



D

REPORT

Travellers: breaking down barriers to rights

CONTRIBUTION TO THE NATIONAL STRATEGY

In the eyes of the law, we are all equal

Défenseur des droits

RÉPUBLIQUE FRANÇAISE

CONTENTS

INTRODUCTION	03	3- ACCESS TO WATER	18
BACKGROUND INFORMATION	04	4- SCHOOLING AND ENROLMENT OF TRAVELLER CHILDREN	19
1- THE RECOMMENDATION OF THE EUROPEAN COMMISSION	04	A- Worrying data	19
2- THE FIELD OF COMPETENCE OF THE DEFENDER OF RIGHTS	05	B- Recurrent schooling difficulties: too few claims made to the Defender of Rights	19
3- GENERAL OPINIONS AND DECISIONS SINCE ITS INCEPTION	06	5- ACCESS TO HEALTHCARE	21
FINDINGS AND RECOMMENDATIONS AIMED AT THE EFFECTIVE PROTECTION OF THE RIGHTS OF TRAVELLERS	08	6- ACCESS TO AID, SERVICES AND WORK	22
1- TOO FEW CLAIMS	08	7- DISCRIMINATORY LANGUAGE AND INCITEMENT TO DISCRIMINATION	23
2 EFFECTIVE RECOGNITION OF THE ITINERANT LIFESTYLE OF TRAVELLERS	10	CONCLUSION	23
A- Incomplete recognition in the texts	10		
B Application of existing laws that encounters many obstacles	12		
a- <i>Insufficient implementation of the possibilities of reception by local authorities</i>	12		
b- <i>Qualitative objectives to be taken into account as a matter of urgency</i>	13		
c- <i>The tightening of sanctions against Travellers camping outside dedicated halting sites</i>	15		
d- <i>Continued denial of domiciliation</i>	17		

INTRODUCTION

The Defender of Rights, approached by the Interministerial Delegation for Housing and Access to Housing (DIHAL), wanted to contribute to the development of the French strategy on Roma equality, inclusion and participation. In the interests of consistency with regard to the context and national law, the Defender of Rights wished to present this contribution in two parts, one devoted to the rights of Travellers and the other to those of migrant Roma.

This contribution is devoted to Travellers. It has been drawn up on the basis of the work carried out by the Office of the Defender of Rights since its inception and is based on the expertise developed by the investigation services responsible for handling individual claims but also on opinions and recommendations relating to more general provisions of the legislative and regulatory framework.

In order to complete its findings and work, the Defender of Rights wished to conduct a series of consultations. It was thus able to hear, on the one hand, from Travellers, primarily concerned by the Strategy, and from the associations supporting them and, on the other hand, from a certain number

of institutions involved in public action on access to the rights of Travellers. Finally, the Defender of Rights took note of the latest studies to draw up an inventory that is as close as possible to the realities and daily life of Travellers.

Finally, a workshop entitled “Le droit aux droits et aux recours : quelles pistes de travail en 2021-2022 ?” was organised on 7 July 2021 at the Defender of Rights. The objective of this closed workshop, bringing together Travellers, associations, institutions and researchers, was to share common findings on the difficulties encountered by Travellers in the access to and exercise of their fundamental rights and freedoms. Furthermore, the Defender wanted to allow information on the future programming of the various parties represented to be shared in order to examine, within the framework of the consultation, possible avenues for cooperation.

BACKGROUND INFORMATION

1 · THE RECOMMENDATION OF THE EUROPEAN COMMISSION

In October 2020, the European Commission published a proposal for a Recommendation, finally adopted by the Council on 12 March 2021 on Roma equality, inclusion and participation¹.

This recommendation provides for Member States to draw up, by the end of 2021, **national strategic frameworks for Roma equality, inclusion and participation**, which incorporate measures in particular in seven key areas: equality, inclusion and participation in terms of horizontal objectives, but also education, employment, healthcare and housing concerning sectoral objectives.

With regard to equality and the fight against discrimination, in its first paragraph, the recommendation encourages Member States to “*consolidate efforts to adopt and implement measures to promote equality and effectively prevent and combat discrimination (...) as well as their root causes*”. In particular, by adopting the provisions related to the powers of the Defender of Rights in the fight against discrimination, the efforts made must include:

- Intensify the fight against direct and indirect discrimination and harassment, as provided for in Directive 2000/43/EC (...);
- Provide targeted assistance to Roma people who have faced discrimination;
- Combat multiple and structural discrimination against Roma and, in particular, against Roma women, Roma children, LGBTI+ Roma, Roma with disabilities, elderly Roma, stateless Roma and EU mobile Roma.

In the key areas covered by the recommendation and for which the Defender of Rights is competent, the Recommendation encourages Member States to:

- Ensure effective equal access to all stages of education without discrimination;
- Fight discrimination in access to employment, particularly for young Roma;
- Ensure effective equality and non-discrimination in access to public services, including health services, and in access to adequate social protection schemes;
- Guarantee the fight against digital exclusion of Roma, in particular by bridging the digital skills divide in access to health information;
- Guarantee access to desegregated housing and essential services;
- Guarantee access to essential services such as tap water, safe and clean drinking water²;
- Improve the living conditions of Roma people and prevent and tackle the negative health impact of exposure to pollution and contamination;
- Prevent forced evictions by promoting early warning and mediation, organise support for people at risk of eviction and provide adequate alternative housing, focusing particularly on families;
- Support the construction and maintenance of halting sites for Travellers.

With regard to the methodological aspect, paragraphs 14 and 15 of the Recommendation provide that Member States allow the involvement of the national bodies for combating discrimination in all their tasks

¹ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021H0319\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021H0319(01)&from=EN).

² See Article 16 in conjunction with recital 31 of Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (recast), which provides that Member States shall take “*the measures they consider necessary and appropriate to ensure that there is access to water intended for human consumption for vulnerable and marginalised groups*”.

(handling of complaints, research work, cooperation with civil society, etc.).

Finally, the recommendation highlights the need for governments to closely involve these bodies in the development, implementation and monitoring of national strategy. DIHAL therefore asked the Defender in May 2021 to contribute to the work being undertaken to develop the strategy.

The recommendation also insists on the assistance that Member States must provide to these bodies so that they can effectively remedy the problem of Traveller “*underreporting*” and non-exercise of their rights.

2 · THE FIELD OF COMPETENCE OF THE DEFENDER OF RIGHTS

The Defender of Rights was created by the Organic Law No. 2011-333 of 29 March 2011. It is an independent, single-member administrative authority established by Article 71-1 of the Constitution.

It is responsible for:

- Combating direct or indirect discrimination prohibited by law, or by an international commitment duly ratified or approved by France, as well as promoting equality;
- Defending rights and freedoms in the context of relations with state administrations, local authorities, public institutions, and bodies with a public service mission;
- Defending and promoting the best interests and the rights of the child enshrined in law or by an international commitment duly ratified or approved by France;
- Ensuring compliance with professional ethics by persons carrying out security activities on the territory of the French Republic.

Finally, the Organic Law No. 2016-1690 of 9 December 2016 on the competence of the Defender of Rights for the orientation and protection of whistleblowers provides that it is also in charge of “helping to guide all whistleblowers to the competent authorities under the conditions laid down by law and ensuring their rights and freedoms”.

It has also been appointed by the Government to ensure, on the one hand, the mission of an independent monitoring mechanism for the implementation of the International Convention on the Rights of Persons with Disabilities under Article 33.2 and, on the other, the monitoring of the International Convention on the Rights of the Child.

As part of its mission to combat discrimination, but also in its other areas of competence, since its inception, the Defender of Rights has thus carried out work – previously undertaken by the High Authority for the Fight against Discrimination and for Equality (HALDE) – in the fields of protection, promotion and proposals for reforms concerning the rights of Travellers.

In this capacity, it is represented on the National Advisory Commission for Travellers.

Indeed, the Defender of Rights regularly hears individual claims relating to situations of discrimination and difficulties encountered by Travellers in exercising their rights related to accommodation and housing, education, health and social services, and more recently access to essential services such as water.

Finally, at the beginning of its mandate, the Defender of Rights was contacted regarding situations of violation of their civil and political rights. It was thus required to issue several individual and/or general opinions and decisions.

3· GENERAL OPINIONS AND DECISIONS SINCE ITS INCEPTION

Based on individual claims and its findings over the years, the Defender of Rights, and before it HALDE³, found that Travellers were faced with discrimination in all areas of their lives. The discrimination suffered by Travellers and more generally antigypsyism are based on non-acceptance by part of the population and by the authorities of the itinerant lifestyle and caravan housing.

The institution made several recommendations calling for amendments to legislation and regulations that do not respect the rights and freedoms of Travellers: freedom to come and go, civil rights, the right to respect for home and family life, access to goods and services, and various benefits as well.

These findings corroborate both the testimonies reported by the associations consulted and the latest European studies on discrimination. In a recent study, the European Fundamental Rights Agency⁴ collected data which, once again, confirmed the existence of systemic or structural discrimination⁵ faced by Travellers. Generally speaking, Travellers and Roma constitute the minority most widely discriminated against on the basis of actual or alleged origin, in all areas of their daily lives (employment, housing, public and private services, schooling, healthcare)⁶.

The European Commission, in its draft Recommendation to the Council⁷, also explicitly mentioned the need to combat systemic structural discrimination against these populations.

In 2011⁸, the Defender of Rights recommended a reform of the legislative framework in order to repeal the special regime for registration on the electoral roll to which Travellers were subject, provided for by Law No. 69-3 of 3 January 1969 on the exercise of itinerant activities and the regime applicable to persons travelling in France without domicile or fixed residence. The Constitutional Council has recognised a breach of the principle of equality between citizens in the exercise of their civil rights⁹.

On several occasions, the Defender of Rights has denounced the visa requirement for travel permits imposed on Travellers, under penalty of criminal sanctions, as seriously violating their freedom to come and go. Back in 2014¹⁰, it recommended repealing the aforementioned Law of 3 January 1969 that had introduced this obligation, which was brought about by the Equality and Citizenship Act of 27 January 2017.

In several opinions relating to the Act¹¹, the Defender of Rights also reiterated its concerns, first of all about the inadequacy of the halting sites, but also the conditions of access and availability of transit sites, and more generally about the freedom of movement of Travellers.

³ See HALDE Deliberation 2007-372 of 17 December 2007 on discrimination against Travellers, which contains various recommendations on Travellers, as well as the special report of 14 September 2019 published in the absence of a response following these recommendations.

⁴ FRA, "Equality in the EU 20 years on from the initial implementation of the equality directives", 30 April 2021.

⁵ Defined as "inequalities arising from legislation, policy and practice, not intentionally but as a result of a number of institutional factors in the preparation, implementation and revision of legislation, policy and practice"; "Roma and Traveller Inclusion: Towards a new EU Framework, Learning from the work of equality bodies", Equinet Perspective, June 2020

⁶ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-opinion-equality-directives-01-2021_en.pdf.

⁷ European Commission, *Proposal for a Council Recommendation on Roma equality, inclusion and participation*, COM(2020) 621 final, Brussels, 7 October 2020.

⁸ Decision R-2011-11 of 2 December 2011 on access to the voting rights of Travellers.

⁹ Decision No. 2012-279 QPC of 5 October 2012 on the exercise of itinerant activities and the regime applicable to persons travelling in France without domicile or fixed residence.

¹⁰ Decision of the Defender of Rights MLD-MSP-2014-152 of 24 November 2014.

¹¹ Opinion 15-11 of 20 May 2015 on the status, reception and housing of Travellers; Draft Law No. 1610 on the status of Travellers; Opinion 18-10 of 27 March 2018 on the Draft Law No. 346 on the reception of Travellers and the fight against illicit settlements; Opinion 17-11 of 16 October 2017 on the Draft Laws No. 557 intended to support local authorities and their groups in their mission to welcome Travellers and No. 680 aimed at strengthening and improving the effectiveness of sanctions in the event of illegal group settlements on public or private land.



As part of its position, it also made recommendations on private family sites, the winter truce for access to fluids (water and electricity) and access to insurance for permanent residential caravans. The subject will be discussed further in this contribution.

On another subject, in a more recent decision¹², the Defender of Rights considered that in the absence of any other compensation mechanism, the purpose and scope of Decree No. 99-778 of 10 September 1999 establishing a Commission for the Compensation of Victims of Spoliations Resulting from the Anti-Semitic Legislation in Force during the Occupation should be interpreted broadly. Indeed, it was intended to allow the Commission to compensate gypsies and Travellers who suffer persecution, internment or spoliations, in accordance with the principle of equality and the obligation of non-discrimination on the grounds of race or ethnic origin. In view of these considerations, the Defender of Rights¹³ decided to submit observations to the Council of State. The latter

dismissed the appeal in the context of which it was involved. While it considered that the competence of the Commission could be limited, without disregarding the principle of equality, to the examination of the particular situation of Jews, who were the subject of a systematic extermination policy, it did not, however, dispute that Gypsies were also dispossessed during the Occupation. Following this decision, the applicants referred the matter to the European Court of Human Rights.

In this contribution, the recommendations made by the Defender of Rights in opinions and decisions published since 2014, and not yet fulfilled, will be reiterated. New recommendations and areas of focus are also presented, as well as commitments that the Defender of Rights wanted to make, particularly after consulting the Travellers' associations.

¹² [Decision 2020-159 of 2 September 2020 on the infringement of the principles of equality and non-discrimination characterised by the exclusion of gypsies and Travellers from the scope of application of Decree No. 99-778 of 10 September 1999 establishing a Commission for the Compensation of Victims of Spoliation Resulting from the Anti-Semitic Legislation in Force during the Occupation.](#)

¹³ The Defender of Rights had in fact been contacted by applicants who had – as well as referring the matter to the institution – appealed to the administrative judge challenging the legality of Decree No. 99-778 of 10 September 1999 establishing a Commission for the Compensation of Victims of Spoliation Resulting from the Anti-Semitic Legislation in Force during the Occupation.

FINDINGS AND RECOMMENDATIONS AIMED AT THE EFFECTIVE PROTECTION OF THE RIGHTS OF TRAVELLERS

1· TOO FEW CLAIMS

Non-recourse is a major issue in the fight against discrimination for Travellers.

During the meeting organised by the Defender of Rights on 4 May 2021 and then the working seminar of 7 July 2021, Travellers had the opportunity to bring up many situations that they considered discriminatory, including:

- Refusals of planning permission and/or connection to networks not based on the provisions of the law in force (for example, refusal of planning permission on building land);
- The classification on the local town planning plan (PLU) of plots held by itinerant persons as non-constructible zones, while neighbouring plots are maintained as building zones;
- The pre-emption by SAFER of plots that Travellers wanted to acquire, while neighbouring plots were sold to other individuals;
- The prohibition on setting up caravans on private land for a period of more than 3 months;
- The refusal to move forward in hiring as soon as the person said that they belonged to a group of Travellers;

- Access to schooling denied;
- Denial of care, etc.

While the testimonies and various studies of the feelings of Travellers in the area of discrimination¹⁴ are overwhelming, the Defender of Rights finds that these individuals rarely exercise recourse to assert their rights and do not often file claims with the institution.

In its 2020 study, the European Agency for Fundamental Rights reported little knowledge by Travellers of anti-discrimination organisations. In particular, 14% of those who responded to the Agency's survey, who are also resident in France, are aware of the Defender of Rights. The tendency towards non-recourse is particularly significant in terms of discrimination. In this study, only 14% of all Travellers surveyed reported having filed a complaint or report, as well as the lack of knowledge of the institutions, associations report a lack of trust in these institutions, and the fear of negative repercussions. The stigma attached to Travellers seems sometimes to be encouraged by the public actors themselves¹⁵.

¹⁴ See FRA, *Gens du voyage en France: Principaux résultats de l'enquête de 2019 auprès des Roms et des gens du Voyage, 2021; Où sont les « Gens du voyage » ? Inventaire critique des aires d'accueil*, W. Acker, Editions du commun, 2021; Association protestante des amis des Tziganes, *Discriminations et droits des Gens du voyage*, Symposium of 8 October 2020; Association Sociale Nationale Internationale Tzigane, *Decoding the French Halting and Housing Policy and Legislation relating to traveller nomadic way of life and mobile accommodation*, 2019.

¹⁵ V. FRA, *Roma and travellers in six countries*, 2020; FRA, *Implications of COVID-19 pandemic on Roma and Travellers communities: France*, 15 June 2020.



During a consultation with Travellers' associations, the case was reported of a town hall having introduced a parking ban throughout the municipality specifically aimed at Travellers.

Taking note of these difficulties, the Defender of Rights examined several avenues to encourage Travellers to file claims and exercise recourse to enforce their rights.

The Defender of Rights would like to make the Anti-Discrimination platform in operation since 12 February 2021 more known to Travellers' associations. This platform relies on a chat facility and a phone number. It lets people talk to specialist lawyers and find local contacts via the regional network of the Defender of Rights. Once the platform was live, an information campaign aimed at establishing the platform as a recourse offering practical and tailored assistance for victims of discrimination was put in place, in particular to reach people less likely to file claims. This tool has already produced its first results in the fight against non-recourse.

In addition to discrimination, all the powers of the Defender of Rights can be mobilised in situations experienced by Travellers in which their rights are not respected.

RECOMMENDATION 1

The Defender of Rights is committed to ensuring that its regional network of delegates is made aware of the difficulties encountered by Travellers and that they are trained to best respond to discrimination and other denials of access to rights about which they are contacted. Indeed, with almost 550 delegates present in all French departments and open to the public, a regional approach is a way to encourage them to use the institution.

As well as good knowledge of the Defender of Rights' areas of expertise, it is important for associations to encourage Travellers to contact the institution or other structures under conditions that will allow their claims and appeals to thrive.

In this respect, it should be stressed that the Defender of Rights cannot, in most cases, back a claim when the dispute has already been definitively settled by the judge¹⁶.

¹⁶ Organic Law No. 2011-333 of 29 March 2011 on the Defender of Rights, Art. 33.

It is important to refer the matter to the institution before the judge has made a decision, allowing sufficient time for effective action. In any event, it is advisable to file a claim with the Defender of Rights as soon as possible.

Fully aware of the complexity that such steps may represent, the Defender of Rights wishes to approach associations in order to consider solutions to facilitate referrals to the Defender of Rights, allowing it sufficient time to take action.

RECOMMENDATION 2

The Defender of Rights undertakes to draw up, in conjunction with the associations, a brochure intended for Travellers on their rights and the possible remedies for exercising them. This will involve explaining the situations that could lead to a claim or to judicial recourse through a hands-on approach focusing on topics that are close to the everyday problems encountered by Travellers.

2 EFFECTIVE RECOGNITION OF THE ITINERANT LIFESTYLE OF TRAVELLERS

A- INCOMPLETE RECOGNITION IN THE TEXTS

The Defender of Rights welcomed the repeal of the Law of 3 January 1969 on the exercise of itinerant activities and the regime applicable to persons travelling in France without domicile or fixed residence, which it himself recommended in several of its decisions and opinions, in particular in **its Opinion No. 15-11 of 20 May 2015 on the Draft Law No. 1610 on the status, reception and housing of Travellers.**

The Equality and Citizenship Act of 27 January 2017 which repealed it is indeed a major step forward from this point of view, ending the discriminatory regime which imposed on Travellers the need to belong to a municipality and to have a travel permit.

The Defender of Rights notes, however, that, for the most part, this progress has not enabled full and effective recognition of the itinerant or semi-itinerant lifestyle and caravan housing of Travellers.

The Equality and Citizenship Act introduced a significant approximation of Travellers with persons “of no fixed abode” without taking into account the itinerant lifestyle of Travellers¹⁷, as this Act says nothing about elements for characterising the specific way of life of Travellers, only Law No. 2000-614 of 5 July 2000 on the reception and housing of Travellers (“Besson Law”) provides information on this subject, making particular reference to the “traditional” nature of their housing¹⁸. However, this characterisation is reductive and can be stigmatising.

The recognition of a caravan as a domicile¹⁹ is not today challenged by French judges or by the European Court of Human Rights.

In *Winterstein v. France*²⁰, the Strasbourg judge expressly acknowledged that regardless of the legality of an occupation according to the national law of the Member State, caravans, shacks or cabins installed on land must be regarded as domiciles in the event that sufficiently close and continuous links are established with them. Moreover, the Court recognised “*that living in caravans is an integral part of the identity of the travelling people, even when they no longer live in a nomadic way*”²¹

¹⁷ See *Mode de vie des « Gens du voyage », la diagonale de la discrimination*, S. Gaboriau, 8 October 2020.

¹⁸ This traditional housing method consists, in accordance with the terms of Article 1 of the Law of 5 July 2000, of mobile residences installed on halting sites or land provided for this purpose, and must be taken into account by the policies and systems of town planning, accommodation and housing adopted by the State and by the local authorities.

¹⁹ Domicile is understood here within the meaning of Article 8 of the European Convention on Human Rights, as implying the right to a simple physical space, but also as the right to the peaceful enjoyment of this space.

²⁰ ECHR, 17 October 2013, *Winterstein et al. v. France*, No. 27013/07.

However, the definition in law of the term “domicile” is less protective than that of dwelling.

Caravans are not currently recognised as “dwellings” in France. Many associations²², as well as the National Advisory Commission on Human Rights²³ and the National Advisory Commission of Travellers, have had the opportunity to denounce on various occasions the resulting difficulties for Travellers. They call for changes to the legal framework in this area. This lack of recognition is indeed responsible for multiple discriminations in various fields: registration of address (domiciliation), place of taxation, the right to housing benefit (APL), access to mortgages, access to home insurance for caravans, access to credit, protection against the suspension of fluids and water in winter, the right to custody of a child, etc. From this point of view, it is worth reiterating that **the recognition of caravans as housing is one of the main recommendations made** by the UN Special Rapporteur on the right to adequate housing in his report of 24 August 2020 on the right to housing in France.

Although the question is not a new one, as some lawyers have pointed out, it should be noted that few countries seem to have

committed themselves to such recognition. One of the few examples of this is the Brussels region in Belgium. On 27 January 2012, the Parliament of the Brussels region adopted an order granting housing status to mobile homes. By adding the term “itinerant housing” to Article 2 of the French Housing Code, this reform allows, among other things, the acquisition or rental of building plots for the installation or parking of mobile homes.

RECOMMENDATION 3

At the working seminar of 7 July 2021, the CNCGDV announced the establishment of a working group on the recognition of caravans as housing to examine the legal framework of such a reform. The Defender of Rights welcomes the creation of this working group to which it will contribute.

²¹ More generally, the Court reiterated in its judgment that the concept of “domicile” should not be understood to be limited to the legally occupied or established domicile, forming part of an autonomous interpretation of this concept, independently of any qualification under domestic law that could impede the protection of Article 8. as such, the existence of factual circumstances, including sufficient and continuous links with a specific place, will determine the status of “domicile” of a particular dwelling within the meaning of Article 8. This inclusive interpretation allows judges to consecrate the specificities and traditional way of life of Roma, and to attach to them specific protection appropriate to the particular vulnerabilities and needs of these populations. On these points, see also the ECHR judgments, *Buckley v. United Kingdom*, No. 20348/92, 25 September 1996; ECHR, *Gde Ch., Chapman v. United Kingdom*, No. 27238/95, 18 January 2001; ECHR, *Yordanova et al. v. Bulgaria*, No. 25446/06, No. 24 April 2012.

²² See inter alia: FNASAT document: <http://www.fnasat.asso.fr/biblio%20virtuelle/Accueil%20et%20habitat.pdf> Decoding the French halting and housing policy and legislation relating to traveller nomadic way of life and mobile accommodation, ASNIT, 2019 and ODCI Recommendations, Garantir une meilleure effectivité des droits des citoyens itinérants, 2019.

²³ https://99f7c212-c756-4150-829b-45219e358e2c.filesusr.com/ugd/3724ed_d5162ba52d134b79a4affac9e1831923.pdf.

²⁴ For example, François Filipiak, PhD, professor at the University of Rouen, notes on this subject that “although French law does not yet recognise caravans as housing (the ALUR Law of 24 March 2014 has not changed anything in this field), the Council of State, in a decision of 27 July 2005 “Ministry of Health v. Mr Lançon” opens a breach by considering the caravan as a dwelling: “The caravan must be regarded as a dwelling when it offers living conditions similar to those of a dwelling located in a building”, *La caravane : un statut juridique controversé*, F. Filipiak, *Discriminations et droits des Gens du voyage* – Conference of 8 October 2020.

B APPLICATION OF EXISTING LAWS THAT ENCOUNTERS MANY OBSTACLES

The Defender of Rights points out that this lack of recognition is today accompanied by several worrying developments, relayed by the associations, that violate the fundamental rights of Travellers. In particular, with regard to the right to adequate housing as defined by the UN²⁵, the successive amendments made to the Law of 5 July 2000 on the reception and housing of Travellers have called into question a form of balance initially provided for by the law based:

- On the one hand, on the planning and creation of the various possibilities for receiving Travellers in departmental plans;
- On the other hand, and in return, on the obligation for Travellers to park on the land set aside for them and the possibility of being prohibited from parking anywhere else in the municipal territory, as long as the municipality has fulfilled its reception obligations.

However, the objectives for receiving Travellers provided for by law have still not been met 20 years after its adoption.

The failure to achieve the quantitative and qualitative objectives of the law often puts Travellers in great difficulty. They cannot meet their obligation to occupy the land set aside for them, are found to be breaking the law and are therefore sanctioned.

It thus appears that the balance initially sought by the law, fragile from the outset due to an asymmetry between the parties involved, – the members of a minority group due to its itinerant lifestyle and the local authorities referred to by the law – has deteriorated considerably.

In addition, municipalities with fewer than 5,000 inhabitants are generally released from any obligations in terms of reception. In 2019, these municipalities represented 93.8% of the municipalities in France²⁶.

RECOMMENDATION 4

The Defender of Rights calls on public authorities to consider the current provisions of the law, which have the effect of disproportionately restricting the freedom of movement of Travellers and which, in fact, constitutes an obstacle to the itinerant way of life.

a. Insufficient implementation of the possibilities of reception by local authorities

The Court of Accounts, which devoted two reports to the reception and support of Travellers in 2012 and then in 2017²⁷, makes the same observation of the ineffectiveness of the Law of 5 July 2000. In particular, it notes very slow and uneven progress in the territories: in 2017, only 17 departments had fulfilled all of their obligations; 22 by the end of 2020, according to an analysis published by the Ministry of Housing²⁸, a figure showing the slow progress made in this area.

The recent transfer to public inter-municipal cooperation establishments (EPCIs) of most of the competences in this field²⁹ tends, according to several observers, to aggravate this deterioration, due to the amount of the territory covered by inter-municipality³⁰. The gradual shift to EPCIs of the obligation to develop the halting site thus constitutes a significant weakening of this obligation: on the one hand, it limits the number of sites built and, on the other hand, contributes to unfavourable localisation,

²⁵ Office of the High Commissioner for Human Rights, *The Right to Adequate Housing*, Fact Sheet No. 21 (Rev. 1); see Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, Doc. NUE/1992/23, 1991.

²⁶ Ministry of Territorial Cohesion and Relations with Local Authorities, “Les collectivités locales en chiffres”, 2019.

²⁷ Thematic public report: *L'accueil et l'accompagnement des « Gens du voyage »*, Court of Accounts, October 2012; *L'accueil et l'accompagnement des Gens du voyage: des progrès lents et inégaux, des objectifs à redéfinir*, Annual Public Report of the Court of Accounts, October 2017.

²⁸ According to this analysis, 77% of the spaces prescribed by departmental plans were created.

²⁹ EPCIs are competent in particular with regard to the development, maintenance and management of halting sites and rental family sites since 1 January 2017 by virtue of Law No. 2015-991 of 7 August 2015 on the New Territorial Organisation of the Republic (NOTRe Act), and specified in the Equality and Citizenship Act of 27 January 2017.

³⁰ Observation shared by several Travellers' associations in the meeting on 7 July.

in particular as a result of their distance from the local services necessary for daily life³¹.

Finally, the prerogatives granted to the prefects, reinforced by the Equality and Citizenship Act in the face of clearly refractory municipalities, are, in fact, rarely mobilised.

RECOMMENDATION 5

The Defender of Rights renews its recommendation³² to implement the power of substitution of the Prefect in the event of non-compliance by a municipality with its obligations to create halting sites.

The issue of resettlement also remains a concern. The Defender of Rights reiterates the lack of resettlement proposed to the applicants in the *Winterstein* case, almost eight years after the judgment of the European Court of Human Rights³³, which clearly shows that the supply of housing suitable for Travellers is not commensurate with demand.

In addition, the Defender found that there is a shortage of sites suitable for settled Travellers.

RECOMMENDATION 6

The Defender of Rights recommends identifying all unfulfilled needs for rental housing suitable for Travellers and imposing a minimum amount of suitable housing in departmental plans.

RECOMMENDATION 7

Finally, the Defender asks that the law on the right to housing be applied to families living in caravans, providing for the possibility of benefiting – as regards appropriate social housing – from the development of their family land.

b. Qualitative objectives to be taken into account as a matter of urgency

The inadequacies identified from a qualitative point of view³⁴ make the situation worse.

Several reports have been produced on this issue over the past two years, including the report by William Acker, a lawyer, himself from a family of Travellers, and the report of researcher Lise Foisneau (EHESS) on the inventory of halting sites³⁵. a study by the European Union Agency for Fundamental Rights published in 2020 corroborates these findings³⁶. These reports note a number of deficiencies:

- The unsuitable nature of land, developments and facilities, as well as the absence of connections to networks;
- Locations far away from public and private services, in particular schools.

Finally, some halting sites frequently expose Travellers' families to environmental risks that may affect their health. According to the survey conducted by the European Union Agency, in France, 31% of Travellers reported environmental problems at their place of residence, such as pollution, soot, smoke, dust, odours or contaminated water, compared to 15% of the general population. During discussions with the Defender of Rights, the associations confirmed the alarming findings reported by the studies: halting sites near to rubbish tips, railway tracks, oil centres, land contaminated with hydrocarbons, solvents or mercury.

Travellers and the associations supporting them are certainly consulted, as provided for by the Law of 5 July 2000, within the framework of the departmental advisory

³¹ See *L'usage défavorable aux « Gens du voyage » des pouvoirs de police administrative*, pp 3-2, Benoît Arvis, 8 October 2020.

³² Defender of Rights, Opinion 18-10 of 27 March 2018 on the Draft Law No. 346 on the reception of Travellers and the fight against illicit settlements; Defender of Rights, Opinion 15-11 of 20 May 2015 on the status, reception and housing of Travellers: Draft Law No. 1610 on the status of Travellers.

³³ ECHR, 17 October 2013, *Winterstein et al. v. France*, No. 27013/07.

³⁴ a study by DIHAL to assess both quantitative and qualitative aspects of the situation of halting sites today is expected to be published in conjunction with the Ministry of Ecological Transition in autumn 2021.

³⁵ *Où sont les « Gens du voyage » ? Inventaire critique des aires d'accueil*, W. Acker, Editions du commun, 2021; *« Les aires d'accueil des gens du voyage : une source majeure d'inégalités environnementales »*, L. Foisneau, *Etudes tsiganes*, No. 67, first quarter 2020.

³⁶ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-roma-travellers-six-countries_en.pdf.

committees planned prior to the adoption of departmental plans³⁷. But, on the one hand, what they have to say is insufficiently taken into account even though they are the ones most affected. On the other hand, the associations note that elected officials do not always implement the approved departmental plans. At the seminar of 4 May 2021, the associations indicated that they were opposed to the establishment of a halting site near the Lubrizol plant in Rouen, classified as a Seveso site. This did not prevent families in 2019 from being directly exposed to toxic gases during the plant fire, without actual protection or evacuation measures having been provided for³⁸.

These shortcomings highlighted in recent years have led to a growing awareness amongst public actors.

RECOMMENDATION 8

The Defender of Rights recommends that implementation of the Besson Law be evaluated, from the point of view of achieving both the quantitative objectives – set by the departmental plans on the housing of Travellers (halting sites, transit sites, family land) – and the qualitative objectives. To this end, it recommends that special attention be paid to the appropriate nature of the land used for halting sites and its location, as well as to the quality of the developments, the facilities and their maintenance, and to its proximity to goods and services, including schools.

It would like a systematic study of their possible exposure to health or safety risks to be carried out.

In this regard, it welcomes the joint decision taken by DIHAL and the Ministry of Ecological Transition to conduct an investigation in order to establish the rate of completion of halting

sites and the plans to conduct a qualitative study on these same sites, with particular attention being paid to the health risks associated with the proximity of hazardous or polluting equipment.

Regarding the qualitative investigation, the Defender of Rights recommends that existing studies and data produced by civil society actors be taken into account and that associations be consulted upstream. This investigation must, on the one hand, objectify the criteria used to measure the quality of halting sites – based in particular on the 2019 Decree – and, on the other hand, define the terms of consultation of the people living on the halting sites in order to ensure that their feedback and expectations are taken into account.

During the seminar of 7 July 2021, the Travellers' representatives and the associations confirmed the conclusions of the studies and reports mentioned. It is common for installations classified for the protection of the environment (ICPEs), such as waste disposal sites or sewage treatment plants, to be located near Traveller halting sites.

RECOMMENDATION 9

In order to remedy this situation, the Defender of Rights recommends an amendment to the French Environmental Code allowing the rules concerning the distance between an ICPE and a residential area to be extended to halting sites. This extension to halting sites of the rules regarding distance from ICPEs requires the amendment of various provisions listed in Title I, Chapter II “Installations Classified for the Protection of the Environment” of Book V of the Legislative Part of the French Environmental Code.

³⁷ Adopted jointly by the Prefect and the President of the Departmental Council after consulting an advisory committee on which Travellers' associations sit, the departmental scheme constitutes a system for planning the various possibilities for hosting Travellers and determines the geographical areas and the municipalities where the different types of Traveller reception should be carried out: permanent halting sites for Travellers, transit sites reserved for the reception of large traditional or occasional gatherings, rental family sites for the prolonged reception of Travellers and their caravans and suitable social housing.

³⁸ https://www.liberation.fr/debats/2019/10/01/les-gens-du-voyage-victimes-invisibles-de-lubrizol_1754743/.



For example, the provisions of Article L. 512-7 of the French Environmental Code relating to ICPEs subject to registration state:

“II. — The general requirements may include:

- 1. Conditions for integrating the project into its local environment;*
- 2. The distance of facilities from dwellings, buildings habitually occupied by third parties, establishments receiving the public, waterways, communication routes, water catchment areas, or zones destined for dwellings by binding planning documents”.*

It could therefore be useful to add to point 2 the distance from Traveller halting sites.

In the same way as the ministerial decrees referred to in the French Environmental Code for the enactment of general rules and technical requirements applicable to ICPEs subject to authorisation, on the one hand, and ICPEs subject to declaration, on the other hand, rules should also be included on the distance between the ICPEs in question and all sites allowing the settlement of permanent mobile homes, including Traveller halting sites.

c· The tightening of sanctions against Travellers camping outside dedicated halting sites

The sanctions against Travellers camping outside dedicated halting sites have continued to be tightened as amendments are made to the Law of 5 July 2000, while the deficit of halting sites resulting from non-compliance with the obligations by the authorities concerned often gives them no choice but to break the law.

The successive changes made to Article 9 of the Law of 5 July 2000 on the reception and housing of Travellers have thus led to the introduction of forced eviction procedures that are both derogatory and repressive³⁹. On the one hand, the eviction procedure provided for in Article 9 has been repressive in nature since 2003 with the introduction of the offence “unlawful group occupation of land” into the French Penal Code⁴⁰. On the other hand, the transformation in 2007 of the eviction procedure, which was originally judicial, into an administrative procedure that can be implemented by the Prefect⁴¹ reduces the procedural guarantees available to defendants. These various measures

³⁸ *Op.cit.* Mode de vie des « Gens du voyage ».

³⁹ Pursuant to Law No. 2003-239 on internal security (Sarkozy II).

⁴⁰ Within the framework of the so-called Law on simplification of the law.

run the risk of eviction procedures, today facilitated by the law of 7 November 2018 on the reception of Travellers and the fight against illegal settlements, which extended the scope of application while increasing the penalties. The Defender of Rights has had the opportunity to rule on several occasions against such measures, in the context of its opinions on the latter Law⁴², but also in its opinions on earlier proposals or draft laws containing provisions relating to the reception of Travellers⁴³, as well as in the context of decisions on evictions of occupiers⁴⁴, in particular by bringing a third-party intervention before the European Court of Human Rights⁴⁵.

The implementation of some of these measures has also been condemned by the European Court of Human Rights on two occasions, both in the *Winterstein v. France* judgment in 2013⁴⁶, and more recently in the *Hirtu v. France* judgment, in which the Court specifically ruled on Article 9 of the Law of 5 July 2000⁴⁷. Although, in the latter judgment, the Court did not rule out these provisions as a legal basis for eviction measures taken against persons living in caravans, it reiterated that its urgency does not release the administrative authority from its obligation to take into account the special needs of members of a socially disadvantaged

group in the examination of proportionality to which it is bound, and in particular to assess the consequences of the measure. The Court further notes that the requirements provided for in the interministerial circular of 26 August 2012 on the anticipation and support of evacuations of illegal camps (diagnosis of the families and persons concerned, support for schooling, health and accommodation) were not respected in this case. Finally, it reiterates the procedural guarantees, in particular the right to a judicial review of the eviction measure. Although the aforementioned judgment concerns the situation of persons belonging to a Roma group, on the one hand, the contested Prefectoral Order had been adopted on the basis of Article 9 of the Law of 5 July 2000 and expressly targeted Travellers; on the other hand, the scope of the circular of 26 August 2012 is not limited to the situation of Roma – although the latter implicitly constitute the populations most affected by these eviction procedures – in that it covers all cases of eviction in the event of the settlement of persons without right or title to public or private property to establish illegal camps⁴⁸.

⁴² See Opinion 18-10 of the Defender of Rights on the aforementioned Draft Law No. 346.

⁴³ Opinion 15-11 of 20 May 2015 on the status, reception and housing of Travellers: Draft Law No. 1610 on the status of Travellers; Opinion 17-11 of 16 October 2017 on the Draft Laws No. 557 intended to support local authorities and their groups in their mission to welcome Travellers and No. 680 aimed at strengthening and improving the effectiveness of sanctions in the event of illegal group settlements on public or private land; Opinion 18-10 of 27 March 2018 on the Draft Law No. 346 on the reception of Travellers and the fight against illicit settlements.

⁴⁴ Examples: Decision 2017-043 of 23 February 2017 on a procedure for the eviction of occupants without right or title to land; Decision 2019-040 of 6 February 2019 on a procedure for the eviction of occupants without right or title to land.

⁴⁵ Decision of the Defender of Rights No. MDE-MSP-MDS/2014-111.

⁴⁶ ECHR, 17 October 2013, *Winterstein et al. v. France*, No. 27013/07. The ECHR reiterates, in particular in the *Winterstein* judgment, that “the vulnerable position of Roma and Travellers as a minority means that some special consideration should be given to their needs and their different lifestyle” and that “Article 8 of the Convention imposes a positive obligation on the Contracting States to facilitate the way of life of Roma and Travellers”. It also states the requirement for an examination of proportionality to be carried out by the national authorities, in the presence of an underprivileged social group, of which Travellers are one, not only when they envisage solutions to the unlawful occupation of sites, but also, if eviction is necessary, when deciding on its date, the terms and, if possible, resettlement offers.

⁴⁷ ECHR, 14 May 2020, *Hirtu et al. v. France*, No. 24720/13.

⁴⁸ The text of the circular also expressly mentions the need to support traveller children in terms of schooling, which therefore does not exclude Travellers from application of the guarantees provided for by the latter.

Within the framework of the observations that it brought as a third-party intervener before the Court within the framework of the *Hirtu* judgment⁴⁹, the Defender of Rights had drawn the attention of the judges to the alarming conclusions that it had drawn in June 2013 on the conditions for evacuation of camps in the assessment of application of the interministerial circular of 26 August 2012. It also recalled France's obligations under the Convention within the context of procedures for the eviction of vulnerable families occupying land without right or title: the requirements laid down by the case law of the Court of Strasbourg in terms of procedural guarantees, the right to respect for home and family life, the right to be treated with dignity and the right to effective remedy.

The Defender of Rights also submitted observations to the European Committee of Social Rights, in the case *Forum européen des Roms et des Gens du voyage v. France*⁵⁰. It submitted similar findings on the application of the 2012 interministerial circular and on access to their rights by persons belonging to a Roma group, noting in particular the lack of legal protection of Roma affected by a threat of eviction and appropriate and permanent resettlement solutions. The Committee followed the conclusions of the Defender of Rights relating to housing, considering in particular that frequent evictions of Roma families were not sufficiently guaranteed to reduce their impact on access to the fundamental rights of the persons concerned⁵¹.

The Defender is very concerned and will closely monitor the announcement made at the closing of the Beauvau de la Sécurité on 14 September 2021 relating to “*the introduction of a fixed penalty for the unlawful occupation by Travellers of land, by simplifying the procedure*”, even though local authorities do not comply with the obligations provided by law in terms of the number of halting sites.

RECOMMENDATION 10

The Defender of Rights recommends that the eviction procedure resulting from Article 9 of the Law of 5 July 2000 be brought into line with the requirements laid down by the ECHR in the *Winterstein* and *Hirtu* judgments. In particular, it recommends the incorporation into the law of the obligation to carry out an assessment as provided for in the 2012 circular in order to verify, on the one hand, whether the French or foreign persons and families concerned belong to socially disadvantaged and minority groups due to their way of life and, on the other hand, their special needs; and that the examination of proportionality provided for by the case law of the European Court be carried out.

The Defender of Rights also recalls that the institution may be called upon by the courts to present observations.

d- Continued denial of domiciliation

Also brought before the Defender of Rights, again recently⁵², are situations relating to the refusal to register an address, or refusal by municipal centres for social action (CCAS) to renew domiciliation, opposed by the latter, or by inter-municipal centres for social action (CIAS) or municipalities, for individuals, for example, because of their illegal occupation of Traveller halting sites that had been closed. Under the French Family and Social Action Code, the link with the municipality is established when the territory of the municipality constitutes the place of residence of the person requesting domicile, regardless of their status or where they live. Therefore, the fact that the claimants are “unlawfully” resident in the municipality's territory should not call into question their relationship with it. Therefore, in some of the cases handled by the Defender of Rights, the fact that the claimants' children were enrolled in school

⁴⁹ Decision of the Defender of Rights No. MDE-MSP-MDS/2014-111.

⁵⁰ Decision MSP-MLD-MDE-2016-184 of 13 July 2016 on a third-party intervention concerning the situation of Roma families living in slums before the CEDS.

⁵¹ CEDS, *Forum européen des Roms et des Gens du Voyage (FERV) v. France*, No. 119/2015, 5 December 2017.

⁵² Decision 2020-237 of 15 December 2020 on the denial of domiciliation by a municipality to two individuals due to their illegal occupation of a closed traveller halting site.

in the municipality's territory was sufficient to establish their connection with the municipality and to justify in itself the allowing of their request for domicile⁵³.

RECOMMENDATION 11

The Defender of Rights reminds mayors that they must register the address of Travellers, in accordance with the provisions of the French Family and Social Action Code, and ensure that, going forward, their services respect the legal and regulatory framework of the right to register an address. Domiciliation grants Travellers the same rights as those acquired by residents of the municipality.

3· ACCESS TO WATER

The Defender of Rights has handled several complaints concerning access to water, electricity and household waste collection in informal living spaces. It also intervenes very occasionally on matters relating to temporary connection when it is contacted by vulnerable persons.

The right to water, particularly to drinking water, is a fundamental right recognised by several international bodies.

The right to adequate housing as defined by the UN, stemming from Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the observations of the Committee on Economic, Social and Cultural Rights (CESCR) on the right to housing, implies more than housing alone.

“Housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal”⁵⁴.

The UN Special Rapporteur on the right to adequate housing had made recommendations to that effect on several occasions. In a statement dated 27 July 2020, it recommends that the authorities “ensure that all people have safe and adequate access to water and sanitation facilities, in line with the objectives of sustainable development, so that people who are homeless or living in inadequate housing, such as informal settlements, can carry out the necessary hygiene procedures, including hand washing, to protect themselves from COVID-19. These facilities must be located in safe places and provide non-discriminatory access for all so that affected persons can effectively protect themselves from the disease”⁵⁵.

The right to water as a basic good is also provided for in Article 16 of Directive (EU) 2020/2184 of 16 December 2020 on the quality of water intended for human consumption (recast)⁵⁶. This article provides, in particular, in its Article 16 for new guarantees for access to water for vulnerable and marginalised groups⁵⁷.

In its communication on the Directive, to be transposed by the Member States by 12 January 2023, the European Commission states that: “The new rules will require Member States to improve access for all people, especially for vulnerable and marginalised groups who currently have difficult access to drinking water. In practice, that means setting up equipment for access

⁵³ Examples: Amicable settlement 14-010957 of 8 January 2015 relating to administrative domiciliation; Decision 2020-237 of 15 December 2020 on the denial of domiciliation by a municipality to two individuals due to their illegal occupation of a closed traveller halting site.

⁵⁴ See fact sheet 21 on the High Commissioner for Human Rights website, pp 3-4: https://www.ohchr.org/sites/default/files/Documents/Publications/FS21_rev_1_Housing_en.pdf.

⁵⁵ See p. 25 of document: <https://www.undocs.org/en/A/75/148/>.

⁵⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020L2184&rid=1>.

⁵⁷ See Article 16: Access to water intended for human consumption: (...) Member States shall: (a) identify people without access, or with limited access, to water intended for human consumption, including vulnerable and marginalised groups, and reasons for such lack of access; (b) assess possibilities for improving access for such people; (c) inform such people about possibilities for connecting to the distribution network or about alternative means of having access to water intended for human consumption; and (d) take measures that they consider necessary and appropriate to ensure that there is access to water intended for human consumption for vulnerable and marginalised groups. (...).

to drinking water in public spaces, launching campaigns to inform citizens about the quality of their water and encouraging administrations and public buildings to provide access to drinking water”⁵⁸.

In this respect, the Council of State obliges the authorities to verify, when they plan to take a decision refusing temporary connection, that this decision does not disproportionately harm the right to private and family life as protected by Article 8 of the European Convention on Human Rights⁵⁹. Moreover and with regard to water, the Council of State ordered the authorities to guarantee access to it for the most vulnerable populations⁶⁰.

However, Travellers also face difficulties accessing drinking water and running water more generally. Indeed, it emerges from exchanges with the associations, as well as from the study of the European Agency for Fundamental Rights, that 14% of Travellers do not have access to tap water⁶¹. More recently, the Agency noted that obstacles to access to water, of which there were more during the COVID-19 pandemic, had serious yet predictable consequences in terms of health issues⁶².

RECOMMENDATION 12

The Defender of Rights recommends that interministerial reflection involving DIHAL be conducted in order to examine the provisions that would ensure effective access to drinking water for the most vulnerable and an ambitious transposition of the Directive on this subject.

4 · SCHOOLING AND ENROLMENT OF TRAVELLER CHILDREN

A · WORRYING DATA

The study by the European Agency for Fundamental Rights notes that unlike almost all other children aged between 4 and 5 in France, only 32% of children of Travellers of the same age receive early childhood education. On the other hand, the percentage of school leavers amongst Travellers is particularly high compared to the rest of the French population. Thus, only 82% of traveller children aged 6 to 15 attend school. In the 18-24 age group, 84% of Travellers leave the school system before or just after college, compared to 9% for the overall population.

B · RECURRENT SCHOOLING DIFFICULTIES: TOO FEW CLAIMS MADE TO THE DEFENDER OF RIGHTS

During consultations and exchanges with Travellers and the associations representing them, the Defender of Rights noted the difficulties encountered with regard to the schooling of traveller children and its continuity.

The Defender of Rights is sometimes contacted regarding denial of enrolment in schooling, or interruption of schooling, by mayors and municipal departments, for traveller children or travelling families settled on halting sites or transit sites⁶³, or on “illegally occupied” land.

Thus, in 2015, the Defender of Rights issued a decision⁶⁴ concerning a municipality’s refusal to enrol two children in school on the basis that the land occupied was unlawfully occupied. The mayor of the municipality had told the mother of the children that the municipality

⁵⁸ See Communication from the European Commission: https://ec.europa.eu/commission/presscorner/detail/en/IP_18_429.

⁵⁹ Council of State, 15 December 2010, No. 323250.

⁶⁰ Council of State, 31 July 2017, No. 412125, 412171.

⁶¹ FRA, Roma and Travellers in Six Countries, 2020.

⁶² FRA, Coronavirus Pandemic in the EU - Impact on Roma and Travellers, 1 March - 30 June 2020.

⁶³ See, for example, Decision 2017-236 of the Defender of Rights.

⁶⁴ Decision MDE 2015-273 of 17 November 2015.



would only allow them to enrol on the condition that the family moved to the halting site for Travellers.

The mayor thus expressly made the enrolment in school and therefore access to extracurricular activities and the children's canteen conditional on the existence of a regular family residence or domicile in the territory of his municipality. In his opinion, the question of the regular nature of the family's camp had to be settled before the children could benefit from their right to education.

The Defender of Rights considers such refusals to be unlawful. The regulations concerning enrolment in school and those relating to town planning, housing or parking are absolutely distinct. The right to education is a fundamental right over which the municipality has no discretion. Thus, such refusals, particularly by mayors, constitute a manifest misuse of power.

RECOMMENDATION 13

The Defender of Rights reiterates that local authorities must stop using administrative disputes against families staying on illegally occupied land to hinder, prevent or even prohibit children's access to school. Such refusal to enrol these children is clearly illegal and likely to constitute discrimination based on place of residence.

It calls for greater vigilance by the State on this subject, both at the beginning of and throughout the school year.

It also asks the associations to report to it any denial of schooling for Traveller children or situations in which children's rights are not upheld.

More recently, in connection with the health crisis, the attention of the Defender of Rights was drawn to the difficulties encountered by traveller children and families in their dealings with schools.

According to the information provided by the associations, the rate of traveller children who did not return to school after the first lockdown in spring 2020 was alarming.

According to the *Solidarité Tziganes Moselle* association in particular, no children returned to school in June 2020 and, in the following September when the school year started, it would seem that only 10 to 20% of the students found their way back into the department's school system.

According to the evidence provided, it would appear that where children lived exacerbated their parents' concerns about possible contamination of family members, including the most vulnerable (grandparents), by children.

Remote schooling seems to allow often more efficient monitoring within the context of an itinerant lifestyle. Many families would therefore have chosen to register children in the regulated National Centre for Distance Education (CNED). This registration would be facilitated in some academies, but more difficult in others, and the issue of the principle of dual registration – with the CNED and in a school or college designated for the children – would not be resolved.

During the pandemic, the children of Travellers were even more affected due to the ongoing difficulties with access to the internet and electricity. For example, traveller children, due to a considerable digital divide, cannot participate in e-learning activities in the same way as other children, making them more likely to drop out of school⁶⁵. The question also arises of the possibility of parents supporting their children in remote schooling.

RECOMMENDATION 14

The Defender of Rights recommends to the authorities that data be produced in order to objectify the extent of school drop-out by young people from Traveller communities. In the event that the data collected reveals significant numbers of Travellers dropping out of school, it recommends that measures be taken promptly to remedy this situation. In particular, it reiterates that in order to stop them dropping out – and to combat the

non-use of public services due to these services becoming increasingly electronic – access to the internet must be provided at reception facilities.

It also recommends that an inventory of mobile schools for children of Travellers be carried out.

Finally, the Defender of Rights would like solutions to be considered in connection with academies and Regional Health Agencies (ARSs) in order to allay, locally, the fears related to COVID in schools and to vaccination.

5. ACCESS TO HEALTHCARE

It appears in the study of the European Agency for Fundamental Rights that although 76% of the Travellers surveyed believe that their health is good or very good, compared to 68% of the general population, people aged 45 and over see their health deteriorate more than the rest of the French population in the same age group. Therefore, Travellers have a life expectancy lower than that of the general French population. The life expectancy of men is 7.9 years lower than that of men in the general population in France, while women from Traveller groups live 10.9 years less than the average woman in France.

To this are added the environmental risks mentioned above to which Travellers are exposed due to the location of halting sites.

The European Agency for Fundamental Rights has highlighted the higher risk amongst Travellers of health problems (diabetes, high cholesterol or blood pressure, cardiovascular and pulmonary diseases, and disabilities)⁶⁶. And yet, at the same time, Travellers were less informed than the general population about the possibility of access to medical care during the COVID-19 pandemic, leading them to stop their treatment for chronic diseases⁶⁷.

⁶⁵ FRA, Coronavirus Pandemic in the EU - Impact on Roma and Travellers, 1 March - 30 June 2020.

⁶⁶ FRA, Coronavirus Pandemic in the EU - Impact on Roma and Travellers, 1 March - 30 June 2020.

⁶⁷ FRA, Coronavirus Pandemic in the EU - Impact on Roma and Travellers, 1 March - 30 June 2020.



In addition, it emerges from the consultations of the Defender of Rights that, in the context of COVID-19, several people belonging to families of Travellers infected with the virus were denied access to isolation sites and access to vaccination seemed difficult without the help of associations.

RECOMMENDATION 15

The Defender of Rights reminds local authorities of the need to take measures to facilitate, on the one hand, isolation under suitable conditions for people who contract COVID-19 on halting sites or at large gatherings and, on the other hand, access to information for families on vaccination and the vaccine itself.

Outside the pandemic context, and in general, the Defender of Rights recommends that authorities take the necessary measures to improve Traveller access to healthcare.

Finally, very recently, the situation of a 10-year-old child suffering from severe autistic disorders with behavioural problems and major cognitive deficits has been brought to the attention of the Defender of Rights. It is

indicated that since 2016 the family has been waiting for a place in a special school. However, their choice of a travelling lifestyle has been criticised by their various contacts. Moreover, their itinerant lifestyle affected the monitoring of their child, in particular due to the rigid application of the principle of sectorisation of certain care (for example, in an educational-psychological medical centre). The claim mentioned the fact that the child received no schooling until they arrived in a municipality where a personal initiative by a headteacher had allowed partial admission to a school. The claim is being investigated by the Defender of Rights.

6- ACCESS TO AID, SERVICES AND WORK

The Defender was also informed that many Travellers whose caravan constitutes their permanent home cannot access home insurance due to the absence of products in this area. This situation in fact places them in violation, exposing them to denial of access to halting sites because of the failure to produce proof of home insurance when required.

RECOMMENDATION 16

The Defender of Rights recalls, as it has done in several previous opinions and decisions, the need to include the guarantees specific to “caravans as permanent dwellings” among the mandatory insurance policies referred to in the French Insurance Code, and thus allow the persons concerned, in case of refusal, to appeal to the *Bureau Central de Tarification*. a framework decision on this subject will be issued at the end of 2021.

Furthermore, in order to be able to rule on the refusal of credit for the purchase of caravans by Travellers, specific situations should be brought before the Defender so that it can investigate individual situations and, if necessary, make general recommendations.

7· DISCRIMINATORY LANGUAGE AND INCITEMENT TO DISCRIMINATION

The Defender of Rights noted in some claims filed, as well as in the group testimonies of Traveller associations, the persistence of discriminatory language or language that incites discrimination against them⁶⁸.

Exposed to systemic discrimination, Travellers are the minority that receives the most negative opinions from the French population. The survey conducted by the European Agency for Fundamental Rights supports the testimonials reported during the consultations organised by the Defender of Rights. Proof that stereotypes of Travellers are firmly anchored, more than one in two French people says they feel uncomfortable with the idea of having Roma or Travellers as neighbours. The study reports that 35% of participants were subjected to harassment motivated by hatred and that 5% suffered physical assault motivated by hatred in the 12 months prior to the survey. In addition, one in five traveller children was the victim of offensive

or threatening language because they belong to this group.

However, the Defender of Rights is not competent and cannot handle complaints about racist language or violence, unless they are from public or private security forces, or if they may constitute situations of harassment in employment.

RECOMMENDATION 17

The studies, reports and opinions of the Defender of Rights indicate a continuum between racist language and discriminatory behaviour towards Travellers.

The Defender of Rights undertakes to contribute to the development of the communication tools and campaigns produced by DIHAL, DILCRAH and CNCDDH in order to combat antigypsyist language and actions, for aspects falling within its areas of competence. Coordinated, ambitious actions on the part of the institutions, developed and implemented with the associations, are necessary to combat prejudices towards Travellers in all areas of society.

CONCLUSION

This contribution will be transmitted to DIHAL to feed into the national strategic framework for Roma equality, inclusion and participation, which is expected to be finalised by the end of 2021.

The Defender of Rights wishes to organise a working seminar one year after the one held on 7 July 2021, in order to carry out an interim analysis on the recommendations and commitments presented.

⁶⁸ Examples: Decision 2018-147 of 11 May 2018 on the content of an email sent by a policeman on 17 October 2017 to several dozen recipients, including elected officials, the municipal police and police officers; Decision MDS-MLD-2015-057 of 20 March 2015 on a discriminatory instruction contained in a municipal police memo.

CREDITS

David Delaporte

Getty Images

—
Defender of Rights

TSA 90716 - 75334 Paris Cedex 07

+33 (0)9 69 39 00 00
—

defenseurdesdroits.fr



D
Défenseurdesdroits
— RÉPUBLIQUE FRANÇAISE —