



DECISION ON THE MERITS
8 December 2004

European Roma Rights Center
v. Greece

Complaint No. 15/2003

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 205th session attended by:

Messrs Jean-Michel BELORGEY, President
 Nikitas ALIPRANTIS, Vice-President
Messrs Stein EVJU, General Rapporteur
 Rolf BIRK
 Matti MIKKOLA
 Konrad GRILLBERGER
 Tekin AKILLIOĞLU
Ms Csilla KOLLONAY LEHOCZKY
Messrs Lucien FRANCOIS
 Andrzej SWIATKOWSKI

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter

After having deliberated on the 11 October 2004 and on 6 and 8 December 2004,

On the basis of the report presented by Ms Csilla KOLLONAY LEHOCZKY,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint submitted by the European Roma Rights Center (“the ERRC”) was registered on 4 April 2003 and on 16 June 2003 the Committee declared it admissible.

2. In accordance with Article 7§1 and §2 of the Protocol providing for a system of collective complaints (“the Protocol”) and with the Committee’s decision on the admissibility of the complaint, the Executive Secretary communicated, on 20 June 2003 the text of the admissibility decision to the Greek Government (“the Government”), to the ERRC, and on 23 June to the Contracting Parties to the Protocol, to the states that have made a declaration in accordance with Article D para. 2 of the Revised European Social Charter, as well as to the European Trade Union Confederation (ETUC), the Union of the Confederations of Industry and Employers of Europe (UNICE) and the International Organisation of Employers (IOE), inviting them to submit their observations on the merits of the complaint. In accordance with Article 25§2 of the Committee’s Rules of Procedure the President fixed a deadline of 30 September 2003 for the presentation of observations.

3. On 14 November 2003, the Government presented its observations on the merits of the complaint.

4. The President set 13 February 2004 as the deadline for the ERRC to present their observations in response to the Government. The observations were registered on 10 February 2004.

5. During its 201st session (29 March – 2 April 2004), the Committee decided, after considering the ERRC’s request for a hearing, in accordance with Article 7§4 of the Protocol and Article 29§1 of the Committee’s Rules of Procedure, to organise a hearing with the representatives of the parties.

6. The hearing took place in public at the Human Rights Building in Strasbourg on 11 October 2004.

7. The ERRC was represented by:

Mr Claude CAHN, Programmes Director, ERRC;

Ms Savelina DANOVA-RUSSINOVA, Research and Policy Co-ordinator, ERRC;

Mr Panayote DIMITRAS, Spokesperson, Greek Helsinki Monitor, Local Monitor, ERRC;

Mr Malcolm LANGFORD, Senior Legal Officer, ESC Rights Litigation Programme, COHRE; and

Ms Natalie MIVALEZ, UN Co-ordinator and European Projects Manager, COHRE.

The Government was represented by:

Mrs Louiza KIRIAKAKI, Official, Ministry of Interior, Public Administration and Decentralization; Directorate of Development Programs, Department of Development Programs;

Mrs Lenousa ILOLEVA, Official, Ministry of Environment, Physical Planning and Public Works, Directorate of Housing Policy, Department of Housing Policy;

Mr Ioannis TASSOPOULOS, Director, Ministry of Health and Social Solidarity, Directorate of Social Solidarity, Directorate of Social Awareness and Solidarity;

Mrs Paraskevi KAKARA, Official, Ministry of Employment and Social Welfare, Directorate of International Relations, Section II;

Ms Panagiota CHONDROU, Official, ministry of Employment and Social Welfare, Directorate of International Relations, Section II; and

Mrs Despina KOUKOULOPOULOU, Permanent Representation of Greece to the Council of Europe.

8. In accordance with Article 29§2 of its Rules of Procedure, the Committee invited the ETUC to participate in the hearing.

9. The Committee heard addresses by Mr Claude CAHN, Mr Panayote DIMITRAS, Ms Savelina DANOVA-RUSSINOVA, and Mr Malcolm LANGFORD and by Mrs Louiza KIRIAKAKI, Mrs Lenousa ILOLEVA, Mrs Paraskevi KAKARA and Mrs Despina KOUKOULOPOULOU and replies to questions put by members of the Committee.

10. Documents submitted by the ERRC during the hearing were transmitted to the Government which then submitted its comments on them on the 5 November 2004.

SUBMISSIONS OF THE PARTIES

a) *The Complainant Organisation*

11. The ERRC asks the Committee to find that the Government fails to apply in a satisfactory manner Article 16 of the Charter in light of the Preamble, on the grounds that the Roma are denied an effective right to housing, in that legislation discriminates against the Roma in housing matters, and in practice there is widespread discrimination against Roma and Roma are often the subject of forced evictions. In particular the ERRC alleges that Ministerial Decision No A5/696/25.4.83 Official Gazette 243/B/11/5/83 "*Sanitary provision for the organized relocation of itinerant persons (nomadic travellers)*" ("the 1983 Ministerial Decision") discriminates against Roma, regardless of whether they are itinerant or not. It is alleged, that it singles out persons of Roma origin through its use of the term *Athinganoi*. It, allegedly, has the effect of ensuring their residential segregation and therefore amounts to racial segregation. In addition it is submitted that it promotes their social exclusion and perpetuates their confinement to substandard housing. The ERRC also alleges that Joint Ministerial Decision No 23 641/3.7.2003 (Official Gazette 973/B/15-07-2003) Amendment of the A5/696/25.4.83 *Sanitary provision for the organized settlement of itinerant persons*" ("the 2003 Joint Ministerial Decision") is discriminatory.

b) *The Defending State*

12. The Government asks the Committee to find the complaint unfounded in all respects, it highlights that the impugned legislation has been amended and that measures have been taken to improve the housing situation of Roma in Greece.

RELEVANT DOMESTIC LAW

13. **The Greek Constitution**

Article 21§4 provides that:

"acquisition of housing for those who do not have one or who are inefficiently housed is a matter of State's special care."

14. **1983 Ministerial Decision No A5/696/25.4.83 Official Gazette 243/B/11/5/83 "*Sanitary provision for the organized settlement of itinerant persons (nomadic travellers)*" provides**

Article 1: "*the unchecked, without permit, encampment of wandering nomads (Athinganoi¹ etc.) in whatever region is prohibited.*"

Article 3 (1): "*the lands for the organized encampment of wandering nomads [...] must be outside inhabited areas and a good distance from the approved urban plan or the last contiguous houses.*"

¹ This term is used to describe persons of Roma origin.

Article 3 (3): states that “*Encampment is prohibited near archaeological sites, beaches, landscapes of natural beauty, visible by main highway points or areas which could affect the public health (springs supplying drinking water, etc.)*”.

15. Joint Ministerial Decision No 23641/3.7.2003 (Official Gazette 973/B/15-07-2003), “Amendment of the A5/696/25.4.83 Sanitary provision for the organized settlement of itinerant persons” provides:

Article 1

- 1) *Uncontrolled settlement of itinerant persons in any area is prohibited without the relevant permission provided for by this decision.*
- 2) *The temporary settlement of itinerant persons is permitted on condition that the prerequisites of the following articles are fulfilled, until the issues concerning their permanent settlement are regulated.*

Article 2

- 1) *The selection of the appropriate locations, which may be public, municipal or private for the temporary settlement of itinerant persons is made by a decision of the Secretary General of the Region on a proposal of the local Municipal or Community Council and following an introduction made by a committee set up and composed of representatives of the Directorate of Hygiene, the Directorate of Urban planning, Housing and Environment and the Directorate of Agriculture of the local Prefectural Self-Government of the Technical Service of the Municipalities and Communities of the prefecture, the Local Union of Municipalities and Communities, the Local Self-Government Agency, on the Territorial boundaries of which the organised permanent encampment for the temporary settlement of itinerant persons is to be made provided that permission has been granted by the local archaeological or other service and authority.*
- 2) *If the Local Self-Government Agency does not make its proposal within a month, in the case that a relevant invitation is sent by the Region, the Secretary General of the Region proceeds to his/her rest actions according to what is mentioned above.*

Article 3

- 1) *The capacity of each location, regarding the number of dwellings and persons, is determined by decision of the Secretary General of the Region, with a view to safeguarding hygiene and acceptable living conditions.*
- 2) *According to the provisions in force, no one is allowed, even temporarily, to settle near archaeological sites, beaches, landscapes of natural beauty, or in areas where a settlement may cause damage to the public health (drinking water supplies, etc).*
- 3) *In the locations of organized settlement the following infrastructure works for healthy living conditions must be made available: drinking water, sewage, dustbins and means to collect waste, as well as facilities of personal hygiene in communal baths, facilities for the laundry of clothing and supply of electric power. The details of the hygiene works are determined in each specific case by the sanitary service, in accordance with the sanitary provisions in force and aiming at protecting the health of the itinerant persons and the public health in general.*
- 4) *The latrines, baths, facilities for the laundry of clothing, refreshment stands and bases for the placement of prefabricated housing will be placed in derogation from the provisions of the General Housing Regulation.*

Article 4

- 1) *The local Municipality or Community is responsible for the organisation and supervision of the operation of the approved settlement locations.*
- 2) *In order to cover the expenses for the establishment and operation of organised sites of encampment, reciprocal dues may be imposed on their users, by decision of the local Municipal or Community Council.*
- 3) *The necessary infrastructure works in sites of encampment of itinerant persons (water supply, baths etc.) can be included in relevant programmes of the Ministry or Health and Welfare as well as other public bodies or bodies of the Local Self-Government.*

Article 5

The roughly made dwellings of itinerant persons in various areas, which already existed on the date of publication of this decision, remain until the determination and establishment of the organised settlements sites, provided that they fulfil the prerequisites of Article 3 of the present decision.

Article 6

- 1) *The present provision comes into force 15 days following the date of its publication in the Official Gazette.*
- 2) *The control and supervision of its application is entrusted to the Sanitary and Police Bodies and to the Municipal Police, if one exists. The offenders of the present are prosecuted and punished according to Article 3 of Act 2520/40, as it has been replaced by the single article of Act 290/43 ratified by 303/46 Act of a Ministerial Council, unless other provisions of Acts or Decrees provide for heavier sanction.*
- 3) *The present decision does not apply to organised camping sites supervised by the EOT, nor to popular resorts and summer camps, the operation is determined by other provisions.*

The restrictions of this provision do not apply to the settlements of farmers in agricultural areas or of cattle breeders in summer or winter grasslands or of travellers in general.

This decision is to be published in the Official Gazette.

THE LAW

16. Article 16 and the Preamble of the European Social Charter read as follows:

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Preamble (Extract)

....

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

.....

ON THE ALLEGED VIOLATION OF ARTICLE 16

17. The Committee considers that, from among the issues raised, the complaint in substance relates to the right of Roma to housing and in particular to three elements:

- the insufficient number of permanent dwellings of an acceptable quality to meet the needs of the settled Roma;
- the insufficient number of stopping places for Roma who choose to follow an itinerant lifestyle or who are forced to do so;
- the systematic eviction of Roma from sites or dwellings unlawfully occupied by them.

18. It observes that the ERRC relies both on Article 16 as such and Article 16 in conjunction with the Preamble.

i) Preliminary issues

Scope of Article 16

19. The Committee emphasises that one of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion. This requirement is exemplified in the proscription against discrimination in the Preamble and in its interaction with the substantive rights of the Charter.

20. This imperative to respect difference, avoid discrimination and social exclusion, was recently the subject of an important judgment given by the European Court of Human Rights, (*Connors v United Kingdom* of 27 May 2004 at para 84) where it stated that:

“The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (Buckley judgment cited above, pp. 1292-95, §§ 76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see Chapman, cited above, § 96 and the authorities cited, mutatis mutandis, therein)” (at para 84).

21. The Committee's case law has responded in a like manner on the question of how human difference should be appropriately accommodated. In its decision in Collective Complaint No. 13 which involved the interaction between Article E and Articles 15 (The right of persons with disabilities to social integration and participation in the life of the community) and 17 (The right of children and young persons to social, legal and economic protection) it stated:

"The Committee recalls, as stated in its decision Complaint No 1/1998 (International Commission of Jurists v. Portugal, §32), that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact their choices will have for groups with heightened vulnerabilities" Complaint No. 13/2002, Autism Europe v France decision on the merits, November 2003, §53.

22. The Committee notes that if it is possible to subject the receipt of social rights to the fulfilment of a certain number of conditions, the conditions must not be such so that is impossible in the majority of cases to satisfy them, with the effect that the realisation of the rights is impeded.

23. The imperative to avoid social exclusion, respect difference and not to discriminate applies to all groups of Roma; itinerant and settled.

24. The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural. It is also of central importance to the family. The Committee recalls its previous case law to the effect that in order satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence.² Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.

25. The implementation of Article 16 as regards nomadic groups including itinerant Roma, implies that adequate stopping places be provided, in this respect Article 16 contains similar obligations to Article 8 of the European Convention of Human Rights.

26. In addition the principle of equality and non-discrimination form an integral part of Article 16 as a result of the Preamble.

² Conclusions XIII-2 p. 43-44

Data collection

27. The Committee notes that, in connection with its wish to assess the allegation of the discrimination against Roma made by the complainant organisation, the Government stated until recently that it was unable to provide any estimate whatsoever of the size of the groups concerned. To justify its position, it refers to legal and more specifically constitutional obstacles. The Committee considers that when the collection and storage of personal data is prevented for such reasons, but it is also generally acknowledged that a particular group is or could be discriminated against, the authorities have the responsibility for finding alternative means of assessing the extent of the problem and progress towards resolving it that are not subject to such constitutional restrictions.

28. Furthermore the Committee notes that (official or semi official) estimates of the number of Roma have been made in the past, and that it is unlikely that a programme such as the IAP would have been drawn up with no supporting estimates of the population or groups to benefit from such a programme. The Committee notes that in the Government's last submissions it gave estimates of the number of Roma in Greece, but failed to indicate on which estimates its programmes were based.

Responsibility of the state

29. The Committee recalls that even if under domestic law local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, states party to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the Greek state.

ii) As to the alleged insufficiency of permanent dwellings

A. Arguments of the parties

30. The ERRC alleges that a substantial number of the Roma population are discriminated against in practice in housing matters and that their right to adequate housing is violated.

31. According to the ERRC at least 100,000 Roma are living in settlements in substandard housing; settlements with inadequate infrastructure and limited or no access to basic amenities (such as water or electricity) and public services, which are often in unsafe or unsanitary locations and which are some distance from the urban plan.

32. The ERRC cite, *inter alia*, in support of their submissions a 1999 study conducted by the Public Enterprise for Town Planning (DEPOS). This broke housing facilities for Roma down into three main categories: first the study identified what the authors term “genuine” settlements (settlements in which all living quarters are makeshift) secondly it identified “mixed” settlements (containing both makeshift dwellings and permanent homes) and finally “neighbourhoods” constellation of houses inhabited by Roma which are essentially part of a city or village. According to the study, more than half the genuine settlements and some of the mixed settlements and neighbourhoods were located in areas unsuitable for inhabitation. Moreover 15 % of the genuine settlements were further than one kilometre from the nearest urban centre and only a small number had access to paved roads. In 7 of the 46 genuine settlements there was no water supply, while in the remainder there was inadequate access to running water. Approximately one third of the mixed settlements were found to be without adequate supply of running water. Not a single genuine settlement and only 25% of the mixed settlements had any kind of connection to the electricity grid. Only 9 of the 46 genuine settlements and 6 of the 26 mixed settlements were connected to an adequate sewage system, less than half of the genuine settlements and 70% of the mixed settlements possessed garbage removal services.

33. The ERRC further submit evidence of the conditions in 27 Roma settlements and state that, since the complaint was lodged there has been virtually no improvement in the living conditions in these settlements, nor have any of the Roma living in these settlements been re-housed.

34. The Government in response draws attention to and provides details of the measures that it has taken to improve the situation of the Roma in Greece, notably the adoption of the Integrated Action Plan (Integrated Action Plan for the Social Integration of the Roma People) (IAP) formulated by an Inter-ministerial Committee to promote the social inclusion of the Roma and which includes the field of housing. It was adopted in 2001 for a period of 8 years. The IAP is divided into two priority axis the first concerns housing; development of new settlements, improvement of existing residences, improvement of existing settlements and organization of housing for nomadic populations.

35. Further the Government highlights that a programme of housing loans has been introduced by the Ministry of the Interior, Public Administration and Decentralisation whereby Roma families can obtain a loan for housing up to 60,000 euros guaranteed by the Greek state. The Government submits that to date 14,151 applications for loans have been made and 4,797 loans have been granted.

36. The ERRC in their publication *Cleaning Operations: Excluding Roma in Greece* (appended to the complaint) state that the IAP is endowed with a budget of approximately 300 million euros, from both the Third EU Structural Fund and domestic funds. The first axis (pillar) which addresses primarily housing is allocated approximately 180 million euros and foresees the purchase of 1,500 acres of land by the state in which to build 100 new settlements, the building of 4,000 new homes, the carrying out of repairs in an already existing 1,200 houses and the creation of 60 organised camp sites for itinerant Roma. It is based on the principles of respect for the cultural characteristics of Roma and the implementation of positive measures as a prerequisite for the enjoyment by Roma of equal rights with the majority.

37. However the ERRC submit that a major barrier to improving the housing situation of the Roma is the intransigent attitude of the local authorities, and no measures have been taken to address this. Moreover they submit that only a handful of communities have seen even rudimentary improvements to their housing and most housing related projects have stalled.

38. The Government responds to the allegations, by providing details of funding provided by the Ministry of the Interior, Public Administration and Decentralisation, to certain Municipalities to improve the living conditions in certain Roma settlements, for example the delivery of 1712 prefabricated houses to about 6,000 Roma. It provides details of improvements in several municipalities.

39. The Government acknowledges that the situation of certain settlements referred to by the complainant organisation is unsatisfactory, but states that these settlements are temporary and that the living conditions will be improved in these settlements. Where the central government has noted lack of cooperation or action by the local authorities it has taken certain measures. It states that the examples relied upon by the complainant organisation to support their claim, cannot be considered as representative of the situation of Roma as a whole in Greece.

B. Assessment of the Committee

40. The Committee notes the allegation made by the complainant organisation that an estimated 100,000 Roma live in sub standard housing conditions is corroborated by information from other bodies³ and was not convincingly denied by the Government.

41. The Government failed to provide information as to the estimated number of Roma living in what could be considered to be substandard housing. It provided information on the IAP which was adopted in 2001, the number of requests made for loans under the housing loans programme and information on measures taken or planned in the future. It acknowledged that the situation of Roma in certain settlements was unsatisfactory.

42. The Committee finds that Greece has failed to take sufficient measures to improve the living conditions of the Roma and that the measures taken have not yet achieved what is required by the Charter, notably by reason of the insufficient means for constraining local authorities or sanctioning them. It finds on the evidence submitted that a significant number of Roma are living in conditions that fail to meet minimum standards and therefore the situation is in breach of the obligation to promote the right of families to adequate housing laid down in Article 16.

³ Concluding Observations of the UN Committee on Economic, Social and Cultural Rights: Greece June 2004, Conclusions and Recommendations of the UN Committee Against Torture: Greece November 2004, ECRI Third Report on Greece December 2003.

43. In light of the excessive numbers of Roma living in substandard housing conditions, even taking into account that Article 16 imposes obligations of conduct and not always of results and noting the overarching aim of the Charter is to achieve social inclusion, the Committee holds that the situation is in violation of Article 16 of the Charter.

iii) As to the alleged insufficiency of temporary camping sites

A. Arguments of the parties

44. The situation of itinerant Roma was regulated by the relevant Ministerial Decision of 1983 at the time the complaint was lodged and is currently regulated by the 2003 Ministerial Decision. In addition to the allegation that the 1983 Ministerial Decision discriminated against the Roma, the ERRC argues that the 2003 Joint Ministerial Decision does not constitute an adequate remedy for violations of and administrative actions flowing from the 1983 Ministerial Decision. Further the 2003 Joint Ministerial Decision contains no safeguards against its application in a racially discriminatory manner, in particular as it may have the effect of applying only to itinerant Roma and not other itinerant groups. The ERRC allege that there is still no effective protection against discrimination in the field of housing for Roma. They submit that as many Roma are forced to live in settlements which do not meet the standards laid down by the 2003 Joint Ministerial Decision due to Government failure to provide any alternative and that as criminal liability is engaged for violation of the 2003 Joint Ministerial Decision, Roma are at risk of being deprived of their liberty. Furthermore the applicants submit that no stopping sites exist which meet the standards of the 2003 Joint Ministerial Decision

45. The Government states that the 1983 Ministerial Decision has been amended by the Joint Ministerial Decision Official Gazette 973/B/15-07-2003, Amendment of the A5/696/25.4.83 *Sanitary Provision for the organized relocation of itinerant persons* ("the 2003 Joint Ministerial Decision"). The scope of the 2003 Joint Ministerial Decision covers all itinerant persons and not just the Roma population. Further the current legislation provides that the Secretary General of the Region in cooperation with any other authority or service appointed by the Prefect, is responsible for the selection of settlement locations and not the prefectural services. The restrictions on the location of settlements have been reduced. In addition the 2003 Joint Ministerial Decision provides that settlements must be provided by the Municipality or Community with certain services such as electricity, sewage, garbage disposal etc. However the Government states that Integrated Action Plan for the Social Integration of the Roma People (IAP) only provides for the construction of permanent settlements for itinerant persons and no request has been made to the Ministry of Interior, Public Administration and Decentralisation.

B. Assessment of the Committee

46. The Committee notes that as a result of the terms of the 2003 Joint Ministerial Decision which concerns itinerant persons in general and the 1983 Ministerial Decision which expressly concerned the Roma, the conditions for temporary encampment as well as the conditions regarding the amenities are extremely strict and that in the absence of the diligence on the part of the local authorities on one hand to select appropriate sites and on the other the reluctance to carry out the necessary works to provide the appropriate infrastructure, Roma have an insufficient supply of appropriate camping sites.

47. The Committee therefore holds that the situation constitutes a violation of Article 16 of the Charter.

iv) As to the forced evictions and other sanctions

A. Arguments of the parties

48. The ERRC allege that local authorities evict Roma from settlements they have inhabited for some time and provide no alternative housing or resettle them in substandard housing. It alleges that the law provides inadequate procedural safeguards, and in addition many of the evictions it documents are in fact in breach of domestic law. The ERRC provides examples of cases where Roma, both settled and itinerant were prosecuted for inhabiting sites which failed to have an adequate infrastructure meeting the standards of the sanitary regulations.

49. The Government states that the Roma are moved from property that they occupy normally unlawfully, property that they have no right to occupy and that belong to others and to whom the state owes a duty to respect and protect their rights. The Government provides details of the procedure to be followed when "expelling" Roma from land they occupy illegally and which is owned by the Greek state: once a Protocol of Administrative expulsion has been issued the person against whom it is issued may contest it before a Magistrates Court within 30 days and further may appeal a decision of the Magistrate's Court to a court of higher instance. The expulsion may be suspended until there has been a final decision. Legal aid is available for those with low incomes. Alternative housing should be provided.

B. Assessment of the Committee

50. The Committee notes that the Government provides no real information on evictions, (either statistics, or remedies for those unlawfully evicted or examples of relevant case law). It fails either to comment on or contradict the information provided by the ERRC on collective evictions of Roma both settled and itinerant without the provision of alternative housing and sometimes involving the destruction of personal property.

51. The Committee considers that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned. The Committee considers that on these three grounds the situation is not satisfactory.

ON THE REQUEST FOR REIMBURSEMENT OF EXPENSES

A. *Arguments of the parties*

52. The complainant organisation asks the Committee to direct Greece to pay it the sum of 23,142 euros for expenses incurred in preparing the complaint.

53. The Government asks the Committee to reject the complainant organisation's request on the basis that the Charter is a different instrument to the European Convention of Human Rights, there is no such power to order costs under the Charter or the Protocol. It refers to complaint No 9/2000 Confédération Française de l'encadrement - "CFE-CGC" v. France where the Committee rejected a request for costs.

B. *Assessment of the Committee*

54. The Committee notes that the Protocol does not regulate the issue of compensation for expenses incurred in connection with complaints. However, it does consider that a consequence of the quasi-judicial nature of the proceedings under the Protocol is where there has been a finding of a violation of the Charter, the defending State should meet at least some of the costs incurred.

55. Moreover, when the Ministers' Deputies considered such a request transmitted by the Committee in connection with Complaint No. 1/1998, they considered that they were not called upon in the present case to take action regarding the request. This indicates that the Committee of Ministers accepted the principle of such a form of compensation.

56. The Committee has therefore considered the complainant organisation's request and submits its opinion on it to the Committee of Ministers, leaving it to the latter to decide how it might invite the Government to meet all or part of these expenses.

57. In the light of all considerations, the Committee considers that it would be fair to award the complainant organisation the sum of 2, 000 euros as compensation for expenses incurred. It therefore invites the Committee of Ministers to recommend that Greece pay this sum to the complainant organisation.

CONCLUSION

For these reasons, the Committee concludes by 8 votes to 2:

-that the insufficiency of permanent dwellings constitutes a violation of Article 16 of the European Social Charter;

-that the lack of temporary stopping facilities constitutes a violation of Article 16 of the European Social Charter;

-that the forced eviction and other sanctions of Roma constitutes a violation of Article 16 of the European Social Charter;

and invites the Committee of Ministers to recommend that Greece pay the complainant organisation a sum of 2000 euros as compensation for expenses incurred by the procedure.

Csilla KOLLONAY LEHOCZKY
Rapporteur

Jean-Michel BELORGEY
President

Régis BRILLAT
Executive Secretary

In accordance with Rule 30 of the Committee's rules of procedure a concurring opinion of Mr. Nikitas ALIPRANTIS is appended to this decision.

APPENDICES

Concurring opinion of Mr Nikitas Aliprantis

Since Article 16 of the European Social Charter does not establish a real right to housing but simply requires states to protect family life by such means as the provision of housing, I consider that the measures taken by Greece are, in general, satisfactory. They show that it is seeking to "achieve the objectives of the Charter within a reasonable time", according to the Committee's formula in Complaint no. 13/2002, when, as in this case, "the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve". However, the complaint concerning the housing of travelling people must be upheld, because the arrangements established under the joint ministerial decree, no. 23641/3.7.2003, do not meet the requirements of Article 16 for three reasons, which prevent the adequate protection of travelling people with regard to housing.

Firstly, although the procedure for the choice of sites for temporary housing requires local authorities to make proposals within one month, the region is not obliged to request proposals from local authorities, which permits excessive procrastination.

Secondly, and above all, the decree does not provide for any sufficiently dissuasive penalties, criminal or otherwise, for representatives of local authorities who refuse to accept responsibility for setting up the sites agreed on, even though this is an obligation under the first sub-paragraph of article 4. By failing to include specific penalties, the decree itself creates the conditions for its non-implementation.

Finally, article 5 of the decree, which concerns existing housing, stipulates, in a fairly unclear fashion, that such housing will only be retained until the rehousing sites have been fitted out if it satisfies the health and other standards specified in article 3. If this condition is not met, immediate eviction from such housing can be ordered completely legally, without those concerned being first offered the possibility of rehousing.

For these reasons – and only these reasons – I consider that the situation of travelling Roma is in violation of article 16.