



DECISION ON THE MERITS

Adoption: 18 October 2006

Notification: 30 November 2006

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**European Roma Rights Centre
v. Bulgaria**

Complaint No. 31/2005

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 218th session attended by:

Mr. Jean-Michel BELORGEY, President
Mrs Polonca KONČAR, First Vice-President
Mssrs Andrzej SWIATKOWSKI, Second Vice-President
Stein EVJU, General Rapporteur
Rolf BIRK
Matti MIKKOLA
Tekin AKILLIOĞLU
Mrs Csilla KOLLONAY LEHOCZKY
Mssrs Lucien FRANÇOIS
Mrs Beatrix KARL

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter

Having deliberated on 19 September and 18 October 2006,

On the basis of the report presented by Mrs Polonca KONCAR,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint submitted by the European Roma Rights Centre (“the ERRC”) was registered on 22 April 2005 and on 10 October 2005 the Committee declared it admissible. The ERRC alleges that Bulgaria discriminates against Roma in the field of housing with the result that Roma families are segregated in housing matters, lack legal security of tenure, are subject to forced evictions, and live in substandard conditions in breach of Article 16 of the Revised European Social Charter (the Revised Charter) read alone or in conjunction with Article E.

2. Pursuant to 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, the Executive Secretary communicated the text of the admissibility decision, on 14 October 2005 to the Bulgarian Government (“the Government”) and the ERRC, and to the Contracting Parties to the Protocol and to the states that have made a declaration in accordance with Article D§2 of the Revised European Social Charter, and the European Trade Union Confederation (ETUC), the Union of the Confederations of Industry and Employers of Europe (UNICE) and the International Organisation of Employers (IOE).

3. Pursuant to Article 31§1 of the Committee’s Rules, the Committee fixed a deadline of 13 January 2006 for the presentation of Government’s submissions on the merits and subsequently, at the request of the Government and pursuant to Article 28§2 of the Rules, the President extended this deadline to 13 March 2006. The submissions were registered on 14 March 2006.

4. Pursuant to Article 31§2 of the Rules, the President set 15 May 2006 as the deadline for the ERRC to present its response to the Government submissions. The response was registered on 16 May 2006.

5. Pursuant to Article 31§3 of the Rules, the President then set 19 June 2006 as the deadline for the Government to submit a further response to the ERRC response and subsequently, at the request of the Government, extended this deadline to 19 July 2006. The response was registered on 19 July 2006.

6. The Committee set 13 January 2006 as the deadline for any observations from the States party to the Protocol as well as from the UNICE and the IOE. No observations were registered.

SUBMISSIONS OF THE PARTIES

a) The Complainant Organisation

7. The ERRC alleges that Bulgaria discriminates against Roma in the field of housing, with the result that the Roma families are segregated in housing matters, live in substandard housing conditions with inadequate infrastructure, lack legal security of tenure, and are subject to forced evictions. For all these reasons the housing situation of Roma amounts to a violation of Article 16 of the Revised Charter read alone or in conjunction with Article E by Bulgaria.

b) The Defending State

8. The Government asks the Committee to find the complaint unfounded. Though it does not contest that Roma families face difficulties in the field of housing, it considers that this does not affect the Roma population exclusively, thereby making the claims of discriminatory practices and policies groundless. Similarly, the Government contends that the legislation in the field of housing is not discriminatory against Roma. It finally asks the Committee to acknowledge the on-going legislative and practical measures the Government implements for the integration of vulnerable population groups, including Roma, with respect to housing.

RELEVANT DOMESTIC LAW

9. Relevant legislation on housing, eviction and non-discrimination includes:

- Law on Municipal Property (1996)

Article 65: "(1) A municipal property which is in possession or is being held on no legitimate grounds, is not being used as designed, or the need for which is no longer there, shall be seized on the basis of an order of the mayor of the municipality.

(2) The order to seize a property shall be executed under an administrative procedure with the assistance of the National Police authorities.

(3) The order under paragraph (1) can be appealed in the order of the Administrative Procedure Act. Appeal shall not suspend the execution of the order, unless the court rules otherwise".

- Law on State Property (1996)

Article 80: "(1) Any State property held in possession or tenure without any legal grounds, or such as shall be used inappropriately or such of which the purpose shall have ceased to exist shall be repossessed by the order of the competent Regional Governor.

(2) The order of the Regional Governor to repossess such property shall be implemented by administrative procedure and enforced by the National Police authorities.

(3) The order under paragraph 1 above shall be subject to appeal in accordance with the procedure laid down in the Administrative Procedure Act. The appeal shall not have suspensory effect, unless otherwise provided by court decree".

- Territorial Planning Law (2001)

Article 16(3): (Effective January 2, 2001) "Any illegal construction works, commenced after the 30th day of June 1998 but not legalized prior to the promulgation of this Act, shall not be removed if the said works were tolerable under the effective detailed urban development plans and under the rules and standard specifications effective during the said period and according to this Act, and if declared by the owners thereof to the approving authorities within six months after the promulgation of this Act".

Article 222(1): "(Amended, SG No. 65/2003) The Chief of the National Construction Control Directorate or an official authorized thereby shall perform the following functions, acting within the competence vested therein:

- 1. suspend illegal construction works;*
- 2. suspend construction works, parts thereof, or individual building and erection works performed in deviation from the construction file as approved, and permit resumption after rectification of violations and payment of the fines and pecuniary penalties due;*
- 3. bar access to construction works referred to in Items 1 and 2 and direct the placing of signs restricting the access of people and machinery and barring them from any such construction works;*
- 4. ban the supply of electricity and heat, running water and gas to construction works referred to in Items 1 and 2;".*

- Protection against Discrimination Act (2003)

Article 4: "(1) Any direct or indirect discrimination on the grounds of gender, race, nationality, ethnical belonging, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status, or on any other grounds, established by the law, or by international treaties on which the Republic of Bulgaria is a party, is forbidden.

(2) Direct discrimination shall be any less favourable treatment of a person on the grounds, referred to in paragraph 1, than another person is, has been or would be treated under comparable circumstances.

(3) Indirect discrimination shall be to put a person, on the grounds referred to in Paragraph 1 in a less favourable position in comparison with other persons by means of an apparently neutral provision, criterion or practice, unless the said provision, criterion or practice have objective justification in view of a lawful aim and the means for achieving this aim are appropriate and necessary".

Article 5: "... racial segregation ... shall be deemed discrimination".

Article 37: "A refusal of providing goods and services, as well as providing goods and services of a lower quality or with less favourable conditions on the grounds referred to in Article 4, Paragraph 1 shall not be allowed".

10. Council of Ministers' Decree No. 333 of December 2004 aimed at improving the administrative capacity in the field of the rights and protection of ethnic communities. On the one hand, it established a Commission for Roma Integration under the renamed National Council for Cooperation on Ethnic and Demographic Issues (NCEDI), which is a consultative and coordination body. On the other hand, it created the Ethnic and Demographic Issues Directorate within the Council of Ministers, which is in charge of coordinating and controlling the implementation of the Framework Programme for Equal Integration of the Roma into Bulgarian Society.

11. Finally, the Government has adopted several framework programmes and action plans which explicitly target Roma, or more generally groups of the population in a disadvantaged position, mainly in the context of the Decade of Roma Inclusion

2005-2015 initiative adopted by eight Central and Eastern Europe countries. The most relevant are:

- the 2005 National Action Plan on the Decade (NAPD), which encompasses the Framework Programme for Equal Integration of the Roma into Bulgarian Society (adopted in 1999) and addresses, *inter alia*, living conditions and non-discrimination;
- the National Housing Strategy (Council of Ministers' Decision No. 395 of 14 May 2004), which provided for the adoption of a special programme targeted to the housing of Roma, the National Programme for improvement of the living conditions of Roma in the Republic of Bulgaria for the period 2005-2015.

THE LAW

12. Articles 16 and E of the Revised Charter read as follows:

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".

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."

I. PRELIMINARY ISSUE

Scope of Articles 16 and 31

13. At the admissibility stage, the Government argued that the complaint was unfounded because it relied on Article 16, which deals with the right of the family to social, legal and economic protection, whereas the right to housing is covered under Article 31 of the Revised Charter. In particular, it argued that the right to housing provided under Article 16 is considerably more restricted in scope and that the "automatic" transfer of the rights contained in Article 31 to Article 16 would deprive the former of any content. Since Bulgaria has not accepted Article 31, it asked to the Committee to declare the complaint inadmissible.

14. The ERRC argued that housing is fundamental for the development of family life and that the right to adequate housing is encompassed by Article 16. It recalls that the Committee's case law under Article 16 already developed a far reaching interpretation of the right to housing. In its response to the Government observations on admissibility, the ERRC further argued that the Committee in its decision on the

complaint ERRC v. Greece (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004) already considered the following issues as falling under the material scope of Article 16: i) the insufficient number of permanent dwellings of an acceptable quality to meet the needs of the settled Roma; and ii) the systemic eviction of Roma from sites or dwellings unlawfully occupied by Roma. Finally, it considers that on the basis of Article B(1) of the Revised Charter a State party to the Revised Charter is also bound by the case law developed under the same article of the 1961 Charter.

15. The Committee recalls that when it ruled on the admissibility it did not examine the issue of the delineation between Article 16 and 31, which in its opinion could only be properly assessed when examining the merits of the case.

16. Article 16 in its very wording of the Charter (English version, which clarifies the French version), provides for the right to housing of families as an element of the right of the family to social, legal and economic protection. The Committee has already given an interpretation of the notion of the right to housing under Article 16. It summarised this interpretation in its decision on the complaint ERRC v. Greece (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24) as follows: “The Committee recalls its previous case law to the effect that in order to 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”.

17. The Committee considers that, as many other provisions of the Charter, 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.

18. Finally, the Committee affirmed in its General Introduction to Conclusions 2002, para. 4.a, that “the interpretation given under the European Social Charter of 1961 remains valid for those provisions that were not amended by the Revised Social Charter of 1996. Any changes in case law relating to provisions that have not been amended naturally apply to both treaties”.

II. ON THE ALLEGED VIOLATION OF ARTICLE 16 TAKEN TOGETHER WITH ARTICLE E

19. The Committee considers that the complaint raises two specific issues:

- the inadequate housing situation of Roma families and the lack of proper amenities;

- the lack of legal security of tenure and the forced eviction of Roma families from sites or dwellings unlawfully occupied by them.

20. The Committee observes that in connection with each of these issues the ERRC relies on both Article 16 as such and Article 16 taken together with Article E. The Committee considers that any discrimination suffered by Roma as regards housing on the Bulgarian territory applies to both inadequate housing and lack of security of tenure and eviction. It follows that the Committee understands the arguments of the complainant as an allegation that the situation violates Article 16 of the Revised Charter taken together with Article E.

i) As to the inadequate housing situation of Roma families and the lack of proper amenities

A. Arguments of the parties

21. The ERRC alleges that the Bulgarian legislation does not guarantee the right to adequate housing and that it failed so far to effectively transpose into domestic law this right as provided under Article 16 of the Charter.

22. The ERRC alleges that the large number of Roma in Bulgaria live separated and segregated from non-Roma population in settlements, often walled off from them through physical barriers such as metal or concrete fences and almost completely removed from the mainstream of Bulgarian social and economic life. Romani neighbourhoods, as the Government itself recognises (1999 Framework Programme for Equal Integration of Roma in Bulgarian Society) are usually found on the outskirts of cities, town and villages, are not included in city plans and lack adequate infrastructures.

23. According to the ERRC, Romani neighbourhoods are overcrowded and have markedly substandard housing and living conditions. Many homes consist of makeshift shacks made of cardboard, metal scraps and mud bricks, often devoid of windows, doors, and walls. From a 2001 World Bank Survey, quoted by ERRC, it appears that in the Falkuteta neighbourhood of Sofia, 17% of the respondents lived in “primitive houses” (cardboard houses and hovels) and another 59% in “flimsy structures” (wooden sheds, makeshift shacks).

24. Basic infrastructures such as water, electricity, heating, sewage and solid waste removal, and public transportation are non-existent or insufficient to meet the needs of the population (Maksuda, Pazardzhik, Stolipinovo settlements). The provision of electricity has recently raised serious concerns: the complainant mentions several cases of Romani neighbourhoods being cut off from electricity supply due to unpaid electricity bills. The collective disconnection from the electrical grid also affected Roma families who did not have debts with the state-owned provider, representing thereby a collective punishment. In Falkuteta (Sofia) the provider refused to repair a breakdown in the grid because of unpaid debts thereby affecting all clients of the network.

25. The ERRC argues that there are discriminatory practices concerning the housing of Roma in Bulgaria since the housing conditions of Roma are substantially substandard compared to the rest of the Bulgarian population, contrary to the Government's claims that poor residential conditions affect Bulgarian citizens equally. In support of its argument the complainant quotes the National programme for Improvement of the Living Conditions of Roma in the Republic of Bulgaria for the period 2005-2015, adopted by the Government in 2004. In the programme, it is stated that "an increasing differentiation between the living conditions in the Roma groups and the living conditions of the remaining part of the population can be observed". Similarly, the programme indicates that "during the last 15 years the living conditions of increased number of Roma have permanently deteriorated...and this turns the Roma districts into ghettos. There is a great difference between the levels of the coverage of the provision of public utilities for Roma dwellings and for the dwellings countrywide".

26. The ERRC argues that the Government's "one-size-fits-all" approach to non-discrimination, i.e. the fact that the administration strictly treats all persons identically regardless of their particular circumstances, follows from a misinterpretation of the non-discrimination principle. The ERRC highlights that the Committee, on line with the case law of the European Court of Human Rights, has already imposed positive obligations on the states parties with respect to non-discrimination of disadvantaged groups. In particular, the ERRC refers to the Committee's statement that "equal treatment requires a ban on all forms of indirect discrimination, which can 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" (ERRC v. Italy, Complaint No. 27/2005, decision on the merits of 7 December 2005, § 20).

27. Finally, the ERRC alleges that, notwithstanding the Government's awareness of the worrying situation of Roma, the several programmes and action plans adopted to redress the housing situation of Roma, remained largely unimplemented and under-financed. The action plan implementing the 1999 Framework Programme for Equal Integration of Roma in Bulgarian society had been adopted only at the end of 2003. The 2001 Territorial Planning Law actually even contradicted one of the goals of the Framework Programme, i. e. making easy the legalisation of Romani dwellings. According to the complainant, the 2004 National Action Plan for the Decade of Roma Inclusion only reproduced the already adopted Framework Programme and is not funded appropriately. The few scattered measures implemented so far have been possible because of the intervention of international donors and local NGOs.

28. The Government acknowledges the lack of an explicit provision on the right to adequate housing in national law, but it mentions Article 33 of the Constitution, which states that the home shall be inviolable, as well as the Law on State Property and the Law on Municipal Property, which set out the criteria for the accommodation of persons in social housing. Finally, the Social Assistance Act includes a dwelling among the basic needs of a person.

29. The Government recognises the allegation about the poor housing situation of Roma, but contends that it does not result from discriminatory practices since the

whole Bulgarian population suffers from residential problems. It argues that the housing policy aims at the integration of disadvantaged ethnic communities. It also considers that the legislation provides adequate safeguards against discrimination and that, at any event, integration does not mean privileged attitude towards some citizens at the expenses of the others since more efficient protection of the rights of Roma would constitute discrimination against the rest of the population. In its subsequent response the Government underlined that the state requires observance of the legislation by all its citizens and that offences may not be permitted under the justification of positive discrimination measures.

30. The Government considers that it has largely demonstrated its recognition of Roma as a vulnerable ethnic minority by means of the several programmes and measures taken specifically addressing the Roma situation in general and concerning housing.

31. The 1999 Framework Programme for Equal Integration of the Roma into Bulgarian Society aimed at eliminating discrimination against Roma in the field, *inter alia*, of housing. The Framework Programme is implemented through action plans, the current one running for the period 2006-2007. In the context of Decade for Roma Inclusion, the Government adopted the 2005 National Action Plan on the Decade (NAPD), which encompasses and implements in the long-term the Framework Programme. The NAPD addresses, *inter alia*, Roma housing issues such as allocation of municipal properties for new constructions; design of a land registry; legal recognition of existing dwellings; and development of an infrastructure. A budget of 2.8 million € was earmarked for these activities under the PHARE programme. The Government mentions also other measures taken concerning the construction of dwellings and infrastructures under the cover of PHARE.

32. The National Housing Strategy (Council of Ministers' Decision No. 395 of 14 May 2004) provided for the adoption of a special programme for the housing of Roma; the National Programme for improvement of the living conditions of Roma in the Republic of Bulgaria for the period 2005-2015. The main goal of the programme is to unite and coordinate the efforts of state bodies, local authorities, NGOs and the Roma community for increasing the housing conditions of the Roma. In particular, the programme aims at the regulation of Roma settlements, the improvement of existing dwellings and the construction of new social dwellings, and development of infrastructures. The budget of the programme amounts to 1.2 billion BGN (€ 613.3 million) earmarked principally as follows: 42.3% for infrastructure and 41.4% for social housing. Contributions are shared among the state (40%), municipal authorities (17%), and the European Union Structural Funds (30%). The Government sets out the measures foreseen in 2006 (such as adoption of relevant legislation, development of structural plans for Roma neighbourhoods, development of infrastructure, and training of the actors involved) and the budget earmarked for the period 2007-2009 (a total of 35 million €).

B. Assessment of the Committee

33. The Committee observes that, upon ratification, the Charter has been incorporated in the Bulgarian domestic legal order with a status higher than statutory

law (Article 5.4 of the Constitution). The right to adequate housing is therefore part of domestic law.

34. The Committee recalls that Article 16 guarantees adequate housing for the family, which means a dwelling which is structurally secure; possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; is of a suitable size considering the composition of the family in residence; and with secure tenure supported by law (see *ERRC v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24). The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period.

35. The Committee considers that the effective enjoyment of certain fundamental rights requires a positive intervention by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources (*mutatis mutandis* most recently *European Court of Human Rights, Ilascu and others v. Moldova and Russia*, judgment of 8 July 2004, § 332). Nonetheless, “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” (*Autism-Europe v. France*, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 53).

36. The Committee finds that the inadequate housing situation of Roma families as alleged by the complainant and recognised by the Government, demonstrated that legal and practical measures were necessary to redress such situation.

37. As regards the adequacy of the measures taken by the Government, the Committee firstly considers that the national authorities are better placed to evaluate the needs of their country (*mutatis mutandis* *European Court of Human Rights, Hatton and others v. the United Kingdom*, judgment of 2 October 2001, Appl. No. 36022/97, § 96), and that it is not the task of the Committee to substitute itself in determining the policy best adapted to the situation. Nonetheless, as stated in the *Autism-Europe* decision (*Autism-Europe v. France*, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 53), the measures taken must meet the following three criteria: (i) a reasonable timeframe, (ii) a measurable progress and (iii) a financing consistent with the maximum use of available resources.

38. The Committee has examined all the information submitted by the parties and, in particular, taking into account the “National Programme for improvement of the living conditions of Roma in the Republic of Bulgaria for the period 2005-2015”, summarized in the Government response of 19 July 2006. It finds that the measures foreseen by this above-mentioned programme could result in meeting the three above-mentioned criteria. However, it considers that the Government did not provide enough evidence that the various programmes and action plans concerning Roma

adopted so far are being effectively implemented. In particular, it observes that the National Programme mentioned above is the last one of a series which date back to 1999 (the Framework Programme for Equal integration of the Roma in the Bulgarian Society) and which has been subsequently embedded in the 2005 National Action Plan on the Decade (NAPD). Notwithstanding the clear political will expressed by the Government to improve the housing situation of Roma families, all these programmes and their implementing measures have not yet yielded the expected results.

39. Moreover, the Committee observes that in its response of 19 July 2006 the Government admits that, for the time being, the situation is not in compliance with Article 16 of the Revised Charter and that it hopes this will change in a reasonable period of time, proof of which there are timetables and schedules. Although the Committee recognises that the effective implementation of the right to housing may require time, it also finds that given the urgency of the housing situation of Roma families a time frame of six years (1999-2005) should have been enough to realise significant improvements.

40. The Committee recalls that Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in the absence of objective and reasonable justifications (see paragraph E, Part V of the Appendix), any individual or groups with particular characteristics benefit in practice from the rights in the Charter. In the present case this reasoning applies to Roma families. Moreover, as the Committee stated in the Autism-Europe decision (Autism-Europe v. France, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 52), "Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect 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".

41. The Committee recalls that in its decision on the right to housing of Roma in Italy it held that "equal treatment implies that Italy should take measures appropriate to Roma's particular circumstances to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless" (ERRC v. Italy, Complaint No. 27/2005, decision on the merits of 7 December 2005, § 21). It further developed the state's positive obligation with respect to access to social housing where it found Italy in violation of the Charter because of "its failure to take into consideration the different situation of Roma or to introduce measures specifically aimed at improving their housing conditions, including the possibility for an effective access to social housing" (ERRC v. Italy, Complaint No. 27/2005, decision on the merits of 7 December 2005, § 46).

42. In all its submissions the Government emphasised that Bulgarian legislation provides adequate safeguards for the prevention of discrimination. However, the Committee finds that in the case of Roma families, the simple guarantee of equal treatment as the means of protection against any discrimination does not suffice. As recalled above, the Committee considers that Article E imposes an obligation of taking into due consideration the relevant differences and acting accordingly. This means that for the integration of an ethnic minority as Roma into mainstream society measures of positive action are needed.

43. The Committee therefore holds that the situation concerning the inadequate housing of Roma families and the lack of proper amenities constitutes a violation of Article 16 taken together with Article E.

ii) As to lack of legal security of tenure and the forced eviction of Roma families from sites or dwellings unlawfully occupied by them

B. Arguments of the parties

44. The ERRC maintains that the majority of Roma families lack security of tenure of their dwellings as a consequence of living in illegal and substandard settlements. For this reason they are discriminated against and disproportionately exposed to forced eviction, which is the direct consequence of the irregularity of their tenure. The ERRC claims the situation to be in violation of Article 16 alone or read in conjunction with Article E.

45. The ERRC alleges that, as a result of legislative changes, the protection against eviction has been eroded. The complainant argues that the Provisional Regulations of §16 of the 2001 Territory Planning Law makes it impossible for Roma to legalise their dwellings, which given the rate of illegal housing varying between 50% and 85% in Roma settlements prevents any improvement of the situation. Applications for legalisation should have occurred within six month since the entry into force of the law, but no or scarce information was provided to Roma in Romani language. However, even if it this had been the case, it is doubtful that Roma's applications would have been successful taking into consideration that their dwellings seldom meet the strict requirements imposed by the legislation, i.e. respecting the detailed urban development plans and the rules and regulations in force. Moreover, the legalisation procedure is described as cumbersome and expensive.

46. The ERRC points out that the majority of Roma dwellings are illegally built outside the zoning map in force and their inhabitants have no or only partial documentation attesting authorisation to build or property. As a consequence of their location, they do not benefit from public services such as garbage collection, public transport and electricity at all or, alternatively, at a substantially lesser level than other areas. This implies that they do not meet the security and hygiene standards required for legalisation. Finally, Roma dwellings are often built on state or municipal property. All these elements make the current legal framework affect the Roma disproportionately in comparison with the rest of the Bulgarian population with respect to security of tenure. The ERRC provides factual evidence of situations in which Roma citizens have been discriminated as regards the legalisation of their dwellings, as in the case of Mrs E. Tsvetkova, or their applications rejected because they could not meet the terms of the law.

47. The ERRC alleges that in case of failure of legalisation, the Territory Planning Law provides for the demolition of illegal dwellings, prohibition of access to them and denial of supply of electricity, water and gas. The law stipulates neither alternative housing, nor compensation for the demolition, the expenses of which shall be born by the inhabitants. The same kinds of rules apply to eviction from state or municipal

land. In addition, the provisions implementing the Municipal Property Act make access to social housing subject to certain conditions, among which a five years registered residence in the municipality. According to the ERRC, this in practice means that the majority of Roma illegal settlements are voted to demolition and their inhabitants evicted and rendered homeless.

48. According to the ERRC, Bulgarian legislation does not provide the legal safeguards which, according to the Committee's case law, must generally accompany evictions, such as the automatic participation of a court official or the automatic suspension of the procedure when the decision of eviction is appealed. Roma subject to forced evictions often lack the possibility of judicial redress, are not given alternative accommodation, or very substandard ones (Mrs Yordanova in Kazanlak) or only offered excessively expensive accommodation (Shumen), and often become homeless. Neither compensation is offered. The ERRC provides several examples of such evictions from urban slum settlements, such as Assanova (Sofia), Meden Rudnik (Burgas), Shumen (where those Roma who rented municipal dwellings ended up homeless because of the high rent price), Varna, and of threats of eviction (Vazrazhdane and Falkuteta districts in Sofia). It also challenges the Government's claim that the demolition of illegal housing is part of the Government's policy for improvement of the living conditions of the Roma population, since it rather aggravated their already deplorable housing conditions.

49. The Government challenges the allegations by affirming that the current legal framework is necessary to regulate housing construction and recognition of illegal dwellings and it applies to all citizens indistinctly. It states that access and provision of services to illegal dwellings shall be forbidden. It also states that inhabitants of illegal dwellings cannot claim compensation for their demolition since that would be to recognise a right following from unlawful behaviour. Expropriation of private properties is compensated and subject to judicial appeal when the owner can demonstrate his possession. With regard to the specific case of Ms Tsvetkova, the Government does not refute the allegations arguing that no general conclusion cannot be drawn by a single case of violation of a right.

50. The Government also argues that the legislation on expropriation provides for compensation of private property on municipal land, while no compensation is given if the asset is on state land. At any event, these rules apply only with respect to legally owned assets and judicial redress is possible in these cases. The Government indicates that with regard to certain of the evictions mentioned in the complaint the authorities took the necessary steps to provide alternative accommodation (Mrs Yordanova), offered rent of municipal dwellings (Shumen) or compensation for demolished legal dwellings (Asanova). As regards the Vazrazhdane district, the threat of eviction has been suspended following an appeal against the decision and alternative housing is being sought for Roma with the help of Roma NGOs and the Government's commitment to provide land and financing for the construction of temporary housing. If successful, this kind of approach will be followed in other cases.

B. Assessment of the Committee

51. The Committee recalls 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” (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 51).

52. It also recalls 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). 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. 27/2005, decision on the merits of 7 December 2005, § 41).

53. Furthermore, the Committee observes that a person or a 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 from their rights.

54. The Committee finds that the legislation allowing, *inter alia*, the legalisation of illegal constructions did exist (2001 Territorial Planning Law), but that it set conditions too stringent to be useful in redressing the particularly urgent situation of the housing of Roma families (respect of constructions’ safety and hygiene rules, official documents attesting property, residence in the district for more than five years), situation which is also recognised by the Government. Moreover, the Committee considers that it follows from the fact that illegal Roma settlements have been existing for many years and that, though not uniform, provision of public services, as electricity, was ensured and inhabitants charged for it, that state authorities acknowledged and tolerated *de facto* the actions of Roma (*mutatis mutandis* European Court of Human Rights, Oneryildiz v. Turkey of 30 November 2004, § 105 and §§127-128). Accordingly, though state authorities enjoy a wide margin of appreciation as to the taking of measures concerning town planning, they must strike the balance between the general interest and the fundamental rights of the individuals, in the particular case the right to housing and its corollary of not making individual becoming homeless.

55. The Committee finds that the current legislation on the legalisation of dwellings affects Roma families in a disproportionate manner. By strictly applying the rules on legalisation to Roma, whose situation also differs as a consequence of the state non-intervention over a certain period (regarding property documents, or the respect of construction safety and hygiene rules), Bulgaria has discriminated against Roma families by failing to take due consideration of the specificity of their living conditions.

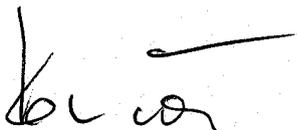
56. As regards eviction, which is the consequence of the non-legalisation of dwellings, the Committee finds that while it is true that legislation exists and it includes judicial redress, it does not address properly the specific situation of Roma families, with the exception of the suspended eviction of the Vazrazhdane (Sofia). In particular the Committee observes that though in certain cases the Roma evicted were provided with alternative accommodation or compensation, these measures, on the one hand, did not concern all families involved because of the conditions set by the law; and on the other hand, accommodation was either substandard or of a temporary nature (vans, barracks or municipal dwellings whose rent was too expensive for low income families such as Roma). The Committee recalls that it is the responsibility of the state to ensure that evictions, when carried out, respect the dignity of the persons concerned even when they are illegal occupants, and that alternative accommodation or other compensatory measures are available. By failing to take into account that Roma families run a higher risk of eviction as a consequence of the precariousness of their tenancy, Bulgaria has discriminated against them.

57. The Committee holds that the situation constitutes a violation of Article 16 in combination with Article E because Roma families are disproportionately affected by the legislation limiting the possibility of legalising illegal dwellings; and the evictions carried out did not satisfy the conditions required by the Charter, in particular that of ensuring persons evicted are not rendered homeless.

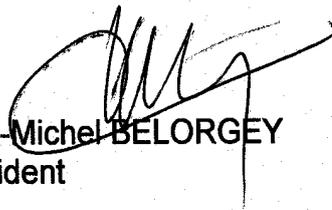
CONCLUSION

For these reasons, the Committee holds:

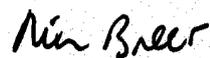
- by 9 votes to 1 that the situation concerning the inadequate housing of Roma families and the lack of proper amenities constitutes a violation of Article 16 of the Revised Charter taken together with Article E;
- by 9 votes to 1 that the lack of legal security of tenure and the non-respect of the conditions accompanying eviction of Roma families from dwellings unlawfully occupied by them constitute a violation of Article 16 of the Revised Charter taken together with Article E.



Polonca KONCAR
Rapporteur



Jean-Michel BELORGEY
President



Régis BRILLAT
Executive Secretary