# COLLECTIVE COMPLAINT

European Roma Rights Centre v Portugal

22 April 2010

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

errc
european roma rights centre

# TABLE OF CONTENTS

# I. ADMISSIBILITY

## 1.1 State Party

1. Portugal signed the European Social Charter (ESC) on 1 June 1982 and ratified the Charter on 30 September 1991. The ESC entered into force in Portugal on 30 October 1991.

2. Portugal signed the Revised European Social Charter (RESC) on 3 May 1996 and ratified it on 30 May 2002. The RESC entered into force with respect to Portugal on 1 July 2002. When depositing the instrument of ratification, Portugal officially declared that it was bound by all the articles of the Charter, with the exception of certain provisions under Articles 2 and 6.[1]

3. Portugal signed the Additional Protocol of 1995 providing for a system of collective complaints on 9 November 1995 and ratified it on 20 March 1998. The Additional Protocol entered into force with respect to Portugal on 1 July 1998.[2]

## 1.2 Relevant articles of the RESC

The ERRC submits this complaint concerning the housing rights situation of Roma in Portugal, raising in particular concerns regarding articles 16, 30, 31 and E of the RESC:

## 1.3 Standing of the European Roma Rights Centre

4. The European Roma Rights Centre (ERRC) is an international public interest law organisation, which has consultative status with the Council of Europe and is one of the organisations entitled to lodge collective complaints under the ESC/RESC mechanism. The ERRC has had standing with the ESC/RESC collective complaint mechanism since June 2002[3] and is currently registered in the list of international NGOs entitled to submit a collective complaint for the period 1 July 2006 – 30 June 2010.[4]

5. In addition, under Article 3 of the Additional Protocol of 1995,[5] the international non-governmental organisations referred to in Article 1(b) may submit complaints with respect to those matters regarding which they have been recognised as having particular competence. The ERRC is a Budapest-based international public interest law organisation which monitors the human rights situation of Roma in Europe and provides legal defence in cases of abuse. Since its establishment in 1996, the ERRC has undertaken first-hand field research in more than twenty countries, including Portugal and has disseminated numerous publications, from book-length studies to advocacy letters and public statements. Since 2005, the ERRC has been researching the housing rights situation of Roma in Portugal. In 2007, the ERRC, together with Númena Centro de Investigacao em Ciencias Sociais e Humanas (Númena), published *Social Inclusion Through Social Services: The Case of Roma and Travellers. Assessing the Impact of National Action Plans for Social Inclusion in Czech Republic, France and Portugal,*[6] which covered the subject of the present complaint. The ERRC continues to monitor Roma access to adequate housing in Portugal.

6. Furthermore, the standing of the ERRC before the ECSR is well established as it has successfully submitted the following complaints:

1 Council of Europe, "List of declarations made with respect to treaty No. 035, European Social Charter: Portugal", 15 April 2010, available at: **http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=035&CV=1&NA=&PO=POR&CN=999&VL=1&CM=9&CL=ENG**.

2 Council of Europe, *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*, 1995, available at: **http://conventions.coe.int/Treaty/en/Treaties/html/158.htm**.

3 Letter from the Secretariat General of the Council of Europe to Mr Claude Cahn, European Roma Rights Centre: 14 June 2002.

4 Council of Europe, "International Non-Governmental Organisations (INGOs) entitled to submit collective complaints", *European Social Charter: Governmental Committee*, 1 June 2009, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Organisations Entitled/INGOList2009rev_en.pdf**.

5 Council of Europe, *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*.

6 ERRC/Númena, *Social Inclusion Through Social Services: The Case of Roma and Travellers. Assessing the Impact of National Action Plans for Social Inclusion in Czech Republic, France and Portugal*, (2007), available at: **http://www.errc.org/cikk.php?cikk=2737**.

- *No. 15/2003 European Roma Rights Centre (ERRC) v. Greece*; lodged on 4 April 2003; *Resolution ResChS(2005)11* adopted on 8 June 2005 by the Committee of Ministers;[7]
- *No. 27/2004 European Roma Rights Centre (ERRC) v. Italy*; lodged on 28 June 2004; *Resolution ResChS(2006)4* adopted on 3 May 2006 by the Committee of Ministers;[8]
- *No. 31/2005 European Roma Rights Centre (ERRC) v. Bulgaria*; lodged on 22 April 2005; *Resolution ResChS(2007)2* adopted on 5 September, 2007 by the Committee of Ministers;[9]
- *No. 46/2007 European Roma Rights Centre (ERRC) v. Bulgaria;* lodged on 22 October 2007; *Resolution CM/ResChS(2010)1* adopted on 31 March 2010 by the Committee of Ministers;[10]
- *No. 48/2008 European Roma Rights Centre (ERRC) v. Bulgaria;* lodged on 28 March 2008; *Resolution CM/ResChS(2010)2* adopted on 31 March 2010 by the Committee of Ministers;[11] and
- *No. 51/2008 European Roma Rights Centre (ERRC) v. France;* lodged on 17 April 2008; decision on the merits dated 19 October 2009.[12]

# II. SUBJECT MATTER OF THE COMPLAINT

7. The issue addressed in this Collective Complaint is the housing situation of Roma in Portugal. As housing constitutes a centrepiece in a family's health and prosperity, the ERRC maintains that the sum of housing-related injustices in Portugal (including problems of access to social housing, substandard quality of housing, lack of access to basic utilities, residential segregation of Romani communities and other systemic violations of the right to housing) violates Articles 16 and 31 of the RESC. Furthermore, the ERRC holds that current housing conditions of Portuguese nationals of Romani ethnicity are an important indicator of their social exclusion, illustrating that their right to housing is not being protected and constitute a violation of Articles 30 and 31 of the RESC. The ERRC asserts that these articles may be read independently and/or in conjunction with the RESC's Article E non-discrimination clause.

8. Prior to entering into the substance of Portugal's systematic infringement of the right to adequate housing where Roma are concerned, a discussion of the key elements upon which the rationale of the complaint is based follows:

   - The elements of the right to adequate housing in the RESC and the ECSR's jurisprudence;
   - The content of the right to adequate housing under other international legal instruments;
   - The right to protection against poverty and social exclusion;
   - The ban on discrimination - including racial discrimination - in access to housing; and
   - The ban on racial segregation.

## 2.1 Articles 16, 30, 31 and E and the right to housing in the ECSR's jurisprudence

9. The right to housing is guaranteed explicitly by Article 31 of the RESC. Furthermore, the right to housing is treated as a means for securing the social, legal and economic protection and full development of the family (Article 16), as well as the right to protection against poverty and social exclusion (Article 30). The

7 Council of Europe, *No. 15/2003 European Roma Rights Centre (ERRC) v. Greece*, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**.

8 Council of Europe, *No. 27/2004 European Roma Rights Centre (ERRC) v. Italy*, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**.

9 Council of Europe, *No. 31/2005 European Roma Rights Centre (ERRC) v. Bulgaria*, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**.

10 Council of Europe, *No. 46/2007 European Roma Rights Centre (ERRC) v. Bulgaria*, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**.

11 Council of Europe, *No. 48/2008 European Roma Rights Centre (ERRC) v. Bulgaria*, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**.

12 Council of Europe, "European Social Charter: List of complaints and state of procedure", *No. 51/2008 European Roma Rights Centre (ERRC) v. France*, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**.

very fact that the right to housing is protected by several distinct articles of the RESC is a reminder of the importance attached to it by the Parties to the RESC. As the ECSR has observed, there is an important degree of overlap between the various RESC articles safeguarding the right to housing. Thus, in its decision in the Complaint ERRC v Bulgaria, the ECSR noted that:

> […] as many other provisions of the Charter, Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31.[13]

10. The ECSR's expanding jurisprudence on the right to housing defines it as a set of rights beyond the mere entitlement to a house. "The right to housing permits the exercise of many other rights – civil and political as well as economic, social and cultural. It is also of central importance to the family."[14] The ECSR has made it clear that the right to housing should be interpreted as a right to adequate housing.

11. In its decision on the merits in relation to ERRC v Bulgaria, which concerned the latter's conformity with Article 16, the ECSR held that:

> Article 16 guarantees adequate housing for the family, which means a dwelling which is structurally secure; possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; is of a suitable size considering the composition of the family in residence; and with secure tenure supported by law.[15] The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period.[16] Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.[17]

12. The ECSR has employed the same principle of adequate housing in interpreting Article 31 RESC:

> 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.[18] 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.[19]

13. The ECSR has also held that the right to housing, as protected under Articles 16 and 31, might entail different obligations on the part of Member States vis-à-vis different groups (including Roma) and that special, positive action measures might have to be implemented.[20]

13 Council of Europe, European Committee of Social Rights, *No. 31/2005 European Roma Rights Centre (ERRC) v. Bulgaria*, "Decision on the Merits", 18 October 2006, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**, 6.

14 Council of Europe, European Committee of Social Rights, *No. 15/2003 European Roma Rights Centre (ERRC) v. Greece*, "Decision on the Merits", 8 December 2004, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**, 8.

15 *Ibid*., paragraph 24.

16 *No. 31/2005 ERRC v. Bulgaria*, "Decision on the Merits", 10.

17 *No. 15/2003 ERRC v. Greece* "Decision on the Merits", 5-8.

18 Council of Europe, European Committee of Social Rights, *Conclusions of the European Committee of Social Rights* "2003: European Social Charter revised", Article 31§3, France, 232; Italy, 348; Slovenia, 561; and Sweden, 655; available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsYear_en.asp**.

19 Council of Europe, European Committee of Social Rights, *No. 27/2004 European Roma Rights Centre (ERRC) v. Italy*, "Decision on the Merits", 7 December 2005, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**, p.11.

20 The Committee states in *ERRC v. Bulgaria* that: "Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in the absence of objective and reasonable justifications (see paragraph E, Part V of the Appendix), any individual or groups with particular characteristics benefit in practice from the rights in the Charter. In the present case this reasoning applies to Roma families. Moreover, as the Committee stated in stated in the Autism-Europe decision (Autism-Europe v. France, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 52), 'Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may 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' […] In all its submissions the Government emphasised that Bulgarian legislation provides adequate safeguards for the prevention of discrimination. However, the Committee finds that in the case of Roma families, the simple guarantee of equal treatment as the means of protection against any discrimination does not suffice. As recalled above, the Committee considers that Article E imposes an obligation of taking into due consideration the relevant differences and acting accordingly. This means that for the integration of an ethnic minority as Roma into mainstream society measures of positive action are needed." *No. 31/2005 ERRC v. Bulgaria*, "Decision on the Merits", 11-12.

14. The ECSR has also made it clear that although meeting their obligations in respect of the right to housing is a highly demanding undertaking in terms of time and resources, Member States should nevertheless form and implement realistic plans. In ERRC v Bulgaria, the ECSR noted that "the enjoyment of certain fundamental rights requires a positive intervention by the state"[21] and identified necessary legal and practical measures for effective protection.

15. Article 30 RESC considers housing a prerequisite to the prevention of social exclusion and poverty. According to the ECSR, living in a situation of poverty and social exclusion violates the dignity of human beings.[22] For these reasons Article 30 requires Member States to "adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach."[23] Moreover, "adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy."[24]

16. Finally, the measures should be of a quality and quantity adequate to the nature and extent of poverty and social exclusion in the country concerned.[25] In assessing compliance with the Charter, the Committee systematically reviews the definitions and measuring methodologies applied at the national level and the main data consequently made available. Also, the at-risk-of-poverty rate before and after social transfers (Eurostat) is used as a comparative value to assess national situations.[26]

17. Lastly, the ECSR has shown increasing concern about the issue of culturally appropriate housing. Noting that some Roma/Travellers around Europe still engage in an itinerant lifestyle, in the complaints filed by the ERRC the ECSR has held Greece, Italy and France in violation of Article 16 and 31 respectively, in relation to the insufficiency and inadequacy of the halting sites available to Roma/Travellers.[27]

## 2.2 Other international legal standards relating to the right to housing

18. According to Article H of the RESC, the rights contained in RESC should not be interpreted to limit the protection afforded by equivalent provisions contained in domestic legislation or other international instruments. Although the ECSR has already adopted a highly progressive and comprehensive approach to the right to housing which makes reference to pertinent international standards, the ERRC aims to establish beyond any doubt that the right to housing, particularly concerning vulnerable groups such as Roma, is firmly entrenched in international law.

19. A number of provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[28] provide protection of core elements of the right to adequate housing. According to European Court of Human Rights (ECtHR) case law, the purposeful destruction of property might under certain conditions amount to inhuman and degrading treatment.[29] Furthermore, in the *Moldovan v. Romania*

21 *Ibid*., 10.

22 Statement of Interpretation on Article 30, see in particular Conclusions 2003, France.

23 *Ibid*. Council of Europe, European Committee of Social Rights, *No. 33/2006, International Movement ATD Fourth World v. France*, "Decision on the Merits", 4 February 2008, available at: **http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp**, 40.

24 European Committee of Social Rights, *Conclusions of the European Committee of Social Rights* "2005: European Social Charter revised", Slovenia, Articles 8, 11, 14, 17, 18, 23, 25, 27, 30 and 31 of the Revised Charter, 51.

25 European Committee of Social Rights, *Conclusions of the European Committee of Social Rights*, Statement of Interpretation on Article 30, all countries.

26 European Committee of Social Rights, *Conclusions of the European Committee of Social Rights* "2005: European Social Charter revised", Slovenia, 674; Conclusions of the European Committee of Social Rights "2003: European Social Charter revised"; Statement of Interpretation on Article 30, all countries.

27 *No. 15/2003 ERRC v. Greece*, "Decision on the Merits", 13; *No. 27/2004 ERRC v. Italy*, "Decision on the Merits", 12; *No. 51/2008 ERRC v. France*, "Decision on the Merits", 23.

28 Portugal ratified the ECHR on 9 November 1978.

29 See European Court of Human Rights, *Mentes and Others v. Turkey (Article 50)*, Application No. 23186/94, 24 July 1998, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696083&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649** and European Court of Human Rights, *Selcuk and Asker v. Turkey*, Application No. 23184/94 23185/94, 24 April 1998, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696039&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**.

case, the ECtHR held that the responsibility of the respondent state under Articles 3 and 8 was engaged by the unacceptable living conditions of Roma following the destruction of their houses to which state agents had acquiesced.[30] Article 8(1) of the ECHR sets forth the following guarantees: "Everyone has the right to respect for his private and family life, his home and his correspondence."[31] Article 8's protection encompasses *inter alia* the following rights: the right of access,[32] the right of occupation[33] and the right not to be expelled or evicted, and is thus intimately bound with the principle of legal security of tenure.[34] Furthermore, the ECtHR has developed the concept of "positive obligations" extensively within its Article 8 jurisprudence, under which a Contracting State must not only restrict its own interferences to what is compatible with Article 8, but may also have a positive obligation to protect the enjoyment of those rights and secure the respect for those rights in its domestic law.[35] In addition, protections available under Article 1 of Protocol 1 to the ECHR guaranteeing the peaceful enjoyment of one's possessions have been interpreted to include the protection of housing rights.[36]

20. Portugal is also bound by the International Covenant on Economic, Social and Cultural Rights (ICESCR),[37] in particular Article 11(1),[38] that addresses the right to an adequate standard of living,

30 European Court of Human Rights, *Moldovan and Others v. Romania*, Application No. 41138/98 and 64320/01, 12 July 2005, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=780024&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**, paragraphs 113-114.

31 Council of Europe *Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol 11*, Rome, 4.XI.1950, available at: **http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm**.

32 European Commission of Human Rights, *Wiggins v. United Kingdom*, Application No. 7456/76, 13 D & R 40 (1978), 8 February 1978, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=open&documentId=804194&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**.

33 *Ibid*.

34 European Commission of Human Rights, *Cyprus v. Turkey*, Application No. 6780/74 and 6950/75, 26 May 1975, **http://cmiskp.echr.coe.int/tkp197/view.asp?action=open&documentId=804641&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**.

35 For example, European Court of Human Rights, *Costello-Roberts v. United Kingdom*, Application No. 13134/87, 25 March 1993, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695681&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**, para.26. See also, European Court of Human Rights, *Connors v. The United Kingdom*, Application no. 66746/01, 27 May 2004, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=699671&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**, where the Court found a violation of Article 8 requirements in a case involving the failure to provide adequate legal security of tenure to a family of English Gypsies. In the decision in that case, the Court ruled: "[…] The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, § 45, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 49). It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, *mutatis mutandis, Gillow v. the United Kingdom*, cited above, § 55; *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III; *Christine Goodwin v. the United Kingdom*, no. 28957/95, § 90, ECHR 2002-VI). Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (*Hatton and others v. the United Kingdom*, [GC] no. 36022/97, ECHR 2003-…, §§ 103 and 123)." (Connors Judgment on Merits, para. 82).

36 In *Öneryildiz v. Turkey*, a case involving the destruction of slum dwellers' homes following an explosion at a rubbish tip, the ECtHR, while finding a violation by the Turkish government of Article 1 of Protocol 1 ruled, *inter alia*, "The Court reiterates that the concept of 'possessions' in Article 1 of Protocol No. 1 has an autonomous meaning and certain rights and interests constituting assets can also be regarded as 'property rights', and thus as 'possessions' for the purposes of this provision […] the Court considers that neither the lack of recognition by the domestic laws of a private interest such as a 'right' nor the fact that these laws do not regard such interest as a 'right of property', does not necessarily prevent the interest in question, in some circumstances, from being regarded as a 'possession' within the meaning of Article 1 of Protocol No. 1 […] It must be accepted […] that notwithstanding that breach of the planning rules and the lack of any valid title, the applicant was nonetheless to all intents and purposes the owner of the structure and fixtures and fittings of the dwelling he had built and of all the household and personal effects which might have been in it. Since 1988 he had been living in that dwelling without ever having been bothered by the authorities (see paragraphs 28, 80 and 86 above), which meant he had been able to lodge his relatives there without, *inter alia*, paying any rent. He had established a social and family environment there and, until the accident of 28 April 1993, there had been nothing to stop him from expecting the situation to remain the same for himself and his family. […] In short, the Court considers that the dwelling built by the applicant and his residence there with his family represented a substantial economic interest. That interest, which the authorities allowed to subsist over a long period of time, amounts to a 'possession' within the meaning of the rule laid down in the first sentence of Article 1 § 1 of Protocol No. 1 […]." European Court of Human Rights, *Öneryildiz v. Turkey*, Application No. 48939/99, 30 November 2004, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=708579&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**.

37 Portugal ratified the ICESCR on 31 October 1978. International Covenant on Economic, Social and Cultural Rights, available at: **http://www2.ohchr.org/english/law/cescr.htm**.

38 Article 11(1) of the ICESCR.

and General Comments[39] No. 4[40] and No. 7[41] where the United Nations Committee on Economic, Social and Cultural Rights (CESCR) further clarifies what the right to adequate housing entails. Its interpretation of Article 11 of the Covenant is reflected in the jurisprudence of the ECSR and its interpretation of the RESC.

21. Other international treaties and bodies that address the right to adequate housing include the Convention on the Rights of the Child (CRC),[42] the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),[43] the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[44] the UN Commission on Human Rights[45] and the UN Sub-Commission on Prevention of Discrimination of Minorities.[46]

22. In addition to the various instruments on the right to housing in general, there is an ever-increasing body of international "soft" and "hard" law exclusively concerning the right to housing of Roma.

23. The Council of Europe Member States have adopted a number of resolutions dealing expressly with the issue of housing of both itinerant and sedentary Roma. Recommendation Rec(2005)4[47] sets out a number of principles that should be respected and guidelines that should be taken into account when drafting and implementing housing programmes for Roma.

39 CESCR, *The right to adequate housing (Art. 11.1): General Comment 4*, available at: **http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument** and CESCR, *The right to adequate housing (Art. 11.1): forced evictions: General Comment No. 7,* available at: **http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument**. General Comments Nos. 4 and 7 state that all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats.

40 The CESCR defines in its General Comment 4 para. 8 "adequate housing" as housing enjoying "sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services." Moreover, housing should be "affordable and habitable." Habitability consists of "allocating adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors." Adequate housing must also ensure the "physical safety of residents." Furthermore, housing must be accessible to those entitled to it. The location of the housing facilities must allow "access to employment opportunities, health care services, schools, childcare services and other social facilities." Finally, housing "should not be built on polluted sites or in immediate proximity to pollution sources that may threaten the right to health of the residents" and should also be culturally adequate. CESCR, *General Comment 4*.

41 The CESCR defines forced evictions in its General Comment No. 7 as "the permanent or temporary removal against their will of individuals, families and/or communities from their homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." CESCR, *General Comment 7*.

42 Article 27 CRC assigns state responsibility to provide material assistance, including housing, to children and assist parents to implement this right. Portugal ratified the CRC on 21 October 1990. OHCHR, Convention on Rights of the Child, General Assembly Resolution 44/25, 20 November 1989, available at: **http://www.unhchr.ch/html/menu3/b/k2crc.htm**.

43 Article 5(e)(iii) of ICERD. Portugal ratified the ICERD on 23 September 1982. OHCHR, International Convention on the Elimination of All Forms of Racial Discrimination, General Assembly Resolution 2106, 21 December 1965, available at: **http://www2.ohchr.org/english/law/cerd.htm**.

44 Article 14 (2) of CEDAW. Portugal ratified the CEDAW on 3 September 1981. UN Division for the Advancement of Women, Convention on the Elimination of All Forms of Discrimination Against Women, available at: **http://www.un.org/womenwatch/daw/cedaw/cedaw.htm**.

45 The UN Commission on Human Rights has affirmed that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to housing. UN Commission on Human Rights, Resolution 1993/77, (E/CN.4/RES/1993/77) paragraph 1, 10 March 1993, available at: **http://www.unhabitat.org/downloads/docs/1341_66115_force%20evic%20chr1.htm**.

46 The Sub-Commission has reaffirmed that forced eviction constitutes a gross violation of a broad range of human rights, including the right to adequate housing. See UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. Forced Evictions: Sub-Commission resolution 1998/9 (E/CN.4/SUB.2/RES/1998/9), 20 August 1998, paragraph 1, available at: **http://www.unhabitat.org/downloads/docs/5670_2252_E.CN.4.Sub.2.RES.1998.9.En.htm**. Furthermore, international bodies have ruled that, in certain instances, forced evictions and the destruction of property amount to cruel and inhuman or degrading treatment. For example, in the case of *Selçuk and Asker v. Turkey*, the European Court of Human Rights ruled that the destruction of houses and the eviction of those living in them constituted a form of ill-treatment in violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. European Court of Human Rights, *Selçuk and Asker v. Turkey*, 24 April 1998, Appls Nos 00023184/94 and 00023185/94. Similarly, the UN Committee against Torture (CAT) has ruled that, under certain circumstances, destruction of property may amount to cruel and inhuman or degrading treatment in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Committee against Torture. Communication No 161/2000: Yugoslavia. 02/12/2002. CAT/C/29/D/161/2000 (Jurisprudence)). The case is particularly noteworthy for the purposes of this Collective Complaint insofar as the victims were Romani.

47 Council of Europe, *Resolution of the Committee of Ministers to Member States on improving the housing conditions of Roma and Travellers in Europe*, 23 February 2005, available at: **https://wcd.coe.int/ViewDoc.jsp?id=825545&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75**.

24. Within the framework of the European Union,[48] a European Parliament resolution calls on Member States to take steps in favour of de-ghettoisation and in order to combat discriminatory practices by providing housing and to assist individual Roma in finding alternative housing.[49]

25. Lastly, Portugal is a Participating State in the Organization for Security and Cooperation in Europe (OSCE) whose Permanent Council adopted an Action Plan in 2003 "On Improving the Situation of Roma/Sinti within the OSCE Area."[50] A number of the recommendations contained therein relate to the issue of housing of Roma.[51]

26. In 2007 the Council of Europe Commissioner for Human Rights and the UN Special Rapporteur on the Right to Adequate Housing[52] noted an undeniable growth of anti-Romani sentiment or "anti-Ziganism" in Europe in recent years that has resulted in a dramatic increase in the rate and number of forced evictions of Roma as well as an intensification of segregation and ghettoisation in the housing field.

## 2.3 The ban on discrimination – including racial discrimination – in access to housing

27. In addition to the Preamble to the ESC and Article E of RESC, a number of other Council of Europe standards ban racial discrimination and this area of law recently has been extended. In 1994, the Council of Europe adopted the Framework Convention for the Protection of National Minorities,[53] to which Portugal has been a party since 2002.[54]

28. In addition, in 2000, the Council of Europe opened for signature Protocol 12 to the European Convention on Human Rights which provides a freestanding ban on discrimination in the realisation of any right secured by law.[55] Prior to the entry into force of Protocol 12, the ECtHR has undertaken to significantly strengthen the ban on racial discrimination under the Convention's existing Article 14 provisions. In a string of cases (such as *Nachova v. Bulgaria*, *Cobzaru v. Romania*, *Angelova and Ilev v. Bulgaria*), the ECtHR started defining the obligations of states under Article 14. More specifically, the procedural aspect of Article 14 imposes upon states the obligation to *ex officio* investigate whether racist motives might have played a role in an act or practice held to be in violation of another article of the ECHR. In the *Cobzaru* case, the ECtHR highlighted this obligation.[56]

29. The ERRC argues that the observation by the ECtHR could apply equally in cases of housing rights violations pertaining to Roma, since numerous international NGOs and intergovernmental organisations frequently report on such incidents, noting that in many cases they are motivated by racist animus.

48 European Parliament, *Resolution P6_TA(2005)0151 on the Situation of Roma in the European Union*, available at: **http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0151+0+DOC+XML+V0//EN**.

49 *Ibid*., paragraph 19.

50 OSCE, Decision No. 566 Action Plan on Improving the Situation of Roma/Sinti within the OSCE Area, 27 November 2003, available at: **http://www.osce.org/documents/odihr/2003/11/1562_en.pdf**.

51 In addition, a 2007 OSCE report noted a steady rise in forced evictions of Roma resulting in residential segregation and an increasing gap to mainstream society. OSCE, Forced evictions of Roma in the OSCE region: working towards finding sustainable solutions to stop this phenomenon, (2007).

52 "Governments Should Take Positive Steps to Protect the Housing Rights of Roma in Europe" Joint Statement by Council of Europe Commissioner for Human Rights Thomas Hammarberg and UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari, CommDH/Speech(2007)16, 24 October 2007, available at: **https://wcd.coe.int/ViewDoc.jsp?id=1199995**.

53 Framework Convention for the Protection of National Minorities, available at: **http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm**.

54 Relevant articles of the Framework Convention include articles 3(1), 4(1), 4 (2) and 6(2).

55 Portugal signed the Protocol on 4 November 2000, thus expressing political will to be bound by it. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.2000, available at: **http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm**.

56 European Court of Human Rights, *Cobzaru v. Romania*, Application No. 48254/99, 26 July 2007, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=821518&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**. In this case, the Court highlights that "[h]owever, the Court observes that the numerous anti-Roma incidents which often involved State agents following the fall of the communist regime in 1990, and other documented evidence of repeated failure by the authorities to remedy instances of such violence were known to the public at large, as they were regularly covered by the media. It appears from the evidence submitted by the applicant that all these incidents had been officially brought to the attention of the authorities and that as a result, the latter had set up various programmes designed to eradicate such type of discrimination. Undoubtedly, such incidents, as well as the policies adopted by the highest Romanian authorities in order to fight discrimination against Roma were known to the investigating authorities in the present case, or should have been known, and therefore special care should have been taken in investigating possible racist motives behind the violence."

Furthermore, the Court early on in its case law recognised that discrimination might have direct as well as indirect effect.[57]

30. Moreover, the European Union has adopted several Directives on the scope and dimensions of anti-discrimination laws in the European Union.[58] In particular, the Race Equality Directive includes, at Article 3(1) (h), a ban on discrimination in relation to housing.[59]

### 2.3.1 THE BAN ON RACIAL SEGREGATION

31. Portugal is bound by Article 3 of the ICERD, which requires states to "condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature […]."[60] Elaborating on Article 3, the Committee on the Elimination of Racial Discrimination (CERD), further states in its General Recommendation No.19 that racial segregation can arise without any initiative or direct involvement by public authorities and urges states to monitor trends that may give rise to racial segregation and to work for its eradication.[61]

32. The ICERD also includes a ban on racial discrimination in the field of economic and social rights, including the right to housing (Article 5 (e) (iii)). The inclusion of the Article 3 ban on racial segregation indicates that, under international law, particular harm is incurred by policies aiming at the forcible separation of persons and groups, based solely on their ethnic origin. Furthermore, in its General Recommendation No. 27 on Discrimination against Roma, the CERD called on States Parties "to develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing."[62] Because racial segregation is documented most often in the fields of education, housing and health, the RESC Article 31 guarantee of adequate housing should be understood as incorporating the ban on racial segregation included in Article 3 of the ICERD and General Recommendation No. 27 of the CERD.

## III. THE FACTUAL PROFILE OF PORTUGAL'S VIOLATION OF ARTICLE 16, ARTICLE 30 AND ARTICLE 31 INDEPENDENTLY OF AND/OR IN CONJUNCTION WITH THE ARTICLE E BAN ON DISCRIMINATION

33. On the basis of first hand field research, documentation and continuous monitoring in Portugal since 2005, the ERRC submits that Portugal has failed to meet its human rights obligations under the RESC

57 See European Court of Human Rights, *Thlimmenos v. Greece*, Application No. 34369/97, 6 April 2000, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696438&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**, para. 44, where the Court held that: "[it has] so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification […]. However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different." The Court has upheld this principle in later cases such as in European Court of Human Rights, *Chapman v. the United Kingdom*, Application No. 27238/95, 18 January 2001, paragraph 129, available at: **http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697031&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649**.

58 Beginning in 2000, and in particular under expanded powers provided by an amended Article 13 of the Treaty Establishing the European Community, the European Union adopted a number of legal measures which have significantly expanded the scope of anti-discrimination law in Europe. Particularly relevant for the purposes of this Collective Complaint is Directive 2000/43/EC "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" (The Race Directive). Directives are binding on EU Member States and their provisions must be transposed into the domestic legal order. Council Directive 2000/43/EC, 29 June 2000, available at: **http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf**.

59 *Ibid*.

60 Article 3 of the ICERD.

61 UN Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation 19: Racial Segregation and Apartheid* (Art. 3). August 18, 1995, para. 4. **http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/18c91e92601301fbc12563ee004c45b6?Opendocument**.

62 UN Committee on the Elimination of Racial Discrimination, *General Recommendation 27*, 16 August 2000, para. 30.

and other relevant international law. A significant number of Roma[63] live in substandard housing conditions, which has consequences for those Romani families and their ability to access other rights. Failure to ensure their right to housing has grave, multiple and mutually reinforcing effects on Roma, which result in their increased social exclusion. This can be largely attributed to the implementation of Portugal's resettlement programmes, which were characterised by major shortcomings and have negatively affected Romani communities in Portugal.

34. Research undertaken by the ERRC and Númena shows that Roma whose fundamental housing rights are violated typically do not have practical access to effective legal remedies for redress. Research undertaken by the ERRC shows that the housing conditions in which a significant portion of the Romani community find themselves are highly substandard and that the implementation of housing programmes by Portuguese authorities is often infected with racial animus. This finding is supported by the latest report of the European Commission against Racism and Intolerance (ECRI) latest report on Portugal.[64]

35. The widespread and systemic nature of these violations demonstrates Portugal's failure to meet its obligations under Articles 16, 30 and 31 of the RESC independently and/or in conjunction with the Charter's Article E non-discrimination provisions. In the following, the ERRC presents a detailed account outlining the violations of the Charter articles referred to above.

## 3.1 The right to adequate housing and anti-discrimination provisions in Portugal domestic law

36. In its third report on Portugal, the ECRI noted that progress had been made in the development of law and practice to combat discrimination and provide for equal access to social services in Portugal. The administrative legal provisions and those included in the Labour Code prohibiting racial discrimination were noted as positive developments, among others.[65]

37. Moreover, the legislation of Portugal does set out the right to housing and non-discrimination in this field.

38. The Constitution of Portugal provides for the following:

Article 34: Inviolability of home and correspondence

1. Personal homes and the secrecy of correspondence and other means of private communication shall be inviolable.
2. Entry into a citizen's home may only be ordered by the competent judicial authority and then only in such cases and in compliance with such forms as may be laid down by law.
3. No one shall enter any person's home at night without his consent, save in situations of flagrante delicto, or with judicial authorisation in cases of especially violent or highly organised crime, including terrorism and trafficking in persons, arms or narcotics, as laid down by law.
4. The public authorities shall be prohibited from interfering in any way with correspondence, telecommunications or other means of communication, save in such cases as the law may provide for in relation to criminal proceedings.

Article 65: Housing and urban planning

1. Everyone shall possess the right for themselves and their family to have an adequately sized dwelling that provides them with hygienic and comfortable conditions and preserves personal and family privacy.
2. In order to ensure enjoyment of the right to housing, the state shall be charged with:
   a) Planning and implementing a housing policy that is embodied in general town and country planning documents and supported by urban planning documents that guarantee the existence of an adequate network of transport and social facilities;

63 It is estimated that roughly 31% of all Roma in Portugal live in precarious housing conditions. ERRC/Númena, *Social Inclusion Through Social Services*, 58.

64 Council of Europe: European Commission Against Racism and Intolerance (ECRI), *Third Report on Portugal*, 13 February 2007, available at: **http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Portugal/Portugal_CBC_en.asp**.

65 *Ibid.*, para. 21.

b) In cooperation with the autonomous regions and local authorities, promoting the construction of low-cost and social housing;

c) Stimulating private construction, subject to the general interest, and access to owned or rented housing;

d) Encouraging and supporting local community initiatives that work towards the resolution of their housing problems and foster the formation of housing and self-building cooperatives.

3. The state shall undertake a policy that works towards the establishment of a rental system which is compatible with family incomes and access to individual housing.

4. The state, the autonomous regions and local authorities shall lay down the rules governing the occupancy, use and transformation of urban land, particularly by means of planning instruments and within the overall framework of the laws concerning town and country planning and urban planning, and shall expropriate such land as may be necessary to the fulfilment of the purposes of public-use urban planning.

5. Interested parties shall be entitled to participate in the drawing up of urban planning instruments and any other physical town and country planning instruments.[66]

39. Articles 13 and 15 of the Constitution outline the principles of equality; and the criminal and civil legislation provides for sanctions in acts of racial discrimination.

### 3.1.1 OTHER RELEVANT DOMESTIC LEGAL PROVISIONS

40. There are several references in domestic criminal, civil and administrative law that directly or indirectly deal with racial discrimination.[67] In particular, Law 18/2004 transposes the Race Equality directive on "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin",[68] which resulted of the expansion of the existing protection against discrimination in Portuguese law. Article 2(d) of Law 18/2004 bans discrimination in the access to and supply of goods and services available to the public, including those related to habitation.[69] The Law defines direct and indirect discrimination.

41. The complaints procedure under the law involves the High Commission for Immigration and Intercultural Dialogue (Alto Comissariado para a Imigração e Diálogo Intercultural, ACIDI),[70] a state body responsible for the promotion of equal treatment in Portugal. The High Commissioner for Immigration and Intercultural Dialogue (High Commissioner), with the assistance of the Commission on Equality and Racial Discrimination (CICDR), is responsible for imposing sanctions under Law 18/2004 and Law 134/99.

42. Under this procedure, the High Commissioner can impose fines and other ancillary sanctions (e.g., ban on practising a profession or suspension of a licence, etc.) in cases of racial discrimination. The procedure can apply to acts of racial discrimination in different areas, including housing.

43. In spite of reforms in 2007, the role of this institution in overseeing the implementation of anti-discrimination legislation in Portugal and its effectiveness were questioned by non-governmental organisations in Portugal, due to the fact that it is not an independent body. The ECRI's third report on Portugal confirms these concerns, concluding that so far ACIDI's work with Roma has not met expectations and has failed to resolve the integration problems experienced by these communities.[71]

44. According to numerous sources,[72] the individual complaints procedure, in place since 2000 and designed to punish racial discrimination through fines, has been a major disappointment. A six-year

66 Constitution of the Portuguese Republic, available at: **http://www.portugal.gov.pt/Portal/EN/Portugal/Sistema_Politico/Constituicao/** edited version by the ERRC.

67 Criminal Code (CP) - Passed by Decree-Law nº 400/82, of 23 September and amended by Decree-Law nº 48/95, of 15 March, by Laws nº 65/98, of 2 September, 7/2000, of 27 May, 77/2001, of 13 July, 97/2001, 98/2001, 99/2001, 100/2001, of 25 August, 108/2001, of 28 November, by Decrees-Law nº 323/2001, of 17 December, and by Laws nº 52/2003, of 22 August, 100/2003, of 15 November, 11/2004, of 27 March and law 59/2007 of 4 September 2007.

68 Council Directive 2000-43-EC, 1.

69 Portugal, Law 18/2004, available at: **http://dre.pt/pdfgratis/2004/05/110A00.PDF#page=11**.

70 Formerly known as High Commission for Immigration and Ethnic Minorities (Alto Comissariado para a Imigração e Minorias – ACIME).

71 ECRI, *Third Report on Portugal*, para. 31.

72 *Ibid.*, para. 36.

review indicated that a total of 190 cases had been recorded as of 2006, only two of which had resulted in a fine. Another problem is that the general inspectorates are reportedly not specifically trained to deal with racial discrimination cases.[73]

45. Studies on immigrants and ethnic minorities reveal cases where members of these groups have complained of racial discrimination in a number of situations.[74] Discrimination of this kind has apparently occurred in access to housing among other things. Some of these cases have been reported to ACIDI, but in many instances the authorities take no action. According to these studies, the discrimination also affects all immigrants and persons of immigrant origin living in Portugal, most specifically Roma and black people.

46. As noted above, the Portuguese legislation relevant to anti-discrimination provides adequate safeguards for the prevention of discrimination. Thus, the failure to provide an effective remedy in cases of discrimination against Roma, including in the field of housing, are not due to the lack of legislative norms but rather failures of implementation.

47. As for legislative regulations ensuring access of Roma to adequate housing, in addition to the Constitutional guarantee cited above, Decree-Law no. 73/96 was created to allow for greater flexibility and speed in the construction of cost-controlled housing and government supported re-housing schemes in all situations in which different cultural traditions require special accommodation.

### 3.1.2 STATE POLICY WITH REGARD TO THE SOCIAL INCLUSION OF ROMA AND IN PARTICULAR ACCESS TO HOUSING

48. All housing measures in Portugal fall within the auspices of the Institute for Housing and Urban Rehabilitation (IHRU),[75] a public institute with financial and administrative autonomy under the control of the Ministry of Urban Affairs, Territorial Planning and Environment. The IHRU is responsible for granting technical support to local authorities, proposing housing policies to the government, etc. The social dimension, namely resettlement in social housing (re-housing), is an important part of the Institute's work. The Institute is also responsible for producing the appropriate legal framework and co-financing the re-housing projects developed by the municipalities.

49. It is generally recognised by academics, nongovernmental organisations and government officials in Portugal that Roma are a disadvantaged population, many of them living in situations of economic and social exclusion. This situation tends to replicate itself over generations and stems from a long history of persecution, segregation and everyday discrimination. Although there is no official data on the number of Roma living in Portugal, their number is estimated to be between 40,000 and 60,000.[76]

50. The situation of Portuguese Roma has been a matter of concern for the international human rights community for more than 10 years. In their reports and recommendations on the situation of Roma in Portugal, international organisations have repeatedly expressed their desire for urgent action to remedy the situation.

51. In its second report on Portugal, the ECRI recommended that Portuguese authorities adopt several measures to improve the situation of Roma in Portugal. In particular, it recommended that steps be taken to combat the racist prejudice and stereotypes and the racial discrimination experienced by Roma. The ECRI further stressed the importance of ensuring that decisions of local authorities did not result in discrimination against Roma and called on the authorities to improve the housing conditions of Roma families and to encourage access to education for the children of these families.[77]

52. In its third report on Portugal, the ECRI expressed its concern that the situation of Roma in Portugal had not improved during the previous five years. Moreover, the ECRI contended that substandard living conditions persist in many Romani neighbourhoods and that many Roma are arbitrarily

73 *Ibid*.

74 *Ibid*., para. 46.

75 Formerly known as the National Institute for Habitation (Instituto Nacional da Habitação), however with the Decree-Law no. 207/2006, 27 October 2006 it was restructured and renamed Institute for Housing and for Urban Rehabilitation, IP (Instituto da Habitação e Reabilitação Urbana, IP).

76 Alexandra Castro and André Correia, 38th World Congress of the International Institute of Sociology, Budapest, June 26-30 2008: Globalization and (De-)/(Re-) Construction of Roma/Gypsy/Traveller Identities.

77 Council of Europe: European Commission Against Racism and Intolerance (ECRI), *Second Report on Portugal*, 4 November 2002, available at: **http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Portugal/Portugal_CBC_en.asp**.

evicted from their homes by local governmental agencies. The ECRI recommended that Portuguese authorities investigate the housing situation of Roma and urged them to address discrimination that perpetuates the poor living conditions of Portuguese Roma.[78]

53. Furthermore, the ECRI noted with regret reports by local civil society organisations that no real progress had been made on these issues and that many acts of anti-Gypsyism are ignored by local authorities. They indicated that it was unacceptable that Portugal had not established a comprehensive national strategy to combat racism, and the ECRI encouraged the Portuguese government to increase the number of positive action initiatives to facilitate the social inclusion of Roma.

54. The Council of Europe's Committee of Ministers noted in its resolution on Portugal's implementation of the Framework Convention for the Protection of National Minorities that "Roma are still at a disadvantage and they could be confronted with discrimination, social exclusion and marginalization." It pointed out the necessity for measures to be developed to promote the full and effective equality of Roma, in particular in such fields as housing.

55. In March 2009, a Parliamentary Commission organised a public hearing on the situation of Portuguese Roma. In the concluding report of the hearing, emphasis was placed on the fact that the Roma community in Portugal has a very weak economic capacity and "the housing situation of Roma community is very precarious and difficult to solve."[79] Moreover, this report highlighted that discrimination against Roma in Portugal is a widespread phenomenon and most of the non-Roma citizens are not willing to live in the same neighbourhood with Roma or to rent or sell them a house. However, this report also reinforced the stereotypes and prejudices against Roma by stressing that Roma are not able to live with others because they are not willing to give up their own lifestyle, which differs from the commonly accepted way of living.[80]

## 3.2 Violation of Article 16 of RESC

56. Article 16 of the RESC requires states to ensure necessary conditions for the full development of the family through, inter alia, the provision of family housing and other appropriate means. The ERRC submits that Portugal has failed to meet the requirements of Article 16 in a number of areas set out below. The Portuguese Constitution guarantees the right for everyone and all families to have an adequately sized dwelling that provides them with hygienic and comfortable conditions and preserves personal and family privacy. In order to ensure the enjoyment of the right to housing, the State is charged with, inter alia, planning and implementing housing policies that guarantee the existence of adequate public transport and social facilities and promoting the construction of low-cost and social housing.[81] As demonstrated below, the ERRC submits that Portugal is in violation of its domestic legal framework and the RESC through its failure to secure effectively the right to adequate housing.

### 3.2.1 INADEQUATE NATIONAL ACTION PLANS ADDRESSING HOUSING NEEDS OF ROMA COMMUNITIES

57. Assessment of Portugal's efforts to meet its international obligations to combat discrimination and social exclusion of Roma in the sphere of housing necessitates a review of Portugal's National Action Plans for Social Inclusion (NAP)[82] and their impact on Roma communities.

58. The NAP 2003-2005 contained some specific measures for the inclusion of Roma although it was not designed to address the needs of the Roma population exclusively. Specific measures in the NAP 2003-2005 to address housing problems included the introduction of a new urban rehabilitation programme for refurbishing of dilapidated houses, the support of low cost housing construction and the re-launching of a programme for re-housing of families living in slums.

78 ECRI, *Third Report on Portugal*.

79 Parliamentary Commission for Ethics, Society and Culture, Sub-Commission for Equal Opportunities and Family, Report on the public hearings held on Portuguese Roma within the scope of the European Year for Intercultural Dialogue, p.33-35, available at: **http://www.parlamento.pt/sites/COM/Paginas/DetalheNoticia.aspx?BID=2622**.

80 *Ibid*.

81 Article 65 of the Portuguese Constitution.

82 Portugal, *National Report on Strategies for Social Protection and Social Inclusion: Portugal*, available at: **http://ec.europa.eu/social/main.jsp?catId=753&langId=en**.

59. The Special Re-housing Programme (PER) is a central component of all the NAPs, and falls within the IHRU's responsibility. This programme was created in 1993 to eradicate existing slums and re-house their former inhabitants in public housing, with affordable rents.[83]

60. The NAP 2006-2008 aimed to eradicate the housing problems of vulnerable groups, including Roma, but it did not change significantly from the NAP 2003-2005 in terms of specific measures. Only two new housing related projects were included, neither of which specifically targeted Roma.

61. Most recently, the NAP 2008-2010 highlights the importance of adopting additional measures that will address the housing problems that Roma currently face in Portugal but fails to provide an adequate policy solution or identify appropriate funding that will ensure adequate living condition for Roma.

62. Assessing the impact of Portugal's NAPs on the housing situation of Roma is not an easy task, primarily because the Portuguese government does not collect data disaggregated by ethnicity.[84] Portuguese organisations such as Númena have noted that aside from the lack of disaggregated data, the lack of knowledge on the part of national authorities regarding the specific problems of Roma is one of the most significant impediments to the implementation of more active social inclusion policies.[85]

63. Although the efforts of the Portuguese government to enact national action plans that include provisions designed to improve access to housing is a positive step in the right direction, the following field research show the inadequacies in realising such plans as they pertain to the Roma community.

64. Research conducted by the ERRC and Númena in 2006 and 2009 identified major deficiencies in the realisation of the NAPs, and in particular PER implementation; namely the lack of access of vulnerable Roma to re-housing programmes and inadequate financing of re-housing projects coupled with a lack of will by local authorities to implement re-housing programmes.

65. According to ERRC/Númena research, central authorities only partially finance re-housing programmes, while the remainder, up to 50%, of the financing required from municipal budgets. Local authorities interviewed often claimed to have insufficient funds or available land in explaining their failure to implement re-housing programmes.[86] A recent study[87] covering 31 municipalities in Portugal where it was known that Roma live in substandard conditions showed that only seven of the re-housing programmes implemented indirectly benefitted Roma. 25 municipalities identified the lack of funds as the major obstacle to implementing re-housing programmes for Roma. However, in most of these communities the number of Romani families requiring assistance was quite small, suggesting that the funds required would have also been quite small: in 17 of the 31 municipalities the number of Romani families was less than 21.[88] Furthermore, the indirect benefit of re-housing programmes for certain Romani communities is limited to a physical improvement of the abode. However, such re-housing efforts that benefit individual families and/or communities do not address segregation and isolation of Romani communities from mainstream non-Roma communities.

66. The IHRU is not able to launch concrete housing programmes; it must wait for requests for support from local authorities and housing cooperatives, at which time it may provide partial financing and minimum guidelines. It lacks the power to impose positive practices in the design and implementation of re-housing programmes and it does not have direct contact with the beneficiaries of the re-housing programmes to assess their degree of satisfaction.[89] As a result, most re-housing projects end up perpetuating segregation of already marginalised groups.

83 There is one PER for the Lisbon and Porto Metropolitan Areas created by the Decree D.L.163/93 of the 7 May 1993, which provides the Municipalities in those two metropolitan areas the conditions to eradicate existing slums and to re-lodge their inhabitants in public housing with low rents. There is also a possibility for the other municipalities to proceed with re-housing programmes in low cost public housing, which can be constructed or bought. These programmes are also financed by the central administration and offer more favourable conditions in accessing bank loans.

84 The government itself has recognised this fact in the NAP 2003-2005.

85 Númena internal report to the ERRC on the social inclusion project, 2006.

86 ERRC/Númena interview with Ms Sónia Paixão, Assistant to the Social Action Councillor. Loures, May 2006.

87 Alexandra Castro (2009) "Avaliação das Necessidades dos Municípios na implementação do Modelo Integrado de Actuação com a População Cigana" in População Cigana em Situação de Precariedade Habitacional: Avaliação das Necessidades dos Municípios na Implementação do Modelo Integrado, pp. 13-23

88 *Ibid*., 13.

89 Although a public housing project in Buraca, in the suburbs of Lisbon, won the IHRU prize, on the grounds of its awareness to cultural issues, namely the houses were suited to Roma tastes and the neighbourhood was well integrated in the urban fabric, this good example was not made into a general rule, being dependent on the interest and goodwill of particular authorities, assistants, and experts.

67. Re-housing programmes implemented have also suffered because local authorities have reportedly faced opposition from their constituencies who are often reluctant, particularly in smaller towns and rural areas, to accept Roma integration policies and projects. For example ERRC/Númena research in Beja in 2006, and more recently in 2009, revealed that Romani families living in tents were re-housed in Bairro das Pedreiras, a neighbourhood on the periphery of the city, in small houses that lack appropriate support structures and are inadequate for the family size of the new residents. The local councillor justified the effort, citing limited funding and time for construction. The councillor concluded by stating that these kinds of programmes are developed against the will of a significant part of the local population that "does not understand why we give houses to the Gypsies."[90] Responding to the fact that the Roma concerned were re-housed in a single neighbourhood, the councillor asserted that this was not a case of ghettoisation "because they already lived together, and we wanted to maintain vicinity relations."

68. PER programmes have also left out a significant number of vulnerable Romani families. After the original census of families living in informal settlements was conducted in 1993, no new population counts took place. In the years since 1993, PER housing plans have been drawn up by various municipalities for support by the IHRU, accounting for only those people included in the original census. Moreover, in many locations, such as Castelo Branco, where the ERRC conducted research between 2005 and 2009, the plans had not yet been implemented. This long time lag between programme design and implementation exacerbates the problem of relying on census data that is now 17 years old.

69. This policy leaves entire families unprotected, without any means to acquire or rent any kind of lodging. For instance, this happened to the Silva Ganhão family from Evora, composed of three nuclear families and approximately 30 members. According to Alexandra Castro from the Centre for Territorial Studies, this family is one of many Romani families living in Evora who are not eligible for the re-housing programme since they arrived in Evora after the census of the informal settlements took place.[91]

### 3.2.2 IMPLEMENTATION OF HOUSING POLICIES RESULT IN PERPETUATION OF SUBSTANDARD LIVING CONDITIONS AND RESIDENTIAL SEGREGATION FOR ROMA COMMUNITIES

70. Despite efforts to address the precarious housing situation for Roma in Portugal, the government has failed to adequately implement resettlement and housing programmes, which has resulted in the perpetuation of substandard living conditions for Roma stakeholders of such programmes. In order to satisfy Article 16 of the RESC, 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 is of adequate standard and includes essential services (such as heating and electricity).

71. In larger towns like Lisbon, Porto and Braga, the majority of families have been re-housed by local authorities. This process, however, has not been free of problems - most quarters where Roma were re-housed are disconnected from the urban fabric, meaning that roads are poorly constructed, public transportation is limited and quarters are located far from the city centre. Examples of such quarters include Bairro da Cucena, in the Seixal area, where representatives of the Social Aid Department admitted to the inadequacy of the public transport network and the impact on mobility for Roma living there.[92] Other examples of similar conditions include Picoto in Braga or Esperanca in Beja.[93]

72. The following is a non-exhaustive list of exemplary cases of racial segregation perpetuated by resettlement:

73. The informal Romani Quinta da Carapalha settlement in the north-eastern City of Castelo Branco, comprising 14 families and approximately 60 people, was scheduled for resettlement in 2005. The Castelo Branco City Council began construction of the new housing area, "Bairro de Sapateira", consisting of 10 houses, in November 2004. ERRC field visits revealed that the new settlement is located approximately three kilometres away from the city in a completely isolated rural area without access to public transportation. During a meeting with the ERRC on 23 March 2005, Mr Andre Cordoso of the Castelo Branco city council openly admitted that the new settlement was being constructed outside the city because "there is lots of pressure by non-Roma not to allow Roma in their neighbourhoods." According to SOS Racismo

90 Númena interview with the local councillor in Beja, June 2006.

91 ERRC research on housing situation of Roma in Portugal, November 2008.

92 ERRC/Númena interview with Ms Anabela Soares, Social Aid Department, September 2009.

93 ERRC/Númena, internal research report, November 2008, on file with the ERRC.

research, the settlement was allegedly moved due to the commercial interest of the national railway company, Rede Ferroviária Nacional (REFER), as train tracks run right beside the existing settlement.[94] ERRC/Númena research in September 2009 revealed that the Roma residents still lack access to public transportation and most of them rely on wagons to travel as a result.

74. The Romani community of Rio Maior consists of approximately 100 people. For about 20 years, the Romani community had lived in a settlement in the sports area of the city. In 2003**,** the Rio Maior City Council relocated the community to a new area approximately two kilometres away from the city on the site of a former coalmine. An ERRC visit to the area in 2005 revealed that public transportation did not extend to the new settlements and as a consequence, the community experienced serious difficulties in accessing schools, health services, stores and other services.[95] ERRC/Númena follow-up research in September 2009 shows that no advances have been made in improving the access of the Romani residents to schools, health services, stores and other services. One resident, Ms Maria Olga Daniel Lero, complained that the housing site is located in unlit woods, causing safety concerns among Romani parents in allowing their children to walk alone to and from school.[96] Ms Lero further informed the ERRC that several residents have incurred respiratory problems that they suspect derive from the dust from the former coalmine on top of which they have been resettled.[97]

75. In Beja, social houses for Roma were built in 2006 in the industrial area of the city in the neighbourhood called Bairro das Pedreiras, three kilometres away from the centre of the city. This is a problem for the residents because in the surrounding area there is no school, no child care services and no medical centre. Until recently most of the children did not go to school, but an ERRC/Númena visit in September 2009 revealed that the municipality had finally provided the Romani children transportation to school. However, Roma residents complained that the school bus often does not wait for the children. Public transportation for the Roma residents of Bairro das Pedreiras is still lacking. If Roma residents need medical assistance, they are forced to walk at least three kilometres in order to get to the nearest medical centre. Furthermore, the owner of one of the factories located near to the settlement erected metal fences to prevent the residents from approaching his factory. According to Nazare Dos Reis, an elderly Romani woman resident, the municipality built these houses far away from the city because nobody likes to have a Roma for a neighbour.[98]

76. In the Romani settlement Cucena in Seixal, Portuguese Romani activists have noted the following concerning spatial segregation in resettlement areas:

> This is a mixed neighbourhood – Africans, Roma and non Roma. Most are Roma and Africans. People are not at all happy with the location of the estate. First there is the issue of accessibility and the lack of transport, then because there is absolutely nowhere to buy water, there isn't a shop or a butcher, a café, a pastry shop, a chemist, there is nothing in a radius of 3 or 4 km.[99]

> The lack of transport. Children from that neighbourhood are enrolled in four schools and access is difficult due to the scarcity of transport. Those that don't have private transportation face a huge problem. […][100]

77. In some cases, local government initiated resettlement programmes are located in hazardous areas. For example, in the north-eastern city of Bragança, several families who had lived in that area for over 25 years were resettled by the City Council onto land which covers a former garbage dump and where the Roma have been living for years. It was reported during ERRC research that when it rains in the wintertime the garbage rises to the surface and is covered again with soil in the spring.

78. Research in resettlement areas visited by the ERRC shows that they are plagued by substandard quality of housing. For example, Mr Rogério Bernardo, a Romani resident of the newly built housing area two kilometres away from the city centre of Rio Maior, isolated in the middle of a local forest, on the top of the old mine Rio Maior, expressed his anger with respect to the rapid degradation of the condition of homes provided by the local authorities, during his meeting with the ERRC in 2005. Although the homes were built as recently as 2003, Mr Bernardo stated that many of them leak when it rains and, due to inappropriate drainage, several of the homes often flood.[101]

94 ERRC field trip, March 2005.

95 ERRC field trip, March 2005.

96 Interview with Ms Maria Olga Daniel Lero. September 2009.

97 *Ibid*.

98 ERRC research on housing situation of Roma in Portugal, November 2008.

99 ERRC/Númena, interview with Mr Bruno Gonçalves.

100 ERRC/Númena, interview with Ms Olga Mariano.

101 ERRC interview with Mr Rogério Bernardo, March 2005.

79. Similarly, in 2006 in Beja, the local authorities built social houses for Roma that are three kilometres away from the centre of the city. The houses are connected to the water mains, to the electricity grid and have bathrooms inside. However, houses are not provided with hot water and they do not have heating systems. Some of the inhabitants have installed their own hot water heaters and all of them use wood stoves to heat their houses during the winter. The floor of the houses is made solely from concrete without any kind of insulation and in some the roof leaks when it rains or snows. Additionally, no normal roads lead to the settlement or between the houses within the settlement. According to Nazare Dos Reis, the municipality has not fixed any of the defects in the houses since they moved in. At the beginning, they put tiles on the floor but she said that they have no money any more to invest in this house.[102]

80. In addition to the substandard quality of housing provided to Roma within the resettlement programs, where authorities have initiated projects to "improve" the housing situation of Roma, the family size of residents is often not taken into account. Many households have several families living together in exiguous spaces designed for only one family. This is the case of Mr Luis Maia, who lives in a re-settled neighbourhood in Braga, with his wife and children at his fathers' house. They are nine people living in a small municipal dwelling.

81. In Porto, the research revealed an extreme situation where four households lived together in a house with only three rooms. Ms Gonçalves lives in a similar place with her large family of seventeen: her husband, four sons, their daughters-in-law and their grandsons.[103]

82. In Beja, there are about 53 Roma families accommodated in 50 social houses provided by the local authorities and the vast majority of the families have at least 7-8 members living together in three small rooms.[104] Ms Patricia Canelas, at the Social and Cultural Centre of Bairro Da Esperanca, stated that the re-housing of Roma in Beja did not envisage the natural demographic growth of families nor were the housing units individually tailored to meet the needs of the different sized families.[105] All housing units are identical in size and are not adapted to meet individual family needs – a situation which has led to severe overcrowding. The housing units consist of two bedrooms and a living room. Thirteen housing units accommodate households with more than 7 members and 15 housing units have more than two households cohabitating.[106]

### 3.2.3 CONCLUSION

83. The failure of the Portuguese authorities to adequately implement National Action Plans on housing to ensure the right to housing of vulnerable groups, such as Roma, is in violation of Article 16 and states' obligations to ensure the necessary conditions for the full development of the family by promoting the provision of family housing. As the family is recognised by the RESC as a fundamental unit of society, it is imperative that all means necessary are undertaken to promote and further the development of families. In relation to marginalised groups exposed to a higher degree to discriminatory practices and exclusion, such means include firm positive policies pertaining to integration. Unless policies and programmes are developed emphasising social inclusion of Roma, housing programmes will simply perpetuate existing patterns of segregation.

84. The current national housing programmes do not contain such firm policies, nor are they tailored to meet any of the specific needs and circumstances of the Roma community and therefore they effectively undermine any efforts to integrate the Roma into the majority society. As shown above, the resettlement of Roma within the framework of national housing plans has often resulted in effective spatial segregation, often coupled with inadequately sized dwellings and poor infrastructure and limited or no access to public services.

85. In view of the above, the ERRC submits that Portugal, through its failure to adequately address the housing needs of Roma, is in violation of its obligations under Article 16 of the RESC.

## 3.3 Violation of Article 30

86. Article 30 of the RESC provides protection against poverty and social exclusion. It obliges states to take measures to promote the effective access of persons and their families who live or risk living in a situation

102 ERRC research on housing situation of Roma in Portugal, November 2008.

103 ERRC/Númena, internal research report, on file with the ERRC.

104 ERRC research on housing situation of Roma in Portugal, November 2008.

105 ERRC/Númena interview with Ms Patricia Canelas, September 2009.

106 Patrícia Canelas (2008) Caderno de Caracterização da Comunidade Cigana residente no Bairro das Pedreiras: Observatório Social – 2008 – Centro Social, Cultural e Recreativo do Bairro da Esperança.

of social exclusion or poverty to, inter alia, housing. The Explanatory Report[107] to the RESC indicates that the term *poverty* applies to "persons who find themselves in various situations ranging from severe poverty, which may have been perpetuated for several generations, to temporary situations entailing a risk of poverty."[108] It further defines *social exclusion* as being applicable to "persons who find themselves in a position of extreme poverty through an accumulation of disadvantages, who suffer from degrading situations or events or from exclusion, whose rights to benefits may have expired a long time ago or for reasons of concurring circumstances."[109]

87. Roma in Portugal in most cases live separated from the majority population, often in substandard housing conditions, with limited or no access to educational facilities, health care centres and other public services. As argued above under the chapter addressing violations of Article 16 of the RESC, the ERRC reiterates that housing programmes which aim to improve housing standards and promote integration are often not accessible to Roma. When Roma are re-housed through housing programmes, such initiatives result in perpetuating residential segregation, thus enforcing the feeling of social exclusion among Roma. Poverty and segregation from mainstream society has contributed to the severe marginalisation of Roma in Portugal, which has resulted in the effective social exclusion of Roma from majority society as shown by research below.

### 3.3.1 NATIONAL HOUSING PLANS RESULT IN RESIDENTIAL SEGREGATION, GHETTOISATION AND SOCIAL EXCLUSION

88. Residential segregation of Roma in Portugal often occurs as a result of a decision by municipal authorities to relocate Romani residents away from town centres and away from non-Romani neighbours.

89. Implementation of housing programmes that effectively segregate Roma from the majority non-Roma population is contrary to what the Portuguese government has proclaimed through its policies aiming to integrate Roma in multi-ethnic communities. Rather, existing local housing programmes that incidentally include the re-housing of Roma communities perpetuate racial segregation in housing.

90. According to Númena, housing programmes such as the Family PER[110] and the Prohabita programme,[111] which could lead to more effective integration by enabling families to access regular social housing schemes, are not accessible to Roma. Access to these programmes is dependent on formal employment and declaring taxes: at the time of the ERRC/Númena research only 15.6% of the Romani respondents were engaged in formal employment.[112] This means that the vast majority of Roma are ineligible for regular social housing programmes and the NAPs do not include measures to effectively combat this by actively fostering the inclusion of Roma in the formal economy.[113] Programmes such as the Family PER and the Prohabita programme that indirectly exclude the vast majority of Roma families from being eligible are discriminatory in effect.

91. Thus, Portuguese re-housing policies have perpetuated spatial segregation and inadequate housing conditions for all Roma families in need. The Portuguese government has failed to adequately address these problems, in spite of the fact that Portuguese law provides for the adoption of positive measures in the field.[114] In developing social inclusion policy between 2003 and 2009, the Portuguese government has failed to make the necessary amendments to state housing programmes in order to adequately account for the particular needs of Romani families and has not positively impacted the social exclusion of Romani communities.

92. An example of failed government housing policies and programmes was in 2002 when the Seixal city authorities resettled the Romani residents of the informal Quinta da Lucena settlement to a housing

107 Council of Europe, *Explanatory Report to the European Social Charter (revised)*, ETS no. 163, available at: **http://conventions.coe.int/Treaty/en/Reports/Html/163.htm**.

108 *Ibid.*, para. 114.

109 *Ibid*.

110 Family PER, which on its turn was a three folded financing to allow families to buy their own houses, outside re-housing quarters.

111 Prohabita is directed to support house rents, instead of house acquisition.

112 ERRC/Númena, *Social Inclusion Through Social Services*, 53.

113 Portugal's minimum insertion income, accompanied by programmes for the active inclusion of the unemployed in formal employment, does not foster real access to employment for many unemployed Roma in Portugal, by failing to take account of their very specific situation. ERRC/Númena, *Social Inclusion Through Social Services*, 54-58.

114 See paragraph III.1.11.

area located 5 kilometres away from the nearest village. There is no transportation to take the children to school, no access to stores or to social services.[115] The lack of school transportation is in violation of Portuguese law that requires municipalities to provide transportation for all children who reside more than 3 kilometres from the school.[116]

93. The ERRC contends that despite existing NAPs and PER policies adopted by Portugal, the explicit measures and action plans fail to promote integration in housing. With the exception of one case where re-housing policies benefit the Roma population, the vast majority of Roma in the resettlement areas researched by the ERRC have been re-housed in segregated areas on the outskirts of towns and cities or in rural areas.[117]

94. The failure on part of the Portuguese government to collect reliable data on the exact numbers of Roma in Portugal to be able to assess how many are in need of improved housing, taken on its own, contributes to the epic failure of the existing inadequate housing programmes. In order to understand the scope of the housing problems faced by Roma and to develop appropriate plans of action and for appropriate allocation of funds, it is of pivotal importance to collect the relevant information that would constitute the basis for national and local government actions. Failure to do so undermines any serious and sustainable attempts to improve housing conditions for Roma in Portugal. The ERRC argues that the indifferent approach to the housing situation of a vulnerable minority constitutes a violation of the RESC, in particular as it relates to the right to protection from poverty and social exclusion under Article 30 of the RESC and more broadly speaking, the right to access housing of an adequate standard under Article 31 and the right of family to social protection through promotion of family housing under Article 16.

### 3.3.2 CONCLUSION

95. The ERRC notes the inefficiency of nation-wide long-term policies to address the substandard conditions and marginalised settings in which Roma in Portugal live. The absence of sustainable housing policies not only leaves a significant portion of the task to local municipalities who are often prone to discriminatory behaviour, but also contributes to the further social exclusion of Roma in Portugal.

96. In view of the above, the ERRC submits that although some efforts to re-house Roma communities by Portuguese authorities have occurred, such re-settlement policies and programmes should be implemented in accordance with Portugal's commitments and obligations of integrating Roma into Portuguese society and in line with policies of social inclusion. By re-housing Roma families and communities in ethnically homogenous settlements often on the outskirts of cities, towns or in isolated rural areas, Portuguese re-settlement policies reinforce racial and residential segregation and social exclusion of Roma which seriously hamper their social and economic development and integration into mainstream Portuguese society.

97. In addition, resettlement dwellings often fail to take into consideration the individual size, demographic composition and growth of families, leading to serious overcrowding problems as the housing units are most often similar in size and composition. The ECSR has stated that adequate housing also implies that "a dwelling [must be] of suitable size considering the composition of the family in residence."[118]

98. Furthermore, direct or indirect racial segregation is a clear cut example of discrimination. The ECSR has previously formulated its view regarding direct and indirect discrimination in the area of housing in several cases.[119] Portuguese re-settlement polices that result in Roma communities being further marginalised and separated from mainstream Portuguese society run contrary to Portugal's obligations under the RESC, a violation affirmed by the Committee's jurisprudence. The examples given above of failed implementation of re-settlement policies targeting Roma and how they often lead to cases of overcrowding must be held in violation of Portugal's obligations under Article 30 of the RESC.

115 ERRC/Númena, internal research report, September 2009.

116 Law Decree No. 299/84, adopted 5 September 1984.

117 Loures, on the periphery of Lisbon, provides a different and positive example of an integrated housing solution. Although most families living in the area were re-housed in separate neighbourhoods that were specially built under the PER slum eradication process, some Romani families were re-housed in other houses owned by the Loures City Hall. Despite the initial complaints of local residents, Romani families were effectively re-housed in those buildings and their relation with their neighbours is now calm. According to ERRC/Númena research from October 2009, another 41 Roma families are scheduled for re-housing in the abovementioned area as well as in other neighbourhoods in Loures and environs.

118 See *No. 31/2005 ERRC v. Bulgaria*, "Decision on the Merits", para. 16.

119 See, *e.g. No. 27/2004 ERRC v. Italy*, "Decision on the Merits" and *No. 31/2005 ERRC v. Bulgaria*, "Decision on the Merits".

## 3.4 Violation of Article 31

### 3.4.1 DETERIORATING RESIDENTIAL CONDITIONS IN INFORMAL ROMANI NEIGHBOURHOODS

99. Article 31 of the RESC protects the right to housing which obliges states to take measures to, as far as possible, eliminate homelessness and to promote access to housing of an adequate standard and to make such housing accessible to those without adequate means. In regard to deteriorating residential conditions in informal Romani settlements, it is important to emphasise that the Portuguese constitution compels national and local authorities to ensure that families reside in adequately sized dwellings that provide them with hygienic and comfortable conditions and preserves personal and family privacy.[120]

100. Field research undertaken by the ERRC and partner organisations since 2005 indicates highly substandard conditions prevailing in long-standing informal Romani settlements throughout Portugal that leave Roma residents without proper facilities for everyday hygiene, and with curtailed or non-existent means of personal or family privacy in the overcrowded dwellings.

101. Frequently, informal Romani settlements in Portugal lack basic infrastructure such as access to potable water, heating, waste disposal, sanitation facilities, electricity, lighting, washing facilities, means of food storage and site drainage. Settlements with these conditions vary in size from 20 people in Quinta do Lago to the over 3,000 in the Bairro São João de Deus outside Porto.

102. The vast majority of settlements visited by the ERRC do not have access to potable water or electricity. Most Roma interviewed reported that they must obtain water as a result of their own efforts.[121] For example, of 11 Romani households with a total number of 45 people (25 children below age of 10) in Telheiro settlement in the Pias parish, only four households have potable water, electricity and bathrooms. The remaining seven households have no such facilities and are forced to collect water from neighbouring households equipped with potable water.[122] Similarly, according to a Romani woman from Poco Baixo Street in Pedrogao, eight shacks with 12 children under age of 10 are without water and electricity and water must be carried from a well.[123]

103. In the Alentejo region, Mr C. Reis testified to the ERRC and Númena, "We live in a barrack built on municipal land. It has no water, no electricity and it has plenty of animals. We lived in Moura but the Mayor of the municipality started sending us away. Afterwards he sent us even further away and now we are in this place […]. The Mayor talks about the housing project, but the world will come to an end before the houses are ready."[124]

104. The informal Romani settlements visited by the ERRC and Númena either had only illegal electrical hook-ups or, in extreme cases, no electricity at all. Of the nine houses that comprise the Romani settlement in the southern town of Pias, only two had legal electrical hook-ups while the rest were illegally connected. Mr Fernando Jorge Garcia Carapinhas informed the ERRC that prohibitively high installation fees created an insurmountable barrier to accessing electricity. The fees effectively prevent the residents from legally obtaining electricity, although they are capable of making monthly payments.[125] Mr Florencio Dimas, a Romani man from the Roma settlement Canada in the Pias parish informed the ERRC/Númena that the 21 Roma households reside in shacks with no sewage or electricity. Mr Dimas told the ERRC/Númena that the head of the parish, prior to being elected, had promised the Roma families electricity supply. In addition, Mr Dimas claims that the national government had provided money to the parish to solve the problems of the Roma families but, according to Mr Dimas, the head of the parish "is only interested in football fields and gardens". Furthermore, Mr Dimas stated that the head of the parish had prevented SIC (the national broadcasting company) from making a documentary highlighting the problem.[126]

105. During an ERRC research mission in November 2008, the situation was very similar in the Roma settlements in Vidiguera, Marinha Grande, Evora, Moura and Sobral da Adiça. In these areas, most of the Romani families did not have electricity at all. Only some Romani families from Vidiguera, Marinha Grande

120 Article 65 of the Portuguese Constitution.

121 A similar situation was registered also during the course of the ERRC research in November 2008 in the cities: Evora, Sobral da Adiça and Marinha Grande.

122 ERRC/Númena, internal research report, September 2009.

123 ERRC/Númena, interview with Ms Maria de Fatima Cabecas, September 2009.

124 ERRC/Númena, interview with Mr C. Reis, June 2006.

125 ERRC interview with Mr Fernando Jorge Garcia Carapinhas, March 2005. Confirmed by research in September 2009.

126 ERRC/Númena interview with Mr Florencio Dimas, September 2009.

and Sobral da Adiça reported that they had portable gas generators to secure light during the evening. Even this, however, proved very difficult to afford since they do not have permanent source of income.[127]

106. Very few settlements have adequate sewage removal, treatment systems or solid waste removal. Many Roma interviewed by the ERRC reported no sewage removal or sanitary facilities at all. Six of nine settlements visited by the ERRC in November 2008 did not have access to sanitary facilities. Residents of the Largo Da Feira Romani settlements in Moura, the Romani settlement in Sobral Da Adiça comprised of 91 individuals must use a nearby field as their toilet facility. Many of the settlements visited by the ERRC suffered from extremely inadequate solid waste removal; in several settlements neither solid waste removal of any kind nor containers for storage existed.[128] The Romani settlement of Martir Santo in Campo Maior is located in the historical centre of the town close to the castle wall. Forty-seven Roma families reside there, totalling nearly 200 individuals, of them 73 children under age of 18, all living in deplorable slum conditions. Residual water mixed with food remnants covered the four metre wide road lined with poorly constructed shacks on both sides. A Romani woman complained about rats in shacks and despite numerous efforts by residents to build concrete ditches to stay the water flow, children are left to walk barefoot in this cesspool.[129]

107. Informal settlements are often situated on what would otherwise be uninhabitable land. The Romani settlement in the town of Sobral Da Adiça, within the Moura administrative area, has existed for 70 years and comprises approximately 100 people. In addition to being a former garbage dump, a decision by the City Council 15 years ago placed the current town dump beside the settlement. According to Mr José Fialho Flores Reis, garbage continues to be dumped on a daily basis causing severe health risks. Mr José Pedro Conceicão Reis testified to the ERRC that approximately six years ago his infant sister died in Sobral Da Adiça from a skin infection and high fever that may be attributable to the deplorable housing conditions.[130] The casual link between the death and the hazardous housing conditions has never been officially confirmed. Similarly, in Braganca, 36 Roma, including 18 minors divided in nine households, live in a settlement called Crossing of Donai, also known as the "Garbage Dump," located on the site of a former garbage dump. None of the shacks have potable water, although there is one common water facility in the camp provided for by the municipality of Braganca. In addition, the makeshift shacks contain no electricity or sanitation.[131] Dr Valente, at the Braganca Health Care Centre who is assigned to a number of the Romani families, informed the ERRC/Númena that the poor living and hygienic conditions have a direct impact on the overall poor health situation of the Romani residents.[132]

108. Housing structures consist of either informal shacks or tents in the majority of areas visited by the ERRC; in some cases persons were found to be living in cars or vans. The materials used in the construction of housing, where the structures have been built by Romani individuals, or by local governments, are extremely poor. For instance, the Roma settlement in Vidiguera, comprising approximately 15 shacks, was built with the support of the local authorities who provided inhabitants with building materials (tin and rafters) in order to build their shacks. According to one older Romani woman, a leader in the Romani community, the municipality intends to move them to another place which was previously used as a slaughterhouse. She was very frustrated because of that and said that she feels that the authorities treat Roma as animals.[133] In Marinha Grande, approximately 33 Roma have been living in tents since 2006 in a forest next to a highway. Twenty-four of the inhabitants are minors and they have no access to hot water, electricity or sewage and the only public water tap is located approximately 100 metres from the tent camp.[134]

109. In inclement weather conditions, parts of the houses are often blown away or severely damaged. Without adequate resources to purchase construction materials, the damage often goes unrepaired for a long time. For example, the Romani community which is located in the ruins of a medieval castle in Vidigueira, in the Beja district, consists of about 61 people who live in poorly constructed shacks, often made of tin plates that stand unprotected against the weather conditions. Roma in Vidigueira reported that their damaged and unrepaired homes impact their lives in various ways. Several of the homes visited by the ERRC were infested by rats, bugs and snakes, due to their location and the poor construction, causing illness and extreme discomfort for the residents. Ms Cândida Cristina Fialho Da Encarnação who lives in the Largo Da Feira Veiha settlement, told the ERRC that her chest, legs and back are covered with rashes and insect bites, which cause her great discom-

127 ERRC research, November 2008.

128 *Ibid*.

129 ERRC/Númena, internal research report, September 2009.

130 ERRC interview with Mr José Pedro Conceicão Reis, March 2005.

131 ERRC/Númena, internal research report, September 2009.

132 ERRC interview with Dr Valente, September 2009.

133 ERRC research, November 2008. Please find enclosed photographic evidence of housing conditions in Annex I.

134 ERRC/Númena, internal research report, September 2009.

fort and stress.[135] Similarly, Nicodemos and Dēbora Dos Reis Ximenes, two brothers who live in the Sobral Da Adiça settlement, provided the ERRC with photographic evidence of their extensive insect bites and skin problems.[136] More recently, Roma in Telheiro in the Serpa municipality, have complained to the municipality on several occasions as the owner of a nearby enclosure dumps garbage in the vicinity of the Roma settlements, attracting bugs, snakes, lizards, insects and rats causing many problems and discomfort for the residents.[137]

110. A typical feature of informal Roma dwellings is overcrowding, which is quite severe in some cases. For example, several of the houses in the Telheiro settlement in the Serpa municipality are overcrowded. Ms Maria Carapinha informed the ERRC/Númena that she shares a living space with more than five people; all of them live in a house with one bedroom and one living room. The bathroom was rebuilt into a smaller room to fit a couple and their young son. In Marinha Grande, Mr Paco Da Silva lives with his wife and 10 children in a small shack approximately 30-35 metres square without any basic facilities such as hot water, electricity or sewage system. The family has illegally connected to a water tab close to their shack.[138] A special school teacher, Ms Deolinda Rosa, whom the ERRC spoke to, stated that local authorities have denied Mr Da Silva and his family the opportunity to access adequate housing, referring to a requirement of having to be born and registered in Marinha Grande. Ms Rosa added that the municipality does not pay attention to the fact the Mr Da Silva was born in Marinha Grande.[139]

### 3.4.2 CONCLUSION

111. ERRC research on the housing situation of Roma in Portugal over a period of four years shows the inadequate and unacceptable state of informal Romani homes throughout Portugal. Although isolated attempts by local authorities to improve the substandard housing conditions for some Roma communities have been made; the overall situation is highly unsatisfactory. The poor housing conditions of Roma trigger a positive obligation of national and local authorities to improve the deplorable and constantly deteriorating housing conditions for Roma in informal settlements, where dwellings often consist of unprotected tents exposed to incremental weather conditions, makeshift shacks made of tin plates and wooden planks and dilapidated concrete housing blocks. The failure on part of national and local authorities to improve the housing situation of Roma through sustainable housing programmes suggests tacit consent by authorities to the persistence of unworthy housing conditions.

112. The demonstrated substandard housing conditions of Roma living in informal settlements in Portugal, including the lack of essential amenities such as electricity, water and proper sewage, and the failure of national and local authorities to improve the deplorable conditions affecting Roma in informal housing in Portugal is in violation of Article 31 of the Charter as developed by the Committee's own jurisprudence. Through its case-law, the Committee has established that the right to housing also comprises the notion of having a dwelling of suitable size for the family in questions.

113. The frequent cases of overcrowding in Roma dwellings run counter the Committee's own interpretation of the right to housing under Articles 16 and 31. For the purposes of interpreting the right to housing under Article 31, the Committee has articulated the overlap of the term in Articles 16 and 31 as being identical in meaning.[140] Thus, in *ERRC v Bulgaria*, the Committee stressed its interpretation of the right to housing under Article 16 as follows: "The Committee recalls its previous case law to the effect that in order to 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 essentials 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."[141]

135 ERRC interview with Ms Cândida Cristina Fialho Da Encarnaçaò, March 2005.

136 ERRC interview with Nicodemos and Dēbora Dos Reis Ximenes, March 2005.

137 ERRC/Númena, internal research report, September 2009.

138 ERRC research, November 2008. Please find enclosed photographic evidence of housing conditions in Annex II.

139 ERRC interview with Ms Deolinda Rosa, November 2008.

140 See *No. 31/2005 ERRC v. Bulgaria*, "Decision on the Merits", para. 17

141 See *No. 31/2005 ERRC v. Bulgaria*, "Decision on the Merits", para. 16

## 3.5 Violation of Article E in conjunction with Articles 16, 30 and 31 by reason of discrimination of Roma in relation to housing

114. The contention of the ERRC is that the corpus of concerns raised above – including disparate conditions, acts of commission by government and acts of neglect by government - rises to the level of and amounts in practice and effect to a violation of Articles 16, 30 and 31, read in conjunction and/or independently of the Article E non-discrimination provisions of the Revised European Social Charter.

115. A comprehensive review of the situation in Romani neighbourhoods in Portugal, the government's social inclusion policies and relevant legislation strongly indicates a range of systemic violations of the right to adequate housing where Roma are concerned, and thus seriously threatens the existence and wellbeing of Romani families and communities. These violations are a result of the lack of political will to address the severity of the existing housing problem for Roma and to undertake appropriate efforts to adjust policies accordingly. Meanwhile, existing policies are leading to the proliferation of slums and segregated Roma neighbourhoods with substandard and deteriorating residential conditions, which exacerbate the risk of future evictions of Roma without the provision of alternative housing and remedy for the widespread social exclusion of Roma.

116. The approach of the Portuguese government to the housing situation of Roma points to, at a minimum, indirect, discriminatory policies, which keep Roma excluded, marginalised and oppressed through residential and racial segregation and substandard quality housing. As a result, Romani families are often denied the most basic public services and benefits on the grounds of race and/or ethnicity, contrary to a range of international commitments undertaken by Portugal towards the elimination and prosecution of all forms of discrimination. The implementation of policies and programmes that impact the housing situation of Roma also appears to be biased by the racist and discriminatory attitudes prevalent among some public authorities.

117. All the practices which emerged from the ERRC's research have been repeatedly noted by different bodies of the international community, who have delivered numerous recommendations for addressing the situation to Portugal.[142] The ERRC notes that despite the passing of several years these recommendations have not been addressed to date. Indeed they remain as pertinent to the current situation as when they were first published, and increasingly urgent.

118. The ERRC respectfully requests that the European Committee of Social Rights review the facts presented in this Collective Complaint and find Portugal in violation of the aforementioned articles of the Revised European Social Charter, in order to urge the Portuguese government to directly apply the revised European Social Charter and to adopt a national long-term strategy including positive action measures to combat the social exclusion of Roma, through the improvement of their situation in the field of housing.

119. The ERRC respectfully requests that the European Committee of Social Rights direct the reimbursement of costs incurred in the preparation of this complaint, to be detailed in due course.

Thank you for your consideration of these matters.

On behalf of the European Roma Rights Centre,

Robert Kushen
Managing Director

142 See among the latest: ECRI, *Third Report on Portugal*; Council of Europe: Committee of Ministers, *Resolution CM/ResCMN(2007)12 on the implementation of the Framework Convention for the Protection of National Minorities by Portugal*, 5 September 2007, available at: **http://www.unhcr.org/refworld/docid/46e7cf622.html**.