

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



21 April 2005

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

Case Document No. 5

**OBSERVATIONS FROM THE ITALIAN GOVERNMENT
ON THE MERITS**

registered at the Secretariat on 7 April 2005

(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 merits 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,
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1. On 28 June 2004, the non-governmental organisation *European Roma Rights Centre* ("ERRC") lodged a complaint against Italy alleging a violation of Article 31 of the Revised European Social Charter, alone or in combination with Article E. It argues that Italian policies and practice regarding the housing of Roma, particularly their placement where living conditions are harsh and camps subject to inappropriate police surveillance constitutes a violation of the right to housing laid down by the Charter and discrimination and racial segregation in breach of the principle of non-discrimination.

2. On 4 October, the Italian Government presented its written observations on admissibility. It argued firstly that the application should be declared inadmissible as being outside the scope of the Charter.

3. Nevertheless, on 6 December 2004, the Committee found that the formal conditions laid down in the Additional Protocol to the Charter had been satisfied and declared the complaint admissible. It decided that the Government's arguments concerning the scope of the Charter should be assessed later when it considered the merits of the complaint.

4. The Italian Government denies all the ERRC's allegations and considers once again that the complaint falls outside the Charter's scope and therefore wishes to reiterate and expand on the legal arguments presented in its observations on admissibility.

I. Scope of the Charter

5. The ERRC complaint concerns conducts that fall outside the Charter's scope.

Italian nationals and nationals of other parties lawfully resident or working regularly within Italian territory

6. The Appendix to the Charter, which establishes its scope, reads:

"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."

7. This particular case concerns Roma groups, who according to the ERRC itself come from many different countries of Europe and Asia, many of which undoubtedly fall outside the Charter's scope. And even in the case of those who are nationals of other parties to the Charter, the majority are not lawfully resident or working regularly within Italian territory.

8. According to the ERRC, some of the Roma population concerned by the complaint are Italian citizens. But even if some of those involved are in fact covered by the Charter, it is impossible in this case to sift out the alleged facts to ensure that the principles of Article 31 are only applied to persons covered by the Charter.

9. The ERRC is not complaining of decisions or conduct specifically directed at Italian nationals and nationals of other parties lawfully resident or working regularly within Italian territory. Indeed, the complaints concern official actions and conduct directed at unauthorised camps or with the aim of identifying persons without residence permits. As to the more general issue of Roma camps and their circumstances, these are normally set up as short-term measures for persons without residence permits or whose situation remains unsettled and they almost invariably end up with more residents than the number originally planned for. Such situations cannot be said to come within the scope of the right to housing of Italian nationals and nationals of other parties lawfully resident or working regularly within Italian territory, even if nationals of these countries may happen to be among those accommodated.

10. The right to housing embodied in the Charter is dependent on beneficiaries' satisfying certain social criteria, namely that they are lawfully resident or working regularly within the territory. Article 31 reads, "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 challenge to the Italian Government therefore has to be based on its failure to comply with these obligations and not on generalised and unspecified alleged conducts towards the Roma population as a whole, irrespective of whether or not they are lawfully resident or working regularly within Italian territory.

11. Given the types of activity complained of, the reasons for them and the very nature of parties' obligations under Article 31 of the Charter, it is impossible to identify specific actions relating to persons covered by the Charter. So even the ERRC's argument that the complaint should at least be heard in so far as it is confined to Roma covered by the Charter has to be rejected, since it is impossible to relate specific conduct to this latter group, and the complaint has to be dismissed in its entirety as being unfounded.

Alleged irrelevance of citizenship/residence status in cases of discrimination and racial segregation

12. The ERRC claims that in cases of discrimination and racial segregation, the Charter is applicable to everyone in the territory of the country concerned, irrespective of their legal status or origin.

13. It should be noted firstly that the complaint does not rely directly on Article E of the Revised Charter, concerned with discrimination, but is based on Article 31, the right to housing. This clearly emerges from the complaint's overall structure:

" 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."

14. The complaint is therefore principally concerned with the alleged violation of Roma's right to housing, in the form of breaches of each of the three paragraphs of Article 31. The alleged discrimination against, or even segregation of, Roma is the consequence of the violation of Article 31 and is indirect.

15. Article E has to be related to the other articles of the Charter. It specifies that the enjoyment of the rights in the Charter (including of course the right to housing) "shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status". The Charter's aim is clearly to grant a certain number of rights to protected persons, as defined in the Appendix, and any alleged discrimination has to be assessed in terms of those persons, in other words Italian nationals and nationals of other countries lawfully resident or working regularly within Italian territory.

16. The Committee confirmed this interpretation in its decision of 4 November 2004, complaint no. 13/2002, Autism - Europe against France, where it stated:

"51. The Committee considers that the insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the various substantive rights contained therein. It further considers that its function is to help secure the equal effective enjoyment of all the rights concerned regardless of difference. Therefore, it does not constitute an autonomous right which could in itself provide independent grounds for a complaint."

17. The aforementioned link between the right to housing and certain social criteria firmly excludes any extension of the Charter's scope to any person, irrespective of legal status or origin.

18. Finally, in support of its case, the ERRC also cites a number of international conventions of general application and argues that for the purposes of discrimination and racial segregation all international conventions must be interpreted as including everyone, no matter what their legal status or origin.

19. However, the conventions cited by the ERRC explicitly include everyone in their scope, irrespective of legal status or origin, whereas the appendix to the Charter explicitly excludes those who are not nationals of parties lawfully resident or working regularly within the territory.

20. Indeed, of the three conventions referred to by the ERRC, two, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both dating from 1966, acknowledge that international measures to secure recognition of rights that they themselves lay down may include conventions in which the countries concerned deal with the subject matter by limiting their scope to certain types of beneficiary (which is precisely the case with the Charter), while the in third, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Article 1.2 excludes from its application, distinctions, exclusions, restrictions or preferences made by state parties between citizens and non-citizens.

21. Moreover, interpreting the Charter by analogy with other international conventions that have not necessarily been adopted by the states concerned is contrary to the general principles of international law on the application and interpretation of treaties, since it has not been shown that a universal right to housing irrespective of persons' origin or connections with the host country is a customary principle of general application.

22. Even in the case of states that have adopted all the conventions referred to, the Charter was ratified much later than the others so it cannot be argued that the former impose a customary usage automatically extending protection to non-nationals of the parties to the Charter¹. In fact the explicit decision, after the adoption of the other international conventions, to restrict the Charter's scope as stipulated in the Appendix and to limit it to European countries simply highlights the parties' intention to secure a more effective right to housing for their nationals lawfully resident or working regularly within the territory of each of them.

23. This is confirmed by Article J.1 of the Revised Charter, which stipulates that "any amendment to Parts I and II of this Charter with the purpose of extending the rights guaranteed in this Charter shall be communicated to the Secretary General of the Council of Europe and forwarded by the Secretary General to the Parties to this Charter".

The argument that Italy is responsible for Roma's lack of residence permits and illegal status

24. Finally, the ERRC maintains that one (among a number) of reasons why Roma are not residing legally in Italy is that the Italian Government has practised racial discrimination and behaved in an otherwise arbitrary fashion in the granting of residence permits. The other main reason, which the ERRC acknowledges is not the Italian Government's fault, is that

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

Roma do not normally have documents from their countries of origin to enable them to start the regularisation process in Italy.

25. Apart from the fact that there is no evidence to support the ERRC allegations (which the Italian Government rejects in substance), the Appendix on the Charter's scope continues to apply. Why individuals fail to satisfy the conditions for the Charter's application is of no relevance to whether states are in compliance with the Charter. Otherwise, the Italian Government could find itself held responsible, *de facto*, not for any breach of Article 31 of the Charter but for actions outside the Charter's scope – in this particular case, its implementation of the policy for granting residence permits. Nor would this benefit those concerned, who would be offered no protection against the real violation of their rights according to this interpretation, namely the refusal to grant such a permit.

26. Finally, it should be noted that the Appendix states clearly that Article 18 of the Charter, on the right to social and medical assistance, is not concerned with the question of entry into the territories of the parties, since the right to settle in a country is not covered by the Charter.

27. For all these reasons, the Charter does not apply to the facts alleged by the ERRC. They also support the Italian Government's contention that its conduct has not in any way been incompatible with the Charter.

II. Implementation of undertakings to apply the right to housing and the non-discrimination principle

28. According to Article I of the Charter, its provisions are applied through a. laws or regulations; b. agreements between employers or employers' organisations and workers' organisations; c. a combination of those two methods; and d. other appropriate means. In its decision on the merits of Complaint No. 12/2002, Confederation of Swedish Enterprise against Sweden, the Committee stated that when methods other than laws or regulations were used to apply articles of the Charter, the national authorities must use their powers of oversight to ensure compliance with it. More specifically, in relation to Article I.b:

"28. The commitment made by the Parties, under which domestic legislation or other means of implementation under Article I, bearing in mind national traditions, shall not infringe on employers' and workers' freedom to establish organisations, implies that, in the event of contractual provisions likely to lead to such an outcome, and whatever the implementation procedures for these provisions, the relevant national authority, whether legislative, regulatory or judicial, is to intervene, either to bring about their repeal or to rule out their implementation."

29. In the case of the subject matter of the ERRC complaint, the Italian Government has done everything in its power to enact relevant national legislation and ensure that the competent local authorities do the same. Over the years it has achieved significant results and has always taken action against any conduct that could be in breach of Article 31 or the non-discrimination principle.

Existing and planned legislation

30. The Italian Government has always supported the principle of universal equality, in accordance with the country's Constitution, through legislation and regulations, various forms of oversight and penalties for unacceptable conduct.

31. Legislative-decree No. 286 of 25 July 1998, Single Act regulating immigration and the status of foreigners ("Single Act on immigration"), draws together all the provisions relating to foreign nationals and seeks to grant every foreign community on Italian soil the right of integration while fully respecting their culture, traditions and religion.

32. More specifically, Article 2 of Legislative-decree No. 286, concerned with the rights and duties of foreign nationals, states that:

“1. The fundamental human rights provided for in national laws, international conventions in force and recognised principles of international law are granted to the foreigner who is at the borders or within the territory of the State in all circumstances.

2. The foreigner who is lawfully residing within the territory of the State enjoys civil rights attributed to the Italian citizens unless international conventions in force and the norms in this Single Act provide for otherwise (...).

3. The Italian Republic, in compliance with the ILO Convention no. 143 of 24 June 1975, which was ratified by Act no. 158 of 10 April 1981, guarantees to all foreign workers lawfully residing on its territory and to their families equal treatment and equal rights as Italian workers.

4. Lawfully residing foreigners participate in local public life.

5. Foreigners are treated equal to citizens as regards jurisdictional protection of rights and legitimate interests in their relationship with the public administration and in access to public services, according to the law.”

33. Article 4 of the decree authorises entry into Italian territory for anyone carrying a valid passport or equivalent document and a visa, while Article 5 states that “foreigners who regularly entered the country according to Article 4 and who are in the possession of a residence card or a valid residence permit are allowed to reside on its territory”. Persons who do not have the required documentation are refused entry or expelled in accordance with the relevant legislation and international conventions.

34. Among the most recent measures, Legislative-decree No. 122 of 26 April 1993 subsequently became Act No. 205 of 25 June 1993 on “Urgent measures on racial, ethnical and religious discrimination”. This introduced measures to prevent and criminalise certain forms of racial intolerance.

35. Similarly, Section 41(1) of the Immigration and Foreign Status Act, No. 40 of 6 March 1998, states that "discrimination means any behaviour that, directly or indirectly, determines distinction, exclusion, restriction or preference on the grounds of race, colour, descent, or national or ethnic origin, religious opinions and practices, which has the purpose or the effect of nullifying or impairing the recognition, the enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economical, social, cultural or any other field of public life". Section 42 authorises victims of discrimination to apply to the courts for an immediate end to the discriminatory conduct. The Act also established observation, information and assistance centres to help the victims of discrimination.

36. Roma who are Italian nationals have the same rights and obligations as any other citizen. Similarly, if they are citizens of the European Union they enjoy the same freedom of movement and right of residence as all Community citizens. If they come from outside the Union, the aforementioned Legislative-decree No. 286 of 25 July 1998 applies.

37. Certain specific measures have been introduced to help Roma citizens enforce their rights, such as encouraging them to enter their names on the population/civil status register and comply with compulsory education requirements and issuing them with work permits.

38. Over the years, the interior ministry has frequently drawn local authorities' attention to the situation of Roma, and the need to encourage their social integration. Examples include ministerial circulars such as the ones on "*Problem of Travellers*" of 11 October 1973 and 15 July 1985, in which local authorities were urged to ensure that Roma were included on the civil status register, received medical and social assistance and issued with work permits. They were also required to lift all specific bans on Roma parking and to provide sites, equipped with essential services.

39. Finally, various pieces of legislation have been introduced to offer Roma special protection as communities and cultural groups, for example on 30 May 2001 (AC 225): "Protection of the right to be nomadic and recognition of Travellers population as linguistic minorities", 19 June 2001 (AC 895): "Recognition of Roma, Sinti and Travellers communities", and 11 July 2001 (AS 447): "Framework law for the promotion of education, vocational training, access to the labour market and to housing for the Travellers community and for the regulation of their presence on the national territory".

40. Article 3.5 of Legislative-decree No. 286 of 25 July 1998 stipulates that:

"Within their respective budgetary appropriations, regions, provinces, municipalities and other local authorities adopt the measures necessary for achieving the goal of removing the obstacles which, in practice, deny the full recognition of the rights and interests of the foreigners within the state territory, in particular as far as housing, language, and social integration are concerned, meanwhile respecting fundamental human rights."

41. Several regions have also enacted legislation, partly based on Council of Europe recommendations, to protect Roma and their culture. Some of it has subsequently been amended to take account of the fact that these groups have become less mobile over the years. All of this legislation contains provisions on Roma and travellers' rights, including issues relating to stopping places and their rights to health, housing, education and work.

Other appropriate means of securing the right to housing and the principle of non-discrimination

42. The Italian state offers foreign nationals, particularly Roma, constant and active protection against discrimination, using a range of administrative and judicial measures.

43. Firstly, under Legislative-decree No. 215 of 9 July 2003, which itself implements European Council Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the Italian Government has established an office to promote equal treatment and the ending of discrimination based on race or ethnic

origin, as part of the equal opportunities department of the prime minister's office. This is specifically intended to act as a safeguard and an institutional point of reference, to ensure that the various activities under the equality heading are working properly. The aim is to create the right conditions for effective integration with peaceful and informed cohabitation in accordance with the principles of human rights and respect for our culture.

44. The new regulations offers anyone who considers him or herself to be the victim of direct or indirect discrimination or harassment for racial or ethnic reason a rapid and effective judicial remedy in the form of a court order to end the discrimination, if it is established. Such action can be taken individually or on behalf of those concerned by anti-discrimination associations or institutions. The anti-discrimination office is empowered to receive complaints from alleged victims of discrimination. It operates a call centre for that purpose and offers them immediate assistance as well as support with any legal action they may take to end the discrimination.

45. The Italian courts also offer protection against discrimination, including discrimination against Roma. In the most recent case of which we are aware, on 2 December 2004, the Verona Court found certain Italian citizens guilty of a breach of the aforementioned Legislative-decree No. 122 of 26 April 1993, subsequently Act No. 205 of 25 June 1993, and ordered them to pay € 45 000 compensation to the *National Institution for Travellers*.

46. The case concerned events in the City of Verona where citizens had taken steps to prevent the establishment on new campsites in the area. Their initiatives mainly took the form of gathering signatures to oppose the new sites, putting up posters and statements to the local press. This provoked a strong reaction in the municipal council, following which two associations concerned with racial discrimination took action in the courts, leading to the decision of 2 December 2004.

III. Actions and conduct of which the Italian state is accused

47. Briefly, the ERRC accuses the Italian state of two types of violation: i. the poor state of upkeep of Roma camps, which it alleges frequently fail to meet minimum standards of hygiene and comfort, and discrimination against Roma in terms of access to social housing, and ii. police misconduct during certain surveillance and eviction operations in camps.

48. With regard to the upkeep of camps and access to social housing, the Italian Government has tried to show in the preceding paragraphs that it has always done its best to meet its Charter undertakings, using the methods specified in Article I, that is national and local legislation and regulations and any other appropriate means, subject to administrative and judicial scrutiny.

49. Turning to the specific episodes cited by the ERRC, it is impossible to make a detailed rebuttal of its claims given the total absence of supporting evidence other than the statements of those concerned. Where evidence has been forthcoming to support the ERRC allegations the authorities have taken appropriate action but otherwise there is no reason to believe that the events referred to by the ERRC, particularly those relating to public order, ever took place.

50. Nevertheless, the Italian Government will try to answer the ERRC's specific allegations in as much detail as possible, as a sign of its good faith in managing the situation of Roma in Italy.

The upkeep of Roma camps

51. As noted earlier, under the *Single Act on immigration*, local authorities are responsible for setting up and running camps. Several have been established, with in each case an indication of the maximum number of occupants and an appropriate level of hygiene facilities and services for that capacity.

52. Unfortunately, in nearly all the camps, the families authorised to move in accommodate other persons, usually ones with no residence permits, with the immediate consequence that the facilities become inadequate. In addition, many acts of vandalism are recorded, making these facilities unusable. One example is the Via Triboniano camp in Milan, which covers 6 000 m² and has two sectors with two separate entrances. The first accommodates 50 persons from Bosnia who have never created any problems and make proper use of the facilities at their disposal. The second houses 300 persons of Romanian origin. In this case the facilities have been seriously damaged by the inhabitants themselves.

53. In addition, unauthorised camps are constantly being discovered, where naturally enough there are no facilities, since they have not been installed by the relevant authorities. These camps also often include unauthorised buildings. In each case, the authorities try to find acceptable solutions to secure the transfer of persons with the right documentation to more appropriate accommodation.

54. The ERRC's allegations that Roma are discriminated against in the allocation of social housing must also be firmly denied. Such housing is allocated according to strictly objective and neutral criteria which give Roma the same entitlement as anyone else in the country fulfilling the necessary conditions.

Alleged misconduct

55. As noted earlier, the examples of misconduct cited by the ERRC all relate to police public order activities, which are always based on orders issued by the local head of police (*Questore*), after consulting the *Government local office* and, if necessary, the local mayor. These are quite distinct from criminal police activities under court direction. No trace has been found of any violations or misconduct in connection with the episodes referred to by the ERRC.

56. In the absence of material evidence concerning the episodes reported by the ERRC, the situations in Rome and Milan will be taken as illustrations of the conduct of the Italian state. In the capital, the only episodes reported have concerned operations to carry out identity checks and possibly expel those without any residence papers, check on whether possessions are lawfully owned and take action on offences that have been established in the courts. In none of these cases was any misconduct recorded by the relevant authorities. Moreover, in May 2004 the Rome *Government local office* set up a working group for illegal Roma camps made up of police representatives and highly qualified representatives of city council social services, who ensure that Roma rights are respected.

57. The same applies to episodes recorded in Milan. With particular reference to the mass eviction from the Via Adda building, which is described in paragraph 7.23 of the ERRC memorial and received a lot of press attention, the building was occupied illegally and the eviction took place without any violence. The 263 evicted persons from outside the European Union were taken to a civil protection centre and after their documents had been checked, 60 persons whose papers were in order were transferred to a reception centre and the rest were taken to a police station for the necessary administrative checks. Only those who lacked a residence permit were required to leave the country.

58. Similarly, in the case of a building in Via Barzaghi, whose residents were evicted by Milan city council on 6 November 2001, those concerned left the premises in an orderly fashion and without any incidents. They were transferred to the Via Triboniano camp referred to earlier. It should be added that health services are provided in the camp by the non-profit making organisation, "*I medici del mondo*" and volunteers from the neighbouring Sacco hospital.

59. In neither of these cases or in any of the others reported by the ERRC were any acts of violence or misconduct recorded, and all the actions were carried out on the basis of instructions relating to public order. Most of them were also carried out under the supervision of immigrants', or even specifically Roma, organisations.

60. In conclusion, the Italian Government maintains firstly that the ERRC complaint falls outside the scope of the Charter. However, it has also shown that it has always fulfilled its undertakings under the Charter using the methods prescribed in Article I, both nationally and locally, and has secured significant results over the years, and that it is continuing its policy of improving conditions for Roma. Turning to the allegations of misconduct, for which no evidence has been adduced, the Italian Government has shown that whenever there has been evidence that the law has been broken, the relevant authorities have taken action against the perpetrators and – where appropriate – compensated the victims.

61. For all these reasons, the Italian Government asks the Committee to find:

- firstly, that the ERRC complaint must be ruled inadmissible as falling outside the scope of the Charter;
- on the merits, that the Italian state has not violated Article 31 of the Charter, either alone or in combination with Article E;

and therefore to dismiss the complaint.

Rome, 21 March 2005

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