by the *Couverture maladie universelle* (Universal Sickness Cover; CMU) or *Aide médicale d'Etat* (State Medical Assistance; AME). It also points out that minor children of migrants in an irregular situation are no longer subjected to the requirement of three months' presence in the country to be able to benefit from AME.

B – Assessment of the Committee

139. The Committee recalls that the healthcare system must be accessible to everyone (Conclusions 2007, Albania) in particular to disadvantaged groups which should not be victims of discrimination (Conclusions XVII-2 and 2005, Statement of interpretation on Article 11, §5).

140. The Committee also recalls that the right of access to healthcare requires that the cost of healthcare should be borne, at least in part, by the community as a whole (Conclusions I, Statement of Interpretation on Article 11; Conclusions XV-2, Cyprus). This also requires that the cost of healthcare must not represent an excessively heavy burden for the individual. Steps must therefore be taken to reduce the financial burden on patients, in particular those from the most disadvantaged sections of the community (Conclusions XVII-2, Portugal).

141. The Committee adds that when ruling on situations where the interpretation of the Charter concerns the rights of a child, it considers itself bound by the internationally recognised principle of the best interests of the child (Defence for Children International (DCI) v. the Netherlands, complaint No. 47/2008, decision on the merits of 20 October 2009, §29). In this regard, it refers to the Convention on the Rights of the Child of 20 November 1989, in particular to Article 24, which states that:

“1. States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (...)

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (...)

(d) To ensure appropriate pre-natal and post-natal health care for mothers (...)”

142. The Committee notes that the allegation of *Médecins du Monde* on the breakdowns in medical care and treatment due to evictions is not contested by the Government. The Committee stresses, in addition, that this situation is underlined by the HALDE in its decision No. 2009-372 of 26 October 2009, noting that the state authorities confirm that, during the eviction operations, the personal situation of the individual, from the standpoint of the continuation of their health treatment, is not taken into consideration or monitored.

143. In its above-mentioned decision, the HALDE stresses that the migrant Roma of Romanian and Bulgarian origin residing in France for less than 3 months do not benefit from any social protection and that, despite the fact that minor children may benefit from AME without restrictions, in practice their requests are usually rejected. Moreover, the

Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, found that the Roma in France have little access to medical care in practice (see Memorandum by Thomas Hammarberg, commDH(2008)34, 20 November 2008, §151).

144. The Committee considers that the state has failed to meet its positive obligation to ensure that migrant Roma, whatever their residence status, including children, enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services.

145. The Committee therefore holds that there is a violation of Article E taken in conjunction with Article 11§1.

Alleged violation of Article E taken in conjunction with Article 11§2 by reason of a lack of information and awareness-raising for the migrant Roma and of counseling and screening on health issues

A – Submissions of the parties

1. The complainant organisation

146. *Médecins du Monde* underlines the lack of information provided by the public authorities to the migrant Roma on, on the one hand, their rights and, on the other hand, the organisation of the health system, resulting in a failure to respect their right to health protection as enshrined in Article 11§2. *Médecins du Monde* stresses that the only instances to take such an action are voluntary associations and nearly never the public authorities. This results in a high level of misunderstanding between health professionals and the Roma population.

147. According to *Médecins du Monde*, women's health is a particular cause for concern, above all from the standpoint of mother and child health, including multiple unsupervised pregnancies, repeated abortions with no follow up, and negligence in the use of contraceptives. *Médecins du Monde* finds that in Ile-de-France, only one roma woman in ten is monitored during her pregnancy and also only one roma woman in ten of childbearing age uses contraception. It adds that prevention of childhood illnesses and rickets is very fragmentary.

2. The Government

148. The Government refers to the emergency care fund, which offers a means of tackling the most serious health problems such as the health of pregnant women and childhood illnesses. According to the circular DHOS/DSS/DGAS No. 2005-141 of

16 March 2005 of the ministry of Labour, Employment and Health, the following should be considered to fall within the definition of emergency care:

- care of minors;
- pregnancy (preventive pre-natal and post-natal examinations, care provided to pregnant women and to new-borns);
- abortions and terminations of pregnancy for medical reasons.

B – Assessment of the Committee

149. The Committee recalls that free consultations and screening must be provided for pregnant women and children throughout the country (Conclusions 2005, Moldova, Article 11§2).

150. The Committee also recalls that national rules must provide for the provision of information to the public, as well as its education and participation, with a view to developing a sense of individual responsibility in health matters. States must in other words demonstrate, through concrete measures, that they implement a public health education policy for the benefit of the population in general and the population groups affected by specific problems (*Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint No.30/2005, decision on the merits of 6 December 2006, §§ 216 and 219).

151. In addition, the Committee underlines having found the situation to be in conformity with the Charter in the field of awareness-raising of the general population (see Conclusions 2009, France, Article 11§2).

152. However, the Committee considers that special attention should be paid to the migrant roma population due to their particular vulnerability on health issues resulting from their poor living conditions. It notes that free and regular consultation and screening for pregnant migrant roma women and for children may be provided on the basis of the circular DHOS/DSS/DGAS No. 2005-141 of 16 March 2005 of the ministry of Labour, Employment and Health. However, it results from the information communicated by *Médecins du Monde* and not called into question by the Government that a possibility to benefit from such consultations and screenings is not sufficient. Public authorities should take measures to inform those concerned and encourage them to benefit from these possibilities. The Committee notes that the Government does not mention any concrete action directed at the migrant roma population in order to inform them and raise their awareness on health issues, which amounts to a violation of Article E taken in conjunction with Article 11§2.

153. The Committee therefore holds that there is a violation of Article E taken in conjunction with Article 11§2.

Alleged violation of Article E taken in conjunction with Article 11§3 by reason of a lack of prevention of diseases and accidents

A – Submissions of the parties

1. The complainant organisation

154. *Médecins du Monde* stresses that the environmental risks to which the migrant Roma are exposed are without question all linked to their living conditions in the camps. Infectious diseases are favoured by hygiene conditions that may be described as degrading, since it is quite common to see harmful and polluting piles of waste in camps while access to drinking water is relatively non-existent. Thus, cases of infectious respiratory, cutaneous and gastrointestinal diseases and even scabies are frequently identified in consultations conducted by associations. In a similar vein, the general state of dampness, poor ventilation and harmful effects of heating methods improvised by the occupants of shantytowns, resulting from the authorities' failure to install electricity that conforms to the existing standards, all equally compromise the health of those concerned (see Collectif National Droits de l'Homme Romeurope, *Rapport sur la situation des Roms migrants en France*, 2009-2010, September 2010, p.140).

155. *Médecins du Monde* also stresses that the vaccination coverage among the roma population is low and, depending on the type of vaccine, only concerns 12 to 20 per cent of the patients, and 18 to 30 per cent of children under 7 years old (see the 2009 report of the *Médecins du Monde* monitoring centre on access to care, pp. 150 to 154).

156. It mentions also numerous domestic accidents, such as burns, gas poisoning and fires, linked to the dangerous living conditions of the Roma (see Collectif National Droits de l'Homme Romeurope, *Rapport sur la situation des Roms migrants en France*, 2009-2010, September 2010, p.140).

2. The Government

157. The Government refers to the emergency care fund, which enables the tackling of the most serious infectious diseases. According to the circular DHOS/DSS/DGAS No. 2005-141 of 16 March 2005 of the ministry of Labour, Employment and Health, treatments designed to prevent the spreading of illnesses to a person's entourage or to the community (communicable infectious diseases such as tuberculosis or AIDS) are in fact considered as emergency care.

B – Assessment of the Committee

158. The Committee refers to the poor living conditions of the migrant Roma, as already stressed above (see §59), demonstrating that Roma communities do not live in healthy environments.

159. The Committee recalls that states parties have to take appropriate measures to prevent, as far as possible, epidemic, endemic and other diseases as well as accidents.

160. Article 11§3 requires states to ensure high immunisation levels, in order to not merely reduce the incidence of these diseases, but also to neutralise the reserves of viruses and thus to reach the objectives set by the World Health Organisation (WHO). The Committee underlines that vaccinations on a large scale are recognised as the most efficient and most economical means of combating infectious and epidemic diseases (See Conclusions XV-2, Belgium, Article 11§3). This concerns the population in general, but with special attention directed at the most vulnerable groups.

161. The Committee takes note of the high proportion of infectious diseases, in particular tuberculosis, among migrant Roma. On this point, it stresses the main explanations given by the health observatory authority of the Ile-de-France region on the difficulties encountered by the actors working in the health sector, such as a lack of health education provided to Roma, their distrust towards institutions, their limited use of health devices and the fact that repeated evictions contribute to weaken access to care and support (see Observatoire régional de santé d'Ile-de-France, *Situation sanitaire et sociale des "Roms migrants" en Ile-de-France*, January 2012, esp. pp.68-71).

162. The Committee refers also to the example provided by Romeurope on the expulsion of a Roma camp by police forces on the eve of a vaccination campaign planned in cooperation by the administrative department in the context of a measles epidemic (see Collectif National Droits de l'Homme Romeurope, *Rapport 2010-2011, "Les Roms, boucs-émissaires d'une politique sécuritaire qui cible les migrants et les pauvres"*, February 2012, p. 18).

163. Infectious diseases and risk of domestic accidents largely results from the poor living conditions in the migrant Roma camps. The Committee further notes the very low vaccination coverage among the migrant Roma. The Government provides no information on preventive measures taken for migrant Roma to address these problems but only refers to the emergency care fund. The Committee finds that this is not sufficient. The particular situation of migrant Roma requires the Government to take specific measures in order to address their particular problems. Treating the migrant Roma in the same manner as the rest of the population when they are in a different situation constitutes discrimination.

164. The Committee therefore holds that there is a violation of Article E taken in conjunction with Article 11§3.

ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 13 OF THE CHARTER

Article E – Non-discrimination

“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.”

Article 13 – The right to social and medical assistance

Part I: “Anyone without adequate resources has the right to social and medical assistance.”

Part II: “With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.”

A – Submissions of the parties

1. The complainant organisation

165. Concerning medical assistance *Médecins du Monde* argues that it is often difficult for migrant Roma to obtain a satisfactory sickness cover, particularly owing to the complexity of the procedure for claiming it. It is difficult for the Roma to know their rights and there is a lack of guidance on or assistance with completing the complex procedures for applying for the state Medical Assistance (AME) (evidence of residence in France for a period of over three months; several appointments needed; difficulty to secure proof of residence; change in the evidence on the entitlement to AME which is no longer a simple paper document but a laminated card that cannot be forged and for the attainment of which a social security centre must be visited with identity photos and later returned to for the purpose of collecting the card; payment of an annual contribution of € 30, a sum that is beyond the reach of most Roma families living in extreme poverty). Finally, the arrangements for treatment provided free of charge to foreign nationals who are unable to demonstrate the residence of over three months and thus their entitlement to the AME – the so-called urgent and emergency treatment fund – is still underused, in particular by certain hospitals.

2. The Government

166. The Government presents three different social protection arrangements available to foreign residents in France – the universal sickness coverage (CMU), the state medical assistance (AME) and the emergency fund.

- Migrants in a regular situation are entitled to sickness and maternity insurance under the same conditions as French citizens. In order to be affiliated to the general insurance scheme by virtue of the CMU arrangement, people must be able to prove that they have been residing in France for an uninterrupted period of over three months;
- Migrants in an irregular situation who have been residing in France for three months or longer (and children with no condition of length of stay) are entitled to the AME (under Article L. 251-1 of the Social Action and Family Code). The AME gives the beneficiary a right to full coverage of medical care and hospital charges without the need to advance any money, except in cases where the medical service provided is considered to be of a minor importance. In addition, any person who do not reside in France but is in the country may ask the minister in charge of social action to benefit from AME;
- For migrants in an irregular situation who have been residing in France for less than three months and are therefore entitled neither to the CMU nor to the AME, a so-called emergency and life-saving care fund exists. Article 254-1 of the Social Action and Family Code defines the type of care covered by the arrangement as follows: “emergency care, the absence of which could be life-threatening or lead to a serious, long-term deterioration of the health of the person concerned or the child to be born”.

167. With regard to the supposedly complex procedure of application for the AME, the Government refers to Decree No. 2005-859 of 28 July 2005, listing the documents that may be used as proof of the three months’ residency and which makes express provision for homeless people, stipulating that they may request a body approved within the meaning of Article L. 252-2 of the Social Welfare and Family Code to issue them with an official domiciliation certificate. Residential social reintegration centres may also issue certificates of this type.

168. As regards the fact that the evidence of entitlement to the AME is no longer a simple paper document but a laminated card that cannot be forged, the Government stresses that this procedure in no way constitutes an obstacle to access to care because of its complexity. It brings about increased security to the system and improves the treatment of migrants in an irregular situation. The AME card is the equivalent of the card issued to all those covered by the ordinary French social insurance scheme (the *carte vitale*) and has the same technical features.

169. As for the introduction of the annual contribution of €30 charged for the entitlement to the AME, the Government points out, firstly, that the Constitutional

Council found that this complied with the constitution for the following reason: “payment of the contribution introduced by Section 188 of the Act in question is not a condition for free access to the emergency care provided for in Article L. 254-1 cited above. In view of its amount, this contribution is compatible with the constitutional requirements of the eleventh paragraph of the Preamble to the 1946 Constitution”. The Government also stresses that minors do not have to pay this contribution.

170. Lastly, the Government points out that France is one of the European countries providing the most extensive access to health care for migrants in an irregular situation.

B – Assessment of the Committee

171. First, the Committee observes that Article 13 is invoked by *Médecins du Monde* as a whole. In the light of the submissions, the Committee considers that the allegations raised by *Médecins du Monde* relate more precisely to Article E taken in conjunction with Article 13§1 and to Article 13§4.

Alleged violation of Article E taken in conjunction with Article 13§1 by reason of a lack of medical assistance for migrant Roma lawfully resident or working regularly in France for more than three months

172. The Committee recalls that legislation or practice denying entitlement to medical assistance from foreign nationals within the territory of a state party is contrary to the Charter (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §32). It also recalls that Article 13§1 provides that in the event of sickness, people without adequate resources should be granted financial assistance for the purpose of obtaining medical care or provided with such care free of charge (European Roma Rights Centre (ERRC) v. Bulgaria, complaint No. 46/2007, decision on the merits of 3 December 2008, §44).

173. The Committee underlines that according to the French legislation, migrants lawfully resident or working regularly in France benefit from sickness and maternity insurance (universal sickness coverage; *couverture maladie universelle* - CMU) on the same conditions as the French population. In order to be affiliated to the general scheme of the CMU, it is nevertheless necessary to justify having resided in France for an uninterrupted period of over three months.

174. The Committee notes that, even though the legislation is applied to the migrant Roma residing lawfully or working regularly in France for more than three months, it emanates from the case file that the implementation of the legislation raises difficulties and is insufficient (see the above decision on Article 11§1, §144), which constitutes a violation of Article E taken in conjunction with Article 13§1.

175. The Committee therefore holds that there is a violation of Article E taken in conjunction with Article 13§1.

Alleged violation of Article 13§4 by reason of a lack of medical assistance for migrant Roma lawfully resident or regularly working in France for less than three months

176. As stated above (see §173) the universal sickness coverage (*couverture maladie universelle* - CMU) is not applicable to the migrant Roma having resided in France lawfully or worked there regularly for less than three months. The Committee considers that this constitutes an unjustified difference in treatment with nationals.

177. The Committee therefore holds that there is a violation of Article 13§4.

Alleged violation of Article 13§4 by reason of the failure to provide emergency medical assistance to migrant Roma not residing lawfully or not working regularly in France

178. The Committee recalls that Article 13§4 confers on foreign nationals the right to emergency social and medical assistance. States are required to provide appropriate short-term assistance to those in immediate and urgent need (such assistance may involve the provision of accommodation, food, emergency medical care and clothing). The beneficiaries of this right to emergency social and medical assistance include foreign nationals who are lawfully present within the territory of a given state but do not have resident status, as well as foreign nationals unlawfully present in the country (Conclusions 2009, Andorra, Article 13§4).

179. The Committee notes that *Médecins du Monde* makes arguments that concern medical assistance. More precisely, they concern emergency medical assistance for the migrant Roma not residing in France legally or working there regularly. The Committee notes however that these arguments are very much underdeveloped.

180. The Committee recalls having already indicated that the situation in France with regards to emergency assistance for non-residents is in conformity with Article 13§4 because all foreigners present on the French territory, whether lawfully or unlawfully, are entitled to emergency medical assistance (see Conclusions 2009, France, Article 13§4).

181. Moreover, as concerns the obligation of an annual payment of 30€ charged for the ability to benefit from the AME, the Committee notes that arguments on its impacts from the viewpoint of the Charter have been presented by neither *Médecins du Monde* nor the Government. It notes that as such, this obligation has been abolished by the law No. 2012-958 of 16 August 2012. The Committee does therefore not pronounce on the issue.

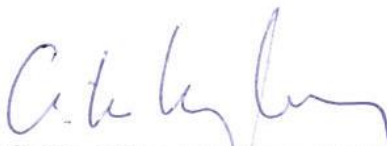
182. As a conclusion, the Committee holds that there is no violation of Article 13§4 with regard to the emergency medical assistance provided for migrant Roma not residing in France lawfully or not working there regularly, as alleged by *Médecins du Monde*.

CONCLUSION

183. For these reasons, the Committee concludes unanimously that:

- there is a violation of Article E read in conjunction with Article 31§1 because of a too limited access to housing of an adequate standard and degrading housing conditions for migrant Roma lawfully resident or working regularly in France;
- there is a violation of Article E read in conjunction with Article 31§2 because of the eviction procedure of migrant Roma from the sites where they are installed;
- there is a violation of Article E read in conjunction with Article 31§2 because of a lack of sufficient measures to provide emergency accommodation and reduce homelessness of migrant Roma;
- there is no violation of Article E read in conjunction with Article 16 as concerns the family benefits provided to the migrant Roma not residing lawfully or working regularly in France;
- there is a violation of Article E read in conjunction with Article 16 because of a lack of sufficient measures to provide housing to families of migrant Roma residing lawfully or working regularly in France;
- there is a violation of Article E read in conjunction with Article 30 because of insufficient measures to promote effective access to housing to migrant Roma residing lawfully or working regularly in France;
- there is a violation of Article E read in conjunction with Article 19§8 because of breaches in the expulsion procedure of migrant Roma;
- there is a violation of Article E read in conjunction with Article 17§2 because the French education system is both not sufficiently accessible;
- there is a violation of Article E read in conjunction with Article 11§1 because of difficulties of access to health care for migrant Roma, whatever their residence status;
- there is a violation of Article E read in conjunction with Article 11§2 because of a lack of information and awareness-raising and of counseling and screening on health issues towards migrant Roma;
- there is a violation of Article E read in conjunction with Article 11§3 because of a lack of prevention of diseases and accidents of migrant Roma;

- there is a violation of Article E read in conjunction with Article 13§1 because of a lack of medical assistance for migrant Roma lawfully resident or working regularly in France for more than three months;
- there is a violation of Article 13§4 because of a lack of medical assistance for migrant Roma lawfully resident or working regularly in France for less than three months;
- there is no violation of Article 13§4 concerning migrant Roma not residing lawfully or not working regularly in France with regard to emergency medical assistance.



Csilla KOLLONAY LEHOCZKY
Rapporteur



Luis JIMENA QUESADA
President



Régis BRILLAT
Executive Secretary