



Civil society monitoring report  
on implementation  
of the national Roma integration strategy  
in Belgium

*Identifying blind spots  
in Roma inclusion policy*

**Prepared by:**  
CMGVR – Centre de Médiation des Gens du Voyage et des Roms  
November 2019



Justice  
and Consumers

**EUROPEAN COMMISSION**

Directorate-General for Justice and Consumers  
Directorate D — Equality and Union Citizenship  
Unit D1 Non Discrimination and Roma Coordination

*European Commission*  
*B-1049 Brussels*

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Luxembourg: Publications Office of the European Union, 2020

Print	ISBN	<b>XXX-XX-XX-XXXXX-X</b>	doi:	<b>XX.XXXX/XXXXXX</b>	Catalogue number	<b>XX-XX-XX-XXX-EN-X</b>
PDF	ISBN	<b>XXX-XX-XX-XXXXX-X</b>	doi:	<b>XX.XXXX/XXXXXX</b>	Catalogue number	<b>XX-XX-XX-XXX-EN-X</b>

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The report has been prepared by NGO Mediation Centre for Roma and Travellers (*CMGVR – Centre de Médiation des Gens du Voyage et des Roms*).

The report was prepared as part of the Roma Civil Monitor pilot project, 'Capacity-building for Roma civil society and strengthening its involvement in the monitoring of National Roma Integration Strategies'. The pilot project is carried out for the European Commission, DG Justice and Consumers. It is coordinated by the *Center for Policy Studies* of the Central European University (CEU CPS), in partnership with the European Roma Grassroots Organisations Network (ERGO Network), the European Roma Rights Centre (ERRC), the *Fundación Secretariado Gitano* (FSG) and the Roma Education Fund (REF) and implemented with around 90 NGOs and experts from up to 27 member states.

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## LIST OF ABBREVIATIONS

CGRA/CGVS	Commissioner General's Office for Refugees and Stateless Persons ( <i>Commissariat Général aux Réfugiés et aux Apatrides / Commissariaat Generaal voor Vluchtelingen en Staatlozen</i> )
CIRE	Coordination and Initiatives for Refugees and Foreigners
CMGVR	Mediation Center for Roma and Travellers ( <i>Centre de Médiation des Gens du Voyage et des Roms</i> )
COCOF	French Community Commission
COCOM	Communitarian Community Commission (Flemish-French speaking in Brussels)
ECSR	European Committee of Social Rights
EMA	Emergency Medical Assistance
ERRC	European Roma Rights Centre
GDRC	General Delegate for the Rights of the Child
NSRI	National Strategy for Roma inclusion
RCM	Roma Civil Monitor
SWO	Social Welfare Offices
UNIA	Belgian Equal Opportunity Body

## EXECUTIVE SUMMARY

Following the [RCM's previous two reports](#) on Belgium,<sup>1</sup> the aim of this third one is to give a closer focus to issues that have not received proper attention in the current strategic cycle, or to problems for which policy solutions have not been sufficiently conceived or pursued.

### The need for effective recognition of caravans as housing

The many difficulties and infringements to fundamental rights faced by Travellers in Belgium today are directly linked to the legal uncertainty that surrounds the mobile lifestyle, and more specifically to the lack of effective recognition of caravans as housing. Though, caravans are now recognised as a type of habitat in all three regions of Belgium. However, the potential positive outcomes of this recognition are significantly limited by the fact that it was not accompanied by an adaptation of the qualitative criteria for housing (health, safety, habitability). The lack of available sites, the handling of evictions, the difficulties in obtaining planning permits or residence addresses, are all symptoms of this insufficient inclusion of caravans and of the mobile lifestyle in our legal system.

Local authorities are bound to be central actors in the effectiveness of the decrees recognising caravans. For now, the "in-between status" of mobile homes generates a certain blurriness in the ways that the law gets implemented locally by municipal authorities and services. The main recommendations for this first chapter are the development of technical standards and qualitative criteria for mobile housing, and the compulsory creation of sites for Travellers. Other recommendations insisted on the need for awareness-raising amongst local authorities and for the employment of Travellers mediators.

#### ***Case study: Major police operation leading to collective seizure of caravans***

To illustrate the need for effective recognition of caravans as housing, the authors have decided to develop a case study on the aftermaths of the recent massive police operation led amongst Traveller groups. A great number of caravans were seized by the police, which left hundreds of Travellers homeless. The aim of this case study is to draw attention to the elements of the judicial intervention that are problematic in their seemingly disproportionate nature, as well as their consequences on the lives of the Traveller families affected.

### Families homelessness

In recent years, the number of families in situations of homelessness has been increasing and generated the apparition of shanty towns and of a growing number of squats. While Belgium is a country characterised by advanced social security and the promotion of fundamental rights, there are hardly any humanitarian (and even emergency) responses to the worrisome situation of these families and children. Quite the opposite: recently, the difficulties faced by these families have been aggravated by a legal setback: the introduction of the "anti-squat law".

Adding to the lack of infrastructure and regulation, an additional difficulty has to do with the family dimension of the homelessness faced by Roma. While family is an evident source of resilience for marginalised groups, it can also be an obstacle today because the available support is almost always conceived for individuals. This significant lack of perspectives for

<sup>1</sup> The first annual cycle of the Roma Civil Monitor was focused on the horizontal precondition of the Roma inclusion – governance, fight against antigypsyism and anti-discrimination. The second cycle concerned the four key policy fields – education, employment, healthcare and housing. All reports are available at: <https://cps.ceu.edu/roma-civil-monitor-reports>

families in situations of homelessness is one of the most telling illustration of this problematic.

In spite of the global lack of political willingness around this issue, in the past few years, several local projects of insertion through housing for Roma families have emerged in Belgian municipalities. These projects are inspired from the dynamic of "Housing First" and have the ambition of bringing marginalised families back into the social protection system.

The recommendations stemming from this second chapter have to do with the development of accommodation alternatives that are suitable for families and with promoting measures allowing for the temporary occupation of uninhabited buildings.

### Roma's access to asylum and legal residence

The way in which Roma's requests for asylum are treated illustrates one of the most profound paradoxes of contemporary Europe: although discriminations and persecutions against Roma are now widely acknowledged and presented as a challenge for European authorities, it is nearly impossible for them to obtain asylum. Recently, the systematisation of asylum refusals has been facilitated by the entry of several Eastern European countries into the EU, as well as by the adoption of the "list of safe countries", for which asylum procedures are accelerated and come with limited possibilities of appeal. Among these "safe countries" subjected to a presumption of guarantee and protection of human rights are several Balkan countries, where a climate of insecurity, anti-Gypsy hatred and discriminatory treatments are reported.

Unfortunately to this day, there is no specific policy answer meant to ensure the protection of Roma families that are excluded or even persecuted in their home countries. The reality is quite the opposite: the Roma population keeps being the target of expulsion measures and of a restrictive interpretation of international refugee protection instruments.

The recommendations for this chapter on Roma's access to asylum were to mitigate the systematic resort to the list of safe countries as it currently jeopardises thorough individual assessment of safety presumptions.

#### ***Case study: Roma Serbian family imprisoned and expelled***

To illustrate the concrete reality of this disregard for Roma's fear of persecution in asylum procedures, the authors have decided to report on the recent detention and expulsion of Roma family with children. This recent case was at the centre of a media storm. As a matter of fact, in 2017, and in spite of previous condemnations (2004 and 2008), Belgian authorities have reinstated the possibility of detaining migrant families and children residing illegally in the country. This repressive policy was first implemented on a Roma family, regardless of its particularly vulnerable profile. In October 2018, the family was sent back after two months of detention, and despite the fact that the UN Committee for the Rights of the Child had specifically requested that Belgium set the family free. The arguments raised by the lawyers and the civil society concerning the family's fears of persecution have been considered "purely hypothetical" by the State Secretary to Asylum and Immigration. Today, a few months after their expulsion, the family lives in a slum 200 km away from Belgrade, without an address, without papers nor income, without access to schooling for the children.

## INTRODUCTION

The Roma Civil Monitor (RCM) is a pilot project initiated by the European Parliament which aims to survey the views of the civil society in each Member State concerning the implementation of Roma inclusion policies. In Belgium, as in many other European states, a National Strategy for Roma Inclusion (NSRI) was produced back in 2012, and advocates for a *comprehensive approach* of all objectives pushed forward by the European Framework for National Roma Integration Strategies up to 2020.

A few years after the elaboration of the Belgian NSRI, it is time to evaluate the improvements and challenges it brought about. It is in this context that the Mediation Centre for Roma and Travellers (CMGVR) got mandated to carry out this mission of research, data collection and analysis, through [three monitoring reports](#). The first report (2017) focused on governance and the overall political framework, the fight against discrimination and the fight against racism. The second report (2018) addressed the key issues of housing, employment, education and health. Both reports showed that though some improvements have been made, considerable challenges still remain in all sectors covered by the NSRI and the monitoring reports.

As a matter of fact, the two previous Roma Civil Monitoring reports have shown that beyond the production of the strategy itself, little has been done since to concretely improve the living conditions of both Roma and Travellers communities in Belgium. There have been some recent policy improvements for Travellers, such as the introduction of an official recognition of caravans as housing and a decree planning for the development of ten additional sites for temporary stay. However, Travellers still suffer from a critical lack of effective recognition of their mobile lifestyle, visible in the long-standing lack of available sites for their temporary and permanent stay and in the ensuing repeated evictions. This situation impedes their access to all fundamental rights and to a full enjoyment of their citizenship. The Roma community on the other hand, continues to face precarious living conditions and a global discrimination, which bars them from an equal access to school, housing, healthcare and the labour market. Overall, the fight against discrimination and antigypsyism is still rather ineffective, with a very small number of complaints lodged and followed up on. Concerning political participation and representation, some degree of consultation has been ensured, but recommendations issued by the civil society are still rarely integrated in political decisions. On a positive note, since 2014, the access to the Belgian labour market for Romanian and Bulgarian citizens has constituted an undeniable progress in terms of living conditions.

This third cycle of civil society monitoring opens an opportunity to focus on issues that have not received sufficient attention or for which the policies developed are insufficient, poorly/not implemented or non-existent. Basing on their expertise and long-standing experience in the field, the authors have decided to report on the following issues:

1. The need for an official and effective recognition of caravans as housing: the marginalisation of the mobile lifestyle and of mobile housing is at the core of practically all the difficulties faced by Travellers today in their access to rights.
2. Roma families in situation of homelessness and their access to housing and social rights: though this issue concerns a minority of Roma living in Belgium, the growing number of families experiencing homelessness or high housing insecurity is a matter of humanitarian emergency, to which no appropriate and lasting solution has been provided so far.
3. Roma people's access asylum and legal residence: one can only notice the incoherence limiting Roma people's access to legal stay. Although the deprivation, continuing antigypsyism and human rights violations they face in most home countries are now widely acknowledged, the doors of asylum remain closed to them

and the right to free circulation and residence for EU Roma is restricted by an extensive use of the notion of being “an unreasonable burden for the State”

These themes are identified as central fieldwork themes and as major obstacles faced by the communities in their inclusion efforts. For the CMGVR, this third cycle is an opportunity to improve and clarify the knowledge on these issues and to continue to inform public authorities in a useful and relevant way.

The methodology for this report inscribes in a qualitative approach. The authors are part of a grassroots organisation that has been active on the ground for nearly 20 years, with both Roma and Traveller communities, and has always made a point of relaying and addressing the concerns expressed by the communities themselves. All three themes picked for this report reflect those concerns and find their sources in legal voids or loopholes. The authors have documented these voids and loopholes based on their years of experience, and through the collection and analysis of existing documentation (studies, reports, laws, court cases, websites of services and institutions concerned). Ground data collected amongst the civil society and community representatives were another significant source of information and analysis. These data were formally and informally gathered during daily work by the side of both Roma and Travellers communities, as well as in the frame of the regular conferences, trainings and seminars the CMGVR organises or partakes in.

Notice: Most of the quotes and texts cited in the document have been translated by the authors from French or Flemish to English and are not legally bounded.

# NEED FOR RECOGNITION OF CARAVANS AS HOUSING

## Definition of the problem

In Belgium, for years, representatives of the Traveller community have relentlessly reported facing multiple obstacles in keeping their mobile lifestyle. They experience growing tensions around the organisation of temporary stay and continuing difficulties in negotiating periods of installation that are viable for their professional activities. Despite increasing public means to finance new sites, Travellers representatives and field workers concur to say that the most central and urgent problem faced by Travellers today is the lack of accessible sites, both for residential and temporary stay. As evoked in the previous RCM reports, evictions of Travellers families from residential and temporary sites still happen all year round, including during winter. This situation is highly problematic for Travellers because their mobility is what determines and allows for the development of their economic activities, and the maintenance of their family, social and professional ties.

All those elements characterising the current situation were already highlighted in March 2012, in a decision of the European Committee of Social Rights (ECSR) condemning Belgium for the violation of several rights protected by the European Social Charter.<sup>2</sup> Since then, little has been done to tackle these pressing issues, as it has been detailed in [the previous Roma Civil Monitor report](#). Concretely, the current context is in a “blocking position” that directly affects Travellers’ fundamental rights. To many stakeholders, it illustrates both the limits of the voluntary-based approach that prevails in Belgium, and the pressing need for supra-municipal involvement. The global incomprehension and rejection of Travellers’ mobile lifestyle makes it nearly impossible for them to build a future for themselves, to exercise their independent activities, to pursue regular schooling, to benefit from continuous medical care, and overall to feel included as citizens.

A clear positive improvement is that caravans are now recognised as a type of habitat in all three regions of Belgium.<sup>3</sup> However, the potential positive outcomes of this recognition are significantly limited by the fact that technical and qualitative housing criteria have not been subjected to adaptations yet. In other words, housing regulations and technical housing standards have generally not been adjusted to the specificities of mobile homes. The authors of this report firmly believe that the many difficulties and fundamental rights infringements faced by Travellers in Belgium today are directly linked to the legal uncertainty surrounding the mobile lifestyle, as well as to the lack of effective recognition of caravans as housing. The lack of available sites, the handling of evictions, the difficulties in obtaining a planning permit or residence address, are all symptoms of this insufficient inclusion of caravans and of the mobile lifestyle in our legal system. This chapter is intended as a review of the efforts put together by Belgian authorities towards a more efficient recognition, as well as of the remaining challenges to this day.

## Background of the problem

*"The Committee [European Committee of Social Rights – 2012] noted that, due to the lack of consideration of caravans in existing law and policies, Travellers faced extreme difficulties in finding land - public or private - where they could stay in a caravan, either temporarily (on so-called transit sites or sites for temporary stay) or permanently (so-called residential site for long term installations)."*<sup>4</sup>

<sup>2</sup> ECSR, Decision on the merits: International Federation of Human Rights (FIDH) v. Belgium, Collective Complaint No. 62/2010. Available at: [https://hudoc.esc.coe.int/eng/#{%22ESCDcIdentifier%22:\[%22cc-62-2010-dmerits-en%22\]}](https://hudoc.esc.coe.int/eng/#{%22ESCDcIdentifier%22:[%22cc-62-2010-dmerits-en%22]})

<sup>3</sup> Wallonia was the last of the three regions to formalize this recognition, in April 2019, with a decree on “Light housing” recognising the caravan, amongst other types of alternative homes, as a legitimate housing.

<sup>4</sup> Ringelheim, Julie, septembre 2015. *La situation des Gens du Voyage en Belgique : Analyse de la Ligue des droits de l’homme présentée au Commissaire aux droits de l’Homme du Conseil de l’Europe*.

To this day, the hosting of Travellers groups and the organisation of their temporary stay still hinges on incentive measures and voluntary-based politics. A limited number of municipalities decided to get involved and receive subsidies for the acquisition, equipment and management of a transit site.<sup>5</sup> However overall, most local authorities are still reluctant to the idea of opening their own site. Consequently, and though subsidies do exist both in Flanders and in Wallonia, the current number of sites is clearly insufficient to meet the needs. The few existing sites are often fully booked and with long waiting lists.

This scarcity tends to increase during winter because most sites then get closed by local authorities, forcing entire families to wander off the roads during the coldest months of the year. This issue more particularly concerns Walloon and Brussels families since many French, Dutch and Flemish Travellers families have residential sites to go back to in their region of origin for the winter.<sup>6</sup>

The issues surrounding the lack of infrastructure for Travellers are first and foremost social and housing issues. Today in Belgium, the mobile way of life is seriously compromised by the lack of sites for temporary or longer stays, by increasingly frequent evictions and by the rejection from the sedentary population. The difficulty of finding halting sites pushes Travellers families in situations of unbearable housing insecurity and makes it more and more difficult for them to work and make a living and access their fundamental rights.

The political reluctance and the inertia characterising the existing structures and laws tends to legitimise and strengthen feelings of rejection towards Travellers, which further widens the gap with the sedentary society.

## Policy answer to the problem

### **Current state of recognition: the "in-between" status of caravans**

*"Can a caravan be considered as housing? It is a delicate question, and the stake is huge: when the caravan is not considered as housing (in the regional housing codes), there are many negative consequences such as the impossibility to obtain an urban permit to install it on a residential site, the absence of any regional grant (for acquisition, renovation...), etc. On the other hand, assimilating the caravans to a type of housing requires its perfect conformity to health and safety standards."<sup>7</sup>*

In Belgium, housing matters are managed by the Regions and are thus enshrined in the regional housing codes. The type and degree of legal recognition caravans benefit from therefore varies from one region to another, though those variations do not come with massive differences in practice:

- In Flanders, the Flemish Housing Code grants recognition to the caravan since March 2004. The Flemish housing code insists on the necessity to improve the housing conditions of Travellers.
- In Brussels, the Brussels Housing Code has enshrined the notion of "*itinerant habitat*" in March 2012 but these habitats are excluded from all types of existing aids (for acquisition, renting or renovation) and are excluded from the classic safety and sanitary rules.<sup>8</sup> Additionally, since this legal recognition was introduced, the (formal and informal) possibilities for Travellers to stay with their caravans on the Brussels territory have progressively disappeared and eventually left the region without a single site available for Travellers.

<sup>5</sup> 11 municipalities in Wallonia, four in Flanders, and none for the region of Brussels.

<sup>6</sup> Le Soir, « *Un nouvel hiver en suspens pour les Gens du Voyage* », 22 November 2019.

<sup>7</sup> Bernard, N., Moons, N., (2016). *Discussion note issued from the National Roma Contact Point meeting on housing.*

<sup>8</sup> [http://www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=fr&caller=summary&pub\\_date=12-03-14&numac=2012031110](http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=12-03-14&numac=2012031110)

- In Wallonia, the regional authorities have attempted to promote different types of "alternative habitats". Recently, in April 2019, the Walloon Government modified its housing code with a Decree on "*light habitat*", giving legal recognition to different types of alternative habitats, including caravans.

### ***The remaining challenges***

Throughout European countries, the situation of Travellers is generally treated as a distinct, "exceptional" policy field. The legislative developments mentioned above thus constitute an improvement and a positive step towards greater housing security for Travellers living in caravans, because it brings them back to elementary social and housing rights. Amongst community representatives, these decrees are generally perceived as positive news, but many express reservations on their concrete repercussions, given the inertia that keeps characterizing issues linked to urban planning, registration/residence taking and organisation of temporary stay.

To sum things up, the current degree of inclusion of caravans in our legal system does not solve most of the problems met by Travellers. There are two main reasons for that:

- 1) In order to be effective, the legal recognition of caravans must come with new housing regulations and technical standards that are adapted to the specificities of mobile homes.
- 2) The local implementation and interpretation of the law: the current "in-between status" of mobile homes allows for a certain blurriness in the ways municipal authorities and services implement the law locally. Local authorities are bound to be central actors in the effectiveness of the decrees, not just in terms of housing rights but also in creating an access to a legal and administrative existence, with all that it implies for every other fundamental right.

### ***Recent policy development: Wallonia's "Travellers Decree" (2019)***

For years, the CMGVR has attempted to tackle the political inertia around the creation of sites at the local level, which generates a phenomenon of congestion in the rare municipalities that effectively organise temporary stay. In 2019, the new Walloon Minister for Social Action passed a decree focused on improving the means for the organisation of Travellers' temporary stay. This decree opens subsidies for the creation of ten transit sites in Wallonia. Nine cities and municipalities responded to the call for proposals, most of them were already involved in a subsidised organisation of temporary stay.

### *Case study: major police operation leading to collective seizure of caravans*

**Disclaimer:** The authors are fully aware of the seriousness of the offenses and believe they should be investigated and prosecuted accordingly (like any other criminal activity). The aim of this case study is to draw attention to the elements of the judicial intervention that are problematic in their seemingly disproportionate nature, as well as their consequences on the lives of the Travellers affected – many of whom are innocent. According to the authors, there is a clear connection between these events and the need for effective recognition of caravans as housing.

In May 2019, a large-scale police intervention took place amongst Traveller groups in different Belgian cities and made headlines nationwide and internationally. In a report documenting the situation of Travellers following this police action, UNIA, the Belgian Equal Opportunity body, summarized it as follows:

*"On 7 May 2019, Belgian police led a large-scale operation, specifically on sites where Travellers live, as part of an investigation into a case presented as organised crime; more specifically, they were looking into a case of fraud and embezzlement tied to the purchase and sale of used vehicles via the internet. At a press conference on 8 May, the federal prosecutor's office explained that more than 1,200 police officers carried out some 200 searches at 19 halting sites, during which they arrested 52 people, 24 of whom were the subject of arrest warrants. 90 caravans, 91 vehicles, and 34 other pieces of property were seized, as well as large sums of cash. 18 searches were conducted in several banks to seize the content of safe-deposit boxes. This operation, called "Strike" in the press, is described as one of the most significant police operations over the last twenty years"<sup>9</sup>. (UNIA, July 2019, p.3)*

#### ***The question of disproportionality***

*"The deprivation of liberty, searches of private homes, body searches, the seizure or holding of goods are clearly intrusive means for achieving justice, but can still be used under the condition that their use is justified, meaning they must be mobilised as necessary means to reach a legitimate goal. (...) If the means are not necessary, meaning it would be possible to reach the same goal by using other less intrusive means, we speak of "disproportionality". (UNIA, July 2019, p.14)*

Without overlooking the gravity of the accusations, many in the civil society have raised concerns of disproportionality in the handling of this judicial operation, which were perceived as potentially leading to inhumane or degrading treatments. The many testimonies and reports brought up questionable elements, notably in the handling of the searches,<sup>10</sup> the seizure of indispensable goods and the lack of response to the consequences of those seizures.

During this police intervention, properties have been seized, including many caravans which were the only homes of their owners and their families. From one day to the next, entire families, with children and elderly people, became homeless without alternative accommodation.<sup>11</sup> Some found refuge in their extended families, others reportedly live in tents, cars, and even out in the street. On the day that followed the police intervention, Traveller groups gathered in front of the Brussels courthouse to protest an alleged discriminatory nature of the police intervention and to draw attention to the deprivation they faced as a result. In the news that night, a mother asked: *"We do not have our*

<sup>9</sup> On 11 July 2019, UNIA, the Belgian Equal Opportunity body, published its second report on the situation of Travellers in Belgium following police operation "Strike".

<sup>10</sup> For instance: *"On at least three of the sites, those who had not been arrested – notably women, children and the elderly – were grouped together in the middle of the site, where they remained until the end of the operation (around 6:00pm). Nobody was allowed to return to the caravans, even under watch, to retrieve necessary items. No solutions (shelter, food, water) were put in place by the police for the elderly, women, or children". (UNIA report, 11 July 2019, p. 7)*

<sup>11</sup> With one exception where alternative accommodation was offered, but refused by the family because it was in a homeless shelter where family members were likely to be separated.

*caravans anymore, no diapers, no milk bottle... We are left like that in the streets. We are no dogs! We are human beings, right?"<sup>12</sup>*

Reportedly, some of the vehicles have already been sold by the Prosecutor.<sup>13</sup> Many Travellers whose vehicle had not been seized, including some who had not been searched during the police action, have later been informed that their vehicles had been deregistered and that they must return their license plate. Bank accounts have been frozen and blocked without further explanation. *"The procedure the authorities have followed allows the court to take provisional possession of all of the assets of the targeted persons, by blocking their bank accounts then emptying them, by reselling their seized cars and caravans, apparently with no concern for figuring out how these people will survive until the end of the investigation".* (UNIA, July 2019, p.13)

### **ERRC Complaint**

In July 2019, the ERRC (European Roma Rights Centre) lodged a complaint against Belgium at the European Committee of Social Rights, requesting immediate measures from the Belgian government in response to the alleged violations of the European Social Charter.<sup>14</sup> Amongst other things, the complaint evokes an ethnically targeted collective punishment: *"Based on the evidence that we have been able to gather about the police operation, it appears that the police had cause to believe that a small number of Travellers were involved in criminal activity. They responded by assuming that all Travellers across the country were involved in that criminal activity. (...) This amounts to ethnically targeted collective punishment."*<sup>15</sup>

In the face of those accusations by the ERRC, Belgian authorities defended themselves in a statement dated 27 August 2019,<sup>16</sup> stating that the police and judicial operation aimed to dismantle *"an internationally structured criminal organisation"*, independently of the origin of the people concerned.

### **UN intervention**

In June 2019, following a complaint lodged by one of the lawyers working on the case, the UN requested explanations from Belgian authorities on the possible disproportionality of the measures taken by the justice system and on their impacts on the living conditions of Travellers. The four UN Special Rapporteurs (Health, Housing, Minority Rights, Fight against Racism) then released a communication which showed particular concern for the consequences of these seizures on Travellers' housing rights.<sup>17</sup>

### **The link with the need for recognition of caravans**

There is a clear connection between the handling of this police and judicial action and the need for effective recognition of caravans as housing. Beyond the many testimonies and reports, the concrete reality of the situation reveals that the seizures were executed without any regard to the fact that these caravans were family homes, and without questioning the proportionality of these measures before any court judgement is made.

<sup>12</sup> Video available at: [https://www.rtbef.be/info/societe/detail\\_des-gens-du-voyage-denoncent-leurs-conditions-suite-aux-vastes-perquisitions-de-cette-semaine?id=10215352](https://www.rtbef.be/info/societe/detail_des-gens-du-voyage-denoncent-leurs-conditions-suite-aux-vastes-perquisitions-de-cette-semaine?id=10215352)

<sup>13</sup> At least 21 by 28 June, according to one of the lawyers. (UNIA, 2019)

<sup>14</sup> In the collective complaint, the ERRC claims that the conduct of Belgian authorities violated the following provisions of the European Social Charter: Article E read in conjunction with 1§2 (the right to work), 11§1 (the right to protection of health), 12§1 (the right to social security), 13§1 (the right to social and medical assistance), 15§3 (the right of persons with disabilities to independence, social integration and participation in the life of the community), 16 (the right of the family to social, legal and economic protection) and 17 (the right of children and young persons to social, legal and economic protection).

<sup>15</sup> Collective Complaint n° 185/2019 ERRC v. Belgium

<sup>16</sup> ERRC c. Belgique, 27 July 2019. Réclamation n° 185/2019, case document n°2. « *Observations du gouvernement sur la recevabilité et la demande de mesures immédiates* ».

<sup>17</sup> UA BEL 2/2019. Accessible on : <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24630>

*"It is clear that when the caravans were seized, no one took into account that for families who live in them, caravans are not luxury items (for tourism), but in fact their actual house." (UNIA, July 2019, p. 11)*

As stated by the four UN rapporteurs in their June 2019 communication: "(...) *the confiscation of caravans reported by the authorities amounts to forced eviction, which is a serious violation of the right to adequate housing and other human rights, prohibited by international human rights law*". (p.4)

About the seizure of caravans, the UN Rapporteurs further clarify: *"The confiscation of such housing – even if undertaken as part of a criminal investigation – is only respectful of human rights if various guarantees are respected, as indicated in the Committee's General Comment No. 7 on Economic, Social and Cultural Rights (E/1998/22), which emphasizes (para. 16) that an eviction should not leave a person homeless or make them vulnerable to a violation of other human rights. The General Comment also indicates that when a person is unable to provide for himself or herself, the State party must ensure that alternative housing options are available."* (p. 4)

Because of the inordinate handling of this police investigation, entire families have been pushed in situations of homelessness, with no consideration for individual circumstances or for whether those who got dispossessed were guilty or innocent. In its July 2019 report, UNIA summarised the extent of the threat weighting on those families: *"If we take away a caravan from a family of Travellers, this family is instantly homeless – one of the most noxious forms of material precariousness and social marginalisation that exists in our European societies, and more violent still when it impacts women and children, the elderly, and sick people"*. (p. 15)

## FAMILY HOMELESSNESS

### Definition of the problem

Many Roma families leave their home countries to flee antigypsyism, chronic economic deprivation and social exclusion. Although some find ways to get by and to find a place in the Belgian society, many of them keep struggling with the consequences of past and present discrimination, which keeps them stuck in poverty and unstable housing conditions.

As evoked in [the previous RCM report](#), the last few years have been marked by an alarming observation: the number of Roma families in situation of homelessness and permanent wandering is increasing,<sup>18</sup> not only on the streets of Brussels but also in other Belgian cities. According to the estimations of grassroots organisations published by the CIRE (*Coordination et Initiatives pour les Réfugiés et Etrangers*), there are about 300 Roma people on average in situations of homelessness in Brussels, while this phenomenon was nearly inexistent a few years ago. Field workers in other major Belgian cities also noticed the emergence of these situations in growing numbers, with families living out in the streets or going from one squat to another.

Recently, the multiplication of these situations of extreme deprivation has generated the emergence of slums, a phenomenon mostly avoided in our country up to now.<sup>19</sup> While Belgium is a country characterised by advanced social security and the promotion of fundamental rights, there are hardly any humanitarian (and even emergency) responses to the worrisome situation of these families and children. This is how entire families are living out in the streets, sometimes with new-born kids, even during winter.

As it was summarised by a psychologist from the mental health service *Ulysse*: *"The worst part of these life contexts is being on the street, where insecurity, instability and lack of possibilities are exacerbated. Living on the street is exhausting physically and psychologically. The risks of psychic decompensation are multiplied because the institutional responses are unsafe/insufficient and reproduce, like a mirror of their migration path, the repeated ruptures that caused these families to wander."*<sup>20</sup>

It is unfortunate to observe that while family is an evident source of resilience for marginalised groups, it can also be an obstacle because the support available is almost always conceived for individuals. This chapter focuses on a stark illustration of this problematic: the issue of Roma family homelessness and the lack of perspective in terms of their insertion through housing.

### Background and cause of the problem

#### ***The family dimension: a source of resilience and an obstacle***

Roma people in situation of homelessness face the same deprivation as the rest of the homeless population. The difference is they usually experience this situation as a family (vs. isolated individuals).<sup>21</sup> Though being together is positive in terms of psycho-social health, it is also a major drawback in a system where the majority of public services

<sup>18</sup> This phenomenon has been visible since 2009, which correspond to the year FEDASIL stopped welcoming Europeans in their reception centres.

<sup>19</sup> According to some fieldworkers in Brussels, some families' migratory path indicates that many of them came to Belgium from France since 2016.

<sup>20</sup> De Ridder, P., (2018). "Familles forcées à l'errance". Expert contribution to the study presented by the CIRE, (2018). *Ce n'est pas de mon ressort! Pour une inclusion des familles migrantes en errance*.

<sup>21</sup> In Belgium, there are no official figures on the global number of homeless people, only assessments by associations. Back in 2003, the European NGO against homelessness FEANTSA published an estimation of 17,000 people in situation of homelessness in Belgium. This evaluation has been used in more recent reports, such as the SPP Intégration Sociale, *Focus n°2 Lutte contre le sans-abrisme et l'absence de chez soi (2012)*. In Brussels, the organisation La Strada organised a count of homeless people during the night of 7 November 2016 and counted a total of 3,386 people in the streets of the capital.

and solutions for socio-professional integration and access to housing are individualised.<sup>22</sup>

As a matter of fact, most of the initiatives and programmes meant to tackle homelessness or develop insertion through housing are unsuited for Roma families because they are conceived for individuals. This observation also holds for the most basic housing support like emergency night shelters, the great majority of which are not accessible to children.<sup>23</sup> Even in the rare instances when they can (family shelters), places are limited and many conditions apply that are likely to exclude Roma families in precarious situations, such as that of having a legal residence in Belgium. Additionally, beyond the short-term perspectives of emergency shelters, it is difficult for Roma families to find suitable and housing for a large family, because of the little availabilities in social housing and of the high rental costs of sufficiently spacious housing.

### **EU citizens, free circulation and access to rights**

Beyond the family dimension, many Roma in Belgium are European citizens nationals with a "conditional right of residence".<sup>24</sup> which makes most social action policies relatively inaccessible to them. As a matter of fact, the freedom of movement and of residence for EU citizens is a right based on an economic criterion, namely that of having sufficient resources not to constitute an "unreasonable burden for the State". Yet, it is precisely the lack of financial resources that drives many Roma families into exile. In other words, for EU citizens who do not have a permanent residence status, requiring assistance from SWOs can have direct consequences on the right to residence.

Field experience has shown that the notion of "unreasonable burden for the state"<sup>25</sup> is often used excessively when it comes to Roma: in some cases, applying for non-contributory social assistance has been enough to generate an order to leave the country. Unsurprisingly, field experience has shown that this can have a deterrent effect on Roma families: in spite of a growing precariousness, many of them renounce to seek assistance in fear of becoming the target of an administrative order to leave the territory. When it comes to access to social rights and services, these families are stuck in a legal and administrative deadlock.

Whether it is about EU citizens or not, administrative aspects multiply the factors leading to situations of homelessness. As it was summarised by a representative from the ASBL *Lutte contre l'Exclusion Sociale* (Molenbeek, Brussels): "*The problem of families in situations of permanent wandering becomes all the more acute when they do not fit in any of the boxes that allow access to the necessary support and to a lasting solution to regain dignity, both in terms of social status and living conditions.*"<sup>26</sup>

<sup>22</sup> The system of individualised social assistance is enshrined in 8 of July 1976 organic law on Social Welfare Offices. Additionally, most existing projects of socio-professional insertion are developed around the individual and hardly take into account family-related factors. For what concerns insertion through housing, the main existing project is Housing First Belgium (HFB), which far targets the insertion through housing of isolated individuals exclusively.

<sup>23</sup> Night shelters mainly accommodate adults with social difficulties and usually are not mandated to accommodate children.

<sup>24</sup> EU citizens benefit from an automatic right of residence in Belgium provided that they fulfil the conditions of Article 40 of the Law of 15 December 1980. During the first three years of residence, the Office for Foreigners may withdraw the EU citizen's right of residence if they no longer meets said conditions or if they constitute an unreasonable burden on the social assistance system (Article 42bis of the Law of 15 December 1980).

<sup>25</sup> For European nationals, freedom of movement and residence is mainly based on an economic criterion, namely that of having sufficient resources not to constitute an "unreasonable burden for the State". Yet, the lack of financial resources is – amongst other factors – precisely what drives many Roma families into exile.

<sup>26</sup> Benabid, A., (2018). "Un accompagnement global dans une logique de consortium de compétences", Expert contribution to the study published by the CIRE (2018), *Ce n'est pas de mon ressort ! Pour une inclusion des familles migrantes en errance.*

A representative of the Forest SWO (Brussels) made a similar observation: "*The administrative deadlock maintains these men, women, and their children in permanent wandering and marginality, where their prospects are reduced to emergency.*"<sup>27</sup>

### Policy answer to the problem

Back in 2012, the Belgian NSRI showed favourable to the organisation of temporary occupation of abandoned buildings and illustrated this need with the example of the Gesu Church (Brussels). Back then, the church was inhabited by more than 200 people, many of whom were Roma. However, and while this occupation was the object of an agreed temporary communal living project, the occupants got forcefully evicted on decision of the mayor by hundreds of police officers, in November 2013, with insufficient alternatives for accommodation.

### Global lack of political reaction

The right to a decent housing and to live in dignity are instituted by several legal texts ratified by Belgium, such as the EU Fundamental Rights Charter and the Universal Declaration of Human Rights. On several occasions, the European Committee of Social Rights has confirmed that when it comes to human dignity, the European Social Charter cannot be interpreted in a way that deprives foreigners in irregular stay from a protection of their most fundamental rights.<sup>28</sup> More particularly, as recalled by the Belgian General Delegate for Children Rights and by the many organisations working in the field, the lack of response to the situation of homeless families is in violation of Art. 3 of the UN Convention on the Rights of the Child, which establishes the notion of "best interest of the child" and insists that States Parties should take all appropriate legislative and administrative measures to ensure their protection and well-being.

Yet, the issue of Roma family homelessness in Belgium is faced with a heavy lack of political response. There is currently no legal framework nor adequate administrative means to compensate for the reality of these families in situations of homelessness. Even humanitarian and extreme urgency responses are rare and are mostly spontaneous actions of solidarity by ordinary citizens. In an article dedicated to field work with Roma families in homelessness, Juliette Béghin from *Bruxelles Laïque ASBL* spoke about the "denial of existence" these families are subjected to: "*They are stuck in a sort of 'sub-status', in a sub-humanity, which yet cannot get institutions and social sectors to mobilise, though their mission should be to come to their assistance.*"<sup>29</sup>

According to civil society representatives, the current situation raises a red flag as to what the problem could become if Belgian authorities do not adopt adapted measures of insertion through housing in the near future. The emergence of tiny shantytowns in several Belgian cities are a clear forewarn (notably in Brussels).<sup>30</sup> Recently, the difficulties linked to the lack of infrastructure and regulations have been aggravated by a legal setback: "the anti-squat law". In October 2017, Belgian authorities passed a law against squats,<sup>31</sup> penalising the illegal occupation of any real estate property. This decision followed the heavy media coverage of an illegal house occupation by Roma families in Ghent. Since then, there has been a wave of evictions that increased the poverty and marginalisation of a population who was already vulnerable. Amongst them, many Roma families. In a study published by the CIRE, Prof. Nicolas Bernard explained why this new law is particularly worrisome: "*First, it ignores the societal context behind*

<sup>27</sup> Roekens, C., (2018). "Perspectives rétrécies à l'urgence des familles Roms à Forest pour reléguer l'errance au passé". Expert contribution to the study published by the CIRE (2018), *Ce n'est pas de mon ressort ! Pour une inclusion des familles migrantes en errance*.

<sup>28</sup> For instance: Committee of Social Rights, Complaint n° 90/2013, Complaint n° 86/2012, Complaint n° 69/2011.

<sup>29</sup> Béghin, J., (2018). "Parfois, j'en ai eu gros sur la patate..." Itinérance d'un travailleur social." Expert contribution to the study presented by the CIRE, (2018). *Ce n'est pas de mon ressort! Pour une inclusion des familles migrantes en errance*.

<sup>30</sup> RTBF Info, *Un bidonville en plein coeur de Bruxelles*, 14 April 2016.

[https://www.rtbf.be/info/regions/detail\\_un-bidonville-en-plein-c-ur-de-bruxelles?id=9269738](https://www.rtbf.be/info/regions/detail_un-bidonville-en-plein-c-ur-de-bruxelles?id=9269738)

<sup>31</sup> See details in [the previous Roma Civil Monitoring report](#).

*the emergence of squats, namely the housing crisis and, correlatively, the scandal of the real estate vacancy of hundreds of properties. [...] Second, this law goes against the current trend that aims for the regularization of squats through precarious occupation agreement". (2018, p.23)*

### **Local initiatives - Housing First projects for Roma families**

In spite of the global lack of political willingness around this issue, since 2016, a few local projects of insertion through housing for Roma families have emerged in Brussels thanks to a budget made available by the Region. These projects are inspired from the dynamic of "Housing First"<sup>32</sup> and have the ambition of bringing marginalised families back into common law. For instance, such projects have been developed by the Social Welfare Office of Ixelles (two families for minimum two years), the SWO Forest and the SWO of Molenbeek (one family for 18 months).<sup>33</sup> It is worth of noting that the SWO of Brussels and the SWO of Anderlecht have opened a "Roma cell" within their services, and the SWO of Auderghem have launched a project of administrative support.

Some Flemish cities have launched similar projects. For instance, Instapwonen in Ghent (since September 2013): this small-scale project accommodates and guides three families of Slovak and Bulgarian origin, under conditions of active involvement and financial participation (a third of the rent if they have an income). In Wallonia, the CMGVR has developed an innovative practice this year, in partnership with the Walloon Housing Fund, which enabled the housing insertion of a Roma family in situation of homelessness.

These housing reinsertion projects are built upon an intersectional approach meant to widen the accompaniment of the families to educational, health and administrative support. The aim is to stabilise all areas of life in anticipation of permanent housing. The positive outcomes of these local projects illustrate that while there are no ready-made solutions, some successful operational practices are currently in development.

#### **SAMUSOCIAL, Brussels**

In Brussels, the main shelter service for people in situation of homelessness is the *Samusocial*. This service is active since 1999 and its mission is to reach out to people living on the streets of Brussels to offer them emergency assistance and reflect with them on potential solutions. In 2014, in the face of a growing number of families living on the streets, the *Samusocial* opened a "family shelter" with about 130 beds distributed in 38 private rooms. According to the *Samusocial* activity report, a total of 75 families were hosted in 2019, and 39 of them were then oriented towards other accommodation solutions.<sup>34</sup> The families hosted come from all backgrounds and countries and there is no restriction related to their administrative status.<sup>35</sup> This service is entirely free, contrarily to foster homes.

The *Samusocial* reportedly hosts some Roma families. In the 2018 CIRE study on families in situation of permanent wandering, a representative of Samusocial testified: *"We have been hosting for the past two years, three [Roma] families for whom administrative integration is difficult and who face numerous obstacles in the search for a durable solution."* (p. 33)

<sup>32</sup> "Housing First" is the name of a method meant to tackle homelessness, based on the idea that any effective inclusion process starts with a decent place to live. In this logic, providing homeless people with an individual and permanent housing is a prerequisite for durable inclusion and a necessary condition for them moving forward. However, Housing First projects in Belgium are conceived for isolated individuals, which makes it hardly compatible for families.

<sup>33</sup> These three projects are detailed in the study published by the CIRE, (2018) "Ce n'est pas de mon ressort! Pour une inclusion des familles migrantes en errance".

<sup>34</sup> <https://rapportannuel.samusocial.be/mission-sans-abris/lhebergement/centre-familles/>

<sup>35</sup> For instance, in 2018, 27.17 per cent of the families hosted were Belgian, 41.73 per cent were foreigners with legal stay, 22.05 per cent in irregular status and 9.06 per cent with a tourist status (i.e. EU citizen on Belgian territory for more than three months).

### **Response of by the civil society**

In 2013, an inter-associations work group called the Platform for Families in Situation of Permanent Wandering ("*Familles en Errance*") was created in Brussels with the ambition to reflect on sustainable solutions for these families, many of which are EU Roma, and to encourage political reactions.<sup>36</sup> That same year, the workgroup sent a manifesto<sup>37</sup> to the representatives of the Brussels Region, which presented three fundamental principles for a proper social support of these families: (1) the stabilisation of their situation in a safe place providing for long accommodation, (2) a close social assistance, and (3) their access to citizenship and social rights. The idea is thus to combine emergency measures and long-term solutions. The inputs of the Platform for Families in Situation of Permanent Wandering were central in the release of a budget by the Brussels Region and in the development in the local projects of insertion through housing described above.

In Wallonia, the CMGVR has been organising conferences (one in 2017 and one in 2018) focused on the situations of homelessness experienced by Roma families. The objective was to initiate dialogue and collective reflection amongst the many field actors led to meet homeless families in their daily work (social workers, street workers, medical staff, police, etc.). The CMGVR also regularly organises trainings for social workers with an awareness-raising objective. Those activities constituted first and foremost an opportunity to recall the basics: Roma do not have a natural vocation to be poor or homeless. According to the feedbacks received by the CMGVR, it also helped social actors understand that Roma share the same aspirations, desires, projects, as any other immigrant family; that is, having a home, a job, sending their children to school and living in dignity. Though the aspirations are similar, the difference lies in the fact that the difficulties and obstacles encountered by other immigrants are tenfold in the case of the Roma because of the centuries old stigmatisation and discrimination they face as a community.

<sup>36</sup> This platform gathered the CIRE, the *Ligue des Droits de l'Homme* (Human Right League), *Médecins du Monde* (World's Doctors), the FOYER, Amnesty International and the association *Rom en Rom*.

<sup>37</sup> A summary of the manifesto sent by the Platform for Families in Situation of Permanent Wandering is available online on the website of Amnesty (2013) « *Familles Roms en errance à Bruxelles : le Manifeste des Associations* »: <https://www.amnesty.be/infos/nos-blogs/archives/le-blog-de-claire-pecheux/article/familles-roms-en-errance-a>

## ROMA'S ACCESS TO ASYLUM AND LEGAL RESIDENCE

### Definition of the problem

The issue of the (in)accessibility of asylum for Roma is one of many illustrations of the double standards and paradoxes that mark their treatment throughout Europe: today, the centuries of discrimination and persecutions endured by the Roma community all around the continent are widely recognised, and presented as a major challenge by and for the European institutions. While those institutions acknowledge the continuing antigypsyism and human rights violations faced by Roma in most home countries, the doors of asylum remain hermetically closed to them at the national level. Whether they come from European countries or not, Roma's applications for asylum are often denied. The wide recognition of Roma as a vulnerable minority is a criterion that hardly gets activated in the frame of asylum right.

As a result, many Roma families coming from non-EU countries, following a rejected asylum application, find themselves in an illegal situation on Belgian territory. Parents then face an impossible choice: returning to a country that does not want them or stay and hide without any access to rights. Their children, even born in Belgium, grow up in the same liminal situations, outside of society, of access to rights and to the law.

As for what concerns EU citizens, one should note that freedom of movement is a right subjected to conditions, notably that of having sufficient financial resources. Yet it is precisely the lack of financial resources that drives many Roma families into exile. In Belgium, we observed that the very year the Belgian Strategy for Roma Inclusion was published was also the year the exceptions to the free circulation of people started being activated, notably against some Roma families. They then received orders to leave the territory and some were sent away.

Additionally, expulsion orders got facilitated in 2018 by the introduction of a law that allowed for the detention of migrant families with children. In spite of previous condemnations by international instances, and of the stir provoked in the public opinion, a first family was locked up in August 2018. This family was Roma.<sup>38</sup> Importantly, in April 2019, the Council of State decided to suspend the Royal Decree allowing for the detention of children residing illegally. This practice has thus stopped for the time being.

### Background and cause of the problem

It would be futile to reproduce the list of systematic abuses, exclusions and marginalisation suffered by Roma people in Europe. International organisations (UN, Council of Europe, European Parliament, FRA and others) address them annually. However, it is relevant to identify the main obstacles to asylum for Roma in Belgium. Among those obstacles, the discrepancy that would come with the recognition of European refugees, the list of "safe countries", the media coverage of Roma migrations and the rampant antigypsyism.

### ***The unattainability of asylum for EU citizens***

For EU citizens, it is nearly impossible to obtain asylum: Europe would have to acknowledge that it produces its own refugees. Since 2009, *Fedasil* (the federal agency for the reception of asylum seekers) has developed a practice of non-reception of European asylum seekers, based on the argument that they have access to the labour market. Additionally, as evoked earlier, access to social benefits for EU nationals is limited by the notion of "unreasonable burden for the Belgian State" which can lead to the withdrawal of their residence permit. As summed up by a lawyer from the Brussels Bar: *"Even when they come from EU countries, Roma families can end up in an irregular situation, de facto deprived of perspectives and of optimal social protection. Beyond*

<sup>38</sup> See details in the case study below.

*three months, the right of Union citizens to reside in another State is in fact conditioned by their professional activities and/or income, which tends to drive socially marginalized European populations into clandestinity.”<sup>39</sup>*

### **The list of “safe countries”**

Recently, the systematisation of asylum refusals has been facilitated by the entry of several Eastern European countries into the EU, as well as by the adoption (in 2012 for Belgium) of the “list of safe countries”<sup>40</sup> – countries which are subjected to a presumption of guarantee and protection of human rights. As evidenced by numerous international forums and reports, many of these “safe countries” are Balkan countries, where there is a climate of insecurity, antigypsyism and discriminatory treatment.

In most home countries, Roma suffer from poor conditions in terms of their access to housing, employment and social services. It is even more the case for Roma “returnees”.<sup>41</sup> A 2019 study by the World Bank<sup>42</sup> extensively describes the vulnerabilities suffered by Roma who have been forced to return to Western Balkans countries, from barriers in their access to institutional support, segregated housing conditions, high unemployment rates, lower health indicators than the rest of the population, obstacles in their access to schooling... Beyond the readmission agreements, a central issue for returnees is that they need to obtain a state-issued ID to access social services: *“Roma report discrimination throughout the return process. They often return to informal settlements and may lack proof of address or other identification documents needed to register for social services, including those crucial to reintegration”*.<sup>43</sup>

Judging from the general context faced by Roma in their home countries, great caution should be exercised before concluding that there is no reason for them to fear persecution based on ethnicity, or an extremely fragile socio-economic situation in the event of their return. Yet, for people coming from these “safe countries”, asylum procedures are accelerated and come with limited possibilities of appeal. As a result, many face forced return, including with children born in Belgium, to countries where they will likely lack effective support to reintegration and sufficient access to basic rights and services.

It must be recalled that the European Court of Human Rights envisages a standard of risk assessment for cases of return to third countries, as for return to the country of origin. For both, rigorous scrutiny of conditions and actual treatment of applicants is required. Beyond an individualised assessment of whether the country can be considered safe for a particular asylum seeker, this places an obligation on asylum authorities to take into account international organisations’ and NGOs’ reports and the extent to which such organisations are able to carry out independent human rights monitoring in the country. The European Court of Human Rights has clearly rejected inclusion in a list of safe third countries as sufficient evidence for considering a country as safe for a specific applicant. It also consistently highlights States’ obligations to proactively assess the risk of violations of Article 3 European Charter of Human Rights<sup>44</sup> of their own motion, including when applying presumptions of safety elsewhere.

<sup>39</sup> Van der Plancke, V., (2018). « Familles roms européennes indigentes : briser l’errance par l’activation de la citoyenneté européenne ? », contribution to the study presented by the CIRE, (2018) *Ce n’est pas de mon ressort! Pour une inclusion des familles migrantes en errance*.

<sup>40</sup> “According to the EU’s definition, countries on this list have a democratic system without widespread persecution, torture, the threat of violence, or armed conflict. All six countries in the Western Balkans region have been designated as ‘safe countries of origin’ in the list proposed by the EU, allowing the MS to fast-track asylum applications from the Western Balkans. As a result, asylum applications are usually rejected, and the applicant becomes subject to the Return Directive”. (UNCD, 2017, p.8)

<sup>41</sup> See for instance the UNDP report, 2017, *Roma returnees to the Western Balkans: “No place for us: neither here, nor there”*.

<sup>42</sup> World Bank Group, 2019. *Supporting the effective reintegration of Roma returnees in the Western Balkans*.

<sup>43</sup> *Idem*, p. 10.

<sup>44</sup> The article 3 of the ECHR concerns the Prohibition of torture: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”

### **Media coverage and its impact on public opinion**

In most host countries, including Belgium, Roma migrations are generally not seen favourably, even when they take place in the frame of the free circulation of people. One can remember the heavy media coverage in 2007, when Bulgaria and Romania entered the EU, and in 2014, when their workers gained access to the EU labour market. In both cases, the circulation of Roma from these countries has been presented by a certain chunk of the media as a major cause of concern. The multiplication of alarming articles, the use of wordings such as "massive immigration", "exodus", "invasion", illustrate just the way in which these migrations were portrayed and perceived. Evidently, this media perspective on Roma migration corresponds to the many political discourses held towards them in Europe, particularly those supporting control policies or repressive measures, which are so easily combined with the existing prejudices against this minority.

### **The perception of Roma as a nomadic people**

Still on the subject of stereotypes and misrepresentations, one should note that Roma are still widely perceived and depicted by the media, politicians and public servants as a nomadic people, and thus as a population that is innately and constantly in movement. There is a long-standing amalgam between Roma and Travellers, notably because they share a common history of nomadism. However, the great majority of Roma today is sedentary. One of the consequences of this false representation of Roma is that in practice, it further complicates the political and administrative understanding of their need for asylum, and thus limits their concrete possibilities of obtaining legal stay. It is crucial to recall that Roma are not Travellers and the issues they face should not be addressed as those of a nomadic population.

This widespread confusion can be explained, in part, by what the French sociologist Eric Fassin called "state nomadism".<sup>45</sup> State nomadism refers to the fact that the repeated evictions of Roma, added to the near impossibility to find a decent housing, forces them to a "nomadic" lifestyle. This nomadic lifestyle is then seized by politicians and by the media to conclude that this whole community might be by essence "impossible to integrate" (in the words of former French Prime Minister Manuel Valls). This is a clear example of a wider trend, the ethnicisation of social and economic problems, turning them into "Roma problems". This ethnicisation is at the core of antigypsyism and is a central reason why Roma, though internationally recognised as victims, are still often pointed at as guilty on a case-by-case basis.

### **Policy answer to the problem**

Unfortunately, to this day, there is no policy answer meant to ensure the protection of Roma families that are excluded or even persecuted in their home countries (apart from a few rare decisions by the Foreigners Litigation Council). The reality is quite the opposite: the Roma population keeps being the target of expulsion measures and of a restrictive interpretation of international refugee protection instruments. This situation generates the repatriation of entire families in disastrous conditions, regardless of the necessity and needs, and without proper care and follow-up upon return.

When it comes to Roma, it has been noticeable over the years that migration strategies and policies have been implemented in a continuous manner. The three following cases are emblematic examples of this claim:

- Almost 20 years ago, in 1999, a group of 74 Slovak Roma asylum seekers were forcibly deported. They had complied with a police summons whose stated objective was to help families "complete their asylum file". In reality, it was a pretext to group

<sup>45</sup> Fassin É., Fouteau C., Guichard S., Windels A., 2014, *Roms et riverains. Une politique municipale de la race*, Paris, La Fabrique éditions, 227 p.

them and send them away.<sup>46</sup> The expulsion of these families was carried out in disregard of the indications of the European Court of Human Rights, which recommended taking the time to examine the legitimacy of their asylum applications and recalled the prohibition of collective expulsions.

- More recently, in 2011, the expulsion of a Roma family from Belgium to Serbia has also been condemned by the European Court of Human Rights in 2015.<sup>47</sup> The condemnation had to do with the responsibility of Belgian authorities in an "inhumane or degrading treatment" for leaving a family of seven in the streets for weeks. Belgian authorities were condemned to pay the family a compensation of 22,750 EUR. Though the Court did not rule on the asylum request, the condemnation invoked a multiplication of reports indicating that *"Serbians of Roma origin were subjected to discrimination in Serbia, that they lived in deplorable conditions, and that they had no access to health care, housing or education"*. The Court also added the need to take into account *"the vulnerabilities specific to the applicants, namely the presence of a severely disabled girl and young children including an infant."*<sup>48</sup>

Yet, these condemnations did not prevent the incarceration and expulsion, in 2018, of a whole family of Serbian Roma, who certainly was in a place to claim equal legitimacy of its application for asylum and its fears of persecution. (Please, see case study below.)

<sup>46</sup> See for instance: Goldman, Henri, "Retour à Kosice". MICMAG, April 2014 (pp. (5-6). Available at: [https://www.cncd.be/IMG/pdf/mic\\_mag\\_01\\_web.pdf](https://www.cncd.be/IMG/pdf/mic_mag_01_web.pdf)

<sup>47</sup> <https://www.lalibre.be/belgique/la-cedh-condamne-la-belgique-pour-avoir-laisse-a-la-rue-une-famille-rom-avec-5-enfants-559bb7e23570c685853111ce>

<sup>48</sup> It should be noted that following this 2015 ruling, the matter was then referred to the Grand Chamber of the ECHR, which actually decided to strike out the family's application because the lawyer failed to maintain contact with their clients V.M. and Others v. Belgium – Struck out of the list – by the Grand Chamber.

### *Case study: a Roma Serbian family imprisoned and expelled*

The following case study is not an isolated case: it is a reflection of the global disregard for Roma's fears of persecution in asylum procedures, in spite of a growing public and political acknowledgment of past and present mistreatments of the community throughout Europe. The particularity of this case is that was at the centre of a media storm because it involved child detention. As a matter of fact, in 2017, and in spite of previous condemnations (2004 and 2008), Belgian authorities have reinstated the possibility of detaining migrant families and children residing illegally in the country.<sup>49</sup> This repressive policy was first implemented on a Roma family, regardless of its particularly vulnerable profile.

On Thursday, 4 April 2019, the Council of State suspended the Royal Decree allowing for the detention of children. This decision constitutes, if needed, an additional clue on the highly problematic nature of the family confinements that took place this year.

#### ***On the detention of children***

When made public, the idea of creating a detention center for families with children was unanimously criticised by the Belgian civil society, and was brought to the attention of international human rights institutions. Already in December 2016, the EU Commissioner for Human Rights Nils Muižnieks had urged the Belgian government to reconsider the decision to resume this practice.<sup>50</sup> Several international bodies such as UNICEF,<sup>51</sup> Amnesty International<sup>52</sup> and the UN Committee on the Rights of the Child<sup>53</sup> also called for the prohibition of these practices in the EU. Adding to that, many Belgian political representatives, more than 300 organisations and thousands of citizens mobilized around this issue.

As underlined by UNICEF Belgium, *"the detention of children for cause of migration is a violation of the rights of the child and is always in opposition to the principle of the best interest of the child"*. Though Belgium had inscribed in its Constitution the International Convention on the Rights of the Child, which states that the best interest of the child should always prevail over decisions of the State, it fails to implement this basic principle.

#### ***The first family in detention was Serbian Roma***

Still, in August 2018, despite the protests of hundreds of NGO<sup>54</sup> and a massive civic outrage, a first family got locked up in the Center 127bis of Steenokkerzeel. This family was Roma, composed of a 23-years-old mother and her four children (all under six years old, including a new-born baby). These children were all born and raised in Belgium. The mother had left Serbia when she was a teenager and only kept distant memories of it. Since the rest of her relatives lived in Belgium and abroad away from Serbia, she did not have any material resource or family relationship to help her out in Serbia. As summed up by the Belgian General Delegates for Children Rights (GDCR): *"Belgium is about to send back a single mother without income or any roots left, with four children*

<sup>49</sup> It should be recalled that the UN Committee on the Rights of the Child considers the detention of children as a violation of their fundamental rights. Detaining children goes against the "superior interest of the child" and is in clear opposition with the precepts of the International Convention on the Rights of the Child, which Belgium ratified. Adding to that, the European Court of Human Rights has declared on several accounts that the placement and detention of children in closed centres constitute an inhumane and degrading treatment.

<sup>50</sup> CommDH(2016)43, 12 December 2016. [https://rm.coe.int/ref/CommDH\(2016\)43](https://rm.coe.int/ref/CommDH(2016)43)

<sup>51</sup> <https://www.unicef.be/fr/la-detention-denfants-migrants-en-centres-fermes-une-violation-des-droits-de-lenfant/>

<sup>52</sup> <https://www.amnesty.be/camp/asile/jesuishumain/stopdetentionenfant>

<sup>53</sup> <http://www.youdontlockupachild.be/actus/the-un-committee-on-the-rights-of-the-child-urges-belgium-to-put-an-end-to-the-detention-of-children/>

<sup>54</sup> See the campaign *"On n'enferme pas un enfant. Point."*, signed by 325 organisations: <http://www.onnenfermepasunenfant.be/>

*born on Belgian soil, in a potentially hostile territory, which might expose them to unworthy and degrading living conditions”.*

### **Expulsion in spite of UN statement**

This last sentence of de GDCR was clear reference to the significant risk of persecution for Roma who get expelled to Serbia. A risk that the family's lawyer was well informed about, and documented in her appeal with numerous facts and reports. Aware of the minimal chances of a successful asylum plea for people coming from a country listed as “safe”, the lawyer also pinpointed the absurdity of imprisoning and expelling a family that is anchored in Belgium for many years and has a complete absence of roots in Serbia.

Yet, in October 2018, the family was sent back after two months of detention (a lot longer than allowed by the royal decree on child detention), and despite the fact that the UN Committee for the Rights of the Child had specifically requested that Belgium release the family.<sup>55</sup> The arguments raised by the lawyers and the civil society concerning the family's fears of persecution had all been considered “purely hypothetical” and the family had been offered “assisted return”.

Though, Serbia is, however, a country in which Roma nationals have suffered a long history of diaspora, exile and denial of access to identity papers. Up until her expulsion, this mother lived with her family, with her children's grandparents, in a Belgian city where she had been living for years. Her four young children, all born in Belgium and spoke Flemish better than Serbian. This expulsion came with a forced separation of the children with their father, who did not benefit from a recognised nationality and whose readmission was refused by Serbia. Beyond the trauma and the obvious heartbreak for all family members, his absence is a factor that strongly increased the vulnerability of the family once they reached a country, they knew nothing about.

### **Life conditions upon return**

Today, a year after their expulsion, the family lives in a slum 200 km away from Belgrade, without an address, without papers nor income, without access to any form of schooling for the children. During his visit to Serbia in January 2019, the General Delegate for the Rights of the Child witnessed that beyond the readmission agreements, nothing had been set up to ensure that the family would receive a legal residence status in Serbia.<sup>56</sup> Like in several other Balkan countries, in Serbia, access to school and basic social assistance depends on residence status.

As noted by the General Delegate for the Rights of the Child after his visit in Serbia, and by the lawyers and associations who are in contact with the family, the concerns that had been described by Belgian authorities as “hypothetical” have all come true. Yet, Serbia is presented as a safe place to send back Roma, seemingly without need to properly investigate individual cases and to inspect the legitimacy of their fears.

### **International reports on the situation of Roma in Serbia**

Here is what the last UN report on Serbia,<sup>57</sup> dating back to April 2017, had to say in its evaluation, in which the subject of hate crimes is classified as one of the “principal matters of concern”:

*“10. The Committee is concerned that, despite the State party's efforts to prevent offences motivated by hatred, hate crimes, particularly against Roma, continue to be a serious problem in the State party. While noting the amendments to article 54 (a) of*

<sup>55</sup> <https://www.dei-belgique.be/index.php/nos-publications/communiqués/send/42-communiqués/395-communiqué-de-presse-le-comité-des-droits-de-l-enfant-des-nations-unies-ordonne-la-libération-de-la-famille-serbe.html>

<sup>56</sup> YouTube link to the reportage made by the General Delegate for the Rights of the Child during his visit in Serbia: <https://www.youtube.com/watch?v=MyfIyKzr8sg>

<sup>57</sup> CCPR/C/SRB/CO/3 – International Covenant on Civil and Political Rights

*the Criminal Code introducing aggravating circumstances for crimes committed by individuals who feel hatred for a particular race, religion, nationality or ethnicity, sex, sexual orientation or gender identity, it regrets that the State party has not provided any example of the practical implementation of those amendments (arts. 2, 6, 20 and 26).*

*14. The Committee reiterates its concerns that, despite the State party's efforts, members of the Roma community continue to suffer from widespread discrimination and exclusion, unemployment, forced eviction and de facto housing and educational segregation. While noting that the State party has made progress on the issue of registration, it is concerned about the continued difficulties faced by internally displaced Roma in terms of: (a) registering births and their place of residence and acquiring identification documents, including as a result of a narrow interpretation of the law on permanent and temporary residence; (b) being integrated into Serbian society; and (c) the poor conditions reported in collective centres (arts. 2, 7, 16-17, 24 and 26)."*

In a report published in 2014, the COE Advisory Committee on the Framework Convention for the Protection of National Minorities expressed concern that members of the Roma community continue to be subjected to targeted attacks in Serbia:

*"The Advisory Committee observes that while the numbers of hate-motivated incidents reported appear overall to have dropped in the last few years (from 354 in 2007 to 242 in 2011), racist attacks against persons belonging to national minorities and their property (including religious property) continue to occur, with Roma frequently the target. [...] It also remains deeply worrying that Roma families who have been resettled following eviction have again been the subject of sustained and violent racist attacks. These attacks follow on from sometimes violent protests against the decision to settle the families in their new location."<sup>58</sup>*

In describing the life conditions suffered upon return by this Roma family, this case study constitutes yet another reason to question whether Serbia (and other Balkan countries) should still systematically be deemed as safe regardless of ethnic origin.

On a more general note, the situation documented above illustrates once again the existence of a "bias" in the access to fundamental rights. The application of these rights to Roma individuals and families remains blurred, uncertain, and sometimes inscribes in such lawlessness that even the stances and decisions taken by international organizations have little impact.

<sup>58</sup> Third Opinion on Serbia adopted on the 28<sup>th</sup> of November 2013, published on 23 June 2014:  
[www.refworld.org/docid/53b2c2be4.html](http://www.refworld.org/docid/53b2c2be4.html)

## RECOMMENDATIONS

### Need for recognition of caravans as housing

With an objective of effective legal recognition of caravans, the main recommendations for this first chapter are the development of technical standards and qualitative criteria for mobile housing and the compulsory creation of sites for Travellers' temporary stay. Other recommendations insisted on the need for awareness-raising amongst local authorities and for promoting the employment of Travellers mediators.

#### **To the Regional Housing Ministries of Brussels, Flanders and Wallonia**

1. *The development of technical standards and qualitative criteria for mobile housing:* in order to be effective, the legal recognition of caravans must come with new housing regulations that are adapted to the specificities of mobile homes. Regional authorities, in consultation with community representatives, should define the criteria caravans must meet to get permission for permanent stay.

#### **To the Regional Ministries for Social Action of Brussels, Flanders and Wallonia**

2. *Making the creation of sites for Travellers' temporary stay compulsory:* a decree making it compulsory for local authorities to create more sites and laying out the basics for a proper organisation of the temporary stay of Travellers would significantly improve the life conditions of Travellers and the relationships between Travellers and local populations.
3. *Sensibilisation Sensitisation of local authorities:* Local authorities are bound to be central actors in the effectiveness of the decrees recognising caravans as housing, not just in terms of housing rights but also in creating an access to a legal and administrative existence for Travellers, with all that it implies for every other fundamental right. There is a need to ensure the proper information of local authorities in order to incite willingness for an effective implementation of the law.
4. *Promoting the employment of Travellers mediators:* Despite the incentives of the Belgian NSRI, mediators are still hired in insufficient numbers. Ground experience suggests that the employment of mediators from the Travellers community could be highly beneficial to the communication and relationships between Traveller groups and local authorities and populations.

### Family homelessness

#### **To the Regional Housing Ministries and the Regional Ministries for Social Action of Brussels, Wallonia and Flanders**

5. *Developing accommodation alternatives that are suitable for families:* There is an urgent need for adapted measures of insertion through housing that are suitable for families. Structural subsidies could also be allocated to organisations working on reinsertion through housing. Additionally, there is need to rethink the shelter system and services in order to include solutions to homelessness that are adapted to a family dimension.
6. *Applying the stated objective of the Belgian NSRI, which promoted the temporary occupation of uninhabited building and the use of precarious occupation agreements:* such measure would allow the regularisation of existing squats, provided that they offer safe housing conditions.
7. *Instituting a moratorium on evictions during winter and ensuring the provision of suitable housing alternatives for evicted families:* The right to adequate housing as defined by the United Nations Committee on Economic, Social and Cultural Rights is the right to live somewhere in security, peace and dignity. One of the UN guidelines

touches upon the responsibility of the State in the protection against forced evictions.

## Roma's access to asylum and legal residence

### **To the Federal Public Service for Foreign Affairs**

### **To the Secretary of State for Immigration**

### **To the CGRA/CGVS**

8. *Mitigating the systematic resort to the list of safe countries:* Today, the discrimination faced by Roma in several of the "safe countries" are acknowledged by EU authorities and human rights bodies and are documented in countless international and local reports. Without questioning the benchmarking utility of the list of safe countries, it cannot and should not be the only factor determining the legitimacy of asylum requests issued by "safe country" nationals. This first recommendation is directly linked to the second one:
9. *Ensuring the effective recognition of Roma as a persecuted minority, subjected to ethnic segregation:* Belonging to a persecuted minority is one of the criteria protected by the Geneva Convention, which should be taken into account in the examination of any asylum request. Already in 2007, the European Court of Human Rights had stated that "as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority" and that they thus require "special protection".<sup>59</sup>
10. Ensure an effective opportunity for any applicant to rebut the safety of a third country in their individual circumstances, including through access to free legal assistance and representation and access to an effective remedy with automatic suspensive effect.

<sup>59</sup> D.H. and Others v. the Czech Republic. 13 November 2017, paragraph 182.

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