

**DECISION ON ADMISSIBILITY**

**17 September 2010**

**European Roma Rights Centre (ERRC)**  
**v. Portugal**

Complaint No. 61/2010

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 245<sup>th</sup> session attended by:

Mrs Polonca KONČAR, President  
Mssrs Andrzej SWIATKOWSKI, Vice-President  
Colm O'CONNOR, Vice-President  
Jean-Michel BELORGEY, General Rapporteur  
Mrs Csilla KOLLONAY LEHOCZKY  
Mr Lauri LEPPIK  
Mrs Monika SCHLACHTER  
Mssrs Rüçhan IŞIK  
Petros STANGOS  
Alexandru ATHANASIU  
Luis JIMENA QUESADA  
Mrs Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 22 April 2010, registered on 29 April 2010 as number 61/2010, lodged by the European Roma Rights Centre ("ERRC") and signed by its Managing Director, Mr Robert Kushen, requesting the Committee to find that the situation in Portugal is not in conformity with Articles 16, 30 and 31 of the Revised European Social Charter ("the Revised Charter"), alone or in conjunction with Article E;

Having regard to the documents appended to the complaint;

Having regard to the Revised Charter and, in particular, to Articles 16, 30, 31 and E, which read as follows:

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

Part I: "The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development."

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

**Article 30 – The right to protection against poverty and social exclusion**

Part I: "Everyone has the right to protection against poverty and social exclusion."

Part II: "With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b. to review these measures with a view to their adaptation if necessary."

**Article 31 - The right to housing**

Part I: "Everyone has the right of housing."

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

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

**Article E – Non-discrimination**

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

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201<sup>st</sup> session and revised on 12 May 2005 at its 207<sup>th</sup> session and on 20 February 2009 at its 234<sup>th</sup> session (“the Rules”);

Having regard to the observations of the Portuguese Government (“the Government”) on the admissibility of the complaint received on 10 September 2010;

Having deliberated on 17 September 2010;

Delivers the following decision, adopted on the above-mentioned date:

1. ERRC alleges that the sum of housing-related injustices which Roma suffer in Portugal amount to a violation of Articles 16, 30 and 31 of the Revised Charter, alone or in conjunction with Article E. It, in particular, claims that:

- a) resettlement programmes for Roma are characterised by major shortcomings, namely the lack of access of persons not included in original census of informal Roma encampments to re-housing programmes, the inadequate financing of re-housing projects and the lack of will by local authorities to implement re-housing programmes;
- b) re-housing policies perpetuate spatial and social segregation of Roma because resettlement areas are located on the outskirts of cities, with poor infrastructure, limited or no access to public services, and dwellings are often inadequately sized;
- c) national authorities have failed to improve the deplorable living conditions in informal Roma encampments, which frequently lack basic infrastructure such as access to potable water, electricity, sewage removal or sanitary facilities. Such substandard housing conditions result in the inability of Roma families to access other rights and in their increased social exclusion.

2. The Government, in its observations, raises the following objections to admissibility:

- the complaint does not indicate sufficiently, as required by Article 4 of the Protocol, in what respect Portugal has not ensured the satisfactory application of Articles 16, 30, 31 and E of the Revised Charter;

– the complainant organisation files the complaint in collaboration with “Númena Centro de Investigação em Ciências Sociais e Humanas”, which is a national non governmental organisation; however Portugal has not recognised the right of national non governmental organisations to lodge complaints.

## THE LAW

3. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Portugal on 20 March 1998 and entered into force for this state on 1 July 1998, the complaint is submitted in writing and concerns Articles 16, 30, 31 and E of the Revised Charter, provisions accepted by Portugal at the time of the ratification of this treaty.

4. The Committee considers, contrary to the Government’s objection, that the grounds of the complaint are sufficiently well indicated for the latter to be declared admissible. As concerns the accuracy of the complainant organisation’s arguments, the Committee considers that this matter pertains to the merits of the complaint.

5. The Committee notes that, in accordance with Articles 1 b) and 3 of the Protocol, ERRC is an international non-governmental organisation with participative status with the Council of Europe. It is included in the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints before the Committee.

6. With respect to the Government’s objection on the association of a national non-governmental association to the complaint, the Committee notes the current complaint has been lodged by ERRC alone, although ERRC relies on research collected jointly with “Númena Centro de Investigação em Ciências Sociais e Humanas”. It is for the Committee to decide what weight to give to this material, independently of its origin as long as it has been endorsed by the complainant organisation. Pursuant to Rule 25§2 of the Rules, complainant organisations are entitled to be assisted by advisers. The fact that Portugal has not accepted the right of national non governmental organisations to submit complaints is therefore irrelevant (*INTERIGHTS v. Greece*, complaint No. 49/2008, decision on admissibility of 23 September 2008, §8).

7. The Committee has already considered that the ERRC has particular competence (*ERRC v. Greece*, complaint No. 15/2003, decision on admissibility of 16 June 2003, §5; *ERRC v. Italy*, complaint No. 27/2004, decision on admissibility of 6 December 2004, §5; *ERRC v. Bulgaria*, complaint No. 31/2005, decision on admissibility of 10 October 2005, §6; *ERRC v. Bulgaria*, complaint No. 46/2007, decision on admissibility of 5 February 2008, §5; *ERRC v. Bulgaria*, complaint No. 48/2008, decision on admissibility of 2 June 2008, §5; *ERRC v. France*, complaint No. 51/2008, decision on admissibility of 23 September 2008, §6). It confirms this decision since no significant change has taken place.

8. The complaint is signed by Mr Robert Kushen, the Managing Director of the ERRC. According to an extract of the ERRC's registration at the Metropolitan Court of Budapest, dated 26 March 2010, Mr Robert Kushen appeared as one of the representatives of the organisation at the time the complaint was lodged. The Committee considers that Mr Kushen was duly authorised to represent the ERRC when submitting the complaint. Therefore the condition stipulated in Rule 23 of the Rules are fulfilled.

9. For these reasons, the Committee, on the basis of the report presented by Mr Rüçhan IŞIK and without prejudice to its decision on the merits of the complaint,

### **DECLARES THE COMPLAINT ADMISSIBLE**

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Revised Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 5 November 2010;

Invites ERRC to submit a response to the Government's submissions by a deadline which it shall determine;

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Revised Charter to make comments by 5 November 2010, should they so wish;

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 5 November 2010.



Rüçhan IŞIK  
Rapporteur



Polonca KONČAR  
President



Régis BRILLAT  
Executive Secretary