

**18 September 2008**

To: LIBE Committee European Parliament Delegation to Italy

**Memorandum Concerning the Necessity to Apply Treaty Measures in the Matter of the Italy Emergency**

**I. Submitting Organisations**

The Centre on Housing Rights and Evictions (hereinafter “COHRE”) is an international non-governmental organization which has consultative status with the Economic and Social Council (ECOSOC). COHRE is the leading international human rights organization campaigning for the protection of housing rights and the prevention of forced evictions. COHRE has undertaken repeated first-hand field research in Italy since the beginning of the Italy crisis, and is *inter alia* one of the organizations joining and providing information for the June 2008 Open Society Institute report “Security a la Italiana: Fingerprinting, Extreme Violence and Harassment of Roma in Italy”. Further information on COHRE is available at: [www.cohre.org](http://www.cohre.org)

The European Roma Grassroots Organization (hereinafter “ERGO”) is a European Network of Roma NGOs focused on Roma empowerment and participation. ERGO is a regular consultation partner for the European Commission.

OsservAzione is a non governmental organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuses against Roma and Sinti in Italy. Among other actions, OsservAzione published the report *Imperfect Citizens: Report on the Racial Discrimination of Roma and Sinti in Italy* (2006). Further information on OsservAzione is available at: <http://www.osservazione.org/>

The Policy Center for Roma and Minorities (hereinafter “PCRM”) is a foundation which invests in building up and strengthening regional, national and international capacity of human resources from Roma communities and other minorities, assists governmental and non-governmental bodies, institutions and organizations in their Roma and minorities-

related activities, encourages and steers public debate and social dialogue related to Roma and minorities, and facilitates the cooperation and exchange of information among main stakeholders.

## **II. Summary**

This memorandum sets out grounds for opening discussion of the relevance of Treaty of the European Union Article 7 concerning ongoing events in Italy.

The Italian crisis constitutes a new chapter in post-World War II history. The present Italian government has imported explicit racism directly into its programs and legislative work, apparently breaking a previously existing European consensus that explicit racial discrimination and racist incitement has no place in the European legal and governmental order. These matters contravene the principles on which the Union is based, as set out in Article 6 of the Union Treaty: “the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States”. A detailed discussion of the legal and factual matters at issue are appended below.

The European Parliament is one of the institutions named in European Union Treaty Article 7 which may provide a “reasoned proposal” to the Council on the initiation of Article 7 proceedings. We urge Parliament to develop and act on such a reasoned proposal. The discussion which follows below can provide an initial basis for such a reasoned proposal.

## **III. Discussion**

### **III.A. The 2000 Austria Crisis and Its Aftermath**

Following formation in January 2000 of a national government in Austria including the “Freiheitlichen” (“Freedom Party”) under the leadership of Jorg Haider, the fourteen other European Union Member States as the Union then existed suspended bilateral relations with Austria.

The Freedom Party under the Haider leadership was widely held to embody and advocate policies divergent from the European consensus. This was particularly the case, first of all, as a result of an election campaign marked by anti-foreigner sloganeering and, secondly, the widespread sense that Haider had links to unreconstructed Nazis. Haider himself had reportedly made comments praising Hitler’s employment policies.

In July 2000, a three-person team involving ex-President of Finland Martti Ahtisaari, German Constitutional Law expert Jochen Frowein, and Marcelino Oreja, former Spanish Foreign Minister was appointed to examine the Austrian government’s commitment to

“European values”, above all with respect to minorities, refugees and migrants, as well as the political development of the Freedom Party.

Among its conclusions, the three experts recommended that a procedural instrument be developed to prevent and monitor issues concerning fundamental European values in the EU Member States, so that should a similar situation arise in one or more of the Member States in the future, the EU would be able to address the matter systematically. The three experts recommended the inclusion of this mechanism directly into Treaty on European Union (“Union Treaty”) Article 7. The recommendations of the three experts were taken up in the form of an amendment to Union Treaty Article 7, which became effective on 1 February 2003, with the entry into force of the Treaty of Nice.

The full text of Union Treaty Article 7, as amended by the Treaty of Nice, is appended below as an Annex to this statement.

### **III.B. Amended Union Treaty Article 7**

A 2003 Communication from the European Commission to the European Council and European Parliament “on Article 7 of the Treaty on European Union: Respect for and promotion of the values on which the Union is based”<sup>1</sup> sets out the parameters and modalities of amended Union Treaty Article 7, and the circumstances in which Union Treaty Article 7 are to be used. The Commission stressed that Article 7 as revised by the Treaty of Nice was an improvement on the previous mechanism, in that it provided the Union with an instrument to respond to a risk of serious breach, before one emerged. The Commission Communication states, *inter alia*:

Article 6(1) of the Treaty on European Union (the “Union Treaty”) lists the principles on which the Union is based: “*the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States*”.

This enumeration of *common principles*, or to use the terminology of the draft Constitution, of *common values*, puts the person at the very centre of the European integration project. It constitutes a hard core of defining features in which every Union citizen can recognise himself irrespective of the political or cultural differences linked to national identity.

Respect for these values and the concern to work together to promote them is one of the conditions for any State wishing to join the European Union. Article 49 of the Union Treaty speaks very clearly to States wishing to accede to the Union:

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<sup>1</sup> All citations based on Communication from the Commission on Article 7 of the Treaty on European Union (15 October 2003), Commission of the European Communities, [28.10.2003]. COM(2003) 606 final. Available on [http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003\\_0606en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0606en01.pdf).

*“Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union”.*

Article 7 of the Union Treaty, introduced by the Amsterdam Treaty and amended by the Nice Treaty, and Article 309 of the Treaty establishing the European Community (the “EC Treaty”), equip the Union institutions with the means of ensuring that all Member States respect the common values.

The entry into force of the Nice Treaty on 1 February 2003 was a defining moment for the Union's means of action here. By giving the Union the capacity to act preventively in the event of a clear threat of a serious breach of the common values, Nice greatly enhanced the operational character of the means already available under the Amsterdam Treaty, which allowed only remedial action after the serious breach had already occurred.

In this respect, the amended Article 7 confers new powers on the Commission in its monitoring of fundamental rights in the Union and in the identification of potential risks. The Commission intends to exercise its new right in full and with a clear awareness of its responsibility.

The ultimate purpose of the means laid down is to penalise and remedy a serious and persistent breach of the common values. But first, and above all, they are intended to prevent such a situation arising by giving the Union the capacity to react as soon as a clear risk of a breach is identified in a Member State.

The Commission Communication notes that “the scope of Article 7 is not confined to areas covered by Union law”. It states that the mechanism “is not designed to remedy individual breaches” and that the situation giving rise to the engagement of the mechanism must “... go beyond specific situations and concern a more systematic problem.” In distinguishing between actions under Treaty Article 7 concerning “risk of a serious breach”, the Commission Communication states:

A risk of serious breach remains within the realm of the potential, though there is a qualification: the risk must be “clear”, excluding purely contingent risks from the scope of the prevention mechanism. A serious breach, on the other hand, requires the risk to have actually materialised. To take a hypothetical example, the adoption of legislation allowing procedural guarantees to be abolished in wartime is a clear risk; its actual use even in wartime would be a serious breach.

By introducing the concept of “clear risk”, Article 7 of the Union Treaty provides a means of sending a warning signal to an offending Member State before the risk materialises. It also places the institutions under an obligation to maintain constant surveillance, since the “clear risk” evolves in a known political, economic and social environment and following a period of whatever duration during which the first signs of, for instance, racist or xenophobic policies will have become visible. (emphasis added)

Concerning how to evaluate the existence of a “serious breach” for the purposes of Union Treaty Article 7, the Commission states: “To determine the seriousness of the breach, a variety of criteria will have to be taken into account, including the purpose and the result of the breach. Regarding the purpose of the breach, for instance, one might consider the social classes affected by the offending national measures. The analysis could be influenced by the fact that they are vulnerable, as in the case of national, ethnic or religious minorities or immigrants.” (emphasis added)

The Commission paper names a range of relevant institutions which might be engaged in the initiation or evaluation during Article 7 proceedings, including the European Parliament.

### **III.C. The Italy Crisis**

In light of the foregoing, it is noteworthy that none of the relevant parties at Union level have as yet suggested the application of Union Treaty Article 7, notwithstanding the fact that conditions currently prevailing in Italy since the formation of the current government in May 2008 evidently obtain.

Threats to non-citizen Roma have been severely heightened following the election in April 2008 and the formation on 8 May 2008 of a new right-wing national government including extremist xenophobic and racist elements, as well as success in local elections by the extreme right in a number of municipalities, including the capital Rome. This, combined with years of anti-Romani propaganda by the Italian media, which has unceasingly portrayed Roma primarily as vagrants and criminals, has resulted in a clear risk to a breach of Article 6, under the criteria set out by the Commission. Romani camps have been destroyed and their inhabitants ejected by the state police and/or other representatives of the public authority, often without notice and without the option of alternative shelter. Other camps in various regions throughout Italy have been the target of arson or vandalism based on racial hatred. The perpetrators of these crimes are rarely prosecuted or even investigated by local authorities.

The level of anti-Romani hate speech by politicians and other public figures in Italy, which is widely disseminated by Italian media in the absence of editorial comment, has been dramatically heightened in recent weeks and is of extreme concern now. These matters, although a long-term feature of Italian public life, have dramatically worsened in the recent period. Particularly since the beginning of campaigning for the April 2008 general election, anti-Romani speech in the public sphere has risen to hysterical levels and has had very serious negative consequences for the safety and security of Roma in Italy. Few if any high-ranking Italian officials have spoken out against such public statements or taken any actions to hold the responsible persons accountable.

A non-exhaustive list of anti-Romani statements undertaken by public officials in the period since March 2008, and particularly since the formation of the new government, follows here:

- According to La Repubblica of May 19, Minister of Interior Roberto Maroni stated, “All Roma camps will have to be dismantled right away, and the inhabitants will be either expelled or incarcerated.”
- It has been reported that Milan Deputy Mayor Riccardo de Corato has stated he will seek a *numerus clausus* to limit the number of Roma in Milan.
- It has further been reported that Milan Mayor Letizia Moratti wants to establish a government post entitled "Exceptional Commissioner for the Roma Emergency".
- Mr. Davide Boni, an official in the Lombardy regional government, reportedly said, “All Gypsies must go”.

Indeed, the new government has acted on its explicit anti-Romani commitments by enacting explicitly racist laws, ordinances and decrees. On 21 May 2008, the Council of Ministers of the Italian government, meeting in Naples, passed a new emergency decree defining the presence of the Roma in the areas of Campania, Lazio, and Lombardia as a cause of great social alarm with possible grave repercussions in terms of public order and safety. Extraordinary powers usually allowable only in times of severe natural disasters were given to state and local officials to deal with this “problem”. In the decree, the presence of Roma in the three Regions is defined as resulting in situations of an "extreme critical nature" and of "serious social alarm" with possible serious repercussions in terms of public order and security for local populations. The new decree identifies the mere presence of Roma and Sinti populations as a public emergency.

The three Ordinances of the President of the Council of Ministers of 30 May 2008, adopted following the decree and specifically concerning the Regions of Lombardy, Lazio and Campania, grant the extraordinary commissioners, in turn identified as the prefects (that is, the local institutional figures under the competence of the Ministry of Interior), powers to tackle “the state of emergency in relation to the settlements of nomad communities”. Such powers apparently concern the monitoring of camps, taking a census of the people (including minors) who are present there and taking photo-documentary details; the expulsion and removal of persons with irregular status; measures aimed at clearing “camps for nomads” and evicting their inhabitants; as well as opening new “camps for nomads”.

In addition, on 28 June, Minister of Interior Roberto Maroni revealed a plan for fingerprinting all Roma residents in camps, including children, insisting that this plan is a solution to inadequate housing problems and rising crime rates in Italy. The policy, part of a broader initiative to take a detailed census of Roma, has drawn sharp criticisms from the European Commission and UNICEF, as well as the Catholic weekly magazine *Famiglia Cristiana* in its coming issue of 3 July 3 (according to La Repubblica of 1 July). The latter institutions have stated that these measures would violate the fundamental rights of the child. The Italian government has nevertheless implemented these measures as announced.

Perhaps of greatest concern has been the new government's studious tolerance – amounting to tacit encouragement – of a wave of violent racist vigilante acts carried out against Roma and Sinti in Italy. On 13 May 2008, assailants burned a Romani camp in Naples to the ground, causing the approximately 800 residents to flee while Italians stood by and cheered. The incident occurred after an Italian woman claimed that a Roma girl had broken into her apartment to steal her baby. The unbridled media frenzy this rumor unleashed, playing on deeply imbedded anti-Romani stereotypes, sparked public hysteria, and in the days following the alleged attempted kidnapping (an act which was not been proven in any court of law, and about which there are plausible allegations of fabrication), there were signs actively inciting hatred against Roma which the police failed to dismantle. On the day of the torching a program on RAI television showing Italians in the area screaming “Roma out” was broadcast before the police were even alerted to the riot. Only two weeks later, on 28 May, the same camps was set on fire for the second time by unknown perpetrators. Despite this recent history, along with the consideration that four Molotov cocktails were thrown into a Roma camp in Milan and Novara two days prior, Italian authorities did little to secure the safety of the Roma and their homes from a mob attack.

The Naples events have not been isolated. For example, on 9 June, a settlement of circa 100 Romanian Roma in Catania, Sicily was attacked and burned to the ground. In another incident, on 25 May, a Sinti girl in Brescia was stopped from going to school by some non-Romani children yelling “dirty Gypsy, dirty kidnapper”. Interior Minister Roberto Maroni has reportedly downplayed the attacks, stating, “As for vigilante attacks on immigrants, that is what happens when gypsies steal babies, or when Romanians commit sexual violence.”

Finally, several high profile instances of mass eviction/destruction of Romani camps have taken place around Italy. For example, on 6 June 2008, Italian authorities destroyed the Testaccio Romani camp in Rome, which housed some 120 Romani individuals, including 40 children. According to media reports, many of the inhabitants of the camp had reportedly been transferred from a previously destroyed camp in Rome's Saxa Rubra area. The persons concerned are reportedly Italian citizens. No adequate alternative housing has been provided. In Florence on 17 May, circa 200 Romanian Roma, including several children, were forcibly expelled from a former military barracks where they were squatting without providing any other shelter.

#### **III.D. European Response to the Italy Crisis**

On 28 July, the Council of Europe's Human Rights Commissioner – a party with an explicitly named role in the Commission's 2003 Communication concerning the application of Union Treaty Article 7 – published a Memorandum concerning his June 2008 visit to Italy. Among concerns expressed by the Commissioner in the Memorandum are the following:

Despite efforts made by the authorities, there is little progress in the effective protection and enjoyment of human rights by Roma and Sinti. Widespread discrimination against these minority populations, already highlighted by other reports, continues. The new immigration legislation which has been introduced or is under way (see following section) aims to impose further, stricter controls of, inter alia, Roma who immigrate to Italy, even if they come from other EU states. Representatives of Roma and Sinti met by the Commissioner expressed a mixture of frustration about their lack of recognition and their “invisibility”, fear about the security measures, need for protection in a society where they feel exposed to victimisation and hate.

Also, the Commissioner has been informed that on 21 May 2008 the Cabinet approved an emergency Decree by which a state of emergency was declared in three regions until 31 May 2009. Under this Decree, issued by the Prime Minister on 26 May and entitled “Declaration of the state of emergency in relation to settlements of the nomad communities in Campania, Lazio and Lombardia”, the Prefects (Prefetti) in these regions assume also functions of “Special Commissioners” with the competence to: a) monitor and authorize settlements; b) carry out censuses of the persons living therein; c) adopt measures against convicts that may live therein; d) adopt measures of eviction e) identify new areas where adequate settlements may be built; f) adopt measures aimed at social cohesion, including schooling.

After the visit, the Commissioner was concerned about the Minister of Interior proposals to fingerprint Roma people of all ages. In particular, he spoke out against the discriminatory nature of this measure, especially as regards children.

...

The Commissioner noted with concern that Roma and Sinti have been excluded from Law 482/1999 on the protection of historical linguistic minorities, on the grounds that they had no links with any specific area. In Italy it seems to be widely, and erroneously, held that Roma and Sinti are “nomads” who prefer to live in camps. In this regard, it has also been noted that Italy has signed (on 27 June 2000) but not as yet ratified the European Charter for Regional or Minority Languages.

The Commissioner is following closely and is deeply concerned at anti-Roma and anti-Sinti manifestations in Italy which have been occasionally extremely violent resulting into setting on fire Roma camps, reportedly without effective protection by the Police which has also carried out violent Roma camp raids. Of particular concern is the support which has been provided to such manifestations, directly or indirectly, by certain domestic, national and local, political forces and figures as well as by certain mass media. No information is as yet available on the conclusion of any effective investigation into such incidents by the competent

authorities. During his discussion with the Minister of Interior, Mr Roberto Maroni, the Commissioner expressed his serious concern at this situation.

During his visit, the Commissioner was informed of the existence of some positive examples of local authorities that have addressed the dire housing situation of Roma, such as the one in the town of Pescara. However, at the same time, the Commissioner received a new worrying report concerning the town of Mestre (Venice) where the construction of a fully equipped camp for Italian Roma, funded by the Venice municipality, was reportedly suspended after the forceful protests and entry into the site of local political forces.

On 20 June the Commissioner visited the Roma camp *Casilino 900*, in Rome, which has been reportedly used as such for forty years and described as “semi-regular”. The Commissioner noted with regret that the standards of the living conditions there were unacceptably low. The situation on this site remains basically unchanged since the visit of the previous Commissioner three years ago who had described the camp as a shanty-town. It consists of caravans, shacks and chemical toilets, many of the latter in an obviously too bad state for use.

On the date of the Commissioner’s visit, the inhabitants of the camp, approximately 650 persons, including approximately 240 minors, had no access to electricity or water. The Commissioner was informed by Roma organisations that he met on 19 June that similar conditions prevail in many other Roma camps, a situation that makes mortality rates there very high. The *Casilino 900* camp, along with four other camps in Rome, is reportedly visited three times per week by the Local Health Agency and regularly by the municipality’s “group for assistance to marginalised persons” which forms part of the municipal police.

...

The Commissioner is particularly concerned at the fate of children living in bad conditions in camps such as the one he visited. Even though formally they have access to school education, it is doubtful whether they may effectively enjoy, *inter alia*, their right to education under such living conditions. The Commissioner was also informed by Roma inhabitants of the *Casilino 900* camp that many of them, originating in former Yugoslavia, lack identification documents, a situation that causes them serious problems, especially when they need to contact public authorities, including schools.

The series of “pacts for security”, signed in 2006 and 2007 between state and certain city authorities have targeted criminality which has also been liaised through these pacts to areas where Roma or Sinti have their dwellings. Linked to these pacts is the emergency legislation which was adopted in November 2007 (Law Decree 181/2007 on removals on public security grounds) and in January 2008 (Law Decree 249/2008 on expulsion and removals on grounds relating to terrorism and public security). It has been reported that as at the end of December

2007 more than 1,000 persons had been expelled from Italy and at least 1,000 Roma homes in Rome alone had been destroyed and the inhabitants had been evicted by Italian authorities.

Such expulsions were not an absolutely new phenomenon; they had already occurred in the recent past. The Commissioner has noted that on 19 May 2005 by judgment no 16571/05 the Italian Court of Cassation found against a decision of the Milan court that had annulled the expulsion orders of a number of Romanian Roma. The Court of Cassation recalled that under Article 4 of Protocol N°4 to the European Convention on Human Rights (ratified by Italy on 27/05/1982) the term “collective expulsion” indicated expulsions that target a group of aliens without a reasonable and objective examination of the reasons and of the defence of each of them. It also noted that under Italian law an expulsion may be proscribed on humanitarian grounds or on grounds relating to family cohesion. However, the Court of Cassation struck down the lower court’s decision, noting that the sole fact that the expulsion decrees in question had been adopted at the same time using identical wording and reasoning and against persons of the same ethnic origin was not in itself contrary to Article 4 of Protocol N°4 to the Convention.

In this context, the Commissioner is gravely concerned at the case of *Hamidovic v Italy*, a case concerning a Roma citizen of Bosnia and Herzegovina, mother of three children, who was expelled from Italy in September 2005 while her individual application was pending before the European Court of Human Rights, despite the request made by the Court to Italy under its Rule 39 (Interim measures) to suspend the applicant’s expulsion while her application was pending before the Court. Even though Ms Hamidovic was afterward granted a stay permit, the Commissioner considers necessary that member States fully comply with interim measures so as to avoid hindering an effective exercise of the right of individuals to apply to the European Court. This right must be seen as a fundamental requisite of the European system of human rights protection.

In light of the foregoing concerns and conclusions, and in particular mindful of the texts of Articles 6 and 7, it is entirely unclear as to what has hindered the Union from engaging Union Treaty Article 7, or from even opening preliminary discussion as to its relevance. To date, discussion on issues in Italy has centred around possible infringement of Union directives concerning freedom of movement and discrimination. While these legal provisions may also be relevant, it appears evident that the Italian crisis has raised matters of significantly greater scale and intensity than simply Directive infringement. Legal instruments of more comprehensive scale are now relevant to address the scope and nature of the current crisis.

#### **IV. Conclusion**

We urge Parliament to develop and submit to the Council a reasoned proposal on the initiation of Article 7 European Union Treaty measures concerning the current crisis in Italy.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Claude Cahn', with a stylized flourish at the end.

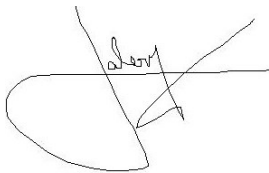
Claude Cahn  
Head of Advocacy Unit  
Centre on Housing Rights and Evictions (COHRE)

A handwritten signature in blue ink, appearing to read 'Liliya Savkova Makaveeva', with a stylized flourish at the end.

Liliya Savkova Makaveeva,  
President  
European Roma Grassroots Organization

A handwritten signature in black ink, appearing to read 'Nando Sigona', with a stylized flourish at the end.

Nando Sigona  
Head of Research Unit  
OsservAzione

A handwritten signature in black ink, appearing to read 'Valeriu Nicolae', with a stylized flourish at the end.

Valeriu Nicolae,  
President  
Policy Center for Roma and Minorities

## **ANNEX: Article 7 of the Treaty on European Union**

### **Article 7 of the Treaty on European Union**

*1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.*

*2. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.*

*3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.*

*4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.*

*5. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.*

