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

15 December 2023

**Case Document No. 1**

**International Federation of Human Rights (FIDH) and International Movement ATD - Fourth World v. Belgium**
Complaint No. 232/2023

# COMPLAINT

**Registered at the Secretariat on 1 December 2023**

# Collective Complaint

on the situation of persons forced to resort to begging to live in accordance with human dignity, or in attempting to do so

**Department of Social Rights**
Directorate General of Human
Rights and Rule of Law
Council of Europe
F-67075 Strasbourg Cedex

**THE INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH)**, 17 Passage de la Main d'or, F-75011 Paris, France,

represented by Ms Alice MOGWE, President, having authority to represent the association in all its civil activities and to bring legal proceedings (Article 13, paragraph 1, of FIDH's Statutes – Appendix 1)

and

**INTERNATIONAL MOVEMENT ATD FOURTH WORLD**, 12 rue Pasteur, F-95480 Pierrelaye, France,

represented by Mr Bruno DABOUT, Delegate-General, having authority to represent the association in all its activities and in legal proceedings (Article 13, paragraph 1, of its By-Laws – Appendix 2, and Article 6 of its Rules of Procedure, on "Functioning of the Bureau" - Appendix 3),

both taking legal counsel from Jacques FIERENS, of the Brussels Bar, Drève de la Brise, 29, B-1170 Bruxelles (+32 475 85 39 08 – jacques.fierens@unamur.be),

have the honour to submit herewith a collective complaint **against Belgium** based on Articles 16, 30 and E of the revised Social Charter (hereinafter "the Charter").

# Contents

# PART I. THE PARTIES

## *A. The complainant organisations*

1) The International Federation for Human Rights

**1.** The International Federation for Human Rights (FIDH) is an international non-governmental organisation with participatory status with the Council of Europe, as referred to in Articles 1b and 3 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. It is included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints before the Committee (No. 33).

**2.** Under its statutes, the FIDH is an organisation for the defence and promotion of all human, civil, cultural, economic, social and political rights at international level. Accordingly, part of its mission is to take action, including legal action before authorities examining compliance with human rights standards at regional and international level, to secure recognition of human rights violations (see Appendix 1).

**3.** The European Committee of Social Rights (hereinafter "the Committee") has already considered that the FIDH has particular competence for the protection of the rights contained in the Charter (*FIDH v. Greece*, Complaint No. 7/2000, decision on admissibility of 28 June 2000, §8; *FIDH v. France*, Complaint No. 14/2003, decision on admissibility of 16 May 2003, 55; *FIDH v. Belgium*, Complaint No. 62/2010, decision on admissibility of 1 December 2010, cc-62-2010; *FIDH v. Belgium*, Complaint No. 75/2011, decision on admissibility of 22 March 2011, cc-75-2011; *FIDH v. Greece*, Complaint No. 72/2011, decision on admissibility of 7 December 2011, cc-72-2011; *FIDH v. Ireland*, Complaint No. 110/2014, decision on admissibility of 17 March 2015, cc-110-2014; *FEANTSA and FIDH v. France*, Complaint No. 224/2023, decision on admissibility of 17 October 2023, cc-224-2023.

2) International Movement ATD Fourth World

**1.** International Movement ATD Fourth World is also an international non-governmental organisation with participatory status at the Council of Europe, as referred to in Articles 1b and 3 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. It is included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints before the Committee (No. 39).

**2.** Article 1 of the By-Laws of International Movement ATD Fourth World states that it brings together individuals, families and groups of people who reject the inevitability of the extreme poverty in which they are condemned to live and, alongside them, men and women of all origins and all countries who share in this rejection. Together they have given themselves the name "Fourth World". International Movement ATD Fourth World acts for the advancement of a society where the equal dignity of each human being can be recognised and where extreme poverty and social exclusion will be banished (see Appendix 2).

**3.** The Committee has already considered that International Movement ATD Fourth World has particular competence for the protection of the rights contained in the Charter and referred to

in this complaint (*International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on admissibility of 12 June 2006, cc-33-2006), *Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), Magistrats Européens pour la Démocratie et les Libertés (MEDEL), Confederación Sindical de Comisiones Obreras (CCOO) and International Movement ATD Fourth World v. Spain*, Complaint No. 206/2022, decision on admissibility and immediate measures, 19 October 2022, cc-206-2022).

### *B. The respondent state*

**4.** This complaint is directed against the Belgian state as a federal entity.

**5.** The Law of 15 March 2002 "approving the revised European Social Charter and Appendix, done in Strasbourg on 3 May 1996" was published in the Belgian Official Gazette (*Moniteur belge*) on 10 May 2004, page 37.404. Belgium has accepted 87 of the 98 paragraphs making up the Charter, including Articles 16 and 30, which are relied on in this complaint, and is bound by Article E.

Not only is the federal state internationally responsible for the undertakings made on ratification of the Charter but it also enacts the legislation punishing or regulating begging in Belgium, even though it is through the exercise of municipal authority that many regulations are implemented in the area.

As the Committee pointed out in its decision on *European Roma Rights Center v. Greece* among others, "even if under domestic law local or regional authorities… are responsible for exercising a particular function, states party to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the … state" (8 December 2004 (merits), CC 15/2003, §29).

## PART II. SUBJECT OF THE COMPLAINT

### *A. The fundamental rights at issue*

1) Article 16

**6.** Article 16 of the Charter states:

> *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:* ***The right of the family to social, legal and economic protection***
>
> *With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and*

*other appropriate means.*

2) Article 30

**7.** Article 30 states:

*Part I: Everyone has the right to protection against poverty and social exclusion.*

*Part II:* ***The right to protection against poverty and social exclusion***

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

*a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;*
*b) to review these measures with a view to their adaptation if necessary.*

3) Articles 16 and 30 read in conjunction with Article E

**8.** On a particular question, the complainant organisations also refer to Articles 16 and 30 read in conjunction with Article E, which reads as follows:

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

The Preamble of the Charter sets the following condition:

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

## *B. Our requests*

1) Under Article 16 of the Charter

**9.** Article 16 of the Charter requires States Parties to establish economic, legal and social protection of the family. In the light of this provision, the complainant organisations ask the Committee to find that Belgium is in breach of this article on the grounds:

- that no constitutional or legal provision enshrines the right to beg where this right is exercised to live, or to help one's family to live, in accordance with human dignity, or in attempting to do so. This is despite the fact that this right has been recognised both by the European Court of Human Rights and by the case law of the Belgian *Conseil d'Etat*;

- and that no federal law defines the admissible criteria for restrictions to the right to beg,

which can be justified only by the need to protect national security, public safety, the country's economic well-being or law and order, or to prevent crime or protect health, morals or others' rights and freedoms.

**10.** Article 16 has also been infringed because the penalties provided for in the event of begging prohibited by municipal regulations are liable to affect persons who are begging because they are victims of exploitation, who should instead be protected for this reason.

**11.** Furthermore, the number of different municipal regulations makes full legal protection impossible.

**12.** Proper protection of families also requires the abolition of measures to remove foreign beggars who have applied for entitlement to social welfare in the hope of not having to beg.

2) Under Article 30 of the Charter

**13.** Under Article 30 of the Charter, the complainant organisations ask the Committee to find that Belgium has not adopted an overall and co-ordinated approach to promote effective access for persons forced to resort to begging and their families who find themselves or are at risk of finding themselves in situations of enduring social exclusion or poverty to, in particular, employment, housing, training, education, culture and social and medical assistance.

**14.** Increasing numbers of municipal regulations prohibiting begging or restricting the right to beg, often in breach of fundamental rights enshrined in the Charter and other international treaties ratified by Belgium, show that there is absolutely no overall and co-ordinated policy at national, regional or Community level.

**15.** In the complainant organisations' view, an overall and co-ordinated approach to supporting persons forced to resort to begging implies:

- that the right to beg, where this right is exercised to live, or in attempting to live, in accordance with human dignity, should be enshrined in a constitutional or legal provision which would apply throughout Belgium;
- that the limits on admissible infringements of this right should be enshrined in a law that would apply throughout Belgium, and that such infringements should be justified only by the need to to protect national security, public safety, the country's economic well-being or law and order, or to prevent crime or protect health, morals or others' rights and freedoms.

**16.** Such an approach also requires the abolition of criminal sanctions or administrative fines for persons who beg in order to live, or in attempting to live, in accordance with human dignity.

**17.** It also requires the abolition of measures to remove foreign beggars applying for entitlement to social welfare in the hope of not having to beg.

3) Under Articles 16 and 30 read in conjunction with Article E

**18.** Under Articles 16 and 30 read in conjunction with Article E, the complainant organisations ask the Committee to declare that Belgium is responsible for indirect discrimination at the least, on the grounds of supposed race or social background because in a number of cases, municipal regulations prohibiting begging or restricting the right to beg are targeted in particular at a group

referred to by the authorities as "Roma".

# PART III. ARGUMENTS

## *A. Belgian legislation, regulations and case law on begging*

### 1) The Constitution, laws and decrees

#### *a) The theoretical and incomplete decriminalisation of begging in Belgium*

**19.** Begging was a crime in the territories which currently form Belgium for six centuries[1] before it was decriminalised by a law of 12 January 1993 containing an "emergency programme for a more caring society". This repealed the Law of 27 November 1891 on the punishment of vagrancy and begging and Articles 342 to 347 of the Criminal Code, which punished aggravated begging, i.e. vagrants who entered homes to beg; beggars who feigned disabilities, disguised themselves or carried false certificates, false passports or travel warrants; beggars bearing arms; beggars equipped with files, hooks or other devices designed to commit crimes or offences or to procure means of breaking into houses; begging with threats of assault or damage to property; begging with violence; begging in groups.[2]

**20.** The decision to repeal was based, according to the federal legislator, on the existence of the right to social assistance: "Regarding it as a crime to have no financial means and considering people without means to be a threat to law and order are the perfect example of a totally anachronistic rule in the light of the positive development in the law on social assistance based on Article 1 of the Institutional Law of 8 July 1976 on social welfare centres (CPASs)".[3]

#### *b) The human dignity of persons forced to beg*

**21.** Under Article 1 of the Law of 8 July 1976, "Everyone shall have the right to social assistance. The purpose of this is to enable everyone to lead a life in accordance with human dignity".

**22.** The principle of respect for human dignity is also enshrined in the Constitution itself, following an amendment of 31 January 1994. Article 23, paragraph 1 (formerly 24*bis*) states that "everyone has the right to lead a life in keeping with human dignity".

**23.** The European Court of Human Rights states that the notion of human dignity underlies the spirit of the Convention. It is often mentioned in relation to Article 3 and has been referred to repeatedly in judgments under Article 8 (*Lacatus v. Switzerland* of 19 January 2021, referred to at length below, §§56 to 60, citing *Kučera v. Slovakia*, No. 48666/99, §122, 17 July 2007, *Rachwalski and Ferenc v. Poland*, No. 47709/99, §73, 28 July 2009, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], No. 39630/09, §248, ECHR 2012, *Khadija Ismayilova v. Azerbaijan*, Nos. 65286/13 and 57270/14, §116, 10 January 2019, *Beizaras and*

[1] In the region that would become Belgium in 1830, we should cite in particular an order issued by Philip the Good on 18 October 1433. See J. FIERENS, "Les définitions de la pauvreté comme sources du droit" ["Definitions of poverty as sources of law"] in *Revue Droits fondamentaux et pauvreté - Tijdschrift Grondrechten en armoede*, online: droitpauvrete.be, No. 2021/2, pp. 1-37, especially Nos. 8 to 18, 27 and 28.

[2] See G. Beltjens, *Encyclopédie du droit criminel belge. Première partie, Le Code pénal et les lois pénales spéciales*, Bruxelles-Paris, Bruylant-Christophe-Librairie A. Maresq, Aîné, 1901, pp. 422-431.

[3] Doc. parl., Ch., sess. 1991-1992, Rapport, 630/5, p. 21.

*Levickas v. Lithuania*, No. 41288/15, §117, 14 January 2020, *Vinks and Ribicka v. Latvia*, No. 28926/10, §114, 30 January 2020, and *Hudorovič and Others v. Slovenia*, Nos. 24816/14 and 25140/14, §116, 10 March 2020). The Court considers that human dignity is seriously compromised if the person concerned does not have sufficient means of subsistence, and cites the judgment of the Belgian *Conseil d'Etat* of 6 January 2015 in the *Pietquin and Others* case referred to below. By begging, the person adopts a particular lifestyle in order to overcome an inhuman and uncertain situation (*Lacatus v. Switzerland*, cited above, §56).

**24.** Respect for human dignity must also be regarded as a general principle of Belgian law[4] and of international law, as referred to in Article 38 §1.c of the Statute of the International Court of Justice (see also the regional treaties and conventions which recognise the principle such as the Treaty on the European Union (Article 2) and the EU Charter of Fundamental Rights (Article 1), which is intended to provide additional protection to that afforded by the ECHR).

**25.** However, neither the drafters of the relevant legislation nor those of the Constitution took the process to its logical conclusion as they merely repealed the provisions punishing begging and did not positively grant the right to beg if such begging was exercised in order to live, or in attempting to live, in accordance with human dignity, or to ensure, or attempt to ensure, that one's family can live in accordance with human dignity.

**26.** Article 36.3° of the Law of 8 April 1965 on the protection of young people provided that the youth court must hear cases referred to it by the public prosecutor concerning minors under the age of 18 found begging or rough sleeping or habitually begging or rough sleeping. From 1990 to 2004, these provisions were progressively repealed by the three Belgian Communities and the Brussels-Capital Region after they were given authority to do so through the transfer to the Communities of responsibility for youth support measures.

*c) The justified punishment of the exploitation of begging*

**27.** Through the law of 10 August 2005 amending various provisions with a view to stepping up the fight against trafficking in human beings and the practices of abusive landlords, the provisions of the Criminal Code were fleshed out by Articles 433*quinquies* to 433*novies* which heavily punish *exploitation* of begging. Committing such an offence against a minor or a vulnerable person is one of the possible aggravating circumstances.

**28.** Article 82 of the Law of 8 April 1965 on the protection of young people imposed criminal penalties on persons habitually making a minor under the age of 16 beg or procuring a minor under the age of 16 for a beggar who then used the minor to arouse public pity. These provisions were also repealed by the Law of 10 August 2005:

> *The point here is not to recriminalise begging but, as with prostitution, to punish persons who exploit other people's begging. Moreover, the draft includes Article 82 of the Law of 1965 on the protection of young people, which now provides for a prison sentence for persons who habitually make a minor under the age of 16 beg or procure*

[4] See J. FIERENS, "Existe-t-il un principe général du droit au respect de la dignité humaine ?" ["Is there a general principle of the right to respect for human digntiy?"], note under Cass., 18 November 2013, in *Revue critique de jurisprudence belge*, 2015/4, pp. 358-382.

*such a minor for a beggar.*[5]

*Ms Laurette Onkelinx, Deputy Prime Minister and Minister of Justice, points out that the aim of these provisions in draft law DOC 51 1560 is to target anyone who exploits other persons, whether adults or minors, for example by placing them at street corners or making them available to beggars to use them to arouse pity. The latter example is taken from Article 82 of the Law on the protection of young people. Article 3 of the draft law may therefore be removed. It should not be forgotten, however, that begging as such, whether by an adult or a minor, is not prohibited. Therefore, while it is possible that the case of a mother begging with her child will naturally fall within the scope of the law, it will be for the court to decide on a case-by-case basis whether exploitation of a minor is involved. All of the circumstances of the case should be taken into account.*[6]

The paradox is that in practice, municipal regulations prohibiting or restricting begging punish persons who are forced to beg and are exploited, who are often women and mothers, while failing to deal with those who exploit them.

*d) Punishment of begging and violations of human dignity arising from powers assigned to municipalities and from administrative penalties*

**29.** Article 135 of the New Municipal Law[7] is the basis on which, since 1993, many municipalities have introduced regulations prohibiting or restricting begging.[8] To date, 305 such regulations have been introduced (see below, paragraph 63).

**30.** Article 135 of the New Municipal Law requires municipalities to ensure that their inhabitants enjoy clean, healthy, safe and peaceful streets and other public buildings and places. It is worded as follows (bold added by the complainants):

*§1. The municipalities have the power in particular: to manage the municipality's assets and income; to settle and pay local expenses which must be covered by public funds; to manage and commission public works for which the municipality is responsible; to administer establishments which belong to the municipality, are maintained using its funds or are intended specifically for use by its inhabitants.*

*§2. Likewise,* ***the municipalities have a duty to ensure that their inhabitants enjoy the benefits of proper public order, in particular clean, healthy, safe and peaceful streets and other public buildings and places***.

*More particularly, provided that the matter is not excluded from the powers of the municipalities, the public order matters entrusted to the vigilance and authority of the municipalities are as follows:*

*1°* ***anything relating to the safety and convenience of passing through or along***

[5] Doc. parl., sess. 2004-2005, Ch., Rapport, 1559/004, p. 6.
[6] Ibid, pp. 19-20.
[7] New Municipal Law, codified by the Royal Decree of 24 June 1988, ratified by the Law of 26 May 1989. This law could be amended by decree in some Regions, depending on their powers. This was not the case, however, for the provisions contested in this case.
[8] On this development and its criminal consequences, see F. KUTY, "Le droit pénal et la précarité" ["Criminal law and hardship"], *Revue de droit pénal et de criminologie*, 2020, pp. 661-687, especially point II.4, "La précarité à l'origine de la mendicité comme moyen de subsistance et la privation de liberté consécutive à la méconnaissance d'un règlement communal organisant ce phénomène" ["Begging as a means of subsistence to deal with hardship and imprisonment following infringement of a municipal regulation governing this matter"], pp. 671 et seq.

***streets, river embankments, squares and other public thoroughfares**; this includes cleaning, lighting, removal of obstacles, the demolition or repair of buildings in danger of collapse, prohibiting the placing of objects at windows or other parts of buildings which could cause damage or harm if they fell and prohibiting people from throwing objects which could harm or injure passers-by or produce harmful fumes; road traffic policing applying to permanent or recurring situations is not covered by this article;*

*2° **punishment of disturbances of the peace**, such as fights and arguments accompanied by riots in the streets, commotion caused in places of public assembly, night-time noises and gatherings disturbing the peace of citizens;*

*3° **the maintenance of law and order in places where large crowds gather such as fairs, markets, public celebrations or ceremonies, shows, games, cafés, churches and other public spaces**;*

*4° verification that the correct quantities of commodities are supplied where measuring units or devices are used for their sale, and that comestibles displayed for public sale are clean and healthy;*

*5° taking reasonable precautions to prevent and provide necessary assistance to deal with accidents and disasters such as fires, epidemics and epizootic diseases;*

*6° remedial action in respect of any untoward incidents caused by destructive or dangerous animals on the loose;*

*7° taking the necessary measures, including police orders, to **combat any form of public disturbance**.*

**31.** In addition, municipal regulations prohibiting or restricting begging include penalties for infringements or municipal administrative penalties, which are financial penalties based on Article 119*bis* of the New Municipal Law and the Law of 24 June 2013 on municipal administrative penalties:

Article 119*bis* of the New Municipal Law provides as follows (bold added by the complainants):

*§1. **The Council may provide for penalties for infringements to its regulations and orders**, unless a law, decree or order already does so. **Such penalties may not exceed penalties for summary offences.**[9]*

*Higher criminal fines than those authorised by this law, set by regulations and orders currently in force, shall be automatically reduced to the maximum fine for a summary offence.*

*§2. **The Council may also provide for the following administrative penalties for infringements of its regulations and orders**, unless a law, decree or order has provided for a criminal or administrative penalty:*

*1° **an administrative fine of up to 10 000 francs;***

[9] Fines for summary offences must amount to no less than one euro and no more than twenty-five euros, save in cases provided for by the law. All fines collected are added to state funds. In the event of failure to pay a fine within two months of the judgment in the presence of the accused or of service of a decision given in absentia, fines may be replaced by a prison sentence, whose length will be set by the judgment or the sentence and may not exceed three days for those convicted of a summary offence. Imprisonment for a summary offence may not be less than one day or more than seven days, save in cases provided for by the law (Articles 2, 30 and 40 of the Criminal Code). In theory a penalty for a summary offence may consist of electronic surveillance, community service, a stand-alone probation sentence or special confiscation (Article 7 of the Criminal Code).

*2° the administrative suspension of an authorisation or permit issued by the municipality;*

*3° the administrative withdrawal of an authorisation or permit issued by a municipality;*

*4° the administrative closure of an establishment on a temporary or permanent basis.*

*Administrative fines shall be imposed by the official appointed for this purpose by the municipality, referred to hereinafter as "the official". This official may be the same as the person who identifies infringements pursuant to §6 below.*

*The suspension, withdrawal and closure measures referred to above shall be imposed by the Board of Mayors and Aldermen.*

*§3. The Council may not simultaneously establish a criminal penalty and an administrative penalty for the same infringements of its regulations and orders; it may only establish one of the two.*

*§4. The penalties provided for in paragraph 2, sub-paragraph 1.2° to 4°, may only be imposed once the offender has received a prior warning. The warning must be accompanied by an extract from the regulation or order that has been infringed.*

*§5.* ***Administrative penalties shall be proportionate to the facts to which they are a response and reflect whether they constitue a repeat offence.***

*A finding of several concomitant breaches of the same regulation or order shall give rise to a single administrative penalty in proportion to the seriousness of all the facts taken together.*

*§6. Infringements shall be recorded in a report by a police officer or auxiliary.*

*§7. If the facts constitute both a criminal offence and an administrative offence, the original of the police report shall be sent to the Crown Prosecutor and a copy shall be forwarded to the official.*

*Where the infringement may be punished only by an administrative penalty, the original of the report shall be forwarded only to the official.*

*§8. In the case referred to in §7, paragraph 1, above, the Crown Prosecutor shall have one month from the date of reception of the original of the report to inform the official that a judicial inquiry or investigation has been opened or that criminal proceedings have been initiated. Such notification shall terminate the possibility for the official to impose an administrative fine. The official may not impose a fine before this time limit has expired unless the Crown Prosecutor announces beforehand that he or she does not wish to take action. Once this time limit has expired, the facts may only be punished through an administrative penalty.*

*§9. Where the official decides that there is reason to initiate an administrative procedure, he or she shall notify the offender, in a registered letter:*

*1° of the facts in respect of which the procedure has been initiated;*

*2° that offenders may set out their defence in writing, in a registered letter, within fifteen days of receipt of the official's registered letter and that they are entitled at this point to ask to present their defence orally;*

*3° that offenders are entitled to be assisted or represented by legal counsel;*

*4° that offenders have the right to consult the case file;*

*5° that a copy of the report referred to in §6 is appended thereto.*

*The official shall determine on what day if any the offender shall be invited to present his or her arguments orally.*

*If the official considers that any fine imposed will not exceed 2 500 francs, offenders shall not be entitled to ask to present their defence orally.*

*§10. After expiry of the time limit referred to in §9.2°, or beforehand, if the offender announces that he or she does not dispute the facts, or after the offender or his or her*

*legal representative presents his or her oral defence, the official may impose the administrative fines provided for by the police order.*

*The offender shall be notified of this decision by registered letter.*

*The official may not impose an administrative fine after the expiry of a six-month time limit from the date on which the offence was committed, not including any appeal procedures.*

*§11. The decision to impose an administrative fine shall be enforceable one month after the date of its notification, save in the event of an appeal under §12 below.*

*§12. The municipality – where it has been decided not to impose an administrative fine – or the offender may lodge an appeal in writing with the police court within one month of the notification of the decision.*

*The police court shall assess the legality and proportionality of the fine imposed.*

*It may uphold or reverse the decision. The police court's decision is not subject to appeal.*

*Without prejudice to the preceding paragraphs, the provisions of the judicial code shall apply to the appeal to the police court.*

*§13. The Crown shall establish by an order to be discussed in cabinet the procedure by which a municipality shall appoint the official tasked with imposing administrative fines and the way in which such fines shall be collected.*

***All administrative fines collected shall be credited to the municipality.***

Article 2, §1, of the Law of 24 June 2013 on municipal administrative penalties

*§1. The municipal council may introduce **administrative penalties or sanctions for infringements to its regulations and orders**, unless administrative penalties or sanctions have been established by or under a law, decree or order for the same offences.*

Article 4, §1.1°, of the Law of 24 June 2013 on municipal administrative penalties

*§1. The municipal council may provide in its regulations or orders for the possibility of imposing one or more of the following penalties for the facts referred to in Articles 2 and 3:*

*1° **an administrative fine of up to €175 for a minor or €350 for an adult;***

*…*

Article 4§2 of the Law of 24 June 2013 on municipal administrative penalties

*§2. The municipal council may provide in its regulations or orders for the **following alternative measures** to the administrative fine referred to in §1.1°:*

*1° community service, which is defined as public interest work carried out by the offender for the benefit of the community;*

*2° local mediation, which is defined as a measure enabling the offender, through the intervention of a mediator, to repair or offset the damage caused or to ease the conflict;*

*§3. penalties established by the municipal council may not exceed penalties for*

*summary offences.*

**32.** The absence of any constitutional or legal text enshrining the right to beg if this right is exercised to live, or in attempting to live, in accordance with human dignity, or to ensure, or attempt to ensure that one's family can live in accordance with human dignity, explains, along with the powers that municipalities are assigned by the New Municipal Law, why many municipal regulations punish all sorts of begging through summary penalties or financial administrative penalties. This situation is incompatible with Article 16 of the Charter because in no respect can it be considered that it constitutes appropriate social, legal and economic protection for the full development of the family.

**33.** The number of different municipal regulations makes it impossible moreover, particularly for a population group which often has little education, to be aware of them, still less to have an overview of them, and this results in a lack of adequate legal protection, particularly with regard to regulatory provisions which may seem favourable to beggars. The application of regulations is therefore not foreseeable within the meaning of Article 8§2 of the European Convention on Human Rights (see below, paragraph 58).

**34.** Furthermore, in many cases, penalties are liable to affect vulnerable people, such as women and children forced to beg by others, who themselves are victims of human trafficking for the purposes of begging, whereas the perpetrators of the exploitation themselves go unpunished.

*e) The ineffectiveness of the right to respect for human dignity for foreign nationals*

**35.** Begging has, as we have seen, been decriminalised in theory in Belgium because of the existence of the right to social assistance entitling "everybody" to live in accordance with human dignity (see above, paragraphs 20 to 24). There also occasions where the municipal regulations which punish begging provide that the police force should refer beggars to the local social welfare centre.

**36.** However, this purposefully overlooks the fact:

- that Article 57, paragraph 2, of the Institutional Law of 8 July 1976 on social welfare centres (CPASs) relates only by derogation to the other provisions of this law, Article 1 of which states that the CPAS's tasks are solely as follows:

  1° granting emergency medical assistance for foreigners residing illegally in the Kingdom;

  2° noting any situation of need deriving from the fact that the parents do not or cannot fulfil their duty to provide for a foreigner under the age of eighteen who is residing illegally in Belgium together with his or her parents.

  In the situation mentioned in para. 2 above, social assistance is confined to the material aid required for the child's development and is exclusively provided by a Federal reception centre, in accordance with the conditions and arrangements established by the Crown.

- that foreign nationals, even when legally resident or nationals of the European Union, are liable to be expelled from Belgium if they apply for social assistance to a CPAS on the ground that they place an "unreasonable burden on the Kingdom's social assistance system", pursuant to Articles 41*ter*, 42*bis*, 42*ter* or 42*quater* of the Law of 15 December 1980 on access to the country and residence, settlement and removal of foreign nationals.[10]

[10] With regard to EU citizens, these provisions are a transposition of Article 14 of Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family

In practice the Aliens Office makes use of this possibility almost systematically.[11]

**37.** As a result, the right to social assistance in principle entitling everyone to lead a life in accordance with human dignity does not exist, either in theory or in practice, for foreign nationals, and does not constitute in any respect appropriate social, legal and economic protection to ensure the full development of the family. Yet, for many poor or vulnerable foreign nationals, begging is the only way to ensure, or attempt to ensure, the dignity of their close family.

2) Administrative and judicial case law

**38.** After the enactment of the Law of 12 January 1993 containing "an emergency programme for a more caring society", the City of Brussels, was the first municipality to recriminalise begging through an order of the municipal council of 26 June 1995 on the prohibition of begging in the municipality. The City claimed that it was given the power to impose this prohibition by Article 135 of the New Municipal Law.

**39.** At the request of the Belgian Human Rights League (the *Ligue des droits humains,* which was called the *Ligue des droits de l'homme* at the time), this municipal order was set aside by judgment No. 68.735 of the *Conseil d'Etat* of 8 October 1997,[12] on the basis of the argument, among others, that "begging shall be neither prohibited nor punished by the law; a municipal police regulation may only hinder the exercise of begging through measures required for the preservation of law and order or public security, peace or cleanliness; [and] such measures must be proportionate to any probable or reported disturbances".

**40.** In January 2008, a police patrol in the City of Brussels approached a Roma woman begging with her two very small children. She was arrested and charged with exploitation of minors through begging. Although she had no criminal record she was sentenced at first instance to no less than 18 months' fixed-term imprisonment and a fine of €4 125, but then acquitted by judgment 201013 of the Brussels Court of Appeal of 26 May,[13] which found that the Criminal Code did not punish the mere presence of children: "Nothing in the case file proves that the defendant made either of her children beg. Nor is it asserted by the investigators that either of the two children appealed, verbally or through gestures, to the generosity of passers-by." Citing A. DE NAUW, "Initiation au droit pénal spécial" ["Introduction to special criminal law"], Kluwer, 2008, p. 331, No. 570, the Court of Appeal also noted that the preparatory documents for the Law of 10 August 2005 state that "parents who use their own children to beg are not deemed to commit an offence, as the legislator considers that the response to such facts should not be a criminal matter" (Appendix 4).

**41.** In judgment No. 217.930 of 14 February 2012, given in response to an application for the suspension of a regulation introduced by the City of Ghent on 28 June 2011, which sdrastically limited the right to beg, the *Conseil d'Etat* pointed out that the law neither prohibited nor punished begging but nor did it prohibit municipalities from restricting begging. The municipalities must

members to move and reside freely within the territory of the Member States.

[11] Between 2011 and 2016, about 12 000 EU citizens were issued an order to leave Belgian territory on the "unreasonable burden" pretext. Most were persons receiving welfare benefit or unemployment benefit who had worked for less than a year in Belgium. See C. CALDARINI, "Charge déraisonnable" ["Unreasonable burden"], Bruxelles Laïque Echos, December 2016, available online.

[12] The judgments of the *Conseil d'Etat* can be consulted on its website at http://www.raadvst-consetat.be/.

[13] *Journal du droit des jeunes*, 2010, No. 298, p. 44; *Journal des tribunaux*, 2010/26, p. 454.

ensure that their inhabitants enjoy the benefits of proper public order, "in particular clean, healthy, safe and peaceful streets and other public buildings and places". The *Conseil d'Etat* held that the the public order powers entrusted to municipalities related specificallly to material public order meaning that the use of such powers by the municipality could only be warranted if there were specific and sufficiently well-established needs. Any measures taken should be reasonably proportionate to any such needs.

**42.** One of the features of judgment No. 217.930 is that it refers to a violation of Articles 30 and 31 of the revised Social Charter (although Belgium has not accepted Article 31). However, the *Conseil d'Etat* merely reiterates the content of these provisions before finding that the complainant organisation fails to show in what way the impugned regulation infringes them.[14]

**43.** In judgment No. 229.729 of 6 January 2015, *Pietquin and Others. v. Ville de Namur*, the *Conseil d'Etat* established a fully-fledged right to beg if begging was necessary to preserve human dignity: "Considering that the right to lead a life in accordance with human dignity implies being able to acquire means of subsistence, to which begging can contribute failing any better material and effective solution".

**44.** In the same decision, the Conseil d'Etat considered that prohibiting begging with children did not form part of the public order powers which municipalities derive from Article 135 of the New Municipal Law: "however, the method referred to in the first point of this article has no relation with material public order needs as there is nothing to indicate on the face of it how begging with a minor under the age of 16 might infringe this principle".[15]

**45.** In 2019, the Liège Criminal Court heard a case concerning a beggar who had been charged with obstructing a person holding or exercising public authority in the execution of their duty (under Articles 269 to 274 of the Criminal Code). The defendant was subjected to a body search and was taken into administrative custody for "disturbance of the peace" because he had already been reported eighteen times for begging. In its judgment of 3 July 2019 (Appendix 5)[16], the Court noted the following in particular:

> *The public order regulation on begging in the City of Liége of 25 June 2001 deals with this social phenomenon, which it defines as "asking aid or assistance from the public in the form of alms". Article 6 provides that "beggars may neither approach passers-by nor hold out a begging bowl or a similar object", the point of this being "to leave the public the choice as to whether or not to give". Article 10 adds that in the event of an infringement of this regulation, the offender "will be placed under administrative arrest and undergo an identity check". It would be an understatement to say that this municipal regulation is very restrictive. Under the regulation, beggars may not "approach passers-by". Although begging has been decriminalised, in reality the City of Liège authorises itself purely and simply to prohibit charity as soon as it is requested.*
>
> *… The court will not asses the legality of this regulation, as it is entitled to under Article 159 of the Constitution, as the prosecution is not based on an infringment of*

[14] In the judgment given in response to the application for the decision to be set aside, the 12th Flemish Division of the *Conseil d'Etat* decided, much to everyone's surprise, that the Human Rights League did not have the requisite standing. This case law is at variance with that of the French-speaking divisions.

[15] P. 11. As the City of Namur withdrew this measure and replaced it with another regulation, there was no decision on the request to set the measure aside.

[16] *Jurisprudence de Liège, Mons et Bruxelles* (case-law report from these 3 cities), 32/2019, p. 1504.

*the regulation by the defendant. However, the court cannot overlook the fact that the defendant's reaction to his administrative arrest is linked to the application by the local police of this regulation.*

*… The court notes that:*
*– the Law of 27 November 1891 on the punishment of vagrancy and begging was repealed by the Law of 12 January 1993 containing an emergency programme for a more caring society;*
*– living without a job, a home or a source of income does not constitute a criminal offence;*
*– begging is not a criminal offence in itself when it is freely engaged in by an adult;*
*– begging is not an impropriety or, in itself, a disturbance of public order even if it causes people to feel uneasy;*
*– the right to lead a life in accordance with human dignity implies being able to have means of subsistence, to which begging can contribute failing any better material and effective solution, and the fact that beggars may have the right to social integration is not enough to rule out the possibility that they will have to or want to engage in begging for reasons which they are not obliged to give* (note to: Conseil d'Etat, 6 January 2015, No. 229.729).

*The preparatory documents for the Law of 12 January 1993 reveal its underlying philosophy. According to the government of the time, the source of this law was "a principled position, which tend[ed], in the late 20th century, to view homeless people as disadvantaged persons in need of social integration and not as criminals in need of punishment"* (note to: *Doc. parl*., Senate, ordinary session, 1992-1993, No. 546/2, p. 9). *The Government itself acknowledged that "poverty continues however to prick the conscience of every citizen … forms part of a process of polarisation within our society and .. results directly from the social relationships from which it is formed"* (note to: Draft Law containing an emergency programme for a more caring society, Explanatory Memorandum, *Doc. parl*., Chamber of Representatives, extraordinary session, 1991-1992, No. 630/1, pp. 1 and 2). *"The level of civilisation", it said, "can be gauged by the rights that society grants to its poorest members"* (note to: *ibid.* p. 8). *Beggars can no longer be regarded as a "nuisance to society", from which honest citizens should be preserved. The administrative arrest made in this case seems to have had the sole aim of discouraging the defendant from begging again in Liège City Centre.*

*… The only criticism made against the defendant by the police officers who arrived first on the scene is that he disturbed passers-by when he was begging because he followed them for a little while with his hand outstretched. Even assuming that this conduct is confirmed, it does not constitute a criminal offence.*

*… There is no doubt that seeing beggars and being confronted with poverty in town centres is difficult for many citizens to face, but this is more because of a vague feeling of guilt or discomfort in the light of the social disparities and the extreme vulnerability embodied by these people than the behaviour of beggars themselves. It is not acceptable to make an administrative arrest based solely on what are, ultimately, the entirely personal feelings of some passers-by, whereas others are not troubled. Furthermore, even if it were accepted that holding out a hand to beg for charity or following a passer-by for a few metres were capable of disturbing the peace (which it is not), the arrest would have had to be absolutely necessary.*

*... Under the guise of preserving law and order, it seems in fact that many municipalities, in treating begging as a quasi-professional activity organised according to a neighbourhood-by-neighbourhood rota and a precise timetable, and regulating how it should be carried out, actually intend to prohibit it or at least clearly to discourage it. By establishing administrative penalties for infringements of their municipal regulations, they are attempting to return to a form of punishment which the legislator has now abandoned. The court knows, as a result of examining many criminal cases, that the City of Liège sends out pedestrian patrols of local police officers in civilian dress which are referred to as administrative begging policing teams ("*AP mendiants"*) and are tasked specifically with addressing the phenomenon of begging. As specificed in the police report, this was the case with the team which dealt with the defendant in the current case. 5.*

*Removing poor people from public spaces to hide them from public view is a way of concealing the problem, not solving it. It is not so much against begging that the authorities should be taking action but against poverty.*

**46.** At the time of the current complaint, another case is pending before the *Conseil d'Etat* (No. G/A 236.981/XV-5160). The Human Rights League and other anti-poverty organisations have asked the courts to set aside several provisions of a new municipal regulation adopted by the City of Brussels on 28 March 2022, prohibiting begging with a minor under the age of 16 in the City and providing for administrative penalties against offenders. In a judgment dismissing the application for suspension because this was not an emergency,[17] the *Conseil d'Etat* stated nonetheless as follows:

*The* Conseil d'État *has previously recognised that "the right to lead a life in accordance with human dignity implies being able to have means of subsistence, to which begging can contribute failing any better material and effective solution", albeit specifying that "this right does not imply being entitled to beg without any possible restriction being imposed to the practice by the administraive authorities"* (Conseil d'Etat, *judgment No. 229.729 of 6 January 2015).*

*The European Court of Human Rights points out that the notion of human dignity underlies the spirit of the European Convention on Human Rights and Fundamental Freedoms. It considers that this notion may be referred to under Article 8 and that "the right to address others for help lies at the very core of the rights protected by Article 8 of the Convention" (ECHR,* Lacatus v. Switzerland *judgment of 19 January 2021, §§56 to 60).*

**47.** It follows from this domestic case law that a right to beg, albeit conditional, has been recognised by the *Conseil d'Etat*, although it also accepts that proportionate restrictions may be made by regulations to this right. However, the right is enshrned neither in the Constitution nor in federal law. As a result, hundreds of municipal regulations are in breach of this right (see below), theoretically obliging either beggars or human rights associations to bring long and costly proceedings before the courts,[18] which is impossible in practice. If the Constitution or a

[17] No. 255.608, of 26 January 2023.

[18] According to the *Conseil d'Etat*'s 2019-2020 activity report, available online, the average processing time within the court divisions for a case tried on the merits in contentious proceedings not including cassation (i.e., between reception of the case by the division and the final decision) was 240 days (previous judicial year: 242 days). The

federal law enshrined the right to beg and indicated the restrictions which, in principle, are proportionate, for example by amending Article 135 of the New Municipal Law, Belgium would be giving itself appropriate social, legal and economic protection for the full development of the family, and adopting a comprehensive and co-ordinated approach to support persons forced to resort to begging.

## *B. The case law of the European Court of Human Rights*

**48.** In its *Lacatus v. Switzerland* judgment of 19 January 2021,[19] the European Court of Human Rights held that the prohibition on begging on the public highway was linked to respect for private life, as protected by Article 8 of the Convention (§92). In its opinion, begging is one of the means of surviving for some people who are in a clearly vulnerable situation (§107).

**49.** Interference with the right to protection of private and family life is admissible if it pursues legitimate aims within the meaning of Article 8§2 of the Convention. These legitimate aims include combating exploitation, particularly of children. However, the interference must be proportionate to the goal pursued (§99).

**50.** A desire to make poverty less visible or make a town more attractive for investors or tourists is not a legitimate aim warranting a restriction to the right to beg (§113).

**51.** The Court doubts whether penalising the victims of exploitation can help to combat the trafficking or exploitation of human beings (§§111-112).

**52.** It had already stated its preference in principle for helping people in situations of poverty rather than taking measures to restrict their rights, as in the *Wallová and Walla v. the Czech Republic* judgment of 26 October 2006 (§§73-74).

**53.** It follows from the analysis of the *Lacatus* judgment that the European Court of Human Rights considers that:

- punishing a person for begging when begging is *one* of their means of subsistence – but not necessarily the only one – infringes their right to respect for private life;
- interference with this right through the prohibition or restriction of begging can only occur if it is provided for by the law;
- such interference must be a proportionate measure which is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

**54.** The Court's decision justifies the complainants' demands for legislation to be enacted on begging in Belgium, as any intereference with the right to beg must be "in accordance with the law" under Article 8§2 of the European Convention on Human Rights. To view this need as a consequence of Article 16 of the revised Charter would also make for the alignment of the case

average length of processing for cases suspended by the court division was 80 days.

[19] In Belgian legal doctrine, see M.-F. RIGAUX, "La mendicité, le droit à la dignité humaine et le droit à l'autonomie" ["Begging – the right to human dignity and the right to autonomy"], comments concerning ECHR, *Lacatus v. Switzerland*, 19 January 2021, *Revue trimestrielle des droits de l'homme*, 2021, book 127, pp. 729-748; L. LAVRYSEN, "Bedelen is een mensenrecht" ["Begging is a human right"], *Juristenkrant*, 2021, book 423, pp. 1 and 3.

law of the European Committee of Social Rights with that of the European Court of Human Rights.

**55.** In the Court's view, the national law must be clear, foreseeable and adequately accessible (*Silver and Others v. the United Kingdom,* 1983, §87). This includes sufficient foreseeability for individuals to be able to act in accordance with the law (*Lebois v. Bulgaria*, 2017, §§66-67), and clear demarcation of the scope of discretion for public authorities. Domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which they are entitled under the rule of law in a democratic society (*Piechowicz v. Poland*, 2012, §212). Domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which, and the conditions on which, the authorities are entitled to resort to measures affecting their rights under the Convention (*Fernández Martínez v. Spain* [GC], 2014, §117). Lawfulness also requires that there be adequate safeguards to ensure that an individual's Article 8 rights are respected. Domestic law must provide due protection for individuals against arbitrariness (*Bykov v. Russia* [GC], 2009, §81; *Vig v. Hungary*, 2021, §§51-62).

**56.** Proportionate restrictions to begging in accordance with the law can only be for the purposes of protecting national security, public safety or the economic well-being of the country, preventing disorder or crime or protecting health or morals or the rights and freedoms of others. It follows from this that the national legislation demanded by the complainants on the basis of Article 16 of the Charter in order to provide appropriate social, legal and economic protection for the full development of the family must, if it wishes to preserve the right to beg and harmonise the case law of the Committee and the Court, clearly specify that the restrictions may serve only those purposes which are set out in Article 8§2 of the European Convention on Human Rights.

## *C. The report of the Combat Poverty Service and the Federal Institute for the protection and promotion of Human Rights*

**57.** In April 2023, the Federal Service to Combat Poverty, Insecurity and Social Exclusion (Combat Poverty Service), working with the Federal Institute for the protection and promotion of Human Rights (IFDH), published a report entitled *La réglementation de la mendicité sous l'angle des droits humains. Étude de la réglementation de la mendicité en Belgique et l'impact de l'arrêt* Lacatus *et de la jurisprudence du Conseil d'État*[20] (*Regulation of begging from a human rights angle. Study on the regulations on begging in Belgium and the impact of the* Lacatus *judgment and the case law of the* Conseil d'Etat) ("the Report").

**58.** The Combat Poverty Service is an independent, public, interfederal institution. It was set up by a co-operation agreement of 5 May 1998 between the Federal State, the Communities and the Regions "concerning the continuation of the Poverty Reduction Policy".[21] Under Article 1, the signatories undertake, with due regard for their respective competences, "to continue and co-ordinate their policies for the prevention of insecurity, the fight against poverty, and the integration of individuals into society, based on the following principles: the realisation of social rights as established in Article 23 of the Constitution; equal access to all of such rights for every individual, which may also include measures for positive action; the introduction and reinforcement of modes of participation of all public administrations and individuals concerned, in particular those living in poverty, and the development, implementation and evaluation of these policies;" and recognition that "a policy of social integration is an inclusive, global, and coordinated policy, meaning it must be implemented throughout all of the areas of competence and requires an ongoing evaluation of all of the initiatives and actions undertaken and contemplated".

**59.** The Federal Institute for the protection and promotion of Human Rights (IFDH) was set up by a Law of 12 May 2019.[22] Its aim is to help to protect and promote human rights in Belgium. Its tasks cover all matters relating to human rights protection which are dealt with at federal level and for which no other independent body with a human rights remit is responsible.

**60.** The Report states that of the 581 towns and municipalities in Belgium in total, 305 have adopted a regulation on begging. Clearly therefore there is no "overall and co-ordinated approach" to promote the effective access of persons who live or risk living in a situation of persistent social exclusion or poverty, along with their families, to, in particular, employment, housing, training, education, culture and social and medical assistance.

**61.** The Report then notes that 253 of these municipal regulations on begging contain at least one provision which, according to the arguments outlined above, is problematic in the light of the *Lacatus v. Switzerland* judgment and the case law of the Belgian *Conseil d'Etat* (see, in particular, pp. 7, 32 and 36). This shows that the families of persons who beg in the hope of a more dignified life are not afforded appropriate social, legal and economic protection for their full development.

[20] Available on the Combat Poverty Service website, https://luttepauvrete.be/, and the IFDH website, https://www.institutfederaldroitshumains.be/fr/publications/la-reglementation-de-la-mendicite-sous- langle-des-droits-humains.
[21] *Moniteur belge*, 10 July 1999, p. 26.572.
[22] *Moniteur belge*, 21 June 2019, p. 63.964.

**62.** In conclusion, the Combat Poverty Service and the IFDH note, on pages 32 to 34, as follows:

> *The judgment [Lacatus] has a major impact in Belgium and is an important addition to the* Conseil d'Etat*'s existing case law. Although begging was removed from the criminal law in 1993, beggars are still at risk of being punished. More and more towns and municipalities have resorted to measures based on their policing powers. This has led to a proliferation of local regulations on begging: 305 police regulations of this type are currently in force. The compatibility of these provisions with human rights is the focus of this report. In many cases (253), this incompatibility is clear. On examining the Lacatus judgment and the case law of the* Conseil d'Etat *it is quite apparent that a large majority of the regulations on begging are at variance with certain key principles.*
>
> *…*
>
> *Any general ban on begging will always be in breach of the case law. Such bans do not help to protect the rights of third parties as they take no account of the nature of the begging concerned, unjustifiably prohibiting non-aggressive and non-obstructive forms. Nor do such bans help to protect law and order as begging in itself cannot be considered to be a breach of the peace. Where a form of begging can be considered a breach of the peace nonetheless, the principle of proportionality requires the extent in time or space of any ban to be proportionate to the seriousness of the breach.*
>
> *Just as problematic are bans on begging using the display of physical infirmities, wounds or mutilations. It is difficult to see how such bans can contribute to protecting law and order or the rights of third parties. At the most, being confronted with infirmities, wounds or mutilations will make some people ill at ease or will seem to them to be undesirable but these feelings are not enough to justify a ban. Furthermore, such bans could also be considered discrimination against persons with disabilities. Where the persons concerned need to beg to meet their needs, this can also be reagrded as an infringement of their right to a decent standard of living.*
>
> *Some police regulations limit begging bans to specific areas, whether or not they are restricted to certain times. Often, such regulations seem to be introduced to increase the commercial or tourist appeal of the municipality concerned. This is not an acceptable justification to restrict the right to beg. Bans sometimes also seem to be motivated by a desire to ensure a smooth flow of pedestrians or traffic. This is a legitimate aim but the ban still does not meet human rights requirements as it applies regardless of whether law and order has been breached in specific circumstances. It is preferable therefore to explicitly limit bans to forms of begging which impede pedestrians or traffic.*
>
> *There are also bans on begging which apply only during specific periods or festivities. These apply regardless of the actual impact of begging on law and order during these times, and are therefore in breach of the case law. Nor are tourist-related issues sufficient to justify the prohibition of begging during specific festivities.*
>
> *The prohibition of begging* ***by or in the company of minors***[23] *is also excessive. It alone cannot be considered a breach of the peace. Consequently, a ban does not meet human*

[23] On this occasion, bold type is that in the original report.

*rights requirements. However, it is also important to ensure that the best interests of the child are properly safeguarded. However, there are other ways of dealing with problems linked to child begging. True exploitation of minors through begging is punished under Articles 433ter and 433quater of the Criminal Code. Merely begging in the presence of minors is not enough to constitute such an offence. Legislation on compulsory schooling already makes it possible to take measure against parents where begging activities interfere with their children's education.*

*A general ban on* ***begging with animals*** *is also in breach of the current case law. Firstly, it is based on an unrealistic assessment of the danger. Beggars have no interest in frightening the people from whom they hope to receive charity. In addition, such bans are problematic, not only from the viewpoint of the right to begging as protected by Article 8 of the ECHR but also from the viewpoint of the right to respect for the ties between humans and pets protected by the same article. However, it is compatible with the existing case law to prohibit begging with "****aggressive animals****" as in such cases, there is a genuine risk of a violation of law and order or the rights of others. Its practical application must be founded, however, on the actual existence of a sufficiently serious danger in specific circumstances. More problematic still are certain municipal regulations containing vaguer provisions, such as a ban on begging with "animals which might become aggressive". It would be preferable to limit such bans to truly aggressive animals whose actual behaviour indicates that they pose a genuine threat. Lastly, several municipalities prohibit begging with a "dirty" animal. "Dirtiness" cannot always be equated with a danger to public health. It is difficult therefore to see how such a ban might contribute to protecting law and order, security, peace or public health. Accordingly, any such ban does not meet human rights requirements.*

*What view should we take of a ban on begging* ***for the benefit of others*** *or on organised begging? Exploitation of begging by others is already prohibited by Article 433ter of the Criminal Code. A major difference is that Article 433ter of the Criminal Code targets the perpetrator of the offence not the victim of the exploitation of begging. The European Court of Human Rights has objected to punishment of the victims of begging because it does not do enough to combat exploitation. If there is exploitation, victims should be helped rather than punished. If there is no exploitation, simply banning begging for the benefit of others does not help to protect law and order or the rights of third parties. In either case, banning begging for the benefit of others does not meet human rights requirements.*

*In many municipalities, it is prohibited to* ***ring or knock on doors to ask for*** *charity. This prohibition is also excessive. Simply ringing or knocking on a door is not enough to amount to "harassment". The ringing or knocking would have to be repeated regularly to be regarded as truly problematic.*

*Lastly, some municipalities prohibit* ***"disguised" begging****, such as asking for charity on the pretext of providing a service such as washing car windows, selling religious items, food, newspapers or magazines or going door to door. However, the fact that begging is "disguised" does not constitute a breach of the peace or the rights of third parties either.*

**63.** The Report concludes on pages 34 et seq. by listing a series of provisions which limit the right to begging and are acceptable provided that they are applied proportionately. This list and

the related discussion reveal the entirely disparate nature of the regulations concerned and the lack of an overall, co-ordinated approach to the social response to begging.

**64.** In its final recommendations (pages 38 et seq.), the Report asks:

- for the municipalities to align police regulations containing provisions on begging with the requirements of the European Court of Human Rights and the case law of the *Conseil d'Etat* and to take account of beggars' financial vulnerability;

- for the supervisory authorities to increase access to justice for poor persons, act against excessive prohibition of begging and alert local authorities to the limited circumstances in which restrictions can be imposed on begging by police regulations;

- for police regulations to require police officers to refer beggars to social assistance services before anything else;

- for the authorities to adopt a human rights-based approach to begging and tackle the root cause so that persons in situations of poverty are no longer obliged to depend on it for their subsistence.

**65.** The complainant organisations must agree with the analysis of the Report's recommendations but regret that they do not take into account the requirements of the Charter, which is overlooked by this study despite the fact that it was drawn up from a human rights viewpoint in general.

**66.** The complainant organisations also regret that the Report does not suggest that the admissible restrictions on the right to begging should be incorporated into a law applying to the entire territory of the State Party, such as the one which gives municipalities the power to enact regulations in this area, namely the New Municipal Law codified by the Royal Decree of 24 June 1988, especially its current Article 135.

**67.** Nor does the Report analyse the impact on the fundamental rights of the persons concerned of the provisions on begging contained in the laws and regulations on public transport.[24] For instance, Article 10 of the Law of 27 April 2018 on the national railway police is clearly disproportionate in that it provides: "It is prohibited to beg in railway vehicles and it is prohibited to cause nuisance in railway stations through invasive or aggressive begging". An Order of the Government of Brussels-Capital Region of 13 December 2017 establishing certain conditions for the running of public transport also contains provisions which purely and simply prohibit begging on Brussels public transport and punish this practice through a lump sum fine (see Articles 3, 10° and 11).

**68.** Nor does the Report highlight the indirect discrimination to which the members of the Roma community are clearly subject.

## *D. Discrimination against Roma*

**69.** In the *Lacatus* judgment, the European Court of Human Rights, which found against Switzerland, notes that the applicant is from the Roma community (§1). The Court also points

[24] See J. FIERENS, "La répression de la mendicité en 2004" ["Repression of begging in 2004"], comments on Brussels Police Court judgments, 27 January 2004, *Journal des tribunaux*, 2004, pp. 543-544.

out (§39) that the Group of Experts on Action against Trafficking in Human Beings (GRETA), which was set up pursuant to Article 36 of the Convention on Action against Trafficking in Human Beings to ensure that the Convention is implemented by the Parties, noted in its Report concerning the implementation of the Convention by Switzerland, adopted on 11 July 2019 and published on 9 October 2019, that:

> *"235.* According to NGO reports, there are cases where victims of trafficking are being fined or prosecuted for offences of the alien's legislation, labour laws or regulations on prostitution. This situation creates a deterrent effect on victims of trafficking, who are less likely to report their cases to the authorities for fear of being prosecuted or expelled from the Swiss territory. One organisation reported five cases in which victims were not treated as such but rather, once they contacted the authorities, were considered to have violated labour or immigration laws, and received fines or were expelled from the country. During the visit, interlocutors underlined the fact that these measures target particularly persons from the Roma community and often result in both the victims and the perpetrators being returned to their countries of origin. GRETA is concerned that victims of forced criminal activity are often not identified as such and end up in custody. In this context, the criminalisation of begging places the victims of forced begging in a situation of heightened vulnerability" (sentence underlined by the Court).

**70.** The Court then highlights in particular a Recommendation of the Parliamentary Assembly of the Council of Europe, which focuses on the impact on Roma, with regard to the Charter, of criminalising begging – an issue which the complainant organisations also suggest that the Committee should look into (§§40-41):

> *40.* "In its Recommendation 2003 (2012) on Roma migrants in Europe, the Parliamentary Assembly of the Council of Europe emphasised that the Roma were among the most disadvantaged, discriminated against, persecuted and victimised groups in Europe. It found that prejudices, combined with the widespread tendency to make a generalised link between Roma and criminality, had contributed greatly to the plight of Roma in Europe. Concerning the criminalisation of begging, it recommended that the Committee of Ministers instruct the relevant Council of Europe committees and bodies to:
>
> > 'analyse legislation and practices in member States aimed at criminalising begging and evaluate the impact of this on Roma and the implications under the European Convention on Human Rights, **the revised European Social Charter**[25] and other Council of Europe standards' (§6.1).
>
> *41.* In an article published on 16 July 2015 on the Council of Europe's website, entitled 'Time to debunk myths and prejudices about Roma migrants in Europe', Nils Muižnieks, the Council of Europe's then Commissioner for Human Rights, noted that the authorities in several countries were increasingly taking or discussing measures to criminalise the presence of Roma in public places, by enacting bans on begging or "sleeping rough". He had previously criticised that approach in his reports on France and Norway.
>
> *42.* In his 2015 report on France, Nils Muižnieks had considered the ban on begging

[25] Bold added by the complainant organisations.

in Marseilles to be an example of 'anti-Gypsyism' (Report following a visit to France from 22 to 26 September 2014 (2015), §171). Concerning Norway, he had found that the blanket ban on non-aggressive begging had a discriminatory impact on Roma immigrants and interfered with their freedom of expression, concluding that such laws should be repealed (Report following a visit to Norway from 19 to 23 January 2015 (2015), in particular §§59-67)".

**71.** Discrimination against Roma in Belgium is sometimes explicit. For instance, the Municipal Order of the City of Brussels of 28 March 2022 on begging with children (Appendix 6), which, as stated above, is currently being examined by the *Conseil d'Etat*,[26] was defended in particular as follows:

> "Considering that, according to the police report of 3 March 2022 cited above: …
> 83 families or 271 beggars of Romanian origin (Roma), 10% of whom are minors, have been registered by the police as professional beggars in our area and were either accommodated in the Hôtel Président (by the emergency relief body, the Samu social) or living on the street".

The Mayor of Brussels also stated as follows in the daily newspaper *La Libre* of 5 May 2022 (Appendix 7):

> *We should not gloss over the fact that it is mainly with the Roma community that we have a problem in this respect.*
> *I would also point out that since the adoption of this regulation, all the people who were begging with children have gone.*
> *… According to the information we have received from the police, they have gone back to Romania.*
> *… We have teams of police officers who understand Romanian, we are prepared to open places in schools, we have a task force dealing solely with Roma at the public social welfare centre (CPAS), but for various reasons, Roma passing through Belgium do not want to enter into contact with our social services.*

**72.** Already in 2012, after Romanians were granted free movement in the European Union, in the legal doctrine on exploitation of begging, certain authors highlighted the indirect discrimination affecting Roma: "Criminal law and Roma. This is a very strange entry point to the criminal law domain given that there is no criminal law relating to a specific category of individuals. However, it must be said that Roma are certainly more likely to be related with some types of offence, but not because they commit them, rather because they are the victims of them".[27]

**73.** Regardless of the explicit references to Roma in justifications for municipal regulations, it is certain that, where it comes to bans or restrictions on begging, they are subject to indirect discrimination, in other words situations in which a seemingly neutral provision, criterion or practice is actually used intentionally to cause a particular disadvantage to persons of a specific race, social background or (supposed) ethnic orgin compared to other people. Article E of the Charter prohibits not only direct discrimination but also all forms of indirect discrimination (European Roma Rights *Centre (ERRC) v. Belgium*, Complaint No. 185/2019, decision on the

[26] Case No. G/A 236.981/XV-5160**.**
[27] Ch.-E. CLESSE, "Les Roms face au droit penal" ["Roma and the criminal law"] in J. FIERENS (ed.), *Les Roms face au droit en Belgique*, Brussels, La Charte publishers, 2012, p. 157. Mr Clesse is currently the chief labour inspector of Hainaut province and a professor in criminal labour law at the Free University of Brussels.

merits of 8 December 2022, cc-185-2019, §99).[28]

## PART IV. CONCLUSIONS

**74.** It can be concluded, on the basis of the facts established by the complainant organisations, the arguments outlined above and the documents cited, that the requests for findings of a violation by Belgium of Articles 16 and 30 of the Charter, read individually or in conjunction with Article E, are admissible and well-founded.

Done in Paris, on 20 November 2023

For the International Federation for Human Rights,

Alice MOGWE, President

For the Intenrational Movement ATD Fourth World

Bruno DABOUT, Delegate-General

[28] See also the reports of the European Union Agency for Fundamental Rights (FRA) on discrimination against Roma, particularly *Roma and Travellers in six countries*, 2020, online.

## APPENDICES

1. Statutes of the International Federation for Human Rights (FIDH)
2. By-Laws of the International Movement ATD Fourth World
3. Rules of Procedure of the International Movement ATD Fourth World
4. Brussels, 26 May 2010, *Journal du droit des jeunes*, 2010, No. 298, p. 44.
5. Liège Criminal Court, 3 July 2019, J.L.M.B., 32/2019, p. 1504.
6. Municipal Order of the City of Brussels of 28 March 2022 on begging with children
7. Statement by the Mayor of Brussels in the daily newspaper, *La Libre*, of 5 May 2022