



European
Social
Charter

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

**DECISION ON ADMISSIBILITY
AND
ON IMMEDIATE MEASURES**

29 June 2021

European Roma Rights Centre (ERRC) v. Belgium

Complaint No. 195/2020

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 321st session attended by:

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

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint registered on 27 April 2020 as No. 195/2020, lodged by the European Roma Rights Centre (ERRC) against Belgium and signed by Đorđe Jovanović, President of the ERRC, asking the Committee to find that the situation in Belgium is not in conformity with Articles 1§2, 11§1 and 11§3, 12§1, 13§1, 16, 17, 30 and 31 alone as well as Article E, in conjunction with each provisions concerned of the Revised European Social Charter (“the Charter”);

Having regard to the observations of the Government of Belgium (“the Government”) on admissibility of the complaint and the request for immediate measures, registered on 22 July 2020;

Having regard to the response from the European Roma Rights Centre (ERRC) (hereafter “the ERRC”) to the Government’s observations, registered on 11 September 2020;

Having regard to the response from the ERRC to the Committee’s questions registered on 23 April 2021;

Having regard to the response from the Government to the Committee’s questions registered on 27 May 2021;

Having regard to the Charter, and in particular to Articles 1§2, 11§§1 and 3, 12§1, 13§1, 16, 17, 30, 31 and E, which read as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

Part II: “With a view to ensuring the effective exercise of the right to work, the Parties undertake:

...

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

...”

Article 11 – The right to the protection of health

Part I: “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”

Part II: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;

...

3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.”

Article 12 – The right to social security

Part I: “All workers and their dependents have the right to social security.”

Part II: "With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;
- ...

Article 13 – The right to social and medical assistance

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

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

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

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

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

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

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: "Children and young persons have the right to appropriate social, legal and economic protection."

Part II: "With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
 - b. to protect children and young persons against negligence, violence and exploitation;
 - c. to provide protection and special aid from the state for children and young persons temporarily or definitely deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools."

Article 30 – 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.”

Article 31 – The right to housing

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.”

E – Non-discrimination

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

Having regard to the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules adopted by the Committee on 29 March 2004 at its 201st session and last revised on 19 May 2021 at its 320th session (“the Rules”), in particular to Rule 36, which reads as follows:

Rule 36 – Immediate measures

- “1. At any stage of proceedings, the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure, the adoption of which is necessary to avoid irreparable injury or harm to the persons concerned.
2. In case of a request for immediate measures made by a complainant organisation, the request shall specify the reasons therefore, the possible consequences if it is not granted, and the measures requested. A copy of the request shall forthwith be transmitted to the respondent State. The President shall fix a date for the respondent State to make written submissions on the request of immediate measures.
3. The Committee’s decision on immediate measures shall be accompanied by reasons and be signed by the President, the Rapporteur and the Executive Secretary. It shall be notified to

the parties. In the decision, the Committee shall fix a deadline for the respondent State to provide comprehensive information on the implementation of the immediate measures.”

Having deliberated on 23 March and 29 June 2021;

Delivers the following decision, adopted on this latter date:

1. The ERRC states that in the context of police operations carried out on 4 and 5 April 2020 targeting two Travellers' sites in the Couillet and Jumet areas of the municipality of Charleroi, families, including children, sick persons and a pregnant woman, had their caravans and property seized. The ERRC claims that this situation has to be considered within the wider context of police operations conducted against Traveller communities across Belgium since 2019 and which were the object of a previous collective complaint introduced in 2019 (ERRC v. Belgium, Complaint No. 185/2019, decision on admissibility and immediate measures of 14 May 2020). In the present case, the ERRC alleges that the police operations on 4 and 5 April 2020 in Charleroi were carried out without taking into account considerations of proportionality and without offering an alternative solution for the families concerned, such as provision of alternative accommodation, access to water, sanitation, electricity, food and medical services, and exposed the affected families to hardships and health risks, including those associated with COVID-19, in breach of the Charter. More particularly, the ERRC alleges that with these actions the Belgian authorities violated:

- Article 1§2 (right to work), as by seizing the homes of Traveller families without offering any alternative housing and social aid, the Belgian authorities deprived these families of their ability to work;
- Article 11§§1 and 3 (right to the protection of health), as the seizure of the caravans, endangered the health of the families affected as well as causing undue risk to the health of pregnant women, children, and to those already suffering from health vulnerabilities.
- Articles 12§1 (right to social security), 13§1 (right to social and medical assistance) and 30 (right to protection against poverty and social inclusion), by failing to ensure that the Travellers affected had access to adequate resources, social and medical services, which lead to further marginalisation, poverty and exclusion;
- Articles 16 (right of the family to social, legal and economic protection) and 17 (right of children and young persons to social, legal and economic protection). ERRC alleges that the specific needs of the children, pregnant woman and persons on medication were not taken into consideration by the police authorities before, during, or after implementing the operations in question.
- Article 31 (right to housing): the ERRC further alleges that the seizure of caravans left the families homeless and without a housing solution.

The ERRC also considers that this operation amounted to ethnically targeted collective punishment in breach of Article E (non-discrimination) in conjunction with each of the aforementioned provisions of the Charter.

2. The ERRC further asks the Committee to indicate immediate measures to the Government in accordance with Rule 36 of the Committee's Rules. The ERRC argues

that with a view to avoiding serious, irreparable injury to the persons concerned the Government should immediately:

- cease seizing further caravans from Travellers related to the police operations on 4 and 5 April 2020 as described above, especially having regard to the COVID-19 pandemic;
- return all caravans which were seized on 4 and 5 April 2020 from Travellers at the Couillet and Jumet sites, or to provide adequate and family-appropriate alternative accommodation for the persons left homeless as a result of the police operation;
- ensure that all affected families have access to water, sanitation, electricity, medical services, food and medicine, and social aid;
- provide access to free-of-charge gynaecological care for pregnant women affected by the police operations;
- ensure that Traveller children have access to online education tools and materials during the COVID-19 pandemic.

3. In its observations, the Government does not contest the admissibility of the complaint. However, the Government considers that the request for immediate measures should be rejected for several reasons. First, the Government emphasises that the police operations in Charleroi in April 2020 were carried out to ensure respect for lockdown measures within the framework of the COVID-19 pandemic and that it was within this context that the caravans were identified as stolen. Second, the Government invokes the need to safeguard the proper course of the criminal investigation as the caravans seized were reported as stolen. They cannot therefore be returned and, moreover, no request has been made by any of the affected Travellers for the lifting of the seizure measures. Third, as regards access to medical services, online education, water, sanitation, electricity and other forms of social aid, the Government states that all the persons concerned have been offered alternative accommodation and that they have refused it. Finally, the Government considers that the immediate measures should be rejected as, out of all the persons directly affected, some persons already enjoy access to social assistance or have benefitted from such assistance in the past. Therefore, they cannot be considered to be in need of immediate measures in the light of the social assistance programme existing in Belgium, which ensures help with finding work, access to training and education as well as to food and medical services.

4. In reply to the Committee's request for information on the total number of persons affected by the loss of their homes or caravans as a result of these two police operations in April 2020, and on their current situation, the ERRC states that at least four caravans, two in each of the areas concerned, which were the owners' only homes, were seized, thus making the traveller families concerned homeless. In Couillet, there were seven family members affected (four adults - one being a pregnant women at the time - and three children) and in Jumet five persons were affected (four adults and a child). The ERRC highlights that the Centre of Mediation for Travellers

and Roma in Wallonia, and the Belgian Equality Body (UNIA) has recommended to all Municipalities in Wallonia to take the necessary measures to ensure that Traveller's families occupying unofficial sites were allowed to remain without being disturbed, particularly until the end of the lockdown period in the light of the COVID-19 pandemic and to suspend all eviction measures. The police did not follow these recommendations. The ERRC further states that the two families affected by the Couillet operation are staying in borrowed caravans that they have secured with the help of their family and friends. They were not offered any alternative accommodation or assistance at any point.

5. The Government, in its reply to the Committee's request, states that four caravans were seized, two in Jumet and two in Couillet, by an instruction of the judge on duty. In Jumet, three people were affected, while in Couillet there were seven (one family of two parents and their three children and another couple). Social aid was proposed in all cases to those remaining without an accommodation but according to the Government, this was refused by the persons in question.

THE LAW

As to the admissibility conditions set out in the Protocol and the Committee's Rules

6. The Committee notes that in accordance with Article 4 of the Protocol, which was ratified by Belgium on 23 June 2003 and entered into force for this State on 1 August 2003, the complaint has been submitted in writing and concerns Articles 1§2, 11§1, 12§1, 13§1, 16, 17 and 30 of the Charter, provisions accepted by Belgium when it ratified this treaty on 2 March 2004, as well as Article E. Belgium is bound by these provisions since the entry into force of the treaty in its respect on 1 May 2004.

7. The Committee notes that the ERRC also invokes Article 31 of the Charter, a provision not accepted by Belgium. The Committee recalls that, pursuant to Article 4 of the Protocol, a complaint shall relate to a provision of the Charter accepted by the State Party concerned (see in this sense *European Federation of Employees in Public Services (EUROFEDOP) v. Greece*, Complaint No. 3/1999, decision on admissibility of 13 October 1999). The Committee considers therefore that the complaint is inadmissible as regards Article 31 of the Charter.

8. The Committee notes that the grounds of the complaint are indicated, detailing in what respect the ERRC considers that Belgium has not ensured the satisfactory application of the Charter. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility.

9. The Committee notes that, in accordance with Articles 1 (b) and 3 of the Protocol, the ERRC is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list established by the Governmental Committee of international non-governmental organisations entitled to lodge complaints before the Committee.

10. The Committee further considers that the ERRC has submitted a complaint in a field in which it has particular competence within the meaning of Article 3 of the Protocol. The Committee recalls that the ERRC is a non-governmental organisation which monitors the human rights situation of Roma in Europe and provides legal defense in cases of abuse. Moreover, the Committee has already held that the ERRC has particular competence in presenting complaints pertaining to the situation of Roma (see most recently, *European Roma Rights Centre (ERRC) v. Belgium*, Complaint No. 185/2020, decision on admissibility and on immediate measures of 14 May 2020, §7).

11. The complaint is signed on behalf of the ERRC by Đorđe Jovanović, President of the ERRC, who is empowered to represent the organisation in accordance with its statutes. The Committee therefore considers that the complaint complies with Rule 23 of its Rules in this respect.

12. Finally, the Committee notes that the ERRC alleges that, even though the operations conducted in April 2020 affected a small number of families, it was conducted without consideration of the proportionality of the measures taken and leaving the affected families homeless and without alternative accommodation. The Committee considers that the complaint refers to a general problem of the application of the Charter resulting from state practice, and as such, the complaint can be regarded as collective in nature (see *Associação Sindical dos Profissionais da Polícia (ASPP/PSP) v. Portugal*, Complaint No. 179/2019, decision on admissibility of 13 May 2020). The Government has not raised any objections in this respect.

As to the request for immediate measures

13. The Committee underlines the exceptional character of immediate measures. The adoption of said measures must appear “necessary to avoid irreparable injury or harm to the persons concerned” (Rule 36§1), insofar as “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (*International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

14. Any request for immediate measures must establish a tangible situation in which the persons concerned by the complaint find themselves at risk of serious irreparable injury or harm (*Conference of European Churches (CEC) v. the Netherlands*, Complaint No. 90/2013, decision on immediate measures of 25 October 2013 §2; *Association for the Protection of all Children (APPROACH) Ltd v. Belgium*, Complaint No. 98/2013, decision on immediate measures of 2 December 2013, §2).

15. The Committee notes that in the present case, the police operations on 4 and 5 April 2020 targeted two Travellers’ sites in the municipality of Charleroi, where caravans and property were seized. The ERRC alleges that in the context of this operation, alternative accommodation, access to water, sanitation, electricity, food and medical services were not provided or offered. This is disputed by the Government, which states that the persons directly concerned by the police operations in question

were offered assistance to be relocated elsewhere, but they refused this offer. The caravans could not be returned as they had been reported stolen and the proper course of the criminal investigation had to be ensured. The Government further states that Belgian law guarantees a right to social integration, which is designed to assist persons who have no other resources. This right ensures that beneficiaries receive an income as well as assistance in finding a remunerated job, in following studies or training and are provided with access to basic services, food and medical services. The Government recalls that to benefit from this right a request has to be made by the potential beneficiary and certain conditions have to be fulfilled, mainly in terms of legal residence within the territory of Belgium and lack of any other income. Finally, the Government submits that out of the 8 persons directly affected by the police operations in question, 3 benefit from this right at present and 4 others have had access to services, including urgent medical services, before 2020.

16. The ERRC contests the Government's information. It reiterates that the seizure of caravans placed the Travellers at risk of homelessness and that the seizure was done without taking account the consequences for their life and health. The ERRC also states that it is incorrect that the affected families were offered alternative accommodation, in fact the police had merely suggested that they "stay with other gypsies". Finally, while the ERRC accepts that there is a right to social integration in Belgium, it contests that this is relevant in situations of emergency like the one in question in the present case as the filing of an application for this right implies a lengthy and bureaucratic process and it cannot therefore serve as a remedy in this type of cases, particularly under the circumstances of the COVID-19 pandemic. The ERRC further reiterates that this particular situation shows the lack of proportionality of the measures taken by the police against the Travellers community and the impact on their enjoyment of social rights under the Charter, placing them at risk of irreparable harm.

17. In the case at hand, the Committee notes that it is disputed whether the persons affected by this complaint were offered alternative accommodation or not. The Government explains that all persons affected by the police operations conducted on 4 and 5 April 2020 were offered assistance. The ERRC contests this and further considers this situation to be connected to a general problem concerning the lack of proportionality that police operations have on Traveller families in Belgium and that these particular operations implied a higher risk for the families as a result of the ongoing COVID-19 pandemic.

18. The Committee notes the limited scope of the police operations in question as well as the fragmentary information at its disposal on the situation of the persons concerned. Having regard to the specific circumstances of the present case, the Committee also notes that a considerable amount of time has passed since the operations took place. As such, the risk of serious and irreparable injury cannot be established within the meaning of Rule 36§1 (see, among others, *Unione Italiana del Lavoro U.I.L. Scuola- Sicilia v. Italy*, Complaint No. 113/2014, decision on admissibility and on immediate measures of 9 September 2015, §16). The Committee therefore considers that no immediate measures can be purposefully indicated to the Belgian Government in the instant case.

19. For these reasons, the Committee, on the basis of the report presented by Tatiana PUIU, and without prejudice to its decision on the merits of the complaint,

UNANIMOUSLY DECLARES THE COMPLAINT ADMISSIBLE AS REGARDS ARTICLES 1§2, 11§§1 AND 3, 12§1, 13§1, 16, 17 AND 30 OF THE CHARTER, AS WELL AS ARTICLE E IN CONJUNCTION WITH EACH PROVISIONS CONCERNED, AND INADMISSIBLE AS REGARDS ARTICLE 31 OF THE CHARTER

Pursuant to Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter, and to publish it on the Council of Europe's Internet site.

Invites the Government to make written submissions on the merits of the complaint by 6 August 2021.

Invites the ERRC to submit a response to the Government's submissions by a deadline which the Committee shall determine.

Invites the Parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter to notify by 6 August 2021 any observations they may wish to submit.

Pursuant to Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 6 August 2021.

UNANIMOUSLY DECIDES THAT IT IS NOT NECESSARY TO INDICATE IMMEDIATE MEASURES TO THE GOVERNMENT



Tatiana PUIU
Rapporteur



Karin LUKAS
President



Henrik KRISTENSEN
Deputy Executive Secretary