

**ROMA IN ITALY: BRIEFING TO THE EUROPEAN COMMISSION
OCTOBER 2010¹****Update to the “Memorandum on Violations of EU Law” Submitted by the Open Society
Justice Initiative, OsservAzione and the European Roma Rights Centre on 4 May 2009**

Introduction.....	1
Violations of European Law	2
Prolongation and extension of the 2008 Nomad Emergency Decree	3
Expulsions of Roma.....	3
Further identifications and evictions of Roma and Sinti.....	4
The 2009 Security Package: an increasingly uncertain legal status for the Roma.....	6
The Roma Census: continued collection and retention of sensitive ethnic data.....	7
Challenging the Emergency decree: ineffective domestic judicial remedies.....	8

Introduction

1. The present note documents how the adoption and implementation of measures targeting Roma within the framework of the “emergency” proclaimed two years ago by the Italian authorities have promoted practices that amount to systemic breaches of EU law. This note also provides new evidence of “voluntary repatriation agreements” which target Romanian Roma, the lack of information concerning data collected in the “Roma census,” and the ongoing evictions within both authorized and non-authorized encampments. The Open Society Foundations addresses this briefing to the Commission in its role as guardian of the treaties as provided for by Article 258 of the Treaty on the Functioning of the European Union (TFEU).
2. The note provides an update on the information contained in the memorandum “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’” submitted to the European Commission, DG Employment and Social Affairs (DG EMPL) and DG Freedom, Security and Justice (DG JLS) on 4 May 2009 by the European Roma Rights Centre (ERRC), the Open Society Justice Initiative (OSJI) and OsservAzione.
3. In May 2008, the Italian government adopted a “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”). These Emergency Measures (the Nomad Emergency Decree, its three implementing orders, and its implementing guidelines²) granted to the prefects of Rome, Milan and Naples exceptional powers “derogating

¹ This briefing was drafted by the Open Society Justice Initiative (OSJI) in September and October 2010. The official documentation used for the brief and attached in the annex section was supplied by Associazione Africa Insieme (Pisa), Associazione 21 Luglio (Rome), Comunità di Sant’Egidio and NAGA (Milan).

² Decree of the President of the Council of Ministers n. 32041 of 21 May 2008. Ordinances of the President of the Council of Ministers no. 3678, of 30 May 2008: Urgent civil protection provisions to tackle the state of emergency in relation to nomad community settlements in the territory of the Campania region (No.3678); in the territory of the Lombardy region (No.3677); in the territory of the Lazio region (No.3673). “Guidelines to

from the rules of law in force” to adopt measures targeted, directly or indirectly, at Roma, Sinti and undocumented third country nationals residing in so-called nomad camps. The specific emergency powers included the monitoring of formal and informal camps, identification and census of the people (including minors) who were present there, fingerprinting and taking photos; the expulsion and removal of persons with irregular status; measures aimed at clearing “camps for nomads” and evicting their inhabitants; as well as the opening of new “camps for nomads”.

4. In 2008, the Italian government created a database containing information only about Roma for the express purpose, among others, of dismantling Roma camps and expelling Roma from the country, in breach of the EU Data Protection Directive which prohibits the processing of sensitive data of a single ethnic group, but the European Commission failed to respond. The prefects to whom the emergency powers were delegated with responsibility for the census have never provided information on the procedures that are available to access or modify personal data collected during the census, nor have they released information on the extent to which the purported objectives for which the census was carried out have been achieved. So far individual applications to access the data collected for the census have not been replied to (see Annex 4 “Personal data applications”).
5. On 30 September 2010, in announcing that it was considering infringement proceedings against France for measures targeting Romanian Roma, the European Commission stated that it would keep under strict scrutiny the situation of other member states with regard to the treatment of Roma who are EU citizens.

Violations of European Law

6. The Memorandum of 4 May 2009 contains an explanation of the way in which the implementation of the Roma census violates both specific directives of EU law and the guarantees of the European Convention on Human Rights and the Charter of Fundamental Rights. In summary, the violations are as follows:
 - *The Data Protection Directive (95/46/EC)*. The collation of information on a single ethnic group into a database violates Article 8 which prohibits the processing of sensitive personal data revealing ethnic origin.
 - *The Race Equality Directive (2000/43/EC)*. The Emergency Measures and the manner of their implementation amount to discrimination against the Roma and Sinti minority group – usually and incorrectly defined as “nomads in Italy” – whose mere presence has been singled out and designated as the cause of an emergency situation and target of emergency state action, in breach of Article 2 and Article 3(1)(h) of the Race Equality Directive.
 - *The Freedom of Movement Directive (Directive 2004/38/EC) and Article 18 TFEU*. Repatriations targeted at EU citizens from specific countries (Romania) and specific ethnic groups (Roma) breach the anti-discrimination provisions within the Directive, and amount to discrimination on the basis of nationality and ethnicity. Repatriation contracts signed under threat of eviction amount to forced expulsions in violation of freedom of movement.
 - *Article 8 European Convention on Human Rights (ECHR): Right to Respect for Private life*. The collection of information that reveals a person’s ethnic identity violates Article 8 where

implement the President’s Ordinances nos. 3676, 3677 and 3678 of 30 May concerning the encampments of nomadic communities in the regions of Campania, Lazio and Lombardia,” July 17, 2008.

there is no justification. The census process in Italy was arbitrary in that it lacked a sufficient legal basis and had no legitimate aim.

- *Discrimination.* This treatment of Roma amounts to a discriminatory violation of Article 8, and is such blatant discrimination as to amount to an affront to human dignity, reaching a level of severity that amounts to degrading treatment in violation of Article 3 ECHR.

Prolongation and extension of the 2008 Nomad Emergency Decree

7. The extraordinary powers granted through the Nomad Emergency Decree were due to expire after one year, but on 28 May 2009, they were prolonged for eighteen more months, until 31 December 2010. In addition, the original decrees were amended to cover two new regions: Piedmont and Veneto.³
8. The prolongation occurred despite the fact that, in spring 2009, the Ministry of the Interior announced the conclusion of the census and published its summary results. According to the Ministry, during the first year of the nomad emergency, 167 encampments were subjected to the census, 124 irregular and 43 regular. Identity checks were performed on 12,346 people, of which 5,436 were minors, and their data were “registered.”⁴
9. After two full years of “emergency,” during which the commissioners were delegated extraordinary powers, there is still no evidence that any of the proposed measures of social assistance and housing – constantly evoked by the government and the commissioners as the objective grounds for the proclamation of the decree – have yet been implemented. While the Ministry of Interior states that 15 to 20 million euro was allocated to each emergency area, there is no information as to whether those funds were received and how they have been used to ameliorate the condition of Roma in Italy.⁵
10. Instead of introducing measures to improve the situation of Roma, new restrictive regulations were adopted in both Milan and the Lazio Region (see paragraph 13 below) which severely limited the personal freedoms of Roma residing in authorized camps, by establishing maximum periods of residence in the camps (three years in Milan) and by making it easier for the local authorities to withdraw residence authorizations. This has made it more difficult for Roma families to acquire stable employments or to enrol their children in schools. The regulations also limit the freedom of movement of Roma in the camps, and require them to produce their identity papers to “camp managers” who in the Salone camp in Rome are employed by a private security company.

Expulsions of Roma

11. The decision by France in August 2010 to expel thousands of Roma and to return them to Bulgaria and Romania has led to a swift response by the Italian Ministry of the Interior, which clearly indicates on its website that it aims to seek permission from the Commission to commence collective deportations of EU citizens who do not have employment.⁶ In outlining

³ Decree of the President of the Council of Ministers n. 38839 of 28 May 2009 and ordinances 3776 and 38841 of 1 June 2009, all published in Official Gazette No. 129 of 6 June 2009.

⁴ Ministry of the Interior, *Censimento dei campi nomadi*, 2008:

http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/speciali/censimento_nomadi/index.html

⁵ <http://roma.repubblica.it/dettaglio/campi-nomadi-ecco-il-piano-13-insediamenti-per-seimila-rom/1686622>

⁶ http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/00829_2010_09_06_pari_gi_seminario.html

his request, Minister of the Interior Roberto Maroni stated that Italy would be “tougher than Sarkozy” and expressed his regret at being unable to expel Roma who were Italian citizens, demonstrating the motive behind the new initiative.⁷ “Voluntary” repatriations have already occurred with the local government in Pisa issuing contracts for the “repatriation of Romanian Roma”⁸ and providing funds for approximately 100 Roma to return to Romania (see annex 1, “Deliberation of the Public Health Agency in Pisa concerning Repatriation Contracts for Romanian Roma”).⁹ Local NGOs report that those few who did not agree with the contract were evicted from their usual encampments. There are also examples of expulsion orders made outside the context of repatriation contracts, such as a recent example in Milan on 6 October 2010 when the police issued an expulsion order against a Romanian citizen who was arrested for begging (see Annex 6).

Further identifications and evictions of Roma and Sinti

12. In spite of the results publicized at the end of the first year of the emergency in May 2009, operations aimed at the identification of people residing in authorized and unauthorized settlements, their eviction, and the closure and clearance of the camps continued during the winter of 2009/2010, both in the five regions concerned by the “nomad emergency” and elsewhere.
13. In February 2009, officials in the Lazio region and in Milan used their delegated emergency powers to adopt new regulations which severely limited basic rights of access, residence, and freedom of movement within authorized camps.¹⁰ In Milan, the new regulations introduced a three-year maximum period of residence in the camps threatened the ability of Roma to settle in a particular area, integrate into local communities and pursue stable employment or education.¹¹
14. In Milan between 1 January 2010 and 31 July 2010 a series of around 70 evictions of authorized and non authorized camps took place which were documented and reported to the UN Special Rapporteur on the Right to Adequate Housing, the Director of the European Union Fundamental Rights Agency, and the Commissioner for Human Rights of the Council of Europe by the Italian NGO “Naga” and ERRC on 5 May 2010.¹² Among these operations, the eviction of the camp of via Rubattino on 19 November 2009 prevented around 40 children from

⁷ “If anything, the problem is something else: unlike in France, many Roma and Sinti here have Italian citizenship. They have the right to remain here. Nothing can be done.” See Corriere della Sera, “Maroni: giusto espellere i rom Saremo più duri di Sarkozy, La Francia segue la nostra linea dei rimpatri, noi andremo oltre,” 21 August 2010. Available at http://www.corriere.it/politica/10_agosto_21/maroni_d57cd780-acea-11df-b3a2-00144f02aabe.shtml It is estimated that half of the 150,000 Roma in Italy are Italian citizens, 20-25% are from other EU member states and the remainder are non EU nationals.

⁸ Deliberation of the Director of the USL5 Agency n. 330 of 18 May 2009, “Voluntary repatriation of Romanian Roma.”

⁹ “La Toscana Rossa come Sarkozy: 500 euro per partire”, La Stampa, 28 August 2010, p. 3. “Pisa, i rimpatri dei rom toccano quota cento. ‘Ma non siamo la Francia’”, Il Tirreno, 21 August 2010, p. 11.

¹⁰ Commissioner delegate for the nomad emergency in Lombardy, “Regulation for the areas reserved for the nomads in the municipality of Milan”, 5 February 2009, available at:

http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0845_regolamento20090205.pdf

Commissioner delegate for the nomad emergency in the Lazio, “Regulation for the management of equipped villages for nomad communities in the Lazio Region”, 18 February 2009, available at:

http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0716_regolamento_nomadi_roma.pdf

¹¹ Article 7.2, Regulation for the areas reserved for the nomads in the municipality of Milan.

¹² <http://www.errc.org/cms/upload/file/urgent-response-needed-to-recurrent-evictions-of-roma-in-milan-italy.pdf>

continuing to attend school. In July 2010, school teachers in Milan complained that most of the Roma children enrolled failed to progress into the next class due to the number of absences from school caused by the recurrent evictions.¹³

15. In September 2010, the municipality of Milan issued orders evicting 120 Roma from the authorized camp of *via Idro*, relying on Article 12 of the new regulations, which prohibits those with previous convictions and their family members from residing in authorised camps. Eviction orders targeted individuals who had already served their sentence, together with their children (see Annex 2 “Eviction letter for minors at *via Idro*”). In Rome, the new “Disciplinary code for residence in nomad camps” (Annex 3) drafted to implement the measures requiring regulation of camps introduced in February 2009 explicitly foresees restrictions to freedom of movement within the camps and provides for outsourced security checks and monitoring of individuals trying to gain access to the authorised camps.¹⁴ Articles 9 and 11 of the Milan regulations provide for similar identity checks and limitations on access to camps.
16. In Rome, cooperation between the commissioner delegate for the emergency and the local mayor led to the adoption of a “Nomad Plan” in July 2009.¹⁵ This plan foresees the “transfer” of around 6,000 camp inhabitants to 13 new out-of-town villages to be built by the municipality. On the basis of this new plan, two among the biggest unauthorized camps of Rome were evicted in the fall and winter: Casilino No 700 – around 400 inhabitants – on 11 November 2009, and Casilino No 900 – around 700 inhabitants – on 19 January 2010. As of July 2010 the municipality of Rome had not yet provided any location for the thirteen new villages, which have been promised for a number of years.¹⁶ Rather, a call for regions and towns to make a bid to host the new villages was launched only in May 2010.¹⁷ In the meantime, some 200 people were moved to the Centre for the Reception of Refugees (CARA) at Castelnuovo di Porto or to existing overcrowded authorized camps in the outskirts of Rome, all of which are now overcrowded, such as the camp of Salone. The impact and possible consequences of Rome’s “Nomad plan” were highlighted by Amnesty International in a report published in March 2010 (see Annex 5, “Summary of Reports by International Bodies and NGOs on the situation in Italy”).
17. The prorogation of the nomad emergency had a spill-over effect even on those regions which were not originally nor officially targeted by the emergency powers. In Tuscany, for instance, a camp close to the city of Florence (Sesto Fiorentino) and hosting around 190 Roma was cleared without notice on 15 January 2010, i.e. in the coldest season of the year. On 19 January 2010, Roma camps were forcibly closed in Pisa, where also the “Città sottili”¹⁸ program – frequently

¹³ “Rom bocciati per troppe assenze”, *Avvenire*, 15 July 2010.

¹⁴ Article 5.1 and 6 of Annex 3 “Disciplinary code for residence in authorised camps Rome”.

¹⁵ Municipality of Rome, *Piano Nomadi*, 2009

<http://www.comune.roma.it/was/repository/ContentManagement/information/N869782002/piano%20nomadi%20schede.pdf>

¹⁶ Clough Marinaro, Isabella, ‘Between Surveillance and Exile: Biopolitics and the Roma in Italy’, *Bulletin of Italian Politics*, Vol. 1, No. 2, 2009, 265-87.

¹⁷ http://www.iltempo.it/roma/cronaca_locale/roma/2010/05/05/1155503-piano_nomadi_resta_alto_mare.shtml

¹⁸ Vitale, Tommaso (ed.), *Le Politiche Possibili: Abitare le città con i rom e i sinti*, Carocci, 2009; Enwereuzor, Udo and Laura Di Pasquale (COSPE), *RAXEN Thematic Study - Housing Conditions of Roma and Travellers – Italy*, March 2009 http://www.cospe.it/uploads/documenti/allegati/roma_housing_final.pdf ;

referred to as a best practice of inclusive housing for the Roma community – was terminated.¹⁹ The local government in Pisa has also established the repatriation project mentioned at paragraph 11 above and targeted at Roma from Romania, whereby around 100 people agreeing to be repatriated were given a 500 euro grant.

The 2009 Security Package: an increasingly uncertain legal status for the Roma

18. In July 2009 the Italian government adopted the “Security Package” which criminalized irregular entry into Italy and stay without a valid residence permit.²⁰ The combined application of the Security Package and the Nomad emergency decree of May 2008 caused great legal uncertainty for the Roma and Sinti living in Italy, leaving Roma – both those born in Italy but *de facto* stateless and those from non-EU countries – liable to criminal prosecution and expulsion. Many camp inhabitants have an irregular immigration status either because they failed to have their permit of stay renewed or because they are *de facto* stateless – i.e. they were born in Italy but failed to apply for Italian or other citizenship in sufficient time and consequently do not hold any passport. An address in a nomad camp is often not considered as sufficient proof of residence by public administration to release permits of stay, or to accept citizenship applications, or to accept administrative applications to be declared stateless. Law 94/ 2009 raised the requirements on adequacy of housing which are necessary to obtain a regular permit of stay, making it very difficult for the inhabitants of “nomad camps” to meet the new requirements.
19. As a consequence of the Roma census pursued since May 2008, public authorities have been able to collect detailed information on those camp residents with an irregular or undetermined legal status. According to the norms of the “Security package” all third country nationals who are irregular residents are subject to criminal prosecutions, fines and eventually expulsion orders. Thus, many of those who have been subjected to the census continue to live with an unclear legal status, with the threat that the government or police may use the census data to prosecute or expel them.
20. Since late 2009, local authorities in Rome and Naples have been advising Roma to file applications for humanitarian protection, in an attempt to overcome the legal uncertainty deriving from the combination of the two measures mentioned above. For example, after the last round of evictions in Rome, around 300 Roma from Casilino No 900 and 200 Roma from the Salone encampment were encouraged to file applications for humanitarian protection. In Naples, humanitarian stay permits were released to Roma residing in the camp of Scampia in spring 2010.²¹ However, the grant of humanitarian protection is at the discretion of the territorial commissions charged with examining the applications or the police headquarters. Permits of stay released on the ground of humanitarian protection are short term (one year) and thus inadequate for most of those Roma who had resided in the camps for a number of years.
21. The legal situation of a wide portion of those who have been identified is still highly uncertain. It is in the power of the local government to withdraw humanitarian protection for Roma *en masse*, leaving them subject to criminal sanction and immediate expulsion.

¹⁹

http://www.pisanotizie.it/index.php/news/news_20091117_chiusura_citta_sottili_commento_africa_insieme.html

²⁰ Law No 94/2009 on Provisions Relating to Public Safety of 15 July 2009.

²¹ <http://www.migrantiblog.it/blog/2009/11/06/roma-permesso-di-soggiorno-per-protezione-umanitaria-ai-nomadi-senza-precedenti-penali/> ; Interview with Gabriella Bianchi, June 2010; Interview with Francesca Saudino, July 2010.

The Roma Census: continued collection and retention of sensitive ethnic data

22. As outlined above, the authorities have continued to collect information about Roma on the basis of delegated emergency powers, despite the fact that the Ministry of the Interior published supposedly final results of the Roma census in October 2008. The ongoing Roma census has not been overseen by any privacy authority, and the data collection process has changed from that which was scrutinized and authorized by both the European Commission and the Italian Privacy Watchdog, as set out in the implementing guidelines adopted on 17 July 2008.²²
23. In addition, at no time in the past two years has the government or any of the five prefects released any information as to how the data collected in the Roma census has since been processed – whether by the police, the municipalities, or the Red Cross – and for what purpose. In Rome, the prefect to whom the emergency powers were delegated in 2008, Mr Mosca, outsourced the census operation to the Italian Red Cross, and outsourced the data analysis to a private research centre, the *Istituto Tagliacarne* in Rome. To date, however, there is no publicly available information as to how the census data for Rome has been processed since its collection.²³ The *Istituto Tagliacarne* has not released any report on the Roma census in Rome. In addition, it is unclear whether the Red Cross continued to supervise or be involved in the further identity checks and registration procedures carried out in 2009/2010, after the removal of Mr Mosca from his position as prefect.
24. The lack of information with regard to the processing of the sensitive ethnic data that was collected has caused serious concerns among the population which was identified. Essentially, the Italian government has collected a secret dossier with the details of all Roma in the country, with no indication as to what is being done with the information. Without this information it is impossible for Roma to access or modify their personal data. Applications have been made to the Italian Privacy Authority for information about the data but have not yet produced any results (see paragraph 4 above).

²² Guidelines to implement the Ordinances 3676, 3677, 3678 of 30 May 2008 concerning the encampments of nomadic communities in the regions of Campania, Lazio and Lombardy, 17 July 2008.

²³ Interview with the Prefect of Rome: «Facciamoli lavorare, anche come sciuscià», *Il Sole 24 ore*, 13 August 2008. <http://www.ilsole24ore.com/art/SoleOnLine4/Italia/2008/08/rom-intervista-prefetto-roma.shtml?uuid=5bbf9e52-6901-11dd-8589-ac9f26a918da&DocRulesView=Libero>

Challenging the Emergency decree: ineffective domestic judicial remedies

25. In the past two years, the violations of European Union law mentioned in the ERRC-OSJI-OsservAzione joint memorandum – the EU Race Equality Directive and the EU Data Protection Directive – together with the same issues under domestic law, have been raised in complaints made against the Emergency Decree before Italian courts. The complaints were filed either by individual complainants supported by national or international NGOs or, collectively, by domestic NGOs. Overall, five complaints have been filed in domestic courts in 2008, and one with the European Committee for Social Rights.²⁴ As of June 2009, three of the domestic proceedings have been dismissed²⁵ and two are still ongoing.²⁶
26. As regards the court decisions in the three cases that have been dismissed, one of the cases was dismissed on formal grounds (Mantova) and two on substantive grounds. The two ongoing complaints were filed in 2008 and are still awaiting a first instance judgment in spite of the supposedly precautionary nature of the antidiscrimination procedure, which purports to ensure that antidiscrimination cases are expedited.
27. The European Court of Human Rights has recently criticized the failure of Italian courts to consider the substance of claims for discrimination, finding a violation of Article 6 ECHR. In the case of *Udorovic v Italy* the applicants were Roma who had been subjected to a process of identification and forced eviction during the previous “Nomad emergency” at the end of the 1990s. They commenced proceedings alleging that the action of the government that was targeted specifically against Roma was discriminatory and unlawful. The Italian courts refused to consider the discrimination aspect of the case. In its judgment of May 2010, the Court concluded that there was a violation of Article 6 because the Italian courts had failed to determine the discrimination aspect of the claim.²⁷
28. In the legal challenges to the Nomad Emergency Decree of 2008, the Italian courts have continued to avoid dealing with the discrimination aspects of the claim, concluding that as the process was not intentionally directed against Roma, but only happened to effect only Roma, then it was not discriminatory. The Italian courts have declined to give any ruling on the EU law aspects of the claim.
29. In contrast, the Neapolitan tribunal for minors who had to judge the alleged baby kidnapper of Ponticelli – the last episode of crime imputed to Roma which prompted the adoption of the NED in 2008²⁸ – only took a few months to reach decisions in first and second instance. The court convicted the accused, a Roma girl, remarking that the defendant “is completely inserted in the schemes of the Roma culture”.²⁹

18 October 2010

²⁴ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, (No. 58/2009).

²⁵ Tribunale di Roma, 8 February 2009, r.g. 4766/08; Tribunale di Mantova, 21 Aprile 2009, r.g. 458/09; Tribunale di Milano, 8 February 2010, 49050/2008. The texts of some of these complaints are available on the web: <http://www.progettodiritti.it/upload/ricorsorum.pdf>, <http://www.asgi.it/content/documents/dl08072302.ricorsoromn.pdf>, <http://sucardrom.blogspot.com/2008/07/milano-denunciato-il-governo-italiano.html>

²⁶ Tribunale Amministrativo Regionale del Lazio, r.g. 6400/2009. Tribunale di Milano, r.g. 59283/2008.

²⁷ *Udorovic v. Italy*, ECtHR, Judgment of 18 May 2010.

²⁸ FRA 2008 “Incident Report - Violent Attacks against Roma in the Ponticelli District of Naples, Italy”. Vienna: European Union Fundamental Rights Agency.

²⁹ Tribunal of minors of Naples, 29 September 2009, r.g. 136/09.

Annexes

1. Deliberation of the Public Health Agency in Pisa concerning Repatriation Contracts for Romanian Roma, 15 December 2009.
2. Eviction letter for minors at *via Idro*, Milan, 25 September 2010 (anonymised).
3. Disciplinary code for residents in authorised camps, Rome.
4. Personal data applications, Rome and Milan, Aug-Oct 2010 (anonymised).
5. Summary of Reports by International Bodies and NGOs on the situation in Italy.
6. Expulsion Order against Romanian Roma, Milan, 6 October 2010 (anonymised).