

THE COURT OF ROME

II Civil Division

represented by Judge Ms Carmen Bifano, issued the following

ORDER

in the proceedings recorded under no. **17035 / 2012** of the R.G.A.C. commenced by:

ASGI - Associazione Studi Giuridici sull'Immigrazione, represented by its current legal representative;

and

Associazione 21 luglio, represented by its current legal representative;

both with address for service in Rome, via Mazzini 8, at the office of counsel Salvatore Fachile who represents and defends them pursuant to the power of attorney reproduced in the margin of the writ of summons;

-petitioners-

versus

ROMA CAPITALE, with address for service in Rome, via del Tempio di Giove 21, at the Municipal Attorney's Office, represented and defended by counsel Pier Ludovico Patriarca as per the general power of attorney certified by Mr Gennaro Mariconda, Notary Public in Rome, file no. 49405 of 5.11.2010;

-respondent-

and

the Prime Minister's Office, the Ministry of the Interior, with address for service in Rome, via dei Portoghesi 12, at the State Attorney's Office;

-parties joined in the proceedings-

SUBJECT: civil action against discrimination under art. 44 of Legislative Decree 286/1998, art. 4 of Legislative Decree 215/2003; art. 28 of Legislative Decree 150/2011 and art. 702 *bis* of the Italian Civil Procedure Code [c.p.c.]

Subject matter of the dispute – The parties' arguments

Whereas:

by means of the above petition, the associations referred to above asked the Court:

- to establish and declare that *"the conduct of the Municipality of Rome, consisting in the continuation of the works for the completion and allocation of the equipped village La Barbuta, has been discriminatory"*,
- to order the Municipality of Rome *"to cease such discriminatory conduct and to remove the effects of such conduct, and particularly to finally suspend the works for the completion and allocation of the equipped village La Barbuta"*

- to rule that the sought order be publicly disclosed;

for such purpose the petitioners, also through their subsequent authorised briefs, have claimed and argued that:

- by order no. 592 of 12.11.1995 (exhibit 13 attached to Roma Capitale's supplementary statement) the Rome Mayor had ordered that the Roma and Sinti communities based in Rome - via Scintu, via Vignali, via Procaccini, via Rapolla - be moved to an area on the border between the Municipality of Rome and the Municipality of Ciampino named "La Barbuta", which since then has been inhabited by approximately 250-300 Roma and Sinti citizens, although such order was overruled by the TAR [Regional Administrative Court] Lazio due to failure to provide a specific time frame;

- the Prime Minister's Office (hereinafter PMO) by decree of 21.05.2008 (exhibit 5 attached to Roma Capitale's supplementary statement), subsequently overruled by the Council of State in its judgment no. 6050 of 16.11.2011 (exhibit 6 attached to the petition), which became final on 22.04.2013 by virtue of the Supreme Court's decision no. 9687/2013 (exhibit 1 attached to the petitioners' authorised brief of 24.09.2013), had declared "*... a state of emergency in respect of the nomad settlements in the regions of Campania, Lazio and Lombardy*" subsequently designating the Prefects of Rome, Naples and Milan as "*commissioners in charge of all necessary actions to solve the state of emergency*";

- based on the above, the Rome Prefect, along with the Municipality of Rome, had prepared the "Nomad plan" for the city of Rome and the Lazio Region, envisaging the closure of all informal and tolerated settlements and the transfer of about 6000 people belonging to the Roma and Sinti communities to 13 'equipped villages', whether expanded or newly built, located in the suburbs of Rome, including the village based in the 'La Barbuta' area;

- more specifically, the village located in the 'La Barbuta' area:

- is intended to host 650 people belonging to the Roma and Sinti communities, as proven – with specific regard to such ethnic origin – by several public documents, including documents provided by Roma Capitale

(e.g.: ann. 7 to the draft social land-use plan 2011/2015 of Roma Capitale, specifying that the measures envisaged in the Nomad plan regard about 6000 people of Roma origin: exhibit 4 attached to the petitioners' defence brief in the complaint procedure, filed as part of this legal action on 4.02.2013;

- agreement with Italian Red Cross to manage the La Barbuta Camp, the beneficiaries of which are expressly defined as "socially weak persons of Roma origin" and the report on the Municipal schooling plan concerning the La Barbuta settlement, which was expressly addressed to Roma children and teenagers: see respectively exhibits 18 and 20 attached to Roma Capitale's supplementary statement;

- order no. 1/2011 of the Commissioner in charge of the Nomad Emergency in the Lazio Region, which, in the whereas section, refers to the Regional Law no. 82 of 24.05.1985 setting out "rules in favour of the Roma": exhibit 17 attached to Roma Capitale's supplementary statement;

- the National Strategy for the Inclusion of Roma, Sinti and Caminanti adopted by the Italian Government in February 2012, which defined the equipped villages as "*large mono-ethnic settlements*": exhibit 5 attached to the petition;
- the contents of the Council of State's decision no. 6050/2011, now become final, holding that the declaration of a state of emergency in respect of the nomads' situation is unlawful due to the lack of the evidence-gathering stage, and that "*it is undoubtedly common knowledge that the large majority of persons living in the camps in question belongs to a specific ethnicity, being of Roma origin*": exhibit 6 attached to the petition, already quoted);
- is unsuitable to host human settlements, due to it being incompatible with Legislative Decree 96/05 and Ministerial Decree 20.04.2006, as it is very close to the Ciampino airport;
- is located in the suburbs of the Municipality of Rome, quite close to the railway junction and to the Grande Raccordo Anulare [Rome's main ring road], in an area with absolutely no services, shops, public or private activities of any type whatsoever, houses and public transport, since the road leading to the closest Municipality of Ciampino has no sidewalks and no street lights and is with a lot of traffic, public transport means are not efficient - the COTRAL line stop cannot be reached as it is beyond the guardrails and the ATRAL interurban line buses comes at irregular intervals ranging from 40 minutes to 2 hours, as shown by the attached maps (exhibit 3 attached to the petition; exhibits 5-7 attached to the petitioners' defence brief filed as part of the complaint procedure on 4.02.2013, already quoted);
- its "housing units" are prefabricated huts (containers) with no foundations, with wall-boards coated in galvanised steel and polyurethane foam, of about 30 sq m, intended to host families of up to 8 members, compliant – as acknowledged in the summary document "Measures for the Roma people" of the Municipality of Rome (exhibit 4 attached to the defence brief of the petitioners in the complaint procedure (already quoted) – with the European Standards EN 1647 for "Leisure and Holiday Caravans...";
- greatly hinders the coexistence between the Roma and Sinti communities hosted in the camp and the local community as well as a real equal access to school and social and health services, actually strengthening the current segregation and exclusion of said communities, dooming them to remain a condition of political, economic and cultural isolation;
- is in conflict with the objectives the Italian Government itself has set in February 2012 through the UNAR [National Office for the Fight against Racial Discrimination] by adopting the "*National Strategy for the Inclusion of the Roma, Sinti and Caminanti to implement the European Commission's Communication no. 173/2011*", where Roma camps are defined "*as a condition of physical isolation, which reduces the chances of social and economic inclusion of the RSC communities*" (exhibit 5 attached to the petition, already quoted);
- was "established" through overruled administrative orders and through implementation measures which have consequently become unlawful;
- was created through a conduct which the European Committee of Social Rights (ECSR) (CEDS), the Human Rights Commissioner of the Council of the European Union (CommHR), the Committee on the Elimination of Racial Discrimination (CERD), OSCE's High Commissioner for

National Minorities have already and repeatedly qualified as a breach by Italy of the general principle of non-discrimination and of the European and international standards on human rights (ECSR's decisions of 7.12.2005 and 25.06.2010: exhibits 10 and 11 attached to the petition; CommHR's memorandum of 19/20.06.2008 and report of 7.09.2011: exhibits 13 and 18 attached to the petition; OSCE's report 2009: exhibit 14 attached to the petition; CERD's Italy recommendation 2012: exhibit 3 attached to the defence brief of the petitioners in the complaint procedure, already quoted);

- is part of a Nomad plan the ineffectiveness of which in terms of security and integration has been acknowledged by the very Italian Senate in the "*Final report of the survey on the condition of Roma, Sinti and Caminanti in Italy*" approved on 9.02.2011 (exhibit 16);
- offers an actually permanent living solution to the Roma and Sinti communities, both because it is envisaged that each family to whom a unit has been allocated may stay for a renewable period of two years, and therefore not on a temporary basis, and because the administrative notice of 18.01.2013, concerning the criteria to award the score for the purpose of allocating social houses – not revoked until January 2015 in spite of the guidelines provided by the Head of the responsible office, aimed to avoid its 'discriminatory' application (see exhibit 1 filed on 29.12.2014) – has expressly denied that camp inhabitants may be awarded the 18 points available to "*families in a condition of ... severe housing deprivation.... living in facilities provided on a temporary basis*"...(category A point 1), as for such purposes "*nomad camps*" have been considered to be "*permanent facilities*" (exhibit 2 attached to the petitioners' defence brief filed at the hearing of 22.03.2013);
- thus gives rise to a less favourable treatment based on ethnicity, whereby no importance is attached to nationality – which is however Italian in about 50% of the cases reported based on data disclosed by Roma Capitale (see social land-use plan, already quoted); this cannot be qualified as a "positive action" permitted by art. 3, par. 5 of Legislative Decree 215/03, as such measures were taken through neither appropriate nor necessary means, also taking into account that in 98% of cases the communities hosted in camps have turned out to be no longer nomad (see: National Strategy adopted by the Italian Government, already quoted; Report by the Extraordinary Committee of the Italian Senate for the Protection and Promotion of Human Rights: exhibit 16 attached to the petition), as also acknowledged by the Human Rights Commissioner for the Council of the European Union, Nils Muižnieks after directly witnessing the situation existing in the city of Rome in July 2012 (in such respect, reference was made by the petitioners to the official website of the Council of the European Union);

Roma Capitale, in its statement of defence, in its supplementary statement filed after the order to serve the petition again in compliance with the terms for appearance, and in its subsequent authorised briefs:

claimed as follows:

- its lack of standing to be sued in respect of the construction of the "*La Barbuta*" village, as this had been planned and implemented by the Commissioner in charge of the Nomad Emergency, who directly reports to the Prime Minister's Office;

- the lack of standing to sue of the petitioners, as such associations are not registered with the list under art. 5 of Legislative Decree 215/03 and however have been granted no power of attorney by the persons concerned, who are clearly identified or identifiable individuals, since the new "*La Barbuta*" village was implemented as a renovation of the pre-existing one;

sought dismissal of the petition as groundless, arguing that:

- there is no discriminatory intent, as was also excluded in the case at issue by the Regional Administrative Court and by the Council of State in its judgment no. 6050/2011, confirmed by the Supreme Court in its decision no. 9687/2013, which held the declaration of a state of emergency in respect of the nomads situation in some Italian regions, including Lazio, to be unlawful only due to lack of preliminary inquiries;

- the unlawfulness of the declaration of a state of emergency does not automatically mean that the administrative actions taken thereafter are discriminatory;

- the relaxation in the burden of proof provided for by art. 28 of Legislative Decree no. 150/2011 in favour of the petitioners in cases such as the one at issue does not amount to a shifting in the burden of proof, and in any event the arguments presented by the petitioners are merely suggestive;

- several public transport means connect the new camp to the Municipality of Ciampino, with bus stops at just a few minutes walking distance;

- the integration of the camp's inhabitants has been promoted, by reconstructing the camp on the same site where the previous one was based;

- places in the camp were not allocated based on ethnic origin but rather based on a condition of social distress, as the area was mainly intended for those who lived in the camps nearby, as proven by the fact that 50 Italian citizens are among those who have been allocated a house, as stated also in the order;

- camp rules are applicable *erga omnes*, as they are exclusively aimed at a proper management of the service;

- the allocation of camp houses can be qualified as a "positive action", *i.e.* it was not at all directly or indirectly discriminatory under art. 3, par. 5 of Legislative Decree no. 215/2003, as also proven by the following:

- the effects it brought about, *i.e.* an actual and significant improvement in the living conditions of hundreds of people, since:

- living in the camp does not amount to mere accommodation, but also entitles its members to take advantage of social services aimed at their social and occupational integration;

- children living in the camp are offered schooling services;

- the accommodation offered in the camp is temporary and not permanent, as it may stretch over a time span of two years;

- accommodation is on a voluntary basis, as houses are allocated as agreed with the persons concerned;

- living in the village does not prevent access to other housing facilities;

- the irrelevance in such respect of the internal administrative circular dated 18.01.2013, providing only an interpretation to one clause of the notice of allocation of social housing facilities, and rather confirming that people living in the camp were not excluded from such allocation;

once the authorisation was granted to join the State Administrations in these proceedings, the Prime Minister's Office and the Ministry of the Interior duly appeared, claiming:

-that the petitioners have no capacity to sue, as they are not registered with the relevant Ministerial List and as they have obtained no power of attorney from the persons concerned, who are clearly identified and identifiable individuals;

seeking dismissal of the petition as groundless, for such purpose arguing as follows, also in their authorised briefs:

- that the La Barbuta camp is not aimed at segregating the population living in its, as it constitutes the refurbishment of a pre-existing camp – 'sign of the historical and deep-rooted presence of nomad camps in the territory of the X Municipality of Rome' dating back to 1995 and earlier – for the purpose of ensuring minimum levels of social services, well-being, legality and protection from xenophobia;

- that no direct discrimination has occurred, since the measures taken by the Commissioners in charge of the Nomad Emergency are addressed to the inhabitants of authorised and unauthorised camps hosting heterogeneous populations, regardless of their nationality and religion;

- that no indirect discrimination has occurred, given that a lawful objective was pursued, *i.e.* to promote better living conditions, and appropriate and necessary means were adopted, since houses were allocated on a voluntary and temporary basis, and their acceptance does not prevent access to other housing facilities;

- that the provisions laid down by the Council of the European Union and the European Committee for Social Rights are not binding, as they merely serve as a policy guidance;

- the irrelevance of the internal circular dated 18.01.2013 in respect of the failure to award the maximum score to the camp's inhabitants for the purpose of allocating social housing facilities, as 'villages are permanent, while house allocation is temporary';

- there has been no discrimination, because the different treatment does not infringe but rather promotes fundamental rights;

The progress of proceedings

once the petitioners were authorised to join in the proceedings the Rome Prefect, in his capacity as Commissioner in charge the Nomad emergency, and after filing a motion for interim measures during the proceedings, restricting the claim to the conduct consisting in the allocation of houses in the "La Barbuta" camp, such allocation was suspended until completion of the interim proceedings;

the Panel of Judges, upholding the complaint lodged by Roma Capitale, overruled the interim order of suspension (see exhibit 29 attached to Roma Capitale's supplementary statement);

having considered that:

although they should not be disregarded, the specific and restricted purpose as interim reliefs of the above mentioned orders issued as part of the relevant interim proceedings does not set any structural or functional constraint for this decision on the merits in the first instance proceedings, all the more so in a case such the one in point, where the specific type of proceedings for interim relief under art. 702 *bis* c.p.c. - which is mandatory in respect of matters governed by art. 28 of Legislative Decree no. 150/2011 - in the absence of any specific bar in terms of arguments or means of evidence to be presented, have enabled the parties to file new documents in parallel at any time, expanding and examining more in detail their defence arguments;

The petitioners' legal standing:

having also considered that:

following a logical order in examining the disputed issues – pursuant to art. 276 c.p.c. – the petitioners' capacity to sue has been challenged in terms of both their failure to prove registration with the List under art. 5 of Legislative Decree no. 215 /2003 and their failure to obtain a power of attorney by the persons concerned which must be deemed "clearly identified and identifiable individuals" under art. 5, par. 3 of Legislative Decree no. 215/2003;

the claim was brought under paragraphs 1 and 3 of art. 5 of Legislative Decree no. 215/2003, which implemented European Directive 2000/43/CE on the equal treatment between persons irrespective of racial or ethnic origin, as subsequently amended and supplemented by Law Decree no. 59/2008 converted into Law no. 101/2008, also setting out "*Urgent provisions for the implementation of EU rules and the enforcement of judgments of the Court of Justice of the European Communities*";

paragraphs 1 and 3 of art. 5 of Legislative Decree no. 215/2003, *ratione temporis* applicable to these proceedings, as amended in 2008, read as follows:

1 "*Associations and entities registered with a specific list approved by decree of the Minister of Labour and Social Policies and by the Minister for Equal Opportunities, and identified based on their policy objectives and the continuity of their action have legal standing ((**under articles 4 and 4 bis**)), pursuant to a power of attorney which shall be granted (or otherwise be null and void) by means of a public deed or a certified private deed, in the name and on behalf or in support of the individual victim of discrimination*"

3 "*The associations and entities included in the list as per paragraph 1 above have also legal standing ((**under articles 4 and 4 bis**)) in the event of collective discrimination when the victims of discrimination cannot be directly and immediately identified*";

having held that:

therefore, as argued in respect of the claim of lack of capacity to be sued as filed, it is common knowledge that in the case at issue we are dealing with collective discrimination, as proven by the fact that the conducts that should be ceased and the effects that should be removed based on the sought interim reliefs consist in the creation of a "village" intended for 600/650 people and in the allocation of the relevant lodges;

having established that:

the petitioners have proven to be registered with the list as per art. 5, par. 1 of Legislative Decree no. 215/2003, exhibiting the relevant decree at the hearing held on 22.03.2013;

as expressly provided for in OPCM (Order by the Prime Minister's Office) no. 3776/2008 of 30.05.2008 (exhibit 6 attached to Roma Capitale's supplementary statement), adopted as first implementation of DPCM (Decree by the Prime Minister's Office) no. 122 of 21.05.2008, declaring a state of emergency "*in respect of nomad settlements in the regions of Campania, Lazio and Lombardy*" (see above, exhibit 5) and specifically mentioned in order no. 1/2011 of the 'Commissioner in charge of the Nomad Emergency in the territory of the Lazio Region' which 'approved the final project for the intervention named "Villaggio della Solidarietà – La Barbuta" ' (see above, exhibit 17), said camp, like all other "authorised" camps to be implemented in compliance with the so-called Nomad plan, was intended to host, in addition to the families already living in the pre-existing camp based on the same area, also some of the families coming from 'unauthorised camps', which were instead meant to be removed, and therefore could not be identified in advance;

in order to clarify the actual implementation of the above provision in the case in point, at the hearing held on 18.07.2012 the petitioners filed a "notice" by the Local Police to Roma Capitale, informing of "*the executive decision .. dated 2.07.2012 ... signed by the Head of the Department for the Promotion and Social Services and Health*" of the Municipality of Rome, which specifically ordered that "*the nomad camp Baiardo*", based in Rome, via del Baiardo "*be removed*" with "*demolition of all shelters existing on that site*" and with offer of "*resettlement to the facilities of the Solidarity Villages*", in the case at issue at the "*Equipped Village of Roma Capitale named Nuova Barbuta, at via di Ciampino 63 in Rome*";

that the inhabitants of the specific camp located in the La Barbuta area might vary and this was such a likely occurrence that it was expressly envisaged by art. 11 of the Call for Tenders for the service regarding the "*schooling project for children and teenagers at the settlement Ciampino-La Barbuta for the school year 2012-2103*", with the duty for the awarded entity, the social cooperative enterprise Ermes, to readjust the service should the Municipal Authority "*decide to move camps and/or transfer communities from one territory to another...*" (see report attached to exhibit 18 attached to Roma Capitale's supplementary statement);

furthermore, the existence of a variable time frame in which the village accommodations could be allocated, from a minimum of three months to a maximum of two years (renewable), is a further confirmation that the identity of those who lived in the camp could easily change, and therefore such persons cannot be deemed to be capable of being 'immediately' identified under art. 5 par. 3

of Legislative Decree no. 215/2003 (see annex 2 to Roma Capitale's authorised brief dated 25.09.2013 for the hearing held on 15.11.2013);

above all, due to the historical and regulatory issues underlying the case at issue, the persons in favour of whom the petition has been served are not those who were accommodated at the La Barbuta village at a given moment in time, for instance on the date of filing of the petition, but those who – based on the decision taken under DPCM no. 22 of 26.05.2008 (irrevocably overturned but nonetheless still producing its effects) – have been and might be accommodated in such village as a consequence of unpredictable circumstances (e.g. identification of sites to be 'cleared', allocation of persons living in 'cleared' camp to this or other authorised camps, end of the period of stay in a camp and accommodation at another 'authorised' camp);

having held that:

therefore, pursuant to art. 5, par. 3 of Legislative Decree no. 215/2003 *"the victims of discrimination"* in favour of whom the petition was lodged *"cannot be directly and immediately identified .."*, and thus no power of attorney was required under art. 5, par. 1 *"to be granted, under the sanction of nullity, by means of a public deed or a certified private deed, in the name and on behalf or in support of the victim of discrimination..."*;

that the orders issued by the Court of Rome on 11.06.2013 and 27.05.2013 under art. 702 *bis* c.p.c. do not set a precedent to the contrary, because such orders had declared the lack of legal standing of associations which had started a legal action along with single individuals, who therefore were clearly identified (exhibit 20 and 21 attached to the defence brief of the State Administrations dated 25.09.2013);

Roma Capitale's standing to be sued

having established:

that the reference made in the petition's conclusions to the La Barbuta "equipped village" and to the relevant completion activities implies that such reference regards the "refurbishment" of the pre-existing camp, as arranged – see above – by the orders issued by the Commissioner in charge of the Nomad emergency in the Lazio Region no. 4/2010 (exhibit 14 attached to Roma Capitale's supplementary statement) and 1/2011 (already quoted), implementing DPCM no. 22/2008 and OCPCM no. 3776/2008 (already quoted),

that the requested and authorised intervention of the State Administrations, to which the Commissioner functionally and structurally reports, occurred

without extension to such State Administrations of the claims lodged in the petition, but through a mere service of the original petition and of the subsequent hearing minutes;

as is now common knowledge and as proven by the measures referred to so far, that the State Administrations were responsible for the construction of the new "equipped village La Barbuta", in such respect no standing to be sued can be acknowledged to Roma Capitale, which in its supplementary statement seemed to have focused its claim on such aspect;

that in any event, Roma Capitale's lack of standing to be sued in respect of the 'allocation of accommodation units' in the new camps, including the one based in the La Barbuta area, is clear from its very social land-use plan, where the latter lists Roma Capitale's tasks as part of the Nomad plan, implemented and accepted as such, besides through the City Council's resolution no. 24/2008 and the City Board's resolution no. 54/2012 (see p. 23 of annex 7 to the social land-use plan 2011/2015, exhibit 4 attached to the petitioners' defence brief in the complaint procedure, filed as part of these proceedings on 4.02.2013, already quoted; ann. 1 to the information notice of the Head Office of the Department for the Promotion of Social Services, file no. QE/73518 of 22.10.2012: exhibit 20 attached to Roma Capitale's supplementary statement already quoted);

Legal framework

(also in respect of the Italian citizenship of about 50% of the Roma living in the Rome-based camps)

having established that:

as part of the domestic laws and regulations currently in force, the concept of discrimination that is relevant for the purposes hereof has been defined by art. 43 of Legislative Decree 286/1998 which, implementing Delegated Law no. 40/1998, introduced the Consolidation Act governing immigration and the status of aliens, and by Art. 2 of Legislative Decree no. 215/2003, enacted to implement European Directive no. 2000/43/EC on the equal treatment between persons irrespective of racial or ethnic origin;

pursuant to art. 43 of Legislative Decree 286/1998: *"discrimination shall mean any conduct that directly or indirectly gives rise to a differentiation, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, religious beliefs and practices, and that is aimed at or results in destroying or jeopardising the acknowledgment, enjoyment or exercise, under equal conditions, the fundamental human rights and freedoms in the political, economic, social and cultural field and in any other sphere of public life"*;

this general and all-encompassing definition set out by par. 1 is followed in par. 2 of the above art. 43 by a list, provided for the sake of simplification, of discriminatory conducts, among which particular attention should be devoted for the purposes hereof to those described under letters a) and b), pursuant to which: 2. *In any event, an act of discrimination is committed whenever:*

a) *the public officer or person in charge of a public service or person providing a public-interest service, while exercising his/her duties, takes an action or fails to take an action in respect of a foreign citizen only due to the latter being foreign or belonging to a specific race, religion, ethnic group or nationality, and thus unfairly discriminates such person;* b)

anyone imposes more unfavourable conditions or refuses to provide goods or services offered to the public to a foreigner only due to the latter being foreign or belonging to a specific race, religion, ethnic group or nationality;

under art. 2 of Legislative Decree no. 215/2003 *"the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin. Based on such*

principle, no direct or indirect discrimination shall be committed, according to the following definition

a) there is direct discrimination when, due to his/her race or ethnic origin, an individual is treated less favourably than another is, has been or would be treated under similar circumstances; b) there is indirect discrimination when a provision, a criterion, a practice, an act, an agreement or a conduct that is apparently neutral may put individuals of a specific race or ethnic origin at a particular disadvantage compared to other persons";

substantially, the definitions of ethnic discrimination provided in the two provisions, both indirectly referred to by art. 28 of Legislative Decree 150/2011, are mutually complementary, as the former (art. 43 of Legislative Decree 286/1998) is based on the relationship between general case / specific case but, in respect of its specific subject matter, expressly referred to "foreign people", while the latter (art. 2 of Legislative Decree no. 215/2003) is based on the macro distinction between direct / indirect discrimination;

both provisions originate from the development of cross-border law, as art. 43 of Legislative Decree no. 286/1998 derives from art. 1 of the International Convention on the Elimination of all Forms of Racial Discrimination opened in New York on 7.03.1966 and ratified in Italy through law no. 654 of 13.10.1975, while the provisions of art. 2 of Legislative Decree no. 215/2003 originate from Directive 2000/43/EC which, in turn, along with its twin directive 2000/78/EEC establishing a general framework for equal treatment in employment and occupation, was adopted by the European Commission based on the recommendations expressed by the European Council of Tampere of 15/16-10.1999;

the source of the two provisions are particularly relevant for the purpose of their interpretation, as the very drafting of such rules by the Italian law maker constitutes a clear expression of and an implementation to the commitments undertaken by the Italian State at an international level, more specifically within the legal framework of the United Nations and of the European Union; hence, the decisions and recommendations issued and to be issued vis-à-vis the Italian State by these institutions which, as part of these supranational legal systems, have been entrusted with supervising to what extent and degree the principle of ethnic non-discrimination has been applied in Italy, are legally relevant in matters such as the one in point;

furthermore, a decisive role in the protection of human rights against discrimination has been played by the Council of the European Union, an international organisation founded in 1949, which is independent from the European Union and counts Italy among its members: it was the Council of the European Union which, back in 1950, adopted the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified in Italy by Law no. 848 of 4.08.1955. Art. 14 thereof provides the principle of non-discrimination in respect of the 'enjoyment of the rights and freedoms' recognised therein and, starting from the 1992 Maastricht Treaty on the European Union, was acknowledged as the main source – also in respect of the latter – for the general principles governing the matters falling within its scope; another document originated from the Council of the European Union is the European Social Charter of 1961, subsequently amended in 1996 to reflect social and cultural changes, art. 31 of which today recognises the 'right to housing', to be interpreted in association with art. E, which mirrors the principle of non-

discrimination as set forth by art. 14 of the previous ECHR, and in which the contracting Parties, including the Italian State, undertook *"to take actions aimed: 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"*; that, as part of the Italian legal systems, the basic principles governing the matter are not those set forth by art. 3 of the Constitution, which literally regards "citizens", but those of art. 2 of the Constitution, pursuant to which, *"The Republic acknowledges and ensures the inviolable human rights, both to single individuals and to social groups, where a man's personality is expressed, and requires compliance with mandatory duties of political, economic and social solidarity"*

having established that:

according to **surveys conducted by the** summoned **Municipal Administration, about 50% (precisely 48.6%) of the Roma who lived in camps on the municipal territory as at spring 2008 are Italian citizens** (see ann. 7 to the draft social land-use plan 2011/2015 of Roma Capitale: exhibit 4 to the petitioners' defence brief in the complaint procedure, filed as part of these proceedings on 4.02.2013, already quoted, see p. 5 where the Roma are explicitly referred to) **and 97/98% of them are no longer nomad, based on data provided by the Ministry of the Interior** and disclosed in the final report of the survey on the Roma, Sinti and Caminanti condition in Italy, prepared by the Italian Senate's Extraordinary Committee for the Promotion of Human Rights (exhibit 16 attached to the petition, see p. 46 herein below);

therefore, **the case in point falls entirely within the scope of application of Legislative Decree no. 215/2003, as it does not only deal with the issue of 'foreigners'** and constitutes, as already mentioned, a due implementation of European Directive no. 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin art. 2, par. 2 of which refers to the provisions of art. 43, par. 1 and 2 of Legislative Decree no. 286/1998, although art. 3, par. 3 of Legislative Decree no. 215/03 points out that its scope of application does not encompass *"inequalities of treatment based on nationality and is without prejudice to domestic provisions and conditions regarding the entry into, stay, access to employment, assistance and social security of third-country nationals and stateless persons on the State territory, or any treatment adopted pursuant to law in respect of the legal status of the aforementioned persons"*;

the following provisions are also worth mentioning:

art. 3, par. 1 of Legislative Decree no. 215/03, whereby: *"The principle of equal treatment without distinction as to racial and ethnic origin applies to anyone, both in the public sector and.... with specific regard to the following areas:*

- a) *access to employment and occupation...*
- b) *employment and working conditions...*
- c) *access to all types and levels of vocational guidance and training,;*
- d) *....*

- e) *social protection, including social security;*
- f) *healthcare;*
- g) *social advantages;*
- h) *education;*
- i) *access to goods and services, including housing."*

art. 3, par. 5 of Legislative Decree no. 215/03, whereby: *"Pursuant to art. 2, those inequalities of treatment that, in spite of giving rise to indirect discrimination, are objectively justified by a legitimate aim pursued through appropriate and necessary means shall not in any event constitute an act of discrimination";*

art. 28, par. 4 of Legislative Decree no. 150/2011 on the simplification of civil procedure, whereby *"When the petitioner alleges facts, including facts inferred from statistical data, based on which the existence of discriminatory acts, agreements or conducts can be assumed, the defendant shall have the burden to prove that no such discrimination has been committed";*

destination of the 'La Barbuta' camp also in connection with its historical origin

having established that:

in respect of the destination of the disputed camp, objective and certain data can be inferred from the following documents:

- Rome Mayor's orders no. 592 of 13.11.1995 and no. 80 of 23.01.1996 (respectively exhibits 13 and 12 attached to Roma Capitale's supplementary statement, already quoted):

order no. 592 of 13.11.1995, amended by order no. 618 of 4.12.1995 (exhibit 2 attached to PMO's statement of defence), as an extraordinary and urgent order, set out for the first time, on grounds of public policy *"the arrangement of two temporary camps in the plots of land... within the area named "La Barbuta", owned by the cooperative 'Consorcasa s.r.l.'" for the purpose of moving – as set forth in the order – "the nomads currently settled at via Sciuntu, via Vignali, via Procaccini and via Rapolla". According to order no. 80/1996, a census of the nomads was carried out by the local police on 13-14-15 November 1995, just like all other 'nomads' living in the "equipped camps" and "spontaneous settlements" within the Municipality of Rome with the aim – as expressly declared in order no. 80/1996 – "to plan a progressive series of actions aimed at offering decent and civilised accommodation to the legally eligible Roma and Sinti families whose presence has been established on the Municipal territory";*

- annex 7 to the draft social land-use plan 2011-2015 of the Municipality of Rome, named "Summary Document. Interventions for the ROMA people" (annex 4 to the petitioners' defence brief in the complaint procedure, exhibited as part of these proceedings on 4.02.2013, already quoted): this document, drafted based on data as at April 2011, provides a precise historical, social and demographic reconstruction of the Roma's presence in the territory of the Municipality of Rome; on p. 22 of such document the "Nomad plan" is defined as a *"project, an operating system focused on the Roma people and involving the Prefecture, Roma Capitale and*

volunteering organisations. The plan consists in a series of measures aimed at solving the nomad emergency in the territory of the Lazio Region, in particular in the area of Roma Capitale as provided for by decree of the PMO dated 21.05.2008", and it is also pointed out that the "the Nomad plan has two fundamental aims: on the one hand the rearrangement of the Roma settlements within the city and on the other a focus on the individual so as to avoid discriminations and promote the principle of equal treatment irrespective of ethnic origin. Based on a survey carried out on behalf of the Commissioner, the Rome Nomad plan will involve approximately 6000 people of Roma origin".

It should be noted that, on p. 28, the "La Barbuta" village is included in the list of Roma Capitale's authorised villages surveyed as at April 2011 as part of the Nomad plan, also based on the specific activities of photographic identification and granting of the DAST (Authorisation of Temporary Settlement) provided for in the Plan";

- Order no. 1/2011 of the Commissioner in charge of the Nomad Emergency in the territory of the Lazio Region dated 21.01.2011 (exhibit 17 attached to Roma Capitale's supplementary statement, already quoted) setting out *"the approval of the final project for the intervention named "Villaggio della Solidarietà – La Barbuta" as well as of the costs for the implementation of the relevant activities for an overall amount of euro 6,151,945.36 plus VAT, to be awarded through a call for tenders"*, pointing out in the introduction that the area involved in the works is compliant – from a town-planning perspective – with *"the provisions laid down by art. 4 of the Regional Law no. 82 of 24 May 1985, providing 'Rules in favour of Roma'"*.

As a matter of fact, art. 4 of said law describes all necessary requirements of the "camp", pointing out – amongst other things – that *"its surface area shall not be smaller than 2,000 square metres and shall not exceed 4,000 square metres, it shall prevent any type of urban isolation and shall be identified in such a manner as to promote access to public services"* and expressly sets out that *"the <<ROMA>> who intend to access the camp shall pay a fee to the Municipal Administration, and they shall manage the camp jointly with the latter"*;

- "Report on the schooling project for Roma children and teenagers at the Ciampino – La Barbuta camp for the school year 2012-2013" (attached to note no. 57412 of 14.08.2012 of the Head of the Department for the Promotion and Social Services and Health, Mr Angelo Scozzafava, setting out clear specifications for the Municipal attorneys for the purposes of these proceedings: exhibit 18 attached to Roma Capitale's supplementary statement). The report starts as follows *"Until last year the Ciampino – La Barbuta settlement was included in the schooling project for the Roma living in unauthorised camps, intended for no. 77 children"* and goes on describing in detail how the eviction of the Tor di Quinto/Via del Baiardo and Tor de' Cenci camps highly affected such project, with the consequent transfer of the Roma minors and their families, 25 of whom from Tor di Quinto to 'La Barbuta';

- Agreement for the management of the accommodation service at the La Barbuta Equipped Camp, entered into between the 14th Department of Roma Capitale – Nomads Office, and the Italian Red Cross, as awarded entity for a monthly consideration of € 17,875.00 (ann. 3 to note no. QE/73518 of 22.10.2012, signed by the Head of the Department, Mr Scozzafava, also setting out information for the Municipal Attorneys in respect of these proceedings: annex 20 to Roma Capitale's supplementary statement): as expressly defined in art. 1, the agreement regarded the *"hospitality and accommodation in favour of socially weak persons of ROMA origin"*;

having considered that:

both the historical origin of the specific La Barbuta camp, created in 1995 as part of reorganisation and census activities explicitly intended for the *"Roma and Sinti people"* living in the Municipal territory and also aimed to provide them with *"decent and civilised accommodation"*, and the fact that the rehabilitation of the La Barbuta camp in 2008/2010 was included within the Nomad plan - which in turn is clearly focused on the *"structural reorganisation of the Roma settlements in Rome"* -, and the documents related to the management of said 'village', also specifically intended for *"children"* and *"socially weak people of ROMA origin"*, prove the following:

that the term *"nomad"* is substantially used as a synonym for person of Roma origin, although, as already highlighted, this is no longer justified, because almost all (97/98%) of these people have nowadays settled, as acknowledged in Roma Capitale's social land-use plan 2011/2015 (already quoted, see p. 4),

as a matter of fact, depending on how they have historically settled and on how they have subsequently changed and are currently changing, the inhabitants of "camps" within the territory of Roma Capitale, including La Barbuta, both before and after the requalification 2008/2010, are mostly – at least statistically – of Roma origin;

from 1995 onwards, when the Municipal Administration dealt with "nomad camps" it has most clearly taken care of the "Roma";

the theoretical possibility that "Roma" people might live outside the camps or that people of a different origin live in the camps does not exclude the historical, objective data substantially assumed by all of the above mentioned administrative documents, i.e. that people of Roma or Sinti or Caminanti origin are statistically the most prevalent ethnic group living in the "camps";

the ethnic origin of the Roma (Sinti and Caminanti) is totally independent of the relevant nationality as shown by the above mentioned statistical surveys carried out by Roma Capitale itself, according to which about 50% of the Roma, and precisely the Roma living in the camps based in the Rome territory, are Italian citizens;

Location and features of the area where the "La Barbuta" camp is based

having established that:

equally objective data on the location and features of the "La Barbuta" camp emerge from the following documents:

- Rome Mayor's orders no. 592 of 13.11.1995, no. 618 of 4.12.1995 (both annulled "to the extent that they do not set an effectiveness term, because in breach *as this is in breach of the law*" by judgment no. 1283/2004 of the TAR Lazio: exhibit 3 attached to PMO's statement of defence) and no. 80 of 23.01.1996 (already quoted): when on 13.11.1995 the Rome Mayor issued an extraordinary and urgent order to transfer the nomads based at via Scintu, via Vignali, via Procaccini, via Pelizzi, via Rapolla *"to the two plots of lands included in the area named "La Barbuta", the area had absolutely no services; indeed, "Servizio Giardini was awarded the works to build visual barriers" – afterwards (by order 618/95) the "through planting 'lauro nobilis' 2.50-3.00 meter high - the two stopover camps were fenced, uniting the land constituting the surface of the camps", "AMA was entrusted to build a road to access the two camps... " and, by order no. 618/95, "to provide and place chemical toilets" "Ripartizione VI was entrusted to provide water supply – subsequently specified to be performed by tanker truck (by order no. 618/95) – and electric energy supply"; order no. 618/1995 purported also, at point 8) to assign to the Director of the 12th department the task of planning and carrying out the works of modification of the temporary loitering camps in equipped camps, as soon as transfer of La Barbuta area was finalised and as soon as the necessary financial resources were found";*

- Delegated Commissioner for the nomad emergency in Regione Lazio area's order no. 4 dated 31.05.2015 (already quoted, exhibit 14 attached to Roma Capitale's supplementary statement): order no. 4/2010, which ruled a *"reorganisation of the nomad camp named 'La Barbuta' with a view to its stabilisation, with consequent adaptation of the village to the regulations currently in force ... allowing also to restore the minimum levels of social service"* , establishes that, on the date when it was issued, *"the nomad settlement at issue is still temporary and presents precarious hygienic conditions with an extremely critical nature, with consequent high degree of socio-environmental and health conditions deterioration to the extent that actions of stabilisation and compliance with urgent and undelayable health and safety regulations were required";*

- Minutes of the Services Conference of 1.09.2010 on the "stabilisation of the settlement located in the "La Barbuta area" .." (exhibit 15 attached to Roma Capitale's supplementary statement): on that date the area still evidenced a lack of all services, since all the various participants (Municipal departments for Mobility and Transportation, Public green and Environmental Protection, Section Chief for ANAS, Italgas etc.) had envisaged the need to *guarantee the regular traffic on the road to Ciampino, a road with a high traffic flow", " the need for a plan to restore the residual dumping materials and the like" , "to respect the prescribed safety distances from the road by limiting it with the fence thereof"*, the possibility of a single interference that may come *"from the water and sewers crossing", the absence of a gas network in the area";*

- Delegated Commissioner for the nomad emergency in Regione Lazio area's order no. 4 dated 31.05.2010 (already quoted, exhibit 17) which ordered *"the approval of the final project for an intervention named "Villaggio della Solidarietà - La Barbuta" as well as the expenses for carrying out the necessary and related interventions for an overall amount of € 6,151,945.36 plus VAT,* and in the whereas section acknowledges that the area of said intervention is encompassed, pursuant to art. 107 of the Technical Operative Notes to the general urban regulation plan so, by a homogenous area "F" as a *"public space destined to public green areas and public services"* for local use, which, however, does not include, as per art. 85 of the Technical Operative Notes, the *"special facilities for public use"*, as per art. 4 of the Regional Law no. 82 of 24 May 1985 introducing "Provisions in the Roma's favour", whereby, by virtue of the power to disregard the provisions currently in force that the Commissioner was entrusted with by the underlying state of emergency declaration , yet, as seen, vacated, the project to build the "Village" has been approved, derogating to art. 85 of the Technical Operative Notes, allowing, albeit not-permitted by the urban regulation plan in force, to build *"special facilities for public use"* in an area merely destined to "public green areas";

- Extract of the Minutes of the Deliberations of the Capital's Junta of 29 February 2012 (annex 1 to the Note no. QE/73518 of 22 October 2012, cit., including information to the Municipality's attorney general in regards to the proceedings at issue: exhibit 20 attached to Roma Capitale's supplementary statement): such deliberation approved the *"draft of the agreement for jobs' entrustment and support by the Promotion of Social Services and Health Departments for the Service of protection of the areas where the authorised Villages of Roma Capitale are located"* for an annual amount of € 3,757,050 including VAT of 21%, and lists in its introduction the 8 authorised villages to which such agreement refers to, by defining them as *"located in the following sites of suburban areas of the Capital"*, by mentioning at no. 8 *"La Barbuta Area (close to the Ciampino airport)"*;

having considered:

that, therefore, the following data are objective, textually recognised by the documents drafted by the municipality's administration itself:

- the peripheral nature of La Barbuta Area, since 1995, when the camps were founded for the first time, of whose in 2010, after fifteen years, the requalification and "stabilisation" was disposed; such nature, indeed, has not even been contested, and moreover, arises unequivocally also from the photographic documentation, also aerial, filed in by both parties (see exhibit 8 attached to the petition; photo 9 attached to exhibit 22: Note QE 73749 signed by Director Scozzafava also including information addressed to the municipality's attorney general with reference to the proceedings at issue), other than having been disclosed by its closeness to the separate Municipality of Ciampino (see exhibit 8 attached to the petition: injunction by the Major of Ciampino);

- the structural lack of the necessary services network, typical of the areas addressed to urban expansion, as inevitable consequence of the original and unchanged destination to "public green area" of the area in which La Barbuta camp was designed and has been "stabilised"; in regards to such destination, moreover, the waiver of the ban to create "special gears for public use", conversely disposed by the old provision of LR no. 82/1985 "*in favour of Romany people*", deceased by effect of the end of the declaration of Nomads emergency and of all consequent commissarial acts, affected by derived illegitimacy (see par. 7 of judgment no. 6050/2011, exhibit 8 attached to the supplementary statement of the Municipality of Rome);

Purpose and stability of the "La Barbuta" camp, also in relation to its historical origin

having established:

that the order by Rome's Major no. 592 of 13 November 1995 (already quoted) disposed by means of an extraordinary and urgent order the transferral of "*nomads resident in via Sciuntu, via Vignali, via Procaccini and via Rapolla*" into the newly founded camps of "La Barbuta" area in order to face the declared double-sided emergency: the one of "*spread social alarm with consequent danger of public disorders*" arising out of the supervened proximity of those camps "*with intensely populated buildings*" inexistent before, and the one of "*generalised ambient degradation which determines a condition of hygienic-sanitary risk*";

that, as seen before, the subsequent order no. 618/1995 (already quoted) disposed, at point 8, to assign "*to the Director of the XII Department the task of projecting and enacting works aimed at transforming the two provisional stopover camps into equipped stopover camps, as soon as the formalisation of the transfer of the area defined as "La Barbuta" would have occurred and as soon as the necessary financial resources would have been found*";

that the other order by the Major no. 80 of 23 January 1996 (already quoted) disposed the prohibition of new establishments, further than the ones censured and listed in an attached chart, only allowing the transfers among the listed establishments;

that the DPCM no. 122 of 26 May 2008 (already quoted, exhibit 5 attached to Roma Capitale's supplementary statement) declared the state of emergency in relation to the establishments of nomad communities on the territory of Campania, Lombardia and Lazio regions, on the ground of which the abovementioned orders no. 4/2010 and 1/2011 of stabilisation of "La Barbuta" Village have been adopted, in relation to the acknowledged "*social alarm with possible severe repercussions in terms of public order and safety*" connected to the presence of nomads and non-EU irregular citizens "*which took permanently seat in the urban areas*";

that the "*requalification*" of the nomad establishment defined as "La Barbuta" disposed under order no. 4/2010 (already quoted) has been expressly prepared "*for the purpose of its stabilisation*";

that annex 7 to the draft of social land-use plan 2011/2015 of Roma Capitale (already quoted: exhibit 4 attached to the petitioners' defence brief in the complaint procedure, filed in the case at issue on 4 February 2013) at page 25 explains that: "*the permanence into equipped villages is legalised by the issue of the Authorisation Document for Temporary Residence (DAST) lasting 2 renewable years. Such document certifies the residence in the equipped village; the abidance to the applicable Regulation; the will of taking part to the activities of professional insertion, school attendance and social inclusion disposed by the camp's programme*" and that "*the purpose of the Nomads Plan in the long run is based on two fundamental principles, strictly connected... : the respect of the legality principle and the promotion of social integration...*";

that the "*draft of the agreement for jobs' entrustment and support by the Promotion of Social Services and Health Departments for the Service of protection of the areas where the authorised Villages of Roma Capitale are located, approved by the Capital's Junta with Deliberation of 29 February 2012*" (annex 1 to the Note no. QE/73518 of 22 October 2012, cit., including information to the Municipality's attorney general in regards to the proceedings at issue: exhibit 20 attached to Roma Capitale's supplementary statement) describes the subject of the service, placing on the trustee the burden of verification of the possibility "*of possible expansion of close by areas*", the "*possible individuation of other areas suitable to solve the occurred critical situations*" and the "*possible hypothesis of requalification of the areas ... abusively occupied*";

that the management's decision no. 2769 of 15 June 2012, which entrusted CRI for the service of management of the authorised Village "La Barbuta" approving the relating Convention (annex 3 of the exhibit 20, attached to Roma Capitale's supplementary statement, already quoted) expressly states at its second paragraph "*that it has been upheld that all the nomads in Rome should be placed inside equipped villages with the concomitant elimination of all the abusive establishments existing at the moment*";

that the note of 18 January 2013 of the Residential Policy Department of Roma Capitale (already quoted, exhibit 2 attached to the petitioners' defensive brief filed at the hearing of 22 March 2013) with the object "*Clarifications on the requirements ... for the assignment of ERP accommodations*" relating to the 2012 announcement, clarifies that "*nomad camps cannot be compared to the situation described in the A1 category since they have to be considered as permanent structures*";

Considering

that the facts of the case have shown that there has firstly been a **factual stabilisation of the camps of the "La Barbuta" area**, notwithstanding both their officially temporary nature and the

annulment of orders of the Mayor that 20 years ago had ordered its creation, specifically in the parts omitting to state an end date;

that, in 2010, stabilisation of "La Barbuta" camp became, as seen, the express aim of the reorganisation of a pre-existing settlement, by that time for 15 years, to the extent that it has been **legally officialised through a document currently affected by "derived nullity", whose effects have been deemed appropriate by Roma Capitale**, as shown by the contents of the **social development plan 2011/2015** quoted here several times and literally reported as well as the **Executive Committee's resolution no. 54/2012** (see II indent of exhibit 20 attached to Roma Capitale's supplementary statement, already quoted);

that the **decision to gather "*inside equipped villages all nomads living in Rome*"** outlined in 1995 and endorsed by the city administration even after the annulment, in 2011, of the declaration of a nomad-related state of emergency (see Committee resolution 54/2012, already quoted, and second indent of Director's resolution no. 2769/2012 already quoted, respectively annex 1 and 3 to exhibit 20 attached to Roma Capitale's supplementary statement), beyond the above-explained identity between a **notion of nomad, referring to a social situation that does not actually exist in Rome anymore** and a notion of Roma (Sinti, Caminanti), implies, *per se*, the stabilised situation of Roma camps reorganised as equipped villages, and, therefore, the **stability of a specific collective solution to the presence of specific ethnic communities on the city's territory, albeit formally identified by the mere perceptible clue of the presence of the unauthorised camps that, still, even for historical reasons, are populated by members of such ethnic group** (Sinti and Caminanti: RSC);

that the decision to **give legal grounding to the more than ten-year long factual stabilisation of "La Barbuta" area camps** is further confirmed by the fact that **the city administration entrusted the task of spotting further areas to widen the camps and build new ones to the delegate for the equipped Roma camps 'control, monitoring and statistical investigation' service** (see annex 1 to exhibit 20 already quoted);

that, given the more than ten-year long history of Roma camps in Rome, including the one here at issue, and, on the other hand, the outlook of further resorting to the 'camp solution', the above-mentioned goal, described as long-term goal, of promoting the Roma social integration, contradicts *per se* the expressly temporary nature of the camps, appears rather far from the possibility of an actual and concrete fulfilment.

Features of the "housing units" and means of management of the equipped village "La Barbuta"

having established:

that, with specific reference to the features of the housing units located inside the redeveloped camp in the "La Barbuta" area and the management system thereof, equally objective data emerge from the following documents:

- annex 7 to the **social development plan 2011/2015 for Roma Capitale** (exhibit 4 of the petitioners' defence brief in the complaint procedure, filed in these proceedings on 4.02.2013, already quoted) where, on page 23, it is pinpointed that the "*Nomad Plan*", adopted by Roma Capitale with the Council's resolution no. 24/2008 and the Executive Committee's resolution no. 54/2012 (already quoted annex 1 to document 20 attached to Roma Capitale's supplementary statement, "*envisages a structural re-organisation of the Roma settlements in the municipality of Rome. There will be 12/13 equipped villages, provided with the residential standards set forth by the current regulation (the housing units are equipped with a certificate of conformity to the European rules EN1647)...*");

- rules of the camp named "*Villaggio della solidarietà*" "*Nuova Barbuta*", attached to the Police report on the proposal to assign a housing unit located therein, presented by the recurring parties during the 18.07.2012 hearing (already quoted), providing, *inter alia*:

- that "*any access by visitors...may take place only subject to prior authorisation, through communication to be carried out with our portership service by at least one member of the family bound to be visited..*"

- that visits "*may be authorised and allowed (save for exceptional cases) only between 7:00 am and 10:00 pm*"

- "*temporary hospitality to relatives and acquaintances may be allowed up to max. 7 days..., subject to prior authorisation by the competent municipal offices, and upon filing of the pertinent written request, by at least one of the adult members of the family which the home was assigned to...*";

- **Prospectus of annual management costs for "Campo Barbuta"** (exhibit 23 attached to Roma Capitale's supplementary statement), **for the amount of € 1,281,131.00**, excluding those related to the "residential units", whose unitary cost is indicated in € 12,000.00 , where bills and waste disposal alone amount to € 307,000.00 (€ 180,000.00 for electricity, € 55,000.00 for drinking water, € 72,000.00 for waste disposal);

having considered:

that for the '**housing units**' making up the nomad Camps, redeveloped as authorised villages, therefore including "La Barbuta" Camp, the city council has declared their compliance with the **technical rule BS EN 1647 detailing the requirements aimed at guaranteeing health and safety to the people making use of mobile homes, as temporary or seasonal accommodation**, such as trailer and components thereof;

that the mere reference to the acronym EN 1647, with no mention of the update year, does not seem to suffice *per se* even to maintain the above mentioned residential modules' current compliance with the current safety requirements;

having held:

therefore, that **accommodation inside a nomad camp** redeveloped as authorised village, **such as "La Barbuta" Camp, is, in fact, offered with high public costs, compatible with an emergency situation, temporary as such, yet, in the case at issue, stabilised for at least**

twenty years, firstly from a factual standpoint and subsequently from a legal one, as **'collective solution' to non-nomad groups**, with a statistical **preponderance of a Roma** (Sinti and *Caminanti*) **ethnicity within the scope of a stable organisational structure and even with a view of further expansion**, and, **even with regard to each hosted family, with non-temporary features** (the DAST's [Temporary standing authorisation] expires after two years but may be extended) and yet in similar conditions to those of a 'holiday resort', **located at the farthest outskirts of the urban settlement, in an area not destined to residential settlements but to urban green areas and with a view to manifest and significant restrictions to privacy and personal freedom compatible with situations of lodging at someone else's place for touring or emergency reasons, neither of which exist**, and, furthermore, **with a bar** for people living in a camp such as 'La Barbuta', **to accessing council housing in fair competition with other people in social fragility situations that do not live in such camps**, given the fact that Roma Capitale did not show any intention to recognise even to people living in nomad camps the highest rank (18 points) provided by the current ERP tender notice for *"families with serious residential problems...living in hosting facilities, public dormitories or in any case, in other places offered provisionally by authorities, entities and charities..."* or *"determined by temporary housing, for at least one year, in inappropriate hand-built shelters i.e. lacking the essential services"* (see exhibit 1 attached to the petitioners' defence brief filed during the 22.03.2013 hearing), intention clearly manifested for the purpose of the present proceedings since it was expressly described by the Housing Intervention management of Roma Capitale as a *"first partial and provisional response (since awaiting a reply) to the requests for an assessment of the alleged discrimination carried out by Roma Capitale"* (see note with protocol number 37651 of 23.12.2014 filed on 29.12.2014) entailed consequential choices and since proof of the contrary has been detected having the recurring parties filed on 12.01.2015 a communication dated 4.11.2014, mailed on 22.12.2014, addressed to a guest of the authorised village in *via Luigi Candoni*, similar to La Barbuta, that, when confronted with the request for assignment of the above mentioned A1 category has acknowledged the D1 category (14 points) provided for the families with three or more children;

that such obstacle to the admission for public housing for those who, in a situation of actual social hardship, live in authorised camps significantly downscales the actual free nature of accommodation in such camps;

that the voluntary nature of accepting accommodation in the authorised camp by those evacuated from unauthorised or illegal camps is just as much conditioned, given that, as evidenced, the provided and statistically preponderant solution, since it is in principle foreordained, is nothing but the authorised camp;

assuming:

therefore, that once reiterated the lack of nomadism in the groups in situations of accommodation problems to whom the **residential solution offered by camps such as La Barbuta**, in light of what is evidenced above, with a preponderance of Roma ethnicity and with a 50% of Italian citizens, and, on the other hand, the lack of an actual temporary nature of both such solution and

the social situation that it faces, said solution **generates, for the beneficiaries a lesser, non-temporary, different treatment in comparison with other subjects in a situation of social and even residential hardship**, thereby violating the inviolable right – as per Art. 2 Const. – of every person both as such and as part of a community where his personality is expressed, to a dignified existence, from the point of view of an individual's both basic and relationship, development, social affirmation needs and, therefore, an existence that is first and foremost free of any sort of hygienic, environmental, familiar, social cultural or work-related etc. deterioration; that such a differentiated, lesser treatment that the housing solution offered by the authorised camps such as La Barbuta provides, appears, therefore, ascribable to an **"indirect discrimination"** – as per Art. 2, par. 1, lett. b) of the Legislative Decree no. 215/03 – which takes place *"whenever a provision, criterion, practice, action, agreement or behaviour that are apparently neutral may place people of a specific race or ethnic origins in a position of significant disadvantage in comparison with other people"*;

that, as a matter of fact, for an **"indirect discrimination"** to take place, there is no need for a 'discriminatory intent', and, as consequence, the will to treat some people badly due to their ethnic group, but it is sufficient that a **"behaviour"** merely **"may"** do so in fact, thereby meaning that it is factually capable to **"place people of a specific race or ethnic origin in a position of considerable disadvantage in comparison with other people"** i.e. that it **"may"** cause such effects;

considering:

that, as specified above, by virtue of Art 3, par. 5 of the same Legislative Decree no. 215/03 *"differences of treatment that, albeit resulting indirectly discriminating, are objectively justified by legitimate ends, pursued through the appropriate and necessary means do not amount to discrimination acts as per article 2"*;

that such provision, in consideration of the fact that it was introduced in the Italian domestic legal system to comply with an obligation to enact EC Directives, must be interpreted consistently with the rationale and preceptive content of the adopted measure, and, therefore, in the specific case of EC Directive 43/2000, as inferable from its *whereas* section and pertinent provisions, namely:

Whereas nos. 17 and 18, whereby

"(17) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin, and such measures may permit organisations of persons of a particular racial or ethnic origin where their main object is the promotion of the special needs of those persons.

(18) In very limited circumstances, a difference of treatment may be justified where a characteristic related to racial or ethnic origin constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission." and

from the content of articles 4 and 5, according to which:

"Article 4 – Essential and decisive requirements for the performance of the working activity –

In waive of article 2, paragraphs 1 and 2 – Member States can establish that a different treatment based on a characteristic relating to race or ethnical origin does not constitute a discrimination should, for the nature of the working activity, or because of the context in which this is performed, such characteristic constitute an essential and decisive requirement for the performance of the working activity, as long as the purpose is legitimate, and the requirement proportioned.

Article 5 – Positive Action –

For the purpose of assuring effective and complete equality, the principle of equal treatment does not obstacle the maintenance or adoption of specific measures, addressed at avoiding or compensating the disadvantages connected to a specific race or ethnical origin, by a Member State.

having considered:

that in the case at issue, in regards to the above, the foundation, in 1995, of the camps in "La Barbuta" area, as much as the related "requalification" and "stabilisation" disposed in 2010 by the central Government by means of its delegated Commissioner, endorsed by Roma Capitale, through the adoption of its social regulatory plan no. 2011/2015 and the resolutions of Council and Junta respectively no. 24/08 and no. 54/2012, have been expressly originated and motivated by the necessity of solving a 'situation of social alarm' and therefore of public order and safety.

having held:

that such public order purposes, expressly posed as grounds for the foundation of La Barbuta camps in 1995, as well as for the declaration of the state of emergency that justified the decisional powers of the delegated Commissioner, in the exercise of which their stabilisation has been disposed, are themselves legitimate, addressing the necessity of protecting the social safety of the remaining population living on the (national and) municipality's territory, but they are pursued by means which the twenty-year history of La Barbuta camps itself, as discussed above, proves as being neither appropriate or necessary, considering that:

- although they have been directed since 1995, and therefore for 20 year, by regulating and concentrating the presence of the so called "nomads" in the camps only - initially only "registered in the census" and eventually "authorised" and "re-qualified", did not solve the issue relating to the presence of other 'camps', the ones defined as "tolerated" (e.g.: Foro Italico, Monachina, Tor di Quinto, Salviati 1 and 2, etc.) as much as the abusive ones: indeed, it is shown by the annex 7 attached to the social regulatory plan no. 2011/2015 of Roma Capitale – already quoted – which includes data updated at April 2011, that up to that date, the populations so called 'nomads' in the area of Rome were adding up to around 7,000 presences, against the 5,467 registered in November 1995 (see the annexes attached to order no. 80 of 23 January 1996: exhibit 2 Roma Capitale's statement of defence in the precautionary phase) and that of such 7,000 units, 3,680 were present in the 'authorised villages', among which La Barbuta, 1,310 in 'tolerated camps' and around 2,000 in abusive villages;
- in 2010, 15 years after their foundation, camps of La Barbuta area reached the same condition of ambient and socio-sanitary degradation of the villages for which a remedy should have been

adopted (see the introduction to order no. 4/2010 of the delegated Commissioner which disposed the 'stabilisation', and the introduction to order no. 592 of 1992 – already quoted);

- they offer a collective solution, independently from the individual responsibility for the specific conducts, source of the "long-lasting status of social tension" or of the "serious social alarm", respectively mentioned by Rome Mayor's order no. 592 of 1995 and by the DPMO no. 122/2008 which declared the "state of emergency in relation to the villages of nomad communities..." – already quoted, other than the subjective responsibility of the possible fraudulent conducts aimed at emulating a poverty status hiding wealth obtained illegally;

- they offer a generalised solution whose stabilisation has been projected in the framework of an emergency management on a ultra-regional level, which – also with reference to, in the case at issue, the waivers adopted to the city planning legislation and to the non-assessed consistency with the limits arising out of the presence of the close by Ciampino airport – definitively ceased to be legitimate, because of the effect of the irrevocable jurisdictional annulment of the abovementioned DPCM no. 122/2008 (see services conference relating to the stabilisation of the camp "La Barbuta" to which the companies ENAC and ENAV did not attend, and applicable conclusive minutes, which does not include anything about a possible related point of view: doc. 15 and 16 attached to the integrative brief of Roma Capitale);

- they offer a "residential" solution as previously discussed, which is permanent and with the perspective of expanding, but with structural characteristic of provisional nature (compliance with the technical legislation for caravans; location in a urban area addressed to public green areas with all the consequences regarding the difficult connection to all the services typical of civil life, etc.) to masses of people, mostly of Roma ethnicity (Sinti and Caminanti) and in situation of social and residential discomfort, not nomad anymore (for a percentage of 97/98%; other than Italian citizens for almost 50%);

having held:

that, moreover, the exclusion of 'indirectly discriminatory' effects of the camp solution, that cannot be grounded on the internal legislation criterion – under art. 3, par. 5 of Legislative Decree no. 215/2003 – of the "legitimate purposes pursued by appropriate and necessary means", appears even more distant from the protection system as disposed by the EU Directive no. 43/2000;

that the case at issue, indeed, deals neither with a different treatment "essential and decisive for the performance of the working activity..." (article 4), nor with those "specific measures aimed at avoiding or compensating disadvantages related to a certain race or ethnical origin" which, as much as art. 5 of the Directive 43/00, can only show a "positive action", being against the qualification of "specificity" the generalised, stable and complex nature which the equipped camp solution, such as La Barbuta, determines, because of what discussed above, and also considering the defensive allegations and claims of the Council management itself, according to which the location within the equipped village is not a simple residential solution but also an offer of a whole package of services aiming at a social integration whose actual success, however, has not been proven;

having considered:

that, moreover, **the conclusions reached until now are consistent with the ones reached by national and international entities**, since:

- the extraordinary Commission for the protection and promotion of human rights of the Italian Senate, in the final report on the investigation on the condition of Roma, Sinti and Caminanti in Italy of 9 February 2011 (exhibit 16 attached to the petition), and UNAR, as office aimed at challenging discrimination, founded within the Cabinet of the Ministry Council, disposed by art. 7 of Legislative Decree no. 215/2003, in the informative communication drafted for the European Commission in February 2012 (exhibit 5 attached to the recourse), recognised the feasibility of the so called "campisation" in regards to the security and integration of the discussed ethnic communities objectives;

- particularly, the abovementioned report of UNAR, which defined camp "as place of physical and relational degradation for families and persons of RSC origin", it reads:

"The lack of an accommodation and the residential disadvantage are maybe the most extreme examples of poverty and social exclusion from society. Even if access to an accommodation with limited cost is both a necessity and a fundamental right, the guarantee of such right still constitutes, nowadays, a difficult task in Italy ... It is an acquired data that the administrative solution of nomad camps has been for decades the reference model of accommodation policies for RSC in Italy, and this residential form, which pre-assumed the application to a nomad population and temporary stop services, soon became unable to respond to the needs of populations and communities that became sedentary, which only by 3% of cases still demonstrate an attitude towards itinerancy.

The administrative policy of "nomad camps" increased, during the years, the residential inadequacy until it became, from consequence, the fore condition and cause of the spatial marginality and social exclusion for those who suffered and suffer such modality of accommodation...

Particularly, it is an increasingly important need for the local authorities to get over Roma camps, since it is physical condition of isolation which reduces the possibility of social and economic inclusion of the RSC communities (see UNAR report, exhibit already quoted, p. 86);

- the extraordinary Commission and the Senate as much as UNAR, reporting data acquired through ANCI, also pointed out the need of "a wide spectre of residential options" alternative to nomad camps, furthermore already positively tested in other Italian Municipalities, such as Reggio Emilia, Modena, Firenze, Pisa, Prato, Bologna, Padova, Torino, Messina, Settimo Torinese, Genova, and schematically listed as: social construction in ordinary public accommodations; support on the acquisition of private ordinary accommodations; support on the lease of private ordinary accommodations; self-built accommodations sided by projects of social involvement; lease of public farmhouses and farmsteads, stop areas for itinerant groups; regularisation of the presence of caravans in rural areas of RSC property (see UNAR report, p. 88);

- Committee for the elimination of racial discrimination (from now CERD), founded in the sway of the international Convention on the elimination of every form of racial discrimination, opened in

New York on 7 March 1966, and ratified by Italy through Law no. 654 of 13 October 1975, according to which, under art. 9 of the Convention, Member States, and therefore also Italy, shall provide a yearly report on the legislative, judiciary, administrative and other kind of measures adopted in order to enact the Convention and that, on its side, Italy has to submit a yearly report on embraced activities to the General Assembly of the UN, through the Secretary General, and drafted the following documents:

a) resolution no. 27/2000, concerning exclusively the discrimination against Roma, recommending all Member States to take in favour of Roma at least the measures listed in it, including at paragraph 4, entitled "*Measures to improve living conditions*", point 30, the solicitation "*to develop and execute policies and projects intended to avoid the segregation of the Roma community in accommodations; to involve the Roma community and the associations as partners together with other people in construction, reconstruction and maintenance projects*" and at point 31 "*to refrain from placing Roma in camps out of the populated areas, in remote locations and without access to medical and other facilities...*" (see: document, translated in Italian, available on the website indicated in note no. 1 of the petition at p. 11);

b) recommendations to Italy 2012, formulated in relation to Italy's periodical reports no. 16, 17 and 18 where at paragraph 15 – p. 3/4 – it is stated that: "*the Committee deplores the evacuations of the Roma and Sinti communities which took place since 2008 in the context of the DEN (Nomad Emergency Decree) and observes with concern the absence of corrective measures despite the fact that the judgment rendered by the State Council on November 2011 has annulled the DEN ... As stated in the preceding conclusive observations, the Committee is concerned that the Roma, Sinti and Caminanti, citizens and non-citizens, live in a situation of de facto segregation from the rest of the population in camps that often lack of infrastructures to fulfil the most elementary needs... The Committee solicits the Member State to take the necessary measures to avoid forced evacuations and to provide an alternative adequate accommodation to these communities. ... Considering its recommendations no. 27(2000) concerning discrimination against the Roma and no. 30(2004) concerning discrimination against the non-citizens, as well as the national strategy to include the Roma, Sinti and Caminanti communities, the Committee encourages the Member State to increase the efforts to avoid residential segregation of Roma and Sinti communities, citizens and non-citizens, to develop social housing programs for them*".

In view of the judgment rendered by the State Council, the Committee recommends to the Member State to take adequate measures to provide to Rom and Sinti communities effective compensations for all the negative effects caused by the implementation of the DEN..." (document no. 3 attached to the statement of defence of the applicants in the proceeding of complaint, filed in this proceeding on 4 February 2013);

- the European Committee, established within the European Council as the body responsible of monitoring, vis-à-vis the Member States, and therefore **also vis-à-vis Italy,** **the application of the European Social Charter,** and the Protocol added in 1995 introducing a collective complaints procedure in case of the allegation of the Charter's breach, precisely with reference to the nomad communities' conditions in Italy, expressly Roma and Sinti communities, found Italy to be in

breach of all the above-mentioned provisions set out in art. 31 of the European Social Charter, recognizing the "right to housing", jointly with art. E, and therefore, in substance and specifically, ascertained the discriminatory nature of the allocation of these ethnic communities in camps, in particular establishing that: *"... persisting in its practice to allocate Roma and Sinti in camps, the Italian Government has failed in taking into consideration all the relevant differences or in taking adequate measures to ensure them the rights and collective benefits that must be available to everyone. Therefore, the Committee states that Italy did not prove that: it took the adequate measure to make sure that local authorities are fulfilling their commitments/responsibilities in this respect* (paragraph 36 and 37 of the judgment rendered on 7 December 2005 regarding the complaint no. 27/2004 made by the European Roma Rights Centre (the ERRC) with specific reference to the discriminatory nature of the housing solutions implemented in Italy towards Roma and Sinti – exhibit 11 attached to the petition), and moreover: *"the Committee reminds that article 31 paragraph 1 ensure the access to adequate housing. According to article 31 paragraph 3 the Member State has to implement adequate measures for the housing construction, in particular social accommodations. ... The Committee considers that the Member State (Italy) is bound to the principle of equal treatment for Roma and Sinti with reference to the access to public housing, but Italy did not prove that this right of access is actually granted or that the criteria regulating the access to public housing are not discriminatory. The Committee reminds that the principle of non-discrimination in article E includes also the indirect discrimination. The failure to consider the different situation of Roma and Sinti or the failure to introduce measures to specifically improve their housing conditions, including the possibility of an actual access to public housing, shows that Italy is in breach of Article 31 paragraphs 1 and 3 jointly with article E"* (ibid. paragraphs 45 and 46);

- the same European Committee, more recently, recalled the above-mentioned decision in the conclusions regarding the state of implementation of the European Social Charter by Italy in 2011, stating once again the non-compliance with the provisions of art. 31 of the measures taken towards Roma and Sinti communities in Italy (see Conclusions 2011 – January 2012: document no. 15 attached to the complaint, in particular page 41);

having held:

That the results of the investigations on the situation of the Roma and Sinti and Caminanti (RSC) communities in Italy, carried out by high-rank authorities of the State's organisation from both the legislative representatives (Senate of the Republic) and the administrative branch (UNAR at the PMO), may not be neglected as much as the opinions of the authorities of international organisation that Italy has acceded to, since, as pinpointed above, albeit not having effects involving directly the parties to this court trial, due to the legal relevance of the institutional functions of the former and the obligations conventionally undertaken by Italy on the international scenario, have an undeniable relevance to interpret the overall legal system in the specific area here at issue;

having held

that, in conclusion, on the basis of all the historical and documental elements so far considered, as well as the consequent observations here above presented, Roma Capitale's overall conduct, as described above, namely the attribution of residential units in the equipped village La Barbuta, is to be officially ruled as having discriminatory character with indirect nature;

that Roma Capitale must be ordered to cease the above-described conduct in full and the elimination of the related consequences;

that it must also be ordered to publish the present judgment once on *il Corriere della Sera* at Roma Capitale's expense;

that the extraordinary problematic situation at issue in this case and the persistent denial, by Roma Capitale, of factual circumstances emerged from its acts and documents, in compliance with a great number of administrative notes – in acts – created with the specific intent to provide data for the defence in the present proceeding, with consequent considerable burdening of the proceeding and of the duty to give reasons for the decision, constitute serious and exceptional reasons for the compensation of all the expenses related to the interim measures stage of the proceedings and half of the expenses related to the proceedings on the merits, which shall be paid for the remaining part by Roma Capitale in favour, jointly, to the plaintiff associations in the amount of € 9,350.00, of which € 350.00 for half of the expenses, € 1,500.00 for half of the expenses related to the study phase, € 1,000.00 for half of the expenses related to the introductory phase, € 4,000.00 for half of the expenses related to the pleading phase, € 2,500.00 for half of the expenses related to the decision stage, in addition to forfeit expenses in the amount of 15% plus tax legally due;

**For these reasons
declares**

the discriminatory character with indirect nature of the overall conduct carried out by Roma Capitale as described in the reasoning, namely the attribution of residential units in the equipped village La Barbuta;

orders

that Roma Capitale cease the above-described conduct in full and the elimination of the related consequences;

the publication of the present judgment once on *il Corriere della Sera* at Roma Capitale's expense;

compensates all the expenses related to the interim measures stage of the proceedings and half of the expenses related to the proceedings on the merits and sentences Roma Capitale to pay to the recurring associations, jointly, half of the expenses for the proceedings, determined in the amount of € 9,350.00 including forfeit expenses in the amount of 15% plus tax legally due.

To be served.

Rome, 30.05.2015

The judge
Ms Carmen Bifano