

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



16 November 2010

Case document No. 1

Centre on Housing Rights and Evictions (COHRE) v. France
Complaint n° 63/2010

COMPLAINT

registered at the Secretariat on 15 November 2010

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I. Factual Situation

1. The Romani population of France has been estimated at 300,000 to 340,000,¹ with some estimates as high as 1.3 million.² There are generally believed to be between 10,000³ and 20,000⁴ migrant Roma living in France, a significant number of whom are from Romania and Bulgaria.

2. Forced eviction of Romani housing and expulsion of Roma is not a new phenomenon in France. Indeed, France has expelled Roma under various schemes in significant numbers since at least 2007.⁵ Indeed, it has been reported that France sent almost 10,000 Roma back to Romania and Bulgaria over the past few years.⁶

3. However, with the announcements by President Sarkozy on 21 and 28 July 2010, that a new concerted policy of forced eviction and mass expulsion of so-called unlawful camps was to be implemented, the situation faced by Roma in France has deteriorated substantially.

4. Within a month of those announcements, it has been reported that an additional 950 Roma were returned to Romania and Bulgaria, bringing the total for 2010 to more than 5,000.⁷

5. The evictions have been implemented with a high degree of coercion and abuse. For instance, evictions have occurred in the early hours of dawn and families have been forcibly separated.⁸ Furthermore, no alternative accommodation has been made available.

6. The recent forced evictions and mass expulsions have specifically targeted Roma. According to an investigation by the European Roma Rights Centre (ERRC) “the ethnic discrimination in French policy is and always has been manifest”.⁹ Indeed, according to the ERRC, “all of the returns reported in the media have

¹ Organisation for the Security and Co-operation of Europe Office for Democratic Institutions and Human Rights (OSCE-UDIHR), *Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, Status Report 2008, Appendix V, page 63.

² European Roma Rights Centre, *Always somewhere else: Anti-Gypsyism in France*, Country Report No. 15 (2005).

³ Council of Europe, Commissioner of Human Rights, Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, Doc. commDH(2008)34 at para. 146 (20 November 2008). See https://wcd.coe.int/ViewDoc.jsp?id=1410711&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P515_102369.

⁴ Amnesty International, Media Release: France – President Urged Not To Stigmatize Roma and Travellers (23 July 2010). See: <http://www.amnesty.org/en/news-and-updates/france-president-urged-not-stigmatize-roma-and-travellers-2010-07-23>.

⁵ European Roma Rights Centre, Submission in Relation to the Analysis and Consideration of Legality under EU Law of the Situation of Roma in France, at p. 1 (27 August 2010).

⁶ *Id.*

⁷ *Id.* at p. 2.

⁸ European Roma Rights Centre, Submission in Relation to the Analysis and Consideration of Legality under EU Law of the Situation of Roma in France: Factual Update (27 September 2010).

⁹ *Id.* at p. 2.

involved Roma and the ERRC is yet to identify a return to Romania or Bulgaria which did not involve Roma.”¹⁰

7. In addition to the discriminatory effect on the Romani population, there is evidence of discriminatory intent. The internal memorandum of 5 August 2010 circulated to police chiefs in August 2010 and signed by the Chief of Staff for Minister of the Interior, stated: “Three hundred camps or illegal settlements must be evacuated within three months; Roma camps are a priority,”¹¹ and that “It is down to the *prefect* [state representative] in each department to begin a systematic dismantling of the illegal camps, particularly those of the Roma.”¹²

8. While France claims that many returns are voluntary, the extent to which any returns are indeed voluntary is in question. In its 2008 report on France, the Council of Europe’s Commissioner of Human Rights considered similar expulsions and expressed concern that:

Such repatriation is not always genuinely “voluntary”, as repatriation operations are sometimes coordinated with intimidating, or even improper, police operations.¹³

9. The current spate of expulsion is following a similar pattern as that observed in France by the Council of Europe’s Commissioner of Human Rights in 2008. For instance, forced evictions often begin at dawn and have resulted in rendering persons homeless.¹⁴ Furthermore, Roma expelled from France have stated that they accepted payments from France, in the amount of Euro 300, because to do otherwise would mean they would be expelled with less favourable conditions.¹⁵

II. Admissibility

A. Competence of COHRE, the Complaining Organisation

10. The Centre on Housing Rights and Evictions (COHRE), an international non-governmental organisation, is the leading international human rights organisation campaigning for the protection of housing rights and the prevention of forced evictions. COHRE’s work includes advocacy, a training and education program and extensive research and publication activity. COHRE is registered in the Netherlands since 1994, and coordinates its global activities from its headquarters in Geneva, Switzerland. Additional information about COHRE is available on the internet at: www.cohre.org.

¹⁰ *Id.*

¹¹ Leaked memorandum dated 5 August 2010 signed by the Chief of Staff for Minister of the Interior regarding “Evacuation des encampments illicites”; See Exhibit 1.

¹² *Id.*

¹³ Council of Europe, Commissioner of Human Rights, Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, Doc. commDH(2008)34 at para. 149 (20 November 2008).

¹⁴ European Roma Rights Centre, Submission in Relation to the Analysis and Consideration of Legality under EU Law of the Situation of Roma in France, (27 August 2010).

¹⁵ *Id.*

11. COHRE submits this collective complaint to the Executive Secretary,¹⁶ acting on behalf of the Secretary General of the Council of Europe, pursuant to the collective complaint mechanism established by the Council of Europe on 9 November 1995 with the purpose of ensuring the full realisation by all of social rights.¹⁷

12. Under Article 1(b) of the Additional Protocol, the High Contracting Parties recognise the right of international non-governmental organizations holding consultative status with the Council of Europe to submit collective complaints.¹⁸ COHRE has consultative status with the Council of Europe, and is on the Governmental Committee list of international non-governmental organisations allowed to submit collective complaints.

13. Unlike bodies coming under Article 1(c) and Article 2 § 1 of the Additional Protocol, international non-governmental organisations entitled to submit complaints need not come within the jurisdiction of the High Contracting Party at issue. COHRE is therefore entitled to bring a collective complaint against those countries having ratified the European Social Charter or Revised European Social Charter or both that have also agreed to be bound by the collective complaints mechanism, without prejudice to any other admissibility requirement.

B. Application of the Revised European Social Charter and the Collective Complaint System to France

14. France is a State party to the 1996 Revised European Social Charter and to the Additional Protocol providing for a system of collective complaints.

15. France signed the European Social Charter on 18 October 1961 and ratified it on 9 March 1973. The European Social Charter entered into force with respect to France on 8 April 1973. France signed the Revised European Social Charter (Revised Charter) on 3 May 1996 and ratified it on 7 May 1999. The Revised Charter entered into force with respect to France on 1 July 1999. France has accepted to be bound by all Articles in Part II of the Revised Charter.

16. France signed the Additional Protocol of 1995 providing for a system of collective complaints on 9 November 1995 and ratified it on 7 May 1999. The Additional Protocol entered into force with respect to France on 1 July 1999.

III. Merits

17. The underlying issues regarding inadequacy of housing attest to violations of Article 31 § 1, Article 31 § 2, and Article 16, each individually and in conjunction with Article E. While violations were found in the case of *European Roma Rights Centre*

¹⁶ Pursuant to Rule 22, Part VIII, of the Rules of Procedure of the ECSR, entry into force 29 March 2004, replacing Rules 9 Sept. 1999.

¹⁷ See Additional Protocol to the European Social Charter providing for a system of collective complaints, European Treaties Series No. 158 (hereinafter "the Additional Protocol").

¹⁸ List of International Non-Governmental Organisations (INGOs) entitled to submit collective complaints, Council of Europe, Strasbourg, 11 July 2008.

(*ERRC*) v. *France*, Complaint No. 51/2008, Decision on the Merits of 19 October 2009, COHRE would hope the Committee will reaffirm these underlying violations as they relate to the present complaint.

18. The factual situation referenced above – dealing with the intentional policy of forced eviction and mass expulsion of Roma – amounts to additional violations of the Revised European Social Charter. In particular, this factual situation also amounts to violations of Article 31 read alone and in conjunction with Article E of the Revised Charter as well as to violations of Article 19 § 8 read alone and in conjunction with Article E of the Revised Charter.

A. Article 31: Right to adequate housing

19. Article 31 of Part II of the Revised European Social Charter provides that:

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.¹⁹

20. Article E of Part V of the Revised European Social Charter guarantees that:

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.²⁰

21. As a social right, the right to adequate housing entails three general obligations: the obligation to respect the right by not interfering with whatever level of housing persons presently enjoy; the obligation to protect the right by ensuring that other actors, including non-State actors, do not violate the right; and the obligation to fulfil the right by providing housing to those unable to provide adequately for themselves.

22. Expanding on the obligation to fulfil, in *European Roma Rights Centre (ERRC) v. France*, the Committee reaffirmed that under Article 31 a State Party's "obligation consists in taking effective measures so that results are achieved, qualitatively and quantitatively."²¹ Furthermore, the Committee has held that "the effective enjoyment of certain fundamental rights requires a positive intervention by the state: the state

¹⁹ Revised European Social Charter, Art. 31, (ETS No. 163), entered into force 7 January 1999.

²⁰ ²⁰ Revised European Social Charter, Art. E, (ETS No. 163), entered into force 7 January 1999.

²¹ *European Roma Rights Centre (ERRC) v. France*, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 30.

must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question.²² The Committee has also held that “implementation of the Charter requires State Parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the right specified therein.”²³

23. The Government of France has argued that one of its rationales for forcibly evicting Roma, whether French nationals or non-French nationals, is that they live in substandard housing. However, the fact that many Roma live in substandard housing attests to the inability or the unwillingness of France to meet its obligation to fulfil the right to adequate housing. Indeed, the Committee has repeatedly found a violation of Article 31§1 on account of Roma settlements consisting of substandard housing.²⁴

24. In a situation where the obligation to fulfil is not met, the remedy can not be a violation of the obligation to respect the right to adequate housing by carrying out forced evictions.

25. In a case similar to the factual situation in France, the European Committee of Social Rights has found the practice of forced eviction to violate Article 31§ 2. In the case of *European Roma Rights Centre v. Italy*, the Committee examined the forced eviction of Roma from settlements in Italy and found that these forced evictions violated Article 31§ 2 of the Revised Charter read in conjunction with Article E.²⁵

26. In *European Roma Rights Centre (ERRC) v. Italy*, the Committee held “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.”²⁶ The Committee also held that “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” and that “compensation for illegal evictions must also be provided.”²⁷

27. The Committee reaffirmed and elaborated upon the prohibition of forced eviction in its decision on *Centre on Housing Rights and Eviction (COHRE) v. Italy* in 2010. In that decision the Committee held that forced evictions amount to “an aggravated violation” when “measures violating human rights specifically target and affect vulnerable groups” and when “public authorities not only are passive and do

²² *European Roma Rights Centre v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 35.

²³ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 61.

²⁴ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 10 July 2010, § 59; *European Roma Rights Centre (ERRC) v. France*, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 50.

²⁵ *European Roma Rights Centre (ERRC) v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005.

²⁶ *European Roma Rights Centre (ERRC) v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 41.

²⁷ *Id.*

not take appropriate action against the perpetrators of these violations, but they also contribute to such violence.”²⁸

28. As mentioned above, the targeting of a vulnerable group is apparent in the case at issue. It bears repeating that in addition to the discriminatory effect of disproportionately targeting the Romani population, there is evidence of discriminatory intent. The internal memorandum of 5 August 2010 circulated to police chiefs and signed by the Chief of Staff for the Minister of the Interior, stated: “Three hundred camps or illegal settlements must be evacuated within three months; Roma camps are a priority,”²⁹ and that “It is down to the *prefect* [state representative] in each department to begin a systematic dismantling of the illegal camps, particularly those of the Roma.”³⁰

29. The Committee has held that “Article E not only prohibits direct discrimination but also all forms of indirect discrimination” and that “discrimination may also arise 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.”³¹

30. The Committee found violations of Article 31 § 2 in *Centre on Housing Rights and Evictions (COHRE) v. Italy*, in situations similar to the factual situation articulated above, including the discriminatory intent and effect, lack of alternative accommodation, lack of due process protection, and use of force.

31. Consequently, the European Committee of Social Rights should find France to be in violation of Article 31 § 2 for the forced eviction of Roma, whether French or non-French nationals, from their homes.

B. Article 19 § 8 Prohibition on mass expulsion

32. Article 19 § 8 of Part II of the Revised European Social Charter provides that:

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: ... to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality.³²

33. Again, Article E of Part V of the Revised European Social Charter guarantees that:

²⁸ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 10 July 2010, § 76.

²⁹ Leaked memorandum dated 5 August 2010 signed by the Chief of Staff for Minister of the Interior regarding “Evacuation des encampments illicites”; See Exhibit 1.

³⁰ *Id.*

³¹ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 6 July 2010, § 35.

³² ³² Revised European Social Charter, Art. 19 § 8, (ETS No. 163), *entered into force* 7 January 1999.

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.³³

34. As relayed in the facts above, France has expelled Roma en mass without conformity with the Revised European Social Charter.

35. In *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009 decision on the merits of 6 July 2010, the Committee held that “collective expulsion” is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.

36. To be in conformity with the Revised European Social Charter, expulsion can only occur for offences against public order or morality that constitute a penalty for a criminal act, with such penalties imposed by a court or a judicial authority.³⁴ Furthermore, family members who have joined a person subject to expulsion may not be expelled as a consequence of that expulsion.³⁵

37. As Roma have been compelled to leave France en masse without the reasonable and objective examination of the particular case of each individual to ascertain the above criteria, France is in violation of Article 19 § 8 of the Revised European Social Charter read alone and in conjunction with Article E.

IV. Conclusion

38. The Centre on Housing Rights and Evictions (COHRE) respectfully requests the European Committee of Social Rights to find France in violation of its legal obligations under the Revised European Social Charter, including in particular Articles 31 § 2 and 19 § 8 read alone and in conjunction with Article E.

39. Roma forcibly evicted or expelled or both should have their right to return and right to restitution of housing respected and ensured.

40. Roma forcibly evicted or expelled or both should receive just and fair compensation for any losses associated with their forced eviction and expulsion.

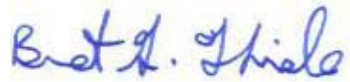
41. COHRE reserves the right to amend this Complaint.

Respectfully submitted,

³³ Revised European Social Charter, Art. E, (ETS No. 163), *entered into force* 7 January 1999.

³⁴ See, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 6 July 2010, §151.

³⁵ See, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 6 July 2010, §152.



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