

DECISION ON ADMISSIBILITY

1 December 2010

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 247th session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, Vice-President
Colm O'CONNOR, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Mr Lauri LEPPIK
Mrs Monika SCHLACHTER
Mssrs Rüçhan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Luis JIMENA QUESADA
Mrs Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 27 September 2010, registered on 30 September 2010 as number 62/2010, lodged by the International Federation of Human Rights ("the FIDH") and signed by its President, Mrs Souhair Ben Hassen, requesting the Committee to find that the situation in Belgium is not in conformity with Articles 16 and 30 of the Revised European Social Charter ("the Revised Charter"), as well as with Article E in conjunction with each of these provisions;

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Belgium ("the Government") on admissibility of 18 Novembre 2010;

Having regard to the Revised Charter and, in particular, to Articles 16, 30 and E, which read as follows:

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

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

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

Article 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."

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."

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

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session and on 20 February 2009 at its 234th session ("the Rules");

Having deliberated on 1 December 2010;

Delivers the following decision, adopted on the above-mentioned date:

1. the FIDH alleges that the situation of the population known as "Travelers" in Belgium amount to a violation of Articles 16 and 30 of the Revised Charter, alone or in conjunction with Article E. It, in particular, claims that:

- a) there are insufficient public caravan sites that travellers can use for either short stays or permanent residence;
- b) spatial and regional planning regulations take no account of travellers' specific needs or circumstances, which in practice disproportionately restricts their ability to obtain planning permission to live in their caravans on private property;
- c) the authorities make unreasonable use of eviction procedures against travellers who are unlawfully settled on land because they have been unable to find a place on an authorised site and such evictions are not accompanied by appropriate safeguards;
- d) the Walloon and Brussels regions do not recognise caravans as dwellings, which prevents travellers from enforcing their right to housing; in the Flemish region the rules governing health, safety and living conditions are not adapted to the circumstances of mobile homes;
- e) members of this group of the population are frequently refused the right to be registered as resident, which is a precondition for several important entitlements and services, in particular social allowances.

2. The Government notes that the FIDH also refers to Article 31 of the Charter and the right protected by it. While reiterating that it is not bound by this Article, the Government does not raise any objections as to the admissibility of the complaint. This is without prejudice with its views as to the merits.

THE LAW

3. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Belgium on 23 June 2003 and entered into force for this State on 1 August 2003, the complaint has been submitted in writing and concerns Article 6§4 of the Revised Charter, provision accepted by Belgium when it ratified this treaty on 02 March 2004 and to which it is bound since the entry into force of this treaty in its respect on 1 May 2004.

4. Moreover, the grounds for the complaint are indicated.

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

6. The Committee has already considered that the FIDH has particular competence (FIDH v. Greece, complaint No. 7/2000, decision on admissibility of 28 June 2000, §8 ; FIDH v. France, complaint No.14/2003, decision on admissibility of 16 May 2003, §5). It confirms this decision since no significant change has taken place.

7. The complaint is signed by Mrs Souhair Ben Hassen President of the Organisation who, according to the statute, represents the organisation in all civil matters and is vested with all powers necessary for that purpose. Therefore the conditions stipulated in Rule 23 of the Rules are fulfilled.

8. In its observations on admissibility, the Government notes that the FIDH refers to Article 31 of the Revised Charter, an article that Belgium has not accepted. The Committee recalls that "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" (MDAC v. Bulgaria, complaint No. 41/2007, decision on admissibility of 26 June 2007, §9).

9. For these reasons, the Committee, on the basis of the report presented by Mr Alexandru ATHANASIU and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Revised Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 31 January 2011;

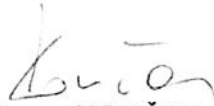
Invites the FIDH to submit a response to the Government's submissions by a deadline which it shall determine;

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Revised Charter to make comments by 31 January 2011, should they so wish;

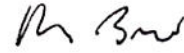
In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 31 January 2011.



Alexandru ATHANASIU
Rapporteur



Polonca KONČAR
President



Régis BRILLAT
Executive Secretary