

ROMA IN ITALY
Follow-Up Briefing to the European Commission
March 2012

Introduction

1. The Open Society Justice Initiative has provided two prior briefings to the European Commission in May 2009¹ and in October 2010² describing the ways in which the Italian authorities have treated Roma and Sinti under the “Nomad Emergency Decree” in breach of EU law. In this follow-up briefing, we update the Commission on ongoing violations of the Race Equality Directive (2000/43/EC) and the Data Protection Directive (1995/46/EC) despite a recent decision of the Italian Council of State that found the Italian measures unlawful.
2. We urge the Commission to finalize its review of Italy’s failure to fulfill its obligations under the Race Equality Directive and the Data Protection Directive. In the course of finalizing this review, the Commission should determine whether:
 - a) Policies that are expressly premised on the belief that the presence of Roma/nomad communities is a “direct cause of social, environmental, and hygienic degradation”³ amount to unlawful ethnic stereotyping, direct and indirect discrimination on the basis of ethnic origin, prohibited by the Race Equality Directive;
 - b) Italy is carrying out genuine social integration measures in the context of its preparation of a national strategy for Roma integration in accordance with the Council conclusions (2011/C 258/04) on an EU framework for national Roma integration strategies up to 2020, or whether public funds continue to be used for segregated Roma-only camps and reception facilities;
 - c) Public funds are used for repatriation plans that are restricted to specific EU nationalities and carried out under the label of regional integration measures;
 - d) The preservation of Roma census data collected in 2008 and 2009 pursuant to Nomad Emergency Measures and use of census data during evictions violates the Race Equality Directive and the Data Protection Directive and whether the ethnic databases should be destroyed immediately.

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 “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.

- e) The Italian Privacy Code⁴ infringes the Data Protection Directive (95/46/EC) and the Race Equality Directive (2000/43/EC) by using “nomad” as thinly-veiled code for targeting Roma and Sinti in its provision that “the initiatives for the supervision and the support to the stay of nomads are to be considered among the measures with an overriding public interest for which sensitive data can be acquired in accordance with Articles 20 and 21 of this Legislative Decree.”
3. The Commission should communicate its view that the Nomad Emergency Measures violated the Race Equality Directive and Data Protection Directive and require Italy to destroy the census data and provide further remedies for the discriminatory practices. Failing compliance, the Commission should bring the matter before the Court of Justice of the European Union.

Overview

4. The Nomad Emergency Decree took effect on 21 May 2008 and was subsequently extended twice. The latest extension occurred after the last briefing to the EC, and would have kept the “emergency” in place until 31 December 2011, a total of more than three and a half years. The extension recognized that the Nomad Emergency Decree did not meet its purported objectives of social inclusion and integration, and instead of achieving any positive objectives, measures under the Nomad Emergency Decree entrenched unequal treatment of Roma and Sinti, and breached a range of provisions of EU law.
5. 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 Decree and its implementing orders (collectively, the “Nomad Emergency Measures”).⁵ 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 disproportionate and illegitimate and also unlawful.
6. However, the court failed to find that the Emergency Measures were racially discriminatory and to order destruction of the data collected through the census, damages or any other remedies to the victims. Although the court voided the Nomad Emergency Decree, its ruling leaves in place the ongoing discriminatory consequences of the Nomad Emergency Measures. Moreover, the ruling expressly allows authorities to reinstate some of the measures if they can be premised upon ordinary legislative or regulatory powers, or upon the showing of a genuine emergency (see Annex 13).⁶
7. The Council of Europe’s Committee of Social Rights (see Annex 11) has held that the Emergency Measures violated the prohibition on discrimination and the rights of Roma people to adequate housing, social, legal and economic protection, protection against poverty and social exclusion, and the right of migrant Roma families to protection and assistance.⁷ In its decision, the Committee expressly found that,

“[T]he contested ‘security measures’ represent a discriminatory legal framework which targets Roma and Sinti, especially by putting them in a difficult situation of non access to

⁴ Article 73 paragraph 1. f) of Legislative Decree No 196 of 30 June 2003.

⁵ *Ministry of the Interior and others v. ERRC and others*, Council of State, Ruling No 6050 of 16 November 2011.

⁶ *Ibid.*, at page 21.

⁷ European Committee on Social Rights, *Centre on Housing Rights and Evictions v. Italy*, Complaint No. 58/2009, decision of 25 June 2010.

identification documents in order to legalise their residence status and, therefore, allowing even the expulsion of Italian and other EU citizens (for example, Roma from Romania, Czech Republic, Bulgaria or Slovakia)”⁸

8. But European Union institutions have remained silent, omitting to take a stand against the overt racial discrimination and unlawful data collection. The Commission should exercise its power to refer Italy to the Court of Justice of the European Union, which has the advantage of stronger enforcement powers than the Council of Europe, for the following violations of EU law:
 - *A. Lack of Data Protection.* Despite the ethnically sensitive nature of the data that was collected during the nomad census, the data still has not been adequately protected and Italian authorities have rejected applications to allow access to, anonymise or delete the data. In some cases, they have failed to respond to such applications at all. Instead of protecting the data, authorities continue to use it to evict Roma and Sinti. The Council of State decision in November 2011 leaves intact the data collected during the census and allows its ongoing unlawful use.
 - *B. Forced Evictions.* Since the census, municipalities have issued a number of discriminatory regulations covering nomad camps. A series of eviction orders have been and continue being issued to Roma and Sinti – both families and individuals – with no provision of adequate alternative housing for those evicted. Although the Nomad Emergency Measures were struck down by the Italian Council of State, there has been no restitution for victims of forced eviction.
 - *C. Lack of Judicial Remedies.* Although the Italian Council of State voided the Emergency Measures, no Italian court has provided effective judicial remedies against their discriminatory effects and the ongoing retention of data. No complaints regarding the discriminatory nature of the Nomad Emergency Measures over the past three years have been upheld.
9. The Commission should consider whether the activities performed under the emergency measures amount to unlawful racial discrimination.
10. The Commission should also consider whether the retention of data collected as part of a racially discriminatory census is compatible with the Commission Communication on a Framework for National Roma Integration Strategies up to 2020, and the Conclusions of the Employment, Social Policy, Health and Consumer Affairs Council related thereto.⁹ The Council welcomed the Commission’s proposal inviting Member States to adopt or develop further a “*comprehensive approach to Roma inclusion*, and encouraged them to set achievable national goals in the fields of education, employment, healthcare and housing, as well as to put in place a monitoring mechanism and make existing EU funds more accessible for Roma inclusion projects”.¹⁰ The Council also underlined that Member States should “promote desegregation in all policies and avoid reproducing segregation, so as to overcome this problem in the long term”.¹¹

⁸ *Ibid.*, at para. 158 (emphasis added).

⁹ COM (2011) 173 of 5 April 2011, Council Conclusions of 19 May 2011 (3089th Employment, Social Policy, Health and Consumer Affairs Council meeting).

¹⁰ Council Conclusions of 19 May 2011, para. 19.

¹¹ *Ibid.* para. 26.

Background and Prior Briefings

11. 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”). These emergency measures granted to the prefects of Rome, Milan and Naples powers “derogating 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 those in the camps, including minors, and providing for fingerprinting and taking photos of them. The measures also provided for the expulsion and removal of persons with irregular status, activities aimed at clearing “camps for nomads” and evicting their inhabitants, as well as the opening of new “camps for nomads”.¹² In the Implementing Guidelines adopted a few months after the emergency measures, the government stated that such activities would be carried out only for the purpose of improving the conditions of nomad communities and with due respect for human rights standards, as well as antidiscrimination and privacy law. The guidelines, however, were not a legislative document and have not been followed by the authorities in the more recent phases of the emergency.¹³
12. As part of these measures, the government created a database containing solely information about Roma and Sinti, for the express purpose – included in the declaration of emergency – of dismantling Nomad/Roma camps and expelling unlawfully resident Nomads/Roma from the country. The prefects with responsibility for the census have not provided information on the procedures in place to access or modify personal data collected during the census, and have not published any data on the extent to which the purported objectives of the census have been achieved.

May 2009 Briefing

13. In May 2009, the Justice Initiative, together with the European Roma Rights Centre and OsservAzione presented a joint briefing to the European Commission which explained the ways in which the implementation of the Roma census violated both specific directives and the guarantees of the European Convention on Human Rights and the Charter of Fundamental Rights.

October 2010 Briefing

14. On 30 September 2010, the European Commission announced that it was considering infringement proceedings against France for measures targeting Romanian Roma, and stated that it would keep under strict scrutiny the situation of other member states with regard to the treatment of Roma and Sinti who are EU citizens.
15. As a result, in October 2010 the Justice Initiative presented a follow-up briefing to the European Commission in which it invited the Commission to consider bringing infringement proceedings against Italy in view of the ongoing measures targeting Roma and Sinti within the framework of the “emergency” which had lasted at that time for more than two years. This

¹² 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; in the territory of the Lombardy region (No. 3677); in the territory of the Lazio region (No. 3676).

¹³ “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,” July 17, 2008.

follow-up briefing explained that no new measures of social assistance or housing had been provided, presented new evidence of “voluntary repatriation agreements” which target Romanian Roma, described the ongoing evictions from both authorized and non-authorized encampments, discussed the uncertain legal status which many Roma and Sinti faced as a result of the July 2009 “Security Package”, and raised further concerns regarding the lack of information concerning data collected in the “Roma census”.

Violations of European Law

16. As explained in the May 2009 and October 2010 briefings, the implementation of the Roma census violates specific EU directives and guarantees of the European Convention on Human Rights and the Charter of Fundamental Rights:
- *The Data Protection Directive (95/46/EC)*. The collection 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*. Collection of information that reveals a person’s ethnic identity violates Article 8 where, as here, it lacks a sufficient legal basis and is not necessary in a democratic society to achieve a 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.

Second Prolongation of the 2008 Nomad Emergency Decree

17. On 17 December 2010, the Italian Council of Ministers again extended the state of emergency declared in 2008 “with regard to the settlements of nomad communities”.¹⁴ The December 2010 decree extended the duration of the emergency until 31 December 2011 for the five regions, and declared that derogated powers are still needed in order to attain a series of objectives which constitute a “second phase of the emergency”.¹⁵ This was the second annual prolongation of the state of emergency despite the fact that the extraordinary powers granted in the “Nomad Emergency Decree” of 2008 were originally intended to expire after only one year. The

¹⁴ Official Gazette No. 304 of 30 December 2010.

¹⁵ Decree of the President of the Council of Ministers of 17 December 2010, *considerandum* No 1.

emergency was first prolonged on 28 May 2009 until 31 December 2010 and the effected territory was extended to include two new regions, Piedmont and Veneto.¹⁶

18. Continuation of the Nomad Emergency Decree implicitly recognized that for two and a half years, most of the alleged objectives of social inclusion and integration, which had been used to justify the delegation of derogated powers to the Nomad Emergency Commissioners, had not been met or even actively pursued. In fact, as recognized in the recent Italian Council of State decision:

“There is no doubt about the fact that *among* the emergency interventions foreseen in the ordinances of 30 May and implemented through the executive measures were *also* included provisions aiming to improve the hygienic and sanitary conditions of the nomad encampments, to protect minors against their employment by criminal organizations and to grant access to social and assistance services for the interested individuals. Nonetheless, there is also no doubt that the first interest pursued by the declaration of the state of emergency is to be identified in the protection of the populations residing in the concerned urban areas from a situation held as dangerous because of the existence of the named settlements.”¹⁷

A. Nomad Census

19. The data collected in the “first phase of the emergency” in the framework of the so-called “Nomad census”, in 2008, was collected exclusively from Roma and Sinti residents of nomad camps, and therefore involves an intrinsic ethnic component. The European Committee on Social Rights found that the Nomad Emergency Decree targeted Roma and Sinti (see above), and other international bodies recognize that the use of the word “nomadi” by the Italian authorities is merely a disguise for Roma.¹⁸
20. Italy has compounded the harm of developing an ethnicity-based census database by failing to maintain control over the information. Instead, in some instances it has delegated the storage and treatment of the census data to private entities, which make it difficult for individuals to access or modify their data.
21. In addition, the government has allowed the data to be used for purposes beyond those identified when it was collected, which were set out in the 2008 Implementing Guidelines and approved by the Italian Data Protection Authority.¹⁹ For example, the data has now been provided to Municipal police who use it to establish the family details of Roma in order to forcibly evict entire families under administrative regulations introduced after the census, and whose purposes differ from the ones for which the collection of data was authorised.
22. Italian courts have not provided any relief to individuals seeking to access, modify or destroy the census data. The Council of State decision in *Ministry of the Interior and others v. ERRC and others* failed to order the data destroyed. Petitioners in other cases, discussed below, have been similarly unable to obtain access to their personal data, to have the data modified or destroyed. As a result, the ethnicity-based census data remains in place for use by local and national authorities and is an ongoing violation cause by the Nomad Emergency Measures.

¹⁶ Decree of the President of the Council of Ministers of 28 May 2009 and ordinances 3776 and 38841 of 1 June 2009, all published in Official Gazette No. 129 of 6 June 2009.

¹⁷ *Ministry of the Interior and others v. ERRC and others, cit.*, p. 15.

¹⁸ See May 2009 briefing at pages 18-22.

¹⁹ <http://www.garanteprivacy.it/garante/doc.jsp?ID=1538633>

Attempts to access and modify data collected in Rome

23. On 21 August 2010, three Roma individuals whose personal data had been collected as part of the census in Rome (an Italian citizen and two Bosnian citizens who were born, raised and resident in Italy) applied to have their data deleted, rendered anonymous, or disclosed to them (see Annex 1). The applicants had not benefited from any social inclusion, integration or assistance measures after the census. Instead, they were given verbal orders to transfer themselves and their families from their usual encampments to other, highly overcrowded, Roma-only camps. So far, the Municipality of Rome has failed to provide any new housing facility (in the form of either new “designated encampment areas /solidarity villages” or public housing for those evicted in the context of the Nomad emergency).
24. These applications were filed with the Prefecture of Rome and the Red Cross of Rome, which failed to reply.²⁰ On 18 December 2010, the three applicants filed petitions with the Italian Data Protection Authority (DPA) challenging the failure to reply. The DPA failed to respond to the applications lodged by the two long-term residents who were citizens of Bosnia, but it did make a request to the Province of Rome regarding access to the data of the Italian citizen. The Province replied, communicating the data and stating that it was being kept by the Red Cross of Rome and that, at that point in time, the data had not been used for any of the purposes stated in the census guidelines (February 2010, see Annex 2). The Italian applicant then requested that the DPA have his data deleted from the Red Cross database, including in particular the data concerning the applicant’s country of origin; however, on 15 March 2011, the DPA rejected this further application, citing the continuation of the state of emergency (see Annex 3).²¹

Attempts to access and modify data collected in Milan

25. In Milan, five Romanian Roma applicants who were legally resident in the authorised camp of Triboniano filed applications to access the Milan census database in the aftermath of the census. The applicants were also served municipal eviction orders where the census was explicitly cited as source of evidence to evict the applicants and their families, including minor children (Annex 4). In response to these applications, the Prefecture of Milan confirmed that it was in possession of the relevant data, and that it had made the data available to the Municipality of Milan, but it refused the applicants’ request to delete the data (Annex 5). The Data Protection Authority was notified about this refusal in September 2011 (Annex 6), but no provision has yet been adopted in response.

B. Emergency Measures and Evictions by Local Authorities

26. Since the introduction of the original emergency measures, the local authorities used their delegated powers to introduce further regulations that target only Roma and have used those powers to carry out evictions of Roma.
27. In February 2009, officials in Lazio and Milan used their delegated emergency powers to adopt new “regulations for nomad camps” (see Annex 7 for the Regulation for the Lazio Region and Annex 8 for the Regulation from Milan). By establishing special requirements applying only in the nomad camps and in no other types of public housing, the regulations established an unequal treatment affecting only residents of the authorised nomad camps, i.e., Roma and Sinti.

²⁰ See *TAR Lazio*, Ruling no. 194/2011, as an example of a failure to respond to one of these applications.

²¹ Decision by the DPA (Garante della Privacy) No 102 of 15 March 2011

<http://www.privacy.it/garanterico201103152.html>

Such unequal (and detrimental) treatment affecting a particular group amounts to direct discrimination, or at a minimum to indirect discrimination on the basis that even if not explicitly directed at “Roma”, it disproportionately affects them.

28. In both Lazio and Milan, a series of formal and informal evictions have accompanied the implementation of these regulations and the “nomad plans” adopted by the municipalities. These evictions have only targeted families and individuals of Roma ethnicity. In many cases, residents of formal and informal encampments have not been formally notified of eviction orders.
29. The eviction orders issued by the Milan Municipality, including that received by one of the Romanian Roma who applied for the modification of the data collected, explicitly cite the Nomad census as justification for the order, even though the eviction orders are based on a Municipal regulation adopted *after* the conclusion of the census. The order against this particular applicant also indicated that he and his entire family were evicted from the camp of Triboniano as a result of his prior conviction for a petty crime, for which he had already served his sentence. Neither the census nor the Implementing Ordinances and Implementing Guidelines relating to the Nomad Emergency provided for the eviction or transfer of legally resident individuals, such as EU citizens, let alone legally resident family members.
30. Neither municipality has provided adequate or systematic alternative housing for the evicted families. In Milan, a small amount of alternative housing was proposed to families evicted from authorised encampments, but even in these cases there were disputes and the finalization of the agreements was delayed (see para. 38, below). No alternative housing has been provided to those evicted from informal encampments. In most cases, families have been encouraged to either find private housing solutions or transfer to other nomad camps or camps for refugees. The authorities have also proposed repatriation agreements for some of the Roma families living in Triboniano (see Annex 9). The camp of Triboniano was officially closed on May, 2 2011. According to the Ministry of the Interior, 439 people were moved.²²
31. In Rome, approximately 3,510 of the Roma who were evicted from formal and informal camps have been directed by municipal authorities towards an only-Roma temporary reception centre set up in an old paper mill (*La Cartiera*) on the outskirts of Rome. As documented by a child-rights NGO, this reception center lacks even basic facilities and is used exclusively to house Roma families.²³ Access to the paper mill is video-controlled by the police and by private security personnel, as is the case in some other authorized camps.
32. In June 2011, in Florence, Roma evicted from an informal encampment were offered a repatriation plan directed to Romanians only (Annex 13). The measure has been funded through regional money allocated for integration programs.
33. As of February 2012, two months after the Council of State’s judgment striking down the Nomad Emergency Decree and part of the Nomad Camps Regulations, public authorities have not officially introduced any new substitutive measures on nomad camps.

22

http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/minoranze/00825_2011_05_02_sgombero_campo_nomadi_Triboniano.html

²³ A video of the conditions of the Roma living in the ex-reception centre is available here: <http://www.redattoresociale.it/Video.aspx?id=355181>

C. Lack of Remedies for Discrimination and Violations of Data Protection

34. Although the discriminatory character of the Nomad Emergency Measures has been recognized by international bodies, Italian courts have either failed to consider the substance of any discrimination complaints or have dismissed the complaints on procedural grounds.
35. The Italian Council of State decision discussed above provided no remedies for harms caused by the emergency, including ethnicity-based discrimination and retention and misuse of ethnicity-based census data.
36. In particular, the Council of State failed to address indirect discrimination resulting from the Nomad Emergency Measures and only focused on direct discrimination, thereby improperly requiring the applicants to prove discriminatory intent:

“It is certainly a fact of common knowledge that the vast majority of individuals present in the concerned camps concretely has a precise ethnic background, insofar as they have Roma origins. However, in the opinion of this Section, even though these elements are perhaps apt to reveal a discriminatory intent by some of the institutional subjects involved, they do not allow to conclude that the entire administrative action has been uniquely and principally finalized at establishing a racial discrimination of the Roma community.... Naturally, this does not exclude at all the fact that single measures or provisions have had concrete illegitimate and discriminatory effects ... but this is not sufficient to declare that the acts are illegitimate under this profile.”²⁴
37. In the October 2010 briefing we described the failure of civil courts to rule on the merits of discrimination complaints made against the Nomad Emergency Measures since 2008. Instead, courts have dismissed the cases on formalistic grounds or by failing to address the discrimination complaint. This practice has been condemned by the European Court of Human Rights in *Udorovic v. Italy* in May 2010.²⁵
38. Little progress has been made since the October 2010 briefing, and even small successes in obtaining inadequate remedies have been followed by sweeping judicial affirmations of the law on appeal. One relatively small but successful claim of discrimination can be seen in the Milan Tribunal ruling of January 2011 in which it struck down a municipal policy not to assign 25 public housing slots to Roma families. In September 2010, the Municipal Council of Milan decided that they would no longer assign 25 public housing slots to Roma families, reversing a previous decision to do so in order to implement the “Milan Nomad Plan”. In changing its decision, the Council had adopted the policy of the Ministry of the Interior, which opposed the idea that public housing facilities might be assigned to Roma instead of Italians.²⁶ In January 2011, the Milan Tribunal found that this policy amounted to unlawful discrimination. The Municipality of Milan appealed against the first instance decision, but the appeal was rejected.²⁷ In spite of this, it took several months to finally assign the allotted slots to the Roma families.
39. A more comprehensive complaint against the Nomad Emergency Decree was rejected by the Milan Tribunal on 2 March 2011 in language that evinces acceptance of the discriminatory premises advanced by the government. The tribunal’s decision equated nomads and Roma and

²⁴ *Ministry of the Interior and others v. ERRC and others*, at pages 19-20.

²⁵ See October 2010 briefing at paragraph 27.

²⁶ *Corriere della Sera*, 30 Settembre 2010,

http://milano.corriere.it/milano/notizie/cronaca/10_settembre_30/case-rom-nomadi-moratti-maroni-penati-boeri-1703863298867.shtml

²⁷ *Tribunale di Milano*, decisions of 20 December 2010 and 24 January 2011.

Sinti, and endorsed the stereotype of Roma settlements as a cause of public, social and environmental degradation, of public disorder, and a lack of safety (Annex 12). In its decision, the Tribunal stated that:

“The court considers that the critical situation described by the DPCM [presidential decree] ... may well fall within the statutory provisions pursuant to Art. 5 cit. [Act on public security allowing for the concession of extraordinary powers in the presence of natural disasters] ... given the mentioned massive presence in the city of Milan of about six thousand nomads (in the Province of Milan settlements of *Roma and Sinti* amounted to about approximately 13,000 people in 2007, about 4,150 people in the territory of Milan at the date of 21.12.2006, according to the estimate made by the ISMU report cited by the applicants themselves, so that the numerical data cited in the decree of May 2008 is substantially undisputed and perfectly compatible with the earlier estimate of that research institute). This presence is such as to determine a clear state of deterioration of hygiene, health and socio-environmental conditions, and cause social alarm, understood not only under the safety aspects but also under the point of view of public order” (our emphasis).²⁸

40. In another part of the same judgment, the Court rejected the equation of Roma and nomads for the purpose of addressing the alleged ethnic character of the census and data protection aspects. It claimed that there was no ethnic character to the census, despite testimony that the census was only performed on individuals of Roma ethnicity and not on other third country nationals sporadically resident in nomad camps, stating that:

“The ethnic character of the census in question, alleged by the complainants, is in reality excluded by the wording of the measures and the purposes therein set forth, since the recipients of the measures are described as all the individuals present in the authorised camps as well as in the non-authorised squatter settlements where there are nomadic communities and therefore all those who, whatever their nationality, are present in these settlements.”²⁹

41. These examples show the failure of Italian courts to recognize the discriminatory nature of the policy and violations of law as a result of racial discrimination and unlawful data collection.

Recommendations

42. The Commission should finalize its review of Italy’s violations of the Race Equality Directive and the Data Protection Directive. It should determine whether:
- a) Italy’s policies that are expressly premised on the belief that the presence of Roma/nomad communities is a “direct cause of social, environmental, and hygienic degradation”³⁰ amount to unlawful ethnic stereotyping, direct and indirect discrimination on the basis of ethnic origin, prohibited by the Race Equality Directive;
 - b) Italy’s social integration measures in the context of its preparation of a national strategy for Roma integration are devised in accordance with the Council conclusions (2011/C 258/04)

²⁸ *Tribunale di Milano*, decision of 12 March 2011, Application No. 2008/59283.

²⁹ *Ibid.*

³⁰ “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.

on an EU framework for national Roma integration strategies up to 2020, or whether public funds continue to be used for segregated Roma-only camps and reception facilities;

- c) Public funds are used for repatriation plans that are restricted to specific EU nationalities and carried out under the label of regional integration measures;
 - d) Roma census data collected in 2008 and 2009 pursuant to Nomad Emergency Measures and used during evictions violates the Race Equality Directive and the Data Protection Directive and should be destroyed immediately.
 - e) The Italian Privacy Code³¹ infringes the Data Protection Directive (95/46/EC) and the Race Equality Directive (2000/43/EC) by using “nomad” as thinly-veiled code for targeting Roma and Sinti in its provision that “the initiatives for the supervision and the support to the stay of nomads are to be considered among the measures with an overriding public interest for which sensitive data can be acquired in accordance with Articles 20 and 21 of this Legislative Decree.”
43. The Commission should communicate its view that the Nomad Emergency Measures violated the Race Equality Directive and Data Protection Directive and require Italy to destroy the census data and provide further remedies for the discriminatory practices. Failing compliance, the Commission should bring the matter before the Court of Justice of the European Union.

Annexes

Annex 1: Anonymised Data Protection Applications, Rome, November 2010

Annex 2: Anonymised Reply by the Prefecture of Rome to a Roma Applicant, February 2011

Annex 3: Anonymised Decision by the Italian DPA on the Rome application, 15 March 2011

Annex 4: Anonymised Eviction Order issued by the Municipality of Milan to a Roma family, March 2010

Annex 5: Anonymised Reply by the Prefecture of Milan to a Roma Applicant, October 2010

Annex 6: Notification to the Italian DPA about the use of the Milan census for evictions of Roma families, September 2011

Annex 7: Regulations for the management of the equipped villages in the Lazio Region

Annex 8: Regulation for the Areas Assigned to Nomad Communities in the Municipality of Milan

Annex 9: Repatriation agreement for Romanians proposed by the Municipality of Milan, March 2011

Annex 10: Florence Municipal Deliberation establishing a Repatriation Plan for Romanians, June 2010

Annex 11: Decision of the European Committee on Social Rights, *COHRE v. Italy*, 25 June 2010

Annex 12: Decision by the Ordinary Tribunal of Milan, 2 March 2011

Annex 13: Decision by the Council of State, *Ministry of the Interior and others v. ERRC and others*, Ruling No 6050 16 November 2011.

³¹ Article 73 paragraph 1. f) of Legislative Decree No 196 of 30 June 2003.