EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DECISION ON THE MERITS

25 June 2010

Centre on Housing Rights and Evictions (COHRE)
v. Italy

Complaint No. 58/2009

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 244th session attended by:

Ms	Polonca KONČAR, President
Messrs	Andrzej SWIATKOWSKI, Vice-President
	Colm O'CINNEIDE, Vice-President
	Jean-Michel BELORGEY, General Rapporteur
Ms	Csilla KOLLONAY LEHOCZKY
Mr	Lauri LEPPIK
Mss	Monika SCHLACHTER
	Birgitta NYSTRÖM
	Lyudmila HARUTYUNYAN
Messrs	Ruchan ISIK
	Petros STANGOS
	Alexandru ATHANASIU
	Luis JIMENA-QUESADA
Ms	Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary,

Having deliberated on 24 and 25 June 2010,

On the basis of the report presented by Mr Luis JIMENA-QUESADA,

Taking into consideration its decision to give precedence to this complaint in view of the seriousness of the allegations,

Delivers, in English only, the following decision adopted on this last date:

PROCEDURE

1. The complaint lodged by the Centre on Housing Rights and Evictions ("COHRE") was registered on 29 May 2009. It alleges that the situation of Roma and Sinti in Italy is in violation of Articles 16, 19, 30 and 31 of the Revised European Social Charter ("the Revised Charter") as well as of Article E taken in conjunction with each of these provisions.

2. The Committee declared the complaint admissible on 8 December 2009.

3. In accordance with Article 7§§1 and 2 of the Protocol providing for a system of collective complaints ("the Protocol") and with the Committee's decision on the admissibility of the complaint, on 11 December 2009 the Executive Secretary communicated the text of the decision on the admissibility to the Italian Government ("the Government") and to COHRE. On 14 December 2009 he communicated it to the Contracting Parties to the Protocol and the states that have made a declaration under Article D§2 and to the organisations referred to in Article 27§2 of the Charter.

4. In accordance with Rule 26 *in fine* of the Committee's Rules, the Committee set 8 February 2010 as a deadline for presentation of the Government's submissions on the merits and 12 March 2010 for COHRE's response on the merits.

5. The Government's submissions on the merits were registered on 5 February 2010 and COHRE's response to them was registered on 3 March 2010 and forwarded to the Government on 8 March 2010.

6. A hearing took place in public in the European Court of Human Rights, Strasbourg, on 21 June 2010 (Rule 33). There appeared before the Committee:

a) *for the complainant organisation*

Mrs Daria Storia, *Counsel*

b) *for the Government*

Mr Mario Remus, expert at the Ministry of Foreign Affairs replacing the *Agent*,
Mrs Patrizia Vicari, Cabinet of the Minister of Interior,
Mrs Carmelita Fortunata Ammendola, Department of Civil Liberties and Immigration, Ministry of Interior, and
Mr Claudio Castellan, Department of Public Security, Ministry of Interior, *Advisers*

7. The Committee heard addresses by Mrs Storia and Mr Remus and replies to questions by both, as well as by Mrs Vicari.

8. The Committee also received additional written information submitted to it and the complainant organisation by the Italian delegation.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

9. COHRE alleges that the situation of Roma and Sinti in Italy amounts to a violation of Articles 16, 19§1, 19§4.c, 19§8, 30, 31§1, 31§2 and 31§3 of the Revised Charter, as well as a violation of Article E taken in conjunction with each of these provisions.

10. In its written submissions the complainant organisation had also alleged a violation of Article 19§7. However, during the public hearing, responding to a question by the Committee, the counsel of COHRE decided not to maintain the specific allegation based on Article 19§7. She in fact clarified that the issue concerning legal proceedings was linked to the lack of guarantees in relation to forced evictions under Article 31§2.

11. COHRE, in particular, asks the Committee to find that:

- the adoption of "Pacts for Security" (as of November 2006) and of so called "Nomad" state of emergency Decrees (as of May 2008) and their implementing Orders and Guidelines constitute deliberate retrogressive steps which fail to address the violations found by the Committee in Complaint No. 27/2004 and in subsequent conclusions relating to the right to housing of Roma and Sinti in Italy;

- both *de facto* and *de jure* segregation regarding the housing of Roma and Sinti, as well as obstacles to gain or retain legal status for Roma and Sinti, have worsened their living conditions, whereas the Revised Charter requires a coordinated approach to combat poverty and social exclusion;

- furthermore, the policy and practice of segregating Roma and Sinti families in "ghettos" by using discriminatory identification procedures, denies them access to adequate housing and protection of family life;

- reference to "nomads" as a threat to national security has contributed to the racist and xenophobic propaganda relating to emigration and immigration of Roma and Sinti. As a result, Roma and Sinti migrants have been deprived of protection and assistance notably as regards access to housing and in cases of forced evictions from their housing or expulsions from the territory.

B – The Government

12. The Government asks the Committee to find that the situation of Roma and Sinti in Italy does not give rise to a violation of the Revised Charter as the Italian authorities have allocated resources and taken concrete measures to guarantee effectively Article E combined with Articles 16, 19, 30 and 31.

RELEVANT DOMESTIC AND INTERNATIONAL LAW

A – Domestic law

13. According to the Constitution:

> *"Article 2 - The Republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic and social solidarity."*
>
> *"Article 3 - All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions, and personal or social conditions. It is the duty of the Republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic and social organisation of the country."*

14. As of November 2006, "Pacts for Security" were signed by state and local authorities with regard to numerous cities including, *inter alia*, Naples, Rome, Milan, Florence, Turin, Genoa, Bologna, Catania, Bari, Cagliari, Venice, Modena, Prato and Trieste. All "Pacts for Security" follow the model of delegating increased authority to the Prefect with a view to implementing a strategic plan to solve the "nomad emergency" (expression used in the *"Patto per Roma Sicura"* of 18 May 2007 and its renewed version, the *"Secondo Patto per Roma Sicura"* of 29 July 2008) or the "Roma emergency" (expression used in the "*Patto per Milano Sicura"* of 18 May 2007).

15. As of May 2008, these “Pacts for Security" were provided with a legal basis through the adoption of the following measures:

(i) Law Decree (Decreto legge) No 92/2008, on “Urgent measures in the field of public security”, amended and converted into law by Law No. 125/2008 of 24 July 2008 (Gazzetta Ufficiale No. 173, 25 July 2008)

Article 1(f) amends Article 61 of the Italian Criminal Code providing that: “the circumstance of being a subject who is residing illegally on the Italian territory aggravates the offence”.

Article 5(1) amends Article 12 of the Legislative Decree No. 286/1998 (Testo Unico Immigrazione) providing that: “whoever let out an accommodation to a foreign citizen residing illegally in the Italian territory is subject to a sentence ranging from 6 months to 3 years imprisonment”

Article 6 amends Legislative Decree 267/2000 (Testo Unico Enti Locali) conferring to mayors the competence to adopt “urgent regulations for security reasons”.

(ii) Decree of the President of the Council of Ministers of 21 May 2008, Gazzetta Ufficiale No. 122 of 26 May 2008 - Declaration of the state of emergency in relation to settlements of nomad communities in Campania, Lazio and Lombardia

Considering the extremely critical situation that has developed in the territory of the Lombardia Region, due to the presence of numerous irregular third-country citizens and nomads who have settled in a stable manner in urban areas (…);

Considering the extremely critical situation concerns also the province of Naples and Rome, where is also registered the heavy presence of nomad communities in the urban areas and in the surrounding zones, with largely abusive settlements;

Considering that the situation described above has caused an increase in social alarm, with serious incidents that seriously endanger public order and security;

Considering that the above mentioned situation, that concerns various levels of territorial Italian Government due to its intensity and extension, cannot be tackled using the instruments provided in the ordinary legislation.

Having regard to the ‘Pact to implement the Strategic plan for solving the Roma emergency in Milan’ signed on 21 September 2006 by the Prefect of Milan, by the President of Lombardia Region, by the President of the Province and the Mayor of Milan;

Having regard to the ‘Pact for safe Rome’ signed on 18 May 2007 by the Prefect of Rome, by the President of Lazio Region, by the President of the Province and the Mayor of Rome;

Having regard to the statements of 14 and 16 May 2008 in which the Minister of the Interior, representing the serious situation caused, and the concrete risk to cause further serious situations, has requested to adopt urgent special measures;

Considering it necessary to use extraordinary instruments and powers to solve the emergency, applying in this case the requirements provided by Article 5 paragraph 1 of Law No. 225 of 24 February 1992;

Acquiring the understanding of Campania, Lazio and Lombardia Regions;

Having regard to the decision of the Council of Ministers adopted on the meeting of 21 May 2008;

Decrees:

In accordance with and for the purpose of Article 5 paragraph 1 of Law No. 225 of 24 February 1992, considering the contents of the preamble, the state of emergency is declared until 31 May 2009 in relation to settlements of nomad communities in the territory of Campania, Lombardia and Lazio Regions."

(iii) Ordinances of the President of the Council of Ministers Nos. 3676, 3677, 3678 of 30 May 2008, which create urgent civil protection provisions to tackle the state of emergency in relation respectively to nomad community settlements in the territory of the Lazio, Lombardia and Campania regions – text of Order No. 3676

"Having regard to the Decree of the President of the Council of Ministers dated 21 May 2008, concerning the declaration of the state of emergency until 31 May 2009, in relation to the settlement of nomad communities in the territory of Campania, Lazio and Lombardi Regions;

Considering the extremely critical situation that has developed in the territory of Lazio Region, with particular reference to the urban areas of the City of Rome and the surrounding zones, due to the presence of numerous irregular third-country and nomad citizens who have settled in a stable manner in these areas;

Considering that the above mentioned settlements, due to their extreme precariousness, have caused a situation of serious alarm, with the possibility of serious repercussions in terms of public order and security of the local populations;

Recognizing the necessity to adopt extraordinary and derogatory measures to urgently solve the state of emergency assigning each intervention to the bodies established for this purpose;

Recognizing the need to implement all the initiatives that can guarantee the respect of the fundamental rights and dignity of the persons, providing certain means of identification to apply the humanitarian and immigration provisions being in force, and instruments that provide access to the main social, welfare and healthcare services, also considering the protection of minors from criminal subjects and organisations that abuse the uncertainty of identity and anagraphical data for the purpose of illegal traffic and serious forms of exploitation. […]

Article 1

The Delegated Commissioner within his area of competence, where applicable, also derogating from the rules of law in force, concerning the environment, territorial landscape, health and hygiene, the territorial planning, the local police, roads and traffic, except the obligation to guarantee the indispensable measures for the protection of health and environment, provides for the completion of the following initiatives:

a. definition of action programs to solve the state of emergency;

b. monitoring of the authorized camps occupied by the nomad communities, and the identification of unauthorized settlements;

c. identification and census of persons, including minors, and of families present in the places mentioned in paragraph b), by taking fingerprints;
d. adoption of the necessary measures, empowering the Police, against the persons mentioned in paragraph c) who are to or could be expelled by virtue of an administrative or judicial measure;

e. if the existing camps don't satisfy the habitation needs, program for specification of new suitable sites for the authorized camps;

f. adoption of measures to clean out and restore the field occupied by abusive settlements ;

g. carry out the first interventions suitable to restore the minimum levels of social and health services;

h. interventions to promote the social inclusion and integration of the persons transferred into the authorized camps, with particular reference to the measures of support, and to the projects regarding minors, to actions for combating the phenomena of abusive trading and the phenomena of begging and prostitution;

i. monitoring and promotion of initiatives applied in the authorized camps to support the school attendance and vocational training, and the participation in the activity of realisation and recovering of the habitations.

j. adopt all the necessary measures to solve the state of emergency."

(iv) Guidelines to Implement the President's Minister's Decrees 3676, 3677, 3678 of 30 May 2008 concerning the encampments of nomadic communities in the regions of Campania, Lazio and Lombardy of 17 July 2008

"[T]he practical implementation of the decrees will be carried out in full respect of the fundamental rights and human dignity, in compliance with the general principles of the legal system and EC directives, as clearly mentioned in Article 3 of the provision. To this end, the operation entrusted to the Commissari shall not concern specific groups, individuals nor ethnic groups, but all people living in illegal and legal encampments, regardless of their nationality and religion. The Commissari shall avoid any action that might be, directly or indirectly, considered discriminatory.

Monitoring encampments and taking a census of the people and family groups

The census provided for in Article l, paragraph 2, subpar. c) of the decrees must be considered instrumental in achieving social, assistance and integration goals with the additional aims of realizing the extent and the types of actions needed and proposing initiatives to be carried out quickly, if possible. Therefore, encampments - both legal and illegal ones - shall be monitored and precisely identified. Then a thorough head counting shall be conducted, even with the filling out of a "foglio notizie" that - taking into account the different local peculiarities - shall only contain the data necessary for the above-mentioned purpose and respecting the fundamental rights and dignity of the people involved, thus excluding all non-pertinent data, such as ethnicity and religion. As regards health data, although the answers must be provided on a voluntary basis, the information needed for possible prevention activities and health assistance can be collected.

As for the data collected this way, once again it is specified that no database will be created in respect of the national and international laws on privacy. The information collected during these activities shall be saved and stored as it is done for all the other citizens by the authorities who are entitled to do so (Registrar's office, police offices, social assistance offices, local health agencies (ASL), etc.).

Identification

In order to guarantee the necessary identification - to protect the right to the identity of a person - the decrees establish that as regards the use of identifying techniques, various forms of recognition can be used: descriptive, photographical, anthropometric, and fingerprint recognition. Even though it rests in the discretion of the Commissari what form of recognition should be adopted in order to guarantee the validity of identification, fingerprints shall be used, according to the ordinary procedures provided for by the legislation in force, only if it is not possible to obtain a valid identification through available documents and in certain circumstances as provided for by the Consolidated Text on public security and relevant implementation rules. Once again, all procedures will be carried out respecting the individual and in observance of his/her privacy.

Specific attention will be paid in identifying minors and this type of identification shall be used to protect them even from their parents' abuses or from the abuses of self-defined parents. In particular, it is allowed to fingerprint only youngsters from the age of 14 onwards, when other identification means are not implementable. With regard to children between the age of 6 and 14, fingerprints shall be taken only in order to grant stay permit - in this phase, it must be noted that such procedure will take place only upon request by the individual exercising the legal authority over the child concerned, in accordance with what established by the E.U. regulation n. 380/2008 - or, when necessary, in connection with the competent prosecutor's office at the Juvenile Court and through the judicial police. Below the age of six, fingerprints can be taken by the judicial police only under exceptional circumstances, upon agreement with the prosecutor's office at the juvenile court, when the children have been abandoned or when there is the suspicion they could be victim of a crime. All the data gathered won't be stored in an autonomous collection, but they shall be stored in the archives established by the law, such as the foreigners' archive at the Questura and Prefettura for those requesting a residence permit or applying for citizenship.

Data already collected

It is to be noted that if the data collected to date are not treated as indicated, they will no longer be usable and/or stored.

Prevention activities, removals and expulsions

Available data on nomadic settlements in specific areas of Italy show that these locations are not homogeneous in their composition and are inhabited by people who have joined the camps at different times, belong to different ethnic groups, and have different nationalities, including Italian. They are mainly people with no fixed abode who travel across Italy and create temporary irregular settlements here and there.

The activities of recognition, identification and census may also lead to identifying individuals already sentenced to limitations of personal liberties, illegal non E.U. migrants, and/or E.U. citizens who shall be removed on imperative grounds of public security or other circumstances provided for by the law. These people shall be subject to immediate measures, according to the law in force.

All these activities should allow the identification of people who can legitimately live in authorised encampments and are also aimed at eliminating all illegal camps.

As regards the data treatment, it must be carried out in such a way that all data collected are, as usual, sent to the judicial and police authorities as provided for by the law, since these data are collected to guarantee security in addition to all the other crime prevention and suppression instruments."

16. The adoption of the above "security measures" was based on Law No. 225/92 of 24 February 1992 on the establishment of a national civil protection service, which empowers the Government to declare a state of emergency in the event of "*natural disasters, catastrophes or other events that, on account of their intensity and extent, have to be tackled using extraordinary powers and means*" (Article 2.3.c).

17. According to Law No. 189/02, known as the "Bossi-Fini" Law (amending legislation concerning immigration and asylum) of 30 July 2002 (*Gazzetta Ufficiale* No. 199, 26 August 2002), expulsions may be carried out by administrative decision even if an appeal has been lodged (Article12). However, the Italian Constitutional Court (Judgment No. 222 of 8 July 2004) has held that this procedure is not in conformity with defence rights and the due process of law (Articles 13 and 24 of the Italian Constitution).

18. Law No. 94/09 on "Provisions on public security" of 15 July 2009, *inter alia* results in criminalising irregular immigrants (Article 1.16) as the status of irregular immigrant has become an "aggravating circumstance" under Italian criminal law.

B – International sources

19. Article 2 of the United Nations Convention on the Elimination of all forms of Racial Discrimination of 21 December 1965 reads:

> "*1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:*
>
> *(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*
>
> *(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;*
>
> *(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*
>
> *(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;*
>
> *(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.*

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved."

20. Article 11 of the United Nations International Covenant on Economic, Social and Cultural Rights of 16 December 1966, reads:

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

21. The United Nations Committee on Economic, Social and Cultural Rights made the following comments as to adequate housing and forced evictions:

General Comment 4

"8. (…) 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 with affected persons and groups. (…)

"18. (…) 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." (Doc. E/1992/23: "The right to adequate housing")

General Comment 7

"13. 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."

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

"17. 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." (Doc. E/1998/22: "Forced evictions, and the right to adequate housing")

22. As regards resolutions and reports concerning specifically the situation of Roma and Sinti in Italy:

(i) Committee of Ministers Resolution ResCMN(2006)5 on the implementation of the Framework Convention for the Protection of National Minorities by Italy, adopted on 14 June 2006, adopted on the basis of the 2nd opinion on Italy by the Advisory Committee on the Framework Convention for the Protection of National Minorities of 24 February 2005 (document ACFC/INF/OP/II(2005)003)

"1. Adopts the following conclusions in respect of Italy: (…)

b) Issues of concern

Initiatives to tackle discrimination and negative stereotypes in the media must be stepped up as these problems continue to affect certain minority groups. (…)

The lack of tangible progress in the integration of the Roma, Sinti and Travellers, the widespread discrimination they often face and the poor living conditions prevailing in many camps is a source of concern. A comprehensive strategy of integration at national and local level needs to be completed in consultation with those concerned. Legal guarantees at the state level for the Roma, Sinti and Travellers need to be developed so as to enable these persons to better preserve and further develop their identity and culture.

2. Adopts the following recommendations in respect of Italy: (…)

- *consider the reinforcement of procedural guarantees and legal remedies so as to make existing legal provisions against discrimination more effective and thereby better ensure equality before the law and equal protection of the law for persons belonging to minorities;*

- *step up efforts at the state level to ensure legal protection of the Roma, Sinti and Travellers and enable them to preserve and develop their identity;*

- *intensify existing measures to enable Roma, Sinti and Travellers to enjoy adequate living conditions and pursue efforts to adopt, in consultation with those concerned, a comprehensive strategy of integration at national level focusing on access to housing, employment, education and health care."*

(ii) European Parliament, Resolution 2008/0361 of 10 July 2008 on the census of Roma on the basis of ethnicity in Italy

"G. whereas on 21 May 2008 the Italian Government issued a decree declaring a state of emergency in relation to nomad settlements in the regions of Campania, Lazio and Lombardy, based on Law No 225 of 24 February 1992 on the establishment of a national civil protection service, which empowers the government to declare a state of emergency in the event of 'natural disasters, catastrophes or other events that, on account of their intensity and extent, have to be tackled using extraordinary powers and means', (…)

I. whereas the decree declared a state of emergency for a period of one year, until 31 May 2009,

J. whereas the Italian Minister of the Interior has repeatedly declared that the purpose of taking fingerprints is to carry out a census of the Roma population in Italy and that he intends to allow the fingerprinting of Roma living in camps, minors included, by way of derogation from ordinary laws, affirming that Italy will proceed with these identification operations that will be concluded before 15 October 2008 in Milan, Rome and Naples,

K. whereas fingerprinting operations are already under way in Italy, notably in Milan and Naples, and whereas according to information provided by NGOs such data are stored by Prefects in a database, (…)

9. Expresses concern at the affirmation - contained in the administrative decrees and orders issued by the Italian Government - that the presence of Roma camps around large cities in itself constitutes a serious social emergency with repercussions for public order and security which justify declaring a state of emergency for one year;

10. Is concerned that, owing to the declaration of a state of emergency, extraordinary measures in derogation from laws may be taken by Prefects to whom authority has been delegated to implement all measures, including the collection of fingerprints, based on a law concerning civil protection in the event of 'natural disasters, catastrophes or other events', which is not appropriate or proportionate to this specific case; (…)"

(iii) European Commission against Racism and Intolerance (ECRI), third monitoring report on Italy, CRI(2006)19, adopted on 16 December 2005

(iv) Commissioner for Human Rights of the Council of Europe, Mr. Thomas Hammarberg:

- *Memorandum following the visit to Italy on 19-20 of June 2008, document CommDH(2008)18;*
- *Report following the visit to Italy on 13-15 January 2009, document CommDH(2009)16.*

THE LAW

PRELIMINARY ISSUES

In general

23. In its decision on admissibility of 8 December 2009 the Committee considered that the allegations of COHRE were serious. It thus decided to give priority to the examination of the present complaint in accordance with Rule 26 *in fine* of its Rules.

24. The present complaint indeed not only alleges that Italian authorities have not ensured a proper follow-up to the decision on the merits of 7 December 2005 in respect of European Roma Rights Center ("ERRC") v. Italy, Complaint No. 27/2004, and subsequent conclusions on the right to housing. It also, more specifically, raises new issues linked to the adoption by the Italian authorities of allegedly regressive measures that would have worsened the situation assessed by the Committee.

25. In this respect, the Committee already held that:

> "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 allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected." (Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53).

26. More particularly, with regard to the right to housing, the Committee, in connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, emphasised that:

> "implementation of the Charter requires State Parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein" (International Movement ATD Fourth World v. France, Complaint No 33/2006, decision on the merits of 5 December 2007, § 61).

27. In this regard, the Committee holds that such realisation of the fundamental social rights recognised by the Revised Charter is guided by the principle of progressiveness, which is explicitly established in the Preamble and more specifically in the aims to facilitate the "economic and social progress" of State Parties and to secure to their populations "the social rights specified therein in order to improve their standard of living and their social well-being".

Personal scope of the Revised Charter

28. The Committee notes that the parties do not question the fact that the vulnerable group covered by the complaint is a heterogeneous group.

29. In this connection, the Committee highlights that:

> "the Roma currently living in Italy are not a homogeneous group. They stay for different periods of time. Their legal status varies from person to person. They face a variety of economic circumstances. And they have been integrated into the local community to varying degrees. These differences are often lost in the public's perception of these groups. The Roma and Sinti are still widely considered by the Italian public to be a nomadic population, even though the majority of them have in fact been settled for a long time" (OSCE, *Assessment of the human rights situation of Roma and Sinti in Italy*, *Report of a fact-finding mission to Milan, Naples and Rome on 20-26 July 2008*, March 2009, p. 13).

30. Moreover, this heterogeneous character includes the specific group of "Sinti", who emigrated to Northern Italy in the 13th century.

31. According to COHRE, which refers to figures collected by the Office for Democratic Institutions and Human Rights ("ODIHR") of the Organisation for the Security and Co-operation in Europe ("OSCE"), an estimated 160 000 Roma reside in Italy, approximately 70 000 of whom hold Italian citizenship. Though the numbers are contested (approximately 150 000 Roma according to the information provided by the Ministry of Interior), it is estimated that more than half come from South Eastern Europe, former Yugoslavia, Bulgaria and Romania.

32. The Committee observes that this heterogeneous group includes Italian citizens and nationals of other parties to the Charter or the Revised Charter lawfully resident in Italy but also, in a proportion which is not clearly determined, third country nationals or persons without residence permit.

33. In the light of the information provided in the written submissions and during the public hearing, the Committee understands that it is extremely complex to distinguish to whom the protection guaranteed by the Charter and its Appendix applies without restrictions. The Committee considers that the lack of identification possibilities should not lead to depriving persons fully protected by the Charter of their rights under it. In addition, that part of the population at stake which does not fulfil the definition of the Appendix cannot be deprived of their rights linked to life and dignity under the Charter (International Federation of Human Rights Leagues, FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 32 and Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 37).

Discrimination

34. COHRE presented allegations under Articles 16 (right of the family to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing) and/or in relation to Article E (non discrimination clause) of the Revised Charter in conjunction with each of these provisions. COHRE considers that the discrimination at stake is based on racial grounds.

35. The Committee reiterates that Article E prohibits discrimination and therefore establishes an obligation to ensure that, in the absence of objective and reasonable justifications, any individual or groups with particular characteristics enjoys in practice the rights secured in the Revised Charter. Moreover, Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (see, *inter alia*, Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52 and ERRC v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 40).

36. The Committee further reiterates that in respect of complaints alleging discrimination the burden of proof should not rest entirely on the complainant organisation, but should be the subject of an appropriate adjustment (Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, § 52).

37. With regard to racial discrimination, the Committee points out that the European Court of Human Rights held that:

> "Discrimination on account of one's actual or perceived ethnicity is a form of racial discrimination (…). Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment. (…) no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (*Timishev v. Russia,* judgment of 13 December 2005, §§ 56 and 58)."

38. The Committee considers that the same interpretation is valid for the Charter.

39. Furthermore, with regard to the Roma in particular, the European Court of Human Rights takes into account the fact that:

> "(…) as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority (…). They therefore require special protection. (…) 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 (…) not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community" (*Orsus v. Croatia*, judgment of 16 March 2010, §§ 147-148).

40. The Committee will also bear in mind these important features.

41. The complainant organisation maintains that the "Pacts for Security" adopted by state and territorial authorities since November 2006 are part of a strategic plan (see national sources above, § 14). Indeed, the "*Patto per Roma Sicura"* (18 May 2007) and the "*Patto per Milano Sicura"* (18 May 2007) explicitly respectively refer to the "*emergenza nomada*" ("nomad emergency") and the "*emergenza Rom*" ("Roma emergency").

42. Even if the representative of the Government maintained during the public hearing that this terminology could not have been used in these "Pacts for Security" because of its undemocratic and discriminatory implications, the Committee notes that these terms appear in the text of both "Pacts for Security" which, at the time of the adoption of this decision, were published on the official website of the Ministry of Interior (http://www.interno.it/mininterno/site/it/temi/sicurezza/0999_patti_per_la_sicurezza.html).

43. The Committee also notes that the adoption of Decree No. 92/2008 (amended and converted into law by Law No. 125 of 24 July 2008), as well as of the Ordinances declaring the presence of Roma as a cause of "serious alarm, with the possibility of serious repercussions in terms of public order and security of the local populations" (see national sources above, § 15) was meant to provide these "Pacts for Security" with a legal basis *a posteriori*.

44. Moreover, the Committee notes that the initial "Pacts for Security" continue to serve as "models" as is confirmed by the official list of 49 such "Pacts" existing at the time of adoption of this decision (as published on the website of the Ministry of Interior). Indeed, the last one ("*Patto per Pisa Sicura"* of 9 June 2010) refers likewise to Law No. 125 of 24 July 2008 and deals in Article 11 with unauthorised settlements and encampments ("*accampamenti e insediamenti abusivi*").

45. Finally, during the public hearing, both parties informed the Committee that the declaration of the state of emergency in relation to settlements of nomad communities (Decree of the President of the Council of Ministers of 21 May 2008), which was provided for until 31 May 2009, has been extended until the end of 2010.

46. In the light of the foregoing, the Committee considers that the complaint, in substance, presents allegations of racial discrimination concerning the enjoyment of the right to housing by the Roma and Sinti in view of their substandard living conditions and forced evictions, as well as of difficulties for these groups in having access to housing and family benefits. COHRE also claims that Roma and Sinti populations are discriminated against in the protection of family life with regard to census and identification procedures, and that they are the victims of a xenophobic and racist propaganda which aggravates their social exclusion.

47. The Committee therefore considers that the alleged inequality of treatment in the enjoyment of the above-mentioned rights is a fundamental aspect of the present complaint. It therefore must analyse all the issues pertaining to this complaint from the standpoint of Article E read in conjunction with each of the substantive provisions relied upon by the complainant organisation, i.e. Articles 16, 19, 30 and 31 of the Revised Charter.

48. The Committee will examine the allegations in the following order:

1. Article E taken in conjunction with Article 31 (right to housing);

2. Article E taken in conjunction with Article 30 (right to protection against poverty and social exclusion);

3. Article E taken in conjunction with Article 16 (right of the family to social, legal and economic protection);

4. Article E taken in conjunction with Article 19 (right of migrant workers and their families to protection and assistance).

FIRST PART: ALLEGED RACIAL DISCRIMINATION IN THE ENJOYMENT BY ROMA AND SINTI OF THE RIGHT TO HOUSING (ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 31)

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter 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.

Article 31 – The right to housing

Part I: Everyone has the right to housing.

Part II: 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.

I. ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 31§1

A – Submissions of the parties

1. The complainant organisation

49. With regard to the violation of the right to adequate housing, COHRE submits that following the adoption of the contested "security measures" (see domestic law, §§ 14, 15 and 18 above) a growing number of Roma live in socially excluded locations characterised by substandard conditions on the edges of towns, segregated from the rest of the population. Material conditions in authorised and unauthorised camps are frequently inhuman. Moreover where Italian authorities have taken measures and allocated resources on Roma, COHRE argues that these efforts have in most cases not been aimed at integrating Roma into Italian society. Instead, "temporary housing containers" have been established in a number of cases surrounded by high walls, isolating the Roma from the view of non-Romani Italians and having the effect of officially sanctioning ghetto communities with inadequate public infrastructure and services.

50. Additionally, COHRE alleges that the above-mentioned measures constitute deliberate regressive steps which fail to bring into conformity with the Charter the situations found to be in violation of Article 31 by the Committee in its decision on the merits in Complaint No. 27/2004.

2. The respondent Government

51. The Government firstly explains that to improve, both qualitatively and quantitatively, the situation of all Roma and Sinti, an overview of the number Roma and Sinti, in particular minors, in the cities of Rome, Milan, Florence, Bologna and Naples was required. To this effect, it collected data in the relevant camps, with the approval of the European Commission and in collaboration with UNICEF and the Red Cross.

52. The Government then maintains that following the production of these statistics, national, regional and local institutions have taken urgent steps to determine whether the persons identified were Italian citizens, with the aim of offering them protection, whether they were born in Italy or migrant. In respect of the right to housing under the Revised Charter, the Government states it took steps to provide adequate accommodation by financing projects in the cities of Rome, Padua, Turin, Milan and Reggio Calabria.

B – Assessment of the Committee

53. The Committee underlines that in its decision on the merits of 7 December 2005 in ERRC v. Italy, Complaint No. 27/2004, it found that the situation in Italy was in breach of the Revised Charter as:

> "§ 36 (…) by persisting with the practice of placing Roma in camps, the Government has failed to take due and positive account of all relevant differences, or adequate steps to ensure their access to rights and collective benefits that must be open to all.
>
> § 37 The Committee therefore finds that Italy failed to show that:
> - it has taken adequate steps to ensure that Roma are offered housing of a sufficient quantity and quality to meet their particular needs;
> - it has ensured or has taken steps to ensure that local authorities are fulfilling their responsibilities in this area.

54. The Committee reiterates that adequate housing under Article 31§1 means a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (see Conclusions 2003, Article 31§1 France, European Federation of National Organisations Working with the Homeless, FEANTSA v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, § 76 and Defence for Children International, DCI v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 43).

55. As the Government has provided no evidence, either in its written submissions or during the public hearing, to demonstrate that the numerous examples of substandard living conditions of Roma and Sinti have improved rather than deteriorated following the adoption of the contested "security measures", the Committee relies, *inter alia*, on the Memorandum by Mr Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to Italy on 19-20 June 2008. As regards living conditions in camps, with reference to the Roma camp *Casilino 900*, in Rome, the Commissioner noted that:

> "§ 34 (…) the standards of the living conditions there were unacceptably low. The situation on this site remains basically unchanged since the visit of the previous Commissioner three years ago who had described the camp as a shanty-town. It consists of caravans, shacks and chemical toilets, many of the latter in an obviously too bad state for use.
>
> § 35 On the date of the Commissioner's visit, the inhabitants of the camp, approximately 650 persons, including approximately 240 minors, had no access to electricity or water. The Commissioner was informed by Roma organisations that he met on 19 June that similar conditions prevail in many other Roma camps, a situation that makes mortality rates there very high." (CommDH(2008)18)

56. The Committee further notes that the construction of four "villages of solidarity" (*villaggi della solidarietà*) as part of the implementation of the "Rome Pact" on the periphery of Rome for 4 000 Roma (out of the more than 10 000 Roma reported to be affected in Rome) was not considered a successful solution by Mr. Achille Serra, the Prefect of Rome, although he had conceived the project.

57. Moreover, this negative view is confirmed by the assessment of the human rights situation of Roma and Sinti in Italy by the OSCE High Commissioner on National Minorities of March 2009:

> "The delegation was informed by almost all of the local, regional, and central authorities that they met with of a variety of plans regarding the construction or improvement of housing conditions in Roma and Sinti communities, particularly for those people currently living in unauthorized settlements. Several of these plans appeared to be in advanced stages of development. However, it seems that the implementation of these plans has been difficult for a number of reasons. It has been difficult to secure state funding and to overcome opposition from local populations to such plans. Complicated administrative structures among the different layers of government also appeared to have hampered approval and implementation procedures.." (p. 29)

58. The Committee therefore finds that the living conditions of Roma and Sinti in camps worsened following the adoption of the contested "security measures". As, on the one hand, the measures in question directly target these vulnerable groups and, on the other, no adequate steps are taken to take due and positive account of the differences of the population concerned, the situation amounts to stigmatisation which constitutes discriminatory treatment.

59. The Committee holds that the situation of the living conditions of Roma and Sinti in camps or similar settlements in Italy constitutes a violation of Article E taken together with Article 31§1 of the Revised Charter.

II. ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 31§2

A – Submissions of the parties

1. The complainant organisation

60. COHRE submits that with the adoption of the contested "security measures" Italy has not limited the risk of evictions and that of rendering numerous Roma and Sinti homeless. It argues that on the contrary such measures have resulted in more forced evictions and actions of violence against Roma and Sinti camps with few cases of alternative accommodation being provided.

61. COHRE moreover claims that evictions were carried out without respecting the requirements set by the case law of the Committee not only in the decision on the merits concerning Italy (§ 41, decision of 7 December 2005) but also in the decisions on the merits in Complaints No. 33/2006, ATD v. France (§ 83, decision of 5 December 2007) and No. 39/2006, FEANTSA v. France (§ 108, decision of 5 December 2007).

62. In its response to the Government's submissions on the merits, COHRE points to the reported forced eviction of a further 70 Roma persons from the *Bacula* camp in Milan in March 2009 and of a further 400 Roma persons from the *Via Centocelle* camp in the eastern part of Rome in November 2009. Similarly, it also highlights a reported forced eviction of approximately 150 Roma persons from the *Via Sant'Arialdo* area of Milan on 22 January 2010. According to information gathered by Amnesty International and referred to by the complainant organisation, the communities concerned were not notified or consulted about the eviction.

63. Finally, COHRE submits that the authorities did not systematically prepare plans for adequate alternative housing nor did they discuss such plans with the individuals likely to be affected. In those cases where alternative accommodation was offered, COHRE maintains that the alternative accommodation did not satisfy, either in terms of quantity or in terms of quality, the requirements of adequate housing.

2. The respondent Government

64. In its submissions on the merits of the complaint, the Government argues that in the event of illegal occupancy or infringements of individual or collective interests, evictions may be carried out. It further maintains that the authorities have intervened only in such cases and have carried out evictions respecting the applicable rules of procedure, being sufficiently protective of the rights of the persons concerned.

65. The Government also states that numerous Roma and Sinti left their settlements and the Italian territory at their own initiative.

B – Assessment of the Committee

66. The Committee points out that, in its decision on the merits of 7 December 2005 in ERRC v. Italy, Complaint No. 27/2004, it found that the situation in Italy was in breach of the Revised Charter as:

> "41. (…) with regard to Article 31§2 that States Parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available (see Conclusions 2003, Article 31§2, France, p. 225, Italy, p. 345, Slovenia, p. 557, and Sweden, p. 653).
>
> 42. The Committee finds that Italy has failed to establish that the relevant evictions it carried out satisfy these conditions, and has not provided credible evidence to refute the claims that Roma have suffered unjustified violence during such evictions."

67. In the present case, the Committee considers that the Government has not demonstrated that the numerous examples of evictions highlighted by the complainant organisation were carried out in conditions that respected the dignity of the persons concerned and that alternative accommodation was made available to them.

68. Under Article 31, the authorities have the obligation to avoid criminal actions being perpetrated against Roma and Sinti settlements by individuals or organised groups. Additionally, when criminal actions or violence are allegedly perpetrated by police officers, the authorities have the obligation to investigate all such cases.

69. In this regard, the Advisory Committee on the Framework Convention for the Protection of National Minorities stated:

> "85. Disturbing reports on abusive police raids in camps continue to be issued by NGOs and human rights activists. It seems that such raids, which may be conducted for valid reasons linked to crime prevention, sometimes result in an excessive use of force against Roma, Sinti or Travellers as well as the destruction of personal belongings, shacks or campers. It is in particular problematic that such operations do not seem to target only persons under suspicion, but often equally affect all residents of a camp, including children. Forced evictions are allegedly also carried out in camps without giving the persons concerned prior notice and providing them with alternative accommodation." (second opinion on Italy, document ACFC/INF/OP/II(2005)003)

70. Further, the Council of Europe Commissioner for Human Rights expressed his concern:

> "32 (…) at anti-Romani and anti-Sinti manifestations in Italy which have been occasionally extremely violent resulting into setting on fire Roma camps, reportedly without effective protection by the Police which has also carried out violent Roma camp raids. Of particular concern is the support which has been provided to such manifestations, directly or indirectly, by certain domestic, national and local, political forces and figures as well as by certain mass media. No information is as yet available on the conclusion of any effective investigation into such incidents by the competent authorities.
>
> 33. During his visit, the Commissioner was informed of the existence of some positive examples of local authorities that have addressed the dire housing situation of Roma, such as the one in the town of Pescara. However, at the same time, the Commissioner received a new worrying report concerning the town of Mestre (Venice) where the construction of a fully equipped camp for Italian Roma, funded by the Venice municipality, was reportedly suspended after the forceful protests and entry into the site of local political forces."(CommDH(2008)18)

71. The Committee further notes that the climate of stigmatization of Roma and Sinti reflected in the "Pacts for Security" was amplified by the declarations attributed by national and international press to political authorities:

- with regard to intolerant attacks against nomad camps in Campania, the Minister for reforms allegedly observed that "if the State does not do its homework, it is done by people themselves *(La Reppublica*, 17 May 2008:");

- an official in the Lombardy regional government allegedly declared "All Gypsies must go" (*Los Angeles Times*, 24 May 2008);

- in relation to violence episodes against nomad camps in Ponticelli, the Mayor of Rome, allegedly stated that if the State appears unable to defend the citizen and to guarantee his security, "the citizen must defend himself on his own" (*La Reppublica*, 14 May 2008).

72. At the public hearing, the representative of the Government questioned the accuracy of some of these statements. The Committee, however, notes the absence of any concerted action by the Government to counter stigmatisation that might have been caused by not demonstrating that the measures taken were not only based on security concerns but also had a social dimension.

73. The Committee therefore finds that evictions of Roma and Sinti continue to be carried out in Italy without respecting the dignity of the persons concerned and without alternative accommodation being made available. Moreover the respondent Government has not provided credible evidence to refute the claims that Roma have suffered unjustified violence during such evictions and that raids in Roma and Sinti settlements, including by the police, have not systematically been denounced and those responsible for destroying the personal belongings of the inhabitants of the settlements have not always been investigated and, if identified, condemned for their acts.

74. As, on the one hand, the measures in question directly target these vulnerable groups and, on the other, no adequate steps are taken to take due and positive account of the differences of the population concerned, the situation amounts to stigmatisation which constitutes discriminatory treatment.

75. From this last perspective, the Committee considers that, the lack of protection and investigation measures in cases of generalized violence against Roma and Sinti sites, in which the alleged perpetrators are officials, implies for the authorities an aggravated responsibility (see, *mutatis mutandis*, the Inter-American Court of Human Rights in *Myrna Mack Chang v. Guatemala*, judgment of 25 November 2003, § 139; *Las Masacres de Ituango v. Colombia*, judgment of 1 July 2006, § 246; *Goiburú and others v. Paraguay*, judgment of 22 September 2006, § 86-94; or *La Cantuca v. Peru*, judgment of 29 November 2006, § 115-116).

76. The Committee considers that an aggravated violation is constituted when the following criteria are met:

- on the one hand, measures violating human rights specifically targeting and affecting vulnerable groups are taken;

- on the other, public authorities not only are passive and do not take appropriate action against the perpetrators of these violations, but they also contribute to such violence.

77. In view of the information available in the case file, the Committee holds that these criteria are met in the instant case, and finds an aggravated violation of the Revised Charter. To reach such a finding, the Committee also takes into consideration the fact that it had already found violations in ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005: Moreover, the situation has not been brought into conformity but it has worsened as highlighted by several international monitoring bodies.

78. Furthermore, the measures in question reveal a lack of respect of the essential values set forth by the European Social Charter (among others, human dignity and non discrimination) whose nature and intensity goes beyond ordinary breaches of the Charter. Moreover, these aggravated violations do not only affect individuals as victims or the relationship between these individuals and the respondent state: they challenge the community interest and the fundamental common standards shared by Council of Europe Member States (human rights, democracy and the rule of law). Consequently, the situation requires urgent attention from all Council of Europe Member States.

79. Therefore, the Committee holds that the practice of eviction of Roma and Sinti as well as the violent acts often accompanying such evictions constitute a violation of Article E taken in conjunction with Article 31§2.

III. ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 31§3

A – Submissions of the parties

1. The complainant organisation

80. COHRE alleges that Italy's identification of Roma and Sinti with "nomads" in local and national housing policy results in a continued failure to make accessible and affordable permanent dwellings of an adequate quality to meet the needs of Roma and Sinti, including of those who are forcibly confined in segregated camps and those who never lived in a camp in their country of origin. It submits that Italy has no national strategy for making housing affordable and accessible to Roma, and persistently ignores the fact that Roma and Sinti seek the same social benefits as the rest of the population.

81. COHRE claims that the contested "security measures" have reinforced the misperception that all Roma are "nomads" who prefer to live in camps isolated from the Italian society. The result has been a continued relegation of Roma and Sinti to segregated camps, instead of improving their effective access to social housing or to housing benefits.

2. The respondent Government

82. The Government argues that the situation is complex and that if those concerned are not willing to accept the assistance available and the solutions offered, any measure is likely not to be effective.

83. It reiterates that it has taken a number of measures and that in so doing, it has been mindful of Recommendation (2005)4 of the Committee of Ministers which, with regard to "choice of lifestyle" states that, while "all conditions necessary to pursue these lifestyles should be made available to them by the national, regional and local authorities", this has to be done "in accordance with the resources available and (…) the rights of others and within the legal framework relating to building, planning and access to private land".

B – Assessment of the Committee

84. In its decision on the merits of 7 December 2005 in ERRC v. Italy, Complaint No. 27/2004, the Committee found that the situation in Italy was in breach of the Revised Charter as:

> "45. (…) Under Article 31§3 it is incumbent on States Parties to adopt appropriate measures for the construction of housing, in particular social housing (see Conclusions 2003, Article 31§3, France, p. 232, Italy, p. 348, Slovenia, p. 561, and Sweden, p. 655). Furthermore, they must ensure access to social housing for disadvantaged groups, including equal access for nationals of other Parties to the Charter lawfully resident or regularly working on their territory.
>
> 46. The Committee acknowledges that the State Party is committed to the principle of equal treatment for Roma as regards access to social housing, but has failed to provide any information to show that this right of access is effective in practice or that the criteria regulating access to social housing are not discriminatory.

85. Furthermore, in Conclusions 2007 on Article 31§3 concerning Italy, the Committee held that :

> "Under Article 31§3 housing benefits must be introduced at least for low-income and disadvantaged sections of the population. Housing allowance is an individual right and all qualifying households must receive it in practice; legal remedies must be available in case of refusal."

86. From the information provided by the authorities, the Committee considers that there is no evidence to establish that Italy has taken sustained positive steps to improve the situation. The Committee is aware of the financial resources allocated by the Italian authorities to specific initiatives and projects referred to by the respondent State in its written submissions and during the public hearing. Still, the Committee considers that it has not been demonstrated that such resources were aimed at improving access of Roma and Sinti to social housing without discrimination. In fact, in contrast with the examples provided by COHRE with detailed descriptions of the precarious situation and substandard conditions in many Roma camps throughout Italy, the representative of the Government only mentioned during the public hearing an isolated concrete case of effective access to social housing ("*centro per l'emergenza abitativa*") in the city of Brescia for a nomadic population of 227 persons.

87. The representative of the Government also pointed out the difficulties to deal with social housing coherently given the complex distribution of competences between the national level and the Regions. In this regard, the Committee reiterates that:

> "even if under domestic law local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States Parties to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised" (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29 and ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 26).

88. Moreover, as reiterated in its decision on the merits of 6 December 2006 in respect of Marangopoulos Foundation for Human Rights v. Greece, Complaint No. 30/2005:

> "The Committee assesses the efforts made by states with reference to their national legislation and regulations and undertakings entered into with regard to the European Union and the United Nations (Conclusions XV-2, Italy, Article 11§3)"

89. In this respect, the Committee underlines that Article 4 of the Draft articles on Responsibility of States for internationally wrongful acts (adopted by the International Law Commission, at its fifty-third session in 2001) provides that:

> "1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.
> 2. An organ includes any person or entity which has that status in accordance with the internal law of the State."

90. Thus, ultimate responsibility for policy implementation, involving at a minimum oversight and regulation of local action, lies with the Italian State.

91. The Committee therefore holds that the situation of segregation of Roma and Sinti in camps constitutes a violation of Article E taken in conjunction with Article 31§3.

SECOND PART: ALLEGED RACIAL DISCRIMINATION IN THE ENJOYMENT BY ROMA AND SINTI OF THE RIGHT TO PROTECTION AGAINST POVERTY AND SOCIAL EXCLUSION (ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 30)

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter 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.

Article 30 – The right to protection against poverty and social exclusion

Part I: "Everyone has the right to protection against poverty and social exclusion."

Part II: "With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b. to review these measures with a view to their adaptation if necessary."

A – Submissions of the parties

1. The complainant organisation

92. COHRE submits that Italy has failed to implement a coordinated approach to combat poverty and has systematically excluded Roma and Sinti from legal status and social benefits. Moreover, it argues that the contested "security measures" coupled with the continued policy of segregating Roma and Sinti in camps and tolerating *de jure* discrimination against them have led to their extreme poverty and social exclusion.

93. COHRE insists on the connection between the failure to guarantee the right to housing to Roma and Sinti and Article 30 by showing that "the lack of legal status arises from segregated and inadequate living situations", and "because camps are not considered 'housing', not even as a temporary solution, Roma and Sinti residing in these camps are barred from registering for social housing".

94. Additionally, it alleges that this situation results in lack of civic and political participation, which contributes to placing Roma in a position of grave social vulnerability.

2. The respondent Government

95. The Government refers to a series of initiatives taken to enhance access by Roma children to education.

B – Assessment of the Committee

96. The Government's arguments refer exclusively to measures adopted in the field of education, in particular the integration of migrant and Roma school children. The Committee values initiatives aimed at ensuring equal access to education for children from vulnerable group.

97. The Committee however points out that this issue is not at stake in the present case, as it has not been raised by the complainant organisation. Indeed, the Committee recalls that: "the parties to the complaint are bound by the Committee's decision on admissibility, particularly as regards the provisions of the Charter to which the complaint relates ». (*Confédération Française Démocratique du Travail* (CFDT) v. France, Complaint No. 50/2008, decision on the merits of 9 September 2009 , § 18).

98. In the light of the foregoing, the Committee considers that the respondent State has not proved that it has invested real efforts to prevent or eradicate the poverty situation affecting Roma and Sinti population, especially those evicted people who were rendered homeless without any social assistance from the Italian authorities in a context of isolated ghettos with highly substandard conditions and inadequate public infrastructure or services.

99. In this connection, in its decision on the merits of 19 October 2009 in ERRC v. France, Complaint No. 51/2008, the Committee held that:

> "93. (…) living in a situation of social exclusion violates the dignity of human beings. With a view to ensuring the effective exercise of the right to protection against social exclusion, Article 30 requires States Parties to adopt an overall and co-ordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access to fundamental rights. There should also be monitoring mechanisms involving all relevant actors, including civil society and persons affected by exclusion. This approach must link and integrate policies in a consistent way (Conclusions 2003, Article 30, France, p. 214).

100. The Committee considers that it results from its findings under Article E taken in conjunction with Article 31 that the housing policy for Roma and Sinti, especially the situation of nomad camps and the difficulties to have access to social housing, is discriminatory under Article E taken together with Article 30.

101. Moreover, under the reporting system, the Committee referred to other sources such as the United Nations, the OSCE and ECRI that have:

- noted the denial of residence and the fact of "placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities" (2008 Concluding Observations on Italy of the Committee on the Elimination of All Forms of Racial Discrimination, § 14);

- stated that most of the plans implemented by the Italian authorities to improve housing for Roma and Sinti "seem to offer only short-term solutions through the construction or improvement of camps, reception centres, and so-called solidarity villages" (OSCE High Commissioner on National Minorities, Assessment of the Human Rights Situation of Roma and Sinti in Italy, March 2009, p. 29),

– "recommended that a comprehensive policy to improve the situation of the Italian and non-Italian Roma and Sinti populations across a wide range of areas and to counter discrimination against them, be elaborated at national level. ECRI notes that there has been no progress towards the establishment of such a policy and that there is no meaningful co-ordination of or support for the action taken by the regions in these fields at the national level. Civil society organisations have, however, consistently underlined that the situation of disadvantage, marginalisation and discrimination of Roma and Sinti is such that without national co-ordination and leadership it cannot be addressed in a sustainable way" (CRI(2006)19, § 93).

102. The Committee concluded that Italy failed to adopt an overall and co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion (Conclusions 2009, Italy, Article 30). It repeats this finding in the present complaint.

103. Furthermore, the Committee observes that the segregation and poverty situation affecting most of the Roma and Sinti population in Italy (especially those living in the nomad camps) is linked to a civil marginalisation due to the failure of the authorities to address the Roma and Sinti's lack of identification documents. In fact, substandard living conditions in segregated camps imply likewise a lack of means to obtain residency and citizenship in order to exercise civil and political participation.

104. In this regard, the Council of Europe Commissioner for Human Rights has further highlighted that:

> "in many cases Roma communities are socially isolated and fragmented. As a result they may be less aware about political and electoral processes, and may lack vital information. They are therefore also vulnerable to electoral malpractices. (…) Another major impediment is that many of them are not included in civic and voter registers, frequently lack the necessary identity documents and are therefore not allowed to vote" (Viewpoint of 1 September 2008 on "Roma representatives must be welcomed into political decision-making").

105. In its decision on the merits of 19 October 2009 in ERRC v. France, Complaint No. 51/2008, the Committee held that:

> "99. (…) The Committee considers that the reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes a special importance. In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by article 30.

106. Civil and political participation of the Roma and Sinti population not only requires strategies for empowerment from public authorities but also respect for ethnic identity and cultural choices. In this connection, the Committee refers to the judgment in Chapman v. the United Kingdom where the European Court of Human Rights observed that:

> "there is an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle (…), not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity that is of value to the whole community" (European Court of Human Rights, *Chapman v. the United Kingdom* [GC], judgment of 18 January 2001, no. 27238/95, § 93 and more recently, *Muñoz Díaz v. Spain*, judgment of 8 December 2009, no. 49151/07, § 60).

107. Under Article 30, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation.

108. By not facilitating access to identification documents for Roma and Sinti, the Italian authorities have excluded some potential voters. In addition,

> "there is little involvement and representation of Roma and Sinti in direct dialogue and consultation with the authorities. Roma and Sinti communities are seldom able to present their own interests and concerns; instead, they are presented through intermediary organizations contracted by local or regional authorities. Such indirect consultation arrangements may not always be in the best interest of those concerned" (OSCE High Commissioner on National Minorities, Assessment of the Human Rights Situation of Roma and Sinti in Italy, March 2009, p. 30).

109. Consequently, the Committee considers that the situation results in restricting the possibility for the persons concerned to participate in the decision-making processes. This leads to discriminatory treatment with regard to the right to vote or other forms of citizen participation for Roma and Sinti and, thus, is a cause of marginalization and social exclusion. As on the one hand, the measures in question directly target these vulnerable groups and, on the other hand, no adequate steps are taken to take due and positive account of the differences of the population concerned, the situation amounts to stigmatisation which constitutes discriminatory treatment.

110. In the light of the foregoing, the Committee holds that the situation constitutes a violation of Article E taken in conjunction with Article 30.

THIRD PART: ALLEGED RACIAL DISCRIMINATION IN THE ENJOYMENT BY ROMA AND SINTI FAMILIES TO SOCIAL, LEGAL AND ECONOMIC PROTECTION (ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 16)

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter 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.

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

Part I: "The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development."

Part II: "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."

A – Submissions of the parties

1. The complainant organisation

111. COHRE's allegations under Article 31 are reiterated under Article 16 as regards the right to housing of Roma and Sinti families. Additionally it maintains that the procedures of identification of Roma and Sinti used by the authorities in the nomad settlements were discriminatory.

2. The respondent Government

112. As regards access to adequate housing and housing benefits for Roma and Sinti families, the Government maintains that the authorities are doing everything possible to secure such rights. It also highlights that given the complexity of the situation, it proceeded to the collection of statistical data to acquire a clearer picture of the extent and nature of the needs of such families.

B – Assessment of the Committee

113. The Committee recalls that in accordance with the principle of equality of treatment, under Article 16 States are required to ensure the protection of vulnerable families, including Roma and Sinti families. The Committee observes that the Roma and Sinti in the present case include also Roma and Sinti families.

114. The Committee considers that the parties' submissions concerning this provision are linked to two different aspects coming within its ambit:

(i) the right of the family to adequate housing;

(ii) the right of the family to protection against undue interference in family life.

(i) The right of the family to adequate housing

115. The Committee reiterates that "Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31" (ERRC v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 17 and ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 89).

116. Thus, the Committee holds that the finding of a violation under Article E taken in conjunction with Article 31 amounts to a finding of a violation of Article E taken in conjunction with Article 16 in this respect.

(ii) The right of the family to protection against undue interference in family life

117. The Committee observes that the Italian authorities have carried out interventions focusing on the monitoring of Roma and Sinti camps by means of identification and census of the people present in such camps, including through fingerprinting of inhabitants or the compilation and storage of photometric and other personal information in databases, as well as in some cases a specific identity card allowing access to the camp.

118. In this respect, in its decision on the merits of 7 December 2005 in ERRC v. Italy, Complaint No. 27/2004, the Committee reiterated that:

> "23. (…) when it is generally acknowledged that a particular group is or could be discriminated against, the state authorities have a responsibility for collecting data on the extent of the problem (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy. Similarly, if homelessness is to be progressively reduced as required by Article 31§2 of the Revised Charter, states will need the necessary factual information to deal with the problem. The regular collection of detailed information and statistics is a first step towards achieving this objective (Conclusions 2005, France, Article 31§2, p.268)."

119. In fact, if data on ethnicity may appear necessary or appropriate for the achievement of the objectives of the Revised Charter, including for the design and implementation of effective policies to combat discrimination against Roma, Sinti and other vulnerable groups, the Committee considers that this collection of detailed information must respect minimum international standards:

- First of all, to avoid that the collection of sensitive data (on ethnic origin, religion, etc.) becomes unduly constraining, the principles of individual voluntary declaration (rather than compulsory) and self-identification should be promoted.

- Then, in order to increase the response rates among the vulnerable groups and to overcome the resistance to declare one's ethnic consciousness (creating a confident atmosphere where members of these groups would no longer fear abuse of personal data experienced under past regimes), it is important to establish and enhance cooperation with national and international monitoring bodies (see, e.g., Guidelines for dealing with issues related to ethnic data collection in ECRI's country-by-country work, ECRI(2005)31, 7 November 2005 and "Ethnic statistics and data protection in the Council of Europe countries", Study report by Patrick Simon, ECRI, 2007) as well as consultation with NGOs representing or working with these groups.

- Finally, to ensure confidentiality throughout the process of collecting and producing data (including information to guarantee the exercise of *habeas* data), qualified staff (e.g., social workers) must be associated with the reporting of multiple ethnic responses.

120. In this context, if discretion must be left to the competent national authorities, the margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (see, *mutatis mutandis*, European Court of Human Rights, *Connors v. the United Kingdom*, judgment of 27 May 2004, § 82). Where a particularly important facet of an individual's existence or identity is at stake, the discretion allowed to the State will be restricted (see, *mutatis mutandis*, European Court of Human Rights, *Evans v. the United Kingdom* [GC], judgment of 10 April 2007, § 77). Similarly, by interpreting Article 7 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the Court of Justice of the European Union (see, *mutatis mutandis,* case C-524/, *Huber v. Bundesrepublik Deutschland* [GC], judgment of 16 December 2008, §§ 63-65) has stated that, while Community Law has not excluded the power of Member States to adopt measures enabling the national authorities to have an exact knowledge of population movements affecting their territory, the exercise of that power does not, of itself, mean that the collection and storage of individualised personal information is necessary.

121. The Committee considers that these principles of interpretation are also valid in the context of Article 16 of the Revised Charter.

122. With regard to the census of Roma and Sinti in Italy, in the written submissions, in relation to the results of the census of 22 October 2008 concerning camps in three cities (Rome, Milan and Naples), the Government merely mentioned that 12 346 persons were registered in 167 camps and that almost 12 000 of these persons had left these camps in June 2008.

123. As to the reasons justifying the need to carry out the census, alongside public order, the contested "security measures" refer to the need to improve health conditions of the persons concerned. However, Italian authorities have not demonstrated that they are implementing any strategy for collecting information about the health of persons nor for combating the risks to public health of these vulnerable groups.

124. As to the modalities for carrying out the census, the representative of the Government during the public hearing maintained that they were in conformity with European Union Law and presented as evidence an article from the Italian newspaper *La Repubblica* (of 4 September 2008, *"Nomadi, la Ue assolve l'Italia. Misure non discriminatorie"*). The Committee firstly points out that this alone cannot be considered as formal evidence that such modalities were in conformity with European Union Law. Secondly, it insists that its task is to rule on conformity with the Revised Charter and not with European Union Law.

125. During the public hearing, the representative of the Government highlighted that the principle of voluntary identification was applied with regard to minors. However, he did not indicate how this principle was applied in practice and what the results were.

126. The Committee finds that, in the present case, the procedures of identification and census of Roma and Sinti were not accompanied by the due safeguards for privacy and against abuses as set out above. The procedures instead amounted to an undue interference in the private and family life of the Roma and Sinti concerned.

127. The Committee considers that the Italian authorities have not justified that the contested "security measures" respect the principle of proportionality and are necessary in a democratic society.

128. Indeed, the Committee considers that the way in which the Italian authorities collected personal data concerning Roma and Sinti (including fingerprinting) exceeded the requirements that may entail public security and was not used to their benefit. The same observations are valid as concerns identification through badges and formal permission from civil protection to enter and exit the camps/settlements.

129. The Committee considers that in parallel with Article 8 of the European Convention on Human Rights ("the Convention"), Article 16 of the Revised Charter protects a right to personal development and the right to establish and develop relationships with other human beings and the outside world (see, *mutatis mutandis*, European Court of Human Rights, *P.G. and J.H. v. the United Kingdom*, judgment of 25 September 2001, § 56).

130. The Committee, in view of the specific discriminatory context in which the information at issue has been recorded and retained, considers that on the one hand, the census and measures of identification concerning Roma and Sinti adopted by the Italian authorities were exclusively based on theoretic security reasons (the "*emergenza nomadi*") and were of no use to enlighten any social problem.

131. It also considers, on the other hand, that the conditions in which the operations were carried out, particularly due to the emergency legislation in place, constituted an obstacle to real protection against arbitrariness (see, *mutatis mutandis,* European Court of Human Rights, *Malone v. the United Kingdom*, judgment of 2 August 1984, §§ 66-68; *Rotaru v. Romania* [GC], judgment of 4 May 2000, § 55; *Amann v. Switzerland* [GC], judgment of 16 February 2000, § 56).

132. Therefore, the Committee holds that the situation constitutes a violation of Article E taken in conjunction with Article 16 of the Revised Charter.

FOURTH PART: ALLEGED RACIAL DISCRIMINATION IN THE ENJOYMENT BY MIGRANT ROMA WORKERS AND THEIR FAMILIES OF THE RIGHT TO PROTECTION AND ASSISTANCE (ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 19)

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter 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.

Article 19 – The right of migrant workers and their families to protection and assistance

Part I: "Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party."

Part II: "With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration; (…)

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters: (…)
   c. accommodation; (…)

8 to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality; (…)

I. ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 19§1

A – Submissions of the parties

1. The complainant organisation

133. COHRE argues that 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", is at the very least misleading propaganda relating to immigration and emigration of Roma.

134. COHRE considers that legislation adopted quickly and singling out Roma and Sinti as targets for security concerns has the effect of conflating foreigners with offenders. Further, it serves to legitimise racist and xenophobic actions against Roma and Sinti, masking an agenda of violence and segregation under the aegis of security concerns.

2. The respondent Government

135. The Government points out that following the establishment of the European Union Platform for Roma Inclusion and with the help of EU structural funds, the national office against racial discrimination (UNAR), in conjunction with the European Commission, is preparing measures to combat racial discrimination and xenophobia. In this regard, during the public hearing the representative of the Government also highlighted that on 7 June 2010 the Council of Europe DOSTA Campaign (to combat prejudices against Roma) was launched in Italy with the support of UNAR.

B – Assessment of the Committee

136. The Committee underlines that Article 19§1 guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other Parties who wish to immigrate (Conclusions I, Statement of Interpretation on Article 19§1). Under Article 19§1, States must take measures to prevent misleading propaganda relating to immigration and emigration. Such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter (Conclusions XIV-1, Greece). To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary, *inter alia*, to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease (Conclusion XV-1, Austria).

137. The Italian authorities have been considered directly responsible for the relaxation of the anti-discrimination law dealing with incitement of racial hatred and violence and racially-motivated offences, as well as for the use of xenophobic political rhetoric or discourse against Roma and Sinti, by different international bodies:

- in the Memorandum following his visit to Italy on 19-20 June 2008, the Council of Europe Commissioner for Human Rights noted "that in February 2006 anti-racism legislation was modified by Law 85/2006 which seriously reduced the sentences provided for in cases of propaganda advocating racial or ethnic superiority or hatred, and instigation to commit or the commission of discriminatory or violent acts on racial, ethnic, national or religious grounds" (CommDH(2008)18, §18). In the Appendix to the Memorandum with the Comments by the Italian Government, the latter confirmed that "the amendment introduced in February 2006 to the "Mancino Law" mitigated only the punishments attached to the crime, provided by Article 1, consisting in propaganda advocating racial or ethnic superiority or hatred, and instigation to commit or the commission of discriminatory or violent acts on racial, ethnic, national or religious grounds by reducing the initial maximum term of 3 years of imprisonment to either a fine of 6,000 Euros or 18 months imprisonment";

- the Assessment of the Human Rights Situation of Roma and Sinti in Italy by the OSCE High Commissioner on National Minorities (March 2009) considered "the measures adopted by the Government, starting with the declaration of a state of emergency, disproportionate in relation to the actual scale of the security threat related to irregular immigration and the situation in the Roma and Sinti settlements. Moreover, the delegation is concerned that the measures taken, by in effect targeting one particular community, namely the Roma or Sinti (or "nomads"), along with often alarmist and inflammatory reporting in the media and statements by well-known and influential political figures, fuelled anti-Roma bias in society at large and contributed to the stigmatization of the Roma and Sinti community in Italy" (p. 8).

- in the ECRI Third Report on Italy, it is noted that "some members of the Northern League have intensified the use of racist and xenophobic discourse in the political arena. Although locally-elected representatives of this party have been particularly vocal in this respect, representatives exercising important political functions at national level have also resorted to racist and xenophobic discourse. Such discourse has continued to target essentially non-EU immigrants, but also other members of minority groups, such as Roma and Sinti. In some cases, this type of discourse has consisted in generalisations concerning these minority groups or in their humiliating and degrading characterisation, even taking the form of propaganda aimed at holding non-citizens, Roma, Sinti, Muslims and other minority groups collectively responsible for a deterioration in public security in Italy. Racist and xenophobic discourse has gone as far as presenting the members of these groups as a threat to public health and the preservation of national or

local identity, resulting in some cases in incitement to discrimination, violence or hatred towards them" (CRI(2006)19, § 86).

138. During the public hearing and in the written responses provided by the Government, reference was made to the agreement (12 June 2008) by the Italian Council of Journalists' Association of a Code of Conduct ("Rome Charter") on reporting, in a balanced and accurate manner, on asylum and migration issues. The Committee takes note of this new instrument, drafted by the Journalists' Association and the Italian National Press Federation in collaboration with the UNCHR. Even admitting the difficulty of striking the right balance between the freedom of the press and the protection of others in cases of dissemination of racist remarks (see, *mutatis mutandis,* European Court of Human Rights, *Jersild v. Denmark,* judgment of 23 September 1994), the Committee finds that the Government has not taken all appropriate steps against misleading propaganda by means of legal and practical measures to tackle racism and xenophobia affecting Roma and Sinti.

139. The Committee considers that statements by public actors such as those reported in the complaint create a discriminatory atmosphere which is the expression of a policy-making based on ethnic disparity instead of on ethnic stability. Thus, it holds that the racist misleading propaganda against migrant Roma and Sinti indirectly allowed or directly emanating from the Italian authorities constitutes an aggravated violation of the Revised Charter.

140. In the light of the foregoing, the Committee holds that the use of xenophobic political rhetoric or discourse against Roma and Sinti constitutes a violation of Article E taken in conjunction with Article 19§1 of the Revised Charter.

II. ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 19§4.c

A – Submissions of the parties

1. The complainant organisation

141. COHRE repeats its allegations concerning the violation of the right to housing also with regard to Roma and Sinti migrant workers and their families.

2. The respondent Government

142. The Government also reiterates the steps taken to ensure that adequate housing is provided also with respect to Roma and Sinti migrants regularly working or legally residing in Italy.

B – Assessment of the Committee

143 The Committee reiterates that Article 19§4 guarantees the right of migrant workers to a treatment not less favourable than that of nationals in the areas addressed by the subheadings of the provision. Within these areas States are required to guarantee certain minimum standards with a view to assisting and improving the legal, social and material position of migrant workers and their families. States are required to prove the absence of discrimination, direct or indirect, in terms of law and practice (Conclusions III, Italy) and should inform the Committee of any practical measures taken to remedy cases of discrimination. Moreover, States should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers (Conclusions I, Italy, Norway, Sweden, United-Kingdom)

144. Sub-heading (c) of Article 19§4 concerns accommodation. Under this provision States undertake to eliminate all legal and *de facto* discrimination concerning access to public and private housing. There must be no legal or *de facto* restrictions on home–buying (Conclusions IV, Norway), access to subsidised housing or housing aids, such as loans or other allowances (Conclusions III, Italy).

145. In its submissions, the Government states that many of the Roma and Sinti in Italy are in an illegal situation. The Committee notes that some are indeed in this situation and therefore they do not fall *prima facie* within the scope of Article 19§4c. However, it is also undisputed that this population includes Roma and Sinti migrant workers from other States Parties who are in a legal situation and therefore enjoy the rights set out in Article 19§4c.

146. The Committee has already ruled on the situation of Roma and Sinti and their right to housing in this decision under Articles E and 31. Its findings in this regard also apply to Roma and Sinti migrants and their families residing legally in Italy.

147. The Committee holds that the finding of a violation of Article E taken in conjunction with Article 31 as far as the right to housing is concerned amounts to a finding of violation also of Article E taken in conjunction with Article 19§4c.

III. ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 19§8

A – Submissions of the parties

1. The complainant organisation

148 COHRE alleges that the contested "security measures" have enabled the Government to designate an entire group of persons, Roma and Sinti, as a threat to public security and to proceed to their collective expulsion violating human rights standards.

2. The respondent Government

149. The Government states that migrants who are not citizens may be liable to expulsion for specific reasons. It underlines that it understands that under Article 19§8 of the Revised Charter, States Parties are authorised to expulse workers who are lawfully resident if they endanger national security or offend against public interest or morality.

B – Assessment of the Committee

150. The Committee acknowledges that Article 19§8, which obliges States to prohibit by law the expulsion of migrants lawfully residing in their territory, admits exceptions where there is a threat to national security, or offend against public interest or morality (Conclusions VI, Cyprus).

151. However, the Committee recalls that expulsion for offences against public order or morality shall only be in conformity with the Revised Charter if they constitute a penalty for a criminal act, imposed by a court or a judicial authority, and are not solely based on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of their presence in the territory of the State. States must ensure that foreign nationals served with expulsion orders have a right of appeal (Conclusions IV, United-Kingdom) to a court or other independent body, even in cases where national security, public order or morality are at stake.

152. Moreover, migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory (Conclusions XVI-1, Netherlands).

153. Although the exact figures on expulsions of Roma and Sinti lawfully residing in Italy (in particular those fulfilling all requirements to be considered Italian nationals but being impeded to prove it through the relevant identification documents) could be controversial, it appears that the contested "security measures" (in the framework of the above mentioned strategic plan which directly tackles the "Roma emergency") did entail that many were forced to return to their countries of origin, especially to Romania.

154. Moreover, as far as collective expulsions are concerned, the complainant organisation highlights that "United Press reported on 28 December 2007 that 500 persons had already been forced to leave Italy while another 1.200 were reportedly facing expulsion. Moreover an article by *Il Sole 24 ore* of 29 December 2007 stated that 510 persons had been banned from Italy, 181 of whom were expelled for "imperative security reasons".

155. According to the European Court of Human Rights:

> "collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group. That does not mean, however, that where the latter condition is satisfied the background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with Article 4 of Protocol No. 4". (…) in those circumstances and in view of the large number of persons of the same origin who suffered the same fate as the applicants, the Court considers that the procedure followed does not enable it to eliminate all doubt that the expulsion might have been collective." (*Conka v. Belgium*, no. 51564/99, judgment of 5 February 2002, §§ 59 and 61)

156. The Committee considers that the same interpretation is valid for the Revised Charter.

157. In the light of the above, even if according to the Italian legislation on aliens any expulsion might be taken only on an individual basis and no collective expulsion might be allowed, the Committee finds that the practices permitted by the contested "security measures" are evidenced by the fact that the so-called "*emergenza rom*" offers a collective basis to proceed in identical abstract terms to these collective expulsions. Furthermore, the doubt that the expulsion is collective is reinforced in the present complaint because it is to be placed in the framework of the "*piano strategico emergenza rom"* and in the context of the above violations of the Revised Charter already found by the Committee.

158. In the instant case the Committee considers that the contested "security measures" represent a discriminatory legal framework which targets Roma and Sinti, especially by putting them in a difficult situation of non access to identification documents in order to legalise their residence status and, therefore, allowing even the expulsion of Italian and other EU citizens (for example, Roma from Romania, Czech Republic, Bulgaria or Slovakia).

159. Moreover, the Committee notes that the adoption of the contested "security measures" was based on Law No. 225 of 24 February 1992 on the establishment of a national civil protection service, which empowers the Government to declare a state of emergency in the event of "natural disasters, catastrophes or other events that, on account of their intensity and extent, have to be tackled using extraordinary powers and means" (Article 2.3.c of Law No. 225/92). Replying to a question by the Committee, the representative of the Government stated that this Law No. 225/92 was used for budgetary reasons (as it allows an easier access to financial resources). This procedure has been used in different contexts such as international sports competitions or religious celebrations.

160. The Committee also observes that the adoption of the contested "security measures" has been considered "indicative of serious weaknesses of the state mechanism that appears to be unable to deal effectively with social problems that are not novel by means of ordinary legislative or other measures" (Memorandum by the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, following his visit to Italy of 19-20 June 2008, Strasbourg, 28 July 2008, CommDH(2008)18, para. 43).

161. Therefore, the Committee holds that the situation of expulsion of Roma and Sinti constitutes a violation of Article E taken in conjunction with Article 19§8 of the Revised Charter.

CONCLUSION

162. For these reasons the Committee concludes:

- unanimously that there is a violation of Article E taken in conjunction with Article 31§1;
- unanimously that there is a violation of Article E taken in conjunction with Article 31§2;
- unanimously that there is a violation of Article E taken in conjunction with Article 31§3;
- unanimously that there is a violation of Article E taken in conjunction with Article 30;
- unanimously that there is a violation of Article E taken in conjunction with Article 16
- unanimously that there is a violation of Article E taken in conjunction with Article 19§1;
- unanimously that there is a violation of Article E taken in conjunction with Article 19§4.c;
- unanimously that there is a violation of Article E taken in conjunction with Article 19§8.

Luis JIMENA QUESADA
Rapporteur

Polonca KONČAR
President

Régis BRILLAT
Executive Secretary