

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



13 January 2021

**Case Document No. 6**

**European Roma Rights Centre (ERRC) v. Belgium**  
Complaint No.185/2019

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

**Registered at the Secretariat on 11 December 2020**

European Committee of Social Rights  
Council of Europe  
By email only: [social.charter@coe.int](mailto:social.charter@coe.int)  
11 December 2020

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

COLLECTIVE COMPLAINT NUMBER 185/2019

EUROPEAN ROMA RIGHTS CENTRE (ERRC)

V.

BELGIUM

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

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Number of pages: 17

## **I. Introduction**

1. The European Roma Rights Centre (hereafter: “the ERRC”) submits this response to the submissions on the merits of the abovementioned complaint prepared by the Belgian Government (hereafter: “the Government”), received and registered by the Committee on 4 September 2020.
2. Pursuant to Rule 31§2 of the Rules of the European Committee of Social Rights, the President of the Committee invited the ERRC to submit a response to these submissions by 12 November 2020.

3. In light of the alarming situation with the Coronavirus outbreak in Belgium, a request for an extension of the time limit for the presentation of the response by the ERRC on the Government's submissions on the merits of the complaint was submitted to the Committee on 29 October 2020.
4. On 5 November 2020, in conformity with Article 7 of the Additional Protocol to the European Social Charter providing for a system of collective complaints and in application of Rule 28§2 of the Rules of the European Committee of Social Rights, the President of the Committee decided to extend the deadline to 12 December 2020.

## II. Preliminary remarks

5. This response follows the format of the Government's Observations on merits and uses the Government headings. As the Government's Observations do not contain numbered paragraphs, there are no references to specific paragraph numbers.
6. The ERRC will address the merits only to the extent that they (as set forth in the collective complaint) need to be clarified, refined, or enlarged upon in light of the Government's Observations. The fact that the ERRC, as a complainant organisation, will not address all the issues and omit some of the questions means only that the relevant issues were extensively addressed in the original complaint and therefore, the organisation has nothing substantially new to add to that analysis. Hence, the ERRC asks the Committee not to interpret its silence on any of the questions as consent with the Government's position.
7. There are two important Annexes attached to the observations: **Annex 12 and Annex 13.**
8. **Annex 12:** This Annex contains a summary of individual testimonies gathered in the period between October and November 2020 by conducting phone interviews with Travellers affected by the Operation Strike. The interviews were collected on the request of the ERRC with the assistance of the Belgian organisations UNIA, NGO Foyer vzw, and OCMW Halle, for which the ERRC wishes to express our gratitude. In total, twelve affected individuals were interviewed. The summary of the

interviews was translated from French into English by UNIA.<sup>1</sup> Annex 12 also contains information regarding two cases of blocked bank accounts of Travellers, represented by the Belgian lawyer Mr. Alexis DESWAEF.

9. The ERRC is requesting from the Committee to anonymise the personal identity of the interviewed individuals when publishing this submission.
10. **Annex 13:** This Annex contains a number of Appendices, including: full written testimonies of the witnesses in French, copies of the ID documents of some of the witnesses<sup>2</sup>, copies of bank letters regarding termination of customer relations (in Dutch), medical certificates concerning the health of an affected individual, a letter from the Belgian lawyer Mr. Maître Alexis DESWAEF to the judge of instruction, evidence of *pro justitia* seizure of a caravan dated 8 August 2020 (3 months after the actual seizure), a hand-written letter from an affected individual to the public prosecutor, a certificate of the CPAS of Vilvoorde dated 26 November 2019 from an affected individual who received social welfare from the CPAS from January 2019 until October 2019, and letters for refusal of social support by CPAS (in Dutch).

### III. On the substance of the complaint allegations

11. In part **A. *Antecedents de procedure***, the Government reiterated the Committee decision on the request for immediate measures from May 14, 2020:

***“ - Prendre toutes dispositions possibles pour éviter qu’il ne soit porté atteinte, de manière grave et irréparable, à l’intégrité des personnes appartenant à la communauté des Gens du voyage exposées à un risque immédiat d’être privées de leurs droits sociaux fondamentaux, en particulier : - s’assurer que les personnes dont les caravanes ont été saisies ne restent pas sans-abri ou ne soient pas forcées de vivre dans des conditions de vie inacceptables ; - veiller à ce que toutes les personnes touchées, aient un accès adéquat à l’eau, aux installations sanitaires, à l’électricité, à l’assistance médicale et sociale nécessaire ainsi qu’à l’aide juridique, en tenant compte particulièrement des besoins des groupes vulnérables*”**

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<sup>1</sup> We are continuing the numbering of our annexes, which is why the first annex here is “Annex 12”.

<sup>2</sup> Some of the interviewed have asked us not to disclose their personal data, for fear of reprisals.

***concernés (notamment les enfants, les personnes handicapées et les personnes âgées) ; - s'assurer que la présente décision soit portée à la connaissance de toutes les autorités publiques compétentes et informer le Comité sans délai des mesures prises en application de celle-ci. (Nous soulignons)".<sup>3</sup>***

In this regard, the ERRC would like to highlight that although clearly aware of the content of the Committee's decision on immediate measures adopted over six months ago, until today the Belgian Government has hardly done anything to remedy the conditions of the affected persons nor has provided the Committee with any update on the activities and steps it has taken to give effect to the Committee's decision on immediate measures. From the Government's response (especially part C. of the submission) it appears that the only activity they planned on undertaking over a year on from the police operation is to send an awareness-raising article to the CPAS so that they pay particular attention to the community of Travellers and Roma.<sup>4</sup> The ERRC would like to remind the Belgian Government that apart from the inactivity of the CPAS, the Operation Strike was primarily organised and carried out by especially aggressive and racist police officers (using language such as *"pauvre Gitan, c'est jamais de votre faute, jamais vous, vous n'avez pas le droit de vous plaindre"*/*"poor Gypsy, it's never your fault, never you, you don't have the right to complain"*), whose unprofessional work had to be sanctioned and consistently monitored. Unfortunately, today the affected members of the community are still facing severe social and economic hardships as a direct consequence of the Strike and no one has assumed responsibility for that. The actual testimonies presented in Annex 12 and Annex 13 show that the difficulties connected to the human rights violations already raised

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<sup>3</sup>*"Take all possible measures to prevent serious and irreparable damage to the integrity of persons belonging to the Travellers' community exposed to an immediate risk of being deprived of their fundamental social rights, in particular:- ensure that those whose caravans have been seized do not remain homeless or are not forced to live in unacceptable living conditions; - ensure that all those affected have adequate access to water, sanitation facilities, electricity, necessary medical and social assistance and legal aid, taking particular account of the needs of the vulnerable groups concerned (especially children, the disabled and the elderly; - ensure that the present decision is brought to the attention of all the competent public authorities present decision is brought to the attention of all the competent public authorities and inform the Committee without delay of the measures taken in application of it."*

<sup>4</sup> UNIA has informed the ERRC that such awareness-raising articles were not yet received by any of the social workers they have contact with.

in the collective complaint and quoted in UNIA's reports are still not resolved for many of the affected persons, including elderly persons, persons with disabilities, and children. Moreover, for most of the interviewed persons the situation has only worsened over time, especially taking into consideration the challenges additionally posed by the impact of the novel Corona virus.<sup>5</sup> Based on the Committee's findings on case-law concerning the housing situation of Travellers in Europe "*in the present case, ... there appears to have been a long period during which local authorities and the state have failed to take sufficient account of the specific needs of Travellers*", ERRC v. France, 26 October 2009, complaint 51/2008, §40.

12. In part **B. Remarques préliminaires**, the Government falsely concluded that: "***Il semble par ailleurs ressortir de la décision sur la recevabilité de Votre Comité ainsi que des mesures intermédiaires indiquées que celui-ci accepte que la saisie des caravanes était a priori proportionnée au but poursuivi***".<sup>6</sup>

The ERRC notes that nowhere in the Committee's decision on admissibility and immediate measures is it determined that the seizure of Traveller caravans was a priori proportionate to the aim pursued. Contrary to that, the Government has not done anything to show that Operation Strike was proportionate. Hence, the Committee concluded that "*the Government has failed to dispel the serious concerns about the gravity of the situation outlined in the complaint*", noting that "*where such a situation arises from a police operation aimed at combating internationally organised crime, the State retains an obligation to adopt all possible measures to avoid irreparable injury or harm to persons and to their rights under the Charter*". We repeat that it is incompatible with the Charter to seize someone's home on the mere basis that it is a personal possession implicated in a criminal investigation; a person's home must be treated as such, and a person can only be deprived of her/his home when it is proportionate to a legitimate aim. There has been no consideration of proportionality here. The Government already argued that Belgian law allows people's homes (Travellers' caravans) to be seized and sold on the mere basis that they are part of a criminal investigation. The only justification given for the seizures and sales is that "*maintaining the cars and caravans results in significant expenses and the vehicles lose their value over time*" ("*le gardiennage des voitures et de caravanes engendre des frais importants et les véhicules perdent de la valeur au fil du temps*"). When it comes to someone's home, this justification is incompatible with

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<sup>5</sup> An elderly person with cancer whose caravan, jewels and cash were seized in the police operation on 7<sup>th</sup> May 2019, passed away in November 2020.

<sup>6</sup> "*It also seems to emerge from the decision on the admissibility of your Committee as well as from the immediate measures indicated that the latter accepts that the seizure of the caravans was a priori proportionate to the aim pursued*".

the Charter. If the caravans needed to be searched, this could be done in the space of a few hours; if days were necessary, this might also be compatible with the Charter in certain circumstances. Why is it necessary to separate people permanently from their homes and to sell them? Even if it was compatible with the Charter to apply Article 28 octies to people's homes, why not even consider the possibility of returning the vehicles for a sum of money, as paragraph 2 allows (although even this could raise issues under the Charter, depending on the circumstances). In Lawyer DESWAEF's opinion justice could operate "*saisie entre les mains*", which means a seizure where the person can still use his item. Taking in account that the caravans were homes and not luxury objects (for tourism), the "*saisie entre les mains*" would certainly have been appropriate.

As the ECtHR found in *McCann v. United Kingdom*, 13 May 2008, § 50: "*The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end*". Thus, the seizure and sale of caravans without any consideration of the proportionality of the measure is a severe interference with the Charter rights that leaves families at risk, living in insecure conditions, and facing street homelessness.

We also remind the Belgian Government that, apart from Traveller homes being seized and sold, essential non-luxury personal items such as blankets, clothing, personal documents, and even medicines were also seized by the police and never returned to their owners. All of that without any consideration of the proportionality of the action. We note that the Government completely failed to address the proportionality of these additional breaches in their submission on merits.

13. In part **C. Réponse à la demande de mesures immédiates**, the Government argued that: "***Il est de la liberté de chacun de demander une aide et il n'appartient pas à l'Etat de se substituer au choix des citoyens et de les forcer à rentrer coûte que coûte dans le « système », ni de se lancer à leur recherche, a fortiori lorsqu'ils n'ont pas personnellement introduit une réclamation contre lui.*** Toutefois, si le Comité ou le CEDR avaient connaissance d'une situation concrète dans laquelle une aide sociale avait été refusée, le Gouvernement se tient disposé à analyser cette ou ces situations particulières au regard de la Charte et de sa législation. ***Quant au second volet de la demande, un article de sensibilisation sera prochainement envoyé à***

***l'ensemble des CPAS afin qu'ils aient une attention particulière envers la communauté des Gens du voyages et des Roms...”***<sup>7</sup>

The ERRC reminds the Government that the affected members of the Traveller community were made homeless by the authorities. They did not voluntarily choose to be homeless. As part of the police operation, 90 caravans, 91 other vehicles, 34 valuable goods, large sums in cash, and other personal belongings were seized, leaving many families from the community extremely vulnerable. In such a situation, it was the responsibility of the authorities to systematically offer the affected persons alternative accommodation; i.e. the police via the CPAS. This systemic response was absolutely lacking. This, we claim, is contrary to the Charter: *“prevent and reduce homelessness with a view to its gradual elimination (Article 31, item 2). People’s homes must not be treated as goods, allowing the Government to freely dispose of them, and consciously leaving people homeless without offering any alternative. We also bring to the Committee’s attention Article 23 of the Belgian Constitution, stipulating: “Everyone has the right to lead a life in accordance with human dignity. (...). These rights include in particular (...) the right to decent housing (...). The protection that is granted to the home is also granted to “certain movable property likely to be inhabited: thus a boat (used as accommodation) or a caravan”.*<sup>8</sup> The Committee has previously ruled that *“it is the responsibility of the state to ensure that evictions (in this case caravan seizure), when carried out, respect the dignity of the persons concerned even when they are illegal occupants, and that alternative accommodation or other compensatory measures are available”*<sup>9</sup>. *When evictions must take place, they must be carried out (i) in conditions that respect the dignity of the persons concerned; (ii) in accordance with rules that are sufficiently protective of the rights of the persons concerned.*<sup>10</sup> Evictions shall not result in individuals being rendered homeless and there

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<sup>7</sup> *“it is up to everyone to ask for assistance and it is not up to the State to take the place of the citizens' choice and force them to enter into the "system" at any cost, nor to start looking for them, a fortiori when they have not personally lodged a complaint against it. However, if the Committee or the ERRC were aware of a concrete situation in which social assistance had been refused, the Government is ready to analyse this or these particular situations with regard to the Charter and its legislation. As for the second part of the request, an awareness-raising article will soon be sent to all CPAS so that they have particular attention to the community of Travellers and Roma”.*

<sup>8</sup> 1 Cf. COL 02/2019 - SQUAT - Version révisée 20.02.2020 - page 8.

<sup>9</sup> ERRC v. Bulgaria, §56. See also European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, complaint No. 39/2006, decision on the merits of 5 December 2007, §163.

<sup>10</sup> COHRE v France (collective complaint no.63/2010), decision on the merits, § 42.



should be an immediate restitution upon eviction.<sup>11</sup> Moreover, CESCR General Comment no. 7 on the right to adequate housing prescribes that forced evictions are considered an arbitrary interference against one's home (§8). States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected person (§13).<sup>12</sup> Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights (§16).<sup>13</sup> These principles must apply to the seizure of Travellers' dwellings.

14. The Government further argued that the CPAS existing social support system is on a voluntary basis: a request must be made to the competent CPAS so that it can examine the applicant's file to verify whether the legal conditions are met. The ERRC is well aware of the work of CPAS in previous similar cases and agrees with the Government's point that to be able to benefit from the right to social integration, a person must submit a request to the CPAS and meet several legal conditions (among others having a permanent residence in Belgium and a registered address). We note that even in normal times the set conditions are simply impossible to be fulfilled by many members of the Traveller community, having in mind the Traveller lifestyle and vulnerability. Travellers concerned are required to collect the necessary documents, go to the CPAS to register, and wait for a decision. This is a lengthy bureaucratic process which has proved difficult for many, especially to persons whose documents have been seized together with everything else left in their caravans.<sup>14</sup> Clearly, this is not an adequate procedure convenient in cases when people were made homeless overnight by the police authorities, and then subsequently faced with a global pandemic. Therefore, the authorities as duty bearers were obliged to urgently address the consequences of their actions by making an *ex officio* offer for adequate housing and social assistance to the affected. We reiterate again that such an offer was not made by the

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<sup>11</sup> See §43 and §52 of BASIC PRINCIPLES AND GUIDELINES ON DEVELOPMENT BASED EVICTIONS AND DISPLACEMENT, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18, [https://www.ohchr.org/documents/issues/housing/guidelines\\_en.pdf](https://www.ohchr.org/documents/issues/housing/guidelines_en.pdf).

<sup>12</sup> See item 12, "saisie entre les mains" alternative explained.

<sup>13</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions*, 20 May 1997, E/1998/22, available at: <https://www.refworld.org/docid/47a70799d.html> [accessed 10 December 2020].

<sup>14</sup> For instance, one of the interviewed Travellers spoke how many of his administrative documents remained in the caravan. As a result, he could not follow up the procedure about his driver's license and was condemned by default. He now has to pay a fine and pass the exam again for the driver's license.

competent authorities. The ERRC is aware that even in situations when some of the affected persons have themselves sought help from the CPAS by approaching their offices, in the majority of cases they were refused assistance. Community activists have also repeatedly turned to the local authorities and social services for support, to no avail. This is contrary to the Belgian Law on functioning of the CPAS (Article 43§4, aim of guiding individuals to help them find accommodation), according to which CPAS are bound to provide accommodation to poorly-housed individuals.<sup>15</sup>

As the *Government* claimed to be ready to address such individual cases (*“si le Comité ou le CEDR avaient connaissance d'une situation concrète dans laquelle une aide sociale avait été refusée, le Gouvernement se tient disposé à analyser cette ou ces situations particulières au regard de la Charte et de sa législation”*), we again refer them to the testimonies provided in Annex 12 and Annex 13. Others who were already receiving support prior to the Strike had their access to this support substantially interrupted or completely terminated for reasons directly connected to the Strike: their social assistance funds were also seized by the police, they lost access to many of the required documents during the seizure, or their bank accounts were and are still blocked.<sup>16</sup> It must be also noted that Belgian Travellers, often illiterate or quasi, are not at ease with paper bureaucracy and often rely on the good will of the social workers to gain access to CPAS or other support. For instance, an individual testimony

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<sup>15</sup> Document on the right to housing in Belgium, p. 33.

<[https://www.luttepauvrete.be/publications/rapport6/II\\_droitaulogement.pdf](https://www.luttepauvrete.be/publications/rapport6/II_droitaulogement.pdf) >

<sup>16</sup> In the interview testimony of Mr. Joselito Modest it is described how the police had seized the social assistance money that his son just had received from the CPAS of Vilvoorde. His son called the CPAS and social workers came to the site to confirm that, but the police kept the money and said it would be returned later (which did not occur). In the case of Mr. Fascile Karken his bank account was still blocked at the moment of the testimony (November 2020). He still has no access to his disability pension. Mr. Jimmy Lafertin has made a request for financial support at the CPAS of his town in May 2019. In June, the CPAS of Mortsel informed him that the request had been refused, as he had not provided copies of the bank statements for the three previous months. The bank had refused to provide those copies to Mr. Lafertin as his accounts were blocked. Mr. Deborah Modest (D.M.) discovered around the 10th of May 2019 that her bank account was blocked. It still is at the date of the testimony (November 2020). She has had no incomes at all since then and has no access to her family allowance for the three minor children she raises on her own. The bank account of Mrs. Françoise Modest was blocked in May 2019 and still is at the moment of the testimony (November 2020). She went recently to the bank and was told her money was still in the account but she could not receive it. She was not given any written explanation. Mr. Isaac Modest's bank account is also still blocked at the moment of the testimony. He tried to open another account in several other banks, but without success. He has never received any official explanation. The bank account of Mr. Olivier Modest at “Banque de la Poste” was blocked in May 2019 and still is at the date of the testimony (November 2020). There was no money in it except the family allowance. Mr. Modest managed to open another bank account at “Belfius” in the autumn of 2019, where he now receives his family allowance. But his previous bank “La Poste” refuses to give him information about the money he still has in that bank account.

included in Annex 12 describes how a Traveller woman affected by the Operation Strike was sent away from the CPAS without even being issued a receipt for her request (see also UNIA October 2019 Report).<sup>17</sup> For the ones who receive some social support, the amount received has not been sufficient to protect them from severe deprivation, as evident from the testimonies.<sup>18</sup> Some families dependent on social support have faced even more perverse effects; for instance a 12-year-old boy was removed from his biological family, as with the social assistance received they could not afford to rent a comfortable apartment with a separate bedroom for their oldest son.<sup>19</sup> It might be true that the support of the Belgian CPAS is considered as relatively high in comparison with other countries, however one should not ignore the high costs of living when you have to rent an apartment (instead of living traditionally in a caravan). Most of the financial support is then absorbed by rent and bills, with almost nothing left to afford food, clothing, or school materials.<sup>20</sup> Additionally, dependence on landlords makes Travellers even more vulnerable to discrimination (as evident from the testimonies).<sup>21</sup> The historical resilience of Travellers living in grouped caravans therefore becomes weakened. Traveller incomes stated in the individual testimonies show that these often remain way below the risk of poverty in Belgium.<sup>22</sup> Many Travellers were already living

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<sup>17</sup> About five months ago Mrs. Deborah Modest went to the CPAS of Antwerp to ask for support. The CPAS said they would first help to release her blocked bank account. Then they would check how much money she has in that account and, if it is not enough to live on, they would give her financial support. However, she is still waiting and has since received no news from the CPAS. The CPAS did not give her a receipt for her request for financial aid.

<sup>18</sup> Mr. David Modest actually receives financial support from the CPAS of Charleroi, but it is not enough to solve his housing problem. In normal times, a family saves up money over five or six years to buy a good caravan.

<sup>19</sup> Mr. Oliver Modest's spouse receives financial aid from the CPAS of Antwerp. They found a two-bedroom apartment in Deurne (Antwerp), where they currently live with their five children. After paying the rent and the bills (water, electricity, gas) there remains about 150€ for the whole month. Two weeks before the 20 November 2020, police took their oldest son of 12 years and placed him in a "crisis house", with the explanation that he should have a separate bedroom of his own. Mr. Modest has been told that a social worker from the CPAS will come to visit his family at home, to see how they live. His son is psychologically broken; he cries when they go to visit him.

<sup>20</sup> Mrs. Sylvana Modest and her husband live in an apartment. They pay the rent with her disability pension. When rent and charges are paid (about 1.000€ a month), there is nothing left. Their children do not have the means to support them financially.

<sup>21</sup> Mr. Oliver Modest has been trying to find an apartment with more rooms for many weeks, but the landlords refuse to rent their apartment to him when they discover that he relies on social support from the CPAS.

<sup>22</sup> See: <https://fra.europa.eu/en/publication/2020/roma-travellers-survey> and [https://fra.europa.eu/sites/default/files/fra\\_uploads/belgium\\_legislation\\_and\\_policies\\_rts\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/belgium_legislation_and_policies_rts_report.pdf) )

in poverty before the Strike, but after it they suffered even more severe material deprivation.<sup>23</sup>

15. The ERRC reiterates that the raid was not only about seizing caravans; many Travellers have also had their bank accounts frozen, even though their home was not searched by the police during the raid and there is no indication that they were involved in any criminal activity. As a consequence, several families have no access to their money at all, at a time when they most need it. The Government incorrectly informed the Committee that all bank accounts blocked during the Strike were unblocked. The cases presented by the Belgian lawyer Mr. Alexis DESWAEF have provided a clear picture of the problems concerning Traveller bank accounts, a problem totally neglected by the Belgian Government. There are, in fact, two types of problems: 1) in some cases the account remains "blocked", allegedly by court order; 2) in other cases the bank terminates the customer relationship (and thus closes the account), or the (new) bank refuses to open a new account for the individual (which suggests that the person could be blacklisted somewhere). It seems that, according to Article 46*quater*, §3, 2° of the "Code d'Instruction Criminelle" (Belgian Code of Criminal Instruction),<sup>24</sup> the court order to block a bank account automatically expires after five days if the public prosecutor has not seized the liquid assets on the account within that period. According to Belgian lawyer Alexis DESWAEF's experience, the Belgian banks often ignore this Article and continue to wait for an order from the prosecutor to "unblock" the account, an order that obviously does not come when the prosecutor acts strictly in accordance with the Code of Criminal Instruction. It might therefore be that it is not the Belgian judicial authority that is directly responsible for bank accounts remaining blocked for a very long period (and some of them even now, as we have learned), it may indeed be due to the banks themselves, when they ignore the abovementioned Article of the Code of Criminal Instruction. Still, as at least one lawyer did effectively alert the Federal prosecutor about the problem of accounts remaining blocked, the judicial

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<sup>23</sup>See: [https://www.socialsecurity.be/citizen/fr/a-propos-de-la-securite-sociale/la-securite-sociale-en-belgique/lutte-contre-la-pauvrete#:~:text=Pour%20la%20Belgique%2C%20le%20seuil,deux%20enfants%20\(%3C14ans\);](https://www.socialsecurity.be/citizen/fr/a-propos-de-la-securite-sociale/la-securite-sociale-en-belgique/lutte-contre-la-pauvrete#:~:text=Pour%20la%20Belgique%2C%20le%20seuil,deux%20enfants%20(%3C14ans);) « Pour la Belgique, le seuil de pauvreté est un revenu de 13.023 € net par an, soit 1.085 € net par mois pour un isolé, ou de 27.348 € net par an ou 2.279 € net par mois pour un ménage composé de deux adultes et deux enfants (<14ans). » And [enquête EU-SILC 2015](#) (anglais).

<sup>24</sup> See: [http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=fr&la=F&cn=1808111730&table\\_name=loi&&caller=list&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=\(text+contains+%27%27\)#Art.46quinquies](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&cn=1808111730&table_name=loi&&caller=list&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=(text+contains+%27%27)#Art.46quinquies)

authority or any other appropriate Belgian authority might have emitted a warning to the banks, to remind them of their obligations. The individual testimonies show that such a warning is still needed at present. For example, the Belgian authorities could, without breaking confidentiality, make a list of all bank accounts which have been blocked without assets being seized afterwards, and check with the corresponding banks if the accounts were released according to the abovementioned Article of the law.

A bank may indeed terminate a customer relationship without having to justify its decision. But on the other hand, there is a structural problem when all banks refuse to open any sort of bank account for a specific person. This person is then denied the right to access even the most basic banking services.<sup>25</sup> There are specific motives where a bank can refuse access to the basic banking service, but these motives are restricted and in this case the bank has to justify its decision in writing, except when there is suspicion of specific infractions.<sup>26</sup> One then has to notice that the fact that law enforcement did not seize liquidities nor charge the owner of the bank account, apparently is not enough to convince the banks to return access even to minimal financial services. Hence, there is a grey zone with respect to socio-economic rights to which the witnesses have become very vulnerable.<sup>27</sup> The responsibility of the Belgian Government remains involved in both cases, as it is up to the Belgian authorities to ensure that Belgian law is correctly enforced by the banks. This responsibility is even greater when the consequences of having no access to banking services are far reaching for vulnerable persons, as even their requests for financial support by the CPAS can be jeopardised for that reason.

- 16. In part D. *Fond de la réclamation*, the Government has argued that it is difficult - if not impossible - to respond in a concrete way to the various points raised by the ERRC when no reference is made to any specific and concrete situation... (*“il est difficile - voire impossible - de répondre de manière concrète aux différents points soulevés par le CEDR lorsqu’il n’est fait référence à aucune situation particulière***

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<sup>25</sup> <https://economie.fgov.be/fr/themes/services-financiers/services-de-paiement/service-bancaire-de-base>

<sup>26</sup> <https://economie.fgov.be/fr/themes/services-financiers/services-de-paiement/service-bancaire-de-base>

<sup>27</sup> Unia actually advises social workers confronted by the problem to help their customers complain with the Belgian Ombudsman for financial services (<https://www.ombudsfin.be/en/individuals/home/>), hoping that eventually enough cases will be reported in order to produce a public acknowledgement of a structural problem with regard to that matter.

*et concrète...*”). The ERRC notes that some more recent individual testimonies by affected Travellers have been presented in this response. However, it should be noted that UNIA’s July and October 2019 reports were already quite specific about the situation described in the complaint. Both reports were previously submitted as Annex 6 and Annex 10 to the ERRC’s Response to the Government’s Observations on Admissibility and Request for immediate measures. These reports were based on anonymous testimonies, but the described situations were very concrete and their problematic aspects were described with precision. Additionally, the ERRC notes that it has previously pointed out that only the Belgian authorities have actual access to extensive information in their possession to shed light on the details of the police operation that began on 7 May 2019, including: seized caravans, cars, cash, assets and other valuable objects, blocked bank accounts, etc. For instance, the Federal Prosecutor’s Office has complete information on all seizures and bank account freezings. Unfortunately, the Government has chosen to disclose a few, apparently carefully selected documents, which provide very limited information. In such situation, it is paradoxical for the Belgian authorities to reproach the ERRC for not providing specific individual information in a complaint of a collective nature, information that the organisation could naturally not produce especially not in the time of a global pandemic. Although we previously asked the Committee to indicate to the Government to disclose all of the police reports and documents, to date the Government has not yet done so. We acknowledge that most of that information has to remain confidential, especially when it is linked to a criminal investigation, however the previous argumentation of the Government has not shown that the authorities have seriously examined at least for themselves the concrete situations of these individuals. They would otherwise have been able to provide anonymous but concrete information about the situation of the people affected by the police operation in the same way the ERRC, with the support of its local partners, did.

## Conclusion

It seems that not much has changed in the attitude of the Belgian authorities towards the members of the Traveller community since 2012, when Belgium was condemned for violation of the Charter (Article E in conjunction with Article 16, Article E in conjunction with Article 30) following a collective complaint submitted by the International Federation of Human Rights (FIDH v. Belgium, Collective complaint no. 62/2010).<sup>28</sup>

Based on the evidence that the ERRC and its local partners have been able to gather about the Operation Strike and present to the Committee, it appears that the police had cause to believe that a small number of Travellers were involved in criminal activity. They responded by assuming that all Travellers across the country were involved in that criminal activity. They acted on this assumption by mounting a massive, disproportionate police raid (the largest in two decades) with the aim of seizing caravans, cars, and other property from all Travellers under the assumption that all members of the community were tainted by criminal activity. This amounts to ethnically targeted collective punishment. This is part of a pattern across Europe of this kind of racially targeted, heavy handed policing. See, e.g., *Lingurar and others v Romania* (judgment of the European Court of Human Rights of 16 April 2019), § 80 (“*Roma communities are often confronted with institutionalised racism and are prone to excessive use of force by the law-enforcement authorities*”). The small number of arrests made compared to the number of officers involved, and the fact that Traveller sites across the country were targeted, raised a presumption that the Belgian police are contaminated by institutional antigypsyism. It also raised the presumption that every violation alleged in the complaint is connected to direct discrimination against Travellers. In any event, as UNIA already explained, the operation does not have to have intentionally targeted Belgium’s Traveller community in order to amount to discrimination. Hence, the Committee might conclude, that indirect discrimination was at play, given that the operation overwhelmingly affected Travellers and does not appear to be justified. See, e.g., *ERRC v Bulgaria* (complaint number 31/2005), decision on the merits, § 40. The Belgian Government did not manage to bring evidence to contradict this presumptions.

The seizing of homes, vehicles, and other property of Travellers, deprived many of their ability to work. This is particularly the case for those who were running businesses on Traveller sites. Those who were running registered car-washing business, for example, and had their clients’ cars seized and their bank accounts frozen, have been arbitrarily denied their right to earn a living. The same is true for all others who depend on their vehicles, homes, and other seized possessions to work, and those who had their earnings seized, including by having cash seized and by having their bank accounts frozen or emptied. All of these actions have been taken arbitrarily, with no clear explanation was given by the authorities.

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<sup>28</sup> [https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset\\_publisher/5GEFkJmH2bYG/content/no-62-2010-international-federation-of-human-rights-fidh-v-belgium?inheritRedirect=false](https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-62-2010-international-federation-of-human-rights-fidh-v-belgium?inheritRedirect=false)

Any indirect explanation seems to be that the police have assumed on basis of criminal acts of few individuals that all the property owned by Travellers concerned was stolen.

By seizing Travellers' homes and denying them access to social assistance and social security funds on which they rely, particularly at a moment when they have been exposed to traumatic stress (showing symptoms of post-traumatic stress disorder), and subsequently the health-risk of the novel Corona virus, the Belgian authorities have failed "to remove as far as possible the causes of ill-health". Indeed, they have put the health of large numbers of Travellers at risk, particularly people with disabilities and health problems. The authorities have taken no account of individual circumstances or health consequences when seizing property and freezing bank accounts; the only relevant factor appears to have been the ethnicity of the people involved. Additionally, by exposing Travellers to traumatic stress and denying them access to social security and the social assistance funds on which they are reliant, the Belgian authorities have also failed to ensure that people without adequate resources have access to social and medical assistance.

The Government failed to provide information regarding how many bank accounts of Travellers remain blocked and an explanation for why they incorrectly claimed that the accounts were unblocked. By freezing the bank accounts of people based on their ethnicity, the Belgian authorities have denied access to large numbers of Travellers to social security. This amounts to depriving people of access to the social security system based on their ethnicity, in violation of the obligation to maintain such a system.

Many of the people affected by the actions impugned in this complaint have disabilities. By denying those people access to social assistance and social security funds, and enjoyment of their homes, cars, and other possessions, the Belgian authorities have deprived those people of their right to independence, social integration, and participation in the life of the community.

The Belgian authorities have deprived those Traveller families affected by the actions impugned in this complaint of social, legal, and economic protection. These families no longer have access to family related benefits, to their homes and cars, and to the other advantages on which they rely to make their family lives possible.

Many children living on the sites affected by the 7 May 2019 raids found themselves sleeping in cars or in the open, unable to attend school, and faced with their parents' powerlessness to secure access to their money or possessions, despite the fact that they do not appear to have any link to any criminal activity other than the fact that they are of the same ethnicity of some people accused of crime.

#### **IV. Requested findings and compensation by the Committee**



For all the reasons set above, the ERRC asks the European Committee of Social Rights to find that Belgian Government has committed a violation of their obligations set under Article: a. Article E, taken with all of the provisions mentioned below b. Article 1 § 2. c. Article 11 § 1. d. Article 12 § 1. e. Article 13 § 1. f. Article 15 § 3. g. Article 16. h. and Article 17 in its entirety.

The overall conclusion should be that the Belgian authorities' attitude to Travellers affected by the Operation Strike constituted an ethnically targeted collective punishment and a form of institutional discrimination against this group of the population.

For the reason that the Belgian Government did not satisfactorily apply the measures set under the Committee's Decision on admissibility and on interim measures from 14 May 2020 and violated the Charter, the complainant organisation asks the Committee in its finding among others to conclude that the Belgian Government has failed in implementing the Committee's decision on immediate measures and thus has an obligation to:

- a) **immediately return all caravans which have been seized on or after 7 May 2019 from Travellers in the context of the police operation described above to their owners who have been left homeless, or provide adequate accommodation for the families whose caravans were already sold by the authorities;**
- b) **immediately return the rest of the seized personal belongings from Travellers in the context of the police operation described above or provide financial reparation for their market value;**
- c) **ensure that all Travellers whose access to their bank accounts has been blocked since 7 May 2019 have immediate access to their bank accounts and to the funds that were previously in them;**
- d) **adequately compensate all the affected persons, starting with the twelve individuals who shared their individual testimonies in the present complaint, for the material and emotional damage they suffered as a consequence of the police operation.**
- e) **ensure that Travellers in Belgium will not be subjected to discriminatory police operations similar to the Operation Strike ever again.**

The ERRC, as a complainant organisation asks the Committee, in its findings, to conclude that it would be fair to award the complainant 5.117 EUR (five thousand one hundred and seventeen euros) by way of compensation for the expenses incurred in connection with this complaint. The Committee will find itemized costs attached (Annex 14).

The European Roma Rights Centre  
11 December 2020

