

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



26 November 2004

**Collective Complaint No. 27/2004  
European Roma Rights Center  
v. Italy**

**Case Document No. 2**

**OBSERVATIONS FROM THE ITALIAN GOVERNMENT  
ON THE ADMISSIBILITY**

**registered at the Secretariat on 4 October 2004**

**(TRANSLATION)**



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

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

**Written observations on the admissibility of**

**complaint n° 27/2004**

**by the European Roma Rights Center against Italy**

**submitted by the ITALIAN GOVERNMENT,  
represented by Mr Ivo M. Braguglia, agent,  
assisted by Ms Maria Chiara Malaguti,  
officially resident at the office of the Permanent Delegation  
of Italy to the Council of Europe**

1. On 28 June 2004 the non-governmental organisation, the European Roma Rights Center (ERRC), lodged a complaint against Italy under Article 31, taken alone or in conjunction with Article E of the revised European Social Charter (“the Charter”). The ERRC submits, *inter alia*, that the policies and practices for the housing of Roma in Italy, particularly with respect to the placement of these persons in allegedly insanitary camps subject to so-called arbitrary police controls, constitute an infringement of the principle of the right to housing established by the Charter and a form of racial discrimination and segregation breaching the principle of non-discrimination.

2. The Italian Government, while disputing the ERRC’s allegations on the merits, submits firstly that the complaint should be declared inadmissible in that its subject matter lies outside the scope of the Charter in terms of the persons protected thereby.

***Scope of the Charter***

3. The ERRC’s complaint relates to conduct allegedly having taken place against persons who do not fall within the scope of the Charter.

4. In this connection, the Appendix to the Charter concerning its scope states, *inter alia*, as follows:

*“Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the*

*understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.”*

5. The instant case relates to Roma groups who, in the ERRC’s own admission, come from various European and Asian countries, very many of which most certainly fall outside the scope of the Charter. Furthermore, even where those who may be nationals of other parties to the Charter are concerned, most are not lawfully resident or working regularly on Italian territory.

6. The ERRC states that some of the Roma people affected by the facts to which the complaint relates are nonetheless Italian citizens. However, even if it is true that some of the persons affected are indeed covered by the Charter, it is impossible in the instant case to apportion the contested facts in such a way as to be able to apply the principles of Article 31 of the Charter solely to persons covered by the Charter.

7. The ERRC does not object to acts or conduct aimed specifically at nationals of Italy or other parties to the Charter lawfully resident or working regularly in Italy. Instead, it is concerned with law and order measures directed at unauthorised camps but particularly with the purpose of identifying persons without residence permits. More generally, these Roma camps are usually set up to cope with temporary circumstances. They are specifically intended for people without resident permits or awaiting more permanent solutions and in the end there are always more people occupying the camp than was intended. Situations like these cannot be considered to relate to the housing rights of Italian nationals or nationals of other parties to the Charter lawfully resident or working regularly in Italy, even though it may be that nationals of these countries do actually live in such camps.

8. Furthermore, the effective exercise of the right to housing guaranteed by the Charter is subject to beneficiaries’ meeting certain conditions, namely that they are either lawfully resident or working regularly in the territory of the Party concerned. Article 31 provides that, 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”.

Any act or conduct of which the Italian Government might be accused should therefore be seen in the context of a failure to meet these conditions rather than a general, unspecified attitude towards all Roma people, whether or not they are lawfully resident or regularly working in Italy.

9. Because of the types of conduct objected to, the underlying reasons for them and the requirements for Parties to the Charter to be able to apply Article 31, it would be totally impossible to identify specific acts relating to persons covered by the Charter. Consequently, ERRC’s argument that the complaint should at least apply to those Roma who are covered by the Charter must be rejected because it is impossible to single out specific acts affecting these persons. The complaint should therefore be declared inadmissible in its entirety.

***The alleged irrelevance of citizen or resident status in the case of racial discrimination and segregation***

10. The ERRC also submits that in the event of racial discrimination and segregation, the Charter applies to everyone on the territory of the country concerned, irrespective of their status or origin.

11. In this connection, it should be noted at the outset that the complaint does not rely directly on Article E of the Charter, on discrimination, but on Article 31, on the right to housing. This is clearly shown by the way the complaint is structured:

*“[...] Subject of the Complaint:*

*6. Violations of Articles 31, taken alone and/or in conjunction with Article E;  
[...]*

*7.A. Failure to promote access to housing of an adequate standard to Roma, in violation of Article 31(1), taken alone and/or in conjunction with Article E;*

*7.B. Failure to prevent and reduce homelessness among Roma, in violation of RESC Article 31(2), taken alone and/or in conjunction with the Revised Charter’s Article E ban on discrimination;*

*7.C. Failure to make the price of housing accessible to Roma without adequate resources, in violation of Article 31(3), taken alone and/or in conjunction with Article E”.*

12. The main subject-matter of the complaint therefore is the alleged violation of the right to housing in respect of Roma under each of the three paragraphs of the Article cited above. The alleged discrimination against or even segregation of Roma is presented as an indirect consequence of the violation of Article 31.

13. The application of Article E is also dependent on the application of other Articles of the Charter. Under Article E, the enjoyment of the rights set forth in the Charter itself must 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”. This makes it clear that the goal of the Charter is to secure certain rights to protected persons, as described in the Appendix, and that any alleged discrimination must relate to those persons, namely, in this case, Italian citizens and nationals of Parties to the Charter lawfully resident or working regularly in Italy.

14. This link between the right to housing and certain conditions means that the scope of the Charter may certainly not be broadened to cover everyone present on the territory concerned irrespective of their state or origin.

15. Lastly, the ERRC refers to a number of international treaties of general application in support of its argument and concludes that the existence of such measures proves that in cases of racial discrimination or segregation, all treaties should be interpreted as covering everyone, irrespective of status or origin.

16. However, the treaties referred to by the ERRC expressly state that they cover all persons, irrespective of their origin or status, whereas the Appendix to the Charter expressly rules out those who are not nationals of Parties to the Charter lawfully resident or working regularly on the territory concerned.

17. Two further points should be made with regard to the three treaties mentioned by the ERRC – firstly that *the International Covenant on Civil and Political Rights* and *the International Covenant on Economic, Social and Cultural Rights* of 16 December 1966 (both of which came into force in 1976) acknowledge that international measures intended to secure the rights they themselves recognise may include the negotiation of conventions, in which the states concerned may settle matters by restricting the application of rules to a certain type of person (which is exactly what has happened with the Charter), and secondly that the *International Convention on the Elimination of All Forms of Racial Discrimination* does not apply to distinctions, exclusions, restrictions or preferences made by a State Party to the Convention between citizens and non-citizens (Article 1.2).

18. Moreover, interpreting the Charter by analogy with other international treaties not necessarily adopted by the States themselves would be contrary to the general principles of international law on the application and interpretation of treaties unless it was demonstrated that there is a generally applicable customary principle securing a right to housing for everyone, irrespective of their status, origin or connection with the host country. Furthermore, the Charter was adopted much later than these other treaties – not the other way around – and so, even among states which have adopted them, it cannot legitimately be argued that there is any automatic requirement to extend the Charter to persons who are not nationals of the Parties to it.<sup>1</sup> In point of fact, the positive decision to limit the scope of the Charter as provided for in its Appendix, made after the adoption of other international treaties and confined to European countries, must be regarded as evidence of the Parties' intention to grant a more effective right to housing to their own nationals lawfully resident or regularly working on the territory of one of the Parties than to other persons.

***The argument that the Roma are not legally resident because they have no residence permits, on account of misconduct by the Italian authorities***

19. Lastly, the ERRC asserts that one of a series of reasons why a large number of Roma are not lawfully resident in Italy is that the Italian government pursues policies of racial discrimination and adopts other arbitrary forms of behaviour where it comes to granting residence permits. The other main reason given by the ERRC – and acknowledged not to be the responsibility of the Italian government – is that Roma generally do not have the documents from their country of origin enabling them to begin the regularisation procedure in Italy.

---

<sup>1</sup> See the Convention on the Law of Treaties, Article 31(3)(b).

20. Aside from the fact that there is no evidence for it<sup>2</sup>, the ERRC's allegation (which the Italian government also rejects on the merits) cannot be a ground for excluding the application of the Appendix on the scope of the Charter. The reasons why persons may not meet the conditions required for the application of the Charter are of no possible relevance. If they did apply, the Italian government would be responsible not for violating Article 31 of the Charter but for other actions outside the scope of the Charter itself (in the instant case, actions relating to policies on the issuing of residence permits). Neither would this be of any benefit to the persons concerned, who would not be protected from the real violation of their rights according to the ERRC's interpretation of the facts, namely the refusal to grant residence permits.

\* \*  
\*

For all the above reasons , the Italian government requests the European Committee of Social Rights to declare the ERRC's complaint inadmissible, without prejudice to any defence on the merits.

Rome, ...

Avv. Maria Chiara Malaguti  
Council

Avv. Stato Ivo M. Braguglia  
Agent

---

<sup>2</sup> In fact the Second Report on Italy by the European Commission against Racism and Intolerance states as follows: "*Many foreign Roma/Gypsies possess no legal status in Italy and most of those who are legally present in Italy only possess residence permits valid for short periods of time. Roma/Gypsies are reported to have benefited comparatively less than other groups from the various opportunities for regularisation, partly because of their lack of awareness, and partly because many of them did not possess the necessary valid documentation from their countries of origin.*"