

**DECISION ON THE MERITS
7 December 2005**

**European Roma Rights Centre
v. Italy**

Complaint No. 27/2004

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 212th session attended by:

Messrs Jean-Michel BELORGEY, President
 Gerard QUINN, First Vice-President
 Andrzej SWIATKOWSKI, Second Vice-President
 Stein EVJU, General Rapporteur
 Rolf BIRK
 Matti MIKKOLA
 Alfredo BRUTO DA COSTA
 Nikitas ALIPRANTIS
 Tekin AKILLIOĞLU
Mrs Csilla KOLLONAY LEHOCZKY
 Polonca KONCAR
Messrs Lucien FRANÇOIS
 Lauri LEPPIK
Mrs Beatrix KARL

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

Having deliberated on 7 December 2005,

On the basis of the report presented by Mrs Polonca KONCAR,

Delivers the following decision adopted on this date:

PROCEDURE

1. The complaint submitted by the European Roma Rights Centre (“the ERRC”) was registered on 28 June 2004 and on 6 December 2004 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 the text of the admissibility decision, on 13 December 2004 to the Italian Government (“the Government”) and the ERRC, on 15 December to the Contracting Parties to the Protocol and to the states that have made a declaration in accordance with Article D§2 of the Revised European Social Charter, and on 22 December 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 31§1 of the Committee’s Rules, the Committee fixed a deadline of 15 February 2005 for the presentation of written submissions on the merits and subsequently, at the request of the Government, extended this deadline to 15 April 2005.

3. The ETUC submitted its observations on the merits of the complaint on 16 February 2005.

4. The Government presented its written submissions on the merits of the complaint on 7 April 2005. The President set 30 June 2005 as the deadline for the ERRC to present its response to the Government submissions and subsequently, at the request of the ERRC, extended this deadline to 15 July 2005. The response was registered on 15 July 2005. The President then set 16 September 2005 as the deadline for the Government to submit a further response to the ERRC response. The response was registered on 15 September 2005.

SUBMISSIONS OF THE PARTIES

a) The Complainant Organisation

5. The ERRC alleges that the housing situation of Roma in Italy amounts to a violation of Article 31 of the Revised European Social Charter. In particular the ERRC alleges that Roma are denied an effective right to housing because of the shortage of and inadequate living conditions in camping sites, the forced evictions Roma are often subject to, and the fact that Roma have no access to accommodation other than camping sites. In addition, it alleges that segregationist policies and practices in the field of housing constitute racial discrimination contrary to Article 31 read alone or in conjunction with Article E.

b) The Defending State

6. The Government asks the Committee to find the complaint unfounded in all respects. It first considers the complaint as falling outside the scope of the Charter since the majority of Roma people in Italy are not covered by the personal scope of the Revised Charter as they do not meet the conditions laid down in Article 1 of the Appendix to the Revised Charter, namely that they be nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. Regarding the Roma who are Italian citizens or nationals of other Parties to the Charter, the Government considers it impossible to distinguish them within the Roma population for the purposes of the application of Article 31. Furthermore, the Government denies any violation by either legislation or practice of Article 31, taken alone or in conjunction with Article E.

RELEVANT DOMESTIC LAW

7. Relevant legislation on non-discrimination includes:

- Legislative Decree No. 286 of 25 July 1998, Consolidated Law on Immigration (including Law No. 40/1998 on Immigration and the Status of Aliens)

Section 2(1): "The fundamental human rights provided for in national laws, international conventions in force and recognised principles of international law are granted to the foreigner who is at the borders or within the territory of the State in all circumstances";

Section 3(5): "Within their respective budgetary appropriations, regions, provinces, municipalities and other local authorities adopt the measures necessary for achieving the goal of removing the obstacles which, in practice, deny the full recognition of the rights and interests of the foreigners within the state territory, in particular as far as housing, language, and social integration are concerned, meanwhile respecting fundamental human rights";

Section 5(1): "Foreigners who have legally entered Italy according to the provisions of Section 4, who have been granted a valid stay permit or a valid residence permit issued in compliance with the above Consolidated Law, are entitled to reside on the national territory...";

Section 40(4): "Foreigners regularly residing may have access to collective or private social housing according to the criteria defined by regional law, municipalities..." and (6): "Foreigners in possession of a residence card and foreigners regularly residing, who are enrolled in employment lists or are employees or self-employed, have the right of access, equally to Italian citizens, to public residential housing...";

Section 43(1): "discrimination exists where there is conduct which directly or indirectly gives rise to distinction, exclusion, restriction or preference by reason of race, national or ethnic origin or religious beliefs or practices, the purpose or effect of which is to prevent or jeopardise the recognition, enjoyment or exercise, in conditions of equality, of human rights and fundamental freedoms in the political, economic, social, cultural or other spheres".

10. Two circulars from the Ministry of the Interior regulating the establishment of camping sites with basic facilities, namely circulars of 17 July 1973 and of 15 October 1985 on "The problem of nomads", have not been supplied. These texts encourage local authorities to include Roma on the civil status registers, offer them social and medical assistance and issue them with work permits. They also make it unlawful to impose any specific bans on Roma encampments and require the establishment of camping sites that can provide all essential services.

THE LAW

11. Articles 31 and E of the Revised European Social Charter and the first paragraph of the Appendix read as follows:

Article 31 - The right to housing

"With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1 to promote access to housing of an adequate standard;
- 2 to prevent and reduce homelessness with a view to its gradual elimination;
- 3 to make the price of housing accessible to those without adequate resources."

Article E – Non-discrimination

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

Paragraph 1 of the Appendix - Scope of the Revised European Social Charter in terms of persons protected

"1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 1 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties."

ON THE ALLEGED VIOLATION OF ARTICLE 31 TAKEN TOGETHER WITH ARTICLE E

12. The Committee considers that the complaint raises three specific issues:

- the insufficient capacity of and inadequate living conditions in camping sites 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;
- the lack of permanent dwellings of an acceptable quality to meet the needs of Roma wishing to settle.

13. The Committee observes that in connection with each of these three issues the ERRC relies on both Article 31 as such and Article 31 taken together with Article E. The Committee considers that the discrimination Roma endure as regards housing on the Italian territory applies to all three aspects above. It follows that the Committee understands the arguments of the complainant as implying that the situation violates Article 31 taken together with Article E.

i) The Government's objection based on the scope of the Charter

14. Repeating the arguments presented at the admissibility stage, the Government considers that the complaint falls outside the personal and material scope of the Charter, and must therefore be declared inadmissible.

15. Firstly, the Government contends that the majority of Roma people in Italy do not fall within the personal scope of the Revised Charter because they do not meet the conditions laid down in Article 1 of the Appendix, namely that they are nationals of other parties lawfully resident or working regularly within the territory of the party concerned. It argues that the majority of Roma are either nationals of third countries or illegal migrants. Moreover, for the purposes of Article 31 the Government considers it impossible to distinguish Roma who are Italian citizens or nationals of other parties to the Charter or the Revised Charter, lawfully residing in Italian territory, within the total Roma population.

16. The ERRC maintains that many Roma are foreign nationals unlawfully in Italian territory precisely because of the discrimination practised by the Italian authorities, who refuse systematically to grant them legal status, even if they have been in the country for several generations. It also argues that in cases of racial discrimination under Article E of the Revised Charter, individuals' legal status should not be relevant, as is the case in a number of international instruments, including the International Covenant on Economic, Social and Cultural Rights.

17. The Government denies that Article E can be relied on to broaden the personal scope of the Revised Charter. It also rejects the comparison with other international conventions. Firstly, there is as yet no international customary rule granting a right to housing to all persons present in the territory of a state. Secondly, the explicit definition of personal scope in the Appendix to the Charter clearly indicates the intention of the Parties.

18. The Committee recalls that when it ruled on the admissibility of the case it did not examine this issue, which could only be properly assessed when examining the merits of the case. It notes that the parties do not question the fact that the groups covered by the complaint in fact include Italian citizens and nationals of parties to the Charter or the Revised Charter lawfully resident in Italy. It follows that the Italian Government's contention that it would be impossible "to separate the behaviours contested in a manner to apply the principle of Article 31 of the Charter only to those persons covered by the Charter itself" cannot prevent the Committee from exercising its authority to review the application of Article 31 of the Charter. Even assuming that, as the Government contends, it is impossible to distinguish among Roma to whom the protection afforded by Article 31 shall be compulsorily guaranteed and those Roma to whom, according to the Appendix (paragraph 1), the guarantee of such protection remains within the remit of States parties, the Committee does not see how such a circumstance would exempt the State from the obligation of ensuring that protection.

ii) Preliminary issues

Scope of Article 31

The Committee recalls that Article 31 is directed to the prevention of homelessness with its adverse consequences on individuals' personal security and well being (Conclusions 2005, Norway, Article 31, p.587). The right to housing secures social inclusion and integration of individuals into society and contributes to the abolishment of socio-economic inequalities.

Scope of Article E

19. The Committee recalls that in its decision on the right to housing of Roma in Greece it emphasised 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" (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 19).

20. Similarly, equal treatment requires a ban on all forms of indirect discrimination, which can arise "by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Autism-Europe v. France, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 52).

21. In this case, equal treatment implies that Italy should take measures appropriate to Roma's particular circumstances to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless.

Data collection

22. The Government states that it does not possess precise data on the Roma population, not even the number of Roma who hold Italian citizenship.

23. The Committee recalls that when it is generally acknowledged that a particular group is or could be discriminated against, the state authorities have a responsibility for collecting data on the extent of the problem (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy. Similarly, if homelessness is to be progressively reduced as required by Article 31§2 of the Revised Charter, states will need the necessary factual information to deal with the problem. The regular collection of detailed information and statistics is a first step towards achieving this objective (Conclusions 2005, France, Article 31§2, p.268).

24. Finally, the Committee notes that when credible evidence is adduced alleging discrimination it becomes incumbent on the State party concerned to answer to the allegations by pointing to, for example, legislative or other measures introduced, statistics and examples of relevant case-law (OMCT v. Greece, Complaint No. 17/2003, decision on the merits of 7 December 2004, §46, and ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §50). More precise allegations call for more detailed response.

Responsibility of the state

25. In support of its claims, the Government states that local authorities are responsible for the management and upkeep of camping sites and that many regions (Calabria, Emilia-Romagna, Friuli-Venezia-Giulia, Lazio, Liguria, Piedmont, Sardinia, Tuscany, Veneto, and the Autonomous Province of Trento) and certain municipalities (Bologna and Rome) have adopted specific measures on behalf of their Roma and Sinti populations since 1984.

26. 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 parties to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised" (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29). Thus, ultimate responsibility for policy implementation, involving at a minimum oversight and regulation of local action, lies with the Italian state. Moreover, as a signatory to the Revised Charter and the party against which complaints

are lodged, the Government must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.

iii) As to the alleged insufficiency and inadequacy of camping sites

A. Arguments of the parties

27. The ERRC maintains that Roma camping sites fail to meet minimum living standards and amount to deliberate segregation by the Italian authorities in violation of Article 31 in combination with Article E.

28. Italy is accused of actively pursuing a policy of racial segregation and boasting of a network of ghettos aimed at preventing Roma from integrating into mainstream Italian society. Such a policy is based on the assumption that Roma and Sinti are “nomads” who can only live on the edges of society.

29. According to the ERRC, camping site facilities are inadequate, with limited or no access to basic amenities such as water, electricity and sewage and solid waste removal. Although three-quarters of the camps have running water and electricity, such services are not sufficient to meet the needs, while very few camps are provided with sewage facilities and even fewer with waste collection. Moreover, the majority of camps are infested with insects and rats and only one-third are surfaced with asphalt.

30. The ERRC states that when places have been allocated in camping sites, the normal size of Roma families has never been taken into account, as in the case of the Arrivore Camp in Turin.

31. The ERRC cites in support of its submissions the results of field studies carried out between 1999 and 2004 and interviews with representatives of NGOs active in the Roma field. The complaint provides detailed descriptions of the situation in many Roma camps throughout Italy. Additional factual information appears in the ERRC publication *Campland: Racial segregation of Roma in Italy* (appended to the complaint).

32. The Government contests all the allegations and affirms that national and local authorities have taken the appropriate legislative and regulatory measures, and that administrative and judicial protection is available. Furthermore, it adds that no evidence is provided by the complainant to support its allegations other than the statements of those concerned. According to the Government, appropriate action has been taken in circumstances where credible and concrete evidence has come to light.

33. The Government contends that “authorised” camps are meant for a specific number of persons and provided accordingly with basic amenities. Subsequent inadequacies result from the misbehaviour of the Roma community, who set up unauthorised camps or introduce into authorised camps new residents who were not originally catered for, actions for which the authorities are not responsible.

B. Assessment of the Committee

34. The Committee observes that other than referring to local authority regulations (which were only provided as an appendix to the last written submission by Italy), the Government has adduced no evidence to refute the complainant's allegations. Instead, on the one hand it claims to have taken all the necessary legal measures to safeguard Roma living conditions, while on the other it places responsibility for such an inadequate situation on the Roma themselves, who would be responsible for having seriously damaged the facilities placed at their disposal. Similarly, the Government has not produced any evidence to show that the number of camps is sufficient, but has confined itself to recognising the existence of unauthorised camps, whose establishment is attributed to Roma misbehaviour.

35. Article 31§1 guarantees access to adequate housing, which means a dwelling which is structurally secure; safe from a sanitary and health point, i.e. it possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; not overcrowded and with secure tenure supported by law (see Conclusions 2003, Article 31§1, France, p. 221, Italy, p. 342, Slovenia, p. 554, and Sweden, p. 650). The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period.

36. The Committee recalls that Article 31§1 E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in absence of objective and reasonable justifications (see paragraph 1 of the Appendix), any group with particular characteristics, including Roma, benefit in practice from the rights in the Charter. On the contrary, by persisting with the practice of placing Roma in camps the Government has failed to take due and positive account of all relevant differences, or adequate steps to ensure their access to rights and collective benefits that must be open to all.

37. The Committee therefore finds that Italy failed to show that:

- it has taken adequate steps to ensure that Roma are offered housing of a sufficient quantity and quality to meet their particular needs;
- it has ensured or has taken steps to ensure that local authorities are fulfilling their responsibilities in this area.

The Committee therefore finds that the situation constitutes a violation of Article 31§1 taken together with Article E.

iv) As to forced evictions and other sanctions

A. Arguments of the parties

38. The ERRC alleges that the practice of forced evictions, threats of forced eviction, systemic destruction of property and invasion of Roma dwellings by the Italian authorities is in violation of Article 31§1 in combination with Article E.

39. According to the ERRC, the Italian authorities frequently evict Roma from sites they have occupied for some time and provide no alternative housing or resettle them in at least substandard housing. It provides several examples of cases where Roma, both settled and itinerant, have been prosecuted for occupying unauthorised sites and following their eviction have been sent to other already overcrowded camps or left with no alternative solution (the 2004 eviction from the Via Adda 14 building in Milan for example). Evictions from unauthorised camping sites are allegedly often carried out without procedural safeguards, such as formal warrants, and are accompanied by the destruction of personal belongings (Camp Barzaghi, Camp Casilino 700). It is also claimed that when such evictions take place, Roma are regularly taken to a police station for identity checks, and if they are in the country unlawfully they are taken into custody and eventually deported. The ERRC asserts that these operations are often carried out at night or at dawn by police officers in riot gear who sometimes act violently (Camp Barzaghi, Casilino 700, Tor de' Cenci).

40. The Government challenges the allegations and states that the authorities try to secure the transfer of persons lawfully present in Italian territory to more appropriate accommodation. It also states that during the evictions reported by the complainant, at least in Rome and Milan (Via Adda 14 building and Camp Barzaghi), there were no acts of violence or misconduct recorded and all the actions were carried out on the basis of orders issued by the competent authorities and under the supervision of immigrants' or Roma organisations. In the Via Adda eviction, the 60 persons out of 263 who were lawfully present in Italy were transferred to a reception centre and the rest were taken to a police station for identity checks.

B. Assessment of the Committee

41. The Committee notes with regard to Article 31§2 that States Parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available (see Conclusions 2003, Article 31§2, France, p. 225, Italy, p. 345, Slovenia, p. 557, and Sweden, p. 653). The law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided.

42. The Committee finds that Italy has failed to establish that the relevant evictions it carried out satisfy these conditions, and has not provided credible evidence to refute the claims that Roma have suffered unjustified violence during such evictions. The Committee therefore considers that the situation constitutes a violation of Article 31§2 in combination with Article E.

v) As to the lack of permanent dwellings

A. Arguments of the parties

43. The ERRC argues that the Italian authorities' policy of dismantling inadequate and overcrowded camping sites is not accompanied by any measures to offer the displaced Roma alternative accommodation. Eviction generally leads to the further establishment of substandard and inevitably racially segregated housing in camps or elsewhere. On the other hand, Roma are largely denied access to social housing. Access is regulated by a points system the criteria of which, such as the nature and length of the residence permit or the type of previous dwelling, are hard for Roma to meet. Similarly, it is not much easier for Roma who have been granted refugee status to obtain housing.

44. The Government denies that Roma are discriminated against in the allocation of social housing since anyone fulfilling the objective criteria is entitled to such accommodation. The Government does not specify what form these criteria take.

B. Assessment of the Committee

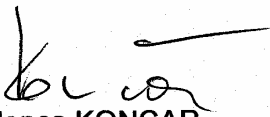
45. The Committee recalls that Article 31§1 guarantees access to adequate housing. Under Article 31§3 it is incumbent on States Parties to adopt appropriate measures for the construction of housing, in particular social housing (see Conclusions 2003, Article 31§3, France, p. 232, Italy, p. 348, Slovenia, p. 561, and Sweden, p. 655). Furthermore, they must ensure access to social housing for disadvantaged groups, including equal access for nationals of other Parties to the Charter lawfully residents or regularly working on their territory.

46. The Committee acknowledges that the State Party is committed to the principle of equal treatment for Roma as regards access to social housing, but has failed to provide any information to show that this right of access is effective in practice or that the criteria regulating access to social housing are not discriminatory. The Committee recalls that the principle of non-discrimination in Article E includes also indirect discrimination. Its failure to take into consideration the different situation of Roma or to introduce measures specifically aimed at improving their housing conditions, including the possibility for an effective access to social housing, means that Italy is in violation of Article 31§§1 and 3 taken together with Article E.

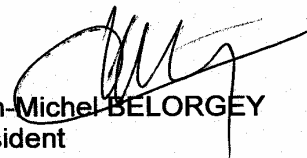
CONCLUSION

For these reasons, the Committee concludes

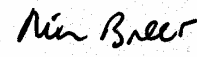
- Unanimously that the insufficiency and inadequacy of camping sites constitute a violation of Article 31§1 of the European Social Charter taken together with Article E;
- Unanimously that forced eviction and other sanctions constitute a violation of Article 31§2 of the European Social Charter taken together with Article E;
- Unanimously that the lack of permanent dwellings constitutes a violation of Articles 31§1 and 31§3 of the European Social Charter taken together with Article E.



Polonca KONCAR
Rapporteur



Jean-Michel BELORGEY
President



Régis BRILLAT
Executive Secretary

