

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



21 September 2005

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

Case Document No. 3

**RESPONSE BY ERRC
TO OBSERVATIONS FROM THE BULGARIAN
GOVERNMENT ON THE ADMISSIBILITY**

registered at the Secretariat on 20 September 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>

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Secretariat of the European Social Charter
Directorate General of Human Rights – DG II
Council of Europe
F-67075 Strasbourg CEDEX
France

Response by the European Roma Rights Centre to the “Observations of the Bulgarian Government on the admissibility of the Complaint Ref. No. 31/2005 (European Roma Rights Centre v. Bulgaria)”

1. The European Roma Rights Centre (ERRC) welcomes the comments of the Bulgarian government concerning the admissibility of Collective Complaint 31/2005, received by the ERRC on 8 August 2005.

2. As to the matter of whether Mr. Claude Cahn, Acting Executive Director, was empowered to represent the ERRC at the time the Complaint was submitted, appended herewith please find a power of attorney dated 25 January 2005 from two members of the ERRC Board of Directors, authorising Mr. Claude Asher Cahn (one and the same person as the signatory of Collective Complaint European Roma Rights Centre v. Bulgaria of 21 April 2005) to represent the ERRC. This power of attorney is, as noted, valid until revoked. It had not been revoked at the time of the ERRC Collective Complaint (21 April 2005) and it is still in force as of the date of this communication.

3. Concerning the Bulgarian government’s comments with respect to the content of Article 16 and the relationship between the rights set out in Article 16 and those set out in Article 31, the ERRC affirms that it does not allege violations of Article 31 of the Revised Charter, which indeed Bulgaria has not accepted, but rather of Article 16 of the Revised Charter, taken together with or independently of the Revised Charter’s Article E non-discrimination guarantees.

4. The ERRC further notes that in European Roma Rights Centre v. Greece, on the basis of facts presented by the ERRC relating to inadequate housing for Roma in Greece –

matters similar in profile to the issues raised here with respect to Bulgaria -- the Committee identified three issues arising from the inadequate housing of Roma in Greece as potentially engaging Article 16 of the 1961 Charter, taken together with or independent of its pre-ambulatory non-discrimination guarantees:

- the insufficient number of permanent dwellings of an acceptable quality to meet the needs of the settled Roma;
- the insufficient number of stopping places for Roma who choose to follow an itinerant lifestyle or who are forced to do so;
- the systematic eviction of Roma from sites or dwellings unlawfully occupied by them.¹

5. In assessing the scope of Article 16 in light of the three elements identified as arising from the facts in *European Roma Rights Centre v. Greece*, the Committee held:

19. The Committee emphasises that one 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. This requirement is exemplified in the proscription against discrimination in the Preamble and in its interaction with the substantive rights of the Charter.

20. This imperative to respect difference, avoid discrimination and social exclusion, was recently the subject of an important judgment given by the European Court of Human Rights, (*Connors v United Kingdom* of 27 May 2004 at para 84) where it stated that:

“The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (Buckley judgment cited above, pp. 1292-95, §§ 76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see Chapman, cited above, § 96 and the authorities cited, mutatis mutandis, therein)” (at para 84).

21. The Committee’s case law has responded in a like manner on the question of how human difference should be appropriately accommodated. In its decision in *Collective Complaint No. 13* which involved the interaction between Article E and Articles 15 (The right of persons with disabilities to social integration and participation in the life of the community) and 17 (The right of children and young persons to social, legal and economic protection) it stated:

“The Committee recalls, as stated in its decision Complaint No 1/1998 (International Commission of Jurists v. Portugal, §32), that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with

¹ European Committee of Social Rights, *European Roma Rights Centre v. Greece*, Collective Complaint 15/2003, Decision on Merits, 18 December 2004, pt. 17.

measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact their choices will have for groups with heightened vulnerabilities”

Complaint No. 13/2002, *Autism Europe v France*, decision on the merits, November 2003, §53.

22. The Committee notes that if it is possible to subject the receipt of social rights to the fulfilment of a certain number of conditions, the conditions must not be such so that is impossible in the majority of cases to satisfy them, with the effect that the realisation of the rights is impeded.

23. The imperative to avoid social exclusion, respect difference and not to discriminate applies to all groups of Roma; itinerant and settled.

24. The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural. It is also of central importance to the family. The Committee recalls its previous case law to the effect that in order 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). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence.² Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.

[...]

26. In addition the principle of equality and non-discrimination form an integral part of Article 16 as a result of the Preamble.

6. In *European Roma Rights Centre v. Greece*, pursuant to the forgoing, the Committee subsequently found three separate violations of Article 16 of the 1961 Charter, as a result of inadequacies in the three areas identified above.

7. Of the three elements identified by the Committee in the matter of *European Roma Rights Centre v. Greece*, only one issue is not relevant in the matter *European Roma Rights Centre v. Bulgaria*, the present complaint, namely “the insufficient number of stopping places for Roma who choose to follow an itinerant lifestyle or who are forced to do so”. The other two elements identified by the Committee in *European Roma Rights Centre v. Greece* are congruous to the matters at issue in *European Roma Rights Centre v. Bulgaria*, namely: (i) the insufficient number of permanent dwellings of an acceptable quality to meet the needs of the settled Roma; (ii) the systematic eviction of Roma from sites or dwellings and the systemic failure to provide security of tenure where Roma are concerned. In addition, further elements may be identified by the Committee as arising from the facts presented in the ERRC’s submission of 21 April 2005.

8. Further, in its first Conclusions, the Committee stated with reference to Article 16 that it “must [emphasis added] be seen in conjunction with a number of other provisions in the Charter” (Conclusions I, p.75) and it went on to enumerate as exemplary several of them, in a non-exhaustive list. Also in the first Conclusions, the Committee noted of Article 16 it requires the

modern state to “create the living conditions necessary to give the family its full scope” (Conclusions I, p.75).

9. The ERRC is aware that the foregoing findings were rendered by the Committee in relation to Article 16 of the original 1961 Charter (taken together with or independently of the 1961 Charter’s pre-ambulatory non-discrimination guarantees), whereas at issue in the current Complaint are violations alleged of Article 16 of the Revised Charter (taken together with or independently of the Revised Charter’s Article E non-discrimination guarantees). It might be argued that in light of the presence of Article 31 in the Revised Charter, the full meaning attached by the Committee to Article 16 of the 1961 Charter, as expressed by the Committee above and in other settled case law might not carry forward in full and be completely transposed into the meaning of Article 16 of the Revised Charter. However, the ERRC would recall that Article B(1) of the Revised Charter precludes the possibility of an erosion or withdrawal of rights during the transition from the 1961 Charter to the Revised Charter, by setting out that: “No Contracting Party to the European Social Charter or Party to the Additional Protocol of 5 May 1988 may ratify, accept or approve this Charter without considering itself bound by at least the provisions corresponding to the provisions of the European Social Charter and, where appropriate, of the Additional Protocol, to which it was bound.” By extension, it is unclear how a State Party might be bound by the requirements of Article 16 of the Revised Charter without also being bound by case law developed under the very same article of the 1961 Charter.

10. As to the Bulgarian government’s second series of comments, which we understand to be a recommendation to the Committee to declare the complaint against Bulgaria inadmissible on grounds of a failure to exhaust domestic remedy in a manner congruous with the requirement set out under Article 35 of the European Convention on Human Rights, the ERRC would note the following:

- No such requirement exists with respect to proceedings under the Collective Complaint mechanism;
- Proceedings before a court of law are relevant in individual cases of violations of rights secured under domestic law but are not adequate to address systemic failures to secure fundamental rights, as in the matter at issue here;
- As noted in the Collective Complaint document of 21 April 2005, Bulgarian lawmakers have (i) not fully transposed the international law *acquis* on the right to adequate housing into domestic law and indeed (ii) in recent years have actually removed protections previously available under Bulgarian domestic law, such as legal protections against forced evictions. As such, domestic law provisions necessary for the defence of rights at issue here are in fact missing from the domestic legal order in Bulgaria;
- Arising from the pernicious effects of various failures of Bulgarian government policy where Roma are concerned, a very sizeable part of the Romani community in Bulgaria lives in situations of poverty and/or extreme poverty and cannot afford attorney and court fees to take up a defence of violations of the fundamental rights at issue here; proceedings of a collective nature such as those provided under the European Social Charter mechanism are therefore (i) relevant and (ii) in the vast majority of cases, the only effective proceedings available to victims and/or their representatives;
- Only a full review of the merits of the European Roma Rights Centre Collective Complaint against Bulgaria is adequate to review, address and allay the matters raised in the Collective Complaint dated 21 April 2005 and now identified as Collective Complaint 31/2005.

11. Finally, the ERRC would use the opportunity of this communication to note that, since the original complaint was lodged in April 2005, the matters at issue in the complaint have taken on a new level of urgency. Namely, in recent weeks, the municipality of Sofia has undertaken a series of forced evictions of Roma – involving in many cases the actual destruction of dwellings – apparently motivated in whole or in part by the desire of municipal officials to discourage Roma from moving to the capital in the wake of catastrophic flooding in the Bulgarian countryside during the summer months of 2005, flooding which has in a number of instances rendered Romani individuals and families homeless. Details of some of the actions of the Sofia municipality follow here:

12. According to information provided by Mr Radostin Manov, an appointed representative of the mayor of Slatina district in Sofia, on 31 August 2005, more than 24 Romani homes in Hristo Botev neighbourhood (in the Slatina district) were demolished and between 150 and 200 Roma – approximately half of whom are children -- were forcibly evicted.

13. According to Mr Manov, the inhabitants of the demolished housing are "foreigners", apparently meaning that they had settled in the Hristo Botev neighbourhood in recent several years and otherwise belonged in the countryside. Because of this, during the eviction, most of the persons forcibly evicted were not provided with alternative housing nor with any form of compensation by the Bulgarian authorities. To a question of the ERRC representative regarding the state's obligations under international law, under which evictions which would render a person homeless are to be avoided, Mr Manov stated that he had no knowledge of such matters.

14. Subsequently, according to reports in the Bulgarian media as well as first-hand documentation by a number of independent Bulgarian human rights organisations, very large-scale forced evictions of Roma are now, as of the date of this communication, planned in Sofia for the coming weeks. These are reportedly slated to take place in a number of the Sofia districts and will be accompanied by the destruction of dwellings. In the Serdika neighbourhood, district Vazrazhdane, a part of Sofia, on 8 September 2005, Ms Eva Seizova, mayor of district Vazrazhdane, requested that a number of Romani families abandon their properties, as these were slated to be demolished. Reputable partner organisations reported to the ERRC on September 19 and again on September 20 that over 160 Roma currently living in the Serdika neighborhood are currently threatened with forced eviction and homelessness. At issue are 56 families, including 167 people total, of whom at least 85 are children. These persons are currently living in structures – in some cases many decades old -- which have not only been tolerated by local authorities, but have indeed been tacitly recognised by them, as most of the persons concerned are legally registered where they live. Several generations of the persons at issue have been born where they now live. The current position of the Bulgarian authorities is that the structures at issue are "illegal" and will therefore, according to written communication received by the persons concerned from officials of the Vazrazhdane municipality, be destroyed on September 27. Attempts by Romani non-governmental organisations to negotiate with the Sofia municipal authorities a suspension of the forced evictions until alternative housing is provided for the affected Romani families have been ineffective as of the date this communication. According to local non-governmental organisations, forced evictions of Roma, including the destruction of housing, are also threatened in the Sofia districts of Lyulin, Krasno selo and Suhodol-3.

15. Civil society organisations including the European Roma Rights Centre, the Bulgarian Helsinki Committee, the International Helsinki Federation, the Romani Baht Foundation and the Tolerance Foundation have engaged to challenge these evictions, including via legal action. Thus far however, no actions undertaken have been sufficient to (i) see persons

already evicted adequately rehoused; (ii) provide justice to persons who may have been forcibly evicted in contravention of domestic and/or international law; or (iii) block local authorities in their plans to undertake further evictions. These facts render questionable the Bulgarian government's contention, in its Observations on the present Collective Complaint, that "there is not only administrative, but also court protection from the aforementioned alleged violations".

16. We respectfully urge the Committee to declare Collective Complaint 31/2005 admissible, and to proceed with a speedy examination of its merits.

On behalf of the European Roma Rights Centre,

A handwritten signature in dark ink, appearing to read 'Claude Cahn', with a long, sweeping tail extending downwards and to the right.

Claude Cahn
Programmes Director