

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

COLLECTIVE COMPLAINT NUMBER 185/2019

EUROPEAN ROMA RIGHTS CENTRE (ERRC)

V

BELGIUM

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Observations on the Government's Observations on Admissibility and the  
Request for Immediate Measures

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1. The European Roma Rights Centre ("the ERRC") submits these observations in response to the observations of the Belgian Government ("the Government") dated 27 August 2019, which concern admissibility and the request for immediate measures. Following some preliminary remarks, these observations follow the format of the Government's Observations.

### 1. Preliminary Remarks

2. We are attaching nine annexes to these submissions. We summarise them at the outset. We are continuing the numbering of our annexes, which is why the first annex here is "Annex 3". These annexes are in chronological order:
  - a. **Annex 3:** An English translation of the report prepared by the NGO Doctors of the World, which was annexed to Unia's 11 July 2019 report. The original report is in Dutch; the original version is included in the annex after the English translation. The ERRC prepared this translation. The report itself was prepared on 23 May 2019.

- b. **Annex 4:** An urgent request for information, dated 4 June 2019, to Belgium from four UN special rapporteurs, covering: the right of all persons to the enjoyment of the best possible physical and mental health; adequate housing as an aspect of the right to an adequate standard of living; minorities; and contemporary forms of racism, race discrimination, xenophobia, and intolerance. The urgent request is for information about Operation Strike and its consequences for Travellers.
- c. **Annex 5:** Handwritten testimony taken by activists in June 2019 about the consequences of Operation Strike for individual families, with personal details (names and precise addresses) redacted.
- d. **Annex 6:** An English translation of Unia's report of 11 July 2019, which is Annex 2. The ERRC prepared this translation, which is also available at [http://www.errc.org/uploads/upload\\_en/file/5163\\_file2\\_unia-report-english-31-07-2019.pdf](http://www.errc.org/uploads/upload_en/file/5163_file2_unia-report-english-31-07-2019.pdf).
- e. **Annex 7:** Belgium's reply to the UN special rapporteurs, dated 5 August 2019.
- f. **Annex 8:** Three email exchanges between a lawyer representing Travellers affected by Operation Strike (Maître Alexis Deswaef) and prosecutor Julien Moinil. The first two documents are emails that M<sup>e</sup> Deswaef sent to the prosecutor after the Government sent their 27 August observations in which they claimed that all bank accounts had been unblocked. The bank accounts dealt with in those first two emails apparently have now been unblocked. The third email exchange concerns a bank account which remains blocked, apparently on the basis that the prosecutor cannot see why the person concerned (who previously lived in Belgium and now lives in the UK) would have a Belgian bank account ("*Je ne comprends pas l'utilité d'un compte en Belgique*" – "*I do not understand what's the use of having an account in Belgium*"). The person data about Travellers in these emails have been redacted.

- g. **Annex 9:** An email sent by the ING Bank to a Traveller whose bank account remains blocked, and has been blocked since 7 May 2019 as part of Operation Strike. The email tells the person that the bank has no information and that all queries must be directed to the prosecutor's office. All personal data have been redacted.
  - h. **Annex 10:** A further report from Unia, dated today (30 September 2019), for which the ERRC wishes to express our gratitude to Unia. The report confirms, inter alia, that Travellers' bank accounts remain blocked as part of Operation Strike and that the violations we have alleged are having a significant impact on Travellers.
  - i. **Annex 11:** A statement from a representative of the ERGO network (European Roma Grassroots Organisation), who has been in close personal touch with Travellers in Anderlecht affected by Operation Strike. The ERRC wishes to express our gratitude to ERGO for this statement, which confirms that people in Anderlecht left homeless by Operation Strike did not receive any offer of support.
3. **Redaction of personal data.** We have interviewed Travellers affected by Operation Strike and obtained the annexed documents from the people we have interviewed and from their representatives. The people concerned have asked us not to disclose their personal data, for fear of reprisals. They have specifically identified a fear of reprisals from Prosecutor Moinil. We are confident the Government will quickly confirm the authenticity of the documents concerned (notably the emails in Annex 8).
4. Before replying in detail to the Government's observations, we wish to highlight two key points which emerge from those observations. These

points make it clear that the complaint is admissible and that an indication of immediate measures is appropriate.

- a. **The Parties agree that caravans have been seized and sold (or are intended for sale) without any consideration of the proportionality of the measure.** The Government admit that Belgian law allows people's homes (Travellers' caravans) to be seized and sold on the mere basis that they are part of a criminal investigation and that it is too burdensome for the authorities to hold onto them. The Government admit that 85% of the caravans seized as part of Operation Strike were people's homes and were placed at risk of disposal in this way, with some having indeed been sold. This, we claim, is contrary to the Charter: people's homes must not be treated as goods (*biens*). On this point alone, as well as many others, there is clearly a case to answer based on the agreed facts. This point alone also makes the indication of an immediate measure appropriate: the seizure and sale of caravans without any consideration of the proportionality of the measure is a severe interference with Charter rights that leaves families at risk, living in insecure, overcrowded conditions and facing street homelessness. It seems that most of the caravans seized are still being held by the authorities.
- b. **The Government incorrectly informed the Committee that all of the bank accounts frozen during Operation Strike were unblocked.** The Government state twice in their observations that the bank accounts have been unblocked, as Belgian law only allows bank accounts to be blocked for a short period. Yet we have produced evidence that bank accounts remained blocked at the time of the Government's observations and that bank accounts still remain blocked. Only the Government can confirm how many bank accounts remain blocked; and, we submit, the Government must provide this information and an explanation for why they incorrectly claimed that the bank accounts were unblocked.

5. We also draw the Committee's attention to section 4 of Unia's most recent report (Annex 10). According to Unia (and our discussions with Travellers), people already affected by Operation Strike (bank accounts blocked, caravans seized) are now receiving notices from the Belgian authorities that land they purchased through mortgages are being seized. In some cases, the banks (apparently contacted by the judicial authorities) are directly getting in touch with contacting Travellers to demand repayment of the full balance of the loan by the beginning of November; for those who cannot pay, the property will be repossessed. In some cases both actions are happening in parallel, leading lawyers to advise the Travellers concerned not to try to repay the balance of their loans (even if this were possible). We believe this amounts to a further breach of Articles 16 and 17 of the Charter, taken with Article E: these measures, which target Travellers, will leave families concerned with no place to live. As Unia notes (Annex 10, section 4), Belgium's failure to ensure adequate halting sites for Travellers means that forcing Travellers to leave the land on which they are living will create considerable hardship. Again, there has been no consideration of the proportionality of the measures concerned and no offer of any assistance. From what we can tell, a large number of families are concerned, and would be evicted from their land all at once, so it is unclear what kind of support the authorities could organise to avoid people becoming homeless.
6. We note that the Government have not numbered the pages nor the paragraph numbers of their submission. We refer to page numbers, considering page 1 to be the first page of the Government's submission (for a total of eight pages).

## **2. Admissibility**

7. In response to the Government's claims in the first paragraph of page 2, we note that the Government have extensive information in their

possession to shed light on the police operation that began on 7 May 2019. They have chosen to disclose a few, apparently carefully selected documents which provide very limited information. In particular, they chose to disclose only two police reports from 7 May, despite the fact that 19 sites were affected. We do not even have a complete list of those sites from the Government. Our interviews with Travellers who were affected by the events of 7 May 2019 paint a very different picture. In particular, the Travellers in Charleroi report that the police were aggressive, particularly at the Rue d'Oslo site, and no support at all was offered to people who were made homeless by the seizure of their caravans. We urge the Committee to consider Annexes 5 and 11. Community activists have repeatedly turned to the local authorities and social services for support, to no avail. It seems that about half of the caravans seized that day were seized in Charleroi. We ask the Committee to indicate to the Government to disclose all of the police reports.

8. We believe the Government misinterpret, in the second paragraph of page 2 of their observations, Unia's statements about the possibility that the operation was justified. Unia is not making an argument about direct discrimination or racist intent. Rather, Unia's statement reflects the law on indirect discrimination: it is clear that the raid disproportionately affected people from a particular ethnic minority; it is now for the Government to show that it was proportionate. See, e.g., EU Directive 2000/43, Article 2 § 2(b): "*indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary*". Unia is waiting for the Government to show that "Operation Strike" was proportionate. So are we. The Government have not done so in their submission to the Committee. We

also note Unia's comment, in today's report (Annex 10, bottom of page 1), that the measures concerned, particularly the freezing of bank accounts, have been happening over an extended period of time, creating ever-greater hardship; the longer these measures last, the more difficult it will be for the authorities to show that they are justified.

### *Context of the Operation*

9. We do not doubt that police operation which began on 7 May 2019 was based on evidence of criminal wrongdoing with a parallel operation in Valenciennes (France) in which four men were arrested.<sup>1</sup> What we claim amounts to a violation of the Charter is the heavy-handed, overbroad nature of the police operation, which targeted virtually all of Belgium's Traveller community and resulted in breaches of the social and economic rights of people without any indication that these were necessary or proportionate. What emerges from the facts is an assumption that if some Travellers are suspected of criminal wrongdoing, all Travellers must be involved, and a belief that the appropriate response to allegations of wrongdoing by some Travellers is to engage in collective punishment rooted in a presumption of guilt by ethnic association.
  
10. The Government admit in the last paragraph of page 2 of their observations that 19 sites were raided on 7 May 2019. It is clear from the information in the Government's observations and elsewhere that these are sites where Travellers were living. We recall that Belgium's Traveller community consists of an estimated 7,000 people.<sup>2</sup> On the day of the raid itself, 1,200 police officers were mobilised. This enormous show of force, overwhelming the community, was used to execute what appear to

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<sup>1</sup> France 3 Hauts-de-France, "Valenciennes : démantèlement d'un trafic de voitures maquillées entre la Belgique et la France", 8 May 2019, available at <https://france3-regions.francetvinfo.fr/hauts-de-france/nord-0/valenciennes/valenciennes-demantelement-traffic-voitures-maquillees-entre-belgique-france-1270425.html>.

<sup>2</sup> Belgium, "National Roma Integration Strategy", 6 March 2012, available at [https://ec.europa.eu/info/sites/info/files/roma\\_belgium\\_strategy\\_en.pdf](https://ec.europa.eu/info/sites/info/files/roma_belgium_strategy_en.pdf).

be a total of either 37 or 62 arrest warrants (including those for non-Travellers, such as federal police officers, notaries, and federal employees). These figures do not appear in the Government's observations, but instead in their reply (Annex 7) to an urgent request sent to the Belgian Government by four United Nations special rapporteurs (Annex 1), asking for information about Operation Strike and its impact on Travellers. (In their reply to the special rapporteurs, the Government refer to 31 people arrested (page 2), six fugitives (page 2), and at least 62 individuals who were in contact with victims (page 3).)

11. In these circumstances, it is hardly difficult to speak of an entire community being targeted; indeed, that is why four UN special rapporteurs sent their urgent request. Indeed, what appears from the Government's submissions is that when Belgian police suspect Travellers of criminal activity, they immediately assume that all Travellers nation-wide are involved. This led one of the country's major newspapers to ask on 11 September 2019, that is, four months after the operation: *"Does the Justice System Think Travellers Are a Criminal Organisation?"*.<sup>3</sup> In any event, the operation does not have to have intentionally targeted Belgium's Traveller community in order to amount to discrimination. The Committee might conclude, when turning to the merits of the case, that indirect discrimination was at play, given that the operation overwhelmingly affected Travellers and does not appear to be justified. See, e.g., *ERRC v Bulgaria* (complaint number 31/2005), decision on the merits, § 40. That is the approach Unia has taken (see above, § 7).

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<sup>3</sup> La Libre, "La justice confond-elle les gens du voyage avec une organisation criminelle ?", 11 September 2019, available at <https://www.lalibre.be/belgique/judiciaire/la-justice-confond-elle-les-gens-du-voyage-avec-une-organisation-criminelle-5d77e86cf20d5a229e4be065>.



## *Contested Facts*

12. In order to support their allegation that Travellers were not deprived of their freedom during the raid, the Government have produced a police report of the raid on “camp D”, located on Rue des Colombophiles in Brussels. This is a very small site, where one extended family (consisting of three nuclear families) was living. It is important to note that despite the massive nature of the police operation, the Government have only produced two police reports of raids; the other report concerns a raid on a site where no people were present and provides sketchy details of arrests at a third site. This selective disclosure of information is misleading. Indeed, our own research shows that the people living at “camp D” did not particularly complain about the conduct of the police officers. (We would of course still claim that they were deprived of their liberty, as they had to ask police officers to leave the camp.) As mentioned earlier, our interviews with Travellers who were present at the raids in Charleroi show that the police were especially aggressive and that no social services were or have since been made available. People who were present at the raid on the large site at Rue des Trèfles in Anderlecht (Brussels) also report that the police were particularly aggressive there. This can be seen in the testimony activists recorded by hand and submitted at Annex 5. For example, several people reported that the police were very aggressive, using language such as “*pauvre Gitan, c’est jamais de votre faute, jamais vous, vous n’avez pas le droit de vous plaindre*” (“*poor Gypsy, it’s never your fault, never you, you don’t have the right to complain*”, reported by someone in Anderlecht. Several of the testimonies recorded in Annex 5 note the trauma suffered by children and adults and the fear of the police. It is imperative that the Government discloses the reports from all of the raids that took place on 7 May, including police reports and reports from social services.

13. The Government claim towards the bottom of page 3 of their observations that only one family accepted an offer of rehousing. No wonder: the people concerned were awakened by a massive police raid as day was breaking and (allegedly) offered housing by people accompanying the police officers who were ordering them out of their homes. This is not compatible with the right to housing: “*when evictions must take place, they must be carried out (i) in conditions that respect the dignity of the persons concerned; (ii) in accordance with rules that are sufficiently protective of the rights of the persons concerned*”. *COHRE v France* (collective complaint no.63/2010), decision on the merits, § 42. In any event, the Government’s claim is at odds with the reports we have of the day, particularly in Charleroi where it appears that around half of the caravans were seized and people reported that no rehousing was offered. See also Annex 11, concerning the failure to offer housing at two sites in Anderlecht where major raids took place (including Rue des Trèfles).
14. The Government rightly note at the bottom of page 3 and the top of page 4 that the sale of caravans is not intended to compensate victims of any alleged crimes. We stand corrected on this point and are grateful for the Government’s clarification of domestic law, which makes it obvious that there is a serious issue arising under the Charter: domestic law allows the authorities to seize Travellers’ homes and sell them without any consideration of the proportionality of the measure, leaving the people concerned homeless. Even if the money recovered is given to the owners of the caravans (which, as the Government make clear, is not certain), in practice these sums will not be enough to replace their homes or replace the items that were in them.
15. It is quite clear that some of the caravans that have been seized were taken from people who have never been accused or approached by the authorities about criminal wrongdoing. There are people concerned who

have had their caravans seized but who have had no other information from the authorities. We have spoken to several such people, who do not wish for their personal data to be disclosed, for fear of delaying the return of their caravans or other reprisals from the authorities. What emerges from the documents before the Committee is that some 76 caravans were seized which were being used as homes (given that of the 91 caravans seized, 15 were taken from a storage hangar), and of those, only 17 (by our count) have been returned (see Annex 9). We repeat that it is incompatible with the Charter to seize someone's home on the mere basis that it is a personal possession implicated in a criminal investigation; a person's home must be treated as such, and a person can only be deprived of her/his home when it is proportionate to a legitimate aim. There has been no consideration of proportionality here.

16. We apologise for a typo in the original complaint: the word "*stolen*" used in § 11 should have said "*sold*". While a small number of the caravans (one-sixth) were uninhabited at the time they were seized, the vast majority were being used as people's homes. The Government do not contest the fact that apart from the 15 caravans seized in a locked hangar, the others were being used as people's homes.

17. The Government and the ERRC are therefore in agreement: Travellers' homes were seized as "goods" (*biens*) in accordance with domestic law, without any regard for the fact that they were homes or any regard for the proportionality of the measure; and those caravans have been sold or are threatened with being sold on the basis that it is too burdensome for the authorities to hold onto them. The fact that the authorities seem not to have considered the use of Article 28 *octies* § 2 of the *Code d'Instruction Criminelle* (restitution of the seized belongings in exchange for a bond) is telling about the authorities' disregard for the Charter. In any event, there is clearly a case to answer about treating people's homes as goods that can be seized and disposed of without any

proportionality analysis. According to the clear case law of the European Court of Human Rights, any measure evicting someone from her home must be subject to a proportionality analysis before the eviction takes place; it is not enough that weeks or months later, someone can have the proportionality tested before a judge. See, e.g., *Winterstein and others v France* (judgment of the European Court of Human Rights of 17 October 2013), § 148(δ): “*La perte d’un logement est une atteinte des plus graves au droit au respect du domicile. Toute personne qui risque d’en être victime doit en principe pouvoir faire examiner la proportionnalité de cette mesure par un tribunal indépendant à la lumière des principes pertinents*” (“*Since the loss of one’s home is a most extreme form of interference with the right under Article 8 to respect for one’s home, any person at risk of being a victim thereof 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*”).

18. In two full paragraphs on page 4 of their observations, the Government address the issue of bank accounts. They admit that Belgian law makes it possible, in theory, for a person’s bank account to be blocked without any explanation, requiring people to make individual requests for information through a lawyer. Such a system, in theory, may be compatible with the Charter depending on how it is used. In practice, in the present case, Travellers have had their bank accounts blocked as part of the same police operation without having received any indication that they are in any way suspected of criminal wrongdoing. See Annex 9. The only connection between all of the people concerned is that they are members of the same ethnic group. In these circumstances, the burden must shift to the Government to show that the blocking of bank accounts – which of course amounts to a serious interference with a range of social and economic rights – is justifiable. *ERRC v Portugal* (collective complaint no.61/2010), decision on the merits, § 23. They have manifestly failed to do so in their observations, referring only to

unsubstantiated findings by police. If the police had in fact found that all of the bank accounts blocked were involved in criminal activity, the owners of those bank accounts would necessarily have been proactively approached by police. There is clearly a case for the Government to answer on the merits, especially given the long period during which accounts have been blocked and the apparently arbitrary approach of prosecutors (see Annex 8: “*Je ne comprends pas l’utilité d’un compte en Belgique*”).

19. The Government rely, in relation to the bank accounts and otherwise, on the fact that people affected by the authorities’ actions have the possibility to instruct lawyers individually and seek redress. Yet collective complaints do not require exhaustion of domestic remedies, nor would such individual complaints deal with the collective nature of what happened: violations of social and economic rights, such as blocking en masse of bank accounts and seizing caravans on a large scale affecting a particular ethnic group. The Government’s comments also ignore the particularly difficult situation that Roma and Travellers face when securing access to justice. On 17 October 2017, the Committee of Ministers of the Council of Europe agreed a recommendation, CM/Rec(2017)10, on improving access to justice for Roma and Travellers in Europe. That included recognition “*that Roma and Travellers continue to face widespread and enduring anti-Gypsyism, which entails, inter alia, widespread discrimination and other violations of their rights, while at the same time creating barriers which prevent them from accessing justice*” and making various recommendations to ensure equal access. It is unclear what steps, if any, the Belgian authorities have taken to implement the recommendation, but it can hardly be said that the Travellers affected by the 7 May 2019 operation and its aftermath can simply resolve their problems by instructing lawyers.

20. The Government also rely on the fact that people concerned have not asked for access to their criminal file (*“la loi... permet toutefois à toutes les personnes concernées de demander accès à leur dossier répressif, ce qu’aucune n’a fait à ce jour”*). If anything, this suggests the difficulty that people affected have had in getting access to lawyers. The Travellers we have spoken to who were affected by Operation Strike report that this is the case: people who had their caravans seized, their bank accounts blocked, and/or their number plates struck off have had serious difficulties getting access to lawyers, and the few lawyers who are able to provide services (such as M<sup>e</sup> Deswaef) are overwhelmed with requests. In addition to the barriers the Council of Europe has recognised Roma and Travellers face in securing access to justice, Belgium introduced reforms to its legal aid system in 2016 which make it harder to get a legal-aid lawyer in exactly the kinds of circumstances created by Operation Strike. The changes (which have been heavily criticised<sup>4</sup> and resulted in a Constitutional Court judgment striking down one aspect of the reform<sup>5</sup>), essentially make it impossible for anyone in the position of the Travellers affected by the actions impugned in our complaint (caravans seized and sold, bank accounts blocked, number plates struck off) to secure access to a legal aid lawyer unless they are receiving support from the welfare office (known in Belgium as the CPAS). As the Travellers concerned did not need CPAS support before Operation Strike, this requires them to go to the CPAS and register, a lengthy

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<sup>4</sup> See Pascal De Gendt, “La réforme de l’aide juridique : vers une justice à deux vitesses ?”, April 2016, available at <http://www.sireas.be/publications/analyse2016/2016-04int.pdf>, page 8: *“En réclamant aux demandeurs de faire preuve de leur indigence, en fournissant des documents parfois difficiles à obtenir dans des délais courts, on construit un obstacle supplémentaire pour les personnes qui auraient réellement besoin d’une aide. On en exclut aussi différentes catégories. Être, par exemple, propriétaire de son logement, ou bénéficier d’un revenu stable de travail, n’empêche pas toujours de tomber dans la précarité à un moment de sa vie”* (“Asking applicants to prove their indigence by producing, within short deadlines, documents that are sometimes difficult to obtain amounts to a further obstacle for people who might really be in need of help. Several categories of people are excluded. For example, owning one’s own home, or having a steady income through work, does not stop a person from falling into hardship at some point in her/his life”).

<sup>5</sup> Judgment number 77/2018 of 21 June 2018. The judgment declared unconstitutional those provisions requiring legal aid recipients to pay a contribution to their legal fees; it did not deal with the burden on individuals to prove that they are poor enough to be eligible for legal aid.

process which has proved difficult for some. Unia detail in their report published today (Annex 10) the difficulties that Travellers affected by Operation Strike have had in securing CPAS support.

21. For those people affected who have instructed lawyers, we have spoken to some of the lawyers involved. They note that the decision not to ask for full access to criminal files or to make an application to lift the seizure (*recours en levée de saisie*) is a question of legal strategy: lodging such formal requests makes it much more likely that the authorities will make full use of the deadlines available to them in law. Refraining from such challenges and instead informally contacting the authorities (see Annex 8) is more likely to lead to a result.

22. At the bottom of page 4 and the top of page 5 of their observations, the Government assert that all of the accounts have been unblocked. This is not true. See Annex 8. This is a factual matter which the Committee must consider, given how the freezing of bank accounts without warning and for an extended period of time affects people's enjoyment of their Charter rights. We ask the Government to confirm the authenticity of the emails contained at Annex 8, to confirm how many bank accounts remain blocked, and to give an explanation for their assertion that all of the accounts have been unblocked when that is not true.

23. The Government are right when they note that social security cards have not been blocked. Yet blocking people's bank accounts means denying them access to healthcare, because of the way Belgium's healthcare system<sup>6</sup> works: unless they have a "*tier payant*" (direct payment for healthcare services by the insurer), publicly insured individuals must pay for care out of pocket and then seek reimbursement from their insurer (*mutuelle*); and in any event, all publicly insured individuals must pay

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<sup>6</sup> Belgium's complex system of reimbursements is described, for example, in the Government's seventh annual report on the application of the Charter: RAP/RCha/BEL/VII(2012), pages 23 et seq.

their monthly contributions (*cotisations*). While being registered with the CPAS can make access to healthcare easier for people in poverty, the Travellers affected by Operation Strike must go through the lengthy process of registering. With their bank accounts blocked, people have been unable to secure ordinary access to healthcare. See also Annex 3, point 2(c).

24. In relation to the striking off of VAT numbers, we again stand corrected. The Government rightly point out that the judicial authorities could not have struck off VAT numbers. Based on our discussions with entrepreneurs affected by Operation Strike, it appears that after their bank accounts were frozen, they were no longer able to receive payment on invoices they had issued, nor make their VAT payments. Some were therefore advised by their accounts to withdraw their VAT numbers. With better access to legal advice they could perhaps have taken another approach that would have allowed them to preserve their VAT numbers, but the people with whom we spoke did not have access to such advice.
25. We reject the Government's unsupported conclusion, in the large paragraph in the middle of page 5 of their observations, that all of the vehicles whose number plates were struck off were irregular. We address this issue below in relation to immediate measures.
26. The Government conclude that the complaint is inadmissible, on the basis of their unsubstantiated affirmation that this was a well-planned and targeted operation. While the operation may have been well-planned, its target was unjustifiably wide: the Belgian authorities went after a larger number of Travellers and the sites on which they live based on what appears to be an assumption that if some people involved in a criminal enterprise were Travellers, the entire community must be involved. It is for the Government to show that other, legitimate considerations were at work.



## ***Immediate Measures***

**27. Ceasing the sale of caravans and returning caravans to their owners.** The Government's response shows that Belgian law and practice is not compatible with the Charter: Travellers' caravans can and have been treated as "goods" that can be confiscated, regardless of the effect on Charter rights. The only justification given for the seizures and sales is that "*maintaining the cars and caravans results in significant expenses and the vehicles lose their value over time*" ("*le gardiennage des voitures et de caravanes engendre des frais importants et les véhicules perdent de la valeur au fil du temps*"). When it comes to someone's home, this justification is incompatible with the Charter. If the caravans needed to be searched, this could be done in the space of a few hours; if days were necessary, this might also be compatible with the Charter in certain circumstances. Why is it necessary to separate people permanently from their homes and to sell them? Even if it was compatible with the Charter to apply Article 28 *octies* to people's homes, why not even consider the possibility of returning the vehicles for a sum of money, as paragraph 2 allows (although even this could raise issues under the Charter, depending on the circumstances). As it is, the authorities are treating people's homes as mere belongings and disposing of them, with the promise that the people affected might receive some amount of money in the future. This is so flagrantly incompatible with the Charter that it justifies the indication of immediate measures. The fact that only 17 caravans have been returned in exchange for a sum of money shows that some 58 caravans that were being used as people's homes have been sold or are at risk of being sold.

28. As for a request for lifting of the seizure (*le recours en levée de saisie*), mentioned at the bottom of page 6, this is inadequate: too few of the Travellers affected have access to lawyers, and it is clear that this

procedure does not take into account the proportionality of seizing someone's home. This is clear from the fact that the one request made was rejected, as the Government point out in the last sentence on page 6, without any consideration of proportionality. (It is unclear if the example the Government cite concerns a caravan or a car.)

29. **Unfreezing bank accounts.** The Government's assertion that all of the frozen bank accounts have been unblocked (*"les comptes bancaires ont été débloqués"*) is false. Bank accounts frozen as part of Operation Strike remain frozen. See Annexes 8 and 10 (section 3). It appears that two of the people whose bank accounts are discussed in Annex 8 have had their bank accounts unblocked, but this happened after the Government submitted their observations on 27 August 2019; the Government owe the Committee an explanation for their inaccurate information. We have tried to ascertain how many bank accounts remain blocked but it is unclear; what is certain though is that the practice continues and appears to be arbitrary. See, e.g., Annex 8, email from Prosecutor Moinil, demanding to know why a person would need a bank account in Belgium before agreeing to unblock it; see also Annex 5, which includes details of a significant number of frozen bank accounts. The Government's sensationalist references to millions of euros – and their blatant attempt to activate racist stereotypes by describing welfare recipients with Rolex watches – ignores the gravamen of our complaint: people with modest means who have never been approached by the police or any other authorities have had their bank accounts blocked for over four months, forcing them to go out of business, rely on family, friends, and hand-outs to feed themselves and their children, and making it impossible for them to enjoy many of the rights the Charter guarantees. In these circumstances, immediate measures are appropriate, all the more so as domestic law does not allow these bank accounts to remain blocked (see the top of page 5 of the Government's observations, referring to Article 46 *quarter* of the *Code d'Instruction Criminelle*).

30. **Restoring the number plates struck off.** The Government seem to believe they are on firmer ground in rejecting this demand (*“L’Etat belge demande de rejeter fermement cette demande” – “The Belgian State asks for this request to be firmly rejected”*). Yet they admit that some of the number plates have been struck off on the basis of a failure to pay tax. While striking off number plates that State officials distributed unlawfully is understandable, and while strict action should be taken to deal with uninsured cars and drivers, the failure to pay tax is hardly a reason to make it impossible for someone to use her car, especially without warning and with nothing more than a form letter (*“un courrier-type”*) with no specific information. The official website of the Federal Public Service for Finance indicates less strict measures for non-payment of road taxes: a fine of 50 EUR for late payments, an offer to allow people to pay their taxes on the spot, or a period of 96 hours in which to settle one’s tax bill.<sup>7</sup>

## Conclusion

31. The Government’s suggestion on page 8 that Operation Strike took only those measures strictly necessary in terms of their impact on Charter rights (*“les actions policières et judiciaires... se sont... déroulées dans des conditions visant justement à minimiser au strict nécessaire leur impact sur les droits et libertés des personnes visées” – “the actions of the police and judicial authorities took place under conditions designed to minimise the impact on the rights and freedoms of the persons targeted to what was strictly necessary”*) is unconvincing. The authorities treated people’s homes as goods, seizing them without warning. The Government are unaware that bank accounts remain blocked or are intentionally misleading the Committee.

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<sup>7</sup> Service Public Fédéral FINANCE, “Taxe de Circulation”, [https://finances.belgium.be/fr/particuliers/transport/immatriculation\\_et\\_impots/taxe\\_de\\_circulation#q5](https://finances.belgium.be/fr/particuliers/transport/immatriculation_et_impots/taxe_de_circulation#q5).

32. There is enough information here to justify the indication of immediate measures to put an end to serious violations of Charter rights against people who have been affected on the basis of their ethnicity; and there is certainly a case to be answered on the merits, requiring the Government to produce far more justification than it has to date. We therefore renew our request for immediate measures and ask the Committee to make a decision as quickly as possible. We respectfully submit that the only clarification the Committee requires at this point is confirmation from the Government that the emails contained in Annex 8 are authentic and that, contrary to what the Government have submitted, bank accounts blocked as part of Operation Strike remain blocked.

The European Roma Rights Centre

30 September 2019