

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



18 August 2005

**Collective Complaint No. 31/2005  
European Roma Rights Center  
v. Bulgaria**

**Case Document No. 2**

**OBSERVATIONS FROM THE BULGARIAN  
GOVERNMENT ON THE ADMISSIBILITY**

**registered at the Secretariat on 29 July 2005**



## **Observations of the Bulgarian Government on the admissibility of the Complaint Ref. No. 31/2005 (European Roma Rights Centre v. Bulgaria)**

1. Concerning the procedure of collective complaints, according to Part IV, art. D, Para 2 of the European Social Charter (revised), under the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, we do not contest that the European Roma Right Centre meets the requirements of Art. 1 “b” from the above-mentioned Protocol and has particular competence for the matters in question according to Art 3. We invite the European Committee of Social Rights to establish whether Mr. Claude Cahn, acting Executive Director has been empowered in proper way to represent the organisation when the complaint has been submitted.

Concerning the alleged violations by Bulgaria of Art. 16, independently or in conjunction with Art. E of the ESC(r), we consider that the right to housing is explicitly stipulated in Art. 31 and not in Art. 16, which deals with the right of the family to social, legal and economic protection and the respective obligation of the Parties to undertake to promote this right by several non-exhaustively listed means, which include provision of family housing. By this way the right to housing provided in Art. 16 is considerably restricted in scope and has to be interpreted only in conjunction with the other part of the measures targeted towards social, legal and economic protection of the family.

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

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

### ***Article 31 – The right to housing***

*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.*

As far as Bulgaria has not ratified Art. 31, but only Art 16 of the ESC (r), we kindly invite the European Committee of Social Rights to declare the complaint manifestly ill-founded on this ground. We consider that the “automatic” transfer of the rights contained in Art. 31 in Art. 16 should not be admitted because otherwise would mean that Art. 31 is deprived of content, which has obviously not been the intention when the ESH(r) has been created. Furthermore the interpretative broadening of the scope of the rights and the application of Art. 16 with the provisions of Art. 31 would violate the will of the State-Party to accept some article and to not accept another.

Moreover such extensive interpretation would create obstacles when accepting new provisions of the ESH(r) as far as this could bring insecurity of the exact content and extent of the obligations thereof. We do not consider admissible to put the rights arising from Art. 31 in the material scope of Art. 16 by simply declaring those rights for “family rights”.

2. While there are several allegations in the complaint, which should not be examined of merits at this stage of procedure, we would like however to pay attention to some of them because we consider they have close relations with its admissibility. In general terms according to the plaintiff, Roma are precluded from legally registering their houses; they live in lack of legal security of tenure and are often subject to forced evictions by administrative way. These allegations are supported by several individual examples.

According to the modern system of protection of human rights, an international body can examine a case only if all domestic remedies have been exhausted. This is the principle of Art. 35\* of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is supported by the constant jurisprudence of the Court. We consider that such rule should be applied by parity of reasoning in this case, because there is no reason to not let the State-Party to apply its own legislation by its internal legal system, but to use directly international instance. We do affirm that there is not only administrative, but also court protection from the afore-mentioned alleged violations. If the plaintiff does not prove that such remedies have been used and exhausted, we consider that the complaint has to be declared inadmissible. In case that the Committee accepts this reasoning, we could deliver detailed description of the legislation related to these rights and the procedures for court protection of them. The complaint itself shows that Bulgarian court has found Sofia electrical company liable for discriminatory denial of services to Roma. However as far as there are no evidence in the complaint for other actions before a court, which possibility, we do state again, exists, we kindly invite the Committee to declare the complaint inadmissible on this ground.

\*Article 35 – Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that:
  - a. is anonymous; or
  - b. is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.