EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON THE MERITS

30 June 2011

European Roma Rights Centre
v. Portugal

Complaint No. 61/2010

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 251st session attended by:

Mssrs Luis JIMENA QUESADA, President
Colm O'CINNEIDE, Vice-President
Mr Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Mssrs Andrzej SWIATKOWSKI
Lauri LEPPIK
Ms Birgitta NYSTRÖM
Mssrs Rüçhan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Mrs Elena MACHULSKAYA
Mr Giuseppe PALMISANO
Mrs Karin LUKAS

Assisted by Mr Régis BRILLAT, Executive Secretary

After having deliberated on 28 and 30 June 2011;

On the basis of the report presented by Mr Rüçhan IŞIK;

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

PROCEDURE

1. The complaint submitted by the European Roma Rights Centre (the "ERRC") was registered on 23 April 2010. ERRC alleges that the sum of housing-related injustices which Roma suffer in Portugal amount to a violation of Articles 16, 30 and 31 of the Revised Charter, alone or in conjunction with Article E.

2. The Committee declared the complaint admissible on 17 September 2010.

3. Pursuant to Article 7§§1 and 2 of the Protocol providing for a collective complaints system ("the Protocol") and the Committee decision on the admissibility of the complaint, the Executive Secretary communicated the text of the decision on 22 September 2010 to the Portuguese Government ("the Government"), the ERRC, the States Parties to the Protocol, the states that have ratified the Revised Charter and 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 31§1 of the Committee's Rules, the Committee set 5 November 2010 as the deadline for the Government to make its submissions on the merits. At the request of the Government and in accordance with Rule 28§2, the deadline was extended to 30 November 2010. The submissions were registered on 30 November 2010 .

5. In accordance with Rule 31§2, the President set 31 January 2011 as the deadline for the ERRC to present its response to the Government's submissions on the merits. At the request of ERRC and in accordance with Rule 28§2, the deadline was extended to 5 March 2011. The response was registered on 4 March 2011.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

6. The ERRC maintains that the situation in Portugal is in violation of Articles 16, 30, 31, alone or in conjunction with Article E of the Revised Charter, for failure to ensure the provision of adequate and integrated housing solutions for Roma. The ERRC considers that re-housing programmes have failed to integrate Roma and often, in fact, have resulted in spatial segregation and inadequately sized dwellings in areas with poor infrastructure and limited or no access to public services. It considers that the State has a positive obligation to improve the deplorable and constantly deteriorating housing conditions for Roma in informal settlements, where dwellings often consist of unprotected tents exposed to inclement weather conditions, makeshift shacks or dilapidated concrete housing blocks. The ERRC considers that the approach of the Government to the housing situation of Roma points to, at least, indirect discriminatory practices, which keep Roma excluded and marginalised through residential segregation and substandard quality re-housing.

B – The Government

7. The Government asks the Committee to find that the housing situation of Roma in Portugal does not give rise to a violation of Articles 16, 30, 31 and E of the Revised Charter as the Portuguese authorities, at both State and municipal level, have developed social housing programmes aimed at persons affected by poverty and social exclusion which have significantly benefited the Roma community.

RELEVANT DOMESTIC AND INTERNATIONAL LAW

A – Domestic law

8. According to the Constitution:

> *"Article 65*
>
> *Housing and urban planning*
>
> *1. Everyone has the right, both personally and for his or her family, to a dwelling of an adequate size, which meets satisfactory standards of hygiene and preserves personal and family privacy.*
>
> *2. In order to ensure the right to housing, it is the duty of the State to:*
>
> *a) Draw up and implement a policy for housing as a part of general national planning and to support plans for urban areas that guarantee an adequate network of transport and social facilities;*
>
> *b) To promote, in cooperation with local authorities, the construction of low-cost and social housing;*

c) To promote private construction, when in the public interest, and access to privately owned or rented dwellings;

d) Encouraging and supporting local community initiatives that work towards the resolution of their housing problems and foster the formation of housing and self-building cooperatives.

3. The State shall undertake a policy that works towards the establishment of a rental system which is compatible with family incomes and for individual ownership of housing.

4. The State, the autonomous regions and local authorities shall lay down the rules governing the occupancy, use and transformation of urban land, particularly by means of planning instruments and within the overall framework of the laws concerning town and country planning and urban planning, and shall expropriate such land as may be necessary to the fulfillment of the purposes of public-use urban planning.

5. Interested parties shall be entitled to participate in the drawing up of urban planning instruments and any other physical town and country planning instruments."

9. In addition to the above constitutional guarantee, Decree-Law no. 73/96 was adopted to allow for greater flexibility and speed in the construction of cost-controlled housing and Government supported re-housing schemes in situations where different cultural traditions require special accommodation.

10. The prohibition of racial discrimination is contained in the Constitution (Articles 13-15), the Labour Code and other criminal, civil and administrative law provisions.

B – International sources

11. 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."

12. Article 5(e)(iii) of the United Nations Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, reads:

"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) Economic, social and cultural rights, in particular:

(iii) The right to housing."

13. Council of Europe, Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe of 23 February 2005, contains a number of general principles, including:

> ***"****Integrated housing policies*
>
> *1. 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*
>
> *2. 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."*

14. As regards resolutions and reports concerning specifically the situation of Roma in Portugal:

> ***(i) Committee of Ministers Resolution ResCMN(2007)12 on the implementation of the Framework Convention for the Protection of National Minorities by Portugal, adopted on 5 September 2007***
>
> *"Adopts the following conclusions concerning the implementation of the Framework Convention by Portugal:*
>
> *…*
>
> *Efforts have been made by the authorities to adopt legislative, institutional and practical measures to combat discrimination and racism. Integration policy, coupled with the promotion of multicultural education, has also remained high on the agenda. Moreover, measures have been taken to improve the socio-economic and educational situation of the Roma. However, a number of Roma are still at a disadvantage in this respect and they could be confronted with discrimination, social exclusion and marginalisation.*
>
> *Further measures should be developed, in co-operation with the persons concerned, to promote the full and effective equality of the Roma, in particular in the fields of housing, education, employment and health and to continue to combat prejudice and hostility against them. "*
>
> ***(ii) European Commission against Racism and Intolerance (ECRI), third monitoring report on Portugal, CRI(2007)4, adopted on 13 February 2007***
>
> ***(iii) Report on the Commissioner of Human Rights visit to Portugal, 27-30 May 2003, CommDH(2003) 14***

THE LAW

PRELIMINARY ISSUES :

Delimitation of the substantial issues at stake

15. The Committee considers that, from among the issues raised, the complaint in substance relates to the right of Roma to housing and in particular to three elements:

– the precarious and difficult housing conditions for a large part of the Roma community;

– the high number of Roma families that live in segregated settings, whether in unregulated encampments or as a result of re-housing by the authorities in the outskirts of cities;

– the inadequacy of re-housing programmes for the Roma community in terms of their family composition, cultural habits and ways of life.

16. The ERRC relies on Articles 16 (right of the family to social, legal and economic protection), 30 (right to protection against poverty and social exclusion) and 31 (right to housing) alone and/or in relation to Article E (non discrimination clause) of the Revised Charter. When invoking Article 31, it does not specify which paragraph(s) it relies on.

17. The Committee considers that the main issue at stake in the complaint is related to the right to housing of an adequate standard, which falls under the scope of Article 31§1 of the Revised Charter, and it will therefore primarily examine the complaint under this substantive right.

Implementing integrated housing policies for the Roma in a non-discriminatory way

18. The Committee emphasises that one of the underlying purposes of the social rights protected by the Charter is to strengthen solidarity and promote social inclusion. It follows that States must 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 Article E and in its interaction with the substantive rights of the Charter.

19. Moreover, the Committee recalls that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Discrimination may 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.

20. This imperative of achieving equal treatment by taking differences into account has been underlined in recent decisions by the Committee. In its decision COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, the Committee explicitly

recognised that special consideration should be given to the needs and different lifestyle of Roma, which were a specific type of disadvantaged group and vulnerable minority.

21. The European Court of Human Rights is also of the view that Roma require specific protection measures. In its judgement Orsus v. Croatia, of 16 March 2010, it stated:

> "(…) 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" .

22. The Committee will therefore examine the allegations raised by the complainant organisation from the perspective of whether the specific disadvantages faced by the Roma population have been sufficiently taken into consideration and responded to by the authorities.

23. It recalls that in disputes related to alleged discrimination in matters covered by the Revised Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. The Committee will thus base itself on reliable information submitted by the complainant organisation, and it is then for the Government to demonstrate that there is no ground for the alleged discrimination.

24. It will examine the allegations in the following order:

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

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

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

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

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.

A – Submissions of the parties

1. The complainant organisation

25. The ERRC submits that field visits it has conducted between 2005 and 2011 to several Roma settlements reveal highly substandard housing conditions. The vast majority of settlements visited by the ERRC lack basic infrastructure such as access to drinkable water, electricity or waste disposal systems. The settlements are often situated on what otherwise would be uninhabitable land and the housing structures consist of either informal shacks or tents. The ERRC claims that the overall inadequate and unacceptable state of informal Romani homes proves the failure of national and local authorities in the discharge of their positive obligations to improve such deplorable housing conditions.

26. Moreover, the ERRC alleges that re-housing programmes have resulted in perpetuating substandard living conditions and residential segregation for Roma communities. Most quarters where Roma have been re-housed are disconnected from the urban fabric, with poor infrastructure and limited or no public services. In some cases the resettlement has even taken place in hazardous areas, close to former waste dumping sites. The ERRC claims that housing solutions have not been tailored to the specific needs of the Roma community and that the dwellings provided have often been of inadequate quality and size.

2. The respondent Government

27. The Government explains that it has put in place a set of social policies, including on housing, for which eligibility is solely based on socio-economic criteria, and aimed at those groups which are more affected by poverty and social exclusion. The members of

the Roma community have access to these programmes just as any other person. Moreover, it indicates that the members of the Roma community have profited significantly from the enormous efforts the authorities have deployed to put an end to the precarious living conditions in insalubrious shacks.

28. The Government explains that, for example, families living in tents and similar dwellings in the metropolitan areas of Lisbon and Oporto have been eligible for resettlement since 1993 following agreements between the central authorities and the municipalities of these areas aimed at the relocation of 48,416 households (with a 71% execution rate so far).

B – Assessment of the Committee

29. The first task for the Committee is to determine whether the facts of the case come within the scope of Article E taken in conjunction with Article 31§1. The Committee considers that the situation described does in effect fall within the scope of these articles as the ERRC complains that Roma still live to a large extent in substandard conditions, and that alternative housing solutions by the authorities have been inadequate.

30. In its submissions, the Government states that the legislation provides adequate safeguards for the prevention of discrimination. The Committee considers, however, that in the case of Roma, merely guaranteeing identical treatment as a means of protection against any discrimination is not sufficient. Moreover, it notes from the *RAXEN Thematic Study – Housing Conditions of Roma and Travellers – Portugal* (2009) that an estimated 16% to 31% of all Roma in Portugal live in precarious housing conditions. When compared to data on the Portuguese population collected by the National Statistics Institute (78,835 persons living in precarious dwellings, representing 0,8% of the resident population), it can be established that the percentage of Roma living in poor housing conditions is far above the national average, and that they are therefore in a different and disadvantaged situation. This difference in their situation triggers a positive obligation of the authorities to take such difference into account and accordingly respond to it with discernment.

Access to public utilities and infrastructure / Habitability

31. The Committee holds that the notion of an adequate house implies a dwelling which is safe from a sanitary and health point of view (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). This means that dwellings must have access to natural and common resources, namely safe drinking water, electricity, sanitation facilities and waste disposal.

32. The ERRC claims that it has been monitoring the housing conditions of Roma in Portugal since 2005. It asserts that the latest field mission that it conducted in Portugal during January-February 2011 shows that the overall poor housing conditions of Roma and the persisting failure of local authorities to resettle or improve their living conditions has remained virtually unchanged.

33. The Committee notes that there have been some improvements in the housing field for Roma, for example, the dismantlement of the entire housing complex of the Barrio São João de Deus on the outskirts of Porto or the integrated housing solution in the municipality of Loures. However, it considers that the overall picture of the living conditions of Roma remains poor, with numerous examples of substandard housing conditions in Roma settlements.

34. Firstly, the Committee observes that the Government has not refuted the deplorable housing conditions of the Romani families living in the informal settlement of Largo de Feira, who are deprived of water, electricity and adequate hygiene facilities and sewage. Similarly, the Government has acknowledged the arguments set out in the complaint concerning the unsatisfactory housing conditions in the settlement of Marinha Grande, where around 33 Roma have been living in tents since 2006 in the woods next to a highway. Twenty four of the residents are minors and they lack hot water, electricity or sewage and the only public water source is located approximately 100 metres from the tent camp.

35. In some cases, the ERRC claims that housing conditions have further deteriorated. This is asserted to be the situation of the Romani community of Vidigueira, where sixty-seven persons living there were allegedly deprived of water for eight days following the destruction of the concrete taps by representatives of the municipality of Vidigueira and the police.

36. The Committee considers that the right to adequate housing includes a right to fresh water sources. The restriction of water could have serious consequences for the life and health of the persons affected. Therefore States Parties are required, under Article 31§1 of the Revised Charter to ensure that Roma settlements have access to safe drinking water. The fact that the Roma settlement in Vidigueira was without water for over a week, and given that the authorities have not publicly clarified the circumstances which prompted the cutting of the water supply (despite numerous requests for an explanation by the ERRC), leads the Committee to find a breach of the Revised Charter.

37. The Committee underlines that in order to meet the criteria of adequacy, a dwelling must provide occupants with adequate space and protect them from harsh weather conditions or other threats to health. It must also be structurally secure to ensure the physical safety of occupants.

38. As already noted above, housing conditions in general are described as very poor in informal settlements (accommodation in tents or huts made of plastic, recycled cardboard and other collected materials). In its 2007 report on Portugal, ECRI stated:

> "§ 104 (…) a large number of Roma still live in difficult, if not very difficult conditions, despite the progress made in this area in recent years (...) Some Gypsy communities live in the most basic of encampments on the outskirts of town, sometimes without any access to essential services such as water and electricity.

39. The Committee also notes from the *RAXEN Thematic Study – Housing Conditions of Roma and Travellers – Portugal* the difficult situation of the Roma community in Sobral da Adiça:

> "(…) According to numerous testimonials from different NGO's, researchers and even government officials, including NFP researchers that were present in 2006, several families were living there in extreme conditions. They lived in precarious municipal houses and most of these houses did not have electricity, water or sanitation. They had lived there for more than fifty years but they were unable to get a single public water fountain. Additionally, they lived far from urban centres and consequently experienced difficulties accessing public services.

40. Therefore, given the continuing precarious housing conditions for a large part of the Roma community, coupled with the fact that the Government has not demonstrated that it has taken sufficient measures to ensure that Roma live in housing conditions that meet minimum standards, the situation is in breach of Article E taken in conjunction with Article 31§1.

Segregation

41. Pursuant to Article 31§1, adequate housing must be in a location which allows access to public services, employment, health-care services, schools and other social facilities. States should be vigilant when implementing housing policies so as to prevent spatial or social segregation of ethnic minorities or immigrants.

42. One of the main problems pointed out by the ERRC in the complaint is that re-housing programmes have many times resulted in the spatial and social segregation of Roma. Many examples are provided, for example the Committee in particular notes the housing programme in the Pedreiras settlement in Beja where local authorities have walled off the Roma community, effectively segregating them from the rest of the urban fabric.

43. The Committee also refers to a report by the Portuguese Parliament of 2009 on the situation of the Roma. The conclusions are quite critical of housing policies and presents a bleak picture of the situation of Roma housing. On the re-housing process, the report states:

> "(…) with the exception of a few successful cases, there are a number of problems with the re-housing process: the concentration of Roma families in council estates, far away from the urban fabric, with poor transport accessibilities; the concentration of Roma families with other vulnerable groups; poorly built housing".

44. It also mentions that there is still 'prejudice which leads Roma families to be placed on the outskirts, in sites which are unfit for building' or that 'there are several places throughout the country where the permanence of Roma families is refused'.

45. An additional example of the insufficient measures taken by the Government refers to Braganca, where one Romani community lives on the former rubbish dump on the outskirts of the town. Despite the various housing and slum eradication programs

outlined by the municipality of Braganca in the Government's observations, there has still been no resettlement of the Romani residents from the former rubbish dump.

46. The question of spatial segregation is likewise mentioned in the *RAXEN Thematic Study – Housing Conditions of Roma and Travellers – Portugal*. Several organisations and most of the interviewees of the study affirmed that several Roma populations lived in segregated neighbourhoods. A common spatial and architectonic configuration was said to be chosen more frequently than desirable for municipal re-housing. Moreover, remote placement and single entry neighbourhoods configured a relatively common segregation practice by Portuguese municipalities.

47. The Committee notes from the Government's submissions the different housing and resettlement programmes that have been put in place, which have helped to improve the situation, but nevertheless considers that some of the above criticisms voiced by the complainant organisation, and other sources, concerning the implementation of such programmes are valid.

48. The Committee considers that segregated neighbourhoods for Roma have to a large extent been created by the action of municipalities. Roma have been re-housed by municipalities in such neighbourhoods in a higher proportion than the general population with housing needs. Moreover, there are also examples of discriminatory practices by local authorities, such as the construction of a concrete wall to separate the Roma in Beja (§ 42), the cutting of water in Vidigueira (§ 36) or the precarious municipal houses of the Roma community in Sobral de Adiça, lacking electricity, water or sanitation (§ 39). The Committee therefore considers that implementation of re-housing programmes by municipalities have often led to segregation of Roma, and, have on other occasions been tainted by discrimination, without finding lasting solutions to the deteriorating residential conditions in informal Romani neighbourhoods. The situation is therefore also in breach of Article E taken in conjunction with Article 31§1 on this ground.

Housing and respect for cultural diversity of Roma families

49. The Committee considers that social housing offered to Roma should be, as far as possible, culturally suited to them. Re-housing of Roma families in apartment blocks has often prevented family and casual gatherings, given that their means of existence as a community and bonds of solidarity are broken. Moreover, they are also faced with hostile attitudes of neighbours in apartment blocks. Therefore, the Committee considers that attention should be paid to these problems in policy planning.

50. The main problem raised by the ERRC related to cultural adequacy of dwellings refers to the fact that the family size is often not taken into account for the purpose of resettlement, which results in inadequately sized dwellings.

51. The Committee notes in this respect from the report by the Portuguese Parliament of 2009 on the situation of the Roma that:

'High rise housing solutions have made lifestyles and shared common spaces difficult to manage', and also that there have been 'housing solutions incompatible with the Roma family size and their way of living'.

* * *

52. In the light of the above considerations on the different criteria on which the Committee assesses adequacy of housing, it concludes that the housing conditions of many Roma fall short of the requirements of the Revised Charter. Indeed, it holds that the specific differences of Roma have not been sufficiently taken into account when implementing housing programmes, and that some of such programmes have led to the segregation of Roma or have been tainted by discrimination.

53. For all these reasons, even taking into account that Article 31§1 imposes obligations of means and not always of results, given that the overarching aim of the Charter is to achieve social inclusion, the Committee holds that the situation is in violation of Article E taken in conjunction with Article 31§1.

II. ALLEGED VIOLATION OF 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

54. The ERRC´s allegations under Article 16 are very much related to those submitted under Article 31. Additionally it maintains that many re-housing projects have left out a significant number of Roma families. Only those families that were included in the original census carried out in informal settlements back in 1993 were considered eligible for re-housing. Since many families arrived in the settlements after that date, and there have been no new population counts registering them as living there, such families have been left unprotected, without any housing solutions.

55. The lack of data collection disaggregated by ethnicity, and more generally, the lack of knowledge by the authorities regarding specific problems of Roma, are also alleged by the ERRC to be significant impediments to the implementation of more active social inclusion policies.

2. The respondent Government

56. The Government maintains that access to housing programmes is open to all persons/families on an equal basis, the main selection criteria being a household's socio-economic conditions. Whilst it admits that that there are no specific housing programmes based on ethnicity -which would most likely be contrary to constitutional principles- it argues that a high number of Roma households have been covered by these. The Government provides examples of resettlement of Roma families in various municipalities.

B – Assessment of the Committee

57. The Committee notes that most of the parties' submissions concerning this provision are linked to the right of the family to adequate housing. It recalls in this respect 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" (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 115).

58. The Committee therefore refers to the findings it has reached under Article 31§1. As to the allegation that some families have been excluded from any resettlement possibility on the grounds of not being registered, it finds that this problem can be subsumed into the shortcomings of re-housing programmes.

59. On the question of data collection, the Committee recalls that State authorities have a responsibility for collecting data on particular groups which are, or could be, discriminated against (ERRC v. Greece, Complaint No. 15/2003, decision of the merits of 8 December 2004, § 27). The gathering of such data is indispensable to the formulation of rational policy, as States need factual information to deal with the problem. This being said, the Committee has also stated that this collection of detailed information must respect minimum international standards (see COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 119).

60. Thus, the Committee holds that the finding of a violation under Article E taken in conjunction with Article 31§1, also entails a violation of Article E taken in conjunction with Article 16.

III. ALLEGED VIOLATION OF 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

61. The ERRC underlines the inefficiency of nationwide long-term policies to address the substandard housing conditions and marginalised settings in which Roma live in Portugal. Moreover, the fact that housing policies are to a large extent dealt with by local authorities, allegedly often prone to discriminatory practices, reinforces the social exclusion of Roma.

62. Additionally, the ERRC insists that re-housing policies have been incapable of breaking the cycles of social and economic exclusion that were at the root of the poor housing conditions. The creation of segregated neighbourhoods, with no integration in the mainstream urban fabric, has led to a stigmatisation of such neighbourhoods among the general public. The failure to ensure the right of Roma to housing has grave, multiple and reinforcing effects, which results in the increased social exclusion of Roma.

2. The respondent Government

63. The Government submits that with a view to including the Roma community in the Portuguese society, they have long ago given them full access to an important set of general programmes and measures, aimed at individuals or groups living in situations of poverty and social exclusion, including the Social Insertion Income, housing programmes and other social welfare benefits.

64. The Government also refers to the High Authority for Immigration and Intercultural Dialogue (ACIDI) which has been conducting some important measures to promote the social inclusion of the Roma communities. The Support Office for Roma communities, for example, has been assuming a mediating role between these communities and several institutions, in order to solve some difficult situations, including in the domain of housing. In the same context, ACIDI has also launched a Pilot-Project on Municipal Mediators, whose goal is to improve the access, by Roma communities, to local services and infrastructures, and to promote a better communication between the said communities, local institutions and the local population.

B – Assessment of the Committee

65. The Committee firstly points out that Article 30 requires States Parties to adopt positive measures for groups generally recognised as excluded or disadvantaged, such as Roma, to ensure that they are able to access rights such as housing, which in turn will have an impact on access to other rights such as education, employment and health.

66. The Committee finds that ERRC's arguments on the existence of 'racial discrimination' in the housing field mostly refer to 'spatial segregation', that is, the social exclusion of Roma in the enjoyment of the right to housing. The Committee recalls that living in segregated settings means that there will be inadequate access to schooling, fewer opportunities for employment or more difficult access to medical facilities. Likewise, inadequate standards of housing lead to poor health and higher incidences of diseases. In assessing compliance with this provision the Committee will therefore pay particular attention to the re-housing measures taken by the authorities, as these are of utmost importance for the general social inclusion of Roma.

67. The Government denies the arguments that municipalities - which are largely responsible for dealing with housing matters for the Roma - have implemented the available housing programmes in a deficient or discriminatory manner.

68. The Committee nevertheless finds that there are examples of failed re-housing projects which can be attributed to the municipalities, namely all those which have led to new housing developments for Roma in segregated settings, which demonstrate the absence of political will to provide integrated, adequate housing. Examples of this are the Cucena neighbourhood in Seixal (Lisbon metropolitan area) or the Pedreiras neighbourhood in Beja (Alentejo-south region).

69. Moreover, this view is confirmed by the *RAXEN Thematic Study – Housing Conditions of Roma and Travellers – Portugal*, where an interviewee stated:

> "The absence of both municipal and central government policies towards Roma housing explains most of the problems faced by the Roma. The lack of these kinds of policies are due to two reasons: a political one that takes into consideration the accountability of ballots preferring the majority and an educational one, that reveals that the Portuguese political elite has not changed the way they conceive difference and diversity. Since there are no central orienatations towards Roma housing the 'Roma

issue' is even sometimes manipulated in local elections promising the end of certain problematic neighborhoods in order to get votes".

70. The Government argues that the Committee did not conclude, under the reporting system, that the situation in Portugal was in breach of Article 30. The Committee however finds that, in the circumstances of the present case, there are new elements leading to a conclusion of non-conformity: from a temporal criterion, the last conclusions on Portugal concerning Article 30 were limited to the period ranging from 1 January 2005 to 31 December 2007, whereas the present complaint provides numerous and updated examples showing ineffective policy coordination, insufficient funding and even discriminatory practices in the area of housing for Roma, amounting to a breach of Article 30.

71. Hence, the Committee holds that the inability and unwillingness of central authorities to correctly oversee/coordinate the implementation of housing programmes at the local level taking into consideration the specific situation of Roma, for instance by taking action against those municipalities where housing projects have led to the isolation or segregation of Roma, demonstrates the lack of an "overall and coordinated approach" in this area, amounting to a violation of Article E taken in conjunction with Article 30.

IV. REQUEST FOR COMPENSATION

A – Arguments of the parties

1. The complainant organisation

72. The ERRC asks the Committee to consider reimbursement of costs in the sum of € 18,080 for expenses incurred in preparing the complaint. It provides a detailed itemised budget in this respect.

2. The respondent Government

73. The ERRC only raised its request for reimbursement of costs at the stage of replying to the Government's submissions on the merits of the complaint. The Government has not reacted or made any comments on this request.

B – Assessment of the Committee

74. The Committee has already stated that, whilst the Protocol does not regulate the issue of compensation for expenses incurred in connection with complaints, it considers that as a consequence of the judicial nature of the proceedings under the Protocol in case of a finding of a violation of the Charter, the respondent State should meet at least some of the costs incurred. Furthermore, the Committee of Ministers accepted the principle of such a form of compensation (CFE-CGC v. France, complaint No. 16/2003, decision on the merits of 12 October 2004, §§75-76).

75. Consequently, when such a claim is made, the Committee will examine it and submit its opinion regarding it to the Committee of Ministers, leaving it to the latter to decide how it might invite the Government to meet all or part of these expenses (CFE-CGC v. France, ibid., §77). For costs to be taken into consideration by the Committee, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see, mutatis mutandis, judgment of the European Court of Human Rights, Nikolova v. Bulgaria, 25 March 1999, paragraph 79).

76. The Committee first notes that in the instant case the complainant organisation has not produced any bills supporting the costs incurred for preparing the complaint, mostly related to research in the field. However, the Committee recalls that in another similar complaint, in the absence of any supporting documents, it also recommended payment of a lump sum of € 2 000 as compensation, without the Committee of Ministers giving any follow-up to this recommendation (CFE-CGC v. France, ibid., §80). In the light of the case-file, the Committee considers that in the instant case the amount claimed by the complainant organisation is excessive. However, making an assessment on an equitable basis, the Committee considers that it would be fair to award the complainant organisation a lump sum of € 2 000. It thus invites the Committee of Ministers to recommend that Portugal pay this sum to the complainant organisation.

CONCLUSION

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 16;

- unanimously that there is a violation of Article E taken in conjunction with Article 30.

and invites the Committee of Ministers to recommend that Portugal pay the complainant organisation a sum of € 2,000 as compensation for expenses incurred by the procedure.

Rüçhan IŞIK	Luis JIMENA QUESADA	Régis BRILLAT
Rapporteur	President	Executive Secretary