

Human Rights in Belgium

Annual Report 2003

(Events 2003)

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During the year, a number of human rights issues in Belgium were examined by international bodies. At its 60th session in March, the UN Committee on the Elimination of Racial Discrimination adopted its concluding observations on Belgium after examining its periodic report. Although the committee welcomed the enactment of new laws aimed at combating racism and racial discrimination, it expressed concern and made recommendations in relation to the increasing influence of racist and xenophobic political parties and organizations.

In June, the UN Committee on the Rights of the Child adopted its concluding observations after examining Belgium's periodic report under the International Convention on the Rights of the Child. Special measures of protection were recommended in relation to unaccompanied migrant children, sexual exploitation and trafficking, and administration of juvenile justice.

In September, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE) adopted the report by Lili Nabholz-Haidegger (Switzerland, LDR), rapporteur on national minorities in Belgium. The report was further discussed at the September session of the Parliamentary Assembly followed by adoption of Resolution 1301 calling on Belgium to ratify without delay the Council of Europe's Framework Convention for the Protection of National Minorities.

In October, the European Committee for the Prevention of Torture (CPT) of the Council of Europe published a report on Belgium assessing the treatment of persons deprived of their liberty. A limited number of allegations of ill-treatment by law enforcement officials were heard and the committee recommended changes in practices, in particular access to a lawyer during police custody.

In December, the Belgian Senate adopted a new anti-discrimination law to include all forms of discrimination such as race, color, national or ethnic background, gender, sexual orientation, handicap, state of health, age, religious or philosophical beliefs.

During the year, signs of growing anti-Semitism and Islamophobia became more apparent.

Judicial System

Bar Associations and Lawyers

A number of cases involving pressure on lawyers acting on behalf of certain clients or defending certain cases were reported to Human Rights Without Frontiers (IHF cooperating organization) under cover of anonymity. The type of pressure and coercion exercised on lawyers was most often threats to tarnish their reputation and good name. Threats of disciplinary sanctions by bar associations were also common. In practice, the lawyers were summoned in private by his bar association, representative or local president, to drop certain cases or clients and to refrain from certain actions in a procedure. To avoid being targeted by their bar association or exposing themselves to reprisals and sanctions, lawyers tended to stay away from controversial clients, cases, arguments and evidence, and chose not to push a case too hard.

Courts

Regarding the courts of law, there were problems related to access to justice on the one hand, and structural dysfunctions and abuses within the judiciary on the other.

Although representation by a lawyer was not mandatory in Belgium, there was a great bias against *pro se* litigants (i.e. litigants representing themselves in court without the assistance of a lawyer). *Pro se* litigants were often treated unfairly and uncivilly by judges and by opposing counsel. Typically, judges would postpone proceedings and request the *pro se* litigant to seek legal representation. Therefore, the litigant's fundamental right to defend him/herself in court and have access to the courts was limited. In practice, litigants were obliged to consult a lawyer if they did not want to be submitted to the bias of the court when representing themselves. In a rare case, the Belgian Court of Cassation denied a lawyer who was representing himself the right to file a motion with this court and summoned him to seek the assistance of a second lawyer, although this requirement was not formally stated in the law.

No attention was given to the combination of the functions of practicing lawyer and judge, which are totally opposite and incompatible professions. In Belgium, it was very common to have lawyers who were at the same time assistant judges. Abuses were reported about such assistant judges and lawyers who misused their status of assistant judge to inappropriately influence the court when they were acting as lawyers, thereby creating an inequality of arms with the opposing lawyer. Regular and full-time judges as well as assistant judges were protected by immunity from suit. In Belgium, judges were totally unaccountable. Victims of alleged violations of their rights could not prosecute them, a fact that led to abuses and dysfunctions.

Torture, Ill-Treatment and Police Misconduct

In October, the CPT published a report on Belgium assessing the treatment of persons deprived of their liberty.ⁱⁱ The report analyzed cases of ill-treatment by law enforcement officials, the use of force and means of restraint during the removal of foreign nationals by air, and the situation of psychiatric care units within the prison system.

One of the failures was the lack of fundamental safeguards against ill-treatment such as access to a lawyer during police custody. Belgium's Permanent Commission for Control of Police Services ("Comité P") was entrusted with the task of overseeing the functioning of the custody system. More than 93% of the cases documented and studied by the commission pointed to misconduct by law enforcement officials, while more than 40% of the cases involved acts of violence or abuse of power. Out of these, 22.34 % were related to abuse of power; 11.43 % to acts of physical violence; 6.38% to verbal violence; 4.52% to loss of liberty; and 2.13% to control of identity.

The CPT's findings indicated that the operations for removal of foreign nationals by air involved a manifest risk of inhuman and degrading treatment.

- On March 26, a first instance court of Brussels transferred five former police officers to the Correctional Tribunal for their involvement in the fatal repatriation of Semira Adamu in September 1998.

As regards the prison system, Belgium was mainly criticized for the lack of personnel and appropriate infrastructure in the psychiatric care units and especially the one at the prison of Lantin. On March 15, the Belgian authorities announced their decision to close the unit and transfer its patients to the Establishment for Social Defense in Paifve, following the CPT's communiqué calling on Belgium to improve the situation.

Religious Intolerance

The relationship between the state and religions in Belgium is historically rooted in the principle of recognition and non-recognition of religions. However, recognition criteria were never enshrined in the Constitution, in decrees or in laws. In 2002, six religions (Catholicism, Protestantism, Anglicanism, Judaism, Islam and Orthodoxy) and secular humanism (*laïcité*) were recognized by the

state. They enjoyed facilities and advantages that were denied to all other religious groups.

The state financed only recognized religions. State subsidies were provided by all taxpayers, including those who professed a non-recognized religion or who did not adhere to any religion or belief system. This system was not equitable in so far as taxpayers were unable to prohibit the state from using their income tax to finance religions and secular humanism that were openly opposed to non-recognized minority religions.

The state had put in place mechanisms and agencies – the Parliamentary Enquiry Commission on Sects, the Inter-Ministerial Coordination Agency of Fight against Harmful Sectarian Organizations and the Center for Information and Advice on Harmful Sectarian Organizations – to identify so-called “harmful cults” (bad religions), warn the public and fight against them.

The center comprised twelve members and twelve substitutes. The recruiting method of these members far from guaranteed their impartiality. Indeed, half of the members were nominated by the Council of Ministers for approval by the House of Representatives, while the other half was directly appointed by the House of Representatives. Representatives of political parties, the Catholic Church, various anti-sect movements and ideologies were to be found among the members. The independence of the Sect Observatory was also scarcely guaranteed as it was under the authority of the Ministry of Justice.

The observatory kept silent about religious discrimination committed by public authorities and was careful not to criticize ministers or mayors who denied access to public halls to groups, which acted legally, on the grounds that they were on an alleged list of sects suspected of being harmful.ⁱⁱⁱ

- The Anthroposophic Society sued the Belgian state arguing that the law creating the Center for Information and Advice as well as the Inter-Ministerial Coordination Agency was anti-constitutional. The highest domestic instance, the Court of Arbitration, dismissed the case. The European Court in Strasbourg declared the case non-admissible in September 2002.
- The tax department has denied the Japanese religious group Sukyo Mahikari an exemption from property tax on its place of worship on the grounds that it is on the parliamentary of sects suspected of being harmful. A procedure of appeal was started in 1998 and is still pending.

The distribution of printed material, including religious and philosophical writings, was forbidden by municipal decrees in certain parts of Brussels and of other towns: distribution was prohibited near schools, Christian churches (but not synagogues, mosques or any other non-Christian places of worship), military barracks, etc. Other regulations provided that any distribution of printed material, even free of charge and on a small scale, may only be carried out with the written approval of the mayor and after the payment of a small fee.

Some Belgian municipalities made it a requirement for candidates for positions as civil servants to swear a statement that they do not belong to a harmful sectarian organization.

Renting public places for meetings was often denied to religious associations mentioned on the official list of 189 movements suspected of being “harmful sectarian organizations”.

In divorce cases, courts sometimes denied the child custody to the parent who was affiliated to a non-recognized religion (Pentecostal Church, Jehovah’s Witnesses, Church of Scientology, Sahaja Yoga, Raelian movement, etc.) on the grounds that it was a harmful cult. A number of courts also granted visitation rights to the non-custodial parent who was a member of a so-called ‘cult’ on the condition that he/she did not expose his or her children to the teachings or lifestyle of that religious group during visits.

The Foreign Workers’ Act of 1999 required from non-recognized religions that foreign missionaries obtain work permits before applying for a visa to enter the country for religious work.

The same act provides that foreign clerics and missionaries are not submitted to that regulation. On many occasions, Belgian consulates failed to answer such applications and in this way denied American Mormon, Adventist and Pentecostal missionaries access to Belgian territory.

- In February 2002, US female Pentecostals were arrested, jailed and deported on the grounds that they were working without a work permit, although they were unpaid volunteers.

In public schools under the authority of the French community, Jehovah's Witnesses complained that their children had no other choice but to attend religious or allegedly neutral ethics classes the contents of which, they said, conflicted with their beliefs. In the Flemish community, the children of Jehovah's Witnesses were exempted from such classes.

Chaplains of recognized religions and moral advisers of secular humanism officially had access to prisons, detention centers for asylum seekers, hospitals, the armed forces, etc. Non-recognized religions were not allowed to send chaplains to such institutions.

National Minorities

Belgium signed the Council of Europe Framework Convention on National Minorities in 2001 but, as of the end of 2002, it had not ratified the Convention due to the fact that the federated entities were not in a position to agree on the concept of "national minority."

Belgium as a federal state comprises three communities, three regions and four linguistic regions (three monolingual and one bilingual). The 1962-1963 language laws fixed the language boundaries, which were still valid in 2002. The principle of territoriality was thereby introduced, stipulating that in monolingual regions the use of the language of the region was compulsory for all public administrative acts. The same laws provided for linguistic facilities for the inhabitants of 27 communes contiguous to a different linguistic region, who had the right to request that, in their dealings with the authorities, language other than that of the region in which the communes were located should be used. Six of the 27 communes with facilities lie on Flemish territory in the Brussels periphery and have a large share, sometimes a majority, of French-speaking inhabitants. Though the official language in these communes was Dutch, these inhabitants had the right to request that French be used in their dealing with the public authorities.

The Parliamentary Assembly of the Council of Europe (PACE) appointed a rapporteur to look into some minority issues in Belgium. In April 2002, the PACE discussed the report at its session. In September, the Committee on Legal Affairs and Human Rights approved the report, and Resolution 1301 (2002) on the protection of minorities in Belgium was adopted. The resolution reiterated that Belgium was one of the countries with "significant minorities who need to be protected and whose rights are not officially recognized."^{iv} The Assembly spelled out their proposals for groups in Belgium that should be considered as national minorities under the Framework Convention: at state level, only German-speakers should be considered a minority; and at local and regional level, French-speakers should be considered a minority in the Dutch-language and German-language regions, while Dutch-speakers and German-speakers should be considered minorities in the French-language region.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

Belgium has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Civil and Political Rights (ICCPR). In March, the UN Committee on the Elimination of Racial Discrimination adopted its concluding observations on Belgium after examining its periodic report. Although the committee welcomed the enactment of new laws aimed at combating racism and racial discrimination, it expressed concern and made recommendations in relation to the increasing influence of racist and xenophobic political parties and organizations, especially in Flanders; cases of racist incidents towards immigrants and asylum seekers in police custody by law enforcement officials; the difficult access of ethnic minorities to housing and

employment; and the absence or the insufficiency of educational measures for judges, lawyers, prosecutors, and civil servants.

In December, the Belgian Senate adopted the long-awaited Anti-Discrimination Law, which provides not only for legal protection against racial discrimination, but also against discrimination based on sexual orientation, handicap, state of health, religious or philosophical beliefs, and age. The new law supplements the 1981 Anti-Racism Law, which is limited by several deficiencies, in particular, the difficulty of providing evidence of racially motivated acts in a criminal case. As criminal proceedings were long and difficult, victims of discrimination were often discouraged from taking the matter to court. Further, principles of criminal law made the victim responsible for providing proof of discrimination, whereas evidence tended to be in the hands of the discriminating person or organization.

The new law provides important solutions to the shortcomings of the 1981 Anti-Racism Law. First, discrimination is defined in broad terms as an act, whether intentional or not. This is a new civil approach, dealing with discrimination as a situation that must be rectified rather than as a crime. Second, the responsibility of proving the case has been shifted from the victim to the defendant. If the victim presents a case, which establishes a suggestion of discrimination, it is up to the defendant to prove non-discrimination. The law provides for a civil procedure under which claimants will be in a position to have their damages redressed and compensated in the quickest possible way.

The implementation of the provisions of the Anti-Racism Law is entrusted to the Center for Equal Opportunities and Fight against Racism, established in 1993. With the new Anti-Discrimination Law, the center has the jurisdiction to deal with the expanded scope of motives of discrimination (with the exception of cases of sexual discrimination). In 2002, the center acted as a civil party in a number of cases, involving physical aggression motivated by racism, discrimination in housing, employment, education, and access to public places. During the year, the most important cases under the Anti-Racism Law were:

- On January 28, the Correctional Tribunal of Liège convicted Hubert Defourny for hate speech and for his adherence to two extreme-right groups, REF and Bloc Wallon, instigating hatred and racial discrimination.
- On February 4, the Correctional Tribunal of Antwerp convicted one elected representative of the extreme-right Vlaams Blok for giving the Hitlerian salute at the time of taking the oath at the council inauguration.
- On February 19, the Correctional Tribunal of Tournai convicted one person for instigating racism.
- On April 23, the Correctional Tribunal of Bruges convicted members of a citizens' initiative of Ostende, Burgerinitiatief Oostende, for distributing racist leaflets.

In 2002, there was one conviction under the 1995 Law against Negationism by the Correctional Tribunal of Brussels for distribution of racist and negationist texts over the Internet.

Another important legislative act was the 1989 law regulating the financing of political parties and its 1999 amendment, which provided for limitation or cessation of donations to political parties hostile to human rights and freedoms. In 2001, the Council of Ministers adopted a decree for the application of the 1989 law allowing the expropriation of public donations to parties "manifesting hostility towards human rights."

- In 2000, the Centre for Equal Opportunities and Fight against Racism and the League for Human Rights took three non-profit associations to court on charges of collaborating and providing assistance to Vlaams Blok. The center and the league wanted to prove that racial

discrimination underlies the Vlaams Blok political doctrine. In 2001, the Correctional Tribunal of Brussels decided that the case fell within the scope of political offenses and as such had to be judged by people's jury. In 2002, following the appeal lodged by the Center and the League as civil parties in the case, the Prosecutor's Office called for the conviction of the three associations in front of the Brussels Court of Appeal. The appeal process had not been completed by the end of the year.

Anti-Semitism

During the year, private individuals committed xenophobic acts of harassment and aggression reinforcing the impression of growing tendencies of anti-Semitism and Islamophobia.

Belgium was one of the focal points in Europe for a sharp escalation of anti-Semitism in 2002. Attacks, both verbal and physical, occurred mostly in Brussels and Antwerp, especially in locations with large concentrations of Arab/Muslim and Jewish populations.

- On April 1, five Molotov cocktails were thrown at the synagogue on Clinique street in the Anderlecht quarter of Brussels. The Molotov cocktails flew in through the second-story windows into the women's gallery, setting the benches on fire. There were no casualties and only slight damage.^v
- On April 3, a Molotov cocktail was tossed at a synagogue in the heart of a Jewish section of Antwerp. There were no casualties and only minor damage was caused.
- On April 4, a Molotov cocktail was thrown at the Old Synagogue in Antwerp.
- On April 19, a Jewish family living in Chaussée de Gand in Brussels was harassed once more in a series of such incidents recorded over the previous weeks. Events reached the point where a gang from the area vandalized the family's vehicle scratching "Dirty Jew" and the star of David on the paintwork.
- On April 21, the Chief Rabbi of Russia, who headed a delegation of the World Jewish Congress in Brussels, was attacked by a young person of Arabic origin. The attack occurred near the Gare du Midi when the rabbi was on his way to a demonstration against anti-Semitism held on Clinique Street in Brussels (Anderlecht). The rabbi was struck in the chest, called a "Dirty Jew terrorist" and robbed of his hat.
- During the night of April 22, shots from an automatic weapon were fired at the synagogue in Charleroi. The synagogue was empty and no casualties were reported. Signs of some 18 bullets were discovered on the building. According to the police, the attacker or attackers fled the scene in a getaway car.
- In November, a Jewish teacher of French language at a Brussels school was threatened and harassed by Muslim students.

The government condemned these acts of violence and called for calm and the cessation of hostilities, while the Center for Equal Opportunities and Fight against Racism announced its decision to act as a civil party in a court case of hate crime and racial violence related to the incident on April 1, as envisaged in article 1 of the 1981 Anti-Racism Law.

In October 2002, Belgian Prime Minister Guy Verhofstadt issued the country's first official apology for the complicity of government officials in deporting tens of thousands of Jews to Nazi death camps during the Holocaust. The apology came some two months after the publication of the findings of a committee of historians which was set up by the government to investigate the Belgian collaboration with the Nazis. It followed similar apologies issued by leaders of other European countries over the past decade, most notably Germany, France, Austria and Switzerland.

Islamophobia

In the aftermath of September 11, 2001, the already existing Islamophobia in civil society increased in intensity. The hostile climate was fuelled by extreme right parties and by some political figures in other parties. In June, the Belgian Permanent Committee for the Control of Intelligence Services, known as “Comité R,” transmitted its ninth report to the president of the Senate, the president of the House of Representatives, the minister of justice and the minister of defense.^{vi} The surveillance of the activities of various Muslim institutions was at the heart of a heated debate in the media. The president of the Muslim executive expressed disagreement with the report in an open letter addressed to the president of the Senate and the follow-up commission.

- During the year, the most serious incident was the assassination of Mohamed Achrak, a young man of Moroccan origin, in the Borgerhout quarter of Antwerp on November 26. The growing wave of resentment and hostility among the Arab population in the city was stemmed by an appeal for peace and respect issued by Achrak’s family.

Asylum Seekers and Immigrants

In 2002, one of the most important developments in the area of asylum and immigration was a judgment by the European Court of Human Rights.

- In the case of *Conka v. Belgium* of February 5 (No. 51564/99), the European Court of Human Rights ruled that Belgium had infringed articles 5 and 13 the European Convention of Human Rights (ECHR) and article 4 of Protocol 4 thereof.^{vii} In October 1999, the family of Conka and some 70 other refugees of Roma origin were deported back to Slovakia after their requests for asylum had been turned down. Belgium was condemned for arrest of persons carried out by fraudulent methods (in violation of article 5.2 of the ECHR); for *de facto* preventing their access to an appeal mechanism (in violation of article 5.4); for the collective character of the expulsion (in violation of article 4 of Protocol 4); and for creating circumstances under which no effective recourse in front of the Conseil d’État could be undertaken (in violation of article 13).

There were six closed centers in Belgium, which were administered by the Foreigners’ Office under the authority of the Ministry of the Interior. Two of the centers were situated at the border: the center INAD at the Brussels airport for “non-admissible” cases, where foreigners were detained before their *refoulement*; and the transit center 127 for foreigners who lacked the necessary documents to enter the country and ask for asylum.

The other four centers were in different regions of the country for immigrants waiting for their documents to be processed. Some organizations, such as the League for Human Rights, had access to the centers. However, the access of lawyers to the two centers at the border was very difficult.

The regularization process launched by law on December 22, 1999 was coming to an end. The Center for Equal Opportunities and Fight against Racism observed that the law did not provide for mechanisms to resolve all individual cases. The main problem remained to be the backlog of asylum applications. While 400 to 500 applications could be processed in a month, 4,000 new cases were submitted in the meantime. In 2001, the regularization commission introduced the principle of “last in, first out.” This system affected between 30,000 and 40,000 files submitted in 1999 and 2000.

Rights of the Child

Belgium is a signatory to the Convention of the Rights of the Child. Although children living in Belgium enjoy a relatively fortunate position, many improvements are necessary before children’s rights are fully guaranteed.

In May, the UN Committee on the Rights of the Child considered the second periodic report of Belgium and later in June adopted its concluding observations. One of the major concerns with regard to children's protection remained to be the fact that corporal punishment was not expressly prohibited by law. Though numerous initiatives have been taken in the area of child abuse, including sexual abuse, such as the Law on the Criminal Protection of Minors, amendments to the Criminal Code and the adoption of article 22 bis of the Constitution concerning the protection of child's moral, physical and sexual integrity, further legislative measures were needed to prohibit corporal punishment of children in the family, in schools and in institutions. There were no effective procedures and mechanisms to receive, monitor and investigate complaints or to prosecute in cases of ill-treatment ensuring that the abused child was not victimized in legal proceedings and his/her privacy was protected.

With respect to article 2 of the Convention on the Rights of the Child, the general principle of non-discrimination prohibits differences in treatment on grounds that are arbitrary and objectively unjustifiable, including nationality. According to the interpretation of the Belgian government issued in a separate declaration when acceding to the convention, non-discrimination on grounds of national origin did not necessarily imply obligation to automatically guarantee foreigners the same rights as their nationals. The concluding observations of the UN Committee on the Rights of the Child raised the concern that this declaration under article 2 may restrict the enjoyment of non-Belgian children in Belgium of rights contained in the convention and further emphasized that the guarantee of non-discrimination applied to each child within the jurisdiction of the respective country.^{viii}

The group of unaccompanied foreign minors stood out as one requesting special measures of protection. Despite the various activities, including a draft law on the establishment of special reception centers for unaccompanied minors and a draft law on the creation of a guardianship service, Belgium lacked specific regulations for unaccompanied minors, whether seeking asylum or not. The UN Committee on the Rights of the Child emphasized the need to establish special reception centers for unaccompanied minors, to ensure that the stay in those centers will be for the shortest time possible, and to adopt the draft law on the creation of a guardianship system.

- The case of Tabita, a five-year-old girl of Congo, pointed to the lack of effective coordination among all authorities involved in such cases, including the Ministry of the Interior, the Ministry of Foreign Affairs, the Foreigners' Office, police services, tribunals, and reception centers. On her arrival in Belgium, Tabita was directed towards the 127 closed center, where she stayed for two months before being sent off to be reunited with her mother in Canada.
- As of the end of 2002, twenty-seven children stayed at the 127 closed center, 25 of them were under the age of 12.

ⁱ Based on Human Rights Without Frontiers, *Report on Human Rights in Belgium in 2001*.

ⁱⁱ For the full text of the CPT's report, see www.cpt.coe.int

ⁱⁱⁱ *Le Soir*, Anne Morelli (Institute of Study of Religion and Secular Humanism at Free University of Brussels), "Mais à quoi donc sert l'observatoire des sectes ?" January 7, 2003.

^{iv} Council of Europe Resolution 1492 (2001) as quoted in Resolution 1301 (2002), <http://assembly.coe.int> . For more information about the issue of national minorities, see www.hrwf.net

^v More cases recorded in 2002 and 2001 can be found on the website of Human Rights Without Frontiers, www.hrwf.net/newhrwf/html/belgium2002/html

^{vi} At www.comiteri.be and www.hrwf.net/newhrwf/html/belgium2002/html

^{vii} See www.echr.coe.int

^{viii} *UN Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Belgium. 13/06/2002, CRC/C/15/Add.178, June 13, 2002.*