

Roma and Travellers Survey 2019

Legislation, policy and practical aspects

Country: France

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	Questions	Yes/ No	Supporting information (provide also relevant links, if appropriate and where possible)
1	<p>Are there <u>practical barriers</u> that hinder Roma and Travellers from using anti-discrimination and/or hate speech/hate crime laws and procedures (e.g. affordability of access to procedures, lack of awareness, lack of effective and Roma and Travellers ‘friendly’ recording structures)?</p> <p>Please indicate and explain briefly two such main barriers. Justify your answer by referring to existing reports and data produced by national human rights institutions, equality bodies, Ombuds institutions or other relevant sources, including civil society organisations.</p> <p>Please provide links to the reports/sources that you have used.</p> <p>Indicative length: two short paragraphs</p>	Yes	<p>One of the major practical barriers that prevents Roma and Travellers from using anti-discrimination or hate speech/crime laws and procedures is the lack of effective and ‘friendly’ reporting structures. The Public Defender of Rights has issued several decisions in recent years about persistent police interventions and instructions of a discriminatory nature which rely on social and racial profiling and target Roma and Travellers in particular. In 2019, the Association Sociale Nationale Internationale Tzigane underlined that Travellers are “exposed to constant police harassment” (p. 16). Conflictual relations between the police and members of these groups, generating fear and mistrust, thereby explain their reluctance to report unlawful acts to the authorities, according to the National Human Rights Collective Romeurope (p. 85). In addition to this, in its 2018 report on the fight against racism, anti-Semitism and xenophobia, the National Consultative Commission on Human Rights (en) highlighted that investigating police officers sometimes try to dissuade victims of racism from lodging complaints. They instead encourage victims to use the procedure of ‘main courante’, which implies noting simple statements of facts without pressing criminal charges (p. 204).</p> <p>Another obstacle is related to the cost of legal advice and representation. According to the National Human Rights Collective Romeurope, due to the difficulties in establishing the legal qualification of the facts, and that acts have been committed on the basis of the criteria laid down by the law, victims are induced to seek assistance from specialised associations and/or to request legal aid in submitting a complaint (p. 85). However, decisions that reject or annul requests for legal aid from individuals facing social and economic insecurity are common as a result of these individuals’ inability to provide an official proof of having received, financial resources or not, according to a Recommendation of the Public Defender of Rights published on 27 May 2019 (p. 12).</p>
2	<p>Is there legislation (beyond generic legislation on discrimination and/or hate speech/crime) <u>specifically aimed</u> at or used to protect Roma and Travellers against discrimination</p>	Yes	<p>In France, there is no legislation, nor any procedure specifically aimed at or used to protect Roma and Travellers against discrimination and/or hate speech/crime. Members of these communities are protected by a generic legal framework. At the institutional level, a specialised national administrative body was thus created in 1992 and reorganised in 2015: the National Consultative Commission on Travellers (CNCGV). Its main task is to study the specific</p>



	<p>and/or hate speech/crime, including for example dedicated criminal law provisions, or special structures and procedures focusing on Roma and Travellers (e.g. a specialised structure to deal exclusively with Roma and Travellers' cases)?</p> <p>Please indicate such provisions, structures or procedures and clarify whether and which particular groups of Roma and Travellers are explicitly covered. Please provide links to legislation or other relevant sources.</p> <p>Indicative length: two short paragraphs</p>		<p>questions relevant to Travellers and to make proposals aimed at ensuring access to their rights. The Commission also provides advice to the Government on any general matter relating to this community. The National Consultative Commission on Travellers has stated that although its mission is focused on problems encountered by 'Travellers', who are overwhelmingly French citizens, this does not mean that certain groups are <i>a priori</i> excluded. Its mission can therefore include 'Tzigane' populations, who originate from eastern Europe and who have moved to France in recent years.</p> <p>Moreover, on 22 September 2016, the National Consultative Commission on Travellers, along with the Minister of Culture and Communication in office and nine national NGOs representing Travellers and Tziganes, signed a charter entitled 'The Charter of the National Consultative Commission on Travellers'. This instrument, which has no legally binding force, was adopted with a view to promoting their culture and tackling misconceptions and stereotypes in order to change the way French society perceives them.</p>
3	<p>Have there been any significant court decisions or cases dealt with by non-judicial bodies (e.g. equality bodies, Ombuds institutions, other human rights bodies) over the last five years treating discrimination and/or hate speech/crime against Roma and Travellers?</p> <p>Please mention no more than three such cases. Give a short description of each case and its outcome.</p> <p>Please provide links to the decisions and/or other useful sources of information about them, where available.</p>	Yes	<p>Firstly, one important decision is related to hate speech targeting Roma and Travellers by politicians in public discourse. At a public meeting in November 2013, the mayor of Roquebrune-sur-Argens indulged in hate speech, stating after a fire in a Roma settlement that "Nonetheless I would like to remind you that the Travellers, I mean, the Roma, have set fires nine times. [...] The last one, they set themselves. [...] It's almost a shame that the emergency services were called so early!". Accused of provocation to discrimination, hatred or violence against these groups, the politician was convicted at first and second instance with a fine of 10,000 euros and a year of non-eligibility for public office. The Supreme Court upheld the conviction with its decision of 1 February 2017. The characterisation of the act as 'provocation', under Article 24 of the Law of 29 July 1881 on the Freedom of the Press, was retained by the judges. The court also emphasized that the restriction of freedom of expression was necessary and proportionate in a democratic society, with the purpose of fighting racism and protecting public order, and concluded that the conviction of non-eligibility was justified with regard to the status of the perpetrator (the mayor), his personality and the gravity of the offence, in accordance with Articles 132-1 of Criminal Law and 485 of the Code of Criminal Procedure.</p> <p>Secondly, in a decision of 27 September 2019, the Constitutional Council ruled on the issue of the constitutionality of Article 9 of the Law of 5 July 2000 on the Reception and</p>



<p>Indicative length: three short paragraphs</p>	<p>Accommodation of Travellers. This article defines the conditions in which the municipalities and public establishments of inter-municipal cooperation, that have fulfilled their obligations under the Department plan by setting up or funding halting sites, may issue orders prohibiting Travellers from camping in other areas. Unauthorised camping may also lead to the eviction of the illegal occupants. The Constitutional Council considered that, through this measure, the legislature seeks to ensure that the living conditions of Travellers are compatible with public order and with the rights of third parties. In addition, it rejected the argument that these provisions constitute discrimination based on ethnic origin. It should also be noted that the Constitutional Council confirmed that the time-limit of 24 hours for lodging an appeal against a formal notice and the time-limit of 48 hours for a judge to rule are intended to guarantee the rapid execution of orders. Therefore, it concluded that these provisions do not demonstrate a manifestly unbalanced conciliation between the right to an effective judicial remedy and the objective pursued, and consequently are in conformity with the Constitution. This decision was particularly criticised by NGOs (e.g. National Association of Travellers Citizens-ANGVC).</p> <p>Thirdly, another case concerns the conformity of travelling documents and of fines relating to failure to comply with control obligations with article 14 of the European Convention on Human Rights (prohibition of discrimination) and article 2 of the Fourth Protocol to the Convention (freedom of movement). A French Traveller petitioned the Minister of the Interior to annul Decree n°70-708 of 31 July 1970. After the implicit decision of the Minister to reject this request, the applicant brought the case before the Supreme Administrative Court, which led to a judgement dated 19 November 2014. On the one hand, the court held that the legal requirement that individuals who have no stable residence for more than six months must hold specific travelling documents, aims to allow for the identification of these persons and to maintain their communication with the State. Therefore, it ruled that the contested provisions are based on an objective difference of situation between Travellers and other national residents, and that they do not constitute discrimination on the grounds of origin. On the other hand, the provisions that punish individuals who circulate without possessing such travelling documents with criminal fines were found disproportionate to the objective pursued. More specifically, the court stated that they contravene the right to freedom of movement. In consequence, the court ordered the Minister to repeal the illegal provisions within two months.</p>
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			<p>Finally, in the last year, France has witnessed a series of vigilante attacks against Roma and Traveller camps and individuals following unfounded rumours on social media that members of these communities abducted children (see press reports). Some of these cases have been brought to court and led to official convictions, such as the judgement of the Bobigny Criminal Court of 3 July 2019 that found the identified perpetrators guilty of preparing an attack on a Roma camp in the Paris suburbs. According to the press, the court condemned them for “participating in a group formed with the goal of committing violence,” an offence that punishes people who prepare acts of violence, even if they do not carry them out (Article 222-14-2 of Criminal Code). The sentences for the six men varied from six months imprisonment to five-month suspended sentences.</p>
4	<p>Are there any barriers (legislative/policy or practical) hindering Roma and Travellers children from accessing education (e.g. neutral registration rules but difficult for Roma and Travellers to comply with, distance between home and schools, discriminatory behaviours alienating children from school environment, measures leading to school segregation)?</p> <p>Please indicate and explain briefly two such main barriers. Justify your answer by referring to existing reports and data produced by national human rights institutions, equality bodies, Ombuds institutions or other relevant sources, including civil society organisations.</p> <p>Please provide links to the reports/sources that you have used.</p>	Yes	<p>A first practical obstacle lies in discriminatory behaviour. Public authorities are legally obliged to ensure the registration of all school-aged children regardless of their housing conditions (Article L.131-5 of Education Code). Nonetheless, refusals on the part of some mayors to enrol Roma and Traveller children in their municipal schools have been reported by the Public Defender of Rights. In addition, families are often unaware of the reasons school registration is denied to them. Several sources denounce the fact that the requirements are often illegal (p. 151). The League of Human Rights recalled that the reasons for refusing school enrollment must be notified to parents in writing without delay, in order to enable them to exercise legal recourse, and stressed that imminent eviction or illegal occupation of a piece of land should not, under any circumstances, be used as a justification for a refusal to enroll children in the education system (p. 6-7).</p> <p>Systematic evictions remain an important barrier in accessing and following continued education of Travellers’ children. A research report from June 2018, requested by the Public Defender of Rights, explained that due to the lack of available halting sites families are forced to settle on unregulated encampments. This situation may lead to evictions that affect the access of Traveller pupils to education (p. 150). In its opinion on the draft law relating to the Reception of Travellers and to the Fight against illegal encampments (currently Law n° 2018-957), the Public Defender of Rights criticised the provisions which are facilitating more legal expulsions and pointed in particular to the link between evictions and gaps in schooling and drop-outs from school (p. 6). A renewed concern around the breach of children’s right to education in</p>

	Indicative length: two short paragraphs		France was also expressed by the National Consultative Commission on Human Rights who, in a dossier issued on 6 September 2019, recommended among others that in the event of expulsion the prefect inform the national education services in order to ensure the continuity of schooling (p. 16).
5	<p>Are there any specific regulatory or policy measures over the last five years affecting access to housing for Roma and Travellers (e.g. legislation/policy measures on social housing or halting sites for Roma and Travellers, measures affecting their access to water, electricity or communication services)?</p> <p>Please mention the two most important measures or changes in legislation (on federal, regional or municipal level) classifying them as having a positive or negative impact. You can provide one example for each category. Or, as appropriate, two examples of positive or two examples of negative impact. Please give a short description of each measure and provide relevant links.</p> <p>Indicative length: two short paragraphs</p>	Yes	<p>a) measure(s) having a positive impact</p> <p>The Government instruction of 25 January 2018 'aimed at giving new impetus to the eradication of illegal encampments and informal slums' relaunched the existing policy by establishing a 5-year programme. In order to achieve this goal, it calls upon local authorities to mobilize State funding and co-funding. It also invites them to establish, from the moment of the creation of a camp, an action plan and a provisional calendar for the complete removal of the camp. This plan should be adapted to the characteristics of the individuals concerned and the camps, such as the level of danger for the occupants and disturbances to public order. The Interdepartmental Delegation for Accommodation and Access to Housing (DIHAL) has presented the instruction as a 'turning point' in the approach to this issue, as it is henceforth 'a question of taking action over time, with a clear objective of the lasting eradication of camps, without any resettling' (p. 3). Among the principal positive aspects, the UN High Commissioner for Human Rights (en) noted that 'the policy adopts a comprehensive approach which includes access to housing, health, education and employment, as well as child protection and women's rights'. However, he regrets the lack of enforceability of the instruction: 'Given the absence of mechanisms to compel non-compliant or inactive local authorities to act, it is unclear whether the new Instruction can fully achieve its intended result' (p. 6). This policy measure has been received with vigilance by some researchers, who also criticise the ambiguity of the language used (e.g. 'slum', 'illegal camp').</p> <p>Additionally, Law n° 2000-614 of the 5th of July, that sets the basic principles of the halting and housing policy for Travellers, has been amended by the 'Equality and Citizenship Law' of 27 January 2017. The Article 149 of this recent text provided the basis for several positive measures and was implemented by two decrees. The Decree of 26 December 2019 is intended to determine the methods of calculating the right of use and the pricing systems of the halting sites. The pricing policies for deposits, pitches and water applied prior to this were varied, posing several problems, as explained by the Minister of Territorial Cohesion in response to a parliamentary question. These diverse prices were sometimes difficult to explain and were at the origin of unequal treatment between users, in particular when the cost of the water was</p>



		<p>higher than that charged to the other residents of the same municipality. Moreover, such pricing could generate competition between areas, with those with the highest prices being less frequented than others. Financial reasons (high deposits and/or daily rate) had also been raised on number of occasions as a factor explaining the refusal of certain Traveller families to stay in halting sites (e.g. the 2012 report of the Court of Auditors, p. 119-120). In parallel, the Decree of 5 March 2019 creates an obligation to plan for the halting of large groups ('grand passage') travelling together. It contains a list of essential elements, including accessible and secure facilities for water, sanitation and electricity, solid waste removal, access to roads and sidewalks, public lightning. Until then, the provisions that provided some regulations for large gatherings had no legal force <i>per se</i>, and thus lacked enforceability. As a result, it had been regularly reported that large groups had difficulties in finding appropriate sites (e.g. with accessibility to vehicles, with water or electricity supplies). The Association Sociale Nationale Internationale Tzigane had noted that 'unfit sites are often used as an excuse by local authorities who can then justify an eviction procedure, [...], if the group halts outside the 'official' site' (p. 9). The new Decree has generally been well received, <i>inter alia</i> by the National Consultative Commission on Travellers which submitted a favourable opinion to this initiative.</p>
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b) measure(s) having a negative impact

Unauthorised camping is punished under [Article 322-4-1 of the Criminal Code](#) introduced by [Article 53 of the Internal Security Act of 18 March 2003](#). 'The act of collectively settling with the aim of establishing residence, even temporarily' on land belonging in particular to a municipality which has complied with the obligations provided by the Departmental planning framework, or which is not included in this plan, or belonging to any other owner without being able to prove permission has been granted, is a criminal act. In 2018, the article was amended by [Law n° 2018-957 of 7 November](#) relating to the Reception of Travellers and to the Fight against illegal encampments in order to double the penalties. Illegal occupation of land is henceforth punishable before the criminal courts by one year of imprisonment and a €7,500 fine. On 27 March 2018, the [Public Defender of Rights](#) issued a critical opinion regarding this provision, noting in particular that as the previous penalties had been feebly applied (60 people were convicted of this offence in 2016 and only five were sentenced to imprisonment, the average sentence handed down being 2.2 months), their reinforcement does not appear to meet the objective pursued by the legislator, namely to better prevent illegal occupations (p. 6). Moreover, for the [Association Sociale Nationale Internationale Tzigane](#), the measure in question targets Travellers, and criminalizes a nomadic way of life by disproportionately penalizing illegal stops (p. 6).