COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 23 June 2002
MG-S-ROM (2002) 10 rev

The movement of travellers in Council of Europe member states, 2002

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INTRODUCTION

At its 11th meeting in 2001 the Council of Europe's Specialist Group on Roma/Gypsies (MG-S-ROM) decided to initiate a study on the position regarding the economic and social rights of the nomadic populations in Council of Europe member countries**.**

Two experts were recruited for this purpose at the end of 2001. The exact purpose of the study was determined by these experts in consultation with the Migration and Roma/Gypsies Department of the Directorate-General for Social Cohesion**.** Because of the vastness of the field concerned it was decided to do the work in stages, starting with an examination of the legal conditions governing the movement of Travellers in the strict sense.

No economic or social rights can be effectively exercised unless the specific way of life of the holder of the rights is recognised. Where such recognition is lacking, the existence of the rights becomes superfluous and indeed relatively unimportant because of the ever-present concern to avoid various forms of harassment.

In addition, the conditions for enjoying these rights may be conceived exclusively in terms of a sedentary population. They then become an underhand weapon designed to force an economically weak group to abandon a way of life based specifically on constant movement.

This way of life constitutes the material basis for economic and social rights.

The law must therefore protect the movement of Travellers, ie safeguard their freedom to come and go together with its corollary, the right to set up encampments under proper conditions.
The first step was to send a questionnaire to Member States and NGOs on the legal conditions governing the movement of Travellers. The questionnaire enabled a summary to be drawn up of the related legislative, regulatory and administrative practices in 19 states (**I**).

On receipt of the replies a panel of representatives from four states was chosen to carry out a more detailed examination of the legislation (**II**).

On this basis, the experts were able to draw up proposals for improving and harmonising the legal conditions

governing the movement of Travellers (**III**)

SUMMARY OF LEGISLATIVE, REGULATORY, AND ADMINISTRATIVE PRACTICES IN CONNECTION WITH THE FREE MOVEMENT OF TRAVELLERS IN 19 MEMBER STATES

On 30 October 2001, the Council of Europe's Migration and Roma/Gypsies Department circulated to member states and a number of NGOs a questionnaire on the free movement of Travellers and their encampments. From 95 questionnaires sent out, 28 replies were returned to the Council of Europe in the form of 26 completed questionnaires and 2 written answers (Germany and the Russian Federation).

The replies provide information on Travellers' movement in 18 member states : Austria, Belgium, Bulgaria, Croatia, Germany, Hungary, Ireland, Italy, Latvia, "The Former Yugoslav Republic of Macedonia", Netherlands, Norway, Portugal, Russia, Slovenia, Sweden, Switzerland and the United Kingdom.

Three quarters of these states have no administrative unit or authority to deal exclusively with Roma affairs, which probably explains why Travellers' migratory movements are not monitored. Where such units or authorities do exist, they are rarely independent, possess limited financial, human and sometimes computing resources (Germany, Belgium, United Kingdom) and are usually responsible for implementing social and/or integration policies.

Yet most of these countries have a nomadic population (72%), made up for the most part of nationals of the country. The itinerant population represents up to three quarters of the Roma or Gypsy population (as is the case in the United Kingdom).

Questions 1 à 8 : General information

Specialist administrative unit				Non-sedentary population				Nationals				Study of migratory movements			
Yes	No	Nr	T	Yes	No	Nr	T	Yes	No	Nr	T	Yes	No	Nr	T
8	20	0	28	20	8	0	28	18	4	7	29	6	17	5	28
29	71	0	100%	71	29	0	100%	62	14	24	100%	21	61	18	100%

Note T : Total Nr : No reply

Scrutiny of conditions governing Travellers' movement (I) and their encampments (II) is not superfluous, concealment of their situation frequently giving rise to legislative encroachment on their liberties.

Movement of Travellers

It is not enough to record that there are restrictions on Travellers' freedom to come and go (1.1); the questionnaires show how those restrictions work and are perpetuated (1.2).

Restrictions on freedom of movement

Direct restrictions on Travellers' movements ought to be non-existent, being contrary to the principle of non-discrimination which is the basis of the democratic societies that make up the Council of Europe. Yet only two thirds of the states say that Travellers' movements are governed by ordinary law, ie the same rules as other nationals. Five failures to reply to this question reflect a certain embarrassment on the part of the authorities

concerned. Perhaps it is more hesitancy on their part, knowing that the legislation is intended to catch mainly Travellers without being specifically aimed at them?

Questions 11-12 : Freedom of movement

Movement of Roma governed by ordinary law				Socio-occupational regulations governing movement of nationals			
Yes	No	Nr	T	Yes	No	Nr	T
15	3	6	24	6	11	7	24
63	12	25	100%	25	46	29	100%

Over a third (38%) or respondents mention provisions which, because of the application criteria, apply primarily to Travellers. These provisions rely on the socio-occupational characteristics of the Travelling population (13+25=28% of cases) as a means of defining their subject matter. This practice is well known and may be qualified as indirect discrimination.

Questions 9-10: Movement of Travellers

Special provisions governing the movement of Roma				Provisions indirectly covering Roma				Coverage criteria				
Yes	No	Nr	T	Yes	No	Nr	T	E	S	Eth	a	T
5	19	4	28	11	16	2	29	3	5	5	8	21
19	67	14	100%	38	55	7	100%	14	24	24	38	100%

E : Economic
S : Social
Eth : Ethnic
O : Other

It is therefore an established fact that there are obstacles to the free movement of Travellers. However, recording the fact is not sufficient to put an end to it; the system needs to be dismantled.

Restrictions on the free movement of Travellers

1.1.1 Legal basis for different treatment

Where there is direct or indirect discrimination against Travellers, its legal basis is to be found in an administrative measure in 72% of cases. It is rarely due to legislation: only 28% of the cases of restrictions are based on the law and never on the constitutional order.

This is extremely valuable information. First of all, it makes it clear that the situation of Travellers lies largely outside the control of national parliaments, which are the expression of democratic will and the primary guarantors of fundamental freedoms. Gaps in the constitution and legislation afford the administration the opportunity to opt for rules that restrict Travellers' movement.

Half of the administrative restrictions are, in fact, administrative practices that have no statutory basis. This is

illustrated by the case of officials who take upon themselves powers they do not, in fact, possess. Or by the use of semi-official directives by the executive authority which it is difficult to have set aside by the courts because the acTual situation is difficult to prove.

Questions 13-14 : Classification of different types of Travellers

Uniform regime				Legal status of classification					Types				
Yes	No	Nr	T	C	L	AR	AP	T	E	S	P	O	T
12	3	6	21	0	3	4	4	11	3	1	4	1	9
57	14	29	100%	0	28	36	36	100%	33	11	44	11	100%

Nr : No reply
C : Constitutional
E : Economic
L : Legislative
S : Social
RA: Administrative Regulations
PA :Administrative Practice
P : Professional
O : Other
1.2.2 Differences in treatment regarding movement
Differing treatment may take two forms:

1. It may relate to movement as such (a)
2. or it may relate to the means of movement, ie the mobile home (b)

a) Differences in treatment of movement as such

aa) special surveillance measures

An itinerant population is unsettling for the surveillance authorities, more used to dealing with a geographically stable population. It requires different monitoring methods, including those concerning travels, to gather information about the routes taken by Travellers for purposes of comparison. One quarter of respondents appear to require Travellers to be in possession of special documents in order to be able to move around (Italy, Netherlands and United Kingdom [?]. A quarter also carry out periodical checks (Belgium, Croatia, Italy). And some (eg Italy and France) require Travellers to report to an authority. Italy and France apparently use all these methods of surveillance. Lastly, one third acknowledge using systematic checks of encampments. These are then zealously carried out by the police, confirming the high proportion (36%) of cases in which administrative practices are the basis of differences in treatment.

Questions 15-16-17 : Monitoring of Travellers' movement

Possession of special documents				Periodical checks				Means of checking				
Yes	No	Nr	T	Yes	No	Nr	T	RR	C	OC	O	T
6	13	1	20	5	11	3	19	3	4	1	4	11
30	65	5	100%	26	58	16	100%	27	36	1	36	100%

RR : Reporting requirement
C : Systematic checks of encampments
OC : Non-specific checks
O : Other

ab) administrative-stabilisation measures

In almost half the states, Travellers must declare a home base which they cannot choose freely: they need prior authorisation to determine the place of their choice (60% of cases). In most cases, a locality is their home base (61% of cases).

The system is pernicious because compliance is an absolute condition in order to be able to exercise civil (28%) and civic (28%) rights. It also affords the state an opportunity to enforce fiscal obligations (23%).

The frequency of such administrative formalities combined with the obligation to declare a home base compels Travellers to return regularly to the same place, which they may wearily make their permanent refuge.

In all cases, Travellers' range of movement is reduced, making it easier to monitor them. The effect of these measures, whether deliberate or not, is to stabilise the itinerant population to the detriment of their freedom to live where they choose. They impose restrictions on complete freedom of movement.

Question 45: Travellers' freedom to choose their home base

Free choice				**Nature of restriction**			
Yes	No	Nr	T	A	D	Other	T
9	15	4	28	9	1	5	15
32	54	14	100%	60	6	34	100%

A : subject to prior authorisation D: subject to prior declaration

Question 46: Travellers' choice of home base

Compulsory				**Types of attachment**				**Purpose of home base**					
Yes	No	Nr	T	L	NC	O	T	F	C	CQ	J	a	T
14	7	7	28	8	0	5	13	9	11	11	5	3	39
50	25	25	100%	61	0	39	100%	23	28	28	19	8	100%

L : Attachment to a locality Fisc : Fiscal
NC : Attachment to a national centre C : Civil
O: Other CQ: Civic
J : Judicial
O: Other

b) Means of travel

ba) inviolability of the home

Travellers' caravans or mobile homes are usually protected under criminal law as their occupants' homes. Where this is so, police searches are not left to their discretion but are strictly controlled and arrests in the home are generally prohibited during the night.

However, this right to protection is not guaranteed in one state in five because a caravan is not regarded as a home, resulting in a serious difference of treatment that discriminates against Travellers. Such discrimination is all the more unacceptable because it concerns a fundamental right and is practised by member states of the Council of Europe, and the European Convention on Human Rights guarantees inviolability of the home.

This absence of protection can also be a means of exerting pressure on Travellers to give up their way of life for the sake of obtaining the protection of the law in a traditional fixed abode.

Question 47 : Inviolability of the mobile home

Yes	No	Nr	Total
17	5	6	28
61	18	21	100%

bb) treatment of mobile homes as housing

Just as lack of security can persuade Travellers to give up their traditional way of life, so too refusal to treat their mobile homes as housing for the purpose of payment of certain social benefits may be a strong incentive to adopt a sedentary life style. This is what happens in one third of States. This method is all the more effective where the population is extremely poor and so dependent on such benefits.

Here too, differences in treatment of Travellers because of their type of home can be an effective way of making them give up their manner of exercising their freedom to come and go.

Question 48 : Treatment of mobile homes as housing for social benefit purposes

Yes	No	Nr	Total
8	11	9	28
29	39	32	100%

1.2.3. Perpetuation of differences in treatment through the criminal law

The effectiveness of a legal rule depends on the penalties it provides for in the event of non-compliance; without them it would fall into immediate disuse. Application of this principle to a situation involving discrimination prevents those subject to it from escaping and so reinforces the perverse effects of a difference in treatment.

Three NGOs having replied to the questionnaire (in Ireland, the United Kingdom and Switzerland) report that unauthorised movement by Travellers is subject to special penalties. Two states apparently even resort to imprisonment, even though most prefer administrative measures.

Moreover, there is no reason to believe that those states which do not apply penalties specially intended for Travellers do not achieve the same effect by means of indirect discrimination.

The penalty may be the same for all but "all" means only Travellers because they alone or mostly are subject to movement restrictions. Or the penalty may apply to all unauthorised movement, thus also embracing the special rules applicable to Travellers.

Questions 19-20 : Penalty for unauthorised movement

Nature of the penalty						**Specific penalties applicable to Travellers**			
Civils	Criminal		Adm	None	T	Yes	No	Nr	T
	F	P							
0	3	2	7	6	18	4	9	7	20
0	17	11	39	33	100%	20	45	35	100%

F : Fine None : No penalty
P: Imprisonment Adm : Administrative

1.2.4 Application of the regime applicable to EU nationals

Discrimination can sometimes operate "in reverse", ie non-nationals from other countries of the European Union are better treated than nationals in the same circumstances. There appears not to be any discrimination of this kind between Travellers from other EU countries within the common area of jurisdiction: national Travellers are governed by the same rules as those from other European Union countries.
Generally speaking, non-EU travellers are treated differently.

Question 18 : EU Travellers and nationals

Identical regulations				**Movement within the national territory**			
Yes	No	Nr	Total	CC	TCC	SC	T
12	3	4	19	5	2	0	7
63	18	21	100%	71	29	0	100%

CC : Same conditions as any other non-Travelling member of the European Union.
TCC : Same conditions as any other member of a third country.
SC : Special conditions**.**

2. <u>Travellers' encampments</u>

There is a tendency among Council of Europe member states to establish special sites to accommodate Travellers (2.1). However, one third of states have no legislation to this effect, leaving Travellers subject to laws which rarely favour long stays (2.2).

Question 21 : Special sites reserved for Travellers or relevant legislation

Yes	**No**	**Nr**	**T**
17	9	2	28

61	32	7	100%

2.1 Identical treatment of encampments

For encampments as for movement, rules (2.1.1) are effective only if backed by a system of penalties (2.1.2).

2.1.1 Encampment provisions

a) Length of stay

The key element for Travellers in any system of ordinary law governing encampments is clearly the maximum authorised length of stay. From this point of view, the arrangements described by states which apply ordinary law are extremely varied.
The maximum is six months in Croatia but a mere 48 hours in the Walloon Community of Belgium. Between the two there are wide variations - "The Former Yugoslav Republic of Macedonia" : 8-60 days; United Kingdom: 48 hours - 7 days. This period may also be left to the discretion of the local authorities and hence be arbitrary, as in the Flemish Community of Belgium.

b) Access to other gathering sites

Two public authorities and one NGO report that three states ban Travellers from camping and caravan sites; the silence of others (36%) might indicate that they are not the only ones to practise such straightforward discrimination. Yet such sites are often the only places with decent sanitation in the absence of special sites reserved for Travellers.

Question 22 : Access to public camping and caravan sites

Yes	No	Nr	T
10	4	8	22
46	18	36	100%

2.1.2 Penalties for illegal encampment
a) Eviction
Since Travellers are subject to the ordinary law governing encampments, it is logical that they should be subject to the same eviction procedure if they fail to observe the relevant rules. What is more important is to know which authority has the power to evict them, since that determines the degree of protection of Travellers' rights. It would seem that a court order for eviction is necessary in only a quarter of states. In the other three quarters, the police apparently act on their own initiative.

The degree of protection of the right to set up camp is thus small, particularly where the local police authorities are closely involved (43%). The latter's answerability to local politicians does not afford the guarantee of impartiality which objective enforcement of the law demands.

Questions 27-28 : Specific eviction measures applicable only to Travellers

Specific eviction measures	Authorities empowered to evict

Yes	No	Nr	T	Judicial	Police		T
					national	local	
3	15	4	22	8	11	14	33
14	68	18	100%	24	33	43	100%

b) Other penalties

First of all, unauthorised camping never goes unpunished; two states even, according to NGOs, have recourse to imprisonment. The most common penalty, however, is a fine (27%), after the application of various administrative measures (43%), which may be the prelude to a subsequent criminal penalty.

The authorities frequently use this combination as a means of restoring law and order quickly, adding punishment of the offence on completion of a longer procedure. From a practical point of view, this is understandable where an unlawful encampment may hinder the freedom of movement of others. However, its systematic application to all encampments would seem to go too far, since it invests the administrative authorities with initial power to assess the lawfulness of the encampment, whereas this power properly belongs to the courts.

Questions 25-26 : Other penalties for unauthorised camping

Type of penalties						**Penalties provided specifically for Travellers**			
Civils	Criminal		Adm	None	T	Yes	No	Nr	T
	F	P							
6	8	2	13	1	30	4	14	5	23
20	27	7	43	3	100%	17	61	22	100%

Note F : Fine

Note P : Imprisonment

Note Adm : Administrative

Note None : No penalties

2.2 <u>Territorialised positive discrimination through the provision of special sites</u>

In the states which have decided to introduce a policy of providing special sites for Travellers, the establishment (2.2.1) and management (2.2.2) of such areas has taken various forms.
The service offered to Travellers varies in quality according to the conditions governing occupation of the sites (2.2.3). However, it can often be a form of social exclusion if the sites are used as a means of separating off a marginalised population (2.2.4).

2.2.1 Establishment of reception areas
The structure of Council of Europe member states makes no difference to how special sites are established: in the overwhelming majority of cases, whether or not the state is federal in structure, the initiative lies with the local

authorities (82%). However, the power seems discretionary, for only the Land of Berlin can step in to set up such areas if the local authorities fail to do so. Nor does central government offer any financial incentive: only 16% contribute financially. The only exception is France where the state subsidies local authorities which establish sites.

Consequently, in most cases, the local authorities bear the cost (60%), sometimes sharing it with the Travellers where the latter are not left to pay for everything themselves. So it is not surprising that provision in these states is insufficient despite a policy of catering for Travellers. One possible solution is suggested by the Dutch example, where private businesses can establish and run sites.

Questions 29-30-31 : Establishment of special sites

Initiative				**Funding**						**Intervention of national authorities if local authorities fail to act**			
F	N	L	T	NA	LA	Ass	TR	O	T	Yes	No	Nr	T
2	2	18	22	4	15	0	5	1	25	3	13	4	20
9	9	82	100%	16	60	0	20	4	100%	15	65	20	100%

Note F : federal authority NA : national authority

Note N : national authority LA : local authority

Note L : local authority Ass : Travellers’ association

Note TR : Travellers O : other

2.2.2 Site management, quality and access

Because they are closest, the local authorities naturally run and administer the sites (72%) instead of the national authorities. Nevertheless, it would be reasonable to expect greater involvement from Travellers. However, their associations are not closely involved: only two states mention their involvement in running the sites. Associations not made up exclusively of Travellers do not play much part in running the sites either.

The day-to-day operation of these sites is too burdensome for the local authorities, which have many other claims on their attention, or for associations, which are too poorly structured. Private management could be a solution.

Yet site amenities are are not very extensive; only half of them include social facilities (47%) or have to meet standards of equipment (44%). The sites are apparently not very attractive to Travellers, especially as two thirds of them do not have to meet sanitary requirements (69%) and fewer than one state in five employs caretakers; they are rarely able to accommodate economic activity (only two states) or cater for children's schooling (three states).

Even where such facilities exist, half of the states who say they inform Travellers about them rely mainly on word of mouth (78%) and never on signposting.

Questions 32-33-34 : Management and quality of reception areas

Management and administration	**Quality standards**	**Amenities**

of sites

NA	LA	TAs	As	Co	O	T	None	S	E	Sec	T	Sch	WS	Soc	O	T
0	18	2	3	2	0	25	2	10	14	6	32	5	3	8	0	17
0	72	8	12	8	0	100%	6	31	44	19	100%	30	18	47	0	100%

NA : National authority S:Sanitation Sch : Schools
LA : Local authority E : Equipment WS : Workshop
TAs : Travellers' Association Sec: Security Soc : Social
As : Other community associations None : No standards facilities
Co : Private companies O : Other

Question 35 : Travellers' knowledge of sites

Information				**Types of information**			
Yes	No	Nr	T	SP	IC	Other	T
10	7	3	20	1	1	7	9
50	35	15	100%	11	11	78	100%

SP : Signposting
IC :Information campaign

2.2.3 Occupation of sites
As the sites are intended for itinerants, they do not cater for Travellers wishing to settle. Also, they have to be able to accommodate new arrivals. Length of stay has logically therefore to be limited but only half the states admit to this. In most cases it is limited to one month (62.5%). In two states (Belgium, Netherlands) it is limited to 48 hours, which makes the pursuit of economic activities or children's schooling strictly impossible (although their sites do not have schools anyway).

In general, the authorities favour small sites able to accommodate a few families, clearly wishing to avoid large gatherings, even on an occasional basis.

Question 36 : Length of stay

Limitation of length of stay				**Duration**				
Yes	No	Nr	Total	- 48H	-30 days	- 2 months	+ 2 months	T
10	6	4	20	2	3	2	1	8
50	30	20	100%	25	37.5	25	12.5	100%

Questions 37-38 : Capacity of sites

Average number of places					**Availability of sites for large gatherings**			
-20	-30	-40	-50	T	Yes	No	Nr	T

			and +					
8	3	2	3	16	5	12	13	30
50	19	13	18	100%	17	40	43	100%

2.2.4 Legal implications of the provision of a site

a) Access to other sites

Fifty-five per cent of states allow Travellers to occupy ordinary camping and caravan sites in addition to those specially reserved for them, while three states (Netherlands, Switzerland, United Kingdom) ban them from ordinary sites. The sites then have a connotation of separate treatment and perhaps accentuate marginalisation.

Question 44 : Travellers have access to camping and caravan sites

Yes	**No**	**Nr**	**Total**
11	6	3	20
55	30	15	100%

b) Penalties for camping outside the official sites

Penalties for camping outside the official sites are not fundamentally different from those applied in states which have no such sites. The question is not whether there is a penalty but whether there is a ban. Apart from the actual principle of a ban, which may cause the sites to be regarded as "reservations", it is the rigidity of the ban which is threatening. If the number of sites is insufficient at national or only local level, the possibility of stopping there becomes virtually non-existent for many Travellers. They have no choice but to stop illegally elsewhere and to expose themselves to prosecution.

The system can then become pernicious, both drastically reducing the last Travellers' right to stop and imposing enforced sedentation on some through official harassment.

This logic can be reinforced by the specific nature of the penalties reserved, according to the NGOs, for Travellers stopping outside the sites, thereby emphasising that use of the sites is not a right but an obligation. And what about the states that did not reply to the questionnaire?

Questions 39-40 : Penalties for stopping outside the sites

Prohibition of stopping outside the sites				**Penalties for unauthorised camping**					
Yes	No	Nr	T	civils	criminal		Adm	None	T
					F	P			
11	4	5	20	7	11	2	11	2	33
55	20	25	100%	20	34	6	34	6	100%

F: Fines
P : Imprisonment
Adm : Administrative
None : No penalties

41 : Penalties provided for only for Travellers

Yes	No	Nr	T
5	11	4	20
25	55	20	100%

c) Penalties for Travellers only
Eviction remains the effective instrument for punishing camping outside the sites. Here too, some states apparently apply different treatment to Travellers camping outside the official sites, corroborating previous observations.

Question 42 : Special eviction procedure for Travellers

Yes	No	Nr	T
6	11	3	20
30	55	15	100 %

J : Judicial
N : national
L : local

d) Enforcement of the penalty
Prior recourse to the courts to obtain an eviction order is not systematic, apparently being required in only one state in five. In over half of cases, eviction is initiated by the police, mainly locally. The absence of a sufficient degree of protection may render the system described above (or simply its establishment as numbers of Travellers grow) pernicious.

Question 43 Issue and execution of the eviction order

Court	Police		T
	National	local	
7	11	15	33
21	34	45	100%

II. DETAILED EXAMINATION OF THE LEGISLATION IN PANEL

OF FOUR MEMBER STATES

It was decided to carry out a more detailed examination of the structures and principles governing the French, Italian, Swiss and United Kingdom legal systems relating to the movement of Travellers.

These states were chosen because their institutional characteristics and their experience in this field are apparently very dissimilar.

France and the United Kingdom are strongly centralised states, unlike Switzerland and Italy where there is a strong tradition of local autonomy. France has recently adopted legislation comparable to that which existed in the United Kingdom until 1994[1].

However, a closer examination shows that, in legal terms, the problem throughout seems to be to assert a right of encampment for Travellers.

For while freedom of movement as such does not appear to be a fundamental problem - except in France where special documents are required of Travellers under a 1969 act[2] - the freedom to stop has a hard time of it. Without the latter freedom, movement is in practice difficult.

A comparative study of the legislation of these states on stopping reveals the intrinsic weakness of the right to encamp (1). Attempts to strengthen it have often failed (2).

1. Intrinsic weakness of the right to encamp

The rise of the urban society has taken place at the expense of Travellers' ability to encamp (1.1). This is due essentially to the lack of strong guarantees of the right to encamp (1.2).

A finding: reduction of Travellers' right to encamp

The development of urban societies since the middle of the 19th century has been bad for the maintenance of an itinerant population. Such development is greedy for space. It has had a direct influence on Travellers' encampments[3].

In the United Kingdom, for example, the "commons" ("biens communaux" under the Ancien Régime in France) for centuries provided legal stopping places for nomads[4]. Section 23 of the 1960 Caravan Sites and Control of Development Act ended this practice by authorising local authorities to close the commons to Travellers. In compensation, Section 24 of the act allowed those authorities to open caravan sites[5].

The commons, which were situated right on the edge of built-up areas, were in actual fact a hindrance to urban development. However, in passing the act, the British Parliament profoundly changed the logic governing the reception of Travellers: the right to encamp, which had been undeniable on the immutable commons, now became a right that depended on local authorities' willingness to establish a special site.

Side by side with the increasing amount of land occupied for sedentary activities and the consequent eviction of nomads, the rationalisation of this occupancy was also a factor in reducing encampment rights.

Here the example is given by France and its system of laws on land use[6]. Communes can control their territorial organisation by adopting Local Town Planning Schemes. Those who have done so have generally sought to control lengthy encampments by targeting Travellers, albeit without naming them. These local authorities have thus been able to ban all caravan sites from their land or to locate them specifically in the most unfavourable areas[7]. In addition, the development of motor traffic has led to regulations that favour the movement of traffic but discourage it from stopping[8].

How have Travellers' rights been reduced so easily?

1.1 The reason: the absence of strong written guarantees of the right to encamp

The right to encamp, to stop or to make a lengthy stay is generally presented as the corollary of the right to come and go freely. This correlation is not neutral but marks the absence of autonomy as freedom, of the right to encamp.

The bulk of constitutions and declarations of fundamental rights guarantee freedom of movement. This is the case with the Swiss Federal Constitution and Article 16 of the Italian constitution. Habeas Corpus is the United Kingdom equivalent.

The French constitution alone makes no express reference to the right to move freely. However, the right has been deduced by the French Constitutional Court from Article 2 of the Declaration of the Rights of Man and of the Citizen of 1789[9]. This silence has given rise to the question of the basis for any freedom to halt under French law since this is not mentioned in any act or basic text. "Stationnement"(remaining in a place) is expressly referred to only in the Highway Code, which is the work of the rule-making authority: no definition of "stationnement" is given there and reference is made only to prohibited forms of it such as parking[10].
The picture in Switzerland, Italy and the United Kingdom is identical: no stable basic rule makes freedom to encamp, of which no mention is made, in any way untouchable.

Consequently, not only have Travellers no formal guarantees as regards this right but also the mass of citizens is deprived of it. Their situation can be improved only by strengthening the right in question on behalf of Travellers.

2. Difficulty of strengthening the right to encamp

The problem of encampment for Travellers has become increasingly acute with the continuing shrinkage in available spaces. Public-order disturbances are increasing[11]. States have reacted by encouraging, and even compelling, local authorities to establish reception sites (2.1).
For various reasons these policies have sometimes failed (2.2).

2.1 Promotion of a specific encampment right for Travellers

The British, French, Italian and Swiss States have decided to develop reception sites for Travellers. However, the legal means employed show varying degrees of constraint.

The Swiss Confederation appears for the moment to have left the matter in the hands of the cantonal and communal authorities. The job of determining the possibilities of preparing sites for foreignTravellers has been given to a Foundation with the name "Assurer l'avenir des Gens du Voyage suisses" (Ensuring the Future of Swiss Travellers) but its conclusions regarding the determination of available places will be known in...ten years![12]

In Italy the central authorities have made a timid attempt to act in this field, which comes under the responsibility of the Regions and Provinces. In the 1970s the Minister of the Interior issued a circular inviting mayors to rescind bans on Travellers' encampments[13].

Since the 1980s ten of the 20 Italian Regions and one Province have legislated in favour of Travellers. The laws recognise the right to be a Traveller, and thus to encamp, and define two types of site, long-stay and transit. Construction is left to the local authorities[14].

The French system established by the Act of 4 July 2000 is somewhat comparable but marked by the imprint of the centralising state. Under the act, it is the responsibility of the French "départements" to draw up schemes for the reception of Travellers. These schemes estimate the site requirements in the "département" and decide where

the sites are to be situated in the communes which they designate[15]. Once the scheme has been adopted, the communes, which receive large subsidies for the purpose[16], have two years in which to erect the facilities. The site must meet minimum standards of amenity laid down by decree[17]. If the communes fail to comply, the government representative in the region may step in and arrange construction of the sites[18].
The French authorities have to a great extent taken the British Caravan Sites Act of 1968 as their model.

After the abolition of the commons, local initiative for the creation of reception sites was lacking. To remedy this, the 1968 Caravan Sites Act authorised the Secretary of State to allow the direct creation of sites in place of the local authorities[19]. To counterbalance this, as currently provided for by the French legislation of July 2000, Travellers could be forbidden to encamp outside those sites on other parts of local land[20].

The results of the French reforms will be observed over the next decade but, meanwhile, it can be recorded that the policy followed by the United Kingdom in 1994 has failed.

2.2 Difficulty of implementing the new right

In Italy, the legally allowed limits on freedom of movement arising from safety and public-health requirements have been used as pretexts for banning Travellers from setting up encampments[21].

Likewise, in the United Kingdom, the power granted by the 1968 Caravan Sites Act to governmental authorities to take over from local authorities with respect to districts has practically never been used[22]. Hence the partial failure of the British system.

Even more pernicious have been the effects of the abolition by Section 80 of the 1994 Criminal Justice and Public Order Act (CJPOA) of any requirement to establish sites; measures banning encampment have been maintained and even extended without compensation.

Section 77 of the CJPOA prohibited encampments on any area attached to a motorway and on any occupied or unoccupied land without the owner's permission. In addition, local authorities were given the power to instruct illegal occupants to leave[23].

Henceforth encampment is legally allowed in the United Kingdom only on public caravan sites, which are well known to be inadequate, on private land with the authorisation, seldom granted, of the owner and on sites owned by Travellers, for which 90% of encampment authorisations are refused on the grounds of town-planning regulations[24].

In Switzerland, Italy, France and the United Kingdom therefore, the final decision on the creation of sites lies with local authorities.

In the absence of the power to step in on the part of the central or even regional authorities, communes in "federal" states such as Switzerland and Italy find it easy to thwart policies on reception sites and, in fact, have done so. All they have to do is to fail to implement or distort the instructions and recommendations of the central authorities.

Even where the latter possess the power to step in, they do not display the necessary political will to put it into effect.

Against this background, what future is there for the new French legal arrangements resulting from the act of July 2000? Certain communes have already requested postponement of the obligation to provide amenities within the

prescribed two-year period and the central authorities have shown themselves to be fairly well-disposed on this point.

III. PROPOSALS FOR IMPROVING AND HARMONISING THE LEGAL CONDITIONS GOVERNING THE MOVEMENT OF TRAVELLERS

The proposals by the consultants are aimed at the setting up of a co-ordinated and coherent system of legal guarantees of Travellers'freedom of movement.

They target both freedom to move (1) and freedom to halt for a reasonable period (2).

1. Travellers' freedom to move

The member states of the Council of Europe should:

1 remove all obstacles to Travellers' freedom of movement, inter alia by abolishing special movement documents which may be required of itinerants and which amount to internal passports;
2. refrain from requiring Travellers to produce identification other than the ordinary-law documents of member states where such documents are in force;
3. state the home base, where this is obligatory, on ordinary law identity documents by means of a special mention, in order to prevent confusion;
4. allow Travellers to choose a natural person or an association as their address;
5. in the technologically most advanced states, encourage Travellers to have an internet address on an official Travellers' website;
6. collect on that website a range of public services facilitating contacts between Travellers and the authorities, such as tax returns, notification of legal decisions, declarations of marital status, applications for social-security benefits etc;
7. never use the above information on the home base as a means of drawing up files allowing the person concerned to be identified as a Traveller, for the sake of succeeding generations;
8. permit a free choice of address, where choosing is obligatory.

Freedom of encampment

The member states of the Council of Europe should:

1. grant Travellers a special right to encamp by

a) creating reception sites at which Travellers can stop and stay in order to enable the to establish durable encampment;

b) making these sites attractive by

° providing them with a minimum of facilities, especially sanitary
° providing a sufficient number of them under an appropriate zoning plan
° signposting their presence using a European hologram

c) associating Travellers and/or their representatives with all the decision-making processes leading tothe creation of reception sites;
d) requesting international organisations to supply financial assistance with the financing of these facilities, in particular the EBRD and the Council of Europe Development Bank;

e) granting to Travellers' mobile homes the legal status of a permanent address;
f) granting to Travellers' mobile homes the social-security status of a permanent address;

2. guaranteeing Travellers' special right to encamp by

a) incorporating it into their domestic law in accordance with rules having at least a legislative or even a constitutional value and putting it on the same footing as the right to decent housing when such a right is accorded to underprivileged groups
b) negotiating an international treaty under the auspices of the Council of Europe aimed at the establishment of a programme for providing states with stopping places designed to take account of Travellers'pan-European transfrontier movements.

c) making all evictions of Travellers subject to the prior authorisation of a court, unless there is a serious and imminent danger to law and order, after three cumulative conditions have been found to be present:

° the encampment must be illegal;
°there must be sufficient room at reception sites in the area concerned;
° these sites must have adequate facilities and be well maintained;

d) authorising Travellers' associations to exercise the individual rights of Travellers before the competent courts in dealing with evictions, both as defendants and as plaintiffs, and at any stage of the proceedings;

e) limiting the duration of encampment on sites in order to prevent them from becoming ghettoes through the on-site sedentation of the users;

f) refraining from fixing an authorised encampment duration shorter than the longest period of schooling between two holiday periods, especially if the sites do not have educational facilities.

APPENDIX 1

Reading the tables and limitation of the method

1) Reading the tables:

The tables show the number and percentage of replies, in thematic order.

The upper box shows the number of replies to each question in relation to the total number of completed questionnaires or of replies (respondents sometimes gave several answers to the same question).

The lower box shows the percentage figure.
Replies to multiple-choice questions are shown quantitatively (upper box) and as a percentage (lower box) in relation to the number of replies.

2) Limitations of the method:

The results of processing entail a margin of error:

- because of the existence of several answers to the same question (both the authorities and NGOs were questioned for each state);
- because respondents did not always understand the point of the questions;
- because the replies do not always appear to have been given according to the law.

Wherever possible, the reliability of the findings has been restored by the consultants by:

- taking into account multiple replies for the same state by distinguishing in the commentary between NGOs' and authorities' replies;
- by not counting as non-replies (Nr) respondents who respected the logic of the questionnaire and refrained from replying in justifiable instances.

APPENDIX 2

1) The questionnaire: response rate

The Secretariat of the Specialist Group on Roma/Gypsies (MG-S-ROM) of the Council of Europe sent out 95 questionnaires to 43 member states, NGOs and all members of the Group.

By the end of January 2002, 25 questionnaires had been returned to the Secretariat, meaning that one organisation in four had replied (26%). The distribution of completed questionnaires by country and organisation (ministry, NGO and specialists) is shown in Table 1.

2) Number of questionnaires received, by country and institution

Country code	Country	Ministry	NGO	Others : specialist	Total
	Andorra				0
	Austria	1	1		2
	Belgium	2	1		3
	Cyprus				0
	Denmark				0
	Finland				0
	France				0
	Germany	1			1
	Greece				0
	Iceland				0
	Ireland	1	1		2
	Italy			2	2
	Liechtenstein				0

	Luxembourg				0
	Malta				0
	Moldova				0
	Netherlands		1		1
	Norway	1			1
	Portugal	1			1
	San Marino				0
	Spain				0
	Sweden	1			1
	Switzerland	1		1	2
	Turkey				0
	United Kingdom	1	2		3
Total WEC	**West European Countries**	**9 (10*)**	**5 (6*)**	**2 (3*)**	**11 (19*)**
	Albania				0
	Armenia				0
	Azerbaijan				0
	Bulgaria	2			2
	Croatia				0
	Czech Republic				0
	Estonia				0
	Georgia				0
	Hungary	1			1
	Latvia	1			1
	Lithuania				0
	"The Former Yugoslav Republic of Macedonia"	1			1
	Moldova				0
	Poland				0
	Romania				0
	Russia				0
	Slovak Republic				0
	Slovenia	1			1
	Ukraine				0
Total CEEC	**Central and East European Countries**	**5 (6*)**			**5 (6*)**

Total	**14(16*)**	**11 (6*)**	**2(3*)**	**16(25*)**

1.2.3.1. Number of completed questionnaires

3) Number of written replies

Some countries did nor return the questionnaire but sent a note in reply; this was the case with Russia and Poland.

Other countries supplemented the completed questionnaire with written replies: this was the case with Germany (Land of Berlin) and the United Kingdom[25]**.**

After processing of the questionnaire, seven countries were selected for the study. NGOs and specialists were asked to describe the general situation of Travellers in their countries with regard to movement and encampments

The distribution of written replies by country and organisation (ministry, NGO, specialist) is shown in Table 2.

Country	Ministry	NGO	Others : specialist	Total
Andorra				0
Austria				0
Belgium				0
Cyprus				0
Denmark				0
Finland				0
France				0
Germany	1			1
Greece				0
Iceland				0
Ireland				0
Italy			1	1
Liechtenstein				0
Luxembourg				0
Malta				0
Moldova				0
Netherlands				0
Norway				0
Portugal				0
San Marino				0
Spain				0

Sweden				0
Switzerland			1	1
Turkey				0
United Kingdom	1		1	2
Total West European Countries	**2**	**0**	**3**	**5**
Albania				0
Armenia				0
Azerbaijan				0
Bulgaria				0
Croatia				0
Estonia				0
Georgia				0
Hungary				0
Latvia				0
Lithuania				0
“The Former Yugoslav Republic of Macedonia”				0
Moldova				0
Poland	1			1
Romania				0
Slovak Republic				0
Slovenia				0
Czech Republic				0
Russia	1			1
Ukraine				0
Total Central and East European Countries	**2**	**0**	**0**	**2**
Total	**3**	**0**	**4**	**7**

APPENDIX 3

QUESTIONNAIRE

ON THE FREE MOVEMENT OF TRAVELLERS (SUCH AS ROMA AND SINTI)

AND THEIR ENCAMPMENTS

IN COUNCIL OF EUROPE MEMBER STATES

QUESTIONNAIRE

Country:

… Federal state
… Non-federal state
… System includes self-governing public authorities

Correspondent:

Surname, first name

Address

Tel.

Fax

E-mail

Web site

Position(s)

Authority or department for which you work

Available resources: … financial
… human
… computer
… other:

Sources of information:

I. General information

1. In your country, is there an administrative unit or authority which deals **exclusively** with Travellers?

YES … NO …

> If so, is this authority:

… independent?
… linked with another department?

- which?

- nature of the link: … hierarchical
… financial
… other:

2. What resources does this authority enjoy?

… financial
… human
… computer

… other:

3. What policy(ies) does this authority implement?

… social
… cultural
… integration
… reception
… migration
… other:

4. In your country, are there **non-sedentary** Travellers?

YES … NO …

5. Approximately how many non-sedentary Travellers are there in your country?

6. For the most part, are they nationals of your country?

YES … NO …

7. What proportion of Travellers are nomadic as compared with sedentary?

8. Have there been studies of the migration patterns of non-sedentary Travellers?

YES … NO …

II. Travellers' movements

9. In your country, are there regulations designed **specifically** to apply **exclusively** to the movements of non-sedentary Travellers?

YES … NO …

10. Is the movement of persons subject to specific regulations which, although **not explicitly targeting** non-sedentary Travellers, **statistically** affect them rather than other people?

YES … NO …

> What are the causes of this situation?

… economic

… social criteria

… ethnic criteria
… other:

A. <u>If the answer to questions 9 and 10 is no</u>:

11. Are Travellers' movements governed by ordinary legislation - in other words, are they bound by the same regulations as other nationals of your country?

YES … NO …

12. Is any legal distinction made between nationals on the basis of their socio-occupational classification (itinerant traders, fairground workers, etc)?

YES … NO …

B. <u>If the answer to question 9 or 10 is yes</u>:

13. Do these regulations apply uniformly, that is, without distinction between different categories of Travellers?

YES … NO …

> Where such a distinction exists, on what criteria is it based?

… economic

… social
… occupational
… other:

14. What is the legal basis for regulations on Travellers' movements?

… Constitution
… legislation
… administrative rules
… administrative practice

15. Are Travellers' movements made subject to the holding of special documents?

YES … NO …

16. Are there periodic controls on such movements?

YES … NO …

17. What form do controls take?

… Travellers are obliged to report automatically to the police, the courts or some other authority

… encampments are systematically checked
… identical controls to those on the rest of the population

… other:

18. Are non-sedentary Travellers who are nationals of a European Union member state subject to the same regulations as Travellers who are nationals of your country?

YES … NO …

> If not, what conditions govern their movements in your country?

… the same conditions as those governing all nationals from European Union member states

… the same conditions as those governing all foreign nationals
… specific conditions

19. What are the penalties for **unauthorised** movement?

… civil
… criminal: … fines … prison sentences
… administrative
… none

20. Do these penalties **specifically** target Travellers?

YES … NO …

III. <u>Traveller encampments</u>

21. In your country, are there either sites reserved **exclusively** for Traveller encampments or legislation for the establishment of such sites?

YES … NO …

A. <u>If the answer to question 21 is no</u>:

22. Do non-sedentary Travellers have access to campsites and caravan parks in general public use?

YES … NO …

23. What is the minimum permissible period of stay?

24. What is the maximum permissible period of stay?

25. What are the penalties for **unauthorised** encampments?

… civil

… criminal: … fines … prison sentences

… administrative
… none

26. Do these penalties **specifically** target Travellers?

YES … NO …

27. Where an unauthorised encampment exists, is there a **specific** eviction procedure which applies **exclusively** to non-sedentary Travellers?

YES … NO …

28. Which authorities are empowered to evict Travellers?

… the courts
… the police: … national police
… local police

B. <u>If the answer to question 21 is yes</u>:

29. The decision to set up a site is taken by:

… the regional (federate) authorities
… the national authorities
… the local authorities

30. Where local authorities fail to provide, can the national authorities act for them or force them to take action?

YES … NO …

31. Who pays for the establishment and maintenance of sites?

… the national authorities
… the local authorities
… Travellers' associations
… Travellers
… other:

32. Who is responsible for the day-to-day running and administration of sites?

… the national authorities
… the local authorities
… Travellers' associations
… other organisations
… private companies
… other:

33. What quality standards apply at sites?

… none
… health standards
… standards of equipment (electricity, water, etc)
… security standards (caretaking, hours of access, etc)

34. Do sites exist which offer the following facilities?

… schools
… craft workshops
… social facilities
… other:

35. Are non-sedentary Travellers informed of the existence of such sites?

YES … NO …

> If so, how?

… road signs
… information campaigns
… other:

36. Is a time limit imposed on stays at sites?

YES … NO …

> If so, how long is it?

- 48 hours … a week … 2 weeks … a month … 2 months … over 2 months …

37. On average, how many caravans can each site accommodate?

10 … 20 … 30 … 40 … 50 … more than 50 …

38. Are there sites or campgrounds which are reserved for or can accommodate large gatherings (over 100 caravans)?

YES … NO …

39. Where a site exists, are Travellers prohibited from setting up camp elsewhere?

YES … NO …

40. What are the penalties for **unauthorised** encampments **away from allotted sites**?

… civil
… criminal … fines … prison sentences
… administrative
… none

41. Do these penalties **specifically** target Travellers?

YES … NO …

42. Where an unauthorised encampment exists, is there a **specific** eviction procedure which applies exclusively to non-sedentary Travellers?

YES … NO …

43. Which authorities are empowered to evict Travellers?

… the courts

… the police … national police
… local police

44. Do Travellers have access to public campsites and caravan parks?

YES … NO …

IV. <u>Related questions</u>

45. Are Travellers free to base themselves where they wish?

YES … NO …

> If not, what steps are necessary?

…prior authorisation
… prior statement of intent
… other:

46. Are non-sedentary Travellers obliged to identify a home base?

YES … NO …

> If so, in what form?

… a local authority of residence
… a national centre
… other

> Why is this necessary?

… tax authorities
… administrative authorities
… civic register
… the courts
… other

47. Does the principle of inviolability of the home apply to non-sedentary Travellers' caravans?

YES … NO …

48. Are non-sedentary Travellers' caravans assessed as housing for the purpose of social benefits?

YES … NO …

Note [1] French Act No 2000-614 of 5 July 2000; Caravan Sites Act 1968 and Criminal Justice and Public Order Act 1994

Note [2] Act No 69-3 of 3 January 1969

Note [3] See the relevant sociological and town-planning studies

Note [4] Lord Justice Sedley R. v. Lincolnshire CC ex parte Atkinson (September 1995) quoted in Memorial of the Applicant

Note [5] See OSCE report on the situation of Roma and Sinti in the OSCE, 1998, pp 100 et seq

Note [6] Town-Planning Code and local standards

Note [7] CE 30 October 2001, UNSA and others in D, 2002, p 601

Note [8] Auby J.M., *La réglementation administrative du stationnement des véhicules automobiles sur les voies publiques*; D, 1962, Ch XV p 83 et seq

Note [9] Conseil constitutionnel, 76-75 DC of 12 January 1977, Rec p 33

Note [10] Code de la route, Articles R 417-9 et seq

Note [11] There is no need to mention any particular one of the numerous press articles on this subject

Note [12] According to the Association Action Sinti et Jenisch Suisses

Note [13] According to a note by Nando Sigona

Note [14] Idem

Note [15] Article 1 of the Act of 5 July 2000

Note [16] Ibid, Article 4 and Decree No 2001-568 of 29 July 2001

Note [17] Decree 2001-519 of 29 July 2001

Note [18] Article 2 of the Act of 5 July 2000

Note [19] Caravan Sites Act 1968, Section 6(1)

Note [20] Article 9 of the Act of 5 July 2000 and Caravan Sites Act 1968, Section 10(1)

Note [21] According to a note by Nando Sigona

Note [22] Lord Avebury, "Forward" in Rachel Morris and Luke Clements (eds) Gaining Ground: Law Reform for Gypsies and Travellers, Traveller Law Research Unit, Cardiff Law School, University of Hertfordshire Press 1999, pp xiii-xix, and p xiv

Note [23] CJPOA, Section 77(3)

Note [24] According to a 1999 study: HL Hansard 7 June 1994, col

1198 and 1132

Note [25] We have counted this document as a questionnaire as the Home Secretary (Race Equality Unit) replied to the questionnaire following the order of the questions in his note