

# 2002 Annual Report on Human Rights in Belgium

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## Introduction

HRWF Int. (06.02.2003) - Website: [www.hrwf.net](http://www.hrwf.net) - Email: [info@hrwf.net](mailto:info@hrwf.net) - During the year, a number of human rights issues in Belgium were examined by international bodies. At its 60<sup>th</sup> 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 organisations, 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 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 are recommended in relation to unaccompanied minors, sexual exploitation and trafficking, and administration of juvenile justice.

In September, the Committee for Legal Issues 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, colour, national or ethnic background, gender, sexual orientation, handicap, state of health, age, religious or philosophical beliefs.

During the year, tendencies of growing anti-Semitism and Islamophobia became more visible.

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## Judicial system

### *Bar associations and lawyers*

A number of cases involving pressure on lawyers acting on behalf of certain clients or defending certain cases have been reported to *Human Rights Without Frontiers* under cover of anonymity. The type of pressure and coercion exercised on lawyers is most often threats to tarnish his/her reputation and good name. Threats of disciplinary sanctions by bar associations are also common. In practice, the lawyer is 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 have a tendency to stay away from controversial clients, cases, arguments and evidence, and chose not to push a case too hard. This situation creates a climate of fear and insecurity amongst lawyers.

### *Courts*

Two sets of problems are worth mentioning: On one hand, problems related to access to justice and on the other, structural dysfunctions and abuses within the judiciary.

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

No attention has been given to the combination of the functions of lawyer and judge, which are totally opposite and incompatible professions. In Belgium, it is very common to have lawyers who are at the same time assistant-judges. Abuses are reported about these assistant-judges and lawyers who misuse their status of assistant-judge to inappropriately influence the court when they are acting as lawyers, thereby creating an inequality of arms with the opposing lawyer. Regular and full-time judges as well as assistant-judges are protected by immunity from suit. In Belgium, judges are totally unaccountable. Victims of alleged violations of their rights cannot prosecute them. This leads to abuses and dysfunctions.

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## **Torture and ill-treatment**

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. The report analyses 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 with psychiatric care units within the prison system.

One of the failings is the lack of fundamental safeguards against ill-treatment like, for example, access to a lawyer during police custody. Belgium's Permanent Commission for Control of Police Services ("Comité P") is entrusted with the task of overseeing the functioning of the custody system. More than 93% of the cases documented and studied by the Commission point to misconduct by law enforcement officials, while more than 40% of the cases involve acts of violence or abuse of power. Out of these, 22,34 % are 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 indicate that the operations for removal of foreign nationals by air involve a manifest risk of inhuman and degrading treatment.

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

As regards the prison system, Belgium has been mainly criticised for the lack of personnel and appropriate infrastructure in the psychiatric care units and especially the one at the prison of Lantin. On 15 March, 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.

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## **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. Six religions (Catholicism, Protestantism, Anglicanism, Judaism, Islam and Orthodoxy) and secular humanism (*laïcité*) are currently recognised by the state. They enjoy facilities and advantages that are denied to all other religious groups.

- The state finances only recognised religions. State subsidies are provided by all taxpayers, including those who profess a non-recognised religion or who do not adhere to any religion or belief system. This system is not equitable in so far as taxpayers are unable to prohibit the state from using their income tax to finance religions and secular humanism that are openly opposed to non-recognised minority religions.
- The state has put in place mechanisms and agencies - *Parliamentary Enquiry Commission on Sects*, *Centre for Information and Advice on Harmful Sectarian Organizations* and *Inter-Ministerial Coordination Agency of Fight against Harmful Sectarian Organizations* - to identify so-called "harmful cults" (bad religions), warn the public and fight against them.

The *Centre* comprises twelve members and twelve substitutes. The recruiting method of these members is very far from guaranteeing their impartiality. Indeed, half of the members are nominated by the Council of Ministers for approval by the House of Representatives, while the other half is directly appointed by the House of Representatives. Representatives of political parties, the Catholic Church, various anti-sect movements and ideologies are to be found among the members. The independence of the *Sect Observatory* is also scarcely guaranteed as it is under the authority of the Ministry of Justice. The Observatory keeps silent about religious discrimination committed by public authorities and is careful not to criticise ministers or mayors who deny access to public halls to groups, which act legally, on the grounds that they are on an alleged list of sects suspected of being harmful.

- The Anthroposophic Society has sued the Belgian state arguing that the law creating the *Centre for Information and Advice* as well as the *Inter-Ministerial Coordination Agency* is 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 distribution of printed material, including religious and philosophical writings, is forbidden by municipal decrees in certain parts of Brussels and of other towns: near schools, (Christian) churches (but strangely enough not synagogues, mosques or any other non-Christian places of worship), military barracks, etc. Other regulations provide 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 have made it a requirement for candidates for positions as civil servants to swear a statement that they do not belong to a harmful sectarian organisation.

- Renting public places for meetings is often denied to religious associations mentioned on the official list of 189 movements suspected of being “harmful sectarian organizations”.
- 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.
- In divorce cases, courts sometimes deny the child custody to the parent who is affiliated to a non-recognised religion (Pentecostal Church, Jehovah’s Witness, Church of Scientology, Sahaja Yoga, Raelian movement, etc.) on the grounds that it is a harmful cult. A number of courts also grant visitation rights to the non-custodial parent who is a member of a so-called “cult” on the condition that he or she does not expose his or her children to the teachings or lifestyle of that religious group during visits.
- The Foreign Workers’ Act of 1999 requires from non-recognised religions that foreign missionaries obtain work permits before applying for a visa to enter the country for religious work. On many occasions, Belgian consulates have failed to answer such applications and have in this way denied American Mormon, Adventist and Pentecostal missionaries’ access to the 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. The same act provides that foreign clerics and missionaries are not submitted to that regulation.
- In public schools under the authority of the French community, Jehovah’s Witnesses complain that their children have no other choice than to attend religious or (allegedly neutral) ethics classes the contents of which, they say, conflict with their beliefs. In the Flemish community, the children of Jehovah’s Witnesses are exempted from such classes.
- Chaplains of recognised religions and moral advisers of secular humanism have officially access to prisons, detention centres for asylum-seekers, hospitals, the armed forces, etc. Non-recognised religions may not send chaplains to such institutions.

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## **National minorities**

Belgium signed the Framework Convention on National Minorities under the Council of Europe in 2001. Belgium, however, has not yet ratified the Convention due to the fact that the federated entities are 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 have fixed the language boundaries, which are still valid. The principle of territoriality was thereby introduced, stipulating that in monolingual regions the use of the language of the region is compulsory for all public administrative acts. The same laws provide for linguistic facilities for the inhabitants of 27 communes

contiguous to a different linguistic region, who have the right to request that, in their dealings with the authorities, language other than that of the region in which the communes are 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 is Dutch, these inhabitants have the right to request that French be used in their dealing with the public authorities.

The Parliamentary Assembly of the Council for Europe (PACE) appointed a rapporteur to look into some minority issues in Belgium. In April 2002, the Assembly discussed the report at its session. In September, the Committee for Legal Affairs and Human Rights of the Council of Europe approved the report and Resolution 1301 (2002) on protection of minorities in Belgium was adopted by the Assembly. The 2002 resolution reiterates that Belgium is one of the countries with "significant minorities who need to be protected and whose rights are not officially recognised". 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.
- 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.

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## **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 organisations, 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 are long and difficult, victims of discrimination were often discouraged

from taking the matter to court. Further, principles of criminal law make the victim responsible to provide proof of discrimination, whereas evidence tends to be in the hands of the discriminating person or organisation.

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. That 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 Centre 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 28 January, 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 4 February, 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 19 February, the Correctional Tribunal of Tournai convicted one person for instigating racism.
- On 23 April, 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 Internet.

Another important legislative act is the 1989 law regulating the financing of political parties and its 1999 amendment, which provides 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 Centre and the League want 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 offences and as such had to be judged by people's jury. In 2002, following the appeal lodged by the Centre 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 has not been completed by the end of the year.

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

### **Anti-Semitism**

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. Some of the incidents are:

- In November, a Jew teacher of French language at a Brussels school was threatened and harassed by Muslim students.
- On the night of 22 April, 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.
- On 21 April, 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.
- On 19 April, a Jewish family living in Chaussée de Gand in Brussels was harassed once more in a series of such incidents recorded over the past several weeks. Things reached the point where a gang from the area attacked the family's vehicle scratching on it "Dirty Jew" and a Star of David.
- On 4 April, a Molotov cocktail was thrown at the Old Synagogue in Antwerp.

- On 3 April, 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 1 April, 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.

In the aftermath of the attack on 1 April, the Centre 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 as envisaged in article 1 of the 1981 Anti-Racism Law.

### **Islamophobia**

In the aftermath of September 11, the already existing islamophobia in civil society has 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 of 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 Defence. 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 is the assassination of Mohamed Achrak, a young man of Moroccan origin, in the Borgerhout quarter of Antwerp on 26 November. The growing wave of resentment and hostility among the Arab population in the city was stemmed by an appeal to peace and respect issued by Achrak's family.

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## **Asylum seekers, refugees and immigrants**

In 2002, one of the most important developments in the area of asylum and immigration is the judgement of the case of Čonka v. Belgium of 5 February (no. 51564/99) by the European Court of Human Rights in Strasbourg, whereby Belgium was condemned to have infringed the European Convention of Human Rights. In October 1999, the family of Čonka 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 European Convention for Human Rights), 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 No. 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 are six closed centres in Belgium, which are administered by the Foreigners' Office under the authority of the Ministry of the Interior. Two of the centers are situated at the border:

- The centre INAD at the Brussels airport for “non-admissible” cases, where foreigners are detained before their refoulement.
- The transit center 127 for foreigners who lack the necessary documents to enter the country and have asked for asylum.

The other four centers are in different regions of the country for immigrants waiting for their documents to be processed. Some organisations, like for example the League for Human Rights, have access to the centres. However, the access of lawyers to the two centres at the border is very difficult.

The regularisation process launched by law on 22 December 1999 is coming to an end. The Centre for Equal Opportunities and Fight against Racism observed that the law did not provide for mechanisms to resolve all individual cases. The main problem remains to be the backlog of demands. While 400 to 500 demands can be processed in a month, 4,000 new cases have been submitted in the meantime. In 2001, the regularisation commission introduced the principle of “last in, first out”. This system affects between 30,000 and 40,000 dossiers submitted in 1999 and 2000.

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## **Rights of the child**

Belgium is a signatory to the Convention of the Rights of the Child. Although children living in Belgium enjoy a comparably 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 remains to be the fact that corporal punishment is not expressly prohibited by law. Though numerous initiatives are 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 are needed to prohibit corporal punishment of children in the family, in schools and in institutions. There are no effective procedures and mechanisms to receive, monitor and investigate complaints as well as to prosecute in cases of ill-treatment ensuring that the abused child is not victimised in legal proceedings and his/her privacy is 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, non-discrimination on grounds of national origin does 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 raise 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 emphasise that the guarantee of non-discrimination applies to each child within the jurisdiction of the respective country.

The group of unaccompanied minors stands out as one requesting special measures of protection. Despite the various activities, including a draft law on the establishment of special reception centres for unaccompanied minors and a draft law on the creation of a guardianship service, Belgium lacks specific regulations for unaccompanied minors, whether seeking asylum or not. The UN Committee on the Rights of the Child emphasised the need of establishing special reception centres for unaccompanied minors, of ensuring that the stay in those centres is for the shortest time possible, and of adopting the draft law on the creation of a guardianship system.

- The case of Tabita, a five-year-old girl of Congo, points to the lack of an effective co-ordination 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 centres. On her arrival to Belgium, Tabita was directed towards the 127 closed centre, where she stayed for two months before being sent off to reunite with her mother in Canada.
- As of the end of 2002, twenty-seven children stay at the 127 closed centre, twenty-five of them are under the age of twelve.

For the full text of the CPT's report, see <http://www.cpt.coe.int>

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

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 <http://www.hrwf.net>

More cases recorded in 2002 and 2001 can be found on the website of *Human Rights Without Frontiers*, <http://www.hrwf.net/newhrwf/html/belgium2002/html>

Website <http://www.comiteri.be> and <http://www.hrwf.net/newhrwf/html/belgium2002/html>

The text of the judgement is on <http://www.echr.coe.int>

Concluding Observations of the Committee on the Rights of the Child: Belgium. 13/06/2002, CRC/C/15/Add.178, 13 June 2002