

ENNHRI third-party observations in application no. 233/2023

International Federation of Human Rights (FIDH) and International Movement ATD – Fourth World v. Belgium

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1. Introduction

1. In the complaint *International Federation of Human Rights (FIDH) and International Movement ATD - Fourth World v. Belgium*¹ the European Committee of Social Rights (the Committee) is asked to find that the repression of begging by local ordinances in Belgium does not comply with Articles 16, 30 and E of the European Social Charter (the Charter). The applicants point out the lack of legal provision protecting the right to beg when this right is exercised to live or attempt to live in accordance with human dignity, or to support or attempt to support one's family in accordance with human dignity. In addition, they consider that the restrictions adopted by the municipalities are excessive, enforced through disproportionate measures, and that they disproportionately affect potential victims of human trafficking and people identified as Roma by the public authorities.
2. The following third-party observations by the European Network of National Human Rights Institutions (ENNHRI) address the legal issues arising from the Charter and from international human rights standards in relation to prohibitions on begging. It builds upon a study by two ENNHRI member organisations on begging regulations in Belgium,² results of a survey conducted among ENNHRI members on national regulations on begging covering 24 Council of Europe Member States,³ as well as on a third-party intervention⁴ submitted by ENNHRI in 2023 in the case of *Dian v. Denmark* (n° 44002/22) before the European Court of Human Rights (ECtHR).⁵
3. ENNHRI invites the Committee to recognise that begging – when is exercised to live or attempt to live in accordance with human dignity, or to support or attempt to support one's family in accordance with human dignity – enjoys protection under the Charter. ENNHRI submits that this complaint can also be a welcome opportunity for the Committee to provide clarity regarding the following four issues. Firstly, the existence and scope of the protection of begging under the Charter. Secondly, the circumstances under which States may legitimately impose restrictions on begging. Thirdly, whether States can resort to criminal law to restrict life-sustaining activities. Fourthly, whether persons living in poverty should be protected by social assistance measures rather than being criminalised.

¹ International Federation of Human Rights and International Movement ATD Fourth World, *réclamation collective relative à la situation des personnes contraintes de recourir à la mendicité pour vivre ou tenter de vivre conformément à la dignité humaine*, complaint addressed to the European Committee of Social Rights, [No 233/2023](#), Paris, 20 November 2023.

² See Combat Poverty, Insecurity and Social Exclusion Service and the Federal Human Rights Institute, *La réglementation de la mendicité sous l'angle des droits humains – étude de la réglementation de la mendicité en Belgique et de l'impact de l'arrêt Lăcătuș et de la jurisprudence du Conseil d'État (Begging Regulations from a Human Rights Perspective)*, 4 May 2023, report available in French ([here](#) and [here](#)) and in Dutch ([here](#) and [here](#)) on the websites of both institutions.

³ Albania, Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Liechtenstein, Luxembourg, Malta, Moldova, the Netherlands, Northern Ireland, Norway, Poland, Portugal, Slovakia, Slovenia, Türkiye.

⁴ ENNHRI, [Written observations in application n°44002/22 – Strugurel Ion Dian against Denmark](#), 30 June 2023.

⁵ European Court of Human Rights (hereafter: ECtHR), *Dian v. Denmark* (dec.), [n° 44002/22](#), 21 May 2024.

2. The complaint and ENNHRI's interest

4. *International Federation for Human Rights (FIDH) and International Movement ATD Fourth World v. Belgium* is a complaint about restrictions on begging in Belgium, while begging is exercised to attempt to live a life in accordance with human dignity. In 1993, the Belgian legislator repealed the provision in the criminal code prohibiting vagrancy and begging.⁶ Since then, numerous municipalities have adopted regulations prohibiting or limiting begging within their territorial limits. These local ordinances are adopted based on Article 135 of the New Municipal Law,⁷ which grants the municipalities the power to take measures in order to guarantee public security, hygiene and tranquillity in places accessible to the public. Yet, many local ordinances go beyond those objectives by proscribing behaviours because of their suspected impact on the economic attractiveness of a municipality or the possible discomfort they may cause to its citizens. Violating these city ordinances can result in penalties, most often in the form of fines of up to €500.
5. The complainants argue that these restrictions constitute a breach of the Charter. Specifically, they claim that it violates :
 - Article 16 of the Charter, due to the lack of legal recognition of the right to beg when that right is used to live or to attempt to live a life in accordance with human dignity and due to the lack of an appropriate legitimate aim to impose restrictions. In addition, the complainants argue that those inappropriate sanctions can penalise victims of exploitation, which is in breach of Article 16 as well;
 - Article 30 of the Charter, due to the lack of a global and coordinated approach to promote effective access to employment, housing, training, education, culture and social and medical assistance for people having to rely on begging to support themselves and their families;
 - Article E of the Charter, combined with Articles 16 and 30, due to its disproportionate impact on individuals described as Roma by public authorities.
6. The Belgian government did not contest the admissibility of the complaint.⁸ On May 14, 2024, the Committee deemed the complaint admissible,⁹ stating that both complainants had a particular competence regarding the matters under examination.

⁶ Act of 12 January 1993 containing an emergency programme for a more caring society, *Belgian Official Bulletin (B.O.B.)*, 4 February 1993.

⁷ Art. 135, New Municipal Law of 24 June 1988, *B.O.B.*, 3 September 1988.

⁸ European Committee of Social Rights (hereafter : ECSR), *Fédération internationale pour les droits humains (FIDH) et Mouvement international ATD Quart Monde c. Belgique*, Observations du gouvernement sur la recevabilité, 14 March 2024, [246/2023/LV/IU](#).

⁹ ECSR, *Fédération internationale pour les droits humains (FIDH) et Mouvement international ATD Quart Monde c. Belgique*, No. 233/2023, [decision on admissibility](#), 14 May 2024.

7. ENNHRI is a registered association representing all National Human Rights Institutions (NHRIs) within the Council of Europe region. ENNHRI membership currently comprises 49 members from 43 countries across wider Europe, of which 39 NHRIs are accredited with 'A' or 'B' status under the United Nations 'Paris Principles'. NHRIs are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights. This includes the right of the family to social, legal and economic protection (art. 16 Charter), the right to protection against poverty and social exclusion (art. 30 Charter) and the right not to be discriminated against (art. E Charter). On 27 September 2024, ENNHRI was granted leave by the President of the Committee to submit its observations in the present case.

3. Belgian regulations on begging

8. For more than 30 years, Belgium has not had a federal begging prohibition (3.1).¹⁰ However, at the local level, many municipalities have reintroduced restrictions on begging. Those restrictions were adopted through local police regulations and targeted a wide range of forms of begging and begging-related behaviours: general bans, bans in the vicinity of shops and restaurants, bans against begging with certain objects or animals, etc. Those regulations are subjected to certain limits, which can be controlled by the Belgian high administrative court, the Council of State (3.2). However, a study conducted by FIRM-IFDH and the Combat Poverty, Insecurity and Social Exclusion Service in 2023 has found that 253 out of 581 municipalities have bans going beyond those limits and unduly restrict human rights of people who beg (3.3).

3.1. Belgian abolition of a criminal begging prohibition

9. In Belgium, the offence of begging was removed from the Criminal Code in 1993.¹¹ In the past, beggars and vagrants were punished with deprivation of liberty when not working. The authorities claimed that forced labour would lead these people to structure and discipline, with a view to developing "good citizens". In the process of this repressive approach, they also received social assistance.¹² This system of criminalising vagrants and beggars was then considered a humane solution. However, the institutions that were initially intended as shelters for the homeless became overcrowded and started becoming quasi-prisons.¹³

10. The number of homeless people doubled between the 1970s and early 1990s, in part because of a

¹⁰ Excluding the one applicable to the public train systems. Act of 27 April 2018 on railway policing, *B.O.B.*, 29 May 2018.

¹¹ Act of 12 January 1993 containing an emergency programme for a more caring society, *op. cit.*

¹² W. Depreeuw, *Landloperij, bedelarij en thuisloosheid. Een socio-historische analyse van repressie, bijstand en instellingen*, Antwerpen, Kluwer rechtswetenschappen, 1988, pp. 218-222.

¹³ W. Depreeuw, "Een herziening van de Wet van 1891 tot beteugeling van de landloperij en de bedelarij... onnodig indien niet ernstig", *Panopticon* 1989, p. 97.

severe housing shortage and unaffordable rental prices.¹⁴ Consequently, in the 1990s, the criminalisation and punishment of begging was removed from the Criminal Code.¹⁵ The government statement of policy at the time emphasised the foundations of social security – namely the principles of solidarity and insurance among all citizens – to combat poverty and subsistence insecurity.¹⁶ The law recognised that poverty results from a confluence of circumstances and social relations, rather than being solely an economic issue. The guiding principle of the removal was an integration ethic: to prevent formerly institutionalised homeless people and people who beg from simply ending up on the streets, a gradual change with guidance was advocated. Therefore, the law enacting an emergency program not only removed the criminal provisions but also included measures requiring the Public Centre for Social Welfare, working at the municipal level, to provide support to these individuals.¹⁷

3.2. Reintroduction of Belgian begging prohibitions through local ordinances

11. Soon after begging was removed from the Criminal Code, many municipalities started imposing far-reaching restrictions. Local police regulations were adopted on the basis of the so-called ‘police powers’ of municipalities that empower them to take measures to protect public order within the territory of the municipality.¹⁸ Municipalities can choose to sanction breaches of local police regulations through two means:
 - by foreseeing light criminal sanctions, such as a prison sentence of 1 to 7 days, a fine of up to €200, or 20 to 40 hours of community service. Those breaches would need to be prosecuted by the judicial authorities and imposed by a court. In practice, criminal sanctions for violations of begging regulations are rare.
 - by so-called municipal administrative sanctions, consisting mainly of fines of up to €500 or €175 in the case of minors from the age of 14 onwards. Alternatively, the sanction can also be several hours of community service or a mediation. The sanctions are applied directly by the municipality: the individual may contest the fine before the municipality, and then in court. Municipal administrative sanctions are largely favoured by local authorities as they grant authorities a more flexible way to sanction behaviours they deem unwanted.

¹⁴ Report on behalf of the Public Health and Environment Commission of the Senate to the draft law containing an emergency programme for a more caring society, *Parl.St.* Senaat, 1992-93, nr. 546/2, p. 7.

¹⁵ Report on behalf of the Public Health and Environment Commission of the Senate to the draft law containing an emergency programme for a more caring society, nr. 546/2, *op. cit.*, p. 17.

¹⁶ Draft law containing an emergency programme for a more caring society, *Parl.St.* Kamer, BZ 1991-92, nr. 630/1; W. DEPREEUW, “Een herziening van de Wet van 1891 tot beteugeling van de landloperij en de bedelarij... onnodig indien niet ernstig”, *Panopticon* 1989, p. 101.

¹⁷ *Ibid.*, p. 2.; Report on behalf of the Public Health and Environment Commission of the Senate to the draft law containing an emergency programme for a more caring society, nr. 546/2, *op. cit.*, pp. 7-8.

¹⁸ Adopted on the basis of Articles 133, first limb and 135, § 2 of the New Municipal Law of 24 June 1988.

12. The national legal framework imposes limits on what local regulations may or may not prohibit, as shown through the case law of the Council of State, the court which receives appeals against local begging regulations.¹⁹ It can suspend or annul regulations found contrary to the law. Its examination focuses on the proper exercise of local police powers and respect for the proportionality principle. The Council of State's reasoning on begging regulations usually follows the following principles:
- 1) The Council of State acknowledges that begging, in the absence of better solutions, can help to acquire means of subsistence. It considers it may be necessary for the right to a life in accordance with human dignity. This does not imply that no restrictions can be placed upon begging, but the Council of State does prohibit excessive regulations.²⁰
 - 2) These police powers are limited to maintaining the so-called 'material' public order, which includes 'public order' (the absence of disorder or rioting), 'public safety' (the avoidance of accidents or risk of accidents to persons or property) and 'public health' (absence of disease or risk of disease).²¹ These powers do not extend to the protection of the so-called 'moral' public order, except when 'moral' disorder degenerates or threatens to degenerate into material disorder.²² Begging – which is not prohibited by law – may relate to this 'moral' public order. Therefore, municipalities cannot prohibit begging as such through police regulations. At most, they can restrict specific forms of begging when it causes a disturbance of public safety, public order or public health (the 'material' public order). Thus, according to the Council of State, when a begging regulation does not contribute to the protection of the 'material' public order, it goes beyond local police powers.
 - 3) The Council of State has clarified what can be considered as protecting public order. Considerations related to tourism (e.g. keeping the streets free of people who beg) are excluded, as are bans on going door to door to receive a handout. It also ruled that begging with a minor under the age of 16 does not as such endanger public order.²³
 - 4) Additionally, measures adopted to support public order must be proportional to the disturbance they mean to address. The measure cannot be more intrusive than what is necessary. As such, a general and permanent ban purporting to deal with organised begging and begging in certain places and during certain times would be disproportionate. Begging bans must be limited in time and space. Banning all types of begging during certain events in a city is excessive. Municipalities are not permitted to simply label any unpleasant or undesirable

¹⁹ *Begging Regulations from a Human Rights Perspective, op. cit.*

²⁰ Art. 135, § 2 New Municipal Law of 24 June 1988, *op. cit.*

²¹ B. Warnez, *De Lokale Bestuurlijke Ordehandhaving in Vlaanderen, die Keure* (2020), pp. 20-21.

²² E.g. Council of State 18 March 2010, BVBA Belgium Business Company v. de Stad Bilzen, n° 202.037, para. 16

²³ *Begging Regulations from a Human Rights Perspective, op. cit.*, p. 12.

conduct as a hindrance to public order and then ban them.²⁴

- 5) Lastly, the Council of State also provides guidelines on specific forms of begging. Begging on sidewalks, at the entrance of buildings or on the road, for example, may restrict passage or access. Hence, a ban on obstructive begging, even across an entire territory, may be proportionate. According to the Council, these are phenomena which seem inherently disorderly. However, the existence of an actual disorder must always be ascertained in a concrete situation. This will depend on place, time, number of pedestrians, the width of the door or sidewalk, and so on. Therefore, whether something is an obstruction depends on the context.²⁵

3.3. Study on local begging regulations from 2023

13. In 2023, the Combat Poverty, Insecurity and Social Exclusion Service and the Federal Human Rights Institute (FIRM-IFDH) – both members of ENNHRI²⁶ – published a joint report on local begging regulations in Belgium.²⁷ This report examines all police regulations containing provisions related to begging and their compliance with the case law of the ECtHR and the Belgian Council of State.²⁸ Since this report is relied upon by the applicant organisations in their complaint, a brief summary of its main findings is sufficient for the purposes of the present intervention.
14. The study shows that, at the time of writing (April 2023), in 305 out of 581 Belgian municipalities, there exists a municipal police regulation prohibiting certain forms of begging. According to the study:
 - 87 municipalities have a general ban on begging in public places.
 - 54 municipalities ban in specific places: in a particular zone, such as the tourist and/or commercial centre; in front of particular buildings (shops, official buildings and railway stations); or in particular places (like cemeteries and car parks).
 - 17 municipalities proscribe begging during specific periods.
 - Often, prohibitions concern specific ways of begging. 160 municipalities ban aggressive and/or intrusive forms of begging, and roughly half of the municipalities with a begging regulation in place.
 - Other common prohibitions include: begging which hinders the circulation of

²⁴ *Ibid.*

²⁵ *Ibid.*, p. 11.

²⁶ The Federal Human Rights Institute (FIRM-IFDH) is a National Human Rights Institution accredited with B status by the GANHRI Sub-Committee on Accreditation. The Combat Poverty, Insecurity and Social Exclusion Service is an associate member of ENNHRI, without an accreditation status from the GANHRI Sub-Committee on Accreditation.

²⁷ *Ibid.*

²⁸ The relevant case law by the Council of State is also discussed in the report (*ibidem*).

traffic or pedestrians (130 municipalities), begging by knocking/ringing the doorbell (107), begging with animals (98), begging with or by children (94), begging using certain objects (75), begging by showing mutilations or injuries (35) and 'covert' begging (for instance by pretending to sell items) (33).

15. Analysing these regulations through the lens of the case law of the ECtHR and the Belgian Council of State, the study concludes that most of these local begging regulations are unlawful. Some types of bans are considered acceptable: on aggressive and/or intrusive forms of begging or on begging which hinders the circulation of traffic or pedestrians. The study concludes that for 253 out of the 305 municipalities, which have a begging regulation in place, the relevant provisions go further than is acceptable under the requirements set out in the case law.

4. Protection of Begging under the Charter

16. The complaint alleges three distinct violations of the Charter :
 - Article 16, which protects the right of the family to social, legal and economic protection ;
 - Article 30, which guarantees the right to protection against poverty and social exclusion ;
 - and Article E, prohibiting discrimination, combined with Articles 16 and 30.
17. Considering that the Charter constitutes a living instrument dedicated to the values of dignity, autonomy, equality and solidarity,²⁹ ENNHRI invites the Committee to interpret these provisions as encompassing the protection of begging under the Charter when begging is exercised in order to live or attempt to live in accordance with human dignity, or to support or attempt to support one's family in accordance with human dignity. The following section examines these provisions one by one to discern the basis of the protection of begging under the Charter.

4.1. Article 16 – Right of the family to social, legal and economic protection

18. Article 16 of the Charter *inter alia* requires economic and social protection of the family by appropriate means.³⁰ According to the Committee's case law, this provision includes protection against measures which could make families more vulnerable regarding their economic and social situation, in particular where such measures make it more difficult to create the necessary conditions for the full development of the family.³¹ Vulnerable and disadvantaged groups require

²⁹ E.g. ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, [No. 14/2003](#), 8 September 2004, § 27.

³⁰ ECSR, *Digest of the Case Law of the European Committee of Social Rights*, June 2022, p. 147.

³¹ ECSR, *Equal Rights Trust v. Bulgaria*, [No. 121/2016](#), 16 October 2018, § 59.

special protection within the relevant regulatory framework³² and particular care is warranted for the effective protection of Roma families.³³

19. The Committee has held that begging restrictions make families more vulnerable regarding their economic and social situation, and subject them to increased economic hardship.³⁴ This particularly holds true for families which are dependent on begging to sustain their livelihood. Academic research conducted in Brussels in 2008 shows that begging yields poor returns, especially for people perceived to be Roma: on average their estimated income is only 40% of the poverty line, or an estimated €325 per month at the time.³⁵ The researchers concluded that the assumptions underpinning the Belgian local regulations regarding begging "*have no empirical ground*", as begging is often a last-resort measure for vulnerable groups in a situation of extreme poverty rather than a fraudulent activity, organised by criminal groups and generating significant profit.³⁶ Restrictions on begging may thus harm their capacity to find or procure themselves their sustenance. Consequently, the Committee is invited to recognise that begging enjoys protection under Article 16 of the Charter.
20. Further information is provided below on specifically vulnerable and disadvantaged groups, including children and victims of trafficking, who are impacted by begging restrictions in Belgium. A last sub-section sets out how interpreting Article 16 of the Charter as protecting begging for those whose livelihood depends upon it would be in line with the interpretation of Article 8 of the European Convention on Human Rights (ECHR) by the ECtHR.

4.1.1. Regulations aiming at protecting children

21. Some of the regulations restricting begging are adopted with the goal of protecting children's welfare. More than 60 municipalities in Belgium forbid begging by children or by adults accompanied by children.³⁷ While the reasons for those particular bans are not always specified, concern for children's welfare is a legitimate goal. Accordingly, the Committee has found that suspension or termination of family allowance fell within a State's margin of appreciation to combat school absenteeism.³⁸ Yet, it also underlined that Article 16 prohibits punitive measures "*as they can make the family concerned more vulnerable regarding their economic and social situation*".³⁹

³² *Ibid.*, p. 144.

³³ *Ibid.*, p. 142.

³⁴ *Ibid.*, § 60.

³⁵ S. Adrienssens, J. Hendrickx, "The Income of Informal Economic Activities: Estimating the yield of begging in Brussels", *HUB Research Paper*, 2008/16, March 2008, p. 18.

³⁶ *Ibid.*, pp. 18-19.

³⁷ *Begging Regulations from a Human Rights Perspective*, *op. cit.*, p. 19.

³⁸ ECSR, *Digest of the Case Law of the European Committee of Social Rights*, June 2022, p. 147.

³⁹ *Ibid.*

22. Most municipalities favour punitive measures – most often in the form of a fine that can be imposed on minors themselves as young as 14.⁴⁰ Furthermore, prosecuting the exploitation of children is not the purview of the municipality but that of the federal prosecuting authorities.⁴¹ School absenteeism is also tackled by a specific authority in Belgium.⁴² Finally, studies conducted in Brussels have shown that the presence of children with people who beg is not necessarily linked to abuse or neglect but rather the expression of the lack of appropriate care facilities for children of socially vulnerable or excluded families.⁴³ It thus follows that the priority of municipalities should be to tackle the root causes of children begging or children accompanying adults begging: the poverty of their families through social programs, as the UN Committee on the Rights of the Child has recommended.⁴⁴

4.1.2. Regulations aiming at combatting human trafficking

23. Regulations restricting begging can also arise from a concern that victims of trafficking may be forced to beg by criminal networks. In Belgium, like in other Council of Europe Member States,⁴⁵ human trafficking is a criminal offence, and exploitation through forced begging is one of the purposes of trafficking.⁴⁶ In 2016, Myria - the Belgian Federal Migration Centre (ENNHRI member⁴⁷ and Independent National Rapporteur on Trafficking in human beings), noted that few cases had been opened by public prosecutors on the basis of this article⁴⁸ and that more actions were expected from federal authorities.
24. Myria also stresses that the approach adopted by the authorities should aim to protect potential victims of trafficking by opting for social support measures instead of (financial) sanctions.⁴⁹ The ECtHR has also expressed doubts that punishing the victims of exploitation would contribute to the fight against trafficking or exploitation of human beings.⁵⁰ Similarly, a joint study by the UN Special

⁴⁰ New Municipal Law, *op. cit.*

⁴¹ According to articles 433ter and 433quater of the Criminal Code.

⁴² Act of 29 June 1983 on compulsory education, *B.O.B.*, 6 July 1983. This law was repealed for Flanders by the decree of 25 April 2014 on education XXIV, *B.O.B.*, 25 September 2014, and was partially repealed in the French Community by the Primary and Secondary Education Code, *B.O.B.*, 19 September 2019.

⁴³ Coordination des ONG pour les droits de l'enfant (CODE), 2004, Recherche-pilote sur la sensibilisation des autorités publiques à la Communauté Rom et sur l'intégration scolaire des enfants Roms, pp. 39-40 ; Committee of Experts on Roma and Traveller Issues (ADI-ROM), Thematic Report on Legislation and Policies Related to Begging, with Special Focus on Children, (2023), [CM \(2022\)194-asdd2-final](#), p. 9.

⁴⁴ United Nations Committee on the Rights of the Child, 28 February 2019, Final conclusions on Belgium, UN Doc. [CRC/C/BEL/CO/5-6](#), § 37 ; see also ADI-ROM, *op. cit.*, p. 14.

⁴⁵ As in many other Member States of the Council of Europe. For example, Sections 232 and 233 of the German Criminal Code forbids trafficking for and exploitation of begging.

⁴⁶ In Belgium, trafficking is forbidden by article 433quinquies of the Criminal Code.

⁴⁷ Myria (the Belgian Federal Migration Centre) is an associated member of ENNHRI, without an accreditation status from the GANHRI Sub-Committee on Accreditation.

⁴⁸ Myria, report on human trafficking – beggars in the hands of traffickers, [annual report 2016](#), pp. 30-31.

⁴⁹ *Ibid.*, p. 64.

⁵⁰ ECtHR, *Lăcătuș v. Switzerland*, [No. 14065/15](#), 19 January 2021, §§ 111-112.

Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on adequate housing underlines that *"when begging is the result of exploitation and linked to the trafficking in persons, criminal responsibility should be attributed to those who force persons into begging, and not on trafficked persons forced to beg"*.⁵¹ However, local ordinances often only provide sanction mechanisms aimed at the potential victim of the trafficking – i.e. the person begging– and municipalities are ill-equipped to pursue wider and more complex trafficking criminal networks. In light of this, it raises concerns whether local ordinances are an appropriate method to address trafficking. Consequently, those provisions may raise concerns over their alignment with Article 16 by potentially making victims of trafficking even more vulnerable.

4.1.3. Insights from the case law of the ECtHR

25. Finally, interpreting Article 16 as protecting begging for those whose livelihood depends upon it would be in line with the interpretation of Article 8 ECHR (the right to respect for private and family life) by the ECtHR in the *Lăcătuș v. Switzerland* judgment. The ECtHR has held that the right to call on others for assistance goes to the very essence of the rights protected by Article 8 ECHR. It is derived from the right to establish and develop relationships with other human beings and the outside world, which forms part of the right to respect for private life under Article 8 ECHR.⁵² Begging as protected under the ECHR is also derived from the concept of human dignity which 'is inherent in the spirit of the Convention'. According to the ECtHR, *"a person's dignity is severely compromised if he or she does not have sufficient means of subsistence (...). By the act of begging, the person concerned is adopting a particular way of life with the aim of rising above an inhumane and precarious situation"*.⁵³
26. The Committee holds that the Charter *"must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied"*, which *"applies above all to the European Convention on Human Rights"*.⁵⁴ Hence, the Committee may interpret Article 16 – as well as Article 30 of the Charter, alone or combined with Article E (further below) – in light of the interpretation of Article 8 ECHR by the ECtHR. The Committee has already considered that the right to establish relationships with other human beings and the outside world enjoys protection under Article 16 of the Charter, and must thus be construed in an analogous manner as the corresponding right protected under Article 8 ECHR.⁵⁵

⁵¹ United Nations Special Rapporteur on extreme poverty and human rights and United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, *Breaking the cycle : ending the criminalisation of homelessness and poverty*, Study presented to the Human Rights Council, 26 June 2024, UN Doc. [A/HRC/56/61/Add.3](#), p. 19.

⁵² ECtHR, *Lăcătuș v. Switzerland*, *op. cit.*, § 55.

⁵³ *Ibid.*, § 56.

⁵⁴ ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, [No. 39/2006](#), 5 December 2007, § 50-51.

⁵⁵ ECSR, *Centra on Housing Rights and Evictions (COHRE) v. Italy*, [No. 58/2009](#), 25 June 2010, § 129.

Consequently, the protection of begging for those whose livelihood depends upon it can be derived from the Article 16 of the Charter.

4.2. Article 30 – Right to protection against poverty and social exclusion

27. Article 30 of the Charter requires that States give effect to the right to protection against poverty and social exclusion by adopting measures aimed at preventing and removing obstacles to access to fundamental social rights.⁵⁶ The Committee considers poverty “*as involving deprivation due to a lack of resources (...) which can arise inter alia from the failure of States Parties to fulfil their obligation (...) to provide a minimum income to persons in need*”.⁵⁷ In this regard, it is submitted that a situation in which persons are dependent on begging to sustain their livelihood *prima facie* gives rise to a presumption that State authorities have failed to adequately protect the social rights of the persons concerned. Such failure is exacerbated when State authorities take measures which further deprive persons of access to adequate resources – such as begging bans – thereby affecting their ability to live in a manner compatible with their human dignity.⁵⁸ In this regard, the Committee has held that, when restricting the rights of persons living in a situation of poverty, State authorities must ensure that the level of social rights protection “*is still adequate to meeting basic social needs*”.⁵⁹ The right to an adequate standard of living is also enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights, and if that right cannot be guaranteed by state actions, a person must have the freedom to seek assistance from others.
28. The next sub-sections further highlight specific aspects of the application of Article 30 of the Charter: a human-rights based interpretation in line with UN Guiding Principles on Extreme Poverty and Human Rights, implying a prohibition to criminalise life-sustaining activities (section 4.2.1); the social exclusion dimension of Article 30 (section 4.2.2); and Article 30 as a procedural right implying a positive obligation to develop a coordinated approach regarding begging bans (section 4.2.3). Lastly, reference is made to case-law of the ECtHR, which supports the applicability of Article 30 of the Charter (section 4.2.4).

4.2.1. Article 30 as a prohibition to criminalise life-sustaining activities

29. Criminalising life-sustaining activities is submitted to be incompatible with Article 30, interpreted in light of the *UN Guiding Principles on Extreme Poverty and Human Rights*.⁶⁰ According to those Principles, restrictions on life-sustaining activities are only acceptable in exceptional cases, and

⁵⁶ ECSR, *Conclusions 2013 - Statement of interpretation on Article 30*, 2013_163_06/Ob/EN.

⁵⁷ *Ibid.*

⁵⁸ *Mutatis mutandis* ECSR, *European Roma Rights Centre (ERRC) v. Bulgaria*, [No. 48/2008](#), 18 February 2009, § 43.

⁵⁹ ECSR, *Greek General Confederation of Labour (GSEE) v. Greece*, [No. 111/2014](#), § 85.

⁶⁰ *UN Guiding Principles on Extreme Poverty and Human Rights*, adopted on 27 September 2012 by Human Rights Council Resolution No. 21/11, UN Doc. [A/HRC/21/39](#), § 66 (hereafter ‘UN Guiding Principles’). See also below, §§ 48-49.

enforcement of those restrictions through criminal law (rather than, for example, administrative measures) is considered disproportionate. A recent study by the UN Special Rapporteur on Extreme Poverty and Human Rights and the UN Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living further examined the links between restrictions on life-sustaining activities and the protection against social exclusion.⁶¹ The study stresses that poverty is “a cause and consequence of a broad range of human rights violations” and notes a trend of the criminalisation of persons using public spaces for life-sustaining activities. Concerningly, regulations that penalise life-sustaining activities in public spaces, such as begging, lead to the double victimisation of particularly vulnerable, socially excluded, groups.⁶² Those laws are often adopted with a view to maintaining public order and health, especially at the local level.⁶³ The two UN Special Rapporteurs emphasise the need for local governments to develop non-punitive strategies that regulate the fair and inclusive use of public spaces without prohibiting life-sustaining activities.⁶⁴

30. Article 30 is of particular importance here, since it is the article of the Charter that ensures indivisible links with other provisions of the Charter, including the right to the social, legal and economic protection of the family (Article 16).⁶⁵ Those indivisible links have led the Committee to adopt a human rights-based approach to poverty inspired by the one developed by the UN Special Rapporteur on Extreme Poverty and Human Rights.⁶⁶

4.2.2. Begging bans and the social exclusion dimension of Article 30

31. In the context of begging bans, Article 30 of the Charter is not only relevant in its poverty dimension but also in its social exclusion dimension. According to the Committee, social exclusion must be “understood as involving obstacles to inclusion and citizen participation”.⁶⁷ It is submitted that this dimension also requires respect more generally for the fundamental rights and freedoms of persons living in poverty, in particular for their autonomy to make choices on how to sustain their livelihood (see paras. 55-56). In this regard, it must be recalled that the Committee considers that ‘the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes on a special importance.’⁶⁸

⁶¹ *Breaking the cycle: ending the criminalisation of homelessness and poverty, op. cit.*

⁶² *Ibid.*, p. 3 and p. 10.

⁶³ *Ibid.*, p. 18.

⁶⁴ *Ibid.*

⁶⁵ K. Lukas, *The Revised European Social Charter – An Article-by-Article Commentary*, Edward Elgar Publishing, Cheltenham, 2021, p. 325.

⁶⁶ *Ibid.*

⁶⁷ ECSR, *Conclusions 2013 - Statement of interpretation on Article 30, op. cit.*

⁶⁸ *Ibid.*

4.2.3. Article 30 as a procedural right and the positive obligation to have a coordinated approach regarding begging bans

32. Article 30 of the Charter is also understood as a procedural right. It obliges State parties to pursue a coordinated overall policy “in order to ensure the vindication of rights granted by the Charter”.⁶⁹ However, in Belgium, no coordinated approach to regulations against begging as a life-sustaining activity exists and each of the 581 Belgian municipalities can adopt their own regulations.⁷⁰ Furthermore, the criminal offences associated with begging – exploitation of begging⁷¹ or trafficking for the purpose of begging’s exploitation⁷² – are regulated by the federal Criminal Code. Social assistance to individuals’ begging is also split between the municipalities, the regional authorities and the federal government. As a result, the approach used to regulate begging can vary immensely. As mentioned earlier, the study by the Combat Poverty Service and FIRM-IFDH found that more than half of all Belgian municipalities have their own regulations regarding begging and that 80% of those regulations are likely in violation of ECtHR and Belgian case law.⁷³ The Council of State found repeatedly that those regulations constituted an excess of power by municipalities, due to their tendency to regulate the ‘moral’ public order despite having no power to do so.⁷⁴

4.2.4 Further insights from the case law of the ECtHR

33. It is recalled that, according to the Committee, the rights protected by the Charter must be construed in a manner analogous to the corresponding right protected under Article 8 ECHR, and that in the *Lăcătuș*-judgment the ECtHR recognised that the right to call on others for assistance, including through begging exercised to live or attempt to live in accordance with human dignity, enjoys protection under Article 8 ECHR. This protection is derived from the right to establish and develop relationships with other human beings and the outside world, which forms part of the right to respect for private life under Article 8 ECHR, as well as from the concept of human dignity which ‘is inherent in the spirit of the Convention’ (see para. 25). It is recalled that the Committee considers that “living in situation of poverty and social exclusion” in and of itself “violates the dignity of human beings”⁷⁵. Particular attention should be given to children begging and adults accompanied by children, as the Committee has held that State parties must take measures to prevent the occurrence

⁶⁹ K. Lukas, *The Revised European Social Charter*, op. cit., p. 324.

⁷⁰ *Begging Regulations from a Human Rights Perspective*, op. cit.

⁷¹ Art. 433ter and 433quater, Belgian Criminal Code.

⁷² Art. 433quinquies, 2°, Belgian Criminal Code.

⁷³ *Begging Regulations from a Human Rights Perspective*, op. cit.

⁷⁴ See for example Council of State, *BVBA Belgium Business Company c. City of Bilzen*, No. 202.037, 18 March 2010, § 16.

⁷⁵ ECSR, *Conclusions 2013 - Statement of interpretation on Article 30*, 2013_163_06/Ob/EN (2013).

of street children and assist them in regaining a dignified living situation⁷⁶. In light of this, the Committee is invited to recognise that begging similarly enjoys protection under Article 30 of the Charter.

34. A similar approach was followed, among others, by the Bulgarian Constitutional Court. In 2022, it declared the general ban on begging in Bulgaria unconstitutional by referring to the *Lăcătuș*-judgment.⁷⁷ The Constitutional Court considered that in a democratic society, the 'fight against begging' should not be carried out by means of punishment but by means of social policy. Similarly, Georgia has an Inter-Agency Coordination Council tasked, among others, to protect children begging and develop social measures to support them.⁷⁸

4.3. Article E- Protection from discrimination

35. Article E aims to secure the equal effective enjoyment of all the rights enshrined in the Charter, regardless of any characteristic of an individual or group of persons. Yet, it does not constitute an autonomous right: Article E must be combined with other rights. It targets all forms of discrimination,⁷⁹ whether direct, indirect or systemic.⁸⁰ The Committee notes that "*indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all*".⁸¹ The Committee also refers to the case law of the ECtHR.⁸² The ECtHR considers that indirect discrimination can result from the disproportionate adverse consequences of an apparently neutral general policy or measure on a particular group.⁸³ Finally, States must also ensure that discrimination is eliminated not only in law but also in fact.⁸⁴
36. ENNHRI argues that regulations prohibiting begging may lead to a form of indirect discrimination against certain groups of vulnerable individuals, including Roma and people living in poverty. Such discrimination is in breach of Article E combined with Articles 16 and 30. While laws prohibiting or criminalising begging may appear neutral, they raise concerns over their disproportionate impact on

⁷⁶ ECSR, *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, [No. 114/2015](#), 24 January 2018, §§152 and 163, cited in K. LUKAS, *The Revised European Social Charter*, *op. cit.*, p. 132.

⁷⁷ Bulgarian Constitutional Court, Decision no. 13, 27 September 2022.

⁷⁸ Information gathered through ENNHRI's survey.

⁷⁹ ECSR, *International Association Autism-Europe v. France*, [No. 13/2002](#), 4 November 2003, §52.

⁸⁰ Systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes, in either the public or private sector, which create relative disadvantages for some groups, and privileges for other groups.

⁸¹ ECSR, *International Association Autism-Europe v. France*, *op. cit.*, §§ 51-52 ; *COHRE v. Italy*, *op. cit.*, § 35; *Forum européen des Roms et des Gens du Voyage (FERV) v. France*, [No. 64/2011](#), 24 January 2012, § 41.

⁸² ECSR, *Digest of the Case Law of the European Committee of Social Rights*, June 2022, p. 35.

⁸³ ECtHR (Grand Chamber), *Biao v. Denmark*, [No. 38590/10](#), 24 May 2016.

⁸⁴ ECSR, *FERV v. France*, *op. cit.*, §42.

certain groups of individuals, including due to their ethnic origin and social condition.⁸⁵

4.3.1. Article E combined with Article 16

37. The Committee has held that the States Parties should pay particular attention to the impact of their choices on the most vulnerable groups, in particular families.⁸⁶ Begging bans have a disproportionate impact on vulnerable families who have to rely on begging to support their livelihood and dignity, and especially on families from ethnic minorities, including Roma. This is because members of these groups are more likely to depend on begging to sustain their livelihoods.⁸⁷ Research has shown that Roma individuals are particularly at risk of relying on begging to live or attempt to live in accordance with human dignity.⁸⁸

4.3.2. Article E combined with Article 30

38. According to the Committee, the prohibition of discrimination under Article E of the Charter takes on special importance as well in relation to the right to protection against social exclusion.⁸⁹ The Committee has considered that begging bans constitute a *"denial of the fundamental right of persons belonging to socially disadvantaged groups to equality of respect and esteem"*.⁹⁰ Based on a combined reading of Articles E and 30 of the Charter, begging bans impact disproportionately persons living in poverty and can be considered as indirect discrimination on the ground of poverty, which is prohibited under Article E and national law.⁹¹
39. The Committee has also held that *"as a result of their history, Roma have become a specific type of disadvantaged group and vulnerable minority"*,⁹² requiring special protection under the Charter. Accordingly, for Roma, the ban on begging can be an obstacle to a dignified life, as in some cases it is their only source of income. Begging bans have thus a disproportionate effect and might lead to their indirect discrimination and social exclusion.

⁸⁵ Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, p. 10.

⁸⁶ ECSR, *International Association Autism-Europe v. France*, *op. cit.*, §53.

⁸⁷ Also see Council of Europe Commissioner on Human Rights, ["Time to debunk myths and prejudices about Roma migrants in Europe"](#), Human Rights Comment, 16 July 2015.

⁸⁸ S. Adrienssens, J. Hendrickx, "The Income of Informal Economic Activities: Estimating the yield of begging in Brussels", *op. cit.*, p. 18.

⁸⁹ ECSR, *Conclusions 2013 - Statement of interpretation on Article 30*, 2013_163_06/Ob/EN (2013).

⁹⁰ ECSR, *European Roma Rights Centre (ERRC) v. Bulgaria*, *op. cit.*, § 45.

⁹¹ ECSR, *Digest of the Case Law of the European Committee of Social Rights*, June 2022, p. 144.

⁹² ECSR, *Digest of the Case Law of the European Committee of Social Rights*, June 2022, p. 144.

5. Situations in which restrictions on begging can or cannot be legitimately imposed, and the modalities thereof

40. In this section, ENNHRI would like to draw the attention of the Committee to the three following points. First, ENNHRI invites the Committee's guidance on the circumstances under which begging, when is exercised to live or attempt to live in accordance with human dignity, may exceptionally be restricted under the Charter. This guidance could effectively encourage the repeal of unlawful restrictions. Some insights can be found in the approach used by the ECtHR and other Council of Europe Member States. Second, the Committee could provide clarity on the means by which restrictions can and cannot be imposed. In particular, the Committee could clarify whether criminal law can be used, under the Charter, to penalise life-sustaining activities or whether other means – such as administrative measures – should be preferred. Again, European and domestic case law provides some welcome inspiration the Committee may draw from. Third, a human rights approach gives preference to social protection over restrictions towards persons living in poverty. In this context, ENNHRI highlights some good practices from Council of Europe Member States and draws conclusions which can inform the Committee in the present case.

5.1. What are legitimate restrictions on begging?

41. The Committee is invited to provide guidance on the circumstances under which begging to support one's life with dignity may exceptionally be restricted under the Charter. In this regard, the protection offered by Article 8 ECHR may offer a useful inspiration.

5.1.1. General begging bans and specific bans

42. The ECtHR in *Lăcătuș* has held that States only enjoy a narrow margin of appreciation in imposing begging restrictions, which implies that begging can only be restricted in exceptional circumstances.⁹³ A general ban is in any event unacceptable under Article 8 ECHR, since it *"preclude[s] a genuine weighing-up of the interests at stake and penalise[s] begging in a blanket fashion, regardless of the perpetrator of the impugned activity and his or her potential vulnerability, the nature of the begging and whether it was aggressive or passive, where it took place and whether or not the offender was part of a criminal network"*.⁹⁴
43. Unlike a general ban, the ECtHR considers that a more limited ban may be compatible with Article 8 ECHR, on the condition that it is 'justified on solid public interest grounds'.⁹⁵ According to the ECtHR, *"a desire to reduce the visibility of poverty in a city and attract investments is not a legitimate aim from*

⁹³ ECtHR, *Lăcătuș v. Switzerland*, *op. cit.*, § 105.

⁹⁴ *Ibid.*, § 102.

⁹⁵ ECtHR, *Dian v. Denmark*, *op. cit.*; ECtHR, *Lăcătuș v. Switzerland*, *op. cit.*, § 110.

a human rights standpoint".⁹⁶ Begging can however be restricted where this is necessary "in order to protect the rights of passers-by, residents and shopkeepers", but only where it is established that the person concerned is actually engaging in aggressive or intrusive forms of begging.⁹⁷ Except for the protection of the rights of other persons against aggressive and/or intrusive forms of begging, the ECtHR has explicitly left open the question whether other aims can legitimately be invoked to justify restrictions on begging.⁹⁸

5.1.2. Legitimate restrictions on begging

44. The present case raises questions regarding the situations in which restrictions on begging can be legitimately imposed under the Charter. The Committee is invited to provide at least equivalent protection under the Charter to what is offered by Article 8 ECHR. Higher protection may even be warranted in light of the objective of the Charter to provide for a minimum level of social and economic protection, in particular for persons living in poverty begging in order to live or attempt to live in accordance with human dignity. In its third-party intervention in the *Dian* case,⁹⁹ ENNHRI has argued that there are no other circumstances under which restrictions on begging meet the criteria of legitimacy under the ECHR other than aggressive or intrusive forms of begging. This argument holds true also under the Charter.
45. Therefore, the Committee is invited to explicitly limit the possibility of restricting begging under the Charter to aggressive or intrusive forms of begging. It must moreover be noted that countries typically already have legal instruments to address any aggressive and intrusive behaviour in general (e.g. to ensure the smooth flow of traffic). Such instruments do not single out people who beg, thereby avoiding the risks of stigmatisation. Consequently, questions arise whether prohibitions specifically targeting begging meet the necessity criteria, or whether they can nonetheless be lawful in certain circumstances.

5.1.3. Results of the survey among ENNHRI members on begging restrictions in Europe

46. Further guidance from the Committee regarding the (limited) scope for restrictions of begging is all the more required in light of the significant variation of begging restrictions, both across Europe and within Member States of the Council of Europe. This is evident from the comparative study conducted by the ECtHR in the *Lăcătuș*-judgment¹⁰⁰ and from an ENNHRI survey, which received

⁹⁶ ECtHR, *Lăcătuș v. Switzerland*, *op. cit.*, § 113.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, § 98.

⁹⁹ ENNHRI, Written observations in application n°44002/22, *op. cit.*

¹⁰⁰ ECtHR, *Lăcătuș v. Switzerland*, *op. cit.*, §§ 19-26.

contributions from 25 ENNHRI members from 24 Council of Europe Member States.¹⁰¹ Out of those twenty four countries, ten countries have a national ban on certain types of begging in place (Albania, Denmark, France, Hungary, Ireland, Liechtenstein, Luxembourg,¹⁰² Moldova, Poland, and Slovenia), and several countries have a national ban on any type of begging (Croatia, Malta, Northern Ireland (UK)¹⁰³ and Türkiye). In eight countries, restrictions can (also) be imposed at a local level (Austria, Belgium, France, Germany, Greece, Luxembourg, the Netherlands, and Norway), where authorities typically enjoy wide discretion on the basis of broad administrative public order powers to impose varying, sometimes far-reaching restrictions on begging. In five countries (Bulgaria, Finland, Georgia, Portugal and Slovakia), there is no ban on begging.

5.2. Illegitimate restrictions: criminalising life-sustaining activities

47. The Committee could provide clarity on the means which can be used to restrict begging under the Charter. In particular, the question arises whether recourse to criminal law can ever be justified to prohibit life-sustaining activities. While recognising a tendency amongst States to refrain from using criminal law in this area,¹⁰⁴ and stating that severe criminal sanctions, particularly involving deprivation of liberty, are in principle not warranted,¹⁰⁵ the ECtHR in the *Lăcătuș*-judgment has stopped short of stating that recourse to criminal law is never acceptable in this area. In this regard, ENNHRI invites the Committee to take a firmer position by clarifying that it is never acceptable to resort to criminal law to restrict life-sustaining activities, in line with international standard-setting in this area.
48. The *UN Guiding Principles on Extreme Poverty and Human Rights*, which are meant as a compilation of existing obligations under international human rights documents in relation to poverty, indicate that States must “repeal or reform any laws that criminalise life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities.”¹⁰⁶ The Committee’s attention must be drawn to the fact that this principle has recently been affirmed by the International Commission of Jurists’ *8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty*

¹⁰¹ This includes responses from ENNHRI members from Albania, Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Liechtenstein, Luxembourg, Malta, Moldova, the Netherlands, Northern Ireland (UK), Norway, Poland, Portugal, Slovakia, Slovenia, Türkiye.

¹⁰² Luxembourg technically still has a national ban on any type of begging but criminal courts have ruled the criminal offence of begging had *de facto* been abrogated. National bans on certain types of begging and city-wide begging bans still exist.

¹⁰³ The Northern Ireland NHRI – the Northern Ireland Human Rights Commission - has provided information on the situation and the laws currently existing in Northern Ireland.

¹⁰⁴ ECtHR, *Lăcătuș v. Switzerland*, *op. cit.*, § 105.

¹⁰⁵ ECtHR, *Lăcătuș v. Switzerland*, *op. cit.*, §§ 108-110.

¹⁰⁶ *UN Guiding Principles on Extreme Poverty and Human Rights*, adopted on 27 September 2012 by Human Rights Council Resolution No. 21/11, UN Doc. [A/HRC/21/39](#), § 66.

(2023).¹⁰⁷ This principle is also one of the main points of the recent study by the two UN Special Rapporteurs on the criminalisation of homelessness and poverty (see para. 29).¹⁰⁸ As presented in section 4.2. on Article 30, restrictions on life-sustaining activities should only be acceptable in exceptional cases, and recourse to criminal law to enforce such restrictions is in any event disproportionate. Begging-related offences are among those criminal offences which contribute to the fact that “*persons living in poverty [...] come into contact with the criminal justice system with a disproportionately high frequency*”.¹⁰⁹ Moreover, the existence of such criminal offences legitimises the profiling and deliberate targeting of persons living in poverty by law enforcement personnel.¹¹⁰ In this regard, the UN Special Rapporteur on Extreme Poverty and Human Rights has stated that begging bans “*give law enforcement officials wide discretion in their application and increase the vulnerability of persons living in poverty to harassment and violence.*”¹¹¹

49. It is recalled that the *UN Guiding Principles on Extreme Poverty and Human Rights* can be considered as constituting a consensus, emerging from specialised international human rights instruments regarding the treatment of people who beg. This is important for the purposes of the present case, as the Charter is a living instrument which must be interpreted in the light of relevant international instruments.¹¹² In this regard, the Committee has already recognised that the *UN Guiding Principles on Extreme Poverty and Human Rights* are of particular importance for the interpretation of Article 30 of the Charter.¹¹³ The present case provides an opportunity for the Committee to confirm the growing international consensus against the use of criminal law in this area.

5.3. Privileging personal autonomy and social assistance rather than criminalisation

50. The present case raises questions regarding how States should engage with persons living in poverty. Respect for human dignity and personal autonomy is at the centre of a human rights based approach to poverty. These observations reflect on the need to ensure adequate social measures to protect persons living in poverty and respect personal autonomy, rather than being criminalised to comply with the human rights standards as presented in these observations.

¹⁰⁷ International Commission of Jurists (ICJ), [The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), 2023. Principle 21 states that “[n]o one may be held criminally liable: [...] for engaging in life-sustaining economic activities in public places, such as begging, panhandling, trading, touting, vending, hawking or other informal commercial activities involving non-contraband items”.

¹⁰⁸ *Breaking the cycle : ending the criminalisation of homelessness and poverty*, *op. cit.*

¹⁰⁹ *UN Guiding Principles*, § 65.

¹¹⁰ *UN Guiding Principles*, § 63.

¹¹¹ UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, *Extreme Poverty and Human Rights*, Report to the General Assembly, 4 August 2011, UN Doc. [A/66/265](#), § 32.

¹¹² ECSR, *Transgender Europe and ILGA-Europe v. the Czech Republic*, [No. 117/2015](#), 15 May 2018, § 75.

¹¹³ ECSR, *Conclusions 2013 - Statement of interpretation on Article 30*, 2013_163_06/Ob/EN (2013); also see ESCR, *Defence for the Children International (DCI) v. Belgium*, [No. 69/2011](#), 23 October 2012, § 81.

51. Persons living in poverty may be subjected to so-called 'Othering', whereby the 'non-poor' people draw a line between 'us' and 'them', which establishes, maintains and justifies social distance¹¹⁴. As a result, persons living in poverty often feel shamed, stigmatized and humiliated (the so-called 'poverty-shame nexus')¹¹⁵. They are "typically targets of, at best, the non-poor's pity or indifference and, at worst, their fear, contempt, disgust or hostility (...) but rarely treated as equal fellow citizens"¹¹⁶. Both the benign ('the helpless victim') and malign characterization ('the lazy, work-shy, welfare dependent') of persons living in poverty have in common that the 'in-group' considers them to be 'passive objects' and fails to adequately recognize their agency – i.e. their capacity to act¹¹⁷. 'Othering' thereby affects human dignity, the respect for which should be at the centre of a human rights based approach to poverty. It is therefore necessary to ensure that persons living in poverty are protected by social measures rather than being criminalized to comply with the human rights standards as presented in these observations.

5.3.1. Social assistance rather than criminalisation and good practices

52. Beyond previous references emphasising a focus on social assistance of specific groups in a vulnerable situation earlier made (regarding children para 4.1.1 above; regarding victims of trafficking para 4.1.2), ENNHRI emphasises the reasoning of the ECtHR judgment in the case of *Wallová and Walla* on the phenomenon of begging. In this case, the ECtHR recognised that preference should be given to a social protection approach above a rights-restrictive approach towards persons living in poverty, and that it is exactly the role of the domestic authorities to guide persons to the most appropriate type of social aid.¹¹⁸ Even to the extent that State authorities may legitimately restrict certain types of begging on account of the negative impact thereof on the rights of others (see para. 43), specific attention should always be given to tackling the root of the problem – i.e. the situation of poverty in which persons who beg find themselves – rather than the mere symptom. In this regard, it must be recalled that Article 30 of the Charter requires that State authorities adopt measures aimed at preventing and removing obstacles to access to fundamental social rights for persons living in a situation of poverty and social exclusion (see para. 27). State authorities must ensure that social rights protection at least is adequate to meet basic social needs. They particularly have a special responsibility towards persons who find themselves in a situation of extreme poverty, in which they are unable to cater for their basic needs.¹¹⁹

¹¹⁴ R. Lister, "'To count for nothing': Poverty beyond the statistics", *Journal of the British Academy*, 2015, pp. 139-142.

¹¹⁵ *Ibid.*, p. 144.

¹¹⁶ *Ibid.*, p. 144.

¹¹⁷ *Ibid.*, p. 145.

¹¹⁸ ECtHR, *Wallová and Walla v. Czech Republic*, [No. 23848/04](#), 26 October 2006, § 74.

¹¹⁹ ECtHR (Grand Chamber), *M.S.S. v. Belgium and Greece*, [No. 30696/09](#), 21 January 2011, § 249-264.

53. Good practices reflecting a minimal rights-restrictive approach, and rather a focus on social protection can be found in Council of Europe Member States.¹²⁰ For example, the aforementioned general ban on begging being overturned by Bulgaria's Constitutional Court in 2022.¹²¹ Polish law encourages judges to take into account all circumstances surrounding the begging in order to identify whether the person begging is in genuine need of support, allowing for careful consideration of the interests at stake. State of necessity can be invoked to avoid administrative fines for persons begging, such as in Türkiye.¹²² Another good example to avoid issuing a fine for violations of begging regulations is to limit them to one symbolic euro, as is already the case in some municipalities in Belgium.¹²³
54. Numerous other good practices have been brought to ENNHRI's attention, which the Committee may consider worthy of its consideration. For example, it is considered good practice in some police regulations to explicitly require that police officers should primarily direct people who beg to social assistance, as is already the case in some Belgian municipalities. Law enforcement officers can also work directly in collaboration with social services, as in Portugal.¹²⁴ Police departments should consider investing in communication with the persons concerned. In particular, having a community liaison officer capable of communicating in the language of the persons concerned appears to be an appropriate way to address begging. This can create a bond of trust that might aid in guiding them to social help, but also to make the necessary arrangements. An example of this is the department 'Herscham' of the Brussels police forces, which tries to maintain direct contact with homeless people in the city and guide them to the relevant social services.¹²⁵ Similarly, making arrangements with people who beg to prevent hindrance to third parties appears preferable to a more repressive approach.¹²⁶ This approach is not only relevant for the police but also for the local authorities as a whole. They are recommended to invest sufficiently in social services and in community liaison officers who allow for better contact with the persons concerned in order to direct them to the relevant social services. Lastly, some municipalities attempt to take into account the diversity of people who beg and the problems they face (homelessness, addiction problems, presence of children, ...) so that social support can be attuned accordingly.¹²⁷

¹²⁰ The information on good practices was gathered through the survey conducted by ENNHRI among its members organisations.

¹²¹ Bulgarian Constitutional Court, Decision no.13, *op. cit.*

¹²² This information was gathered through the survey conducted by ENNHRI among its members organisations.

¹²³ *Begging Regulations from a Human Rights Perspective, op. cit.*, p. 39, fn. 168.

¹²⁴ This information was gathered through the survey conducted by ENNHRI among its members organisations.

¹²⁵ *Begging Regulations from a Human Rights Perspective, op. cit.*, p. 39, fn. 168.

¹²⁶ *Ibid.*

¹²⁷ O. Bowling, "Strategies to address begging: local, national and international perspectives", Leeds University (2018), p. 5

5.3.2. *Respecting the personal autonomy of people begging*

55. State interventions on begging should start from the realisation that begging is a symptom that the State is failing to reach those in need, instead of criminalising behaviour which rather indicates insufficient access to social assistance.¹²⁸ At the same time, it must be recognised that the mere availability of social protection measures in itself should never be invoked to deprive persons living in poverty from their personal autonomy to make choices regarding how to sustain their livelihood, including through begging.
56. In this regard, it follows from the *UN Guiding Principles on Extreme Poverty and Human Rights*, that State authorities must respect the human dignity of persons living in poverty, which includes the need to 'avoid stigmatisation and prejudices, and [to] recognise and support the efforts that those living in poverty are making to improve their lives.'¹²⁹ Begging restrictions however stigmatise persons living in poverty, because these persons are singled out on the basis of their low socio-economic status. Thereby, begging restrictions can contribute to the 'perpetuation of discriminatory societal attitudes towards the poorest and most vulnerable',¹³⁰ and have a negative impact on their efforts to sustain their livelihood.
57. Furthermore, it follows from the *UN Guiding Principles on Extreme Poverty and Human Rights* that persons living in poverty 'must be recognised and treated as free and autonomous agents'; and policies which affect them 'must be aimed at empowering [them]' and 'must be based on the recognition of those persons' right to make their own decisions'.¹³¹ They must moreover enjoy the 'right to participate in decisions affecting their lives'.¹³² Begging restrictions, however, negatively impact the autonomy of persons living in poverty to make choices on how to sustain their livelihood.¹³³

6. Conclusion

58. This case is the first to be examined by the Committee concerning bans on begging. However, this procedure follows several cases decided by the ECtHR as well as by domestic Supreme Courts (such as in Bulgaria and Belgium). The United Nations mechanisms are also developing new standards concerning extreme poverty and human rights, and in particular against the criminalisation of life-sustaining activities. It is in this context that the Committee is called upon to give its decision on the

¹²⁸ *Mutatis mutandis* ECSR, 21 March 2012, *International Federation of Human Rights (FIDH) v. Belgium*, [No. 62/2010](#), § 161.

¹²⁹ *UN Guiding Principles*, *op. cit.*, § 15.

¹³⁰ *Extreme Poverty and Human Rights*, *op. cit.*, § 32

¹³¹ *UN Guiding Principles*, *op. cit.*, § 36

¹³² *Ibid.*

¹³³ See also the report from the Combat Poverty Service on citizenship and poverty, which stressed the importance of personal autonomy : [Citoyenneté et pauvreté. Contribution au débat et à l'action politiques – Rapport bisannuel 2016-2017](#), décembre 2017.

compatibility between Belgium's local bans on begging (and the lack of a coordinated approach) and the Charter.

59. ENNHRI invites the Committee to first and foremost recognise that begging enjoys protection under the Charter, based on Article 16, Article 30, on their own and combined with Article E. The Committee is invited to interpret the relevant Charter provisions in such a way as to provide at least equivalent protection to what is offered under Article 8 ECHR, as interpreted by the ECtHR in the *Lăcătuș*-judgment. The Committee is invited to affirm the position of the ECtHR that begging can only be restricted in exceptional circumstances and that a general ban on begging in any case falls outside any acceptable margin of appreciation.
60. ENNHRI submits that the present case provides a unique opportunity for the Committee to clarify the content of begging being protected by the Charter in four respects. Firstly, by interpreting the scope of the protection of begging under the Charter in a broad manner, which is rooted in respect for the personal autonomy of persons living in poverty to make choices regarding how to sustain their livelihood, including through begging. Secondly, by clarifying the circumstances in which States may exceptionally impose legitimate restrictions on begging. Thirdly, by recognising that it is never acceptable to resort to criminal law to restrict life-sustaining activities. Lastly, by emphasising that persons living in poverty must be protected by social assistance measures rather than being criminalised.

