EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

DECISION ON THE MERITS

21 March 2012

International Federation of Human Rights (FIDH)
v. Belgium

Complaint No. 62/2010

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 256th session attended by:

Messrs	Luis JIMENA QUESADA, President
	Colm O'CINNEIDE, Vice-President
Ms	Monika SCHLACHTER, Vice-President
Mr	Jean-Michel BELORGEY, General Rapporteur
Ms	Csilla KOLLONAY LEHOCZKY
Messrs	Andrzej SWIATKOWSKI
	Lauri LEPPIK
Ms	Birgitta NYSTRÖM
Messrs	Rüçhan IŞIK
	Petros STANGOS
	Alexandru ATHANASIU
Mss	Jarna PETMAN
	Elena MACHULSKAYA
Mr	Giuseppe PALMISANO
Ms	Karin LUKAS

Assisted by Mr Régis BRILLAT, Executive Secretary,

Having deliberated on 21 March 2012,

On the basis of the report presented by Mr Alexandru ATHANASIU,

Delivers the following decision adopted on this date:

PROCEDURE

1. The complaint presented by the International Federation of Human Rights ("the FIDH") was registered on 30 February 2010. It alleges that the situation in Belgium is in breach of Articles 16 and 30 of the European Social Charter ("the Charter"), as well as combined with Article E.

2. The Committee declared the complaint admissible on 1 December 2010.

3. In accordance with Article 7 §§ 1 and 2 of the Protocol providing for a system of collective complaints ("the Protocol") and with the Committee's decision on the admissibility of the complaint, on 7 December 2010 the Executive Secretary communicated the text of the admissibility decision to the Belgium Government ("the Government") and to the FIDH. On the same day, he also sent the decision to the States Parties to the Protocol and the States that have made a declaration in accordance with Article D§2, and to the organisations referred to in Article 27§2 of the 1961 Charter.

4. In accordance with Rule 31§1 of its Rules, the Committee set 31 January 2011 as the deadline for the Government to present its submissions on the merits. At the Government's request, the Committee extended this deadline twice, first until 31 March and then until 31 May 2011. The Government's submissions on the merits were registered on 31 May 2011.

5. The deadline set for the FIDH's response on the merits of the complaint was 30 September 2011. At the FIDH's request, the Committee extended this deadline until 30 November 2011. The FIDH's response was registered on 30 November 2011 and sent to the Government on 2 December 2011.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

6. The FIDH asks the Committee to find that Belgium is not applying satisfactorily Article 16 taken alone or in combination with Article E, because of:

- the inadequate number of public sites accessible to Traveller families, whether in the form of permanent or temporary residential sites or *ad hoc* places;
- the failure of urban planning legislation to take account of travellers' specific needs or circumstances, which, in practice, makes it difficult to set up public caravan sites for Travellers, disproportionately restricts their ability to obtain planning permission to live in their caravans on private property and excessively restricts temporary parking possibilities;

- the unreasonable use by the authorities of eviction procedures against Travellers who are unlawfully settled on land because they have been unable to find a place on an authorised site;
- the failure to recognise caravans as dwellings, which prevents Travellers from enforcing their right to housing, as provided for in the Belgian Constitution, and the failure to adapt the rules governing health, safety and living conditions to the particular features of mobile homes;
- the obstacles to domiciliation, on which access to several important rights and services, in particular social allowances, depends.

7. The FIDH asks in addition the Committee to find that Belgium also fails to apply satisfactorily Article 30 of the Charter, taken alone or in combination with Article E because the authorities' failure to guarantee Travellers' families adequate social, legal and economic protection forces them to adopt a highly vulnerable lifestyle which deprives them of an effective right to protection against poverty and social exclusion.

B – The Government

8. The Government asks the Committee to find that the situation of Travellers in Belgium does not constitute a violation of the Charter, as the Belgian authorities have allocated resources and taken practical measures to guarantee effectively Articles 16 and 30 read alone or Article E read in conjunction with these two articles.

RELEVANT DOMESTIC LAW AND INTERNATIONAL STANDARDS

A – Domestic law

(a) Federal legislation

9. The division of powers between the federal State and the various federated entities:

10. Part I of the Belgian Constitution of 17 February 1994, entitled “On federal Belgium, its components and its territory”, provides as follows:

> *“Article 1 – Belgium is a federal State composed of communities and regions.*
> *Article 2 – Belgium comprises three communities: the French Community, the Flemish Community and the German-speaking Community.*
> *Article 3 – Belgium comprises three regions: the Walloon Region, the Flemish Region and the Brussels Region.”*

11. Decision-making power is shared between the federal State, the three communities and the three regions.

12. Under Article 6 of the Special Institutional Reform Act of 8 August 1980, regions are responsible for urban and regional planning and for land use policy. This section also assigns them responsibility for housing and the enforcement of regulations on dwellings which pose a threat to public hygiene and health:

> *"Article 6§1. The areas covered by Article 107 quater of the Constitution are:*
> *I. In respect of spatial planning:*
> *1° Urban and regional planning; (…)*
> *6° Land use policy;*
> *(…)*
> *IV. In respect of housing:*
> *Housing and the enforcement of regulations on dwellings which pose a threat to public hygiene and health. (…)"*

13. The right to housing as laid down in the Belgian Constitution:

> *"Article 23*
>
> *Everyone has the right to lead a life in keeping with human dignity.*
>
> *To this end, the laws, decrees or rules referred to in Article 134 shall guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them.*
>
> *These rights include,* inter alia*:*
> *(…)*
> *2° the right to social security, to health care and to social, medical and legal assistance;*
> *3° the right to decent housing;*
> *(…)*
> *5° the right to cultural and social fulfilment (…)."*

14. Royal Decree of 1 December 1975 establishing the general regulations on road traffic policing and use of the public highway:

> *"Article 27-5 – Restrictions on long-term parking*
>
> *27.5.1. It is prohibited to park unroadworthy motor vehicles and trailers on the public highway for more than 24 consecutive hours."*

15. Civil Code:

> *"Book III, Part VIII, Chapter II, Section 2. Special rules on leases relating to a tenant's main residence (Act of 20 February 1991):*
>
> *Article 1. Field of application.*
> *§ 1. This section shall apply to leases relating to dwellings which tenants, with their lessor's express or tacit agreement, use as their main residence on taking possession thereof. (A dwelling is a movable or immovable piece of property, or a part thereof, intended to constitute the tenant's main residence). (…)*
>
> *Article 2. State of the rented property.*
> *§1. Rented property must comply with basic requirements with regard to health, safety and living conditions. (…) The crown shall lay down the minimum conditions that rented accommodation must meet to satisfy the requirements of paragraph 1."*

16. Act of 19 July 1991 on population registers, identity cards, aliens' identity cards and residence documents, amending the Act of 8 August 1983 on the national register of private individuals:

> *"Section 1§1(1) Each municipality shall keep:*
> *1° population registers, in which Belgians and foreign nationals admitted or authorised to stay in the Kingdom for more than three months or authorised to settle there, or foreign nationals registered for another reason in accordance with the Act of 15 December 1980 on the entry, residence, settlement and removal of aliens, with the exception of foreign nationals included on the pending register provided for in article 1§1(2), shall be registered in the place where they have their main residence, whether they are present or temporarily absent;"*

17. Royal Decree of 16 July 1992 on the population registers and the register of foreigners:

> *"Chapter III – Determining a person's main residence*
>
> *Article 16§1. A person's main residence shall be determined according to actual circumstances, in other words confirmation that the person genuinely resides in a municipality for most of the year.*
> *This confirmation shall be based on various factors including the place to which persons return after work, the place in which their children go to school, their workplace, their energy and telephone bills and the place in which their spouses or other members of their household usually live.*
>
> *§ 2. No application for registration in respect of a main residence may be rejected on grounds of safety, hygiene or urban or regional planning rules.*
> *However, any family that applies for registration at an address where permanent occupation is not authorised for reasons of safety, hygiene or urban or regional planning rules, shall be registered only temporarily, for a period of three years at most.*
> *If in the three months following the application, the municipal authority concerned has not started the administrative or judicial proceedings prescribed or entailed by law to end the unlawful situation thus created, the family's entry in the registers shall become permanent. (…)*
>
> *Article 20§1 – Persons occupying mobile homes shall be recorded in the population registers of:*
> *- the municipality where they reside for at least six months per year at a fixed address; or*
> *- the municipality where they have a reference address."*
>
> *"Chapter IV – Disputes over residence*
>
> *Article 21 – The Minister of the Interior shall nominate officials authorised to conduct on-the-spot inquiries in the event of difficulties or disagreements concerning determination of the main residence or the measures to remove persons from the register or to register persons ex officio described in Articles 8 and 9.*
> *The local authorities shall assist these officials in carrying out their duties. (…)"*

18. Royal Decree of 8 July 1997, establishing minimum conditions for a piece of property rented out as a main residence to comply with the basic requirements with regard to health, safety and living conditions:

> *"Article 1 – For the purposes of this decree, the following definitions shall apply:*
> *- dwelling: a building or part of a building rented and used as a main residence by the tenant;"*

19. Programme Act of 24 December 2002:

"Chapter 2 – Extended application of the special rules on leases relating to a tenant's main residence

Section 377§1 – The following addition shall be made to Article 1, §1(1) of Book III, Part VIII, Chapter 2, Section 2 of the Civil Code, added by the Act of 20 February 1991:
'A dwelling is a movable or immovable piece of property, or a part thereof, intended to constitute the tenant's main residence' …"

20. Administrative Simplification Act of 15 December 2005:

"Section 14 – Section 1, §2(2) and (3) of the Population Registers and Identity Cards Act of 19 July 1991, amending the Act of 8 August 1983 establishing a national register of private individuals, added by the Act of 4 January 1997, shall be replaced by the following provision: 'A reference address shall mean the address either of an individual entered on the register of the place where he or she has his/her main residence or of a legal person, and where, with the agreement of this individual or legal person, an individual with no fixed residence is registered.

Individuals or legal persons who agree to the registration of another person under a reference address undertake to forward to those persons any correspondence or administrative documents destined for them. Such individuals or legal persons may not be pursuing any financial gain. The only bodies authorised to provide reference addresses in their capacity as legal persons are non-profit associations, foundations or social enterprises that have had legal personality for at least five years and whose social objectives include the promotion and defence of the interests of one or more nomadic population groups.' "

21. Decision No. 126.485 of the *Conseil d'Etat* of 16 December 2003 in Catteau and Lentz v. Commune de Hotton (dispute over an order declaring a residential caravan uninhabitable and ordering its demolition):

"An order which declares a dwelling uninhabitable and orders its demolition is clearly a serious measure for the applicants. When such a measure is being considered, there is a duty, in accordance with the principle of audi alteram partem, *firstly, to present those concerned with all the information on which the authority expects to base its decision and, secondly, to offer them an opportunity to defend their point of view; (…)*

The impugned order notes, among other things, that the dwelling is also in complete breach of Articles 84 et seq. of the Walloon Regional and Urban Planning Code and that there is no means of rectifying the situation. This ground, which reiterates the only letter sent before the decision was taken, sent by the municipality on 10 April 2002 and based on the regional and urban planning regulations, cannot be relied on to justify a decision that a dwelling is uninhabitable as such decisions must be based on reasons of public health. The only admissible legal ground therefore is one relating to the unsanitary state of the dwelling. It was nonetheless for the mayor to rely on specific, tangible and established facts demonstrating that public health is endangered by the state of the dwelling. However, the report on which the order was based is cursory, imprecise and incomplete and was not in any way brought to the attention of the applicants, who knew nothing of the findings and the information available to the mayor. (…)".

(b) Law of the federated entities

Flemish Region

22. Flemish Housing Code (Decree of 15 July 1997, as amended in particular in 2004, in respect of Article 2§1, 33°):

"Part I – General provisions

Article 2§1 – For the purposes of applying the Flemish Housing Code and its implementing decrees, the following definitions shall apply: (…)
33° Caravan: dwelling, characterised by its flexibility and mobility, designed for permanent, non-recreational occupation; (…)

Part II – Specific housing policy aims

Chapter I – Right to housing

Article 3 – Everyone has the right to decent housing. For this purpose, steps should be taken to encourage the provision at a reasonable price of a suitable dwelling of a good standard, in decent surroundings and offering security of housing.

Chapter II – Specific housing policy aims

Article 4§1 – Within the limits of the funds allocated for this purpose in the Flemish Region's budget, Flemish housing policy shall establish the necessary conditions to secure a right to decent housing by: (…)
4° devising measures to: (…)
(c) improve the housing conditions of inhabitants accommodated in a caravan. (…)

Part III – Quality control

Chapter I – Safety, health and quality standards for dwellings

Article 5§1 – In the following spheres, each dwelling must satisfy the basic safety, health and quality standards laid down by the Flemish government:
1° the surface area of habitable parts, bearing in mind the type of dwelling and the function of the part of the house in question;
2° sanitary facilities, particularly the presence of a properly working toilet inside the house or an annex thereof and a bath- or shower-room with a running water supply and a connection to a disposal system which does not give rise to unpleasant odours in the house;
3° heating possibilities, particularly sufficiently safe heating equipment to heat the parts of the dwelling designed to be lived in to a normal temperature and to cool them, if necessary, at an affordable energy cost or the possibility to connect them to a network in complete safety, and the thermal insulation and protection of the dwelling from draughts;
4° ventilation, airing and lighting facilities, the lighting possibilities of a part of the dwelling being determined according to the function and position of the part concerned, and the ventilation and airing requirements according to its function, its position and the presence or not of cooking, heating or water heating installations producing combustion gases;
5° safe electrical installations in a sufficient quantity, intended to be used for lighting the dwelling and for the safe use of electrical apparatus;
6° gas installations offering sufficient safeguards both for gas appliances and for their fitting and connection to the gas supply;
7° the stability and physical condition of constructions as regards their foundations, roofing, internal and external walls, floors and openings;
8° accessibility;
9° the minimum energy efficiency ratings a dwelling must attain.
The dwelling must meet all fire safety standards including the special, supplementary standards set by the Flemish government.

The dimensions of the dwelling must be in keeping at least with the number of occupants. The Flemish government shall set standards concerning the minimum surface area of a dwelling according to the composition of the household.

Article 5§2 – The Flemish government shall establish the criteria and the procedure for determining whether a dwelling meets these conditions and means of remedying certain defects through renovation, improvement or conversion work.

Article 5§3 – When establishing the criteria and standards referred to in paragraph 1 above, the Flemish government may take into account specific types of dwelling and the situation of specific groups of occupants."

23. Flemish Regional Planning Code of 15 May 2009:

"Article 4.2.1 No-one may, without prior urban planning permission:
(…)
5° use, develop or, in general, equip a site for:
(…)
(c) the installation of one or more mobile facilities that can be used as dwellings, particularly trailers, caravans, disused vehicles or tents, except in the case of camping on land for which a licence has been obtained or on land set aside for outdoor recreational activities and hence exempt from licensing requirements in accordance with the Decree of 10 July 2008 on tourist accommodation;
(…)

Article 4.6.1. Unless specifically stated otherwise, planning permits shall be valid indefinitely."

24. Flemish Government Decree on the composition of planning applications, 28 May 2004:

"CHAPTER IV. - Planning application for site development work.

Article 10. This chapter shall apply: (…)
4° to the routine use of a site or its development with a view: (…)
(c) to installing one or more mobile facilities that can be used as dwellings, such as trailers, caravans, disused vehicles and tents;"

Walloon Region

25. Walloon Regional, Land Use, Heritage and Energy Planning Code (CWATUPE):

"Article 84 §1. Nobody may, without prior express written permission (from the communal college, or the delegated official of the Government: - Decree of 30 April 2009, art. 39, 1°)
13° use a site regularly for:
(…)
b) the installation of one or more mobile facilities, such as trailers, caravans, disused vehicles and tents, with the exception of mobile facilities authorized by a camping and caravanning permission
(…)
Article 87. The duration of the planning permission is limited:
1° (in the cases specified in Articles 28, § 2, (2), 32, (2) and (4), 35, (3) [read (5)], 84, § 1, 2° and 13° and 110a - Decree of 18 July 2002, Art. 36ter)"

26. Walloon Housing Code (Walloon Parliament Decree of 29 October 1998):

"Article 1
The following definitions shall apply: (…)
3° dwelling: a building or part of a building structurally designed for the accommodation of one or more households."

Brussels Region

27. Brussels Housing Code (adopted by the Decree of the Parliament of Brussels Region of 17 July 2003, as amended by the Decree of 27 January 2012):

PART I – General provisions
Article 2

For the purposes of this decree, the following definitions shall apply: (…)
28° Itinerant home: Dwelling on wheels, characterised by its mobility, housing an itinerant or semi-itinerant household permanently and not for recreational purposes.

Part VIII bis – Itinerant homes

Article 175bis
§ 1. – The right to decent housing referred to in Article 3 above shall not exclude itinerant homes.
In order to render the right to decent housing effective for this type of dwelling, the Government shall establish by decree the minimum safety, health and equipment requirements under Article 4 to be met specifically by itinerant homes and the sites made available for such homes by the authorities. It shall also set the criteria for the territorial attachment of itinerant dwelling units to the Region."

28. Brussels Regional Planning Code (adopted by the Decree of the Government of Brussels Region of 9 April 2004):

"CHAPTER I. - Planning permission.

Section I. - Activities and work subject to planning permission.

Article 98. § 1. Nobody may, without prior express written permission from the mayor and deputy mayors:
(…)
10° use a site regularly for:
(…)
(c) the installation of one or more mobile facilities that can be used as dwellings, such as trailers, caravans, disused vehicles and tents. However, no permit is required for camping using mobile facilities on camp sites, as defined in the legislation on camping;
(…)
The Government shall decide on the arrangements for the application of this paragraph.

Section IV. - Fixed-term planning permission

Article 102. The duration of planning permission shall be restricted for activities or work whose nature or purpose so requires. The Government shall draw up a list of activities and work for which the length of validity of permits shall be restricted.
Planning permission shall be valid from the date on which the issuing authority notifies the applicant either by issuing the planning permit itself or by issuing a certificate stating that permission has been granted.
Planning permission shall not be considered to have expired if the work for which it was granted has not begun.

Interruptions of more than one year in the authorised activities or work shall not cause the planning permit to expire.
Permits may not be extended.
On expiry of the time-limit, permit holders shall be required to restore the site to its former state.
The Government shall decide on the arrangements for the application of this article."

29. Decree of the Government of Brussels Region of 29 January 2004 on fixed-term planning permission:

"Article 1. The length of validity of permits for the activities and work listed in the appended table shall be limited, provided that they are not exempt from planning permission because of their small scale.
The issuing authority shall set the length of the validity of planning permission, while not exceeding the length indicated in the appended table. (…)

Article 3. When planning permission has expired, the mayor and deputy mayors or, should they abstain, a delegated public official shall confirm that the site has been restored to its former condition.

Article 4. A further fixed-term planning permit may be issued for activities and work for which fixed-term planning permission has already been obtained.

APPENDIX

Activities and work subject to fixed-term planning permission	*Maximum length of validity*
(…) *2. Storage and parking of vehicles* *Regular use of a vacant site for:* *(…)* *(c) the installation of one or more mobile facilities that can be used as dwellings, such as trailers, caravans, disused vehicles and tents, with the exception of the facilities referred to in point 7;* *(…)* *7. Temporary installations of a cyclical or seasonal nature* *The installation of temporary facilities of a cyclical or seasonal nature (such as fairground facilities, Travellers' meeting places, inflatable tennis facilities or flooring for cafés' roadside terraces).*	*1 year* *6 years"*

B – International standards

30. International law Commission, Draft articles on responsibility of States for internationally wrongful acts

> *"Chapter II. Attribution of conduct to a State*
>
> *Article 4. Conduct of organs of a State*
>
> *1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.*
>
> *2. An organ includes any person or entity which has that status in accordance with the internal law of the State.*
>
> *Article 5. Conduct of persons or entities exercising elements of governmental authority*
>
> *The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance."*

31. European Court of Human Rights, *Chapman v. the United Kingdom*, judgment of 18 January 2001, on the special attention to be paid to minorities' needs:

> *"Nonetheless, 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 reaching decisions 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)." (§96)*

32. European Court of Human Rights, *McCann v. the United Kingdom*, judgment of 13 May 2008, on the definition of a "home" and access to judicial remedies in the event of eviction from one's home:

> *"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)." (§ 46)*
>
> *"The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end." (§ 50)*

33. Recommendation Rec(2004)14 of the Committee of Ministers to member states on the movement and encampment of Travellers in Europe, adopted on 1 December 2004:

"(…) Considering that those among the Roma/Gypsy and Traveller communities who wish to continue to lead a traditional nomadic or semi-nomadic lifestyle should have the opportunity, in law and in practice, to do so, by virtue of the freedom of movement and settlement guaranteed to all citizens of member states and the right to preserve and develop specific cultural identities;
(…)
Recommends that, when devising, implementing and monitoring policies concerning the movement and encampment of Travellers, the governments of member states:
– take as their basis the principles appended to this Recommendation;
(…)
Appendix to Recommendation Rec(2004)14
(…)
III. General principles

Member states should:
(…)
9. ensure equal access for Travellers to social, cultural and economic services;
(…)
12. give Travellers' mobile homes or, where relevant, the place of residence to which the Traveller is linked, the same substantial rights as those attached to a fixed abode, particularly in legal and social matters;
(…)
IV. Application and implementation

Member states should:
(…)
C. Facilities for Travellers

20. recognise the right of encampment for Travellers;

21. provide areas where Travellers can stop over and stay and set up camp for longer periods than usual in consultation with Travellers and taking their needs into account;
(…)
23. ensure that these areas:
(…)
ii. are sufficient in number, taking into account the demographic trends among the families concerned, and their location in zones suited to the frequency of use of Travellers;
(…)
D. Specific provision for the exercise of Travellers' right of encampment

28. provide for the right of encampment in their domestic legal system in instruments that are legally binding, treating it in the same way as the right to decent housing;

29. in line with the autonomy of territorial units, use a control and incentive mechanism so that local authorities fulfil their obligation to provide encampment areas; if necessary, give a higher authority the power to take over when local authorities do not fulfil this obligation;

30. Member states should establish a legal framework that conforms with international human rights standards, to ensure effective protection against unlawful forced and collective evictions and to control strictly the circumstances in which legal evictions may be carried out. In the case of lawful evictions, Roma must be provided with appropriate alternative accommodation if needed, except in cases of force majeure. Legislation should also strictly define the procedures for legal eviction, and such legislation should comply with international human rights standards and principles, including those articulated in General Comment No. 7 on forced evictions of the United Nations Committee on Economic, Social and Cultural rights. Such measures shall include consultation with the community or individual concerned,

reasonable notice, provision of information, a guarantee that the eviction will be carried out in a reasonable manner, effective legal remedies and free or low cost legal assistance for destitute victims. The alternative housing should not result in further segregation;
(…)
34. define as part of a Traveller's caravan, and therefore of his or her place of residence, an area bound by a perimeter of a few metres around the caravan."

34. Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe, adopted on 23 February 2005:

"(…) Recognising that there is an urgent need to develop new strategies to improve the living conditions of the Roma/Gypsy and Traveller communities all over Europe in order to ensure that they have equality of opportunities in areas such as civic and political participation, as well as developmental sectors, such as housing, education, employment and health; (…)

Recommends that, in designing, implementing and monitoring their housing policies, the governments of member states:
– *be guided by the principles set out in the Appendix to this Recommendation;*
– *bring this Recommendation to the attention of the relevant public bodies in their respective countries through the appropriate national channels.*

<u>Appendix to Recommendation Rec(2005)4</u>

I. Definitions

The term "Roma" used in the present text refers to Roma/Gypsies and Traveller communities and must be interpreted as covering the wide diversity of groups concerned.

"Housing" in this Recommendation includes different modes of accommodation, such as houses, caravans, mobile homes or halting sites. (…)

II. General principles

Integrated housing policies
1. Member states should ensure that, within the general framework of housing policies, integrated and appropriate housing policies targeting Roma are developed. (…)

Freedom of choice of lifestyle
3. Member states should affirm the right of people to pursue sedentary or nomadic lifestyles, according to their own free choice. All conditions necessary to pursue these lifestyles should be made available to them by the national, regional and local authorities in accordance with the resources available and to the rights of others and within the legal framework relating to building, planning and access to private land. (…)

Role of regional and local authorities
9. Member states should encourage local authorities to meet their obligations with regard to Roma – in the same way as for any persons with the same legal status – in the area of housing. They should encourage regional and local authorities to ensure that area-based and local development strategies contain concrete and clearly specific sets of objectives targeting Roma communities and their housing needs. (…)

IV. Preventing and combating discrimination
(…)

Monitoring and review of existing housing legislation
19. Member states, through their relevant authorities, should undertake a systematic review of their housing legislation, policies and practices and remove all provisions or administrative practices that result in direct or indirect discrimination against Roma, regardless

of whether this results from action or inaction on the part of state or non-state actors. They should establish adequate mechanisms (for example, parliament, human rights commissions, ombudsmen, and so on) to ensure, and promote, compliance with anti-discrimination laws with regard to housing matters. Such mechanisms should allow for participation of Roma representatives and NGOs at all stages of monitoring. (…)

V. Protection and improvement of existing housing

Security of land, housing and property tenure
23. Member states, bearing in mind that the right to housing is a basic human right, should ensure that Roma are protected against unlawful eviction, harassment and other threats regardless of where they are residing. (…)

Legal protection from unlawful evictions and the procedure for legal evictions
26. Member states should establish a legal framework that conforms with international human rights standards, to ensure effective protection against unlawful forced and collective evictions and to control strictly the circumstances in which legal evictions may be carried out. In the case of lawful evictions, Roma must be provided with appropriate alternative accommodation, if needed, except in cases of force majeure. Legislation should also strictly define the procedures for legal eviction, and such legislation should comply with international human rights standards and principles, including those articulated in General Comment No. 7 on forced evictions of the United Nations Committee on Economic, Social and Cultural rights. Such measures shall include consultation with the community or individual concerned, reasonable notice, provision of information, a guarantee that the eviction will be carried out in a reasonable manner, effective legal remedies and free or low cost legal assistance for the persons concerned. The alternative housing should not result in further segregation. (…)

VI. Framework for housing policies
(…)

Providing equipped transit/halting sites
33. Member states should ensure that an adequate number of transit/halting sites are provided to nomadic and semi-nomadic Roma. These transit/halting sites should be adequately equipped with necessary facilities including water, electricity, sanitation and refuse collection. (…)

Role of regional and local authorities
35. Member states should make sure that local and regional authorities meet their obligations with regard to Roma, even when the latter do not reside permanently on a given territory. Local government agencies should be educated in the area of non-discrimination and should be held accountable by the state for discriminatory practices and policies in the field of housing.
(…)"

35. The Strasbourg Declaration on Roma, adopted by the member states of the Council of Europe at a High Level Meeting on Roma, Strasbourg, 20 October 2010:

"(5) (…) the member states of the Council of Europe have adopted the following "Strasbourg Declaration":
(…)
(14) Recalling the obligations of States Parties under all relevant Council of Europe legal instruments which they have ratified, in particular the European Convention on Human Rights and the Protocols thereto, and, where applicable, the European Social Charter and the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages;

(15) Recommending that States Parties take fully into account the relevant judgments of the European Court of Human Rights and relevant decisions of the European Committee of Social Rights, in developing their policies on Roma;
(…)

(18) The member states of the Council of Europe agree on the following non-exhaustive list of priorities, which should serve as guidance for more focused and more consistent efforts at all levels, including through active participation of Roma:

Non-discrimination
(19) Adopt and effectively implement anti-discrimination legislation, including in the field of employment, access to justice, the provision of goods and services, including access to housing and key public services, such as health care and education.
(…)
Fighting stigmatisation and hate speech
(…)
(31) Remind public authorities at national, regional and local levels of their special responsibility to refrain from statements, in particular to the media, which may be reasonably understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, or other forms of discrimination or hatred based on intolerance.
(…)
Housing
(36) Take appropriate measures to improve the living conditions of Roma.

(37) Ensure equal access to housing and accommodation services for Roma.

(38) Provide for appropriate and reasonable notice and effective access to judicial remedy in cases of eviction, while ensuring the full respect of the principle of the rule of law.

(39) In consultation with all concerned and in accordance with the domestic legislation and policy, provide appropriate accommodation for nomadic and semi-nomadic Roma. (…)"

THE LAW

PRELIMINARY REMARKS

Material scope of the complaint

The "Travellers" to whom this complaint relates

36. The Committee notes the definition that the FIDH gives of the term "Travellers" in its complaint: "persons of Roma, "Manouche" or Sinti culture, also known as gypsies, and certain communities that are not of Roma culture or origin but are also called Travellers. What they all have in common is a tradition of living in mobile homes, otherwise known as caravans" (p. 6 of the complaint).

37. It notes that it is difficult to establish exactly how many Travellers there are in Belgium as there are no official statistics. According to the FIDH, they number between 5 000 and 10 000, most have Belgian nationality and there are about 80 families in the Brussels region, 900 in Flanders and between 1 000 and 1 500 in Wallonia. 1 000 to 1 500 families, who cross the country in the "good" season from neighbouring countries should be added. However, according to the thematic study conducted for the Raxen Network by the Centre for Equal Opportunities and Opposition to Racism (Housing Conditions of Roma and Traveller, Belgium Raxen National Focal Point, Centre for Equal Opportunities and Opposition to Racism, March 2009, p. 23), there are between 12 000 and 15 000 Travellers in Belgium.

38. The FIDH states that Travellers do not form a homogeneous group. In particular, they are not all itinerant. Only some of them move about all year long, stopping at different places for a few weeks at a time. Today, the great majority are at least partly sedentary. They remain in the same place for most of the year and if they do move it is in the "good" season between the months of March and October. However they do want to continue to live throughout the year in caravans, on a plot of land.

39. The Committee notes that the FIDH also states that "this complaint does not, however, concern Roma living in Belgium who (…) live permanently in traditional dwellings and do not wish to occupy caravans. (…) Nor does it concern persons who want to live in traditional homes but settle in caravans for purely financial reasons because they cannot afford bricks and mortar accommodation" (p. 7 of the complaint).

40. The Committee notes that the Government does not dispute the meaning attributed to the term "Travellers" by the FIDH or question the figures provided by the FIDH concerning the numbers of Travellers and Traveller families in Belgium.

The type of sites needed by Travellers

41. According to the FIDH, Travellers may need any of the following three types of site depending on whether they wish to reside on them permanently or semi-permanently or lead a nomadic lifestyle: public or private-owned residential sites (on which they can install a caravan on a permanent basis), temporary, or transit, sites

specifically designed for Travellers or *ad hoc* sites (not designed to accommodate Travellers but let out or made available to them by local authorities or private individuals on an *ad hoc* basis). The Committee notes that the Government does not question these assertions.

Articles relied on in the complaint – situation under Article 31 of the Charter – prohibition of discrimination (Article E)

42. The Committee notes that the FIDH's complaint has six grounds regarding the situation of Travellers in Belgium. In its view, the first five of these give rise to violations of Article 16 read alone or in conjunction with Article E while the sixth gives rise to a violation of Article 30 read alone or in conjunction with Article E. The Committee notes that the FIDH also refers repeatedly to the content and interpretation of Article 31 on the right to housing in support of its arguments in relation to Article 16.

43. The Committee notes that the Government acknowledges that Article 16, which it has accepted, guarantees the right to decent housing from the standpoint of the family, and that Article 30, which it has also accepted, requires measures to be taken to promote access to fundamental social rights, one of which is the right to housing. The Government points out that Belgium has not accepted Article 31 of the Charter and argues that this means that this article cannot be used to support the FIDH's arguments.

44. The Committee points out that as Belgium has not accepted Article 31, housing for families is examined under Article 16 (Conclusions 2011, Belgium, Article 16).

45. However, the Charter was conceived as a whole and all its provisions complement each other and overlap in part. It is impossible to draw watertight divisions between the material scope of each article or paragraph. It therefore falls to the Committee to ensure at the same time that obligations are not imposed on States stemming from provisions they did not intend to accept and that the essential core of accepted provisions is not amputated as a result of the fact it may contain obligations which may also result from unaccepted provisions (Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on admissibility, 26 June 2007, §9). This is the case with the right to housing. The Committee therefore considers that its views on the scope of the obligations stemming from Article 31 may be useful where it comes to determining the scope of the obligations with regard to the right to housing arising from Articles 16 and 30.

46. The Committee recalls also that, as many other provisions of the Charter, Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In particular, in this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31 (European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §17).

47. The Committee notes that the FIDH maintains that Travellers in Belgium suffer from systematic discrimination in the enjoyment of their rights under Articles 16 and 30 of the Charter.

48. The Committee points out that the function of Article E is to help secure the equal effective enjoyment of all the rights enshrined in the Charter regardless of any particular characteristic of an individual or group of persons. Article E not only prohibits direct discrimination but also all forms of indirect discrimination (International Association Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §51).

49. The Committee also states that discrimination may arise either by treating people in the same situation differently or by treating people in different situations identically. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §35).

50. This complaint relates to discrimination connected with the identical treatment of people in different situations as their caravan lifestyle means that Traveller families are not in the same situation as the rest of the population. Appropriate special measures should therefore be taken to ensure that these families are treated equally and to avoid discrimination based on their lifestyle. As this is a key aspect of the situations which the FIDH claims to be in breach of the Charter, the Committee will examine the complaints under Article E read in conjunction with each of the provisions referred to.

Responsibility of the federal state for the federated entities

51. Under Article 1 of the Constitution, Belgium is a federal state composed of regions and communities. This means that decision-making power in Belgium is not centralised but divided between the federal state, three regions (Flemish, Walloon and Brussels) and three communities (Flemish, French and German-speaking). These three political levels are autonomous and have significant powers.

52. Under Section 6 of the Special Institutional Reform Act of 8 August 1980, regions are responsible for regional and urban planning and have almost total responsibility in the field of housing. Regions have their own budgets to finance their policies and decisions and the direct assistance they grant. Decisions taken by the regions are implemented by regional and local bodies.

53. The Committee notes that, according to the Government, the communities are responsible for areas such as language, culture, the audiovisual sector, education and assistance to persons in need. The regions' responsibilities include all matters in their respective geographical areas relating to the economy, employment, housing, public works, energy, transport, the environment and local and regional planning.

54. The Committee recalls the general principle of international law according to which, in the field of international responsibility of States, the conduct of any State organ, including those of territorial units, shall be considered as an act of the State (see Article 4 of the Draft articles on responsibility of States and comments by the International law Commission).

55. Therefore the primary responsibility for implementing the European Social Charter naturally rests with national authorities. Having regard to their constitutional arrangements and their welfare and industrial relations systems, these authorities may in turn delegate certain powers to local authorities or the social partners. However, if they are not accompanied by appropriate safeguards, such implementation arrangements may threaten compliance with undertakings under the Charter (Conclusions 2006, General Introduction, §10)

56. In this connection, the Committee would point out that the domestic legal system cannot exempt a State Party from the international obligations it entered into on ratifying the Charter. On the subject of such obligations it emphasises that “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 their responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the (...) state” (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29). Consequently, as a State Party to the Charter, the Belgian state must ensure that the obligations arising from the Charter are complied with by the regions and the communities.

57. The Committee notes that the Government confirms that decision-making authority is not centralised. Nonetheless, it recognises that the federal state is still accountable to other states and the international organisations of which it is a member and must comply with its international obligations.

58. The Committee also takes note of the position which the Council of Europe member states took when adopting Recommendation Rec(2005)4 of the Committee of Ministers of the Council of Europe to the member states on improving the housing conditions of Roma and Travellers in Europe, in which it is stated that “member states should make sure that local and regional authorities meet their obligations with regard to Roma, even when the latter do not reside permanently on a given territory. Local government agencies should be educated in the area of non-discrimination and should be held accountable by the state for discriminatory practices and policies in the field of housing” (§35, Role of local and regional authorities). The Committee notes that this text reflects the consensus view of the Council of Europe member states on the subject, by which it sets great store.

I. ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 16

Article E – Non-discrimination

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

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."

59. Reiterating the view it expressed above (see §§ 47-50 above) with regard to the discrimination allegedly suffered by Traveller families, the Committee will examine the following questions under Article E read in conjunction with Article 16. The right of Traveller families to housing is such a key aspect of this complaint, that the Committee will begin its examination by focusing on the FIDH's ground that caravans are not recognised throughout Belgium as a dwelling. It will then examine the allegations that, as there are not enough sites (or pitches) available to install caravans and planning legislation fails to take account of Travellers' specific circumstances, the right to housing in this form of accommodation is not effectively secured. This prompts Travellers to settle on sites illegally, running the risk of being evicted in conditions that do not comply with the Charter. Lastly, Travellers encounter obstacles with regard to domiciliation and this has adverse effects on the enjoyment of social rights which depend on having an official address.

Alleged violation of Article E taken in conjunction with Article 16 by reason of the failure to recognise caravans as dwellings

A – Submissions of the parties

1. The complainant organisation

60. The FIDH notes that Article 23 of the Belgian Constitution establishes the right to decent housing, but that in the Walloon Region, legislation excludes mobile dwellings from the legal concept of housing. According to the FIDH, this has adverse effects on Travellers, including the fact that it is impossible for them to rely on the constitutional protection of the right to housing. For example, they cannot rely on it if they are evicted.

61. The FIDH cites the following other disadvantages: (i) because Travellers' caravans are viewed in law as trailers or vehicles and not as dwellings, they can be removed for breach of the police regulations prohibiting parking in the same place for more than 24 or 48 hours; (ii) as caravans are not regarded as housing, they can be classed automatically as an unhealthy habitat, regardless of their state; (iii) when planning permission is requested for a site located in a residential area, the fact that caravans are not regarded as dwellings makes it easier for local authorities to refuse permission on the ground that this land use is incompatible with the designated purpose of the area; (iv) Travellers who wish to improve or purchase a caravan are not entitled to the various housing benefits available or to housing loans.

62. In 2001, the Flemish Region decided to make express provision for life in caravans, a concept that has been recognised in the Flemish housing code since 2004. The FIDH points out, however, that the criteria relating to housing quality, set in 1998 for conventional housing, have not been adapted to mobile dwellings, such as caravans, and that failure to comply with the housing quality standards (e.g. the roof height of dwellings and insulation standards) can result in the dwellings concerned being declared unfit for habitation. In a 2006 report, the Flemish minorities centre made this same observation and pointed out that, unless special criteria were introduced, most of the caravans would have to be declared uninhabitable.

63. Lastly, the FIDH notes that tenancy regulations are a matter for the federal state. The Act of 20 February 1991 (Civil Code) gives special protection to tenants when the property they are renting is their main place of residence (see paragraph 1, Section II, chapter II, part VIII of book III). The Civil Code was amended, however, by an Act of 24 December 2002 to include in the section on tenancy a definition which states that housing is a movable or immovable piece of property, serving as the tenant's main place of residence. This definition includes caravans therefore. Travellers who rent their caravans thus enjoy greater legal protection than those who own their caravans, and who make up the vast majority of Travellers. Here again, the rules governing health, safety and living conditions laid down by Royal Decree of 8 July 1997 have not been adapted and are sometimes difficult to apply to caravans because they were designed for immovable property. The FIDH argues that this means that Travellers living in caravans continue to lead a highly vulnerable existence from both a material and legal standpoint.

64. In conclusion, the FIDH considers that the exclusion of caravans from the legal concept of housing in the Walloon Region and the failure to adapt the rules on health, safety and living conditions in Flemish legislation and in federal legislation on tenancy agreements entail a violation of Article 16, taken alone or in conjunction with Article E.

2. The Government

65. The Government specifies that it is up to the regions to establish whether caravans may or may not be recognised as dwellings. In any event, the federal state is responsible for all matters concerning tenancy regulations.

66. The Government states that the Walloon government acknowledges that there are gaps in its legislation and is planning to introduce a provision into the Walloon housing code, creating an exception to the current definition of housing, so that alternative forms of dwelling can be recognised.

67. The Brussels Region is aware of the problem and feels that the best solution is to provide suitable sites that offer Travellers a satisfactory environment.

68. In the Flemish Region, living in caravans is recognised as a form of housing (Flemish Housing Code, Article 4§1, 4° (c)). With regard to the minimum health, safety and housing standards, the Code makes it possible to take account of specific types of dwelling and the particular circumstances of groups of inhabitants when determining the requirements and standards (Article 5§1). The Government states that, when drawing up a strategic plan for Travellers, the authorities will try to determine whether it is necessary to lay down a series of different quality standards for caravans.

69. As regards the federal legislation on tenancy, the Government concedes that, although movable property intended for the principal residence of a tenant has in fact been considered as housing since 2002, the royal decree of 8 July 1997, which stipulates the requirements in terms of health, safety and living conditions, has not been amended to take account of this change. The Government states that, as it currently stands, therefore, the Royal Decree of 8 July 1997 does not apply to movable property used as housing and that there is therefore nothing to prevent the renting of caravans as the occupant's principal residence, while emphasising that basic requirements with regard to health, safety and living conditions do nevertheless apply to movable property.

B - Assessment of the Committee

70. The Committee notes that 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).

71. The Committee would point out initially that 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 in its *McCann v. the United Kingdom* judgment of 13 May 2008: “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)” (§ 46).

72. The Committee also emphasises the definition given in the appendix to Recommendation Rec(2005)4 of the Committee of Ministers to the member states on improving the housing conditions of Roma and Travellers in Europe, adopted on 23 February 2005, as it 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".

73. Therefore, in the Committee's view, 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 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.

74. 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.

75. The Committee notes that the recognition of caravans as dwellings is a regional responsibility.

76. In the Flemish Region, caravans are recognised as dwellings (Flemish Housing Code, Article 2, 33°).

77. 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°).

78. In the Walloon Region, however, caravans are not recognised as "housing". In the Committee's opinion, this constitutes indirect discrimination as it means that the specific situation of Traveller families is not taken into account.

79. The Committee notes 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 notes that no equivalent decree has been introduced in the Flemish Region.

80. The Committee notes therefore that at the time of this decision, 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.

81. The Committee notes that orders declaring caravans uninhabitable and ordering their demolition may be challenged in the courts and that 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). It reiterates the importance of such judicial remedies due to the seriousness of the measure and its irreparable nature, but it emphasises that the mere fact that they exist is not enough to compensate for deficiencies in the law and its implementation.

82. The Committee would point out that 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.

83. Accordingly, the Committee concludes that 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.

Alleged violation of Article E taken in conjunction with Article 16 by reason of the failure to provide an adequate number of public sites for Travellers

A – Submissions of the parties

1. The complainant organisation

84. The FIDH alleges that the Belgian authorities are in breach of Article 16, considered in isolation and in combination with Article E, because they are not providing a sufficient number of sites for Travellers, whether these be residential, temporary or *ad hoc*, with the necessary basic amenities for a decent life and located in appropriate environments.

85. It maintains that Belgian local authorities are not required to have policies to accommodate Travellers and hence to establish sites for them. The decision to establish such sites is left entirely to the discretion of municipalities, which usually bow to pressure from local residents, hostile to the idea of Traveller families camping in the area.

86. The FIDH further states that accommodating Travellers requires a co-ordinated policy at a higher level than the municipal one, such as regional level, in order to ensure that a sufficient number of sites are made available. That may necessitate the use of compulsion or pressure from the regional authorities in particular. According to the FIDH, federal, regional and community authorities should do more than merely play a support role, notably through the provision of funding.

87. The FIDH indicates that the situation differs in each of the country's three regions:

(i) Walloon Region

88. According to the FIDH, in the Walloon Region there is just one transit site. There are no public residential sites and only a small number of *ad hoc* sites are made available for short periods on a discretionary basis by certain municipalities.

89. The FIDH argues that while in the Walloon Region local authorities that decide to fit out sites for Travellers are entitled to a subsidy covering the costs of certain improvement works, in practice no application for this subsidy has ever been made. Local authorities can also apply for a subsidy from the French Community (whose jurisdiction extends to a large part of the Walloon Region) for the purchase, fitting out and extension of camping sites for "nomads". In practice, however, the FIDH notes that although a number of proposals were made, they were subsequently abandoned, as the decision to conduct such projects is left to the discretion of local authorities which face pressure from local residents.

90. The FIDH maintains that, of the 262 municipalities in the Walloon Region, only 7 have committed themselves to taking some steps to meet the needs of Travellers in terms of temporary stays.

91. Lastly, the establishment of the Travellers' mediation centre, an association grant-aided by the Walloon Region that sets out to promote dialogue between Travellers, public authorities and local residents, has failed to secure an increase in the number of public sites for Travellers. The review carried out by the mediation centre in 2004 has not produced any results, with authorities preferring to wait until municipalities themselves express the desire to make provision for Travellers.

(ii) Brussels Region

92. The FIDH states that there is only one small public residential site in the Brussels region, capable of accommodating 6 families, and a transit site with 21 pitches.

93. According to the FIDH, the Brussels Region does not have any policy for accommodating Travellers. The only provision is an annual sum of € 13,000 which is included in the regional budget, via the budget of the French Community Commission, to subsidise the development of suitable sites for Travellers.

(iii) Flemish Region

94. The FIDH notes that the 1996 and 2004 strategic action plans for minorities deal with the problem of parking Travellers' caravans, and that in 2004 the government announced plans for 750 additional residential pitches and 500 new transit pitches by 2010. A joint departmental committee was set up to co-ordinate and encourage measures and initiatives for achieving the action plan's objectives. Quality standards for residential and transit sites were drawn up and these apply to all new or re-equipped public sites.

95. The Flemish Community grants local authorities subsidies of up to 90% of the cost of acquiring or extending caravan camping sites for Travellers. The FIDH further notes that the Flemish minorities centre and regional integration centres have been tasked with advising and supporting provinces and municipalities on the question of improving conditions for Travellers, with the emphasis on problems associated with caravan life.

96. The FIDH also notes, however, that fewer than 100 places on residential sites were created between 1997 and 2010, compared with the 750 laid down in the plan. The number of available pitches for Travellers residing in or passing through Flanders is still largely inadequate: 29 public residential sites with a total of 469 pitches, covering barely 50% of needs, and 5 public transit sites with a total of 78 pitches, covering 20% of needs. The FIDH further points out that over the past 15 years, only six new sites have been created. This means that 438 families are unable to find a place on the public sites.

97. In the light of the factual points concerning the three Belgian regions, the FIDH considers that the regions have failed to adopt a proactive policy for developing public residential sites and encouraging municipalities to make arrangements for the temporary accommodation of Traveller families.

98. The FIDH concludes from this that the inadequate number of residential, transit and *ad hoc* sites throughout Belgium amounts to a violation of Article 16, taken alone or in conjunction with Article E.

2. The Government

99. The Government begins by noting that the ground which alleges that there are an inadequate number of public sites is the responsibility of the regions. It maintains that the federal, regional and community authorities have an active policy of encouraging municipalities to provide properly equipped sites for Travellers, in a way that respects local authorities' autonomy. It recognises, however, that their room for manœuvre remains limited and depends on municipalities' willingness to develop such sites.

(i) Walloon Region

100. The Walloon Region has opted for voluntary co-operation with municipalities and has introduced a series of measures to encourage them to manage Travellers' stays more effectively. A permanent interministerial working group on the reception of Travellers has been given the task of developing a concerted approach to the reception of Travellers in Wallonia.

101. The mediation centre for Travellers in Wallonia (the mediation centre) was set up in 2003 to foster dialogue with municipalities and local residents. This centre, which receives financial support from the Walloon Region, has carried out a review of the needs of and problems faced by municipalities in managing the accommodation of Travellers in their respective areas.

102. At the mediation centre's prompting, the above-mentioned interministerial working group has twice met the nine municipalities wishing to invest in facilities in their area for Travellers, the mediation centre, the Walloon public service and the Walloon government. Each municipality is free, however, to decide how reception arrangements for Travellers should be improved: it may mean employing an official specifically for the purpose of acting as intermediary between the Travellers and the authorities or it may mean purchasing or fitting out sites.

103. The interministerial working group and the mediation centre have produced a practical guide containing recommendations that should be followed so that those concerned are accommodated in optimal conditions.

104. The Government points out that there are two budget heads in the Walloon Region under which subsidies can be granted for the purchase of sites and dwellings: the "accommodation" grant covers 100% of the cost of equipping sites with dwellings while the French Community Executive order of 1 July 1982 entitles local authorities to funds for the purchase, equipping and extension of camping sites for "nomads". This last grant may cover up to 60% of the total cost, and is subject to certain health and safety conditions (this order also applies in the Brussels Region).

(ii) Brussels Region

105. The Government begins by making the point that the relatively small area of the Brussels Region coupled with a higher population density means it is harder for Brussels to provide sites that meet Travellers' needs.

106. It maintains that the Region encourages local authorities to increase their provision for Travellers by including an annual sum (€ 13 000) in the regional budget, via the budget of the French Community Commission, to subsidise the development of suitable sites for Travellers (according to the Government, this sum may be increased if municipalities so demand). Under this arrangement, a new public transit site with 20 to 25 places is due to come into operation in 2011.

(iii) Flemish Region

107. The Government refers to a census which showed that there was still a shortage of places in the region for Travellers. In February 2011, for example, there were an estimated 907 Traveller families in the Flemish Region, 469 places on public residential sites and 78 on temporary sites.

108. The Government notes that the 1996 and 2004 strategic action plans for minorities included specific measures to meet the accommodation needs of Travellers, who are recognised as being a minority. An interdepartmental committee, *de Vlaamse Woonwagencommissie* (Flemish caravan committee) was set up to co-ordinate and advise the relevant ministries on the provision of long-term camp sites for Travellers.

109. In addition, the Flemish regional authorities offer municipalities 90% subsidies for the purchase, laying out, refurbishment or extension of sites. Some provincial authorities supplement these subsidies to bring them up to 100%. The Government also points to the existence of a handbook entitled *Living on Wheels* which offers advice on the provision and management of Travellers' sites and is distributed to local authorities free of charge. The Government further points out that a website (www.kruispuntmi.be) was set up in 2011 to bring together all available information on existing and planned sites.

110. Every year, too, the Flemish minister responsible for integration policy sends out a circular entitled "permanent transit sites and *ad hoc* sites for Travellers" which asks municipalities to indicate those sites in their areas on which Travellers can settle for limited periods. The most recent circular, BB 2010/05, states that Travellers who, after consulting a municipality, cannot find any temporary pitch, can contact the governor of the province concerned, who will point them to an available *ad hoc* site.

B – Assessment of the Committee

111. The Committee reiterates that 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).

112. The Committee also points out that caravans must be regarded as housing within the meaning of the Charter (see §73 above). 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 (ERTF) 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).

113. The Committee emphasises that 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).

114. Lastly, the Committee notes that 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. It may not therefore express any opinion on this aspect of the complaint. It points out nonetheless that 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, access to employment, 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).

115. The Committee notes that the Government does not dispute the figures given by the FIDH regarding the inadequate number of sites.

116. The Committee notes the major disparity between the number of Traveller families in Belgium (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 hoc* sites in the Walloon Region). Clearly therefore there are not enough pitches on public sites to enable all Traveller families to park their caravans.

117. The Committee also refers 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 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).

118. In the case in question, the Committee notes that 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 Committee notes that 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.

119. The Committee notes that 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. The Committee reiterates, however, that 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 (see §§ 55-56 above).

120. The Committee would emphasise again that 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. The Committee notes that 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.

121. The Committee therefore finds that 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.

Alleged violation of Article E taken in conjunction with Article 16 by reason of the failure of urban planning legislation to take account of Travellers' specific needs

A – Submissions of the parties

1. The complainant organisation

122. The FIDH alleges that the respondent Government has failed to take account of Travellers' specific needs either in the planning legislation itself or in how this legislation is applied.

123. Firstly, any public authority wishing to establish a public caravan site for Travellers must comply with regional land use plans, which stipulate the purposes for which the land may lawfully be used (residential, leisure, public services, etc.) but which take no account of the particular circumstances of Travellers, thus making it difficult to establish such sites.

124. Secondly, persons wishing to install their caravan on a private site which they own or rent must obtain planning permission in order to do so. This permission is granted by the local authority, which checks to ensure that such a use of the site is compatible with the land use plan, and in particular that the site is in an urban development/residential zone, an arrangement that fails to take account of the particular circumstances of Travellers. In the Flemish Region and in the Brussels Region, the site must also satisfy the "appropriate development" criterion, a flexible concept which, according to the FIDH, allows municipalities too much scope for refusing applications. In the Flemish Region, furthermore, planning applications must satisfy certain formal conditions such as an architect's description of the purpose of the application (Articles 10 and 11 of the Flemish Government Decree of 28 May 2004 on the composition of applications for planning permission). According

to the FIDH, such conditions take no account of the particular case of Travellers who simply wish to park a caravan on a site and not to erect a building. Lastly, in the Brussels Region, as an exception to the general rules, planning permission for the installation of caravans or trailers is always limited to one year and may therefore not be renewed (Article 102 of the Brussels planning code; Brussels Region government decree of 29 January 2004 on fixed-term planning permission). In the Flemish Region (Article 4.6.3 of the Flemish Planning Code) and the Walloon Region (Article 41§3 of the Walloon Regional and Urban Planning Code), local authorities may issue planning permission for a fixed term only.

125. Thirdly, in the three Regions, travellers with an itinerant lifestyle who are looking for places to stop for short periods do not need formal planning permission. Such use of the land, however, is still subject to the zoning regulations (which, in the FIDH's view, do not take account of the needs of Travellers). In the Flemish region, the temporary parking of caravans for non-recreational purposes is confined to residential areas, creating scope for false interpretation by municipalities.

126. According to the FIDH, municipalities have too much freedom when it comes to enforcing planning regulations and are able, for example, to add constraints in addition to those set at regional level. In practice, they are often fairly hostile to Travellers' traditional forms of dwelling: many of them refuse to create residential or transit sites in their area or to make *ad hoc* sites available for short periods; Travellers who want to reside in their caravans on private property are almost systematically refused the necessary authorisation. The FIDH points out that in the Flemish Region, only two families have obtained the necessary planning permission to install their residential caravans on private land, and that no permission has been granted in the other two regions. The opportunities for Travellers to reside on private land are largely theoretical therefore and cannot make up for the inadequate number of public sites.

127. The FIDH concludes that the failure of urban planning legislation and practice to take account of Travellers' needs, coupled with local government policy in implementing this legislation, constitutes a violation of Article 16, considered in isolation and in conjunction with Article E.

2. The Government

128. The Government states that urban planning is the responsibility of the regions.

129. The Government considers that each federated entity takes account, in different ways, of Travellers' specific needs in its legislation and urban planning policies. It further points out that the rules governing land-use planning and their application are based on the principle of equality, which means that the impact of any proposed activities or housing is assessed for each application according to the urban and spatial planning criteria. The long-term siting of caravans or the establishment of camping sites is also subject to this equality principle therefore.

130. The Government indicates that, in the Walloon Region, public authorities have produced a practical guide to managing temporary Traveller stays in Wallonia, proposing a series of measures to raise awareness and facilitate and harmonise relations between municipalities, Travellers and the settled community. Every year the Walloon ministries send out a letter to the said authorities, setting out recommendations for implementing these measures. The Government confirms that under the Walloon Regional and Urban Planning Code planning permission is needed to install a caravan on a plot of land. It further indicates that the Walloon Housing Code might be revised to include a reference to alternative forms of dwelling.

131. The Government states that, in the Brussels Region, the planning regulations (regional land-use plan) do not prohibit public or private land from being used to accommodate Travellers provided the said land lies in zones intended for housing (for stays that have a degree of "permanence") or facilities (for occasional use of a site). The Government further confirms that the Brussels Planning Code (Article 98§1, 10°) contains provisions that are directly applicable to Travellers as it states that prior planning permission is required in order to "use a site regularly for (…) (c) the installation of one or more mobile facilities that can be used as dwellings, such as trailers, caravans, disused vehicles and tents". In accordance with Article 102 of the Planning Code, the Brussels Region decree of 29 January 2004 on fixed-term planning permission further stipulates the periods in question. The list contains two categories which may apply to Travellers: (i) installation and parking of vehicles – maximum duration of one year for the installation of mobile facilities that can be used as dwellings; (ii) temporary installations of a cyclical or seasonal nature (e.g. Travellers' meeting places) – maximum duration of six years. The Government also contends that the *a contrario* interpretation of Article 98§1, 10° (c) of the Code means that no planning permission is required for the one-off or occasional use of a site.

132. In the Flemish Region, the *Ruimtelijk Structuurplan Vlaanderen* (Flemish regional plan) and the provincial plans encourage the establishment of new camping sites for Travellers. According to the Government, the authorities take account of Travellers' specific housing needs in various ways: inclusion of camping sites for Travellers in regional development plans and implementation plans, publication of a pamphlet (*Wonen op Wielen*) to support the provision of Travellers' sites and sending of a circular each year to provincial governors and local authority elected executive bodies to encourage them to establish transit sites (for stays of around two weeks) and *ad hoc* sites, until the Region has a sufficient number of transit sites. The use of a site for more than 90 days a year requires permission under Article 4.2.0, 5°, c of the Flemish planning code. Unless otherwise explicitly stated, such authorisation is not time limited (see Articles 4.6.1 to 4.6.3 of the Planning Code).

B – Assessment of the Committee

133. The Committee points out that, though state authorities enjoy a wide margin of appreciation as to the taking 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).

134. The Committee also refers 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 reaching decisions 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)".

135. The Committee considers that 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).

136. The Committee notes that planning issues are related to responsibilities which are exercised by the regions.

137. The Committee takes note of the efforts made by regional governments to encourage local authorities. It observes, however, that 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 and the way it is implemented, which fail to take account of Traveller families' specific circumstances with regard to housing.

138. 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).

139. The Committee also notes that the Government emphasises that it respects the principle of equality when examining applications for planning permission. It considers 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 to the Committee, and applications to install a caravan on a site, the Committee considers that requiring such a range of documents is excessive.

140. The Committee has stated previously that 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. The Committee considers that 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).

141. In conclusion, the Committee states again that 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, the Committee holds 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.

Alleged violation of Article E taken in conjunction with Article 16 by reason of the illegal use of evictions against Travellers who are unlawfully settled on land because they have been unable to find a place on an authorised site

A – Submissions of the parties

1. The complainant organisation

142. The FIDH begins by pointing out that Traveller families settle on land unlawfully because of the severe shortage of authorised sites, at the risk of being evicted.

143. According to the FIDH, there is no law which specifically protects these families against eviction and which takes account of the fact that their situation stems from the lack of available sites. By acting in this way, however, the Government is guilty of indirect discrimination because it is required to treat people in different situations differently, and Travellers are not in the same situation as other Belgian families.

144. Municipalities do not like to see Traveller families settling in their area and are unwilling to accommodate them at ad hoc sites for more than a few hours or days. Attached to the FIDH's complaint are several local police regulations which either prohibit Travellers from parking at all, or prohibit them from parking for more than 24 hours. Some regulations impose fines if the prohibition against parking is not observed. While a certain number of families settled on unauthorised sites are tolerated by the authorities, the fact that they are camped there illegally means that the local authorities can evict them at any time. In addition, the great majority of Traveller families residing in Belgium on private land without planning permission are merely tolerated by the municipalities, which may change their minds at any time (*Housing Conditions of Roma and Travellers, Belgium Raxen National Focal Point, Centre for equal opportunities and opposition to Racism*, March 2009, p. 25). These families also live, therefore, with the constant threat of eviction.

145. The FIDH adds that the authorities apply the general legislation in matters relating to eviction. It points out that local authorities may rely on various legal provisions to order the eviction of families occupying a site without permission, such as police regulations adopted under the royal decree of 1 December 1975, which prohibit the parking of "motor vehicles that are unfit to drive" on the public highway for more than 24 hours. Evictions may also be ordered on the basis of public health or public safety regulations and failure to comply with such provisions can give rise to administrative sanctions.

146. Further, the planning permission requirement means that keeping caravans or trailers on a site without authorisation is an infringement of the planning regulations that may also carry criminal penalties. In such cases, the authorities are entitled to demand the immediate closure of the site and its return to its original state. The authorities may also order the demolition of property installed illegally, including a caravan parked on a site, when there is no prospect of rectifying the situation. The Conseil d'Etat has ruled that the destruction of a residential caravan that the applicants wanted to preserve and which they planned to make their future residence

was an infringement of the right of ownership and constituted serious detriment that would be difficult to rectify (C.E. (réf.), judgment of 25 April 2002, no. 106.093, Catteau and Lentz v. Commune de Hotton, p. 10). The FIDH points out, however, that this is only an isolated judgment and that the authorities are still empowered to destroy caravans that are parked without planning permission. According to the FIDH, destruction of their caravan has drastic consequences for the Travellers who live in them, since it leaves them homeless.

147. In support of its assertion, the FIDH provides a number of examples of threatened evictions, eviction orders issued under pain of a fine and evictions (usually the Travellers leave the site before the police carry out the eviction). The fact, says the FIDH, that few formal complaints are filed by evicted Travellers does not mean that no injury has occurred.

148. The FIDH further asserts that many of the evictions are carried out in a questionable manner, unexpectedly and without prior warning, in winter or at night and with no consideration for the elderly or sick persons or very young children. Often, too, people are evicted without any arrangements being made to rehouse them.

149. It points out that the legal safeguards against sudden evictions are mainly concerned with tenants. The majority of Travellers, however, are not tenants but the owners of their caravans. The FIDH adds that, unlike tenants or persons occupying a building without official papers where eviction requires a court order, Travellers have no *a priori* legal safeguards and the possibility of instituting proceedings after eviction is of little use because any court decision will come several months too late. Travellers therefore have no legal protection against evictions ordered by local authorities if they are illegally camped on sites or against demolitions and evictions ordered by planning departments.

150. The FIDH concludes that the lack of appropriate safeguards against the eviction of Travellers constitutes a violation of the right to protection of the family embodied in Article 16, aggravated by the inadequate number of public residential, transit and *ad hoc* sites that would enable people to be rehoused. It also cites a violation of Article E in conjunction with Article 16.

2. The Government

151. The Government states that issues related to evictions against Travellers and relevant safeguards may be considered, depending on circumstances, as responsibilities shared between the regions and the federal state for instance, an eviction carried out by local police is a regional responsibility, an eviction carried out by federal police is a federal responsibility.

152. The Government points out that the rules on evictions are laid down in law, decrees and orders and are based on grounds of health, safety and public order. The same rules apply to all, including the Traveller community, and their application by the various authorities concerned reveals no discriminatory treatment of this particular group. The Government denies, therefore, that the authorities have acted outside any legal frame. Regarding the lack of specific legislation on Travellers, it

states that the country's various authorities consider it inappropriate to draw up specific legislation on evictions involving one particular group, as this would have a stigmatising effect on the group concerned.

153. The Government disputes the assertion that Belgian legislation does not contain adequate safeguards for evictions, whether of Travellers or of any other person committing offences as a result of unlawful occupation of a site or premises.

154. The Government states that it has received no reports of frequent or unreasonable evictions involving Travellers. It believes that the FIDH's sources are not reliable and grossly inadequate to support the position taken by the FIDH.

155. The Government states that the focus is on prevention and mediation in an effort to facilitate relations between the authorities, Travellers and local residents. The aim is to avoid using enforcement measures such as eviction in cases where sites are occupied illegally. Transiting Travellers threatened with eviction must be offered an alternative provisional encampment. In the Flemish Region, persons affected by evictions can appeal to the planning inspector who approved the measure or mount a legal challenge.

156. Once the decision has been taken by the competent authority, the deadline for compliance has expired and the persons concerned have not complied, there are two rules that must be observed by the federal police when evicting persons from a municipal site: the purpose must be one that can be achieved only through the use of force and the constraint used must be reasonable and justified. If the eviction requires entry into the premises, it may only be carried out between 5 am and 9 pm. If the eviction does not require entry into the premises, which, according to the Government, is usually the case, the law does not place any restrictions on when it can take place, the only requirement being that it be carried out at a reasonable time.

157. The Government therefore considers that Belgian legislation contains adequate safeguards for evictions. Furthermore, legal remedies are available to Travellers who believe they have been the victims of wrongful evictions to enable them to seek redress and, if appropriate, compensation. Lastly, it disputes the assertion that it is required to enact specific legislation in this area under the Social Charter.

B – Assessment of the Committee

158. The Committee points again to the lack of public sites for Traveller families (see §121 above) and 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 (see §141 above). 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.

159. The Committee also notes that when it is talking about the eviction of Travellers, the Government 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.

160. The Committee emphasises that 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.

161. The Committee recognises that 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. However, 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).

162. The Committee notes that 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. It reiterates its previous assertion (see §73 above) that 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.

163. The Committee has already stated, with regard to Belgium (Conclusions 2011, Article 16), that states must set up procedures to limit the risk of eviction. To comply with the Charter, legal protection for persons threatened by eviction must be prescribed by the law and include:

- 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).

164. In the instant case, the Committee notes that the legal protection afforded to Traveller families under threat of eviction is not sufficient and that eviction procedures can take place at any time of the year including winter and night or day. It considers this situation to constitute a failure to respect human dignity.

165. The Committee points out that 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). The Committee considers that 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.

166. The Committee would point out again that the feature which undoubtedly makes Traveller families completely different where housing is concerned is their caravan lifestyle. The situation requires these families to be treated differently. The Committee notes that 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.

167. Consequently, the Committee concludes that 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.

Alleged violation of Article E taken in conjunction with Article 16 by reason of the obstacles to domiciliation

A – Submissions of the parties

1. The complainant organisation

168. The FIDH maintains that the importance placed on administrative domiciliation – in other words, the recording of persons in the population registers of the municipality in which they have their main place of residence – creates major difficulties for Travellers.

169. It argues that Travellers' requests for domiciliation are often refused by local authorities even though access to a series of rights depends on it. Some social legislation relies on domicile as a condition for entitlement to social benefits (such as "health care" insurance), to establish the territorial jurisdiction of a social security body or to determine whether the insured persons live with others (information that affects the amount of benefit to which they are entitled). Domicile, furthermore, is used to determine which municipality is responsible for issuing administrative documents (such as identity cards, household composition certificates, certificates of residence and nationality and records of convictions, etc.). Such documents may be necessary to obtain a place on a vocational training course or get a job, and this in turn may be useful in order to acquire or retain entitlement to certain social benefits. Also, for registration with a Belgian public employment service as a jobseeker to be legally valid, the service in question must obtain and verify the applicant's national register number (domicile), identity and nationality. All formalities relating to the residence status of foreign nationals, furthermore, must be completed via the municipality in which the person is domiciled. Lastly, the lack of a domicile deprives individuals of any possibility of exercising their right to vote or stand in elections.

170. The FIDH recognises however that the legislation on domiciliation contains provisions that deal specifically with the case of persons living in mobile dwellings. Under the royal decree of 16 July 1992 on population registers and the register of foreigners (Article 20§1), persons living in mobile dwellings and residing for over six months per year at a fixed address on a site are entitled to establish their domicile in the municipality in which the site is located. Under the same decree, persons living in mobile dwellings who have not resided at the same address for six months or more in a year may be entered in the population registers of the municipality "in which they have a contact address". Section 14 of the Administrative Simplification Act of 15 December 2005 states that nomads with no fixed abode may establish their domicile at the contact address "of a corporate body which states in its statutes that one of its aims is to defend such groups' interests".

171. According to the FIDH, however, these rules are too often ignored in practice and many municipalities refuse to enter Travellers in their registers, citing reasons to do with the unfit state of their dwellings or breaches of urban or regional planning rules. Lack of planning permission is often relied on by the municipalities when rejecting applications for domiciliation. The FIDH maintains that such practices are illegal: Section 16§2 of the Royal Decree of 16 July 1992 expressly states that "no

application for registration of a dwelling as a main residence may be rejected on grounds of safety, health or urban or regional planning rules".

172. The FIDH also notes the practice whereby municipalities, having refused to register applicants at their private address, automatically register them at a contact address, i.e. at the address of an association even though, by law, this should only be done if the person concerned specifically requests it. It cites the case of Ms. V.

173. The FIDH therefore concludes that the continuing illegal practice of non-registration and the supervisory authorities' failure to do anything about it constitute a violation of Articles 16 and E of the Charter in view of the serious consequences that not having a domicile entails.

2. The Government

174. The Government states that issues linked to domiciliation do not exclusively concern federal responsibilities.

175. The Government confirms the pieces of legislation cited by the FIDH. It further notes that the FIDH has itself acknowledged that Belgian legislation on residence takes specific account of the particular circumstances of the Traveller community. It points out that the federal state only has exclusive powers to legislate on matters relating to domiciliation or inclusion in population registers. Maintaining registers, and hence including persons in municipal population registers, is a matter for municipalities.

176. The Government states that a provisional registration system was introduced to protect the persons concerned. In effect, it allows persons whose residence status is being re-examined by the municipalities to retain the rights attached to their inclusion in the registers pending an administrative or judicial decision.

177. The Government further contends that no application for registration of a dwelling as a principal residence may be rejected on grounds of safety, health or urban or regional planning rules. As long as those concerned continue to live in a dwelling in which permanent occupation is not authorised for these reasons, they will continue to be registered there.

178. In addition, although entries in municipal population registers are initially a local authority responsibility, where there is a dispute about what constitutes the principal residence the interior minister is responsible for determining its location, under Section 8 of the Act of 19 July 1991 and Section 21 of the Royal Decree of 16 July 1992.

179. Lastly, as regards the authorities' alleged failure to act, the Government points out that numerous training sessions have been run throughout Belgium to ensure that the legislation and regulations on population registers are circulated and properly understood. In addition, federal officials have been given the specific task of investigating difficulties concerning, or disagreements about what constitutes, the principal residence, removal from the register and *ex officio* registrations.

B – Assessment of the Committee

180. The Committee notes, as the FIDH acknowledges, that the legislation on domiciliation contains provisions dealing specifically with the case of persons living in mobile dwellings. It refers in particular to 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.

181. The Committee takes note of the FIDH's arguments that these rules are systematically ignored in practice and that 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. It notes, however, that, even taking into account the principle of the alleviation of the burden of proof, the FIDH does not substantiate its allegations sufficiently on this matter.

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

II. ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 30

Article E – Non-discrimination

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

Article 30 – The right to protection against poverty and social exclusion

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

Part II: "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."

A – Submission of the parties

1. The complainant organisation

183. The FIDH argues that the right to protection against poverty and social exclusion provided for in Article 30 includes a "housing" element, as demonstrated by the fact that the Committee previously concluded that there had been a violation of Article 30 on the basis of the finding of a violation of Article 31 on the right to housing (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009). By analogy, it therefore considers that the finding of a violation of Article 16 concerning the housing of families likewise means that there has been a breach of Article 30 as well.

184. In this particular case, the FIDH maintains that there is no co-ordinated policy in Belgium to prevent or remedy the poverty and social exclusion of Travellers, in particular in the housing field. Firstly it alleges that the authorities have failed to introduce an overall policy to ensure that an adequate number of public sites are created for Travellers. Secondly, it argues that the authorities have failed to take account of Travellers' needs in their town planning legislation and practice. And lastly, it considers that the authorities have failed to introduce a strategy to prevent the eviction of Travellers. The FIDH therefore considers that as a result, there has been a violation of Article 30 taken alone or in conjunction with Article E.

185. The FIDH also states that the mechanisms introduced to assess needs when it comes to combating poverty are of a too general nature to be used to assess the needs of Travellers, taking into account their specific circumstances.

186. It further states that Travellers are not included among the priority groups in the current policy for combating poverty, even though they are particularly affected.

187. It argues that financial incentives alone for towns and municipalities that decide to take action to improve the living conditions of Travellers are not enough. In its view, local authorities should be compelled to take measures to provide accommodation for Travellers.

188. Lastly, the FIDH states that, apart from the Flemish Region with its Flemish caravans committee (*Vlaamse Woonwagencommissie*), there is no system for Travellers to be consulted on and take part in the framing and supervision of policies relating to them.

189. It further points out that the Belgian Government has done nothing to remove the specific legal, psychological and socio-cultural obstacles encountered by Travellers when attempting to exercise their social rights. It refers here to the refusal by some municipalities to grant Travellers' requests for domiciliation, preventing them from obtaining social benefits.

190. The FIDH notes that while some measures have been adopted in the Flemish Region, no specific measures have been taken by the French Community, the Walloon Region and the Brussels Region to combat poverty among Travellers. The setting-up of the Travellers' mediation centre, moreover, does not excuse the authorities from implementing effective social policies dealing with the specific problems facing these people. The FIDH maintains that the Government is not doing anything to assess the impact of these measures on Travellers.

191. In the light of these findings, the FIDH considers that there is no comprehensive, co-ordinated and coherent policy to combat social exclusion among Travellers and that this constitutes a violation of Article 30, read alone or in conjunction with Article E.

2. The Government

192. The Government begins by noting that the Committee's decision in European Roma Rights Centre (ERRC) v. France (Complaint No. 51/2008, decision on the merits of 19 October 2009) cannot apply to the present situation as this decision made a connection between Article 30 and Article 31 and Belgium has not accepted Article 31.

193. The Government states that issues pertaining to policies to combat poverty and social exclusion among Travellers are federal, regional and community responsibilities.

194. It refers to the information provided in its third national report which establishes the existence of a framework for combating poverty. It cites in particular the following initiatives: the strategic report on social protection and social inclusion 2008-2010 and the National Action Plan for social inclusion; the federal anti-poverty plan; the inter-federal barometer which measures levels of poverty and vulnerability in various areas. The Government also refers to a co-operation agreement signed by

the federal state, the communities and the regions in 1998 on the continuation of the federal anti-poverty programme which, according to the Government, is a clear sign that a comprehensive and co-ordinated anti-poverty and social exclusion policy does in fact exist.

195. The Government acknowledges that this agreement does not specifically identify certain target groups such as Travellers but rather favours a comprehensive approach. More specifically, with regard to Travellers, the Government indicates that there are systems for Travellers to be consulted on and take part in the framing and supervision of policies relating to them. It mentions, *inter alia*, the federal public service responsible for programming and social integration which has established a dialogue with associations representing the interests of persons in poverty, including the Walloon anti-poverty network which encompasses associations representing Roma and Traveller interests. The Government likewise mentions the setting-up of an interministerial working group as part of the interministerial integration in society conference, the aim of which is to organise activities to which associations protecting Roma and Traveller interests will be invited. With regard to the specific obstacles faced by Travellers in securing their fundamental social rights, the Government points out that since 2005, Travellers have been able to request that they be registered at the contact address of a legal entity in order to facilitate their registration with the municipal authorities.

196. It goes on to refer to a number of measures taken by the various Belgian entities to promote proper access to housing for Travellers and to fight against the poverty and social exclusion affecting them.

197. It refers to the setting-up in the Walloon Region in 2003 of the mediation centre for Travellers, to foster dialogue between Travellers, their neighbours and municipalities and which has carried out a review of the needs of and problems faced by municipalities in managing the accommodation of Travellers in their local area. The Government also refers to the framework agreement concluded in 2005 between the mediation centre and the Walloon Region on a concerted approach to the reception of Travellers and which gives the centre a greater role in such matters. In addition, the social inclusion and Travellers interministerial working group has the task of producing a concerted approach to the reception of Travellers in Wallonia. In this context, the Walloon interior and the social action, health and equal opportunities ministers have written to all the municipalities in Wallonia in order to inform them about the temporary stay of Travellers on their territory. The interministerial working group has also introduced a heading in local authority housing plans for 2008-2009 so that projects to create Traveller sites can be included, although few municipalities have made use of this heading. It has also produced a practical guide to managing Travellers' temporary stays in Wallonia, which has been circulated to municipalities, among others. Regional grants are also available to municipalities wishing to provide sites for Travellers.

198. With regard to the Brussels Region, the Government refers to the information already mentioned (see §106 above) on the incentives to encourage local authorities to provide appropriate sites. It mentions the setting-up of an *ad hoc* service to act as a contact point between municipalities and Travellers. In addition, owing to the special nature of power sharing in this region, the Flemish Community, the French

Community and the Brussels Region act jointly to combat poverty and social exclusion. The Flemish Community commission is also a member of the Flemish caravan committee (*Vlaamse Woonwagencommissie*) while the French Community commission supports initiatives to promote the integration and better understanding of the Roma community.

199. With regard to the Flemish Region, the Government refers to the earlier description (see §§ 107-110 above) of the policies conducted by the Flemish authorities to meet Travellers' specific accommodation needs. The Flemish caravan committee (*Vlaamse* Woonwagencommissie) is made up of representatives of all the Flemish provinces and senior political and administrative representatives of the policy areas concerned. It is responsible for the overall planning of Travellers' sites in Flanders. The Flemish minister responsible for integration sends out an annual circular on transit and *ad hoc* sites to provide a co-ordinated response to Travellers' needs. In addition, Travellers are a specific target group within the Flemish integration policy under Section 3 of the Decree of 28 April 1998, as amended by the Decree of 30 April 2009. There is a co-ordinated, comprehensive approach to the social problems faced by Travellers in Flanders. The integration centres provide support for local authorities in this area, for example by preparing and managing Travellers' sites. The Flemish authorities also award grants to 39 towns and municipalities to support their local integration policies. A strategic plan for Travellers is being drawn up, with the emphasis on education, employment and training, integration, emancipation, housing, well-being and health.

B – Assessment of the Committee

200. The Committee points out that housing is a critical policy area in fighting poverty and social exclusion (Conclusions 2003, France, Article 30).

201. The Committee also points out that 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 rights. There should also be monitoring mechanisms involving all stakeholders, including representatives of civil society and persons affected by exclusion. This approach must link and integrate policies in a consistent way (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §93).

202. The Committee refers to its description of the National Action Plan (NAP) for social inclusion and the National Strategy Report on Social Protection and Social Inclusion (the Strategy Report), which can be found respectively in Conclusions 2007 and 2009 on Belgium, under Article 30. It 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. The Committee however emphasises that this was a general appraisal and dealt in no way with the specific situation of Travellers in Belgium. Its finding of conformity could not therefore have any bearing on the conformity of the situation that was the subject of the present complaint under Article 30.

203. In this context, the Committee recalls that, 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 Committee notes that the Strategy Report covers all inhabitants in a situation of poverty or exclusion but each of the policies and measures it comprises is supposed to target a specific sub-group. 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).

204. The Committee does not ignore the *ad hoc* measures concerning Travellers mentioned by the Government. It highlights nonetheless 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. The case file shows that, 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.

205. The Committee therefore holds that 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.

III. REQUEST FOR REIMBURSEMENT OF COSTS

A – Submissions of the parties

1. The complainant organisation

206. The FIDH asks the Committee to invite the Committee of Ministers to recommend that the Government pay the sum of € 10 000 in costs. A breakdown of these various costs is provided.

2. The Government

207. The FIDH only made its request for reimbursement of costs at the time of responding to the Government's submissions on the merits. The Government has not responded or made any comments in this regard.

B – Assessment of the Committee

208. The Committee has pointed out that although the Protocol does not regulate the issue of compensation for expenses incurred in connection with complaints, the quasi-judicial nature of the proceedings under the Protocol means that when there is a finding of a violation of the Charter, the defending state should meet at least some of the costs incurred. The Committee of Ministers has, moreover, accepted the principle of such a form of compensation (CFE-CGC v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §§ 75-76).

209. Consequently, when a request for compensation is submitted to it, the Committee considers it and submits its opinion on it to the Committee of Ministers, leaving it to the latter to decide how it might invite the Government to meet all or part of these expenses. For costs to be taken into consideration by the Committee, it must be established that they were actually and necessarily incurred and reasonable as to quantum (CFE-CGC v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §77, and European Roma Rights Centre v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011, §75).

210. The Committee notes initially that in the instant case, the FIDH has produced explanatory budget notes but no bills supporting the costs incurred for preparing the complaint. These costs are, however, connected mostly with research work and the preparation of the complaint and the response to the Government's submissions. The Committee would point out that in a similar situation, it recommended payment of a lump sum of €2 000 as compensation (CFE-CGC v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §80). In the light of the case-file, the Committee considers that in the instant case the amount claimed by the complainant organisation is excessive. However, making an assessment on an equitable basis, the Committee considers that it would be fair to award the FIDH a lump sum of €2 000. It therefore invites the Committee of Ministers to recommend that Belgium pay this sum to the FIDH.

CONCLUSION

211. For these reasons, the Committee concludes:

- 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;
- 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;
- 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;
- 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;
- 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;
- 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;

and invites the Committee of Ministers to recommend that Belgium pay a sum of €2 000 to the complainant organisation in respect of costs and expenses.

Alexandru ATHANASIU
Rapporteur

Luis JIMENA QUESADA
President

Régis BRILLAT
Executive Secretary

In accordance with Rule 35 of the Committee's Rules, a dissenting opinion of Mr Petros STANGOS, joined by Mr Jean-Michel BELORGEY, Ms Csilla KOLLONAY LEHOCZKY and Ms Jarna PETMAN, is appended to this decision.

**DISSENTING OPINION OF MR PETROS STANGOS
JOINED BY MR JEAN-MICHEL BELORGEY,
MS CSILLA KOLLONAY LEHOCZKY AND MS JARNA PETMAN**

I did not agree with the decision taken by the majority of the members of the Committee that the situation of Travellers in Belgium with regard to domiciliation does not constitute a violation of Article E of the revised Charter read in conjunction with Article 16 on the grounds that the allegations put forward by the complainant organisation concerning violation of the Charter were not sufficiently well argued and documented.

The FIDH based its allegations concerning domiciliation on close observation of the situation on the ground by the Belgian welfare and research organisation, Centre Avec, which is very active in combating all forms of discrimination and exclusion and is also actively involved in pluralist civic action networks. In addition, and above all, nowhere in its submissions did the Belgian Government refute the truth of the claims by the FIDH that many municipalities place obstacles in the way of the domiciliation of Travellers; on the other hand, in my view, the Government's admission that the dissemination and understanding of the relevant regulations and the checks on municipalities performed by federal officials are subjects of concern for it mean that real problems exist and remain insoluble in this area.

Lastly, the fact that a person has no address means that he or she is denied citizenship. As seen in this case, having an address is a vital requirement for a whole range of acts on which integration in civic, social and economic life depends. In previous complaints, the Committee dealt with the obstacles to the domiciliation of Travellers from the angle of Article E read in conjunction with Article 30 of the revised Charter (the right to protection against poverty and social exclusion). In those cases, it was a matter of assessing the impact of the obstacles on Travellers' exercise of their right to vote (see, for instance, decision on the merits of 19 October 2009 in complaint No. 51/2008 ERRC v. France, §§101-102). However, access to political rights and access to social rights are the two sides of citizenship and of the inclusion in community life which the latter involves. In my view, in the present case, as in the past, the Committee ought to have addressed the obstacles to the domiciliation of Travellers from the angle of Article E read in conjunction with Article 30.