

Human Rights in Belgium

Annual Report

(Events in 2005)

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The main human rights concerns in Belgium in 2005 were racial discrimination and intolerance and the rights of asylum seekers and immigrants.

In May 2005, Belgium signed Protocol No. 7 to Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, which extends the list of protected rights to include the right of aliens to procedural guarantees in the event of expulsion from the territory of a State ; the right of a person convicted of a criminal offence to have the conviction of sentence reviewed by a higher tribunal; the right to compensation in the event of a miscarriage of justice, the right not to be tried or punished in criminal proceedings for an offence for which one has already been acquitted or convicted, as well as equality of rights and responsibilities as between spouses.

In June, the Centre for Equal Opportunities and Fights against Racism (CELCR) published its annual report. Covering events until the end of 2004, the report analysed the occurrence of discrimination in the country and listed acts according to their type and domain. Belgium still has to ratify Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which contains general anti-discrimination provisions.

In October, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1469 (2005), calling on Belgian authorities to encourage communication and cultural cooperation across the linguistic borders of the country as well as to ratify the Framework Convention on Protection of National Minorities.

In December, the Council of Ministers adopted the overdue reform of the asylum procedure with the purpose to simplify and accelerate it.

Anti-Terrorism Measures

On October 28, the Council of Ministers submitted to the Chamber of Representatives a draft law envisaged to introduce changes to the Criminal Code and Judicial Code in order to make possible some modes of investigation in the fight against terrorism and organized crime.ⁱ The new law was needed due to the fact that the existing law of 6 January 2003 with regard to some particular forms of investigation and methods of inquiry was partially revoked by the Court of Arbitration. In its decree dated 21 December 2004, the Court had found that some of the law provisions were not in conformity with the constitution and pointed to the need to place some measures, especially those directly related to the private life, under the responsibility of an independent and impartial magistrate.

The draft law went into a fast-track procedure in the Chamber of Representatives and the Senate. The project drew the criticism of human rights organizations and civil groups.ⁱⁱ Despite this, the law was finally adopted by the Senate on 23 December, within two months of its deposition.ⁱⁱⁱ The justice minister Laurette Onkelinx reassured the Senate that the law will be applied only in cases of terrorism and organized crime in a response to senators' concerns from both ruling and opposition parties that it was indispensable to readjust the law application.

Freedom of Expression, Free Media and Information

The rights of freedom of speech and freedom of the press were generally respected. However, the principle of the confidentiality of journalistic sources remained a subject of discussion. In 2003, two bills regarding the protection of journalists' sources were submitted to the Chamber of Representatives but only one of them was taken up for further debate.^{iv} The Senate amended and passed the bill on 27 January 2005 and the Chamber finally adopted it on 17 March 2005,^v following lively debates due to the sensitivity of the issue as well as the difference of approaches.^{vi} The new law provides that journalists have the right not to reveal their sources. They are explicitly protected against home searches, seizures, phone tapping and other investigations. Under the new law, journalists can not be sued for illegal detention of stolen documents or for complicity in the violation of professional secrecy by a third party. Article 4 of the law envisages exceptions upon request by a judge in cases where the sources need to be disclosed in order "to prevent crimes that represent a serious attack on the physical integrity of one or several parties".^{vii} The European Federation of Journalists welcomed the law as a "landmark victory" for Belgian as well as for "European journalists who still do not have a legal guarantee for the protection of sources".^{viii}

- On January 25, 2005, three days before the Senate vote on the bill related to the protection of journalists' sources of information, reporter Anne de Graaf and editor Yves Desmet of the Flemish-language newspaper *De Morgen* were interrogated as witnesses in an investigation by federal prosecutors into unauthorized leaks. In particular, they were asked about calls made on De Graaf's phone between 23 March and 8 May 2004.^{ix}

A draft resolution on the protection of the rights of journalists and editors in the exercise of their profession was also submitted to the Senate in February 2004. It would expand the scope of protection of journalists and editors and their access to sources of information.^x Senate discussions on this issue were pending as of the end of 2005.

In the meantime, however, the proposed draft law on new anti-terrorism measures was viewed as infringing upon the right of journalists to protect their sources, which they had obtained earlier in the year. The provision of “discreet visual controls” revived debates on the protection of journalistic sources. On December 12, the Association of Professional Journalists in Belgium (AGJPB) addressed a letter to the Senate members demanding the revision of the draft.^{xi} The lack of legal guarantees in cases of control in professional places such as media offices was the main concern and the AGJPB demanded the re-establishment of the role of judge in authorizing the enforcement of measures. The European Federation of Journalists had expressed the view that the draft law was “out of proportions” and expressed concern that the presence of police officers in press rooms and media office could become a routine practice under the law.

Freedom of Religion and Religious Tolerance

State and Religion

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 have never been enshrined in the Constitution, in decrees or in laws. Six religions (Catholicism, Protestantism, Anglicanism, Judaism, Islam and Orthodoxy) and secular humanism (*laïcité*) are recognized by the state. This system of hierarchy of religions generates various forms of institutional discrimination. The state only finances recognized religious communities, while 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.

Relations between the state and the representative bodies of the Muslim community have been strained over the past few years and tensions lingered on in 2005. In July 2004, the government introduced a law requiring that new general elections be held to fully renew the membership of the Muslim General Assembly and the Executive, despite the fact that they were duly elected for ten-year period in December 1998. The government-imposed decision was strongly criticized by the Muslim representative bodies that viewed it as interference in the internal affairs of the Muslim community. There were officially lodged complaints but they were turned down both by the Council of the State and the Court of Arbitration. The elections date was set for 20 March 2005 and some 69 500 voters had registered. The elections brought about a major shift in the composition of the 68-member General Assembly as Muslims of Turkish descent had won absolute majority. Muslims of Moroccan descent had the majority in the previous General Assembly and they boycotted the new elections in disagreement with government policies. On its own turn, the General Assembly designated 17 candidates for the Executive followed by a screening procedure and an approval of the interior ministry, before being finally appointed.

Discussions about the wearing of headscarves (*hijabs*) in public institutions became less intense during the year. In January, following debates in France and Germany on the issue, two Belgian senators of two different political parties submitted, upon their own initiative, a draft resolution inviting the federal as well as regional- and community-level authorities of the country to adopt new legislative acts banning the wearing of religious insignia in public places, including public hospitals. However, the senators could not garner the support of their respective political parties and the draft was not discussed any further.

Decisions on a ban of headscarves in schools rest with school authorities. The governments of both the French community and the Flemish community handed

this responsibility over to public schools under their respective authority. As many as 70 percent of secondary schools under the authority of the French community have introduced the ban compared to 41 percent in 2000.

A number of complaints were filed with regard to schools' ban on headscarves.

- In June, following a complaint related to a school in Hasselt in the Province of Limbourg, the Appeal Court of Antwerp ruled that the anti-discrimination law was not applicable to the ban on wearing headscarves. The court's decision was based on the judgment that the provincial authorities had respected the constitutional principle of equality when banning the wearing of headscarves. The Court confirmed the right of students of public schools to wear headscarves but discarded the absoluteness of this right. The court acknowledged that public schools can limit this right, in case this measure needs to be instituted for the sake of better organizing the work at school and guaranteeing the safety or the rights of the other students. In this concrete case, the Court concluded that the negative statements made by female plaintiffs against the school administration had had an adverse impact on the atmosphere at the school and its education process.

The CELCR issued a statement stressing the importance of a constructive dialogue between all sides and in particular, between students concerned, students' and parents' committees. The Centre tried to act as mediator between the parties in the school in Hasselt, but had no success.

The issue of the *burqa* gained momentum during the year. Since 2003, several communes have been introducing into their police regulations a ban on wearing the *burqa* and a smaller type of face mask, *niqab*, in public places. By the end of 2005, the number of communes where such ban applied reached a total of more than 20, including the towns of Antwerp, Ghent, Lebbeke, and Maaseik. A fine of 150 euro is foreseen for violations of the ban.

The Sikh community also found itself under strain with the changing policies as regards conspicuous religious insignia. During the year, two Sikh boys, Pawandeep Singh aged 15 and Jaswant Singh aged 16, were given a choice either to remove their turbans or be expelled from a public professional school in Sint-Truiden.

The "sect" issue

The state had in place mechanisms and agencies – the Center for Information and Advice on Harmful Sectarian Organizations (the Sect Observatory) and the Inter-Ministerial Coordination Agency for the Fight against Harmful Sectarian Organizations – to identify so-called "harmful cults," warn the public and fight against them. In October, the Sect Observatory published its bi-annual report.

In an unprecedented move, the Brussels Appeals Court condemned the Belgian House of Representatives on the grounds that it had damaged the image of an organization blacklisted in the report published in 1997 by the parliamentary inquiry commission on sects. The plaintiff was the Universal Church of God's Kingdom, a small religious group mainly present in Antwerp. The court ruled that the parliament investigation commission acted carelessly when compiling the report. The ruling was handed down on 28 June and was signed into effect in the beginning of August. The parliament was ordered to pay the church and three of its directors a symbolic amount of 1 euro in damages and publish the finding in newspapers 'De Standaard' and 'Le Soir' on 3-4 September. The Appeals Court

ruled that the parliament can not defend itself under article 58 of the Constitution that details parliamentary independence. The Belgian Parliament is to appeal to the Cassation Court.

Linguistic Issues

Belgium signed the Council of Europe's Framework Convention on National Minorities in 2001. However, the convention was not ratified 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 regions – the Walloon regions, the Flemish region, and the Brussels Capital region, three linguistic communities, and four linguistic regions (three monolingual and one bilingual). The 1962-1963 language laws fixed the language boundaries, which were still valid as of the end of 2005. 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 linguistically mixed communes, 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, which lie on Flemish territory in the Brussels periphery, 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. This right, however, was often challenged by attempts of some Flemish politicians to impose restrictions. Brussels is officially a bilingual region, with a majority of French-speaking inhabitants. Resolution 1301 (2002) of the PACE reiterated that Belgium was one of the countries with "significant minorities who need to be protected and whose rights are not officially recognized."^{xii} 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 levels, 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.

On 1 October 2002 five Dutch-speaking members of the parliament of the Brussels Capital region and local councillors petitioned the Council of Europe concerning the right to health care of Dutch-speakers in Brussels. The petition was referred to the Committee on Legal Affairs and Human Rights, which appointed Mr Boriss Cilevics (Latvia, SOC) as rapporteur. In the Opinion (doc. 10009) issued by that committee on 3 December 2003, Mr Cilevics noted that the problem posed in Brussels did not so much concern legislation guaranteeing Dutch-speakers' rights, but rather the application in practice of rights that were already recognized.

On 20 January 2004, twelve persons living in communes with linguistic facilities around Brussels lodged another ("counter") petition with the Council of Europe, in which they complained of "real health discrimination against French-speaking citizens by the Flemish region". The Bureau of the Parliamentary Assembly of the Council of Europe joined together the two petitions and referred both to the Social, Health and Family Affairs Committee. Ms Minodora Cliveti (Romania, Socialist Group) was appointed as rapporteur. During her visit to Belgium from 13 to 15 April 2005, the rapporteur had meetings with the authors of both petitions, representatives of the authorities responsible for public hospital administration in the Brussels Capital region, the relevant Dutch-speaking and French-speaking

ministers within the government of the Brussels-Capital region, and the President of the Commission for Language Supervision. The rapporteur's report on *Language problems in access to public health care in the Brussels-Capital region in Belgium* was submitted to PACE in July.^{xiii} The debates during the autumn plenary session in October led to the adoption of Resolution 1469 (2005), concluding that the solution of the linguistic problem did not rest with the modification of the legislative basis, but rather with its application in practice. To this end, the resolution recommended, *inter alia*, the increase of administrative and judicial measures to ensure bi-lingual services in Brussels hospitals as well as to improve the language skills of students in medicine. The resolution called on Belgian authorities to encourage communication and cultural cooperation across the linguistic borders of the country as well as to ratify the Framework Convention.

Negotiations about language rights in the electoral district of Brussels-Halle-Vilvoorde on the edge of Brussels led to heated debates and even to a parliamentary vote of confidence of the government. The electoral district of Vilvoorde includes parts of the Flemish region and parts of Brussels Capital region and the issue at stake was whether to keep the district as it is or to divide it. Negotiations failed and the solution was deferred for two years.

Racism, Intolerance and Xenophobia

Belgium has ratified the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination. Belgium has not ratified yet Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which contains general anti-discrimination provisions. A new Anti-Discrimination Law was adopted in February 2003, which provides not only for legal protection against racial discrimination, but also against discrimination based on sexual orientation, handicap, state of health, religious and philosophical beliefs and age.^{xiv}

The new law supplements the 1981 Anti-Racism Law, which was limited by several deficiencies, in particular, by its narrow definition of discrimination as a criminal act, with the burden of proof placed on the victim. The 2003 Anti-Discrimination Law defines discrimination in broad terms and introduces a new civil procedure aimed at enabling claimants to have their damages redressed and compensated in the quickest possible manner.

However, despite the progress achieved with the adoption of the new law, it remains necessary to revise and reinforce certain parts of it, including those related to protection against discrimination in the areas of access to housing, social services, health care and education.

Since 1993, the Centre for Equal Opportunities and Fight against Racism (CELCR) has been entrusted with overseeing the implementation of the Anti-Racism Law. With the adoption of the Anti-Discrimination Law, the Center was empowered to deal with the expanded scope of motives of discrimination covered by this law.

In June, the CELCR published its annual report for events of 2004. The report noted that the number of victims and witnesses ready to file a complaint or to testify had increased. On the basis of registered cases, the breakdown of acts of discrimination according to their sector is as follows: employment – 17 %, social life – 14 %, public services – 13%, housing – 9 %, police services – 8 %, education – 8 %, private services – 8 %, media/internet/propaganda – 7 %, justice/nationality/residence – 7 %, and others – 9 %.^{xv} With regard to employment, housing and relations with public services, majority of complaints

point to discrimination on grounds of origin (36 %) and race (7 %) as well as religion/culture (10%) and nationality (10 %).

For a number of years, the area of employment has witnessed the largest number of cases of discrimination. Several inquiries were conducted proving that candidates with "foreign sounding" names had more difficulties in finding a job. In March, the Free University of Brussels (ULB) and the Catholic University of Louvain (UCL) conducted a study commissioned by the Regional Brussels Labour Office (ORBEM) to examine discriminatory trends in the area of employment. The report pointed to the existence of discrimination in the recruitment process with people of Moroccan and Turkish origin being the principal disadvantaged group followed by people coming from sub-Saharan Africa. The unemployment statistics in Brussels Region reflected the same tendency.

- In April, the First Instance Tribunal of Nivelles issued an order to a house owner to cease his discriminatory behavior towards people on grounds of their sexual orientation. In November 2004, a same-sex couple found a house for rent through a real estate agency. The owner communicated to the agency the wish to have a "traditional couple". The Tribunal judgment stipulated that an indemnity of 100 euro is to be ruled in any future cases of infraction. Being the first case to be brought to a French-speaking civil tribunal, it was considered to be an important precedent.
- In March and April, the Youth Tribunal of Leuven condemned three youngsters for attacking and injuring two homosexuals in 2003. The CELCR acted as civil party for the victims. Each one of the youngsters had to pay 100 euro for inflicting moral damage, while the CELCR received a symbolic one euro.

In June, the UN Working group of Experts on People of African Descent paid an official visit to Belgium. After hearing testimonies from people of African descent, the Working Group noted that employment and housing remain the area in which the majority of complaints of discrimination continue to be recorded and the field in which people of African descent find themselves more disadvantaged. The Working Group will present its findings and recommendations to the sixty-second session of the UN Commission on Human Rights in 2006.

- In November, the Appeal Court of Liege upheld the condemnation of a landlady on discrimination charges under the provisions of the 1981 Anti-Racism Law for refusing to rent her apartment to a couple due to the fact that the husband was a Muslim of Sudanese origin. The plaintiffs received a symbolic indemnity of 1 euro. This has been the first condemnation case in Liege for racism related to housing.

The Movement against Racism, Anti-Semitism and Xenophobia (MRAX) alerted to the increase of racism-motivated violence committed by police officers since 2000. MRAX had received more than 60 complaints for such cases. Following two cases of violence of police officers towards people of foreign origin committed in the summer of 2005, MRAX called for an inquiry in the police offices in several communes of Brussels.

The issue of public funding of parties inciting racial hatred was not resolved. In 2001, the Council of Ministers adopted a decree to implement the 1989 law regulating the financing of political parties and its amended version of 1999, according to which the public funding may be limited or terminated if political parties are "hostile to human rights and freedoms". The 2001 decree allowed for the withdrawal of public funding to political parties "manifesting hostility towards human rights". In February 2004, the Chamber of Representatives adopted a

draft law to facilitate the implementation of the 2001 decree. The draft was transferred to the Senate for further debate and approval. It was voted in plenary session on 21 January. The law provides for a mechanism in which a complaint about a particular political party can be adopted and submitted to the Council of State by one third of the members of the Committee for Financial Control of Political Parties within the administrative section of the Council of State. The Council of State, which is due to consider a complaint within six months, could subsequently decide to withdraw funding to a political party for a period between three and twelve months. The public funding of Vlaams Belang and Front National amounts to 3 million euro and 640,000 euro respectively. In June, the Commission of Control of Election Expenses made up of members of both the Senate and the Chamber of Representatives decided to place the funding of Front National under monitoring. It was decided, that the Commission would verify on a monthly basis whether the party respects the conditions for using its funds.

In March, ECRI published a report on the use of racist, anti-Semitic, and xenophobic arguments in political discourse, dealing with the situation in Belgium until the end of 2004.^{xvi} Belgium was presented as a case study in the report due to the existence of a far-right nationalist party in national politics as well as due to the way the use of the law led to restriction of political exploitation of xenophobic discourse. Following the completion of the long-running legal proceedings against three non-profit associations linked to Vlaams Blok with the ruling of the Court of Cassation of November 2004, the far-right nationalist party got re-named to Vlaams Belang and continued its existence. The party altered its programme dropping its demand for “large groups of non-European immigrants to be returned to their countries” and limiting the scope for deportation only for immigrants “who reject, deny or combat our culture and certain European values such as separation of the Church and State, freedom of expression and equality between men and women”.^{xvii} In June, however, Filip Dewinter, one of the leaders Vlaams Belang and a member of the federal parliament declared in an interview for the daily Metro that “multiculturalism leads to multi-criminality”. The CELCR criticized the “scapegoat” mechanism invoked by the party leader in his position.

- In June, the postal services distributed a brochure of racist contents by Front National (FN), the extreme right party on the French-speaking side. According to a 1998 agreement between the CELCR and the postal services, the latter should consult the center whether materials distributed by them are in conformity with the anti-racist law. In this case, however, the postal services did not wait for the CELCR to submit their opinion in writing, within 48 hours as provided for in the agreement, and went to circulate the brochure. At the same time, court proceedings against Daniel Féret, federal deputy and the FN president, were still going on. The CELCR, the League for Human Rights and the Movement against Racism had earlier brought charges as civil parties against the racist character of the propaganda and parts of the political program of Front National.

A 1995 law provides for the punishment of acts of denying, belittling, justifying or approving the genocide committed by the Nazi regime during the Second World War.

- In April, Siegfried Verbeke was sentenced by the Appeal Court of Antwerpen to one-year suspended prison term and a fee of 2 500 euro for distributing pamphlets denying the Holocaust. He was stripped of his civil and political rights for a period of ten years. The process against Verbeke was initiated by the CELCR, which acted as civil party. The CELCR as well as the Foundation Auschwitz received an indemnity of one euro.

In 2004, the Government submitted amendments to the 2000 law related to cyber crimes, the 1994 law on author's rights, and the 1995 law on negationism in order to align the Belgian legislation with the Council of Europe Convention on Cyber Crime of 2001 and the 2003 Additional Protocol to the Convention concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.^{xviii} In the framework of the debates, the Movement against the Racism, Anti-Semitism and Xenophobia (MRAX) supported by a group of 11 other organisations proposed two amendments to extend the scope of negationism to include the Armenian genocide and the Rwandan genocide. In June 2005, the Senate Commission of Justice did not have enough votes to adopt the amendments. The period leading to the vote was laden with heated debates stirred by the opposition to the amendments coming from senators of Turkish descent. The issue got further attention due to the complaint lodged by Emir Kir, member of the Socialist Party and state secretary of Brussels Region, against two journalists for defining him as "negationist" for having participated in a demonstration organized on 29 May 2004 by Association de la pensée ataturkiste de Belgique (BADD) under the slogan "Let's reject the allegation of genocide". The First Instance Tribunal of Brussels, however, turned down the defamation complaint deciding that the qualification of negationist is legitimately applicable for Emir Kir in view of his activities.^{xix}

Anti-Semitism

The 35,000-strong Jewish community in Belgium continued to live in an atmosphere of insecurity. The CELCR had alerted towards the increase of complaints for acts of anti-Semitism.

- In April, two teenagers believed to be of North African origin threw a 13 year-old Jewish boy off his bicycle and beat him in Antwerp. Helped by his brother, he was taken to hospital and treated for bruises. The police are investigating.
- In April 2005, a teenager believed to be of Slavic origin threatened some Jewish boys with a knife. He was arrested and sent to a juvenile facility. He had been involved in another anti-Semitic incident some weeks before.
- In May, five petrol bombs were thrown at a synagogue in the Anderlecht district of Brussels causing a fire which took 45 minutes to extinguish and damaging the floor and chairs. The government denounced the attack. There were no arrests.

There were some convictions for violence and harassment triggered off by anti-Semitism.

- In April, a former student of a school in Laeken was sentenced to a suspended one-year prison term for incitement towards racial hatred. He had attacked verbally a professor of Jewish origin. The judges had also concluded that he had not quite understood the gravity of his crime.
- In June, an Antwerp court sentenced a young Moroccan, residing illegally in the country, to 6 months in prison and 500 euro of indemnity for assaulting a Jew in Antwerp in June 2004 and threatening to kill him and all Jews. This was the first conviction of a person for a crime aggravated by anti-Semitism.

Islamophobia

In the aftermath of September 11, the problem of Islamophobia was aggravated. As in previous years, hostility toward Muslims was fuelled by extreme-right parties.

- In February, the commune of Berchem-Sainte-Agathe filed a complaint as a civil party against the author of a pamphlet of racist nature alerting against the mosque construction in the commune. It was signed by Christian Marot, who had allegedly benefited from the help of two municipal counsellors from Vlaams Belang.
- In February, a young couple of Moroccan origin was refused to rent an apartment. They were also subjected to verbal harassment by the real estate agent. The couple filed a complaint with the Movement against Racism, Anti-Semitism and Xenophobia (MRAX) and the case was brought to a tribunal.
- In March, Naima Amzil and her employer, Rik Van Nieuwenhuyze, received threat letters. The employer was threatened with death for hiring a Muslim woman wearing a headscarf. Naima Amzil tendered her resignation, which was turned down. She then went out on a leave for indefinite period of time. Her employer met with the Flemish federal minister Yves Leterme to get assurances that she would keep her worker's social status during the forced leave. Naima returned to work few days later, encouraged by the support expressed from several organizations and personalities, including the federal integration minister Marino Keulen. The case gained public attention. However, the enterprise Remmery continued to receive threat letters allegedly by the extreme-right organisation Nieuw Vrij Vlaanderen.

Migrants, Asylum Seekers and Refugees

In comparison with the previous year, the number of asylum applications has increased by 4 percent with 15 957 applications in 2005 and 15 357 in 2004. The principal countries of origin were the Russian Federation, the Democratic Republic of Congo and Serbia-Montenegro. The level of recognition has also increased in comparison with the previous year. As many as 3 059 applicants were recognized as political refugees, which makes up one-third of the recognition cases in 2004.^{xx}

In December, in the wake of months of political debates, the Council of Ministers finally approved the long-awaited project for a reform of the asylum procedure proposed by the Interior Minister Patrick Dewael in June. The reform has the purpose to simplify and accelerate the asylum procedure. Under the procedure applied before the adoption of the new project, the first decision was taken by the Aliens Office on the basis of both formal considerations (such as whether the applicant had transited through a "safe third country") and substantial considerations (such as whether the claim was "manifestly unfounded"). The General Commissariat for Refugees and Stateless Persons (CGRA) was the second level for a thorough examination of the application. Decisions could be appealed at the Permanent Refugee Appeals Commission (Commission Permanente de Recours des Réfugiés) and at the level of the State Council.

The new procedure introduced a couple of changes. First, the Aliens Office is to be stripped of its decision-making functions in the asylum process. Instead, the General Commissariat for Refugees and Stateless Persons is to be entrusted with the first-instance examination of applications. Second, the new procedure establishes the functions of a specific council, *Conseil du contentieux des étrangers* (CCE), as an independent judicial institution made up of 32 magistrates. The decision-making process is foreseen to last one year maximum compared with the waiting period of three to four years within the current procedure. The UN High Commissioner for Refugees (UNHCR) lauded the project. Third, the reform envisages subsidiary protection for cases that do not fall under the Geneva Convention. The beneficiaries will enjoy rights similar to those of other refugees with the only exception that their right to stay will be extended

each year for the duration of five years. With regard to family reunification, the new reform imposes some new restrictions. The minimum age for someone established in Belgium to be joined by his/her spouse has been increased from 18 to 21 years and a proof for sufficient resources to support other family members needs to be provided. The control period is to be three years instead of 15 months.

Throughout the year, before the approval of the asylum reform, the asylum and immigration policies continued to be characterized by two major shortcomings. First, Belgium applied a restrictive interpretation of the criteria for refugee status. Second, there were no legal provisions regulating the granting of subsidiary protection to persons who did not meet these criteria, but who were in need of protection for humanitarian reasons.

- In April, more than 30 Kurds went on a hunger strike in a church in Brussels for having received a negative answer to their asylum application. They invoked the situation of Kurds in Turkey and asked for regularization of their status. The interior minister stated that hunger strikes should not be accepted as means of pressure. He asked the strikers to suspend their action and to seek recourse with Permanent Refugee Appeals Commission. Several parliamentarians called for the appointment of a mediator, which was not accepted by the interior minister. After nearly a month, the interior minister had a meeting with the strikers to promise that their asylum applications will be re-examined and that the order for them to leave the territory of the country will be suspended for two months.
- In April, the Correctional Tribunal of Antwerp condemned the Belgian state for lengthy proceedings of 7 years on the asylum application of an Iraqi Kurd. His demand was turned down in 1999. Consequently, he appealed with CGRA. The state had to pay indemnities at the amount of 6 250 euro.
- On 9 June, the first-instance tribunal of Brussels condemned the Belgian state demanding it to issue urgently a provisional residence permit to Martin Ebale Zam, a contemporary choreographer of Cameroon origin, to enable him to go to Germany on 11 June and represent Belgium in an international dance festival. His demand for asylum was refused, and his expulsion was suspended due to the appeals procedure before State Council. However, his status remained unresolved for the last 4 years. In the meantime, a press campaign was launched against him in his country of origin due to his homosexuality, which is subject to imprisonment from 6 months to 5 years according to the criminal code in Cameroon.
- In September, Dédé Mutumbo Kazadi, his wife and child of three months were arrested while presenting to the Aliens' Office after having been summoned there for some paper formalities. He was one of the leading figures in the Union for Defense of People without Documents (*Union pour la Défense des Sans-Papiers - UDEP*). Dédé Mutumbo Kazadi and his family were sent to the closed centre 127bis, but were released after 12 days of detention. During this time NGOs and civil groups organized several public manifestations in protest against the measure.

There were six closed asylum reception centers, which were administered by the Aliens' Office under the authority of the Ministry of Interior. Two of the centers were located at the border. One of these was the INAD center at the Brussels airport, where "non-admissible" asylum seekers were detained before they were returned to their countries of origin or departure, and the other one was the transit center 127, where foreigners who lacked documents necessary to enter the country and apply for asylum were detained. The other four centers, which were located in different regions of the country, accommodated immigrants who were waiting for their documents to be processed.

Arrests and forcible deportation of asylum-seekers and immigrants continued to be a serious issue. In July and August, on demand of the Aliens' Office more than 60 people were arrested at the closed centers managed by the Federal Agency for the Reception of Asylum Seekers (FEDASIL). A protocol of cooperation had been concluded between FEDASIL and the Aliens' Office to put in place the expulsion policies. NGOs severely criticized the situation pointing to the breach of confidence towards services that were otherwise expected to meet the social needs of foreigners. For 15 days starting in mid-August, some asylum-seekers, undocumented people and their sympathizers had occupied the building of the Saint-Christophe Basilica in the town of Charleroi to demand the discontinuation of these policies. Following these protests, the Aliens Office promised to apply moratorium on the protocol concluded with FEDASIL.

- In December, a Mongolian journalist Eredhenand (Hanà) Tesernsodnom and her son were forced back to their country. The deportation took place despite the fact that her appeal had been filed with the Court of Cassation and was still under consideration. Both the Belgian Association of Professional Journalists and the International Federation of Journalists voiced their concerns about the safety of the journalist and her son back in their country.^{xxi}

Following the conviction in December 2003 of four law enforcement officials who caused the death of a Nigerian asylum-seeker during her forcible deportation, the interior minister initiated an independent commission led by Professor Vermeersch. The commission began its work on evaluating the methods used during forcible deportation of foreigners in January 2004 and presented its report to the Committee of the Interior of the Senate on 2 February 2005. The report proposed the creation of a permanent commission in charge of analyzing deportation policies on an ongoing basis. The CELCR defined the report as both satisfactory and disturbing at the same time. On one side, the report came up with a number of concrete recommendations that could lead to lowering violence during forcible deportations. On the other side, the CELCR identified several points in violation of some fundamental human rights such as the proposal for time-unlimited detention at closed centers.^{xxii}

The detention of accompanied and unaccompanied minors remained a pressing human rights problem. According to the statistics published by the Aliens' Office, some 512 unaccompanied minors asked for asylum in 2005.^{xxiii} In July, FEDASIL and Child Focus published a study of the precarious situation of unaccompanied minors asking for asylum for the period from 1 January 2003 until 1 September 2004.^{xxiv} In the period studied, 683 non-accompanied minors were registered; out of them, 161 had disappeared. Since May 2004, a new framework provides for guardianship services for unaccompanied minors. In March 2005, the Federal Service of Justice launched a campaign to recruit tutors for the envisaged guardianship services. In June, the Minister of Social Integration inaugurated a center in Steenokkerzeel for unaccompanied minors. The center has the capacity to house 50 children and is the second one after the opening of a center in Neder-over-Heembeek in August 2004.

ⁱ Projet de loi apportant des modifications diverses au code d'instruction criminelle et au code judiciaire en vue d'améliorer les modes d'investigation dans la lutte

contre le terrorisme et la criminalité grave organisée (Doc. Parl. Chambre 2055/001), www.lachambre.be

ⁱⁱ Ligue des droits de l'homme, *Méthodes particulières d'enquête: un projet de loi dangereux pour les droits fondamentaux*, of 1 December 2005, at <http://www.liguedh.be>

ⁱⁱⁱ Text of the law in *Moniteur Belge* of 30 December 2005.

^{iv} The introduction to the first bill (*Proposition de loi visant à accorder aux journalistes le droit au secret de leurs sources d'information*, www.lachambre.be) referred to a case from 2002, in which the Tribunal of First Instance of Brussels ordered two journalists to pay EUR 25 for every hour they continued to refuse to disclose their sources for an article published in the Flemish-language newspaper *De Morgen*. The draft was analyzed within the Justice Committee but was not taken up for further debate.

^v *Projet de loi relatif à la protection des sources journalistiques*. The timeline of the law adoption, amendments and final text can be found at www.lachambre.be.

^{vi} *Rapport fait au nom de la Commission de la Justice par Tony Van Parys*, 10 March 2005, www.lachambre.be

^{vii} Article 4, *Loi relative à la protection des sources journalistiques*

^{viii} International Federation of Journalists, *European Journalists Welcome « Landmark Victory » in Belgium for Protection of Sources*, dated 21 March 2005, at www.ifj.org

^{ix} Press release by Reporters without Borders, *Police question two journalists in new attack on confidentiality of sources*, dated 27 January 2005, www.rsf.org

^x Proposition de résolution relative aux statuts des journalistes et de rédactions permettant de garantir l'exercice optimal de leur liberté d'information et de leurs autres missions démocratiques de service public, www.lachambre.be

^{xi} Letter dated 12 December 2005 to the members of Senate by Association Générale des Journalistes Professionnels de Belgique – AGJPB, at www.agjpb.be

^{xii} Council of Europe Resolution 1492 (2001) as quoted in Resolution 1301 (2002), at <http://assembly.coe.int>.

^{xiii} Council of Europe Doc. 10648 dated 8 July 2005, *Language problems in access to public health care in the Brussels-Capital region in Belgium*, <http://assembly.coe.int>

^{xiv} Act of 20 January 2003 reinforcing the legislation against racism, published in *Moniteur Belge*, 12 February 2003

^{xv} *Rapport Annuel 2004 du CELCR*, June 2005, www.antiracisme.be

^{xvi} *The use of racist, anti-Semitic, and xenophobic arguments in political discourse*, authored by Jean-Yves Camus, ECRI, March 2005

^{xvii} Quotation from ECRI's report, *ibid*.

^{xviii} Project de loi modifiant la loi du 28 novembre 2000 relative à la criminalité informatique, la loi du 30 juin 1994 relative aux droits d'auteur et aux droits voisins, et la loi du 23 mars 1995 tendant à réprimer la négation, la minimisation, la justification ou l'approbation du génocide commis par le régime national-socialiste allemand pendant la seconde guerre mondiale, www.lachambre.be

^{xix} The full text of the judgement can be found at <http://users.skynet.be/suffrage-universel/be/kirjugement.htm>

^{xx} *Le Soir*, 6 January 2006

^{xxi} See Press Service dated 13 December 2005 at www.ifj.org

^{xxii} Centre pour l'égalité des chances et la lutte contre le racisme, Press Release of 2 February 2005, www.antiracisme.be

^{xxiii} Office des Etrangers, statistics at <http://www.dofi.fgov.be/fr/1024/frame.htm>

^{xxiv} *Le profil et le trajet des demandeurs d'asile mineurs d'âge non accompagnés en Belgique*, FEDASIL and Child Focus, at <http://www.fedasil.be/home/attachment/i/6313>