

**COUNCIL OF EUROPE
EUROPEAN COMMITTEE FOR SOCIAL RIGHTS**

*For the attention of
the Executive Secretary,
acting on behalf of the General Secretary
of the Council of Europe*

Written Observations on Admissibility

Procedure no. 27/2004

European Roma Rights Center against Italy

**presented by the Italian Government
represented by Mr. Ivo M. Braguglia
assisted by Mrs. Maria Chiara Malaguti
resident at the Permanent Representation of Italy at the
Council of Europe, Strasbourg**

1. On the 28th of June, 2004, the European Roma Rights Centre (ERRC), a non-governmental organisation, introduced a complaint against Italy with reference to article 31, either alone or in combination with Article E of the revised European Social Charter (the Charter). It is alleged that the policies and practices concerning the housing of Roma in Italy, in particular with regard to their placement in allegedly unhealthy camps and their subjection to police controls characterised as abusive, constitutes a violation of the principle of the right to housing established by the Charter and can be classed as discrimination and racial segregation in violation of the principle of non-discrimination.
2. The Italian Government completely rejects the allegations of the ERRC and asserts in the preliminaries that the complaint should be judged inadmissible, the object of the complaint being outside the area of application of the Charter because of the nature of the individuals protected by the Charter.

Area of application of the Charter

3. The complaint of the ERRC concerns measures allegedly taken against individuals who fall outside the remit of the Charter.
4. In this regard the annex to the Charter dealing with its area of application states :

" Subject to the provisions of Article 12, paragraph 4, and of Article 13, paragraph 4, the persons referred to by Articles 1 to 17 and 20 to 31 do not include foreigners who are nationals of other Parties residing legally or working regularly on the territory of the interested Party, it being understood that the above mentioned articles will be interpreted in the light of the provisions of Articles 18 and 19."

5. The case in question concerns Roma populations who, even according to the ERRC, come from different European and Asian countries of which a great number are outside of the area of application of the Charter. Furthermore, even those individuals who are nationals of other countries who have signed the Charter do not, for the most part, either reside legally on Italian territory or work there regularly.
6. The ERRC states that nevertheless a part of the Roma population affected by the facts dealt with by the complaint are Italian citizens. When some of the individuals in question are covered by the Charter, it is impossible in the case in question to separate the issues contested in such a way as to be able to apply the principles of Article 31 of the Charter exclusively to subjects covered by the Charter.
7. The ERRC is not contesting the acts or measures specifically addressed at Italian nationals or nationals from other countries which are signatories of the Charter resident in Italy or working there regularly. The organisation is, on the contrary, attacking acts and measures of public order, such as non-authorized camps or camps whose aim is to identify individuals who do not possess a residence permit. Regarding the more general question of the standard of the camps for Roma, they are normally set up to deal with temporary situations, to house people without residence permits or who are waiting for more stable solutions, and designed for a number of residents always lower than the number who actually end up living there. Such situations cannot be considered as issues concerning the right to housing of Italian nationals or nationals of other countries which are signatories to the Charter and who are residing in Italy or who work there regularly even if it can happen that such individuals reside there.
8. Furthermore, the actual exercise of the right to housing guaranteed by the charter is linked to the social parameters of the beneficiary which consequently requires that the beneficiary should either reside legally in the territory or should work their regularly. Article 31 states that in order to assure the effective application of this right the parties undertake to take measures destined to "1. facilitate access to adequate housing; 2. to provide against and to reduce homelessness with an eye to its progressive elimination; 3. to make the cost of housing accessible to people who do not possess adequate resources". All acts or measures with which the Italian government can be blamed should be based on the absence of respect of these parameters and not on general or non-qualified behaviour towards the whole of the Roma population, whether they be legally or non-legally resident in Italy or working regularly or not.
9. Owing to the type of behaviour in question, the motives underpinning it and the obligations of the signatories of the Charter to execute Article 31, it would be completely impossible to identify specific acts referring to individuals covered by the Charter. Consequently, just as the argument of the ERRC which states that the

complaint should be limited only to Roma covered by the Charter should be rejected as a result of the impossibility of identifying the specific measures against them, the whole complaint should be judged inadmissible.

The alleged absence of relevance of the status of citizen/resident in the cases of discrimination and racial segregation

10. The ERRC maintains that in the case of racial discrimination or segregation the Charter should be applied to every individual in the territory in question independent of their status or origin.

11. With regard to this we should immediately note that the complaint is not based directly on Article E of the Charter, concerning discrimination, but on Article 31, concerning the right to housing. This is clear from the whole structure of the complaint:

"(...) Subject of the Complaint: 6. Violation of Articles 31, taken alone and/or in conjunction with Article E; (...) 7.A. Failure to promote access to housing of an adequate standard to Roma, in violation of Article 31(1), taken alone and/or in conjunction with Article E; 7.B. Failure to prevent and reduce homelessness among Roma, in violation of RESC Article 31(2), taken alone and/or in conjunction with the Revised Charter's Article E ban on discrimination; 7.C Failure to make the price of housing accessible to Roma without adequate resources, in violation of Article 31(3), taken alone and/or in conjunction with Article E."

12. The principle object of the complaint is thus the alleged violation of the Roma's right to housing brought about by the violation of each of the three paragraphs of the aforementioned article. The alleged discrimination against or even segregation of Roma would occur as a result of the violation of Article 31 and would be indirect.

13. Furthermore, Article E is a function of the other articles of the Charter: according to this article, the enjoyment of the rights recognised by the Charter (including obviously that to housing) "should be guaranteed without any distinction based on race, colour, sex, language, religion, political opinions or any other opinions, national ancestry or social origin, health, membership of a national minority, birth or any other matter". It is therefore clear that the aim of the Charter is to recognise a certain number of rights for protected individuals, who are classified in the annex, and that the situations of alleged discrimination are to be evaluated with regard to these individuals, that is to say Italian citizens and nationals of countries who are signatories of the Charter residing legally or working regularly in the territory.

14. On the other hand, what we have just illustrated with regard to the connection between the right to housing and social parameters excludes completely the extension of the area of application of the Charter to every individual present on the territory independent of their status or origin.

15. Finally, we must add that, in order to support its case, the ERRC refers to a number of international conventions applied generally, drawing the conclusion that the existence of such measures proves that, in the case of racial discrimination or

segregation, all international conventions should be interpreted as being applicable to all individuals, independent of their status or origin.

16. However, the conventions mentioned by the ERRC do not include all subjects independent of their status or origin in their area of application while the annex to the Charter expressly excludes those who are not nationals of signatory countries of the Charter residing legally or working regularly in the territory.

17. On the contrary, we should note that of the three Conventions mentioned by the ERRC, the *International Pact for civil and political rights* and the *International Pact for economic, social and cultural rights*, dating from the 16th of December 1966 (both having entered into force in 1976), recognise that the measures of international law destined to guarantee the realisation of the rights recognised therein include among other things the drawing up of conventions where the states concerned could regulate the issue by limiting the area of application to a certain type of beneficiary (which is exactly what happened with the arrival of the Charter) while the *International Convention for the elimination of all forms of racial discrimination* excludes its application to distinctions, exceptions, restrictions or preferences established by a state signatory to the convention regarding the issue of nationals versus non-nationals (article 1.2).

18. On the other hand, an interpretation of the Charter by analogy with other international conventions, not necessarily adopted by the states themselves, would be contrary to the general principles of international law on the application and interpretation of Treaties in so far as it cannot be demonstrated that a customary principle of general application exists recognising the right to housing for all individuals regardless of their status, origin or connection with the host country. Furthermore, since the Charter was adopted much later than the other conventions, even among those states who have adopted all of the conventions mentioned, one does not find a usage automatically extending protection to non-nationals, belonging to signatory countries of the Charter, as well.¹ On the contrary, the deliberate choice to limit the area of the Charter as foreseen by its Annex, is the demonstration of the intention of the signatories to permit the exercise of the right to housing in a more effective way among their nationals residing legally or working regularly on the territory of one of the signatories.

Italy's alleged role in the non-provision of residence permits for Roma, a frequent cause of irregularities

19. Finally, the ERRC affirms that one of several reasons that a great number of Roma do not reside legally in Italy is the fact that the Italian government adopts racially discriminatory policies and other arbitrary measures concerning the issuance of residence permits. The other principle reason mentioned by the ERRC, and recognised as not being the responsibility of the Italian government, is the fact that the Roma do not normally possess the appropriate documents from their country of origin which would allow the initiation of a procedure for their regularisation in Italy.

¹ See the Convention for Treaty Law, article 31(3)(b)

20. Besides not being founded on any proof,² the allegation of the ERRC (which the Italian Government rejects as groundless) cannot exclude the application of the Annex concerning the area of application of the Charter. The possible reasons why the subjects do not satisfy the conditions required for the application of the charter is not of any relevance: in the opposite case, the Italian government would face the *de facto* responsibility not for the violation of Article 31 of the Charter but for other measures outside the area of application of the Charter (specifically, concerning the policies applied to the issuance of residence permits); with no benefit for the individuals to be protected who in such a way would not be protected against, in this case, a real violation of their rights, that is to say the denial of their residence permit.

For all the reasons set down above, the Italian Government demands the European Committee for Social Rights to declare the complaint of the ERRC inadmissible.

Rome

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² On the contrary, the Second Report on Italy by the European Commission against racism and intolerance has established that Many foreign Roma/Gypsies possess no legal status in Italy and most of those who are legally present in Italy only possess residence permits valid for short periods of time. Roma/Gypsies are reported to have benefited comparatively less than other groups from the various opportunities for regularisation partly because of their lack of awareness of these opportunities, and partly because many of them did not possess the necessary valid documentation from their countries of origin.”