

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



18 August 2005

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

Case Document No. 6

**RESPONSE BY ERRC TO THE
OBSERVATIONS FROM THE ITALIAN GOVERNMENT
ON THE MERITS**

registered at the Secretariat on 15 July 2005



EUROPEAN ROMA RIGHTS CENTRE

1386 Budapest 62, P.O. Box 906/93, Hungary
Phone: (36-1) 413-2200; Fax: (36-1) 413-2201

E-mail: office@errc.org
<http://errc.org>

14 July 2005

Response by the European Roma Rights Centre (ERRC) to the Italian Government's "Report concerning the legal merits of case No. 27/2004 European Roma Rights Centre vs. Italy"¹

I. Introductory Remarks

I.1. The European Roma Rights Centre (“ERRC”) submits these written comments in response to the Italian Government’s Report concerning the legal merits of the Collective Complaint 27/2004 ERRC v. Italy.

I.2. As a preliminary matter, the ERRC notes that the Government has failed to seriously address the claims set forth by the ERRC in its original complaint. The Government has provided little substantive response and almost no factual material to address the matters described in an original ERRC submission of over forty single-spaced pages, which included a wealth of factual detail derived from a number of years of first hand documentation and monitoring of the human rights situation of Roma in Italy. Instead, the Government has opted to adopt a broad position of denial, supported almost by: (i) a reiteration of its earlier demand that the Complaint be found inadmissible; (ii) a recitation of laws “adopted or in the process of being adopted”, many of which of very questionable relevance to the matter at hand, and those of relevance accompanied by a dearth of information as to implementation and the withholding of key information needed to assess the efficacy of these laws with respect to Roma; (iii) a presentation of several case studies, from which it brings no conclusions or even inferences as to the relevance of the matter at hand and, finally; (iv) hints or direct assertions that Roma themselves are to blame for the situation they face with regard to housing in Italy. One might conclude from the Government’s Report that in fact it knows very little about the situation of Roma in Italy and the access of Roma to fundamental rights secured under the Revised Charter.

¹ “Council of Europe, European Committee on Social Rights, For the attention of the Executive Secretary, acting under the authority of the Secretary General of the Council of Europe, “Report concerning the legal merits of case No. 27/2004 European Roma Rights Center Vs. Italy”, Presented by the Italian Government, Represented by Ivo M. Braguglia, Attorney, assisted by Maria Chiara Malaguti, Residing Member of the Permanent Representation for Italy at the Council of Europe, 3 rue Schubert, 67000 Strasbourg. (Hereinafter “Government Report”).

I.3. The ERRC finds the Government Report wholly inadequate to meet the needs of the assessment of the present proceedings. Comments on the substance of the Government Report – if indeed the contents of this document merit that description – follow below.

II. Matters Arising under Paragraphs 1-27 of the Government Report

II.1 The ERRC would note that although this complaint was declared admissible by the European Committee of Social Rights on 6 December 2004, the Government has again delved at length on the issue of admissibility, choosing to omit for the most of its response the substance of the complaint and the facts thereof. Indeed, very little of the Government's response is actually devoted to the substance of Collective Complaint 27/2004, and nothing in the first half of the Government's Report relates in any way to the allegations raised by the ERRC. In addition, it is disappointing that a number of the matters raised at paragraphs 1-27 of the Government – particularly as they relate to the scope and nature of the complaint and the persons at issue in the complaint -- appear to innocently or wilfully misconstrue issues raised in the ERRC Collective Complaint vs. Italy, as well as clarified in the document submitted by the ERRC on 11 November 2004 in response to the Government's comments on the admissibility of the Complaint.

II.2 In the interest of brevity, the ERRC will not comment at length on the views expressed in paragraphs 1-27 of the Government's Report, since we cannot see any substantive arguments raised there not brought previously and addressed in prior submissions on this matter by the ERRC. We understand that Collective Complaint 27/2004 is admissible and the present discussion is to the merits of the Complaint. We refer to our submission of 11 November 2004 on matters related to admissibility for matters related to the Government's comments under paragraphs 1-27. Nevertheless, several matters included in paragraphs 1-27 merit attention here:

II.3. The Government contends that “[...] the camps are normally designed for dealing with temporary situation, with people who do not possess resident permits or who are waiting for more stable solutions [...].” No documentation undertaken by the ERRC in Italy or by any partner organisation with which we are in regular contact in Italy supports this claim. Residents of “camps for nomads” include Italian citizens, as well as persons born in Italy and/or present in the country for periods as long as thirty years. There is no indication that Italian officials have any intention to integrate persons housed in camps. The far more frequent scenario is, as noted in the Government's Report, expulsion from the country.

II.4. As in its previous submission, the Government takes the liberty of asserting matters about the ERRC Collective Complaint which are not true. In paragraph 9, the Government states that “[T]he ERRC does not contest acts or conduct specifically addressed at nationals of Italy or other member countries of the Charter who are legally residing or employed on a regular basis in Italy. The organisation contests acts and conduct which infringe on public order, such as the existence of unauthorized camps or camps which have the aim of identifying individuals who do not possess a residence permit”. Once again, we affirm here that, contrary to the claims made by the Italian government, the ERRC is challenging policies and practices aimed at or resulting in the frustration of the right to housing for very significant segments of the Romani population, notably such violations involving persons who are Italian citizens, as well as persons who are nationals of other Parties to the Revised Charter who are lawfully resident or working regularly in Italy, i.e. the vast majority of persons forced to live in such camps.

II.5. In its Report, the Government appears to have difficulty recalling that the persons at issue – where they are not Italian citizens – are generally citizens of Council of Europe Member States and indeed in the most likely scenario citizens of Parties to the Charter. This fact notwithstanding, the Government submits that persons at issue are from “European and Asian countries” (paragraph 7). In close to a decade of human rights monitoring undertaken in Italy, involving intensive first-hand field research, the ERRC has never on any occasion encountered a Romani person inside or outside a “camp for nomads” who did not originate from a Council of Europe Member State. The slip seems indicative of a general approach by the Italian government, whereby persons originating from any point East of Italy are “Asian” and therefore of limited franchise, even where such persons originate from Parties to the Charter and/or Revised Charter. The appearance in the Government Report of such raw displays of its view of other Council of Europe Member States and persons originating from other Council of Europe Member States makes dispiriting reading.

II.6. The Government introduces in its Report matters of no relevance to the Complaint or to any of the human rights issues involved in Complaint, nor of any relevance to issues raised at any point by the European Roma Rights Centre. For example, the Government states at paragraph 26 of its Report that “access to the territory of the member countries, the right to settlement in a country [is] not covered by the Charter.” As the Committee is aware, at no point during these proceedings has the ERRC suggested that matters related to access to the territory of a Member State would be covered by the Charter. Our submissions have related solely to matters related to the frustration of Charter Rights, on racial grounds, by Italian authorities.

II.7. As noted above, no matters raised in the Government’s effort to justify the systemic frustration of the fundamental rights secured under the Charter raised in s 12-27 of the Government Report have not been previously addressed in the submission by the ERRC of 11 November 2004. However, the ERRC would note developments in Committee jurisprudence since that date. Ruling in the Collective Complaint 15/2003 (“European Roma Rights Centre v. Greece”), the Committee held, at paragraph 26, that “the principle of equality and non-discrimination form an integral part of Article 16 as a result of the Preamble.” European Roma Rights Centre v. Greece pertained to the systemic frustration of housing rights as this contravened the original Charter, namely Article 16, taken together with the original Charter’s pre-ambulatory non-discrimination guarantees. This approach will only be magnified as a result of the strengthened basis offered by Article 31 taken together with or independently of the Article E non-discrimination guarantees, and hence the Government’s systemic racially discriminatory housing practices with respect to Italian citizens and others whose rights are secured under the Revised Charter (namely citizens of other Charter Parties lawfully resident or working regularly in Italy) are that much more reprehensible, and certainly fall afoul of international law, and in particular of Italy’s obligations under the Revised Charter.

II.8. Further, the argumentation in the Government Report at paragraphs 12-27 gives rise to the concern that the Government may not be aware that it is impermissible to undertake racially discriminatory measures – including racial segregation of Italian citizens and citizens of other Charter Parties lawfully resident or working regularly in Italy in the field of housing – while justifying these measures on grounds that they are permitted limitations of rights of non-nationals. The Article E guarantee in the Revised Charter is surely included to protect individuals from arbitrary treatment and the pernicious effects this will have on the individual concerned, as well as the degrading impact it will have on society at large. The contention that the Italian government believes it is free to undertake any manner of racially discriminatory measures – particularly against Italian citizens and citizens of other Charter Parties lawfully resident or

working regularly in Italy in the field of housing – as long as it does so with reference to the nationality exclusion, would be deeply unsettling.

II.9. The foregoing recalls the most worrying aspect of the Italian government’s approach, as expressed both in the current Government Report, as well as in the comments submitted by the Italian Government concerning the admissibility of this Collective Complaint: the view, expressed again here at paragraph 8 of the Government Report,² that it is impossible for the Italian government to distinguish between individuals subject to the Charter’s protections and those who are not. The ERRC urges to the Committee to reject this reasoning as fundamentally at odds with both the content and the spirit of the Charter.

III. Matters Arising under Paragraphs 28-46 of the Government Report

III.1. On the substance of the ERRC Collective Complaint, the Government Report offers little on which to comment. The text offered by the Government indicates generally that it either does not have any quality information on the fate of many tens of thousands of persons in Italy with respect to the rights included in the Charter, or if it has such information, it has not been able or willing to present it in the course of these proceedings. The Government has provided no information in its Report to address any of the matters presented by the ERRC in the complaint on the basis of its documentation and monitoring of the situation of Roma in Italy, and indeed has offered almost no information whatsoever on the substantive matters of the ERRC Collective Complaint. The comments that follow below must of necessity be limited to the scant information the Government has provided in its report, and matters arising from it.

III.2. Apparently with not a trace of irony, the Government presents as an example of positive measures in this area a policy called “The Nomad Problem” (see paragraph 38, Government Report). The ERRC wonders whether the Government has on hand similar policies on “The Jewish Problem” or “The Negro Problem”. The Government cannot possibly be presumed to be in good faith where it pursues an approach defining an entire ethnic group as a “problem”.

III.3. The Government Report states, at paragraph 39, that several bills have been introduced in Parliament related to minority protection for Roma. It does not state the fate of these bills however.

III.4. At paragraph 41, the Government Report notes that “several regions, applying the recommendations of the Council of Europe, adopted laws to protect Roma and their culture”. The Government does not state, probably because it would shed further questionable light on the Italian government’s practices in this area, that during discussions as to minorities protected in Italy under Italy’s minority protection legislation, Roma were pointedly excluded from the protection of that legislation, a matter of significant concern to the Council of Europe during discussions of Italy’s measures to implement the Framework Convention on the Protection of National Minorities. Indeed, despite extensive public debate on the matter of recognising Roma as a national minority in the context of Italy’s joining the Framework Convention, the Government refused to provide Roma with full standing for the purposes of minority protection in Italy, and

² “The ERRC states that a portion of the Roma affected by the issues dealt with in the complaint are in fact Italian nationals. Insofar as a portion of the persons concerned fall within the jurisdiction of the Charter, it is impossible in the case in question to divide the contested facts in order to apply the principles contained in Article 31 of the Charter exclusively to persons who fall within the jurisdiction of the Charter.”

this was subsequently reflected in serious concerns raised by the Advisory Committee to the Framework Convention. These are worth quoting here in detail:

“The situation of the Roma gives rise to deep concern. Besides the shortcomings of the existing statutory provisions for safeguarding their identity and culture, the Advisory Committee notes that by placing them in camps, the authorities have so far failed to place due emphasis on their integration into Italian society. This state of affairs should in future give way to a comprehensive and coherent strategy to provide them with housing, end the discrimination and socio-economic inequalities from which they suffer, and encourage their participation in the public affairs concerning them.”³ [...]

“In its initial State Report and its two further reports, the Italian Government supplied information on all minorities protected by Law No. 482 of 15 December 1999, deeming them covered by the Framework Convention. Furthermore it has indicated that the Ladins and the Walsers are a minority-in-minority. However, there was no detailed information on the Roma minority although the initial State Report mentions its presence as a "minority with no connection with any territory" and gives an estimate of its numbers. [...] The Advisory Committee agrees with the Italian Government that the Framework Convention must be applied to the historical linguistic minorities protected by Law No. 482 of 15 December 1999, and notes the Government's opinion that the Framework Convention could be invoked by the Italian courts when delivering rulings. Next, the Committee observes that although the initial draft of Law No. 482 on protection of historical linguistic minorities included the Roma minority, it was later excluded at the parliamentary deliberation stage chiefly on the ground of this group's having no association with a given territory. The Advisory Committee is of the opinion that, especially in view of their attested historical presence in Italy, the Roma should also be entitled to the protection afforded by the Framework Convention. The Committee therefore welcomes the clarification given when it visited Rome by the representatives of the Italian Government to the effect that the Roma, while not coming under Law No. 482 of 15 December 1999, are nonetheless protected by the Framework Convention. The Advisory Committee notes, however, that at present there is no legal instrument at national level granting the Roma comprehensive protection. The many legislative provisions concerning the Roma which have been adopted at regional level may in fact not suffice; often confined to promoting certain cultural aspects or to the pursuit of social aims, they are very disparate and significantly lack coherence. [...]"⁴

III.5. Above and beyond issues related to the failure by the Italian government to provide Roma with adequate minority rights protection, the Advisory Committee raised a number of concerns of direct relevance to the present Collective Complaint, namely:

³ Executive Summary, Advisory Committee On The Framework Convention For The Protection Of National Minorities, Opinion On Italy, Adopted On 14 September 2001 (hereinafter “FCNM 2001 Report”). The Advisory Committee’s second cycle report is not yet public.

⁴ FCNM 2001 Report, paras 12 and 16.

The Roma are in a situation contrasting sharply with that of all the other minorities, whereas they form a large minority in numerical terms. The Advisory Committee notes with anxiety that the full and effective equality of many members of the Roma community with members of the majority and of the other minorities is not achieved in Italy, particularly from the socio-economic standpoint. The Roma are disadvantaged in education (see comments relating to Article 12) and contend with severe difficulties in gaining access to medical care, employment and housing (see comments relating to Article 6).⁵ [...]

Roma are placed in a plainly different situation which causes deep concern with regard to the discrimination which they incur. It is clear to the Advisory Committee that more satisfactory integration of Roma cannot be confined to a purely social approach but depends primarily on recognising and eliminating all forms of discrimination faced by this population.

In the media field, the Advisory Committee notes the persistence of information presented in such a way as to strengthen the stereotypes associated with Roma. For instance, in reporting criminal facts, some newspapers mention the ethnic origin of the alleged perpetrators, especially when those belong to the Roma community, thus reinforcing the prevalent clichés.

According to certain credible allegations, the conditions under which the police forces operate in the camps sometimes lead to excesses: frisking, search of premises and interrogations surrounded by a disproportionate show of force are said to be frequently extended to the entire camp and to occasional acts of police brutality including insults with racist connotations. It also emerges that some police officers refuse to state the reasons for the measures taken and to show those concerned the warrants authorising them to proceed. In such circumstances, the Advisory Committee believes that it would be expedient for the Italian authorities to review the conditions of police action in the camps, and the possible existence of anti-Roma prejudice among the police and ways to remedy the malfunctions observed.

The Advisory Committee also refers to its comments in respect of Article 4, to the effect that the practice of placing Roma in camps is not apt to enhance their integration. Placement of Roma in camps of this kind can indeed only aggravate the risks of discrimination against them and is thus not compatible with Article 6 of the Framework Convention.⁶ [...]

With regard to paragraph 3, the situation of Roma in the educational field gives rise to deep concern and differs appreciably from that of the other minorities and of the majority, so that equal opportunity in access to education is not yet secured to this minority.

⁵ FCNM 2001 Report, para 24.

⁶ FCNM 2001 Report, paras. 36-39.

The abnormally high level of absenteeism among Roma pupils forms one of the main obstacles to be eliminated. This absenteeism admittedly has varied and complex causes, but the Advisory Committee feels that in general state education should accentuate the language and culture of the Roma minority more than at present, in accordance with the principles set out in Committee of Ministers' Recommendation No. (2000) 4 on the education of Roma/Gypsy children in Europe. The transportation problems facing Roma pupils who live in camps remote from schools, and the precarious financial circumstances of many parents, are also factors of absenteeism which should be addressed. Some moves have already been made at local and regional level to aid school bus services and relieve the parents' lack of means. The Advisory Committee nonetheless considers that the Italian authorities should redouble their efforts in this connection.⁷

The ERRC notes that, close to four years following the adoption of the Advisory Committee's report, all of the matters raised in the Advisory Committee's remain of deep concern in Italy. At the heart of these concerns are, as noted by the Advisory Committee, the aggravating policies of racial segregation pursued by the Italian Government in the field of housing, the subject of this Collective Complaint.

III.6. Further legislative measures, presented in the Government Report at paragraphs 28-46, relate extensively to immigration matters "adopted or in the process of being adopted". The ERRC notes here that the subject matter of this complaint relates to racial segregation in the field of housing of persons who are Roma or are otherwise regarded as "Gypsies" and the frustration of related rights arising from Article 31 taken together with or independently of the Charter's Article E non-discrimination guarantees. The relevance the Italian's recitation of Italian immigration laws is not at all clear, and has not been elucidated in the Government Report.

III.7. The Government Report notes at points 43 and 44 the establishment of a "Bureau for the promotion of equal treatment and the abolition of racial and/or ethnic discrimination" adopted under a 2003 anti-discrimination law. The Government Report does not present any single measure that body has undertaken with respect to challenging anti-Romani racism or related acts of anti-Romani discrimination in Italy, nor does it make reference to any single instance in which the Bureau took action to challenge discriminatory abuses of Roma in Italy. The ERRC believes no such examples are presented because the Bureau has never in fact undertaken any challenge to discriminatory practices against Roma in Italy.

III.8. The Government Report presents, at paragraphs 45 and 46, a narrative summary of the recent prosecution of members of the Liga Nord party in Verona for their efforts to hound "Gypsies" out of the city via them means of a petition inciting the public to racial hatred against Roma in Verona. The episode is the sole and single instance of which the ERRC is aware in which any Italian authority undertook any form of legal measures against an act of anti-Romani racism in Italy. In the matter, following the initiative of the victims and several non-governmental organisations, an Italian court imposed fines and suspended prison sentences on a number of the perpetrators. The case is currently under appeal. Once again however, it is entirely unclear how this matter – the successful criminal prosecution of activist racists undertaking extreme forms of incitement to racial hatred – has anything to do with the matter at hand, namely the systemic frustration of Charter rights on racial grounds as a result of policies and practices pursued by the

⁷ FCNM 2001 Report, paras 54 and 55.

Italian government, combined with the total failure of any authority to challenge these in any effective manner. Their presentation in these proceedings is simply a distraction from the substance of the matter at issue.

IV. Matters Arising under Paragraphs 47-59 of the Government Report

IV.1. The Government confines its comments on the facts of the matter at hand to a scant twelve paragraphs – Paragraphs 47-59 -- at the penultimate section of the Government Report. Where these are enlightening at all as to the policies and practices at issue in this Collective Complaint, they tend to give rise to further concerns with respect to government practice.

IV.2. At paragraph 51, the Government states that the creation and regulation of the camps is the responsibility of local authorities in accordance with Italy's Unified Immigration Act. The ERRC notes that as a result of responsibility for the camp system falling under the Unified Immigration Act, as Italian Romani and Sinti citizens must register local residence at the local immigration offices, rather than at the regular registration office at which all other Italian citizens register local residence.

IV.3. At paragraph 52, the Government blames Romani camp residents for the substandard conditions of the camps. The ERRC has visited on a number of occasions Camp Via Triboniano, to which the government refers. It is true that as a result of the failure of the Italian government to provide adequate housing solutions for many Roma, the residents of this particular camp are forced to live in highly overcrowded circumstances. The excessive number of persons forced to live in this state authorised camp, coupled with the inadequacy of the infrastructure provided by the government – for instance, two working toilets and three garbage containers in 2004 – have led to serious dilapidation of the facilities as the government does not provide adequate upkeep in the area. It is unclear however on what grounds the Government holds camp residents accountable for their own racial segregation and conditions arising from it.

IV.4. At 54, the Government states, “[...] we also firmly refute the allegations of the ERRC concerning the alleged discrimination against Roma in terms of access to public housing: public housing is granted according to objective and neutral criteria and can be sought equally by Roma or any other individual in the territory by fulfilling the required conditions.” The Government presents absolutely no data on Roma and access to social housing, so there is no way to assess the accuracy of this statement or whether in practice Roma are able to access social housing on an equal footing with others in Italy. In light of the very serious concerns arising in Italy, to which the Government's attention has been repeatedly brought, this is not a minor omission, but rather a very serious failing. The failure of the government to provide any factual information on the access of Roma to social housing, and in particular to provide any statistical data in this regard is of particular urgency given the fact that the Government has elsewhere indicated that it views policies named “The Nomad Problem” as matters about which it believes it can be proud. There is clearly an urgent need for detailed information on the access of Roma in practice to social housing and the Government has patently failed to provide it here.

IV.5. At paragraphs 55-59, the Government states that the regular raids by law enforcement officials of Romani homes fall within the jurisdiction of public order and that no violation or improper act can be observed in the cases included in the ERRC's complaint. Thus, despite Article 14 guarantees in the Italian Constitution providing for the inviolability of the home, the Italian government considers regular raids of the homes of Romani individuals to repeatedly

conduct identity checks and suppress the criminal activities of people who may or may not have been convicted of or even suspected of crimes to be proper conduct.

IV.6. The Government's claims as to the legality of the conduct of police officers in their interaction with Roma is belied on a regular basis by frequent reports of abuse reaching the ERRC office from partner organisations or documented by the ERRC during first-hand research. These have continued without interruption during the course of these proceedings. Thus, to name only example, partner organisations provided photographic documentation of a Romani woman being stripped naked on 29 April 2005 in public in Padua during the course of detention on suspicion of possession of narcotics. These photographs are on file at the ERRC and can be presented to the Committee if so requested.

IV.7. More directly to the matters at issue in this Collective Complaint, regarding the description of events surrounding the eviction of several hundred Roma from Via Adda in Milan, the ERRC submits that not all individuals with residence permits were provided housing in a "transitional facility" surrounded by barbed wire as during an ERRC field mission in April 2004, the ERRC met several Romani families with residence permits evicted from Via Adda living in tents beside the temporary camp; the testimony of such individuals was included at paragraph 7.24 of the ERRC's complaint. The ERRC further recalls that, according to the affected Romani individuals interviewed, the forced eviction was carried out in the absence of procedural protections as set out in international law including the International Covenant on Economic, Social and Cultural Rights at Article 11, as elaborated in the UN Social and Economic Rights Committee's General Comment 7.

V. Conclusion

V.1. The materials presented in the Government Report shed almost no light on the matters at issue in Collective Complaint 27/2004 and as such are fundamentally inadequate.

V.2. In its February 2005 decision on the merits of Collective Complaint No. 15/2003, *European Roma rights Centre v. Greece*, the Committee held that:

- "[O]ne of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion" (19);
- "[...] in order to satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). [...] Furthermore the obligation to promote and provide housing extends to security from unlawful eviction" (24)
- "[...] ultimate responsibility for implementation of official policy lies with the [...] state" (29).

V.3. The Italian Government is currently failing to a dramatic extent to meet its Charter obligations where Roma are concerned, on the basis of the situation described in the ERRC Collective Complaint against Italy, dated 18 June 2004, as well as in a subsequent submission on 11 November 2004, and in light of the issues set out above.

V.4. The ERRC therefore requests that the Committee find Italy in violation of the Revised European Social Charter.

On behalf of the European Roma Rights Centre,

A handwritten signature in dark ink, appearing to read 'Claude Cahn', with a long, thin vertical stroke extending downwards from the end of the signature.

Claude Cahn
Acting Executive Director