

Report on Human Rights in Belgium

Year 1999

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Freedom of Expression

Since the case against Marc Dutroux (1), which started in 1997 and is still running, relations between the judiciary and the media have seriously deteriorated. Journalists often feel it is becoming more and more difficult to enjoy freedom of expression. Judges, magistrates, police and gendarmes (2) have been widely criticised and accused by the media of slowness, laxity and incompetence in their enquiries on paedophilia cases. The judiciary has felt threatened by this and confrontation with the press has become more radical.

Since 1997, a growing number of cases have been brought by magistrates against journalists. In January 1997, an issue of the weekly magazine *Ciné Télérevue* was censored before publication as it contained extracts of late Judge Martine Doutrève's personal notes, confiscated by the chairman of the parliamentary commission into paedophilia during her hearing. There have only been two other cases of pre-publication censorship in 35 years of Belgian publishing.

In another case, late Judge Doutrève received substantial damages from the weekly *Le Soir Illustré*, which had published a photograph of the judge on holiday beside a swimming pool. Was this the public's right to information or an infringement of her private life? The courts decided in favour of the judge.

Alongside the increase in number of cases being brought, the amounts of damages claimed and received should also be noted. It would seem that certain lawyers have tried to shut the press up by using financial penalties, and this has had a knock-on effect in other domains. Seeing the situation worsen, investigative journalists have massively taken out professional liability insurance to deal with these risks.

In a money-laundering affair denounced by *Le Soir Illustré*, damages amounting to half a billion Belgian francs (3) are claimed from the journal.

The television programme '*Au Nom de la Loi*' (In the Name of the Law) was sued by the private company *Sterop* for 750 million Belgian francs

In November of 1999 the Brussels Court of First Instance ruled that Michel Bouffioulx and Marie-Jeanne Van Heeswijck pay 500,000 Belgian francs in damages to Jean-Luc Duterme, the gendarmerie commandant. In the weekly publication *Téléoustique*, they had accused him of failing to properly use certain witness statements in a paedophilia affair. The two journalists will take the case to appeal.

In September 1999 the *Journal du Mardi* published a series of articles accusing the Brussels lawyer, Georges Lethé, the driving force behind the so-called sectarian movement *Le Caillou* of subjecting a female adolescent to degrading and inhuman treatment during the 1960's. Mr Lethé has sued the journal and is claiming 5 million Belgian francs in damages.

On the 4th November 1999, the Tribunal of First Instance of Antwerp confirmed its previous decision to ban the distribution of the book '*Edition Guggenheim*' by the Flemish writer, Herrman Brusselmans. The fashion designer Ann Demeulemeester had issued proceedings against him after the book's author had described her in less than glowing terms. In particular he had compared her eyes to those of a toad and let his imagination run riot on the subject of her sexual fantasies. None of the hundred Flemish personalities vilified in the book has taken any legal action.

In November 1999, two journalists, Philippe Breways and Jean-Frédéric Delière, were fined 1.3 million Belgian francs in damages by a Brussels court for having published "injurious, offensive and slanderous" articles in the daily newspaper, *Le Soir Illustré*. The articles were said to be "particularly set against" two investigators from the BSR (Surveillance and Research Brigade) of the police force.

The threat posed to freedom of expression is clear. The media and journalists are being threatened with financial penalties aimed at forcing them into auto-censorship.

1. *Over a period of years, Marc Dutroux, a notorious paedophile, kidnapped, locked up, killed or left to starve children who were to be used as prostitutes. His arrest and the subsequent discovery of the extent of his crimes caused an incredible outcry within Belgian society.*
2. *The gendarmerie is the national police depending from the Ministry of Interior.*
3. *1USD is about 38 BEF.*

Judiciary

The interventions of the organs of the Bar Associations have been increasingly contested both by barristers and those to be tried. These Bar Associations are accused of carrying out a corporatist policy and of failing to defend the interests of those being tried. The organs in question are principally the Presidents and the Councils of the Bar Associations. They are not elected democratically. In the French Bar Association of Brussels (*L'Ordre français des Avocats du Barreau de Bruxelles*), barristers must vote for as many candidates as there are available positions to ensure that their votes are valid. In practice, this means that they often have to vote for candidates that they do not wish to elect, as normally candidates only slightly outnumber the available places.

Moreover, the individuals counting the votes are always the same and are always selected by the Bar President ; during the count observers are forbidden.

The Bar President and Council have enormous power that they can use without any external control ; they influence the course of justice.

Under a pretext of tactlessness, Bar Presidents can force barristers to drop cases, depriving clients of their chosen counsel, sometimes just before a hearing or a deadline. These decisions are made with no respect for the right to disprove charges, with no compulsory formal procedure or motive and no opportunity for an effective appeal.

Barristers who air critical opinions about Bar Associations or magistrates are being increasingly prosecuted and face unilateral sanctions and disciplinary actions, possibly without proper definition of the infraction to be prosecuted.

The Presidents of the Bars are therefore true censors ; they can prevent barristers from defending certain theories, exposing certain arguments or criticising certain decisions.

For example: a barrister who was summoned before the *Ordre français des Avocats du Barreau de Bruxelles* and accused of a lack of deference, dignity and discretion in his approach to a magistrate was supported by around a hundred people, including many of his clients.

This sort of procedure threatens lawyers' independence and freedom of expression. They can be sanctioned for refusing to be hypocritical, expressing their own opinion or that of their client, or for criticising a magistrate.

The barrister in question put forward that the President had not acted independently, but rather on the order of the prosecution, and secondly, that the Bar Council always condemns and never acquits.

Freedom of expression of barristers is being seriously restricted. Barristers who are too visible in the media, notably in the Dutroux case, have not been authorised by their Bar President to take part in televised debates. On the other hand however, a President has faced no preventative measures when, with impunity, he has disclosed to the media the report of the examining judge in charge of hearing the Dutroux, Nihoul and company case, despite the in camera procedure.

In June, three barristers were ordered by the president of their bar association to close their web-site on the ground that "several viewpoints were not acceptable: personal data, inappropriate value judgment of the law and functioning of Justice in general, clumsily selected example, particularly with regard to probity and fees."

Although the criticisms only concerned 2-3 pages of the website, the President of the Bar ordered the closure of the entire site.

Moreover, the barristers concerned were reminded that according to the regulation of the National Bar Association, barristers need the permission of the President of their Bar in order to open a web-site. This authorization can be denied arbitrarily and without justification. This regulation of the Belgian Bar Association is inconsistent with the basic principles of freedom of expression contained in all the international instruments that Belgium has ratified.

Women's Rights

Each year, hundreds of women are brought to Belgium via Mafia networks as the victims of human trafficking. They come from Nigeria, China, Albania, the Ukraine, Thailand, Turkey, Morocco, the Philippines, Bulgaria, Poland, Hungary, Romania and Sri Lanka. Most of them are under 30 years old ; they are thrown headlong into prostitution or clandestine work. They are lured to western countries by promises of high-paying work but when they arrive, they are treated like slaves.

Sentences and fines given to traffickers seem too weak to have any sort of dissuasive effect: from two to six years in prison and an average 100,000-400,000 Belgian francs fine. In addition, the *Commission to defend victims of intentional acts of violence* can only indemnify those persons with a legal permit to be in Belgium, something which the vast majority of the victims do not possess. During legal action, victims and witnesses should have special protection from the Belgian state.

Moroccan wives who are repudiated by their husbands, according to Moroccan law, must have the phrase '*Repudiated*' on their Belgian identity papers, even though this provision does not exist in Belgian law. This is an administrative practice which is both degrading and discriminatory, as Moroccan wives have no option of repudiate their husbands. This discretionary right is only granted to husbands and without any recourse to the courts.

Child's Rights

Article 53 of the law regarding the protection of children is in contravention with the European Convention on Human Rights and has resulted in condemnations for the Belgian State. In practice, this article allows a judge to place a delinquent minor in prison for a maximum of 15 days if there is no space in a secure centre. Article 53 is responsible for several tragedies, notably suicides of young people in prison. The law forbids adults and children mixing in prison and as prisons are overpopulated, the minor is placed in solitary confinement.

On 25 September, the Brussels Court of First Instance sentenced the French Community (one of the federated entities of the Belgian State) to a penalty of 10 millions Belgian francs a day because it had failed to place a young delinquent " in a closed centre " under the authority of a public institution for youth protection.

The detention of minor plaintiffs in secure centres for criminals is also a violation of children's rights. The French Community has promised to increase the number of housing possibilities in closed centre for young delinquents from 27 to 50 by September 2000 but this capacity will fall short of the real juvenile criminality.

Racism and Xenophobia

Belgium ratified the International Convention on the elimination of all forms of racial discrimination, and the International Covenant on civil and political rights (16 December 1966) in which article 20, paragraph 2 forbids any call to national, racial or religious hatred.

The Belgian law of 30 July 1981 aims to crack down on acts inspired by racism or xenophobia, but in practice, its application has been limited by several deficiencies.

Cases of racism and xenophobia are primarily based around problems encountered with public services and the forces of law and order (abusive identity-checks, etc), discrimination in the work place, when finding a place to live, and even when trying to access public areas such as nightclubs.

Racist behaviour in the Belgian army has been the subject of court action. Belgian paracommandos sent to Somalia on a UN peace-keeping mission were accused of racist actions. A military tribunal acquitted soldiers who were accused of having held a Somalian child above a brazier. However in 1998, the military Court of Appeal found guilty of racism a sergeant who had forced a Muslim Somalian child to eat pork and then to vomit. The sergeant was sentenced to 1 year's imprisonment, 6 months of which were to be served in prison, 5 years suspension from certain civil rights and 15,000 Belgian francs in damages.

The *Centre for Equal Access*, which is able to act as civil party in racism and xenophobia cases had 28 files open in 1999. Among these cases was one concerning the *Vlaams Blok*, an extreme-right Flemish party, accused of inciting racial hatred during airtime given to political parties on national television. This behaviour led to the adoption of the law of 12th February 1999 which added an extra article to the 1989 law regulating the financing of political parties. The article allowed for the suppression of grants allotted to any political party hostile to human rights.

However, many complaints against acts of incitement to racial discrimination, hatred and violence committed by the media are thwarted by the incompetence of criminal courts dealing with cases of press freedom.

At the next local elections, the 491,000 members of the EU State will be eligible to exercise their right to vote. On the other hand, the 235,000 residents who happen to not be members of the EU will not have that privilege. Many political parties and human rights organisations are fighting to have that right extended.

On 12 September 1998 a small Flemish neo-nazi group, *Odal Aktiekomitee*, demonstrated at Bruges against the "*foreigners' right to vote*". Several members of their French counterpart, the group *Assaut*, have been sentenced in the past for acts of violence or racism, along with the *Referendum party* of neo-rexist (1) obedience in the Liege region. Other extreme-right groups which hold racism as a central philosophy are equally active in the French-speaking part of Belgium and in Brussels, and include the *National Front* (FN), the *New Front of Belgium* (FNB) and the *Belgian Nation Front* (FNB-Parti). There is an alarming increase in the number of French- and Flemish-speaking racist, (neo)nazi and negationist (2) Internet sites.

1. *Rex was the Wallonian leader of the fascist movement under German occupation in WWII.*
2. *Negationists are those who deny the Jewish Holocaust during WWII.*

Protection of Refugees and Immigrants

So as to facilitate the deporting of illegal immigrants and asylum-seekers who have had their claims dismissed, since 1988 there have been more calls for "closed centres" run by the Foreigners' Office. There are two transit centres called '*127*' and '*127bis*' at Melsbroeck and Steenokkerzeel, near Brussels, as well as two centres for illegal immigrants at Merksplas and Bruges.

Transit Centre 127 was set up in a pre-fabricated building and has a maximum capacity of 100 beds. Its ventilation, insulation and heating are all sub-standard. There are only two communal areas (the detention area and the refectory). Those housed there are asylum-seekers who lodged an asylum request at the airport.

Transit Centre 127bis was inaugurated in March 1994, and houses people who entered the country without sufficient entry papers and then had their asylum request dismissed by the Foreigners Office. More than half of the personnel employed there are charged with surveillance. There is only one communal area, which serves as both refectory and leisure area.

The applicants and refugees locked up in these two centres are subjected to treatments that incompatible with human dignity. The sanitary and hygiene conditions have been frequently criticised over the past years. Also criticised is the handling of families: when refused the right to asylum, the whole family, including any children, are kept in detention. Human rights organisations have demanded an alternative solution to this detention of children, as well as the provision of some form of schooling. Early in November, there were 20 unaccompanied minors of age and about 15 children in closed centres.

Illegal immigrants are held at Bruges and Merksplas while waiting for repatriation. Ever since 1998, these two centres have used a separate wing as an extra transit zone to *Transit Centres 127 and 127bis*. When these centres are full, immigrants are housed in ordinary prisons.

The Merksplas Centre, set up in March 1994, can house 120 people. The Centre at Bruges, open since 1995 can house 80 men and 32 women. A third Centre has been opened at Vottem, near Liege, and can hold 160.

In July 1998, the Council of the State annulled the internal regulations of these centres, finding that they were more severe than prison regulations. Little or no activity is provided and the inmates get bored.

As for the deportation measures, several serious scandals have been noted. The most well-known is the death of Semira Adamu, who was suffocated with a cushion held by two gendarmes, after she had been forcibly placed on a plane to Nigeria in 1998. Since then, nobody has been sanctioned yet.

On January 4, 1999, gendarmes violently intervened during a peaceful protest at the Bruges "closed centre". Several of those in detention were bitten by police dogs.

On January 15, similar events took place at the Merksplas centre.

On January 20, the deportation of a Sierra Leonean man ended in the intensive care unit of a hospital at Conakry, after his treatment at the hands of the Belgian gendarmes. During an abortive deportation on January 24, a Sierra Leonean woman has namely been handcuffed and beaten. The then Minister of Interior, Luc Van den Bossche, explained away the situation, claiming that she had thrown herself down the stairs.

On February 3, a Cameroonian professor, Jean-Marc Ela, was arrested by the airport police after coming from Canada to Belgium to receive an Honoris Causa at the Catholic University of Leuven. The then Minister of Interior defended his gendarmes, saying that they were only doing their duty.

On March 12, after a deportation attempt, a doctor at the detention *Centre 127bis* noticed one of the individuals had wounds to his wrists, neck, torso and left shoulder as well as a fractured leg.

On August 31, an attempted suicide took place at the *Centre 127bis*. The warders allegedly watched the scene passively. Disgusted by their attitude, the prisoners rioted. Two prisoners between the ages of 16 and 18 were hospitalised, one with a fractured leg.

Early in October 1999, Belgium deported 74 Slovakian gypsies even though the European Court of Human Rights had previously promulgated a provisory measure to stop the forced repatriation of this type of asylum-seeker.

Illegal immigrants have no right to humanitarian aid, urgent medical help or social assistance at any stage during either their asylum demand or their appeal to the Council of State.

In November 1999, the government adopted a law that simplified and shortened the examination process of asylum demands. This law also provided for the regularisation of certain categories of illegal immigrants. The new minister of the Interior, Antoine Duquesne, stated that during the last decade, 90,000 repatriations had not in fact taken place. He announced that the repatriation of non-regularised refugees and immigrants would be more forcibly administered, either by voluntary departures, or by putting them on flights, even chartering special flights if the refugees are violent.

Religious Intolerance and Discrimination

- ***Institutionalized discrimination***

The Belgian system of relationships between the state and its religions is historically rooted in the principle of recognition and non-recognition of religions. However, no recognition criteria are enshrined in the constitution, in a law or in a decree. Recognized religions and secular humanism ("laïcité") are subsidized by the state.

Catholicism (since 1802 under French rule), Protestantism (since 1802) and Judaism (since 1808) have enjoyed de facto the status of state recognition. Anglicanism was recognized in 1835, Islam in 1974 and Orthodoxy in 1985.

In December 1998, elections took place inside the Muslim community in collaboration with the Belgian state so as to create an administrative umbrella organization that would reflect its various components in Belgium and with which the state could confer and negotiate. Out of 51 elected and 17 coopted candidates, the State used its discretionary power to select the 16 members of the Muslim representative body. This interference aroused much criticism in the Muslim community. Since 1974 and until this year, Islam has never been financed by the state. In the new legal framework, financing Islam will be possible.

In the past, the Belgian State also used its discretionary power to recognize one or two movements inside spiritual families where pluralism prevails: the EPUB (Eglise protestante unie de Belgique/ United Protestant Church of Belgium) and Anglicanism in the Protestant family or the Greek and Russian Orthodox Churches in the big Orthodox family. This is also a clear form of state interference in the religious sphere and until recently, it has been a source of conflict between Protestant denominations. Consequently, Pentecostal and Evangelical Churches, which represent 50% of Belgian Protestant population, have created a Federal Synod and have applied for separate recognition. The Ministry of Justice has turned down their application and has advised them to set up a common administrative body with the EPUB. However, no promise has been made as to an appropriate increase of the state financing. Although the principle of an administrative coordination body was seemingly accepted by both branches of Protestantism in 1999, more conflicts with the state and inside the Protestant family can be expected, due to the system of relationships the state imposes on religions in Belgium.

Secular humanism ("laïcité"), the symbol of which is the torch, is recognized through the Central Secular Council (Conseil Central Laïque) but only a portion of the secular humanists, free thinkers, agnostics, atheists ... consider themselves to be part of this organization.

This general overview clearly highlights two categories of minority religions. A number of minority religions are recognized by the state and enjoy, to some extent, and with the exception of Islam (about 250,000 - 350,000 members) the financial and material advantages described briefly above. Jehovah's Witnesses, who have a monolithic structure and a clear leadership like the Roman Catholic Church, have also unsuccessfully applied for state recognition although they are as numerous as the Orthodox and the Jews and more numerous than Anglicans (a few hundreds). Their application for recognition did not include any request for financial advantages; rather it was so that they would be able to bring spiritual assistance to their members in hospitals, detention places for asylum-seekers ... Other smaller religious groups have also asked for state recognition but with the same negative outcome.

The distinction between "good" and "not good" religions is discriminatory. Currently, the income taxes of about 130,000 - 140,000 Belgian citizens who belong to non-recognized religions are used to finance recognized religions and secular humanism that they do not profess and that are sometimes openly hostile to their own beliefs.

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

- ***The sect issue***

On March 28, 1996 the parliament voted a law creating a parliamentary enquiry commission on cults comprising 11 members. They presented their report on April 28, 1997. A list of 189 "movements" suspected of being harmful sects was attached to the report. In 1999, an Observatory of sects called *Advice and Information Centre on harmful sectarian movements* was created.

Since the publication of the parliamentary report, *Human Rights Without Frontiers* has received an increasing number of complaints from individuals and minority religions mentioned on the controversial list : defamation, slander, victimization in the neighbourhood, at the workplace and at school, anonymous threats, breach of reputation, loss of jobs or promotions, dismissals, deportation order to a Brazilian Protestant missionary, loss of visitation rights or child custody in divorce settlements, bomb threats in rented rooms, denial of room renting for religious ceremonies, closure of bank accounts, humanitarian agencies' refusal to get donations from 'sects', denial of access to public display boards (panneaux d'affichage publics), etc.

In 1999, minority religions suspected of being dangerous and harmful " sects " in the Belgian parliamentary report on sects have come under police surveillance. This is a unique phenomenon in Belgium's history. This disturbing policy carried out by the Ministry of Interior is widely documented.

Since the ***Anthroposophic Society*** has won its case in First Instance against the French Community (Parliament of one of the federated entities of the Federal Kingdom of Belgium) with regard to defamatory statements spread in the sect prevention brochure " Guru, watch out! ", its only school (Free Steiner School in Court-St-Etienne) subsidized by the same French Community has been the target of administrative harassment while those under the authority of the Flemish Community are not. Moreover, the BSR (Surveillance and Research Brigade) has been visiting parents of former students of the Steiner School and collecting negative statements.

The ***Anthroposophic Society*** has also lodged a complaint with the Court of Arbitration against the creation of an Observatory of Sects putting forward its unconstitutionality. A decision is expected in the year 2000.

For two years and a half, the group ***Vibration Coeur*** (Vibrating Heart) has been trying to sue the Belgian State because it is mentioned on the list of 189 suspicious sects. To no avail. ***Vibration Coeur*** is a non-profit making association of five psychotherapists that holds training sessions for medical practitioners. In the last three years, it has lost 75,000 USD because of their being on " the list " and claims from the State financial damages. Up to now, the State represented by its Ministries of Interior and Justice has used any method for failing to appear in court. The case is again postponed to the year 2000.

In 1999, the headquarters of the Belgian ***Adventists*** got the visit of BSR officers allegedly inquiring about religious movements professing the end of the world in the near future. ***Pentecostal-oriented congregations*** and groups which are on the list of 189 suspicious movements have also been harassed by the BSR and fiscal services while religious institutions linked to established religions have not.

In January 1999, Mrs Vo, the Belgian secretary of the non-profit making association ***Spiritual Human Yoga***, was arrested by the anti-terrorist unit of the BSR and imprisoned for 22 days ; the spiritual leader of the movement, Master Dang, an American citizen, was arrested in the same conditions and detained for 65 days. He was released only after paying a bail of 1.3 million dollars. The computers and the files containing the names of the participants in the courses were confiscated. Now, BSR officers have been ordered to visit these persons and to interrogate them, probably to collect negative statements about the movement and to substantiate up to now unfounded accusations. It remains to be seen if the courts will take the positive testimonies into consideration or if they will just focus on criticisms by former "customers". Since that crackdown, the Belgian headquarters of ***Spiritual Human Yoga*** have been closed : Master Dang is back in the USA and Mrs Vo left Belgium in August to follow her husband abroad.

In spring 1999, a Flemish family practising ***Sahaja Yoga*** got the visit of BSR officers after having heard that the child was with his grandmother at an ashram in Rome. At the time of the visit, the child was on his way back home. The parents made and signed a positive statement about the movement. A member of ***Sahaja Yoga*** in Mechelen who had advertised courses was contacted by BSR officers of Leuven who visited her to know more about her activities. In a separate case dating back to May 1998, Lieve Van Roy, the mother of a seven-year old child, was arrested by the anti-terrorist unit of the BSR in the courtroom of Mechelen, imprisoned for a month and deprived of her custody right because she was living with her son in an ashram in Rome. In the last seventeen months, she has not even been able to get a visitation right. On October 13, 1999, she was eventually allowed to have her son at home every second Saturday from 10 a.m. to 7 p.m.

Last but not least, on 30 September, the offices of the ***Church of Scientology*** in Brussels were searched by 120 officers of the anti-terrorist section of the police while they were moving to another location. The private homes of the president, the treasurer and ten businessmen were searched. Private flats in Belgium and France were simultaneously searched in a joint operation carried out by the Belgian and French police : among the targets, Martin Weightman, who is in charge of the *European Human Rights and Public Affairs Office*. Computers were taken away and so were the files with the list of the members. Fifteen people were interrogated with a standardized questionnaire. Nobody was charged. The whole operation lasted for about 12 hours.

It is clear that any of the 189 groups suspected of being a harmful sectarian movement can be concerned about their being under police surveillance. The use of an anti-terrorist brigade in all the police interventions linked to

the " sect issue " gives the impression in the media that the incriminated movements and some of their leaders or members are dangerous. The media coverage reinforces this image and the McCarthyist climate.

Behind the aforementioned operations, there is clearly a strategy consisting in intimidating minority religions, paralyzing their activities and isolating them. It started before the last parliamentary elections in June 1999 but it has escalated under the new minister of Interior, Mr. Antoine Duquesne, who was the deputy chairman of the Parliamentary Enquiry Commission on Cults and who has publicly made common cause with an anticult movement called *Aide aux victimes de comportements sectaires* (Help to victims of sectarian behaviours). This movement was primarily founded by former Jehovah's Witnesses.