



European Social Charter
Charte Sociale Européenne



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

OSCE Human Dimension Implementation Meeting 2013

Warsaw, 23 September - 4 October 2013

Working sessions 16 : Roma/Sinti

Contribution of the Council of Europe

The European Social Charter and Roma Rights

The European Social Charter lays down fundamental rights (related to housing, health, education, employment, social and legal protection and non-discrimination), which States Parties have undertaken to secure to nationals of the States Parties (43 out of the 47 member states). In addition, no one (i.e. including nationals of non-Council of Europe member states, persons in an irregular situation, undocumented persons and thus also Roma and Travelers falling within these categories) may be deprived of the rights under the Charter which are linked to life and dignity (e.g. urgent medical assistance should be granted to everyone; no one may be evicted, not even from an illegally occupied site, without respecting the dignity of the persons concerned and without alternative accommodation being made available; everyone has a right to shelter; everyone has a right to procedural safeguards in the event of expulsion, etc).

The European Committee of Social Rights ("The Committee") rules on the conformity of national law and practice with the Charter. The monitoring is carried out through two procedures:

- on the basis of regular reports submitted every year by States Party, the Committee adopts **conclusions**.
- on the basis of **collective complaints** that may be lodged by a series of actors against states having accepted the procedure, the Committee adopts decisions on the merits.

Within this context, in particular of the latter procedure (see section II), the Committee has been directly called upon to assess the situation of Roma and Travelers. To date, it has found violations of the rights of Roma and Travelers under **Articles 11, 13, 16, 17, 19, 30 and 31, as well as Article E** taken in conjunction with these Articles of the Charter (see section I below).

I. Overview of the violations of the rights of Roma and Travelers found under the European Social Charter

Article 11 – The right to protection of health

Part I: Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

Part II: With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

1. To remove as far as possible the causes of ill-health;
2. To provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. To prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Violations of this right have been found on the grounds of failure of the authorities to take appropriate measures to address the exclusion, marginalization and environmental hazards which Romani communities are exposed to, as well as the problems encountered by many Roma in accessing health care services.

Article 13 – The right to social and medical assistance

Part I: Anyone without adequate resources has the right to social and medical assistance.

Part II: With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

[...]

Violations of this right have been found on the ground of denial of continued social assistance to persons in need, which resulted in depriving them of adequate resources to continue to live in a manner compatible with their human dignity.

Article 16 – The right of the family to social, legal, and economic protection

Part I: The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

Part II: With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Violations of this right have been found on the grounds of:

- insufficient legal protection of Roma and Travelers' families due to the fact that their legal status is not ensured (lack of identity documents and/or birth certificates);
- discriminatory access in practice to social services, family benefits and housing;
- procedures of identification and census of Roma and Sinti were not accompanied by the due safeguards for privacy and against abuses, they instead amounted to an undue interference in the private and family life of the Roma and Sinti concerned.

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: Children and young persons have the right to appropriate social, legal and economic protection.

Part II: With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organizations, to take all appropriate and necessary measures designed:

[...]

2. to provide children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Violations of this right have been found on the ground that while educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact that some groups live an itinerant or semi-itinerant life style, there should be no separate schools for Roma

Article 19 – The right of migrant workers and their families to protection and assistance

Part I: Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

Part II: With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. [...] to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

[...]

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters: [...]

c) accommodation;

[...]

8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

[...]

Violations of this Article have been found on the grounds of

- racist and/or misleading propaganda allowed by or emanating from public authorities,
- segregation and poor living conditions in camps and stopping places,
- *de facto* collective expulsions of Roma and Travelers migrants.

In the case of evictions and of racist propaganda, the fact that public authorities not only did not take appropriate action against the perpetrators of the violations found but also contributed to such violence, and the circumstance that the violations found were specifically targeting and affecting vulnerable groups amounts, according to the European Committee on Social Rights, to an “aggravated violation.

Article 30 – The right to protection against poverty and social exclusion

Part I: Everyone has the right to protection against poverty and social exclusion.

Part II: With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a) to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b) to review these measures with a view to their adaptation if necessary.

Violations of this Article have been found on the grounds of

- failure to adopt a coordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion,
- segregation, poverty and marginalization affecting most Roma and Sinti living in camps or similar settlements.

Article 31 – The right to housing

Part I: Everyone has the right to housing.

Part II: With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

Violations of this right have been found, *inter alia*, on the grounds of:

- poor living conditions of Roma and Travelers in camps or stopping places,
- the failure to create a sufficient number of stopping places for Travelers,
- the carrying out of evictions without respecting the dignity of the persons concerned and without alternative accommodation being made available,
- the lack of legal remedies and/or legal aid to those who need it to seek redress from the courts following evictions

- the lack of adequate supply of affordable housing for persons with limited resources.

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

As Article 14 of the ECHR, the function of Article E is to help secure the equal effective enjoyment of all the rights concerned regardless of difference.

As regards Roma, Sinti and/or Travellers, most of the violations found with regard to the rights mentioned above were also held to constitute racial discrimination or discrimination on the basis of ethnic origin.

II. Overview of the Collective Complaints concerning Roma and Travelers

Out of the 101 complaints registered to date, 14 concern the situation of Roma and Travellers directly. More detailed information on the European Social Charter in general and the collective complaints procedure in particular can be obtained by using the following link: <http://www.coe.int/socialcharter>