



Jacques Barrot
Vice-President of the European Commission
Responsible for Justice, Freedom and Security

CC: Commissioner Vpidla

Brussels, 4 May 2009

Dear Commissioner Barrot,

We are writing to the European Commission in its role as guardian of the treaties as provided for by Article 226 EC Treaty. The European Roma Rights Centre (ERRC), osservAzione and the Open Society Institute (OSI) hereby submit a joint memorandum to support the Commission in conducting an assessment of the compliance with European Community law of the Declaration of the state of emergency with regard to settlements of the nomad community in the territories of Campania, Lazio and Lombardia regions+ (the Nomad Emergency Decree) and its implementation. Based on our factual and legal analysis of the matter, we urge your services to start an infringement procedure addressing the non-compliance of the Italian authorities with European Community law, specifically Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the EC Data Protection Directive).

The aim of the memorandum attached to this letter is to provide the Commission with the primary data collected by the ERRC in collaboration with osservAzione on the implementation of the Nomad Emergency Decree and its implementing orders and guidelines (in particular the census conducted in %camps for nomads+ in Rome, Milan, Naples and the Region of Veneto) and a legal analysis by the OSI Justice Initiative concerning the non-compliance of the Italian authorities with European Community law.

The Italian Government has recently clarified its explanation of the measures implemented within the Nomad Emergency Decree in its response to the Report by the Council of Europe Human Rights Commissioner, Thomas Hammarberg (see his report of 16 April 2009 following his visit to Italy). The Government claims that the purpose of the measures was to curb criminal behaviour (at para.26) and that no database has been created as the census was carried out %a accordance with national and international laws and regulations concerning the protection of privacy, through records that are used for all citizens, under the responsibility of authorized entities+(at para.37). They state that they considered

it necessary to get detailed information about the number of the people living in the settlements in order to guarantee them a greater level of security and to improve their living conditions. As a consequence, a census was made to identify all the people, not only Roma and Sinti (at para.38).

On the basis of evidence collected in Italy, the memorandum argues that contrary to the Italian Government's contentions, the facts show that the measures and the way in which they have been implemented demonstrate that sensitive personal information has been collected and processed with respect to one targeted ethnic group . Roma and Sinti - allowing for the creation of a Roma and Sinti database. The Nomad Emergency Decree and its implementing orders and guidelines are not in compliance with the EC Data Protection Directive because (1) the census provided for allows for the processing of sensitive personal data based on ethnicity and (2) the specific criteria that may justify such a violation are not met. In addition, the emergency measures violate fundamental rights also protected by the Directive.

The facts demonstrate that there was no attempt to give adequate information to Roma and Sinti camp inhabitants to enable informed consent, such as concerning the purpose of the census, the use of the collected information, where and for how long it would be stored and who would have access to it. To the contrary, the census was carried out under a situation of tension, constraint and often coercion, in the presence of police officers (Naples, Milan, Rome during the second census and in the Veneto region) or even soldiers (during the second Rome census).

To the extent that the government argues that the information is for the purposes of health care and is held by ~~authorised entities~~, the evidence demonstrates that the census was not conducted by health officials but by the police, the army and the Italian Red Cross, and there is no evidence to suggest that data has been sent to health, educational and social services who would have assisted in the implementation of social measures.

The Italian Government claims that the measures do not target Roma and Sinti, giving instructions that the ~~operation~~ shall not concern specific groups, individuals nor ethnic groups, but all people living in illegal and legal encampments, regardless of their nationality and religion.~~+~~ However, the facts demonstrate the opposite: that the measure is targeted only at Roma and Sinti, directly or indirectly.

Similarly, the fact that the Italian Data Protection Authority has ~~approved~~ the package as being in compliance with Italian law is not decisive as there is no clear basis for that approval.

Last but not least, it is questionable whether the individualized sensitive data is necessary to enable the Italian Government to put in place and implement, for example, relief and support programs for which information by its nature can and should be anonymous and impersonal. The Government has not provided any compelling evidence to that effect. Consequently, there is a violation of the Data Protection Directive.

We hope that this information will support the role of the European Commission in ensuring this clear case of non-compliance with Community law is addressed without delay.

Please do not hesitate to contact us should you have any additional questions.

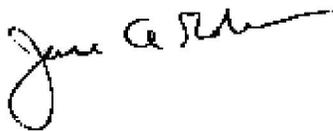
Yours sincerely,



Robert Kushen
European Roma Rights Centre



Heather Grabbe
Open Society Institute-Brussels



James A. Goldston
Open Society Justice Initiative



Piero Colacicchi
osservAzione