

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



6 May 2008

**Case document No. 1**

**European Roma Rights Centre v. France**  
Complaint No. 51/2008

## **COMPLAINT**

Registered at the Secretariat on 17 April 2008



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##### **I.1. State Party**

1.1.01. France: High Contracting Party to the Revised European Social Charter (hereafter “RESC”) since 7 May 1999; accepted supervision under the collective complaints procedure provided for in Part IV, Article D, paragraph 2 of the Charter in accordance with the Additional Protocol to the ESC providing for a system of collective complaints from May 1999. It should be noted that France considers itself bound by all articles of Part II of the Revised Charter and has not entered any reservation / declaration in relation to any of those articles.<sup>1</sup>

## 1.2. Articles Concerned

1.2.01 Article 16 – “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.”

1.2.02 Article 19 – “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:

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

[...]

c. accommodation;”

1.2.03 Article 30 – “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 coordinated 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.”

1.2.04 Article 31 – “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.”

1.2.05 Read independently and/or in conjunction with:

Article E: “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.”

## 1.3 Standing of the European Roma Rights Centre

1.3.01. The **European Roma Rights Centre** (hereinafter “ERRC”) is an international non-governmental organisation (NGO) with consultative status with the Council of Europe. The ERRC is one of the organisations entitled to lodge collective complaints under the ESC/RESC mechanism. Under Part IV,

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<sup>1</sup> See list of Accepted Provisions of the Revised European Social Charter by France at [http://www.coe.int/t/e/human\\_rights/esc/1\\_general\\_presentation/Provisions\\_en.pdf](http://www.coe.int/t/e/human_rights/esc/1_general_presentation/Provisions_en.pdf) See also List of Reservations / Declarations available at <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=163&CM=7&DF=26/10/2005&CL=ENG&VL=1>

Article D, referring to the provisions of the second additional protocol, Parties recognise the right of international non-governmental organisations which have consultative status with the Council of Europe and are listed as having standing before the ESC/RESC mechanism to submit collective complaints to the European Committee of Social Rights, irrespective of whether the organisations concerned come under the jurisdiction of any of the State Parties to the ESC/RESC. The ERRC has standing with the ESC/RESC collective complaint mechanism since June 2002<sup>2</sup> and is currently registered in the list of international NGOs entitled to submit a collective complaint for the period between 1 July 2006 – 30 June 2010.<sup>3</sup>

1.3.02. In addition, under Article 3 of the Second Additional Protocol of the ESC, the international non-governmental organisations referred to in Article 1(b) may submit complaints with respect to those matters regarding which they have been recognised as having particular competence. The ERRC is a Budapest-based international public interest law organisation which monitors the human rights situation of Roma in Europe and provides legal defence in cases of abuse. Since its establishment in 1996, the ERRC has undertaken first-hand field research in more than twenty countries, including France, and has disseminated numerous publications, from book-length studies to advocacy letters and public statements. In November 2005, the ERRC published a country report on the human rights situation of Gypsies, Travellers and Romani migrants in France entitled “Always Somewhere Else: Anti-Gypsyism in France”. In March 2007, the ERRC and the Portuguese Numena Centre published a report entitled *Social Inclusion Through Social Services: the case of Roma and Travellers – Assessing the Impact of National Action Plans for Social Inclusion in Czech Republic, France and Portugal*. The ERRC continues to monitor the situation of Travellers in France. ERRC publications on France and other countries, as well as additional information about the organisation, are available on the Internet at: <http://www.errc.org>

1.3.03. Furthermore, the standing of the ERRC is well established as it has successfully submitted the following complaints:

- *No. 15/2003 European Roma Rights Centre (ERRC) v. Greece*; lodged on 4 April 2003; Resolution [Resolution ResChS\(2005\)11](#) issued on June 8, 2005 by the Committee of Ministers.
- *No. 27/2004 European Roma Rights Centre (ERRC) v. Italy*; lodged on 28 June 2004; [Resolution ResChS\(2006\)4](#) adopted on May 3, 2006 by the Committee of Ministers.
- *No. 31/2005 European Roma Rights Centre (ERRC) v. Bulgaria*; lodged on 22 April 2005; [decision on the merits](#) adopted by the European Committee of Social Rights on 18 October 2006. Resolution [ResChS\(2007\)2](#) adopted on September 5, 2007 by the Committee of Ministers.
- *No. 46/2007 European Roma Rights Centre (ERRC) v. Bulgaria*; lodged on 22 October 2007; decision on admissibility adopted by the European Committee of Social Rights on 5 February 2008.

## II. Subject Matter of the Complaint: Articles 16, 19, 30, 31 and E

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<sup>2</sup> See letter from the Secretariat General of the Council of Europe to Mr. Claude Cahn, European Roma Rights Centre, 14 June 2002.

<sup>3</sup> See pertinent list of international NGOs available at [http://www.coe.int/t/e/human\\_rights/esc/4\\_collective\\_complaints/organisations\\_entitled/OING\\_List\\_en.pdf](http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/organisations_entitled/OING_List_en.pdf)

II.0.01. At issue in this Collective Complaint is the housing situation of Travellers<sup>4</sup> in France. As housing constitutes a centerpiece in the health and prosperity of families, the ERRC maintains that the sum of housing-related injustices in France (including but not limited to social exclusion, forced evictions, inadequate access to housing, lack of access to basic utilities) violates Article 16 and 31 of the Revised Charter. Furthermore, the ERRC holds that current housing circumstances confronting Travellers — such as residential segregation, substandard housing conditions, lack of security of tenure, forced evictions and other systemic violations of the right to adequate housing faced disproportionately by Travellers in France— are an important indicator of their social exclusion and render their right to housing illusory and in violation of Articles 30 and 31 of the RESC. The ERRC also contends that France, in breach of Article 19 of the RESC, has failed to take measures to address the deplorable living conditions of Romani migrants from other Council of Europe member states. The ERRC asserts that these articles may be read independently and/or in conjunction with the Revised Charter’s Article E non-discrimination clause.

## **II.1. Articles 16, 19, 30, 31 and E and the Right to Housing in the ECSR’s jurisprudence**

II.1.01. The right to housing is guaranteed explicitly by Article 31 of the European Social Charter (Revised). Furthermore, the right to housing is treated as a mean for securing the social, legal and economic protection of the family (Article 16) as well as the right to protection against poverty and social exclusion (Article 30). It should be noted that the right to housing is also applicable in relation to migrant workers (Article 19). The very fact that the right to housing is protected by four separate articles of the RESC is ample testimony to the importance attached to it by the drafters of the RESC. The ERRC respectfully notes that, as the European Committee on Social Rights (hereinafter ECSR) itself has observed, there is an important degree of overlap between the various RESC articles safeguarding the right to housing: thus, in its decisions on Collective Complaint No 31/2005 ERRC v Bulgaria, the Committee noted that

“17. [a]s many other provisions of the Charter, Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31”

II.1.02. The ECSR’s expanding jurisprudence on the right of housing appears to treat the right to housing effectively as a set of rights and not a mere entitlement to a house. For example, the ECSR has made it clear that the right to housing should in fact be interpreted as a right to adequate housing. Article 16 of the Charter, in protecting the right of families to housing, also requires that States provide *adequate* housing in order to protect family life. Thus, while reviewing the collective complaint against Greece that related to the latter’s conformity with Article 16, the ECSR noted that

“24. The right to housing permits the exercise of many other rights – civil and political as well as economic, social and cultural. It is also of central importance to the family. The Committee recalls its previous case law to the effect that in order to satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.”

II.1.03. In its decision on the merits in relation to Collective Complaint 31/2005 ERRC v Bulgaria which also concerned the latter’s conformity with Article 16, the ECSR expounded on the above and held that

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<sup>4</sup> Identity issues among the many communities regarded as “Gypsies” and “Travellers” (*Gens du Voyage*) in France are complex and have long been associated with stereotypical notions. For the purposes of this complaint, the ERRC uses the term “Travellers” to refer to those ethnic groups—including “Gypsies”—who are descended from groups that have long been citizens of France, and who have for many generations played a key role in French society and history. Such persons have endured a long-standing history of discrimination in France and are stigmatized, in part, due to their itinerant lifestyle which is a fundamental characteristic of many Travellers’ culture and identity. The term “Roma”, usually preceded by the adjective migrant should be understood as referring to those Roma who migrated to France from other Council of Europe countries, most notably Romania.

“34. The Committee recalls that Article 16 guarantees adequate housing for the family, which means a dwelling which is structurally secure; possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; is of a suitable size considering the composition of the family in residence; and with secure tenure supported by law (see ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24). The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period.”

II.1.04. The ECSR has employed the same principle of adequate housing in Article 31 RESC:

“45. The Committee recalls that Article 31§1 guarantees access to adequate housing. Under Article 31§3 it is incumbent on States Parties to adopt appropriate measures for the construction of housing, in particular social housing (see Conclusions 2003, Article 31§3, France, p. 232, Italy, p. 348, Slovenia, p. 561, and Sweden, p. 655). Furthermore, they must ensure access to social housing for disadvantaged groups, including equal access for nationals of other Parties to the Charter lawfully residents or regularly working on their territory.”

II.1.05. The ECSR has also held that the right to housing, as protected under Articles 16 and 31, might entail different obligations on the part of member states vis-à-vis different groups and that special, positive discrimination measures might have to be implemented. To this end, the ECSR has made use of either the Preamble to the ESC or RESC’s Article E in order to set out these obligations. Thus, in its decision on Collective Complaint No 15/2003 ERRC v Greece, the ECSR observed that:

"the principle of equality and non-discrimination form an integral part of Article 16 as a result of the Preamble."<sup>5</sup>

In its decision on Collective Complaint No 27/2004, ERRC v Italy, the ECSR, elaborating on the scope of Article E RESC, noted that:

“20. [...] equal treatment requires a ban on all forms of indirect discrimination, which can 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” (Autism-Europe v. France, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 52).”

More recently, in its decision on Collective Complaint No 31/2005 ERRC v Bulgaria, the ECSR stated:

“40. The Committee recalls that Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in the absence of objective and reasonable justifications (see paragraph E, Part V of the Appendix), any individual or groups with particular characteristics benefit in practice from the rights in the Charter. In the present case this reasoning applies to Roma families. Moreover, as the Committee stated in stated in the Autism-Europe decision (Autism-Europe v. France, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 52), “Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may 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”.

[...]

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

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<sup>5</sup> *Ibid*, paragraph 26.

[...]

56. [...]The Committee recalls that it is the responsibility of the state to ensure that evictions, when carried out, respect the dignity of the persons concerned even when they are illegal occupants, and that alternative accommodation or other compensatory measures are available. By failing to take into account that Roma families run a higher risk of eviction as a consequence of the precariousness of their tenancy, Bulgaria has discriminated against them.”

II.1.06. The ECSR has also made it clear that although meeting their obligations in respect of the right to housing is a highly demanding undertaking in terms of time and resources, Member States should nevertheless lay down concrete and realistic housing programs and implement them. In its decision on Collective Complaint No 31/2005 ERRC v Bulgaria, the ECSR noted the following:

“35. The Committee considers that the effective enjoyment of certain fundamental rights requires a positive intervention by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources (*mutatis mutandis* most recently European Court of Human Rights, *Ilascu and others v. Moldova and Russia*, judgment of 8 July 2004, § 332). Nonetheless, “when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources” (*Autism-Europe v. France*, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 53).”

II.1.07. Another important aspect of the right to housing that emerges frequently in the ECSR’s jurisprudence is that of forced evictions. Thus, in its decision relating to Collective Complaint No 15/2003 ERRC v Greece, the ECSR noted that

“51. The Committee considers that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned. The Committee considers that on these three grounds the situation is not satisfactory.”

The ECSR reached a similar conclusion in its decision relating to Collective Complaint No 27/2004, ERRC v Italy:

“41. The Committee notes with regard to Article 31§2 that States Parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available (see Conclusions 2003, Article 31§2, France, p. 225, Italy, p. 345, Slovenia, p. 557, and Sweden, p. 653). The law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided.”

The ECSR would proceed, in its decision in relation to Collective Complaint No 31/2005 ERRC v Bulgaria, not only to reaffirm the above enunciated principles but also to implicitly criticise member states for failing to integrate social groups thereby causing them to adopt reprehensible behaviour and invoking this behaviour as a pretext to deprive them of or limit the exercise of their rights. The ECSR drew the attention of member states to this vicious circle and noted:

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

II.1.08. Lastly, the ERRC notes that the ECSR has showed increased sensitivity in the issue of *culturally adequate* housing. Noting that numerous Roma / Travellers around Europe still ascribe to an itinerant lifestyle, the ECSR has proceeded to hold Greece and Italy in violation of Article 16 and 31 respectively, in relation to the insufficiency and inadequacy of halting sites available to Roma / Travellers.

II.1.09. At the core of this complaint are Travellers / Roma living in substandard halting sites or slum settlements and the overwhelming lack of available halting sites. These Travellers / Roma not only lack adequate security of tenure but are highly likely to suffer forced evictions without being compensated or granted adequate safeguards to challenge these evictions. Furthermore, they do not enjoy access to housing benefits available to other French nationals or third country nationals legally residing in France. They often find their efforts to become sedentary and integrate into local societies frustrated by racist attitudes and practices of indirect discrimination. As detailed in this collective complaint these facts include *inter alia*:

- The institutional discrimination against Travellers under French Law which has a pernicious effect on their access to housing.
- The continuing failure of the French state to develop, draft and implement a comprehensive housing policy in relation to Travellers.
- The reluctance to recognise that anti-Romani sentiment is prevalent among not only local authorities but also among higher ranking state officials who are called upon to formulate policies related to Travellers.
- The existence of only a limited number of halting areas where Travellers can stay without being subjected to forced evictions. Many of these halting sites are located in segregated and environmentally hazardous areas, while living conditions in these sites are often unacceptable.
- The refusal of the French state to officially recognise Travellers' housing (namely their caravans) as housing and therefore rendering them ineligible for housing benefits.
- The enactment of disproportionately strict laws against Travellers who are trespassing on public / private land.
- The "express" forced eviction of Travellers (often accompanied by acts of police brutality) without providing them with appropriate legal means to challenge their eviction, or obtain alternative relocation or compensation.
- The discriminatory policies of state authorities in providing Travellers with social housing. The strict application of zoning regulations that has a disproportionately negative effect on Travellers and their effort to secure adequate housing.
- The non-existence of housing policy concerning Romani migrants from other Council of Europe member states, lawfully residing in France.
- That despite the clear emergence of a recognised right to adequate housing and protection from poverty and social exclusion under international and French law and the fact that French law contains groundbreaking provisions in the field of housing, these provisions are not applicable to Travellers.

II.1.10. The present Collective Complaint alleges that in addition to the aforementioned facts and practices which result in systemic violations of the rights ensured in Articles 16, 19, 30 and 31 of the RESC, France's housing policies and practices are tainted by racial discrimination and as such violate the guarantees of equal treatment included in Article E of the Revised Charter and other provisions of international law which will be referred to below. This Collective Complaint also alleges that France's policies and practices in the field of housing for Travellers constitute racial segregation.

II.1.11. Prior to entering into the substance of France's systematic infringement of the right to adequate housing where Roma are concerned, a discussion of the content of four key elements upon which the rationale of the complaint is based, follows below:

- (i) The content and contours of the right to housing under international law;
- (ii) The ban on discrimination -- including racial discrimination -- in access to housing;
- (iii) The ban on racial segregation; and
- (iv) The obligations binding upon members states of the Council of Europe to implement special housing programs in relation to Roma / Travellers.

#### The Right to Housing in International law

- (i) The content and extent of the right to housing under international law



II.1.12. In addition to the ECSR jurisprudence in the field of housing, other international bodies have also elaborated on the various aspects of the right to housing. The ERRC notes that, under Article H of the RESC, the rights contained in RESC should not be interpreted as limiting the protection afforded by equivalent provisions contained in domestic legislation or international provisions. The ERRC undertakes this largely academic exercise (in the sense that the ECSR has already adopted a highly progressive and comprehensive approach to the right to housing which makes the reference to pertinent international standards rather repetitive) in order to establish beyond any doubt that the right to housing (and particularly of vulnerable groups such as the Roma) is firmly entrenched in international law.

II.1.13. France is bound by the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, which states, at Article 11(1), that “The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent”.<sup>6</sup> The United Nations **Committee on Economic, Social and Cultural Rights** (hereinafter CESCR), the body in charge of overseeing the ICESCR, has derived the right to adequate housing from the “right to an adequate standard of living, including adequate food, clothing and housing”.<sup>7</sup>

II.1.14. The same body observed in its **General Comments 4 and 7** on the right to adequate housing that all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats.<sup>8</sup> More specifically, in its **General Comment No. 4**, CESCR defines “adequate housing” as housing enjoying “sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services.” Moreover, housing should be “affordable and habitable”. Habitability consists of “allocating adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors.” Adequate housing must also ensure the “physical safety of residents”. Furthermore, housing must be accessible to those entitled to it. The location of the housing facilities must allow “access to employment opportunities, health care services, schools, childcare services and other social facilities.” Finally, housing “should not be built on polluted sites or in immediate proximity to pollution sources that may threaten the right to health of the residents” and should also be culturally adequate.<sup>9</sup>

II.1.15. The CESCR has also recorded in its **General Comment No. 4** that the practice of “forced evictions is a prima facie violation of the right to adequate housing, regardless of the level of development or availability of resources”.<sup>10</sup> The theme of forced evictions figures predominantly in CESCR’s **General Comment No. 7** where “forced evictions” are defined as “the permanent or temporary removal against their will of individuals, families and/or communities from their homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.<sup>11</sup> **General Comment No. 7** recommends a number of procedural safeguards in relation to forced evictions. They include:

(a) *An opportunity for genuine consultation with those affected;*

(b) *Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;*

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<sup>6</sup> France acceded to ICESCR on 4 February 1981. Although it has lodged an interpretative declaration in relation to Article 11, this declaration is unrelated to the issue in question.

<sup>7</sup> See Committee on Economic, Social and Cultural Rights (CESCR). General Comment 4: The right to adequate housing (Art. 11.1 of the Covenant) 13 December 1991, paragraph 1. Further, the African Commission on Human and Peoples’ Rights concluded that the right to adequate housing was implicitly recognised in rights to protection of family life and property: see *SERAC & CESR v Nigeria*, African Commission on Human Rights, Case No. 155/96, 30<sup>th</sup> Session at paragraphs 59 and 65.

<sup>8</sup> General Comment No 7, para 9, E/1998/22, annex IV, 16th Session; General Comment 4, para. 8.

<sup>9</sup> General Comment 4, para. 8, E/1992/23, annex III, 6<sup>th</sup> Session, adopted on 12 December 1991.

<sup>10</sup> General Comment 4, para. 18, E/1992/23, annex III, 6<sup>th</sup> Session, adopted on 12 December 1991.

<sup>11</sup> General Comment No. 7, para. 4. E/1998/22, annex IV, 16th Session.

- (c) Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, should be made available in reasonable time to all those affected;
- (d) Especially where groups of people are involved, government officials or their representatives should be present during an eviction;
- (e) All persons carrying out the eviction should be properly identified;
- (f) Evictions should not take place in particularly bad weather or at night unless the affected persons consent otherwise;
- (g) The provision of legal remedies; and
- (h) The provision, where possible, of legal aid to persons who require it in order to seek redress from the courts.<sup>12</sup>

In addition, the CESCR emphasized in **General Comment No. 7** that “special attention should be accorded to vulnerable individuals or groups, inter alia, ethnic and other minorities, since often these individuals and groups suffer disproportionately from the practice of forced evictions.”<sup>13</sup>

Furthermore, **General Comment No. 7** provides that evictions should not result in individuals being rendered homeless or vulnerable to violations of other human rights. Where those affected are unable to provide for themselves, authorities must take all appropriate measures, to the maximum of their available resources, to “ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>14</sup>

II.1.16. The **UN Commission on Human Rights** has affirmed that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to housing.<sup>15</sup> Furthermore, the **UN Sub-Commission on Prevention of Discrimination and Protection of Minorities** has reaffirmed that “the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment [...]”<sup>16</sup>

II.1.17. The **UN Sub-Commission on Prevention of Discrimination and Protection of Minorities** and the **UN Commission on Human Rights** have adopted resolutions which recommend that governments undertake policy and legislative action with the purpose of circumscribing practices of forced eviction, including conferring legal security of tenure on those currently under the imminent threat of forced eviction. In the light of an increased awareness of the necessity of security of tenure as a pre-emptive method to fight forced evictions, the **UN Commission on Human Rights**, in its 1993 Resolution, urged Governments “to confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary

<sup>12</sup> General Comment No 7, para. 15, E/1998/22, annex IV, 16th Session.

<sup>13</sup> General Comment No 7, para. 11, E/1998/22, annex IV, 16th Session.

<sup>14</sup> General Comment No 7, para. 17, E/1998/22, annex IV, 16th Session.

<sup>15</sup> UN Commission on Human Rights Resolution 1993/77, paragraph 1.

<sup>16</sup> UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. Forced Evictions: Sub-Commission resolution 1998/9 (E/CN.4/SUB.2/RES/1998/9) 20 August 1998, paragraph 1. Furthermore, international bodies have ruled that, in certain instances, forced evictions and the destruction of property amount to cruel and inhuman or degrading treatment. For example, in the case of *Selçuk and Asker v. Turkey*, the European Court of Human Rights ruled that the destruction of houses and the eviction of those living in them constituted a form of ill-treatment in violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Judgment of 24 April 1998, Appls Nos 00023184/94 and 00023185/94). Similarly, the UN Committee against Torture (CAT) has ruled that, under certain circumstances, destruction of property may amount to cruel and inhuman or degrading treatment in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Committee against Torture. Communication No 161/2000: Yugoslavia. 02/12/2002. CAT/C/29/D/161/2000 (Jurisprudence)). The case is particularly noteworthy for the purposes of this Collective Complaint insofar as the victims were Romani.

measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation".<sup>17</sup>

II.1.18. Furthermore, as a signatory to the **Convention on the Rights of the Child**, France has taken the responsibility under Article 27 of the Convention to take appropriate measures to assist parents to implement the right to an adequate standard of living and to provide, in case of need, material assistance and support programmes, particularly with regard to nutrition, clothing and housing.<sup>18</sup>

II.1.19. France has also ratified the **International Convention on the Elimination of All Forms of Racial Discrimination** (1965) and so has undertaken according to Article 5(e) (iii) "to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone ... to equality before the law, notably in the enjoyment of the ... the right to housing".<sup>19</sup>

II.1.20. In addition, a number of provisions of the **European Convention on Human Rights** provide protections against forced evictions and other core elements of the right to adequate housing. Thus, the purposeful destruction of property might under certain conditions amount to inhuman and degrading treatment.<sup>20</sup> Furthermore, in the seminal case of *Moldovan v Romania*, the European Court of Human Rights held that the responsibility of the respondent state under Articles 3 and 8 was engaged by the unacceptable living conditions of Roma following the destruction of their houses to which state agents had acquiesced.<sup>21</sup> Article 8(1) of the **European Convention on Human Rights** sets forth the following guarantees: "Everyone has the right to respect for his private and family life, his home and his correspondence." Article 8's protection encompasses *inter alia* the following rights: the right of access<sup>22</sup>, the right of occupation<sup>23</sup>, and the right not to be expelled or evicted, and is thus intimately bound with the principle of legal security of tenure.<sup>24</sup> Further, the European Court has developed extensively under its Article 8 jurisprudence the concept of "positive obligations". According to Article 8 jurisprudence a Contracting State must not only restrict its own interferences to what is compatible with Article 8, but may also be required to protect the enjoyment of those rights and secure the respect for those rights in its domestic law.<sup>25</sup> In a case involving the failure to provide adequate legal security of tenure to a family of English Gypsies, also known as *Connors v. The United Kingdom*, the European Court of Human Rights found a violation of the European Convention's Article 8 requirements.<sup>26</sup> In addition, protections

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<sup>17</sup> UN Commission on Human Rights. Resolution 1993/77 (E/CN.4/RES/1993/77) 10 March 1993, paragraph 3.

<sup>18</sup> France ratified CRC on 6 September 1990.

<sup>19</sup> France acceded to CERD on 27 August 1971.

<sup>20</sup> See *Mentes and Others v. Turkey*, 58/1996/677/867 and *Selcuk and Asker v. Turkey*, 12/1997/796/998-999.

<sup>21</sup> Appls. No. 41138/98 and 64320/01, judgment of 12 July 2005, paragraphs 113-114.

<sup>22</sup> *Wiggins v. United Kingdom*, No. 7456/76, 13 D & R 40 (1978).

<sup>23</sup> *Ibid.*

<sup>24</sup> *Cyprus v. Turkey*, 4 EHRR 482 (1976).

<sup>25</sup> E.g. *Costello-Roberts v. United Kingdom*, March 25, 1993, Series A, No. 247-C; 19 E.H.R.R. 112, para.26.

<sup>26</sup> See *Connors v. The United Kingdom*, (Application no. 66746/01), Judgment on Merits, 27 May 2004. In the decision in that case, the Court ruled: "[...] The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, § 45, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 49). It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, *mutatis mutandis*, *Gillow v. the United Kingdom*, cited above, § 55; *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III; *Christine Goodwin v. the United Kingdom*, no. 28957/95, § 90, ECHR 2002-VI). Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance

available under Article 1 of Protocol 1 to the European Convention guaranteeing the peaceful enjoyment of one's possessions have been interpreted to include the protection of housing rights.<sup>27</sup>

(ii) The ban on discrimination including racial discrimination regarding access to housing

II.1.21. In addition to the Preamble to the ESC and Article E of RESC, a number of other Council of Europe standards ban racial discrimination. This area of law has recently been extended. In 1994, the Council of Europe adopted the **Framework Convention for the Protection of National Minorities**. This document provides an extensive series of anti-discrimination guarantees, including:

- *At Article 3(1): "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice."*
- *At Article 4(1): "The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited."*
- *At Article 4(2): "The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities."*
- *At Article 6(2): "The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity."<sup>28</sup>*

II.1.22. In addition, in 2000, the Council of Europe opened for signature Protocol 12 to the European Convention on Human Rights which provides a freestanding ban on discrimination in the realisation of any right secured by law. Prior to the entry into effect of Protocol 12, the European Court of Human Rights has undertaken to significantly

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attaching to the extent of the intrusion into the personal sphere of the applicant (*Hatton and others v. the United Kingdom*, [GC] no. 36022/97, ECHR 2003-..., §§ 103 and 123)." (Connors Judgment on Merits, para. 82).

<sup>27</sup> In *Öneryıldız v. Turkey*, a case involving the destruction of slum dwellers' homes following an explosion at a rubbish tip, the European Court of Human Rights, while finding a violation by the Turkish government of Article 1 of Protocol 1 ruled, *inter alia*, "The Court reiterates that the concept of 'possessions' in Article 1 of Protocol No. 1 has an autonomous meaning and certain rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision ... the Court considers that neither the lack of recognition by the domestic laws of a private interest such as a 'right' nor the fact that these laws do not regard such interest as a 'right of property', does not necessarily prevent the interest in question, in some circumstances, from being regarded as a 'possession' within the meaning of Article 1 of Protocol No. 1 ... It must be accepted ... that notwithstanding that breach of the planning rules and the lack of any valid title, the applicant was nonetheless to all intents and purposes the owner of the structure and fixtures and fittings of the dwelling he had built and of all the household and personal effects which might have been in it. Since 1988 he had been living in that dwelling without ever having been bothered by the authorities (see paragraphs 28, 80 and 86 above), which meant he had been able to lodge his relatives there without, *inter alia*, paying any rent. He had established a social and family environment there and, until the accident of 28 April 1993, there had been nothing to stop him from expecting the situation to remain the same for himself and his family. ... In short, the Court considers that the dwelling built by the applicant and his residence there with his family represented a substantial economic interest. That interest, which the authorities allowed to subsist over a long period of time, amounts to a 'possession' within the meaning of the rule laid down in the first sentence of Article 1 § 1 of Protocol No. 1..."

<sup>28</sup> The ERRC notes that France has not signed the Framework Convention and is therefore not bound it.

strengthen the ban on racial discrimination under the Convention's existing Article 14 provisions. In a string of cases (such as *Nachova v Bulgaria*, *Cobzaru v Romania*, *Angelova and Ilev v Bulgaria* and more recently, *Stoica v Romania*) the European Court of Human Rights has started to define the obligations of states under Article 14. More specifically, and especially in the light of the *Cobzaru v Romania* judgment of July 26, 2007, the procedural aspect of Article 14 imposes upon states to investigate *ex officio* whether racist motives played a role in an act or practice held to be in violation of another article of the Convention. Thus, according to the European Court in the *Cobzaru* case<sup>29</sup>,

“97. However, the Court observes that the numerous anti-Roma incidents which often involved State agents following the fall of the communist regime in 1990, and other documented evidence of repeated failure by the authorities to remedy instances of such violence were known to the public at large, as they were regularly covered by the media. It appears from the evidence submitted by the applicant that all these incidents had been officially brought to the attention of the authorities and that as a result, the latter had set up various programmes designed to eradicate such type of discrimination. Undoubtedly, such incidents, as well as the policies adopted by the highest Romanian authorities in order to fight discrimination against Roma were known to the investigating authorities in the present case, or should have been known, and therefore special care should have been taken in investigating possible racist motives behind the violence.”

The ERRC believes that the above mentioned observation of the Court could apply equally in cases of forced evictions or other violations of the right to housing of Roma, since numerous international NGOs as well as IGOs frequently report on such incidents, noting that in many cases they are motivated by racist animus.

II.1.23. It should also be noted that the European Court recognised early on in its case law that discrimination might have direct as well as indirect effects. As early as 2000, the European Court in the case of *Thlimmenos v. Greece* held that:

“The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification [...]. However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”<sup>30</sup>

II.1.24. It should be noted that the Court has upheld this principle in later cases. In the case of *Chapman v the United Kingdom*, the Court held that:

“While discrimination may arise where States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV),

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<sup>29</sup> *Cobzaru v Romania*, appl. no. 48254/99, judgment of 26 July 2007.

<sup>30</sup> European Court of Human Rights, Judgment, *Thlimmenos v. Greece*, (Application no. 34369/97), 6 April 2000, at paragraph 44.

the Court does not find, in the circumstances of this case, any lack of objective and reasonable justification for the measures taken against the applicant.”<sup>31</sup>

II.1.25. Also, pursuant to the revised Article 13 of the Treaty Establishing the European Community (TEC) after its Treaty of Amsterdam amendments, the European Union has adopted several Directives on the scope and dimensions of anti-discrimination laws in the European Union.<sup>32</sup> Article 3(1)(h) of the Race Directive bans discrimination "in access to and supply of goods and services which are available to the public, including housing."

(iii) The ban on racial segregation

II.1.26. France is bound by Article 3 of the **ICERD**, which reads: "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction". Article 5 (e) (iii) of ICERD bans racial discrimination in the field of economic and social rights, including the right to housing. Because racial segregation is documented most often in the fields of education, housing and health, RESC's guarantee of adequate housing should be understood as incorporating the ban on racial segregation included at Article 3 of the ICERD.

II.1.27. The **United Nations Committee on the Elimination of Racial Discrimination** (CERD), the body established to monitor the compliance of State Parties with ICERD has established in its **General Recommendation 19** that racial segregation can arise without any initiative or direct involvement by public authorities and that State parties should monitor all trends which can give rise to racial segregation and calls on State parties to take measures to eradicate such practices.<sup>33</sup>

(iv) The obligations binding upon states of the Council of Europe to implement special housing programmes in relation to Roma / Travellers

II.1.28. The ERRC notes that in addition to the various instruments on the right to housing in general, there is an ever-increasing body of international "soft" law concerning exclusively the right to housing of Roma.

II.1.29. The **Council of Europe** has adopted a number of resolutions dealing expressly with the issue of housing of both itinerant and sedentary Roma. **Recommendation Rec(2005)4** of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe<sup>34</sup> sets out a number of principles that should be respected and guidelines that should be taken into account when drafting and implementing housing programmes for the Roma. Similar principles and guidelines are contained in the earlier **Recommendation Rec(2004)14** of the Committee of Ministers to member states on the movement and encampment of Travellers in Europe.<sup>35</sup> The ERRC believes that these two recommendations set out in depth both the obligations of member states as well as the means to which they should have recourse, in order to discharge them. The ERRC also notes that both recommendations pay particular attention to the role of local authorities in Roma housing programmes and clearly indicate that central administration should exercise strict control over them, an implicit admission that local authorities are often responsible for the failure of Roma housing initiatives.

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<sup>31</sup> Chapman v UK, appl. no. 27238/95, judgment of 18 January 2001, at paragraph 129.

<sup>32</sup> Beginning in 2000, and in particular under expanded powers provided by an amended Article 13 of the Treaty Establishing the European Community, the European Union adopted a number of legal measures which have significantly expanded the scope of anti-discrimination law in Europe. Particularly relevant for the purposes of this Collective Complaint is Directive 2000/43/EC "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" ("The Race Directive"). Directives are binding on EU member states and their provisions must be transposed into the domestic legal order.

<sup>33</sup> UN Committee on the Elimination of Racial Discrimination (CERD). General Recommendation 19: Racial Segregation and Apartheid (Art. 3) 18 August 1995, para. 4.

<sup>34</sup> Adopted by the Committee of Ministers on 23 February 2005 at the 916th meeting of the Ministers' Deputies.

<sup>35</sup> Adopted by the Committee of Ministers on 1 December 2004 at the 907th meeting of the Ministers' Deputies

II.1.30. Turning to the **European Union**, it is noted that on 28 April 2005, the European Parliament adopted **Resolution P6 TA (2005)0151 on the Situation of Roma in the European Union**.<sup>36</sup> According to paragraph 19 of the Resolution, the European Parliament:

“Considers that the current ghettoisation in Europe is unacceptable, and calls on Member States to take concrete steps to bring about deghettoisation, to combat discriminatory practices in providing housing and to assist individual Roma in finding alternative, sanitary housing;”

II.1.31. Lastly, it is noted that France is also a member state of the **Organisation for the Security and Cooperation in Europe** (OSCE). On 27 November 2003, the OSCE Permanent Council adopted **Decision No 566 Action Plan on Improving the Situation of Roma/Sinti within the OSCE Area**.<sup>37</sup> A number of the recommendations contained therein relate to the issue of housing of Roma.

### **III. The Factual Profile of France’s Violation of Article 16, Article 19, Article 30 and Article 31 Independently of and/or in Conjunction with the Article E Ban on Discrimination**

III.1. On the basis of continuous field research, documentation and on-going monitoring in France, the ERRC respectfully submits that France is not conforming with its human rights obligations under the RESC and relevant international law. Two underlying features need to be borne in mind when assessing the policies of the French state towards Travellers and Roma. The first is that the French state, by and large, continues to ascribe to the romantic notion of the “eternally wandering Traveller”, of the Traveller who does not to permanently settle but prefers to roam. The second is that, as it emerged during the course of research, numerous officials including senior government officials, espouse derogatory stereotypes concerning Travellers – yet it will be those officials who will draft, implement and evaluate the housing projects for Travellers. These two facts might explain why the French state has failed to take the necessary measures to provide for the ever increasing number of Travellers who either out of choice or of necessity have become sedentary. Nevertheless, the situation in relation to the Travellers who continue to travel is equally disappointing. The ERRC notes that, despite the fact that the French authorities have enacted a number of laws concerning the issue of encampment of Travellers in organised sites, the number of such sites does not correspond to the needs of the Travellers population. Furthermore, a sizeable proportion of these sites do not guarantee the stay of Travellers in adequate living conditions. Moreover, and despite the fact that the French state has not discharged the obligations that it has freely undertaken in relation to the housing of Travellers, it either tolerates local authorities’ taking measures which amount to a form of “vigilante justice” or it has adopted draconian laws providing for totally disproportionate criminal sanctions or other penalties against Travellers, even in cases where the local authorities themselves have failed to meet their obligations. At a more general level, the French state has failed to draft, let alone implement, a programme in order to ameliorate the living conditions prevailing in slums inhabited mainly by migrant Roma, many of whom are legally residing in France.

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<sup>36</sup> The text of the resolution is available in English at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0151+0+DOC+XML+V0//EN>

<sup>37</sup> The text is available in English at [http://www.osce.org/documents/odihr/2003/11/1562\\_en.pdf](http://www.osce.org/documents/odihr/2003/11/1562_en.pdf)

III.2. Turning to the issue of forced evictions, it is noted that the current legal framework provides for the collective expulsion of Travellers' communities, ascribing to all of their members responsibility for illegal acts that might have been committed by a few of them. The ERRC is highly critical of this re-emergence of the notion of collective responsibility in a democratic state as France. Finally, the ERRC would like to note that the bulk of the information contained in the present collective complaint is derived from its country report on France entitled "Always Somewhere Else: Anti-Gypsyism in France", attached as Exhibit 1 to the present complaint. This report serves as the core of the present collective complaint, providing the factual background for the impact of the various practices or laws outlined below.

### III.1. Institutionalised social exclusion of Travellers under French law

III.1.1. Despite the fact that the French state claims to make no distinction between its citizens on any grounds, the ERRC notes that for almost a century, laws have been enacted that both distinguish Travellers from the rest of the civic body, but at the same time impose onerous obligations on them. On 16 July 1912, a law relating to nomads was passed.<sup>38</sup> For the next 57 years until its repeal by the 1969 Law (see below, section III.1.4.), this law was to institute strict surveillance and restrictions on the movements of Gypsies and Travellers in France. The aim of this law was summarised by the then Minister of Interior shortly after it was passed: "It is necessary to identify, track and drive out the nomads covered by the law of 16 July 1912 and whose presence in France threatens the tranquillity of our countryside."<sup>39</sup> This law required all nomads to carry an anthropometric identity booklet with them at all times. In addition, the head of each family or group had to have a collective booklet listing all persons travelling with the head of the family. This booklet had to be stamped by the police chief, commander of the gendarmerie, or mayor in each town the group stopped, upon its arrival and departure.<sup>40</sup> Adopting a method created by Mr Alphonse Bertillon during the 1880s in order to track criminals,<sup>41</sup> each anthropometric booklet included personal information about the holder, such as his or her full name, nicknames, place of birth, and other information relevant to establishing his or her identity. It also included physical details such as the measurement of the waist and the chest, the length and width of the head, the length of the right ear, the left elbow and the left foot and eye colour. The booklet included spaces for the holder's fingerprints and two photographs (profile and portrait).<sup>42</sup> Along with these booklets, cars belonging to nomads were to bear special licence plates, with a number 10 centimetres in height, the inscription 'law of 16 of July 1912' and the stamp of the Ministry of Interior.

III.1.2. On the face of it, this law did not directly single out 'Gypsies'. It targeted all individuals "... whatever their nationality, circulating in France without a fixed domicile, and who are not ambulant salesmen or fairground stallholders, even if they have resources and claim to exercise a profession."<sup>43</sup> In drafting this law French policymakers concealed the racist nature of the law through supposedly simply regulating "a way of life" as opposed to addressing a specific group of persons based on their culture, ethnicity or origin – which would be contrary to the French Constitution. However, despite this, legislators were fully aware that the

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<sup>38</sup> Loi du 16 juillet 1912 "Sur l'exercice des professions ambulantes et la réglementation de la circulation des nomads", J.O. 19 juillet 1912.

<sup>39</sup> Cited in Aubin, *L'évolution du droit français applicable aux Tsiganes. Les quatre logiques du législateur républicain*, p. 29.

<sup>40</sup> Some municipalities refused permission for groups to stop, thus not delivering the required stamp. In this way, these documents served not only to control movement, but also to make it increasingly difficult for Gypsies to work, as their economic activities depended on stopping. Carrere, Violaine. "Des papiers pour stationner, des papiers pour circuler". *Plein Droit*, No. 35, Septembre 1997.

<sup>41</sup> Filhol, Emmanuel. *La mémoire et l'oubli : L'internement des tsiganes en France. 1940-1946*. Paris : Conference presentation, 2 June 2004. Available at: <http://aphgcaen.free.fr/cercle/tsiganes.htm#filhol>

<sup>42</sup> Article 8, Law of 16 July 1912. *Bulletin officiel du ministère de l'intérieur*. February 1913, pp. 79 – 82, available at: <http://barthes.ens.fr/cli/revues/AHI/articles/preprints/asseo.html>

<sup>43</sup> Article 3, Law of 16 July 1912, cited in: Senator Delevoye, Jean-Pierre. Report 188 (1999-2000) on the draft law adopted by the National Assembly concerning the welcome and housing of Travellers, and on the legal proposition of Mr Nicolas About aimed at strengthening the prefect's and mayor's means of eviction in cases of illegal occupation by Travellers of industrial, commercial, or professional sites. Ordinary Session of the French Senate (1999-2000), available at: <http://www.senat.fr/rap/199-188/199-1881.html>.



law in effect targeted Gypsies.<sup>44</sup> For instance, during discussions in the French Senate with respect to this law, Senator Etienne Flandin stated that the nomads are:

“vagabonds with an ethnic character [who] live on our territory as in a conquered country, not wanting to follow either the rules of hygiene or the edicts of our civil laws, demonstrating an equal disdain for our criminal laws and our fiscal laws (...) the Bohemians are the terror of our countryside where they exercise their depredation with impunity.”<sup>45</sup>

III.1.3. On 6 April 1940, two and a half months before France surrendered to Germany, a decree was issued by the President of the French Republic forbidding the circulation of "nomads" and ordering their residency in designated locations under police supervision.<sup>46</sup> In a circular issued to Prefects on 29 April 1940, the Minister of the Interior clarified that those falling under the scope of this decree involved nomads as defined by the Law of 16 July 1912. This meant those persons who “are or should be holders of an anthropometric booklet”. Furthermore, those persons who did not have such a booklet, but were suspected of being nomads, could also be assigned to residence. In this way, the decree also covered nomads who had managed to register themselves as fairground stallholders or ambulant salesmen.<sup>47</sup> The circular also described the reasons behind this measure:

“Their continual movements, during which the nomads can gather considerable and important information, can be a very serious danger for national security... It would not be the smallest benefit of this decree if it were to allow for the stabilising of the errant bands which, from a social perspective, constitute a clear danger, and to create in some of them, if not the taste at least the habit of regular work.”<sup>48</sup>

III.1.4. Policies of tracking and controlling Gypsies in France continued after the 1939-1945 war through what has been labelled by many commentators as a more "liberal" or "humane" regime regulating personal status than the law of 16 July 1912. In 1969, a new law, Law n° 69-3 of 3 January 1969, relating to the exercise of ambulant activities and the regime applicable to persons circulating in France without fixed a domicile or residence” (Law of 3 January 1969),<sup>49</sup> was enacted. Still in force today, the law eliminated the need for nomads to carry anthropometric booklets. It, however, replaced these booklets with different types of circulation documents for persons "without a fixed domicile or residence who live in vehicles, trailers, or other mobile shelters”. Different degrees of administrative control and surveillance apply to holders of circulation documents, depending on the type of document that they possess (the law provides for the issue of three different types of circulation documents<sup>50</sup>). These circulation booklets provided under the Law of 1969 and related legislation still contained anthropometric information. This information only ceased to be recorded in March 2001, when it was abolished and the current form of circulation documents were

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<sup>44</sup> The public law jurist, Marcel Waline commented with respect to this law that “we can say of this law that it was based upon racist considerations, instituting a derogatory regime against a whole race, a regime which could apply to others, but which is principally directed against this race...despite its title, despite the two first articles relating to ambulant salespeople and fairground stallholders, it is nonetheless a law of protection against the public danger presented by Bohemians, Romanichels or Gypsies. Aubin, *L'évolution du droit français applicable aux Tsiganes. Les quatre logiques du législateur républicain*, p. 28.

<sup>45</sup> Aubin, *Ibid.*, p. 27. It can be noted that the words ‘nomads’ and ‘Bohemians’ were used as synonyms.

<sup>46</sup> Article 2 of the Decree of 6 April 1940 provides: "Nomads, that is all persons so-reputed under the conditions provided in Article 3 of the Law of 16 July 1912, are ordered to present themselves to the gendarmerie or police station closest to the location where they find themselves in the fifteen days following the publication of the present decree. They will be obliged to go to a locality where they will be required to reside under police surveillance. This location will be designated for each department by ruling of the prefect." In Hubert, Marie-Christine. “Les réglementations anti-tsiganes en France et en Allemagne, avant et pendant l’occupation”. *Histoire de La Shoah. Les Tsiganes Dans l’Europe Allemande*, No. 167, Sept-Dec 1999, Centre de Documentation Juive Contemporaine, p.43.

<sup>47</sup> Hubert, *Ibid.*, p.43.

<sup>48</sup> Auzias, Claire “Samudaripen. Le génocide des Tsiganes” : *l’Esprit frappeur*, 2000, p. 184, cited in Rothéa, *France pays des droits des Roms*, pages 65-66.

<sup>49</sup> Law n° 69-3 of 3 January 1969 “Relating to the exercise of ambulant activities and to the regime applicable to persons circulating in France without a fixed domicile or residence”, J.O.5 janvier 1969, as subsequently amended and currently in force.

<sup>50</sup> These are the special circulation booklet (which exists in two types, Type A and B), the circulation booklet and the circulation cards.

adopted.<sup>51</sup> Also worthy of note is the fact that the French government at the time appeared to have been motivated in its decision to abolish, in the words of the then Minister of the Interior, the “very harsh regime” laid down by the 1912 law because the latter hindered the social integration of Travellers. This, according to the Minister of the Interior, was something that both they and the government wanted.<sup>52</sup>

III.1.5. In the face of such an expressly discriminatory legislative lineage, the maintenance on the statute books and the application of the 1969 Law constitutes, in the ERRC’s opinion, an affront to the principles of democracy, law and human rights. In particular, the ERRC finds the following two aspects of the 1969 law highly objectionable.

III.1.6. The first concerns the existence of three different categories of circulation documents. There appears to be no reason why there should be three different categories of circulation documents, addressed to different recipients and subject to the meeting of different requirements. Special circulation booklets are issued to self-employed entrepreneurs who are also registered in Chambers of Commerce. Circulation booklets are issued to salaried professionals (e.g. construction workers) or unemployed individuals who however have a regular source of income. Lastly, circulation cards are to be issued to those individuals that do not meet any of the criteria for being issued with either a special circulation or a circulation card – in other words, persons who do not have a regular source of income and who are not members of a Chamber of Commerce. Although there is a need to regulate those entrepreneurs engaged into itinerant trading, it is noted that only the special circulation booklets (and to a lesser extent the circulation booklets) could be held to serve this purpose. There appears to be no reason why circulation cards should be issued, since its intended holders do not engage into any professional activity.<sup>53</sup> Equally problematic is the fact that all these circulation documents entail different obligations on the part of their holders. For instance, holders of special circulation documents are not under an obligation to validate their documents, whereas holders of circulation booklets are required to validate them once per year. At the same time, however, holders of circulation cards are required to validate them every three months. The authority carrying out the validation in the last two cases is not a tax or another authority that regulates commercial activities but the police / gendarmerie. It should be noted that the majority of the members of the National Consultative Commission on Travellers (hereinafter NCCT) almost explicitly acknowledged in its Annual Report for 2000-2001 that only the special circulation booklet (and then again, only the Type A special circulation booklet) could be held to be a document that served a specific purpose and hence should be retained, with the rest of the documents being abolished.<sup>54</sup> The NCCT also found other aspects of the circulation documents regulatory framework objectionable, suggesting that until a final decision concerning the circulation documents be adopted, circulation cards should be validated every six months (instead of every three), that their validity should be increased from 5 to 10 years and that possession of these documents should be rendered optional.<sup>55</sup> In early 2002, the French government agreed that all three circulation documents should be replaced by a single one and that in the meantime the validity of the existing documents should be extended from 5 to 10 years.<sup>56</sup> However, on the basis of the information available to the ERRC, as of the date of writing, this has not happened. The ERRC believes that the reason why such an intricate and detailed system concerning circulation documents has been devised and implemented is because the French state, still wants to be able to ascertain the numbers of Travellers. While it is true that the statistics concerning the various types of circulation documents are not, according to standard policy, broken down by ethnic affiliation, the way in which the system of circulation document is organised allows the assessment of the numbers of

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<sup>51</sup> See National Consultative Commission on Travellers, *Rapport Annuel juin 2000 – juin 2001*, at page 20. It should be noted nevertheless that the forms of the current circulation documents provide for the recording of “particular traits” (signes particuliers) of their holders. See Order of 18 January 2001 by the Ministry of Interior.

<sup>52</sup> According to Christian Fouchet, then Minister of Interior, “le statut très dur auquel la loi de 1912 les (les nomades) astreint (...) constitue un obstacle à leur intégration dans la communauté, intégration souhaitée par beaucoup d’entre eux, ainsi que par le gouvernement qui l’encourage”. See article by Emmanuel Aubin, *1912 - 1969 La liberté d’aller et venir des nomades l’idéologie sécuritaire*, in *Revue Etudes Tziganes* no 7, Volume 1/1996, available at <http://www.etudestziganes.asso.fr/tablesrevue/ET%20Volume%207.rtf> page 5 of the online version of the article.

<sup>54</sup> See Saint-Julien, Sylvette, Rapporteur. *Rapport annuel Commission nationale consultative des gens du voyage, Rapport Annuel juin 2000 – juin 2001*, Ministère de l’Emploi et de la Solidarité, Octobre 2001, at page 20

<sup>55</sup> *Ibid*, pages 19-20.

<sup>56</sup> See Saint-Julien, Sylvette, Rapporteur. *Rapport annuel Commission nationale consultative des gens du voyage 2002*, Ministère des Affaires Sociales, du Travail et de la Solidarité, Novembre 2002 at page 14.

Travellers. According to the ‘Delamon Report’ of 13 July 1990 which provided data on the number of persons holding different types of circulation documents at that time, there was a total of 83,050 people, with 53,677 holding special booklets, 4,348 holding circulation booklets, and 25,025 circulation cards. The report commented that: “...the persons surveyed as holding one of these administrative documents are not all Gypsies and Travellers, and it is not, in the end, possible to survey the Travellers with precision on this basis. However, we are able to affirm that Gypsies and Travellers figure primarily amongst those holders of special booklets and circulation cards where they constitute the large majority.”<sup>57</sup> According to the most recent publicly available disaggregated data dated March 2002, a total of 156,282 persons had circulation documents. Of these, 70,484 had circulation cards, 9,689 had circulation booklets, and 76,109 had special booklets.<sup>58</sup> More recent data (but not disaggregated by type of circulation document) dated September 2006, indicate that a total of 168,000 holders of circulation documents was registered.<sup>59</sup> The sum of holders of circulation cards and special circulation booklets should give a pretty accurate estimate of the number of Travellers’ families in France.<sup>60</sup> Indeed, the French National Advisory Commission on Human Rights (Commission nationale consultative des droits de l’homme) recently proceeded to estimate the population of Travellers having French citizenship to 400,000 people, based on extrapolations from the numbers of holders of circulation documents.<sup>61</sup> The ERRC does not consider the fact that such information is maintained is objectionable *per se* – on the contrary, the existence of such information is crucial when drafting programmes relating to the Travellers.<sup>62</sup> What is, however, objectionable is the fact that whereas the French state claims not to hold statistics on the population of any ethnic groups to which its citizens might belong, it does so in the case of Travellers without however aiming at benefiting them from any positive measures. On the contrary, the existence of these documents, in addition to other information (on the way of life or physical characteristics etc), allows public officials to ascertain with a high degree of accuracy that a particular person is a Traveller and therefore increase the danger that they will be subjected to discriminatory treatment.

III.1.7. The second aspect of the Law of 1969 that the ERRC finds highly objectionable is that under the provisions of the Law of 1969, holders of circulation documents may only exercise their right to vote after a 3-year period of attachment to a given municipality and then only if the number of holders of such documents in that community do not surpass 3% of its electoral body.<sup>63</sup> The 3-years attachment period is considerably longer than all other French citizens, even those without a fixed residence but who do not live in vehicles, trailers or mobile shelters (homeless individuals), who are able to vote after 6 months of

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<sup>57</sup> Delamon, Arsène, "La situation des ‘Gens du Voyage’", p. 12.

<sup>58</sup> Ministère de la Défense – Direction générale de la gendarmerie nationale. "Nombre de titres de circulation détenus par les personnes circulant en France sans domicile ni résidence fixe (SDRF), au 19 Mars 2002."

<sup>59</sup> See report entitled « Comment améliorer le contrôle et l’organisation des fichiers de police et de gendarmerie utilisés dans le cadre des enquêtes administratives ? », Rapport remis au ministre d’Etat, ministre de l’Intérieur et de l’Aménagement du territoire, Novembre 2006, available at [http://bigbrotherawards.eu.org/IMG/pdf/Rapport\\_sur\\_les\\_fichiers\\_de\\_police.pdf](http://bigbrotherawards.eu.org/IMG/pdf/Rapport_sur_les_fichiers_de_police.pdf), page 51.

<sup>60</sup> It should be noted that only those over 16 years of age have circulation documents. The total number of persons, including children, belonging to families with circulation documents is thus significantly higher than these figures indicate.

<sup>61</sup> See *Etude et propositions sur la situation des Roms et des gens du voyage en France* that was adopted by the Plenary Assembly of the Commission nationale consultative des droits de l’homme on 7 February, 2008, [http://www.cncdh.fr/IMG/pdf/Etude\\_et\\_propositions\\_sur\\_la\\_situation\\_des\\_Roms\\_et\\_des\\_gens\\_du\\_voyage\\_en\\_France.pdf](http://www.cncdh.fr/IMG/pdf/Etude_et_propositions_sur_la_situation_des_Roms_et_des_gens_du_voyage_en_France.pdf) page 6, appended to the present complaint as Exhibit 3.

<sup>62</sup> See for example Recommendation CM/Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe, Adopted by the Committee of Ministers on 20 February 2008 at the 1018th meeting of the Ministers’ Deputies, Section V.ii : “The needs assessment, provided this is admissible in national law, and in accordance with existing international standards on data protection, including the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108), should be carried out through, for example, household surveys gathering quantitative and qualitative data on the situation of Roma and/or Travellers, disaggregated by gender, age, and other relevant indicators .... The absence of data must not be used either to halt or unduly delay the preparation of any programme or strategy. This may be remedied by launching independent surveys and public consultation with relevant stakeholders.”

<sup>63</sup> Articles 8 and 10, law of January 1969. It is noted that the law does provide for certain exceptions: thus the prefect can authorise the enrolment of Travellers in a particular community above the 3% limit in order to assure that all members of the family are administratively attached to the same community.

residence in a given municipality.<sup>64</sup> Similarly, there is no upper threshold for the representation of any given group of individuals under French law aside from Travellers. These two particular provisions have in fact drawn severe criticism for a wide spectrum of institutions. Interestingly enough, while these provisions do not on their face apply only to Travellers, all the institutions and bodies that have criticised them have done so while examining the issue under the rubric of the situation of Travellers. This, the ERRC believes, is a robust acknowledgement of the fact that these two provisions are more likely than not (if not exclusively) to affect Travellers.

III.1.8. As early as 1990, the “Delamon rapport” and then the “Merrheim rapports” of 1996 and 2001 called upon the French authorities to modify these provisions, while the Ligue de droits de l’ Homme made a similar proposal in its 1998 annual report.<sup>65</sup> More importantly, the National Consultative Commission of Travellers commented, in its annual report for 2000-2001, that the 3% quota was discriminatory and recommended that it be eliminated. It stated that: “This legal threshold is rarely attained. Its elimination would not be likely to cause major changes in the distribution of this population on the national territory. On the other hand, it would have a strong symbolic impact which is not negligible in the aim of a better integration of Travellers.”<sup>66</sup> This recommendation was opposed by the Directorate of Territorial Administration and Political Affairs (DATAP) of the Ministry of Interior due to risks of “electoral manipulation”. The Directorate General of the National Gendarmerie also opposed its elimination.<sup>67</sup> It should nevertheless be noted that, in its subsequent Annual Report, the opinions of members of the NCCT on the issue were divided: Some of them still considered that the existence of special requirements for Travellers in relation to their election rights constituted “a discrimination of structural nature”,<sup>68</sup> while for the rest of the members of the Commission, the issue of legitimacy of these requirements was moot in so far as they had been adopted by the Parliament.<sup>69</sup>

III.1.9. The ERRC notes that although successive French governments appear to recognise that the existence of a separate regulatory framework applicable effectively only to Travellers does pose certain questions concerning its legitimacy, they have, nevertheless failed to revise it. As early as 1991, Senator Henri Collette inquired, on the basis of the Delamon report, whether the French government would be modifying Articles 7 to 10 of the 1969 law. The response of the Ministry of the Interior was that this modification (that included *inter alia* the modification of the provision concerning the proof of a three years attachment to a given municipality for voting purposes) suggested in the Delamon report was “under study”.<sup>70</sup> Sixteen years later, in November 2006, MP Jean Claude Viollet, noting in his question that the requirement for a Traveller to be able to prove an uninterrupted 3 years attachment to a given municipality before he was eligible to vote was discriminatory, received a reply that this difference in treatment could “in effect appear to be discriminatory” and that its modification was still “under study”.<sup>71</sup>

III.1.10. Furthermore, it should be noted that even the Human Rights Commissioner of the Council of Europe, following his visit to France from 5-21 September 2005, stated in his report that

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<sup>64</sup> Article L15-1 of the Electoral Code stipulates that those who cannot provide proof of a fixed domicile or residence, and who are not subject to rules concerning a “municipality of attachment”, may be enrolled on the electoral list in the municipality of a host organisation if such an organisation appears on their identity cards for at least six months or provides them with a declaration indicating links with the town for six months. Article L 15 of the Law establishes special conditions for voting without any time limitations for persons living on boats (bateliers) without a fixed residence or domicile.

<sup>65</sup> See *L'accès aux droits sociaux des populations tsiganes en France : rapport d'étude de la Direction générale de l'action sociale*, Edition de l'Ecole Nationale de la Sante Publique, Rennes: 2007, at page 75.

<sup>66</sup> See *Rapport annuel Commission nationale consultative des gens du voyage, June 2000 – June 2001*, op. cit., p. 21.

<sup>67</sup> *Ibid.*

<sup>68</sup> “... une forme de discrimination structurelle...”. See Saint-Julien, Sylvette, Rapporteur. *Rapport annuel Commission nationale consultative des gens du voyage 2002*, Ministère des Affaires Sociales, du Travail et de la Solidarité, Novembre 2002, at page 21.

<sup>69</sup> *Ibid.*

<sup>70</sup> Question écrite n° 15713 de M. Henri Collette, publiée dans le JO Sénat du 13/06/1991 - page 1221 and Réponse du ministère : Intérieur, publiée dans le JO Sénat du 12/09/1991 - page 1968.

<sup>71</sup> « Ce délai ... peut effectivement paraître injustifié ». See Question N° : 110431 de M. Viollet Jean-Claude, Question publiée au JO le : 21/11/2006 page : 12074, Réponse publiée au JO le : 06/02/2007 page : 1388

“The obligation to carry them [circulation documents] and have them countersigned at regular intervals is a manifest example of discrimination. Travellers are the only category of French citizens for whom the possession of an identity card is not sufficient to comply with legal requirements. As French citizens, as most of them are, Travellers should not have to be subject to such constraints and should be entitled to the same rights as their fellow citizens. I can accept the idea of a travel permit, but I find it deeply shocking that it can be required to be shown at any time even when Travellers have an identity card, and that it has to be countersigned at regular intervals. In addition, representatives of Travellers’ associations told me about certain difficulties encountered by Travellers in obtaining identity cards. I call on the authorities to remove these obstacles at the earliest opportunity. [...] The 1969 law also stipulates that Travellers must be assigned administratively to a municipality (Section 7). [...] I am concerned about these obligations, as they place Travellers in a situation in which they feel under permanent surveillance. Furthermore, the law states quite clearly that the number of Travellers accommodated by a municipality may not exceed 3% of the local population. These provisions violate the freedom to settle in the municipality of one’s choice, which is a right enjoyed by all other French citizens. [...]The special law applying to Travellers has another clause which is just as discriminatory: Travellers are not entitled to vote until three years have elapsed since being assigned administratively to a municipality. For other citizens, including those of no fixed abode, the qualifying period is just six months. I call on the French authorities to put a halt to this situation which restricts Travellers’ civil and political rights.”<sup>72</sup>

However, despite all of the above, the French state has not, as of the time of writing, modified the relevant provisions. Indeed, even in its answer to the Commissioner for Human Rights, the French state did not deal explicitly with these issues but once again maintained that further studies should be carried out.<sup>73</sup>

III.1.11. The ERRC respectfully contends that the above mentioned extensive references to the issue of circulation documents and related provisions serve a twofold purpose. The first is to support the argument put forward by the ERRC that the continuing existence of such blatantly discriminatory provisions, despite the fact that their discriminatory nature appears to be common knowledge, casts serious doubts on the professed willingness of the French state to adopt a comprehensive and above all non-discriminatory legislative framework in relation to the Travellers that would aim at integrating them into the French society. The second purpose is to examine the impact of the provisions, concerning the conditions under which holders of such circulation documents are allowed to exercise their electoral rights, have on their right to housing. The ERRC notes the statement of the adjunct Prefect of Bouches-du-Rhône to the effect that “...The mayor is elected and the Travellers are not voters. The rest of the population would vote against the mayor.”<sup>74</sup> The ERRC notes there is evidence to suggest that in many cases the Travellers who are enrolled in the electoral rolls of a given municipality do not even approach the 3% upper limit and their political weight therefore is not only negligible, but almost non-existent. This is a result of a number of factors, ranging from the lack of access of Travellers to the relevant information to the refusal of mayors to enrol Travellers in the electoral rolls, on various pretexts.<sup>75</sup> The outcome of this situation is that the Travellers’ are not in fact in a position to vote in elections, thereby allowing local officials to ignore them and perpetuate their social exclusion. In the framework of the report commissioned by the Direction Générale de l’ Action Sociale, communities would more often than not respond to the researchers that Travellers attached to the community were not enrolled in the electoral rolls and that usually only between a quarter and a third of Travellers attached to that particular community were also living there.<sup>76</sup> By way of example, it is noted in

<sup>72</sup> See Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on the effective respect for human rights in France following his visit from 5 to 21 September 2005, for the attention of the Committee of Ministers and the Parliamentary Assembly, Strasbourg, 15 February 2006, Comm DH(2006)2, paragraphs 336-340.

<sup>73</sup> Ibid, response of the French state to the Commissioner, appended to the Commissioner’s Report, points 329-350 : « La plupart des mesures à engager appellent recherches, études, mise au point et concertation avec toutes les parties intéressées. »

<sup>74</sup> In French: “Le maire est élu – les gens du voyage ne sont pas électeurs. Tous les autres voteront contre le maire” ERRC interview with Mr Gérard Pehaut, 7 May 2004, Marseille. Rather tellingly, by the end of 2005, the Bouches-du-Rhône department had constructed only 174 caravan emplacements out of the required 1,504. See *Table of existing Halting Sites, end of December 2005*, available at the Ligue des droits de l’ Homme site at [http://www.ldh-france.org/media/groupe/GDV\\_etat\\_avancement\\_existant\\_au\\_3112\\_05.pdf](http://www.ldh-france.org/media/groupe/GDV_etat_avancement_existant_au_3112_05.pdf)

<sup>75</sup> See Exhibit 1, page 72. See also *L’accès aux droits sociaux des populations tsiganes en France*, op.cit., page 78.

<sup>76</sup> See *L’accès aux droits sociaux des populations tsiganes en France*, op.cit., pages 77-78.



the study that 63 people were attached to a community in the region of Paris: out of these 63 people, 15 were of voting age yet only one person was registered in the electoral rolls and in fact had not voted in the past.<sup>77</sup> Nor can the French state that this situation has not been brought to its attention early enough: in 1990, the Delamon report noted that a full 75% of the Travellers were effectively not exercising their right to vote.<sup>78</sup> One of the results of this situation is that Travellers do not have access to one of the basic democratic right, that of voting, which could enable them (at least in the context of municipal elections) to have a say in issues that have a direct impact on them, such as for example the extension of town plans to encompass areas where Travellers have been living illegally.<sup>79</sup> By failing to both abolish the discriminatory regime concerning the electoral rights of Travellers as well as to take the necessary measures to ensure that Travellers are informed of their rights and are allowed to effectively exercise them, the French state perpetuates their social exclusion, in contravention to Article 30 RESC. The fact that the French state has taken no measures at all during the last 17 years to address this issue signifies, in the ERRC's opinion, that it is in fact not willing to do so. The ERRC is aware that the aforementioned article does not refer to the right to vote. The ERRC notes however that the purpose of Article 30 is to protect the individual from social exclusion. It also notes that the fields mentioned in Article 30.a (employment, housing etc) are not exhaustive as they are preceded by the term "in particular", thereby denoting that other issues could come within the ambit of Article 30, provided of course that they are detrimental to the individual's social inclusion. To this effect, the ERRC notes that, in modern democracies, the right to vote is a fundamental right whose exercise denotes, even at the symbolic level (e.g. when the individual chooses not to vote) the inclusion of the individual in the body politic. It is reminded that the suspension of electoral rights is imposed as a sentence to defendants convicted of particularly serious offences. The ERRC believes that such an approach is consistent with the spirit of the RESC. It should be noted that in its Article 15, the RESC provides that persons with disabilities have a right to, *inter alia*, social integration and participation in the life of the community. The ERRC believes that voting in and standing for elections is an important parameter of social integration and participation in the life of the community. This also appears to be the opinion of the ECSR which in its 2003 Conclusions on Italy and in particular in relation to Article 15, took into account the measures undertaken by Italy in order to promote the access to the voting process of persons with disabilities.<sup>80</sup>

### III.2. Inadequate implementation of laws concerning the establishment of halting sites for Travellers

#### III.2.1 Background to the 2000 Besson law and its legacy

III.2.1.A. Despite the numerous shortcomings of the 1969 law recounted above, it is noted that it effectively represents one of the numerous laws and legislative texts that the French state started enacting in the mid to late 1960s and whose objective was to address the various problems faced by Travellers. In 1966 and then in 1968, the Ministry of the Interior addressed two circulars to local authorities, drawing their attention to the interest of the government in the "problem of stationing of populations of nomadic origin [sic] that usually live in caravans."<sup>81</sup> The circular of 20 February 1968 set out the conditions under which the central administration would finance the establishment of halting sites. It is interesting to note that the 1968 circular concerned only halting sites and not grounds for large gatherings, while it also provided that social – educational activities should also take place in these halting sites.<sup>82</sup> 1968 also saw the opening of the first halting site in Laval.<sup>83</sup>

<sup>77</sup> Ibid.

<sup>78</sup> See *Ligue des droits de l'Homme*, Section de Toulon, article of 2 November 2006, available at <http://www.ldh-toulon.net/spip.php?article1594>

<sup>79</sup> The highly complex issue of Travellers' plots of land located outside the approved urban plan is an issue that will be addressed in more detail in section III.4.Q below

<sup>80</sup> See European Committee of Social Rights, Conclusions 2003, Vol. 1 (Bulgaria, France, Italy), at [http://www.coe.int/t/e/human\\_rights/esc/3\\_reporting\\_procedure/2\\_recent\\_conclusions/2\\_by\\_year/2003Vol1\\_en.pdf](http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/2_by_year/2003Vol1_en.pdf), page 297.

<sup>81</sup> ERRC unofficial translation, original has as follows : « au problème du stationnement des populations d'origine nomade, vivant habituellement en caravanes ». Quoted in article by Jacqueline Charlemagne *Le droit au logement des gens du voyage : Un droit en trompe l'œil ?*, Revue Etudes Tziganes no 15, 2000, available at <http://www.etudestziganes.asso.fr/tablesrevue/jcvol15.html>

<sup>82</sup> The circular is mentioned in section II of Circular of 10 July 1980, "Relating to modalities of financing of halting sites for Travellers", J.O. of August 17, 1980, page 7470 N.C.

<sup>83</sup> See *L'accès aux droits sociaux des populations tsiganes en France*, op.cit., page 39, footnote 8.

III.2.1.B. The period between 1968 and 1980 appears to have been largely one of trial and errors. Certain types of halting sites that exist today can trace their lineage back to those years. An interministerial circular of 29 February 1968 refers to “terrains de passage” and “terrains de séjour”<sup>84</sup> and notes that under a 1957 law, such sites were considered to be necessary for municipalities or their collectivities of municipalities.<sup>85</sup> The introduction of the circular of 10 July 1980 gives a succinct overview of the problems encountered until then. As mentioned in the introduction, in many municipalities the welcoming and stationing of caravans posed an acute problem. The circular also notes that communities should, only in very exceptional circumstances, limit the stationing of Travellers to 24 hours, also noting that many municipalities illegally adopted decisions totally prohibiting the stationing of caravans. The circular set out in details the various obligations of the administrative collectivities of local authorities concerning the establishment of halting areas (now called “aires de stationnement”) as well as the funding possibilities open to them. The circular contained a number of points that can be found in later laws concerning the issue of the stationing of Travellers. The circular set out the need for local authorities, as well as for the relevant departments, to carry out studies concerning the number of Travellers living in their administrative jurisdictions, the migratory patterns, the identification of plots of land suitable for the establishment of halting sites and the drafting of a “management departmental plan”. The halting areas were to be established preferably in the periphery of urban zones but definitely not in areas located far away from the town centre. The halting sites should be large enough to accommodate no more than 20 caravans in order to avoid having large concentrations in certain sites. The state would subsidise the creation of each caravan emplacement with the sum of 14,000 French francs (roughly 2,100 EUR with an exchange rate of 6.55 French francs per EUR), while authorities should, within six months forward their departmental plans and especially the numbers of halting areas whose establishment was under process.<sup>86</sup>

III.2.1.C. The next important evolution in the field of establishment of halting sites for Travellers was Law 90-449 of 31 May 1990 “Relating to the implementation of the right to housing” (colloquially know as the first Besson law).<sup>87</sup> It could be said that the 1990 Besson law is ambivalent towards the issue of Travellers, containing aspects that appear to both include and exclude Travellers from the framework applicable to other French citizens. For example, the fact that an article concerning exclusively Travellers was included in a law relating to the issue of housing is clearly a development to be welcomed. On the other hand, one cannot fail to notice that the Besson law keeps Travellers at “arm’s length”: Article 28 relating to the establishment of halting sites is the very last one of the law and is included in the rather conceptually incompatible third section of the law relating to “Conditions for granting personal housing benefits”. It is interesting to note that it has not been included in the first section of the law (concerning the drafting and implementation of a Departmental Plan of Action for the Housing of the most Disadvantaged Persons – PDALPD in French) – indeed, there is a widespread understanding among state officials that Travellers are not among the beneficiaries of PDALPDs and that only the 2000 Besson Law is applicable to them.<sup>88</sup> Furthermore, Article 28 is a very terse one: in 12 lines, it lays down what turned out to be a very ambitious undertaking, namely providing Travellers with halting sites. Under Article 28 of the 1990 Besson Law, departmental plans should be drafted, laying down the conditions under which Travellers should be “welcome” (accueil) in each department concerning their sojourn, the schooling of their children as well as the carrying out of their economic activities. Each community with more than 5,000 inhabitants should provide halting sites for the sojourn and / or transit of Travellers from their area, while should these sites be set up and start functioning, then the local authorities could issue decisions prohibiting the stationing of Travellers on any plot of municipal land other than the halting site designated for that purpose. The circular also provided that, in certain cases, communities with less than 5,000 inhabitants might incur the obligation of providing halting sites to Travellers.

III.2.1.D. The provisions of Article 28 of the 1990 Law were fleshed out in the Ministry of the Interior Circular of 16 March 1992 “Relating to the Departmental Plan (accommodation of travellers)”.<sup>89</sup> The circular (which inter alia abrogated the 10 July, 1980 circular referred to above in section III.2.3) envisaged three kinds of halting sites: the halting sites established on public / municipal land, the halting sites established on private

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<sup>84</sup> The present day equivalent of those two sites would be the “aires d’ accueil” and “aires de grand passage”, respectively.

<sup>85</sup> Cited in article by Jacqueline Charlemagne *Le droit au logement des gens du voyage : Un droit en trompe l’œil ?*, op. cit.

<sup>86</sup> See Circular of 10 July 1980, “Relating to modalities of financing of halting sites for Travellers”, op. cit.

<sup>87</sup> J.O. of 2 June 1990, page 6551.

<sup>88</sup> See below, section III.4.N.

<sup>89</sup> J.O. 3 April 1992, page 4994.

plots of and the existing camping sites. The circular also laid down a number of guidelines concerning the location of the sites (i.e. they should not be far away from the urban fabric as this would impinge on the schooling of the children), the procedure to be followed for the drafting of the departmental plan, the subsidies available and so forth. The circular, however, did not lay down any kind of incentive or sanction to motivate local authorities towards discharging their duties. The issue of forcing the authorities to comply with the circular would become more pronounced following the judgment of the Conseil d'Etat in the case of *Ehrard and others*, on 12 December 1997. According to the Conseil d'Etat, Article 28 of the 1990 law did not present the characteristics of a zoning law or regulation and could not consequently be invoked with a view to obliging communities to modify their town plans in order to allow for the establishment of halting sites.<sup>90</sup> In other words, it was possible for a local authority to refuse to establish a halting site by stating that such a land use was not compatible with its existing town plan and refusing at the same time to modify it so as to make such use possible. Finally, another circular, that of 16 September 1992 set the upper limit of the financing by the state towards the construction of halting sites to 35% of the cost.

III.2.1.E. The 1990 Besson law did not contain any sanctions for authorities who were not willing to establish halting sites.<sup>91</sup> In October 2001, the NCCT noted, in its first report for June 2000-2001, that only 5,000 to 6,000 places for parking of caravans in halting sites were available<sup>92</sup> – the fact that the new Besson law was enacted in July 2000 and its interpretative circular was adopted in July 2001 leads to the conclusion that these 6,000 were created between roughly 1968 and 2000 and constituted the “legacy” of the previous regime concerning the stationing of Travellers to the new regime inaugurated with the July 2000 law. In its 2002 annual report, the NCCT noted that 10 years after the enactment of the 1990 Besson law, only one third of the 96 departments of continental France had adopted a departmental plan<sup>93</sup> and that, in fact, less than a quarter of the communities that were included in the departmental plans and were under an obligation to establish halting sites for Travellers had done so. In addition the material conditions of 229 of the existing halting sites were so bad that these sites would have to be renovated.<sup>94</sup> Indeed, it would appear that almost all existing caravan places would need renovation in order to bring them up to date with the criteria of the 2000 Besson law. According to official information made available to the NCCT, the French authorities planned to renovate a total of 4,895 existing sites between 2002 and 2004.<sup>95</sup> How bad the living conditions were in those sites can be gauged by the subsequent statement of a high ranking public official. Speaking in late 2002, the representative of the Minister of the Interior stated that out of the approximately 7,000 caravan places available, close to 4,000 of them were in “unspeakable conditions”.<sup>96</sup> It is almost certain that

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<sup>90</sup> Conseil d'Etat statuant au contentieux N° 164874 5 / 3 SSR, Lecture du 12 décembre 1997, L Publié au Recueil Lebon. It nevertheless should be noted that as early as 1988, the Council of State had ruled that the establishment of halting sites serves a public interest purpose and hence town plans can legally provide for the commitment of plots of land for the establishment of such sites. See *Ville de Lille c/rue de Bavai, rue de l'Est et environs*, Conseil d'Etat statuant au contentieux N° 54411, 10/8 SSR, Publié aux Tables du Recueil Lebon, judgment of 25 March 1988.

<sup>91</sup> A fact also acknowledged by MP Estrosi in his 2002 report concerning the draft Security Law : according to MP Estrosi, « article 28 de la loi n° 90-449 du 31 mai 1990 [...] n'avait pas de caractère contraignant et n'a guère été suivie d'effets. » See Rapport No 508 Au Nom de la Commission des Lois Constitutionnelles, de la Législation et de l'Administration Générale de la République sur le projet de loi, adopté par le Sénat après déclaration d'urgence (no 381), *pour la sécurité intérieure*, Document mis en distribution le 26 décembre 2002, Première Partie, available at <http://www.assemblee-nationale.fr/12/rapports/r0508.asp>

<sup>92</sup> See National Consultative Commission on Travellers, *Rapport Annuel juin 2000 – juin 2001*, op. cit. at page 11.

<sup>93</sup> More accurate data are to be found in the 1999 report of the Commission on the Constitutionality of Laws of the National Assembly on the draft of what was to become the 2000 Besson law. According to the report, only 32 departmental plans had been signed by both the prefect and the president of the general council while another 15 had been signed only by the prefect. See document No 1620, *Rapport fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de l'Administration Générale de la République sur le projet de loi (no 1598) relative à l'accueil des gens du voyage*, par Mme Raymond Le Texier, Enregistré à la Présidence de l'Assemblée nationale le 26 mai 1999, available at <http://www.assemblee-nationale.fr/11/rapports/r1620.asp> Section B.

<sup>94</sup> See National Consultative Commission on Travellers, *Rapport annuel Commission nationale consultative des gens du voyage 2002*, op.cit., page 33.

<sup>95</sup> Ibid, page 36.

<sup>96</sup> “[...] sur 7,000 places, à peu près 4,000 sont dans des conditions innommables” estime Daniel Canepa, représentant du ministre de l'Intérieur Nicolas Sarkozy”; see article in *Maire-Info*. Dated 24 October, 2002,



these 4,000 places were the ones that had been created before the 2000 Besson law as by 2002 only a few new (i.e. after 2000) sites had been set up.

### III.2.2. A turning point in the right to housing of Travellers: the 2000 Besson law

III.2.2.A. Law no. 2000-614 of 5 July 2000 *Relating to the welcome and housing of Travellers* (hereinafter 2000 Besson Law) could be described as an attempt to “revitalise” its predecessor that also bore its name.<sup>97</sup> In many ways, it rests on essentially the same principles as its predecessor did. The responsibility for carrying out research and drafting plans continues to lie with the departments while, as a general rule, only communities with more than 5,000 inhabitants are required to establish halting sites for Travellers.<sup>98</sup> The 2000 Besson law, however, does contain a series of rather novel provisions. The first is that local authorities can effectively either transfer their obligations to a collective entity (e.g. an EPCI<sup>99</sup>) or “buy off” their obligations under the departmental schemes, by contributing towards the financing of a halting area constructed in another community with which it has concluded an agreement to that effect. Secondly, in addition to halting sites, authorities should designate areas for large scale transit of Travellers,<sup>100</sup> as well as emplacements for large gatherings.<sup>101</sup> Thirdly, understanding that the housing needs of Travellers were diverse, the 2000 Besson Law foresaw the need to provide for another two categories of areas, those of small-scale transit and the “family plots”.<sup>102</sup> Fourthly, in what the ERRC considers an implicit recognition of the fact that authorities would not carry out their obligations under the 2000 Besson law unless induced or coerced to do so, the 2000 Besson Law set out both a number of incentives as well as restraints on authorities. The 2000 Besson law provided for a subsidisation scheme, with the state undertaking to contribute 70% (double that provided for under the 1990 law) of the construction cost. The upper threshold

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entitled « 20 000 emplacements de caravanes devront être créées par les maires pour les gens du voyage d'ici 2005 ». Available at: <http://www.maire-info.com/article.asp?param=2309&PARAM2=PLUS>.

<sup>97</sup> A point that needs to be borne in mind is that the enactment of the 2000 Besson was not without its problems. Both the National Assembly and the Senate proposed different and conflicting drafts of the law and would not agree to a common draft even after two readings in each house and after the deliberations of the joint committee of Article 45.2 of the French Constitution. At the end, the national assembly called upon the government, under Article 45.4 of the French Constitution, to make a final decision and the draft of the national assembly was finally adopted. The various drafts are available at: [http://www.assemblee-nationale.fr/11/documents/index-promulgations-2000.asp#L2000\\_614](http://www.assemblee-nationale.fr/11/documents/index-promulgations-2000.asp#L2000_614). It is interesting to note that in the draft of the law proposed by the Senate (whose members, it needs to be reminded, are elected by mayors and other local officials), one can identify in an almost identical form certain measures that would be adopted concerning Travellers.

<sup>98</sup> It should be noted that, as mentioned in Section I.1 the extensive Circular no UHC/IUH/12 2001-49 of 5 July, 2001 *Relating to the application of law 2000-614 of 5 July 2000 concerning the halting and housing of Travellers* NOR EQUU0110141C (hereinafter the July 2001 Circular) it could be possible that communities with less than 5,000 might be obliged to set up halting sites for Travellers, a necessity already acknowledged in the equivalent circular to the 1990 Besson law.

<sup>99</sup> Etablissement public de coopération intercommunale : public owned company of intra-municipal cooperation.

<sup>100</sup> *Aires de grandes passages*: according to Section IV.2. of the 5 July 2001 circular, such areas would have the capacity to accommodate between 50 to 200 caravans. The technical specifications for these sites are to be found in Circular no 2003-43/UHC/DU1/11 of 8 July, 2003 *Relating to large gatherings areas by Travellers: transit areas for large passages*. In brief, according to the circular, the authorities should identify suitable plots of land, primarily among plots of land belonging to the state, where Travellers could gather for short period of time, usually while in transit. These areas should be able to accommodate approximately 50 to 200 caravans for a few days to a couple of weeks at maximum. No permanent infrastructure was to be made available and only certain rudimentary provision of water and electricity was to be provided. Furthermore, since no construction permit was required for this type of sites, they could be located on “natural land” e.g. fields.

<sup>101</sup> *Emplacements pour grand rassemblement*: according to Section IV.3 of the of the 5 July 2001 circular, such emplacements should be able to accommodate numerous (thousands) of Travellers for a few days per year (e.g. during pilgrimages). These emplacements – in effect, large parking spaces- would have no access to any kind of public utilities and although their inclusion in the departmental plan was obligatory, they would benefit from no subsidy for either landscaping or operation.

<sup>102</sup> *Aires de petites passage* and *terrains familiaux*, respectively. The former should accommodate between 4 to 6 caravans and be provided with basic public services, while the family plots were destined to accommodate small family groups. The inclusion of such types of areas in the departmental plan was not mandatory and was left to the drafters' discretion. The 2000 Besson Law made it clear that authorities could not shield themselves from criticism that they did not establish halting sites, areas for large scale transit or emplacements for large gatherings by arguing that they had established small-scale transit areas or family plots.

would subsequently be set to 15,245 EUR per caravan place in halting sites, 9,147 EUR for the rehabilitation of each already existing caravan place and 114,336 euros for the operation of areas for large scale transit.<sup>103</sup> In fact, even the non-mandatory small scale transit areas and family plots could benefit from such subsidies: subsidies of 70% towards construction cost and of an upper limit of 3,049 and 15,425 EUR per caravan place were available.<sup>104</sup> Furthermore, under Article 4 of the 2000 Besson law, state authorities could contribute financially to the cost of establishment of such sites and areas,<sup>105</sup> while local authorities could also apply for a subsidy of up to 50% of the cost incurred for preparing / drafting relevant studies.<sup>106</sup> They could also request the departments subsidised the operating costs of the halting sites at a maximum percentage of 25%.<sup>107</sup> The 2000 Besson provided another incentive for the authorities to comply with their obligations. As per Article 9 of the 2000 Besson Law, once a municipality has fulfilled its obligations as set out in the Departmental Plan, it can forbid Travellers from stopping their mobile homes anywhere on its territory outside of the designated halting areas. If Travellers stopped elsewhere, on either private or public land, they can be forcibly evicted by court order, unless they were stopped on land which they owned or were stopped on a piece of land for which special permission has been granted for the stay of mobile homes, either for camping (Article L433-1 of the Urbanism Code) or as the permanent housing of their users (Article L 433 -3 of the Urbanism Code).<sup>108</sup> If Travellers squatted on public land owned by the municipality, the mayor could act to evict them if they posed a threat to public health, security, or peace. The departmental plans required under the 2000 Besson law were to have been completed within a period of 18 months from the official publication of the Besson Law<sup>109</sup> (i.e. by 6 January 2002) and each town involved was then to have equipped and made available 1 or more halting areas on its own or in cooperation with other municipalities within a period of 2 years (by 6 January 2004).<sup>110</sup> After the expiry of this time frame, the Prefect would have the power to issue a warning to the authorities that did not meet their obligations. Should the authority not heed the warning within a 3 month period, the State could take possession of municipal land in order to create a "halting area" at the municipality's expense. The municipality would lose out on the State financing for which it would otherwise have been eligible. It is interesting to note in this respect that the National Advisory Commission on Human Rights suggested in its Opinion in relation to the draft Besson Law that the discretionary power of the State to substitute the community should the latter fail to conform to the Besson law should become peremptory.<sup>111</sup>

III.2.2.B. Another important characteristic of the 2000 Besson law is that it provided for the revision of the departmental plans at least once every 6 years after the date of their adoption<sup>112</sup> as well as the revision of Article L-443-3 of the Urbanism Code enabling families of Travellers who wished to become sedentary to park their caravans, subject to certain conditions, to plots of land (terrains familiaux).<sup>113</sup> It also called upon authorities to take the increased rate of sedentarisation of Travellers in mind, ensuring that they had access to social housing and related benefits.<sup>114</sup>

III.2.2.C. In conclusion, the 2000 Besson law (in its original form) and its interpretative circulars provided for the establishment not of mere "parking areas" for Travellers but rather for areas where families can live in

<sup>103</sup> Decree no 2001-541 of 25 June 2001, NOR:EQUU0100641D. The sums referred to are net i.e. after having deducted any taxes applicable.

<sup>104</sup> It is to be noted that local authorities could not ask for subsidies for the operation of these two types of sites.

<sup>105</sup> Indeed, as mentioned in Section III.4. of the July 2001 Circular, authorities could in fact have the halting sites / areas for large gatherings constructed entirely out of public funds.

<sup>106</sup> See July 2001 Circular, Section II.2.

<sup>107</sup> Article 5, section II of the 2000 Besson Law. The limit of financing for maintenance / operating a halting site was initially at 128.06 EUR per month and per caravan place (Decree no 2001-568, 29 June 2001), increased to 132.45 EUR by 1 January 2004 (under Decision of 28 May 2004 *Relating to the Re-evaluation of the housing benefits*).

<sup>108</sup> Article 9 (II and III), Besson Law.

<sup>109</sup> The Besson Law was officially published on 6 July 2000.

<sup>110</sup> Article 1.III.

<sup>111</sup> Commission Nationale Consultative des Droits de l'Homme (CNCDH), *Avis portant sur le projet de loi relatif à l'accueil des gens du voyage* 17 juin 1999, available at: [http://www.cncdh.fr/article.php3?id\\_article=259](http://www.cncdh.fr/article.php3?id_article=259).

<sup>112</sup> Article 1, Section III, last paragraph of the 2000 Besson law.

<sup>113</sup> Article 8, 2000 Besson Law.

<sup>114</sup> See July 2001 Circular, Titre VII. The Circular however made it clear the Besson law concerned wandering Travellers and hence authorities could not claim to have discharged their obligations under the Besson law by failing to operate halting sites but providing Travellers with permanent housing.

decent living conditions. The various circulars laid down a number of guidelines, providing for example the ratio between sanitary facilities and residents, the nature of the areas to be selected, the size of each caravan place, the location of the sites and so forth. As noted in the July 2001 Circular, attention should be placed on the nature of fences to be erected around the halting sites. Such fences should not give the impression that the residents were “fenced in” and lived in a ghetto. For this purpose it was suggested that, the feasibility of planting hedgerows around the site instead of erecting fences should be examined.<sup>115</sup>

### III.2.3. The 2000 Besson law undermined by the French State

III.2.3.A. The ERRC notes that, on paper, the 2000 Besson law attempted to impose strict time limits concerning the implementation of its provisions. However, in practice, the strict conditions it imposed were successively eroded. As noted above (section III.2.2.A), the departmental plans were to have been drafted and approved by 5 January 2002, while the communities included in the departmental plans should have established at least one halting site (or have discharged their obligations by e.g. transferring competence to a collective administrative entity) by 5 January 2004.<sup>116</sup> However, in a circular dated 11 March 2003,<sup>117</sup> it was noted that only 49 out of the 96 departmental plans had been approved. Observing that conformity with the requirements of the 2000 Besson law would permit the application of the draft article 19 of the Law for Interior Security<sup>118</sup> and that a Prefect could exercise his right of substitution and approve a departmental plan without the need to secure the signature of the president of the Conseil Général, each department was given a further delay of 1 year to present the departmental plan to the Prefect and the president of the Conseil Général for co-signature. On 30 July 2004, while much of France was already on summer vacation, the Senate inserted an article towards the end of a Law on Local Freedoms and Responsibilities, granting municipalities an additional 2 years to fulfil their obligations (thus, should a department have adopted its plan on 11 March 2004 and should both delays apply, the deadline for completion of halting areas would be 11 March 2008).<sup>119</sup> Consequently, there were many discrepancies between the time each department adopted its plan: the department of Eure adopted its plan in April 2001 – and hence the deadline for its implementation would be April 2005- while the departments of Doubs and Gers adopted theirs in June 2004 (and in fact in violation of the circular of 11 March 2003 that conferred a one year extension for the adoption of the departmental plan, i.e. 11 March 2004). In their case therefore, the deadline will expire in June 2008.<sup>120</sup> Again however, it would appear that even this extension would not be enough for a number of municipalities. As a result it was once again extended. Thus, by virtue of Article 138 of Law 2007-1822 of 24 December 2007 that further modified Article 4 of the 2000 Besson Law, another 1 year extension (until 31 December 2008) was granted to the municipalities that had failed to conform to their obligation under the 2000 Besson Law. These municipalities are “penalised” for their failure by being entitled only to a 50% subsidy towards the cost of setting up and administering halting sites (as opposed to the original 70%) but at the same time they are able to use an expedited eviction procedure – something to which they were not entitled until now precisely because they had failed to conform to their obligations within the relevant delays (see below, Section III.3.H *et seq.*).

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<sup>115</sup> See Titre V of July 2001 Circular.

<sup>116</sup> Article 1.III and 2 of 2000 Besson Law.

<sup>117</sup> Minister of the Interior, Internal Security and Local Freedoms, Minister of Social Affairs, Work and Solidarity, and Minister of Equipment, Transportation, Housing, Tourism and the Sea, *Circular letter relating to departmental measures for the hosting of Travellers*, 11 March 2003.

<sup>118</sup> See below, Section III.3.D.

<sup>119</sup> Municipalities may benefit from this delay as long as they have demonstrated the willingness to meet their obligations. This willingness can be demonstrated either by: transmitting to the representative of the State a copy of the deliberation or a letter of intention including the location of the site to be developed or rehabilitated into a welcome stopping area for Travellers; acquiring the necessary land or beginning a procedure for acquiring the land on which the site is to be located; or carrying out a preliminary study. Law no. 2004-809 of 13 August 2004 Relating to Local Freedoms and Responsibilities (Loi n° 2004-809 du 13 août 2004 relative aux libertés et responsabilités locales), Article 201, J.O n° 190 of 17 August 2004. Unofficial translation by the ERRC.

<sup>120</sup> It is reminded that the extension for complying with the departmental plan following its approval is extended to 4 years instead of 2 only provided that at the end for the first 2-year extension they had demonstrated their commitment to comply with their obligations by e.g. having launched the necessary procedures in order to buy the plots of land where the halting sites will be established. It should be noted that according to latest information, another plan was signed in 2005 (departmental plan for Haute-Corse) and the final two in 2006 (Yvelines and Pyrénées-Orientales). The deadline for those will therefore expire in 2009 and 2010, respectively.

III.2.3.B. Another law, adopted on 1 August 2003, sets out the criteria that could enable 28<sup>121</sup> French cities with less than 20,000 inhabitants to totally prohibit the halting of Travellers. These are cities in which at least half of the population lives in areas qualified as "sensitive urban zones" (ZUS).<sup>122</sup> More specifically Article 15 of Law no. 2003-710 of 1 August 2003 on the "Orientation and Planning of Municipalities and Urban Renovation" (hereinafter "Borloo Law") frees these cities from their obligations under the Besson Law (it should be noted that this exemption will be effected only if the municipalities entitled to it put forward a request to that effect).<sup>123</sup> As a result, they are not under an obligation to create a halting area for caravans to reside in the municipality, regardless of whether these are municipalities where Travellers generally stay for professional, family, medical or any other reasons. In addition, this means that these municipalities will immediately be able to apply all of the penal provisions of the Security Law. Many of these cities are in fact cities in which many generations of Travellers have always resided, and where they have family, social and professional ties. The urban zones covered by this law are in essence urban ghettos, seen as particularly volatile and problematic. Excluding these cities from any responsibilities to host Travellers is thus justified as a means of keeping out a population that will exacerbate tensions in an already delicate situation. This reasoning reveals in a stark manner the perception that where there are Travellers, there are problems and tensions with residents. And even more it reveals the proposed solution – keep out and exclude Travellers. The overall tone of the Senate discussions over this law is captured by these comments by Senator Dominique Braye:

"...in small cities, confrontations between Travellers and difficult populations are much more direct (*Protests on the benches of the C.R.C.*<sup>124</sup> group), [...] in small cities we can no longer contain these excesses of violence. The population in difficult neighbourhoods suffers from it... The Travellers, it needs to be acknowledged, exercise the practice of the 'fait accompli', without any respect for the law. Our communist colleagues say that this is about difficult human problems. We would do better to make those people submit to more frequent tax controls and to teach them to respect the law. Because this situation creates tensions within our populations, who do not understand that the same law can be applied in two different ways. These people own cars, caravans equipped with dishwashers, washing machines and many other things. So, obviously we have to avoid bringing these populations into contact with each other. This is what explains that we want to exempt cities with less than 20,000 inhabitants from the scope of application of the law of 2000."<sup>125</sup>

This serious violation of the housing rights and freedom of movement of French Travellers occurs in the context of a law aimed at addressing social inequalities by renovating and improving the housing situation of those whose living conditions are particularly poor and who find themselves marginalised and excluded from French society. Travellers and Gypsies are not only invisible in urban planning, but they are also singled out for negative treatment. The ERRC notes that in addition to the above mentioned law, municipalities could be exonerated from their obligation to establish halting sites for a variety of reasons. Thus, out of the 5 municipalities of the Ile-de-France administrative region<sup>126</sup> that were held not to be obliged to establish halting sites, only three were held in application of the Borloo Law: the municipality of Vernouillet was discharged from its obligations due to the presence of a strong population of sedentary Travellers while the municipality of Herblay was exempted from complying as it was undertaking the implementation of a social and housing programme including the relocation of 80 Travellers' households.<sup>127</sup>

<sup>121</sup> This figure was provided by Minister Jean-Louis Borloo, 'Minister delegated to the City' during the Senate debate on the Law, 23 July 2003 at: <http://www.senat.fr/seances/s200307/s20030723/s20030723004.html>. According to more updated information, out of the 32 (and not 28, as Minister Borloo had noted) municipalities that fell within the law's scope, only half decided to avail themselves of its provisions. See: *Projet de Loi de Finances Initial pour 2007*, available at <http://www.logement.gouv.fr/IMG/pdf/DL63-3.pdf>, page 2.

<sup>122</sup> ZUS are defined in the law as zones characterised by the presence of significant groupings or neighbourhoods with low-quality housing and a marked imbalance between housing and employment.

<sup>123</sup> "Municipalities with a population of less than 20,000, half of which live in a sensitive urban area as defined by paragraph 3 of article 42 of law no. 95-115 of 4 February 1995 on the Direction for the Planning and Development of the Territory, are excluded at their request from the scope of application of the provisions of law no. 2000-614 of 5 July 2000 relating to the welcome and housing of Travellers and particularly the obligation set out under Article 2 of this law." Article 15, Borloo Law. Unofficial translation by the ERRC.

<sup>124</sup> Republican Communist and Citizens Group (Groupe Communiste Républicain et Citoyen).

<sup>125</sup> Session of French Senate, 23 July 2003, discussion on Article 12 *bis*. Available at: <http://www.senat.fr/seances/s200307/s20030723/s20030723004.html>.

<sup>126</sup> In many ways the "heartland" of France as it includes Paris (hence the informal name of Ile-de-France as "the Paris region"), Ile-de-France consists of 8 departments.

<sup>127</sup> See URAVIF (Union régionale des associations pour la promotion et la reconnaissance des droits des Tsiganes et Gens du voyage en Ile-de-France), *Observatoire de l'habitat des Gens du voyage en Ile-de-France*, Première édition – décembre 2005. Available at: <http://www.fnasat.asso.fr/obs%20def.pdf>, pages 7 and 8.

III.2.3.C. The 2000 Besson law would suffer another two blows in 2006 and 2007 in the form of an 3 August 2006 circular relating to the new technical specifications of halting sites<sup>128</sup> and of the 5 March 2007 Law Relating to the Prevention of Delinquency<sup>129</sup> (which laid down a summary eviction procedure for Travellers). According to the circular, the main reason why a significant delay was being witnessed in the implementation of the 2000 Besson Law was the increased cost incurred by the construction of the sites.<sup>130</sup> The fact that many halting sites had not been created was a consequence of the prefects' inability to take action against Travellers who were squatting since no halting sites were available. The ERRC notes that the reference to the "impossibility of evicting the Travellers" due to the inexistence of halting sites in a circular purporting to outline the technical specifications of halting sites is inappropriate. The impression that is given is that the drafter of the circular considered that the only reason why the construction of halting sites should be expedited was not to provide suitable accommodation to the Travellers but rather to comply with the necessary legal requirements in order to evict them. This impression is reinforced by the content of the circular: its main tenor appears to be to reduce as much as possible the construction cost of halting sites, even if that meant that the quality of life in those sites would be affected. Thus, the circular recommends to the authorities to avoid engaging consulting companies over the construction of halting sites while it stipulates that only one sanitary block, consisting of at least one shower and two WCs, per five caravan places should be available. By contrast, under the previous legal framework, this ratio was considered to be the minimum and in fact the ratio deemed more suitable was one such sanitary block per two / three caravan places. Similarly, whereas under the 5 July 2001 the longest period of sojourn could not be, as a rule, more than 9 months, under the new circular the sojourn could be as a rule no longer than 5 months.

III.2.3.D. The aforementioned impression is reinforced by the "housing" component of Article 27 of the 5 March 2007 Law for the Prevention of Delinquency. As noted above, the 2000 Besson Law laid down 2 types of organised sites for Travellers: the halting sites and the areas for large gatherings.<sup>131</sup> In Article 27 of the 5 March 2007 law, another type of localisation was added: the "temporary emplacement". It appears to be a simpler halting area created to accommodate a maximum of 30 emplacements<sup>132</sup> and with access to basic public services.<sup>133</sup> In effect, the municipalities would designate such a temporary emplacement and notify the Prefect. If the latter considered that the living conditions in the temporary emplacement met the relevant criteria, then he could approve it and authorise its operation. It is to be noted that a municipality would not be considered as having discharged its obligations under the 2000 Besson (i.e. setting up proper halting sites) merely by setting up such emplacements – hence the title "temporary". Notwithstanding the fact that, at least normatively, it is surprising that such an important addition (albeit provisional) to the 2000 Besson Law was made by means of a law against delinquency, another question that arises is the need for introducing another type of site. If nothing else, the creation of such sites will divert both resources (the lack of which has already led the Minister to lower the technical specifications of halting sites, see previous Section) and focus from the implementation of the departmental plans which is surely the first priority. The only purpose that they appear to serve is to effectively enable local authorities to proceed to the speedy forced eviction of Travellers (addressed in more detail in section III.3.N. below).

#### **III.2.4. The 2000 Besson law and Travellers**

III.2.4.A. The majority of Travellers the ERRC encountered in France during its field research view the Besson Law with an anxious eye. The comments of Mr Robert Zigler, President of the Gypsy Association Goutte d'Eau, illustrate these fears:

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<sup>128</sup> Circular No NOR/INT/D/06/00074/C "Implementation of the Prescriptions of the departmental plan concerning the halting of Travellers", dated 3 August 2006.

<sup>129</sup> Law 2007-297.

<sup>130</sup> While partly true, the drafters of the Circular failed to make even a passing reference to the primary reason behind this delay, namely the intransigence of local authorities and the lack of political will. This issue will be addressed below in section III.2.6.

<sup>131</sup> See above, section III.2.2.A.

<sup>132</sup> ERRC notes that the term has from time to time been used, somewhat confusingly, to refer to both "caravan place" (emplacement individuelle) as well and the grouping of numerous (usually two) caravan places. In the present context, it is believed that the term has the latter meaning.

<sup>133</sup> See Ministry of Interior and Regional Development, Decree no 2007-690 *Relating to the agreement provided for in Article 9 of the Law of 5 July 2000 relating to the halting and housing of Travellers*, INTD0752575D. The very terse circular consists of only four brief articles.

“The Besson Law is a law that we did not approve of. The mayor or Prefect base themselves on this law, and when we express our feelings, they do not listen. It goes in one ear and out the other... Our culture will start evaporating. Our children will become settled by force. Even with the halting areas the State gives us, travel will disappear. In 10-15 years when there will be halting areas across the country, you will have to find out in advance if there is space to halt -- otherwise you will be punished.”<sup>134</sup>

III.2.4.B. Numerous Travellers in France pointed out to the ERRC that their views were not taken seriously, if at all, during the various stages of the drafting and implementation of the departmental plans. In order to avoid undue repetition, the ERRC kindly refers members of the ECSR to Sections 4.2.2 and 4.2.3 of its country report on France, appended as Exhibit 1 to the present collective complaint. This lack of real consultation between the authorities and the end-users (namely the Travellers) – a deficiency of the program in and of itself<sup>135</sup> has also had a negative impact on the configuration of the halting site; thus in certain cases, Travellers have indicated to researchers shortcomings of the halting sites that could have been addressed at the planning stage (and possibly have led to lower overheads), if only their opinions had been solicited.<sup>136</sup>

III.2.4.C. Other researchers have also noted the fact that Travellers were displeased with the way in which the departmental plans were implemented. In one such case, a young woman told the researcher that even though the living conditions in the halting site in which she lived were adequate, she did not have the opportunity to invite her friends over or even her family. In her own words, she felt she was being told “Stay there [in the halting site] and shut up”.<sup>137</sup>

III.2.4.D. The highly pragmatic objections of Travellers are perhaps best summarised in a recent text by Alain Fourest of the NGO “Rencontres Tziganes”. In his 10 July 2007 editorial, Mr Fourest noted that although imperfect, the 2000 Besson Law has led to the establishment of halting sites where Travellers can live in dignity and that the failure of the law lay effectively in its non-implementation. Therefore, according to Mr Fourest, instead of examining whether the 2000 Besson Law should be abolished, one should focus on the issue of implementation of the law.<sup>138</sup>

### **III.2.5. The failure of the 2000 Besson to provide Travellers with sufficient and adequate halting sites and areas for grand gatherings**

III.2.5.A. Before embarking on an evaluation of the implementation of the 2000 Besson Law, a few words of caution should be noted. During its research for the present collective complaint as well as that for its country report, the ERRC noted that different officials used different criteria to assess the various parameters of housing initiatives concerning Travellers. In particular, the ERRC noted significant discrepancies in the assessment of caravan places available to Travellers. For example, NCCT would note in its 2000 – 2001 report that approximately 5,000 to 6,000 caravan places were available without however providing any information as to the quality of these places.<sup>139</sup> Indeed, the NCCT observed in its 2002 Annual Report that, as of 30 June 2002, only 2,700 caravan places met the requirements laid down by the 2000 Besson Law.<sup>140</sup> The ERRC agrees with the approach taken by, among others, the URAVIF<sup>141</sup> to the effect that only caravan places conforming to a minimum of conditions (set out in the various circulars) concerning localisation and

<sup>134</sup> ERRC interview with Mr Robert Zigler, 6 March 2004, Toulouse.

<sup>135</sup> According to section C.21 of the Council of Europe Committee of Ministers’ Recommendation Rec (2004) 14 of 1 December 2004, member states should “provide areas where Travellers can stop over and stay and set up camp for longer periods than usual in consultation with Travellers and taking their needs into account;”

<sup>136</sup> See étude commandée par le ministère de la Ville et du Logement *Evaluation du dispositif d’ accueil des gens du voyage - Rapport final*, Janvier 2008,

[http://www.lagazettedescommunes.com/actualite/pdf/evaluation\\_accueil\\_gdv\\_rapport\\_final.pdf](http://www.lagazettedescommunes.com/actualite/pdf/evaluation_accueil_gdv_rapport_final.pdf) at pages 36-37.

<sup>137</sup> See *L’ accès aux droits sociaux des populations tsiganes en France*, op.cit., page 46. Many of the problems encountered by Travellers sojourning in halting sites stem from the very strict internal regulations applicable to halting sites, an issue that is addressed in section III.2.5.E. below.

<sup>138</sup> The editorial is available at: <http://www.rencontrestsiganes.asso.fr/spip.php?article400>.

<sup>139</sup> See National Consultative Commission on Travellers, *Rapport Annuel juin 2000 – juin 2001*, op. cit., page 11.

<sup>140</sup> See National Consultative Commission on Travellers, *Rapport annuel Commission nationale consultative des gens du voyage 2002*, op.cit., pages 34 and 36.

<sup>141</sup> Union régionale des associations pour la promotion et la reconnaissance des droits des Tsiganes et Gens du voyage en Ile-de-France.



living conditions, functioning within properly managed halting sites, should be taken into account.<sup>142</sup> For example, caravan places in areas of large gatherings should not be considered as proper housing solutions and should not therefore be counted towards the number of adequate caravan places available. This task is rendered all the more difficult since official documents usually fail to provide disaggregated data<sup>143</sup> while different Departmental Directorates for Equipment (Direction Départementale de l'Équipement, DDE) responsible for furnishing the relevant data for each department might use different criteria in order to classify a caravan place as adequate. The case of the department of Val d'Oise could serve as an example: according to the data furnished by the department's DDE, the department had 218 caravan places available at the end of 2004.<sup>144</sup> Nevertheless, according to detailed study by URAVIF, out of the 218 caravan places existing at the time of adoption of the departmental plan (November 2004), only 99 conformed to the relevant standards. Eighty-one places would have to be rehabilitated while another 38 had been closed down.<sup>145</sup>

III.2.5.B. According to a 2005 report by the Conseil Général des Ponts et Chaussées, there were 5,251 caravan places available in halting sites at the end of 2003.<sup>146</sup> By the end of 2004, according to official information contained in the same report, 6,076 caravan places were available in 262 halting sites, as well as 3,323 caravan places in 30 areas for large gatherings. Considering that the total number of caravan places in halting sites to be made available amounted to 44,056 in all 96 departments, the completion rate was 13,79%.<sup>147</sup> The figures for 2005 were somewhat better: there were 7,711 caravan emplacements in 362 halting sites, 7,339 caravan places in 63 areas for large gatherings, raising the rate to 17.5%. Additionally, it is noted that 131 "terrains familiaux" had been established the previous year.<sup>148</sup> According to the latest comprehensive data available, as of the end of 2006, there were 10,553 caravan places available in 441 halting sites. Furthermore, there were 8,803 caravan places available in 63 areas for large gatherings and lastly, 131 "terrains familiaux". The target of caravan places in halting sites to be constructed now rested at 41,865 (instead of 44,056 the previous year) and thus the completion rate was a 25,21%.<sup>149</sup>

III.2.5.C. However, the above mentioned statistical information also fails to reveal the actual conditions prevailing in those halting sites / areas for large gatherings. It should be noted for example that while talking in the Senate on 30 January 2007, Mr Pierre Hérisson, the incumbent president of the NCCCT, mentioned that there were only 8,000 places available out of the required 40,000,<sup>150</sup> in other words 20% less than the

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<sup>142</sup> See URAVIF *Observatoire de l'habitat des Gens du voyage en Ile-de-France*. op. cit., pgs 3 and 11.

<sup>143</sup> By way of rare example, the Minister of Housing, answering a parliamentary question in 1998, would state that there were 9,800 caravan places available yet only half of them were properly maintained and run. See Question écrite n° 11469 de M. Georges Mouly, Réponse du ministère : Logement, publiée dans le JO Sénat du 10/12/1998 - page 3973. Available at: <http://www.senat.fr/basile/visio.do?id=qSEQ981011469>.

<sup>144</sup> Rapport du Conseil General des Ponts et Chaussées n. 2005-0032-01, *Le financement des aires d'accueil des gens du voyage*, June 2005, page 24. Conseil General des Ponts et Chaussées stands for General Council for Bridges and Roads: this Council is in fact one of the most longstanding controlling / auditing bodies of the French Republic, established in 1804.

<sup>145</sup> See URAVIF *Observatoire de l'habitat des Gens du voyage en Ile-de-France*, op. cit., page 9.

<sup>146</sup> Rapport du Conseil General des Ponts et Chaussées n. 2005-0032-01, *Le financement des aires d'accueil des gens du voyage*, June 2005, page 14. The report was commissioned by the Minister of Equipment, Transportation, Housing, Tourism and the Sea, following the adoption of an amendment by the National Assembly in the framework of the debate concerning the national budget for 2005 to the effect that the before the parliamentary debate for the budget of the next year (2006), a report should have been drafted relating to the modalities by which the state financial aid towards the establishment of halting sites was being implemented.

<sup>147</sup> Rapport du Conseil General des Ponts et Chaussées n. 2005-0032-01, *Le financement des aires d'accueil des gens du voyage*, June 2005, page 25.

<sup>148</sup> See *Table of existing Halting Sites, status as end of December 2005*. Available at the Ligue des droits de l'Homme site at: [http://www.ldh-france.org/media/groupe/GDV\\_etat\\_avancement\\_existant\\_au\\_3112\\_05.pdf](http://www.ldh-france.org/media/groupe/GDV_etat_avancement_existant_au_3112_05.pdf). The veritable "boom" - more than 100% - in the number of caravan places available (from 3,323 the previous year to 7,339) should not come as a surprise: local authorities show a marked preference to such sites since they can be located pretty far from the urban fabric where land prices are low (and presumably few neighbours to object to the placement) and they are to operate for a very short period of time (usually two weeks per year, on fixed period). See Rapport du Conseil General des Ponts et Chaussées, *Le financement des aires d'accueil des gens du voyage*, op. cit, pages 13 and 16.

<sup>149</sup> See *Table of existing Halting Sites, status as of end of December 2006*. Available at:

[http://sienat31.free.fr/IMG/pdf/aaL\\_existant\\_311206\\_vdef.pdf](http://sienat31.free.fr/IMG/pdf/aaL_existant_311206_vdef.pdf)

<sup>150</sup> Minutes of the Session of the Senate of 30 January 2007. Available at:

number mentioned above for the end of 2006. Indeed, according to research and monitoring conducted by the ERRC, numerous official halting sites present serious deviations from the standards set out in the 2000 Besson Law. By way of example, many halting sites are located in areas unfit for human habitation. They are also located away from the urban fabric while the facilities are in many cases in desperate need of repair. In order to avoid undue repetition, the ECSR is kindly referred to Section 6 through 6.2 (pages 131-149) of the ERRC country report appended at Exhibit 1 to the present collective complaint. To give an impression of the increased number of places that might not be adequate for human habitation, it is noted that by the end of 2004, there was a total of 6,076 caravan places available. However, in July 2004, Ms Sylvette Saint-Julien, Rapporteur of both NCCTV annual reports, informed the ERRC that only 3,500 caravan places could be considered as appropriate for halting.<sup>151</sup>

III.2.5.D. The inadequacy of numerous halting sites has also been attested to by a number of other semi-official or official documents. According to the report commissioned by the General Directorate for Social Action, most of the official halting sites are not fit for human residence, either because they are located away from the urban fabric or because they are located in areas prone to flooding or industrial areas. Additionally, numerous halting sites are highly deficient in terms of facilities: the report mentions sites where there is only one shower with no hot water as well as sites where there is one WC (without a key) for 100 to 120 persons. According to the report, it is not rare to encounter rats on the sites or there is increased concentration of lead, or they are located in an area prone to flooding or close to high power grid lines. Indeed, according to the researcher, Travellers (who also have to pay in order to sojourn in the sites) are resentful for many reasons, the most important of which relate to the lack of basic amenities, such as hot water or garbage disposal and removal.<sup>152</sup> The most scathing account concerning the inadequacy of numerous halting sites is perhaps to be found in the 2004 report of Conseil Général des Ponts et Chaussées “Relating to the Welcome of Travellers”.<sup>153</sup> According to the report which was based on questionnaires dispatched to 10 departments and other information, the various requirements laid down in the July 2001 circular concerning the technical specification of halting sites (see above, section III.2.2.C.) were rarely met. In fact, in some cases, they were almost blatantly breached (e.g. in the case of halting sites close to noise-producing facilities). Technical authorities (more specifically the DDEs, Directions Départementales de l’Équipement) often feel that they cannot continuously reject locations suggested by the municipalities and appear to lower the standards on purpose. In some case, halting sites have been established in areas well known to be prone to flooding.<sup>154</sup> The ERRC believes that the problem is more pronounced in cases of halting sites which were constructed before the 2000 Besson Law and have been subjected to a rehabilitation programme. Considering that numerous requirements were not applicable to them when they were established (e.g. the requirement not to establish sites next to industrial zones) and that approximately 5,000 such places were to be rehabilitated, it is expected that a significant number of those places (and by consequence, a considerable number of the total places) is located in areas of questionable conformity with environmental and residence criteria. A site emblematic of the situation is that of the halting site of St. Menet in Marseilles. This halting site of approximately 50 caravan places first opened its doors in 1977. Situated between a highway and the railway tracks, it is also located in an industrial area. For many years the site was in a bad state and in need of repair. Major renovations finally took place in the years 2005-2006. It appears that state authorities were informed of the location of the site and of its unsuitability; they nevertheless included it in the relevant departmental plan which was approved and led to the financing of the renovation work.<sup>155</sup>

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[http://cubitus.senat.fr/cra/s20070130/s20070130H\\_mono.html](http://cubitus.senat.fr/cra/s20070130/s20070130H_mono.html)

<sup>151</sup> ERRC interview with Ms Sylvette Saint-Julien, 20 July 2004, Paris.

<sup>152</sup> See *L'accès aux droits sociaux des populations tsiganes en France*, op.cit., pages 44 – 45.

<sup>153</sup> Rapport du Conseil Général des Ponts et Chaussées n. 2005-0282-01, *L'accueil des Gens du Voyage, Rapport de mission sur la mise en œuvre de la loi no 2000-614 du 5 Juillet 2000 relative à l'accueil et à l'habitat des gens du voyage*, June 2004. The report was commissioned by the Secretary General for Urbanism, Housing and Construction, an agency seconded to the Ministry of Equipment, Transportation, Housing, Tourism and of the Sea. It is interesting to note that in the letter assigning to the General Council the task of preparing the report, the Secretary General noted that in certain cases, the choice of locations for the sites was problematic.

<sup>154</sup> Ibid, page 10.

<sup>155</sup> The history of the St Menet site is recounted in the letter addressed by Senator for Bouches de Rhones, Mr. Robert Pret, to Senator Jean-Claude Gaudin and the latter's reply. The correspondence is available at: [http://www.robertbret.org/article.php3?id\\_article=2348](http://www.robertbret.org/article.php3?id_article=2348). See also a pertinent article that appeared on Rencontres Tziganes. Available at: [http://www.rencontresziganes.asso.fr/spip.php?article33&artsuite=0#sommaire\\_1](http://www.rencontresziganes.asso.fr/spip.php?article33&artsuite=0#sommaire_1).



III.2.5.E. Another issue that has been often raised by Travellers is that of the way in which the halting sites operate. According to the 5 July 2001 Circular, halting sites should operate in accordance with an internal regulation that would, *inter alia*, mention the time when the manager of the halting site would be at the premises to register the arrival or departure of Travellers, the period of time when the site would be closed for maintenance, the applicable fees as well as the general rules to be observed. Usually in the form of an undertaking by the community to manage the halting site on its own or of conventions between communities and private associations (or even other public entities), internal regulations of halting sites are supposed to be very simple and straightforward documents. However, the ERRC is very concerned by the fact that in certain cases, these internal regulations are more reminiscent of internal regulations of penitentiaries rather than residential areas. It should be noted that under the provisions of the 5 July 2001 Circular, the person managing the halting site or his agents should have a daily and adequate presence in the site in order to take care of the arrivals / departures of Travellers, observe that the internal regulations are complied with and so forth. It could well be said that the manager of the halting site would in fact fulfil the same function as the manager of a camping site. One would therefore expect that arrivals and departures from the halting sites would be possible on a daily basis (admittedly within prearranged hours in order that payments and other administrative tasks should be taken care of) and that residents of the halting site would be available as a rule to invite friends and family members to their place. This, however, appears not to happen in many cases. Many communities manage their halting sites themselves and usually refer Travellers to the Town Hall to check in and out. Naturally enough, Town Halls are closed on weekends or on bank holidays and Travellers are effectively precluded from either leaving or arriving at a halting site during these days. It should be noted that in certain cases, this not only means that Travellers cannot for example pay their bills when they leave (something that will automatically lead to their entry in the list of defaulters who might be precluded from entering another site in the future), it might also mean that the Travellers cannot even **physically** leave the halting site with their vehicles. As a young Traveller stated to the ERRC, in a number of sites in the region where he lives, Travellers are requested to check in and out at the local Town Hall. They are not given a key to the site but have to first register with the Town Hall or make their payments, as the case might be, and then officials from the municipal police will let them in or out. Thus, they cannot move their cars from the sites during the closing hours of the Town Hall from late Friday evening to early Monday morning.<sup>156</sup> In another case, in January 2007, a Traveller's caravan was burned down inside a halting site on a Wednesday evening. The fire brigade truck could not enter into the site because the barrier on the entrance was lowered as the manager of the site was not on the premises.<sup>157</sup> Other communities appear to employ more benign measures to ensure that Travellers do not depart until they have settled their debts. Thus, according to the internal regulations of the "Bourg-en-Pressé-Pennessuy" and "Peronnas-Monernoze" sites (these two sites provide a total of 64 caravan places), Travellers are required to leave the insurance cards of their vehicles with the manager of the site until their departure.<sup>158</sup> According to information gathered during the research conducted by the ERRC, managers of numerous sites ask, in practice, Travellers to hand over their circulation documents and / or I.D. cards which are returned to them when they leave and upon the payment of their dues often on a cash only basis. It should be noted that upon arrival, most halting sites require Travellers to deposit a cash-only caution (usually around 70 EUR) which is forfeited should they depart without taking care of their payments. While even the legitimacy of the deposit can be questioned, the ERRC believes that the imposition of additional measures, ranging from the withholding of personal documents to the imposition of curfew on Travellers is unacceptable and the manifestation of a racist stereotype that portrays the Travellers as habitual defaulters.

III.2.5.F. It is true that internal regulations do vary. Turning to particular internal regulations, arrivals and departures to the site of "La Boisse"<sup>159</sup> in the city of Chambéry are allowed between 9am to 12pm and 2pm to 5 pm from Monday to Saturday only. Outside of these hours, families can contact the manager to report emergencies and, "in exceptional cases", as mentioned in the regulation, to allow for the departure of a family. Furthermore, in order for a Traveller to be admitted to the site, he should not have been sentenced to an eviction by a court (it is not specified if that particular site is meant, or whether there is a monitoring

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<sup>156</sup> The testimony is included in the ERRC country report, Exhibit 1, at page 142.

<sup>157</sup> The incident took place in the Marseille Saint Menet site and is recounted at <http://www.abri.org/antidelation/Une-caravane-part-en-fumee-a>

<sup>158</sup> Both regulations are available at <http://www.agglo-bourgenbresse.fr/cadre.php?pages=articles&espace=COMPETENCES& dossier=4& id=34>

<sup>159</sup> According to the Internal Regulation, the site consisted of 50 emplacements, each able to accommodate more than one caravan. In other words, the site had a capacity of at least 100 caravans. This, however, is contrary to the rule laid down in the July 5, 2001 Circular that notes that as a rule, halting sites should have a capacity of between 25 to 40 caravans.

system whereby managers of sites circulate among themselves information on Travellers that have been evicted). He / she should also provide his / her circulation document and his / her I.D. card as well evidence that his / her caravan and car are insured. The maximum duration of the stay was set to 84 days per year regardless of whether the stay was continuous or in shorter periods of time. The regulation makes no reference to potential derogation from this rule (e.g. extension of stay due to family reasons) but on the contrary makes it clear that Travellers violating this rule will be evicted and barred from the site.<sup>160</sup> The regulation also has an article outlining the consequences should a resident of the site be found carrying a weapon.<sup>161</sup> According to the article, in such a case, a criminal complaint would be lodged against the person in question but at the same time he and his family would be immediately evicted.<sup>162</sup> The ERRC cannot ascertain any valid reason as to why the arrest and even the conviction of a Traveller for a firearms related offence should justify the automatic eviction of his family from the site.

III.2.5.G. The ease with which numerous internal regulations proscribe the sanction of eviction for a variety of offences, be they minor or major is unfortunately a recurring one. It is noted for example that the model Internal Regulation found at the site of the Prefecture of Haute Savoie states that non-conforming with the obligations of the present regulation will lead to an eviction.<sup>163</sup> The internal regulations of the “Bourg-en – Presse-Pennesuy” and “Peronnas-Monerno” sites provide that Travellers residing in the sites should shown mutual respect and behave well towards other residents. Any inappropriate act (“Toute incorrection”) could lead to the eviction of the family. Another article provides that any lack of respect to the personnel of the site would lead to the *immediate* eviction (“expulsion immédiate”) from the site.<sup>164</sup> Such provisions give rise to a number of issues such as what would amount to “improper behaviour” or “lack of respect” and who would define an act as such. Furthermore, the ERRC finds the imposition of a collective sanction (eviction) on the family for a reprehensible act of one of its members disproportionate, if not discriminatory. Regulations, such as the one mentioned above, come into sharp contrast with other regulations such as the one applicable to halting sites of the Community of Agglomeration of Limoges-Métropole. Travellers need to present their validated circulation documents, I.D. cards and insurance papers to be photocopied before they are admitted into the site. Departures and arrivals are allowed within normal hours on a daily basis. If the manager of the site is absent, he can be contacted over the phone – the regulation does not qualify this by adding that he can be contacted only in “exceptional circumstances”. The maximum period of sojourn is set to four consecutive months – in exceptional cases, an extension of up to another month can be granted. After this period of time, a person will not be able to take up residence in the site for a period of another four months. Travellers who take up residence for a period of less than fifteen days can move into the site without any delay. The regulation also mentions that residents can accept visitors in their residence. Lastly, according to the regulation, it is only in cases of serious acts of misconduct that the manager of the site will examine what measures to take and ask the person to leave after having solicited his / her views.<sup>165</sup>

III.2.5.H. The numerous checks and controls imposed on Travellers when living on a site serve to heighten their feeling that the sites are in effect a sort of “prison”, where their movements are monitored. In the case of Travellers living at the St Menet site in Marseilles where the manager’s office is in a raised tower-like

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<sup>160</sup> A recent judicial decision casts serious doubts as to the legitimacy of such a clause. According to Decision no 2395 by the Appeals Court of Nancy, First Civil Chamber and dated 17 October 2006, the right to stay in a halting site is in fact an aspect of the right to housing that has constitutional value. Overstaying (i.e. staying more than the duration laid down in the regulation) is not, in and of itself, a ground for ordering the eviction from a resident of the site. Other reasons (e.g. the fact that the resident’s overstaying precludes other Travellers from taking up his place) should also be brought forward.

<sup>161</sup> There is no reference if this article would be applicable in the rather unlikely case of a Traveller having a permit to carry a firearm.

<sup>162</sup> The regulation is available at : [http://www.chambery-metropole.fr/uploads/Document/WEB\\_CHEMIN\\_4250\\_1180602713.pdf](http://www.chambery-metropole.fr/uploads/Document/WEB_CHEMIN_4250_1180602713.pdf). The regulation was adopted, in the form of a decision, on 26 February 2007. It is signed by the Mayor of Chambery (and president of the Chambery agglomeration community) who incidentally is Mr. Louis Besson, the person after whom the two laws relating to the housing of the Travellers have been named.

<sup>163</sup> See Article 13 of the model regulation, available at: <http://www.haute-savoie.pref.gouv.fr/publications/schemas-departementaux/sdagdv/48-49.pdf>.

<sup>164</sup> Articles 13 and 17 of the regulations. Available at: [http://www.agglo-bourgenbresse.fr/cadre.php?pages=articles&espace=COMPETENCES&\\_dossier=4&\\_id=34](http://www.agglo-bourgenbresse.fr/cadre.php?pages=articles&espace=COMPETENCES&_dossier=4&_id=34).

<sup>165</sup> The regulation that is applicable to five sites with a total capacity of 124 caravan places. Available at: <http://www.agglo-limoges.fr/metropole/siteinternet.nsf/ALL/241012105F7C69B9C125710E00385369?OpenDocument>.

structure made of concrete and overlooking the site with cameras on the roof, the above feeling does not constitute a mere metaphor but a statement of fact.<sup>166</sup> Similarly, almost all the official halting sites visited by the ERRC in southern France in December 2006 were surrounded by large fences,<sup>167</sup> while a municipality took the decision of having CCTV cameras installed in its halting sites.<sup>168</sup> Indeed, a researcher noted that many police officers with whom he talked during his field research informed him that local police stations would keep records of the car license plates of every Traveller that arrived in sites located within their area of responsibility and would exchange such information with neighbouring police stations.<sup>169</sup> This should come as no surprise: in a report concerning the work time and the information procedures of the interior security forces, it was noted that one of the departmental Public Security directorates visited had, *inter alia*, kept tables of the evictions of “nomades” [sic] and of the encampments of Travellers.<sup>170</sup> Other police / gendarmerie units appear to have extensive statistics relating to the frequentation by caravans per year of certain areas, the average number of caravans likely to be encountered at any given time, duration of sojourn, etc.<sup>171</sup>

III.2.5.I. Another issue that should be taken into account when assessing the compliance of certain local authorities with their obligations under the 2000 Besson Law is their policies on other issues relating to Travellers that might have an impact on their housing situation. Numerous camping sites around France are run by the local municipalities and it would have been thought that such sites could be used to accommodate Travellers, especially for example during winter months when there are fewer tourists. It should be reminded to this effect that this common sense solution was included in the 1990 Besson Law. The 1992 circular on the law’s application explicitly mentioned that camping sites should accommodate Travellers under the sole precondition that the latter pay the applicable rates and conformed to the camping sites’ internal regulations.<sup>172</sup> However, certain local authorities that own camping sites have explicitly introduced or allowed the entities to which they have delegated the right to manage the site to introduce a special (i.e. increased) rate for the double-axle caravans that are usually favoured by Travellers, in order to dissuade them from staying there. Thus the municipality of Besançon would note in its 2000 activity report that despite instituting in 1999 “a dissuasive special rate for double axle caravans” in its camping policy, Travellers continued staying at the camping site giving rise to problems.<sup>173</sup> In its 2002 report however the municipality noted that Travellers were not joining the camping any more “thanks to the dissuasive rate for double axle caravans introduced in 1999”. It was also noted that numerous campers had started regularly sojourning at the site, something “at least partially related to the absence of Travellers from the premises [of the camping]”.<sup>174</sup> The ERRC cannot fail to notice that the body entrusted in 1996 with managing the

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<sup>166</sup> See ERRC Country Report, Exhibit 1, page 141. It is also noted that in some cases the sites are run by the municipal police. *Ibid*, page 140.

<sup>167</sup> See ERRC/Numena, *Social Inclusion Through Social Services: The case of Roma and Travellers*. Assessing the Impact of National Action Plans for Social Inclusion in Czech Republic, France and Portugal. Exhibit 2, page 46.

<sup>168</sup> Minutes of Senate Session of 12 December 2005. Available at: <http://www.senat.fr/seances/s200512/s20051212/s20051212002.html>. This revelation was made by a Senator during the discussion on the 2006 Law on Finances, only to draw a response from the Rapporteur of the Law to the effect that this should be considered as an issue since such cameras were installed in other localities such as e.g. railway stations.

<sup>169</sup> See *L'accès aux droits sociaux des populations tsiganes en France*, op.cit., page 47.

<sup>170</sup> See *L'organisation du temps de travail et des procédures d'information des forces de sécurité intérieure*, Rapport d'information n° 25 (2003-2004) de M. Aymeri de Monstesquiou, fait au nom de la commission des finances, déposé le 15 octobre 2003, available at [http://www.senat.fr/rap/r03-0025/r03-0025\\_mono.html](http://www.senat.fr/rap/r03-0025/r03-0025_mono.html)

<sup>171</sup> See statistics maintained by the police and gendarmerie of the Prefecture of Val d'Oise. Available at: <http://www.val-doise.pref.gouv.fr/content/heading2868927/content2926166/categoryId2926444.html>.

<sup>172</sup> Section 1.2.1.3 of the Ministry of Interior Circular of 16 March 1992 “Relating to the Departmental Plan (accommodation of travellers), mentioned above in section III.2.1.D.

<sup>173</sup> “malgré un tarif spécial «caravane double essieu» dissuasif (instauré en 1999)...” See Bulletin Officielle de la Commune de Besançon, Exercice 2000, *Rapport d'activité des services délégués - Délégation de gestion du Camping Municipal de Besançon-Chalezeule*, available at [http://www.besancon.fr/gallery\\_files/site\\_1/346/348/364/8812/8813/A0106010.PDF?PHPSESSID=2c7edeb5d5c3fba66e25dd130d0643de](http://www.besancon.fr/gallery_files/site_1/346/348/364/8812/8813/A0106010.PDF?PHPSESSID=2c7edeb5d5c3fba66e25dd130d0643de) page 1.

<sup>174</sup> “La fréquentation des gens du voyage a été inexistante, cela grâce au tarif dissuasif «caravane double essieu» instauré dès 1999. L’année 2002 a fait apparaître le résultat du travail de fond entrepris en 1999 avec le passage régulier de clients qui s’arrêtent maintenant chaque année à l’allée et au retour sur le camping, mais également la création d’un noyau de campeurs qui viennent chaque année. Ce phénomène est en partie liée à l’absence de

camping site for a period of eight years was none other than the French Federation of Camping and Caravaning (Federation Française de camping et Caravaning). Furthermore, as ERRC research has revealed, certain camping sites have a policy of not admitting double axle caravans on their premises. Although this can be considered as a generally applicable and hence non-discriminatory rule, camping site managers allow, in practice, campers with double axle caravans that are not Travellers into the camping sites.<sup>175</sup> The ERRC has also noticed that, in at least one case, the manager of the camping requested a Traveller family with a double axle caravan to pay the special rate (which was in fact double the ordinary rate), a rate that as the Traveller family found out, was not levied from other non-Traveller campers with double axle caravans. The Traveller family obtained copies of their own and other campers' receipts and brought proceedings against the director of the camping site<sup>176</sup>

III.2.5.J. One of the outcomes of the unsatisfactory situation described above is that Travellers often refuse to stay at a halting site and prefer to run the risk of facing severe penalties (see below, section III.3). The President of the NCCT noted in August 2006 that numerous halting sites presented a vacancy rate of more than 50% and that some of the sites would be actually closing down.<sup>177</sup> This point was also made by an MP on 20 February 2007.<sup>178</sup>

### III.2.6. The 2000 Besson Law: an assessment

III.2.6.A. On 31 May, 2006, then Minister of the Interior Nicolas Sarkozy stated in the National Assembly that the 2000 Besson Law was a failure.<sup>179</sup> According to Mr Sarkozy, this was because the technical standards for the sites set by the 2000 Besson Law were too high, resulting in a cost of approximately 23,000 EUR per caravan place. The solution to the wider problem of the Travellers, according to Mr Sarkozy, was to reduce the construction cost for the sites and allow for the speedier eviction of Travellers.<sup>180</sup> Seven years earlier, in a Report on behalf of the Committee on the Constitutionality of Laws to the National Assembly concerning the draft bill of what was to become the 2000 Besson Law, Deputy Raymond Le Textier noted that "Nine years after the coming into force of Article 28 of Law 90-449 of 31 May 1990 concerning the realisation of the right to housing, it has to be conceded that its provisions, the implementation of which rested on the good will of local actors, has not managed to solve the issue of the welcome of Travellers".<sup>181</sup> The ERRC respectfully considers that the mere fact that two high ranking political officials admitted twice within

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fréquentation des gens du voyage." See Bulletin Officielle de la Commune de Besançon, Exercice 2002, *Rapport d'activité des services délégués – Délégation*, available at [http://www.besancon.fr/gallery\\_files/site\\_1/346/348/364/8812/8813/A0310005.pdf?PHPSESSID=b12425bd4423abccc19fd8609dd4155e](http://www.besancon.fr/gallery_files/site_1/346/348/364/8812/8813/A0310005.pdf?PHPSESSID=b12425bd4423abccc19fd8609dd4155e), page 1

*de gestion du Camping Municipal de Besançon-Chalezeule*, available at

<sup>175</sup> See ERRC country report on France, Exhibit 1, page 114.

<sup>176</sup> The incident is recounted in a post by a Traveller on the site of the French Socialist Party, Section of Cormeilles en Parisis, at: <http://cormeillesenparisis.parti-socialiste.fr/2006/11/04/petition-concernant-laccueil-des-gens-du-voyage/>.

<sup>177</sup> Article in *Le Monde*, 16 August 2006. Available at:

[http://www.rencontresgitanes.asso.fr/spip.php?article259&artsuite=0#sommaire\\_1](http://www.rencontresgitanes.asso.fr/spip.php?article259&artsuite=0#sommaire_1).

<sup>178</sup> See statements by MP Gilbert Meyer, National Assembly, First session of 20 February 2007. Available at: <http://www.assemblee-nationale.fr/12/cra/2006-2007/143.asp>.

<sup>179</sup> ERRC unofficial translation. The original is as follows: "Enfin, la loi Besson est un échec [...]": National Assembly, 31 May 2006. Available at:

<http://www.assemblee-nationale.fr/12/cra/2005-2006/231.asp>.

<sup>180</sup> Indeed, this was the tenor of two developments that took place in 2006 and 2007, relating to the lowering of the standards for sites and the enactment of a new law for the speedier eviction of Travellers. See above, section III.2.3.D *et. seq.*

<sup>181</sup> ERRC unofficial translation. The original has as follows: "Neuf ans après l'entrée en vigueur de l'article 28 de la loi n° 90-449 du 31 mai 1990 visant à la mise en œuvre du droit au logement, force est de constater que ses dispositions fondées sur la bonne volonté des acteurs locaux n'a pas permis de résoudre la question de l'accueil des gens du voyage." See No 1620, *Rapport fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de l'Administration Générale de la République sur le projet de loi (no 1598) relative à l'accueil des gens du voyage*, par Mme Raymond Le Texier, Enregistré à la Présidence de l'Assemblée nationale le 26 mai 1999. Available at: <http://www.assemblee-nationale.fr/11/rapports/r1620.asp>.

sixteen years<sup>182</sup> that the French state failed to address the housing problems of the Travellers prompts the need for an extensive and in-depth analysis of the reasons that lead to this failure.

III.2.6.B. In his May 2006 speech, Mr Sarkozy effectively blamed the increased cost of construction of sites as the reason for the failure to reach the objectives of the 2000 Besson Law. Although admittedly the funds involved were significant and the undertaking in terms of resources and time on behalf of the agencies involved was a demanding one, the ERRC believes that it was within the capabilities of the prospering French economy. Indeed, this was the main tenor of the Report of the Committee on the Constitutionality of Laws on the draft bill of the 2000 Besson Law: according to the report, although the financing by the state was inadequate and would have to be doubled, it also noted that the lack of coercive measures against the municipalities who failed to meet their obligations under Article 28 of the 1990 Besson Law was also a factor to be taken into account. This is why the Committee suggested (and had to defend its position twice in the face of fierce opposition by the Senate) that a provision calling for the substitution of the communities by the Prefect, in case the former failed to discharge their obligations, be included. The Commission's proposal was eventually taken up and was embodied into Articles 1.III and 3 of the Besson Law.<sup>183</sup> It should be noted that the Commission also took into account that the municipalities who complied with their obligations under the 2000 Besson Law had to be "rewarded" for doing so. Thus, under Article 9 of the 2000 Besson Law, should a municipality have fulfilled its obligations, then it could adopt a decision prohibiting the stationing of caravans in any plot of communal land and have recourse to the local court to demand their eviction by means of an injunction.<sup>184</sup> The decision of the court would be provisionally executable, enabling for the speedier eviction of Travellers.

III.2.6.B.a. However, as it was mentioned previously, successive governments severely undermined if not neutered these provisions with a series of circulars and laws, not only by failing to apply them but by successively extending the deadlines.<sup>185</sup> The ERRC believes that the unwillingness of the French state to enforce the 2000 Besson Law and adhere to its principles had a freezing effect on prefects who, being closer to the local communities and more aware of the local political balances, were equally more susceptible to pressure from local political and social actors. According to the report by the Conseil Général des Ponts et Chaussées, despite the fact that certain Prefects used their substitution power as a leverage to force communities to discharge their obligations, both political and technical factors usually mitigated against this.<sup>186</sup> This was because such an action on the part of the prefect would risk alienating the local population.<sup>187</sup> To their credit however and despite the reluctance on the part of the French state to adhere to the 2000 Besson Law, many prefects did use their power of substitution in approving departmental plans: out of the 96 departmental plans, only 73 had been co-signed by the prefect and the president of the Conseil Général. The remaining 23 bore the signature of the prefect only.<sup>188</sup> At the same time, some of the departmental plans, co-signed by both the president of the Conseil Général and the prefect, appear to have been the fruit of a compromise. The initial studies for the departments of Seine-Saint-Denis and Val-de-Marne called for the establishment of 800 and 600 caravan places, yet the Conseil Généraux of the two departments refused to sign the departmental plans unless the numbers were reduced to 600 and 450, respectively. In the end, the departmental plan of the former department set the objective to 606 caravan places and the latter to 400.<sup>189</sup> In fact, it would appear that the progress, however modest, in the implementation of the 2000 Besson Law should in a rather perverse way be attributed to the 2003 Law on Internal Security. By augmenting the legal arsenal in evicting Travellers of only those local authorities who

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<sup>182</sup> And in effect, more than sixteen years if one takes into account that the French state started addressing the issue of the housing of Travellers in 1968.

<sup>183</sup> It is reminded that the principle of substitution of the local authorities is provided for in two instance in the framework of the 2000 Besson Law: the first in the case that the president of the General Council failed to sign the departmental plan within the original period of 18 months (Article 1.III) and the second when the local authorities failed to implement the approved departmental plan (Article 3).

<sup>184</sup> The municipality could do the same, subject to certain conditions, if the caravan were stationed on private owned property.

<sup>185</sup> See above, Sections II.3.A to II.3.D.

<sup>186</sup> Rapport du Conseil General des Ponts et Chaussées n. 2005-0282-01, *L'accueil des Gens du Voyage, Rapport de mission sur la mise en œuvre de la loi no 2000-614 du 5 Juillet 2000 relative à l'accueil et à l'habitat des gens du voyage*, June 2004, page 10.

<sup>187</sup> Ibid, page 13.

<sup>188</sup> See *Projet de Loi de Finances Initial pour 2007*. Available at:

<http://www.logement.gouv.fr/IMG/pdf/DL63-3.pdf>, page 2.

<sup>189</sup> See URUVIF *Observatoire de l'habitat des Gens du voyage en Ile-de-France*, op. cit., page 9.



complied with the 2000 Besson Law, many authorities decided to finally meet their obligations.<sup>190</sup> Recently, the French government went further and extended this “privilege” to those communities who persistently refused to comply with their obligations, effectively sounding the death knell of the 2000 Besson Law, at least as the former was initially envisaged.<sup>191</sup>

III.2.6.C. Returning to the issue of increased expenditure as a prohibiting factor for the implementation of the 2000 Besson Law, the ERRC respectfully submits that there is evidence that it was definitely not a prohibitive one. Thus, it is noted that a total of 8,028 caravan places (the number included both new constructions and rehabilitation of old caravan places) had been financed by the end of 2004<sup>192</sup> yet only 6,076 caravan places were available.<sup>193</sup> By the end of 2005, the total amount of caravan places financed until then had risen to 11,839<sup>194</sup> yet only 7,711 caravan places were available.<sup>195</sup> This seemed to indicate that the delays in establishing the requisite number of caravan places in halting sites were not mainly due to the lack of funding since it appears that the French state, at least in 2004 and 2005, funded 50% of additional caravan places. Furthermore, the ERRC notes that funding allocated for halting sites was increased by 33% in 2007 (40 million EUR as opposed to 30 million in 2006), a rather strong proof that the availability of funds is not – at least to the extent presented – an issue.<sup>196</sup>

III.2.6.D. The ERRC respectfully contends that the strongest testimony corroborating its own assessment that the main reason for the failure of the housing program laid down in the 2000 Besson Law was the lack of the central administration to implement it is to be found in a very authoritative and official report. According to the report by the Conseil Général des Ponts et Chaussées, funding was a major factor to be taken into account when reviewing the reasons behind the delays in the establishment of halting sites. In the majority of departmental plans and due to a number of reasons (most notably increased land values), the financial contribution in real terms of the state towards the establishment of halting sites was in average within the 35 – 50% range, as opposed to the prescribed 70%.<sup>197</sup> According to the report, this was because many authorities opted for more comprehensive infrastructure in their halting sites, qualitatively and quantitatively superior to the norms prescribed by the 2000 Besson Law, in order to afford Travellers’ families with a higher living standard and to ensure the durability of the infrastructure.<sup>198</sup> The second reason was that, in many cases, land values increased significantly under real estate market pressure.<sup>199</sup> The report nevertheless makes it clear that the financial parameter, while undoubtedly significant, does not appear to have been the main reason behind the inadequate implementation of the 2000 Besson Law: as mentioned in the cover page of the report, addressed to the Minister of Transportation, Amenities, Tourism and Sea, “Although the financial aspects do not appear as the main factor explaining the reticence of local authorities to establish halting sites, it is proposed to reaffirm the strong mobilisation of the state on this subject by bringing its real degree of contribution to a level closer to that laid down by law.”<sup>200</sup> A glance at the appended table to the

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<sup>190</sup> Ibid, page 6. See also *L'accès aux droits sociaux des populations tsiganes en France*, op.cit., page 41. See also *Projet de Loi de Finances Initiale pour 2007*, op. cit, page 2

<sup>191</sup> See below, Section III.3.I. *et. seq.*

<sup>192</sup> See *Projet de Loi de Finances Initiale pour 2006*, available at <http://www.logement.gouv.fr/IMG/pdf/DL63-3.pdf> at page 3.

<sup>193</sup> See above, section III.2.5.B to C.

<sup>194</sup> See *Projet de Loi de Finances Initiale pour 2007*, op. cit., page 3.

<sup>195</sup> See above, section III.2.5.B to C.

<sup>196</sup> *Projet de Loi de Finances Initiale pour 2007*, op. cit., page 3

<sup>197</sup> Rapport du Conseil General des Ponts et Chaussées n. 2005-0032-01, *Le financement des aires d'accueil des gens du voyage*, June 2005, page 12.

<sup>198</sup> According to a latest report, another reason that could have led to the incurring of substantial overheads in the cost of setting up halting sites was that in many cases these sites were established in environmentally sub-standard areas and consequently necessitated extensive (and expensive) landscaping work. In other cases, the new sites are located in remote locations and hence extending the relevant public utilities networks has been equally extensive. By way of example, 22% of the total investment in relation to the site at Rillieux-la-Pape (Rhône department) was spent on the extension of the water mains network and other work necessary due to the distance of the site from the town. See étude commandée par le ministère de la Ville et du Logement *Evaluation du dispositif d'accueil des gens du voyage - Rapport final*, Janvier 2008, [http://www.lagazettedescommunes.com/actualite/pdf/evaluation\\_accueil\\_gdv\\_rapport\\_final.pdf](http://www.lagazettedescommunes.com/actualite/pdf/evaluation_accueil_gdv_rapport_final.pdf) at page 32.

<sup>199</sup> Ibid, page 14.

<sup>200</sup> ERRC unofficial translation. The original is as follows: “Bien que les aspects financiers n'apparaissent pas comme le principal facteur de réticence locale à la réalisation des aires de nomades, il est proposé de réaffirmer

report allows one to see why: in the case of at least 31 departmental plans out of the total 96, the main obstacles in the implementation of the plans related exclusively or partially to the “reactions of neighbours” (reaction des riverains), the “hostility of neighbours” (hostilité des riverains), the “wait-and-see attitude of certain elected officials” (attentisme de certains élus), “strong reticence on the part of local elected officials” (fortes réticences des élus), and the “absence of real political will” (absence de réelle volonté politique).<sup>201</sup> The ERRC would like to highlight in this respect that according to a February 2008 poll, 59% of the 400 mayors questioned stated that they were not favourable towards the establishment of Travellers in their municipalities (while another 7% was neither in favour nor against); 47% of the 1,000 individuals questioned shared this opinion (while another 9% was neither in favour nor against). Interestingly enough, only a 19% of the mayors and the individuals were against the purchase by their municipality of land in order to establish social housing.<sup>202</sup>

III.2.6.E. In addition, the report implicitly admitted that the various legislative measures taken by the central administration, and which extended the deadlines for the departments to meet their obligations under the 2000 Besson law, had an overall pernicious effect on the implementation of the law. According to the report, “the extension by two years of the deadline for establishing the halting sites has had the perverse effect of demobilisation of municipalities that already were reticent, e.g. in Ardeche or in Isere, while other Departmental Infrastructure Departments (DDE) such as those of Indre et Loire, Manche and Marne demand a “softer” application of the conditions concerning the modalities of reporting or the deadlines”.<sup>203</sup> ERRC respectfully notes that in the 2004 report of the Conseil Général des Ponts et Chaussées, one of the main recommendations was to “Display, at the highest political level, the will to continue down the road laid down by the law of July 5, 2000 (the 2000 Besson Law)”.<sup>204</sup> The ERRC shares the views of the expert body of the Conseil Général des Ponts et Chaussées and respectfully refer the ECSR to Section III.2.3 of its present complaint, where the numerous legislative texts undermining the very foundations of the 2000 Besson Law, are recounted.

III.2.6.F. The ERRC notes that according to the latest available information, no substantial positive developments have taken place. Thus, in her report following her September 2007 visit to France, the Independent Expert on Minority Issues noted that as national officials informed her, only 8,000 caravan places were available (whereas an estimated 40,000 such places were required) while in many cases, the halting sites did not meet the required minimum standards of infrastructure and environmental adequacy. In her recommendations, she recommended that the “severe penalties currently foreseen in law should be imposed on municipalities that violate laws adopted to implement the rights of individuals belongs to Gypsy / Traveller communities. No municipality should be allowed to disregard the law with impunity.” The ERRC would like to highlight the impression formed by the independent expert during her contacts with state officials: according to the expert, “In discussions with the Cabinet of the Ministry [of Interior], the independent expert noted that the framework that dominated the discussion of those policies was one of “law and order” rather than the rights of citizens. This was emphasized by the fact that the official responsible for Traveller affairs was a senior General of the Gendarmerie, as was his predecessor.”<sup>205</sup>

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la forte mobilisation de l’Etat sur ce sujet en portant son taux réel de participation à des valeurs plus proches de celles prévues par la loi.” Ibid, cover letter to the report, dated 21 June 2005

<sup>201</sup> Ibid, pages 28-43.

<sup>202</sup> See Secours Catholique / Réseau Mondial Caritas, *L’ Exclusion et la Pauvreté: Regard Croisé des Maires et Des Français*, February 2008, available at [http://www.tns-sofres.com/etudes/pol/270208\\_exclusions.pdf](http://www.tns-sofres.com/etudes/pol/270208_exclusions.pdf) , page 11.

<sup>203</sup> ERRC unofficial translation : “La prolongation de deux ans du délai de réalisation des aires aurait eu pour effet pervers la démobilisation des communes déjà réticentes dans l’Ardèche ou dans l’Isère, alors que d’autres DDE, comme celles d’Indre et Loire, de la Manche et de la Marne, demandent une application souple des critères liés au report ou à la fin des délais”. Ibid, page 13.

<sup>204</sup> ERRC unofficial translation : “Afficher au plus haut niveau politique la volonté de poursuivre dans le voie tracée par la loi du 5 juillet 2000”. Rapport du Conseil General des Ponts et Chaussées n. 2005-0282-01, *L’accueil des Gens du Voyage, Rapport de mission sur la mise en œuvre de la loi no 2000-614 du 5 Juillet 2000 relative à l’accueil et à l’habitat des gens du voyage*, June 2004, at page 14.

<sup>205</sup> See UN Doc A/HRC/7/23/Add.2, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, *Report of the independent expert on minority issues*, Addendum, Mission to France (19-28 September 2007), 4 March 2008, sections 32, 35 and 89. The report is available at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/114/02/PDF/G0811402.pdf?OpenElement>

III.2.6.G. By way of conclusion, the ERRC would like to trace the evolution of the number of halting sites available in one of the most significant administrative regions of France, that of Ile-de-France. Its 8 departments constitute 7.68% of the total number of departments in continental France (96). The coming into force of the 1990 Besson Law would find the 8 departments having altogether 324 caravan places conforming to a minimum of standards and located within organised halting sites. By 1995, the number of caravan places available decreased to 235. In the dawn of the 2000 Besson Law, the number had increased to 423 and by the end of 2005 to 491.<sup>206</sup> By the end of 2006, the number of available sites would raise to 607.<sup>207</sup> In other words, from 2000 until the end of 2006, the region of Ile-de-France witnessed the addition of only 184 presumably adequate caravan places to the already 423 existing ones, i.e. a rate of 30 caravan places per year. Even if a series of admittedly mitigating parameters is taken into account (such as the expected high land prices in Ile-de-France, delays in finding affordable and suitable plots of land in a heavily urbanised region), the ERRC believes that such a very low rate should also be attributed to the failure of local authorities to commit themselves to the fullest extent possible towards providing Travellers with adequate housing by *inter alia* sanctioning local authorities that consecutively failed to conform to their obligations under the 2000 Besson Law.<sup>208</sup> By failing to do so, the ERRC believes that the French state failed to adequately address the housing problems of Travellers, in violation of Articles 16, 30 and 31 of the RESC. In addition, the ERRC has adduced concrete and substantiated evidence suggesting that this failure is attributable to a large extent to the discriminatory attitude of numerous local authorities towards Travellers, an attitude against which the central administration has failed to take a firm stand, if not actually fomented.<sup>209</sup> For these two reasons, the ERRC respectfully believes that the French state's policy vis-à-vis the Travellers is also, alone and / or in conjunction with the aforementioned articles, in violation of Article E of the RESC.

### **III.3. Summary justice: preventive measures against the installation of Travellers, disproportionate punitive sanctions and “express” collective forced evictions of Travellers trespassing on public / private property**

III.3.A. Adopting the principle according to which the prevention of a problem is always preferable to its suppression, many local authorities in France have identified areas where Travellers are likely to halt and have attempted to prevent them from doing so by creating obstacles. Examples of such measures are recounted in the ERRC country report on France.<sup>210</sup> Further ERRC research revealed that the issue of preventing Travellers from stopping in municipalities is an important one in the local political agenda. Indeed, in certain municipalities inform their citizens that they are doing everything in their power to

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<sup>206</sup> See URUVIF *Observatoire de l'habitat des Gens du voyage en Ile-de-France*, op. cit., page 25. It should be noted that according to other sources, by the end of 2005, there were 663 caravan places available in the Ile-de-France. See *Table of existing Halting Sites, status as of end of December 2005*, available on the Ligue des droits de l'Homme site at:

[http://www.ldh-france.org/media/groupe/GDV\\_etat\\_avancement\\_existant\\_au\\_3112\\_05.pdf](http://www.ldh-france.org/media/groupe/GDV_etat_avancement_existant_au_3112_05.pdf). For reasons mentioned above (see section III.2.5.A) as well as in view of the unexplained decrease in caravan places the next year, ERRC believes that the estimate by URUVIF is more accurate.

<sup>207</sup> See *Table of existing Halting Sites, status as of end of December 2006*, available at [http://sieanat31.free.fr/IMG/pdf/aaL\\_existant\\_311206\\_vdef.pdf](http://sieanat31.free.fr/IMG/pdf/aaL_existant_311206_vdef.pdf)

<sup>208</sup> In the interest of fairness, the ERRC notes that in addition to the problems already noted, the 8 departmental plans of the Ile-de-France region's departments call for the realisation of 5,360 caravan places, which represent approximately the 1/8 of the total number of caravan places to be realised in France and surpass by far the objectives of the departments of any other region. By way of comparison, the region with the second highest number of caravan places to be realized is that of Pas-de-Calais (which consists of two departments) where 4,313 caravan places are to be realised.

<sup>209</sup> The ERRC is concerned by the various negative stereotypes concerning the Travellers that are often expressed even by members of the Senate or the National Assembly. The usual stereotype is that Travellers are indolent and live off social security benefits. Thus for example, Mr. Christian Estrosi (current Secretary of State charged with French dependencies), allegedly stated on April 12, 2007 and in the run-up to the French national elections, that “Travellers have to account for themselves, they have to explain where their big caravans and big cars come from. Should Nicolas Sarkozy be elected, he will audit all of them and deport them”. The statement was originally published in the French biweekly newspaper *Politis* of 19 April 2007 and has been reproduced in a 25 May 2007 article by LDH-Toulon. Available at: <http://www.ldh-toulon.net/spip.php?article2023>.

<sup>210</sup> See Exhibit 1, pages 113-114.



prevent Travellers for stationing in their area of jurisdiction, by setting up various obstacles.<sup>211</sup> Confronted with letters by citizens asking them what they have done to prevent Travellers from stationing in their municipalities, local authorities routinely outline the measures they have implemented. Thus, the municipality of Saint-Andre would denote that not only it has complied with the 2000 Besson Law and that, in cases of illegal stationing of Travellers, it immediately proceeded to have them evicted. The municipality also indicated that it has taken measures (such as the placing of boulders or the digging of moats) in order to prevent their stationing.<sup>212</sup> The municipality of Emerainville would try to assuage a concerned citizen by pointing out that since 1997 the municipality had taken a series of measures to prevent Travellers from settling on communal property. The municipality also asked local enterprises to take measures in order to prevent Travellers from stationing in their parking lots. The obstacles put up or scheduled must have been elaborate since the municipality notes that their cost will be high.<sup>213</sup> The ERRC notes that, in addition to the obvious (and in fact self-professed) racist character of these measures, it is highly likely that under certain conditions, the total ban on stationing could be considered as a hindrance to the right to “come and go” (droit d’aller et venir) enunciated in the judgment of the French Constitutional Court in the case of [Ville de Lille c. Ackermann](#),<sup>214</sup> such obstacles might pose a threat to the life and limb of motorists and / or pedestrians and could also be in breach of relevant provisions of the Urbanism Code. By way of example, the digging of a moat on a plot of land would necessitate the issuing of a relevant permit. To the ERRC’s knowledge, no action has been taken against municipalities that have implemented such measures. Other municipalities assign their municipal police (at times in close co-operation with the national police or the gendarmerie) to monitor locations where Travellers might stop legally (under certain conditions, municipalities cannot prohibit the stationing of Travellers for less than 48 hours) as well as prevent them from doing so, by *inter alia* escorting them to the administrative borders of the next municipality, where at the same time its police units are also waiting to escort them to yet another municipality.<sup>215</sup> One should add to the above the frequent “informal” visits paid by the police to sites where the Travellers are staying. Ostensibly carried out in order to check the identity of persons (a practise that is ipso facto illegal), the police routinely threaten the Travellers with eviction and / or violence if they do not leave. Although illegal, few Travellers have the courage or can spare the means to challenge the police officers and file complaints against them. It was indeed out of sheer luck that a number of journalists were present at the settlements of Bulgarian Roma in the municipality of Bussy-Saint-Georges on 20 December 2005, when three municipal police officers and one social worker visited the settlement, allegedly in order to convince the Roma to

<sup>211</sup> See e.g. press release (undated but circa July-August 2007) by the municipality of Bussy Saint-Georges, available at:

[http://www.ville-bussy-saint-georges.fr/him/showarticle.aspx?article=gdv100807&modele=article\\_std&source=articles](http://www.ville-bussy-saint-georges.fr/him/showarticle.aspx?article=gdv100807&modele=article_std&source=articles). The site contains numerous references (as well as photos) to the stationing of Travellers, usually referred to as “invasions” or “intrusions”. It is interesting to note that the mayor of the municipality, Mr Hughes Rondeau, has declared his intention to comply with the 2000 Besson Law in order to have access to the “fast-track” eviction processes (<http://www.huguesrondeau.com/index.php?2007/06/16/167-gens-du-voyage-au-dela-des-protestations>). The same mayor would also state that he objected to the establishment of a halting site in an urbanized zone, noting that “For obvious sociological reasons, the cohabitation [between Travellers and residents] is impossible. This should not be perceived as an attempt to ostracize somebody but I am contended to note that the lifestyles [of Travellers and residents] are divergent”. ERRC unofficial translation, the original text is as follows: “Pour des raisons sociologiques évidentes, la cohabitation est impossible. Je ne pratique là nul ostracisme, mais me contente de constater que les modes de vie sont trop éloignés.” Undated article, available at the municipality’s website at: [http://www.bussy-saint-georges.fr/him/showarticle.aspx?article=gensvoyage&modele=article\\_std&source=articles](http://www.bussy-saint-georges.fr/him/showarticle.aspx?article=gensvoyage&modele=article_std&source=articles).

<sup>212</sup> See Saint-Andre bulletin (with relevant photos) at:

[http://www.villesaintandre.fr/outils/download.aspx?id\\_fichier=1344&id\\_page=733&id\\_langue=1](http://www.villesaintandre.fr/outils/download.aspx?id_fichier=1344&id_page=733&id_langue=1).

<sup>213</sup> Letter of December 2000, available at: <http://www.mairie-emerainville.fr/images/elus/lettresdumaire/lettre-dec2000gdv.htm>.

<sup>214</sup> Conseil d’Etat statuant au contentieux N° 13205, 1 / 4 SSR, Publié au Recueil Lebon, Lecture du 2 décembre 1983. According to this decision, local authorities cannot, under certain conditions, limit the halting of Travellers (let alone totally proscribe) to a period of no more than 48 hours.

<sup>215</sup> See ERRC country report on France, Exhibit 1, pages 104-107 and 110-113. Similar have been the finding of a report by the Fondation Abbe Pierre. See Les Cahiers du mal-logement de la Fondation Abbe Pierre, *Les difficultés d’habitat et de logement des « Gens du Voyage »*, en partenariat avec la DGUHC. La DGAS et la CNAF, Janvier 2006. Available at : [http://www.fondation-abbe-pierre.fr/pdf/cahier\\_gdv.pdf](http://www.fondation-abbe-pierre.fr/pdf/cahier_gdv.pdf), pages 14 and 36. See also *L’accès aux droits sociaux des populations tsiganes en France : rapport d’étude de la Direction générale de l’action sociale*, op. cit., page 68.

relocate to a local gymnasium where they would have better living conditions. According to the affected Roma and two local journalists who witnessed part of the police operation, the police officers proceeded to destroy the properties belonging to the Roma. However, when they realised that journalists were present, they allegedly exclaimed “Shit, the press” and tried to seize the journalists’ cameras. According to the prosecutor, “it is difficult to believe that the police had really visited the place in order to help the residents”. He then proposed that two police officers, charged with jointly causing serious damage to another person’s property, be sentenced to a 3 month suspended prison sentence.<sup>216</sup>

III.3.B. Paradoxically, no measures have been taken against these municipalities (or at the very least, measures in order to examine whether such measures are legal or not) but the legal armoury of the municipalities in the field of eviction of Travellers has considerably increased. The strengthening of the existing legal framework started with Article 28 of the 1990 Besson Law. According to the article, should a community comply with its obligations under the departmental plan, then it could adopt a municipal decision prohibiting the stationing of Travellers on all other community-owned plots of land. The 1990 Besson Law however did not lay down any particular judicial procedure to be followed in such cases. This was a major source of discontent for local officials who pressured for speedier and more summary procedures. Indeed, as early as 1997, National Assembly MPs put forwards proposals calling for the eviction of Travellers without first securing a judicial decision. The drafters of the 2000 Besson Law attempted to steer a middle course. By virtue of Article 9 of the 2000 Besson Law, they provided that should a community have fulfilled its obligations under the departmental plans then it could adopt a municipal decision that would prohibit the stationing of caravans in any other plot of land belonging to the community apart from the halting site. Should a caravan be stationed on communal or public land, the mayor could seize the local civil court of first instance and seek an injunction under the expedited “referral” procedure ordering the forced eviction of the caravan. In cases where the caravan is parked on private land, the mayor could follow the aforementioned procedure only if the stationing of the caravan posed a threat to public order, health or security. The judge would have the discretion to either order the Travellers to join the local halting site under a daily fine or order their forced eviction. The judge’s decision would be provisionally and immediately executable.

III.3.C. The 5 July 2001 circular concerning the implementation of the 2000 Besson Law clarified further Article 9 of the 2000 Besson Law, drawing the authorities’ attention to the fact that only the existence of a properly managed and maintained halting site would enable them to use Article 9 of the 2000 Besson law. Should that not be the case, the circular “warned” the authorities that the judge could hold that the Travellers did not have access to effective accommodation and hence refuse issuing an injunction ordering the forced eviction of Travellers. The circular also stressed that in cases of emergency (especially in cases where Travellers had stationed in areas of natural beauty), proceedings could take place even on bank holidays. In such cases, however, care should be taken so that the defendant(s) were provided with adequate time to prepare his / their defence. It also noted that the municipality was not obliged to employ a lawyer in order to seek an injunction nor did it have to pay a court bailiff to have the decision served to the trespassers – these two measures were expected to significantly reduce the cost of the proceedings of which numerous authorities had complained.<sup>217</sup> Another collateral “benefit” of municipalities that had discharged their obligations under the 2000 Besson Law was that their requests to the local prefect to provide effective police assistance for the forced eviction of the Travellers would be dealt with priority – although, as the circular mentioned such cases (i.e. of communities not complying with their obligations but securing an injunction / decision to evict the Travellers) should be rare.<sup>218</sup>

III.3.D. In a rather apparent attempt to circumvent the reality on the ground (namely, that as of 2003 the vast majority of municipalities had not met their obligations under the 2000 Besson Law and hence could not benefit from its Article 9), the French government decided to criminalise illegal stationing. Considering, however, that as a penal infraction such an offence should normally incur a very light penalty (e.g. a fine),

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<sup>216</sup> See Press Bulletin by Agence France Presse (AFP), 3 June 2007, reproduced at: <http://www.mrap.fr/campagnes/tgv/prison>. It should be noted that counsel for the police officers claimed that his clients were the victims of an orchestrated plan by the Roma and the local journalists, who had strained relation with the mayor of Bussy-Saint-Georges, Mr Hughes Rondeau (see above, Section III.3.A.).

<sup>217</sup> See 5 July 2001 Circular, *op. cit.*, pages 25 and 26, Titles VI.1. and VI.2. It is noted that under Article 9.IV of the 2000 Besson Law, should Travellers trespass on a plot of land where its owner was carrying out an economic activity (was e.g. cultivating the plot of land), the owner could have recourse to the same expedited referral procedure.

<sup>218</sup> *Ibid*, page 27, Title VI.3.

the French government decided to make it punishable by disproportionately heavy sanctions. Thus, under Article 53 of Law 2003-239 On Internal Security of 18 March 2003 that introduced two new articles almost explicitly relating to Travellers in the Criminal Code,<sup>219</sup> the parking of caravans a group with the aim of constituting a residence, even temporarily, is a criminal offence if carried out :

- a) on land owned by a municipality that has conformed to its obligations under the Besson Law
- b) on land owned by a municipality that is not included in the Departmental Plan (thus the majority of towns with less than 5,000 residents and those with more than 5000 that are not included in the Plan) or
- c) on any other land (private, state, regional and departmental) without being able to produce proof of permission to do so, or of the permission granted to the person holding the right for use of the land.

Penalties for the above infractions are severe: 6 months imprisonment, a fine of 3,750 EUR and the suspension of a person's driver's license for up to 3 years.<sup>220</sup> In addition, any vehicles used to carry out the act of illegal stopping (as is generally the case for Travellers who tow their mobile homes with vehicles) can be seized and confiscated unless the vehicles themselves constitute the person's home.

III.3.E. It is difficult to see why a municipality that had complied with its obligations under the 2000 Besson Law would find the above appealing and worth pursuing. As it can be seen, the procedure is not tantamount to an eviction –the caravans would remain on the site. This almost automatically begs the question why should a municipality prefer launching criminal proceedings against the Travellers rather than seek an injunction for their eviction. The answer to this question appears to be twofold. First, the municipalities below 5,000 inhabitants that would benefit the most from the new law are not those that had complied with their obligations under the Besson law but rather those that had not. It is reminded that prior to the Internal Security Law, only those municipalities not included in the departmental plan, that had either proceeded on their own to establish a halting site or had financed (without being obliged to do so) the creation of such a site, could benefit from the eviction procedure of Article 9 of the 2000 Besson Law. However, under the new law, **all** municipalities with less than 5,000 inhabitants (as well as those above 5,000 inhabitants exempted from its scope of application) benefit from its provisions. Second, the main objective of the law is to have a dissuasive effect on Travellers who, not knowing e.g. if a community had complied with its obligations or if it had less than 5,000 inhabitants would avoid parking altogether.

III.3.F. Articles 53 of the Internal Security Law was not well received by Travellers' associations or prestigious institutions, such as the NCCT and the National Advisory Commission on Human Rights. The former expressed concerns over the fact that, while the communities had failed to conform to their obligations under the Besson Law, it would be the Travellers that would suffer from this failure, something that the NCCT considered "deeply inequitable".<sup>221</sup> The latter noted that Article 53, related "almost exclusively" ("quasi exclusivement") to Travellers, provided for very harsh sanctions and that no similar sanctions were provided for those communities that failed to conform to their obligations. The Commission also noted that the expedited procedure provided for under civil law ensured perfectly ("permettent parfaitement") the eviction of trespassers with little delay and that the problem laid in the lack of willingness on the part of administrative authorities to execute the judicial decisions. The Commission also considered that the creation of this new offence and the related sanctions was worrying and inoperative.<sup>222</sup> Article 53 divided many Senators. One of the first criticisms focused on the fact that Travellers were included in a law dealing with numerous criminal acts, ranging from terrorism to prostitution, the implication being somewhat to the effect that Travellers were in and of themselves a threat to internal security. Minister Sarkozy defended the law, noting that its objective was not to stigmatise Travellers whose majority of members were honest. On the contrary, he believed that the law would give a new impetus to communities in complying with their obligations under the 2000 Besson Law. The second criticism was raised by Senator Michel Dreyfus-Schmidt who noted that the implementation of Article 53 would be very difficult. He wondered for example

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<sup>219</sup> The Law included two articles, Article 53 and 58. Article 53 is dealt with exclusively below. Article 58 concerned the procedure that the mayor of a community not included in the departmental plan should follow if the Travellers had stationed on a private plot of land and provided that the stationing posed a threat to public health, security or peace.

<sup>220</sup> Article 53(1) and 53(2).

<sup>221</sup> Avis émis par la Commission nationale consultative des gens du voyage, Réunion plénière du 18 novembre 2002. Available at: [http://www.ldh-france.org/actu\\_nationale.cfm?idactu=589](http://www.ldh-france.org/actu_nationale.cfm?idactu=589).

<sup>222</sup> Commission Nationale Consultative des Droits de l'Homme (CNCDH), *Avis portant sur le projet de loi pour la sécurité intérieure*. 14 November 2002. Available at: [http://www.cncdh.fr/article.php3?id\\_article=145](http://www.cncdh.fr/article.php3?id_article=145).

if the police would proceed to arrest all Travellers who had parked illegally, even if they were numerous. Another point raised by the Senator was that, as the Rapporteur of the draft law previously mentioned, it was not expected that the Article would be applied but rather that its existence would have a dissuasive effect on Travellers. This prompted the Senator to note that the government effectively used the penal code as a “means of diffusing” a message. The Senator ended his impassioned speech by noting that the solution did not lie in the repression of a problem but required a concerted fight against poverty.<sup>223</sup> In the end Article 53 of the Internal Security Law was adopted and Articles 322-4-1 and 322-15-1 were introduced to the Criminal Code. Far from remaining a dead letter, they were applied with certain vigour. Refuting allegations by the Deputy Mayor of Merignac to the effect that the law was applied in a restrictive manner, Patrick Devedjian, Minister Delegated to Local Freedoms,<sup>224</sup> stated that by 3 December 2003, 428 persons had been arraigned, more than 45 persons had been placed in detention (one of whom was found guilty) while more than 10 vehicles were seized in three departments.<sup>225</sup> According to more recent statistics, between April 2003 and April 2007, the National Police recorded 2,299 installations by Travellers in violation of Article 322-4-1, while another 788 such installations were registered by the gendarmerie and relevant charges brought against the Travellers involved.<sup>226</sup> The above numbers constitute a rather good tally for a provision that was not meant to be applied.

III.3.G. It should also be noted that the enactment of the Interior Security Law was not a simple, routine affair. On 14 February 2003 and on 19 February 2003, a group of more than 60 Senators and Members of the National Assembly respectively seized in accordance with Article 61.b of the French Constitution the Conseil Constitutionnel, alleging that numerous aspects of the Internal Security Law were unconstitutional. In their memorandum, the Senators and MPs claimed, *inter alia*, that the sanctions provided for under Article 53 of the Internal Security Law were disproportionately grave and impaired Travellers’ way of life. According to the decision of the Conseil Constitutionnel, the sanctions were not deemed disproportionate and the legislator had acted within the constitutionally accepted limits of his discretion.<sup>227</sup>

III.3.H. Even this law that “was not meant to be applied” was later on not deemed effective enough. As a result, the government came under pressure to adopt an even speedier eviction process. In a somewhat conceptually incongruous move to his mandate, Senator Hérisson (former President of the NCCT) proposed during the discussion of a draft law concerning the prevention of delinquency, an amendment modifying Article 9 of the 2000 Besson Law. This amendment authorised the prefect to order, under certain conditions, the forced eviction of Travellers without having secured a favourable judicial decision to that effect and giving Travellers a minimum of 24 hours to comply. Under the same amendment, Travellers would have the right to challenge the prefectorial order – something that would suspend its execution - before an administrative court which would have to issue its decision within 72 hours. Lastly, according to the amendment, only those municipalities that had complied with their obligations under the 2000 Besson Law would be able to

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<sup>223</sup> See Minutes of the Senate Session of 13 November 2002. Available at: <http://www.senat.fr/seances/s200211/s20021113/sc20021113006.html>. It should be noted that the Rapporteur, Mr M. Jean-Patrick Courtois, vehemently refused having effectively admitted that the law would not be implemented. It appears however that such a belief was widespread among public officials: At a conference held on 24 October, 2002, a Marseilles prosecutor queried how the law would apply, in light of the principle of individual responsibility. The prosecutor wondered how the police could identify that a person A, instead of person B, had committed the offense within a group of 60 persons. The response he received from a member of Minister Sarkozy’s Staff was that the law would not be applied but had been enacted only in order to dissuade Travellers and, rather oddly, local officials. See article of 31 October 2002 at Maire-Info. Available at <http://www.maire-info.com/article.asp?param=2330&PARAM2=PLUS>.

<sup>224</sup> Ministre Délégué aux Libertés Locales.

<sup>225</sup> See Maire-Info. Article of 3 December, 2004, available at: <http://www.maire-info.com/article.asp?param=3716&PARAM2=PLUS>.

<sup>226</sup> As mentioned in the French Government’s written submissions on the merits of Collective Complaint No 39/2006, European Federation of National Organizations Working with the Homeless (FEANTSA) v. France, dated 1 July 2007. Available at: [http://www.coe.int/t/e/human\\_rights/esc/4\\_collective\\_complaints/list\\_of\\_collective\\_complaints/CC39CaseDoc5\\_en.pdf](http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/list_of_collective_complaints/CC39CaseDoc5_en.pdf), paragraph 80. It should be noted that although not stated in the Government’s submissions, it is highly that these numbers do not refer to individuals Travellers but to installation of groups of Travellers. In other words, it is highly likely that these numbers concern only the acts of trespassing on a particular plot of land which could in each case involve more than one family.

<sup>227</sup> Conseil constitutionnel, Décision n° 2003-467 DC du 13 mars 2003, Loi pour la sécurité intérieure. Available at: <http://www.conseil-constitutionnel.fr/decision/2003/2003467/2003467dc.htm>.

make use of this procedure.<sup>228</sup> A highly ironic Senator [M. Michel Dreyfus-Schmidt](#) noted that, once again, the issue of Travellers was dealt with in the context of a law concerning delinquency.<sup>229</sup> In the end, the amendment was not only adopted by the National Assembly but the latter, going even further than the Senate, unanimously extended the application of the new procedure to those municipalities that had not yet complied with their requirements under the 2000 Besson Law as well as those communities that would establish the new type of halting site, “the temporary emplacement”.<sup>230</sup> The law was the subject of heavy criticism by senators during its final reading. In response, the senators received the somewhat sarcastic retort by the Rapporteur of the Law, Mr Jean René Lecerf, that the draft of the law had been unanimously adopted by the National Assembly.<sup>231</sup> In the end, the amendment was included in Law 2007-297 of 5 March 2007 Relating to the Prevention of Delinquency.

III.3.I. The draft law also provoked reactions by Travellers associations and NGOs. On 17 November 2006, a total of 15 Travellers associations, human rights NGOs and NGOs cooperating with Travellers addressed an open letter to the President of the French Republic, the Minister of Justice and the Senators and Members of the National Assembly to express their concerns over the draft law. More specifically, they noted that despite the fact that local authorities had not yet conformed to the 2000 Besson Law, the French state proceeded to add another sanction against Travellers, in addition to those already adopted in 2003. The open letter was accompanied by a legal memorandum prepared by the League of Human Rights (Ligue des droits de l' Homme - LDH) in which the three following points were made: first, LDH noted that, under the new procedure, challenges against the prefect's decision were to be heard before administrative and not civil courts in contravention to Article 66 of the French Constitution. Second, LDH insisted on the “blatant violation” of the inviolability of one's house: under the new procedure, a person's house can effectively be removed without a judicial order.<sup>232</sup> Third, LDH noted that the new procedure violated the principle of equality of all citizens before the law. As noted above, the prefect could give the Travellers a minimum of 24 hours' notice to comply with a decision. Conferring such discretion to the prefect and prescribing a minimum period of time only would effectively mean that other prefects could give a longer notice to comply than others.<sup>233</sup>

III.3. J. In addition to the points raised above, the ERRC would like to recall that numerous members of the French National Assembly had previously tabled parliamentary questions calling for the institution of an eviction procedure for Travellers that would dispense with the requirement to secure a judicial decision before the eviction took place. Moreover, a member of the National Assembly proposed a draft bill to that effect in 1997. In its 1999 report introducing the draft of the 2000 Besson Law, the Rapporteur for the Assembly's Commission for the Constitutionality of Law noted in relation to these proposals that “these recurring demands fail to take into account the role of the guardian of individual freedoms entrusted, by virtue of Article 66 of the Constitution, to the judicial authority. Nor do they take into account the principle of respect of the right of the defence guaranteed by the jurisprudence of the Conseil Constitutionnel. Such propositions are also equally contradictory with the provisions of the European Convention on Human Rights which protect the right to live a normal family life and the right to due process.”<sup>234</sup>

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<sup>228</sup> See Minutes of the Senate session of 19 September 2006. Available at: <http://www.senat.fr/seances/s200609/s20060919/s20060919007.html#int1510>.

<sup>229</sup> Ibid.

<sup>230</sup> See Rapport n° 132 (2006-2007) de M. Jean René Lecerf, fait au nom de la commission des lois, déposé le 20 décembre 2006. Available at: [http://www.senat.fr/rap/106-132/106-132\\_mono.html#toc0](http://www.senat.fr/rap/106-132/106-132_mono.html#toc0).

<sup>231</sup> See Minutes of the Senate session of 9 and 10 January 2007. Available at: <http://www.senat.fr/seances/s200701/s20070109/s20070109001.html> and [http://www.senat.fr/cra/s20070110/s20070110H\\_mono.html#toc22](http://www.senat.fr/cra/s20070110/s20070110H_mono.html#toc22).

<sup>232</sup> It is reminded that even the 2003 Law Relating to the Prevention of Delinquency provided that mobile structures / caravans used as a person's house could not be seized / removed without a judicial order.

<sup>233</sup> The open letter, together with the LDH's legal memorandum, are available at: [http://www.ldh-france.org/actu\\_nationale.cfm?idactu=1348](http://www.ldh-france.org/actu_nationale.cfm?idactu=1348).

<sup>234</sup> Unofficial translation by the ERRC. The original reads as follows: “Ces demandes récurrentes ne tiennent pas compte du rôle de gardien des libertés individuelles confié à l'autorité judiciaire par l'article 66 de la Constitution, ni du principe du respect des droits de la défense garanti par la jurisprudence du Conseil constitutionnel. Ces propositions sont par ailleurs également contradictoires avec les stipulations de la Convention européenne des droits de l'homme, qui protègent le droit de mener une vie familiale normale et le droit à un procès équitable.” See document No 1620, *Rapport fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de l'Administration Générale de la République sur le projet de loi (no*



III.3.K. The new eviction procedure furthermore appears to be in sharp contrast to numerous procedural aspects of Articles 6 (right to a fair trial), 8 (right to family life) and 14 (freedom from discrimination) of the European Convention of Human Rights. There is an apparent violation of the principles of presumption of innocence and equality of arms. It will be noted that, upon receipt of a request by a mayor (to which a corroborating statement by a police officer can be appended), the prefect can proceed to issue an executable decision without calling upon the “defendants” to present their version of the events and / or present mitigating factors that should, according to them, be taken into account. Second, the procedure is in flagrant violation of having one’s rights and obligations determined by a fair and impartial tribunal. Whereas there is European Court case law suggesting that the “tribunal” need not necessarily be a court, the same case law is clear that the tribunal should at the very least have all the trappings of such a body, including absolute independence in reaching its deliberation. In the instant procedure, however, the prefect is an official of the executive appointed by the state and answerable to his superiors. He is not vested with any special mandate when examining requests by mayors under this procedure.<sup>235</sup> Third, the procedure severely curtails the right of Travellers to have access to adequate and effective legal counsel: as it has been noted, the prefect might give Travellers only 24 hours to comply. It will be undoubtedly difficult for them to find legal counsel within such a short period of time. The issue of legal representation is rendered all the more acute if it is considered that the forced eviction of the Travellers does not fall within the civil limb of Article 6 but rather within its criminal one. In other words, that the threatened sanction (eviction) is of such a nature to amount to a criminal charge instead of a civil obligation: should that be held to be the case, then the lack of any care for the provision of legal aid and / or time to prepare and present one’s defence might also be counter to Article 6(3) of the European Convention of Human Rights.<sup>236</sup> Fourth, the ERRC notes that this special procedure will be applicable only in relation to Travellers and not for example, “camping-caristes” or “Halemois”<sup>237</sup> who might also trespass private or public property. The ERRC does not see why this eviction process should apply only in relation to and to the detriment of the rights of Travellers and not to other groups that, for all intents and purposes, have an identical way of life. To this effect, the ERRC respectfully notes that the European Court of Human Rights held in the case of *Connors v UK*, that:

“[paragraph 89] The mere fact that anti-social behaviour occurs on local authority gypsy sites cannot, in itself, justify a summary power of eviction, since such problems also occur on local authority housing estates and other mobile home sites and in those cases the authorities make use of a different range of powers and may only proceed to evict subject to independent court review of the justification for the measure. Notwithstanding the assertion that gypsy attitudes to authority would make court proceedings impractical, it may be noted that security of tenure protection covers privately run gypsy sites to which the same considerations would appear also to apply. ...[paragraph 94] ... However, even allowing for the margin of appreciation which is to be afforded to the State in such circumstances, the Court is not

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1598) relative a l'accueil des gens du voyage, op. cit. Such proposition would continue to be made even after the 2000 Besson Law came into effect and in fact almost even before its implementation began in earnest.

<sup>235</sup> Contrast, e.g., the special status of police officers – “judges” in cases of minor offences in the case of *Belilos v Switzerland*, ECHR Pubs. Series A, vol 132, 1988. It is noted that despite the fact that police officers serving as judges did present some trappings of independence, the European Court held that since after discharging their duties they would return to their ordinary police post, this created legitimate doubts as to their independence.

<sup>236</sup> Although member states enjoy a significant margin of appreciation in classifying an infraction as a civil or criminal one, the final arbiter of the true nature of the charges is the European Court of Human Rights. It should be noted in this respect that the Code of Construction and Housing effectively provides, in its First Book, Title V entitled *Inspection and Penal Sanctions*, 2nd Chapter entitled *Penal Sanctions*, for one’s eviction as a criminal penalty, by ordering, under [Article L152-5](#), the “bringing about of the previous condition” (la mise en conformité des lieux). This can only be accomplished by e.g. the demolition of a structure built without a permit or in the case of caravans, by their removal from the plot of land in question. In other words, for all intents and purposes identical sanction to an eviction is considered, under the Code of Construction and Housing, as a penal sanction.

<sup>237</sup> “Camping-caristes” are individuals who live in camping cars (see e.g. the website of *Association Camping Car – Liberté* at <http://a.ccl.free.fr/index.htm> According to the Association, there are more than 200,000 camping cars in France and their number is on the increase). It should be noted that many of those living in camping cars have turned them into their primary residence. The “Halemois” on the other hand are those individuals living in temporary or mobile housing. Named after the association that is fighting for their rights (association des HABitants de Logements Ephémères ou Mobiles – HALEM, <http://www.halemfrance.org/>), they often face the same problems that “camping-caristes” and Travellers face. One of the main issues of the campaign waged by the Halemois is the abrogation of the mobile housing tax that has also caused the reaction of Travellers’ associations. See below, Section III.4.K.

persuaded that the necessity for a statutory scheme which permitted the summary eviction of the applicant and his family has been sufficiently demonstrated by the Government. The power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the gypsy community. The references to “flexibility” or “administrative burden” have not been supported by any concrete indications of the difficulties that the regime is thereby intended to avoid ... [paragraph 95] In conclusion, the Court finds that the eviction of the applicant and his family from the local authority site was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights and consequently cannot be regarded as justified by a “pressing social need” or proportionate to the legitimate aim being pursued. There has, accordingly, been a violation of Article 8 of the Convention.”<sup>238</sup>

In terms of remedies, the ERRC notes that Travellers can challenge the decision of the Prefect in front of an administrative tribunal and that, if the verdict of the court is not to their favour, they can appeal it within one month. Their appeal would have no suspensive effect however and by the time it would have been brought before the Appeals Court, they would have been evicted. Even if the Appeals Court eventually rules in their favour (holding e.g. that they did not pose a threat to public security), it would not be able to afford them with adequate restitution. This would be because in most cases, evicted Travellers would be trespassing. The Appeals Court could therefore not order their re-settlement on a plot of land they did not own / have a permit to settle on, as this would amount to judicially sanctioning an illegal act. This was one of the dicta of the Civil Court of Appeal of Nancy in its decision 87/20007 of 15 January 2007. Quashing an ordinance issued in accordance with Article 9 of the 2000 Besson Law (in its original form) and awarding Travellers in the case with costs and expenses, the Court additionally noted that it could not order the re-installation of the Travellers from the plot of land from where they had been (illegally, as the court held) evicted.<sup>239</sup> Against such a background, the ERRC believes that appealing the decision of the administrative tribunal should not be considered as an effective remedy. The European Court also noted that in similar cases, *ex post facto* judicial remedies might not be considered as adequate or effective:

“[paragraph 92] While therefore the existence of judicial review may provide a valuable safeguard against abuse or oppressive conduct by local authorities in some areas, the Court does not consider that it can be regarded as assisting the applicant, or other gypsies, in circumstances where the local authority terminates licences in accordance with the applicable law.”<sup>240</sup>

The ERRC respectfully believes that the above points are *per force* applicable in relation to the “fast-track” eviction procedure introduced by Article 27 of the Law on the Prevention of Delinquency (i.e. the amended Article 9 of the 2000 Besson Law).

III.3.L. Another highly problematic issue raised by the new eviction process concerns the practicalities of its implementation. As noted in the 10 July 2007 Circular of the Ministry of the Interior outlining the application of the law,<sup>241</sup> the decision by the prefect should be communicated to the Travellers trespassing on land from which their eviction is sought as well as posted in the local Town Hall. The circular, however, does not appear to require the notification of the prefect’s decision to **each and every trespasser**, nor does it appear to call upon the authorities to exercise due care in notifying the trespassers (a ground on which judicial ordinances were quashed in the past).<sup>242</sup> The circular appears to treat a whole group of Travellers trespassing on a plot of land as collectively guilty. In other words, it does not appear that the authorities will seek to identify which members of a group of trespassing Travellers pose a threat to e.g. public health (since some Travellers might for example empty the contents of their caravans’ septic tanks on the ground while others might take care and not do so) but rather seek to evict the group *en masse*. The ERRC is very concerned about the possibility that state authorities might focus on the collective responsibility, as opposed to individual responsibility, of trespassing Travellers. The ERRC respectfully reminds the ECSR that the prosecutor of Marseilles had voiced his concerns that police and prosecuting authorities would not be able to implement the 2003 law on interior security since it would be difficult for them to ascertain which

<sup>238</sup> Application no. 66746/01, judgment of 27 May 2004, rendered final on 27 August 2004.

<sup>239</sup> Cour d’Appel de Nancy, Première chambre civile, Arrêt no 87/20007 du 15 janvier 2006, Numéro d’inscription au répertoire général : 05/02733

<sup>240</sup> Connors v. UK, *op. cit.*.

<sup>241</sup> Circular No NOR INT/d/07/00080/C “Travellers: procedure of serving notice to quit and forced eviction of illegal occupants from a plot of land”, dated 10 July 2007.

<sup>242</sup> See No NOR INT/d/07/00080/C, *op. cit.*

individual had broken the law.<sup>243</sup> **The ERRC is concerned that under the new Law on Prevention of Delinquency, the authorities will simply proceed to the collective eviction of Travellers without carrying out criminal investigations concerning the individual liability of Travellers and without due process.** The ERRC is unfortunately compelled to note that its reading of the law is neither erroneous nor arbitrary. In fact, its fears were substantiated by one of the first evictions to take place under the new procedure: according to a 3 July 2007 press release of the Préfecture of Lot-et-Garonne, at 6:00AM the same day, regular police together with riot police proceeded to evict a community of Travellers that “was at the origin of numerous criminal acts committed notably in the industrial area of Boe, ranging from destruction of property to acts of physical assault including armed assault, against police officers.” The ERRC cannot but be alarmed by the extension of the potential liability of some members (which apparently had not been established since otherwise they would have been arrested, tried and imprisoned) of the particular community to all its members, thereby leading to their eviction. It also expresses its amazement over the fact that, as it appears from the text, the police did not seek to identify and arrest those Travellers allegedly responsible for committing truly grave offences (such as firing against police officers) but rather contented themselves into evicting them. Another reason advanced for the eviction was the need to free the plot of land in question in order to build a halting site for Travellers.<sup>244</sup>

III.3.M. In conclusion, the ERRC would like to address a number of normative issues raised by the new eviction procedure that clearly indicate that the spirit, if not the letter of the 2000 Besson Law, has to be laid to rest in peace. Under the 2000 Besson Law, even in cases where the municipality had conformed to its obligations, it would lay with the court to decide the eviction of Travellers who were trespassing. Under the current eviction procedure, the judge is effectively circumvented. It is interesting in that respect to note that the French state opted to totally exclude judicial officials from the initial stages of the eviction procedure. The ERRC notes in passing that the French government could have provided that the eviction procedure would take place under the judicial process of petition (requête).<sup>245</sup> The latter is a procedure whereby an injunction is requested from a judge without the need to hold adversarial proceedings as is the case in the similar procedure of referral (référé). While the ERRC firmly believes that the adversarial proceeding before a judge is the main hallmark of due process, it considers that a process where a judge is involved would be more impartial than a process where a judge is not. Second, the ERRC has noted above that the 2000 Besson Law was to a certain extent premised on a compromise: it laid down certain duties and sanctions for local authorities on the one hand but, on the other hand, it provided them with the financial means to discharge them. The central administration not only gradually neglected to engage in exercising control over the authorities thereby allowing the situation to grow out of control but it also started strengthening the powers of local authorities vis-à-vis Travellers. This tendency culminated with the 2007 Law on the Prevention on Delinquency. Under the original 2000 Besson Law, only those municipalities that had discharged their obligations under the law by both establishing and properly managing and maintaining halting sites could benefit for the expedited eviction procedure (which did not, it needs be reminded, dispense with due process). Furthermore, communities with less than 5,000 inhabitants that were not included in the departmental plan, did not have a halting site and had not voluntarily financed the establishment of such a site in a nearby area would have to tolerate the sojourn of Travellers on their territory for a minimum of 48 hours and a maximum of 15 days. This was a side effect of the trade-off referred to above: since these communities were relieved of the obligation to accommodate a halting site for Travellers, it appeared fair that they could not be “compensated” with the power to prohibit the installation of caravans on any communal area, as was the case with the communities that were obliged to accommodate Travellers in halting sites. In other words, since these small communities did not offer any kind of alternative accommodation to Travellers, they could not either prohibit their stay altogether or have recourse to the expedited eviction procedure. The ERRC submits that this balancing act was in fact the axis around which the 2000 Besson Law was expected to develop. In a way, small communities were encouraged to either finance or establish themselves halting sites so they could benefit from the same procedures available to those communities that were obliged to provide halting sites to Travellers. The 2003 Internal Security Law drove a wedge through this tacit balance: the heavy criminal sanctions provided for under this law would be equally applicable to those communities who were included in the departmental plans and those that were

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<sup>243</sup> See above, Section III.3.F.

<sup>244</sup> The press release is available at:

[http://www.lot-et-garonne.pref.gouv.fr/files/lot\\_et\\_garonne/publications/473\\_publication.pdf](http://www.lot-et-garonne.pref.gouv.fr/files/lot_et_garonne/publications/473_publication.pdf)

<sup>245</sup> Such a proposition had been made already in January of 2002: see Proposition de Loi No 3543, Enregistré à la Présidence de l'Assemblée nationale le 17 janvier 2002, présentée par M. Gilbert Meyer. Available at: <http://www.assemblee-nationale.fr/11/propositions/pion3543.asp>.



not.<sup>246</sup> The balance was totally upset however with the coming into force of the latest 2007 law. As noted in the 10 July 2007 Circular concerning the application of the new law, the municipalities-beneficiaries of the new eviction procedure could be divided into two categories. First, those that would benefit permanently from the new process. These would be:

- a.) the communities with more than 5,000 inhabitants included in the departmental plan and which have discharged their obligations (either by transferring competence to an intermunicipal entity or by having established and maintaining a halting site);
- b.) communities not included in the departmental scheme but which had established and maintained a halting site;
- c.) communities that, without being under an obligation to do so, had provided voluntarily funds for the establishment of a halting site; and
- d.) communities that were members of an intermunicipal entity that had assumed obligation in the framework of the departmental plan.

The communities in categories a), b) and c) referred above were the “privileged” communities under the 2000 Besson law, since they could only adopt a decision prohibiting the stationing of Travellers’ caravans in any areas other than the halting sites and could therefore make use of the expedited eviction procedure laid down in the old (pre 2007) Article 9 of the 2000 Besson Law. The 2007 law added to the beneficiaries of the new procedure those communities of category d) which were not formerly entitled to the expedited eviction process and had to tolerate the sojourn of Travellers for no less than 2 and no more than 15 days. Objectionable as this might be, it was to be followed by something far more far-reaching. The 2007 law did not only add communities in case d) above but also added to the beneficiaries another category, namely;

- e.) communities with less than 5,000 that do not fall in any of the categories b), c), d) above and which are not subjected to any obligation under the 2000 Law. In other words, practically all the communities with less than 5,000 inhabitants, regardless of whether they have taken any measures or not, can now use the expedited eviction procedure.

Following the 2007 law and contrary to the wishes of the legislator of the 2000 Besson Law, the territory of **all communities** with less than 5,000 inhabitants is now off-limits for the Travellers, regardless of whether they (the communities) can point to the existence of a halting site or whether they have financed one. It is interesting to note the rather underhanded attempt to circumvent (once again) the 2000 Besson Law. Under the original (i.e. pre 2007) form of that law, only municipalities which had discharged their obligations under the 2000 Besson and whose mayor (or the police prefect in the case of Paris) had adopted a decision prohibiting the stationing of caravans on communal land other than the halting site, could have recourse to the expedited eviction procedure. Indeed, those few municipalities that had conformed to their obligations had adopted such decisions. The drafters of the 2007 law faced a dilemma: on the one hand they could not retract the requirement that a decision by the mayor be issued before the municipality could have recourse to the new eviction procedure, on the other hand however this requirement (tied as it was to the condition that the municipality in question should have met its obligations which in turn presupposed that it was under such obligations) would prevent other municipalities<sup>247</sup> from making use of the procedure. The solution that was finally adopted was the insertion of a new Article in the Besson Law, Article 9.1., concerning explicitly those communities with less than 5,000 inhabitants that were not included into the departmental plan or had taken any measures. The addition of a new article was necessary since even the new (i.e. after the 2007 law) Article 9 of the 2000 Besson Law retains the requirement that a decision should have been adopted before the mayor seizes the prefect with a request to evict the Travellers under the new procedure. Under the newly introduced Article 9.1, this requirement is not applicable in relation to those municipalities with less than 5,000 that are not included in the departmental plan and that had no obligation under the 2000 Besson Law.<sup>248</sup> In the face of the above, the only areas where the Travellers could be expected to park somewhat

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<sup>246</sup> Arguably however, Travellers charged under the 2003 law for trespassing in communities where no alternative accommodation was forthcoming (be it because the municipality had not complied with its obligations or because it was under no obligation) could raise a “state of necessity” argument.

<sup>247</sup> And especially municipalities with less than 5,000 inhabitants not included in the departmental plans and which had not established a halting site or financed the establishment of one without being under an obligation to do so. It is reminded that under the “old” 2000 Besson Law, these municipalities would have to tolerate the stay of Travellers for a period of no less than 2 and no more than 15 days.

<sup>248</sup> See 10 July 2007 Circular, section 2, page 3: “Evidemment, cette condition [d’existence régulière d’une arête d’interdiction du stationnement] ne s’applique pas aux communes qui sont dispensées de création d’une aire

safely<sup>249</sup> would be areas belonging to municipalities with more than 5,000 inhabitants and where they (the municipalities themselves or the intermunicipal entities to which they belonged) had failed to establish a halting site.

III.3.N. This is, however, where the second limb of the new law comes in. As noted in the 10 July 2007 Circular, communities that have not complied with their obligations under the 2000 Besson Law will be able to benefit from the new eviction procedure during a period of time in the following two instances:

- a) communities that have yet to comply with their obligations under the 2000 Besson Law but which have been granted a two years extension to do so; and
- b) communities that have established a “temporary emplacement”, the suitability of which has been approved by the local prefect, for a period of six months following the approval of the site by the prefect.

Turning to the first category and by way of example, those communities included in departmental plans that were approved in July 2004 (such as the department of Gers), and provided they have embarked on at least some basic steps towards implementing it (and hence have been granted with the additional two years extension), will be able to benefit from the new procedure until July 2008, even if until then they have not complied with their obligations. **In fact, by virtue of Article 138 of Law 2007-1822 of 24 December 2007, these communities have been granted yet another extension (until 31 December 2008) during which they should conform to their obligation and therefore make use of the expedited eviction procedure.** The only penalty they have to face is the reduction of the rate of subsidies from 70% to 50%. The second category poses even more problems. First, the fact that a new type of site (the “temporary emplacement”) is introduced by a law relating to the prevention of delinquency is a rather clear indication that the drafter’s main concern was not to provide Travellers with housing. It might also be a reason why the General Direction for Urbanism, Housing and Construction instructed its services, in its 16 May 2007 Circular, not to finance the construction of such sites.<sup>250</sup> The ERRC respectfully believes that this type of site was included purely in order to allow those communities that, although under an obligation to do so, had failed to establish as of the time of enactment of the law the required halting sites to be in a position to make use of the new eviction procedure. These communities will now not have to wait until they establish the required halting sites in order to employ the new summary eviction process. Rather, they can proceed to establish a more or less “impromptu” halting site (“temporary emplacement”) and after securing the agreement of the local prefect as to the suitability of the site (an agreement that will be more or less almost automatically forthcoming), they will be able to have the Travellers evicted under the new eviction procedure. The only limitation to the above case is that these communities would only be able to make use of this “benefit” for six months after the approval of the site by the prefect. In addition, the creation of such sites does not absolve the municipality in question from meeting its obligation under the departmental plan. The ERRC is concerned however by the prospect that, in the future, the six months time limit could be extended (and more than once) thereby rendering this provisional measure a permanent one (or at least semi-permanent).

III.3.O. Another issue that is not in the spotlight but which is highly indicative of the objectives served by the 2007 law is the following. Under the “old” 2000 Besson Law, should Travellers trespass on a plot of land where its owner was carrying out an economic activity (was e.g. cultivating the plot of land), the owner could have recourse to the same expedited referral procedure as the municipalities that had met their obligations under the law. The ERRC considers this an implicit acknowledgment of the fact that private individuals that sustained losses in their livelihood should be able to seek an injunction ordering the eviction of Travellers with the same beneficial procedure that the

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aménagée (communes de moins de 5000 habitants) et ne peuvent donc prendre une arête d’interdiction générale de stationnement sur leur territoire.”

<sup>249</sup> In the sense that the prefect could in fact order their eviction but their challenge of the prefect’s order before the administrative court could be successful if they manage to prove that the municipality concerned had not complied with its obligations.

<sup>250</sup> Circular n°2007-37 UHC/UH2 “Relating to the implementation of the housing policy and the programming of the subsidised state financial aids for 2007”, issued by the General Direction for Urbanism, Housing and Construction on 16 May 2007. Available at: [http://www.dguhc-logement.fr/info/circprog/cp2007\\_anx5.php](http://www.dguhc-logement.fr/info/circprog/cp2007_anx5.php), section 1.

municipalities that had discharged their obligations under the 2000 Besson Law. Following the 2007 law, this remained unchanged resulting in the rather unequal treatment between municipalities and private individuals. Under the new procedure, municipalities (even those that have not discharged their obligations under the departmental plan and could therefore be held liable for the fact that the Travellers could trespass on private property) will have access to a new and extremely fast eviction procedure without the need to secure a judicial decision, whereas the private owner<sup>251</sup> would still have to apply before a court in order to have Travellers evicted.

III.3.P. Moreover, the ERRC considers that special attention should be paid to the different tenor of two circulars, namely that of 5 July 2001 (which concerns the application of the 2000 Besson Law including the way in which the eviction process under Article 9 should be implemented) and that of 10 July 2007, outlining the new eviction procedure. The first circular drew the prefects' attention to the fact that they should examine and carefully assess each request to authorise police presence during an eviction, observing that it would fall within their margin of appreciation to refuse to provide such assistance to municipalities that had nevertheless secured a decision by the court to evict Travellers.<sup>252</sup> The former, on the contrary, sets the new eviction procedure and notes that, where the relevant conditions for its application are not met, other procedures to evict Travellers might be applicable. The procedures are set out in the circular. In other words, whereas the first circular encouraged prefects to adopt a critical attitude and assess each request for assistance on its facts, the underlying idea of the second circular is that the Travellers should always be evicted.

III.3.Q. The ERRC respectfully reminds the ECSR that this highly regrettable development in the eviction procedures for Travellers has taken place at a time when the French state is channelling very significant funds towards social housing and has made headway in making the right to housing a reality. The ERRC cannot but observe that on the very day the Law relating to Prevention of Delinquency was adopted (5 March 2007), Law 2007-290 "Instituting the opposable right to housing and other measures concerning the social cohesion" was also adopted. The ERRC notes that the French state has undertaken significant initiatives to prevent evictions<sup>253</sup> which are often presented in its various documents such as e.g. the French National Action Plan for Social Inclusion. In its latest version (for the years 2006-2008), a recurring theme in the field of housing is that of prevention of evictions and amelioration of living conditions.<sup>254</sup> The ERRC respectfully believes that this highly laudable and meritorious undertaking cannot be reconciled with the numerous legislative provisions enacted that serve the sole aim of securing the expedited eviction of Travellers or subjecting them to onerous sanctions, without affording them due process.

III.3.R. Finally, the ERRC notes that, according to its on-site research, the findings of which have been presented in its country report on France, there have been persistent and documented allegations by Travellers that in many cases of illegitimate or legitimate forced evictions, their eviction is accompanied by acts of police brutality.<sup>255</sup>

III.3.S. In conclusion, the ERRC believes that the expedited eviction procedure that is not accompanied by effective legal safeguards, together with the exceptionally heavy and criminal sanctions imposed on Travellers following the failure of the French state to meet its obligations, constitute a violation of France's obligation under Articles 16 and 31 of the RESC. The above constitute a of Article 30 of the RESC, as these sanctions single out Travellers exclusively and not only prevent them from affording themselves and their families with a least a modicum of housing but also lead to their further social exclusion. This is because these sanctions clearly have a detrimental effect on the right to housing of the Travellers by either forcing

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<sup>251</sup> Whose trespassing of property could well be the result of the failure of the municipality to establish halting sites for Travellers.

<sup>252</sup> See above, Section III.3.B. *in fine*.

<sup>253</sup> See for example Circulaire UHC-FB4/DH2 n° 2005-44 UHC/DH2 du 13 juillet 2005 relative à l'application des dispositions de prévention des expulsions de la loi de programmation pour la cohésion sociale

<sup>254</sup> See *Rapport sur les stratégies pour la protection sociale et l'inclusion sociale 2006-2008 : France*, 15 Septembre 2006. Available at:

[http://ec.europa.eu/employment\\_social/social\\_inclusion/docs/2006/nap/france\\_fr.pdf](http://ec.europa.eu/employment_social/social_inclusion/docs/2006/nap/france_fr.pdf), especially pages 36-37.

<sup>255</sup> See ERRC country report, Exhibit 1, pages 181-195.

them to become sedentary (for fear that, due to the shortage of halting sites, they might be subjected very heavy sanctions) or by forcing them to travel in an atmosphere of fear, insecurity and anguish and station their caravans at very remote and / or out of sight areas, in an attempt to minimise the risk of incurring the aforementioned sanctions. Finally, the fact that such measures are directed exclusively against Travellers constitutes, in the opinion of the ERRC, alone and / or in conjunction with the aforementioned articles, a violation of Article E of the RESC.

#### **III.4. Inadequate positive measures to promote the access of Travellers to materially and culturally adequate housing**

III.4.A. One of the findings of the research and monitoring activities of the ERRC in France is that an ever increasing number of Travellers decide, either out of choice or out of necessity, to become sedentary. It should be noted that this tendency among Travellers is not a recent phenomenon. As early as 1990, the Delamon report noted that, out of the roughly 250,000 Travellers in France, 70,000 were itinerants, 65,000 semi-sedentary and 105,000 sedentary.<sup>256</sup> In 2000, the Ministry of Employment noted, in an answer to a question tabled in the Senate, that the situation of Travellers has evolved and that a large segment of the community is semi-sedentary or sedentary.<sup>257</sup> Reports from other sources corroborated these findings: according to a 1994 UNISAT report<sup>258</sup>, 70% of the Travellers in France would like to have a plot of land where they could settle, while requests for “terrains familiaux” (small plots of land destined to accommodate usually up to six families) have been put forward by 60 to 80% of the Travellers actually living in caravans in the region of Ile-de-France.<sup>259</sup> For the reasons set out in the following paragraphs, the ERRC believes that France has not paid particular attention to this tendency towards sedentarisation of Travellers and has consequently failed to adopt a national, comprehensive and structured approach to this issue. This failure should be attributed, to a large extent, to the continuous espousal of successive French governments to the somewhat romantic notion of Travellers as wanderers.

III.4.B. The ERRC notes that this tendency on the part of Travellers to become sedentary has so far assumed mainly two forms: first, the induction of Travellers in social housing (Habitation à Loyer Modéré, HLM, i.e. Housing at Moderated Rent) and second, the more or less permanent establishment of Travellers with their caravans in plots of land they had bought or, in some cases, rented.

III.4.C. Turning to the access of Travellers to HLM, the ERRC respectfully refers the ECSR to its country report on France and an additional publication by the ERRC dealing *inter alia* with France, where the numerous problems faced by the Travellers (such as inordinate delays in comparison to other French citizens in gaining access to HLM, relegation of Travellers to the oldest and / or worse quality in terms of maintenance HLM buildings) are recounted in great detail.<sup>260</sup>

III.4.D. The situation concerning the access of Travellers to family plots of land is somewhat more complicated. First, it should be noted that the French state has recognised that this issue should be taken into account and addressed. Article 8 of the 2000 Besson Law provided for an additional clause to the Code of Urbanism, according to which plots of land located in zones where building was permitted could be landscaped so they could accommodate caravans that served as the primary residence of their users. Furthermore, a whole chapter of the 5 July 2001 circular concerning the implementation of the 2000 Besson Law dealt with the these “terrains familiaux” as they came to be known. According to the Circular, Travellers wishing to become sedentary or semi-sedentary faced a host of problems, exacerbated by their usually dire financial situation. To this effect, departments and local authorities were called upon on to examine and address this issue, preferably with the context of a collective and concerted plan by all social actors involved, including the departmental Plans of Action for the Housing of the Most Disadvantaged Persons (PDALPDs). The

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<sup>256</sup> Quoted in document No 1620, *Rapport fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de l'Administration Générale de la République sur le projet de loi (no 1598) relative à l'accueil des gens du voyage*, par Mme Raymond Le Texier, *op. cit.*

<sup>257</sup> Question écrite n° 18128 de M. Michel Mercier (Rhône - UC), Réponse du ministère : Emploi , publiée dans le JO Sénat du 06/01/2000 - page 47. Available at: <http://www.senat.fr/basile/visio.do?id=qSEQ990718128>.

<sup>258</sup> Union National des Institutions Sociales et d'Action pour les Tsiganes, National Union of Social Institutions Active on Gypsy issues.

<sup>259</sup> Quoted in *L'accès aux droits sociaux des populations tsiganes en France*, *op.cit.*, page 53.

<sup>260</sup> See ERRC country report, Exhibit 1, pages 169 – 175. See also ERRC/Numena, *Social Inclusion Through Social Services: The Case of Roma and Travellers*, Assessing the Impact of National Action Plans for Social Inclusion in Czech Republic, France and Portugal, Exhibit 2, pages 44 – 45.

Circular also cautioned authorities that the inclusion of studies and projects related to the housing of semi-sedentary or sedentary Travellers was not mandatory and that in no case could a municipality implement housing projects for sedentary Travellers in order to absolve itself from its obligations under the 2000 Besson Law.<sup>261</sup>

III.4.E. The most important step to date in the discourse of “family plots” was made in 2003 and assumed the form of two circulars. According to the 21 March 2003 Circular of the Minister for Equipment, Transportation, Housing, Tourism, Sea and the Minister delegated to the City and the urban renovation,<sup>262</sup> the construction of family plots that would be rented to Travellers could from then on be financed on the same terms applicable for the construction of caravan places in halting sites (i.e. the state would provide funds of up to 15,425 EUR per caravan place in a family plot). Furthermore, Travellers living on family plots could benefit from housing benefits granted to persons below a certain income that have to pay rent. On 7 December 2003, another circular was issued outlining the modalities concerning the construction of family plots: the latter would effectively consist of small halting sites set up in zones where building was permitted, with the benefit that their occupants (who would sign a contract with the owner of the plot of at least one year’s duration) would be able to “personalise” their surroundings and modify them to suit their professional needs (e.g. erecting a small warehouse), though building of structures destined for habitation would not be allowed. Finally, different construction / managements permits were foreseen depending upon whether more than six caravans would be accommodated.<sup>263</sup>

III.4.F. The ERRC believes that the concept of family plots is a very innovative one and well-suited to the needs of Travellers. The fact however that departments were not under any kind of obligation to establish family plots led to a variety of responses from the departments. Thus, according to a report entitled *The implementation of the right to housing and of the provisions of the law against exclusions*, out of the 90 departments from which the authors of the report required information, 20 departments had not carried out a needs-assessment study, 17 had commissioned a study that was on-going at the time and 53 had carried out such a study. Out of these 53 departments, only 23 had included it in their departmental plan drafted under the 2000 Besson Law. Furthermore, out of these 53 departments, only 30 could provide specific data concerning the number of families involved, which amounted to 5,300 families in all 30 departments.<sup>264</sup> The same study noted an equally divergent approach as to the solutions to be adopted: out of the 60 departments that reported on the housing solution they proposed to adopt, 43 suggested an “adapted housing solution” (i.e. plots where a small house would be erected next to the caravan)<sup>265</sup>, 37 departments would be establishing family plots in strict accordance with the 17 December 2003 Circular (i.e. family plots where only the parking of a caravan would be allowed) while another 13 departments were considering transferring ownership of family plots to Travellers.<sup>266</sup> The funding solutions proposed by the departments presented an interesting novelty: the exchange of plots of land, allowing Travellers to build their own housing, selling / renting the plots and so forth.<sup>267</sup>

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<sup>261</sup> 5 July 2001 Circular, Title VII.

<sup>262</sup> Circulaire UHC/IUH2/6 n° 2003-21, 21 mars 2003 relative à la mise en œuvre de la politique du logement et à la programmation des financements aidés de l’Etat pour 2003.

<sup>263</sup> Circulaire N°2003-76/UHC/IUH1/26 du 17 décembre 2003 relative aux terrains familiaux permettant l’installation des caravanes constituant l’habitat permanent de leurs utilisateurs.

<sup>264</sup> Direction générale de l’Urbanisme, de l’Habitat et de la Construction, *La mise en œuvre du droit au logement et des dispositifs de la loi contre les exclusions : Rapport au Conseil national de l’habitat 1999 – 2002, novembre 2004*. Available at : <http://lesrapports.ladocumentationfrancaise.fr/BRP/054000537/0000.pdf>, pages 100-101.

<sup>265</sup> It should be noted that “adapted housing” is somewhat different to “family plots”. The former are usually ordinary homes with some modifications suited to the lifestyle of Travellers such as the erection of a shelter for the caravan, financed within a context of a PDALPD (usually by means of a PLAI – Prêt locative aide d’intégration – Assisted Rental Loans for Integration Purposes). The latter could be considered as small halting sites, to be financed under the same conditions as ordinary halting sites within the context of the departmental plan. As noted in Circular n°2007-37 UHC/IUH2 “Relating to the implementation of the housing policy and the programming of the subsidised state financial aids for 2007”, issued by the General Direction for Urbanism, Housing and Construction on 16 May 2007, housing projects financed under PLAIs cannot be also financed by budget lines of the departmental plan for Travellers. See Circular, available at: [http://www.dguhc-logement.fr/infolog/circprog/cp2007\\_anx5.php](http://www.dguhc-logement.fr/infolog/circprog/cp2007_anx5.php), section 3.

<sup>266</sup> Ibid, page 101.

<sup>267</sup> Ibid.



III.4.G. According to official data, by the end of 2005, the French state had financed the establishment of 92 family plots, while by the same date, 199 such plots were available.<sup>268</sup> According to data from all 90 DDEs, by the end of 2006, 102 family plots were available – the discrepancy between the two figures can be explained by the fact that the number of 102 plots concerns only plots of land established by municipalities that then rent them to Travellers.<sup>269</sup> Interestingly enough, according to the same source, there were only 131 such plots by the end of 2005.<sup>270</sup> No explanation is provided for this discrepancy. It should be noted that there is no information as to the caravan places each family plot accommodates and that family plots can, provided certain conditions are met, accommodate more than 6 caravans. The ERRC believes that an estimate of a ratio of 6 caravan places per family plot is reasonable.

III.4.H. Despite the numerous advantages offered by family plots<sup>271</sup> and although the majority of Travellers look forward to the acquisition / renting of one, it appears that the majority of departments have failed to make use of that concept. This lack of interest should be attributed to a large extent to the fact that the establishment of such sites is not an obligation incumbent on the municipalities but is discretionary. It is rather logical to surmise that those local authorities that have failed to discharge their obligations under the 2000 Besson Law, would not be highly enthusiastic about establishing family plots, all the more since they are not obliged to do so. The second reason is a structural one. The concept of family plots straddles two different and somewhat conflicting notions: that of itinerancy and that of a permanent residence.

III.4.I. This conceptual conflict is evident in the various measures taken in relation to the Travellers. Thus, while it is admitted that the caravan is for the Travellers their residence (and is actually considered as their traditional housing),<sup>272</sup> caravans are not considered as regular, “ordinary” housing and the prospective or actual owner are not entitled to the various benefits which comprise the following: Family Housing Allowances (ALF) for those responsible for the care of others, Social Housing Allowances (ALS) for housing expenditures for persons whose resources do not exceed a set amount, Housing Personalised Aids (APL), an allowance for tenants of officially agreed housing, as well various other electricity and heating allowances. Complicating things even further, the jurisprudence of the Cour de Cassation has rendered it clear that caravans which have lost their mobility should be considered as “light houses” and their occupants are therefore entitled to the aforementioned benefits.<sup>273</sup> Similarly, according to a recent judgment of the Conseil d’Etat, caravans that have lost their mobility should be considered as light houses whose installation on a plot of land requires the issuing of a building permit.<sup>274</sup>

III.4.J. There appear to be three main conceptual / legal obstacles in recognising the caravan as a form of “proper” housing. The first stems from the fact that one does not need a building permit to obtain and park a caravan that he can use as a home. Yet according to a 15 April 1972 Circular, the requirement that a building permit be issued applies to all building activity, and therefore to building a house. The question that arises is whether a building permit applies to structures that are not built (houses) but manufactured (caravans). The second obstacle relates to the issue of mobility: according to Article R 443-2 of the Code of Urbanism, a caravan is defined as a vehicle or component of a vehicle that is destined for sojourn or the exercise of an activity and has not lost its means or mobility. In other words, a caravan is effectively a vehicle and as a vehicle cannot be a home, then by logical extension a caravan can not be considered as a form of housing. Proponents of this theory could well argue that it does not cast a disproportionate burden

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<sup>268</sup> See *Projet de Loi de Finances Initial pour 2007*. Available at: <http://www.logement.gouv.fr/IMG/pdf/DL63-3.pdf>, pages 2 and 3.

<sup>269</sup> *Table of existing Halting Sites, status as of end of December 2006*. Available at: [http://sieanat31.free.fr/IMG/pdf/aaL\\_existant\\_311206\\_vdef.pdf](http://sieanat31.free.fr/IMG/pdf/aaL_existant_311206_vdef.pdf).

<sup>270</sup> *Table of existing Halting Sites, end of December 2005*. Available at: [http://www.ldh-france.org/media/groupe/GDV\\_etat\\_avancement\\_existant\\_au\\_3112\\_05.pdf](http://www.ldh-france.org/media/groupe/GDV_etat_avancement_existant_au_3112_05.pdf).

<sup>271</sup> Not the least being the freeing up of places in halting sites: ERRC research and monitoring have showed that numerous Travellers families living in such sites are Travellers in name only, in the sense that they spend practically all the year in the same site.

<sup>272</sup> According to Article 1.I of the 2000 Besson Law, “Municipalities take part in the welcome of persons called Travellers, whose traditional housing [the French term here is *habitat*] consists of mobile residences.”

<sup>273</sup> C.Cass., ch.soc., Directeur régional des affaires sanitaires et sociales d’Ile-de-France C. Epoux Contival, note J.-C. MAGENDIE, Rec. Dalloz Sirey, 1989, p.400-402, and quoted in article by Jacqueline Charlemagne *Le droit au logement des gens du voyage : Un droit en trompe l’œil ?*, op. cit.

<sup>274</sup> CE, *Avis rendu par le Conseil d’Etat sur des questions de droit posées par un tribunal administrative ou une court administrative d’appel*, NOR : CETX0407592V, J.O no 208 du 7 Septembre 2004, page 15772, texte no 38.

on Travellers, since the only thing they have to do in order to transform their caravans from vehicles to houses is to deprive them of their means of mobility, as the jurisprudence of the two French supreme courts amply illustrates (see preceding paragraph). The third is the 1969 law mentioned above.<sup>275</sup> According to Article 3 of that law, individuals who are over 16 years old that have no fixed residence or address for more than 6 months per year must obtain a circulation document if they live in a permanent way, in a vehicle, a towed vehicle or another mobile shelter.

III.4.K. The ERRC respectfully notes that it cannot subscribe to the above, for the following reasons. First, the ERRC notes that such an approach, premised on a belief that only a sedentary lifestyle is acceptable and permissible, unduly restricts individuals' preference as to their way of life. To this effect, the ERRC recalls paragraph 12 of the Council of Europe Committee of Ministers' Recommendation Rec (2004) 14 of 1 December 2004, whereby Travellers mobile homes should be given "...the same substantial rights as those attached to a fixed abode, particularly in legal and social matters." The second reason is the very policy of the French state vis-à-vis halting sites and caravans. Thus, following Article 1.IV of Law 2006-872 of 13 July 2006 *National engagement towards housing* that modified Article L. 3211-7 of the General Code of Public Entities Property, such entities can proceed to cede ownership of their private land holding at reduced prices in order to carry out construction work, mostly housing, provided that part of this housing is dedicated to social housing, including permanent halting sites.<sup>276</sup> In other words, following the 13 July 2006 Law, halting sites (i.e. the infrastructure, the sanitary blocks etc) are considered as a form of social housing, yet at the same time (and rather oddly), the caravans, namely the place where the Travellers live and which will be stationed on these sites, are not considered as houses. Secondly, on 23 November 2005, the National Assembly approved a bill levying a council tax on mobile homes.<sup>277</sup> As noted in the September 2005 report on France by Council of Europe Commissioner for Human Rights Mr. Alvaro Gils-Robles, "This special law [the 1969 law] also relates to the status of Travellers' caravans which are not considered as housing. They are consequently not entitled to any housing assistance and find it difficult to obtain social assistance in general. Paradoxically, despite all the problems encountered and not resolved, on 23 November 2005, the National Assembly approved a bill levying a form of council tax on mobile homes. The tax rate was originally set at € 75 per square metre for all caravans larger than 4 m<sup>2</sup>. On the adoption of the budget the amount was reduced to € 25. This certainly represents an improvement on the initial proposal. However, given the great financial difficulties of a large proportion of the Traveller population, I cannot help wondering whether such a levy is appropriate at all. I note, moreover, that whilst Travellers will now face a tax equivalent to a residence tax, they enjoy none of the advantages offered by housing benefits. One can easily detect the risk of inequality here."<sup>278</sup> Indeed, during the discussion of the law at the Senate, certain Senators protested over the fact that caravans were considered as houses for taxation purposes but not as such for social benefit purposes and called for the suppression of the law that would introduce the tax.<sup>279</sup> Proceeds from that tax would be deposited into a departmental fund and would be channelled towards the construction, maintenance and running of halting sites in the department.<sup>280</sup> The ERRC notes that under the

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<sup>275</sup> See Section III.1.4. above.

<sup>276</sup> That said, it should be noted that construction of halting sites does not count towards the minimum quota of 20% social housing that each municipality should have, under Article L 302-5 of the Construction and Habitation Code.

<sup>277</sup> The tax is set out in Article 1595 ter of the General Code of Taxation.

<sup>278</sup> Report by Mr Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, on the effective respect for human rights in France following his visit from 5 to 21 September 2005, for the attention of the Committee of Ministers and the Parliamentary Assembly, Strasbourg, 15 February 2006, Comm DH(2006)2, paragraph 340.

<sup>279</sup> See Minutes of the Session for the Law of Finances of 2007 at the Senate, 12 December 2005. Available at <http://www.senat.fr/seances/s200512/s20051212/s20051212002.html>. The ERRC would like to note the following: Senator [Mme Alima Boumediene-Thiery](#) proposed an amendment that would effectively recognise the caravans as a form of housing. She retracted her proposal once she received the (emphatic) assurance of the Rapporteur of the law on finances that the commission of finance would adopt an amendment that would recognise the caravan as a form of housing. More specifically, the Senator queried whether amendment would mean that "... a caravan would be recognized as legal primary house and thereby allowing access to rights" (in the original: "Cela veut-il dire qu' une caravane sera reconnue comme habitation principale légale, ouvrant des droits?"), to receive the answer by the Rapporteur that "That's it!" (in the original : "C'est cela!").

<sup>280</sup> This provision might also give rise to certain problems: it is expected that the proceeds from this tax would be accrued to the department where the community to which each is Traveller that is administratively attached to it belongs. Yet in the majority of cases, the Travellers have been living for many years in municipalities that are not those to which they are administratively attached and might also be outside the department. In other words, it



relevant law, Traveller families could be exempted from the obligation to pay that tax under the same conditions that “ordinary” families were exempted from paying the generally applicable habitation tax, another evidence of the implicit consideration of caravan as a form of housing. As of the date of writing, the application of the law (originally to be applicable by 1 January 2007) was deferred to January 1 January 2008 (then again to 1 January 2010).<sup>281</sup> It is interesting to note that in a 1981 judgment, the Conseil d’Etat held that even a “fixed caravan” (namely one that had lost its means of mobility) could not be subjected to habitation tax since it is not a built structure and does not therefore enter within the ambit of application of the real-estate tax for built property.<sup>282</sup>

III.4.L. This ambivalent stance of the French state towards Travellers and more specifically on the status of caravans has repercussions on the various measures implemented for Travellers. Thus, while the social services of certain departments recognise the caravans as housing and provide funds to the Travellers to purchase or replace them, others fail to do so considering that all issues of housing related to Travellers should be regulated exclusively by the relevant provisions of the department plan on the welcome and housing of Travellers. According to information contained in the January 2006 Report of the Fondation Abbé Pierre, during the period 2001-2003, approximately one third of the 123 Cases of Family Allowances (CAF, Caisse d’Allocations Familiales), provided (subject to certain conditions e.g. number of dependent family members etc) Travellers with interest free loans towards acquiring a caravan, loans ranging from 600 EUR to 10,000 EUR and subject to varying conditions.<sup>283</sup>

III.4.M. The ERRC would like to note that the non-recognition of caravans as a form of housing also has dire consequences on other aspects of the life of Travellers. First, Travellers are often forced, due to their limited resources, to seek loans in order to buy their caravans. However, since most banks refuse to provide them with such loans, they usually have to resort to the “services” of loan sharks who provide them with loans at exorbitant interest rates.<sup>284</sup> This is something well known to French authorities – indeed, Senator Pierre Hérisson would note, in one of his speeches at the Senate, that in order for Travellers to obtain a loan from a bank, they had to go to a bank based in Monaco.<sup>285</sup> Second, it is to be noted that caravans deteriorate rapidly, thus posing the need of replacing them pretty regularly (usually every 5 to 6 years, time also depends on how often the caravan is used).<sup>286</sup> It could well be however that by that time, Travellers will not have managed to repay the loan they took in order to buy their caravan. As a result, they either have to take out another loan on abusive if not outright exploitative terms or continue living in the same caravan under daily worsening conditions.<sup>287</sup> Third, the ERRC believes that an important factor in one’s enjoyment of one’s house is the possibility of having the house insured. Again, the vast majority of banks / insurance agencies refuse to insure caravans belonging to Travellers (but not caravans belonging to ethnic French) as well as their towing vehicles. In this context, the circulation documents as well as the inscription “SDF –

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could be the case that the proceeds from the tax on Travellers living on department X but attached to a community in department Z will go towards the financing / maintenance of a site where they do not live.

<sup>281</sup> See Minutes of the session for the Law on Finances of 2007 at the Senate, 17 November 2006. Available at: [http://www.senat.fr/commission/fin/pjlf2007/40bisa\\_40duovicies/40bisa\\_40duovicies.html](http://www.senat.fr/commission/fin/pjlf2007/40bisa_40duovicies/40bisa_40duovicies.html). The ERRC cannot fail to notice that one of the Senators considered that it would be difficult for tax collectors to go to the halting sites and collect the tax as there was a risk that they would be wounded, ostensibly following an assault by Travellers : M. Charles de Courson: “[...] Imaginez-vous, M. Copé demander à ses inspecteurs des impôts de courir dans les zones d'accueil des gens du voyage ? Il risque d'y avoir des blessés ! Il faut un peu de pragmatisme.” Ibid.

<sup>282</sup> Quoted in article by Jacqueline Charlemagne *Le droit au logement des gens du voyage: Un droit en trompe l’œil ?*, op. cit.

<sup>283</sup> See Les Cahiers du mal-logement de la Fondation Abbe Pierre, *Les difficultés d’habitat et de logement des « Gens du Voyage »*, en partenariat avec la DGUHC. La DGAS et la CNAF, Janvier 2006. Available at: [http://www.fondation-abbe-pierre.fr/pdf/cahier\\_gdv.pdf](http://www.fondation-abbe-pierre.fr/pdf/cahier_gdv.pdf), page 36, pages 21, 34.

<sup>284</sup> See ERRC country report in France, Exhibit 1, pages 206-207. See also *L’accès aux droits sociaux des populations tsiganes en France : rapport d’étude de la Direction générale de l’action sociale*, op. cit, pages 61-62, pages 131-132. See also Les Cahiers du mal-logement de la Fondation Abbe Pierre, *Les difficultés d’habitat et de logement des « Gens du Voyage »*, op. cit., page 21.

<sup>285</sup> Minutes of Senate Session of 30 May 2006. Available at: <http://www.senat.fr/seances/s200605/s20060530/s20060530001.html>.

<sup>286</sup> Thus e.g. a family that benefits of an “adapted house” will not be using its caravan on a daily basis and hence it will be in good working condition for a longer period of time.

<sup>287</sup> See e.g. also *L’accès aux droits sociaux des populations tsiganes en France : rapport d’étude de la Direction générale de l’action sociale*, op. cit, page 61.

Sans Domicile Fixe i.e. Without Fixed Residence) usually “alert” an insurance agent to the fact that their holders are likely to be Travellers. In fact, ERRC research has indicated that not only many insurance companies refuse to accept new customers but they have also instructed their agents to terminate the contracts with Travellers who are already their clients, notwithstanding the fact that they might have been punctual in their payments.<sup>288</sup> These problems force Travellers to approach certain insurance companies that undertake to insure their caravans and vehicles at increased rates.<sup>289</sup> Despite the fact that this problem was well-known to the authorities as early as at least 1999, when a Senator expressed his concern over this problem in a question he tabled and the Ministry of Finance in its answer effectively admitted its existence (and implicitly of the fact that it was doing effectively nothing to address the issue other than holding discussion with the insurance companies),<sup>290</sup> the French state has failed to take measures to ensure the access of Travellers to insurance and deferred it for study to the NCCT, prompting its president, Senator Hérisson, to note that the NCCT would examine the issue but that urgent measures ought to be taken.<sup>291</sup>

III.4.N. The problem of different departmental approaches to the housing issues of Travellers and the existence of parallel structures is even more pronounced in relation to family plots and sedentary or semi-sedentary Travellers. It is reminded that the construction of family plots is, on one hand, included in the departmental plan for the welcome and housing of Travellers but, on the other hand, their construction is not binding on the authorities. In many cases therefore, departments can legitimately refuse to include the construction of such plots in their departmental plans for Travellers and refuse at the same time to include them in their PDALPDs by noting that any issue related to Travellers should be dealt in the context of the respective plan and that it was not addressed there precisely because they were under no obligation to so. This somewhat circular argument might be the main operative reason behind the limited number of family plots available – approximately 200 family plots had been financed by the end of 2005.<sup>292</sup> In relation to this veritable conundrum, the ERRC cannot but welcome the assertion by the French Government to the effect that “one of the known facts where housing is concerned is the inadequate link between departmental plans on facilities for itinerants and departmental housing action plans for the disadvantaged; proposals are being studied with a view to strengthening this link and promoting an overall policy.”<sup>293</sup>

III.4.O. The ERRC cannot fail to notice however that departments often have significant leeway in addressing such issues. It notes that different strategies were adopted by various departments in relation to the inclusion of Travellers in PDALPDs or similar action plans. Thus, a somewhat limited number of departments have proceeded to incorporate the problematic of sedentary or semi-sedentary Travellers within their PDALPDs, without them being obliged to do. According to research conducted by the Fondation Abbé Pierre, it was only in 5 out of the 34 departments that the research encompassed that associations working on Travellers issues were invited to take part in the PDALPDs – on the contrary, such associations were heavily involved in the departmental plans concerning Travellers.<sup>294</sup> In fact, it would appear that, in at least one case, departmental authorities “hid” the fact that a PDALPD project concerned sedentary Travellers to ensure that their superiors would not reject it and ask that it be examined in the framework of the departmental plan for Travellers, where the departmental authorities would have less flexibility to tackle the issue as it would lie wholly within the discretion of the municipality.<sup>295</sup> The ERRC notes that another piece of evidence pointing

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<sup>288</sup> See ERRC country report on France, pages 213-214. See also *L'accès aux droits sociaux des populations tsiganes en France : rapport d'étude de la Direction générale de l'action sociale*, op. cit, pages 62, 131-132. See also *Les Cahiers du mal-logement de la Fondation Abbe Pierre, Les difficultés d'habitat et de logement des « Gens du Voyage »*, op. cit., page 20.

<sup>289</sup> See also *L'accès aux droits sociaux des populations tsiganes en France : rapport d'étude de la Direction générale de l'action sociale*, op. cit, pages 62, 131-132.

<sup>290</sup> Question écrite n° 14245 de M. Emmanuel Hamel, Réponse du ministère : Économie publiée dans le JO Sénat du 13/05/1999 - page 1607. Available at: <http://www.senat.fr/basile/visio.do?id=qSEQ990214245>.

<sup>291</sup> Minutes of Senate session of 30 May 2006. Available at: <http://www.senat.fr/seances/s200605/s20060530/s20060530001.html>.

<sup>292</sup> See above, Section III.4.G.

<sup>293</sup> See Submissions of the French Government on the Merits, *International Movement ATD Fourth World v France*, Complaint no 33/2006, Case document no 4, dated 16 October 2004. Available at: [http://www.coe.int/t/e/human\\_rights/esc/4\\_collective\\_complaints/list\\_of\\_collective\\_complaints/CC33\\_CaseDoc\\_4\\_en.pdf](http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/list_of_collective_complaints/CC33_CaseDoc_4_en.pdf). Section 2.5 *in fine*.

<sup>294</sup> See *Les Cahiers du mal-logement de la Fondation Abbe Pierre, Les difficultés d'habitat et de logement des « Gens du Voyage »*, op. cit., page 31.

<sup>295</sup> The case is recounted at *L'accès aux droits sociaux des populations tsiganes en France : rapport d'étude de la Direction générale de l'action sociale*, op. cit., page 64-65.

to the direction that only a few departments have included the theme of sedentary Travellers in their PDALPDs or other similar projects can be gleaned by the various “exhortations” to that effect are contained in numerous official documents. Thus, as early as 2003, it was suggested that projects concerning sedentary Travellers should be included in the National Plan for the Strengthening of the Fight against Precariousness and Exclusion.<sup>296</sup> Similarly, in its replies concerning the 2006 and 2007 national budget, the Ministry of Employment, Social Cohesion and Housing noted that PDALPDs must grant priority to sedentary families [of Travellers] by instituting actions relating to “adapted housing” and drafting social and urban studies. Interestingly enough, both documents stress the need for a linkage between urban-oriented and housing of Travellers oriented policies.<sup>297</sup> Even more recently, the French government has noted in its submissions relating to two collective complaints lodged against it that PDALPDs should include sedentary Travellers among their beneficiaries.<sup>298</sup> The ERRC would like to note that the very fact that the French government is explicitly recognizing the Travellers as a group to which priority should be accorded in the relevant action plans is a very welcome development, all the more since, until at least 2000, Travellers did not figure among the population groups regarded as disadvantaged in terms of housing.<sup>299</sup>

III.4.P. The lack of a comprehensive and clearly laid down policy concerning the housing of sedentary Travellers is all the more evident in cases where Travellers themselves have undertaken to provide their families with housing solutions. The problems encountered are compounded by the emergence of a latent anti-gypsyism on the part of the local authorities. The cases encountered tend to fall in the following three categories. The first category concerns cases where Travellers express an interest in buying or have bought a plot of land for which a building permit can be issued, thereby allowing them to build a house. Despite the fact that Travellers are willing to spend significant amounts of money in order to buy constructible plots of land, local authorities (sometimes in concert with local real estate agents) tend to use every method at their disposal in order to prevent them from doing so.<sup>300</sup> While these methods are illegal, few Travellers are willing to invest time and money in filing a complaint against the authorities, since even if they are vindicated in the end, they will have to live in a hostile community. Methods employed by municipalities to velvety evict include the modification of the local town plan in order not extend any more to the plots of land belonging to Travellers. Such a case has been brought to the attention of the High Authority for the

<sup>296</sup> Plan national de renforcement de la lutte contre la precarite et l'exclusion, presented on 25 March 2003. One of the objectives of the Action Plan was to “help those Travellers that wish to become sedentary.” Available at: [www.fnarspicardie.org/fichiers/Intro\\_Versini.doc](http://www.fnarspicardie.org/fichiers/Intro_Versini.doc). It his response to a parliamentary question in April 2004, the Minister for Equipement, Transports, Housing, Tourism and Sea confirmed that this constituted an objective of the Action Plan. See Question écrite n° 07520 de M. Pierre-Yvon Trémel, Réponse du Ministère de l'équipement, des transports, du logement, du tourisme et de la mer, publiée dans le JO Sénat du 01/04/2004 - page 805. Available at: <http://www.senat.fr/basile/visio.do?id=qSEQ030507520>.

<sup>297</sup> ERRC unofficial translation. The original has as follows : “Le plan départemental d'action pour le logement des personnes défavorisées (PDALPD) ayant vocation a prendre en compte les besoins des familles défavorisées doit accorder une priorité a ces familles sédentaires par l'inscription d'une action concernant l' habitat adapté et le recours aux maîtres d'œuvre urbaine et sociale (MOUS)”. See *Projet de Loi de Finances Initiale pour 2006*, op. cit., at page 4 and *Projet de Loi de Finances Initial pour 2007*, op. cit., page 4.

<sup>298</sup> French Government's Written submissions on the Merits of Collective Complaint No 39/2006, European Federation of National Organizations Working with the Homeless (FEANTSA) v. France, dated 1 July 2007. Available at: [http://www.coe.int/t/e/human\\_rights/esc/4\\_collective\\_complaints/list\\_of\\_collective\\_complaints/CC39\\_CaseDoc\\_5\\_en.pdf](http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/list_of_collective_complaints/CC39_CaseDoc_5_en.pdf), paragraph 83. See also Submissions of the French Government on the Merits, International Movement ATD Fourth World v France, Complaint no 33/2006, Case document no 4, dated 16 October 2004. Available at: [http://www.coe.int/t/e/human\\_rights/esc/4\\_collective\\_complaints/list\\_of\\_collective\\_complaints/CC33\\_CaseDoc\\_4\\_en.pdf](http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/list_of_collective_complaints/CC33_CaseDoc_4_en.pdf) section 2.5.

<sup>299</sup> As the report notes, this was in fact a feature of all the answers from Council of Europe states, regardless of their degree of economic prosperity. Thus according to the report, “[...] interestingly, the Roma/Gypsy group was not mentioned in replies from any parts of Europe as being particularly disadvantaged. This latter statement should not, however, be taken as an indication that adequate solutions to the problems of this group have been found, but rather as an indication of the absence of adequate policy measures for the Roma/Gypsy population, or perhaps even as a general lack of recognition of their specific vulnerability.” See Council of Europe's Group of Specialists on Access to Housing (CS-LO), *Report on Access to Housing for Disadvantaged Categories of Persons*, c.2002. Available at: [http://www.coe.int/t/dg3/socialpolicies/socialrights/source/tosicserdosiREP\\_en.doc](http://www.coe.int/t/dg3/socialpolicies/socialrights/source/tosicserdosiREP_en.doc), page 5.

<sup>300</sup> *L'accès aux droits sociaux des populations tsiganes en France: rapport d'étude de la Direction générale de l'action sociale*, op. cit., pages 59 – 61.

Fight against discrimination and for Equality (HALDE): ironically enough, the local authority had decided to re-classify the plot of land belonging to a Travellers family in order to expropriate it and construct a halting site for Travellers. Following mediation by HALDE, it was suggested that the Traveller family exchanged its plot of land with other belonging to the municipality. However, this solution was not adopted. Further investigation by HALDE revealed that the municipality had other plots of community-owned land available, that the procedure for creation of the halting site was not in conformity with the 2000 Besson Law and that the municipality's motive behind its desire to change the status of the Traveller family's plot of land was related exclusively to the family's ethnic origin.<sup>301</sup> The ERRC recalls that a for all intents and purposes identical incident is mentioned in its country report on France.<sup>302</sup>

III.4.Q. More problems are encountered in cases of Travellers who have purchased non-constructible plots of land. This is because due to their illegal nature, authorities enjoy a wider margin of lawful action. One method that is usually employed is that of pre-empting the sale of such plots of land. Many municipalities in France have declared that they will exercise their right of pre-emption in cases of sales of plots of land in areas within their jurisdiction. This entails that every intention to buy / sell property will have to be notified to the local town hall, thereby providing the municipality with "early-warning" that a Traveller is interested in buying a plot of land. Certain municipalities therefore tend to pre-empt such sales, or ask SAFER<sup>303</sup> to do so. In fact, certain Senators raised this issue (namely the sale of agricultural plots of land to Travellers, usually without notifying SAFER or by registering it as a donation and not a sale<sup>304</sup>) and called upon the government to take stronger measures against this phenomenon.<sup>305</sup> In cases where Travellers have bought such plots of land, municipalities often refuse to allow the electricity and gas company to connect their properties to their networks, based on the *prima facie* legitimate argument that their settling on such plots of land is in violation of the Code of Urbanism. Another danger that Travellers run when buying such plots of land relates to the owners of the property: numerous cases have been reported where ethnic French take advantage of the Travellers' desire to buy a plot of land and, knowing the problems the Travellers face (see below), demand exorbitant prices for their plots of land.<sup>306</sup>

III.4.R. Despite the above, Travellers continue to buy plots located on non-constructible land. The reasons behind this seemingly unwise insistence are manifold. First, as a rule, the purchase price of such plots of land is significantly lower than that of plots on constructible land. This makes it appealing to Travellers who not only have limited financial resources (and who might also have to make payments towards settling other debts they might have e.g. loans –with high interest rates- they took in order to buy a caravan) but furthermore are excluded from the housing loans market.<sup>307</sup> Another reason could well be the impossibility of buying a plot on constructible land due to the reactions of the municipality / residents or the pre-emption of the property.<sup>308</sup> In some cases, Travellers believe that the less visible they are (by e.g. buying a plot of land on a remote location) the less likely it is that they will be found out and evicted<sup>309</sup> while in other cases, it could be that they have received the tacit agreement by local authorities that they can settle without running the risk of eviction. As expected, such agreements are not in any way binding and might result in the

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<sup>301</sup> See HALDE, deliberation no 2000-204, 2 October 2006. Available at <http://www.halde.fr/IMG/alexandrie/2445.PDF>.

<sup>302</sup> See ERRC country report on France, Exhibit 1, page 176-177.

<sup>303</sup> SAFER stands for Société d'Amenagement Foncier et d'Establissement Rural. Before each sale of agricultural land, the sale has to be notified to SAFER and the latter, if it so wishes, can decide to pre-empt the sale.

<sup>304</sup> Donations between living persons preclude the municipality and / or SAFER from exercising their right to pre-emption.

<sup>305</sup> See Question écrite n° 10080 de M. Paul Loridant and Question écrite n° 10203 de M. Laurent Bêteille, Réponse du Ministère de l'équipement, des transports, de l'aménagement du territoire, du tourisme et de la mer, publiée dans le JO Sénat du 29/07/2004 - page 1727. Available at: <http://www.senat.fr/basile/visio.do?id=qSEQ031210080> and <http://www.senat.fr/basile/visio.do?id=qSEQ031210203>, respectively. The ministry's response was to the effect that the use of the right to preemption premised exclusively on the origin of the prospective buyer would be "an abuse of authority".

<sup>306</sup> See Les Cahiers du mal-logement de la Fondation Abbe Pierre, *Les difficultés d'habitat et de logement des « Gens du Voyage »*, op.cit., page 19. See also Minutes of Senate session, 3 November 2005. Available at: <http://www.senat.fr/seances/s200511/s20051103/s20051103001.html>.

<sup>307</sup> Ibid, page 22.

<sup>308</sup> Ibid, page 19.

<sup>309</sup> See *L'accès aux droits sociaux des populations tsiganes en France : rapport d'étude de la Direction générale de l'action sociale*, op.cit., page 58.

eventual eviction of Travellers.<sup>310</sup> Moreover, it should not be forgotten that, should a family buy a constructible plot of land and be issued a building permit, they need to build the structure for which the permit was issued within a specified period of time (usually five years). This deadline is problematic because, at the time of the sale, the family might already have channelled all its existing resources towards buying the plot of land.

III.4.S. The third category is even more problematic than the first two. It relates to sedentary Travellers living in slum neighbourhoods, usually for many years. In most such cases, the Travellers have not been given any title to the land as they settled there (or allowed to establish themselves there) by permission of the authorities. ERRC research in France has revealed numerous such slums whose residents live under appalling living conditions and who are under threat of eviction.<sup>311</sup>

III.4.T. Faced with the above, departments have once again adopted totally divergent policies. Thus for example, certain municipalities faced with the problem of plots of land belonging to Travellers and located on non-constructible land have decided to regularise them by extending the local town plan while other municipalities refuse to do so and call for the demolition of the structures edified by Travellers. Similarly, certain municipalities are implementing a series of diverse measures, such as for example the exchange of plots of land (whereby Travellers relinquish ownership of their plot of land on non-constructible for another one for which a building permit can be issued) or the creation of special town planning zones where caravans can solely be stationed and a minimum of construction undertaken.<sup>312</sup> However, other municipalities refuse to undertake such initiatives and impede similar ones undertaken by other state agencies: whereas the CAF of Paris has the capacity of issuing “urgency loans” to Travellers who wish to buy a plot of land, it can only do so under the condition that the Mayor agrees before the granting of the loan to allow the stationing of caravans on that particular plot. Such agreements however are usually not forthcoming.<sup>313</sup>

III.4.U. According to a report commissioned by the Direction Générale de l’Action Sociale, numerous Travellers associations with which the researchers came into contact stated that almost three quarters of the Traveller’s families with whom they are working and who own plots of land, face problems ranging from difficulties (in fact, impossibility) in issuing a building permit to non-recognition of the caravan as a form of housing.<sup>314</sup>

III.4.V. In conclusion, the ERRC cannot but highlight the absence of a national policy relating to the issues referred to above. The absence of such policy not only leaves a significant margin of discriminatory action to local municipalities, it also contributes further to the feeling of social exclusion of Travellers who note that significant initiatives are undertaken by certain municipalities and other authorities (by e.g. issuing them with loans in order to buy caravans or regularising their plots) while others are indifferent or seek to evict them. Whereas the ERRC does not believe that it is reasonable or conducive for local authorities to merely regularise all plots belonging to Travellers and located on non-constructible land, it believes that more information should be gathered relating to the particularities of each case and that a case by case approach should be adopted. The ERRC notes that certain municipalities, out of their own initiative, are already engaged in such work. However, the lack of a national and structured policy on the issue presents clear obstacles. To this effect, the ERRC believes that the failure of the French state to explicitly recognise caravans as a form of housing and allow the families living in them to have access to all housing benefits, together with its failure to adopt a uniform policy in relation to the problematic theme of plots of land located on non-constructible land and consequently by preventing the Travellers from having access to adequate housing, is in violation of Articles 16, 30 and 31 of the RESC. At the same time, the ERRC notes that the problems recounted above have a particularly heavy impact on the Travellers since that they live mostly in caravans and / or have problems with their property because of its position. The ERRC respectfully believes that the French state, by failing to take positive measures to address this situation, discriminates against the Travellers thus acting in violation of Article E of the RESC.

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<sup>310</sup> See e.g. 15. See also *L'accès aux droits sociaux des populations tsiganes en France : rapport d'étude de la Direction générale de l'action sociale*, op.cit., page 56.

<sup>311</sup> See ERRC country report on France, Exhibit 1, pages 159-169.

<sup>312</sup> See Les Cahiers du mal-logement de la Fondation Abbe Pierre, *Les difficultés d'habitat et de logement des « Gens du Voyage »*, op.cit., pages 15, 32, 38-39, 41.

<sup>313</sup> See *L'accès aux droits sociaux des populations tsiganes en France : rapport d'étude de la Direction générale de l'action sociale*, op. cit., page 55.

<sup>314</sup> Ibid, page 56 - 57.



### III.5. Lack of national policy on provision of housing to immigrant Romani families lawfully residing in France

III.5.A. The ERRC notes that, even before the accession of Bulgaria and Romania to the EU, numerous Roma from both countries – then member states of the Council of Europe- started migrating to France. It is to be noted that even before the 2000 Besson Law was enacted, proposals were made in the National Assembly to the effect that its scope of application should encompass all Travellers, regardless of their nationality. This proposal however was not taken up.<sup>315</sup> Another interesting note, made in the context of the debate at the Senate over the draft bill, was made by Senator Hérisson (the current president of the NCCT). According to Senator Hérisson, the French government should take measures towards the problems that were likely to arise due to the enlargement of the European Union, since it was likely that Travellers from other EU countries might migrate to France.<sup>316</sup>

III.5.B. The ERRC notes that the living conditions prevailing in numerous encampments where migrant Roma live are appalling.<sup>317</sup> The ERRC notes that many of these Romani usually visit France for a short period of time, work in seasonal posts and then return to their countries. As a result, they are treated as “tourists” and do not enjoy any kind of housing benefit, while other Roma families have been living lawfully in France for many years.<sup>318</sup> The ERRC notes that certain municipalities around France have proceeded to adopt innovative solutions in order to eradicate such slums<sup>319</sup>. In addition, there are also many reports of forced evictions of Roma migrants from their camps, often accompanied by acts of police brutality and without being offered with alternative accommodation.<sup>320</sup> The ERRC is furthermore concerned about the increasing allegations concerning the efforts by French authorities to convince migrant Roma to “willingly” agree to return to their home countries.<sup>321</sup> This in turn constitutes ample proof of the failure of the French authorities to elaborate a comprehensive housing and social plan for these Roma – indeed, this situation prompted the visit on 7 January 2008 of representatives of Romeurope to the advisor to the Presidency of the Republic on issues of immigration, during which they brought to his attention the issues of “voluntary repatriation”, forced evictions and inhuman living conditions of migrant Roma in France.<sup>322</sup>

III.5.C. In light of the above, the ERRC respectfully believes that the situation relating to the access of housing of migrant Roma from EU / CoE member states is in violation of Article 19 of the RESC. Furthermore, the ERRC respectfully argues that by failing to take such measures, the French state is essentially consigning Roma to live under appalling living conditions and is discriminating against them, in violation of Article 16 together with Article E RESC.

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<sup>315</sup> See document No 1620, *Rapport fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de l'Administration Générale de la République sur le projet de loi (no 1598) relative à l'accueil des gens du voyage*, par Mme Raymond Le Texier, op.cit., amendement no 20, proposed by M. Jean-Jacques Weber.

<sup>316</sup> See Avis n° 194 (1999-2000) de M. Pierre Herisson, fait au nom de la commission des affaires économiques, déposé le 27 janvier 2000, *Projet de loi relatif à l'accueil et à l'habitat des gens du voyage*, available at <http://www.senat.fr/rap/a99-194/a99-1940.html>

<sup>317</sup> See ERRC country report on France, Exhibit 1, pages 267-274.

<sup>318</sup> See Collectif des droits de l'homme Romeurope, *Rapport 2006*, made public in June 2007. Available at: <http://www.romeurope.org/wp-content/uploads/2007/08/rapport-romeurope-2006-version-finale190807.pdf>, page 27.

<sup>319</sup> Ibid, pages 14-15.

<sup>320</sup> See ERRC country report on France, Exhibit 1, pages 274-284. The issues of forced evictions of Roma was also raised by the European Commission Against Racism and Intolerance. See ECRI, *Third report on France* Adopted on 25 June 2004 and made public on 15 February 2005, CRI (2005) 3. Available at: [http://www.coe.int/t/e/human\\_rights/ecri/1%2Decri/2%2Dcountry%2Dby%2Dcountry\\_approach/france/third\\_report\\_France.pdf](http://www.coe.int/t/e/human_rights/ecri/1%2Decri/2%2Dcountry%2Dby%2Dcountry_approach/france/third_report_France.pdf), paragraph 96.

<sup>321</sup> See 7 April 2008 article by Ligue française des droits de l'Homme, [http://www.ldh-france.org/actu\\_derniereheure.cfm?idactu=1654](http://www.ldh-france.org/actu_derniereheure.cfm?idactu=1654) A description of the conditions under which the Roma “agree” to their repatriation is provided at <http://www.ldh-france.org/media/actualites/T%E9moignage%20operation%20contr%F4le%20070907.pdf> The ERRC notes that recently the Grand Chamber judgment of the European Court of Human Rights in the case of *D.H. and others v. the Czech Republic* (App. No. 57325/00, judgment of 13 November 2007) addressed at length the issue of “informed consent” given by Roma to various administrative acts that are detrimental to their rights. See *D.H. and others v. the Czech Republic*, esp. paragraphs 202-204.

<sup>322</sup> See Romeurope press release of 8 January 2008 at <http://www.ldh-toulon.net/spip.php?article2457>

#### IV. Conclusions

IV.1. The ERRC has produced a sizeable body of concrete, substantiated and multi-faceted evidence that amply attests to the main contention permeating the present collective complaint, namely that the laws, policies, actions and omissions on the part of the French state and its agents **constitute a serious breach of its obligations under Articles 16, 19, 30 and 31, read in conjunction and / or independently of the Article E non-discrimination provisions of the Revised European Social Charter.**

IV.2.A significant part of the present complaint was devoted to demonstrating that the reasons behind this breach of France's obligations under the Revised Charter are of a structural nature and that, in the ERRC opinion, the numerous violations referred to in this complaint are in fact symptoms and not causes. The ERRC cannot fail to note that numerous policies undertaken by the French state in relation to Travellers have drawn heavy criticism not only from prestigious institutions such as the National Advisory Commission on Human Rights on the National Consultative Commission on Travellers, but also by numerous Senators and Deputies of the National Assembly. Indeed, one only has to peruse the relevant sessions of the Senate or of the National Assembly to witness the sometimes heated debates that the various legislative texts concerning Travellers occasioned.

IV.2.B. The ERRC notes that its country report on France, attached as Exhibit 1 to the present complaint, contains a series of recommendations addressed to the French state, the majority of which is directly or indirectly related to the housing problems faced by many Travellers in France. The ERRC notes that despite the lapse of two and a half years following the publication of the November 2005 report, these recommendations sadly remain as pertinent as they did at the time of publication. In fact, the ERRC is unfortunately forced to observe that the March 2007 Law on the Prevention of Delinquency constitutes, for a number of reasons extensively set out above, a significant regression in relation to the situation of Travellers in France. The ERRC respectfully urges the French state to strictly implement the original version of the 2000 Besson Law which, despite a number of shortcomings, presented one of the most ambitious steps undertaken by the French state in the field of housing of Travellers in France.

IV.2.C. At the same time, the ERRC would like to note that highly prestigious bodies in France are increasingly expressing their concern in relation to the situation of the Roma / Travellers in France. The ERRC readily shares their concerns and observes that they reflect many of the issues referred to above. The Committee is kindly referred *inter alia* to the recent *Etude et propositions sur la situation des Roms et des gens du voyage en France* that was adopted by the Plenary Assembly of the Commission nationale consultative des droits de l'homme on 7 February 2008<sup>323</sup> as well as Délibération n° 2007-372 of 17 December, 2007 adopted by HALDE.<sup>324</sup>

Thank you for your consideration of these matters.

On behalf of the European Roma Rights Centre,



V,  
Executive Director

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<sup>323</sup> Appended to the present complaint as Exhibit 3.

<sup>324</sup> Appended to the present complaint as Exhibit 4.