



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	France
<b>Title:</b>	ECtHR, 14 May 2020, n° 24720/13, <i>Hirtu v. France</i>
<b>Date:</b>	18 May 2020
<b>Expert:</b>	Sophie Latraverse
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The legality of the conditions of eviction of illegal camp occupied by a Roma family
<b>Grounds of discrimination:</b>	Racial or ethnic origin
<b>Field of application:</b>	Housing, Education
<b>Source:</b>	ECtHR
<b>Applicable law:</b>	Articles 3, 8, 13 and 14 of the ECHR, Article 2 of Protocol n° 1 ECHR

### **Content**

**Case:** In the context of a national policy of systematic evictions of illegal Roma camps, the applicants, 7 Roma persons, were evicted in April 2013 from a camp illegally occupied in three Paris suburbs. They had set their residence on this plot further to their previous eviction from another camp in October 2012.

The applicants allege that their eviction violated Article 3 of the ECHR protecting them against 'inhuman or degrading treatment', and their rights to domicile and private and family life protected by Article 8. They took the position that the eviction and the treatment they were subjected to result from a systematic policy towards Roma in France, based on their ethnic origin that constitutes discrimination in violation of Article 14 of the Convention.

In addition, they argue that beyond the trauma inflicted upon their children, their attendance to school was interrupted in violation of their right to education protected by Article 2 Protocol n° 1 of the Convention.

The Defender of Rights presented a third party intervention before the ECtHR in this case.

**Decision of the court:** The ECtHR decided unanimously that there has been no violation of Article 3 protecting the applicants against 'inhuman or degrading treatment'. The circumstances of their eviction and their living conditions after the eviction did not constitute inhuman and degrading treatment. In principle, the authorities have the right to evict persons who illegally occupy a plot belonging to the city and they cannot claim to have a legitimate desire to stay there.

Meanwhile, regarding the conditions under which this eviction was enforced, the Court noted that it was not taken in application of a judicial decision, but by a local prefect order to evacuate executed without delay without enforcing the Ministerial instruction of 28 August 2012 putting in place a policy anticipating the dismantling of illegal camps, in order

to implement humanitarian conditions in relation to access to housing, education and social rights. Therefore, the particular situation of the applicants, the lack of humanitarian measures to protect them that should have been taken and the short delay of enforcement of the prefect order, did not give them time to seek judicial relief.

The Court stressed that the fact that the applicants belong to a particularly underprivileged group and that the State is in a positive obligation to take their particular needs into account when examining the proportionality of the means taken by the national authorities in enforcing forced evacuation.

Since the State has not fulfilled this positive obligation, the applicants' right to private and family life was violated.

In addition, the court noted that the applicants' arguments alleging a violation of Articles 3 and 8 of the Convention were not examined by the first instance court, neither on the merits nor in seeking injunctive relief, contrary to the requirements of Article 13 of the Convention protecting their right to an effective remedy.

However, the Court dismissed the applicants' allegation of a violation of Article 14 of the Convention and Protocol n° 1, for non-exhaustion of domestic remedies.

**Key points of analysis:** This decision intervenes after two contradictory decisions of the 3<sup>rd</sup> civil Chamber of the Court of cassation that were rendered in 2019 (4 July 2019 n° 18-17119 (074-FR ND 2019), and 28 November 2019 n° 17-22810).

In these cases, the Court of Cassation refused to apply the jurisprudence of the European Court of Human Rights in *Winterstein* providing for the positive obligation of the State to take Roma and Travellers' particular needs into account. It dismissed arguments alleging the necessity to accompany these particular needs in light of a requirement of proportionality, invoking the absolute superiority of the right of property also protected by Article 1 Protocol 1 ECHR.

NGOs have indicated that they will bring one of the cases decided by the Court of cassation before the ECtHR.

**Internet link source:**

ECtHR: <http://hudoc.echr.coe.int/eng?i=001-202442>.

Observations of the Defender of Rights:

[https://juridique.defenseurdesdroits.fr/index.php?lvl=notice\\_display&id=12087&opac\\_vie\\_w=-1](https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=12087&opac_vie_w=-1).