**Resolution CM/ResChS(2013)8
Complaint No. 62/2010
by the International Federation of Human Rights (FIDH) v. Belgium**

*(Adopted by the Committee of Ministers on 30 April 2013
at the 1169th meeting of the Ministers’ Deputies)*

The Committee of Ministers,[1](https://wcd.coe.int/ViewDoc.jsp?id=2061805&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383" \l "P10_248" \t "_self)

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 30 September 2010 by the International Federation of Human Rights (FIDH) against Belgium;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

***- unanimously that there is a violation of Article E read in conjunction with Article 16 because of:***

***a. the failure in the Walloon Region to recognise caravans as dwellings; and***
***b. the existence, in the Flemish and Brussels Regions, of housing quality standards relating to health, safety and living conditions that are not adapted to caravans and the sites on which they are installed.***

The questions raised are, on the one hand, whether caravans should be regarded as dwellings or not and, on the other hand, if they should be, what the consequences are in terms of applying housing quality standards (on health, safety and living conditions).

Initially classifying a property as a home or not is a question of fact, not one of law, which follows, *mutatis mutandis*, the position adopted by the European Court of Human Rights: “The Court has noted on a number of occasions that whether a property is to be classified as a “home” is a question of fact and does not depend on the lawfulness of the occupation under domestic law (see, for example, Buckley v. the United Kingdom, judgment of 25 September 1996, Reports of Judgments and Decisions 1996 IV, §54, in which the applicant had lived on her own land without planning permission for a period of some eight years)”(see McCann v. the United Kingdom, 13 May 2008, §46, judgment available in English only).

The definition given in the appendix to Recommendation [Rec(2005)4](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%282005%294&Language=lanEnglish&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383) of the Committee of Ministers to member States on improving the housing conditions of Roma and Travellers in Europe, adopted on 23 February 2005, reflects the consensus of the Council of Europe member States on the subject: “‘Housing’ in this recommendation includes different modes of accommodation, such as houses, caravans, mobile homes or halting sites”. Therefore, any place in which a family resides legally or illegally, whether a building or a movable piece of property such as a caravan, must be regarded as housing within the meaning of the Charter. By extension, and as admitted by the Council of Europe member States in adopting Recommendation [Rec(2004)14](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%282004%2914&Language=lanEnglish&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383) of the Committee of Ministers to member States on the movement and encampment of Travellers in Europe, adopted on 1 December 2004, the site on which the caravan is installed must also be considered to form part of the dwelling. Furthermore, the rights and obligations arising from the legal recognition of a dwelling must apply to all forms of housing, including alternative forms such as caravans. Therefore, the regulations on living conditions (particularly those on health and safety) must be reasonably adapted to these alternative forms of housing so as not to place unwarranted restrictions on the possibility of residing in such dwellings.

The recognition of caravans as dwellings is a regional responsibility. In the Flemish Region, caravans are recognised as dwellings (Flemish Housing Code, Article 2, 33°). Caravans were not recognised as dwellings in the Brussels Region until the very recent amendments, on 27 January 2012, to the Brussels Housing Code (Article 2, 28°). In the Walloon Region, however, caravans are not recognised as “housing”. This constitutes indirect discrimination as it means that the specific situation of Traveller families is not taken into account.

It is noted that under Article 175bis, which was added to the Brussels Housing Code on 27 January 2012, the government must establish by decree the minimum safety, health and equipment requirements to be met specifically by itinerant homes and the sites made available for such homes by the authorities. It is noted that no equivalent decree has been introduced in the Flemish Region.

Although caravans are legally recognised as dwellings in these two regions, the housing quality standards in force (on health, safety and living conditions) are still those which were drawn up before caravans were recognised as dwellings and are not therefore adapted to them. If these standards were applied strictly, a large majority of caravans might be declared uninhabitable.

Orders declaring caravans uninhabitable and ordering their demolition may be challenged in the courts and sometimes these challenges are successful, as illustrated by the decision of the *Conseil d’Etat* of 16 December 2003 (No. 126.485, Catteau and Lentz v. Commune de Hotton). The Committee reiterated the importance of such judicial remedies due to the seriousness of the measure and its irreparable nature, but it emphasised that the mere fact that they exist is not enough to compensate for deficiencies in the law and its implementation.

The caravan lifestyle of Traveller families most certainly makes their housing situation quite distinct from other people. This situation calls for differentiated treatment and tailored measures to improve their housing conditions. This principle is not applied everywhere in Belgium because caravans are not recognised as dwellings throughout the country and if housing quality standards relating to health, safety and living conditions were strictly applied, a large majority of caravans might be declared uninhabitable.

Accordingly, there is a violation of Article E read in conjunction with Article 16 because of the failure in the Walloon Region to recognise caravans as dwellings and the existence, in the Flemish and Brussels Regions, of housing quality standards relating to health, safety and living conditions that are not adapted to caravans and the sites on which they are installed.

***- unanimously that there is a violation of Article E read in conjunction with Article 16 because of the lack of sites for Travellers and the State’s inadequate efforts to rectify the problem.***

In order to satisfy Article 16, States must, among other things, promote the provision of an adequate supply of housing for families and take the needs of families into account in housing policies (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §24).

Caravans must be regarded as housing within the meaning of the Charter. Furthermore, in accordance with the equal treatment principle, Article 16 requires States Parties to ensure the protection of vulnerable families, including Traveller families (European Roma and Travellers Forum v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §143). When applied to the lifestyle of Travellers, this requirement gives rise to a positive obligation to ensure that a sufficient number of residential sites are provided for them to park their caravans (see also European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §25).

The effective enjoyment of certain fundamental rights requires a positive intervention by the State: the State must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question, namely in this case the right to adequate housing, provided that this objective is achieved within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §35).

The FIDH fails to illustrate its additional allegation concerning the fact that the sites made available for Traveller families should be equipped with basic amenities enabling them to lead a decent life and be located in an appropriate environment. An opinion therefore cannot be expressed on this aspect of the complaint.

The obligation to ensure that housing is adequate or, in other words, sanitary, applies equally to persons living in mobile homes. This means that public sites for Travellers must be properly fitted out with the basic amenities necessary for a decent life. Such sites must possess all the basic amenities, such as water, waste disposal, sanitation facilities, electricity, and must be structurally secure, not overcrowded and with secure tenure supported by law (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §46). It is also important, in order to secure social integration and, in particular, Travellers’ access to employment and education, that sites are located in an appropriate environment offering easy access to public services, where there are employment opportunities, health care services, schools and other social facilities (European Roma Rights Centre (ERRC) v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011, §41).

The government does not dispute the figures given by the FIDH regarding the inadequate number of sites.

A major disparity between the number of Traveller families in Belgium is noted (about 80 families in the Brussels Region, 900 in the Flemish Region and 1 000 to 1 500 in the Walloon Region) and the number of sites and pitches available (one residential site for six families and one transit site with 21 pitches in the Brussels Region; 29 residential sites with a total of 469 pitches and five transit sites with a total of 78 pitches in the Flemish Region; and no residential sites, one transit site and a small number of ad hocsites in the Walloon Region). Clearly therefore there are not enough pitches on public sites to enable all Traveller families to park their caravans.

The Committee also referred to a publication by the Fundamental Rights Agency of the European Union, which states that “although Belgium (…) nominally accept(s) the right of Roma and Travellers to ascribe to an itinerant/semi-itinerant way of life, the provision of appropriate accommodation is so limited in practice that their right is effectively negated” (European Union Agency for Fundamental Rights (FRA), Housing conditions of Roma and Travellers in the European Union, Comparative Report, October 2009, p. 35).

In the case in question, Belgium has not taken the necessary legal and practical measures for Traveller families to enjoy their right to housing. There are no deliberate, proactive policies at federal or regional level to encourage municipalities to set up residential sites and take steps to organise temporary accommodation for Traveller families. The government refers to policies designed to encourage local authorities to set up sites to accommodate Travellers and the efforts being made to help to finance the establishment of sites. These measures are particularly limited in scope, however, and are clearly not sufficiently conducive for the number of sites to increase satisfactorily as only a few municipalities have expressed their desire to arrange for the temporary accommodation of Travellers (for instance only seven of the Walloon Region’s 262 municipalities have done so). Only the Flemish Region has adopted a strategic action plan but it seems destined for failure as fewer than 100 of the 750 places planned for residential sites have actually been set up.

The government acknowledges that the federal, regional and community authorities’ margin for manoeuvre remains limited and depends on the local authorities’ willingness to commit themselves fully to setting up such sites within their jurisdictions. However, it is for the Belgian State, as a State Party to the Charter, to ensure that the obligations arising from the Charter are complied with by the regions and the communities.

The feature which undoubtedly makes Traveller families completely different where housing is concerned is their caravan lifestyle. This situation calls for differentiated treatment for these families and tailored measures to improve their housing conditions. This principle is not applied sufficiently in Belgium, as demonstrated by the lack of sites for Travellers and the State’s inadequate efforts to rectify the problem.

The lack of sites for Travellers and the State’s inadequate efforts to rectify the problem constitute a violation of Article E read in conjunction with Article 16.

***- unanimously that there is a violation of Article E read in conjunction with Article 16 because of the failure to take sufficient account of the specific circumstances of Traveller families when drawing up and implementing planning legislation.***

Though State authorities enjoy a wide margin of appreciation as to the implementing of measures concerning town planning, they must strike the balance between the general interest and the fundamental rights of the individuals or, in this particular case, the right to housing and its corollary of not making individuals homeless (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §54).

The Committee also referred to the judgment of the European Court of Human Rights in the case of Chapman v. the United Kingdom (judgment of 18 January 2001, §96), which provides as follows: “although the fact of belonging to a minority with a traditional lifestyle different from that of the majority does not confer an immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment, it may have an incidence on the manner in which such laws are to be implemented. As intimated in Buckley, the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in decision making in particular cases (Buckley v. the United Kingdom*,* judgment of 25 September 1996, pp. 1292-95, §§76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life (see, *mutatis mutandis*, Marckx v. Belgium, judgment of 13 June 1979, Series A no. 31, p. 15, §31; Keegan v. Ireland, judgment of 26 May 1994, Series A no. 290, p. 19, §49; and Kroon and Others v. the Netherlands, judgment of 27 October 1994, Series A no. 297-C, p. 56, §31)”.

The principles laid down by the Court in this case law also apply *mutatis mutandis* in the implementation of Charter rights. Therefore, it is reasonable for States to introduce regulations on the establishment of public caravan sites for Travellers and for it to be necessary to acquire authorisation (in this case, planning permission) to be allowed to set up public sites for Travellers or to be able to install a caravan on private property. Nonetheless, it is for the State, in its planning legislation and in its individual decisions, to show due regard for the specific circumstances of Travellers so as to enable them to live, in so far as possible, in accordance with their traditions and cultural identity while striking the right balance between this and the public interest (see, *mutatis mutandis* for the situation of Roma, Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§39-40).

Planning issues are related to responsibilities which are exercised by the regions. The efforts made by regional governments to encourage local authorities have been noted. However, these efforts are not yielding sufficient results as the number of planning permits granted by municipalities to Traveller families wishing to settle on privately owned sites is particularly low. Only two families are reported to have been granted planning permission to install their caravan permanently on private plots in the Flemish Region while no permits at all seem to have been issued in the two other regions, and the government does not dispute these facts. This situation clearly shows the shortcomings of Belgian planning law, which fails to take account of Traveller families’ specific circumstances with regard to housing.

Furthermore, the policies of limiting planning permission to one year in the Brussels Region and allowing municipalities to issue fixed-term permits in the two other regions constitute direct discrimination against Traveller families as planning permission for traditional housing lasts indefinitely. This situation is also incompatible with the principle of legally guaranteed secure tenure recognised by the Committee (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §46).

The government emphasises that it respects the principle of equality when examining applications for planning permission. It considered that there is a mistaken application of this principle, which is reflected in the requirement, when requesting planning permission in the Flemish Region, to provide a long list of very detailed documents, which means that in practice applicants must hire an architect (under Section 11 of the Flemish Government Decree on the composition of planning applications, 28 May 2004). Since this requirement is implemented in the same way in quite different situations such as applications for the construction or conversion of a building, where the requirement seems reasonable, and applications to install a caravan on a site, requiring such a range of documents is excessive.

In the case of Travellers, merely guaranteeing identical treatment as a means of protection against any discrimination is not sufficient. The application of identical treatment in different situations may amount to discrimination. Article E imposes an obligation of taking into due consideration the relevant differences and acting accordingly (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §42).

In conclusion, the feature which undoubtedly makes Traveller families completely different where housing is concerned is their caravan lifestyle. This situation calls for differentiated treatment for these families and tailored measures to improve their housing conditions. This principle is not sufficiently applied in Belgium where either the content or the implementation of planning legislation is concerned. Consequently, there is a violation of Article E read in conjunction with Article 16 because of the failure to take sufficient account of the specific circumstances of Traveller families when drawing up and implementing planning legislation.

***- unanimously that there is a violation of Article E read in conjunction with Article 16 because of the situation of Traveller families with regard to their eviction from sites on which they have settled illegally.***

It is recalled that there is a lack of public sites for Traveller families and that the fact that, when these families attempt to settle on private land, neither the relevant planning legislation nor the way it is implemented takes account of their different circumstances. As a result, these families are forced to occupy sites illegally for want of any alternative housing solutions and have no choice but to run the risk of being evicted.

When the government is talking about the eviction of Travellers, it provides little or no detailed information (particularly on judicial safeguards against eviction, remedies for unlawfully evicted persons or examples of case law) that might contradict the information provided by the FIDH.

States are required to do their utmost to foster acceptance of the different lifestyle of Travellers compared to the rest of the population. One of the consequences of this is that because Traveller families fall into an especially vulnerable category, States must protect them against the threats of expulsion to which they are exposed, which often prompt them to leave in order to protect themselves from harm to their property and their person before they are formally evicted.

Illegal occupation of a site may justify the eviction of the occupants. However, the criteria of illegal occupation must not be unduly wide (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §51). Persons or groups of persons who cannot effectively benefit from rights enshrined in national legislation, such as the right to housing, may be forced to adopt reprehensible behaviour in order to satisfy their needs. This circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §53).

The distinction made by the government between entry into caravans and entry onto the site on which they are installed is not compatible with the Charter. The site on which the caravan is installed forms part of a Traveller family’s home, on a par with the caravan itself. All entries onto a site for the purposes of an eviction must therefore be regarded as an entry into the occupant’s home and must comply with the rules concerning eviction from a home.

States must set up procedures to limit the risk of eviction (Conclusions 2011, Belgium, Article 16). To comply with the Charter, legal protection for persons threatened by eviction must be prescribed by the law and include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation for illegal evictions.

Furthermore, when evictions do take place, they must be:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the rights of the persons;
- accompanied by proposals for alternative accommodation
(European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §41, and Conclusions 2011, Turkey, Article 31§2).

In the present case, the legal protection afforded to Traveller families under threat of eviction is not sufficient and eviction procedures can take place at any time of the year, including winter, and night or day. This situation constitutes a failure to respect human dignity.

Evictions must not render the persons concerned homeless (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §57) and that equal treatment implies that the State should take measures appropriate to Traveller families’ particular circumstances to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless (see, *mutatis mutandis*, European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §21).

Belgium has failed to demonstrate that proposals of appropriate and sufficiently long-term alternative accommodation are made to Traveller families urged to leave, or evicted from, an illegally occupied site. Under such circumstances, urging Traveller families to leave sites on which they have settled – even illegally – and then, even though there are not enough legal sites, evicting them if they refuse to comply and not proposing suitable long-term alternative accommodation, adds to the failure to respect these families’ right to housing.

It is recalled that the feature which undoubtedly makes Traveller families completely different where housing is concerned is their caravan lifestyle. This situation requires these families to be treated differently. The Belgian authorities fail to take account of the fact that Traveller families run a higher risk of eviction because of the precarious nature of their tenancy owing to the fact that they have settled on an unlawful site having failed to find a place on an authorised site. In so doing, Belgium has discriminated against them.

Consequently, the situation of Traveller families with regard to eviction from sites on which they have settled illegally constitutes a violation of Article E read in conjunction with Article 16.

***- by 11 votes to 4 that there is no violation of Article E read in conjunction with Article 16 concerning the situation of Travellers with regard to domiciliation.***

As the FIDH acknowledged, the legislation on domiciliation contains provisions dealing specifically with the case of persons living in mobile dwellings, in particular Section 20§1 of the Royal Decree of 16 July 1992 on the population registers and the register of foreigners and the Administrative Simplification Act of 15 December 2005.

According to the FIDH’s arguments, these rules are systematically ignored in practice and many municipalities refuse to enter Travellers in their registers or that they register them automatically and against their will at a contact address, not their personal address. However, even taking into account the principle of the alleviation of the burden of proof, the FIDH did not substantiate its allegations sufficiently on this matter.

Consequently, the situation of Travellers with regard to domiciliation does not constitute a violation of Article E read in conjunction with Article 16.

***- unanimously that there is a violation of Article E read in conjunction with Article 30 because of the lack of a co-ordinated overall policy, in particular in housing matters, with regards to Travellers in order to prevent and combat poverty and social exclusion.***

Housing is a critical policy area in fighting poverty and social exclusion (Conclusions 2003, France, Article 30).

With a view to ensuring the effective exercise of the right to protection against social exclusion, Article 30 requires States Parties to adopt an overall and co-ordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access to fundamental social rights. There should also be monitoring mechanisms involving all stakeholders, including representatives of civil society and persons affected by exclusion (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §93).

Referring to the description made by the Committee of the National Action Plan (NAP) for social inclusion and against poverty and the National Strategy Report on Social Protection and Social Inclusion (the Strategic Report), which can be found respectively in Conclusions 2007 and 2009 on Belgium, under Article 30. It has been found that the overall approach adopted by the government for the reference period ending on 31 December 2007 was in conformity with Article 30 in that it established an analytical framework, set proper priorities and fostered appropriate action. This was a general appraisal and dealt in no way with the specific situation of Travellers in Belgium. This finding of conformity could not therefore have any bearing on the conformity of the situation that was the subject of the present complaint.

In this context, under Article 30 of the Charter, governments are required to introduce measures which take account of the multidimensional nature of poverty and exclusion and, in particular, to target specifically the most vulnerable groups (Conclusions 2007, Belgium, Article 30). The Strategic Report covers all inhabitants in a situation of poverty or exclusion. However, Travellers are not specifically targeted in this context: (see, in French: <http://www.socialsecurity.fgov.be/docs/fr/publicaties/socinc_rap/nsr-08-10_fr.pdf>).

Without ignoring the ad hoc measures concerning Travellers mentioned by the government, the scarcity of suitable means of collecting the necessary information to draw up targeted policies, the lack of such policies, the insufficient use of binding measures aimed at local and regional authorities and the fact that the representatives of Travellers are not involved in the various stages of policy making were reported. As a vulnerable group, Travellers do not sufficiently benefit from a co-ordinated overall policy to combat the poverty and social exclusion from which they suffer in Belgium although their situation requires differentiated treatment and targeted measures to improve their circumstances.

Consequently, there is a violation of Article E read in conjunction with Article 30 because of the characteristics of the violation of Article E read in conjunction with Article 16 and of the lack of a co-ordinated overall policy with regards to Travellers in order to prevent and combat the poverty.

Having regard to the information communicated by the delegation of Belgium during the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 12 March 2013,

1. takes note of the statement appended hereto made by the respondent government on the follow-up to the decision of the European Committee of Social Rights and welcomes the announced measures with a view to bringing the situation into conformity with the Charter;

2. looks forward to Belgium reporting, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, on the measures taken with a view to bringing the situation into conformity with the Charter;

3. decides not to accede to the request for the reimbursement of costs transmitted by the European Committee of Social Rights.

*Appendix to Resolution CM/ResChS(2013)8*

**Belgian Government’s observations submitted at the meeting of the GR-SOC of 12 March 2013**

On 30 September 2010, the International Federation of Human Rights (FIDH) lodged a collective complaint against Belgium on the ground of a lack of social, legal and economic protection against poverty and social exclusion for Travellers (Complaint No. 62/2010).

On 21 March 2012, the Committee submitted its report to the Committee of Ministers, finding as follows:

§ unanimously that there was a violation of Article E read in conjunction with Article 16 because of:

o the failure in the Walloon Region to recognise caravans as dwellings; and
o the existence, in the Flemish and Brussels Regions, of housing quality standards relating to health, safety and living conditions that were not adapted to caravans and sites where they had settled;

§ unanimously that there was a violation of Article E read in conjunction with Article 16 because of the lack of sites for Travellers and the State’s inadequate efforts to rectify the problem;

§ unanimously that there was a violation of Article E read in conjunction with Article 16 because of the failure to take sufficient account of the specific circumstances of Traveller families when drawing up and implementing planning legislation;

§ unanimously that there was a violation of Article E read in conjunction with Article 16 because of the situation of Traveller families with regard to their eviction from sites on which they had settled illegally;

§ unanimously that there was a violation of Article E read in conjunction with Article 30 because of the lack of a co-ordinated overall policy with regard to Travellers, particularly in housing matters, in order to prevent and combat poverty and social exclusion.

Before going into the details of the measures taken by the various federal and federated entities in response to the findings of violations by Belgium of some of the provisions of the European Social Charter, it is important to note, in respect of the alleged violation of Article E read in conjunction with Article 16 with regard to the situation of Travellers concerning domiciliation, that the Committee found that the situation of Travellers in this respect did not constitute a violation of Article E read in conjunction with Article 16 because the federal legislation contains provisions dealing specifically with the case of persons living in mobile dwellings by arranging for a reference address.

As to action taken **at federal level** in response to the Committee’s findings, on 14 September 2012, the Secretary of State for Social Integration and the Fight against Poverty presented the Belgian Cabinet with the second Federal Anti-Poverty Plan. This plan is built around six strategic objectives, drawn from the National Reform Programme, the National Social Report and the previous Federal Anti-Poverty Plan, and is designed to help meet Europe’s target for 2020 of extricating 380 000 people from poverty. One of these strategic objectives is “to combat homelessness and substandard housing”.

Two of these objectives are worth highlighting as a part of Belgium’s response to the findings of the European Committee of Social Rights in its report on Collective Complaint No. 62/2010:

o OPERATIONAL OBJECTIVE 1. Determine and highlight the responsibilities and roles of the federated entities and the federal State with regard to homeless people and substandard housing.

Action 69. Under the co-ordination of the Secretary of State for Social Integration and the Fight against Poverty, a co-operation agreement on homelessness and substandard housing will be negotiated between the different tiers of government.

The Secretary of State will do everything in his/her power to negotiate a clear and ambitious co-operation agreement. The agreement could become the cornerstone of a structural policy to combat homelessness and hence a means of putting in practice one of the key recommendations of the Jury of the European Consensus Conference on Homelessness, namely implementing a national strategy to combat homelessness.

o OPERATIONAL OBJECTIVE 3. Clarify the administrative practices with regard to the granting of a reference address for people without a home and incapable of acquiring one by their own means.

Action 75. The Minister of the Interior will promote the development of the HOMERe pilot project and will ask the project co-ordinators for a mid-term progress report and a final report at the end of the pilot period containing recommendations on the one hand on the good practices developed by the municipalities concerned and identifying any factors causing problems with the interpretation of the regulations on the other hand.

As part of the project, “experience experts”, employed by the Federal Public Service of Home Affairs, will highlight the importance of having an address or, where necessary, a reference address among people in situations of social exclusion. The HOMERe project takes the form of an awareness-raising campaign, whose aim is to help people affected by homelessness to meet the administrative requirements to retain entitlement to welfare benefits and allowances. Reference addresses are a form of social assistance enabling people without homes and without the resources to acquire one to be entered on the population register at the address of an individual or a legal person (frequently a Public Social Assistance Centre – CPAS). As a result, the person in question can receive any administrative letters sent out by the public services.

A Government Agreement of 1 December 2011 also provides as follows:

“… The government shall negotiate a co-operation agreement on the homeless with the Communities and Regions in order to determine the roles and responsibilities of each tier of government” (page 154).

With regard to the measures taken by the **Brussels-Capital Region** in response to the existence of housing quality standards relating to health, safety and living conditions that are not adapted to caravans and the sites on which they are installed, an Order amending the Brussels Housing Code with a view to recognising Traveller dwellings was enacted on 1 March 2012. The Government of the Brussels-Capital Region will determine the specific rules for this kind of dwelling by decree. It will also set the minimum standards to be met by the sites made available to Travellers. The decree is currently being prepared by the office of the Secretary of State responsible for housing. It will identify in particular what safety standards will apply to mobile homes.

With regard to the Committee’s findings of violations of Article E read in conjunction with Article 16 because of the lack of sites for Travellers and the State’s inadequate efforts to rectify the problem and because of the failure to take sufficient account of the specific circumstances of Traveller families when drawing up and implementing planning legislation, it should be noted that the Brussels-Capital Region authorises the installation of sites for Travellers in all the areas set out in the regional land-use plan (PRAS). In Judgment No. 26.986 of October 1986, the *Conseil d’Etat* held that this type of installation was a public interest community amenity, which was admissible in all PRAS areas. The future Regional Sustainable Development Plan of the Brussels-Capital Region will take account of the specific situation of Travellers in the spheres of housing and social welfare.

As to the measures taken by the **Walloon Region** to address its failure to recognise caravans as dwellings, amendments were made to the Walloon Housing and Sustainable Dwellings Code on 9 February 2012. These amendments state (Article 22bis) that “The Region shall grant assistance to households in a vulnerable situation who set up or improve a home which is not a dwelling in an area as defined in Article 44 §2. (…)”. Article 44 §2 refers to several types of area including “sites designed for mobile homes occupied by Travellers”. This provision reflects the Walloon Government’s desire to cater, in future, for alternative or innovative lifestyles, particularly for the benefit of permanent inhabitants of recreational sites. Such assistance can only be granted in the areas defined in Article 44 and can only relate to homes meeting minimum safety standards (such as those relating to electricity) and rules governing living conditions (natural light, surface areas, etc.) although not necessarily meeting all the minimum health standards applicable to other dwellings.

In response to the finding that there are not enough sites for Travellers and that there is no overall co-ordinated policy, the Walloon Region states, as it did already in its submissions on the merits of the complaint, that it has set up several bodies to deal with the problem of Travellers and find a solution geared to improving the cross-sectoral approach to Traveller reception policy (a permanent interministerial working group on the reception of Travellers chaired by the social action office and comprising all the Walloon ministerial private offices and a non-profit-making association, the Mediation Centre for Travellers in Wallonia (CMGV), which provides a link between Travellers, their neighbours and local authorities and makes everyone aware of the rules and procedures).

The pilot project launched in 2010 and described in the government’s submissions (p. 11) is subject to a regular review which provides a clear picture of the action taken in the field and the difficulties encountered by the project operators. As the relevant agreements expired on 31 December 2012, the evaluation of the projects run by these seven municipalities is under way and will be completed by the end of February 2013. On the basis of this evaluation, the Walloon Government will reactivate the project in March 2013, widening the current scope of the experiment while taking account of the findings of the evaluation and possibly extending the offer of partnership to other willing municipalities.

As part of the pilot project, three temporary sites for Travellers, in Namur, Mons and Sambreville, are now in the process of being set up, in consultation with the CMGV and Travellers’ representatives. In principle, these sites, which are already available but not yet fully equipped, will be fully operational in 2013 or 2014. The development of these new projects has been made structurally possible via the funding system co-ordinated by the Directorate Generals for Housing and for Social Welfare of the Walloon Public Service. In addition to these public sites, other municipalities such as Hotton and Ottignies-Louvain-la-Neuve rent private sites and make them available to Travellers.

Furthermore, to cope with the occasional arrival of large groups in the Walloon Region, on pilgrimages for example, the Walloon Ministries of Social Welfare and of Housing have asked the Mediation Centre for Travellers and Roma to draw up a separate set of specifications for large-scale transit areas.

The two ministries have also sent a joint letter to various public interest bodies active in the Walloon Region in the housing field, asking them to draw up a list of sites available for large gatherings of Travellers. Co-operation between the Mediation Centre and local housing associations, particularly the Walloon Housing Association, has made it possible to pinpoint 23 sites in 19 different locations meeting the requirements to host large groups which make such a request. Two of these sites were used in 2012 and five further sites will be available in 2013.

At the beginning of 2013, consultation with the various stakeholders will be reactivated in order to arrive at a methodology for drawing up an operational list of large-scale transit areas in Wallonia to be used for large gatherings.

Lastly, the practical guide proposing a series of measures designed to facilitate and harmonise relations between municipalities, Travellers and the settled community will be re-edited in 2013 to bring it into line with the changes in the policy on the reception of Travellers in the last three years.

The approach that was adopted in Wallonia from the outset in 2004 was to place the emphasis on solutions based on consultation, working from the bottom up and involving all the stakeholders including municipal authorities, the Mediation Centre, representatives of Traveller families, associations, neighbours and other public authorities.

Instead of pursuing a policy which would be imposed on municipalities without meeting their expectations or the special needs of Travellers, the Walloon Government’s desire is to devise schemes which will function as smoothly as possible and will stimulate the interest and support of other municipalities, Travellers and the settled community.

It is true that this process of devising joint solutions with all the stakeholders takes time, but the results are much more satisfactory and long-lasting and have a knock-on effect which gradually prompts people, more than any rhetoric, to live together more harmoniously.

In the **Flemish Region,** the findings of violations by the Committee in its report have given rise to the adoption and implementation of a strategic plan for Travellers. Numerous co-ordinated measures have been taken, not only in the housing sphere but also in the fields of education, the fight against poverty and integration, and they are continuing and will continue in future.

The following activities, listed in the strategic plan, have been and are currently being implemented by the Flemish Government’s Department of Spatial Planning, Housing and Immovable Heritage (the RWO Department):

o Action 1: in all the areas of competence of the Flemish Region which play an essential role with regard to the integration of Travellers into the life of the community, contact points will be set up to serve the various stakeholders in the Flemish Region, sharing their strategic expertise in this particular field and helping to deal with specific problems;
o Action 3: three times a year, the Flemish Caravan Committee will present the Flemish Government with a progress report on site provision policy based on contributions from various fields of competence;
o Action 11: the town and spatial planning requirements for the development of sites for Travellers or the installation of caravans will be clarified;
o Action 12: the Flemish Caravan Committee will have full oversight over the planning files for Traveller sites. The RWO Department will monitor these cases and take them into account, wherever possible, in its spatial planning policies;
o Action 13: the town planning and integration unit, the subsidised infrastructure team, the RWO Department and the migration and integration network, *Kruispunt M-I*, will systematically update the digital Traveller site monitoring system;
o Action 14: in consultation with the Minister for Spatial Planning, the Flemish Minister for Civic Integration will examine the possibilities in terms of planning, recognition and subsidies for private sites for Travellers;
o Action 16: the Flemish Minister for Housing will introduce appropriate regulations on housing standards for Travellers’ mobile homes and thus promote a policy on housing quality equivalent to that applied to fixed housing;
o Action 23: the RWO Department will assess and adjust the planning permission guidelines for Traveller sites and the installation of mobile homes or caravans on the basis of the experience of municipal sites for Travellers, private sites and new concepts which cater for Travellers’ specific housing needs;
o Action 24: the RWO Department will consider its approach to new or alternative forms of housing (such as caravans) in the context of its planning permission policy. In this connection, spatial criteria (such as the “second home” criterion) have been developed to redefine the context in which these new or alternative forms of housing are acceptable from a town planning viewpoint;
o Action 25: the department will study how planning policy has worked to date and in what areas improvements should be made. This could be arranged at regional, provincial and municipal level and could form part of the preparation of a strategic development plan, which would be the successor to the current Flemish Structural Plan for Development;
o Action 26: the department will investigate to what extent it could simplify the planning permission application procedure (for example through a simplified table, in which both the person granting permission and the applicant can clearly see what documents are required for the application);
o Action 27: the department will ensure that the provinces pay systematic attention to the use of residential and transit sites by Travellers.

Action 16 of the strategic plan, combined with Actions 23, 24, 25, 26 and 27, is a response to the finding of a violation of Article E read in conjunction with Article 16 because of the existence in the Flemish Region of housing quality standards relating to health, safety and living conditions that are not adapted to caravans and the sites on which they are installed.

Actions 11, 12, 13 and 14 (p. 33) in particular are a response to the finding of a violation of Article E read in conjunction with Article 16 because of the lack of sites for Travellers and the State's inadequate efforts to rectify the problem.

Lastly, Actions 11, 12, 23, 24, 25, 26 and 27 are a response to the finding of a violation of Article E read in conjunction with Article 16 because of the failure to take sufficient account of the specific circumstances of Traveller families when drawing up and implementing planning legislation.

**Conclusion**

The details of these various measures taken by the federal and federated entities shows clearly that they have taken and are taking practical steps – and plan to continue doing so in future – to deal with the violations identified by the Committee in its report with regard to the reception of Travellers on their territory and the establishment of a co-ordinated overall policy with regard to Travellers, particularly in housing matters, in order to prevent and combat poverty and social exclusion. In this way, Belgium is attempting to bring its situation into conformity with its obligations under the European Social Charter in this respect.

\* \* \*

**Appendices**

Federal measures:

The Federal Anti-Poverty Plan can be consulted (in French) via the following link: <http://www.mi-is.be/be-fr/doc/politique-de-lutte-contre-la-pauvrete/second-plan-federal-de-lutte-contre-la-pauvrete>

The Government Agreement of 1 December 2011 can be consulted here (in French):
<http://premier.be/sites/all/themes/custom/tcustom/Files/Accord_de_Gouvernement_1er_decembre_2011.pdf>

Measures in the Flemish Region:

The Strategic Plan for Travellers can be consulted here (in Dutch):
<http://www.integratiebeleid.be/integratiebeleid/offici%C3%ABle-documenten>

[1](https://wcd.coe.int/ViewDoc.jsp?id=2061805&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383" \l "P10_249" \t "_self) In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.