



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

31 May 2011

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International Federation of Human Rights Leagues v. Belgium
Complaint No. 62/2010

**SUBMISSIONS BY THE GOVERNMENT
ON THE MERITS**

registered at the Secretariat on 31 May 2011

European Committee of Social Rights

**Collective complaint by the International Federation of
Human Rights Leagues against Belgium**

(Complaint 62/2010)

Memorial in reply of the Kingdom of Belgium

31 May 2011

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General introduction

On 30 September 2010, the European Committee of Social Rights registered a collective complaint lodged by the International Federation of Human Rights Leagues (FIDH) against Belgium for failure to provide "Travellers" with social, legal and financial protection and protection against poverty and social exclusion.

The Committee declared the complaint admissible on 1 December 2010.

In the complaint, the FIDH asks the Committee to find that Belgium has failed to apply satisfactorily articles 16 and 30 of the European Social Charter, taken alone or in conjunction with Article E.

Belgium notes that the FIDH takes Travellers 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 caravans. ... 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. 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. This applies particularly to Roma who have emigrated from the countries of eastern Europe since the end of the cold war."

The complaint identifies three sorts of Travellers' sites:

- Private or public residential sites on which Travellers can settle for part of the year;
- Temporary or transit sites on which Travellers only stop for short periods;
- *Ad hoc* sites, which 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.

In reply to this complaint, Belgium wishes to describe to the Committee the measures taken by the federal state and the federated entities to ensure that this group of persons enjoy their fundamental rights under the European Social Charter and that their traditional way of life, consisting of living in mobile homes, is respected, subject to "the balance to be struck between the general interest and the interest of a specific group", as your Committee has specified¹. This memorial seeks to demonstrate with regard to each element of the complaint that the criticisms made are unfounded.

¹ European Roma Rights Centre (ERRC) v. Bulgaria complaint no. 31/2005, decision on the merits of 18 October 2006, §35

Part I: Division of responsibilities between the federal state and the federated entities

The first sentence of the Belgian Constitution states that Belgium is a federal state composed of communities and regions². In other words, decision-making authority in Belgium is not centralised, but is divided between the following entities:

- the federal state
- three regions
- three communities

These three political levels:

- are autonomous;
- have significant powers and responsibilities, which they also and exclusively exercise in the sphere of international relations, which includes the conclusion of relevant treaties;
- co-operate in numerous areas.

There are various forms of co-operation between the federal state and the federated entities to secure the joint exercise of specific powers and responsibilities or to develop new joint initiatives. These co-operation agreements are provided for in the special institutional reform legislation. For example, on 5 May 1998, the federal state, the communities and the regions signed a co-operation agreement in Brussels on the continuation of the federal anti-poverty programme. This was approved at federal level in an act of 27 January 1999, Belgian monitor (MB) of 10 July 1999³. If the Committee so wishes, Belgium can supply it with the complete list of co-operation agreements concerning the areas covered by this complaint.

1. The federal state

When Belgium became a federal state in 1993 the federal level retained certain responsibilities concerning all Belgians that are exercised throughout the country. These relate mainly to defence, justice, finance, social security, a considerable part of public health and home affairs. Foreign affairs are also a federal responsibility, though without prejudice to regions' and communities' authority in the field of international co-operation, including the conclusion of treaties, in areas for which they are responsible. Nevertheless, the federal state retains responsibility *vis-à-vis* other states and the international organisations of which it is a member for compliance with international obligations, whether they are

² Belgian Constitution, Article 1.

³ [Co-operation agreement on the continuation of the anti-poverty programme, approved in the Act of 27/1/1999, MB 10/7/1999](#); see also <http://www.luttepauvreté.be>

entered into by the federal state itself or by the federated entities, by virtue of their exclusive responsibilities.

Legislative authority is exercised by:

- the federal parliament, composed of two houses: the chamber of Representatives and the Senate
- the Crown. However the King is relieved of all responsibility. His ministers co-sign draft legislation and royal decrees, which are voted by parliament and for which they bear full responsibility.

Executive authority is vested in the federal government.

2. The communities

The communities are political entities based on language. Belgium has three official languages and therefore three communities, which exercise their responsibilities in the following linguistic regions:

- The Flemish Community is responsible for the Dutch-speaking region and also has certain responsibilities in the bilingual Brussels-Capital Region;
- The French-speaking Community is responsible for the French-speaking region and also has certain responsibilities in the bilingual Brussels-Capital Region;
- The German-speaking Community is responsible for the German-speaking region.

The communities are responsible for all matters concerning, respectively, Dutch, French and German-speaking citizens. These responsibilities cover such areas as language, culture, the audiovisual sector, education and assistance to persons in need. In all these areas, they exercise legislative and executive powers.

Each community has a parliament and a government.

3. The regions

Belgium is divided into three regions:

- the Flemish Region;
- Brussels-Capital Region;
- the Walloon Region.

The regions are territorial entities. The Flemish Region corresponds in area to the Dutch-speaking language region. The Walloon Region encompasses the French and German-speaking language regions. Brussels-Capital Region covers the bilingual Brussels-Capital language Region – Brussels city + 19 municipalities.

The regions are responsible for a whole series of matters concerning Flemings, citizens of Brussels and Walloons. These responsibilities include all matters in their respective areas relating to the economy, employment, housing, public works, energy, transport, the environment and local and regional planning. Like the communities, they have both legislative and executive powers.

Each region has a parliament and a government.

* * *

However, certain specific features should be noted:

- In Flanders, the regional and community authorities are combined in a single government and parliament.
- In the bilingual Brussels-Capital Region, community responsibilities are exercised by three community commissions:
 - the French Community Commission (Cocof), responsible for the French-speaking institutions;
 - the Vlaamse Gemeenschapscommissie (VGC – or Flemish Community Commission), responsible for Dutch-speaking institutions and
 - the Joint Community Commission (Cocom), responsible for institutions not answerable exclusively to either of the two communities. Cocom is also responsible for direct assistance to individuals without the intermediation of institutions, the adoption of rules and standards that are directly binding on individuals and co-ordination in areas of common interest.

The community commissions are autonomous and do not form part of the Brussels-Capital Region institutions, even though their assemblies and executives are made up members of the regional council and government.

- Finally, the French Community has transferred part of its responsibilities to the Walloon Region and Cocof. The latter exercises legislative power, by decree, for the transferred responsibilities.

4. The division of responsibilities for subjects covered by the collective complaint

Responsibilities for the subjects covered are divided as follows between federal and federated entities:

- The first complaint: "inadequate number of public sites for Travellers" - regional responsibilities;
- The second complaint: "failure of legislation and urban planning to take account of Travellers' needs" - regional responsibilities;
- The third complaint: "disproportionate use of evictions against Travellers and the inadequacy of the relevant safeguards" – responsibilities shared, depending on circumstances, between the regions and the federal state: regional responsibility for evictions by local police, federal responsibility for evictions by federal police;
- The fourth complaint: "failure to recognise caravans as dwellings" – regional responsibility, but the federal state is responsible for all matters concerning tenancy regulations;
- The fifth complaint: "obstacles to domiciliation" (or principal residence) – despite the FIDH's statements to the contrary, these do not exclusively concern federal responsibilities.

The federal state has exclusive powers to legislate on matters relating to domiciliation or, to use the legal terminology, inclusion on population registers.

However, under Article 164 of the Belgian Constitution, municipalities have exclusive responsibility for maintaining the population registers. Including persons in the municipal population registers is one aspect of maintaining registers and is therefore, in the first place, a municipal responsibility;

- The sixth complaint: "inadequate policies to combat poverty and social exclusion among Travellers" – federal, regional and community responsibilities.

Part II Belgium's non-acceptance of Article 31 of the European Social Charter

Belgium's has not accepted Article 31 of the revised European Social Charter.

However, it acknowledges that Article 16, which it has ratified, embodies the right to decent housing from the standpoint of the family, and that Article 30, which it has also ratified, requires measures to be taken to promote access to fundamental social rights, one of which is the right to housing.

Part III The merits of the complaint

1. The alleged inadequate number of public sites for Travellers

The FIDH states that "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".

It needs to be recognised first that the Belgian Constitution grants local authorities significant administrative autonomy, in accordance with the European Charter for Local Self-Government of 15 October 1985. As we seek to show in this memorial, the federal, regional and community authorities have an active policy of encouraging local authorities to provide properly equipped sites for Travellers. However, their margin for manoeuvre remains limited and they depend on local authorities' willingness to develop such sites that meet the required health and safety requirements in their areas. As will be demonstrated, local authorities are making major efforts to cater for Travellers in their respective areas.

1.1. The situation in the Walloon Region

Wallonia has been aware of the need to act at local level but also of the difficulty of achieving satisfactory results through compulsion, because of the high level of autonomy of local authorities. It has therefore opted for voluntary co-operation with these authorities and has introduced a series of measures to encourage them to secure the desired outcome, namely more effective management of Travellers' stays aimed at integrating them into their host communities and improving social cohesion.

Wallonia has established a permanent interministerial working group on the reception of Travellers, chaired by the social action office and of which all the Walloon ministerial private offices are members. Its secretariat is provided by the interdepartmental social cohesion directorate of the Walloon general secretariat of the public service. The working group has been instructed to produce a concerted approach to the reception of Travellers in Wallonia.

A non-profit association – the mediation centre for Travellers in Wallonia, or CMGVW – was also established in 2003. Its purpose is to promote equal opportunities and recognition of and respect for Travellers' lifestyle. It sets out to reverse the processes that lead to poverty among members of this community. Above all, though, it fosters dialogue between Travellers, their neighbours and local authorities. In particular, in 2004, with the support of the Walloon internal affairs ministry, the CMGVW carried out a review of the needs of and problems faced by municipalities in managing the accommodation of Travellers in their areas. Among other things, the survey highlighted the characteristics of Travellers' stays.

In 2004, the CMGVW and the Walloon Region concluded a framework agreement on a concerted approach to the reception of Travellers in Wallonia, designed to

support, particularly financially, and reinforce the mediation centre's activities. The agreement has been renewed twice, for two-year periods (2007-2009 and 2010-2012), since 2004⁴.

At the mediation centre's prompting, the interministerial working group has twice met the nine local authorities wishing to invest in facilities in their area for Travellers. These meetings included the CMGVW, the Walloon public service (interdepartmental directorate of the public service), the planning, housing, real estate and energy operational directorate, the local authorities, social action and health operational directorate and representatives of the Walloon government, and were intended to determine the practical contribution of all those concerned to a concerted policy on accommodating Travellers and/or planning sites for them.

It has emerged from these meetings that:

- when the reception of Travellers is organised, there appear to be fewer problems;
- sites are not necessarily owned by local authorities. Agreements reached with private owners enable all concerned to exercise their prerogatives;
- there needs to be a liaison person – a municipal staff member who can create links with local authority departments, the police, the municipal executive, local citizens and Travellers themselves.

On 11 March 2010, the Walloon health, social action and equal opportunities ministry invited the nine local authorities involved in the partnership with Wallonia to confirm their intentions by signing an agreement and submitting proposals by 30 June 2010. The municipalities of Amay, Courcelles, Hotton, Mons, Namur, Ottignies-Louvain-la-Neuve, Sambreville and Verviers (Bastogne, was also approached but dropped out) confirmed their commitment to continue the process initiated by the CMGVW. sign the agreement and make concerted arrangements for Travellers in their area, with the support of the region.

The agreement and the lodging of proposals enables these municipalities to benefit from all the assistance available, which concerns both the organisation of Travellers' stays and the purchase and equipping of sites. Signing the agreement also entitles the local authorities concerned to nine APE – employment assistance programme - points. APE is designed to cover all or part of the pay and social contributions of unemployed job seekers, and nine points corresponds to € 25 320 per year for taking on an employee and an additional operating costs subsidy of € 10 000 per year.

Five APE officials have been operating in five of the municipalities and have been incorporated into these authorities' social cohesion planning process, with the support of the local government, social action and health and employment

⁴ Framework agreements on a concerted approach to the reception of Travellers in Wallonia (2004-2006, 2007-2009, 2010-2012)

ministries of the Walloon government, to promote the effective access of all the citizens in their areas to their fundamental rights.

Naturally, local authorities are free to develop the project that is most suited to its needs. Some prefer to approach the reception of Travellers by employing a specific official to act as intermediary between the latter and the civic authorities. Some Travellers wish to acquire a plot while others simply seek assistance with fitting one out. Needless to say, the regional authorities respect the principle of local self-government in this regard.

With a view to standardising the development of sites, the interministerial working group and the mediation centre, drawing on their numerous contacts with Travellers, have produced a practical guide with a series of recommendations that should be adhered to if those concerned are to be accommodated in optimal conditions⁵.

For example, based on the experience of certain authorities, it is recommended that temporary sites such as fields, unused sports grounds or large parking areas be made available from March to October for an average of 35 caravans and periods of stay of two to three weeks per group, and that a contact person be appointed within the local authority.

Travellers can then advise this individual of their arrival, take note of the arrangements made and comply with the decisions negotiated governing the organisation of their stay.

Wallonia is well aware of the problems associated with the arrival of Travellers and therefore supports the mediation centre and discusses with it how local authorities can best respond to the demands placed on them. This is the purpose of the aforementioned pilot project, which will enable the region to improve still further its future support to municipalities.

There are two budget heads concerned with fitting out Travellers' sites, which offer subsidies for the purchase of sites and dwellings:

- the "accommodation" grant covers 100% of the cost of equipping sites with dwellings⁶;
- on the other hand, the order of the French Community executive of 1 July 1982⁷, which grants funds to provinces, municipalities, conurbations, federations and associations of local authorities and other subordinate

⁵ Web-site: <http://cohesionsociale.wallonie.be/spip/IMG/pdf/GUIDEgensduvoyage.pdf>

⁶ [Walloon government decree of 24/11/05 \("accommodation" grants\)](#)

⁷ French Community executive decree of 1/7/1982 on grants 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"

authorities for the purchase, equipping and extension of camping sites for "nomads", covers other areas of expenditure not covered by the "accommodation" grant (left hand column of the table). This grant may cover up to 60% of the total cost, and is subject to certain conditions.

If subsidies to local authorities are to be optimised, therefore, there has to be joint complementary funding from the two sources.

Heading	Social action	Accommodation
	French Community executive order of 01/07/82	Walloon government order of 24/11/05 (art. 44 CWL)
Applicant	<ul style="list-style-type: none"> - Province - Local authority - Associations of local authorities - Subordinate authorities 	<ul style="list-style-type: none"> - Province - Local authority or autonomous local authority body - Public social action centre (CPAS) - Walloon housing foundation (FLW))
Grants for:	acquisition, development, extension	Equipment or re-equipment
Area	depending on local needs	
Size of sites		
Location	Hygienic location with good access to public transport and therefore to schools, shops and other social contacts	
Works		
Access roads	Easy vehicle access with appropriate surfacing	Areas reserved for the movement of vehicles
Drainage	At least a septic tank	Evacuation of surface water and sewage
Water	At least a shared tap	water supply
Fire safety	A fire hydrant	Necessary fire hydrants
Electricity	At least a shared supply	
Public lighting		Of the roadways
Shared areas		Grassing, tree and shrubs, street furniture and footways
Hygiene	Regular collection of household waste	
Buildings		

Period of validity	10 years	30 years
Rate of subsidy	60%	100% for on-site works 60% off-site
	Budgetary Appropriation: € 100 000 in the 2010 budget	Budgetary Appropriation: when the financial commitment is entered into
	Grant procedure: not defined	Grant procedure: arts. 13 to 15

Once a project is approved, authorisation is given to submit it for tender. Grants are based on the tender documents and are paid in three instalments:

- 40% when the contract is awarded
- 40% on proof of correct use of the first instalment
- 20% when the final accounts are presented.

1.2. The situation in Brussels-Capital Region

Belgium first wishes to make the point that the relatively small area of Brussels-Capital Region coupled with a higher population density means that there is less land available than in the other two regions. It is therefore harder for Brussels to provide sites to meet Travellers' needs.

Nevertheless, and despite the FIDH's claims, while respecting the principle of local self-government, Brussels-Capital Region regularly encourages local authorities to increase their provision for Travellers by including an annual sum in the regional budget, via the budget of the French Community Commission, to subsidise the development of suitable sites for Travellers.

This subsidy currently amounts to € 13 000. The amount could be increased if municipalities so demanded.

The region uses this subsidy to encourage local authorities with appropriate sites to develop them for the use of Travellers, in accordance with the resolution approved by the Brussels parliament on 20 February 2004 (which the FIDH refers to in its submission).

The subsidy has enabled the City of Brussels to make proposals for public land to be used as a transit site for Travellers. It is located in Haren, rue de la Grenouillette. It belongs to the public social action centre (CPAS) and has been made available by the city. Planning approval for the site was issued on 16 June 2009.

The project draws on the experience of the City of Antwerp, and has the following features:

- the construction of a management office with two municipal officials employed part-time, offering a 24 hour reception service;
- the provision of toilets and rubbish sacks (an agreement will be reached with "Bruxelles Propreté"⁸ for rubbish collection);
- internal regulations;
- capacity for 20-25 caravans;
- information exchanges with similar facilities in the other regions;
- monitoring licence plates and collaboration with the police.

Work is under way on the site and is planned for completion in summer 2011.

So by summer 2011, Brussels-Capital Region will have a new permanent site⁹ in Haren, rue de la Grenouillette, with 20 to 25 places

There is also an order of the French Community executive dated 1 July 1982, which is still in force and is applicable in the territory of Brussels-Capital Region, which grants funds to provinces, municipalities, conurbations, federations and associations of local authorities and other subordinate authorities for the purchase, equipping and extension of camping sites for "nomads", who are not otherwise defined.

This grant may cover up to 60% of the total cost, and is subject to certain conditions.

1.3. The situation in the Flemish Region

A recent census carried out by Kruispunt Migratie-Integratie vzw¹⁰ as part of the preparation of the Flemish strategic plan for Travellers (see below) showed that despite significant efforts by the Flemish authorities there was still a shortage of places in the region for Travellers. There were an estimated 907 families belonging to the Traveller community in the Flemish Region in February 2011. These families were settled on residential sites for at least most, and usually all, of the year. A few travelled during part of the year. Of these 907 families in Flanders, 460 lived on 29 public residential sites. The others were mainly on private sites.

Residential sites in the Flemish Region

⁸ Bruxelles-Propreté is responsible for street cleaning and waste management, including rubbish collection, in Brussels-Capital Region. In addition to these practical tasks, it also runs prevention and awareness raising campaigns concerning waste, recycling and public cleanliness.

⁹ Another site is located in the municipality of Molenbeek-Saint-Jean, rue de l'Oiselet, and is permanently occupied by travelling showpeople..

¹⁰ Kruispunt Migratie-Integratie vzw is the centre of expertise on integration and migration for Flanders and Brussels.. It is subsidised by the Flemish public authorities. (<http://www.kruispuntmi.be>)

Municipality	Year of establishment	Year of substan upgrading	Number of places
Aalst	1990	2011	13
Aalst	2001		15
Aarschot	1995		11
Antwerp	1988		24
Antwerp	1987	2001	14
As	1991		6
Bilzen	1982		2
Bilzen	2008		6
Dendermonde	2003		5
Diest	±1960		9
Genk	1977		52
Ghent	1995	2009	27
Grobbendonk	1988		10

Ham	1980	2005	8
Hasselt	1988	2009	26
Heist o/d Berg	1990		10
Herentals	1996	2009	20
Herentals		2010	17
Leuven	2000		26
Maaseik	1988	2001	26
Maasmechelen	1989	2001	28
Mechelen	1996		20
Mortsel	1995		26
Oud-Turnhout	1993		8
Puurs	1992	2007	8
Rotselaar	1994		7
St.-Katelijne-Wav	1993		12
St.-Truiden	1998		18
Wetteren	1993		15

Permanent sites for temporary stays in the Flemish Region

Municipality	Year of establishment	Year of substan upgrading	Number of places
Antwerp	2005		18
Beersel	2005		15
Ghent	2010		25
Kortrijk	2009		20

As the FIDH itself acknowledges, since 1996 Flanders has had an active policy of responding to the demand for sites for Travellers of a high standard and adapted to their needs. They are treated as a specific target group under the Flemish integration policy¹¹. Thus the 1996¹² and 2004¹³ strategic plans for minorities included specific programmes to meet the accommodation needs of this target group.

An interdepartmental committee, *de Vlaamse Woonwagencentmissie* (Flemish caravan committee) was set up in 1997 as part of project 7 of the Flemish strategic plan for minorities of 24 June 1996¹⁴. The committee meets regularly and sponsors initiatives, coordinates and advises the relevant ministries on the provision of suitable long-term camp sites for Travellers.

As in other regions, Flemish cities and other municipalities have significant administrative autonomy. The Flemish public authorities therefore have an active policy of encouraging local authorities to provide sites for Travellers. They offer 90% subsidies for the acquisition, laying out, refurbishment or extension of such sites¹⁵. In 2011, the authorities made € 2 778 000 available for the establishment and refurbishment of sites. Some provincial authorities supplement these subsidies to bring them up to 100%. To support potential initiatives of this sort, in

¹¹ Art 5.2 of the decree of 28 April 1998 on the Flemish integration policy, as amended by the decree of 30 April 2009: [Strategic plan for minorities 2004-2010 approved by the Flemish government on 26/3/2004](#)

¹² Strategic plan of the Flemish policy on ethno-cultural minorities, July 1996, approved by the Flemish government on 24 July 1996

¹³ Living in diversity – shared nationality and equal opportunities in a multicoloured Flanders. Update of the policy on ethno-cultural minorities: [Strategic plan for minorities 2004-2010 approved by the Flemish government on 26/3/2004](#): Decree of 28.04.98 on the Flemish integration policy, as amended by the decree of 30.04.09:

¹⁴ Ministry of the Flemish Community, interdepartmental committee on migration, strategic plan of the Flemish policy on ethno-cultural minorities, July 1996

¹⁵ [Flemish government order of 12/5/2000 on grants for the the acquisition, preparation, refurbishment or extension of sites for Travellers](#)

2001 the Flemish authorities published a handbook entitled *Wonen op Wielen* (living on wheels)¹⁶, which offers valuable advice on the provision and management of Travellers' sites. The guide is distributed free of charge and was fully revised and updated in 2010 to take account of existing experience of this subject.

The implementation of the Flemish government order on grants for the acquisition, preparation, refurbishment or extension of sites for Travellers

Initiator	Province Municipality Associations of local authorities Public social assistance centres Flemish Community Flemish housing association Recognised social housing associations
Subsidy for	Acquisition Provision Refurbishment Extension
Level of subsidy	90%

The *Kruispunt Migratie-Integratie* non-profit association established a special internet site in early 2011 to bring together all available information on existing and planned sites. This association's¹⁷ site provides regularly updated information for Travellers and all those working in this field.

To meet the specific accommodation needs of Travellers, each year the Flemish minister responsible for integration policy sends out a circular - *doortrekkersterreinen en pleisterplaatsen* (permanent, transit and *ad hoc* sites for Travellers) – which asks local authorities to indicate those sites in their areas on which Travellers can settle for limited periods. The most recent circular, BB 2010/05, states that Travellers who, after consulting a municipality, cannot find any temporary plot, can contact the governor of the province concerned, who will point them to an available *ad hoc* site¹⁸.

Despite these efforts there is still a shortage of permanent and temporary sites in Flanders. The Flemish authorities are therefore considering the possibility of providing new sites, as part of the strategic plan for Travellers (see below).

¹⁶ *Wonen op Wielen, woonwagenterreinen aanleggen en beheren, een handleiding* (Living on wheels: preparing and managing Traveller sites, a handbook), 2010; available at <http://www.integratiebeleid.be>

¹⁷ See footnote 10.

¹⁸ [Circular BB 2010/05 of 17/12/2010 on permanent transit and ad hoc sites for Travellers](#)

Conclusion

In the Walloon Region, the establishment of a permanent interministerial working party on the reception of Travellers, and of a non-profit organisation, the mediation centre for Travellers in Wallonia, working with the relevant authorities on the basis of a framework agreement, and the granting of subsidies to local authorities for the acquisition and provision of sites for Travellers are sufficient evidence that the regional authorities are aware of the problem of Travellers' accommodation in their area and are taking numerous steps to receive them.

Brussels-Capital Region includes each year in the budget of the French Community commission, a subsidy to support municipalities that decide to provide camp sites. The region is already quite prepared to increase this subsidy if demand from local authorities indicates such a need. However, the region's high population density means that the amount of land available is very limited. As a result, the planning legislation in force in Brussels authorises the use of private property for Travellers' sites, subject to the normal conditions for all land-use proposals that they are compatible with existing planning regulations.

Finally, thanks to an important packet of measures, the *Vlaamse Woonwagencommissie*, subsidies, the circular and the strategic plan for Travellers, the Flemish authorities also have an active policy to assist the reception of Travellers in their territory.

So despite the claims to the contrary of the FIDH in its complaint, and subject to the constraints of local self-government, the regional authorities are acting in accordance with Article 16 of the European Social Charter, particularly in combination with Article E, to ensure that Travellers have access to residential, transit and *ad hoc* sites that have been equipped to offer them decent living conditions. The regional authorities are nevertheless aware of the need to increase still further the number of these sites and to encourage local authorities to take the necessary measures. However, it is a gross exaggeration to claim, as does the FIDH, that there is, in Belgium, "a drastic shortage of sites on which Travellers can lawfully stay or reside in their caravans".

2. The alleged failure of urban planning legislation to take account of Travellers' specific needs

The FIDH accuses Belgium of failing 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 highlights two types of impact of planning regulations on Travellers traditional life style:

- The establishment of public sites in accordance with regional land use plans and the absence of measures to promote the provision of public residential, transit or *ad hoc* sites for Travellers;
- The need for planning permission to install a caravan on a long-term basis.

The FIDH states that "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".

Belgium denies this assertion and would make two points. Firstly, despite the FIDH's claims, each federated entity takes account of Travellers' specific needs in its legislation and urban planning policies. Secondly, the rules governing land-use planning and their application are based on the principle of equality, which means that the impact of any proposed activities or housing is assessed according to urban and spatial planning criteria by the authority responsible for issuing the relevant permit. The long-term siting of caravans or the establishment of camping sites are therefore also subject to this equality principle.

2.1. Walloon Region

In addition to the pilot project described below¹⁹, with a view to raising awareness among local public authorities, the Walloon ministries of local authorities and of health, social action and equal opportunities send out a joint letter each year to municipalities, social action centres, provinces and police districts setting out recommended measures for facilitating and harmonising relations between local authorities, Travellers and ordinary residents. These measures are also included in the practical guide to managing temporary Traveller stays in Wallonia, referred to earlier²⁰.

Under article 84 of the Walloon regional and urban planning code planning permission is necessary to site a mobile home on a particular plot of land. This states that it is prohibited to site one or more mobile facilities such as caravans, trailers, disused vehicles or tents on a plot of land without prior written and explicit planning permission, except in the case of mobile facilities that are authorised by a camping-caravanning permit.

The Walloon planning code is currently being examined with a view to a possible revision. If necessary, a working group will be established to update the provisions on planning permission.

¹⁹ See pp ... below.

²⁰ See footnote 5.

The Walloon government also intends to reform the housing sector and approved a memorandum on the subject on 16 December 2010. It intends to introduce a provision into the Walloon housing code creating an exception to the code's definition of housing, namely a building or part of a building used to accommodate one or more households, to enable the government to incorporate alternative or innovatory forms of dwelling by distinguishing between the form of the dwelling and its occupancy arrangements.

The purpose is to give formal recognition to alternative forms of dwelling so that these can be included in so-called housing groups ("*noyaux d'habitat*"), to deal with the issue of the partial or total settlement of Travellers on specific sites.

The amending decree should come into force in the second half of 2011.

2.2. Brussels-Capital Region

Whatever the circumstances and types of land use (permanent or occasional), the planning regulations in the Brussels-Capital Region, in this case the regional land-use plan, must be applied.

The land-use plan divides the region into different zones, in which various activities or uses are acceptable.

The first issue that arises is how to classify Travellers' occupation of sites, since this can involve a number of uses – long-stay, temporary, seasonal, occasional and so on.

According to the plan's glossary, two types of use may apply:

- "Housing", defined as a group of premises intended for the occupancy or residence of one or more persons, if an alternative use has not been legally established. This includes authorised or subsidised residential and related establishments but excludes hotels.
- Community or public service facilities, defined as buildings or other facilities intended for community use or public services, particularly local authority public services, buildings accommodating parliamentary assemblies and their departments, educational, cultural, sporting, social and health facilities and recognised confessional and secular ethical establishments.
Community or public service facilities are also taken to include diplomatic and career consular establishments of states recognised by Belgium and the representations of the federated or equivalent entities of these states.
They do not include the management or administrative premises of other public departments.

From a planning standpoint, therefore, living in a caravan may be considered to be the occupancy of housing, once there is a certain "permanence", in other

words continuous occupancy for a certain period or cyclical or seasonal occupancy on a regular basis for several years.

When an activity is deemed to be housing for the purposes of the land-use plan, it can only be exercised in zones where housing is authorised, namely in housing, mixed use or administrative zones or community or public service facility zones.

The occasional use of a site to accommodate caravans occupied by Travellers could be considered to be a relevant use if it was deemed to be in the general or public interest.

When the activity is considered to constitute a facility, from the standpoint of the land-use plan, general rule 0.7 may be applicable. This permits the establishment of facilities in all the plan's zones, notwithstanding the surface area restrictions laid down in the specific rules relating to the various zones and so long as they are compatible with the main uses of each zone and with the characteristics of the adjoining plot or plots.

Contrary to what the FIDH maintains, Brussels legislation includes a series of measures to deal with certain issues relating to the accommodation of Travellers in the region.

For example, article 98.1.10 of the Brussels planning code makes planning permission conditional on the normal use of a site for the installation of one or more mobile facilities that can be used as dwellings, such as trailers, caravans, disused vehicles and tents. However, no permit is required for camping using mobile facilities on camp sites, as defined in the legislation on camping.

It is the "normal" use of a site that makes planning permission a requirement. Planning permission is therefore not in principle necessary for the one-off or occasional use of a site.

Moreover, the planning permission required for the normal use of a site to install caravans as dwellings is for a fixed period. Under article 102 of the planning code, cases of fixed-term planning permission are listed in a government decree. The list is itself the subject of the Brussels-Capital Region decree of 29 January 2004 on fixed-term planning permission²¹.

Two categories may apply to Travellers, depending on their type of stay:

- category 2: installation and parking of vehicles – maximum duration of one year for c) the installation of one or more mobile facilities that can be used as dwellings such as trailers, caravans, disused vehicles and tents, other than facilities provided for in category 7;
- category 7: temporary installations of a cyclical or seasonal nature – maximum duration of six years (for example fairground facilities, Travellers'

²¹ Brussels-Capital Region decree of 29/01/2004 on fixed-term planning permission.

meeting places, inflatable tennis facilities or moveable roadside café facilities).

2.3. Flemish Region

2.3.1. Legislation and urban planning to encourage the installation of sites

Flemish legislation and urban planning practices use various means to encourage the establishment of camping sites for Travellers.

The guidelines of the *Ruimtelijk Structuurplan Vlaanderen* (the Flemish regional plan) take account of the need for additional camping sites. It is recommended that sufficient places are provided for Travellers in urban areas in properly equipped residential and transit sites. The assessment of such sites must be in accordance with the provincial and municipal planning process and/or the process of designating urban zones²².

Apart from these provisions of the regional development plan, the five provincial plans contain elements to encourage the establishment of new camping sites for Travellers.

Limburg provincial development plan

Limburg province has identified residential and transit sites and lays down conditions governing places on such sites. The guideline section contains a list of municipalities and the number of places that should be provided in residential and transit sites. The binding section specifies the municipalities in which the province has decided to investigate the establishment of transit sites.

East Flanders provincial development plan

The province has established a method for selecting municipalities that may then be required to provide camping sites for Travellers. This is based particularly on the number of inhabitants. Somewhat different criteria are applied to residential and transit sites. The executive makes its selection after the provincial mobile homes committee has carried out an evaluation in agreement with the local authorities concerned.

Antwerp provincial development plan

There is no separate section of the plan dealing with Travellers' sites. The province considers dwellings for specific target groups, in particular Travellers, to be additional dwellings over and above the quotas imposed on the various types of principal villages.

²² Co-ordinated version of the Flemish regional plan of April 2004, p. 361, Part 2: Intended planning structure – guideline section III.1. urban areas 4.3. Differentiation and improvement of the housing stock <http://www.rsv.vlaanderen.be/nl/overRsv/Herzienenen/herziening2010.html>

The guideline section is an indicative part that reflects a certain vision of the intended shape of Flemish regional development, and is not binding. The binding provisions are binding for the Flemish Region and its institutions but not for its citizens.

Flemish Brabant provincial development plan

The province distinguishes between residential and transit sites, and lays down conditions governing places on each type of site. The guideline section contains a list of municipalities and the number of places that should be provided in residential and in transit sites. The selection process is based on position in the hierarchy of urban centres. The actions and measures section of the binding part of the plan identifies the number of places required in transit sites.

West Flanders provincial development plan

West Flanders province distinguishes between residential and transit sites and lays down conditions governing places on each type of site. The guideline section contains a list of municipalities and the number of places that should be provided in residential and in transit sites. The binding section requires the province to establish the need for additional transit sites, particularly in the coastal region.

In addition to the Flemish regional plan and the various provincial and local plans, the regional, provincial and local spatial implementation plans also provide for the establishment of sites for Travellers. The following table summarises the number and different types of plans providing for Travellers' sites.

Regional spatial implementation plan	6 + 1 being drawn up
Regional "ad hoc sites for nomads" plan	9 local authorities
Provincial spatial implementation plans	6
Local spatial development plans	33 + 2 under consideration
Local spatial implementation plans	4 + 1 under consideration
Preliminary draft local spatial implementation plans	6
Specific local construction plans (former title of spatial implementation plans)	7

The Flemish authorities have also decided to recognise caravans as a form of dwelling in the Flemish housing code²³ as well as incorporating Travellers' sites in the spatial planning process.

Despite the FIDH's claims to the contrary, and as the aforementioned information shows, the Flemish authorities clearly take account of the specific accommodation needs of Travellers in their legislation and regional planning process.

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

²³ Decree of 15 July 1997 containing the Flemish housing code, article 4,1.1.4: see: [Decree of 15/7/1997 containing the Flemish housing code](#)

In the Flemish Region, article 4.2.1.5.c of the planning code makes it a requirement to obtain planning permission to occupy land for more than 90 days a year²⁴. Camping sites for Travellers and the installation of caravans for extended periods are also subject to these requirements, as with any other type of activity or dwelling.

All the local municipal and provincial sites in the region have received planning permission, as have a number of private sites for Travellers.

The Flemish housing code recognises living in a caravan as a form of housing. The regional development plan considers the housing function of Travellers' sites to be their principal function. Caravans may thus be authorised in residential and housing extension areas, *ad hoc* areas for nomads or, in specific cases, areas of public interest. They may also be authorised in areas specially designated for this purpose in regional, provincial and local spatial implementation plans.

The procedure for granting planning permission in Flanders is based on the principle of equality, which means that the impact of any proposed activities or housing is assessed according to urban and spatial planning criteria by the authority responsible for issuing the relevant permit.

The latter examines the compatibility of applications for planning permission for sites or caravans with the relevant planning criteria and their integration into the environment. A Flemish government decree of 5 May 2000 specifies the various cases in which public inquiries must be held into applications for planning permission and building permits.

Decisions on whether to issue planning permission are based on comprehensive investigations and take account of any objections. Unless explicitly stated to the contrary, such authorisation is not time limited. The rules on the length of validity and expiry of planning permission are set out in articles 4.6.1 to 4.6.3 of the planning code.

The Flemish authorities have published a pamphlet entitled *Wonen op Wielen* to support the provision of Travellers' sites²⁵. This offers a clear introduction to all the information on the establishment, equipping and management of camping sites for Travellers, from the special planning conditions to their management and available subsidies. The brochure offers an excellent guide to the development of sites.

2.3.3. An annual circular on accommodating Travellers in transit

The Flemish authorities have a two-pronged approach to the accommodation needs of Travellers in transit. The first, the preferred option, is to encourage the

²⁴ Flemish planning code of 1 September 2009; <http://www.ruimtelijkeordening.be>

²⁵ *Wonen op Wielen, woonwagenterreinen aanleggen en beheren, een handleiding*: (Living on wheels – a guide to establishing and managing sites for Travellers) 2010, available at <http://www.integratiebeleid.be>

provision of transit sites. These are ones where Travellers can stop for a limited period, generally two weeks. The second concerns the provision of *ad hoc* sites until the region has a sufficient number of transit sites. These are also set aside for significant groups of transiting Travellers. *Ad hoc* sites are ones that are not normally intended to accommodate caravans but where caravans that are likely to return to the road may stop under certain conditions for limited periods.

To organise the reception of transiting Travellers, the Flemish authorities send a circular²⁶ each year to provincial governors and local authority elected executive bodies. To help these authorities to designate and manage *ad hoc* sites, the circular establishes clear conditions for their exemption from planning permission requirements²⁷. The conditions are:

- A maximum 90 day limit per year;
- Sites must not be located in spatially vulnerable areas;
- Temporary developments must not be detrimental to the area's general purpose.

In circular BB 2010/05²⁸, *doortrekkersterreinen en pleisterplaatsen voor woonwagengewoners* (transit and *ad hoc* sites for Travellers) the Flemish authorities asks the provinces and local authorities to pay special attention to the treatment of Travellers' families.

Conclusion

In the Walloon region, the authorities are aware of the current gaps in the legislation and want to deal with any problems that this could cause in practice. They have produced a practical guide for the lower tier authorities - municipalities, social action centres, provinces and police districts – aimed at facilitating and harmonising relations between local authorities, Travellers and ordinary residents. They also write to these authorities every year recommending them to implement these measures. The Walloon authorities also propose to reform the regional planning and housing codes to fill these gaps.

The planning regulations in Brussels-Capital Region in no way prevent certain areas, be they public or private land, being set aside to accommodate Travellers. If applications to lodge caravans relate to land situated in residential areas or areas containing public or community facilities planning permission may be granted. Such areas form the majority of the regional land-use plan. Housing and associated facilities are also admissible in most of the other areas identified in the regional plan. It is therefore difficult to see how the current planning legislation in Brussels could impede the allocation of certain sites to accommodate Travellers.

²⁶ Circular BB 2010/05

²⁷ Based on the Flemish government decree 16 June 2010, which came into force on 1 December 2010.

²⁸ See footnote 18.

Nor is it correct that there are no incentives to establish such sites since, as noted earlier, Brussels-Capital Region votes an annual subsidy to encourage municipalities to provide *ad hoc* sites. It should also be noted that the region has indicated on a number of occasions that it is prepared to increase this subsidy if local authorities so request.

There are also many provisions in the Brussels-Capital Region's planning regulations that are specifically applicable to Travellers.

Finally, in Flanders as in the other regions, the planning legislation is based on the principle of equality, which means that the impact of any proposed activities or housing is assessed according to urban and spatial planning criteria by the authority responsible for issuing the relevant permit. This legislation also applies to proposed Travellers' sites and the prolonged occupation of such sites by caravans. The Flemish public authorities are aware of the special accommodation needs of Travellers and therefore try to use various methods to meet them. The introduction of Travellers' sites in both development and implementation plans, the publication of a practical guide to encourage the provision of such sites and the annual circular are all evidence of the steps taken in Flanders to carry out a policy of meeting the special accommodation needs of Travellers and their families.

The various steps taken by the authorities of the federated entities, including adaptations to legislation and regulations to take account of Travellers' specific needs and practical measures to satisfy these needs on the ground reflect a positive and generally welcoming attitude to Travellers in Belgium. In the light of all the foregoing, Belgium asks the committee to declare that it is adequately fulfilling its obligations to this community under article 16 of the revised Charter, whether or not taken in conjunction with Article E of the Charter, by taking account of their needs in urban planning legislation and practice and, where necessary, filling any gaps by means of practical measures adapted to their circumstances.

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

The FIDH accuses Belgium of failing to provide adequate safeguards against the eviction of Travellers, which it considers to be "a further violation of families' right to protection, as embodied in Article 16 of the Charter".

It also maintains that Belgium and its federated entities make disproportionate use of evictions against Travellers. In doing so, it confuses two types of eviction, depending on whether they are carried out under police or under urban planning regulations.

The rules governing evictions are laid down in law, decrees and orders and are based on grounds of hygiene, security and public order. Despite the FIDH's

assertions to contrary, the same rules apply to all, including the Traveller community, and their application by the various authorities concerned reveals no discriminatory treatment of this particular group. The rules are laid down in the public interest, namely to protect both members of this community, who may be risking their lives by pitching on inappropriate sites, and neighbouring residents, who may have to suffer public order disturbances caused by inopportune encampments on sites that are not designated for that purpose or unsuitable.

This complaint has significant implications and implicitly criticises Belgium for acting inhumanely and discriminatorily towards Travellers. The FIDH argues incorrectly that the Belgian authorities have acted unlawfully. The rare evictions of Travellers in Belgium have been carried out in accordance with the law, which applies to all those resident or staying in Belgium. The FIDH states that there is no specific legislation in Belgium "governing the eviction of Travellers occupying private or public sites without authorisation". However, the country's various authorities consider it inappropriate to focus specifically on a particular group, in this case Travellers, by drawing up special legislation on their eviction. Since there is already generally applicable legislation on eviction special legislation for Travellers would be superfluous and would also have a stigmatising, not to say discriminatory, effect. Distinguishing this group from the rest of the population could lead to real discrimination.

The FIDH states that Travellers are frequently the victims of disproportionate evictions in Belgium. Yet the various Belgian authorities are not aware of such frequent evictions and have therefore taken steps to check the FIDH's sources. The latter bases its complaint on a dossier drawn up by MRAX (movement against racism, anti-Semitism and xenophobia) and on various press cuttings. The latter all describe one and the same extraordinary event when, without proper warning to the local authorities, 250 to 300 Travellers successively occupied sites in Nieuwpoort, Wingene and Dour. Despite this violation of the right of property, the various municipal authorities launched a dialogue with the Traveller members of "Vie et Lumière". There were no physical evictions for violation of the right of property. In most cases the Travellers left the site after several days after compensation had been paid to the owners by both the municipal authorities and the Travellers themselves.

As noted above, the FIDH's sources are not reliable and are grossly inadequate to support the complaint of "disproportionate use of evictions against Travellers". Turning to the inadequate safeguards against the eviction of Travellers, the situation in each of the federated entities has to be considered separately.

In addition, the federal state will describe the general legislation governing evictions by the administrative and judicial police, which applies equally to all cases of evictions of Travellers.

3.1. Walloon Region

The FIDH has only identified one case of wrongful eviction of Travellers in the Walloon region in its complaint. This was the eviction, in Dour, of the same group of "Vie et Lumière" Travellers that were evicted from Nieuwpoort and Wingene in Flanders. The regional authorities are not aware of any other actual cases concerning them.

Wallonia gives priority to mediation to avoid enforcement measures such as eviction. Since 2004, therefore, it has supported the mediation centre for Travellers as an interface between the authorities, Travellers and local residents (see below, p. ...).

In addition, the Walloon ministers of local authorities and of health, social action and equal opportunities send out a joint letter each year to municipalities, social action centres, provinces and police districts setting out recommended measures for facilitating and harmonising relations between local authorities, Travellers and ordinary residents. These measures are also set out in a practical guide²⁹.

This practice, which has helped to initiate a consultation process, also enables municipalities to anticipate the arrival of Travellers, and thus organise their response.

3.2. Brussels-Capital Region

It has to be emphasised that in its complaint, the FIDH has not identified a single case of wrongful and disproportionate eviction by the Brussels-Capital Region authorities. Nevertheless, the region wishes to clarify the general law governing all evictions, including those that might be ordered against Travellers.

Evictions by the local police must be based either on the relevant sections of the new legislation on local authorities and public order, safety and health or on a district court decision concerning the illegal occupation of a site.

On the other hand, evictions by the regional authorities for planning reasons, which are concerned with restoring sites to their original state, are the consequence of infringements of planning regulations, such as pitching caravans without planning permission. These offences are identified by sworn public officials appointed by the municipalities or the region. It should be noted that the requirement to return a site to its original condition is the most severe penalty under planning legislation and is therefore rarely applied. The FIDH itself acknowledges that several sites in Brussels-Capital Region are occupied by Travellers without planning permission and without their being evicted.

The region is fully aware of the scale of unmet need for facilities for Travellers. It has explained that, given the shortage of regional land reserves, it has urged local authorities to accept their responsibilities.

²⁹ See footnote 5.

However, in the light of the foregoing and in the absence of any practical evidence supplied by the FIDH, Brussels-Capital Region firmly denies the disproportionate use of evictions against Travellers.

3.3. Flemish Region

Flanders is aware of a shortage of legal sites that can accommodate Travellers. It believes that legislation that reflects Travellers specific housing needs goes a long way to preventing potential evictions of this group. It is therefore taking major steps to satisfy these needs in a fully legal fashion.

The Flemish authorities have adopted various instruments (see below) aimed at securing a satisfactory balance while meeting these accommodation needs.

It continues to give priority to prevention to avoid enforcement measures such as eviction. Nevertheless, in certain specific circumstances explicitly provided for in the legislation, the authorities may be forced to resort to evictions of Travellers. This approach is very rarely employed and only ever as a last resort.

According to circular 2010 BB/05, if after consulting the municipality Travellers are not allocated a temporary site, they may then contact the governor, who is then obliged to point them to an available *ad hoc* site. This means that transiting Travellers threatened with eviction can benefit from an alternative provisional encampment.

3.3.1 Eviction by the local police

Section 135 § 2 of the new local government legislation states that municipalities are also responsible for ensuring that their inhabitants benefit from good policing, particularly regarding cleanliness, health, safety and order in the streets and public places and buildings. Under this section, the local police can take steps to protect the peace and public order and safety. Moreover, section 135 § 2.7 of the new act authorises municipalities to take all necessary steps, including police orders, to combat all forms of public nuisance.

The Flemish authorities operate an explicit policy to prevent any breaches of public safety, peace and public order relating to Travellers. This makes it unnecessary for local authorities to apply section 135 § 2 to protect the peace and public order and safety in their areas.

Local authorities and provincial governors are kept informed of transiting Travellers through the circular *doortrekkersterreinen en pleisterplaatsen*. They are asked to take proactive measures to provide temporary accommodation for them in suitable conditions. The Flemish authorities are convinced that these proactive measures taken by municipalities serve to prevent breaches of public safety, peace and public order.

Circular BB 2010/05 specifies various measures in application of this preventive policy.

Firstly, local authorities are informed of any Travellers in transit. They are then asked to show them an *ad hoc* site where they can stop temporarily.

The circular also highlights a number of priority issues, concerning both referral to *ad hoc* sites and their facilities and management. The aim is to avoid tensions between Travellers, residents and the authorities. The Flemish authorities also propose model municipal regulations and contracts between individual site owners and Travellers. There is also a stage by stage plan that local authorities can follow when Travellers arrive in their territory.

These measures constitute a preventive policy designed to avoid any breaches of public security, peace and public order, thus enabling proactive evictions under section 135§2 of the new local government legislation to be avoided.

3.3.2. Eviction by the regional authorities

In the event of unauthorised occupation of a site by caravans those concerned may be served with notice or a prohibition order may be issued. Anyone authorised to do so may serve notice. However, prohibition orders must be approved by a planning inspector. Persons affected by these measures may appeal to the planning inspector to lift the prohibition order, either fully or partially. They can also apply directly to the president of the court of first instance for a suspension. The president's decision can be challenged in the court of appeal and its decision in the court of cassation.

Since 1 December 2010, it has no longer been necessary in most cases to obtain planning permission to pitch a caravan temporarily, so it is no longer possible to serve notice or issue a prohibition order because permission has not been granted. This is in application of the Flemish government order of 16 June 2010 laying down circumstances in which planning permission is not needed.

Article 7.2 of the order makes it unnecessary to obtain planning permission for temporary constructions, other than advertising equipment, so long as the following conditions are met: 1. Maximum 90 day limit per year; 2. Sites must not be located in spatially vulnerable areas; 3. Temporary developments must not be detrimental to the area's general purpose.

Under article 7.3, planning permission is not needed for the temporary modification of authorised or reputed to be authorised buildings, so long as the 90 day limit is not exceeded.

The Flemish government order of 16 June 2010 responds to the special accommodation needs of transiting Travellers.

3.4. Eviction by the federal police

The federal police are required to act on any orders addressed to them by an administrative or judicial police authority³⁰.

At the request of a mayor, the police may enforce an eviction order when:

- the competent authority has decided to order the evacuation of a municipal site³¹;
- the deadline for compliance has expired;
- those concerned have not complied.

In accordance with section 1 of the Police Act, in the exercise of their administrative or judicial police responsibilities, the police shall ensure respect for and contribute to the protection of individual freedoms and rights and to the democratic development of society. In performing these duties, they shall only use means of enforcement under conditions laid down by the law.

Once the police are legally required to take action, they may if necessary use force to carry out their duties. Nevertheless, two fundamental principles must be respected: those of subsidiarity, whereby force may only be used for a legitimate purpose that cannot be otherwise secured, and of proportionality, whereby the constraint used must be reasonable and justified. Finally, any use of force must be preceded by a warning, unless this would make the use of force ineffective³².

The time chosen to intervene depends on whether or not the police are required to enter the premises in which those concerned are housed. Travellers' caravans constitute places that are protected by the inviolability of a person's residence, under section 15. The courts consider that any premises, including separate and enclosed out-buildings, occupied by persons for the purposes of establishing their real or effective residence and where they are entitled, for that reason, to respect for their privacy, are protected by the inviolability of the home³³. In consequence:

- if the eviction requires entry into the premises, it may only be carried out between 5.00 and 21.00³⁴;
- if the eviction does not require entry into the premises³⁵, the law does not place any restrictions on when it can be carried out. However, in such cases, the proportionality principle requires evictions to be carried out at a reasonable time.

³⁰ Section 8/2 of the Police Act, *MB 22-12-1992*; see: [Loi sur la fonction de police, MB 22/12/1992](#)

³¹ For example, in application of sections 133 and 135 of the new local government legislation or of the rural code (in particular articles 68 and 89).

³² Section 37/2 of the Police Act.

³³ Court of Cassation, 19-02-2002, no. P001100N.

³⁴ Act of 7/6/1969 fixing the authorised times for searches and evictions

³⁵ Which is usually the case.

These rules are scrupulously observed by the police when carrying out evictions and the Belgian authorities are not aware of any cases that have raised problems.

Conclusion

As the federated entities and the federal states have just shown, Belgian legislation contains adequate safeguards for evictions, whether of Travellers or of any other persons committing offences as a result of unlawful occupation of a site or premises.

Moreover, contrary to the FIDH's assertions that the legal safeguards mainly concern tenants, in Belgium, as in any country governed by the rule of law, legal remedies are available to Travellers who are the possible victims of wrongful evictions to enable them to seek redress and, if appropriate, compensation. In fact, the FIDH has not reported any complaints lodged with the Belgian judicial authorities by members of this community following evictions.

In itself, the Social Charter does not establish any additional obligation to enact specific legislation as such so the FIDH's accusation of an additional violation of article 16 of the Charter by Belgium is without foundation.

Moreover, each of the federated entities has drawn attention to the numerous preventive steps it is taking to avoid the ultimate solution of evicting Travellers.

4. The alleged failure to recognise caravans as dwellings

The FIDH criticises the Walloon and Brussels-Capital regions from excluding mobile homes from the legal notion of dwellings and the Flemish Region for failing to adapt its safety and living standards to the specific circumstances of mobile homes.

With regard to the first two regions, it concludes that it is impossible for Travellers to rely on the constitutional protection of the right to housing.

The FIDH also argues that in the Flemish Region, the formal recognition in regional legislation of mobile homes as dwellings is rendered ineffective by the failure to adapt safety and living standards.

It also levels the same criticism at the federal state, which recognises caravans as dwellings in its tenancy legislation, namely that its health, safety and satisfactory living conditions requirements have not been adapted to this form of housing.

Firstly, Belgium wishes to reiterate that it has not accepted Article 31 of the revised Social Charter³⁶.

³⁶ See p. ... of this memorial.

Nevertheless, the following sections will describe the situation regarding recognition of caravans as housing or dwellings, as it relates to the federated entities and the federal state.

4.1. Walloon Region

The Walloon government is aware of the gaps in its legislation and intends to reform the housing sector. It approved a memorandum on the subject on 16 December 2010. It intends to introduce a provision into the Walloon housing code creating an exception to the code's definition of housing, namely a building or part of a building used to accommodate one or more households, to enable the government to incorporate alternative or innovatory forms of dwelling by distinguishing between the form of the dwelling and its occupancy arrangements.

The purpose is to give formal recognition to alternative forms of dwelling so that these can be included in so-called housing groups ("*noyaux d'habitat*"), to deal with the issue of the partial or total settlement of Travellers on specific sites.

The amending decree should come into force in the second half of 2011.

4.2. Brussels-Capital Region

• The Brussels political authorities believe that housing is more than just static bricks and mortar and includes, in a more dynamic fashion, itinerant lifestyles that forge the very identity of those who adopt them. However, it is true that hitherto mobile homes have not featured anywhere in regional legislation. However, as noted earlier, Brussels planning legislation includes specific provisions that are applicable to Travellers.

Housing is defined as follows in the relevant legislation:

- Housing code order of 01-04-04 (amended on 01-04-10)), art 93 § 3, 4: Individual houses or flats fitted out for the residence of a household, including garden and outbuildings.
- Regional government planning order of 21-11-06, part II, art 2, 3: All of the premises intended for residence and forming a residence unit.

Brussels-Capital Region is nevertheless aware of the problem and believes that the best response to the uncontested needs of Travellers is to provide suitable sites that offer them a satisfactory environment.

The region has therefore introduced positive measures to encourage local authorities to accept their responsibilities. As a result, in summer 2011 Brussels-Capital Region will have a new site with twenty places in the city of Brussels.

Given the geographical size of the Brussels region and its extremely high population density, compared with the other two regions, this represents real progress.

4.3. Flemish Region

The Flemish housing code (decree of 15 July 1997, article 4.1.4.c) recognises that living in caravans constitutes a form of housing. The minimum health, safety and housing standards that all dwellings must satisfy are specified in articles 5 and 6 of the code. Dwellings are defined as any real estate or part of it intended mainly to accommodate families of single persons (article 2.1.31). Caravans that are considered to be real estate should therefore comply with the minimum standards laid down in the Flemish housing code. Applying these standards to caravans could cause problems, particularly with regard to the minimum roof height of living space, number of bedrooms, fire safety and insulation. However, article 5.1 of the housing code does make it possible to take account of specific types of dwelling and the particular circumstances of groups of inhabitants when determining the requirements and standards.

When drawing up a strategic plan for Travellers the authorities will try to determine whether it is necessary to lay down a series of different quality standards for caravans.

4.4. Federal tenancy legislation

Section 377 of the Programme Act of 24 December 2002³⁷ amended section 1 of the Act of 20 February 1991 on principal residence tenancies to include moveable property intended for the principal residence of a tenant.

As noted in the explanatory report, the purpose was to extend the protection of the Act of 20 February 1991 to forms of housing occupied by the most vulnerable groups of tenants, such as those living permanently in campsites, rented residential caravans, chalets or caravans that they owned themselves but were located on sites rented from camping site operators.

It also stated that the proposed change was also based on the fact that permanent residence in campsites was a reality for thousands of families and that this category of tenants was currently denied legal protection (p. 177)³⁸.

The FIDH's complaint maintains that the Act of 20 February 1991 is deficient because rented property used as a principal residence must meet certain basic requirements with regard to health, safety and satisfactory living conditions laid

³⁷ [Programme Act \(I\) of 24/12/2002](#)

³⁸ Explanatory report of the programme act of 24/12/2002, parliamentary proceedings of the Chamber of Representatives, Legislature 50, doc 2124/001, p.177; see: <http://www.lachambre.be/FLWB/PDF/50/2124/50K2124001.pdf>

down in the royal decree of 8 July 1997, some of which it is difficult for caravans to meet, since these requirements were established with ordinary buildings in mind.

It considers that this alleged deficiency is in breach of article 16 of the revised Charter, taken alone or in conjunction with Article E.

According to section 2.1 of the Act of 20 February 1991, rented property must comply with basic requirements with regard to health, safety and satisfactory living conditions, and the crown shall lay down the minimum conditions that rented accommodation must meet to satisfy the requirements of paragraph 1.

The royal decree of 8 July 1997 implements this section by defining a series of minimum conditions applicable to dwellings, defined as rented buildings or parts of buildings intended for the occupant's principal residence.

According to the aforementioned explanatory report, given the specific nature of rented accommodation such as caravans, chalets and rented sites for caravans owned by the occupant, it will be necessary to supplement the relevant quality standards with ones adapted to this type of accommodation.

So far no such amendments have been made so as it currently stands the royal decree of 8 July 1997 does not apply to moveable property.

However, it is unclear why this situation should be in breach of Article 16 of the revised Charter.

The complaint refers to this article, interpreted to mean that it would embody the right to the effective enjoyment of decent housing, which "possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity [and] is of a suitable size considering the composition of the family in residence".

According to the complaint, the 1997 royal decree lays down standards concerning, *inter alia*, "the surface area of the dwelling, the conformity of electrical installations and the connection to the running water supply", some of which "it is difficult for caravans to meet".

The complaint thus seems to be criticising the existence of standards that caravans cannot meet.

However, as noted, these standards are not applicable to caravans and do not therefore prevent the renting of caravans as the occupant's principal residence.

If the complaint has to be understood to include the contention that other criteria specific to caravans should be laid down, it needs to be pointed out that the criteria to which it refers, particularly that of "suitable size", are also ones that it considers that caravans are unable to satisfy. So how should a "suitable size"

criterion be defined when the complaint considers that it cannot be satisfied by a caravan?

In addition, the aforementioned rule in the 1991 legislation, whereby rented property must comply with basic requirements with regard to health, safety and satisfactory living conditions, remains applicable to moveable property. It should be noted that the additional rule authorising the crown to set minimum criteria was only adopted in 1997, which shows that it is fully applicable, even in the absence of an implementing royal decree.

Conclusion

Belgium concludes, firstly, that the fact that some of its legislation fails to take specific account of mobile homes does not mean that they are totally excluded from the notion of housing, as shown by the various planning regulations that refer to this form of accommodation and the federal tenancy legislation.

The Walloon and Brussels-Capital Regions have signalled their awareness of the current gap in their legislation. The former has stated its intention to fill this gap in its next reform of the housing sector. The latter has drawn attention to various practical approaches to meeting Travellers' needs, despite the gaps in the law.

The aim of the complaint concerning the federal state and the Flemish Region is unclear. Is the FIDH complaining about criteria that cannot be met by caravans or the absence of specific criteria relating to them?

5. The alleged obstacles to domiciliation

The FIDH is wrong when it states that "everything connected with domiciliation also remains an exclusive federal responsibility."

The federal state only has exclusive powers to legislate on matters relating to domiciliation or, to use the legal terminology, inclusion on population registers. There are several relevant laws and regulations:

- The Act of 19 July 1991 on population registers, identity cards, aliens' identity cards and residence documents, amending the Act of 8 August 1983 on the national register of private individuals³⁹. This has been revised on a number of occasions, in particular by the Administrative Simplification Act of 14 December 2005⁴⁰, which authorises the use of a legal person's address as the reference address for registration purposes.

³⁹ Act of 19 July 1991 on population registers, identity cards, aliens' identity cards and residence documents, amending the Act of 8 August 1983 on the national register of private individuals: see; Population Registers Act of 19/7/1991.

⁴⁰ Administrative Simplification Act of 14/12/2005

- the royal decree of 16 July 1992 on the population registers and the register of foreigners⁴¹;
- General instructions on the maintenance of population registers (co-ordinated version of 1 July 2010).

Keeping population registers up to date is a local government responsibility, as specified in article 4 of the royal decree of 16 July 1992 on the population registers and the register of foreigners, which specifies that maintaining registers is the responsibility of local authority elected executive bodies. The civil status registrar shall ensure that all the procedures governing the maintenance of registers are properly observed⁴².

Including persons in the municipal population registers is one aspect of maintaining registers and is therefore, in the first place, a municipal responsibility;

The aforementioned regulations contain explicit and full provisions concerning the right of Travellers to be included on municipal population registers.

1. Section 1.1.1 of the Act of 19 July 1991 on population registers, identity cards, aliens' identity cards and residence documents, amending the Act of 8 August 1983 on the national register of private individuals, establishes the basic principle that Belgians and foreign nationals admitted or authorised to stay in the Kingdom for more than three months or authorised to settle there, or foreign nationals registered for another reason in accordance with the Act of 15 September 1980 on the entry, residence, settlement and removal of aliens, with the exception of foreign nationals included on the pending register provided for in section 1.1.2, shall be registered in the place where they have their principal residence, whether or not they are present or temporarily absent.

It should be noted that foreign nationals who wish to settle in Belgium for more than three months are required to submit a residence application to the Aliens' Office on the forms specified in the Act of 15 September 1980 on the entry, residence, settlement and removal of aliens before they can apply to be included on the population register of a Belgian municipality. This means that persons who travel for less than three months in Belgium and who do not have their principal residence there clearly cannot be included on the population register of a Belgian municipality. These persons must comply with the relevant regional and local regulations concerning the pitching of their caravans.

2. Under article 16 of the royal decree of 16 July 1992 on the population registers and the register of foreigners, the principal residence is determined according to the *de facto* situation, that is whether there is actual residence in a municipality for the major part of the year.

⁴¹ Royal decree of 16 July 1992 on the population registers and the register of foreigners

⁴² Article 4 of the Royal decree of 16 July 1992 on population registers and the register of foreigners.

3. Under section 1.2 of the Act of 19 July 1991 persons covered by section 1.1.1 who live in mobile homes⁴³ may, at their request, be registered at a reference address by the municipality where they are normally present. By reference address is meant the address either of an individual/natural person entered on the register of the place where he or she has his principal residence or of a legal person, and where, with the agreement of this individual or legal person, an individual with no fixed residence is registered.

4. The Administrative Simplification Act of 14 December 2005 made a significant modification to section 1.2 of the Act of 19 July 1991. Before this date, Travellers could only be registered for reference address purposes with individual persons. Parliament recognised that this could lead to practical problems and to rectify the situation authorised Travellers to have as their reference address the address of a legal person.

Reference should be made in this regard to the preparatory work on the Act of 14 December 2005, which highlights parliament's commitment to finding an appropriate and practical response to the problems associated with Travellers' inclusion on the population registers that takes account of their distinctive circumstances.

"The existing legislation on population registers makes it possible to allocate a reference address to persons with no fixed address, which means that they can in any case be contacted for the purposes of post and administrative documents.

This applies in particular to nomads, gypsies, travelling showpeople, circus artists and boatmen.

The current wording of the legislation (section 1.2.2 and 3) requires the reference address to be that of an individual/natural person. However, this restriction raises a number of problems:

- only a very limited number of persons agree to their principal residence being used as a reference address;
- there is very little continuity of reference addresses because the individuals concerned may withdraw the facility, fall ill, move house and so on;
- because so few individuals agree to allow other persons to register a reference address at their main address, the result is a concentration of such registrations at just a few addresses.

⁴³ Mobile homes are taken to mean boats, caravans (in the form of trailers intended to be towed by a vehicle) or other similar forms of shelter.

The aforementioned definition excludes residential caravans, that is dwellings not intended to be towed by a vehicle on the public highway, whether or not fixed to the ground. The same applies to caravans that are supported by an installation built into or otherwise attached to the ground and which are therefore no longer mobile.

Moreover, the current situation, in which one individual serves as a reference address for 200 to 400 others, offers the authorities far fewer safeguards than there would be if those concerned were authorised to register a reference address with organisations that were professionally concerned with these social groups. This would make it much easier to check the reliability of the relevant information.

The right to have a reference address with the aforementioned organisations would strengthen the link between those requesting an address and those giving one. Authorising such organisational reference addresses would also lead to a certain de-concentration and professional support, while preventing the emergence of a parallel administrative structure.

The registration of births among nomads and gypsies in the population registers also raises problems because of the existence, under the current system, of excessive concentrations of persons registered at certain addresses. As a result, these children often fail to enjoy equal access to preventive health care."

5. The provisional registration system referred to in the complaint was designed to protect the persons concerned, as noted in the report to the crown of the aforementioned royal decree of 16 July 1992: subject to certain conditions, this system "makes it possible to re-examine individuals' residence situation, without infringing the rights attached to their inclusion in the registers in the period preceding an administrative or judicial decision".

No application for registration of a dwelling as a principal residence may be rejected on grounds of safety, hygiene or urban or regional planning rules. While those concerned continue to live in a dwelling in which permanent occupation is not authorised for reasons of safety, hygiene or urban or regional planning rules, they will continue to be registered there.

In practice, persons occupying mobile homes are recorded in the population registers of:

- the municipality where they reside for at least six months at a fixed address. When they are travelling, these persons are then considered to be temporarily absent from the local authority of registration; *or*
- the municipality where they have a reference address with another individual; *or*
- the municipality where they have a reference address with a legal person. The only bodies authorised to act as reference addresses in their capacity as legal persons are non-profit associations or social enterprises that have had legal personality for at least five years and whose social objectives include the promotion and defence of the interests of nomadic groups of the population.

Those in the first group who temporarily leave their municipality of registration must advise it of any absence in excess of six months.

6. It should also be borne in mind that although entries in municipal population registers are initially a local authority responsibility, where there is a dispute about what constitutes the principal residence the interior minister must decide, after investigating the situation on the spot. Thus, under section 8 of the Act of 19 July 1991 and article 21 of the royal decree of 16 July 1992:

- "Where there are difficulties concerning, or disagreement about what constitutes, the principal residence, the Minister of the Interior shall be responsible for determining its location, if necessary after conducting on-the-spot inquiries."
- "The Minister of the Interior shall nominate officials authorised to conduct on-the-spot inquiries in the event of difficulties concerning, or disagreement about what constitutes, the principal residence."

7. Finally, in answer to the FIDH's allegations of failure to comply with these provisions in practice and of the supervisory authorities' failure to take action, Belgium wishes to point out that training was carried in 2010 in all the provinces and is also provided on request. This covers such subjects as the basic principles governing registration and specific provisions relating to reference addresses, temporary registration and so on. The main purpose of this training is to ensure that the legislation and regulations on population registers are properly applied. Special training for police departments on the principles governing the registration of individuals and residence inquiries is still currently under way, in collaboration with police training establishments or at the request of police districts.

Moreover, in accordance with articles 21 and 22 of the royal decree of 16 July 1992 on the population registers and the register of foreigners, the interior minister has nominated officials of the institutions and population general directorate of the Federal Public Service, Home Affairs, to conduct inquiries in cases of difficulties concerning, or disagreement about what constitutes, the principal residence, removal from the register and *ex officio* registrations. The local authorities must assist these officials in carrying out their duties. Departments holding information likely to assist the inquiries are required to supply it. These same officials are also instructed to inspect the registers and give oral explanations to supplement the instructions on changes of residence.

In practice, one or more such inspectors are appointed in each province. Once they have inspected the municipal population registers, the designated officials draw up reports in which they identify any shortcomings in the application of the relevant rules governing the maintenance of these registrations and the inclusion of names in them. The reports are sent to the local authorities concerned together with recommended measures to rectify any problems identified. The situation is constantly monitored at provincial and central levels.

When specific problems in the application of the rules are identified, particularly in connection with disputes about residence, the inspectors meet the municipal authorities to remind them of the regulations and rectify any breaches of them.

It has to be stressed that the FIDH has not identified any precise cases in its complaint as evidence of "illegal practices".

Conclusion

As the FIDH itself acknowledges, Belgian legislation on residence takes specific account of the particular circumstances of the Traveller community and offers a series of measures to facilitate their inclusion on a municipal register, even if they do not reside in that municipality all the year round. Parliament has even passed legislation enabling Travellers to be registered at the reference address of a legal person. This is a clear example of how the basic rules have been adapted to meet the specific needs of the Traveller community linked to their nomadic lifestyle.

Numerous training sessions have been, and are still being, run throughout Belgium to ensure that the relevant legislation and regulations on population registers are properly known and understood. In addition, federal home affairs officials have the specific task of investigating difficulties concerning, or disagreement about what constitutes, the principal residence, removal from the register and *ex officio* registrations.

Since the FIDH has not identified any specific cases Belgium must confine itself to describing the numerous existing provisions and oversight arrangements and the steps taken to ensure that the rules are properly understood and applied by each local authority concerned.

It is therefore incorrect to argue that Belgium is in violation of Articles 16 and E of the Social Charter, on account of the alleged obstacles to the domiciliation of Travellers in Belgium.

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

6.1. Alleged 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

Belgium first wishes to draw the Committee's attention to the FIDH's reasoning in its complaint.

In the complaint it indicates that the Committee's decision on the merits of 19 October 2009, European Roma Rights Centre (ERRC) against France, must also apply to Belgium.

Belgium invites the Committee to examine this decision closely.

With regard to the alleged violation of Article 30 of the revised Charter, paragraph 95 reads: "The Committee considers that it is clear from its conclusions under Article 31 that the housing policy for Travellers is inadequate. It accordingly finds that France has failed to adopt a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion."

This makes it clear that the violation of Article 30 is the result of the finding of a violation of Article 31 of the Charter.

Such a reasoning can in no way apply to Belgium, as the FIDH maintains, for the simple reason that Belgium has not ratified Article 31 of the Charter.

Secondly, Belgium wishes to highlight the action taken by the various political authorities to promote effective access to housing for Travellers.

6.1.1. Walloon Region

In 2003, the mediation centre for Travellers in Wallonia, a non-profit association, was founded. Its aim is to promote equal opportunities for Travellers in Wallonia, and recognition of and respect for their lifestyle. It sets out to reverse the processes that lead to poverty among members of this community. Above all, though, it fosters dialogue between Travellers, their neighbours and local authorities. In particular, in 2004, with the support of the Walloon internal affairs ministry, the centre carried out a review of the needs of and problems faced by municipalities in managing the accommodation of Travellers in their areas. Among other things, the survey highlighted the characteristics of Travellers' stays.

In 2005, the centre and the Walloon Region concluded a framework agreement on a concerted approach to the reception of Travellers in Wallonia, designed to support, particularly financially, and reinforce the centre's activities. Reflecting the highly transversal nature of the Traveller issue, the centre is financed by the government as part of its housing, home affairs, employment, social action and general co-ordination responsibilities. The implementation of the framework agreement is overseen by a steering committee, led by the social action section.

6.1.2. Brussels-Capital Region

The Brussels-Capital Region refers to its earlier description of measures to encourage local authorities to accept their responsibilities regarding the provision of appropriate sites.

Local authorities will also very shortly be receiving a circular informing them of the introduction of an *ad hoc* service to act as a contact point between municipalities and Travellers. The aim is to establish real co-ordination between all those concerned.

6.1.3. Flemish Region

As already noted, the Flemish authorities have a policy for meeting Travellers' specific accommodation needs that seeks to both stimulate and co-ordinate.

The *Vlaamse Woonwagencommissie* was established as part of project 7 of the strategic plan for minorities of 24 June 1996. The Commission is made up of representatives of all the Flemish provinces and senior political and administrative representatives of all the policy areas concerned. It is responsible for the overall planning of Travellers' sites in Flanders. Three provincial commissions co-ordinate the provision of sites within their provinces and ten cities and municipalities with sites intended for Travellers have local commissions. These commissions set out to meet Travellers' residential and temporary accommodation needs.

To provide a co-ordinated response to Travellers' temporary accommodation needs, the Flemish minister responsible for integration sends out an annual circular on transit and *ad hoc* sites.

As described below, in 2011 the Flemish public authorities will be implementing a strategic plan for Travellers that will focus on such areas as education, employment and health. One of the priorities will be Travellers' specific housing needs.

6.2. Alleged violation of Article 30 stemming from the lack of a comprehensive, co-ordinated policy to combat poverty and social exclusion among Travellers

6.2.1. The federal state

6.2.1.1. Belgium's third national report on the revised Charter

First, the Belgian federal state wishes to emphasise that, contrary to the assertions of the FIDH, in its 2009 conclusions on Article 30 of the revised Charter, the European Committee of Social Rights stated that "in the light of the information available, the Committee considers that, on the whole, the approach taken by the [Belgian] Government establishes a clear analytical framework, sets proper priorities and fosters appropriate action. It is therefore in conformity with the Committee's interpretation of the overall and co-ordinated approach referred, to in Article 30 of the Revised Charter."

In its third national report on the revised Charter, to which the Committee gave the aforementioned positive response, Belgium described the measures taken by the federal authorities to combat poverty. These may be summarised as follows⁴⁴:

⁴⁴ For more details, see 3rd National Report on the implementation of the European Social Charter (revised) submitted by the Government of Belgium, 2009 cycle, Report registered by the Secretariat on 12 March 2009. The report is available at the following address <http://www.coe.int>.

- a) the strategic report on social protection and social inclusion 2008-2010 and the National Action Plan for social inclusion (NAP/inclusion)

The NAP/inclusion is a plan that Belgium (like all the EU member states) submits to the European Commission every two years following the launch of the Lisbon Strategy (2000-2010).

The plan is one of five instruments of the Open Method of Coordination (OMC), designed to;

- increase economic growth in accordance with sustainable development;
- increase the level and quality of employment, and
- make a major contribution to eliminating poverty.

Each member state is free to decide what measures it must take to achieve these objectives. However, a certain discipline is needed to ensure consistency and compatibility between member countries.

Since 2005, the NAP/inclusion has become part of a broader national strategic report on social protection and social inclusion.

Efforts are being made to monitor and evaluate social policies in Belgium. The "indicators" and "actions" working groups play an important role.

A so-called "inter-federal barometer" measures levels of and trends in poverty and the impact of anti-poverty policies.

Housing was one of the three "challenges" on which it was decided to focus in the 2008-2010 strategic plan.

b. The federal anti-poverty plan

Belgium has appointed a state secretary for poverty prevention. One of his actions has been the framing of a federal anti-poverty plan.

This contains 59 specific measures divided into six objectives. It was approved by the Council of Ministers on 11 December 2008. The plan only concerns Belgium and only includes federal measures.

It encourages stakeholders to devise practical means of enabling everyone to have a decent standard of living. It offers practical means of ensuring a measure of security for all.

It includes four main elements:

- the establishment of an "inter-federal barometer" to measure poverty, which includes 15 indicators;
- genuine dialogue with those in poverty;
- involvement of all the stakeholders, in the public and voluntary sectors;
- Europe as a partner in the fight against poverty (Belgium takes over the Presidency of the Union in 2010).

Housing features as objective 4 of the federal plan, although housing is mainly a regional responsibility.

c) The inter-federal anti-poverty barometer

The barometer is based on 15 indicators, which focus on poverty and financial insecurity levels in several areas (including income and debt, health care, employment, education, housing and non-monetary hardships) and measure one or more of their main features.

It was established because poverty is not just a matter of insufficient financial resources, but also encompasses exclusion, unsuitable housing, serious health problems and day-to-day problems such as heating, correct diet and paying for child care.

To be effective, the fight against poverty must achieve progress in each of these areas. The federal government has therefore established an information, communication and decision-making tool for this purpose.

The barometer is also the product of co-operation with the regions and communities, several federal public services and programming departments, the cross-federal anti-poverty, insecurity and social exclusion service, universities, statisticians and several associations involved in combating poverty, to ensure that as far as possible each of these stakeholders' priorities and viewpoints is reflected.

It is closely linked to the NAP/inclusion plan because it includes most of the indicators used in the latter.

d) Call for proposals to increase the supply of emergency accommodation

The aim of this exercise is to offer Belgian social action centres the financial resources they need to increase the number of emergency dwellings.

These are units the centres rent for short periods to persons in need following evictions, declarations of unfitness for habitation, disasters, family disputes or homelessness. Lettings are for four months and may be extended just once.

Centres are therefore given grants to:

- ensure that the accommodation concerned meets the health and safety standards applicable to dwellings, as laid down in regional legislation;
- fully equip the emergency accommodation with whatever is necessary to ensure a proper standard of service.

e) Measures associated with the large towns and cities policy

The federal large towns and cities policy derives from the Act of 17 July 2000, which establishes the conditions under which local authorities are eligible for state financial assistance in connection with urban policy.

The towns and cities themselves draw up intervention programmes that form the basis of their contracts with the government, which are of two sorts:

- Urban contracts: the aim is to improve the situation in at-risk neighbourhoods. Contracts have been concluded with 15 towns and cities and are designed to provide a more active response to the underlying causes of such urban problems as insecurity, increasing poverty, urban depopulation, speculation and poor facilities.
- Housing contracts: in 2004, the federal government increased the major towns and cities programme budget for housing. The aim is to support local authority policies to encourage a greater social mix and social cohesion through their housing policies. One of the objectives is a greater supply of housing.

Unlike many financial aid programmes, the major towns and cities programme does not require matching funding from local authorities, because of the particularly difficult situation of the municipalities concerned.

Belgium's third national report includes a full description of these various measures, which the Committee has judged to be consistent with its interpretation of Article 30 of the Charter.

6.2.1.2. Co-operation agreement

The Belgian federal state would also stress that the anti-poverty policy relies on numerous skills and calls for action at all political levels. The governments of the federal state, regions and communities have therefore signed a co-operation agreement that has been ratified by their respective parliaments.

The agreement between the federal state, the communities and the regions on the continuation of the federal anti-poverty programme was signed in Brussels on

5 May 1998 and approved at federal level in an act of 27 January 1999, Belgian monitor (MB) of 10 July 1999⁴⁵.

According to Article 1 of the agreement, "having regard to their respective powers and responsibilities, the parties undertake to continue and co-ordinate their policies to prevent insecurity, combat poverty and integrate all concerned into society, based on the following principles:

- the practical application of the social rights embodied in Article 23 of the Constitution;
- equal access for all to all these rights, which may also entail affirmative action;
- the establishment and strengthening of forms of participation of all the authorities and individuals concerned, particularly persons living in poverty, in the framing, implementation and evaluation of these policies;
- a social integration policy must be transversal, comprehensive and co-ordinated, which means that it must apply in all areas of responsibility and requires the continuing evaluation of all the initiatives and activities undertaken or planned."

The governments of the various federated and federal entities have therefore clearly committed themselves to a comprehensive and co-ordinated anti-poverty and social exclusion policy.

The means of achieving this include:

- A report on insecurity, poverty, social exclusion and unequal access to rights.

Each of the signatories to the agreement undertakes to contribute to the report, in accordance with its own powers and responsibilities.

The actual drafting is undertaken by the anti-poverty, insecurity and social exclusion department.

- The joint ministerial conference on social integration in society.

Under article 9 of the agreement, a joint ministerial conference on social integration meets twice a year to ensure that the various governments remain in step, and that policies to prevent insecurity, combat poverty and integrate all concerned into society are comprehensive, integrated and co-ordinated.

It is chaired by the Prime Minister and prepared in collaboration with the minister or state secretary responsible for integration. It also has a monitoring role, for which it uses the expertise of the social integration department's poverty cell and the anti-poverty, financial insecurity and social exclusion agency.

⁴⁵ See footnote 3.

- The anti-poverty, financial insecurity and social exclusion agency

Under article 5 of the co-operation agreement, an anti-poverty, insecurity and social exclusion agency has been established to:

- collect, collate and analyse information on financial insecurity, poverty, social exclusion and access to rights, based on the indicators specified in article 3 of the agreement;
- make practical recommendations and proposals for improving policies and initiatives to prevent financial insecurity, combat poverty and integrate all concerned into society;
- draw up the report specified in article 2 of the agreement at least every two years;
- at the request of any of the parties to the joint ministerial conference, issue advisory opinions or draft interim reports on any matter falling within its sphere of competence;
- organise structured consultations with the poorest members of society.

The existence of such a co-operation agreement makes it difficult to maintain, as does the FIDH, that Belgium has no comprehensive and co-ordinated policy to combat poverty and social exclusion.

Admittedly, the agreement does not specifically identify certain target groups such as Travellers, but the benefit is that it offers a comprehensive approach to poverty in terms of fundamental rights. The agreement establishes as a objective the effective exercise of social, economic, cultural, political and civil rights and the removal of remaining inequalities in access to these rights.

Belgium therefore has a comprehensive and co-ordinated policy to combat poverty and social exclusion for everyone, including Travellers, and is thus in compliance with Article 30 of the Charter.

6.2.1.3. Specific measures to assist Travellers

The FIDH criticises Belgium for failing to set up systems for Travellers to be consulted on and take part in the framing and supervision of policies relating to them or to identify their specific needs. Belgium does not accept these criticisms:

a. The federal public service responsible for programming and social integration has established a continuing dialogue with associations representing the interests of persons in poverty. For example, it holds regular meetings with the Belgian anti-poverty network, an organisation composed of regional networks, including the Walloon anti-poverty network, which encompasses associations representing Roma and Traveller interests.

b. As part of the programme of the Spain-Belgium-Hungary trio of presidencies of the Council of the European Union, and in particular in connection with the positions defended by Belgium:

- At the second European Roma summit, held in Cordoba on 8 and 9 April 2010 under the auspices of the Spanish presidency of the Council of the Union, the Belgian state secretary for social integration and combating poverty undertook to organise, in collaboration with the European Commission, the 4th European Roma Platform, in Brussels on 13 December 2010. This gave an opportunity to present various examples of good practice, with a particular focus on the positive role played by ombudsmen in helping to implement an integrated approach to the social inclusion of Roma and Travellers.
- This and other recommendations have been included by the European Commission in its European Framework for National Roma Integration Strategies, which will serve as a template for national Roma policies and help to mobilise EU funding for integration activities (published on 5 April 2011).
- The state secretary for social integration has also asked the Walloon mediation centre for Travellers, in conjunction with its two regional partners, Vlaams Minderheden (Flanders) and Le Foyer (Brussels), to draft recommendations on ways of strengthening efforts to prevent poverty among children and homelessness in the Roma and Traveller target groups.

These two studies served as working documents at the European conference "Who cares: Child poverty and Child well-being", held in Marche-en-Famenne on 2 and 3 September 2010, and at the European Consensus Conference on Homelessness, held in Brussels on 9 and 10 December 2010.

d. An interministerial working group has been established as part of the interministerial integration in society conference and will be organising activities to which Roma and Traveller sector associations will be invited.

The above information offers sufficient evidence that Belgium has taken necessary and appropriate steps to consult Travellers, assess their specific needs and develop ideas and proposals to deal with them.

Finally, in answer to the FIDH's complaint that Belgium has failed to take appropriate steps to eliminate specific obstacles faced by Travellers in securing their fundamental social rights, the federal state wishes to point out that an amendment to the legislation in 2005 introduced the possibility of registration at the reference address of a legal person. This was specifically designed to meet Travellers' needs and facilitate their registration with the municipal authorities. The aim of registering via a legal person is also intended to strengthen the link between the individual requesting an address and the body supplying it.

This means that, despite the FIDH's assertions, Belgium has definitely taken specific measures to lift the administrative obstacle that prevented Travellers from enforcing their fundamental social rights. Moreover, because the legislation on inclusion in registers is a federal matter, it applies throughout the kingdom.

The federal state notes that as well as administrative and legal obstacles, the FIDH refers to "psychological and socio-cultural obstacles to accessing rights". However, it carefully refrains from giving any sort of content to these two types of obstacles. In the absence of such content, Belgium finds it impossible to offer any counter-arguments.

6.2.2. Walloon Region

Wallonia seeks to place the treatment of Travellers in the context of social cohesion and effective access to all fundamental rights throughout its area.

This is the basis for the activities of the social inclusion and Travellers interministerial working group, which includes all relevant parts of the government and is co-ordinated by the social action, health and equal opportunities ministry.

The working group was established in 2007 with representation from all the ministerial private offices and has the task of producing a concerted approach to the reception of Travellers in Wallonia. It has expanded to include municipalities interested in providing Traveller sites.

Its main achievements are:

- Awareness raising among Walloon local authorities: the Walloon interior and social action, health and equal opportunities ministries have written to all the municipalities in Wallonia about the need to provide temporary sites for Travellers in their areas. Several years' experience in a number of Walloon municipalities shows that proper planning for and management of Traveller stays reduces the risk of tension. The letter has also been sent to provinces, social action centres and police districts.
- The inclusion of Traveller sites in local authority housing plans 2008-2009: in view of the possibility of grants for the establishment of Traveller sites, the form for local authorities housing plans included a heading to that effect, although few authorities have made use of it.
- The practical guide to management of Traveller's temporary stays in Wallonia: the guide, which is appended, was sent to local authorities, social action centres and police districts in March 2009. It provided a summary of useful information that could contribute to the development of positive practices regarding the management of temporary stays by Travellers in Wallonia. Several years' experience in a number of Walloon municipalities

shows that proper planning for and management of Traveller stays reduces the risk of tension.

- Regional grants to municipalities for the provision of Travellers' sites. As noted earlier, there are two budget headings under which grants can be made for the purchase and fitting out of sites:
 1. the "accommodation" grant covers 100% of the cost of equipping sites;
 2. the French Community executive decree of 1/7/1982 covers other types of expenditure not covered by the "accommodation" grant.

If subsidies to local authorities are to be optimised, therefore, there has to be joint complementary funding from the two sources.

- A supra-municipal approach: This is an initiative sponsored by *Le Miroir Vagabond* association, under which since 2004 four local authorities - Durbuy, Hotton, La Roche and Rendeux – have provided sites for Travellers each year from June to September. Wallonia wants to extend this initiative and involve the provinces in the process.

6.2.3. Brussels-Capital Region

In Belgium, the communities also have powers to introduce anti-poverty and social exclusion measures. In Brussels, the Flemish Community, the French Community and Brussels-Capital Region act jointly to combat poverty and social exclusion in the city, owing to the special nature of power sharing in this region.

6.2.3.1. The *Vlaamse Gemeenschapscommissie* (VGC – the Flemish Community commission)

The Flemish Community's policy with regard to poverty and social exclusion in Brussels reflects its general policy (see below). In Brussels, the VGC is responsible for the Flemish integration policy⁴⁶. To ensure that there is a comprehensive and co-ordinated policy on Travellers in Brussels and in Flanders the VGC is a member of the *Vlaamse Woonwagencentraalcommissie* and monitors the activities of Cocof, Cocom and Brussels-Capital Region with regard to integration. It works in partnership with the *Foyer* and the *Kruispunt voor Migratie en Integratie* (see below).

6.2.3.2. The joint community commission

The joint community commission (COCOM) has not taken any special measures to assist Travellers.

⁴⁶ Articles 27/1 and 27/2 of the decree of 28 April 1998, as amended by the decree of 30 April 2009.

However, there is a general provision in the order of 7 November 2002 on welfare assistance centres and services concerning the rights and freedoms of all the users of COCOM centres and services that prohibits any discrimination on political, cultural, racial, philosophical, religious or sexual orientation grounds.

6.2.3.3. The French Community commission

Cocof's policies concerning cultural and personal services must be carried out with no discrimination, to the benefit of every member of the public.

Cocof's legislation includes anti-discrimination provisions and ensures everyone is eligible for its services, which must operate without any discrimination.

The Brussels anti-poverty action plan, in which Cocof participates, is therefore directed at all those in poverty.

At the same time, there are certain activities aimed specifically at Travellers. For example, Cocof supports the activities of ARTHIS – the Belgian-Romanian cultural centre – a non-profit organisation, aimed at the integration and a better understanding of the Roma community.

6.2.4. Flemish Region

As the FIDH note, Travellers are a specific target group within the Flemish integration policy. Article 3 of the decree of 28 April 1998, as amended by the decree of 30 April 2009 on Flemish integration policy, states that this policy concerns the whole of society, but in certain cases is particularly concerned with specific groups. Sub-section 2 refers to persons lawfully in Belgium who live or have lived in a caravan, as defined in article 2.33 of the Flemish housing code decree of 15 July 1997, or whose parents live in this type of dwelling, other than the inhabitants of campsites and areas accommodating weekend dwellings.

The Flemish integration policy is an inclusive one, which means that it is applied as part of the general policy of several sectors, both through general measures and, if necessary, specific activities and provisions. The Flemish integration policy is co-ordinated by one specific minister.

The policy therefore leads to a co-ordinated approach to the social problems faced by Travellers in Flanders. The policy towards Travellers is a particular concern of the non-profit organisation *Kruispunt migratie-integratie* and of the so-called integration centres.

Several of these centres have specially appointed staff for this purpose, such as the Flemish Brabant and Limburg provincial integration centres and the non-profit organisations *Foyer* and *De Acht*, each of which has a full-term staff member, and the non-profit organisation OdiCe, which has a part-time staff member. The integration centres' activities in this area involve support for local authorities in

preparing and managing Travellers' sites and development and assistance activities with various institutions to improve Travellers' access to services.

Vlaams Minderhedenforum, a Flemish non-profit organisation that acts as a minorities forum, employs a part-time staff member to represent Travellers' interests.

Similarly a staff member of the non-profit organisation *Kruispunt Migratie-Integratie* is responsible for the policy on Travellers. He monitors Flemish policy on the subject and trends in the region and sits as an expert on the *Vlaamse Woonwagencommissie*. The commission has been mandated to take steps to develop sites of a high standard to meet Travellers' needs.

The Flemish public authorities give grants to 39 municipalities to support their local integration policies. The breakdown of these grants is mainly determined by the number of persons in a particular municipality in target groups specified by the decree. It also takes account of the presence of Travellers⁴⁷. The Flemish public authorities operate a system of consensual contracts in which they stress the need for a policy of integrating Travellers in municipalities where they settle.

At the request of the minister responsible for integration⁴⁸, the Flemish authorities are currently drawing up a strategic plan for Travellers, which will be submitted to the Flemish government for approval in 2011. The new strategic plan is particularly concerned with education, employment and training, integration, emancipation, housing, well-being and health. It provides the basis for a specific policy towards Travellers that takes a co-ordinated approach to their integration in Flanders and offers them similar opportunities to other groups of the population.

As has been clearly show, the Flemish public authorities have a specific co-ordinated policy to combat poverty and social exclusion among Travellers. They are therefore in compliance with Article 30 of the Charter.

Conclusion

With regard to the first part of the complaint concerning the alleged violation of Article 30 for failure, by Belgium, to introduce a co-ordinated policy to promote effective access to housing for Travellers, Belgium first draws the Committee's attention to the fact that the complainant's arguments based on the ERRC v France case are not applicable to Belgium. In the latter the Committee found that the violation of Article 30 was the consequence of a violation of Article 31 of the Charter.

⁴⁷ Article 35 of the decree of 28 April 1998, as amended by the decree of 30 April 2009.

⁴⁸ Political memorandum on civic integration 2010-2011, submitted by Mr Geert Bourgeois, Vice Minister-President of the Flemish Government and Flemish Minister for Administrative Affairs, Local Government, Civic Integration, Tourism and the Flemish Periphery of Brussels, see: [Political memorandum on civic integration 2010-2011 by Geert Bourgeois](#)

This reasoning cannot apply to Belgium, as the FIDH maintains, because Belgium has not ratified Article 31 of the Charter.

In the alternative, the federated entities have nevertheless described a range of actions, particularly in response to the first complaint, that clearly demonstrate that each of them, within its own area, is actively pursuing a co-ordinated policy to promote effective access to housing for Travellers.

With regard to the second part of the complaint, namely that Belgium has no comprehensive and co-ordinated policy to combat poverty and social exclusion affecting Travellers and is thus in breach of Article 30, the federal state has firstly informed the Committee of the numerous measures taken by the authorities to combat poverty, which it has already described in detail in its third national report on the revised Charter. It should be recalled that the Committee gave this report a positive assessment and found that the measures taken by Belgium were compatible with its interpretation of Article 30.

The federal state has then gone on to describe in detail the steps taken to ensure the maximum possible co-ordination of the activities of the different tiers of government – federal, community and regional – to combat all types of poverty and social exclusion, including those of Travellers.

Finally, the specific steps that have been taken to strengthen dialogue and consultation with Travellers themselves have been described by the federal state and the various federated entities. The latter have also described the measures they have introduced to pursue a co-ordinated policy in the area.

The foregoing points show quite clearly that it cannot be seriously maintained that Belgium has no comprehensive and co-ordinated policy to combat poverty and social exclusion affecting Travellers.

Belgium calls on the Committee to confirm the position it has already taken in response to its third national report on the revised Social Charter and conclude that the policy of its various authorities to combat poverty and social exclusion, particularly among Travellers, is in conformity with Article 30.

General Conclusions

Belgium notes that the FIDH's allegations are mainly based on press reports or studies and publications emanating from non-governmental organisations or individual experts. Notwithstanding Belgium's esteem for the social commitment of all these defenders of Travellers' rights, it feels bound to draw the Committee's attention to the fact that none of these alleged violations has been substantiated in court in response to complaints by would-be injured parties. Moreover, while the situation of Travellers in Belgium is not perfect and the authorities recognise that progress still needs to be made, the fact that there are observed shortcomings in a situation is not, of itself, evidence of a violation, since account must also be taken of the political will of and practical steps taken by a state to meet the obligations of means (and not results) it accepted when ratifying the Charter.

As Belgium noted at the start of this presentation, the Committee's own case-law shows that Travellers' situation requires a form of "positive intervention" on the part of the state, but that the latter has a certain discretion in deciding what "balance [should] be struck between the general interest and the interest of a specific group", as your Committee has itself put it⁴⁹.

There is absolutely no obligation under the Charter to enact specific legislation or conduct a particular policy in response to Travellers' needs, which could in any event lead to this community being distinguished from the rest of the population and even the appearance of real discrimination.

It has been clearly demonstrated throughout this memorial that the Belgian authorities at federal, regional and community levels are taking all possible steps, while continuing to respect the principle of local self-government, to ensure that Travellers' rights under Article 16, taken alone or in conjunction with Articles E and 30 of the Charter, are guaranteed. In particular, this has entailed the provision of a significant number of residential, temporary and *ad hoc* sites that are equipped in such a way as to allow them a decent standard of life. The regional authorities are nevertheless aware of the need to increase still further the number of these sites and to encourage local authorities to take the necessary measures. However, it is a gross exaggeration to claim, as does the FIDH, that there is, in Belgium, "a drastic shortage of sites on which Travellers can lawfully stay or reside in their caravans".

Belgium therefore asks the Committee to find that:

- by ensuring, via its regional institutions, that local authorities are aware of the problems of Travellers and by taking practical steps to encourage them to make still more sites available to the Traveller

⁴⁹ See footnote 1.

community, it is fulfilling its obligations to them under Article 16, taken alone or in conjunction with Article E;

- by taking account of Travellers' needs in urban planning legislation and, where appropriate, filling any gaps by practical measures adapted to their circumstances, it is fulfilling its obligations to this community under Article 16, taken alone or in conjunction with Article E;
- by ensuring that strict rules are applied in the event of eviction orders served on Travellers and in addition taking numerous preventive measures to avoid the need for the ultimate step of eviction, Belgium is in compliance with Article 16, taken alone or in conjunction with Article E;
- by adopting practical approaches to fill any gaps in the legislation regarding the inclusion of caravans in the legal notion of housing or dwellings and by adapting the criteria of health, safety and satisfactory living conditions, it has demonstrated that it is in compliance with Article 16, taken alone or in conjunction with Article E;
- by enacting numerous provisions regarding domiciliation, or principal residence, that take account of the Traveller community's traditional way of life and establishing appropriate supervisory arrangements and ensuring that local authorities are fully aware of and understand the relevant rules and regulations, it is fulfilling its obligations to them under Article 16, taken alone or in conjunction with Article E;
- by directly involving Travellers in the implementation of the Belgian federal, regional and community authorities' co-ordinated policies to secure effective access to housing and combat poverty and social exclusion, it is fulfilling its obligations under Article 30 of the revised Social Charter;

For all these reasons, the Kingdom of Belgium asks your Committee to dismiss this complaint as unfounded.

Paul Rietjens
Agent of the Belgian government
Brussels, 31 May 2011