

Report on Human Rights in Belgium

Year 2000

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Judiciary

In 2000, the independence and freedom of expression of barristers was still jeopardized by their bar associations. The president and the council of the bar associations had widely discretionary powers that enabled them to influence the course of justice.

The intervention of some organs of the bar associations was increasingly contested both by barristers and persons on trial. These bar associations were accused of carrying out a corporatist policy and reducing the rights of the litigants.

Undemocratic elections of the presidents and the councils of the bar associations

The criticism was targeted primarily at the presidents and councils of the bar associations who were not democratically elected. In the French Bar Association of Brussels (*L'Ordre français des Avocats du Barreau de Bruxelles*), barristers had to vote for as many candidates as there were positions available to ensure that their votes were valid. In practice, this meant that they often had to vote for candidates who they did not wish to elect, as the number of candidates normally only slightly outnumbered the number of seats available.

Moreover, the same individuals always counted the votes and were always selected by the bar president. Observers were forbidden from monitoring the count.

The free choice of a barrister jeopardized

The president and council of the bar had enormous and unfettered power : in practice, they were able and sometimes did influence the course of justice. Under a pretext of tactlessness, bar presidents could and sometimes did force barristers to drop cases, depriving litigants of their chosen counsel, sometimes just before a hearing or deadline. These decisions were made with no compulsory formal procedure or motive and effectively no opportunity for appeal.

Barristers censored

Barristers who were critical of bar associations or magistrates were increasingly prosecuted. They faced unilateral sanctions and disciplinary actions, often without details of the infraction to be prosecuted. The presidents of the bar associations could therefore be true censors : they could prevent and sometimes did prevent barristers from defending certain theories, exposing certain arguments or criticising certain decisions.

A concrete example. In the case *V. v. T.*, Mr T's advocate failed to inform his clients about a friendly settlement proposal made to put an end to a litigation. Without mandate from his clients, he issued seizure proceedings. Consequently, Mr V's advocate asked the seizure to be declared null and void (according to article 848 of the Judicial Code). However, the president of the Brussels Bar Association, after being informed of the facts of the case, did not feel it necessary to take even the least action concerning the absence of mandate. Besides this, when Mr V's advocate protested, he forced him to relinquish the case, firstly for having called into question the mandate of the other advocate and secondly for having replied to the argumentation developed by this advocate in the summing-up and petition (which were, to a large extent, based on confidential elements).

What is more, as such a measure can only have effect over a three-month maximum period (Article 464 of the Judicial Code and Article 17 of the internal regulations of the Belgian Bar Association), he required that this measure should be in place for life, and barred Mr V's advocate, who had released the case for over three months, from bringing a contestation action (an action aimed at having the mandate in question verified by the courts).

In omitting to seriously verify the mandate and in banning Mr V's advocate from having it examined by the courts, the president of the Bar Association, by a unilateral decision, deprived Mr V of the opportunity to exercise a right recognised in law (i.e. the contestation action).

The Minister of Justice who, according to article 1088 of the Judicial Code, has the power to annul actions by bar presidents if they constitute an abuse of power, was called to act but he took sides with the bar president. This is the only recourse provided for in law in this situation. Ministers of Justice however have never sanctioned bar presidents.

To sum it up, in Belgium, a bar president, by a unilateral decision he cannot justify and against which there is no effective recourse, is able to deprive a person being tried of his rights as recognised by law, and of the possibility of obtaining the protection of the legal powers. The bar authorities can therefore operate outside all control, even where interference in legal cases and the bar council finances are concerned. For example, the Brussels Bar amassed a capital of 104,000,000 Belgian francs (about 2,500,000 USD) over a few years thanks to a significant increase in the compulsory fees which advocates pay to the Bar. This patrimony is allegedly not subject to tax, and there is no control over how it is managed, while even the King of Belgium's civil list is examined by the revenue courts. Belgian advocates do not dare raise such issues.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

Belgium has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, and the ICCPR, article 20(2), which forbids any call to national, racial or religious hatred.

Further to that, Belgium has a separate law of 31 July 1981 aimed to crack down on acts inspired by racism or xenophobia. In practice, however, its application has been limited by several deficiencies, as the most important one is the difficulty of providing evidence and proof of racism-motivated acts in criminal court. To rectify this shortcoming, it is proposed to have a general anti-discrimination law, which would provide for a civil procedure under which claimants will be in a position to have their damages redressed and compensated.

Important evolution of the 1981 law is the 7 May 1999 amendment of the Constitution Article 150 under which press-committed acts motivated by racism and xenophobia are brought to ordinary criminal court, thus avoiding the more complicated procedure of convening people's jury viewed as one of the main drawbacks in applying the law hitherto.

Another relevant legislative act is the law of 12 February 1999 that added Article 15 to the 1989 law regulating the financing of political parties. It provided for limitation or cessation of donations to political parties hostile to human rights and freedoms. The law still lacks an implementation mechanism. Moreover, it can be applied only after certain political party is convicted of inciting racism and xenophobia under the anti-racist law of 1981.

The scope of racism-related acts is wide-ranging involving problems encountered by foreigners with public services, discrimination on issues of housing, employment, education, and access to public places. The major concern, however, has been the rise of extremist right-wing parties and the spread of racist and xenophobic propaganda. This growing tendency culminated in the 30% support of the Vlaams Blok, an extreme-right Flemish party, at the municipal elections in the summer of 2000.

The case opened in 1999 towards Vlaams Blok for inciting racial hatred during airtime given to political parties on national television is still pending. This case in particular has led to the additional law regulating the financing of political parties. In October 2000, the Center for Equal Opportunities brought to criminal court three associations on charges of collaborating and providing help to Vlaams Blok. Whatever the outcome, this is considered to be an important case in triggering further political discussions on the behaviour of political parties and their associate organisations.

In 2000, the Center for Equal Opportunities acted as a civil party in 80 cases of serious complaints involving racism and xenophobia. While most of these are still pending, three important cases related to negationism and spread of racism over Internet have ended in convictions. However, many complaints against acts of incitement to racial discrimination and hatred by the extreme-right media were

thwarted by the incompetence of the criminal court dealing with cases of press freedom.

Asylum Policy and Immigration

On 22 December 1999, the Parliament voted the regularization law concerning certain categories of illegal immigrants and set up an independent commission to examine applications on a case-by-case basis. As defined by the Minister of Interior, the regularization process is *unique and time limited* for claims by persons that have entered the country by 1 October 1999. It is explicitly stated that this policy is based on the principle of humanity as much as on the principle of closed borders.

32.662 dossiers concerning over 50.000 persons were collected through the application process. With only 483 applications processed in nine months, it was stated that the work of the Commission is paralyzed due to the cumbersome bureaucratic procedure and the divergent opinions on its functioning. The need to accelerate the process was emphasized and 1 July 2001 is set as its completion date.

The regularization process itself turned out to be just a segment in the political discussions in Belgium on immigration and asylum issues. Throughout the last months of the year, the reform of the asylum procedure and the introduction of new migration policies were high on the political agenda.

The outcome of the political debate is the agreement reached by the Council of Ministers in November on asylum policy. It provides for two types of procedures, normal and accelerated, in processing asylum claims.

Theoretically, the new provisions should guarantee the access to procedure for each asylum seeker. On the other side, however, it is estimated that 80% of the claims will be defined as "manifestly unfounded" on the basis of fourteen criteria and as such will be processed under the accelerated procedure within three weeks. The Federal Administration on Asylum has taken charge of collecting demands and deciding on their eligibility.

On a large-scale non-governmental level the new asylum procedure is evaluated as more restrictive and less open. It is feared that the accelerated processing of applications would reduce the chances of refugees to have their claims examined thoroughly.

Criticism has been also expressed with regard to the degree of independence of the Federal Administration on Asylum, the ineligibility to the regularization procedure if right to asylum has not been granted, the existence of a list of "safe countries", the establishment of registration centers at borders to serve as "filters", which will respectively lead to decentralization of the Foreigners' Office.

While 1999 saw a 60% increase in asylum demands as compared to the previous year, 2000 confirms this growing tendency with 24.343 demands submitted during the first nine months. Since 1998, however, only 8.4% of 174 550 applications were granted the status of political refugee.

In the meantime, the Government decided on limiting the social aid to asylum seekers by excluding financial support to provide them with housing, judicial help and medical care. This decision was outspokenly criticized by human rights organisations as contradicting the right of every person to have his human dignity respected, as enshrined in Article 23 of the Belgian Constitution.

Though extensively discussed, the Council of Ministers could not reach an agreement on the introduction of new migration policies. It has been decided in principle to set up Observatory of Immigration under the Center for Equal Opportunities to analyze the migratory tendencies.

Despite the diversity of opinions on future policies, the common feeling among politicians is that the migratory flows in Europe are on the rise and Belgium's Government announced its intentions to launch a debate on European policies on migration when the country takes over the European Union presidency as of July 2001.

Protection of Asylum Seekers and Immigrants

The issue of "closed centers" was also at the core of much political debate throughout the year and the asylum policy package adopted in November contains a draft royal decree on the functioning of the "closed centers" run by the Foreigners' Office in order to facilitate the deportation of illegal immigrants and asylum seekers whose claims have been dismissed. The most important new aspect is the establishment of a control commission tasked to collect and examine individual complaints by detainees.

The total capacity of the "closed centers" is 480 places in the so-called "127" and "127bis" in Melsbroeck and Steenokkerzel for asylum seekers who have lodged an asylum request at the Brussels airport as well as three centers for illegal immigrants in Merksplas, Bruges and Vottem. There were cases when detainees at these centers were subjected to treatment that violated international human rights standards.

In July 1998, the Council of the State annulled the internal regulations of these centers finding them more severe than prison regulations. Since then, however, lack of activity and idleness has prevailed over the need to ameliorate their conditions.

In October 2000, the death of an Albanian asylum seeker, trying to escape from "127bis" a day before his expulsion date, has led to revision of the "closed centers" concept. It has been concluded that they are part of a mechanism that in the long run will have to disappear. The decision to abolish the practice of placing unaccompanied minors in "closed centers" has been an important change to this effect.

The idea of extending the capacity of the open centers and building new ones was the subject of much political and public debate. The increasing migratory flows strained the capacity of the existing facilities. It was estimated that 555 new places should be open in Wallonia, 440 – in Flanders, and 300 in Brussels, while also

emphasizing the possibility of having more private centers. Currently, there is only one private center in Erezée with capacity of 45 places.

The reaction to the Government's intentions to construct new centers for political refugees near Anvers in Flanders, however, exposed the political and public resistance to the reception of more asylum seekers in an area where the spread of racist and xenophobic propaganda is on the rise and the extreme right-wing party, the Vlaams Blok, has enjoyed support increasingly.

Women's Rights

In 2000, as in previous years, hundreds of women were brought to Belgium via Mafia networks as victims of human trafficking. They come primarily from countries of Central and Eastern Europe as well as from Asia and Sub-Saharan Africa. They were lured to the country by promises of high-paid work but were treated as sexual slaves on arrival.

In a circular dated 11 February 2000, the Prosecutor's Office defined the priorities in combatting the trafficking in human beings and outlined ways of coordination between the police and the Prosecutor's Office. The trafficking in women is the area of utmost priority as their numbers account for 79% of the victims in Belgium. Therefore, though trafficking in human beings is a wider phenomenon, it has a disproportionately high impact on women who become victims of organized crime network. At the same time, sentences and fines given to traffickers – from two to six years imprisonment and an average of 100,000–400,000 Belgian francs (approximately U.S.\$ 2,500–10,000) – seemed too insubstantial to have any dissuasive effect.

Moroccan wives who were repudiated by their husbands, according to Moroccan law, had to have the phrase "repudiated" on their Belgian identity papers, even though this provision does not exist in Belgian law. This administrative practice was both degrading and discriminatory, as Moroccan wives had no option to repudiate their husbands, a right only granted to their husbands and without any recourse to the courts.

Child's Rights

The number of unaccompanied foreign minors arriving in Europe is steadily on the rise. About a thousand of them are officially registered in Belgium but the real number is certainly much higher. They have no specific status or protection. Minors over 16 are sometimes placed in "closed centres". The government has promised to open a federal housing centre for a short and temporary stay while the administrative situation of the minor is being clarified. Then, they would be accommodated in houses and families. During the asylum procedure, an important number of minors disappear and are taken over by traffickers in human beings.

In relation to a child's right to custody with the parent decided by court, there is a mixed Belgian-Moroccan commission set up to meet twice a year and settle judicial differences between the two countries. In 2000, the commission had in charge 25 dossiers of children "kidnapped" by their fathers out of Belgium. In June, however, the commission adjourned its work due to tensions between the negotiators on both Moroccan and Belgian side. In the wake of several diplomatic demarches, the commission reconvened in October. As a result of its work, six enfants were returned to Belgium, while their fathers were sentenced to two years' imprisonment for kidnapping.

In view of similar problems with other nationals, Belgium would have to extend this practice with other country's governments.

Religious Intolerance and Discrimination

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.

Six religions and secular humanism (laïcité) are currently recognized by the state. When the Belgian state was created in 1830, a number of religions had already been recognized under French rule : Catholicism and Protestantism (since 1802) and Judaism (since 1808). They enjoyed, de facto, the status of recognition by the Belgian state. Anglicanism was recognized in 1835, Islam in 1974 and Orthodoxy in 1985. Secular humanism has indirectly enjoyed state recognition since the last revision of the constitution (17 February 1994). Buddhism might be next on the list.

In the past, the Belgian state also used its discretionary power to recognize one or two movements inside spiritual families where diversity prevailed : the Greek and Russian Orthodox Churches in the Orthodox family ; the EPUB (*Eglise Protestante Unie de Belgique*/ United Protestant Church of Belgium grouping together a number of historical churches) and Anglicanism (separately) in the Protestant family. Pentecostal and Evangelical Churches, which were denied a separate recognition by the Ministry of Justice, tried to create a common platform with the EPUB to enjoy the advantages of the recognition. The policy of the Ministry of Justice in this regard is a clear form of state interference in the religious sphere.

Not all the movements inside the Muslim community have joined the administrative representative body which is recognized by the state as the spokesperson of Islam. In the secular humanist family, only the *Centre d'Action Laïque* (Center of Laicist Action) is recognized by the state. This situation has not changed.

Eight federal ministries, the ministries of the three linguistic communities, the ministries of the three regions (Flanders, Wallonia and Brussels), the administrations of the ten provinces and the 589 municipalities are involved in the financing of recognized religions and secular humanism but Islam remains dramatically under-financed. On the one hand, the federal state pays the salaries, retirement and lodging costs of ministers and also subsidizes the construction and the renovation of

places of worship but decides how many clerics will be paid in each religion ; here again, there is a clear interference of the state in the religious sphere. On the other hand, the municipalities must pay any debts incurred by the ecclesiastical administrations of recognized religions without having the right to check their accounts.

In 2000, a number of political parties considered changing the financing system of religions and secular humanism so as to allow taxpayers to choose the belief system they want to finance through their income tax. No draft law has however been presented to the Parliament. Therefore, the financing system remains discriminatory towards members of non-recognized religions and these same religions.

Jehovah's Witnesses and other minority religions were denied the right to bring spiritual assistance to their members in hospitals, detention places for asylum-seekers and similar institutions, a right granted only to chaplains of recognized religions and moral advisers of secular humanism. In public schools of the French-speaking community of Belgium, Jehovah's Witnesses children are obliged to attend either ethic classes (contradictory with their beliefs) or classes of another religion while in the Flemish-speaking community, they may be exempted.

The Cult Issue

The list of 189 movements annexed to the report of the parliamentary commission on cults and the information brochure "*Guru, you'd better watch out !*" massively distributed in schools and in public places continued to be a source of reference for private and public authorities. More cases of intolerance and discrimination towards individuals were recorded by *Human Rights Without Frontiers* in 2000 : intolerance and victimization in schools, at work and in the neighbourhood ; hate speech in the media ; defamation ; slander ; loss of jobs or promotions ; loss of visitation rights or child custody in divorce settlements ; denial of room rental ; police crackdown, etc.

On Thursday 26th October, a public meeting of the new religious movement *Sahaja Yoga*, a group having only 150 members in Belgium, was banned by order of the mayor of one of the municipalities of Brussels. A dozen police officers accompanied by a bailiff turned up to make sure the ban was respected. The organisers of the meeting, scheduled for later that evening, were informed that it had been banned, following orders from state security. The auditorium of the cultural centre in Woluwe St Pierre (Brussels) had been hired several months in advance for a presentation of the *Sahaja Yoga* movement, and the meeting had been advertised by radio, posters, and leaflets.

At 6.30pm barricades were erected in front of the entrance to the cultural centre and a dozen uniformed and plain clothed policemen were in attendance. Some stated that they belonged to the public relations department of the gendarmerie, others that they were part of the state security services and others to the Belgian Brigade of Surveillance and Research (BSR). An affidavit was also presented by a bailiff. The organisers were informed that all meetings of any kind were forbidden and that any discussion of Sahaja Yoga would result in arrest. This group has never been prosecuted for illegal activities.

In 1999, the Anthroposophic Society won its case in first instance against the French Community (one of the federal entities of the Federal Kingdom of Belgium) with

regard to defamatory statements spread in the cult prevention brochure "*Guru, you'd better watch out !*". The ruling was appealed and a hearing was held on 25 November 1999, leading eventually to a decision on 20 January 2000 to overturn the trial decision because of a "lack of urgency", as all the brochures had already been distributed. The Society plans to continue the procedure and to argue on the ground. The brochure has not been reprinted and its content has been removed from the website of the the French Community, probably because a new minister, known to be more respectful of the rights of minority religions, was put in office after the June 1999 elections.

With regard to the brochure "*Guru, you'd better watch out !*", the Buddhist group OKC was nonsuited in first instance but continues the procedure and will argue on the ground.

Another complaint lodged by the Anthroposophic Society against the creation of an Observatory of Cults called *Information and Advice Center on Harmful Cults* was turned down by the Arbitration Court. A complaint was lodged at the European Court of Human Rights in September 2000.

The case *Vibration Cœur (Vibrating Heart) v. The Belgian State* is still pending. *Vibration Cœur* which is a non-profit making association of five psychotherapists which holds training sessions for medical practioners, was mentioned on the list of 189 movements suspected of being dangerous cults.

In January 1999, Mrs Vo, the Belgian secretary of the non-profit making association *Spiritual Human Yoga (SHY)*, was arrested by an anti-terrorist unit and imprisoned for 22 days. The spiritual leader of the movement, Master Dang, an American citizen, was also imprisoned for 65 days. He was released only after paying U.S. \$ 1.3 million in bail. Dozens of SHY practioners were interrogated by the police to substantiate accusations of illegal practice of medicine and financial embezzlement. Two years later, no progress had been registered in this case.

More than one year after the raid of the anti-terrorist unit against the headquarters of the Church of Scientology, the case is still pending.

In fall 2000, the *Information and Advice Center on Harmful Cults* was nearly operational. Its mission is to collect documents about so-called cults and to give access to them to the public.