



11 December 2009

DECISION ON THE MERITS

11 December 2009

**International Centre for the Legal Protection of Human Rights (INTERIGHTS)
v. Greece
Complaint No. 49/2008**

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 240th session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, Vice-President
Colm O'CONNOR, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Mr Lauri LEPPIK
Mrs Monika SCHLACHTER
Birgitta NYSTRÖM
Lyudmila HARUTYUNYAN
Mssrs Rüşan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Luis JIMENA QUESADA
Mrs Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary,

Having deliberated on 8 and 11 December 2009,

On the basis of the report presented by Ms Csilla KOLLONAY LEHOCZKY,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint lodged by the International Center for the Legal Protection of Human Rights (hereafter referred to as "INTERIGHTS") was registered on 28 March 2008. The European Committee of Social Rights ("the Committee") declared the complaint admissible on 23 September 2008.
2. Pursuant to Article 7§§1 and 2 of the Protocol providing for a system of collective complaints ("the Protocol") and the Committee's decision on the admissibility of the complaint, the Executive Secretary communicated the text of the admissibility decision on 29 September 2008 to the Greek Government ("the Government"), the complainant organisation, the states party to the Protocol, the states that have ratified the Revised Charter and made a declaration under Article D§2 and to the international organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the 1961 Charter.
3. In accordance with Rule 31§1 of the Committee's Rules ("the Rules"), the Committee fixed a deadline of 21 November 2008 for the presentation of the Government's written submissions on the merits. At the request of the Government and in accordance with Rule 28§2, the deadline was extended to 20 December 2008. These submissions were registered on 19 December 2008.
4. Pursuant to Rule 31§2 of the Rules, the President set 11 February 2009 as the deadline for the complainant to present its response to the Government's submissions. At the request of INTERIGHTS and in accordance with Rule 28§2, the deadline was extended to 25 March. The response was registered on 26 March 2009 and transmitted to the Government on 17 April 2009.
5. The Government was invited to submit additional submissions by 31 August 2009. These submissions were registered on 28 August 2009 and transmitted to INTERIGHTS on 7 September 2009.

THE PARTIES' SUBMISSIONS

A – The complainant organisation

6. INTERIGHTS submits that the situation in Greece is not in conformity with Article 16 of the Charter, in light of the Preamble on the grounds that the Government continues to forcibly evict Roma without providing suitable alternative accommodation or effective remedies. Further INTERIGHTS alleges that the significant numbers of Roma in Greece continue to live in conditions that fail to meet adequate standards and continue to suffer discrimination in access to housing in violation of Article 16 of the Charter in light of the Preamble.

B- The respondent Government

7. The Government asks the Committee to reject INTERIGHTS' application in all its aspects.

RELEVANT DOMESTIC LAW

Constitution

8. Article 21 (4) provides that “the acquisition of a home by the homeless of those inadequately sheltered shall constitute an object of special state care”.

9. Joint Ministerial Decision No 23641/3.7.2003 (Official Gazette 973/B/15-07-2003), “Amendment of the A5/696/25.4.83 *Sanitary provision for the organized settlement of itinerant persons*” provides:

Article 1

1) *Uncontrolled settlement of itinerant persons in any area is prohibited without the relevant permission provided for by this decision.*

2) *The temporary settlement of itinerant persons is permitted on condition that the prerequisites of the following articles are fulfilled, until the issues concerning their permanent settlement are regulated.*

Article 2

1) *The selection of the appropriate locations, which may be public, municipal or private for the temporary settlement of itinerant persons is made by a decision of the Secretary General of the Region on a proposal of the local Municipal or Community Council and following an introduction made by a committee set up and composed of representatives of the Directorate of Hygiene, the Directorate of Urban planning, Housing and Environment and the Directorate of Agriculture of the local Prefectural Self-Government of the Technical Service of the Municipalities and Communities of the prefecture, the Local Union of Municipalities and Communities, the Local Self-Government Agency, on the Territorial boundaries of which the organised permanent encampment for the temporary settlement of*

itinerant persons is to be made provided that permission has been granted by the local archaeological or other service and authority.

2) *If the Local Self-Government Agency does not make its proposal within a month, in the case that a relevant invitation is sent by the Region, the Secretary General of the Region proceeds to his/her rest actions according to what is mentioned above.*

Article 3

1) *The capacity of each location, regarding the number of dwellings and persons, is determined by decision of the Secretary General of the Region, with a view to safeguarding hygiene and acceptable living conditions.*

2) *According to the provisions in force, no one is allowed, even temporarily, to settle near archaeological sites, beaches, landscapes of natural beauty, or in areas where a settlement may cause damage to the public health (drinking water supplies, etc).*

3) *In the locations of organized settlement the following infrastructure works for healthy living conditions must be made available: drinking water, sewage, dustbins and means to collect waste, as well as facilities of personal hygiene in communal baths, facilities for the laundry of clothing and supply of electric power. The details of the hygiene works are determined in each specific case by the sanitary service, in accordance with the sanitary provisions in force and aiming at protecting the health of the itinerant persons and the public health in general.*

4) *The latrines, baths, facilities for the laundry of clothing, refreshment stands and bases for the placement of prefabricated housing will be placed in derogation from the provisions of the General Housing Regulation.*

Article 4

1) *The local Municipality or Community is responsible for the organisation and supervision of the operation of the approved settlement locations.*

2) *In order to cover the expenses for the establishment and operation of organised sites of encampment, reciprocal dues may be imposed on their users, by decision of the local Municipal or Community Council.*

3) *The necessary infrastructure works in sites of encampment of itinerant persons (water supply, baths etc.) can be included in relevant programmes of the Ministry or Health and Welfare as well as other public bodies or bodies of the Local Self-Government.*

Article 5

The roughly made dwellings of itinerant persons in various areas, which already existed on the date of publication of this decision, remain until the determination and establishment of the organised settlements sites, provided that they fulfil the prerequisites of Article 3 of the present decision.

Article 6

1) *The present provision comes into force 15 days following the date of its publication in the Official Gazette.*

2) *The control and supervision of its application is entrusted to the Sanitary and Police Bodies and to the Municipal Police, if one exists. The offenders of the present are prosecuted and punished according to Article 3 of Act 2520/40, as it has been replaced by the single article of Act 290/43 ratified by 303/46 Act of a Ministerial Council, unless other provisions of Acts or Decrees provide for heavier sanction.*

3) *The present decision does not apply to organised camping sites supervised by the EOT, nor to popular resorts and summer camps, the operation is determined by other provisions. The restrictions of this provision do not apply to the settlements of farmers in agricultural areas or of cattle breeders in summer or winter grasslands or of travellers in general.*

This decision is to be published in the Official Gazette.

INTERNATIONAL SOURCES

10. Recommendation (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe:

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim can be pursued, in particular, by joint action in the field of social cohesion;

Recognising that Roma/Gypsies and Travellers have been contributing to European culture and values, just as other European people, and recognising that despite this asset, Roma/Gypsies and Travellers have been experiencing widespread discrimination in all areas of life;

Recognising that there is an urgent need to develop new strategies to improve the living conditions of the Roma/Gypsy and Traveller communities all over Europe in order to ensure that they have equality of opportunities in areas such as civic and political participation, as well as developmental sectors, such as housing, education, employment and health;

Bearing in mind that policies aimed at addressing the problems faced by Roma/Gypsies and Travellers in the field of housing should be comprehensive, based on an acknowledgement that the issue of housing for Roma/Gypsies and Travellers has an impact on a wide range of other elements, namely the economic, educational, social and cultural aspects of their lives, and the fight against racism and discrimination;

Bearing in mind the under-used potential of Roma/Gypsy and Traveller communities and their capacity to contribute to the improvement of their own situation, especially in the field of housing;

Bearing in mind that some member states do not have, or do not implement, a clearly defined national housing-related legislation, addressing various practices such as housing discrimination, discriminatory harassment in housing, discriminatory boycotts, ghettoisation, racial and residential segregation, and other forms of discrimination against nomadic and semi-nomadic Roma/Gypsies and Travellers, as well as unequal housing conditions and access to housing, such as social housing, public housing, do-it-yourself housing and cooperative housing; (...)

II. General principles

Integrated housing policies

Member states should ensure that, within the general framework of housing policies, integrated and appropriate housing policies targeting Roma are developed. Member states should also allocate appropriate means for the implementation of the mentioned policies in order to support national poverty reduction policies.

Principle of non-discrimination

Since Roma continue to be among the most disadvantaged population groups in Europe, national housing policies should seek to address their specific problems as a matter of emergency, and in a non-discriminatory way.

Freedom of choice of lifestyle

Member states should affirm the right of people to pursue sedentary or nomadic lifestyles, according to their own free choice. All conditions necessary to pursue these lifestyles should be made available to them by the national, regional and local authorities in accordance with the resources available and to the rights of others and within the legal framework relating to building, planning and access to private land.

Adequacy and affordability of housing

Member states should promote and protect the right to adequate housing for all, as well as ensure equal access to adequate housing for Roma through appropriate, proactive policies, particularly in the area of affordable housing and service delivery.

Prevention of exclusion and the creation of ghettos

In order to combat the creation of ghettos and segregation of Roma from the majority society, member states should prevent, prohibit and, when needed, revert any nationwide, regional, or local policies or initiatives aimed at ensuring that Roma settle or resettle in inappropriate sites and hazardous areas, or aimed at relegating them to such areas on account of their ethnicity.

Participation

Member states should, as appropriate, provide Roma communities and organisations with the means to participate in the process of conceiving, designing, implementing and monitoring policies and programmes aimed at improving their housing situation.

Partnership

Moreover, member states should encourage and promote empowerment and capacity-building on a wider basis among Roma communities by fostering partnerships at local, regional and national levels, as appropriate, in their policies aimed at addressing the housing problems facing Roma.

The member states should also ensure that members of the Roma communities are also actively involved in this process.

Coordination

Member states should ensure that proper coordination is provided in the field of housing between, on the one hand, the relevant national, regional and local authorities and, on the other, the Roma populations and organisations who represent the majority active in this field.

11. Recommendation CM/Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe:

(...) Recognising that Roma and Travellers have faced, for more than five centuries, widespread and enduring discrimination, rejection and marginalisation all over Europe and in all areas of life; and were targeted victims of the Holocaust; and that forced displacement, discrimination and exclusion from participation in social life have resulted in poverty and disadvantage for many Roma and Traveller communities and individuals across Europe;

Recognising the existence of anti-Gypsyism as a specific form of racism and intolerance, leading to hostile acts ranging from exclusion to violence against Roma and/or Traveller communities;

Recognising the role of the media and education in the persistence of anti-Roma prejudices and their potential to help overcome them;

Aware that discrimination and social exclusion can be overcome most effectively by comprehensive, coherent and proactive policies targeting both the Roma and the majority, which ensure integration and participation of Roma and Travellers in the societies in which they live and respect for their identity;

Considering that all human rights are indivisible, interdependent and interrelated and that economic and social rights are human rights, and should be supported by concrete community and governmental efforts to ensure they are equally accessible to the most deprived and disadvantaged groups and communities; (...)

Recommends that governments of member states:

- adopt, in accordance with the principles and provisions set out in the appendix to this recommendation, a coherent, comprehensive and adequately resourced national and regional strategy with short- and long-term action plans, targets and indicators for implementing policies that address legal and/or social discrimination against Roma and/or Travellers and enforce the principle of equality;
- monitor and publish regular evaluation reports on the state of the implementation and impact of strategies and policies to improve the situation of Roma and/or Travellers;
- bring this recommendation to the attention of and ensure the support of the relevant national and local or regional, self-governing public bodies, Roma and/or Traveller communities and the broader population in their respective countries through the appropriate channels, including the media.

THE LAW

PRELIMINARY REMARK

12. The Government raised again in its observation on the merits its objection to the complaint on the grounds that the complainant organisation files the complaint in collaboration with the Greek Helsinki Monitor which is a national non governmental organisation whereas Greece has not recognized the right of national non governmental organisations to lodge a complaint.

13. The Committee repeats the reasons that led it to reject this objection; the current complaint has been lodged by INTERIGHTS alone, although INTERIGHTS relies on material collected by the Greek Helsinki Monitor. The Committee recalls that an organisation entitled to lodge a complaint according to the Protocol may rely on any document it considers relevant irrespective of who it was drafted by. It is for the Committee to decide what weight to give this material, independently of its origin as long as it has been endorsed by the complainant organisation. Pursuant to Rule 25 (2) complainant organisations are entitled to be assisted by advisers. The fact that Greece has not accepted the right of national non governmental organisations to submit complaints is therefore irrelevant in this respect.

THE ALLEGED VIOLATION OF ARTICLE 16 OF THE SOCIAL CHARTER

14. Article 16 of the Charter reads:

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 Contracting 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."

15. The non-discrimination clause of the Preamble to the Charter reads:

Preamble

"[...]

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

A. **The alleged violation of Article 16 on the grounds of inadequate housing**

Submissions of the parties

a) The complainant organisation

16. According to INTERIGHTS there is a lack of suitable accommodation for members of the Roma population. It alleges that there are approximately 300,000 individuals of Roma origin living in Greece with a substantial number living in 52 improvised and dangerous encampments.

17. In support of its argument INTERIGHTS states that the Integrated Action Plan for Greek Roma (IAP) envisaged the creation of 100 new Roma settlements covering 1,500,000 square meters to include 4,000 new homes. In addition 1,100 existing homes were to be improved and 60 temporary camping sites were to be constructed. However the complainant organisation alleges that by September 2005 only four permanent settlements comprising a total of 185 houses had been built. 1,712 temporary prefabricated homes have been distributed to Roma under the IAP however this was between 1997-2002 and many are now in poor condition. Further many were never connected to the basic utilities.

18. Of the 60 camping sites to be constructed none have been completed. There is one such camping site under construction in the Birbita/Makarai locality.

19. The complainant organisation alleges that the lack of availability of suitable housing for Roma with the result that they are forced to live in inadequate housing is partly due to an overreliance and flawed implementation on the housing loans scheme under the IAP. According to the complainant organisation this scheme has failed for several reasons, firstly only Roma who already owned a plot of land could apply for loans therefore excluding all those who had no land and arguably the most in need. Secondly there were few applications for loans and few approvals and thirdly local authorities have refused loans to those not in possession of a certificate of permanent residence.

20. The complainant organisation argues that the IAP has failed in general to meet the housing and other related needs of the Roma; only 17% of the original budget has been spent; few new settlements have been constructed, most settlements do not meet adequate housing standards.

21. According to the complainant organisation the majority of destitute settlements described in Annex A to the complaint continue to exist providing evidence of the failure of the IAP programme.

22. A study carried out by the Greek Helsinki Monitor in 2006 of 122 Roma communities found that 83 of them failed to meet adequate housing standards. It maintains that the vast majority of Greek Roma continue to live in the same locations and under the same conditions as they did in 1999.

23. The complaint in this respect refers to the report of the National Commission for Human Rights (NCHR) in 2009 which concluded that the results of the IAP in relation to housing seemed rather modest.

24. In its response to the Governments submissions on the IAP the complainant organisation accepts the Government statistics that over 7,000 loans have been approved and over 5,000 paid out. However it alleges that no Roma from a destitute settlement has benefitted and again submits that the poorest will be unable to apply as they will be unable to make any repayment. The complainant organisation further highlights the evidence provided by the Government as regards the IAP demonstrates that between 2004 and 2009 there has been little progress in providing housing.

25. The complainant organisation cites in support of its arguments in respect of inadequate housing rights a report of the Council of Europe's Human Rights Commissioner (Follow up report on the Hellenic Republic (2002-2005) CommDH(2006)13) where the Commissioner expressed his continued concern as regards the respect of the basic housing rights of the Roma and urged the Government to take all adequate action to ensure their rights were respected in places like Aspryopyrgos, Amaroussia, Patras or elsewhere.

26. It also relies on a report by Amnesty International -Greece Out of the Spotlight: Rights of Foreigners and Minorities are still a Grey Area as well as a recent report by the UN Independent Expert on Minority Issues to the UN General Assembly following a visit to Greece in 2008 (A/HRC/1011 add.3 February 2009) as well as the annual report for 2008 of the Greek National Commission for Human Rights.

b. The Government

27. The Government states that much of the data relied upon by the complainant organisation in order to substantiate their allegations is old data from 2004-2005 and therefore does not reflect the results of measures taken and gives a misleading picture of the conditions of the majority of Roma. Further INTERIGHTS fails to acknowledge that progress in these issues requires time and regards must be had to all measures taken.

28. As regards the housing loans scheme under the IAP the Government states that 9,000 loans were made available for up to 60,000 Euros each the scheme has been revised several times in order to make it more flexible. To date 7,482 loans have been approved and over 5,000 paid out. Loans do not require either permanent residence in the Municipality or the applicant to own a plot of land.

29. Substantial sums of money have been spent by the Municipalities under the IAP in order to improve the situation of Roma 80.4 million Euros have been approved so far (excluding the loans) and over 40 million paid out to date.

30. Permanent settlements have been constructed; 1,712 houses were constructed by 2000 and a further 557 since then. Medical Social Centres and mobile units have been established for both settled Roma and for those pursuing a nomadic lifestyle.

31. In any event the Government argues that the value of the increased spending cannot be judged by the number of homes constructed but the improvement of living conditions in existing settlements must also be taken into account.

32. The Government states that the Roma may also benefit from the provision of housing through the Worker's Housing Association (OEK) which also constructed a settlement specifically for Roma.

33. The Government also highlights that new legislation combating discrimination *inter alia* on the ground of racial or ethnic origin entered into force in 2005 and prohibits both direct and indirect discrimination in relation to housing.

34. Details are provided by the Government of measures taken by the authorities to combat discrimination against Roma.

Assessment of the Committee

35. The Committee recalls that in its decision on the merits of 8 December 2004 in *European Roma Rights Center v. Greece*, complaint no. 15/2003, it found that the situation in Greece was in breach of Article 16 of the Charter on the inter alia, on the grounds that there was both an insufficiency of permanent dwellings available for the Roma, and number of temporary dwellings or sites and that many were living in unacceptable conditions:

“The Committee finds that Greece has failed to take sufficient measures to improve the living conditions of the Roma and that the measures taken have not yet achieved what is required by the Charter, notably by reason of the insufficient means for constraining local authorities or sanctioning them. It finds on the evidence submitted that a significant number of Roma are living in conditions that fail to meet minimum standards and therefore the situation is in breach of the obligation to promote the right of families to adequate housing laid down in Article 16.” (*European Roma Rights Center v. Greece* complaint, No 15/2003, decision on the merits of 8 December 2004, § 42)

36. The Committee recalls in relation to adequate housing under Article 16 of the Charter it has stated:

“(…) In order satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.” (*European Roma Rights Center v. Greece* complaint No 15/2003 decision on the merits of 8 December 2004, § 24)

37. Further:

“One of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion. This requirement is exemplified in the proscription against discrimination in the Preamble and in its interaction with the substantive rights of the Charter.

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

“The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (Buckley judgment cited above, pp. 1292-95, §§ 76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see Chapman, (...) § 96 and the authorities cited, mutatis mutandis, therein)” (*European Roma Rights Center v. Greece* complaint No 15/2003 decision on the merits of 8 December 2004 §§ 19-20).

38. The Committee notes from the information provided by the Government that certain progress has been achieved in ameliorating the living conditions of Roma. It notes in this respect the housing loans programme was extended in that both the number of loans available and the amount of each loan was increased and that to date over 9,000 loans have been approved and over 5,000 disbursed, it also notes the construction of a permanent settlement in Messinia, the establishment of both fixed and mobile medico social centres as well as general developments in non discrimination legislation which covers access to goods and services including housing.

39. However the Committee finds that there is still significant evidenced that many Roma continue to live in settlements which fail to meet minimum standards. In reaching this conclusion it has had regard not only to the evidence submitted by INTERIGHTS but as well to other sources such as the report of the Council of Europe's Commissioner for Human Rights (Council of Europe's Human Rights Commissioner (Follow up report on the Hellenic Republic (2002-2005) CommDH(2006)13), the annual report for 2008 of the Greek National Commission for Human Rights, the annual report for 2007 of the Greek Ombudsman, the report of the UN Independent Expert on Minority Issues to the UN General Assembly following a visit to Greece in 2008 (A/HRC/10/11 add.3 February 2009) the report of the European Commission against Racism and Intolerance (report on Greece CRI 31 2009) as well as to the report of the Fundamental Rights Agency of the EU on Housing conditions of Roma and Travellers in the European Union (October 2009). The Committee refers in particular to the Spata settlement near Athens which houses families in prefabricated housing which have no mains power supply, running water or regular waste collection services and instead have generators and water storage tanks, to the settlement in Aspropyrgos which has no basic public utilities and to that in the city of Komotini as examples. Serious infrastructure deficiencies are to be found in many other settlements. It further refers to the recommendations of the Greek Ombudsman in 2007 where he stressed that arrangements should be made to include all Roma settlements in water and power supply and sewage networks.

40. In its submissions, the Government maintains that the legislation provides adequate safeguards for the prevention of discrimination. The Committee considers, in general but in particular in the case of the Roma, merely ensuring identical treatment as a means of protection against any discrimination is not sufficient. In order to achieve equal treatment differences must be taken into account; in the instant case, there is no doubt that the Roma are in a different situation;" In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality" (Autism Europe v. France, decision on the merits of 4 November 2003 para 53; ERRC v. France, decision on the merits of 19 October 2009 para 83). The Committee considers in fact that the specific differences of the Roma are not sufficiently taken into account and thus, as a result, they are discriminated against when it comes to the enjoyment of the right to housing under Article 16 of the Charter.

41. The Committee holds that the situation in Greece is in breach of Article 16 of the Charter on the ground that the Greek Government failed to take sufficient account of differences in the situation of the Roma and to take appropriate measures to improve the situation of the significant number of Roma continuing to live in conditions that fail to meet minimum standards.

B. The alleged violation of Article 16 of the Charter on the ground of forced evictions

Submissions of the parties

a) The complainant organisation

42. The complainant organisation alleges that Greece is in breach of Article 16 of the Charter taking into account the Preamble on the grounds that it violates the housing rights of Roma, in this respect it alleges that the Roma are systematically evicted from sites, with no prior consultation often, no access to effective remedies and they are rarely provided with suitable alternative accommodation.

43. The complainant organisation alleges that forced evictions against the Roma are widespread; since the end of 2004 the Greek state through both its agents and in collaboration with private actors has carried out over 20 forced evictions affecting over 300 Roma Families.

44. Examples of forced evictions and demolition of certain settlements/houses are documented. For example the complainant organisation provides information on evictions in the Patras area; at Riganokampos, Ati Dimeon and Makrigianni between 2004 and 2007. It alleges that in these cases the forced evictions were part of a deliberate policy on the part of the authorities to remove Roma living in the area. There were allegedly 3 separate evictions between August 2004 and June 2005; in August at Riganokampos and in October 2004 and June 2005 at Makrigianni. In none of these cases was there prior notification or consultation and no attempt to provide alternative housing.

45. In July and August 2006 more evictions took place in Riganokampos and Makrigianni. By 31 October 2006 60 out of a total of 80 families, representing more than 400 persons, had been evicted from the Makrigianni community. None were allegedly offered alternative accommodation. On 15 September 2007 the authorities carried out forced evictions against the remaining 25 Roma families living in the Makrigianni settlement prior to bulldozers demolishing their dwellings. At no point were they served with any notice of eviction nor were they ever offered by the authorities any alternative housing options.

46. According to the complainant organisation since the beginning of 2006 municipal authorities have demolished 68 homes affecting 340 persons in the Patras area.

47. The complainant organisation also provides details of allegedly forced evictions in April 2007 near Athens of Roma who had settled in makeshift sheds in Painia by the Attiki highway as well as in the Greater Athens area (Aghia Paraskevi) and in Crete (Kladiso area of Hania).

48. The complainant organisation alleges in few of the cases was there prior notification or consultation with the persons concerned and little attempt was made to find suitable alternative accommodation.

49. The complainant organisation alleges that remedies in relation to evictions continue to be ineffective. The remedies available are often complex and ineffectual. The complainant notes that seeking an injunction against an eviction does not automatically suspend the eviction process. In effect two applications for interim measures need to be made. The complainant organisation alleges that where Roma have been trespassing on public or private land it is possible to evict them circumventing normal legal procedures for example the rules relating to interim measures or the protocol of administrative eviction.

50. The complainant argues that the legislation in force the Amendment of the A5/696/25.4.1983 Sanitary Regulation for the organised Settlement of itinerant persons (2003 Regulation) which forms the basis for most evictions is discriminatory against the Roma and is used to justify their forced eviction. The regulation only applies to Roma and only protects from eviction those who are living in organised settlements.

b) The Government

51. The Government submits that the evidence submitted by the complainant organisation is in essence a wide synthesis of selected press releases and NGO reports which do not amount to proper evidence. Further other information submitted by then to substantiate their claims are misquotations or misinterpretations of official data.

52. The Greek Government states that following the Committee's decision on the merits of 8 December 2004 in *European Roma Rights Center v. Greece*, complaint no. 15/2003, it has made efforts to diffuse the text of this decision especially to Government or official bodies working with the Roma and further take measures in order to integrate the Roma.

53. As regards the forced evictions, lack of legal remedies and lack of alternative accommodation the Government recalls that the Roma are evicted from land they unlawfully occupy and that the rights of the Roma must be balanced with that of a person to enjoy his property. The Government disputes the allegations made by the complainant organisation in respect of certain cases of forced evictions.

54. The Government states that solutions for alternative housing are usually proposed but in fact often only financial assistance is offered. Further the Ministry of Interior is often prepared to finance alternative settlements.

Assessment of the Committee

55. The Committee recalls that in its decision on the merits of 8 December 2004 in complaint European Roma Rights Center v. Greece, complaint no. 15/2003, it found that the situation in Greece was in breach of Article 16 of the Charter on the grounds inter alia that Roma were often forcibly evicted, contrary to the requirements of the Charter.

56. It further recalls its case law relating to forced evictions :“The Committee considers that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned.” (European Roma Rights Center v. Greece complaint No 15/2003 decision on the merits of 8 December 2004, § 51, ERRC v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 51)

57. It further recalls that 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 (FEANTSA v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §163). The law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided” (ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 41)

58. The Committee refers in this respect to the judgment of the European Court of Human Rights in Connors v. The United Kingdom, judgment of 27 May 2004, where the court stated “The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Buckley*, cited above, pp. 1292-93, § 76, *Chapman v. the United Kingdom* [GC], no. 27138/95, ECHR 2001-I, § 92)” (§83). It also refers to the judgment of the European Court of Human Rights in McCann v. The United Kingdom 13 May 2008 , (§ 50).

59. The Committee also has regard to the General Comment No 7 of the UN Committee on Economic, Social and Cultural Rights on the Right to adequate housing: forced evictions (1997) which explicitly mentions that the procedural protections should include an opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; information on the proposed evictions, and, especially where groups of people are involved, government officials or their representatives to be present during an eviction.

60. The Committee has already stated that "a person or group of persons, who cannot effectively benefit from the rights provided by the legislation, may be obliged to adopt reprehensible behaviour in order to satisfy their needs. However, this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting their rights". (European Roma Rights Center v. Bulgaria, complaint No 36/2005 decision on the merits of 18 October 2006, § 53). In such situations the Government has a responsibility to provide adequate assistance and take appropriate measures.

61. A substantial amount of evidence on alleged forced evictions was submitted to the Committee. The Committee notes that the Government disputes details of certain of the circumstances surrounding some of the alleged forced evictions. It also notes that a certain amount of the information submitted by the complainant organisation is not clearly structured, is incomplete and does not sufficiently justify some of the allegations made in relation to forced evictions. Further some of the material relied upon by the complainant organisation predates the Committee's decision in European Roma Rights Center v. Greece complaint No 15/2003 decision on the merits of 8 December 2004.

62. However the Committee finds firstly that the Government failed to provide information demonstrating that the law on evictions in Greece provides for consultation with those to be affected, reasonable notice of and information on the eviction. Nor was information provided either as to whether the law requires the provision of alternative accommodation.

63. Secondly the Committee finds that the Government has failed to respond adequately to the allegations made that in practice Roma families are not adequately consulted prior to being forcibly evicted, and that no serious efforts are made to find alternative sites or accommodation.

64. As regards legal remedies the Committee notes that there are many remedies available to those threatened by eviction. Where the authorities are seeking to evict persons from public land, an administrative act is issued (Protocols of administrative eviction). The respondents in such cases have 30 days in which to seek interim measures before a Justice of the Peace. An appeal against any decision to evict is also possible before a court of first instance. In addition it is also possible to have recourse to civil law remedies.

65. Action to evict persons from private property may be taken under several provisions of the Civil Code, for example under Article 987 or Article 989. All articles permits the respondents to contest the application for an eviction order. Further the Code of Civil Procedure permits interim measures to be granted.

66. Further under law 3226/04 legal aid is available to appeal an eviction notice.

67. As regards the accessibility of remedies it appears in fact to the Committee that many Roma families are not sufficiently aware of their right to challenge an eviction notice, or do not know how to exercise it, and in particular do not avail of their right to legal aid.

68. Despite its remarks in paragraph 60 the Committee does find sufficient material in the complaint and from outside sources (Council of Europe Human Rights Commissioner Follow up report on the Hellenic Republic (2002-2005) CommDH(2006)13), the annual report for 2008 of the Greek National Commission for Human Rights, the report of the UN Independent Expert on Minority Issues to the UN General Assembly following a visit to Greece in 2008 (A/HRC/10/11 add.3 February 2009) to substantiate the claim that a serious number of Roma continue to be unlawfully forcibly evicted in breach of the Charter, in so far as there has been no prior consultation, adequate notice or provision of alternative accommodation in many of the cases detailed. In this respect the Committee refers inter alia in particular to the forced evictions of Roma in Patras, Votanikos (Athens) and Chania. It further notes that the Greek Ombudsman in 2007 found cases of forced eviction where no alternative housing had been identified with the necessary infrastructure ensuring dignified living conditions and recommended that this practice cease.

69. The Committee also considers that the legal remedies available cannot be considered as sufficiently accessible. The special circumstances of Roma families threatened by eviction means that special support should be available including targeted advice on availability of legal aid and on appeals.

70. Therefore the Committee holds that that there is a violation of Article 16 of the Charter on the grounds that Roma families are often forcibly evicted in breach of the Charter

CONCLUSION

For these reasons the Committee concludes

- unanimously that there is a violation of Article 16 of the Charter on the grounds that the different situation of Roma families is not sufficiently taken into account with the result that a significant number of Roma families continue to live in conditions that fail to meet minimum standards;

- unanimously that there is a violation of Article 16 of the Charter on the grounds that Roma families continue to be forcibly evicted in breach of the Charter and the legal remedies generally available are not sufficiently accessible to them.

Csilla KOLLONAY LEHOCZKY
Rapporteur

Polonca KONCAR
President

Régis BRILLAT
Executive Secretary