

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



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Case document no. 4

Centre on Housing Rights and Evictions (COHRE) v. Italy
Complaint no. 58/2009

**RESPONSE FROM COHRE TO THE
WRITTEN SUBMISSIONS OF THE GOVERNMENT
ON THE MERITS**

registered at the Secretariat on 3 March 2010

3 March 2010

Executive Secretary
Acting on behalf of the Secretary General of the Council of Europe
Secretariat of the European Social Charter
Council of Europe
F-67075 Strasbourg CEDEX
France

**RESPONSE TO WRITTEN SUBMISSION OF THE
GOVERNMENT OF ITALY ON THE MERITS**

The Centre on Housing Rights and Evictions
(COHRE)

against

The Italian Republic

Collective Complaint No. 58/2009

Centre on Housing Rights and Evictions (COHRE)
83 rue de Montbrillant
1202 Geneva
Switzerland
tel: 41. 27. 734. 1028
Email: Litigation@cohre.org

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I. INTRODUCTION

1. The Centre on Housing Rights and Evictions (COHRE), an international non-governmental organisation, is the leading international human rights organisation campaigning for the protection of housing rights and the prevention of forced evictions. COHRE's work includes advocacy, a training and education program and extensive research and publications activity. COHRE is registered in the Netherlands since 1994, and coordinates its global activities from its headquarters in Geneva, Switzerland. Additional information about COHRE is available on the internet at: www.cohre.org.

2. In bringing this Collective Complaint, COHRE is supported by its Italian partner organisation, OsservAzione, Centre for Action Research against Roma and Sinti Discrimination. OsservAzione is a non-governmental organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma and Sinti in Italy. OsservAzione has recently published two reports on the situation of Roma and Sinti in Italy: "Imperfect Citizenship" (2006) on the multiple forms of discrimination and exclusion that Roma and Sinti face in Italy, and "Political participation and media representation of Roma and Sinti", a report on the role of the 'Gypsy issue' and Romani participation to local elections. Further information about OsservAzione is available at: www.OsservAzione.org.

3. With this written submission, COHRE reaffirms the content of its Collective Complaint *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, registered with the Secretariat on 29 May 2009.

II. DISCRIMINATORY AND EXCLUSIONARY LAWS, POLICIES AND PRACTICES

4. The Written Submissions by the Government on the Merits fail to address several of the issues raised in the Collective Complaint, including the so-called Security Measures and the surge in xenophobia and violence against Roma and Sinti. While reaffirming the content of Complaint No. 58/2009, COHRE would like to bring the following updates to the attention of the Committee.

5. In January 2009 the Commissioner for Human Rights of the Council of Europe again visited Italy. In his report on this visit, he affirmed that he was "particularly worried by consistent reports that continue to evidence a trend of racism and xenophobia in Italy, occasionally supported by actions of local authorities, which has led also to violent acts against migrants, Roma and Sinti or Italian citizens of migrant descent."¹

6. Law and policies which are discriminatory in their intent or effect continue, including:

- the Pacts for Security adopted in Naples, Rome, Milan, Firenze, Torino, Genova, Bologna, Catania, Bari, Cagliari, Venezia, Modena, Prato and Trieste;
- the Emergency Decree No 92/2008, which defines the presence of Roma in the areas of Campania, Lazio, and Lombardia as a cause of great social alarm with possible grave repercussions in terms of public order and safety;

¹ Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe, Comm DH(2009)16 (16 April 2009) at para. 15.

- Ordinance of the President of the Council of Ministers No. 3678 of 30 May 2008, which creates urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Campania region;
- Ordinance of the President of the Council of Ministers No. 3677 of 30 May 2008, which creates urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Lombardia region;
- Ordinance of the President of the Council of Ministers No. 3676 of 30 May 2008, which creates urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Lazio region;
- Initiative of Minister of Interior Roberto Maroni to perform a census of Roma living in Italy, including through fingerprinting, which in addition to targeting Roma on an ethnic basis, violates data protection laws.

7. Rather than repealing the census provision, The Italian Data Protection Authority, by decision of 17 July 2008, approved the draft Guidelines of the Interior Ministry concerning the implementation of the census in regions of Campania, Lazio and Lombardia, including the finger printing of Roma residents.²

8. Additionally, on 15 July 2009, Law No. 94 “Provisions on public security” was adopted. Roma and Sinti groups have raised concerns about this law, as several of the measures provided in the law will negatively affect them, such as the legalisation of vigilante groups and measures that will prevent those living in caravans from obtaining identification documents.³

9. Finally, reports of police brutality against Roma and Sinti continue, including in the context of forced evictions.

III. PROHIBITION ON FORCED EVICTION

10. In paragraph 17 of the Written Submissions by the Government on the Merits, the Republic of Italy quotes Complaint No. 15/2003 (*European Roma Rights Center v. Greece*) for the proposition that evictions may occur in the event of illegal occupancy or infringements of individuals or collective interest. However, the Written Submissions fail to substantiate that such conditions exist and warrant eviction.

11. As Italy also states in paragraph 17, evictions must take place “in accordance with the applicable rules of procedure” which must be “sufficiently protective of the rights of the persons concerned.”

12. In defining “applicable rules of procedure” the Committee should be guided by the prohibition on forced eviction enshrined in the International Covenant on Economic, Social and Cultural Rights, which Italy ratified on 15 September 1978.

13. Under the Covenant, the right to adequate housing enshrined in Article 11 requires that “notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation

² OsservAzione, *EU Values: The Roma Migration Challenge: Italy Report* (May 2009).

³ European Roma Rights Centre, osservAzione and Amalipé Romanò, UPR Report to the United National Human Rights Council (2009).

with affected persons and groups.”⁴

14. Additionally, the Committee on Economic, Social and Cultural Rights has held that “instances of forced eviction are *prima facie* incompatible with the requirements of the [International] Covenant [on Economic, Social and Cultural Rights] and can only be justified in the *most exceptional circumstances*, and in accordance with the relevant principles of international law.”⁵ This conclusion has repeatedly been reaffirmed by the international community, and in particular the United Nations Commission on Human Rights which has twice stated that forced evictions are a gross violation of human rights, and in particular the right to adequate housing.⁶

15. Even if such exceptional circumstances exist, “States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.”⁷ Alternatives to eviction include onsite upgrading of informal settlements.

16. Even if the eviction of Roma and Sinti communities are otherwise justified, General Comment No. 7 of the Committee on Economic, Social and Cultural Rights articulates procedural safeguards to ensure that the minimum core content of the right to adequate housing remains protected in those cases where an eviction is justified and may be carried out lawfully.

17. To this end, General Comment No. 7 states:

Appropriate procedural protection and due process are essential aspects of all human rights but it is especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of rights recognized in both International Human Rights Covenants [the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights]. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h)

⁴ Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), para. 8(a), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003). <http://www1.umn.edu/humanrts/gencomm/epcomm4.htm> - one

⁵ Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), para. 18, U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003) (emphasis added).

⁶ See Commission on Human Rights Resolution 1993/77, U.N. Doc. E/CN.4/RES/1993/77 (1993) and Resolution 2004/28, U.N. Doc. E/CN.4/RES/2004/28 (2004).

⁷ Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), para. 13, U.N. Doc. E/1998/22, annex IV at 113 (1998), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003).

provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.⁸

18. Finally, regardless of whether or not evictions are otherwise deemed to be justified, international human rights law states that:

Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.⁹

19. The Republic of Italy rarely if even applies the above legal framework when carrying out forced evictions of Roma and Sinti communities. For instance, on 12 November 2009 Amnesty International reported the forced eviction of some 400 Roma persons from the from the Via Centocelle camp in the eastern part of Rome.¹⁰ According to Amnesty International, “Local NGOs say that the community was not notified or consulted about the eviction. Under domestic law, the authorities should notify each individual, or publish an order or notice.”¹¹

20. Similarly, Amnesty International reported the threatened forced eviction of some 200 Roma persons from the Rubattino area in the east of Milan¹² as well as the forced eviction of some 70 Roma persons from the Bacula camp in Milan in March 2009.¹³ According to Amnesty, “It appears that there has been no consultation with the community on the proposed evictions, nor consistent attempts to identify with them any feasible alternatives to the evictions. It appears that the authorities have not prepared any plan for adequate alternative housing or discussed it with individuals likely to be affected.”¹⁴

21. As recently as 22 January 2010, a forced eviction of approximately 150 Roma persons from the Via Sant'Arialdo area of Milan was reported.¹⁵

IV. CONCLUSIONS

22. COHRE respectfully reaffirms its requests that the European Committee of Social Rights (ECSR) find Italy in violation of Article 31 §§ 1, 2 and 3, as well as Article 16 and Article 30 of the Revised Charter, read alone or in conjunction with Article E, as well as in violation of Article 19 §§ 1, 4, 7 and 8. COHRE respectfully urges that Italian authorities undertake the following measures to bring about compliance with the Revised Charter:

23. Without delay, repeal all legislation and policies negatively impacting Roma, “nomads” or immigrants, including the:

⁸ Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), para. 16, U.N. Doc. E/1998/22, annex IV at 113 (1998), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003).

⁹ *Id.* at para. 17.

¹⁰ Amnesty International, Media Release: *Italian Authorities Forcibly Evict Another Roma Community*, 12 November 2009.

¹¹ *Id.*

¹² Amnesty International, Urgent Action: *Roma Community Facing Forced Eviction*, 11 September 2009.

¹³ Amnesty International, Media Release: *Roma Forcibly Evicted from Milan Settlement*, 31 March 2009.

¹⁴ *Id.*

¹⁵ EveryOne Group, Media Release: *Roma People in Italy. We are launching a desperate SOS to the EU and the UN*, 22 January 2010.

- a. Pacts for Security adopted in Naples, Rome, Milan, Firenze, Torino, Genova, Bologna, Catania, Bari, Cagliari, Venezia, Modena, Prato and Trieste;
 - b. Emergency Decree No 92/2008, defining the presence of the Roma in the areas of Campania, Lazio, and Lombardia as a cause of great social alarm with possible grave repercussions in terms of public order and safety.
 - c. Ordinance of the President of the Council of Ministers No. 3678 of 30 May 2008: Urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Campania region;
 - d. Ordinance of the President of the Council of Ministers No. 3677 of 30 May 2008: Urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Lombardia region;
 - e. Ordinance of the President of the Council of Ministers No. 3676 of 30 May 2008: Urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Lazio region;
 - f. Initiative of Minister of Interior Roberto Maroni to perform a census of Roma living in Italy, including through fingerprinting, which additionally violates data protection laws;
 - g. Law No. 94 “Provisions on public security” adopted 15 July 2009 which provides for the legalisation of vigilante groups and measures that will prevent those living in caravans from obtaining identification documents.
24. Prohibit forced eviction in law and practice and place a moratorium on all other evictions until legal protection mechanisms are in place and accessible to all including Roma and Sinti as well as refrain from any evictions leading to homelessness; Publicly condemn attacks on Roma and Sinti and ensure thorough and effective investigation and prosecution of perpetrators;
25. Without delay, end all forms of racial segregation in the field of housing;
26. Investigate all alleged cases of police abuse and ill-treatment of Roma and Sinti and ensure that the officers concerned are held legally responsible and receive appropriate discipline; ensure that victims of police abuse obtain appropriate remedy; additionally, ensure that victims obtain appropriate redress in cases of failure on the part of authorities to provide protection from non-State actors;
27. Challenge negative representations of Roma and Sinti in the media; implement an anti-racism campaign and issue penalties and fines for racist speech within political parties, especially at high levels of authority; undertake positive imaging of Roma as contributors to culture and society; recognize Roma as a minority;
28. Condemn, via the National Office Against Racial Discrimination (UNAR), Italy’s national equality body, recent developments involving racial discrimination and xenophobia in Italy and undertake all actions within its power to address these acts of discrimination against Roma and Sinti; empower UNAR with the capacity to obtain legal redress for discrimination in the Italian judicial system under free-standing and actionable discrimination claims as well as

collective complaints;

29. Ratify Protocol No. 12 to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms (European Treaty Series No. 177) to secure non-discrimination in the application of rights and in the enforcement of existing domestic anti-discrimination laws;

30. Ensure that Roma and Sinti enjoy rights to family life, home, privacy and dignity by ending raids associated with data collection, including the seizure of papers, fingerprinting and other targeted identification collection techniques;

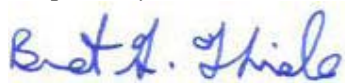
31. Implement immediately the recommendations given in European Parliament resolution on application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States, EP reference number B6-0462/2007 / P6-TA-PROV(2007)0534, adopted 15 November 2007;

32. Without delay, ensure that all cases of de jure or de facto statelessness occurring among Roma on the territory of Italy are resolved; ensure that all Roma entitled to a durable residence status who have not yet been provided with such status are provided with durable residence status without delay; facilitate access to residence status for persons lacking residence status, but where the goods of justice, non-discrimination, and/or social inclusion would so recommend or require;

33. Adopt, in consultation with Romani representatives, a comprehensive national strategy for improving the situation of Roma in Italy with regard to obtaining legal status and appropriate social benefits such as effective access to housing, education, healthcare and legal remedy; increase transparency and remove discretion from legal documentation and residency procedures; simplify and make accessible application procedures;

34. As necessary to properly implement a national strategy at the local level, include in such strategy details specifying: resource allocation; administrative roles and duties; timeframe and steps for measurable progress.

Respectfully submitted,



Bret G. Thiele
Attorney of Record
Senior Expert – Litigation and Legal Advocacy
Centre on Housing Rights and Evictions (COHRE)



Salih Booker
Executive Director
Centre on Housing Rights and Evictions (COHRE)