

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**



30 September 2010

Case document No 1

**International Fédération of Human Rights (FIDH) Organisation
v. Belgium**
Complaint No. 62/2010

COMPLAINT

registered at the Secretariat on 30 September 2010

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**Secretariat of the European Social Charter
Directorate General of Human Rights and Legal Affairs**

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Collective complaint

-

International Federation of Human Rights Leagues v. Belgium

**for failure to offer social, legal and economic protection
and protection against poverty and social exclusion
to Travellers**

deprived of proper access to housing

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Part I. Admissibility of the complaint and parties to the case

1. The complainant organisation

The International Federation of Human Rights Leagues (hereafter FIDH) is an international organisation that defends human rights and is included on the list of organisations entitled to submit collective complaints to the European Committee of Social Rights.

In accordance with its statutes, the FIDH is an association for defending and promoting all human rights at international level. Its statutes therefore entitle the Federation to take action, including legal action, at international level to secure recognition of human rights violations (See Appendix 1). The FIDH has already submitted collective complaints to the Committee concerning the right to housing (FIDH v. France) and other rights. These were declared admissible by the Committee.

In ratifying the Charter, Belgium has accepted the obligations in articles 16 and 30.

The complaint is therefore admissible.

2. The defendant state

This complaint is directed against the state of Belgium. However, because of the federal nature of this state, the situation in each of its regions – the Flemish, Walloon and Brussels-Capital regions – will be considered separately. Certain federated entities have in fact taken some, albeit inadequate, action on behalf of Travellers whereas others have generally failed to do so. Of course, as the Committee noted in the European Roma Rights Centre (ERRC) v. Greece case, "even if under domestic law local or regional authorities are responsible for exercising a particular function, states party to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the state" (8 December 2004, (decision on the merits), complaint 15/2003, §29).

On 2 March 2004 the federal, regional and community governments of Belgium completed the ratification of the revised European Social Charter (RESC) and this was formerly recognised in the Act of 15 March 2002, published in the Belgian Monitor¹. Belgium has accepted 87 of the 98 paragraphs of the revised Charter, including articles 16 and 30 (but not Article 31 (see below)), which are relied on in this complaint.

The complaint is therefore also defensible from this standpoint.

Notes on the division of powers in Belgium between the federal state and various federated entities

¹ Act of 15 March 2002 ratifying the revised European Social Charter and its appendix, done in Strasbourg on 3 May 1996, *MB.*, 10 May 2004.

Under Article 1 of the Constitution, Belgium is a federal state composed of regions and communities. This means that decision-making power in Belgium is not centralised but divided between the federal state, three regions (Flemish, Walloon and Brussels) and three communities (Flemish, French and German-speaking). These three political levels are autonomous, have significant powers and have equal competence with regard to international relations, including the conclusion of treaties on the subjects in question.

Under articles 6, 6 b, 6 c and 7 of the special Act of 8 August 1980, regions are responsible for regional and urban planning and have almost total responsibility in the field of housing. Regions have their own budgets to finance their policies and decisions and the direct assistance they grant. Decisions taken by the regions are implemented by regional and local bodies.

The only housing responsibilities retained by the federal level are property taxes and regulation of the private rental market, that is tenancy legislation. Both of these are currently being regionalised. Everything connected with domiciliation also remains an exclusive federal responsibility.

The communities' responsibilities include assistance to young people and children, education, health education and culture, and as such they have responsibilities for the social, legal and economic protection of the population, and specifically Travellers.

3. *The groups concerned*

This complaint concerns violations of certain rights embodied in the European Social Charter committed by Belgium against the group of the population known as Travellers. The term is used to cover persons of Roma, "Manouche" or Sinti culture, also known as gypsies, and certain communities that are not of Roma culture or origin but are also called Travellers. What they all have in common is a tradition of living in mobile homes, otherwise known as caravans². They number between 5 000 and 10 000 in Belgium, according to the different estimates of associations active in the field. However, in the absence of official statistics it is very difficult to provide a precise estimate.

Among these 5 000 to 10 000 Travellers normally resident in Belgium, most of whom have Belgian nationality, an estimated 80 families, or 300 to 400 persons live in the Brussels region³ while the rest are divided almost equally between Flanders and Wallonia⁴: 900 families in Flanders, or 3 000 to 3 600 individuals, and 1 000 to 1 500 families in Wallonia, or 2 500 to 5 000 individuals. To this should be added 1 000 to 1 500 families, or about 3 000 to 5 000 individuals, who cross the country in the "right season" from neighbouring countries, in particular France, the Netherlands, England, Ireland and Norway⁵.

² For an overview of the history and origins of Roma and Travellers in Belgium, see A. Reyniers et alii, *Les Gens du voyage en Wallonie*, booklet produced with the collaboration of the Walloon region, the private office of the ministry of social affairs, the Walloon region Travellers' mediation centre and the centre for intercultural action of Namur province, 2002 (available on www.cmgv.be/pdf/gensvoyagewallonie.pdf (last visit: 1 August 2010)).

³ These figures do not include travelling showpeople.

⁴ A. Reyniers, "Les gens du voyage. Histoire, réalité et perspectives", *L'Observatoire* (social and medical action journal), no. 38/2003 (special issue "La réalité des gens du voyage" (the reality of Travellers), pp. 69 to 72.

⁵ See the reply to the Walloon parliament by the Walloon minister of health, social action and equal opportunities on 9 November 2004, C.R.I., sess. ord. 2004-2005, no. 8, p. 28.

Travellers do not form a homogeneous group. In particular, they are not all itinerant. Only some of them move about all year long, stopping at different places for a few weeks at a time, for example, for the purposes of seasonal employment, pilgrimages⁶ or, historically, to flee persecution. Today, the great majority are at least partly sedentary⁷. They remain in the same place for most of the year and if they do move it is in the "good" season between the months of March and October. However they do want to live throughout the year in caravans, on a plot of land, to continue a way of life that is open to the outside world, to which they have been accustomed since childhood and that allows them to maintain at least a symbolic link with travelling⁸. As a recent survey shows, those who, of necessity, abandon their traditional way of life to live in houses clearly express the wish to return to living in families and in a caravan⁹.

These differences need to be borne in mind when considering the situation of Travellers in Belgium from the standpoint of the European Social Charter. Their legal situation differs according to whether they are partially or totally nomadic and whether they are seeking a place to live permanently in their caravans or temporary sites for brief stays. However the basic problem, and hence the breach of their Charter rights, remains the same, namely that because Belgian law takes insufficient account of their form of habitat and to some extent penalises this way of life, they experience the greatest difficulty finding sites where they can park their caravans, whether permanently or temporarily.

This complaint does not, however, concern Roma living in Belgium who are totally sedentary in the sense that they live permanently in traditional dwellings and do not wish to occupy caravans. This applies particularly to Roma who have emigrated from the countries of eastern Europe since the end of the cold war¹⁰.

Nor does it concern persons who want to live in traditional homes but settle in caravans for purely financial reasons because they cannot afford bricks and mortar accommodation. We consider that their situation calls for a different response from the authorities to that of persons who, for cultural reasons, prefer to live in mobile homes rather than a traditional dwelling.

⁶ A. Reyniers, "Les gens du voyage en Communauté française de Belgique. Réalités and perspectives", Documents d'analyse and de réflexion, Centre avec (non-profit organisation) March 2009, available on: <http://www.centreavec.be/analyses/Les%20Gens%20du%20Voyage%20en%20Communaut%20fran%20aise%20de%20Belgium.pdf> (last visit: 1 August 2010), p. 4. For more details of the routes taken, see the reply to the Walloon parliament by the Walloon minister of health, social action and equal opportunities, 25 August 2008, *Bull. Q.E.*, sess. ord. 2007-2008, no. 171/1.

⁷ According to the European Roma Information Office only 4% of Europe's 12 million Travellers are nomadic in the strict sense (G. Ruiz and M. Manzonetto to the colloquy in Namur on 6 October 2009 organised by the mediation centre for Travellers in Wallonia on the theme: Roma in Wallonia: obstacles and citizen participation).

⁸ J. Ringelheim, "Gens du voyage: les oubliés du droit au logement?", *L'état des droits de l'homme en Belgique*, Brussels, Ligue des droits de l'homme et Aden, 2010.

⁹ Hoger Instituut voor die Arbeid (HIVA), Katholiek Universiteit Leuven, survey woonwagenbewoners (survey of Travellers), 2009, Louvain.

¹⁰ In its fourth report on Belgium, the European Commission against Racism and Intolerance (ECRI) estimates their number at between 10 and 20 000 (4th monitoring cycle, Council of Europe, 19 December 2008, p. 35, note 45). See also the figures given in the report produced by the RAXEN network: *Housing Conditions of Roma and Travellers*, Belgium Raxen National Focal Point, Centre for Equal Opportunities and Opposition to Racism, March 2009, pp. 22-23.

Part II Purpose of the complaint

1. The fundamental rights concerned:

Article 16 of the revised European Social Charter (hereafter the Charter):

"The right of the family to social, legal and economic protection
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."

Article 30 of the Charter

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

- a. to take measures within the framework of an overall and co-ordinated 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."

- Taken alone or in combination with Article E of the Charter:

"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."

- The Preamble to the Charter also states that:

"Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin";

The FIDH asks the European Committee of Social Rights (hereafter "the Committee") to find that Belgium is not applying satisfactorily Article 16 of the Charter, interpreted in the light of its Preamble and taken alone or in combination with Article E of the Charter, on the grounds that the families of Travellers are deprived of their effective right to housing adapted to their needs and suffer discrimination in the enjoyment of their right to economic, legal and social protection. In practice, the law and policies in force in Belgium fail to take sufficient account of the needs of families living in caravans by tradition and in certain respects penalise this way of life. The result is that Travellers experience extreme difficulty in finding sites where they are allowed to reside or stay. This means that they continue to lead a highly vulnerable existence from both the material standpoint – inadequate, uncertain and fairly insalubrious

facilities – and legally, in that they regularly suffer enforced evictions. More specifically, the following aspects are in violation of Article 16, taken alone or in combination with Article E:

- the inadequate number of public sites accessible to Travellers, either to stay on temporarily or for permanent residence and the absence of any obligation to encourage the rental of sites or to provide temporary *ad hoc* sites, according to needs (complaint 1);
- the failure of spatial and regional planning legislation to take account of travellers' specific needs or circumstances, which in practice disproportionately restricts their ability to obtain planning permission to live in their caravans on private property (complaint 2);
- the authorities' unreasonable use of eviction procedures against travellers who are unlawfully settled on land because they have been unable to find a place on an authorised site and the lack of appropriate safeguards against such evictions (complaint 3);
- the failure of the Walloon and Brussels regions to recognise caravans as dwellings, which prevents travellers from enforcing their right to housing, as provided for in the Belgian Constitution, and the non-adaptation in the Flemish region of the rules governing health, safety and living conditions to the circumstances of mobile homes (complaint 4);
- the obstacles to domiciliation, on which access to several important rights and services, in particular social allowances, depends (complaint 5).

The highly vulnerable lifestyle that is forced on Travellers' families in Belgium because of the authorities' failure to provide them with adequate social, legal and economic protection means that they are also deprived of an effective right to protection against poverty and social exclusion. The obstacles they face in gaining effective access to housing and the evictions they frequently suffer have a very negative impact on their access to employment, training, education and social and medical assistance and, more generally, their ability to integrate into the country's social and economic fabric. Moreover, although certain federated entities have taken appropriate steps, viewed overall the Belgian authorities have failed to establish a comprehensive and co-ordinated policy to prevent the poverty and social exclusion that particularly affects Travellers. The FIDH therefore asks the Committee to find that Belgium also fails to apply satisfactorily Article 30 of the Charter, taken alone or in combination with Article E.

The overall conclusion is that the Belgian authorities' attitude to Travellers constitutes institutional discrimination against this group of the population, in breach of Article E of the Charter.

Preliminary points concerning Travellers' needs for residential or temporary sites

As indicated earlier, currently only a minority of Travellers have a permanently nomadic existence. Most want to live in a fixed place for most of the year and only travel for a few weeks or months. Any consideration of their accommodation needs therefore has to distinguish between two types of need:

- Those who want to live in a fixed location for part of the year need access to residential, or family, pitches, that is ones where they can install a caravan on a permanent basis and, if appropriate, return after a period of travelling. Such residential sites may be of two types:
 - Public sites fitted out by the authorities for long-term occupancy. The services and material facilities are normally of a higher standard than those of temporary sites (see below). As will be seen, the authorities can only establish such sites, or temporary ones, in certain areas, in accordance with land-use plans (see section 2 below).
 - Private sites, purchased or rented by Traveller families. The latter must then obtain planning permission from the municipality to authorise them to live there in a caravan (see section 2).

- Those who travel, either permanently or for a few months a year between March and October, require access to sites where they can stop for short periods before returning to the road. These sites may also be of two types:
 - Sites that are only used for temporary stays by Travellers. These are generally fitted out for this purpose. Stays have to be paid for, are subject to the regulations in force and are limited to relatively short periods of around fifteen days. These are termed temporary, or transit, sites. As with permanent ones, transit sites can only be established in certain areas, in accordance with land-use plans (see section 2 below).
 - Sites that are not specifically intended for Travellers but which local authorities or private individuals let out to them or otherwise make available on an *ad hoc* basis, according to needs and demands in the particular locality and different points in time. These are termed *ad hoc* sites. Ways are generally found of managing refuse disposal and providing access to water and electricity. Thus, in response to demand certain local authorities sometimes authorise groups of Travellers to stop on a local site for a brief period – 5 to 21 days. There is generally a rental charge and certain conditions, concerning refuse disposal and the costs of water and electricity, have to be met¹¹.

Some Travellers prefer the option of renting or otherwise having access to *ad hoc* sites because of the advantages of great flexibility that they offer. They can change their stopping places and itineraries from one year to the next according to their needs, particularly their occupational and educational needs (access to place of work or school for example), their family situation (the number of children they have, visits from relatives and so on) or even the weather conditions, since some sites may not be suitable in high temperatures, rainy weather or cold spells. Access to such *ad hoc* sites offers the flexibility and variability that matches the nature of their lifestyle.

¹¹ For the different types of caravan site to meet Travellers' needs, see Housing Conditions of Roma and Travellers, Belgium Raxen National Focal Point, Centre for Equal Opportunities and Opposition to Racism, March 2009, pp. 24-25.

However, the fact that these sites are not, by definition, intended for permanent stays means that Travellers' access to them and authorisation to stay are dependent on the good will of the local authority concerned, or of the owner in the case of private sites. Local authorities are not obliged to respond to requests for *ad hoc* sites. And when a site is made available to a group of Travellers one year, it may well be difficult to refuse them access the next one.

Residential, transit and *ad hoc* sites generally accommodate several caravans. Most of them are divided into pitches, each designed to take one caravan and thus one family.

This complaint will use the term "site" or "caravan site" to indicate all the different types of sites accessible to Travellers. They will be called "residential sites" for long stays, "transit sites" for short stays and "*ad hoc* sites" for ones that are made available or rented out to Travellers on an occasional or one-off basis.

Part III Complaints

1. Inadequate number of public sites for Travellers

1.1. The Committee's principles

i. Obligations arising from Article 16

The effective right to housing is one of the rights embodied in Article 16 of the Charter, in that it is an essential ingredient of full family life¹². This interpretation also stems from the Committee's integrated approach to the Charter¹³.

In its 2003 decision on the collective complaint against Greece, the Committee held that Article 16 required states to:

"promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). ... Adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction"¹⁴.

The Committee confirmed these principles in the collective complaint *ERRC v Bulgaria*, and stated that:

"Article 16 guarantees adequate housing for the family, which means a dwelling which is structurally secure; possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; is of a suitable size considering the composition of the family in residence; and with secure tenure supported by law ... The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period."¹⁵

The enforcement of Article 16 therefore presupposes positive state intervention. The latter "must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question", in particular the right to housing that meets the needs of those concerned¹⁶. The Committee has also ruled that "states must respect

¹² ECSR European Roma Rights Centre (ERRC) v. Bulgaria (merits) 18 October 2006, cmp 31/2005, §§ 16-17.

¹³ Nicolas Bernard, "Le droit au logement dans la Charte sociale révisée: à propos de la condamnation de France par le Comité européen des droits sociaux", *Revue trimestrielle des droits de l'homme*, 2009, p. 1061 à 1089; J.-Fr. Akandji-Kombé, "Charte sociale européenne et procédure de réclamations collectives (1998 - 1 juillet 2008)", *Journal de droit européen*, 2008, p. 219.

¹⁴ *ERRC v. Greece*, complaint No. 15/2003, decision on the merits of 8 December 2004, §24.

¹⁵ *ERRC v. Bulgaria*, complaint No. 31/2005, decision on the merits of 18 October 2006, §34.

¹⁶ *ERRC v. Bulgaria*, § 35. See also *ERRC v. Greece*, §21.

difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion"¹⁷. In the case of Travellers who live in the traditional manner, that is in caravans, states' duty under Article 16 to promote the provision of an adequate supply of housing for families means that they must ensure that Travellers have access to an adequate number of temporary sites¹⁸. In its decision of 19 October 2009 on the collective complaint brought by the European Roma Rights Centre (ERRC) against France, the Committee stated that Article 31, which embodied the right to housing, had to be seen in the light of Committee of Ministers Recommendation (2005) 4 on improving the housing conditions of Roma and Travellers in Europe, which stated *inter alia* that member states should ensure that, within the general framework of housing policies, integrated and appropriate housing policies targeting Travellers were developed¹⁹. The same principle must apply to Article 16. As the Committee has noted, Articles 16 and 31 "partially overlap with respect to several aspects of the right to housing". In particular, "in this respect, the notions of adequate housing and forced eviction are identical" under the two articles²⁰.

In its decision of 19 October 2009, the Committee confirmed that the obligation to promote access to adequate housing, that is dwellings that are sanitary, applies equally to persons living in mobile homes. This means that public sites for Travellers must be properly fitted out with the basic amenities necessary for a decent life. Such sites must possess "all the basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity", and must be "structurally secure, not overcrowded and with secure tenure supported by law"²¹. According to a memorandum on France written by the Council of Europe's Commissioner for Human Rights, sites are sometimes created outside urban areas or near to facilities which are major sources of nuisance (such as electrical transformers or very busy roads), making them difficult – if not dangerous – to use, particularly for families with young children. The Committee has also made it clear that to secure Travellers social integration and in particular access to employment and education, sites should be located in an appropriate environment, at a reasonable distance from roads and transport links, schools and other important amenities.

This Committee case-law echoes the principles established by the European Court of Human Rights²². The Court found that "the applicant's occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a travelling lifestyle"²³ and concluded that the right to respect for the home and private and family life placed on states a positive obligation "to facilitate the Gypsy way of life"²⁴.

ii. Obligations arising from the non-discrimination principle

"The principle of equality and non-discrimination form an integral part of Article 16 as a result of the Preamble [to the Charter]"²⁵. Article 16 also embodies the obligation to respect

¹⁷ ERRC v. Greece, § 19.

¹⁸ ERRC v. Greece, § 25.

¹⁹ ERRC v. France, complaint 51/2008, decision on the merits of 19 October 2009, § 37. See also International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 149.

²⁰ ERRC v. Bulgaria, § 17.

²¹ ERRC v. France, § 46.

²² See ERRC v. Greece: "Article 16 contains similar obligations to Article 8 of the European Convention of Human Rights" (ERRC v. Greece, § 24).

²³ Eur. Court H R, Chapman v United Kingdom judgment, GC, 18 January 2001, § 73.

²⁴ Eur. Court H R, Connors v United Kingdom judgment, 27 août 2004, § 84.

²⁵ ERRC v. Greece, § 25.

the non-discrimination principle. Article E of the Charter establishes an obligation to ensure that the enjoyment of the rights set forth in the Charter are secured without discrimination on the ground of association with a national minority. The Committee has identified two types of discrimination: direct discrimination, which is where persons or groups of people in an identical situation are treated differently with no objective and reasonable justification or when the means employed are not proportionate to the aims pursued, and indirect discrimination, where persons or groups of people in different situations are treated identically²⁶. In the case of indirect discrimination, the Committee has stated that:

"in a democratic society, human difference should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality. In this regard, Article E prohibits also all forms of discrimination. Such discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all."²⁷

This imposes an obligation on states to take due account of the specific circumstances of Travellers and to act accordingly²⁸. Their specific form of habitat effectively places them in a particular situation. As a result, housing policies that are framed with reference to the majority population, who aspire to live in traditional accommodation, are not adapted to their needs. Thus to quote the European Court of Human Rights, "the applicant's occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a travelling lifestyle"²⁹. Or as the Committee has stated with regard to France, "merely guaranteeing identical treatment as a means of protection against any discrimination is not sufficient"³⁰.

These observations strengthen the obligations arising from Article 16. Travellers' living arrangements call for a particular type of public intervention, namely the fitting out of sites and the issuing of permits for this fitting out process. This requirement is necessary to ensure that Travellers have the effective enjoyment of their rights under Article 16 and that they can enjoy these rights with no discrimination.

Mutatis mutandis, in its decision on complaint 31/2005 the Committee concluded that the inadequate housing of Roma families and the lack of proper amenities in Bulgaria constituted a violation of Article 16 and of the non-discrimination principle³¹. In its decision on complaint 27/2003 concerning Italy, the Committee also found, on the basis of Article 31 taken together with Article E, that the insufficient capacity of and inadequate living conditions in camping sites for Roma who chose to follow an itinerant lifestyle or who were forced to do so and the systematic eviction of Roma from sites or dwellings unlawfully occupied by them constituted discrimination under the Charter³².

²⁶ ERRC v. France , §81; Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52.

²⁷ ERRC v. France , § 83.

²⁸ *Ibid.*, § 84.

²⁹ Eur. Court H R, Chapman v United Kingdom judgment, GC, 18 January 2001, § 73.

³⁰ *Ibid.*, § 84.

³¹ ERRC v. Bulgaria 18 October 2006, cmp 31/2005, § 43.

³² ERRC v. Italy, 7 December 2005 (merits) cmp 27/3004, §§ 12 and 13.

1.2. The situation in Belgium

The Belgian authorities are in breach of Article 16 of the Charter, considered in isolation and in combination with Article E, because they are not providing a sufficient number of sites for Travellers, whether these be residential, temporary or *ad hoc*, with the necessary basic amenities for a decent life and located in appropriate environments.

Belgian local authorities are not required to draw up specific policies for accommodating Travellers. There is thus no obligation to establish sites for them. Nor do they have to seek temporary arrangements by identifying sites that might be made available on an *ad hoc* basis. As a result, there is a drastic shortage of sites on which Travellers can lawfully stay or reside in their caravans (see Appendix 6, press review, p. 11 "De galères en expulsions"). This gap in public provision was identified by the Centre for Equal Opportunities and Opposition to Racism in its report published in March 2009 on the housing conditions of Roma and Travellers in Belgium³³ and by the European Commission against Racism and Intolerance (ECRI) in its last report on Belgium, dated December 2008³⁴. Among its recommendations, ECRI:

"strongly recommends that the Belgian authorities find at the earliest opportunity solutions to enable Travellers to camp, by creating a sufficient number of well located and properly equipped sites"³⁵.

However, the situation differs in each of the country's three regions:

- In the Walloon Region there is currently just one transit site (near Bastogne) and there are no public residential sites. Only a very small number of local authorities sometimes agree, on an entirely discretionary basis, to rent out or make available *ad hoc* sites for short periods.
- In Brussels-Capital Region there is currently one small public residential site, in the municipality of Molenbeek, which can accommodate six families, and there are no operational transit sites.
- The situation is better in the Flemish Region than in the other two. The Flemish regional authorities have taken steps to encourage local authorities to establish residential sites of a suitable standard for Travellers. Currently, in the Flemish Region there are:
 - o 4 public transit sites with a total of 78 pitches;
 - o 29 public residential sites with a total of 468 pitches.

However the number of places created is still below the number needed. Public transit sites cover barely 20% of needs and public residential sites about 50% of needs (see details below). There are also just two private residential sites for which the owners have obtained the necessary planning permission.

³³ Housing Conditions of Roma and Travellers, Belgium Raxen National Focal Point, Centre for Equal Opportunities and Opposition to Racism, March 2009, pp. 22 and 23.

³⁴ ECRI, Report on Belgium, 4th monitoring cycle, 19 December 2008, §§ 119-126, p. 36-37.

³⁵ ECRI, Report on Belgium, 4th monitoring cycle, 19 December 2008, § 125 p. 37 and p. 9.

In the absence of any formal obligation, local authorities are free to refuse to establish residential or transit sites (see Appendix 6, press review, p. 3 "Les gens du voyage interdits"). Nor is there any requirement for them to promote *ad hoc* arrangements, by negotiating in good faith. Even if there are sites available they can opt to refuse to let one out on an *ad hoc* basis to any group of Travellers that might want to stay in their area.

The overall situation in the country is quite clear. The number of sites that Travellers can use, either for short stays or to live, is currently inadequate to meet their needs, even though they represent a very small percentage of the total population. The problem has long been recognised. Yet the national, regional and local authorities have continually taken insufficient steps to rectify the situation, with dramatic consequences for Travellers' families:

- firstly, because they are unable to find a place on an authorised site, many families are forced either to abandon, against their will, their traditional way of life, which represents an important part of their identity, or to live on unauthorised sites in unsuitable conditions, particularly regarding access to water, electricity and sanitary facilities, and under constant threat of eviction (see Appendix 6, press review, p.2 "L'accueil n'est pas encore effectif"; p. 10 "Convoi de Tziganes: remous en Belgique"; p.35 "Evangelische zigeuners nu ook weggejaagd uit Wingene"; p. 39 "Zigeuners vangen ook bot in Wingene" , p. 43 "Zigeuners: n weiland vernield n 300 euro betaald n vandaag weg");
- secondly, because of the inadequate number of sites, the existing ones are overcrowded. The number of families in residence frequently exceeds their capacity, with often more than one caravan on a single plot, leading to a deterioration of living conditions on these sites³⁶.

Moreover, as ECRI remarks, "the failure to find a lasting solution to the problem of acceptance of the Travellers' lifestyle helps perpetuate the stereotypes and the prejudices with which they are viewed"³⁷ (see Appendix 6, press review, p.13 "Respect, sans angélisme, p. 33 "Agressieve zigeuners naar Wingene", p. 56 "Belgie is niet gastvrij", p. 89 "Belgie en Franckrijk racistich tegenover zigeuners").

There is thus a violation of Article 16 of the Charter, taken alone or in combination with Article E.

In a previous case, the Committee found a violation of the Charter after noting that:

"Despite the efforts of the state and local authorities and the positive results sometimes achieved, there is a lack of resources mobilised and of accommodation of settled travellers' specific needs by the local authorities, as well as by the state", ERRC v. France, 26 October 2009, complaint 51/2008, §60.

³⁶ See Housing Conditions of Roma and Travellers, op. cit.: "In reality, due to the massive lack of encampment lots, there is often more than one caravan on a single lot. This overcrowding of the encampment sites lead to many problems" (p. 24).

³⁷ ECRI, Report on Belgium, 4th monitoring cycle, 19 December 2008, § 123 p. 37

"In the present case, ... there appears to have been a long period during which local authorities and the state have failed to take sufficient account of the specific needs of Travellers", ERRC v. France, 26 October 2009, complaint 51/2008, §40.

i. The situation in Wallonia

In the Walloon Region there are no public residential sites for Travellers and just one transit site, outside Bastogne³⁸. Moreover, as in the rest of the country, the authorities are not obliged to arrange for the provision or rental of *ad hoc* sites, for short periods as needs arise.

The great majority of Travellers' families in Wallonia therefore lead a very vulnerable existence. A certain number of families settled on unauthorised sites are tolerated by the authorities. However, as the Committee has stated with regard to states' Article 16 obligations, "temporary supply of shelter cannot be considered as adequate"³⁹. Moreover, these sites are not usually equipped to receive them, and the fact that they are camped there illegally means that the local authorities can evict them at any time. Authorised sites apart, municipalities have full discretion to determine where caravans may be parked. Under a royal decree of 1 December 1975⁴⁰, police regulations prohibit the parking of motor vehicles that are unfit to drive on the public highway for more than 24 or 48 hours. In fact, evictions are frequent (see below, section 3).

In theory, Travellers with the necessary financial resources can try to reside on private land that they have bought or rented. However this option remains very theoretical because it is extremely difficult for them to obtain planning permission (see below, section 2). In any case, this does not exempt the authorities from their positive obligation to "promote the provision of an adequate supply of housing" to meet families' needs.

For families with an itinerant lifestyle or travelling for part of the year the single site in Bastogne is clearly inadequate. In the absence of public sites, the lack of any legislation requiring local authorities acting in good faith to seek *ad hoc* solutions for short-term stays in their area leaves Travellers exposed to the vagaries of chance. Some groups succeed in negotiating approval for short stays that enable them to park on a site for periods of about 5 to 15 days, or even to rent private sites for short periods. However, municipalities have no obligation to renew such agreements and may very well refuse to grant access to these sites the following year (see Appendix 6, press review p. 9 "Le CAL inquiet de la décision du bourgmestre"). For a few years, travelling families have been experiencing increasing difficulty finding sites where they are allowed to stop. In summer 2010, the mayor of one locality (Pecq) even managed to persuade the owner of a site who had agreed to rent out his field to a group of Travellers for three weeks to reverse his decision⁴¹. As a consequence, a certain number of families are forced to camp on sites without authorisation, leaving themselves open to eviction (see Appendix 6, press review, p. 1 "Expulsion repoussée des Gens du voyage à Ronquières"; p. 4 "Press release: Expulsion des Gens du Voyage ce midi à Braîne-le-Compte; p. 93 "Le manque de place a entraîné cette décision qui n'a pas nécessité d'intervention policière" p. 94 "Un campement de Roms obligé de quitter Jumet", p. 95 "La police a expulsé les Roms de Jumet").

³⁸ Though a second is apparently being fitted out, in Namur.

³⁹ ERRC v. Bulgaria, complaint No. 31/2005, decision on the merits of 18 October 2006, §34.

⁴⁰ Art. 27.5.1 of the royal decree of December 1975 establishing the general police regulations on road traffic and the use of the public highway, Belgian Monitor 9 December 1975.

⁴¹ "Des gitans s'installent chez nous" (the gypsies are coming), journal *Vers l'Avenir*, 30 July 2010.

In its December 2008 report ECRI summarised the situation as follows: "At present, Travellers camp on public and sometimes private sites which are not suitably equipped, particularly as regards access to water, electricity and sanitary facilities. This leads to tension with the authorities and the local population, sometimes involving "heavy-handed" expulsions."⁴²"

The Walloon Region does admittedly entitle local authorities that decide to fit out sites for Travellers to a subsidy covering the costs of certain improvement works, such as roads, drains and water distribution networks. These works are listed in article 44.1 of the Housing Code⁴³ (see Appendix 3). The rules governing these grants are set out in an order of 24 November 2005 (see Appendix 3)⁴⁴. However, local authorities must take the initiative in carrying out such work. In practice, this regional subsidy has **never been requested** for fitting out a site intended for Travellers.

Local authorities may also be able to obtain a subsidy from the French Community. The French Community's jurisdiction extends to the major part of the Walloon Region⁴⁵. An order of the French Community executive dated 1 July 1982, which is still in force, grants funds to provinces, municipalities, conurbations, federations and associations of local authorities and other subordinate authorities for the purchase, fitting out and extension of camping sites for "nomads" (not otherwise defined)⁴⁶. This funding may be combined with the subsidies granted by the Walloon Region for certain works and can cover up to 60% of the total costs incurred⁴⁷. Once again, however, it is left entirely to local authorities' discretion to decide whether to establish such sites. And as the authors of a study on the subject remark, this order seems to have largely remained a dead letter⁴⁸. Certain proposals by local authorities to create sites have subsequently been abandoned after pressure from local inhabitants⁴⁹. As a recent example, on 20 September 2010, the mayor of Charleroi stated that his city would not make a site available to Roma unless the Walloon Region made him do so. Yet proposals already existed to use a site on the joint border of the city of Charleroi and the municipalities of Courcelles and Pont-à-Celles to accommodate Travellers. But without Charleroi's participation, the two neighbouring authorities felt unable to develop the proposed site. The

⁴² ECRI, Report on Belgium, 4th monitoring cycle, 19 December 2008, § 119 p. 36

⁴³ Art. 44 § 2 of the Walloon Housing Code, as amended by art. 38 of the Walloon parliamentary decree of 15 May 2003 amending the Walloon Housing Code and article 174 of the Walloon Regional, Urban and Heritage Planning Code, Belgian Monitor, 1 July 2003.

⁴⁴ See articles 3 to 7 and 9 of the Walloon government decree of 24 November 2005 on regional aid to legal persons on the fitting out of blocks of dwellings, Belgian Monitor 29 December 2005.

⁴⁵ The nine German-speaking local authorities at the extreme east of the Walloon Region are the responsibility of the German-speaking Community not the French Community. In addition, the French Community exercises certain responsibilities in the territory of Brussels-Capital Region.

⁴⁶ Order of the French Community executive of 1 July 1982 setting out the conditions under which grants may be made to provinces, municipalities, conurbations, federations and associations of local authorities and other subordinate authorities for the purchase, fitting out and extension of camping sites for "nomads", Belgian Monitor, 10 September 1982.

⁴⁷ Article 5 of the order of the French Community executive of 1 July 1982. Its granting is subject to conditions. In the case of purchase subsidies, the land must be located in a hygienic environment and close to means of public transport offering access to schools, shops and other social contacts (art. 2.2). In the case of fitting out subsidies, to be eligible the work must include the provision of "easy" access for vehicles, links to water and electricity supplies, the provision of a septic tank, surfacing work, refuse collection and, even, the planting of trees and other vegetation (art. 3).

⁴⁸ G. Kensier and D. Deom, *op. cit.*, p. 6 et 7.

⁴⁹ ECRI, Report on Belgium, 4th monitoring cycle, 19 December 2008, § 120 p. 36

project was therefore abandoned⁵⁰ (see Appendix 6, press review, p. 96 "Charleroi n'a pas de terrain à offrir").

Another laudable measure was the establishment, in 2001, of the Travellers' mediation centre, an association grant-aided by the Walloon Region that sets out to promote dialogue between Travellers, public authorities and local inhabitants in the region. Despite its efforts though, the association has failed to secure an increase in the number of public residential or transit sites for Travellers⁵¹.

⁵⁰ C. Mathieu, "Charleroi n'a pas de terrain à offrir", *Le Soir*, 22 September 2010, see also appendix X.

⁵¹ See in particular *Les communes et la gestion du séjour des gens du voyage*, proceedings of a colloquy in Mons on 15 April 2008 organised by the Travellers' mediation centre, Mons, Publications of the University of Mons-Hainaut, 2010 (to be published).

ii. The situation in Brussels

In Brussels-Capital Region:

- There is **one small public residential site** in the municipality of Molenbeek. It is the municipality's property and can accommodate barely six families. However, the site is being closed. The existing inhabitants can remain there but no new occupants will be accepted.
- There are **no transit sites**. The only such site that existed in Brussels, in the Haren district of the city of Brussels municipality, was closed in 2006 and has not been reopened since. In January 2010 the Brussels municipal council decided to refurbish the site for Travellers' use by late 2010 or 2011, with a view to providing 21 pitches⁵².

As in the rest of the country, the authorities are not obliged to arrange for the provision or rental of *ad hoc* sites, for short periods as needs arise.

This means that only 6 of some 80 Traveller families living in Brussels have the possibility of staying on a public site⁵³. Most of these families therefore live on private residential sites managed by Travellers. But only a quarter of them have obtained the planning permission needed to use their land as a caravan site and some of these only for a limited period (see below, section 3). According to the previously mentioned report by the equal opportunities centre, the main private residential sites in the Brussels region are located in the municipalities of Anderlecht (four sites with a maximum capacity for 34 families), Neder-Over-Heembeek (one site, with capacity for 20 families) and Haren (two sites, with a maximum capacity for 8 families)⁵⁴. However, the local authorities tolerate the presence of Travellers on these private residential sites without planning permission because they have lived there for a long time do not cause any trouble. Nevertheless, the authorities could easily decide to evict them without warning.

There also some fifty families who for several years have been travelling in the area around Brussels. They are mainly persons who have lost their place in Brussels-Capital Region and have been unable to find another one.

Since the Haren site closed in 2006, there have no longer been any public transit sites in Brussels. On 20 February 2004, the Brussels parliament passed a resolution calling for the establishment in the region of several transit sites for Travellers⁵⁵. However, no further action

⁵² See *Le Soir*, 13 January 2010.

⁵³ This figure does not include travelling showpeople. See the memorandum on the site situation of Travellers in Brussels-Capital Region, published in December 2006 by the non-profit organisation le Foyer, which is particularly concerned with the question of Roma and Travellers, available on http://www.foyer.be/IMG/pdf/Website_Link_Situatie_WWT_in_het_BHG_0612.pdf (05.08.2010). The information taken from this memorandum has been supplemented by an interview with one of Le Foyer's employees on 05.08.2010.

⁵⁴ Housing Conditions of Roma and Travellers, Belgium Raxen National Focal Point, Centre for Equal Opportunities and Opposition to Racism, March 2009, p. 26. See for more details the extract from this report which appears as an appendix.

⁵⁵ The national Travellers committee itself considers that it is preferable to spread nomads over several sites rather than concentrate them in one place, particularly to avoid "frictions" (motion for a resolution of the Council of

has been taken. For a certain period, the office of the minister of defence made a military site at Neder-over-Heembeek available for Travellers' use during the summer on a provisional basis. However, in 2007 a major social housing project put an end to this arrangement. Certain families that were forced to leave this site now regularly use, without permission, an undeveloped municipal site also situated in Neder-over-Heembeek. In May 2010, the municipality's deputy mayor responsible for green spaces announced his attention of sowing mustard plants on the site to prevent Travellers from stopping there⁵⁶ (see Appendix 6, press review, p. 5 "Liever onkruid dan zigeuners ?", p.8 "Moutarde: B. Mampaka désavoué par F. Thielemans"). The result is that Traveller families with an itinerant lifestyle are forced to avoid Brussels or to stop somewhere without permission, thus risking eviction.

Brussels-Capital Region does not give any financial assistance with setting up sites for Travellers⁵⁷.

iii. The situation in Flanders

Of the country's three regions, Flanders has been the most active in organising places for Travellers and encouraging local authorities to provide sites for that purpose.

Firstly, Flemish policy on ethnic and cultural minorities includes Travellers (woonwagenbewoners) as one of the target groups. The 1996 and 2004 strategic plans on the integration of minorities each had an entire chapter on Travellers and the problems of parking their caravans. In 2004, the government announced plans for 750 additional residential pitches (there were 400 in 2004) and 500 new transit pitches.

A joint departmental committee (*Vlaamse Woonwagencentcommissie*) was set up to co-ordinate and encourage measures and initiatives for achieving the action plan's objectives.

The qualitative needs of and quality standards for residential and transit sites were drawn up by the Flemish government in 1998. These apply to all new or re-equipped public sites. A brochure entitled *Wonen op Wielen*, 2001 (literally living on wheels) has been sent to all the local authorities and other bodies concerned. It was revised in 2010 to make it a genuine handbook for establishing public and private sites.

The defined qualitative needs of and quality standards for sites are included in the urban planning guidelines at regional and provincial levels. There are criteria for their application. As a result of these plans, several municipalities have established or identified sites.

In addition, under the Flemish government order of 1994, amended in 2000, on the financing of sites for Travellers⁵⁸, the Flemish Community grants local authorities subsidies of up to 90% of the cost of acquiring, upgrading or extending caravan camping sites for Travellers⁵⁹.

Brussels-Capital Region on the establishment of several transit sites for Travellers, report by the regional and urban planning and land use committee, Doc. Cons. Brux.-Cap., sess. ord. 2003-2004, no A-464/2, p. 15).

⁵⁶ The information is reported on the site of the Belgian broadcasting corporation: <http://www.rtbf.be/info/regions/bruxelles/de-la-moutarde-pour-repousser-les-gens-du-voyage-215883> (last visited 06.08.10). The mayor of the municipality concerned (City of Brussels) has disavowed his deputy mayor but the latter has confirmed his intention to plant mustard on the site: <http://www.rtbf.be/info/regions/bruxelles/moutarde-b-mampaka-desavoue-par-f-thielemans-218201> (last visit 06.08.10).

⁵⁷ Though the subsidies granted by the French Community (see below) may be requested by municipalities in the Brussels region.

Flanders also has an equivalent to Wallonia's Travellers' mediation centre, *the Vlaams Minderhedencentrum* (Flemish minorities centre, which monitors Flanders' minorities policy). In addition, a few regional integration centres advise and support provinces and municipalities on the question of improving Travellers' situation, with first priority going to problems associated with caravan life.

These measures all promote the establishment of new sites for Travellers. However the objectives set in the 1996 and 2004 strategic plans are far from being achieved. For example, fewer than 100 places on residential sites were created between 1997 and 2010, compared with the 750 laid down in the plan. Moreover, as in the rest of the country, the authorities are not obliged to arrange for the provision or rental of *ad hoc* sites, for short periods as needs arise. So despite the Flemish authorities efforts, **the number of available pitches for Travellers residing in or passing through Flanders is still largely inadequate**. In the Flemish Region there are:

- 29 public residential sites with a total of 468 pitches;
- 4 public transit sites with a total of 78 pitches⁶⁰.

The **four transit sites** are clearly insufficient to meet the needs of some 400 families who spend at least part of the year in Flanders. According to the estimates of those working in the field, the 78 available pitches **do not cover more than 20% of needs** (see Appendix 6, press review, p. 11 "Des Tziganes installés à Audenarde doivent partir mercredi après-midi"; p. 14 "700 zigeuners willen Nieuwpoort bekeren", p. 15 "Invasie van zigeuners zetpolderdorp op stellen", p. 16 "Dorp overromperd door 400 zigeuners", p. 18 "Polderbewoners vs. Zigeuners", etc.).

Meanwhile the 468 pitches available on residential sites cover barely 50% of needs⁶¹. It is estimated that some 900 Traveller families are looking for a residential site in Flanders. This means that 450 families cannot find a place on the public sites. Most of them have installed their caravans on private sites without the required planning permission. They therefore live under the constant threat of eviction⁶². Only two private residential sites have the necessary planning permission.

The steps taken by the Flemish authorities are therefore still insufficient to secure for Travellers the effective enjoyment of their rights under Article 16, without the discrimination prohibited by Article E. One of the factors limiting the extent of regional government action is the fact that decisions to establish sites for Travellers or arrange for the provision or rental of *ad hoc* sites are a local authority responsibility. This some refuse to do. And in Flanders, as

⁵⁸ Flemish government order of 12 May 2000 on grant aid for the acquisition, fitting out, upgrading and extension of camping sites for itinerants, (Belgian monitor, 10 August 2000).

⁵⁹ Local authorities, public social action agencies, housing associations and provinces are all eligible for such funding. See the brochure produced by the Flemish government, *Wonen op Wielen, Woonwagenterreinen aanleggen en beheren, een handleiding* (written by A. Rieren and D. Beersmans), Agentschap Binnenlands Bestuur, January 2010. The provinces of Limburg and West Flanders have also decided to grant local authorities a subsidy to cover the remaining 10% of the cost not covered by the Community.

⁶⁰ See the list of existing sites in Flanders, with the number of plots on each of them, appended to this complaint.

⁶¹ See G. Rulens, "Les gens du voyage dans nos villes", *Échos log.*, 2006, no. 1, p. 35.

⁶² Housing Conditions of Roma and Travellers, Belgium Raxen National Focal Point, Centre for Equal Opportunities and Opposition to Racism, March 2009, p. 25.

in Wallonia, it is also sometimes the case that proposals to set up caravan sites for Travellers are abandoned under pressure from local inhabitants who are hostile to members of these communities settling in their area⁶³.

The inadequate number of public residential, transit and *ad hoc* sites throughout Belgium represents a breach of Article 16 of the Charter, taken in isolation or in combination with Article E.

2. The failure of planning legislation to take account of Travellers' specific circumstances

2.1. The Committee's principles

The Committee has ruled that:

"though state authorities enjoy a wide margin of appreciation as to the taking of measures concerning town planning, they must strike the balance between the general interest and the fundamental rights of the individuals, in the particular case the right to housing and its corollary of not making individual becoming homeless"⁶⁴.

In particular, the criteria for determining whether sites or dwellings are occupied illegally should not be unduly broad⁶⁵. Moreover, when groups occupy property in breach of planning regulations, the legislation under which the occupation of such sites or buildings might be legalised must not pose conditions that are disproportionate, given the situation of the families concerned⁶⁶. In the *ERRC v. Bulgaria* case, the Committee found a violation of Article 16, taken in combination with Article E, because Roma families were disproportionately affected by the legislation limiting the possibility of legalising illegal dwellings⁶⁷. The FIDH considers that the same conclusion must be reached in the case of Travellers living in Belgium.

The European Court of Human Rights has stated that:

"The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases."⁶⁸

The state is therefore obliged to take account of the distinctive aspects of Travellers' lifestyles in its planning legislation and in individual decisions, so that they can continue to live according to their traditions and retain their cultural identity. It is particularly necessary to consider Travellers' specific circumstances when they ask for planning permission to install their caravans on private property because there are insufficient public sites to accommodate them.

⁶³ ECRI, Report on Belgium, 4th monitoring cycle, 19 December 2008, § 120. See also the press review.

⁶⁴ *ERRC v. Bulgaria* 18 October 2006, complaint 31/2005, § 54

⁶⁵ *ERRC v. Greece* 8 December 2004, complaint 15/2003, § 51

⁶⁶ *ERRC v. Bulgaria* 18 October 2006, complaint 31/2005, § 55

⁶⁷ *Ibid*, § 57.

⁶⁸ Eur Court H.R., *Connors v. United Kingdom* judgment, 27 August 2004, § 84, referring to Eur Court H.R. *Buckley v. United Kingdom*, § 96.

2.2. The situation in Belgium

Planning legislation and rules have various forms of impact on Travellers' traditional way of life:

- When they establish caravan sites for Travellers, public authorities have to comply with regional land use plans. These are based on a system of zoning, with each zone in the region legally designated for specific uses, such as residential, leisure, public services and works, agriculture, forestry, green belt and so on.
- Persons wishing to install their caravan on a site which they own, in order to reside there, must obtain planning permission. This is granted by the local authority, which must determine, among other conditions, whether such a use of the site is compatible with the land use plan.
- Travellers with an itinerant lifestyle who look for places to stop for short periods do not need formal planning permission. However, such a use of the land is still subject to the zoning regulations and must be compatible with existing plans.

The planning legislation and regulations currently in force in Belgium were enacted without taking account of Travellers' distinctive way of life or any assessment of their needs. The establishment of residential or transit sites for Travellers, the granting of planning permission to install a caravan on a permanent basis or the occasional installation of a caravan on a piece of land should not, in principle, be incompatible with the designated use of certain of the zones identified in the regional land use plans. However, the local authorities, meaning the municipalities, retain a considerable margin of discretion in enforcing the planning regulations. Firstly, they can add further details to the land use plans in the form of additional constraints to those defined at regional level. Moreover, it is the municipal authorities who decide on applications for planning permission based on a range of criteria. In the absence of any specific reference to Travellers in the planning legislation, the municipalities have the final say on how far their traditional way of life is consistent with the planning regulations. In practice, local authorities are often fairly hostile to this form of dwelling⁶⁹. We have already seen in the previous section that many of them refuse to create residential or transit sites in their area or make *ad hoc* sites available for short periods. This unfavourable attitude is also reflected in the policy on granting planning permission. Travellers who want to reside in their caravans on private property are almost systematically refused the necessary authorisation. Moreover, as an exception to the general rules, planning permission for the installation of residential caravans is for a limited period in Brussels-Capital Region and may also be in the other two regions, and often is in practice. This means that when individuals obtain such permission, the local authorities retain the option of not renewing it when it expires, an option that is actually used. The result is that Travellers' opportunity to reside on private land, when they have sufficient financial resources to purchase or rent it, is largely theoretical and can in no way make up for the inadequate number of public sites.

⁶⁹ See, in particular, Ph. Versailles, "L'habitat nomade. Voyage au pays des lois", *Observatoire, Dossier spécial – La réalité des Gens du voyage*, no. 38, 2003, p. 36.

By failing to take the needs of Travellers into consideration either in the planning legislation itself or in how it is applied, the Belgian authorities are failing in their obligation under Article 16 to "promote the provision of an adequate supply of housing for families" and to "take the needs of families into account in housing policies"⁷⁰.

i. The establishment of public sites

The inadequate number of public caravan sites that Travellers can use has already been highlighted (see section 1). At first sight, land use planning legislation does not create any insurmountable obstacles to the development of such sites. They may be considered to be developments or facilities in the public interest ("*aménagements communautaires*"⁷¹ or "*équipements d'intérêt collectif*"⁷²), which the land use plans authorise public authorities to establish in certain zones and under certain conditions specified in the planning codes. In the Flemish Region caravans are considered to be dwellings (see below, point 4), so sites for Travellers' use must be established in residential zones. The Flemish Region's rules on the provision of sites state that when they have more than five pitches they should preferably be located in urban areas or, in rural areas, the main village⁷³. However, the land use planning legislation makes no provision for encouraging the establishment of public sites for Travellers, whether residential or transit. And as has already been seen, only a minority of municipalities in Belgium have actually created such sites.

ii. The need for planning permission to install a caravan on a long-term basis

In each of the three regions, the legislation makes planning permission an explicit requirement before a caravan to be used as a dwelling can be installed on a particular site⁷⁴. Applications for planning permission must be submitted to the municipal authorities. The elected executive body (mayor and deputy mayors) rules on such applications.

A number of requirements must be met before planning permission can be granted. The authorities must first ensure that the authorisation is lawful, that is that it is compatible with planning regulations and other administrative procedures, with the principle of equality⁷⁵, with land use plans, and even certain draft plans⁷⁶, and with building permits already issued. Finally, the decision must be compatible with the "appropriate development" criterion, at least in the Flemish and Brussels-Capital Regions⁷⁷.

It should be noted that in the Brussels-Capital Region, as an exception to the general rules, planning permission for the installation of caravans is always for a fixed period⁷⁸. In the

⁷⁰ ERRC v. Greece, 8 December 2004, complaint 15/2003, ERRC v. Bulgaria 18 October 2006, complaint 15/2003, § 16.

⁷¹ See articles 26 and 27 of the Walloon regional, land use, heritage and energy planning code (hereafter the planning code).

⁷² See articles B.1.5 and B.2 of the Brussels-Capital Region land use plan (*Belgian Monitor* 14 June 2001).

⁷³ See Flemish Region's regional planning code, 2004.

⁷⁴ For the Walloon Region see article 41, §1, 6° of the planning code, for the Flemish Region see article 4.2.1., 5°, c) of the regional planning code of 15 May 2009 (*Belgian Monitor* 20 August 2009), for Brussels-Capital Region see article 98, §1, 10°, c) of the regional planning code (*Belgian Monitor* 26 May 2004).

⁷⁵ J. Van Ypersele, B. Louveaux, *Le droit de l'urbanisme en Belgique et dans ses trois régions*, 2nd edition, Brussels, Larcier, 2006, pp. 329-330.

⁷⁶ J. Van Ypersele, B. Louveaux, *op. cit.*, p. 335.

⁷⁷ J. Van Ypersele, B. Louveaux, *op. cit.*, pp. 342-350.

⁷⁸ In accordance with article 102 of the Brussels planning code, it is the government that has introduced this exception. See the government decree of the Brussels-Capital Region of 29 January 2004 on fixed-term planning

Flemish and Walloon Regions, the municipal authorities have legal authorisation to issue planning permission for caravans for a fixed term only⁷⁹. This means that even when Travellers do succeed in obtaining planning permission, this might not be renewed when it expires.

permission (*Belgian Monitor* 24 March 2004); Brussels-Capital Region circular no. 5, on fixed-term planning permission, 4 March 1993, *Belgian Monitor* 20 March 1993 and E. Brewaeys, "Stedebouwen planning in het Brussels Hoofdsedelijk Gewest", *T.R.O.S.*, 1996, no 4, pp. 147-148.

⁷⁹ Article 41, § 3 of the Walloon planning code. Article 4.6 of the Flemish regional planning code (15 May 2009) authorises the government to lay down the arrangements governing the issuing of fixed term planning permission.

1. Compliance with regional plans

Planning permission can only be granted if caravans are parked in a suitable zone.

In the **Walloon Region**, two main types of zone are identified in the sector plans drawn up at regional level and expanded on in the local land use plans: urbanised or residential zones, that is suitable for habitation, and non-urbanised, and therefore non-habitable zones⁸⁰. Since caravans serve as dwellings for Travellers, it would appear that the installation of a caravan on a permanent basis ought to be acceptable in urban areas mainly intended for residence⁸¹ and in habitable rural areas, that is ones mainly intended for residence and agriculture⁸². On the other hand, agricultural and forestry zones, green belts, natural areas and parklands are not earmarked for residential uses and are therefore not, in principle, habitable⁸³. However in park areas in excess of five hectares, the government may authorise certain constructions⁸⁴.

Although the installation of caravans serving as dwellings appears at first sight to be compatible with urban and rural habitable zones, local authority practice is critical, since it is they who interpret the sector plans⁸⁵. In response to applications for planning permission, the municipality decides whether the traditional form of dwelling of Travellers is compatible with the sector plans. Yet, studies show that local authorities are very unsympathetic to this form of dwelling. Many consider that the installation of caravans is incompatible with the designated types of land use of urban and rural residential zones⁸⁶. In many cases, therefore, the practical application of the planning regulations leads to the exclusion of caravans from residential areas.

Local authorities tend to confine caravans to areas defined as "leisure zones". Yet, these zones are mainly set aside for recreational and tourism facilities⁸⁷. Caravans that are relegated to leisure zones must be tourism facilities, and intended for recreational use. In one of its decisions, the *Conseil d'Etat* has emphasised that permanent dwellings are the exception in

⁸⁰ J. Van Ypersele, B. Louveaux, *Le droit de l'urbanisme en Belgique et dans ses trois régions*, 2nd edition, Brussels, Larcier, 2006, p. 135.

⁸¹ Article 26.1 of the Walloon regional, land use and heritage planning code, Belgian Monitor 25 May 1984 (hereafter the planning code).

⁸² Article 26.1 of the planning code.

⁸³ J. Van Ypersele, B. Louveaux, *op.cit.*, p. 137. In agricultural zones, only agricultural workers' dwellings and farm-based tourism facilities that are an integral part of the building are acceptable (Art. 35. 2. of the planning code). The only acceptable constructions in forest zones, which are intended for forestry and the maintenance of the ecological balance, are ones that are essential for forestry work and the initial processing and the surveillance of the wood. Hunting and fishing lodges are acceptable, so long as they cannot be fitted out, even temporarily, for residential or commercial uses (Art.36 of the planning code). Dwellings are not allowed in natural areas or green belt (Art. 37 and 38 of the planning code).

⁸⁴ Art. 39 of the planning code.

⁸⁵ In the event of a refusal by the municipal authority, the regional authority is empowered to rectify the interpretation made and grant planning permission. See F. Tulkens, "Les recours administratifs", in *La réforme du droit wallon de l'aménagement du territoire et de l'urbanisme*, Brussels, Bruylant, 1998, pp. 315-335.

⁸⁶ P. Versailles, "L'habitat nomade, Voyage au pays des lois", *Observatoire, Dossier spécial – La réalité des Gens du voyage*, n°38, 2003, p. 36. See also the passages describing the local authority decision in the *Conseil d'Etat* judgments of 25 April 2002, no. 106.093, and 16 December 2003, no. 126.485, *Catteau et Lentz c. Commune de Hotton*. In these judgments, the *Conseil d'Etat* set aside a decision that a caravan installed in a rural residential area was uninhabitable on the grounds that the decision was based solely on the grounds of the incompatibility of the caravan with article 84 of the planning code.

⁸⁷ Article 29 of the Walloon planning code.

leisure zones, given the goals of the sector plans⁸⁸. Article 29 does admittedly authorise dwellings and public service facilities and utilities, but these must complement and be accessory to the function of the leisure zone. Leisure zones must also be situated within the boundaries of an area covered by a planning and environmental report previously approved by the government⁸⁹. This option is not therefore suited to Travellers' situation.

The situation in **Brussels-Capital Region** is fairly similar to that in Wallonia. In principle, parking a caravan on a site for use as a permanent dwelling would appear to be compatible with the purpose of residential zones, as defined in the regional land use plan (the regional plan)⁹⁰. Housing is also authorised in "mixed zones" so Travellers should, in principle, be able to settle there as well⁹¹. Dwellings can also be constructed in public services and works zones, subject to the conditions specified in article E.8.2 of the regional plan. However, permanent dwellings are not usually permitted in green belt or sport and leisure zones⁹², which cannot therefore accommodate caravans. Nevertheless, as in Wallonia, local authority practice is generally hostile to Travellers. Planning applications to install a caravan on a site, even in a residential zone, are frequently rejected. In practice, most Traveller families in Brussels-Capital Region live on private pitches without planning permission (see section 1).

In the **Flemish Region**, caravans are deemed to be dwellings and must be installed in residential zones. In practice, though, planning applications for caravans are almost systematically refused by the local authorities. They usually base these decisions on their authorisation to decide whether the envisaged use of the site is compatible with the appropriate development criterion.

⁸⁸ C.E., judgment of 16 July 2009, no 195.354, *Devulf v. Walloon Region*. The judgment concerned upgrading work on a caravan in a leisure zone. Planning permission was granted for dressing the caravan in wood, but not for the other work carried out by the owner. She refused the proposed transaction and took her case, unsuccessfully, to the *Conseil d'Etat*.

⁸⁹ Art. 29 of the planning code.

⁹⁰ This plan is supplemented at municipal level by local land use plans.

⁹¹ We should also note that dwellings can be constructed in public services and works zones, subject to certain conditions.

⁹² F. 13 of the regional plan.

2. The "appropriate development" criterion

In the Flemish and Brussels-Capital Regions, planning applications can be refused by the local authorities on the grounds that they do not satisfy the appropriate development criterion⁹³. This is a flexible concept that is not exempt from subjectivity⁹⁴. It leaves local authorities considerable scope for refusing applications from individuals to use their land in a way that does not correspond to the authorities' idea of what constitutes appropriate development. This ground thus enables municipalities to refuse to authorise the installation of residential caravan when this form of land use does not match their concept of appropriate development⁹⁵.

3. Other conditions

In the Flemish Region, planning applications must satisfy the formal conditions laid down in the Flemish government decree of 28 May 2004⁹⁶. They must include an architect's description of the purpose of the application and the spatial context of the planned works. They must also describe the real aspect and the situation of the location where the work is planned, the zoning data relating to the property, the compatibility of the application with the legal and spatial context and the integration of the work into the environment⁹⁷. These are onerous conditions to meet and inappropriate in the case of Travellers who simply wish to park a caravan on a site. In Wallonia, an architect's opinion is not required for this sort of application⁹⁸.

4. The consequences of lack of planning permission

The planning permission requirement means that keeping caravans on a site without such authorisation is an offence that is sometimes accompanied by criminal sanctions, and these have become harsher over the years⁹⁹. Culpable failure to put an end to unlawful works is an offence under planning law¹⁰⁰. When planning offences have been committed, the authorities are entitled to demand, where appropriate, the immediate closure of the site and its return to its original state¹⁰¹.

⁹³ J. Van Ypersele, B. Louveaux, *op. cit.*, pp. 342-350. In Brussels-Capital Region the relevant official can only apply this principle in a limited number of cases.

⁹⁴ F. Haumont, *L'urbanisme, Région Wallonne*, Brussels, Bruylant, 1997, p. 658.

⁹⁵ P. Versailles, *op.cit.*, p. 37.

⁹⁶ Flemish government decree on the composition of planning applications, 28 May 2004 (*Belgian Monitor* 26 November 2004).

⁹⁷ Articles 10 and 11 of the Flemish government decree on the composition of planning applications, 28 May 2004.

⁹⁸ Art. 1, 1°, Walloon Regional executive decree specifying the works and decisions for which the contribution of an architect, or a building permit and the involvement of an architect, or a positive opinion of the senior government official responsible for planning matters, are not obligatory, 23 February 1983 (*Belgian Monitor* 9 April 1983).

⁹⁹ See Walloon Regional Decree of 24 May 2007 on planning law offences, *Belgian Monitor* 18 June 2007 and J.-M. Secretin, "Le décret du 24 mai 2007 relatif aux infractions et aux sanctions en matière d'urbanisme", in *Actualités du droit de l'aménagement du territoire et de l'environnement, Plans et Permis*, M Delnoy (ed), Brussels, Anthemis, 2009, pp. 347-373.

¹⁰⁰ Even life tenants of caravans must, despite the limited nature of their rights in rem, put an end to the offence caused by the object of the life tenancy. Cass. 21 February 2006, *Amén.*, 2007, liv. 1., p. 32.

¹⁰¹ This requirement does not constitute an abuse of law. Cass. 7 February 1994, *Arr. Cass.*, 1994, p. 701.

The authorities may also order the demolition of property installed illegally, including a caravan parked on a site, when there is no prospect of rectifying the situation. In the case of a residential caravan and in an isolated decision, the *Conseil d'Etat* has called for caution in using such measures. It considered that the destruction of a residential caravan that the applicants wanted to preserve and which they planned to make their future residence was an infringement of the right of ownership and constituted serious detriment that would be difficult to rectify¹⁰². But this is only an isolated judgment. The authorities are still empowered to destroy caravans that are parked without planning permission. Yet the destruction of their caravan has drastic consequences for the Travellers who live in them, since it leaves them homeless.

The fact that in Wallonia and Brussels, caravans are not recognised as dwellings serves to reduce the legal protection of persons living in such environments. They cannot claim the protection of the right to housing, which is embodied in the Belgian Constitution (see below, section 4).

Finally the installation of a caravan without planning permission is also an offence under Articles 1382 and 1383 of the Civil Code. One of the consequences of this is that the owner of such a caravan must himself bear the cost of any damage to it resulting from someone else's negligence, for example a falling tree¹⁰³.

iii. The occasional use of sites to park caravans

Travellers with an itinerant lifestyle do not, in principle, need planning permission in any of the three regions to park their caravans on sites on a temporary and occasional basis. The occasional use of a site to park a caravan is not in principle subject to planning permission¹⁰⁴. However, such temporary occupation must be compatible with the land use plans. In the Flemish Region in particular, the temporary parking of caravans is restricted to recreational and tourism zones when the caravan really is a leisure and recreation vehicle and to residential zones in the other cases¹⁰⁵. Local authorities can therefore prevent the temporary siting of caravans by Travellers on private land by arguing that this land use is incompatible with the designated purpose of the area concerned.

Planning permission is also required to operate a camping site for persons who camp occasionally for recreational purposes. This is a community responsibility¹⁰⁶. In the French and German-speaking communities the relevant authorisations are camping permits. In

¹⁰² By ordering demolition by the municipality, the mayor's order changes the situation on the ground in an irreversible and immediate manner and prevents the applicants from maintaining in its present state the property which they planned to make their future residence (C.E. (réf.), judgment of 25 April 2002, no. 106.093, *Catteau and Lentz v. Commune de Hotton*, p. 10)

¹⁰³ Brussels (1st ch.), 19 May 2003, *R.W.*, 2006-2007, liv. 11, p. 478. See D. Simoens, "Een illegaal opgestelde caravan moogt u niet beschadigen", *R.G.D.C.*, 1999, no. 4, pp. 253-255. On the other hand, when the caravan is situated in an appropriate location according to the planning regulations, its owner must be compensated for damage to it resulting from the negligence of others. See Antwerp, 30 June 2004, *NjW*, 2004, no 94, pp. 1423-1426.

¹⁰⁴ Art. 84, §1, 13°, b of the Planning Code See: F. Haumont, "Urbanisme / Région Wallonne, no. 1496 to 1544 and M Bauwens, "Kampeert – en woonwagenterreinen en weekendverblijven: het "niet traditioneel wonen" en de Ruimtelijke Ordening", *De Gem.*, 1996, p. 491 ff.

¹⁰⁵ J. Van Ypersele, B. Louveaux, *op. cit.*, p. 143.

¹⁰⁶ See Flemish Council decree of 10 July 2008 on tourist accommodation, French Community decree of 4 March 1991 on the conditions governing the operation of camping and caravanning sites and the German-speaking Community decree of 9 May 1994 on camping and camping sites.

principle, camping sites are only allowed in leisure, tourism or recreation zones. However, these regulations are concerned with occasional caravan use for recreational purposes. In the French and German-speaking Community decrees, Travellers are explicitly excluded from the categories of persons for whom such sites are intended. Thus article 1 of the French Community decree of 4 March 1991, which is the same as article 1 of the its German-speaking Community equivalent, defines camping as the use of tents, caravans and similar forms of shelter as a means of accommodation by persons other than travelling showpeople or nomads¹⁰⁷.

Conclusion

The failure of legislation and urban planning to take account of Travellers' needs, coupled with the policy of local authorities in implementing this legislation, constitutes a further violation of Article 16 of the Charter, considered in isolation and in conjunction with Article E.

3. The disproportionate use of evictions against Travellers and the inadequacy of the relevant safeguards

3.1. The Committee's principles

Evictions are a particularly sensitive issue and plunge Travellers' families into a state of permanent vulnerability, instability and worry.

The Committee has ruled that although the illegal occupation of sites or dwellings might justify the eviction of the unlawful occupants the criteria for determining what constitutes illegal occupation must not be unduly wide¹⁰⁸. In addition:

"a person or a group of persons, who cannot effectively benefit from the rights provided by the legislation, may be obliged to adopt reprehensible behaviour in order to satisfy their needs. However, this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights."¹⁰⁹

The inadequate number of public residential, transit and *ad hoc* sites accessible to Travellers has to be borne in mind when determining whether the eviction of members of this community from sites they are occupying in breach of planning regulations is compatible with Article 16 of the Charter.

¹⁰⁷ Article 1 of the French Community decree of 4 March 1991 on the conditions governing the operation of camping and caravanning sites and the German-speaking Community decree of 9 May 1994 on camping and camping sites. The Flemish Community decree specifies that it applies to accommodation for "tourists", defined as persons who for the purposes of leisure, relaxation, personal development, their occupation or business visit or stay in an environment other their day-to-day one

¹⁰⁸ ERRC v. Bulgaria § 51; ERRC v. France, 19 October 2009, §§ 67 f.

¹⁰⁹ ERRC v. Bulgaria, § 53.

The Committee has also ruled that evictions must be based on rules that are sufficiently protective of the rights of the persons concerned and carried out in accordance with these rules¹¹⁰. In particular, evictions cannot leave people homeless¹¹¹. "The law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided.¹¹²" More generally, "it is the responsibility of the state to ensure that evictions, when carried out, respect the dignity of the persons concerned even when they are illegal occupants, and that alternative accommodation or other compensatory measures are available.¹¹³" The state must also take measures to prevent evictions¹¹⁴. These principles must apply to Travellers' dwellings. In considering national reports, the Committee "examines in particular whether Roma families enjoy such protection [regarding housing] in practice. It considers *inter alia* whether evictions that do not comply with the relevant procedural safeguards are prohibited.¹¹⁵"

The need for the power to evict persons from their accommodation to be accompanied by appropriate safeguards has also been recognised by the European Court of Human Rights. In the *Connors* case (27 May 2004), it found that the United Kingdom had violated Article 8 of the European Convention on Human Rights, because the applicant, who had been evicted from the public caravan site for gypsies where he rented a plot, had not been able to challenge the eviction order in the courts, because these sites were covered by legal rules that meant that those living there did not enjoy the safeguards available to persons in normal housing or on private sites¹¹⁶. The Court is therefore extremely critical of the fact that persons living in caravans may not have the same legal safeguards as those governing other forms of tenancy. In the *McCann v. United Kingdom* judgment, which concerned the applicant's eviction from local authority housing, the Court stated that "any person at risk of [losing his or her home] should in principle be able to have the proportionality of the measure determined by an independent tribunal¹¹⁷". In other words, the Court considers that any eviction from a dwelling must be subject to review by an independent court¹¹⁸.

3.2. The situation in Belgium

¹¹⁰ ERRC v. Bulgaria, § 51.

¹¹¹ ERRC v. Bulgaria, § 57.

¹¹² ERRC v. Italy, complaint 27/2004, decision on the merits of 7 December 2005, § 41.

¹¹³ ERRC v. Bulgaria, §56. See also European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, complaint No. 39/2006, decision on the merits of 5 December 2007, §163.

¹¹⁴ International Movement ATD Fourth World v. France, complaint 33/2006, decision on the merits of 5 December 2007 and C.E.D.S., European Federation of National Organisations Working with the Homeless v. France.

¹¹⁵ ECSR, statement of interpretation, Conclusions 2006, Volume I (Albania, Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Italy, Lithuania, Moldova, Norway, Portugal, Romania, Slovenia, Sweden), §25.

¹¹⁶ Eur Court H.R. *Connors v. United Kingdom*, 27 May 2004.

¹¹⁷ Eur Court H.R. *McCann v. United Kingdom*, 13 May 2008, § 50: "The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end."

¹¹⁸ N. Bernard, "Pas d'expulsion de logement sans contrôle juridictionnel – le droit au logement et la Cour européenne des droits de l'homme", *Rev. trim. dr. h.*, 2009, no. 78, pp. 542-550.

There is no law in Belgium governing the eviction of Travellers occupying private or public sites without authorisation (see press review p.64 "Niet welkom in Nieuwpoort – weg uit Wingene – doorgestuurd in Dour Waar nu naartoe ?").

In practice, though, these families are apparently regularly evicted, unexpectedly and without prior warning, sometimes between 11 pm and 6 am¹¹⁹, and with no consideration for the elderly or sick persons or very young children who might be in the household. It goes without saying that such practices prevent those concerned from benefiting from all their economic and social rights, in particular access to education, health and employment. They are seriously detrimental to elderly persons, to children, whose stability of life and regular sleep are critical for their education, and adults for whom the absence of proper rest is harmful to their working lives.

The legal safeguards against sudden evictions in Belgium are mainly concerned with tenants. They cannot be evicted from their dwelling until the owner has applied to the district court for an eviction order, which if granted must then be served by a bailiff before it can be implemented with the assistance of law enforcement officials¹²⁰. However, the majority of Travellers are not tenants but the owners of their caravans. They therefore lack appropriate legal protection when, because of the authorities' failure to act, they are forced to settle on sites without authorisation.

Local authorities may rely on various legal provisions to order the eviction of families occupying a site without permission. In fact, evictions are frequent (see below, section 3). Under a royal decree of 1 December 1975¹²¹, police regulations prohibit the parking of motor vehicles that are unfit to drive on the public highway for more than 24 or 48 hours. Beyond this period, caravans parked without authorisation within the boundaries of the local authority may be evicted. Secondly, when a caravan is installed on a site without planning permission the authorities may require the owner to remove it and to return the site to its original state (see section 2). Finally, evictions may also be ordered on the basis of public health or public safety regulations. Failure to comply with such provisions may also entail administrative sanctions (see Appendix 6, press review, p. 45 "Wie zigeuners toch toestemming geeft op privéterrein, riskeert 5 jaar en 2,2 miljoen boete", p. 47 "Nooit werden we zo slecht onthaald als bij jullie. 600 zigeuners moeten deze ochtend om 10 uur de weide in Wingene verlaten").

Travellers therefore have no protection against evictions ordered by the local authorities when they are occupying sites unlawfully or against demolitions or evictions ordered by the planning authorities.

The failure to provide adequate safeguards against the eviction of Travellers is a further violation of families' right to protection, as embodied in Article 16 of the Charter.

¹¹⁹ See the dossier drawn up by MRAX, in collaboration with the national Travellers committee, made public at the conference of 22 March 2010.

¹²⁰ The occupants of dwellings which they neither own nor rent may also seek protection from non-formal evictions when they can reasonably claim that they have a right to housing, in opposition to the other party's right of ownership. In practical terms, their eviction is then made subject to certain conditions, such as its deferral or being conditional on the offer of alternative accommodation.

¹²¹ Art. 27.5.1 of the royal decree of December 1975 establishing the general police regulations on road traffic and the use of the public highway, Belgian Monitor 9 December 1975.

Moreover, given the **inadequate number of public** residential, transit or *ad hoc* sites available to Travellers, their **eviction from land they are occupying without authorisation or in contravention of planning regulations when no alternative housing** is available must also be considered to be **in breach of Article 16 of the Charter**.

4. Failure to recognise caravans as dwellings

Article 23 of the Belgian Constitution establishes “the right to decent housing”. However, in the Walloon and Brussels regions, legislation excludes mobile dwellings from the legal concept of housing. This exclusion has several adverse effects on Travellers (see below), including the fact that it is impossible for them to rely on the constitutional protection of the right to housing.

In the Flemish region, however, caravans are legally recognised as dwellings. It should be stressed, however, that if mobile dwellings are included in the concept of housing then the statutory rules governing health, safety and living conditions, which were devised with traditional permanent housing in mind, have to be geared to this particular type of housing. Yet, in the Flemish region, the unsuitability of the rules on living conditions and health (for example with regard to the height of ceilings or insulation standards) may render this recognition ineffective as most caravans could be declared uninhabitable under these rules.

i) The situation in Wallonia and Brussels

In the Walloon and Brussels regions, housing policies are based on the assumption that dwellings are permanent, which has the effect of excluding mobile dwellings from the very concept of housing¹²².

In the Walloon region, article 1, 3°, of the Walloon Housing Code, as established by the Walloon parliamentary decree of 29 October 1998 (*Belgian Monitor*, 4 December 1998) defines housing as:

“buildings or parts of buildings structurally designed for the accommodation of one or more households”.

The Brussels Housing Code does not give a generic definition of the term “housing” but refers more specifically to “furnished housing”. Article 2, 11°, of the Order establishing the Brussels Housing Code of 17 July 2003 (*Belgian Monitor*, 9 September 2003) defines furnished housing as: “buildings or parts of buildings equipped fully or partly with furniture, designed for the accommodation of the buyer or tenant ...”¹²³. It is reasonable to draw the general conclusion from this wording that in Brussels law, housing is necessarily immovable in nature.

The result of these provisions is that in Wallonia and Brussels, caravans are not recognised in law as dwellings¹²⁴. This failure to recognise caravans as dwellings has several adverse effects on Travellers, who, in reality, genuinely do use their caravans as dwellings:

¹²² See, P. Versailles, “Logement et mobilité: la vie en habitat mobile”, *Le logement dans sa multidimensionnalité : une grande cause régionale*, ed. N. Bernard and C. Mertens, Namur, Ministry of the Walloon region, Études et documents collection, 2005, p. 85 et seq.

¹²³ Article 2, 11°, of the Brussels Housing Code established by the Order of the Council of Brussels-Capital region of 17 July 2003, *Belgian Monitor*, 9 September 2003, completed by the Order of the Council of Brussels-Capital region of 1 April 2004 completing the Order of the Council of Brussels-Capital region of 17 July 2003 establishing the Brussels Housing Code, *Belgian Monitor*, 29 April 2004, with our emphasis.

¹²⁴ See J.P. Verviers, 30 June 2000, *Échos log.*, 2000, p. 119 et seq., note L. Tholome.

- Travellers who live in a caravan cannot rely on Article 23 of the Constitution to attempt to gain better protection of their form of housing. In particular, they cannot rely on it when appealing against an eviction order.
- because Travellers' caravans are viewed in law as trailers or vehicles and not as dwellings, they can be removed for breach of the police regulations prohibiting parking in the same place for more than 24 or 48 hours.
- as caravans are not regarded as housing, they can be classed automatically as substandard housing, regardless of their state;
- when planning permission is requested for a site located in a residential area, the fact that caravans are not regarded as dwellings may prompt the local authorities to refuse permission on the ground that this land use is incompatible with the designated purpose of the area;
- Travellers who wish to improve or purchase a caravan are not entitled to the various housing benefits available (such as renovation subsidies) or to housing loans (and hence the advantageous conditions to which borrowers are entitled).

ii) The situation in Flanders

In 2001, the Flemish region decided to make express provision in its law for life in caravans. Since 2004, article 2, paragraph 1, 33°, of the Flemish Housing Code, as established by the Flemish parliamentary decree of 15 July 1997 (*Belgian Monitor*, 19 Aug 1997)¹²⁵ provides as follows:

“For the purposes of the Flemish Housing Code and its implementing decrees, the following definitions shall apply: ... 33° Caravan: dwelling, characterised by its flexibility and mobility, designed for permanent, non-recreational occupation”.

Accordingly, in contrast with Belgium's other two regions, in the Flemish region, caravans may be regarded in law as dwellings.

However, there is one outstanding anomaly: The Flemish authorities failed to revise their housing standards, which were established in 1998¹²⁶ before they recognised caravans as dwellings and hence only with traditional permanent dwellings in mind. Criteria relating to the height of dwellings, the presence of indoor sanitary facilities and insulation standards are particularly ill-suited to caravans. By way of comparison, separate standards¹²⁷ have been established for students' rooms. Yet, in all three Belgian regions, failure to comply with housing quality standards can result in a formal declaration that the sub-standard dwellings are unfit for habitation, whether

¹²⁵ Introduced by Art. 2, 5°, of the Flemish parliamentary decree of 19 March 2004, amending the decree of 15 July 1997 containing the Flemish Housing Code and the decree of 4 February 1997 establishing quality and safety standards for rooms and students' rooms (*Belgian Monitor*, 13 July 2004).

¹²⁶ Flemish government decree of 6 October 1998 on quality control, the right to pre-purchase and the right to social housing management, *Belgian Monitor*, 30 October 1998. See, for insulation standards: Decreet houdende eisen en handhavingsmaatregelen op het vlak van de energieprestaties en het binnenklimaat van gebouwen en tot invoering van een energieprestatiecertificaat en tot wijziging van artikel 22 van het REG-decreet, *Belgian Monitor*, 27 March 2007.

¹²⁷ Flemish government decree of 3 October 2003 establishing quality and safety standards for rooms and students' rooms, *Belgian Monitor*, 10 December 2003.

the occupier owns or rents them¹²⁸. Strict application of the quality criteria set out in the Flemish Housing Code would result in practice in the great majority of caravans being declared uninhabitable.

This observation has moreover been made elsewhere, in a report in 2006 by the Flemish Minority Centre (Vlaams Minderhedencentrum), which is a non-profit-making organisation, charged by the authorities to monitor policy on minorities in Flanders. The report finds that the housing quality criteria in the Flemish Housing Code are not geared to the specific circumstances of Travellers and recommends that special criteria are adopted as, otherwise, most caravans would have to be declared uninhabitable¹²⁹.

¹²⁸ See Articles 5, 3 to 4ter and 4 respectively of the Flemish, Walloon and Brussels Housing Codes. Accommodation, whether rented or not, is subject to inspections in accordance with Articles 6 and 15 to 20ter of the Flemish Housing Code and 5 to 8 of the Walloon Housing Code.

¹²⁹ Vlaams Minderheden Centrum, (2006) *standplaatsenbeleid: analyse en aanbevelingen*, available at www.vmc.be (15.03.2009). See also Housing Conditions of Roma and Travellers, Belgium Raxen National Focal Point, Centre for Equal Opportunities and Opposition to Racism, March 2009, p. 30.

iii) Federal legislation on tenancy agreements

The federal state is in charge of all matters concerning tenancy regulations. The Act of 20 February 1991 gives special protection to tenants when the property they are renting serves as their accommodation and they have made it their main place of residence. Through an Act of 24 December 2002, the following definition of housing was added to the Civil Code:

“Housing is a *movable* or immovable piece of property, or a part thereof, serving as the tenant’s main place of residence”¹³⁰.

A caravan – which is a movable piece of property – can therefore be regarded as housing under the federal legislation on tenancy agreements¹³¹. However, the Act of 20 February 1991 is also poorly suited to Travellers’ actual circumstances as the piece of property being rented out as a main place of residence must satisfy a number of basic requirements with regard to health, safety and living conditions¹³². These standards, which were enacted by the Royal decree of 8 July 1997, relate in particular to matters such as the surface area of the dwelling, the conformity of electrical installations and the connection to the running water supply¹³³. Yet, several of these criteria cannot easily be fulfilled by a caravan¹³⁴ as they were devised with “immovable property” in mind¹³⁵.

Conclusion

The exclusion of caravans from the legal concept of housing in the Walloon and Brussels regions and the unsuitability of the rules on health, safety and living conditions in the relevant Flemish legislation and the federal legislation on tenancy agreements entail a further violation of Article 16, taken alone or in combination with Article E.

¹³⁰ Article 1, end of paragraph 1, section II, chapter II, part VIII of book III of the Civil Code, added by section 377 of Programme Act (I) of 24 December 2002, *Belgian Monitor*, 31 December 2002.

¹³¹ Consequently, Travellers who rent their caravans are protected by the Act of 20 February 1991 provided that their caravan is their main place of residence. However, since most Travellers own their caravans, this rule has very little impact on them. Wallonia's and Brussels' law-makers would do well, however, to take this federal legislation as a model and include caravans among the forms of recognised housing.

¹³² Article 2, paragraph 1, sub-para. 1, section 2, chapter II, part VIII of book III of the Civil Code.

¹³³ See, in particular, Articles 2 and 6 of the Royal decree of 8 July 1997, establishing the minimum requirements for a piece of property rented out as a main place of residence to comply with a number of basic requirements with regard to health, safety and living conditions, *Belgian Monitor*, 21 August 2007.

¹³⁴ For instance, the room reserved for sleeping must be private (Article 2, para. 2 of the Royal decree of 8 July 1997).

¹³⁵ Article 1, sub-para. 1 of the Royal decree of 8 July 1997 still refers exclusively to immovable property.

5. Obstacles to domiciliation

Administrative domiciliation – in other words, the recording of persons in the population registers of the municipality in which they have their main place of residence – is also a source of major difficulty for Travellers. Their applications for domiciliation are often rejected by municipal authorities although access to a series of fundamental rights depends on it^{136/137}.

i) The definition and importance of a person's domicile

The “main place of residence” or “domicile” recorded in the population registers refers to:

- either the place in which the members of a household made up of persons united or not by ties of kinship usually live;
- or the place in which a single person lives¹³⁸.

A person's “main place of residence” is determined according to actual circumstances, in other words confirmation that the person genuinely resides in a municipality for most of the year¹³⁹.

The municipalities are responsible for keeping population registers¹⁴⁰:

“All persons who wish to establish their main place of residence in one of the Kingdom's municipalities ... shall make a declaration to this effect to the municipal authorities of the location in which they have settled”¹⁴¹.

Entry in a municipal population register is subject to two conditions: The presentation of a document proving the person's identity and confirmation that the person concerned really has established his or her main place of residence on the territory of the municipality in question¹⁴². In some cases, the Ministry of the Interior or the mayor and deputy mayors, in other words the municipality's executive body, may ask for a person to be entered in the municipality's registers automatically¹⁴³.

¹³⁶ N. Bernard, P. Versailles *et al.*, "La domiciliation administrative", *Droits quotidiens*, n°94, May 2005, p. 4 et seq.; N. Bernard, "La problématique des campings permanents en Wallonie. Zones de non droit ou lieux d'expérimentation sociale ?", *Les coopératives d'habitants. Méthodes pratiques et formes d'un autre habitat populaire*, ed. Y. Maury, Brussels, Bruylant, 2009, p. 345 et seq.

¹³⁷ See A. Ottevaere, "Le droit des tsiganes à la protection sociale. La culture du voyage au pays des sédentaires", *Chron. D.S.*, 1996, p. 313 et seq.

¹³⁸ Section 3, Population Registers and Identity Cards Act of 19 July 1991, amending the Act of 8 August 1983 establishing a National Register of Private Individuals.

¹³⁹ Article 16, para. 1 of the Royal decree of 16 July 1992 on population registers and the register of foreigners. This confirmation is based on various factors including the place to which persons return after work, the place in which their children go to school, their workplace, their electricity, water, gas and telephone bills and the place in which their spouses or other members of the family live.

¹⁴⁰ Article 4 of the Royal decree of 16 July 1992 on population registers and the register of foreigners.

¹⁴¹ *Idem*, Article 7.

¹⁴² Article 11, 1° and 2°.

¹⁴³ Article 11, 3° and 4°. Under section 8 of the Population Registers and Identity Cards Act of 19 July 1991, problems and disputes over the main place of residence may be referred to the Ministry of the Interior by one of the parties directly concerned.

In Belgium, some social legislation relies on the legally defined concept of “main place of residence” or domicile, as recorded in the national register¹⁴⁴:

- as a condition for entitlement to social benefit. For example, simply by being domiciled in Belgium – and hence recorded in the national register of private individuals – a person has the right to be covered by health care insurance without having to complete a waiting period;
- to establish the territorial jurisdiction of a social security body or “assimilated body”¹⁴⁵;
- to determine whether insured persons live with others (children, spouses, simple cohabitants), as this may affect the amount of benefit to which they are entitled. For example, the authorities have to refer to the national register to find out about the family status of people with disabilities (which determines the amount of their allowances)¹⁴⁶ or whether a worker applying for “allowance insurance” is cohabiting (which again will determine the amount awarded)¹⁴⁷.

An individual’s “main place of residence” or “domicile” will also be used to determine which municipality is responsible for issuing any administrative documents relating to him or her (such as identity cards, household composition certificates, certificates of residence and nationality and records of convictions). Such documents may be necessary to obtain a place on a (vocational) training course or get a job – and this in turn may be useful in order to acquire or retain entitlement to certain social benefits.

More generally speaking, anyone whose administrative affairs are not in order is ineligible or no longer eligible for vocational training or labour support schemes (such as preferential employment) or training in general. For registration with a Belgian public employment service as a jobseeker to be legally valid, the service in question must obtain and verify the applicant’s national register number, identity and nationality¹⁴⁸. For this purpose, it will obtain the following information from “candidates”:

- their national registration number¹⁴⁹;

¹⁴⁴ Section 3, 5°, of the Act of 8 August 1983 establishing a National Register of Private Individuals.

¹⁴⁵ By contrast, when determining the jurisdiction of Public Social Assistance Centres (CPASs), the deciding factor is the person’s actual circumstances, namely the “place in which persons have established the regular focal point of their lives”. Inclusion in a municipality’s population registers may serve as an indication of such residence but it is not a deciding factor. Accordingly, the person’s “*usual and actual place of residence*” will not always correspond to the “domicile” recorded in a register.

¹⁴⁶ Article 9 of the Royal decree of 22 May 2003 on the claims processing system for allowances for persons with disabilities.

¹⁴⁷ Article 225, paragraph 4 of the Royal decree of 3 July 1996 implementing the legislation on compulsory health care insurance and allowances.

¹⁴⁸ The FOREM, ACTIRIS (formerly ORBEm), VDAB and Arbeitsamt form part of the Crossroads Bank for Social Security (CBSS): This means that they must provide information to the CBSS on the employees registered with them (national registration number, surname and first name, date of birth, nationality, main place of residence) and their institutional responsibilities (employment, vocational training, registration as jobseekers and preservation of this status).

¹⁴⁹ The national register of private individuals is an authentic source whose fundamental purpose is identification. It contains data on all the people listed on population registers, municipal registers of foreigners, the waiting register and diplomatic and consular registers, namely first names and surname, date and place of birth, gender, nationality, main place of residence, place and date of death, occupation, marital status, household composition, type of register, administrative situation of persons on the waiting register and legal cohabitation.

- their identity cards so that it can be verified that they are truly who they claim to be.

Furthermore, all formalities relating to the residence status of foreign nationals must be completed through the intermediary of the municipality in which the person is domiciled.

Lastly, the lack of a domicile deprives individuals of any possibility of exercising their right to vote or stand in local, regional or national elections.

ii) The situation of Travellers

Applications from families of Travellers for domiciliation in a municipality are often rejected. Yet, the legislation on domiciliation contains provisions dealing specifically with the case of persons living in mobile dwellings. Under the Royal decree of 16 July 1992 on population registers and the register of foreigners, persons living in mobile dwellings and residing for over six months per year at a fixed address on a site are entitled to establish their domicile in the municipality in which the site is located. Under the same decree, persons living in mobile dwellings who have not resided at the same address for six months or more in a year may be entered in the population registers of the municipality “*in which they have a contact address*”¹⁵⁰. The Administrative Simplification Act of 15 December 2005 states that nomads with no fixed abode may establish their domicile at the contact address “of a corporate body which states in its statutes that one of its aims is to defend such groups’ interests”¹⁵¹.

However, these rules are too often ignored in practice. Many municipalities refuse to enter Travellers in their registers or agree only to enter them temporarily, referring to reasons to do with the unfit state of their dwelling or breaches of urban or regional planning rules. In the case of Travellers residing on private land, the lack of planning permission is often relied on by the authorities when rejecting applications for domiciliation¹⁵². Such practices are illegal. It is

See section 3 of the Act of 8 August 1983 establishing a National Register of Private Individuals. The waiting register is a register in which foreigners are entered in the place where they have established their main residence if they declare themselves to be refugees or have applied for refugee status and have not been included on the population registers in any other connection. See section 1, para. 1, sub-para. 2 of the Population Registers and Identity Cards Act of 19 July 1991.

¹⁵⁰ Article 20 of the Royal decree of 16 July 1992 on population registers and the register of foreigners (*Belgian Monitor*, 15 August 1992).

¹⁵¹ Section 14, Chapter VIII, Administrative Simplification Act of 15 December 2005, *Belgian Monitor*, 28 December 2005, which amended section 1, paragraph 2 of the Act of 19 July 1991 on population registers, identity cards, cards for foreign nationals and residence documents, amending the Act of 8 August 1983 establishing a National Register of Private Individuals (*Belgian Monitor*, 3 September 1991). See also the circular of May 2006 on extending the possibility for nomadic population groups to use contact addresses (*Belgian Monitor*, 6 July 2006). The circular adds that “only non-profit-making organisations, foundations and enterprises with social objectives which have had legal personality for five years or more and whose social purpose includes that of managing or defending the interests of one or more nomadic population groups may serve as a corporate entity with which a private person may have a contact address” (Circular of May 2006 on extending the possibility for nomadic population groups to use contact addresses (*Belgian Monitor*, 6 July 2006)).

¹⁵² A. Ahkim, “La médiation comme méthode d’action”, *Observatoire, Dossier spécial – La réalité des Gens du voyage*, no. 38, 2003, pp. 51-52. See also N. Bernard, P. Versailles *et al.*, “La domiciliation administrative”, *Droits quotidiens*, no. 94, May 2005, p. 4 et seq.; N. Bernard, “La problématique des campings permanents en Wallonie. Zones de non droit ou lieux d’expérimentation sociale ?”, *Les coopératives d’habitants. Méthodes pratiques et formes d’un autre habitat populaire*, ed. Y. Maury, Brussels, Bruylant, 2009, p. 345 et seq.

expressly stated in the law that “no application for registration of a dwelling as a main residence may be rejected on grounds of safety, hygiene or urban or regional planning rules”.¹⁵³

Where a family “applies for registration at a dwelling in which permanent occupation is not authorised for reasons of safety, hygiene or urban or regional planning rules”, it may be registered only temporarily, for a period of three years at most. However, if in the three months following the application, the municipal authority concerned has not started the administrative or judicial proceedings required to bring an end to the unlawful situation thus created, the family’s entry in the registers becomes permanent¹⁵⁴.

These illegal practices continue despite the intervention in the Walloon region of the Travellers’ mediation centre¹⁵⁵. They are the source of infringements of several social rights and the right to vote and tiresome administrative complications for those affected by them. The fact that they occur so frequently and the supervisory authorities do nothing about this constitute a clear violation of Article 16 and E of the Charter in view of the serious adverse effects that a lack of domiciliation results in.

6. The inadequacy of policies to combat poverty and social exclusion among Travellers

6.1. The Committee’s principles

According to the clarifications provided by the Committee, Article 30 of the Charter requires states to:

“adopt an overall and co-ordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach”.¹⁵⁶

From this and other statements by the Committee in its conclusions on the regular reports submitted by states and in its decisions on collective complaints, it is clear that Article 30 imposes at least five obligations on states:

1. Assessing needs

The state must equip itself with the necessary assessment and fact-finding tools to devise and implement an effective policy to combat poverty and social exclusion. This implies

¹⁵³ Article 16, paragraph 2, of the Royal decree of 16 July 1992 on population registers and the register of foreigners (*Belgian Monitor*, 15 August 1992).

¹⁵⁴ Article 16, paragraph 2, of the Royal decree of 16 July 1992 on population registers and the register of foreigners (*Belgian Monitor*, 15 August 1992).

¹⁵⁵ D. Leenman, M. Peltier, *Les Gens du voyage en Communauté française de Belgique. Réalités et perspectives*, Éditions du Centre Avec, March 2009, Brussels, <http://www.centreavec.be>.

¹⁵⁶ Conclusions 2003, France, p. 227.

developing means of measuring poverty and social exclusion in qualitative and quantitative terms, based on objective and relevant criteria¹⁵⁷.

This also means that the most vulnerable groups need to be identified and situations and needs have to be assessed in consultation with the persons concerned.

2. Establishing priorities

To frame effective, co-ordinated policies, states must establish priorities among the situations of exclusion encountered by different population groups according to how urgent and serious they are. These priorities must enable states to focus their efforts on the most vulnerable sections of their population¹⁵⁸.

An ongoing assessment of the situation through indicators of poverty and exclusion is a prerequisite for states to establish such priorities. However, it is not enough in itself. Measures should not be based solely on objective indicators and criteria of poverty and exclusion. They must also be informed by a broad, participatory process of public consultation and debate. Decisions on the future course of social policies must stem from a participatory process, enabling vulnerable groups in particular to make their voices heard.

3. Removing obstacles to the enjoyment of social rights

States must take measures to “strengthen entitlement to social rights, their monitoring and enforcement”, which means taking steps to “improve the procedures and management of benefits and services, improve information about social rights and related benefits and services” and “combat psychological and socio-cultural obstacles to accessing rights”.¹⁵⁹ These rights include, according to Article 30 itself, rights in terms of “employment, housing, training, education, culture and social and medical assistance”. However, as the Committee explains, “this list does not exhaust the areas in which measures must be taken to address the multidimensional poverty and exclusion phenomena”.¹⁶⁰

Consequently, the specific obstacles to access to social rights encountered by some vulnerable groups – whether legal, practical, social or cultural in nature – must be given special attention by the authorities. This applies to Travellers, whose special lifestyles mean that they face particular difficulties where access to social rights is concerned.

4. Monitoring mechanisms and the involvement of civil society

Policies to combat poverty and social exclusion must be supported by “monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion”¹⁶¹.

States must therefore regularly review such policies, and civil society, particularly those actually suffering from poverty and exclusion, must be involved in supervising and monitoring them.

¹⁵⁷ Conclusions 2003, France, pp. 227-228.

¹⁵⁸ See Conclusions 2003, France, p. 227: “specifically target the most vulnerable groups and regions”.

¹⁵⁹ Conclusions 2003, France, p. 227.

¹⁶⁰ Ibid.

¹⁶¹ Conclusions 2003, France, p. 227.

5. *Setting up a comprehensive, co-ordinated policy*

States must implement national, regional and local policies which are comprehensive, co-ordinated and suited to needs. These policies must pay particular attention to the most vulnerable groups.

6.2. **The situation in Belgium**

i) Violation of Article 30 arising from the failure of the Belgian authorities to implement a co-ordinated policy to promote proper access to housing for Travellers

In its decision on *European Roma Rights Centre (ERRC) v. France*, the Committee found that France lacked a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion¹⁶². Consequently it found that there had been a violation of Article 30 of the Charter.

The FIDH is of the view that the same finding has to be made in respect of Belgium, which, unlike France, has not made it a duty for the local authorities to take steps to meet Travellers' housing needs. The arguments in parts 1 to 3 above clearly show that Belgium has failed to implement a comprehensive, co-ordinated policy to promote the proper enjoyment by Travellers of their right to housing:

- the Belgian authorities have not introduced an overall policy to ensure that an adequate number of public sites are created for Travellers (see part 1 above). The lack of a co-ordinated policy is particularly strongly felt in this sphere. It can prompt municipalities to evade their responsibilities, relying on the fact that Travellers will be forced to turn to a neighbouring municipality;
- the Belgian authorities have failed to take account of Travellers' needs in their town planning legislation and practice. They have not introduced a comprehensive, co-ordinated policy to ensure that they may settle on private land (see part 2 above);
- the Belgian authorities have failed to introduce a comprehensive, co-ordinated policy to prevent the eviction of Travellers (see part 3 above).

As emphasised in particular by ECRI in its 4th report on Belgium, the lack of accessible sites for Travellers has highly adverse effects on other social rights, especially access to employment, education and public services:

“Because of the lack of sites, Travellers are in a very delicate position from a number of angles, including access to employment or self-employment. Solutions appropriate to the Travellers' lifestyle also need to be found for access to public services. ECRI is particularly concerned about the education of itinerant children.”¹⁶³

¹⁶² ECSR, *European Roma Rights Centre v. France*, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 95. See also *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 4 February 2008, § 169.

¹⁶³ ECRI, Report on Belgium, 4th monitoring cycle, 19 December 2008, § 121 p. 35.

By failing to take the necessary measures to ensure that Travellers have access to a sufficient number of sites (to live on or to reside on temporarily, according to circumstances) and taking no action to prevent them from being regularly evicted, Belgium helps to keep these people in poverty.

There has therefore been a violation of Article 30 of the Social Charter.

ii) Violation of Article 30 stemming from the lack of a comprehensive, co-ordinated policy to combat poverty and social exclusion among Travellers

Apart from the issue of housing rights, Travellers in Belgium are particularly affected by poverty and social exclusion. The authorities have taken some measures but in the FIDH's view they are not enough to meet the requirements of Article 30 of the Charter.

The decree on Flemish policy with regard to ethnic and cultural minorities adopted by the Flemish Community on 28 April 1998¹⁶⁴ refers to "traditional caravan dwellers" (*traditionele woonwagendwoners*) as one of the target groups of the policy. Special task-forces for the integration of Travellers have been set up in several locations, particularly in Brussels and Antwerp. Their tasks consist in particular of reviewing the policy pursued by the province and highlighting any shortcomings, giving opinions on local policy framework plans, providing logistical support for the relevant administrative departments and facilitating the involvement of nomads in public policy¹⁶⁵. This decree was amended by the Flemish parliamentary decree of 30 April 2009¹⁶⁶. Under the new decree, "particular attention" must still be paid to "persons residing legally in Belgium who live currently or once lived in a caravan ... other than the inhabitants of camp sites or second homes"¹⁶⁷.

These measures are most certainly important but they apply only to territory under the jurisdiction of the Flemish Community. By contrast, no specific policy has been adopted by the French Community, the Walloon region or the Brussels-Capital region to counter the poverty and social exclusion affecting Travellers. In the Walloon region the Travellers' mediation centre plays an important role as an intermediary between Travellers and the authorities. However, the establishment of this centre does not excuse the authorities from implementing effective social policies dealing with the specific problems encountered by these people. Significantly, in the latest report it submitted to the Committee, Belgium makes no reference to any special measures adopted in the context of national inclusion policies to improve access for Travellers to their fundamental social rights such as education, training, employment, social assistance and health care¹⁶⁸.

¹⁶⁴ *Belgian Monitor*, 19 June 1998. The decree was amended by a decree of 30 April 2009 (*Belgian Monitor*, 2 July 2009).

¹⁶⁵ See Article 27 of the Flemish Council decree of 28 April 1998.

¹⁶⁶ Flemish parliamentary decree.

¹⁶⁷ See Article 3, paragraph 1, 2°, of the Flemish Council decree of 28 April 1998, as replaced by Article 5 of the Flemish parliamentary decree of 30 April 2009.

¹⁶⁸ Third report by Belgium, p. 157: "secondary school pupils aged 12 or over who have problems with languages may be enrolled on the 'Dutch as a second language' courses provided as part of the adult education provision". The 2008-2010 National Action Plan for Inclusion states that "The French Community shall ensure that pupils unlawfully present can be enrolled and shall make special provision to take in Roma pupils. It shall continue to improve the educational provision in the area of remedial services, take steps to improve average results in elementary skills, improve the social mix through differentiated management, restructure the 'language and culture of origin' programme and review the training for assistant childhood officers provided by the social action training programme" (National Action Plan for Inclusion 2008-2010, pp. 22-23).

Furthermore, the Belgian state as a whole has failed to take the necessary measures to comply with the following obligations arising from Article 30:

- *Setting up systems for Travellers to be consulted on and take part in the framing and supervision of policies relating to them*

The need to consult and involve the persons concerned permeates all the obligations arising from Article 30 of the Social Charter. Consultation and participation must be arranged both when identifying needs and when devising, supervising and evaluating policies to combat poverty and social exclusion.

Participation by Travellers in the decision-making processes concerning them is made all the more important by the fact that they are a mixed group, whose needs vary according to circumstances. The authorities must pay particular attention to this variety of needs and aspirations when devising the relevant policies.

- *Developing the necessary information systems to assess Travellers' situations and identify their needs and wishes*

In this connection, when selecting the types of information tool to be used, it is important to be aware of the strong misgivings Travellers have about any type of census, which is an understandable attitude given the persecution to which they have been subject in the past. The Advisory Committee on the Framework Convention for the Protection of National Minorities recommends that in this type of situation states should make use of other sources of information such as estimates based on *ad hoc* studies or special surveys¹⁶⁹. Another solution, which may be combined with those described above, is to ask municipalities to provide an estimate of the needs and demands with which they are confronted where it comes to access to caravan, residential or transit sites.

- *Taking appropriate measures to remove the specific legal, psychological and socio-cultural obstacles encountered by Travellers when attempting to exercise their basic social rights*

Particular emphasis is placed above on the rejection by some municipalities of Travellers' requests for domiciliation. These rejections amount to a specific obstacle to Travellers' access to social benefits and prevent them from exercising their right to vote. The authorities have failed to take sufficient measures to curb such practices.

In conclusion, the inadequacy of the measures taken by Belgium to comply with the requirements of Article 30 concerning Travellers results in a further violation of this Article, taken alone or in combination with Article E.

¹⁶⁹ See second opinion on the Slovak Republic, 26 May 2005, ACFC/OP/II(2005)004, paragraph 32; second opinion on Hungary, 9 December 2004, ACFC/INF/OP/II(2004)003, paragraphs 35 and 53; second opinion on Slovenia, 26 May 2005, ACFC/INF/OP/II(2005)005, paragraph 46.

Appendices (in French only)

1. Statutes of the FIDH and official notice of the appointment of the Chair of the FIDH
2. Overview of existing public residential or transit sites in Flanders
3. Relevant legislation
4. Extract from the RAXEN Report
5. Extract from the ECRI report
6. Press review
7. The story of a family of Travellers of Roma origin
8. A study by the Travellers' mediation centre in Wallonia entitled "Caravane et logement : entre précarité juridique et bien-être social - Le point sur les terrains familiaux", 2010.