

ROMA IN ITALY: A CONTINUED EMERGENCY

Briefing to the European Commission

October 2012

I. Executive Summary

1. The Open Society Justice Initiative has provided three prior briefings to the European Commission, in May 2009,¹ October 2010,² and March 2012,³ describing the ways in which the Italian authorities' treatment of Roma and Sinti under the "Nomad Emergency Decree" breaches EU law. This follow-up briefing updates the Commission regarding ongoing violations of the Race Equality Directive (2000/43/EC) and the Data Protection Directive (1995/46/EC).
2. In February 2012, the Government appealed against a Council of State ruling of 16 November 2011 which recognized that there was no emergency justifying the "Nomad Emergency Decree," leading the Council of State to suspend certain aspects of its ruling that had contractual and financial consequences for third parties. As a result of the confusion caused by this appeal and partial suspension of the judgment, courts and local authorities have continued to apply elements of the Nomad Emergency Decree, even though the Emergency Decree itself expired in December 2011. Local authorities, therefore, are continuing to implement segregated camps, and courts have continued to uphold discriminatory eviction and transfer orders.
3. Furthermore, despite assurances given to the UN Committee on the Elimination of Racial Discrimination, the Government has not destroyed the ethnically targeted database compiled as a result of the Roma Census. In addition, the Government has cut the staff of the Office against Racial Discrimination (UNAR), the national equality body entrusted with implementing Italy's *National Strategy for the Inclusion of Roma, Sinti and Caminanti*, such that it is barely able to operate.

II. Recommendations

4. We urge the Commission to finalize its review of Italy's failure to fulfil its obligations under the Race Equality Directive and the Data Protection Directive. In the course of finalizing this review, the Commission should investigate the following issues:
 - *Back to the Emergency Paradigm.* The Italian government continues to seek to uphold the Nomad Emergency Decree and its implementing orders (collectively, the "Nomad

¹ "Violations of EC Law and the Fundamental Rights of Roma and Sinti by the Italian Government in the Implementation of the Census in 'Nomad Camps'", 4 May 2009, submitted by the European Roma Rights Centre (ERRC), the Open Society Justice Initiative (OSJI) and OsservAzione. Available at: <http://www.soros.org/initiatives/justice/litigation/ec-v-italy-20100910/memorandum-to-the-european-commission-20090504.pdf>

² "Roma in Italy: Briefing to the European Commission", 18 October 2010. Available at <http://www.soros.org/initiatives/justice/litigation/ec-v-italy-20100910/memorandum-italy-ec-20101018.pdf>

³ "Roma in Italy: Updated Briefing to the European Commission", 15 March 2012. Available at http://www.soros.org/sites/default/files/Memorandum-European-Commission-20120315_0.pdf

Emergency Measures”). As a result, Italian courts continue to justify forced evictions and the segregated housing of the Roma population making reference to the Emergency Measures. The Emergency Measures were expressly premised on the notion that the presence of Roma/nomad communities is a “direct cause of social, environmental, and hygienic degradation”⁴ and on the false stereotype that Roma are necessarily nomadic by choice. This amounts to unlawful direct and indirect discrimination in housing on the basis of ethnic origin, prohibited by the Race Equality Directive.

- *Ongoing Use of Prohibited Data and Illegitimate Use of Ethnic Database.* The continued storage and use of Roma Census Data collected in 2008 and 2009 pursuant to the Nomad Emergency Measures, including the use of census data during evictions and resettlements, violates the Race Equality Directive and the Data Protection Directive. The Italian authorities should be required to destroy such data and provide evidence of such destruction.
 - *Cutbacks in Equality Body Staff, and Implementation of National Inclusion Strategy.* Italy is not genuinely committed to implementing its *National Strategy for the Inclusion of Roma, Sinti and Caminanti*⁵ in accordance with the Communication from the Commission on *National Roma Integration Strategies: a first step in the implementation of the EU Framework*,⁶ as demonstrated by the Government’s appeal to reinstate the lawfulness of the Nomad Emergency Decree and its significant cut in the staff of the national Office against Racial Discrimination, the national equality body entrusted with implementing the strategy.
5. The Commission should communicate its view to Italy that the Nomad Emergency Measures, the continued implementation of such measures, and the use of the Roma census data, violate the Race Equality Directive and Data Protection Directive, and require Italy to withdraw its appeal of the Council of State ruling, destroy all personal data collected pursuant to the Nomad Emergency Measures including the census data, stop evictions and transfers to new segregated camps, desegregate existing camps, and provide effective remedies for all of the discriminatory practices. Failing compliance, the Commission should initiate infringement proceedings.
6. In order to provide for effective monitoring of the implementation of EU law, the Commission should start infringement proceedings against Italy for the following violations:
- *Racial discrimination in housing: Forced evictions, segregated camps, unnecessary census.* Since the Emergency, municipalities have issued a number of discriminatory regulations covering nomad camps. A series of eviction orders have been, and continue to be, issued to Roma and Sinti – both families and individuals – that are potentially racially discriminatory and make no provision for adequate alternative housing for those evicted. Although the Italian Council of State struck down the Nomad Emergency Measures, there has been no compensation for victims of forced eviction. In addition,

⁴ “Declaration of the state of emergency with regard to the settlements of nomad communities in the territories of the Campania, Lazio and Lombardia regions” (the “Nomad Emergency Decree” or “NED”), Decree of the President of the Council of Ministers n. 32041 of 21 May 2008.

⁵ *National Strategy for the Inclusion of Roma, Sinti and Caminanti – Implementation of European Commission’s Communication no.173/2011*, <http://www.cooperazioneintegrazione.gov.it/news/2012/02/strategiaitalianarom.aspx>

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *National Roma Integration Strategies: a first step in the implementation of the EU Framework*, Brussels, COM(2012) 226 final, 21 May 2012.

plans to construct additional segregated camps have continued since the Italian Council of State's ruling, and the transfer of Roma families to those new camps is ongoing. The Roma census, performed in the framework of the Emergency, was presented to Italian citizens as a necessary pre-condition to avoid evictions, and to be eligible for future housing. These measures and actions constitute direct and indirect racial discrimination in housing, in breach of Articles 2(a), 2(b) and 3.1(h) of the Race Equality Directive (2000/43/EC).

- *Lack of data protection.* Despite the Council of State's ruling, and the end of the Emergency, the data collected in the Roma census has still not been deleted. In some cases, Italian authorities have failed or refused to respond to applications for the deletion of such data. Instead, Italian authorities continue to use the data as part of their measures to evict Roma and Sinti. This constitutes a breach of the Data Protection Directive (1995/46/EC), in particular of its Articles 6.1, 10, 7, and 8, to the extent that the ethnically sensitive nature of the data must be derived from the fact that only Roma, of whatever nationality, were subjected to the census.
 - *Lack of Judicial Remedies.* No Italian court or authority has recognized the racially discriminatory effects of the Nomad Emergency Measures or the violation of data protection guarantees, and no entity has granted remedies to the victims of those measures. The effects of the discrimination and violation of privacy continue to this day, as the suspension of the Italian Council of State's ruling has resulted in legal uncertainty that has allowed further violations to occur. This lack of judicial remedies constitutes a breach of both Article 7.1 of the Race Equality Directive and Article 22 of the Data Protection Directive (1995/46/EC).
7. The Commission should establish whether the budgetary cuts and corresponding staff reductions render the National Office against Racial Discrimination (UNAR) effectively unable to meet the obligations of an equality body, and as such constitute an additional breach of the Race Equality Directive and of Italy's commitments concerning Roma inclusion.

III. Italy continues to breach EU law

A. Government Appeal of the Council of State Ruling

8. On 16 November 2011, after more than three years of the so-called Nomad Emergency, the Italian Council of State struck down the Nomad Emergency Measures.⁷ The court found the Emergency Measures unlawful because they were not premised upon a genuine emergency connected to the presence of Romani and Sinti people. The court further found that some of the regulations restricting access to and movement within the camps were illegitimate because they were not necessary and were disproportionate measures. However, the Council of State failed to find that the Measures constituted racial discrimination and did not order any remedies to the victims, such as the destruction of the data collected through the census or compensation.⁸
9. Although rulings of the Council of State typically are final, on 15 February 2012, the Italian Government used an extraordinary procedure to appeal against the Council of State decision to

⁷ *Ministry of the Interior and others v. ERRC and others*, Council of State, Ruling No 6050 of 16 November 2011.

⁸ See "Roma in Italy: Updated Briefing to the European Commission", 15 March 2012, para. 36.

the Supreme Court of Cassation, seeking a holding that the Nomad Emergency Measures were a lawful response to a legitimate emergency. The appeal argued that the Council of State did not have jurisdiction to evaluate the facts constituting the purported state of emergency, and contested the Council of State's factual findings themselves.⁹ In the appeal, the Government maintained that the mere presence of nomads, i.e. Roma and Sinti, around the main city centres in 2008 was so dangerous that it amounted to an emergency that could be addressed by extraordinary measures, including the census.

10. On 9 May 2012, the Council of State issued an interim order that suspended some elements of its own ruling in light of the Government's appeal. The Council of State referred to certain financial and contractual obligations assumed by the public administration during the Emergency, and concluded that in light of "the serious consequences, not only financial, which would result from a disruption of the activities undertaken in implementation of the measures subject to appeal and annulment...prevalence should be given to the above requirements of continuity".¹⁰ As a result, the Council of State suspended the part of their ruling that referred to contractual and financial relations between the concerned administrations and third parties.
11. The 9 May order created significant confusion among local authorities and the judiciary concerning the continuation of the Nomad Emergency. As set out below, local governments continued to build new segregated camps and to process the Roma Census Data, and courts continued to uphold decisions based on the Nomad Emergency Measures, even though the part of the Council of State ruling holding such activities to be illegitimate had not been suspended. And in any event, the Nomad Emergency Measures had expired on 31 December 2011, as the government decree was not renewed.¹¹

B. Continued discriminatory transfers under Nomad Emergency

12. Following the suspension of the Council of State's ruling, the Municipality of Rome decided to complete the construction of the new segregated nomad camp of La Barbuta, near Ciampino (Rome). This camp, planned under Rome's Nomad Plan, a plan adopted in the framework of the Emergency, is designed to hold up to 900 people and includes fences and video-surveillance equipment.¹² The municipality of Rome is progressively relocating Roma to La Barbuta from other areas of the city including Tor de' Cenci, where the Roma families work, attend school and where their communities are reasonably well integrated.¹³

⁹ *Appeal under Article 111 of the Italian Constitution and Article 110 of the Code of Administrative Procedure*, filing by the Italian Presidency of the Council of Ministers, The Department of Civil Protection, the Ministry of the Interior, and the Prefectures of Rome, Milan and Naples, CT 28259/08, 15 February 2012.

¹⁰ Council of State, Ordinance No 01760/2012 of the interim measures register, Available at http://www.giustizia-amministrativa.it/DocumentiGA/Consiglio%20di%20Stato/Sezione%204/2009/200906859/Provvedimenti/201201760_15.XML

¹¹ Decree of the President of the Council of Ministers of 17 December 2010, Official Gazette No. 304 of 30 December 2010.

¹² See Amnesty International, *On the Edge. Roma, Forced Evictions and Segregation in Italy*, p. 12. Available at: <http://www.amnesty.org/en/library/asset/EUR30/010/2012/en/f84f5df4-1047-49d5-a349-431bd6fab3ba/eur300102012en.pdf>

¹³ See the website of Rome's Municipality concerning the objectives to be achieved before the end of the mandate. The camp was opened in June 2012 http://www.comune.roma.it/PCR/resources/cms/documents/133_obiettivi_di_fine_mandato_ver_15_11.pdf

13. During the summer, Roma rights NGOs entitled to legal standing in antidiscrimination proceedings filed a complaint with the Tribunal of Rome arguing that the transfer exclusively of Roma families to the new, segregated camp amounted to racial discrimination. Initially, the Rome Tribunal recognized the risk of racial discrimination and ordered interim measures to stop to the transfer process. However, a few weeks later, the Municipality of Rome successfully challenged the interim measures and the transfers were reinstated.¹⁴ The Rome Tribunal's decision to lift the injunctive measures and continue the transfers relied on the Nomad Emergency Measures. The Rome Tribunal stated:

“The fact of having acted in pursuance of the Government plan, and having done so for reasons of emergency, rules out the discriminatory nature of the action of the City.... If the municipality acts to implement an emergency plan it cannot be said that it has the intent to segregate or discriminate on grounds of race or membership of an ethnic group ... It should not be forgotten that the racial element is secondary in the choice of persons to be transferred in the village of new construction, since if it is true that we are speaking of nomads, Sinti and other ethnic groups, it is also true that the plan targets only those, within those communities, that do not have a better housing.”¹⁵

14. The Rome Tribunal's reasoning demonstrates several errors. It wrongly derives the legitimacy of the new Rome plan from the prior, expired emergency measures. It also fails to apply the correct test for indirect discrimination by failing to take into account the *discriminatory effects* caused by the measures and failing to scrutinize whether the measures employed are objectively justified by a legitimate aim and are an appropriate and necessary means of achieving that aim. In addition, it fails to appreciate that practices can be racially discriminatory even if they do not affect all members of a protected group, such as in this case in which the Rome Tribunal concedes that some (but not all) members of the targeted ethnic group were affected.

C. Courts Continue to Uphold Evictions

15. Recent decisions of administrative courts also have continued to uphold removal decisions taken during the Nomad Emergency. In September 2012, the Administrative Tribunal of Lazio turned down a complaint by two Roma claimants who had asked for the repeal of an eviction order issued during the emergency, and for compensation for the damage suffered as a result of the discriminatory character of the concerned measures. Their transfer was ordered under Article 12 of the *Regulation for the Areas Assigned to Nomad Communities in the Municipality of Milan*, a measure adopted in the framework of the Emergency that applied only to nomad camps and not to other public housing facilities, and which established that the camp residence authorization for an entire family would be repealed if any member of the family had a past criminal conviction. On the basis of the false stereotype that Roma are voluntarily nomadic people, the Administrative Tribunal of Lazio held that the regulations governing Roma camps can differ from those that apply to ordinary public housing facilities. The Administrative Tribunal of Lazio stated:

“The comparison with public housing is completely out of place, since here the situation is temporary and precarious, and may be lawfully organized under its own rules, provided that they respect the constitutional principles ... the commission of crimes is certainly a reasonable parameter for the distinction between individuals who aspire to a benefit (it is

¹⁴ *ASGI e 21 Luglio v. Roma Capitale*, Tribunal of Rome, R.G. 17035-1/2012, 3 August 2012 and 5313/R.G. 13 September 2012. Cf. **Annexes 1 and 2**.

¹⁵ *Ibid*, 13 September 2012, p. 3-5.

intuitive that the area occupied by P. is potentially used for other nomads), while concerning racial discrimination we do not see how art. 12, for the part of interest here, has such a connotation: in general, however, the regulation refers to the persons in a voluntary nomadic condition, and not to the nomads of a particular ethnic background, or in any case outlines the possibility of expulsion from the camp related to the ethnic background of the guests.”¹⁶

16. The ruling underestimates the generally accepted use of “Roma” and “nomad” as interchangeable terms in Italian administrative jargon, even though only a very minor part of the Roma population in Italy is voluntarily nomadic, as recognized by the Italian Government’s *National Strategy for the Inclusion of Roma, Sinti and Caminanti*.¹⁷ More importantly, the Tribunal fails to explain why the commission of crimes is a relevant factor for access to housing only for family members of Roma, and not for other people aspiring to the benefit of public housing.

D. Ongoing Use of Census Data and Illegitimate Use of Database

17. No steps have been taken to destroy the Roma Census Data, either as a consequence of the ruling by the Council of State, or as a consequence of the end of the emergency in December 2011. To the contrary, recent practice shows that the Roma Census Data are still being maintained and used, at least in the municipalities of Milan and Rome.
18. On 7 March 2012, the then Director of the National Office against Racial Discrimination (UNAR) declared to the United Nations Committee for Elimination of Racial Discrimination (CERD) that the data collected through the 2008/2009 Roma census had been deleted.¹⁸ However, neither the Government nor the Data Protection Authority ever issued any official order to delete such data and no further evidence that the census data had been deleted was ever provided.
19. In Milan, victims of evictions filed an application concerning the misuse of the Roma Census Data with the Italian Data Protection Authority (DPA) in 2011. The DPA has yet to respond to the application, which is still pending. However, a set of documents transmitted to the DPA by the Prefecture and the Municipality of Milan concerning a Roma man and his family who were subjected to the census, demonstrate that the Roma Census Data existed at least until February 2012.¹⁹
20. In January 2012 in Rome, an Italian Roma was allowed access to his data collected in the Roma Census, including his fingerprints and family pictures, pursuant to a court order. The claimant had won an access to information claim against the Ministry of the Interior and the Police

¹⁶ *N.P and F.P. v. Municipality and Prefecture of Milan*, Administrative Tribunal of Latium, Application No 04923/2010. Available at http://www.giustizia-amministrativa.it/DocumentiGA/Roma/Sezione%201/2010/201004923/Provvedimenti/201207479_01.XML
See also Annex 4.

¹⁷ *National Strategy for the Inclusion of Roma, Sinti and Caminanti*, cit., p. 4.

¹⁸ Committee on the Elimination of Racial Discrimination, Concluding Observations, CERD/C/ITA/CO/16-18, para. 11: “The Committee notes the declaration made by the State party that data has since been destroyed.”

¹⁹ “Roma in Italy: Updated Briefing to the European Commission”, 15 March 2012, above, at para. 25. *See also* Roma Census Data: Reply by the Municipality and the Prefecture of Milan to the Data Protection Authority, 6 February 2012, **Annex 3**.

Headquarters of Rome, who were denying access to his census data.²⁰ However, the claimant was subsequently unable to obtain any further information regarding the processing of this data. Thus, in July 2012, the claimant applied to the Rome Tribunal claiming that the database of sensitive information and the continued processing of his personal data – including fingerprints and family pictures – were racially discriminatory and violated the Race Equality Directive. He also argued that the collection and processing of such data by the Prefecture violated Article 6, 7, 8 and 10 of the Data Protection Directive as it was not necessary for the purpose of identification, particularly where the claimant, an Italian citizen, was able to simply show his identity documents.²¹ Notably, even the Guidelines for the Roma Census did not foresee fingerprinting except in cases where identification was not otherwise possible.²² The case is currently pending before the Tribunal of Rome, but it has not been treated as urgent.

IV. Cutbacks in equality body staff further imperil implementation of National Inclusion Strategy

21. In addition to the breaches of EU antidiscrimination and data protection law outlined above, recent measures adopted by the Italian Government have further endangered the credibility of Italy's commitment toward working for Roma inclusion by reducing the resources available to further such integration. Italy's *National Strategy for the Inclusion of Roma, Sinti and Caminanti* identifies the National Office against Racial Discrimination (UNAR) as the national contact point for the elaboration and implementation of the strategy.²³ As an effect of Law Decree n. 95 of 6 July 2012, UNAR's staff was drastically reduced and its director dismissed.²⁴ These measures indicate that, from October 2012, the office will be reduced from about 18 to four staff members, which is clearly insufficient to coordinate the implementation of the strategy, while also performing their mandate as an equality body under Article 13 of the Race Equality Directive.

V. Conclusion

22. The European Union institutions have remained silent for too long about Italy's emergency treatment of Roma and have failed to take a stand against the overt racial discrimination and unlawful data collection that are part of Italian Government's ethnic census, forced evictions, and other Nomad Emergency Measures. The Commission should investigate, censure, and if necessary, initiate infringement proceedings against Italy for its failure to comply with the Race Equality Directive and Data Protection Directive.

²⁰ *XXX v Ministry of the Interior, Prefecture of Rome and Rome Police Headquarters*, Administrative Tribunal of Latium, N. 05170/2011, 23 November 2011. **Annex 4.**

²¹ *XXX v Ministry of the Interior, Prefecture of Rome and Rome Police Headquarters*, filing to the Rome Tribunal, 26 July 2012, RG 49444/2012.Cf. **Annex 5 and 6.**

²² "Guidelines to implement the President's Ordinances nos. 3676, 3677 and 3678 of 30 May concerning the encampments of nomadic communities in the regions of, Lazio, Lombardy and Campania," 17 July 2008. In its November 2011 decision, the Council of State found that the Guidelines had no clear legal value and were not sufficient to remedy the illegitimate character of the census order made under the Nomad Emergency Measures (at page 22).

²³ *National Strategy for the Inclusion of Roma, Sinti and Caminanti*, cit., pp. 25, 35 and ff.

²⁴ *Urgent Measures for a Review of the Public Spending with Unchanged Services for Citizens*, Official Journal no.156 of 6 July 2012, Article 2, para. 20.

1. Annexes

Annex 1: Decision by the Rome Tribunal on Segregated Camp “La Barbuta”, 3 August 2012

Annex 2: Decision by the Rome Tribunal on Segregated Camp “La Barbuta”, 13 September 2012

Annex 3: Roma Census Data: Reply by the Municipality and the Prefecture of Milan to the Data Protection Authority, 6 February 2012

Annex 4: Decision by the Administrative Tribunal of Lazio on [Redacted] application to access the Roma Census Data, 23 November 2011.

Annex 5: [Redacted] application for the deletion of census data and fingerprints and compensation for racial discrimination in Rome, 26 July 2012

Annex 6: English translation of [Redacted] application for the deletion of census data and fingerprints and compensation for racial discrimination in Rome, 26 July 2012



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