

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

DECISION ON THE MERITS

Adoption: 8 December 2022

Notification: 15 February 2023

Publicity: 16 June 2023

European Roma Rights Centre (ERRC) v. Belgium

Complaint No. 185/2019

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 331st session in the following composition:

Karin LUKAS, President
Eliane CHEMLA, Vice-President
Aoife NOLAN, Vice-President
Giuseppe PALMISANO, General Rapporteur
József HAJDU
Barbara KRESAL
Kristine DUPATE
Karin Møhl LARSEN
Yusuf BALCI
Tatiana PUIU
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 14 September, 19 October, 7 and 8 December 2022,

On the basis of the report presented by Giuseppe PALMISANO,

Delivers the following decision adopted on the latter date:

PROCEDURE

1. The complaint lodged by the European Roma Rights Centre (“ERRC”) was registered on 12 July 2019.

2. ERRC alleges that, following a large-scale search operation carried out by the Belgian police on 7 May 2019 targeting nineteen halting sites for Travellers throughout Belgium, many families belonging to this community, including children, elderly and disabled persons, had their caravans, vehicles and property seized and their bank accounts frozen. These actions were based on a suspicion that the persons concerned were all involved in criminal activities. ERRC alleges that with these actions the Belgian authorities have deprived the persons concerned of social, medical, legal and economic protection and assistance in violation of Articles 1§2 (the right to work), 11§1 (the right to the protection of health), 12§1 (the right to social security), 13§1 (the right to social and medical assistance), 15§3 (the right of persons with disabilities to independence, social integration and participation in the life of the community), 16 (the right of the family to social, legal and economic protection) and 17 (the right of children and young persons to social, legal and economic protection) of the Revised European Social Charter (“the Charter”). ERRC also considers that this operation amounted to ethnically targeted collective punishment, in breach of Article E (non-discrimination) in conjunction with each of the aforementioned provisions of the Charter.

3. On 14 May 2020, the Committee declared the complaint admissible. In its decision on admissibility, the Committee also decided that it was necessary to indicate to the Government, in accordance with Rule 36 of the Rules of the Committee (“the Rules”), immediate measures which should be adopted with a view to avoiding serious, irreparable injury to the integrity of persons belonging to the Traveller community at immediate risk of being deprived of fundamental social rights.

4. In its decision on admissibility, in accordance with Article 7§1 of the 1995 Protocol providing for a system of collective complaints (“the Protocol”), the Committee invited the Government to make written submissions on the merits of the complaint by 22 July 2020.

5. Referring to Article 7§§1 and 2 of the Protocol, the Committee invited the States Parties to the Protocol and the States having made a declaration in accordance with Article D§2 of the Charter as well as the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter, to notify any observations they may wish to make on the complaint by 22 July 2020.

6. On 23 June 2020, the Government asked for an extension to the deadline for presenting its submissions on the merits. The President of the Committee extended this deadline until 4 September 2020. The Government's submissions on the merits of the complaint were registered on 4 September 2020.

7. Pursuant to Rule 31§2 of the Rules, the President of the Committee invited ERRC to submit a response to the Government's submissions on the merits by 12 November 2020.

8. On 29 October 2020, ERRC asked for an extension to the deadline for submitting its response to the Government's submissions on the merits. The President of the Committee extended this deadline until 12 December 2020. ERRC's response was registered on 11 December 2020.

9. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to ERRC's response by 18 February 2021.

10. On 3 February 2021, the Government asked for an extension to the deadline for submitting its reply to ERRC's response. The President of the Committee extended this deadline until 18 March 2021. The Government's reply was registered on 18 March 2021.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

11. ERRC alleges that, following a large-scale search operation targeting 19 halting sites for Travellers carried out by the Belgian police on 7 May 2019 and based on a suspicion that the persons concerned were involved in criminal activities, many families belonging to the Traveller community, including children, elderly and disabled persons, had their caravans, vehicles and property seized and their bank accounts frozen. ERRC alleges that with these actions the Belgian authorities deprived the persons concerned of social, medical, legal and economic protection and assistance in violation of Articles 1§2, 11§1, 12§1, 13§1, 15§3, 16 and 17 of the Charter. ERRC also considers that this operation amounted to ethnically targeted collective punishment, in breach of Article E in conjunction with each of the aforementioned provisions of the Charter.

B – The respondent Government

12. The Government asks the Committee to find that there is no violation of the Charter provisions invoked.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Constitutional principles

13. Constitution of Belgium

Article 15

“Home is inviolable; No home visit may take place only in the cases prescribed by law and in the form prescribed by law.”

Article 23

“Everyone has the right to lead a life with dignity.

To this end, the law, decree or rule referred to in Article 134 shall guarantee, taking into account the corresponding obligations, economic, social and cultural rights and shall determine the conditions for their exercise.

These rights include:

[...]

2° the right to social security, health protection and social, medical and legal assistance;

3° the right to decent housing;

[...]

6° the right to family benefits.”

B – Domestic legislation

14. Law of 2 April 1965 on the assumption of responsibility for assistance granted by public social welfare centres – as amended

Article 2

“7. By way of derogation from Article 1(1), the public social welfare centre of the municipality in which the person concerned has his or her de facto residence is competent to grant social assistance to a homeless person who does not reside in an establishment referred to in § 1.

The CPAS must immediately report to the social welfare administration any award of social welfare to a homeless person.

8. By way of derogation from Article 1 (1), the public social action centre of the municipality where the accommodation for which the person concerned applies for the rental guarantee is located is competent to grant him this aid when he leaves a reception structure within the meaning of Article 2(10), of the Act of 12 January 2007 on the reception of asylum seekers and certain other categories of foreign nationals.]

9. Where a public social welfare centre issues a decision concerning medical and pharmaceutical assistance in accordance with Article 9ter, it is competent to grant the necessary assistance during the period of validity of that decision.

When the hospitalisation of the person concerned exceeds the period of validity of this decision, this public social action centre remains competent for the entire uninterrupted duration of his hospitalisation.”

15. Law of 8 July 1976 on the organisation of public social action centres – as amended

Article 1er

“Everyone has the right to social assistance. The purpose of social assistance is to enable everyone to lead a life of human dignity.

Public social action centres are hereby established which, under the conditions determined by this Law, shall have the task of providing such assistance.”

Article 57

"1. Without prejudice to the provisions of Article 57ter, the public centre for social action has the task of providing individuals and families with the assistance due from the community. It provides not only palliative or curative help, but also preventive help. (It encourages the social participation of users. - Law of 25 April 2007, art. 215)

This assistance can be material, social, medical, medico-social or psychological.

2. (Notwithstanding the other provisions of this Act, the mission of the (public social action centre) shall be limited to:

(1) the granting of urgent medical assistance to a foreigner who is staying illegally in the Kingdom;

(2) to establish the state of need following the fact that the parents do not assume or are not able to assume their duty of maintenance, with regard to a foreigner under 18 years of age who stays, with his parents, illegally in the Kingdom (...) - Ruling of the Court of Arbitration No. 131/2005 of 19 July 2005) - Program Law of 22 December 2003, art. 483).

The Crown may determine what is meant by urgent medical assistance.

[...]"

Article 60

"1. The intervention of the centre is, if necessary, preceded by a social investigation, ending with a precise diagnosis of the existence and extent of the need for help and proposing the most appropriate means of dealing with it.

The person concerned shall be required to provide all relevant information on his or her situation and to inform the centre of any new factor which may affect the aid granted.

[...]

3. It grants material aid in the most appropriate form.

Financial assistance can be linked by decision of the centre to the conditions set out in articles 3, (5) and (6), 4, 11 and 13, §2, of the law of 26 May 2002 concerning the right to social integration.

[...]

4. It ensures, while respecting the free choice of the person concerned, the psycho-social, moral or educational guidance necessary for the person assisted to enable him/her to gradually overcome his difficulties himself/herself.

It shall take into account the guidance already provided and the possibility of having it continued by the other centre or service in which the person concerned has already placed his trust.

5. If the person being assisted is not insured against sickness and disability, he shall enrol him in the

The insurer shall be chosen by the insurer and, if no such choice is made, the Auxiliary Fund for Sickness and Disability Insurance. It requires, as far as possible, a personal contribution from the person concerned.

[...]"

Article 71

"Any person may appeal to the Labour Court against a decision on individual aid taken by the council of the public social action centre or one of the bodies to which the council has delegated powers.

[...]"

Article 97

"For the purposes of the provisions of Chapter VII, 'social assistance costs' shall mean:

1. cash payments;

2. the cost of aid granted in kind;

3. hospitalisation costs;

4. accommodation costs, including those incurred in the centre's facilities;

5. the costs calculated according to the pre-established general rates.

[...]"

Article 98

"1. Without prejudice to the application of other legal and regulatory provisions, the public social action committee shall determine the beneficiary's contribution to the cost of social assistance, taking into account the resources of the person concerned.

The latter is in any case entitled to pocket money, the amount of which is fixed by the centre.

[...]

The Crown shall determine the costs that may not be charged to this pocket money. He also determines the status of the spending money, especially when it was not used at the time of death."

16. Law of 26 May 2002 concerning the right to social integration – as amended

Article 2

"Everyone has the right to social integration. This right may, under the conditions laid down in this Law, take the form of employment and/or a living wage, with or without an individualised social integration project.

The public welfare centres are responsible for ensuring this right."

Article 3

"In order to be eligible for the right to social integration, the person must simultaneously and without prejudice fulfil the specific conditions provided for in this law:

(1) to have his/her effective residence in Belgium, in the sense to be determined by the Crown;

(2) be of full age or considered to be of full age for the purposes of this Law;

(3) belong to one of the following categories of persons:

– to have Belgian nationality;

– {benefit as a citizen of the European Union, or as a member of his or her family who accompanies or joins him or her, from a right of residence of more than three months, in accordance with the provisions of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners. This category of persons only benefits from the right to social integration after the first three months of their stay}

– be registered as an alien in the population register;

– or be a stateless person and fall under the application of the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954 and approved by the law of 12 May 1960;

– or be a refugee within the meaning of Article 49 of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens;

– {or benefit from subsidiary protection within the meaning of Article 49/2 of the Law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners;}

(4) do not have sufficient resources, nor being able to claim them, nor being able to obtain them, either by personal effort or by other means. The centre shall calculate the person's resources in accordance with the provisions of Title II, Chapter II;

(5) be willing to work, unless prevented from doing so for reasons of health or equity;

(6) assert his or her rights to the benefits from which he or she may benefit under Belgian and foreign social legislation."

Article 18

"1. The competent centre grants, reviews or withdraws the right to social integration in the form of a living wage, a job or an individualised social integration project, either on its own initiative or at the request of the person concerned or of any person whom he or she has designated in writing for this purpose.

"Competent centre" means the centre referred to in Article 1, first paragraph, (1) and (2) of the Law of 2 April 1965 on the assumption of responsibility for social assistance granted by public social assistance centres.

In the case of a homeless person, the competent centre is the one referred to in [Article 2, §7, of the Act of 2 April 1965 on the assumption of responsibility for assistance granted by the public social action centres].

2. On the day of its receipt, the application shall be entered in chronological order in the register kept for that purpose. The written application shall be signed by the person concerned or by the person designated. Where the application is oral, the person concerned or the person designated shall sign in the appropriate box in the register referred to in paragraph 1.

3. The centre shall send or deliver an acknowledgement of receipt to the applicant on the same day.

Any acknowledgement of receipt must indicate the time limit for examining the application and the provisions of Articles 20 and 22, §1(2).

4. When a centre receives an application for which it does not consider itself competent, it shall forward the application within five calendar days in writing to the centre which it considers competent. Within the same time limit, it shall inform the applicant in writing of this transmission. Under penalty of nullity, the transmission of the application to the CPAS considered competent, as well as the notification to the applicant of the transmission, is done by means of a letter mentioning the reasons for the incompetence.

However, the application will be validated on the date of its receipt at the first centre, as determined in §2.

A centre that fails to fulfil this obligation shall grant the living wage or social integration through employment under the conditions established by this Law until it has forwarded the application and communicated the reasons for its incompetence.

The decision of incompetence may be taken by the President, who shall submit his decision to the Board or the competent body at the next meeting for ratification.

5. The centre to which an application for social benefits has been submitted, for which it is not competent, shall forward it without delay to the competent social security institution. The applicant shall be notified thereof.

6. When the centre receives an application for the right to social integration from another social security institution, the application will be validated on the date of submission to the non-competent institution, i. e. the date of the postmark or, in the absence thereof, the date of receipt of the application."

Article 20

"The centre shall be required to hear the applicant, if the applicant so requests, before making a decision on:

- the granting, refusal or review of a living wage, an individualised social integration project or social integration through employment;
- the penalties referred to in Article 30, §§ 1 and 2;
- the recovery of a person who has received the living wage.

The centre shall be obliged to inform the person concerned of this right in the manner laid down by the Crown.

The person concerned may be heard either by the Board or by the competent body with decision-making powers in the specific case.

At the hearing, the person concerned may be assisted or represented by a person of his choice."

Article 21

"1. Without prejudice to the obligation to grant immediate assistance imposed on it by the law of 8 July 1976 on the organisation of public social welfare centres, the centre shall take its decision within thirty days of receiving the application.

In the cases referred to in the first paragraph of Article 18§4(1) and in Article 18§6, the centre to which the application has been forwarded shall decide within thirty days of the day on which the first centre to which the application was forwarded or the social security institution forwarded the application.

2. Any decision of an individual nature with legal consequences for the right of the person concerned to social integration in the form of a living wage, employment or an individualised social integration project shall be in writing and shall state the reasons for the decision. The reasons must be sufficient and must cover both the legal and factual elements on which the decision is based.

Where the decision concerns a sum of money, it must mention the amount allocated, as well as the method of calculation and the frequency of payments.

3. The decision must also contain the following information:

- (1) the possibility of bringing an appeal before the competent court;
- (2) the address of the competent court;
- (3) the time limit and procedure for bringing an action;
- (4) the content of articles 728 and 1017 of the Judicial Code;
- (5) the references of the file and the service and the social worker who manages it;
- (6) the possibility of obtaining any explanation of the decision from the service managing the file;
- (7) the fact that an appeal to the Labour Court does not suspend the execution of the decision;
- (8) if applicable, the frequency of payment.

If the decision does not contain the particulars provided for in this Article, the time limit for appeal referred to in Article 47, §1 (2), shall not begin to run.

4. The decision is notified to the person concerned within eight days by registered letter or by acknowledgement of receipt, in the manner that may be determined by the Crown. The date of the postmark or of the acknowledgement of receipt is authentic.

5. The decision granting or increasing a living wage, taken following an application submitted by the person concerned, takes effect on the date of receipt of this application.

By way of derogation from the preceding paragraph, the decision taken by the competent centre in the case referred to in Article 18, § 4(3), shall take effect on the day following the date on which the application was transmitted by the first centre to which it was referred.

In the case of an ex officio decision, the Centre shall determine in its decision the date on which the decision takes effect.

6. Any decision to grant, refuse or revise the right to social integration in the form of a living wage, a job or an individualised social integration project is communicated to the Minister, in the manner determined by the Crown, within eight days of the end of the month in which the decision was taken.

If the centre fails to communicate the decision within the required time limit, it shall lose the right to recover the expenses relating to the period between the forty-fifth day following the end of the month in which the decision was taken and the day on which the decision was communicated. The Crown may derogate from this provision in exceptional and collective circumstances. This paragraph applies to decisions taken as from 1 October 2006."

17. Royal Decree on the general regulation of the right to social integration of 11 July 2002 – as amended

Article 36

"The payment of the living wage allowance is made on a fixed date or day, either by postal summons, the amount of which is payable at home, in the hands of the beneficiary, or by circular cheque, or by bank transfer.

However, based on the interest of the beneficiary, duly motivated in the decision, the centre may pay directly to the person concerned."

18. Code of Criminal Investigation No. 1808-11-17/30 – as amended

Article 28sexies

"1. Without prejudice to the provisions of special laws, any person harmed by a measure relating to his or her property may request the lifting of such measure from the Crown prosecutor.
[...]

3. The Crown prosecutor may reject the request if he or she considers that the needs of information so require, if the lifting of the measure would jeopardise the rights of the parties or third parties, if the lifting of the measure would endanger persons or property, or in cases where the law provides for the restitution or confiscation of the said property.

He may grant a full, partial or conditional release. Any person who fails to comply with the conditions laid down shall be punished by the penalties provided for in article 507bis of the Criminal Code.

4. The matter may be referred to the Indictments Division within fifteen days of the notification of the decision to the applicant.

The matter shall be referred to the Indictments Division by a declaration made at the registry of the court of first instance and entered in a register opened for that purpose.

[...]"

Article 28octies

"1. On his own initiative or at the request of the Central Body for Seizure and Confiscation, the Crown prosecutor who considers that he must maintain the seizure of assets may:

(1) authorize their disposal by the Central Body, in order to subrogate to them the proceeds obtained;

(2) return them to the person seized on payment of a sum of money the amount of which he shall determine, in order to subrogate the sum to them.

[...]

2. The authorisation to dispose of relates to replaceable assets of readily ascertainable value, the retention of which in kind may result in disproportionate depreciation, damage or expense in relation to their value.

[...]"

Article 36

"If the nature of the crime or offence is such that the evidence is likely to be acquired by the documents or other documents and effects in the possession of the accused, the [Crown prosecutor] will move immediately to the home [of the accused], for the search of objects which he considers useful for the manifestation of the truth."

Article 37

"1. If there are suspicious documents or effects in the home of the suspected person which may be used as evidence or exculpatory, the Crown prosecutor shall seize such effects or documents.

[...]

2. In the event of seizure of receivables, with the exception of the seizure of registered or bearer securities, the seizure shall be effected by written notification to the debtor.

[...]

4. From the date of receipt of the notification of the report, the debtor may no longer [alienate] the sums or things which are the subject of the seizure. [A third party who fails to comply with this prohibition shall be declared a debtor of the causes of the seizure, without prejudice to damages where applicable.] Within 15 days after the seizure, the debtor shall declare, by registered letter at the post office, the sums or things which are the subject of the seizure in accordance with article 1452 of the Judicial Code.

[...]"

Article 46quater

"1. In searching for crimes and offences, the Crown prosecutor may request, if there is serious evidence that the offences may result in one year's principal prison sentence or a heavier sentence, the necessary information on financial products, services and transactions and virtual values concerning the suspect, from:

(1) the persons and institutions referred to in Article 5(1), (3) to 22 of the Act of 18 September 2017 on the prevention of money laundering and the financing of terrorism and the limitation of the use of cash;

(2) persons and institutions which, on Belgian territory, make available or offer services in connection with virtual values allowing the exchange of regulated means of payment in virtual values;

2. [In order to permit the measures referred to in paragraph 1, the Crown prosecutor may, by specific and reasoned request, request information from the central contact point maintained by the National Bank of Belgium in accordance with the Law of 8 July 2018 on the organisation of

a central contact point for financial accounts and contracts and extending access to the central file of notices of seizure, delegation, transfer, collective settlement of debts and securities.]

3. Where the need for information so requires, the Crown prosecutor may also require that:

(1) for a renewable period of not more than two months, the transactions of the suspect will be observed;

(2) the institution or person interviewed will no longer be able to divest itself of debts and commitments relating to the products, services, transactions and securities referred to in paragraph 1 for a period which it determines, but which may not exceed the period from the time the person or institution becomes aware of its request to five working days after the notification of the data referred to by that person or institution.

The measure referred to in paragraph 1(2) may be required only if it is justified by serious and exceptional circumstances and only if the investigation relates to crimes or offences referred to in Article 90ter, §§ 2 to 4.

4. The Crown prosecutor may, by written and reasoned decision, request the assistance of the persons and institutions referred to in paragraph 1. The institution or person interviewed is obliged to cooperate immediately. In his decision, the Crown prosecutor describes precisely the information he requests, and the form used to communicate that information to him.

Any person who is aware of the measure or assists in it by the head of office shall be obliged to keep secret. Any violation of secrecy is punishable in accordance with article 458 of the Criminal Code.

Any person who refuses to communicate the data or who does not communicate the data in real time or, where appropriate, at the time specified in the request, shall be punished by imprisonment of eight days to one year and a fine of between €26 and €10,000 or only one of those penalties.]”

RELEVANT INTERNATIONAL MATERIAL

A – Council of Europe

1. Committee of Ministers

19. The Committee of Ministers of the Council of Europe, in its Recommendation CM/Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe, defines “housing” as “different modes of accommodation, such as houses, caravans, mobile homes or halting sites”, de facto recognising caravans as housing. It also considered that “since Roma continue to be among the most disadvantaged population groups in Europe, national housing policies should seek to address their specific problems as a matter of emergency, and in a non-discriminatory way”. It further stated that “Member states should promote and protect the right to adequate housing for all, as well as ensure equal access to adequate housing for Roma through appropriate, proactive policies, particularly in the area of affordable housing and service delivery”. Moreover, “Member states should establish a legal framework that conforms with international human rights standards, to ensure effective protection against unlawful forced and collective evictions and to control strictly the circumstances in which legal evictions may be carried out. In the case of lawful evictions, Roma must be provided with appropriate alternative accommodation, if needed, except in cases of force majeure. Legislation should also strictly define the procedures for legal eviction, and such legislation should comply with international human rights standards and

principles, including those articulated in General Comment No. 7 on forced evictions of the United Nations Committee on Economic, Social and Cultural rights. Such measures shall include consultation with the community or individual concerned, reasonable notice, provision of information, a guarantee that the eviction will be carried out in a reasonable manner, effective legal remedies and free or low-cost legal assistance for the persons concerned. The alternative housing should not result in further segregation”.

20. The Strasbourg Declaration on Roma, adopted on 20 October 2010, indicated as one of the priorities the provision of appropriate and reasonable notice and effective access to judicial remedy in cases of eviction, while ensuring the full respect of the principle of the rule of law and in consultation with all concerned and in accordance with the domestic legislation and policy, the provision of appropriate accommodation for nomadic and semi-nomadic Roma.

21. The Council of Europe Strategic Action Plan for Roma and Traveller Inclusion (2020-2025) CM(2019)161 approved by the Committee of Ministers of the Council of Europe on 22 January 2020 at the 1365th meeting of the Ministers’ Deputies states that the “objectives of the Strategic Action Plan are to promote and protect the human rights of Roma and Travellers, to combat anti-Gypsyism and discrimination, and to foster inclusion in society”. It also states that “anti-Roma and anti-Traveller prejudice, discrimination and hate crimes require a combination of the following measures: legal responses and standard-setting work (for example, on combating hate speech and hate-motivated violence) and other intergovernmental co-operation (for example, peer reviews, thematic visits and thematic reports); training of the legal profession, public authorities and law enforcement in Council of Europe standards and relevant case law of the European Court of Human Rights; capacity building of national, regional and local level authorities and civil society, including through the Council of Europe dialogue mechanism with Roma and Traveller civil society; and specific empowerment for particular groups, such as Roma women and youth; and awareness-raising actions for the general public.”

2. Commissioner for Human Rights

22. In the publication by the Commissioner for Human Rights “Human rights of Roma and Travellers in Europe” of February 2012, it is stated that in addition to the particular attention paid to Roma residential areas, Roma persons, notably in cars or other vehicles, have been targeted for ethnically-profiled stops and searches or other discriminatory measures by police. Reports show that Roma settlements have often been targeted by police raids without a legitimate goal and so constitute a form of harassment. The population is often not informed about the reason for the raids, which sometimes involve destruction of property and are accompanied by racist comments and the use of force. In Belgium, Travellers (whether Belgian nationals or not) suffer a shortage of official transit sites.

3. Parliamentary Assembly

23. In its resolution 1740(2010), the Parliamentary Assembly urged the member States to fully implement Committee of Ministers Recommendation Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe; to take urgent measures to prevent further forced evictions of Roma camps and settlements and – in cases of unavoidable evictions – ensure that such evictions are carried out only when all procedural protections required under international human rights law are in place, including the provision of adequate alternative accommodation, adequate compensation for expropriation and losses of moveable possessions damaged in the process of eviction; in the absence of such procedural protections, member States should introduce legislation on evictions, providing safeguards and remedies in accordance with international standards.

24. In its resolution 2153(2017), the Parliamentary Assembly called on the Council of Europe member States to implement capacity-building measures in order to ensure that Roma and Travellers have effective access to existing remedies.

4. European Commission against Racism and Intolerance (ECRI)

25. ECRI General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma recommends that the governments of member States ensure that Roma are not evicted without notice and without opportunity for rehousing in decent accommodation; ensure that Roma enjoy the same type and quality of services as the rest of the population.

26. In its report on Belgium, adopted on 12 December 2019 (sixth monitoring cycle), ECRI recommended that the authorities adopt an integrated approach to the issue of Travellers' access to housing.

B – United Nations (UN)

27. International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5

“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

[...]

(e) Economic, social and cultural rights, in particular:

[...]

(iv) The right to public health, medical care, social security and social services;

[...]

28. International Covenant on Civil and Political Rights (1966)

Article 27

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

29. International Covenant of Economic, Social and Cultural Rights (1966)

Article 9

"The States Parties to the present Covenant recognize the right of everyone to social security including social insurance."

Article 11

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
[...]"

30. In its General Comment No. 4 (1991) on the right to adequate housing, the UN Committee on Economic, Social and Cultural Rights stated that the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.

31. In its General Comment No. 7 (1997) on forced evictions, the UN Committee on Economic, Social and Cultural Rights stated that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Whereas some evictions may be justifiable, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant. In cases where eviction is considered to be justified, certain procedural protections should be applied. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.

32. In its General Comment No. 19 (2007) on the right to social security, the UN Committee on Economic, Social and Cultural Rights stated that all persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups.

33. The UN Committee on Economic, Social and Cultural Rights in its Concluding observations on the fifth periodic report on Belgium of 26 March 2020, recommended that the State party ensured effective implementation of the national strategy for the integration of Roma people, through the adoption of an interfederal action plan

including specific measures for Roma women and children and receiving a specific and adequate budget. It also recommended the adoption of an interfederal action plan to combat anti-gypsyism. It also recommended that the State party ensured, in all three regions, that evictions were carried out only as a last resort, even when the accommodation had been declared unsanitary, except if there was an imminent risk to health or safety. It also recommended that the State party: (a) prohibited forced eviction without the allocation of alternative accommodation; (b) intensified its efforts to equip residential sites for Roma families; (c) ensured that caravans were effectively protected as a place of residence; and (d) systematically recorded all cases of evictions. The Committee referred the State party to its General Comment No. 7 (1997) on forced evictions.

34. UN Special Rapporteurs

35. On 6 June 2019, the UN Special Rapporteur on the right to physical and mental health, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the UN Special Rapporteur on minority issues and the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance asked the Belgian Government to answer specific questions related to the special police operation of 7 May 2019. The Special Rapporteurs noted the principles of the relevant UN Conventions and expressed their concern that the seizure of caravans amounted to forced evictions. The Special Rapporteurs requested all the information on these allegations; at what stage was the investigation and if Article 28octies of the Code of Criminal Investigation of Belgium was applied; for how long and what alternative accommodation was offered to affected persons; what measures had been taken to ensure that the persons concerned had access to health and other services, etc.

36. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted on 18 December 1992 by the UN General Assembly resolution 47/135

Article 4

“1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

THE LAW

PRELIMINARY CONSIDERATIONS

As to the provisions of the Charter at stake

37. ERRC alleges that by the large-scale police operation on 7 May 2019, which resulted in seizure of caravans, other vehicles and money, the striking off of VAT numbers, the freezing of bank accounts and other issues, Belgium is in breach of the following provisions of the Charter:

- a. Article 1§2, as by seizing the homes, vehicles and other property of Travellers, by striking off their VAT numbers and by freezing their bank accounts, the authorities deprived many Travellers of their ability to work;
- b. Article 11§1, as by seizing the Travellers' homes and denying them access to social assistance and social security funds, the authorities put the health of large numbers of Travellers at risk;
- c. Article 12§1, as by freezing the bank accounts of Travellers, the authorities denied effective access to social security;
- d. Article 13§1, as by denying the Travellers access to social security and social assistance funds, the authorities failed to ensure that persons without adequate resources have access to social and medical assistance;
- e. Article 15§3, as by denying persons with disabilities access to social security and social assistance funds and to the enjoyment of their homes, vehicles and other possessions, the authorities deprived them of their right to independence, social integration and participation in the life of the community;
- f. Article 16, as by their actions the authorities deprived the Traveller families of social, legal and economic protection, since these families could no longer access family-related benefits, their homes, vehicles and to the other advantages on which they rely to make their family lives possible;
- g. Article 17, as the children had to sleep in cars or in the open, unable to attend school;
- h. Article E taken together with each of the above-mentioned provisions on account of discrimination of Travellers based on the assumption by the authorities that all Travellers were involved in the criminal activities at issue.

38. While ERRC argues that the authorities violated several provisions of the Charter (Articles 1§2, 11§1, 12§1, 13§1, 15§3, 16 and 17 read alone and E read in conjunction with each of the provisions concerned of the Charter), the Committee notes that the grievances expressed by ERRC in respect of the different provisions of the Charter invoked are not sufficiently substantiated to allow a distinct assessment under each of these provisions.

39. The Committee recalls that Article 1§2 of the Charter covers three different issues: the eradication of all forms of discrimination in employment; the prohibition of forced labour and the prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon (*Unione Generale Lavoratori – Federazione Nazionale Corpo forestale dello Stato (UGL-CFS)* and *Sindacato autonomo polizia ambiente forestale (SAPAF)* v. Italy, Complaint No. 143/2017, decision on the merits of 3 July 2019, §76). In the present instance, ERRC claims that some Travellers withdrew their VAT registration and that the authorities deprived them of their right to earn their living in an occupation freely entered upon. It appears

however from the information at the disposal of the Committee that the authorities did not cancel the Travellers' VAT registration but that the Travellers themselves decided to withdraw it. In these circumstances, the Committee considers that ERRC's allegations under Article 1§2 are unsubstantiated as the loss of VAT registration in this case was not directly linked to the right to work and does not reveal any undue interference with the right of workers to earn their living in an occupation freely entered upon. The Committee therefore rejects the allegation.

40. The Committee further recalls that Article 11§1 of the Charter requires the States Parties to ensure that all individuals have the right of access to healthcare and that the health system is accessible to the entire population (*Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, §100). In the present case, with reference to Article 11, ERRC mainly argues that depriving the Travellers of their homes and other possessions, and of their access to social assistance and social security funds, exposed them to post-traumatic stress disorder. ERRC also states that because their bank accounts were frozen, the Travellers faced difficulties in access to healthcare. The Committee notes that some of the complainant organisation's allegations regarding Article 11§1 more appropriately fall within the scope of Article 13 of the Charter. In particular, the Committee refers to the allegations concerning effective medical assistance. With respect to these allegations, the Committee refers to its examination below on the alleged violation of Article 13§1 of the Charter. As regards the remaining allegations under Article 11§1, namely that depriving the Travellers of their homes and other possessions, as well as the lack of access to social assistance, exposed them to post-traumatic stress disorder, having regard to the lack of specific evidence provided by ERRC, the Committee rejects the allegations in respect of Article 11§1 as unsubstantiated.

41. As regards Article 12§1 of the Charter, ERRC alleges that the freezing of bank accounts prevented a number of Travellers from having access to social security. In this respect, the Committee recalls that the key obligation of States Parties under this provision is to maintain a social security system that covers all the traditional risks (branches of social security) for a significant percentage of the population and provides adequate benefits, such as pension insurance, health insurance, unemployment insurance, family benefits and benefits in the event of work accidents and occupational disease and work accidents or occupational diseases benefits (*Conclusions XVI-1 (2002)*, Statement of Interpretation on Article 12; *Conclusions 2006, Bulgaria*; *Conclusions 2013, Georgia*; *Conclusions 2013, Bulgaria*; *Equal Rights Trust v. Bulgaria*, Complaint No. 121/2016, decision on the merits of 16 October 2018, §24).

42. The Committee has regard to the lack of the information provided by the complainant organisation. More specifically, there is insufficient information on whether and to what extent the freezing of bank accounts led to depriving the persons concerned, and *a fortiori* a significant percentage of the population, of their access to adequate social security benefits in the above-mentioned branches of social security. Consequently, the Committee rejects the allegation in respect of Article 12§1 as unsubstantiated.

43. As regards Article 15§3 of the Charter, the Committee notes the arguments of ERRC that persons with disabilities were deprived of their possessions and that this negatively impacted their right to independence, social integration and participation in the life of the community, but having found no specific evidence it rejects the allegation in respect of Article 15§3 as unsubstantiated.

44. With respect to Article 17 of the Charter, the Committee notes that ERRC alleges that after the police operation some children had to sleep in the open and were unable to attend school. However, no specific evidence is provided to support these allegations, consequently, the Committee rejects the allegations in respect of Article 17 as unsubstantiated.

45. Considering all the information at its disposal and in view of the above considerations, the Committee decides to assess this complaint under Article 13§1 and in respect of Article E in conjunction with Article 16 of the Charter.

I. ALLEGED VIOLATION OF ARTICLE 13§1 OF THE CHARTER

46. Article 13§1 of the Charter reads as follows:

Article 13§1 –The right to social and medical assistance

Part I: “Anyone without adequate resources has the right to social and medical assistance.”

Part II: “With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

[...].”

A – ARGUMENTS OF THE PARTIES

1. The complainant organisation

47. ERRC indicates that, as a result of the large-scale police operation on 7 May 2019, many Travellers were left homeless, and no social aid was offered or it was refused by the authorities. Moreover, many Travellers’ bank accounts were frozen which had the effect of denying them access to social security and social assistance funds. ERRC claims that by such actions the authorities failed to ensure that persons without adequate resources had access to social and medical assistance.

48. ERRC further states that community activists have repeatedly turned to the local authorities and social services for support, but to no avail. It also states that with their bank accounts frozen, people have been unable to secure ordinary access to healthcare.

49. ERRC therefore asks the Committee to find that the freezing of the Travellers' bank accounts deprived them of access to social assistance benefits in violation of Article 13§1 of the Charter.

2. The respondent Government

50. The Government states that it is inaccurate to claim that many families did not have access to their money and that the persons concerned are those who depend on social assistance and social security payments. The Government states that once the seizure of relevant items had been carried out, the bank accounts were unfrozen so that various allowances could be accessed. The Government also asserts that no social insurance cards were deactivated and that no one was deprived of the care they needed.

51. The Government states that in any case Belgian law provides for a possibility of lodging an appeal to have the seizure of various items lifted under Article 28sexies of the Code of Criminal Investigation. The Government states that on 7 August 2019, that is, three months after the police operation, no request for unfreezing of bank accounts had been submitted to the relevant authorities.

52. The Government further notes that compulsory healthcare insurance provides for the reimbursement of healthcare costs and the payment of various benefits (sickness, incapacity to work, maternity, etc.). It is financed from social security contributions and from the State budget, thus, in principle, free for everyone. It has to be differentiated from the complementary insurance offered by different mutual insurance companies. In the Government's opinion, therefore, ERRC incorrectly states that the freezing of bank accounts had a serious impact to the access to healthcare for the persons concerned.

53. The Government also states that under domestic law, the Crown prosecutor cannot demand that bank accounts remain frozen for more than five days. It is the Government's view that it is the responsibility of the banks to unfreeze the accounts in question and, if certain banks decided to terminate the commercial relationship with certain Travellers, that was within their margin of discretion and it was not for the State to interfere. The Government states that if the accounts remain frozen, then there is a contractual problem and not an issue of criminal law for which the Crown prosecutor would be competent.

54. Moreover, the Government asserts that the State can only monitor the situation of persons who are registered at the Public Social Assistance Centres (CPAS) and who actually benefit from guaranteed income or urgent medical assistance (around 1/3 of the persons concerned in this case). The Government explains that 3 out of 8 persons concerned by the police operation benefited from social assistance also after the operation and the assistance was still provided to them as of February 2021. The other persons did not submit a request for social assistance or did not prove that they met the conditions for receiving social assistance (documents were missing, the resources exceeded the legal limit to receive social assistance or the persons concerned were in receipt of disability or healthcare benefits). The Government also states that ERRC failed to provide specific examples of cases in which social assistance was refused.

55. The Government thus maintains that there is no violation of Article 13§1 of the Charter.

B – Assessment of the Committee

56. Article 13§1 of the Charter provides for the right of persons who are in need to be granted adequate social assistance, and, in case of sickness, adequate medical assistance. Under this provision, States Parties are bound to guarantee an enforceable individual right to social and medical assistance, including the right to appeal decisions concerning assistance before an independent judicial body (Conclusions 2013, Andorra).

57. As regards social assistance, Article 13§1 includes the right to benefits for which individual need is the main criterion for eligibility and which are payable to any person on the sole ground that he or she is in need (Conclusions 2017, Article 13§1, Slovak Republic). The entitlement to social assistance arises when a person is unable to obtain resources “either by his own efforts or from other sources, in particular by benefits under a social security scheme” (Statement of interpretation on Article 13§1, Conclusions XIII-4). The text of Article 13§1 clearly establishes that the right to social assistance takes the form of an individual right of access to social assistance in circumstances where a basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to the person concerned.

58. The Committee has already emphasised that persons without adequate resources, in the event of sickness, should be granted financial assistance for the purpose of obtaining medical care or provided with such care free of charge (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 46/2007, decision on the merits of 3 December 2008, §44).

59. With respect to the present complaint, the Committee notes that every person in Belgium is entitled to “urgent medical assistance”, which covers curative and preventive assistance and essential psychological assistance. The Committee notes, therefore, that the Travellers in question could receive appropriate healthcare, access to which was not dependent on the amount of money in their bank accounts or on whether the bank accounts were accessible or frozen.

60. The Committee further considers that the information provided by ERRC does not demonstrate any specific shortcomings of the system of medical assistance for the persons concerned by the present complaint. In particular, the Committee considers that the information at its disposal does not indicate that the authorities failed to take appropriate measures to provide the persons concerned with urgent medical assistance, primary and secondary healthcare or essential psychological assistance.

61. As regards social assistance, the Committee notes that the main allegations of ERRC are that, due to the freezing of their bank accounts, some Travellers concerned by the police operation and criminal proceedings in question could not access their

social assistance benefits, and that for some of them no social assistance was offered, or it was refused.

62. The Committee notes that, according to Belgian law, social assistance can consist of many different components: financial aid, housing, medical aid, assistance and care at home, assistance in finding a job, debt mediation, psychosocial aid, judicial assistance, admission to institutions, reception in social welfare centres, etc. Also, in accordance with the law, financial aid (“guaranteed income”), can be paid not only to a bank account of a beneficiary, but also in cash or by cheque. Thus, in principle it appears possible to receive financial aid even in case a bank account is frozen.

63. The Committee notes from the testimonies of several persons concerned which have been made available by ERRC, that in November 2020 one person still had no access to their disability pension because of the freezing of their bank account; one person asked for social assistance but did not receive it because they could not receive the bank statements required by the authorities; one person continues to receive social assistance and it appears that this person’s bank account is not frozen; one person’s account remained frozen in November 2020 and that person had no income and no access to their family allowance; one person’s bank account remained frozen in November 2020 and that person was a recipient of social assistance from the CPAS but the assistance was transferred to the spouse’s bank account which was not frozen; one person received social assistance between January and October 2019 and then it was discontinued; one person’s bank account was frozen but they managed to open another one, where they continued to receive family allowances.

64. From the information provided by ERRC, the Committee can distinguish only two individual situations concerning issues related to the frozen bank accounts that remained unsolved long after the police operation: one person could not access their disability pension and one person had no access to family allowances because their bank accounts remained frozen for a period of time longer than the time-limit referred to by the Government, which cannot exceed 5 days. The Committee notes that ERRC did not provide any information on whether those persons who could not access their social assistance benefits because their bank accounts remained frozen, attempted to receive those benefits in cash, or to open another account in the same bank or to open accounts in other banks. The Committee also notes that the situation of other persons allegedly concerned by the freezing of bank accounts is unclear from the information provided by the complainant organisation.

65. The Committee further notes that the information provided by ERRC mentions certain persons that were refused social assistance and some cases where a person was not given a receipt for the request for financial aid and where a person could not obtain bank statements because of the freezing of the bank account. The Committee also notes that according to the law and practice in Belgium, it is possible to lodge an appeal against the decision to refuse social assistance. However, as it appears from the information provided by the Government, no such appeals were submitted by the persons concerned.

66. The Committee takes note of the Government's statement that three months after the police operation, no request to unfreeze the bank accounts that were frozen had been received. However, it also notes from the information submitted by ERRC, that there were some attempts by lawyers to have their clients' accounts unfrozen by contacting both the authorities and the banks, but they either remained unanswered or no information was provided about the accounts, even upon the request of the account owners themselves. However, it is not clear from the information at the Committee's disposal that the Travellers' bank accounts were not eventually unfrozen or that those persons did not manage to open other bank accounts.

67. The Committee considers that for the persons concerned there were several ways to solve the issue of frozen bank accounts and to access social assistance transferred to those accounts: to ask to receive the social assistance in person, which is a possibility under Article 36 of the Royal Decree on the general regulation of the right to social integration; to ask the social assistance to be transferred into a bank account of the recipient's family (which was successfully done in the present case by one person) or to open a bank account in another bank and to have the social assistance transferred there. The Committee is not aware why with the above-mentioned exception these possibilities seemingly were not used. No information on this issue is provided by the complainant organisation.

68. With respect to refusal of social assistance, the Committee notes that the domestic legislation provides clear rules on the cases where social assistance must be provided and the steps that a person's request for social assistance goes through. It appears that in the present case social assistance was refused where the persons concerned could not provide evidence about their income and savings from their banks because their accounts were frozen. In a case of refusal, the possibility of appeal to a competent court exists. According to the information provided, it appears that no such appeals were submitted. The Committee also notes that it appears from the information available to it that there were some cases where the requests for social assistance were received and pending before the CPAS. Some of them were approved, some of them could be approved after the submission of evidence that the bank accounts of the persons concerned were frozen. The Committee has no information on whether their requests were approved. Thus, it appears that the refusals of social assistance were not carried out indiscriminately without considering the specific situation of the persons concerned. Moreover, given the generality of ERRC's allegations on this point, the Committee cannot establish with certainty the exact reasons as to why social assistance was refused for some of the persons affected.

69. The Committee further notes that ERRC did not provide clear evidence that the Travellers concerned by the police operation and by the freezing of bank accounts were persons in need, satisfying the basic conditions of eligibility for social assistance. Nor did ERRC provide clear evidence that the police operations and the freezing of bank accounts resulted in putting the persons concerned in a situation of need making them eligible for social assistance. While there is information that before the police operation some Travellers had small businesses and that after the operation they withdrew their VAT registrations, this mere fact does not allow the Committee to conclude that these persons automatically became persons in need of social

assistance and that they met the necessary criteria for receiving such assistance. Moreover, it appears that most of the persons concerned by the police operation were not receiving social assistance before the operation as also confirmed by the complainant organisation.

70. In view of all these considerations, the Committee cannot conclude that, due to the freezing of bank accounts and the alleged lack of provision of social assistance by the Belgian authorities, the Travellers concerned were deprived of adequate resources to live a decent life and meet basic needs in an adequate manner and that their right to social assistance under Article 13§1 of the Charter was not guaranteed.

71. Having regard to what has been stated above, the Committee therefore holds that there is no violation of Article 13§1 of the Charter.

II. ALLEGED VIOLATION OF ARTICLE E IN CONJUNCTION WITH ARTICLE 16 OF THE CHARTER

72. Article 16 of the Charter reads as follows:

Article 16 – The right of the family to social, legal and economic protection

Part I: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”

Part II: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”

73. Article E of the Charter reads as follows:

Article E –Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

A – ARGUMENTS OF THE PARTIES

1. The complainant organisation

74. ERRC states that as part of the police operation on 7 May 2019, 91 caravans were seized, out of which 76 caravans were used as homes (17 were returned to their owners), therefore many families were left homeless. ERRC relies on the statements of some witnesses that no social aid or housing alternatives were offered. ERRC further states that some of the caravans have been sold. It also states that the seizures

continued even after the date of the police operation. ERRC notes that some of the caravans that have been seized were taken from people who have never been accused or approached by the authorities about a criminal wrongdoing.

75. ERRC states that after the police operation the persons concerned received notices from the Belgian authorities that the land they had purchased through mortgages was being seized, in some cases banks demanded the reimbursement of the full loan and for those who were not able to make the reimbursement, the property would be repossessed. In these circumstances, such families would be evicted from their property and would become homeless.

76. ERRC also states that it was the responsibility of the authorities to systematically offer the affected persons alternative accommodation and that the authorities were obliged to make an ex officio offer of adequate housing. The ERRC states that no such offer was made by the competent authorities.

77. ERRC claims that the Belgian authorities deprived those Traveller families affected by the actions impugned in the present complaint of social, legal and economic protection in breach of Article 16 of the Charter and that the police operation amounted to discrimination of the Traveller families.

2. The respondent Government

78. The Government states that the police operation took place after eight months of police investigations and that 19 sites were searched during the operation itself. The Government refers to a document where it is indicated that youth services were present at the sites and that at certain sites that were searched no families accepted the proposals for relocation made by the authorities. According to the Government, from among all the sites concerned only one family agreed to be relocated.

79. The Government does not dispute the sale of some caravans, but it states that several the caravans seized were in fact stolen and the vehicle identification numbers were disguised, others had lethal weapons in them. Moreover, other items discovered in the caravans were considered essential evidence in the investigation. The Government also states that the decision to sell the caravans could be appealed against and that this was successfully done by multiple suspects, which resulted in the suspension of the sale of the caravans until the decision on the merits in their case had been handed down. Moreover, according to the Government, Belgian law provides for the possibility of lodging an appeal to have the seizure lifted, however three months after the police operation only one appeal had been submitted (which was rejected because the invoice provided as proof of the origins of the caravan was forged). Finally, the Government states that a dozen caravans was returned after a fine was paid.

80. The Government further states that secondary legal aid is available to everyone, however, in the absence of decisions to refuse legal aid, the Government cannot accept that the persons concerned by the seizures of their items could not benefit from legal aid to appeal against the decisions of the authorities.

B – Assessment of the Committee

81. The Committee recalls that Article 16 of the Charter imposes obligations on States Parties also in respect of family housing. It has already had occasion to state its interpretation of the notion of the right to housing under Article 16 (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §24; ERRC v. Bulgaria, Complaint No. 31/2005, decision on admissibility of 10 October 2005, §9, decision on the merits of 18 October 2006, §§16-17; International Federation for Human Rights (FIDH) v. Ireland, Complaint No. 110/2014, decision on the merits of 12 May 2017, §§105-110).

82. The Committee further recalls that, to the extent that it requires States Parties to ensure housing for families of an adequate standard and protection from eviction, Article 16 partially overlaps with Article 31 of the Charter, in the sense that the notion of adequate housing and forced eviction are identical under Articles 16 and 31 (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §158; FIDH v. Ireland, Complaint No. 110/2014, op. cit., §107).

83. In addition, in accordance with the equal treatment principle, Article 16 requires States Parties to ensure the protection of vulnerable families, including Traveller families (European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §143). In this respect, States must, among other things, promote the provision of an adequate supply of housing for families and take the needs of families into account in housing policies (International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2012, §111).

84. The Committee emphasises that States Parties are required to do their utmost to foster acceptance of the different lifestyle of Travellers. One of the consequences of this is that because Traveller families fall into an especially vulnerable category, States must protect them against the threats of eviction to which they are exposed.

85. The Committee has already stated, regarding Belgium (Conclusions 2011, Article 16), that States must set up procedures to limit the risk of eviction. To comply with the Charter, legal protection for persons threatened by eviction must be prescribed by the law and include certain obligations, such as an obligation to consult the parties affected in order to find alternative solutions to eviction; an obligation to fix a reasonable notice period before eviction; a prohibition to carry out evictions at night or during winter; access to legal remedies; access to legal aid; compensation in case of illegal eviction, etc. (FIDH v. Belgium, Complaint No. 62/2010, op. cit., §163).

86. The Committee points out that evictions must not render the persons concerned homeless (ERRC v. Bulgaria, Complaint No. 31/2005, op. cit, §57) and that equal treatment implies that the State should take measures appropriate to Traveller families' particular circumstances to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless (see, *mutatis mutandis*, ERRC v. Italy, Complaint No. 27/2004, op. cit., §21).

Context of the seizure of caravans

87. Coming to the specific context of the present complaint, the Committee acknowledges that even where the caravans are housing within the meaning of the Charter, the seizure of them as in the present case cannot necessarily be assessed in the same way as evictions carried out under other circumstances. The Committee further notes that some of the ordinary requirements in case of eviction may not be applicable in the case of police operations to investigate serious crime, where the actions of the authorities must often be carried out fast and often without prior warning to the persons concerned. Thus, for example, fixing a reasonable notice period before eviction could be very difficult to implement in cases where criminal activities have to be investigated and discovered.

88. The Committee notes that in the present case the seizure of assets, in particular the caravans, was carried out precisely within the framework of a large-scale police operation aimed at identifying persons allegedly involved in serious criminal activities. During the operation, it was discovered by the authorities that many of the caravans seized were stolen and their identification numbers had been disguised, others contained lethal weapons and important evidentiary material, some were believed to have been acquired using money received from criminal activity, and for others, their owners could not declare any official revenue to justify the purchase of such caravans.

Obligations of the authorities in the context of the seizure of Travellers' caravans

89. The Committee notes that even considering the particular context of the seizure of caravans in the context of police operations and criminal proceedings, the authorities must carry out their actions in accordance with a procedure that adequately protects the right of the families concerned to housing under Article 16 of the Charter. Therefore, since in the present case the caravans are to be considered as the family home for the persons concerned, when evictions take place as a result of the caravans' seizure by the police, the families living in them should not have been left without alternative accommodation. Where the families concerned by the seizure already had alternative forms of housing at their disposal, they could possibly relocate there; but the authorities must in any event make sure that all the families affected be provided with adequate housing and not be left without any accommodation.

90. Furthermore, the Committee considers that in general, the disadvantaged and vulnerable status of the Traveller families concerned must be a weighty factor in considering approaches to dealing with a situation such as the one at stake in the present complaint. Where, as in the case at hand, the seizure of caravans is considered necessary, the modalities of the seizure should be suitably adapted and, in particular, arrangements for alternative accommodation for the persons concerned must be an integral part of the planning of the police operation, including, for example, measures to assist the families concerned to obtain official status of persons in need of housing, which would make them eligible for alternative accommodation.

Housing situation of the persons concerned

91. The Committee refers to a publication by the Fundamental Rights Agency of the European Union, which states that Travellers surveyed in Belgium live almost exclusively in caravans (more than 96%). Only a small minority of the respondents who were living in caravans also had, in addition, a house or apartment somewhere else (less than 6%) (European Union Agency for Fundamental Rights (FRA), Roma and Travellers in six countries, Roma and Travellers survey, 2020, p. 80).

92. The Committee also notes the Government's reply to four Special Rapporteurs of the United Nations of 5 August 2019, in which it stated that the majority of the suspects owned apartments, cabins and houses besides the caravans, and others had several caravans.

93. The Committee further notes that in the present case the caravans remained seized, or they were even sold by the authorities, and the concerned persons had no access to them. It appears, however, that there was a possibility for those persons to challenge the sale of the caravans, and several persons successfully managed to do this thus preventing the sale of the caravans, at least until the end of the criminal proceedings.

94. As it appears, the Travellers affected were reluctant to request social housing at least partly because they did not want to be dispersed and, in general, because their living environment would change significantly by moving into sedentary housing (blocks of flats). However, the information provided by ERRC does not clearly demonstrate that no other housing options were offered, or that the affected Traveller families were left homeless. In that regard, the Committee notes the individual testimonies of twelve Travellers collected upon the request of ERRC with the assistance of Belgian organisations in October and November 2020, from which it is clear they were either living with their families or in rented housing, some remained in caravans not seized, others had bought a new caravan and still others were able to recover their caravans from the authorities upon payment of a fine.

95. Summing up, the Committee has regard to the following factors: 1) rehousing possibilities were offered in some cases, 2) some Travellers preferred to join their families rather than be rehoused by the authorities, 3) most of the Travellers affected were living in the apartments they owned in addition to their caravans, in the apartments they rented, or in other caravans they owned and that were not seized, and 4) some caravans were returned to their owners upon payment of a fine.

Actions taken by the authorities concerning housing of the families affected

96. The Committee considers that the efforts made by the local authorities to secure accommodation for the Travellers concerned must be taken into account. The Committee also notes that, according to the Government, as a preventive measure the family and youth sections of the various local police forces involved in the operation were called in specifically to deal with questions relating to family housing and minors. On the other hand, the Committee notes from the second Unia report of 11 July 2019 related to the situation of Travellers in Belgium following the police operation on 7 May 2019, that no aid concerning housing was offered to those affected by the operation and that they were completely dependent on the help they could find elsewhere. Also, the Committee notes from the same report that in two cases the police contacted the responsible judge and two caravans were released to the families: one of these caravans was home to a child with disabilities and the other to a pregnant woman.

97. Although the parties have offered divergent accounts of the situation, the Committee observes that it is not contested that in some cases on one site the authorities proposed housing, but only one family accepted such proposal. The Committee notes from several police reports regarding the sites in Anderlecht that families preferred to join other Travellers instead of being referred to accommodation by the local services.

Assessment of the actions of the authorities

98. While pointing out that adequate alternative accommodation in the present case does not necessarily mean the provision of alternative caravans to the families concerned, the Committee reiterates that it has information only about one site targeted by the police operation where some form of alternative accommodation was offered in some cases. Moreover, the Committee has no indication as to whether the alternative accommodation offered in these particular cases satisfied the requirements of the Charter (see above at §90 *in fine*). Finally, the Committee also has no indication that the specific living arrangements and vulnerability of Traveller families in this particular situation was given due consideration by the Belgian authorities.

99. In addition, the Committee recalls that the principle of equality underlying Article E of the Charter implies not only that all persons in the same situation must be treated equally, but also that persons in different situations must be treated differently. Therefore, the States Parties fail to respect the Charter where, without an objective and reasonable justification, they fail to treat differently persons whose situations are different. In this regard, Article E not only prohibits direct discrimination but also all forms of indirect discrimination.

100. Based on the foregoing, the Committee considers that in the case at hand the Belgian authorities failed to demonstrate that they took due and positive account of the particular housing situation and different lifestyle of the Travellers families concerned by the seizure of caravans, nor did they take sufficient steps to ensure that such families could effectively continue to enjoy their right to adequate housing.

101. The Committee indeed considers that even within the framework of police operations and criminal proceedings, the authorities, when proceeding to seize the caravans of a group of persons for whom those caravans effectively constitute housing, should give due consideration to the particular vulnerability of the persons concerned. Not doing so, as in the present case, negatively impacts these persons' fundamental rights in such a way as to give rise to discrimination.

102. Consequently, with respect to the Traveller families concerned by the police operations that led to the seizure of caravans and to the criminal proceedings in question in this complaint, the Committee holds that there has been a violation of Article E taken in conjunction with Article 16 of the Charter.

REQUEST FOR COMPENSATION

103. ERRC requests the Committee to order Belgium to pay the sum of €5,117, representing the expenses it incurred in lodging this complaint, breaking down between lawyer's fees, consultancy fees and the translation costs.

104. The Government does not comment on the costs and expenses requested by the complainant organisation.

105. The Committee decides not to make a recommendation to the Committee of Ministers as regards the complainant organisation's request for a payment of €5,117 in compensation for legal costs incurred in connection with the present proceedings. It refers in this respect to the stance taken by the Committee of Ministers to reimbursement of expenses in the past (see Resolution CM/ResChS(2016)4 in European Roma Rights Centre (ERRC) v. Ireland, Complaint No. 100/2013) and to the letter of the President of the Committee addressed to the Committee of Ministers dated 3 February 2017 in which the President announced that the Committee would for the time being refrain from inviting the Committee of Ministers to recommend reimbursement of costs.

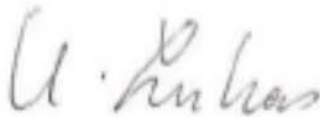
CONCLUSION

For these reasons, the Committee concludes:

- by 10 votes against 4 that there is no violation of Article 13§1 of the Charter;
- by 9 votes against 5 that there is a violation of Article E taken in conjunction with Article 16 of the Charter.



Giuseppe PALMISANO
Rapporteur



Karin LUKAS
President



Henrik KRISTENSEN
Deputy Executive Secretary

In accordance with Rule 35§1 of the Rules of the Committee, a separate dissenting opinion of Paul RIETJENS, joined by Miriam KULLMAN, Tatiana PUIU, George THEODOSIS and Mario VINKOVIC and a separate concurring opinion of Aoife NOLAN are appended to this decision.

SEPARATE DISSENTING OPINION OF PAUL RIETJENS JOINED BY MIRIAM KULLMAN, TATIANA PUIU, GEORGE THEODOSIS AND MARIO VINKOVIC

I agree entirely with the Committee's conclusion, supported by reasons, that there is no violation of Article 13§1 of the Charter.

On the other hand, I am unable to agree with the conclusion – and the reasons given for it – that there is a violation of Article E taken in conjunction with Article 16 of the Charter. I will give my reasons for this below.

In general

I believe that a distinction should be made between:

- on the one hand, a situation where there is clear evidence that a state is adopting a policy (for example in the field of social assistance or housing) and/or applying widespread or repeated practices (moreover, deliberately targeted against a specific population group) in breach of its commitments under the Charter, including Article E; and
- on the other, a situation where, during a wide-ranging operation to combat major crime, evidence is found that the manner in which the police and judicial services have carried out their tasks might, in individual cases and while complying with the criminal procedure as enshrined in the law, nevertheless be qualified as presenting some breaches of the requirements of the Charter, because their conduct has been disproportionate in the light of the aim pursued and is, deliberately or through lack of precaution, in breach of the social rights of the persons arrested.

In this complaint, we clearly find ourselves in the second of these situations, namely a wide-ranging operation to combat major crime. It should therefore be demonstrated, on the basis of substantive evidence and/or the establishment of uncontested facts, that in the specific context of the operation in question and having regard to the principle of proportionality, the social rights of the persons under investigation were infringed in a discriminatory manner, particularly their right to housing.

On this subject, it is worth beginning by outlining the factual context of the situation, as described in the case file.

This was the largest police and judicial investigation in Belgium in the last 20 years, which according to the case documents, targeted a criminal organisation suspected of several crimes and structured internationally, with ramifications in France, Germany, Switzerland and Norway (which is also why EUROJUST was notified), but particularly active in Belgium, where almost every Belgian judicial district was affected.

The operation took eight months to prepare, with thorough investigations by the local police, the federal police and special units, including in the financial field (given the serious indications of money laundering by the criminal organisation concerned). As a

result, an additional asset and financial investigation was opened and the income of the members of the organisation was analysed by financial experts from the Public Prosecutor's Office and from the central body for the fight against serious and organised economic crime.

During the operation itself, six investigating judges were involved and 200 searches were conducted on 19 sites. These included not only sites where five Traveller families were living and 21 houses or warehouses but also a bank, a ministry, several police stations and a notary's office. Several people were arrested (and thus detained) including several federal and local police officers and a public notary, while an insurance broker was also charged and the managers of dozens of shell companies (through which the proceeds were passed on) were arrested. The related arrest warrants were issued for offences including fraud, extortion, receiving stolen goods, money laundering, weapons offences, breaking and entering, and violent gang robbery.

Therefore, the fact that during such a large-scale operation of such importance for public security, caravans were seized (and bank accounts were temporarily blocked) amounts, under the current Belgian legislation on criminal investigation, to taking action justified by the needs of the investigation and any criminal proceedings which may have followed. The action taken targeted all the persons concerned and not just a single category of suspects and therefore, in my opinion, cannot be qualified, as the complainant asserts, as an operation directed against a specific group – in this case, Travellers – thus constituting “*a collective sanction of an ethnic nature violating Article E*” (in combination with various provisions of the Charter).

As to the possible violation during these police and judicial operations of certain articles of the Charter, everything depends in my opinion, on the way in which they were carried out, including the precautions taken to avoid negative consequences for the enjoyment of rights and the efforts made or the measures taken where necessary to re-establish this enjoyment when it was proven that it had been affected.

It is precisely on this subject that the case file in this complaint does not in my view contain clear and detailed evidence showing, as the Committee asserts, that the Belgian authorities failed to give due consideration to “*the specific living arrangements and vulnerability of Traveller families in this particular situation*” (see paragraph 98 of the decision).

Nor, in my view, are the complainant's allegations sufficiently supported by substantive evidence. For example it is impossible to know whether any of the Travellers or the Traveller families concerned were actually made homeless and if so, how many. The file does not contain any precise information on this subject.

Furthermore, in several places in the case file, the complainant and the Government contradict one another and the Committee does not have the means to check which of the two versions corresponds to the factual reality.

With regard more specifically to the Committee's conclusion on the violation of Article E taken in conjunction with Article 16:

I am well aware of the principles applicable to the interpretation and scope of Article 16 of the Charter, in particular when it comes to the protection of vulnerable families, as these principles are reflected in the Committee's case law, to which I, of course, subscribe (see paragraphs 81 to 86 of the decision). I also think it right to emphasise that seizure of a caravan which is its occupants only dwelling – which amounts to an eviction – should never leave the persons concerned homeless, that the families living in it should not be left without accommodation and that the authorities must help them to find another home if they do not already have one available.

However, on the basis of the case documents, I have difficulty with the Committee's conclusions concerning the application of these principles, including those of equality and the prohibition of direct or indirect discrimination, to the specific situation covered by the complaint. In particular, I cannot agree with the conclusion that in this connection, the authorities failed to meet their obligations under the Charter, as reflected in paragraphs 89 and 90 of the decision.

There is no precise and verifiable evidence in the case file which makes it possible to conclude so decisively (as the Committee seems to do in paragraphs 98 to 101 of the decision):

- that the situation of the social group to which the families concerned belong had not been taken into account by the Belgian authorities when planning and implementing their operation;
- that, for the most part, seizure and, if possible, rehousing arrangements were not made;
- that the Belgian authorities failed to pay particular attention or give consideration to the specific living conditions and vulnerability of Traveller families in the situation at hand;
- that they failed to take positive account of the particular housing situation and different lifestyles of the Traveller families affected by the seizure and that they did not take sufficient measures to ensure that these families could effectively continue to enjoy their right to adequate housing.

Nor is there any tangible and verifiable information in the case file on how many of the caravans seized were their occupants' only housing or dwelling or on how many of these occupants were actually made homeless by the seizures and requested rehousing by the authorities but did not receive a suitable proposal from them or refused such a proposal (save in one case). The lack of precise information does not automatically mean that nothing was done.

Nor is it clear from the case documents either how many of the caravan owners successfully contested the seizure (the only material relating to this is the conflicting accounts of the parties).

In addition, in several places, the decision notes or refers to items which seem to be at variance with the conclusion that the authorities failed to meet their obligations and/or that the persons or families concerned were made homeless by the authorities' failure to take the necessary measures. Examples of this are:

- **paragraph 87** (*"the Committee acknowledges that even where the caravans are housing within the meaning of the Charter, the seizure of them as in the present case cannot necessarily be assessed in the same way as evictions carried out under other circumstances"*, or *"the Committee further notes that some of the ordinary requirements in case of eviction may not be applicable in the case of police operations to investigate serious crime"*)
- **paragraph 94** (*"the Travellers affected were reluctant to request social housing at least partly because they did not want to be dispersed"*, or *"the information provided by ERRC does not clearly demonstrate that no other housing options were offered, or that the affected Traveller families were left homeless"*);
- **paragraph 95** (*"1) rehousing possibilities were offered in some cases, 2) some Travellers preferred to join their families rather than be rehoused by the authorities, 3) most of the Travellers affected were living in the apartments they owned in addition to their caravans, in the apartments they rented, or in other caravans they owned and that were not seized, and 4) some caravans were returned to their owners upon payment of a fine"*);
- **paragraph 96** (*"the Committee considers that the efforts made by the local authorities to secure accommodation for the Travellers concerned must be taken into account"*)
- **paragraph 97** (*"although the parties have offered divergent accounts of the situation, the Committee observes that it is not contested that in some cases on one site the authorities proposed housing, but only one family accepted such proposal"*).

Moreover, in relation to the authorities' rehousing proposals, it should also be noted that the Committee states (in paragraph 98) that it *"has no indication as to whether the alternative accommodation offered in these particular cases satisfied the requirements of the Charter"*. This clearly means that the opposite is just as true. On this subject it is also worth stressing that in cases where alternative accommodation was proposed by the relevant authorities, none of the persons concerned would seem to have complained that the solution proposed failed to meet the requirements of the Charter.

Lastly, some of the evidence against the authorities cited in the decision does not seem to me to be convincing:

- the publication by the EU Fundamental Rights Agency to which the Committee refers **in paragraph 91** of the decision contains the results of a general survey, and we do not know how representative the participants were in relation to the total number of Travellers in Belgium or, in particular, to what degree the results were relevant to the

situation of the five families who were the subject of the criminal investigation;

- the assertion in Unia's second report on the situation of Travellers in Belgium following the police operation to which this complaint relates, cited **in paragraph 96** of the decision "*that no aid concerning housing was offered to those affected by the operation and that they were completely dependent on the help they could find elsewhere*" is not only uncorroborated by specific examples that can be verified by the Committee but also seems to be at variance with the information cited above, particularly in paragraphs 94 and 95.

For all these reasons, I cannot agree with the Committee's assessment of the measures taken by the authorities (in paragraphs 98 to 101 of the decision) and the conclusion that it draws from this that there is a violation of Article E taken in conjunction with Article 16 of the Charter (in paragraph 102).

SEPARATE CONCURRING OPINION BY AOIFE NOLAN

In this decision, the Committee has considered the situation complained of from the perspective of an alleged violation of Article E in conjunction with Article 16 of the Charter. I agree with the Committee's finding in that regard. This opinion focuses on one specific element of the Committee's reasoning.

As part of its assessment, the Committee notes that in the context of this complaint – which took place during the course of police operations to investigate serious crime – “the seizure of [the caravans] in the present case cannot necessarily be assessed in the same way as evictions carried out under other circumstances” [paragraph 87 of the decision]. It states that “some of the ordinary requirements in case of eviction may not be applicable in the case of police operations to investigate serious crime where the actions of the authorities must often be carried out fast and often without prior warning to the persons concerned” [ibid]. The Committee continues to say that, “for example, fixing a reasonable notice period before eviction could be very difficult to implement in cases where criminal activities have to be investigated and discovered” [ibid].

The Committee has previously outlined a wide range of obligations related to legal protection in the context of evictions as part of its jurisprudence in relation to Article 16. Amongst other things, it has noted that evictions must take place in accordance with the applicable rules of procedure prescribed by law and that these should be sufficiently protective of the rights of the persons concerned (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §5; ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §41). Charter-consistent legal protection for persons includes a range of different obligations (see, *inter alia*, §85 of the present decision as well as FEANTSA v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §86). These obligations correspond to fundamental elements of the right to legal protection from eviction guaranteed by Article 16. Just as Article 16 applies to all situations of eviction, so too do these obligations.

As such, an interpretation of the Committee's decision to suggest that the “ordinary requirements in case of eviction” do not apply in circumstances such as those under consideration in this case would be incorrect. Nor would it be correct to suggest that Article 16 is an absolute right that can never be limited or restricted, regardless of the context in which an eviction takes place. While Article 16 (and its related obligations) apply to all situations in which evictions are threatened, Article G can be relied on by States Parties when seeking to justify restrictions or limitations on that right and its related obligations. As such, it is not that the particular circumstances of an eviction result in the reduction or removal of state obligations in terms of Article 16. Rather, those circumstances can be taken into account by the Committee when considering the permissibility of restrictions or limitations on Article 16 in terms of Article G of the Charter.