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

22 November 2021

Case Document No. 7

European Roma Rights Centre (ERRC) v. Belgium
Complaint No. 195/2020

**RESPONSE FROM ERRC
TO THE GOVERNMENT'S SUBMISSIONS
ON THE MERITS**

Registered at the Secretariat on 5 November 2021

European Committee of Social Rights

Council of Europe

By email only: social.charter@coe.int

05 November 2021

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

COLLECTIVE COMPLAINT NUMBER 195/2020

EUROPEAN ROMA RIGHTS CENTRE (ERRC)

V.

BELGIUM

Response to the Observations of the Belgian Government on the merits of the
collective complaint

Number of pages: 9

I. Introduction

1. The European Roma Rights Centre (hereafter: “the ERRC”) submits this response to the submissions on the merits of the abovementioned complaint prepared by the Belgian Government (hereafter: “the Government”), received and registered by the Committee on 6 September 2021.
2. Pursuant to Rule 31§2 of the Rules of the European Committee of Social Rights, the President of the Committee invited the ERRC to submit a response to these submissions by 05 November 2021.
3. The ERRC will address the merits only to the extent that they (as set forth in the collective complaint) need to be clarified, refined, or enlarged upon in light of the Government’s Observations. The fact that the ERRC, as a complainant organisation, will not address all the issues and omit some of the questions means only that the relevant issues were extensively addressed in the original complaint and therefore the organisation has nothing substantially new to add to that analysis. Hence, the ERRC asks the Committee not to interpret its silence on any of the questions as consent with the Government’s position.

II. On the substance of the complaint allegations

1. In part **A) Antécédents de procédure**, of the Government’s submissions on merits it is stated that the police checks which occurred on 4th and 5th April 2020 were part of compliance verification with lockdown measures against the spread of COVID-19. The Government

reiterated in part **B) Remarques préliminaires** that the police checks executed by the local police aimed to ensure respect of lockdown measures, further explaining that: *“in April 2020, at the beginning of the pandemic, authorities were particularly careful to ensure the respect of these measures and raised awareness and proceeded with controls in this context”*.

The ERRC reiterates that in an official communication from 23 March 2020, the Walloon Minister of Housing, Local Authorities, and the City, Mr. Pierre Yves- DERMAGNE, invited all municipal authorities in the country to conform to the following recommendations: (1) Travellers who are currently living on official or unofficial sites must be able to remain there without hindrance to the exercising of their rights, nor fulfilment of their obligations; (2) Travellers should not move, either within Wallonia or from outside. In addition, the controls on the Belgian border are strict and foreign travel is strictly regulated; (3) municipal authorities are requested to suspend the execution of eviction procedures which are in progress or are to come; 4) municipal authorities should be asked to organise access to water and electricity. This should last for the entire duration of the containment period.¹

This official communication had been issued in March 2020; over a week prior to the police checks and seizures in Couillet and Jumet, which took place in April 2020. Therefore, it is reasonable to believe that the police and other local authorities were aware of the Minister of Housing, Local Authorities, and the City’s recommendations, especially that **all caravan seizure procedures against Travellers must be suspended** for the entire duration of the containment period.

¹ <https://cmgv.be/habitat-mobile/gerer-le-sejour-temporaire-des-gens-du-voyage/546-sejour-temporaire-et-communes>.

However, instead of suspending such activities during the entire containment period, it appears from the Belgian Government's submission that the Government used the COVID-19 pandemic crisis as an excuse to selectively target, check, and seize Traveller caravans, under the guise of "ensuring respect of lockdown measures". In that context, it is unclear how the police checks on the 4th and 5th April 2020 constituted "ensuring respect of lockdown measures", as they resulted in rendering entire Traveller families homeless in the midst of a global pandemic crisis.

On this note, the ERRC would like to remind the Committee that when the families whose caravans were seized asked the police where they should live after the seizure of their homes (caravans) the police told them: "*You gypsies can arrange it among yourselves*" and "*stay outside with other gypsies*". These statements were also included in our initial complaint and in the testimony provided by one of the affected persons (Mr. J.A). (See Collective Complaint 195/2020, ERRC v. Belgium).²

2. In part **B) Remarques préliminaires** the Government firmly rejects that the police checks in question be placed "in the broader context of police operations led against Traveller communities across Belgium since 2019 and which have been subjected to a previous collective claim introduced in 2019 (ERRC v. Belgium, claim number 185/2019, decision on the eligibility and on immediate actions dated May 14, 2020)". It claimed that "it is inaccurate to draw links of consequence between two distinct events".

The ERRC considers that it is essential to draw a link between the police checks that are the subject of this complaint and the broader context of police operations led against Traveller communities across Belgium since 2019, as they represent examples of antigypsyism (anti-Traveller racism) in policing in Belgium.

² <https://rm.coe.int/cc195casedoc1-en/16809e8280>.

Notably, during the 2020 police checks in Couillet and Jumet the affected families heard the officers say about one of the caravans: *"this is one we missed last year"*, directly indicating that the police operation was connected to the May 2019 raids described in our previous complaint to the Committee. Moreover, one of the affected people clearly stated in his testimony for the ERRC that: *"back in 2019, during the police operation STRIKE, his caravan was searched by the police multiple times but no problem had been detected back then"*.

The April 2020 police checks, similarly to the police operations in 2019, were performed by especially aggressive and racist police officers (using racist language such as *"dirty gypsies"*), whose unprofessional work had to be sanctioned and consistently monitored. Once again, the police exclusively targeted members of the Traveller community with the aim of seizing their caravans and rendering them homeless. In the course of these operations they arrested people and, as well as seizing their caravans, they also kept other items from their personal belongings, including personal documents, clothing, and cash that was never returned to the owners. We note that the Government completely failed to address the legality and proportionality of these additional breaches in their submission on merits.

The small number of arrests made compared to the number of officers involved, and the fact that Traveller sites across the country were exclusively targeted, raises a presumption that the Belgian police are contaminated by institutional antigypsyism. It also raises the presumption that every violation alleged in the complaint is connected to direct discrimination against Travellers. The Belgian Government failed to provide evidence that such police checks and operations have also taken place in other areas across Belgium not inhabited by Travellers, or that in similar circumstances non-Traveller families in Belgium were also rendered homeless, especially in the midst of a global pandemic crisis.

3. In part **C) Fond de la réclamation** the Government claims that the caravan seizures met the criteria of legitimate purpose, necessity, and proportionality. The proportionality criterion was met insofar as assistance has been offered to the persons concerned, i.e., police officers offered social assistance in order to rehouse the people who were without housing, but the latter refused it and preferred to be housed by acquaintances within their group. The seizure of the caravans pursued a legitimate aim and was necessary and proportionate. The persons occupying the caravans all agreed to have them returned to their owners. Moreover, while Belgian law provides for an appeal to lift the seizure, no request has been filed with the Charleroi Public Prosecutor's Office in accordance with article 28 of the Code of Criminal Investigation.

The ERRC considers that it is incompatible with the Charter to seize someone's home on the mere basis that it is a personal possession implicated in a criminal investigation for theft; a person's home must be treated as such, and a person can only be deprived of their home when it is proportionate to a legitimate aim. There has been no consideration of proportionality here. The Government already argued in Collective Complaint 185/2019 ERRC v. Belgium³ that Belgian law allows people's homes (Travellers' caravans) to be seized and sold on the mere basis that they are part of a criminal investigation.

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

³ <https://rm.coe.int/cc185casedoc1-en-complaint/168096f74a>.

domestic law, his right of occupation has come to an end". The seizure and sale of caravans without any consideration of the proportionality of the measure is a severe interference with the Charter rights that leaves families at risk, living in insecure conditions, and facing street homelessness.

Concerning the Governments claim that police officers offered social assistance in order to rehouse the affected who were without housing, but the latter refused it and preferred to be housed by acquaintances within their group, the ERRC argues that this argument is ill-founded. Firstly, it is the duty of the CPAS to offer housing assistance to the affected and not of the police and secondly, nowhere in the Governments submissions to the Committee a written evidence signed by all the affected proving that they indeed rejected social assistance for housing was provided. Furthermore, one can easily notice that the documents annexed to the Government's response on the Committees questions registered on 27 May 2021, issued by the local police in Charleroi and signed by Chief Inspector Lebrun Eddy were issued two months after the actual police operation and caravan seizure ,i.e. they date from 8 and 10 June 2020.

The ERRC further considers that, even if the caravans were indeed stolen property, the criminal investigation did not show that the theft was committed by the affected members of the Traveller community, as no charges for theft have been brought against them. Thus, the entire burden for the criminal investigation was wrongly placed on them. Instead, it was the duty of the police to complete the investigation, discover the identity of the thieves, and sanction them for their criminal activity instead of leaving entire Traveller families, including children and pregnant women, homeless.

In this particular case, the affected members of the Traveller community were firstly victims of a fraud by unknowingly buying caravans that were

stolen property (*“the police told us the caravan was “stolen property that we had in possession”, and that it had an issue with the chassis – that the number was altered – so they had to take it”*), and secondly were victims of the authorities’ unlawful decision to seize their only homes, rendering them homeless in the midst of a global pandemic .

It is clear that such actions were neither necessary, proportional, nor legitimate, as the Travellers had to carry a disproportionately high burden for someone else’s criminal activities; activities that they were not even aware of, as shown when they presented evidence of legitimately purchasing their caravans from another private person. The fact that they all agreed to cooperate with the police authorities in order that the caravans be returned to their owners is the result of their fear of facing further repercussions related to the unknown criminal origin of the caravans they purchased.

The ERRC reminds the Government that the affected members of the Traveller community were made homeless by the authorities. They did not voluntarily choose to be homeless. In such a situation, it was the responsibility of the authorities to immediately and systematically offer the affected persons alternative accommodation. This systematic response was absolutely lacking, especially prior to the seizure of their homes but also after. The ERRC claims that this is contrary to the Charter: *“prevent and reduce homelessness with a view to its gradual elimination (Article 31, item 2)*. People’s homes must not be treated as goods, allowing the Government to freely dispose of them, and consciously leaving people homeless without offering any alternative. We also bring to the Committee’s attention Article 23 of the Belgian Constitution, stipulating: *“Everyone has the right to lead a life in accordance with human dignity. (...) These rights include in particular (...) the right to decent housing (...). The protection that is granted to the home is also granted to “certain movable property likely to be inhabited: thus a boat (used as*

accommodation) or a caravan".⁴ The Committee has previously ruled that "it is the responsibility of the state to ensure that evictions (in this case caravan seizure), when carried out, respect the dignity of the persons concerned even when they are illegal occupants, and that alternative accommodation or other compensatory measures are available"⁵. When evictions must take place, they must be carried out (i) in conditions that respect the dignity of the persons concerned; (ii) in accordance with rules that are sufficiently protective of the rights of the persons concerned.⁶ Evictions shall not result in individuals being rendered homeless, and there should be an immediate restitution upon eviction.⁷ Moreover, CESCR General Comment no. 7 on the right to adequate housing prescribes that forced evictions are considered an arbitrary interference against one's home (§8). State parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected person (§13).⁸ Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights (§16).⁹ These principles must apply to the seizure of Travellers' dwellings.

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⁴ 1 Cf. COL 02/2019 - SQUAT - Version révisée 20.02.2020 - page 8.

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

⁶ COHRE v France (collective complaint no.63/2010), decision on the merits, § 42.

⁷ See §43 and §52 of BASIC PRINCIPLES AND GUIDELINES ON DEVELOPMENT BASED EVICTIONS AND DISPLACEMENT, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18, https://www.ohchr.org/documents/issues/housing/guidelines_en.pdf.

⁸ "saisie entre les mains" alternative.

⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art. 11. 1): forced evictions*, 20 May 1997, E/1998/22, available at: <https://www.refworld.org/docid/47a70799d.html> [accessed 10 December 2020].