



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

FLASH REPORT

Country:	France
Title:	Conseil d'Etat, 25 September 2020, No. 437524
Date:	5 October 2020
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<u>Context</u>	
Issue at stake:	Legality of the decree reserving compensation for spoliation during occupation of France by the Nazi regime to persons of Jewish origin and excluding victims of Traveller and Roma origin
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Other field (Public service)
Source:	National court decision
Applicable law:	Constitution, Declaration of Human and Civic Rights, Article 1 of Protocol 1 and Article 14 ECHR, the Decree No. 99-778 of 10 September 1999

Content

The liability of the French State for crimes and spoliations committed against French Travellers and Roma during the Occupation of France by the Nazi regime (called the Occupation) was only recognised on 26 October 2016 by a declaration of President François Hollande.

Until then, the only legal framework for the indemnification of victims of racist crimes during World War II had been instituted by a decree of 1999 adopted after President Chirac's recognition on 16 July 1995 of the responsibility of the French State in the persecution of victims of antisemitism during the Occupation.

A commission for the compensation of victims of spoliations resulting from antisemitic legislation during the Occupation was created by Decree No. 99-778 of 10 September 1999. This scheme was interpreted by the Conseil d'Etat (Council of State) to be strictly applicable to the compensation of victims of antisemitism during the Occupation who were to benefit from special compensation because of the specificity of their persecution because of its systematic dimension (CE Ass. *Pelletier*, 6 April 2001, No. 22495 and seq. and CE, *Bidalu*, 6 June 2001 No. 214205).

French Traveller and Roma NGOs - *Union Défense Active des Forains* (UDAF) and *France Liberté Voyage* - and an individual traveller, whose parents were victims of spoliations during the Occupation, presented motions to quash Decree No. 99-778 before the Conseil d'Etat.

The petitioners' motions raised the argument that the scheme instituted by Decree No. 99-778 violated the principles of equality and fraternity protected by the Constitution, that it deprived the traveller and Roma victims of racial persecutions of remedy, in contradiction

to the principle of protection of property guaranteed by Article 17 of the Declaration of Human and Civic Rights, and that it violated the principle of non-discrimination in relation to the protection of property, as protected by Article 1 of Protocol No. 1 and Article 14 of the ECHR.

The NGO Ligue Internationale contre le Racisme et l'Antisémitisme (LICRA) and the Defender of Rights (Decision 2020-159) presented briefs in support of the duty of the State to provide indemnification to Travellers and Roma victims of spoliations and racial crimes during the Occupation.

Decision of the Court: The Conseil d'Etat maintained its previous position regarding the specificity of antisemitic persecutions and spoliations related to their systematic dimension, as stated in the *Pelletier* and *Bidalu* cases. Therefore, it decided that Decree No. 99-778 creating a special commission and framework of compensation for victims of antisemitism during the Occupation was not contrary to the principles of equality and fraternity.

However, it further stated that Traveller and Roma victims of persecutions of the French government during the same period were not deprived of the possibility to prevail themselves of the general regime of liability of the State to institute actions in liability.

Key points of analysis: This motion follows a number of previous attempts of war orphans and heirs of members of the resistance to challenge the strict definition of victims covered by the compensation scheme of Decree No. 99-778, that generated the Conseil d'Etat's position on the specificity of the responsibility of the state towards victims of antisemitism because of the 'systematic' dimension of these persecutions.

Further to the recognition by the French State of the specific persecution of Travellers and Roma on 26 October 2016, the objective of the petitioner NGOs was to obtain recognition of the right to compensation of Travellers and Roma, on the one hand, and that the persecution of Roma and Travellers during the Occupation was of a comparable nature to that of victims of antisemitism.

The Conseil d'Etat chose to maintain its position on the specificity of the persecution of victims of antisemitism, while clearly stating that, contrary to its jurisprudence relating to the claims of other victims of the regime of Occupation in the general population, the action in liability against the State of Traveller Roma and victims of persecution during the Occupation would be admissible.

Internet link source: Conseil d'Etat:

https://www.legifrance.gouv.fr/ceta/id/CETATEXT000042365900?tab_selection=all&searchField=ALL&query=437524&page=1&init=true.

Defender of Rights No. 2020-159:

https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=33840&opac_vie_w=-1.