

# HUMAN RIGHTS

*w i t h o u t f r o n t i e r s*

*I n t e r n a t i o n a l*



Avenue Winston Churchill, 11/33 - B-1180 Brussels.  
Phone: 32 2 3456145 - Fax: 32 2 3437491  
Bank account: 310-1361299-87 (Banque Bruxelles Lambert)  
Website: <http://hrwf.net> - Email: [info@hrwf.net](mailto:info@hrwf.net)



## *HUMAN RIGHTS IN BELGIUM*

**Human Rights Without Frontiers International**

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*Human Rights Without Frontiers International* (HRWF Int'l) is a non-governmental organization with an objective to promote democracy, the rule of law and human rights in a global perspective. HRWF Int'l has branches in Belgium, China, Nepal, Bhutan and the US. and cooperates with associate member organizations in Armenia, Bulgaria, Georgia, Iraq, Japan, Russia, etc.

HRWF Director: Willy FAUTRE

Human Rights Without Frontiers International  
Avenue Winston Churchill 11/33  
1180 Brussels, Belgium  
Tel: +32-2-3456145 - Fax: +32 2 3437491  
Email: [info@hrwf.net](mailto:info@hrwf.net)  
Website: <http://www.hrwf.net>  
Bank ING/ Bank account number: 310-1363005-47  
IBAN: BE22 3101 3630 0547  
BIC: BBRUBEBB

This report was written by **Stijn SMET** for *Human Rights Without Frontiers International*, with exception of chapters 1, 11, 12 and 14.

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## TABLE OF CONTENTS

1. SUMMARY .....	1
2. ASYLUM SEEKERS.....	3
3. TRAFFICKING IN HUMAN BEINGS.....	7
4. RACISM AND XENOPHOBIA.....	10
5. DETENTION CONDITIONS.....	14
6. WOMEN’S RIGHTS .....	16
7. CHILDREN’S RIGHTS.....	21
8. LGB RIGHTS.....	22
9. POVERTY .....	24
10. LINGUISTIC ISSUES .....	26
11. TRADE UNION RIGHTS .....	30
12. RELIGIOUS INTOLERANCE AND DISCRIMINATION .....	31
13. CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS .....	34
14. RECOMMENDATIONS .....	40



## 1. Summary

This 42-page report intends to shed light on some issues that directly violate Belgium's commitments under international human rights law, and show recent trends and developments that are of concern to *Human Rights Without Frontiers Int'l* (HRWF Int'l) and other non-governmental organizations in Belgium dealing with human rights issues. The areas addressed are: political asylum; human trafficking; racism and xenophobia; detention conditions; rights of women, children, and the gay, lesbian and bisexual minorities (LGB); poverty; linguistic issues; religious intolerance and discrimination; and case law of the European Court of Human Rights in 2007 as far as it concerns Belgium

Amendments to the 1982 **asylum** legislation have brought about important changes to the Belgian asylum system for example by providing 'subsidiary protection' for asylum seekers not usually recognized by the Geneva Convention, and legal confirmation that unaccompanied minors will no longer be held in closed asylum centres – a practice that had resulted in a high level of traumatising among child asylum seekers. At the same time, however, a new appeals procedure was introduced that was criticized by the UNHCR for seriously limiting the right to defence of asylum seekers on appeal.

The long-time problem of seriously substandard conditions in closed detention centres for asylum seekers remained unresolved, with the majority of asylum seekers suffering from psychosomatic problems. The conditions have been heavily criticized both by the UNHCR and *Médecins Sans Frontières*. Accompanied child asylum seekers continued to be held in closed asylum centres even for months.

Conditions in **detention** Belgium in general are deemed as substandard. While a 2005 law formally guarantees detainees the basic rights in line with international standards, local NGOs have criticized that the regulations have remained a dead letter. The main problems stem from an aged infrastructure, overpopulation caused mainly by the large number of pre-trial detainees (over 40% of the prison population), and a lack of personnel and resources. Overcrowding has led to increased insecurity and shortage of all resources. Belgium has been criticised by the Council of Europe's Committee for the Prevention of Torture for the substandard conditions in its detention facilities on four separate occasions.

A 2005 law designed for **combating human trafficking** for the first time introduced a definition of the term 'human trafficking' in Belgian law. However, the law is partly vaguely worded and is not completely in line with the Council of Europe standards. A September 2006 law offers victims of human trafficking the opportunity to obtain permanent residence permits in exchange for assistance in initiating criminal proceedings against traffickers – but only if the proceedings lead to a conviction or if the crime was committed under aggravating circumstances, not to primarily protect the victims. Fortunately, an unofficial so-called STOP-procedure provides additional protection to victims of human trafficking.

Belgium lacks adequate data collection mechanisms to clearly indicate the level of **racial discrimination** in society, but several reports, general statistical data and anecdotal evidence demonstrate a picture of a deep-rooted presence of racism. Information from prosecutors' offices shows that the number of racist crimes has steadily risen in the past years; the number of racially motivated cases dealt with by the offices has increased from 722 in 2004, to 825 in 2005, and 965 in 2006.

While well over a third of migrants interviewed in a 2006 survey stated having experienced discrimination in several important sectors of life such as education and employment, the most serious problems are probably faced by individuals of non-EU ethnicity in finding employment; nearly half of

the interviewed Belgian employers openly admit that they would rather not hire a person not originating from the EU.

On the positive side, a May 2007 law brought about improvements to the legal framework against racism and discrimination by increasing protection to victims of discriminatory acts, by aggravating sentencing policies in racially motivated cases, and, most importantly, by shifting the burden of proof from the victim to the perpetrator.

Despite recent legislation prohibiting **discrimination based on gender**, women are still being discriminated against in practice, especially in the labour market and the political sphere. The hourly wage gap across all sectors of employment is 13% to the disadvantage of women – with female clerks ranking worst, earning 30% less than a man – and women face bigger problems than men getting promoted. Women are severely underrepresented in all areas of the political domain, making up about 30-37% of the representatives in the different chambers of parliament.

Despite government initiatives to tackle the problem of **domestic violence**, an estimated 20% of women in Belgium have fallen victim to physical or other abuse by their partner. In the 45 publicized cases of violence against women HRWF Int'l looked into, the average conviction of the perpetrator was six months of imprisonment and a fine of EUR 550.

A UNICEF estimate of the number of children falling victim to domestic violence in Belgium is 26,000 to 170,000. The French Community *Service SOS Enfants* statistics showed 2,500 children found to have been maltreated, and *Kind en Gezin*, the Flemish public child assistance institution, cited a figure of 6,147 children having suffered from maltreatment and/or neglect in 2006. According to the Flemish Children's Rights Commissioner, an important hindrance in fighting maltreatment of children is the fact that 74% of adult Belgians accept corporal punishment by parents.

Following the 2007 general elections, there have also been initiatives to move away from the youth delinquency system, including proposals that could be in violation of Belgium's international human rights commitments, including lowering the age of criminal responsibility to 16.

Belgian laws concerning the protection of the rights of **gay, lesbian and bisexual** persons (LGB) are among the most progressive in the world: all forms of discrimination based on sexual orientation is prohibited; same-sex marriages are legal and on equal footing with heterosexual marriage; and same-sex couples are allowed to adopt children. In practice, however, adoption by same-sex couples is very difficult, and research has shown that LGB still experience discrimination and intolerance at work. While there is a general consensus that LGB should be able to lead their life the way they see fit, this acceptance rate decreases noticeably when specific acts concerning LGB 'life style' are at issue, especially adoption by gay people.

In 2007, 14.7%, of all Belgians were living in **poverty**. The Federal Ministry of Economics statistics show that the general poverty risk in Belgium was 15.2% in 2005, with the risk rising to 31.2% for single parents. An alternative study that used both monetary and non-monetary criteria estimated that 12% of all Belgian households were living in a state of so-called multi-aspectual poverty. The scarce amount of social rental houses was a central problem with regard to poverty, as was costs related to education for children.

With regard to **linguistic issues**, it must be stressed that Belgium has signed the Framework Convention for the Protection of National Minorities but has failed to ratify it. Ratification has been hindered by differing views on the concept of 'national minority' among the political actors and by the complexity of the Belgian political institutions – seven parliamentary assemblies must approve it. The Flemish government and parliament claim that the only minority in Belgium is the German-speaking minority, and only within the Walloon region.

The Parliamentary Assembly of the Council of Europe (PACE) has followed the opinion of its Venice Commission and defined as minorities in Belgium: at state level, the German-speaking community; at regional level, the French-speakers in the Dutch-language region and in the German-language region, and the Dutch-speakers and German-speakers in the French-language region. The PACE has also warned Belgium against excluding from application upon ratification groups that are not officially minorities but are in danger of losing their identity.

The Belgian constitution guarantees basic **religious freedom**, including freedom of worship, and non-interference by the state in the appointment of religious clergy. However, the system of relationships between the state and religions in Belgium is historically rooted in a specific and inherently discriminatory system of hierarchy of religions that differentiates between state-recognized and non-recognized religions, with the recognized religions enjoying significant monetary and other privileges. In addition, many new religious movements have been stigmatized as harmful by a parliamentary enquiry commission, ‘anti-sect’ groups and the media. Their members complain about libel, victimisation in the neighbourhood, at the workplace and at school, and other damage to their reputation, economic and private life (in cases of divorce, child custody). Relations between the state and the representative bodies of the Muslim community continue to be very strained.

**Labour rights** are officially guaranteed in Belgium. While workers have the right to form and join unions of their choice without registration, every major labour conflict has been accompanied by attempts by authorities to force trade unions to acquire legal status. Workers of small companies are generally denied the right to collective representation. The EU directive on workers’ information and consultation rights that was due to be transposed into national law by March 2005, and is expected to bring in changes in that regard, had still not become part of Belgian law by the end of 2007. During disputes, employers generally prefer to pay out legal entitlements rather than respect the required redundancy procedure or reinstate workers who have been fired for their union activities. Moreover, employers have been trying for several years to petition the courts to ban certain forms of strike-related activities, such as picketing. Meanwhile, the Belgian government has failed to amend its legislation to prevent recourse to the law in ways that could undermine legitimate use of the right to strike.

During 2007, the **European Court of Human Rights** (ECtHR) delivered **judgments** on a number of cases lodged against Belgium. It found Belgium in violation of the fundamental human rights and freedoms of its citizens on thirteen occasions, whereas one case ended up in a friendly settlement. All but one of the cases in which the court found against Belgium concerned the right to a fair trial, most of them the issue of concluding judicial proceedings within ‘reasonable time’ but also the right to defence and an effective remedy, and access to a court. One judgment against Belgium concerned freedom of expression and journalistic confidentiality. In one case, for example, the applicant’s case had been lingering in the Belgian judicial system for over 20 years.

## **2. Asylum seekers**

### **2.1. Legal framework**

The Law Amending the Law of 15 December 1980 Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners, was passed by the Belgian parliament on 15 September 2006,<sup>1</sup> introducing some important changes to the Belgian asylum system. This law became fully operational on 1 June 2007.

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<sup>1</sup> Law of 15 September 2006 Amending the Law of 15 December 1980 Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners, *Belgisch Staatsblad*, 6 October 2006.

Firstly, concerning the issue of family reunification with a spouse, the new law raised the required age of both spouses from 18 to 21. However, the statutory age remains 18 in cases in which the marriage - or registered partnership that is equated to marriage under Belgian law - already existed prior to the arrival in Belgium of the foreigner requesting family reunification.<sup>2</sup>

Secondly, the new law generally requires persons wishing to move to Belgium for the purpose of family reunification to deliver proof of the fact that the person already living in Belgium is able to support him/herself and the family members. This means proof of adequate housing, health insurance and sufficient, stable and regular income to support both him/herself and the family members for whom the family reunification is requested, in order to prevent the applicant from causing economic burdens on public governments.<sup>3</sup>

Thirdly, the new law introduced the system of so-called subsidiary protection which is designed to grant asylum to those people to which article 1 of the 1951 Geneva Convention does not apply and who can therefore not be granted refugee status, but who can nevertheless prove that returning to their country of origin would place them at a real risk of 'serious damage'.<sup>4</sup> 'Serious damage' is defined in the law as (i) the death penalty or execution; (ii) torture and inhuman or degrading treatment or punishment; or (iii) serious threats to the life of a civilian as a result of arbitrary violence in the case of an international or internal armed conflict. However, under the new law the status of persons enjoying subsidiary protection, unlike the status of refugee, needs to be renewed every year for a consecutive five years before a permanent residence permit is granted.<sup>5</sup>

Fourthly, the new asylum law provides for institutional changes, making the General Commissariat for Refugees and Stateless Persons the primary decision-making body for asylum requests and introducing a new appeals body, the Council for Foreigner Disputes (*Raad voor Vreemdelingenbetwistingen*). Concerning the latter, the UNHCR has already expressed its doubts about the adequacy of the appeals procedure, noting that the strictly written form of the procedure and the lack of investigative competencies of the Council for Foreigner Disputes seriously limits the right to defence of asylum seekers on appeal.<sup>6</sup>

The fifth and final proposed change to the asylum law, which would have required that each asylum procedure be completed within one year, was eventually not included in the law of 15 September 2006, prompting recommendations from several institutions to the Belgian government to amend the asylum law in order to include in it the said maximum period.<sup>7</sup>

On 12 January 2007 the Belgian parliament passed a second law bringing changes to the Belgian asylum system.<sup>8</sup> This law introduced several changes to the manner in which asylum seekers are received and treated in Belgium.

Firstly, the law represents a shift from financial to material assistance of asylum seekers: asylum seekers will be granted housing, medical, psychological, social and legal counselling/assistance, training and a *per diem*, but will no longer receive a monthly allowance. The second important change

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<sup>2</sup> Article 6 of the Law of 15 September 2006.

<sup>3</sup> Ibid. However, the proof of adequate housing and health insurance is not required if the family relations already existed prior to the arrival of the foreigner on Belgian territory and if the application for family reunification is made within one year of the decision granting the foreigner refugee status.

<sup>4</sup> Article 26 of the Law of 15 September 2006.

<sup>5</sup> Ibid.

<sup>6</sup> UNHCR, "Nota aan de politieke partijen betreffende de bescherming van vluchtelingen, personen die de subsidiaire bescherming genieten en staatslozen in België", Brussels, 30 March 2007.

<sup>7</sup> See e.g. Kinderrechtencommissariaat, "Heen en Retour. Kinderrechten op de Vlucht", September 2007, [http://www.kinderrechten.be/IUSR/documents/volwassenen/precair/KRC07\\_doss\\_heen\\_screen.pdf](http://www.kinderrechten.be/IUSR/documents/volwassenen/precair/KRC07_doss_heen_screen.pdf) (accessed 10 October 2007).

<sup>8</sup> Law of 12 January 2007 concerning the reception of asylum seekers and certain other categories of foreigners, *Belgisch Staatsblad*, 7 May 2007.

introduced by this law is the legal confirmation that unaccompanied minors will no longer be held in closed asylum centres but in separate so-called Observation and Orientation Centres.<sup>9</sup> The regime of these open centres is designed to offer the most appropriate reception of the particularly vulnerable category of unaccompanied minors.<sup>10</sup>

## 2.2. Statistical data on asylum seekers in Belgium

The number of asylum seekers in Belgium in 2007 did not differ much from 2006. In 2007, 11,115 people requested asylum, compared to 11,587 in 2006.<sup>11</sup> The top ranking countries of origin of asylum seekers were Russia (including Chechnya) and Serbia (including Kosovo), followed by Armenia, the Democratic Republic of the Congo and Slovakia. Of the 5,800 asylum requests that were decided on by the responsible authorities in Belgium during the first eight months of 2007, 1,170 resulted in the granting of refugee status and 193 in the so-called subsidiary protection status, while the remaining 4,437 asylum requests were refused. The backlog of asylum requests, a major problem in the past in Belgium, continued to decline over the course of 2006 and 2007. While the backlog still amounted to more than 10,000 files on 1 January 2006, this figure declined to 6,124 cases by 1 January 2007 and continued to steadily go down over the course of 2007 to reach 5,444 cases as of 1 September 2007.

## 2.3. Conditions in closed detention centres

*Médecins Sans Frontières* (MSF) issued a comprehensive report in 2007 on the conditions in closed detention centres for asylum seekers in Belgium. The report depicts children suffering from psychological problems – including depression, bed wetting, anxiety and even suicidal tendencies – due to their ‘imprisonment’ in closed detention centres, which are far from a natural environment for children to be brought up in: the children are deprived of contacts with other children of their own age and education, which are necessary to their development.

MSF moreover reported on the presence in the visited closed asylum centres of nearly a dozen pregnant women and seriously ill people, including nine people infected with AIDS – but also people suffering from other diseases such as diabetes – for which no proper medical treatment can be provided in such facilities. The report concludes that the conditions in closed detention centres in Belgium are terrible, with nearly all the visited asylum seekers suffering from psychosomatic problems such as headaches, sleeping problems and loss of appetite, mainly due to stress. In coming to this conclusion, the MSF report confirms the opinion of the UNHCR, which stated in a March 2007 letter to the Belgian political parties that “*the detention of asylum seekers is not desirable in any case, especially when it concerns vulnerable persons such as children, unaccompanied minors or people requiring medical or psychological care. [...] [D]etention must, in principle, be avoided* (translation by the author)”.<sup>12</sup>

## 2.4. Children as asylum seekers

With regard to the treatment of minor asylum seekers under the Belgian asylum system, a differentiation needs to be made between unaccompanied and accompanied minors.

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<sup>9</sup> Article 41 of the Law of 12 January 2007.

<sup>10</sup> Centre for Equal Opportunities and Opposition to Racism, “Centra voor observatie en oriëntatie: op weg naar een effectieve uitweg voor de niet begeleide minderjarige vreemdelingen uit de gesloten centra?”, [http://www.diversiteit.be/CNTR/NL/migrations/advice\\_and\\_recommendations/niet-begeleide+minderjarigen](http://www.diversiteit.be/CNTR/NL/migrations/advice_and_recommendations/niet-begeleide+minderjarigen) (accessed 10 October 2007).

<sup>11</sup> See [http://www.fedasil.be/home/asylum\\_year](http://www.fedasil.be/home/asylum_year) (accessed 5 October 2007).

<sup>12</sup> UNHCR, “Nota aan de politieke partijen betreffende de bescherming van vluchtelingen, personen die de subsidiaire bescherming genieten en staatslozen in België”, Brussels, 30 March 2007.

#### 2.4.1. Unaccompanied minors

In 2007, 422 unaccompanied children were hosted in federal centres, Red Cross centres and by local organizations and institutions.<sup>13</sup>

On 12 October 2006, the European Court of Human Rights (ECtHR) held that Belgium had violated articles 3 and 8 of the European Convention on Human Rights (ECHR) for the way its authorities had treated the detention and deportation of an unaccompanied minor from the Democratic Republic of Congo (DRC).<sup>14</sup>

- The case concerned Pulcherie Mubilanzila Mayekaa, a Congolese woman who had applied for asylum in Canada and wanted her five-year-old daughter Tabitha, who was still living in the DRC, to join her there. Tabitha flew by plane to Canada through Brussels, Belgium, accompanied by her uncle. However, at the Brussels airport, officials apprehended Tabitha and took her to a closed detention facility on the grounds that she was not allowed to enter Belgian territory and because she was not accompanied by her parents. Tabitha was held detained at the centre for two months before she was deported back to the DRC. Only hours after the plane had taken off, Belgian authorities received information from the Canadian embassy that the mother had been granted refugee status and permanent residence in Canada and was consequently entitled to family reunification with her daughter. Therefore, the Belgian authorities should not have deported Tabitha without awaiting the decision in her mother's asylum procedure in Canada. Moreover, although Tabitha should have been accompanied by a professional adult during the return flight to the DRC, and met by a family member upon arrival in DRC, she had to travel alone and no one met her at the airport upon arrival due to insufficient attempts by Belgian authorities to assure the presence of a relative there. As a result, Tabitha had to wait several hours at the airport before accommodation was improvised for her by a DRC government official.

In the above-mentioned case the ECtHR found Belgium in violation of article 3 of the ECHR (prohibition of torture and other cruel, inhuman or degrading treatment) and article 8 (right to family life). According to the court, Tabitha's detention for two months in a centre that was designed for the detention of adults, without proper counselling and educational assistance, and Belgium's failure to provide adequate preparation, supervision and safeguards for her deportation, both amounted to inhuman treatment. The fact that Belgian authorities did not await the message from the Canadian government concerning her mother's refugee status only aggravated the situation.

In addition, the ECtHR cited violation of article 8 (right to family life) since the Belgian government had failed to facilitate family reunification to an unaccompanied minor in a very vulnerable situation, and had deported the girl without ensuring that Tabitha would be looked after upon arrival in Kinshasa.

Since Tabitha's case, Belgian legislation concerning the detention and deportation of unaccompanied minors has been amended. The Programme Law of 24 December 2002, a circulation letter of 15 September 2005 and the aforementioned law of 12 January 2007 significantly improved with regard to the situation for unaccompanied minors, up to a point where these children are actually provided better protection under the law than accompanied minors.

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<sup>13</sup> See <http://www.fedasil.be/fr/home/table2/> (Accessed 6 February 2008)

<sup>14</sup> *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, application no. 13178/03, 12 October 2006, at <http://cmiskp.echr.coe.int/tpk197/portal.asp?sessionId=5006585&skin=hudoc-en&action=request>

### 2.4.2. Accompanied minors

The situation of accompanied minors remains highly problematic in Belgium. Especially the continued detention of accompanied minors in closed asylum centres is a major problem. In 2006, the most recent year for which complete statistics are available, 766 children were being detained in closed detention centres, while awaiting their deportation.<sup>15</sup> During the summer of 2007, one specific case of detention of an accompanied minor in a closed detention centre garnered massive media attention.<sup>16</sup>

- Angelica, an eleven-year-old girl from Ecuador, was detained in a closed centre along with her mother for one month, awaiting their scheduled deportation. They were arrested on 30 June 2007 for staying in the country illegally since 2003 and subsequently taken to the closed detention centre 127 bis in Steenokkerzeel. The authorities were so negligent of their situation that they even forgot that the mother and the daughter were due to appear before the court to defend their case. In the meantime, the mother's lawyer indicated that the situation of Angelica was troubling and that she was showing signs of depression. Their lawyer later reported of ill-treatment of Angelica's mother by the police. She had reportedly been pinned to the ground with a knee on her chest, as a result of which she bore bruises on her knees and chest and marks of cuffs on her wrists and ankles. Eventually, the Brussels court ordered Angelica's and her mother's release from the closed detention centre, but upheld the decision to deport them. In December, the Aliens' Office decided to regularize her situation. Her last recourse was to appeal to the Council for Foreigners Disputes.

Yet, Angelica and her mother were reasonably lucky in the sense that due to the massive media attention, support by NGOs and pressure by the Ecuadorian government, they were released relatively quickly in comparison to other asylum seekers, some of whom spend several months with their children in closed detention centres.

## **3. Trafficking in Human Beings**

### 3.1. Legal framework

#### *3.1.1. The Law of 10 August 2005*

The law of 10 August 2005 combating human trafficking for the first time introduced a definition of the term 'human trafficking' in Belgian law.<sup>17</sup> According to the new law, the crime of human trafficking entails two elements: The first element is a type of action involving movement of a person, namely the recruitment, transportation, transfer or accommodation of a person or the exchange or transferral of control over this person. The second element is the aim of this action, namely to (i) use this person for prostitution or for other acts of sexual exploitation, including child pornography but not adult pornography, (ii) to exploit him/her as a beggar, (iii) to employ this person in circumstances that contravene human dignity, (iv) to harvest this person's internal organs, or (v) to have this person commit a crime against his/her will.

This definition of the crime of human trafficking differs from the one provided by the 2005 Council of Europe (CoE) Convention on Action against Trafficking in Human Beings,<sup>18</sup> which has been signed but not ratified by Belgium by the end of 2007. The Belgian definition adds objective (ii) and (v) to the CoE definition and lacks what is generally considered to be a constitutive element of the crime of human trafficking, namely the use of certain means to commit the crime, such as the threat or use of

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<sup>15</sup> *De Standaard*, "Doorbraak door Angelica", 31 July 2007.

<sup>16</sup> See e.g. *De Standaard* of 24, 25, 30 and 31 July 2007.

<sup>17</sup> Law of 10 August 2005 amending several articles in order to strengthen the fight against human trafficking, smuggling of human beings and the practice of 'huisjesmelkerij', *Belgisch Staatsblad*, 2 September 2005.

<sup>18</sup> Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005.

force, coercion, the abuse of power or the abuse of the vulnerability of the trafficked person.<sup>19</sup> The Belgian law has thus shifted the focus away from the abuse of the victim, targeting his/her exploitation instead.<sup>20</sup>

The 2005 law contains a number of articles that can rightly be criticised. Firstly, probably the most regrettable deficit of the law is the above-mentioned absence of the prerequisite of coercion or the use of force as one of the constitutive elements of the crime of human trafficking. Secondly, the law criminalises human trafficking for purposes of sexual exploitation but the *travaux préparatoires* fail to include adult pornography as one of those purposes, in contravention of European standards.<sup>21</sup> Thirdly, concerning economic exploitation, the term ‘human dignity’ is not further explained, which might lead to confusion. However, the *travaux préparatoires* provide some insight into the matter, indicating that the absence of a wage or a disproportionately low wage for the delivered work constitutes economic exploitation in violation of human dignity.<sup>22</sup> The problem with this approach is that it, in combination with the absence of a prerequisite of coercion or use of force, could lead to a redefinition of human trafficking as a mere infraction on social legislation, e.g. in cases where an illegal alien voluntarily accepts a wage lower than what is European average.

In this matter, a 2007 decision by the Court of Appeal of Antwerp concerning human trafficking stated in a case of Romanian citizens employed illegally in Belgium that working for a lower wage than what is foreseen by law, and for more hours a week than what is legally allowed, was in itself insufficient to consider this employment to be in violation of human dignity, *inter alia* on the grounds that the Romanians involved did not oppose their working conditions, wage or the accommodation provided by their employer.<sup>23</sup> As a result, according to the court, it could not be proven that the accused had exploited the factual situation of the Romanian citizens as they were able to enjoy higher standards of employment in Belgium compared to conditions in their home country. The accused were consequently deemed innocent of the crime of human trafficking.

Finally, the issue of beggary merits some remarks: The exploitation of a person for beggary is essentially a particular form of economic exploitation and therefore redundant in the law. Moreover, concerns have been raised that the explicit inclusion of exploitation for beggary as a type of human trafficking has been led by the ulterior motive of combating public inconvenience caused by seeing beggars in the streets.<sup>24</sup>

### 3.1.2. The law of 15 September 2006

The Law of 15 September 2006 Amending the Law of 15 December 1980 Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners includes a number of articles that are intended to increase protection to victims of human trafficking by granting them, under set conditions, the right to stay on the Belgian territory.<sup>25</sup> This law, which entered into force on 1 June

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<sup>19</sup> Threat or use of force, coercion, abuse of power and abuse of the vulnerability of the victim do constitute aggravating circumstances under the new law.

<sup>20</sup> Council of Europe, “Action against trafficking in human beings: prevention, protection and prosecution”, Proceedings of the regional seminar in Oslo on 1-2 November 2006, p. 37, at [http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006\\_Proceedings.pdf](http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006_Proceedings.pdf) (accessed 18 October 2007).

<sup>21</sup> Institute for International Research on Criminal Policy, “Mensenhandel in België. Status questionis, evaluatie en toekomstopties”, December 2006, p. 16, at <http://www.kbs-frb.be/files/db/NL/PUB%5F1637%5FMensenhandel.pdf> (accessed 18 October 2007).

<sup>22</sup> *Ibid.*, p. 17-18.

<sup>23</sup> Court of Appeal of Antwerp, 23 May 2007.

<sup>24</sup> *Ibid.*, p. 21.

<sup>25</sup> Articles 64-68 of the Law of 15 September 2006 Amending the Law of 15 December 1980 Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners, *Belgisch Staatsblad*, 6 October 2006.

2007, offers victims of human trafficking the opportunity to obtain residence permits in exchange for assistance in criminal proceedings against the perpetrators of the crime. Should the proceedings eventually lead to a conviction, or if the crime was committed under aggravating circumstances of threat or use of force, coercion, deception or the abuse of the victim's vulnerability,<sup>26</sup> the crime victim will eventually obtain a permanent residence permit in Belgium.

The reasoning behind granting victims of human trafficking residence permits under these conditions is based on the fact that they have taken serious risks in filing a complaint against the perpetrators and therefore risk reprisals in their home country.<sup>27</sup> However, regrettably, and contrary to recommendations of victims agencies, an objective victim status has not been introduced, which means that all victims of human trafficking, including minors, are required to cooperate with the judicial authorities if they are to obtain a (permanent) residence permit.<sup>28</sup>

Moreover, requiring victims of human trafficking to cooperate with the authorities before granting them permission to stay on the Belgian territory is not in line with a human rights based approach to fight human trafficking. From a human rights perspective it would be more logical to automatically offer protection status to all victims of human trafficking simply because they are victims and not merely in order to persuade them into assisting with the development of a criminal case against the perpetrators.

Fortunately, and contrary to what could be assumed from the foregoing, victims in cases of human trafficking that do not lead to a conviction or in which the mentioned aggravating circumstances do not apply, are not being entirely left in the cold. Within the unofficial so-called STOP-procedure, which is separate from the official procedure, adult victims of human trafficking can still benefit from the advantage of regularisation also in cases that do not lead to the identification or conviction of the perpetrators. The condition for regularisation is that the criminal proceedings have lasted for minimum two years.<sup>29</sup> This unofficial procedure that is not included in the 2005 law should be given an explicit legal basis in order to increase the security and protection of victims of human trafficking that could possibly benefit from the said procedure.

### 3.2. Data on human trafficking in Belgium

On a scale ranging from very low to very high, Belgium was listed as a country with a high incidence of reporting as a transit country, and a very high incidence of reporting as a destination country for human trafficking in the 2006 United Nations Office on Drugs and Crime report, indicating the global patterns on trafficking in human beings.<sup>30</sup> People are trafficked to Belgium primarily from countries such as Nigeria, Brazil, Albania, Bulgaria, Romania and China. Most people only passing through Belgium are usually on their way to the United Kingdom.<sup>31</sup>

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<sup>26</sup> This is the only case in which the prerequisites set for the existence of the crime of human trafficking by the Council of Europe, but abandoned by the Belgian legislator, still play a role.

<sup>27</sup> Council of Europe, "Action against trafficking in human beings: prevention, protection and prosecution", Proceedings of the regional seminar in Oslo on 1-2 November 2006, p. 42, at [http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006\\_Proceedings.pdf](http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006_Proceedings.pdf) (accessed 18 October 2007). The same protection system applies to victims of the crime of smuggling of human beings, albeit only in specific cases.

<sup>28</sup> Institute for International Research on Criminal Policy, "Mensenhandel in België. Status questionis, evaluatie en toekomstopties", December 2006, p. 44, at <http://www.kbs-frb.be/files/db/NL/PUB%5F1637%5FMensenhandel.pdf> (accessed 18 October 2007).

<sup>29</sup> Ibid.

<sup>30</sup> United Nations Office on Drugs and Crime, "Trafficking in Persons: Global Patterns", April 2006, p. 19-20, at [http://www.unodc.org/pdf/traffickinginpersons\\_report\\_2006ver2.pdf](http://www.unodc.org/pdf/traffickinginpersons_report_2006ver2.pdf) (accessed 19 October 2007).

<sup>31</sup> United States State Department, "Trafficking in Persons Report", June 2007, p. 63, <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007); Pag Asa, "Jaarverslag

Research indicates that people are primarily trafficked to Belgium for purposes of forced labour and commercial sexual exploitation, with the latter being more prevalent than the former.<sup>32</sup> However, there are indications that human trafficking for purposes of economic exploitation is starkly on the rise, at least in the Flemish Region.<sup>33</sup> The stark rise in 2006 of this particular type of human trafficking was almost solely due to the significant increase in the number of Brazilian men being exploited in construction business.

Belgium is generally regarded to be fully complying with the core international standards directed at eliminating human trafficking, since it follows a two-pronged approach; maintaining an aggressive law enforcement stance on the one hand, and financing NGOs to provide victims assistance on the other. However, as noted above, the Belgian legal system is criticised for connecting the granting of permanent residence status to victims of human trafficking to the outcome of the criminal prosecution instead of allowing all victims to remain on its territory. Nonetheless, in practice there have been no reported cases of victims of human trafficking being forced to return to their country of origin after a failure to convict traffickers.<sup>34</sup>

In 2006, Belgian authorities investigated 451 cases of human trafficking, leading to convictions in fourteen separate cases; nine on sexual exploitation and five on economical exploitation.<sup>35</sup> Sentenced traffickers generally received one to ten years' imprisonment.<sup>36</sup>

The Belgian federal government finances one NGO that specialises in the support of victims of human trafficking in each region: *Payoke* for the Flemish Region, *Pag-Asa* for the Brussels Region and *Sürya* for the Walloon Region. These NGOs offer assistance to victims in the form of residential or ambulant shelter and guidance; psychosocial and medical aid; and legal and administrative support.<sup>37</sup> In 2006, the three NGOs provided some form of assistance to a total of 445 victims of human trafficking.<sup>38</sup>

## **4. Racism and xenophobia**

### **4.1. Legal framework**

The Law of 10 May 2007 on Combating Certain Forms of Discrimination introduced several changes to the Belgian legal framework against racism and discrimination.<sup>39</sup> Firstly, the new law's field of application was extended in order to offer increased protection to victims of discriminatory acts.

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2006", p. 17, at [http://www.pagasa.be/uploads/documenten/JAARVERSLAG\\_LR.pdf](http://www.pagasa.be/uploads/documenten/JAARVERSLAG_LR.pdf) (accessed 19 October 2007).

<sup>32</sup> United States State Department, "Trafficking in Persons Report", June 2007, p. 63, <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007).

<sup>33</sup> Pag Asa, "Jaarverslag 2006", p. 15, at [http://www.pagasa.be/uploads/documenten/JAARVERSLAG\\_LR.pdf](http://www.pagasa.be/uploads/documenten/JAARVERSLAG_LR.pdf) (accessed 19 October 2007).

<sup>34</sup> United States State Department, *Trafficking in Persons Report*, June 2007, p. 63, at <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007).

<sup>35</sup> *Ibid.*; Pag Asa, "Jaarverslag 2006", p. 22, at [http://www.pagasa.be/uploads/documenten/JAARVERSLAG\\_LR.pdf](http://www.pagasa.be/uploads/documenten/JAARVERSLAG_LR.pdf) (accessed 19 October 2007).

<sup>36</sup> United States State Department, *Trafficking in Persons Report*, June 2007, p. 63, at <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007). For the most recent court cases leading to a conviction, see Court of First Instance Dendermonde, 17 October 2006; Court of First Instance of Antwerp, 13 November 2006; Court of First Instance of Brussels, 28 November 2006; Court of First Instance of Brussels, 17 January 2007. An overview of and links to these cases can be found at [http://www.diversiteit.be/CNTR/NL/human\\_trafficking/jurisdiction/recente/](http://www.diversiteit.be/CNTR/NL/human_trafficking/jurisdiction/recente/).

<sup>37</sup> Centre for Equal Opportunities and Opposition to Racism, "Opvangcentra voor slachtoffers", at [http://www.diversiteit.be/CNTR/NL/human\\_trafficking/centres+victims/](http://www.diversiteit.be/CNTR/NL/human_trafficking/centres+victims/) (accessed 19 October 2007).

<sup>38</sup> United States State Department, *Trafficking in Persons Report*, June 2007, p. 63, at <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007).

<sup>39</sup> Law of 10 May 2007 Combating Certain Forms of Discrimination, *Belgisch Staatsblad*, 30 May 2007.

Secondly, the law further widens the number of crimes for which criminal punishment is increased in case the crime is committed with a discriminatory or racist motive. Thirdly, and most importantly, the new law amends one of the major problems of the old law, in that it introduces a shift in the burden of proof from the victim to the perpetrator.<sup>40</sup> While under the old system the victim of a discriminatory or racist act was required to prove to a certain degree the existence of a discriminatory or racist motive, this is no longer required under the new law. As soon as the victim claims that discrimination or racism is involved, it is up to the alleged perpetrator to disprove these allegations. In other words, discrimination or racism is suspected until proven otherwise.

In December 2007, the NGO *Liga voor Mensenrechten* (League for Human Rights) appealed to the Belgian Constitutional Court, demanding the court to declare article 21 of another law of 10 May 2007, the Law Amending the Law of 30 July 1981 Criminalising Certain Acts Led by Racism or Xenophobia,<sup>41</sup> unconstitutional and in contravention with the ECHR.<sup>42</sup> In the opinion of the league, this article entails an unacceptable limitation to the freedom of expression.<sup>43</sup> While the league deems it necessary to continue criminalising the spreading of hatred through racist speech, it states that “[i]n article 21 of the antiracism law, the mere spreading of images that are based on racial hatred, is also criminalised. The dissemination of unpleasant racist images should not be criminalised, but combated in public debate”.<sup>44</sup>

In April 2007, a Belgian parliamentarian introduced a legal proposal that would outlaw racist, negationist and neo-Nazi organisations. This proposal was a reaction to the increasing phenomenon of parties and concerts organised by racist organisations such as Blood and Honour and *Bloed Bodem Eer en Trouw* (‘Blood Soil Honour and Loyalty’). Such events cannot be preventively forbidden under the current legislation. This proposal of law was massively criticised, even by human rights NGOs such as the ‘League for Human Rights’ for sloppy wordings that pave the way to broad interpretations and thus potentially threaten the existence of any organisation that holds opinions that are in contravention with one or more democratic principles, no matter whether the organisation’s opinions or intentions have an ideological, a religious or a political underpinning.<sup>45</sup> By the end of 2007, the bill had not been discussed, nor voted in the Belgian parliament.

In 2007, the Belgian federal government was expected to finish the development of a comprehensive national action plan against racism. Due to the political crisis and the persistence of government, it had, however, not been accepted by the year’s end.

#### 4.2. Data on racism in Belgium

Although the federal police has recently started keeping records of racist crimes, the lack of adequate data collection mechanisms for the purpose of indicating the level of racial discrimination in society remains a major problem in Belgium. Nevertheless, several reports, general statistical data and anecdotal evidence allow us to sketch a clear picture of the deep-rooted presence of racism in the country.

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<sup>40</sup> Article 28 Law of 10 May 2007.

<sup>41</sup> Law of 10 May 2007 Amending the Law of 30 July 1981 Criminalising Certain Acts Led by Racism or Xenophobia, *Belgisch Staatsblad*, 30 May 2007.

<sup>42</sup> De Morgen, “Liga voor Mensenrechten wil vernietiging antiracismewet”, 4 December 2007. For further information, see the website of the League for Human Rights, at [http://www.mensenrechten.be/main.php?item\\_content=7002](http://www.mensenrechten.be/main.php?item_content=7002).

<sup>43</sup> Article 21 states “punished with a prison sentence of one month to one year and a fine of fifty to one thousand euro, or with one of these punishments alone, is he that, in the circumstances meant in article 444 of the Criminal Code, disseminates images that are founded on racial superiority or racial hatred”.

<sup>44</sup> De Morgen, “Liga voor Mensenrechten wil vernietiging antiracismewet”, 4 December 2007. For further information, see the website of the League for Human Rights, at [http://www.mensenrechten.be/main.php?item\\_content=7002](http://www.mensenrechten.be/main.php?item_content=7002).

<sup>45</sup> See *De Standaard*, 17 April 2007.

On 13 September 2006, Belgium submitted its periodic report to the UN Committee on the Elimination of Racial Discrimination.<sup>46</sup> The UN committee had not yet issued its report on Belgium by the end of 2007.

In August 2007, the European Union Agency for Fundamental Rights (FRA) commented on racism in Belgium in its *Report on Racism and Xenophobia in the Member States of the EU*.<sup>47</sup> In the report, Belgium is categorised in the group of countries in which sanctions for racism are issued, but where they are not very severe or frequent. The report furthermore confirms that the specialised Belgian body, the Centre for Equal Opportunities and Opposition to Racism (CEOOR) received 987 complaints of racism and discrimination over the course of 2006, which represents a slight decrease compared to the figures for the year 2005. The FRA moreover gives the most recent data concerning racist crimes registered by the federal police. In 2005, the Belgian police recorded 1,264 offences under the 1981 Anti Discrimination Law and the 1995 Negationism Law.

Concerning the prevalence of racist crimes in Belgium, information provided to HRWF by the Department of Statistical Analysis of the Belgian Council of General Prosecutors' Offices (*Collège des Procureurs Généraux*) offers valuable insight into the most recent figures gathered by the prosecutors' offices at the first instance courts. The figures show that the number of racist crimes has continued to rise over the course of the past years. While the prosecutors' offices had been confronted with 722 cases of racially motivated crimes in 2004, this figure rose to 825 cases in 2005 and 965 cases in 2006.<sup>48</sup>

The information provided by the Department of Statistical Analysis moreover indicates the state of affairs with regard to racially motivated crimes as of 10 July 2007.<sup>49</sup> At that date, of the 2,512 cases of racist crimes that had been recorded from 2004 to 2006, 1,868 cases (74%) had been filed without suit, 53 cases (2%) had been settled outside or inside of court, and 60 cases (2.5%) had been brought to court.<sup>50</sup>

CEOOR statistics offer a general insight into the existence of racism in Belgium. Over the course of the entire year of 2006, CEOOR received 650 complaints about racist acts.<sup>51</sup> Most complaints were noted in the following sectors of society: employment; media, internet and propaganda; and community life.

A pilot study conducted by the European Monitoring Centre on Racism and Xenophobia on migrants' experiences with racism and xenophobia in the EU confirms that many foreigners suffer from discrimination in all spheres of society in Belgium.<sup>52</sup> Thirty-nine per cent of the interviewed migrants spoke of discrimination at school or other educational facilities; 38% complained of discrimination by the police; 37% reported perceived discrimination in the employment sphere, either at work or in the

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<sup>46</sup> Committee on the Elimination of Racial Discrimination, fourteenth and fifteenth periodic report submitted by Belgium, 13 September 2006, CERD/C/BEL/15.

<sup>47</sup> European Union Agency for Fundamental Rights, "Report on Racism and Xenophobia in the Member States of the EU", at [http://fra.europa.eu/fra/material/pub/racism/report\\_racism\\_0807\\_en.pdf](http://fra.europa.eu/fra/material/pub/racism/report_racism_0807_en.pdf) (accessed 14 October 2007).

<sup>48</sup> 2006 is the most recent year for which figures were available at the time of writing.

<sup>49</sup> This is the most recent date for which figures were available at the time of writing.

<sup>50</sup> No information was provided by the Department of Statistics on the end-result of the trials, since this does not lie within the responsibility of the *Collège des Procureurs-Généraux*. Moreover, cases not included in these statistics found themselves at stages of the procedure during which no final decision on the prosecution had been made and were therefore not mentioned.

<sup>51</sup> Centre for Equal Opportunities and Opposition to Racism, *Annual Report 2006*, June 2007, at [www.diversiteit.be/images/jaarverslag-2006-nl.pdf](http://www.diversiteit.be/images/jaarverslag-2006-nl.pdf) (accessed 8 October 2007).

<sup>52</sup> European Monitoring Centre on Racism and Xenophobia, *Migrants' experiences of racism and xenophobia in 12 EU Member States*. Pilot study, May 2006, at <http://eumc.europa.eu/eumc/material/pub/merx/Migrants-Experiences-web.pdf> (accessed 8 October 2007).

course of applying for a job; 28% of respondents reported discrimination in the course of the closing of commercial transactions or by having been denied access to such transactions; 20% indicated discrimination in (the access to) restaurants or shops; and 18% of the respondents who had been in contact with public institutions complained of discrimination by these institutions.

With regard to racism in the sector of employment, unemployment rates point to difficulties for people of a non-EU ethnicity to find employment. The FRA report indicates that of the 16 examined EU countries, Belgium had the highest unemployment rates for citizens of non-EU countries compared to EU-citizens during the second quarter of 2006. Unemployment rates were the highest for Moroccan and Turkish nationals (45% for men, 56% for women). Figures for the entire year of 2006 present the following picture: unemployment rates for Belgian nationals were 7.5%, for EU nationals they amounted to 11.4%, while for non-EU nationals, the figures rose to 31.1%.<sup>53</sup> However, there are some signs of positive changes: in the Flemish part of Belgium, unemployment rates in September 2007 were down by approximately 20% for all ethnicities, compared to figures for September 2006.<sup>54</sup>

The fact that discrimination on the job market is one of the major problems facing people from a different ethnicity in Belgium is confirmed by a report by the European Network Against Racism, which indicates that, when given the choice between two people with a *curriculum vitae* of equal qualifications, nearly half of the interviewed Belgian employers openly admit that they would rather not hire a candidate who does not originate from the EU.<sup>55</sup> The results of this study have in recent years been confirmed by several examples of Belgian employers refusing to hire people of usually Turkish or Moroccan origin because “the customers would not want to be served by a foreigner”, or with scepticism such as: “A foreigner that will sell security installations, I have never seen that!”<sup>56</sup> While the former case had not been definitely ruled upon by the Belgian courts by the time of the writing of this article, the latter concluded in the conviction of the involved company for discrimination in March 2007.

Over the course of 2007, several new cases of discrimination based on ethnic origin surfaced.

- In April 2007, the owner of a restaurant was convicted for racism after he had advised a fired employee to return to the *'boesboes'* (slang for jungle) in his resignation letter.
- Another 2007 case concerned an e-mail that the *Deutsche Bank* in Belgium had reportedly sent to a job centre in October in order to fill in open positions at its offices. The e-mail ended with the sentence: “*ATTENTION: ne souhaite pas des personnes exotiques pour aucune poste*” (attention: we do not wish persons of an exotic origin for any post).<sup>57</sup>
- Several job centres have reported that they frequently receive messages from companies that do not wish to employ foreigners. One job centre stated that “[m]ost of them bluntly say that they do not want brown people, *'makakken'* (a Flemish insult for people of Moroccan origin, note by HRWF) or Mohammed, but only white, Dutch-speaking persons”.<sup>58</sup> The same job centre added that they are “disgusted by these practices, but competition on the market forces us to join in”.<sup>59</sup>

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<sup>53</sup> According to Federal Ministry of Economy, Department of Statistics.

<sup>54</sup> According to the Flemish Labour Mediation Service (*Vlaamse Dienst voor Arbeidsbemiddeling*) at <http://arvastat.vdab.be/nwwz/index2.htm> (accessed 10 October 2007). The exact figures were: -20.8% for Belgians; -21.1% for ethnic EU citizens; and -19.4% for ethnic non-EU citizens, with a decrease by 19.6% for ethnic Maghreb or Turkish people.

<sup>55</sup> European Network Against Racism, *Reageren op racisme in België, 2006*, at [http://www.enar-eu.org/en/publication/national\\_leaflets/Belgium\\_NL.pdf](http://www.enar-eu.org/en/publication/national_leaflets/Belgium_NL.pdf) (accessed 8 October 2007).

<sup>56</sup> *De Standaard*, 4 October 2007, “Feryn en Euro-Lock achterna”.

<sup>57</sup> *De Standaard*, “Exotische personen niet welkom”, 4 October 2007.

<sup>58</sup> *De Standaard*, “T-Interim Kortrijk krijgt straf voor discriminatie”, 25 October 2007.

<sup>59</sup> *Ibid.*

- In a case of racial discrimination in discotheques, the owner and several doormen of a nightclub were convicted for racism after they had denied access to the nightclub to a group of Belgian youths since one of them was from Moroccan origin. After this incident, the doormen had beaten the youths and insulted the Moroccan youth as “filthy Arab”.<sup>60</sup>

Racial discrimination in the housing market is less prevalent than in employment; 5% of complaints at the CEOOR concerned housing. However, the issue remains problematic in Belgium, which is proven for instance by the case of a tenant who was convicted for racism in December 2006 after having published a real-estate advertisement that stated that the apartment on offer was located in a “foreigner-free” building.<sup>61</sup>

The following case of racist violence attracted massive media attention in Belgium in 2007.

- In October 2007, Hans Van Themsche, a 19-year old Belgian student, was convicted for life for racially motivated murder and attempted murder he had committed in May 2006. He had killed a 24-year-old Malinese woman and the 2-year-old Belgian girl she cared for, and seriously injured a 47-year-old Turkish woman. Both the case and the trial led to massive discussions on racism in Belgium and to the organisation of events to combat the general atmosphere of intolerance towards foreigners that still exists to a great extent in Belgium.

## **5. Detention conditions**

### **5.1. Legal framework**

The general legal framework that lays the formal basis for fundamental rights granted to detainees in Belgium is the Basic Law of 12 January 2005 Concerning the Prison System and the Legal Position of the Detainees.

Firstly, the law defines as the basic purpose of prison sentences, the compensation for the injustice caused to the victim, the rehabilitation of the convict and the individualised preparation of his reintegration into a free society. In order to facilitate the completion of these purposes, the law provides for the possibility for the convict to cooperate constructively in the formulation of a so-called individual detention plan. This plan can for instance provide for psychosocial counselling and/or medical or psychological assistance for the detainee.

Secondly, the law sums up the essential rights of detainees in Belgian prisons. These basic rights include the right to sufficient food; the detainees’ right to wear their own clothing and shoes; to take care of their appearance and physical hygiene in a sufficient manner; to purchase on their own costs a number of consumption goods out of a selected offer; to communication with the outside world through letters, phone calls and other means of telecommunication; to receive visitors; to contact their lawyers; to contact the media; to conduct their religious beliefs in a free manner, individually and in communion with others; to leisure, physical exercise and sports; to participate in labour available in the prison; to health care on equal standards with that in the free society; to receive visits by a physician of their choice; and the right to legal assistance.

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<sup>60</sup> Centre for Equal Opportunities and Opposition to Racism, “Discriminatie in discotheken: de rechter veroordeelt voor het eerst een uitbater van een discotheek in Brussel”, at

[http://www.diversiteit.be/CNTR/NL/racism/topics/dancings/RAC\\_THEMES\\_DANCINGS\\_DISCRIMINATIE+IN+DISCOTHEEK\\_05-05-2007.htm](http://www.diversiteit.be/CNTR/NL/racism/topics/dancings/RAC_THEMES_DANCINGS_DISCRIMINATIE+IN+DISCOTHEEK_05-05-2007.htm) (accessed 8 October 2007).

<sup>61</sup> European Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member States of the EU*, p. 82, at [http://fra.europa.eu/fra/material/pub/racism/report\\_racism\\_0807\\_en.pdf](http://fra.europa.eu/fra/material/pub/racism/report_racism_0807_en.pdf) (accessed 14 October 2007).

Thirdly, the law regulates the possibility for detainees to defend themselves in front of an independent court in matters relating to their return into society. Through the establishment of these so-called sentence-executing courts, the legislator has finally granted detainees full judicial protection, also after they have been sentenced to imprisonment. Prior to the legal reform, it was the minister of justice, a member of the executive branch, who was responsible in all matters relating to the execution of a convict's prison sentence.

Finally, the 2005 law stipulates that the use of direct force on detainees is only allowed when reasonable and proportionate to the objective for which it is intended. Moreover, force can in principle only be used following a threat of the use of force. All use of force should be reported in a specific registry in order to make a posterior evaluation possible.

## 5.2. Conditions in detention facilities in Belgium

A general comment made by human rights NGOs about the Belgian detention system relates to the fact that the 2005 law, although in force since two and a half years, remains for the most part dead letter.<sup>62</sup>

Belgium has been criticised by the European Committee for the Prevention of Torture for the substandard conditions in its detention facilities on four separate occasions.<sup>63</sup> The Belgian detention system continues to face several difficulties, such as an aged infrastructure, overpopulation and a lack of personnel and resources.<sup>64</sup> The overpopulation in Belgian prisons is mainly caused by the abundant use of preliminary detention of suspects awaiting trial, who make up more than 40% of all detainees. Overcrowding leads to additional problems in prisons, such as increased insecurity and food shortage, since all resources of Belgian prisons are calculated on the basis of their theoretical capacity and not of the amount of detainees that are actually being held in the facilities.<sup>65</sup> The resulting understaffing and lack of resources regularly lead to social unrest within prisons, manifesting itself both in the form of strikes by prison wardens as well as occasional protests by detainees.<sup>66</sup> In November 2007 for instance, some 60 detainees refused to re-enter their prison blocks after their daily walk, demanding better food, longer phone calls and more walking and leisure options.<sup>67</sup>

## 5.3. Detention of minors

During the federal government talks following the June 2007 elections, the political parties that were at the time most likely to form the new Belgian government, proposed changes to the youth protection system that would lead to a much tougher stance on underage criminals. The changes would lead to the creation of two federal youth prisons. Youth judges could sentence underage criminals aged 14 and over to detention in these prisons up until they reach the age of 23. Moreover, should the proposed changes be put into law, youngsters aged 16 and over would automatically be referred to the regular

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<sup>62</sup> See the website of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 18 au 27 avril 2005, 20 April 2006, at <http://www.cpt.coe.int/en/states/bel.htm>

<sup>63</sup> See the website of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

<sup>64</sup> Network Samenleving en Detentie, "Wie we zijn en wat we willen", October 2006, p. 3, at [http://www.mensenrechten.be/pdf/Netwerk\\_Sam&Det\\_visie.pdf](http://www.mensenrechten.be/pdf/Netwerk_Sam&Det_visie.pdf) (accessed 23 October 2007).

<sup>65</sup> Ligue des Droits de l'Homme, "Les prisons sur l'autel du populisme", Communiqué de presse, 30 October 2007, as found at [http://www.liguedh.be/web/Press\\_Communique.asp](http://www.liguedh.be/web/Press_Communique.asp) (accessed 2 December 2007).

<sup>66</sup> Ibid; Amnesty International, "Country Report Belgium", at <http://www.amnesty.org/en/region/europe-and-central-asia/western-europe/belgium> (accessed 19 December 2007).

<sup>67</sup> *De Morgen*, "Opstand in gevangenis in Dendermonde voorbij", 25 November 2007.

criminal courts if they commit certain grave crimes, while the current system demands a decision taken by a youth judge in each individual case before such referral can take place.<sup>68</sup>

The changes in the youth criminal justice system proposed by the political parties participating in the government talks do not seem to find a basis in society. A survey conducted by the High Council of Justice indicates that, out of 3,200 respondents, only 18% supported the creation of actual youth prisons, while 80% were of the opinion that minors who commit a crime should be placed in an institution in which consultation, assistance and education are central objectives.<sup>69</sup>

The proposed changes have moreover been widely criticised, both by actors dealing with youth crime issues and by human rights NGOs. The union of Dutch-speaking youth magistrates opposes the creation of youth prisons, despite the fact that the lack of available space in youth institutions leads to the immediate release of minors who have committed a crime. The union sees other priorities, primarily pointing towards the non-existence of institutions in Belgium in which heavily addicted or mentally disturbed minors who have committed a crime would receive proper assistance.<sup>70</sup>

Human rights NGOs have criticised the proposals because the automatic referral to regular criminal courts of minors who commit certain grave crimes, would lead to a *de facto* lowering of the age of criminal responsibility to 16 for certain crimes. In transforming these proposals into law, Belgium would violate international human rights standards, such as the International Convention on the Rights of the Child, which requires states not to judge minors who commit crimes in the same manner as they do adults.<sup>71</sup>

## **6. Women's rights**

### **6.1. Discrimination, inequalities and unequal opportunities**

Belgium has been party to the United Nations Convention on the Elimination of All Forms of Discrimination against Women since 1985 and has promulgated various laws prohibiting discrimination based on gender, including a general non-discrimination law on 23 February 2003<sup>72</sup> and a specific law on 10 May 2007 against gender discrimination on the labour market.<sup>73</sup> Despite this legislation, women are still being discriminated against in practice, especially on the labour market and in the political sphere.

In the most recent Global Gender Gap Report by the World Economic Forum,<sup>74</sup> Belgium is ranked 19<sup>th</sup> on the Gender Gap Index, following not only countries with an outstanding record on women's rights such as the Scandinavian countries and the Netherlands, but also ranking worse than countries like the Philippines and Sri Lanka and only just better than Moldova, Cuba and Belarus.<sup>75</sup> A closer look at the specific details of the study on Belgium, examining economic participation and opportunity, educational attainment, health and survival and political empowerment, indicates that the category of economic participation and opportunity is particularly problematic. In this category, Belgium obtains

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<sup>68</sup> *De Standaard*, "Vanaf veertien achter tralies", 17 October 2007.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> Ligue des Droits de l'Homme, "Les prisons sur l'autel du populisme", Communiqué de presse, 30 October 2007, as found at [http://www.liguedh.be/web/Press\\_Communique.asp](http://www.liguedh.be/web/Press_Communique.asp) (accessed 2 December 2007).

<sup>72</sup> Law of 25 February 2003 Combating Discrimination and amending the Law of 15 February 1993 Installing a Centre for Equal Opportunities and Opposition to Racism, *Belgisch Staatsblad*, 17 March 2003.

<sup>73</sup> Law of 10 May 2007 Combating Discrimination between Men and Women, *Belgisch Staatsblad*, 30 May 2007.

<sup>74</sup> R. Hausmann, L.D. Tyson and S. Zahidi, *The Global Gender Gap Report 2007*, World Economic Forum, Geneva, 2006, at <http://www.weforum.org/pdf/gendergap/report2007.pdf> (accessed 20 October 2007).

<sup>75</sup> *Ibid.*, p. 7.

an overall rank of 46, dropping as low as 84<sup>th</sup> out of 128 surveyed countries on the subcategory of wage equality for similar work.<sup>76</sup> Also in the category of political empowerment, Belgium does far from well, finishing short of countries such as Costa Rica and Bangladesh.<sup>77</sup>

The most recent comprehensive national report on gender (in)equality in Belgium puts the finger on the wound, signalling the four main fields of society in which women continue to be confronted with serious discrimination: employment, including the wage gap; the pension gap; education; and political power.<sup>78</sup> However, since the problem of the pension gap is mainly the result of the first problem, this issue will not be further addressed in this report. Moreover, since gender inequality in education can nowadays only be noticed within the older generations, while this inequality no longer exists within the younger generations, this form of gender discrimination is clearly fading out in Belgium and will soon disappear. However, discrimination against women in the two remaining fields of society – access to and equal treatment on the labour market on the one hand and political participation on the other – remain highly problematic in Belgium.

In 2004, the employment rate in Belgium was 67.9% for men and 52.7% for women, which shows that women are still underrepresented on the labour market. However, when talking about gender discrimination on the labour market, the main problem women face today remains inequality in wages. In Belgium, women generally earn less than men.

In 2005, the most recent year for which comprehensive figures are available, the wage gap was the biggest for clerks working in the private sector, closely followed by labourers.<sup>79</sup> While male clerks received on average a wage before taxes of EUR 3,484, female clerks earned on average EUR 2,455 per month. This represents a wage gap of 30% to the disadvantage of women. For labourers the wages are respectively EUR 2,120 and EUR 1,670, creating a wage gap of 21%. Only in the public sector do women enjoy remuneration rights of a level nearly equal to men, with a wage gap of ‘only’ 5%. As a result, the general wage gap is 15%.<sup>80</sup> The average woman earns 85% of the average man’s monthly wage.<sup>81</sup>

However, it must be noted that these figures have not been corrected to take account of the phenomenon of part time work. It is estimated that a relatively large part of the wage gap can be explained by the fact that women engage in part time employment more often than men.<sup>82</sup> This obviously has an effect on the wage gap when it is calculated based on monthly wages. Nevertheless, the phenomenon of part time work alone can not explain the serious inequality that exists between wages earned by women and those earned by men, since research indicates that the wage gap across all sectors of employment remains 13%, even when calculated based upon hourly wages before taxes instead of monthly wages.<sup>83</sup>

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<sup>76</sup> Ibid. p.10 and 44.

<sup>77</sup> Ibid., p. 11.

<sup>78</sup> Institute for the Equality of Women and Men, *Vrouwen en mannen in België. Genderstatistieken en genderindicatoren. Editie 2006*”, at <http://www.iefh.fgov.be/ShowDoc.aspx?levelID=18&objectID=308&lang=nl> (accessed 15 October 2007).

<sup>79</sup> Ibid., p. 66.

<sup>80</sup> Figure based on average wages calculated for 2004.

<sup>81</sup> Institute for the Equality of Women and Men, *De loonkloof tussen vrouwen en mannen in België – Rapport 2007*, p. 9, at <http://www.iefh.fgov.be/ShowDoc.aspx?levelID=18&objectID=323&lang=nl> (accessed 15 October 2007).

<sup>82</sup> Institute for the Equality of Women and Men, *Vrouwen en mannen in België. Genderstatistieken en genderindicatoren. Editie 2006*, p. 67, at <http://www.iefh.fgov.be/ShowDoc.aspx?levelID=18&objectID=308&lang=nl> (accessed 15 October 2007).

<sup>83</sup> Institute for the Equality of Women and Men, *De loonkloof tussen vrouwen en mannen in België – Rapport 2007*, p. 12, at <http://www.iefh.fgov.be/ShowDoc.aspx?levelID=18&objectID=323&lang=nl> (accessed 15 October 2007).

The factor that contributes most to this inequality is the under-representation of women in higher functions and their overrepresentation in lower ones. Other factors contributing to the wage gap are the fact that work performed by men usually gains a higher appreciation and that women are more often than men employed in sectors in which the wages are generally lower.<sup>84</sup> But even when all these factors are taken into account, the wage gap still remains substantial.<sup>85</sup> Women receive lower wages than men for equal work. Even with equal seniority and age, in the same sector and for the same job, women are paid less than men.<sup>86</sup>

It must also be noted that the wage gap increases per age category. While the wage gap is only 8% in the 25-29 age category, it keeps rising by age until it amounts up to 17.7% in the 55-64 age category. This increase can be explained in two ways, which should most probably be combined.<sup>87</sup> On the one hand they are the result of different paths in professional careers for women and men. Women face bigger problems than men in receiving promotions. This so-called glass-ceiling phenomenon creates inequality in the wage build-up between women and men, with women's wages increasing more slowly than those of men. Interruptions of employment due to for instance pregnancy also hinder the build up of seniority and the corresponding wage increases. On the other hand, a generation-effect also plays a role, with the younger generation of women being confronted with less gender discrimination than the older generation. However, the latter process should not be overestimated since the younger generation already shows a large wage gap that will keep increasing due to the glass-ceiling phenomenon.

When examining the political participation of women in Belgium, one can easily notice that women are severely underrepresented in all areas of the political domain. Despite efforts by the Belgian government, demanding political parties to nominate an equal number of women and men on the voting list for each election and requiring the first two candidates on each voting list to be of a different sex, equal political participation for women is far from being achieved in Belgium. Prior to the 2007 federal elections, 34.7% of all Deputies in the Chamber of Representatives and 37.5% of all Senators in the Senate were women. After the 2007 elections, these figures are respectively 36.7 and 30.<sup>88</sup>

Gender inequality is also noticeable on the other levels of political representation: in the provincial councils 37% of all representatives are women and in the communal councils this figure drops to 32%. Gender inequality is even more prominent in executive functions, with Belgium having never had a female prime minister, fourteen out of nineteen members of the federal government being male and a mere 8% of all majors being women.<sup>89</sup>

In 2007, Belgium also witnessed a controversial case of sexism in the advertising world.<sup>90</sup>

- In April 2007, a Belgian DVD order company, DVDPost, launched a marketing campaign for which they designed an entire website [www.rentawife.be](http://www.rentawife.be) that claimed to be delivering

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<sup>84</sup> Institute for the Equality of Women and Men, *Vrouwen en mannen in België. Genderstatistieken en genderindicatoren. Editie 2006*, p. 67, at

<http://www.iefh.fgov.be/ShowDoc.aspx?levelID=18&objectID=308&lang=nl> (accessed 15 October 2007).

<sup>85</sup> Ibid; Institute for the Equality of Women and Men, *De loonkloof tussen vrouwen en mannen in België – Rapport 2007*, p. 37, at <http://www.iefh.fgov.be/ShowDoc.aspx?levelID=18&objectID=323&lang=nl> (accessed 15 October 2007).

<sup>86</sup> Ibid.

<sup>87</sup> Ibid, p. 23.

<sup>88</sup> See [http://www.verkiezingen2007.belgium.be/nl/sen/seat/seat\\_etop.html](http://www.verkiezingen2007.belgium.be/nl/sen/seat/seat_etop.html) (accessed 15 October 2007).

<sup>89</sup> Institute for the Equality of Women and Men, *Vrouwen en mannen in België. Genderstatistieken en genderindicatoren. Editie 2006*, p. 108-110, at

<http://www.iefh.fgov.be/ShowDoc.aspx?levelID=18&objectID=308&lang=nl> (accessed 15 October 2007).

<sup>90</sup> Institute for the Equality of Women and Men, Veroordeling van het postorderbedrijf 'Home Entertainment Services' en het reclamebureau 'Emakina' naar aanleiding van de seksistische website 'Rentawife', at [http://www.amazone.be/images/Nieuws/IGVM\\_PBRentawife.pdf](http://www.amazone.be/images/Nieuws/IGVM_PBRentawife.pdf) (accessed 16 October 2007).

women by mail order under the motto “Rent a wife ...For a better life”. On the website – that is still operational at the time of writing – internet users can select hair and eye colour, type, measurements and age of the woman they want, with the clear indication that “You determine yourself when you’re fed up with her”. Afterwards, the users are given the choice between a variety of women matching the users’ desires and their prices. For instance, three women delivered at your house, with unlimited exchangeability, would cost EUR 800 per month, according to the advertisement. Only when the users click on the subscription button are they brought to the website of the DVD order company with a message stating: “If only everything were as simple as DVDPost”. On 26 September 2007, the DVD order company was convicted by a court for having violated article 6 of the 2003 anti-discrimination law, prohibiting incitement to discrimination, hatred or violence towards women. The court argued that the entire set-up of the website “treats women as merchandise, as a sex object and that this is moreover emphasised by their exchangeability”. This attempt by the judicial system to place sexist images and behaviour in a legal framework is unique in Belgium and perhaps even in the whole of Europe.

## 6.2. Domestic violence

Domestic violence is a relatively widespread phenomenon in Belgium with which many women are confronted at some point during their lives. Most estimates indicate that one out of five women in suffer from domestic violence; they are beaten or otherwise physically abused by their partner.<sup>91</sup> However, exact figures or detailed studies on the issue do not exist, with the last comprehensive research on violence within the family dating back to 1998.<sup>92</sup> For this report HRWF has therefore gathered pieces of empirical data, statistics and anecdotal evidence from scattered sources, putting together the puzzle to sketch a general picture of the prevalence of domestic violence in Belgian society.

### *6.2.1. Legal framework*

After decades of neglecting or ignoring the issue of domestic violence, the Belgian government has in the past decade introduced various legislative and other initiatives to tackle the problem.

Although domestic violence still does not constitute a separate offence under Belgian criminal law, the Law of 24 November 1997 against Domestic Violence considers physical violence within a couple to be an aggravating circumstance.<sup>93</sup> Moreover, a 2003 Law provides for the possibility for the partner who is physically abused to ask to be granted the family residence and to receive the child benefits.<sup>94</sup>

In 2004, the Belgian government introduced a national action plan against domestic violence. For the period 2006-2007, this plan provides for numerous activities designed to enhance the fight against domestic violence.<sup>95</sup>

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<sup>91</sup> Amnesty International, “Stop geweld tegen vrouwen”, at <http://www.aivl.be/index.cfm?PageID=225> (accessed 16 October 2007); Direction de l’Égalité des Chances, “Je t’aime. La violence nuit gravement à l’amour”, November 2004, p. 5, at [http://www.egalite.cfwb.be/upload/album/AP\\_171.pdf](http://www.egalite.cfwb.be/upload/album/AP_171.pdf) (accessed 16 October 2007); *De Standaard*, “Duizend meldingen van partnergeweld in een jaar”, 27 March 2007.

<sup>92</sup> *Fedra*, “Partnergeweld”, November 2006, at <http://www.fedramagazine.be/artikel.php?id=90> (accessed 16 October 2007).

<sup>93</sup> Law of 24 November 1997 against Domestic Violence, *Belgisch Staatsblad*, 6 February 1998.

<sup>94</sup> Law of 28 January 2003 concerning allocation of child benefits to the spouse or statutory cohabitant who is the victim of physical violence perpetrated by his or her partner, supplementing article 410 of the Criminal Code, *Belgisch Staatsblad*, 12 February 2003.

<sup>95</sup> National Action Plan concerning the Fight against Domestic Violence for the period of 2006-2007, approved at the Interministerial Conferences of 8 February 2006 and 23 November 2006, at <http://www.iefh.fgov.be/ShowDoc.aspx?levelID=44&objectID=268&lang=nl> (accessed 16 October 2007).

Firstly, at the 2006 Inter-ministerial Conference, at which the action plan was adopted, the responsible public institutions and ministers agreed for the first time upon a common definition of the term 'domestic violence'. Since then, domestic violence is described in Belgium as "any form of physical, sexual or economic aggression between spousal or other partners". Secondly, the action plan introduced important initiatives directed at educating victims of domestic violence as well as the general public on the underestimated problem. These initiatives include the distribution of folders and information brochures and the introduction of so-called white ribbon campaigns. Thirdly, the action plan asks for a more stringent application of the 2003 law on the allocation of child benefits to victims of domestic violence, since a first evaluation of the law has shown that it is as of yet not sufficiently known by the people it aims to assist. Finally, the plan calls for the gathering of comprehensive statistical data and the conducting of quantitative evaluations on the issue of domestic violence in order to increase its visibility in the public domain.

In March 2007, the Belgian Minister of Justice, Laurette Onkelinx, in cooperation with the Council of General Prosecutors' Offices (*Collège des Procureurs Generaux*), introduced a zero tolerance policy towards perpetrators of domestic violence, leading to a great number of criminal cases in 2007 in which men – and occasionally also women – were convicted for having beaten or otherwise abused their partners (see below).

#### 6.2.2. Data on domestic violence in Belgium

The fact that an estimated 20% of women in Belgium have fallen victim to physical or other abuse by their partner can be substantiated by reference to a wide range of statistical data and anecdotal evidence.

Since recently, the Belgian federal police include violence within the family as a separate category in its yearly statistics. In 2006, the most recent year for which statistics are available, the federal police recorded 13,646 cases of domestic violence in the form of physical abuse. This represents an increase by nearly 2,000 cases compared to the year 2005.<sup>96</sup> Due to a lack of comprehensive statistical data on the matter, it is difficult to assess how many of these cases are actually brought to court and lead to a conviction of the perpetrator. Therefore, this report cites the results of limited empirical study undertaken by HRWF, based on all cases of convictions reported in the Belgian press over the course of the first ten months of 2007.<sup>97</sup> During this period, HRWF found reference to 45 different convictions for domestic violence. In only one of these cases, the violent acts were committed by a woman against her partner. In the remaining 44 cases the perpetrator was male. On average, these cases led to a conviction of six months of imprisonment and a fine of EUR 550.

Although the judicial system appears to be taking domestic violence seriously as a priority issue, there still remain cases in which inaction by the authorities result in the death of the victims. It is estimated that 70 Belgian women die as a result of domestic violence each year.<sup>98</sup>

- Kathia Vermeir was murdered by her husband in March 2007.<sup>99</sup> The authorities had for a long time ignored Ms. Vermeir's complaints of domestic violence; since 1995 she had reported on dozens of occasions that she was being physically abused by her husband. Yet, her husband never served a single day in prison despite the fact that he had been convicted

<sup>96</sup> Federal Police, "Staten – Nationaal overzicht 2005", at [http://www.polfed-fedpol.be/crim/crim\\_statistieken/2006/reports/nl/staten/nat/nl\\_staten\\_2005\\_nat.pdf](http://www.polfed-fedpol.be/crim/crim_statistieken/2006/reports/nl/staten/nat/nl_staten_2005_nat.pdf) (accessed 16 October 2007).

<sup>97</sup> In doing so, use has been made of the archives of the newspaper *De Standaard* by gathering and analysing all 2007 articles relating to a criminal conviction for domestic violence.

<sup>98</sup> Amnesty International, "Cijfers intra-familiaal geweld. Wereldwijd & regionaal", p. 5, at [http://www.aivl.be/Media/Cijfers\\_Intrafamiliaal\\_geweld\\_wereldwijd\\_en\\_regionaal.pdf](http://www.aivl.be/Media/Cijfers_Intrafamiliaal_geweld_wereldwijd_en_regionaal.pdf) (accessed 13 November 2007).

<sup>99</sup> *De Standaard*, "Geweldenaar belandde nooit in de cel", 7 March 2007.

for domestic violence on two separate occasions, twice leading to a suspended jail sentence. It is particularly remarkable that, even when confronted with such recurrence of the crime, the Belgian courts did not convict the husband to an effective jail sentence, which could have prevented the subsequent murder of Ms. Vermeir.

The following data further indicates how widespread domestic violence is in Belgium:

- During the first year after its establishment, police referred as many as 1,173 people to the the reception centre for victims of partner violence in the Province of Limburg.<sup>100</sup>
- In Sint-Niklaas, a city with a total population of approximately 70,000, one thousand cases of domestic violence are reported each year.<sup>101</sup>
- A 2006 limited study conducted by the *Steunpunt Algemeen Welzijnswerk* ('Supporting Point for General Social Work') showed that one out of three persons for whom the organization is asked to provide assistance is a perpetrator or a victim of domestic violence, i.e. 46 % of all women and 21 % of all men.<sup>102</sup>

## **7. Children's rights**

### 7.1. Accompanied and unaccompanied minor asylum seekers

See chapter 1 (asylum seekers), above.

### 7.2. Detention of minors

See chapter 5.3. (detention conditions), above.

### 7.3. Violence against children in Belgium

Due to a lack of available statistical data, it is difficult to assess the number of children that fall victim to domestic violence in Belgium. General estimates by UNICEF indicate that their lies somewhere in the region of 26,000 to 170,000.<sup>103</sup>

Information gathered from different national institutions and other sources offers a more detailed insight into the matter.

In the French Community, the *Service SOS Enfants* of the Office of Nativity and Childhood (*Office National de l'Enfance*), the branch dedicated to the assistance of children in need of help took care of cases involving a total of 3,559 children in 2005, the most recent year for which complete figures were

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<sup>100</sup> *De Standaard*, "Familiaal geweld kruipt stilaan uit de schaduwzone", 6 September 2007.

<sup>101</sup> *De Standaard*, "Duizend meldingen van partnergeweld in een jaar", 27 March 2007.

<sup>102</sup> Steunpunt over intrafamiliaal geweld, "Enkele cijfers over intrafamiliaal geweld",

[http://www.steunpunt.be/xcms/lang\\_nl-BE/mid\\_13906/ModeID\\_0/EhPageID\\_897/5014/default.aspx](http://www.steunpunt.be/xcms/lang_nl-BE/mid_13906/ModeID_0/EhPageID_897/5014/default.aspx) (accessed 16 October 2007). It must be noted that the study focused on intra-family violence, which also

includes violence directed towards children and towards parents. However, the same study shows that violence between partners is the most common form of intra-family violence for which the Supporting Point is called upon to assist, representing 78% of all cases of intra-family violence reported by women.

<sup>103</sup> UNICEF, "Behind Closed Doors. The Impact of Domestic Violence on Children", 2006, p. 13, [http://www.unicef.nl/upload/115802\\_822\\_1154357829337-SVITH\\_report5.final.pdf](http://www.unicef.nl/upload/115802_822_1154357829337-SVITH_report5.final.pdf) (accessed 27 October 2007).

available at the time of writing.<sup>104</sup> Of the 2,500 children that were found to have been maltreated, 1,200 had been victims of sexual abuse, nearly 500 had suffered from physical abuse, over 400 from psychological abuse and nearly 400 had been severely neglected. Figures show that in 60% of all cases, the violence was perpetrated by one or both parents.<sup>105</sup> For the French Community, the General Delegate on the Rights of the Child moreover reported that their organisation intervened in some 2,000 cases of violation of children's rights over the course of 2006, 40% of which concerned children who had been sexually, physically or psychologically maltreated.<sup>106</sup>

In the Flemish Community, the Flemish Children's Rights Commissariat dealt with a total of nearly 1,200 complaints about violation of children's rights in 2006. However, not all of these complaints concern maltreatment of children. The commissariat reported that it had received only a limited amount of complaints about domestic violence against children, compared to the Flemish Confidence Centres, which receive over 6,000 complaints of maltreatment of children every year.<sup>107</sup> *Kind en Gezin*, the Flemish public institution for help and advice on the well-being of children, reported that over the course of 2006 the six Flemish Confidence Centres were confronted with a total of 4,591 concrete cases, representing a total of 6,147 children who had suffered from maltreatment and/or neglect. Nearly 2,000 children had been subjected to sexual abuse, over 1,500 to physical abuse, 940 had been emotionally abused and over 1,700 had suffered from physical and/or emotional neglect.<sup>108</sup>

The Flemish Children's Rights Commissioner has pointed to a number of additional problematic issues concerning violence against children in Belgium. According to it, the fact that Belgians do not consider corporal punishment as an unacceptable form of violence against children – a survey shows that 74% of adult Belgians find it acceptable when parents hit their children – is at least questionable. The commissioner has moreover stated that the detention of minors who have committed a crime in conditions that do not meet the standards set out by the Convention on the Rights of the Child, approaches a form of 'institutionalised violence', and considers this to be even more the case for the detention of accompanied minors in closed detention centres.<sup>109</sup>

## **8. LGB Rights**

### **8.1. Legal framework and the situation in practice**

Belgian laws are among the most progressive in the world when it comes to the protection of the rights of lesbian, gay and bisexual persons (LGB). Firstly, a 2003 law prohibits all forms of discrimination based on sexual orientation.<sup>110</sup> Secondly, since the 2003 legalization of same-sex marriages, Belgium

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<sup>104</sup> Service SOS Enfants de l'ONE, "l'Action Enfance Maltraîtée : rapport d'activités 2005", Bulletin de l'Action Enfance Maltraîtée n°66, p. 10, <http://www.one.be/mildacc/Bulletin66rapportactivites.pdf> (accessed 26 October 2007).

<sup>105</sup> Ibid., p. 13 and 15.

<sup>106</sup> UNICEF, *Kinderrechtencommissariaat*, Délégué Général aux droits de l'enfant, Kinderrechtencoalitie, Code, Vereniging voor de Verenigde Naties, "Verslag van de conferentie over geweld tegen kinderen in België en in de wereld", Brussel, 2007, p. 28, at <http://www.kinderrechtencoalitie.be/uploads/documenten/verslagconferentiegeweld.pdf> (accessed 28 November 2007).

<sup>107</sup> Kinderrechtencommissariaat, "Jaarverslag 2006/07", November 2007, p. 23 and 62, at [http://www.kinderrechten.be/IUSR/documents/volwassenen/jaarverslag06/Jaarverslag\\_KRC07\\_screen.pdf](http://www.kinderrechten.be/IUSR/documents/volwassenen/jaarverslag06/Jaarverslag_KRC07_screen.pdf) (accessed 29 November 2007).

<sup>108</sup> Kind en Gezin, "2006 in cijfers", 2007, p. 24, at [http://www.kindengezin.be/Images/cijfers\\_2006\\_tcm149-52880.pdf](http://www.kindengezin.be/Images/cijfers_2006_tcm149-52880.pdf) (accessed 28 October 2007).

<sup>109</sup> Ibid., p. 32 and 34.

<sup>110</sup> Law of 25 February 2003 combating discrimination, *Belgisch Staatsblad*, 17 March 2003.

has put it on equal footing with heterosexual marriage.<sup>111</sup> Finally, after lengthy debates, a 2006 law made it possible for same-sex couples to adopt children.<sup>112</sup>

In practice, however, a number of issues remain unresolved. One of them is the possibility for same-sex couples to adopt children. While no legal hindrances stand in the way of such adoptions, adoption by LGB couples of Belgian children with whom they are not related remains difficult. This is *inter alia* due to the use by adoption agencies of quotas on the number of same-sex couples that are allowed on the list of candidates for adoption. Moreover, contrary to domestic adoption, which is problematic but remains possible, international adoption by Belgian same-sex couples appears to be impossible.<sup>113</sup> Despite having completed the mandatory preparation course, three Belgian couples failed in 2007 to get a child from South Africa and the United States, the only countries from which European LGB are legally allowed to adopt. In South Africa, the only organisation – a Christian orphanage – with which the Flemish adoption authorities have concluded an agreement organising adoptions, has refused to give children up for adoption to LGB people.

## 8.2. Societal attitudes towards LGB

A general study aimed at gathering basic statistical material on LGB indicates that 1 out of 5 LGBs still experiences discrimination and intolerance at work. However, more explicit forms of discrimination – such as the refusal to offer a job, the denial of a promotion and dismissal based on sexual preference – appear to be far less common; less than 1 out of 10 of the interviewed LGBs indicated that he/she has had been, or felt to have been, discriminated against in this respect. Finally, the study warns that LGB people – relatively speaking – are paid lower wages than heterosexuals and that this phenomenon might indicate the presence of a so-called glass ceiling, hindering LGB from attaining promotions that would increase their wage.<sup>114</sup>

Quantitative and qualitative research on the attitudes towards LGB people within the Belgian public service indicates that the participants' attitudes towards LGBs are based on clichés and prejudices, such as “gays are feminine”, “lesbians are manly”, but also “gays can have an influence on children's sexuality” and even “gays are paedophiles”.

The survey confirms that the majority of LGBs (2 out of 3) are afraid to declare their sexuality at work. This fear appears to be justified, since 1 out of 3 respondents (and 2 out of 3 among LGB respondents) was of the opinion that a coming-out would damage LGBs' careers even though discrimination is legally prohibited. In personal contacts, more than 1 out of 3 participants had been regularly confronted with pejorative terms for homosexuals and 1 out of 10 responding LGBs had effectively been the victim of personal insults. Furthermore, the problems LGB people have in integration are regarded by heterosexuals to originate from the LGBs' own personality rather than from a hostile environment. The survey concluded that even though many LGBs are completely accepted at work, there are a wide variety of cases in which LGB are subjected to verbal abuse, dysfunctional behaviour (e.g. the imposition of too heavy a workload or the systematic rejection of performed tasks or requests to redo them), and in some cases even physical violence.<sup>115</sup>

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<sup>111</sup> Law of 13 February 2003 Opening Marriage to People of the Same Sex, *Belgisch Staatsblad*, 28 February 2003.

<sup>112</sup> Law of 18 May 2006 Amending a Number of Articles of the Civil Code in order to Make Adoption by Persons of the Same Sex Possible, *Belgisch Staatsblad*, 20 June 2006.

<sup>113</sup> *De Standaard*, “Homoadoptie van hindernis naar hindernis”, 3 October 2007.

<sup>114</sup> J. Vincke, A. Dewaele, W. Van den Berghe, N. Cox, “Zzzip. Een statistisch onderzoek met het oog op het verzamelen van basismateriaal over de doelgroep holebi's. 2004-2006”, 2006, [http://statbel.fgov.be/studies/ac731\\_nl.pdf](http://statbel.fgov.be/studies/ac731_nl.pdf) (accessed 20 October 2007).

<sup>115</sup> I. de Biolley, M. Aslan, “Verkennd onderzoek naar de beeldvorming over homoseksualiteit binnen het Belgisch openbaar ambt”, May 2007, [http://www.diversiteit.be/NR/rdonlyres/33CB13B0-C7F1-4FB1-8F13-618A304195EF/0/2007\\_onderzoek\\_beeld\\_vorming\\_homoseksualiteit.pdf](http://www.diversiteit.be/NR/rdonlyres/33CB13B0-C7F1-4FB1-8F13-618A304195EF/0/2007_onderzoek_beeld_vorming_homoseksualiteit.pdf) (accessed 19 October 2007).

The findings of another study on the attitudes towards LGBs in Flanders shows that homosexuality is generally accepted in Flanders, with 9 out of 10 participants of the survey stating that LGBs should be able to live their life the way they see fit. However, when the surveyors referred explicitly to actions associated with a LGB 'lifestyle', the acceptance rate decreased noticeably, with for instance 2 out of 3 participants having no problems with people having same-sex intercourse, while the number of convinced opponents reached 16%. Further, 2 out of 3 respondents supported gay marriage, while nearly 1 out of 5 firmly opposed it, and less than half of the respondents accepted adoption by a lesbian couple (and ever fewer adoptions by gay couples).

The survey concluded that while the general acceptance of LGBs was substantial in Flanders, the acceptance of specific aspects of their 'lifestyle' was a lot less so. Moreover, there only exists limited support in a large part of the population for the granting of equal rights to LGB people in certain fields of society.<sup>116</sup>

## **9. Poverty**

### **9.1. Legal framework**

In 2006 the Belgian federal government introduced a National Action Plan on Social Inclusion for the time period of 2006 to 2008.<sup>117</sup> This policy paper defines the objectives of the federal government on combating poverty in the coming years.

The first objective dealt with in the policy paper is the provision of good and affordable housing to everyone, *inter alia* by regulating the delivery of electricity and intervening in the quantitative and qualitative offer of social rental houses. The Belgian government points to the scarce amount of social rental houses available on the already limited rental market in Belgium, leading to long waiting lists. These waiting lists in turn cause prices for social rental houses to rise while their quality drops. A second important objective for the federal government is the fight against poverty among children, *inter alia* by lowering education costs. The government points out that the poverty risk for children in Belgium is slightly lower than the EU average, namely 17% compared to 19%. However, for children of single parents and in families in which none of the parents are employed, the poverty risk rises dramatically, to respectively 36% and 70%. These figures are higher than the EU average.

A final important objective for the federal government is to increase the employment rates of persons belonging to groups who are particularly at risk of poverty, such as foreigners and persons with lower education.

### **9.2. Statistical data on poverty**

The most recent comprehensive statistics available from the Federal Ministry of Economics show that the general poverty risk<sup>118</sup> in Belgium was 15.2% in 2005. The poverty risk rises considerably for certain categories of people: 22.6% for persons aged over 65; 32% among the unemployed; 22.5% for

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<sup>116</sup> J. Pickery, J. Noppe, "Vlamingen over homo's: loopt het beleid voorop? Attitudes tegenover holebi's en homoseksualiteit in Vlaanderen", in "Vlaanderen gepeild! 2007", 2007, <http://aps.vlaanderen.be/statistiek/publicaties/pdf/survey/gepeild2007/hoofdstuk7.pdf> (accessed 20 October 2007); Vlaamse Gemeenschap, "Houding tegenover holebi's en homoseksualiteit", 2006, at <http://aps.vlaanderen.be> (accessed 23 October 2007).

<sup>117</sup> Nationaal Actieplan Sociale Insluiting 2006-2008, at <http://www.mis.be/themes/poverty/NAP/content/Nationaal%20Actieplan%202006-2008%20NL.pdf> (accessed 28 October 2007).

<sup>118</sup> The poverty line is calculated as 60% of the national median income on an individual level.

singles; 31.2% for single parents; and 24.6% for tenants, compared to 12.1% for house owners. The ministry furthermore keeps track of a number of non-monetary indicators of poverty. These indicators show that 21.1% of Belgian households do not have access to all basic comfort elements in the house, such as a bath or a shower, a toilet with running water, warm running water and central heating; 44.4% of Belgian households do not possess a car, a colour television, a telephone and a personal computer (all of them in one household); and 38.1% of Belgian households report that they are not able to “make ends meet”.<sup>119</sup>

An alternative study used both monetary and non-monetary criteria, such as housing conditions, financial stress and a lack of resources, to define poverty. This study estimated that 12% of all Belgian households were living in a state of so-called multi-aspectual poverty (6% in Flanders, 18% in Wallonia and 20% in Brussels).<sup>120</sup>

In 2007, one out of seven, or 14.7%, of all Belgians were living in poverty.<sup>121</sup> Although this figure is lower than the average of 16% in the entire European Union, it cannot be called a good result, since the figure for the EU is based on the scores for all member states, including for instance the Baltic States and Poland, which score well below EU average. Belgium scores worse than Sweden (9%), the Netherlands (11%), Finland and Austria (12%), and France and Germany (13%).<sup>122</sup>

Poverty rates differ significantly between the regions in Belgium. The EU SILC data show that in 2005, 10.7% of the population in Flanders was living below the poverty line, compared to 17.5% in Wallonia and 27% in the Brussels Region.<sup>123</sup>

As a contribution to the United Nations Expert Seminar on Extreme Poverty and Human Rights held in February 2007, Belgian researchers issued a report on the fight against poverty in Belgium.<sup>124</sup> This study refers to the following documented situations of exploitation of or discrimination against poor people in Belgium: landlords letting apartments unfit for habitation; children begging in the streets and ending up in paedophilia networks; homeless people ‘deported’ by the police to remote locations, or freezing to death in the streets of Brussels; electricity or gas supplies being suspended during winter despite legal bans; schools referring able and healthy pupils to special education because of their social or ethnic background; and hospitals declining patients without medical insurance.<sup>125</sup>

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<sup>119</sup> Federal Ministry of Economics, “Resultaten van de enquête naar inkomens en levensomstandigheden van Belgische huishoudens”, p. 2 and 4, at [http://mineco.fgov.be/press\\_releases/press\\_releases\\_pdf/press\\_release\\_03062005\\_nl.pdf](http://mineco.fgov.be/press_releases/press_releases_pdf/press_release_03062005_nl.pdf) (accessed 28 October 2007).

<sup>120</sup> P. Raeymaeckers and C. Dewilde, “Multidimensionele armoede in België. De validering van een multidimensionele armoedemaat op basis van de SILC-2004 voor België en zijn gewesten”, paper presented at the Day of Sociology, Rotterdam, 31 May 2007, p. 22.

<sup>121</sup> *De Standaard*, “Almaar meer Belgen arm”, 17 October 2007.

<sup>122</sup> B. Cantillon, professor of social policy and poverty expert at the University of Antwerp, in *De Standaard*, “Almaar meer Belgen arm”, 17 October 2007. For a more detailed comparison between Belgium and the most developed EU countries, see B. Cantillon, I. Marx, S. Rottiers and T. Van Rie, *Een vergelijking van België binnen de Europese kopgroep: Postremus inter partes*, February 2007, at <http://webhost.ua.ac.be/csb/index.php?pg=29&idrec=86&act=2&sk=3&dr=2&filter=2007&zoekterm> (accessed 28 October 2007).

<sup>123</sup> Studiedienst van de Vlaamse Regering, “Armoede niet gestegen in Vlaanderen”, at <http://aps.vlaanderen.be/statistiek/nieuws/algemeen/2007-10-armoede.htm> (accessed 11 December 2007). The figures for Brussels are based on the 2004 data, since no figures are available for the Brussels Region for the year 2005.

<sup>124</sup> I. Nicaise and F. De Boe, “Combating poverty as a human rights issue in Belgium”, 2007, at [http://www.armoedebestrijding.be/publications/UN\\_Expert\\_Seminar\\_Poverty\\_Human\\_Rights\\_2007.pdf](http://www.armoedebestrijding.be/publications/UN_Expert_Seminar_Poverty_Human_Rights_2007.pdf) (accessed 28 October 2007).

<sup>125</sup> *Ibid.*, p. 1.

Another study adds to these problematic situations the inability to pay the portion of medical fees that is not covered by the insurance, with 17% of poor people stating that they postpone medical care because of the costs involved.<sup>126</sup>

## **10. Linguistic issues**

### **10.1. Background: state structure and the existence of linguistic minorities in Belgium**<sup>127</sup>

Belgium is a federal state made up of three communities,<sup>128</sup> three regions,<sup>129</sup> and four linguistic regions, three monolingual and one bilingual.<sup>130</sup> Competence for many policy areas has been transferred from the federal to the regional level. Belgium's communities and regions are invested with legislative power in many areas which have the potential to directly affect (linguistic) minorities, such as employment and economic policy, housing, culture, education and the use of language in administrative matters.<sup>131</sup>

In Belgium, the territoriality principle *inter alia* requires that within each monolingual region, all communications between the government and the public take place in the language of that region. For instance, in Flanders, a building permit has to be requested and granted in Dutch, while in Wallonia, the whole procedure needs to take place in French. The same applies for instance to the issuing of voting lists.

This territoriality principle has particularly led to discussion in relation to the Flemish periphery of Brussels, especially regarding the six communes with linguistic facilities.<sup>132</sup> Rapporteurs of the Parliamentary Assembly of the Council of Europe have reported that the “conflict seems to have been sparked off by an increased tendency of the Flemish government to restrict as far as legally possible the use of the linguistic facilities, with the aim of reinforcing the Flemish, Dutch-speaking character of the region, including the six communes in question. This tendency of the Flemish Government seems itself to originate in a perceived ‘Frenchification’ of the Brussels periphery at its origin, a fear to which some French-speaking politicians have probably contributed”.<sup>133</sup>

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<sup>126</sup> “Poverty is hazardous for Belgians’ health”, 30 November 2007, at [http://www.expatica.com/actual/article.asp?subchannel\\_id=24&story\\_id=46492](http://www.expatica.com/actual/article.asp?subchannel_id=24&story_id=46492) (accessed 30 November 2007).

<sup>127</sup> For a more detailed historical and analytical overview of linguistic minorities and related issues in Belgium, see K. Deschouwer, *Ethnic structure, inequality and governance of the public sector in Belgium*, United Nations Research Institute for Social Development, January 2004, at [http://www.unrisd.org/unrisd/website/document.nsf/d2a23ad2d50cb2a280256eb300385855/ec506a59176be044c1256e9e003077c3/\\$FILE/Deschou.pdf](http://www.unrisd.org/unrisd/website/document.nsf/d2a23ad2d50cb2a280256eb300385855/ec506a59176be044c1256e9e003077c3/$FILE/Deschou.pdf) (accessed 13 November 2007).

<sup>128</sup> The Flemish, the French and the German Community.

<sup>129</sup> The Flemish, the Walloon and the Brussels Region.

<sup>130</sup> Monolingual: Flanders, Wallonia and the German Community. Bilingual: Brussels.

<sup>131</sup> Council of Europe, Parliamentary Assembly Committee on Legal Affairs and Human Rights, Doc. 9536 *Protection of minorities in Belgium*, 5 September 2002, Explanatory Memorandum by Mrs. Nabholz-Haidegger, Rapporteur, para. 27; Council of Europe, Parliamentary Assembly, Resolution 1301 (2002) *Protection of Minorities in Belgium*, para. 8, at <http://assembly.coe.int/Documents/WorkingDocs/Doc02/EDOC9536.htm>

<sup>132</sup> The communes in question are Kraainem, Linkebeek, Sint-Genesius-Rode, Wemmel and Wezembeek-Oppem. At the time of the territorial division of Belgium in four linguistic regions, facilities were *inter alia* granted to the French-speaking inhabitants of these six communes in the periphery of Brussels that are wholly situated on the territory of Flanders. The facilities include *inter alia* the right to request – in each individual case – communications in French with the local governments, instead of in Dutch (which is generally required in the monolingual region of Flanders).

<sup>133</sup> Council of Europe, Parliamentary Assembly Committee on Legal Affairs and Human Rights, Doc. 9536 *Protection of minorities in Belgium*, 5 September 2002, Explanatory Memorandum by Mrs. Nabholz-Haidegger, Rapporteur, para. 11.

Belgium has signed, but not ratified, the Framework Convention for the Protection of National Minorities on 31 July 2001. Moreover, Belgium has issued a declaration accompanying its signature, stating that “the Framework Convention applies without prejudice to the constitutional provisions, guarantees or principles, and without prejudice to the legislative rules which currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority will be defined by the inter-ministerial conference of foreign policy”.<sup>134</sup> However, Belgium has as of yet not been able to define this notion.

Because of the way the Belgian state is organised, the Framework Convention should be signed and ratified by all seven competent parliamentary assemblies, before it can enter into force in Belgium. However, these ratifications have as of yet not taken place due to differing views that exist on both sides of the country on the matter. The Flemish government and parliament claim that the only minority in Belgium is the German-speaking minority, and only within its own region.<sup>135</sup> The governments and parliaments of the French Community and the Walloon Region reason as follows: “[w]e maintain that minority status must be determined with reference to the Belgian state and to each of its federated entities. Accordingly, we take the view that French-speakers and German-speakers are language minorities at federal level,<sup>136</sup> while French-speakers in Flanders, Dutch-speakers in the Walloon Region, Dutch-speakers in Brussels and French-speakers in the German-speaking region are language minorities at regional and community level”.<sup>137</sup>

Consequently, the European Commission for Democracy through Law (Venice Commission) of the Council of Europe has issued an opinion with regard to which linguistic minorities exist in Belgium. The Venice Commission finds that “in Belgium, in the light of the existing equilibrium of powers between the Dutch-speaking and the French-speaking at the state level, French-speakers are in a position of co-dominance and therefore do not constitute a minority within the meaning of the framework convention at this level, despite being numerically inferior to Dutch-speakers. German-speakers, instead, are to be considered as a minority in the sense of the framework convention at the state level”. The Venice Commission furthermore has concluded that “at the regional level, having regard to the distribution of competences between the various regions and communities and of the territorial division of the country, [...] French-speakers in the Dutch-language region and in the German-language region may be considered as a minority in the sense of the framework convention, as may Dutch-speakers and German-speakers in the French-language region”.<sup>138</sup>

The Parliamentary Assembly of the Council of Europe (PACE) has followed the opinion of the Venice Commission in its Resolution 1301. The PACE concludes that “the following groups are to be considered as minorities in Belgium within the context of the framework convention: at state level, the German-speaking community; at regional level, the French-speakers in the Dutch-language region and in the German-language region, and the Dutch-speakers and German-speakers in the French-language region”. The PACE has also warned Belgium that the issuing of a declaration upon ratification that “would seek to exclude from the convention’s scope of protection a group of persons that, although not belonging to a minority at the state level, would be in danger of losing its identity by the operation

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<sup>134</sup> See the website of the Council of Europe, at

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=8&DF=08/02/05&CL=ENG&VL=1> (accessed 11 December 2007).

<sup>135</sup> Council of Europe, Parliamentary Assembly Committee on Legal Affairs and Human Rights, Doc. 9536 *Protection of minorities in Belgium*, 5 September 2002, Explanatory Memorandum by Mrs. Nabholz-Haidegger, Rapporteur, para. 22. The German speaking Community counts some 70 000 inhabitants.

<sup>136</sup> For the French-speakers, since they constitute a numerical minority in Belgium – representing approximately 40% of the population, compared to nearly 60% for the Flemish-speaking – note of HRW International.

<sup>137</sup> Council of Europe, Parliamentary Assembly Committee on Legal Affairs and Human Rights, Doc. 9536 *Protection of minorities in Belgium*, 5 September 2002, Explanatory Memorandum by Mrs. Nabholz-Haidegger, Rapporteur, para. 23.

<sup>138</sup> European Commission for Democracy through Law, CDL-AD(2002) 1, *Opinion on possible groups of persons to which the Framework Convention for the Protection of National Minorities could be applied in Belgium*, 12 March 2002, paras 43 and 45.

of democratic institutions at the regional level, would probably have to be understood as a reservation incompatible with the object and purpose of the framework convention itself”, and would therefore be invalid.<sup>139</sup>

The Belgian Court of Arbitration, also entitled Constitutional Court, already held in a 1996 judgment that “it is the duty of each legislator, within the limits of its competence, to ensure the protection of minorities”. In the same judgment, the court held Flanders responsible for protecting the rights of the “French-speaking minority established” in the Flemish communes where facilities for French-speakers are provided.<sup>140</sup> This judgment therefore implicitly introduced the theory that French-speaking citizens are a minority in the Flanders region, at the very least in the Flemish communes with facilities for French-speaking citizens.

## 10.2. Examples of linguistic issues in 2007

Over the course of 2007, several linguistic issues arose in Belgium, some of which will be addressed below. The six-month long political crisis put the two main linguistic communities in confrontation, and their inability to create a federal government, inflamed their relations and provided a fertile ground for 'linguistic' provocations.

- During the 2006 local elections and the June 2007 federal elections, in a number of communes with facilities in the Flemish region around Brussels, voting letters were sent to the French-speaking inhabitants in French, in contravention with the general language regulation in this matter. The language facilities offered to French-speaking inhabitants of these communes do not imply an abrogation from the principle that for all actions performed by public authorities, the language of the region should be used.<sup>141</sup> Since the communes in question are located on the territory of the unilingual Flanders, the voting letters should consequently have been sent in Dutch according to the interpretation given to the linguistic legal framework by the Flemish government.<sup>142</sup> As a reaction to this infraction on language regulation, the minister of interior of the regional Flemish government refused to appoint the mayors of these communes until the matter had been duly investigated. This refusal in turn back-lashed the federal government talks that took place following the June elections. One of the political parties at the table, the small *Front des Francophones* (FDF; French-speaking Front) only represented in the Brussels region, demanded the appointment of the mayors before partaking in discussions concerning the reform of the Belgian state that were to take place during the government talks.<sup>143</sup> Moreover, after having been challenged to do so by the president of the FDF, the French-speaking members of the city council of these communes started to deliberate in French.<sup>144</sup> However, according to the interpretation of the linguistic legal framework by the Flemish government, this was also inconsistent with language regulation that stipulates that mayors, deputies and council members can only use

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<sup>139</sup> Council of Europe, Parliamentary Assembly, Resolution 1301 (2002) *Protection of Minorities in Belgium*, paras 18-19.

<sup>140</sup> Court of Arbitration, Judgment N° 54/96 of 3 October 1996, as found in Council of Europe, Parliamentary Assembly, Resolution 1301 (2002) “Protection of Minorities in Belgium”, para. 10.

<sup>141</sup> Omzendbrief BA 97/22 van 16 december 1997 betreffende het taalgebruik in gemeentebesturen van het Nederlandse taalgebied.

<sup>142</sup> See Council of Europe, Parliamentary Assembly Committee on Legal Affairs and Human Rights, Doc. 9536 *Protection of minorities in Belgium*, 5 September 2002, Explanatory Memorandum by Mrs. Nabholz-Haidegger, Rapporteur.; Council of Europe, Parliamentary Assembly, Resolution 1301 (2002) *Protection of Minorities in Belgium*.

<sup>143</sup> *De Morgen*, “FDF eist benoeming Franstalige burgemeesters Rand”, 7 October 2007.

<sup>144</sup> *De Morgen*, “Keulen vernietigt besluiten drie faciliteitengemeenten”, 23 October 2007; Omzendbrief BA 97/22 van 16 december 1997 betreffende het taalgebruik in gemeentebesturen van het Nederlandse taalgebied, II. C.

the language of the region – if it is a unilingual region – during city council meetings.<sup>145</sup> The Flemish Minister of Interior consequently declared the decisions taken by the city councils that day as invalid and decided to permanently deny the appointment of the majors in the communes.<sup>146</sup>

- In November 2007, the city council of Hoeilaart, a commune in the territory of Flanders, situated between Brussels and the Walloon region and with a substantial number of French-speaking inhabitants, adopted regulations that, *inter alia*, set language conditions in connection with the acquisition of so-called social building ground.<sup>147</sup> The new city regulations demand knowledge of the Dutch language as a precondition for candidates who desire to acquire one of the sixteen social building grounds offered.<sup>148</sup> The mayor of Hoeilaart has defended the city council's decision as follows: “[w]e are primarily selling social lots in order to allow people that are currently residing in Hoeilaart to stay here. Knowledge of the Dutch language is necessary to resist the high pressure of ‘Frenchification’”.<sup>149</sup> The cabinet of the Flemish minister of interior has expressed serious doubts about the validity of the said language requirement, stating that “[p]ast proposals to introduce knowledge of a language [...] have made clear that knowledge of language or nationality can not be a criterion in the granting of houses or building grounds”.<sup>150</sup>
- In November 2007, a French-speaking referee stopped a football match for the cup between a Flemish first division team and a Walloon second division team, because of insulting slogans shouted by the public.<sup>151</sup> The referee used his competence under the legislation regulating Belgian football to stop the match on the ground of ‘racist behaviour’.
- On 28 November 2007, the Belgian Constitutional Court declared unconstitutional the bridging measure according to which Brussels police officers should acquire a certificate proving their Dutch-French bilingualism by the end of 2007.<sup>152</sup> After the reform of Belgian police in 2001, police officers in Brussels were given five years to achieve bilingualism. However, when this deadline past on 1 April 2006, merely 52% of the police officers were in possession of a certificate proving their knowledge of the second language. The Federal Minister of Interior Affairs consequently prolonged this period until 31 December 2007. This measure was subsequently challenged in front of the Constitutional Court by NV-A (the cartel partner of CD&V, one of the political parties participating in the government talks following the federal elections in June 2007), which has led to the said judgment.<sup>153</sup>

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<sup>145</sup> Omzendbrief BA 97/22 van 16 december 1997 betreffende het taalgebruik in gemeentebesturen van het Nederlandse taalgebied, II. C.

<sup>146</sup> *De Morgen*, “Keulen vernietigt besluiten drie faciliteitengemeenten”, 23 October 2007; *De Morgen*, “Keulen benoemt Franstalige burgemeesters niet”, 14 November 2007.

<sup>147</sup> *Het Laatste Nieuws*, “Kabinet Keulen heeft twijfels over taalvoorwaarden in Hoeilaart”, 28 November 2007. Social building grounds are plots of land that are granted at a price lower than the market price by the commune to persons with limited resources.

<sup>148</sup> *Het Laatste Nieuws*, “Kopers sociaal kavel Hoeilaart moeten Nederlands kennen”, 27 November 2007.

<sup>149</sup> *Ibid.* ‘Frenchification’ of certain commune on the territory of Flanders is the phenomenon caused by the fact that the amount of French-speaking inhabitants has risen starkly over the past decades in these communes, leading their Flemish inhabitants to fear a loss of cultural identity.

<sup>150</sup> *Het Laatste Nieuws*, “Kabinet Keulen heeft twijfels over taalvoorwaarden in Hoeilaart”, 28 November 2007.

<sup>151</sup> *De Morgen*, “Bekermatch Genk stilgelegd na beledigingen tegen Walen”, 25 November 2007.

<sup>152</sup> Constitutional Court, Judgment n° 146/2007 of 28 November 2007.

<sup>153</sup> *De Morgen*, “Overgangsmaatregel voor tweetaligheid politie Brussel vernietigd”, 28 November 2007; *Le Soir*, “Les policiers devront être bilingues”, 30 November 2007.

## **11. Trade union rights**<sup>154</sup>

### **11.1. Legal framework**

Workers have the right to form and join unions of their choice. While the law does not require trade unions to register, every major conflict has been accompanied by attempts by authorities to force trade unions to acquire legal status.

A law dating back to 1991 grants special protection to staff representatives and deputies on workers' councils and health and safety committees. In addition to financial sanctions, the law provides for the possibility, but not the obligation, of reinstating workers who have been dismissed from work for their trade union activities. Trade union representatives who are not members of these two bodies have a lower level of protection.

Workers of small companies are generally denied the right to collective representation. The EU directive on workers' information and consultation rights that was due to be transposed into national law by March 2005, and is expected to bring in changes in that regard, had still not become part of Belgian law by the end of 2007 because of opposition from managers of small and medium-sized enterprises and continued disagreement between the social partners. The Belgian government has been summoned to appear before the European Court of Justice for failing to implement the directive.

The right to strike is recognised, as are collective bargaining rights, which are widely exercised. However, legislative authorities have intentionally refrained from defining the scope of the right to strike.

### **11.2. Practice**

#### *11.2.1. Circumventing the law*

Employers prefer to pay out legal entitlements, even very large ones, rather than respect the required redundancy procedure or reinstate workers who have been fired for their union activities. The law does, in fact, allow employers to deny a worker's request for reinstatement. In that situation, the employer simply has to pay additional compensation. An important test case involving a union delegate unfairly dismissed in 2005 by the ground services company "Flightcare", operating at Brussels airport, continued to make its way through the courts.

#### *11.2.2. Right to strike heavily penalised*

Employers have been trying for several years to petition the courts to ban certain forms of strike-related activities, such as picketing. The claims have generally been accompanied by requests that such acts be subject to fines if the ban is disregarded. Any union that decides to ignore such a ban, for example, by maintaining picket lines, ends up being heavily penalised. Employers have used these methods again since 2004, despite the conclusion of a 'gentlemen's agreement' between the social partners in March 2002 in which the employers committed themselves to avoid using legal procedures until all conciliation attempts failed, whilst the workers agreed to respect the notice periods required for strikes.

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<sup>154</sup> This chapter is based on the section on Belgium in the "2007 Annual Survey of the International Confederation of Trade Unions," at <http://survey07.ituc-csi.org/getcountry.php?IDCountry=BEL&IDLang=EN>

Meanwhile, the Belgian government has failed to amend its legislation to prevent recourse to the law in ways that could undermine legitimate use of the right to strike. As a result, many employers have continued issuing unilateral petitions to the courts. Some judges have also agreed to issue 'preventive' orders in the absence of any concrete indications that assaults might be committed. These decisions have significantly restricted the right to strike and are considered by the unions to be in breach of the case law of the ILO Committee on Freedom of Association.

## **12. Religious Intolerance and Discrimination**

### *12.1. Constitutional framework*

The constitution guarantees the rights and freedoms of ideological and philosophical minorities (article 11), freedom of worship and its public practice, including the freedom to manifest one's opinions in all matters (article 19). No one can be compelled to take part in activities and ceremonies of a religion (article 20). The state may not intervene in the appointment of religious clergy (article 21). The constitution guarantees the respect of philosophical, ideological, or religious beliefs of parents and their children at school and provides for religious education in public schools (article 24). It also guarantees the payment of the wages and the retirement pensions of the clergy of recognized religions and moral assistants of secular humanism (article 181).

All religious and belief communities are allowed to carry out charitable and economic activities. They can open faith-based schools and receive state subsidies if they fulfill the general requirements. There are religious classes for Catholic, Protestant, Jewish, Muslim and Orthodox students as well as ethics classes in public primary and secondary schools. The independence of the clergy and the right of self-government of religious bodies are recognized and respected.

The Belgian system of relationships between the state and religions in Belgium is historically rooted in a specific and discriminatory system of hierarchy of religions: state-recognized and non-recognized religions. However, recognition criteria have never been enshrined in the constitution, in decrees or in laws. After Belgium gained independence in 1830, Catholicism, Protestantism and Judaism enjoyed de facto state recognition on the basis of the official status they had been granted under French rule at the beginning of the 19<sup>th</sup> century. Anglicanism was recognized in 1835, Islam in 1974, and Orthodoxy in 1985. Secular humanism was recognized as a state-sponsored belief system in 1993 (article 181(2)).

### *12.2. Hierarchy of religions and institutionalized discrimination*

This system of hierarchy of religions and belief systems generates various forms of institutional discrimination. The state only finances recognized religious communities, while state subsidies are provided by all taxpayers, including those who profess a non-recognized religion or who do not adhere to any religion or belief system. Non-recognized faiths are not eligible to receive state subsidies for wages and pensions of their clergy; they are not entitled to have officially accredited chaplains in prisons, detention centers for asylum seekers, hospitals, the armed forces, homes for elderly or handicapped; they are not permitted to teach their religion in public schools; they are denied access to public media and equality of treatment by the tax administration. They are obligated to obtain work permits for foreign missionaries/preachers to enter the country for voluntary religious work and on several occasions in the past, Belgian consulates failed to answer such applications from Adventists, and Pentecostal missionaries as well as American Mormons, or denied them access to Belgian territory.

At the session on freedom of religion or belief of the October 2006 Human Dimension Implementation Meeting of the OSCE/ODIHR held in Warsaw, HRWF Int'l made a public statement on 10 October 2006 about the denial of access of an aged foreign Hindu prisoner named Govind Prasad Srivastana to

religious assistance in Belgium. On 9 October 2006, the U.N. Special Rapporteur on Freedom of Religion or Belief who had previously been informed by HRWF about the case sent a communication to the Belgian Government about this issue as well as about the lack of access to appropriate meals. The Belgian government confirmed to the U.N. Special Rapporteur that Belgian and foreign prisoners who do not profess a state-recognized religion are not entitled to spiritual assistance.<sup>155</sup>

### 12.3. Religious intolerance

Many new religious movements are stigmatized as harmful organizations by officially recognized religions, 'anti-sect' groups and the media, warned against and fought against by two state institutions created in 1998 to identify harmful new religious movements and cults: a *sectes*<sup>156</sup> observatory (CIAOSN/IACSSO) and an inter-ministerial coordination agency to fight them.

Before the mid-nineties, the relations between the state and religious minorities had always been quite peaceful. After the suicides-homicides of the Order of the Solar Temple, a leader of which was Belgian, the state started a sect-hunt, which marked a dramatic turn of events. Following the publication of a parliamentary report (1997) and the list of allegedly suspicious *sectes*, many cases of intolerance and discrimination in the public and private sectors were reported to human rights organizations by members of blacklisted *sectes*. They included: libel, and slander; victimisation in the neighbourhood, at the workplace and at school; damage to individuals' reputation; loss of jobs or promotions; dismissals; loss of visitation rights or child custody in divorce settlements; inability to rent facilities for religious ceremonies or for meetings; denial of the Belgian nationality; denial of access to public display boards; and police surveillance.

### 12.4. Muslim issues

Relations between the state and the representative bodies of the Muslim community have continued to be strained. Despite new internal elections imposed by the Ministry of Justice, the Executive of the Muslims of Belgium (EMB), the official interlocutor of the state, has repeatedly been in the news for alleged financial mismanagement.

- On 26 October 2007, more than half of the members of the EMB were forced to step down at a general meeting of the organisation officially representing Muslims in Belgium. Only 7 out of the 17 members of the EMB, including its President Coskun Beyazgül, survived the vote. Of the remaining 10 members, 2 had resigned voluntarily, while the other 8 were voted down by the General Assembly.

The resignations and the vote were the end-result of long standing complaints of bad governance and a criminal investigation on fraud within the EMB. As a result of the recent events, the Federation of Mosques of Belgium has also started composing a commission of neutral persons that will investigate the EMB in order to formulate proposals for a better leadership of the organisation in the future.

In 2007, the wearing of headscarves (*hijabs*) in public institutions, and especially in public schools, was still publicly debated as it had previously been decided that the regulation regarding headscarves would rest with school authorities. As many as 705 of secondary schools under the authority of the

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<sup>155</sup> Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council", Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum. Summary of cases transmitted to Governments and replies received. Ref. A/HRC/4/21/Add1, 8 March 2007. Human Rights Council. Fourth session. Item 2 of the provisional agenda.

See <http://daccessdds.un.org/doc/UNDOC/GEN/G07/117/05/PDF/G0711705.pdf?OpenElement>

<sup>156</sup> The French words *secte* and *organisation sectaire* used in Belgium have a very negative connotation. They include groups such as cults, but also certain new religious movements or communities of belief. The terms "sect" and "sectarian organization" have a different meaning in English. Ms Asma Jahangir, UN Special Rapporteur on Freedom of Religion or Belief, uses the French word *secte* (and not "sect" or "cult") in her report about her visit to France from 18 to 29 September 2005.

French community have introduced the ban; compared to 415 in 2000. A number of complaints have since then been filed.

- The city of Antwerp decided in 2007 that all people employed by local authorities who are in contact with the public would not be allowed to wear any symbols of their religious, political or philosophical beliefs, including headscarves and crucifixes. However, in August, city officials announced that Muslim women working in nurseries who had been banned from wearing headscarves would be allowed to cover their hair with a *bandana*<sup>157</sup>.
- On 18 October 2007, the Council of State suspended a decision of the Council of Appeal of the Flemish Community Schools, which had fired a Muslim teacher "for urgent reasons."<sup>158</sup> Up until 17 January 2007, Chantal Pommée, a Belgian convert to Islam, had taught Islamic religious classes at the primary school 'De Zonnewijzer' in Sint-Pieters-Woluwe.

According to school regulations in force at the 'De Zonnewijzer', pupils or teachers "are not allowed to wear clothing or symbols through which a religious conviction is visibly expressed." However, this prohibition does not apply to teachers of religious classes while in their classroom. The 43-year old woman from Kraainem was dismissed because she refused to remove her headscarf outside of the classroom on 10 and 17 January 2006. "A school or a group of schools cannot issue a prohibition of a headscarf outside of the classroom; only the Flemish Community's Schools Council can do so," said the Council of State.

- On 29 November 2007, the municipal council of Ghent (Flanders) decided to prohibit civil servants from wearing the *hijab*. The council voted the ban with 26 in favour and 23 against. The spokesman said *hijab*-clad employees might be offered work elsewhere.

Since 2003, more than 20 communes have been introducing into their police regulations a ban on wearing the *burqa* in public places.

At the end of October 2007, a male anaesthesiologist filed a complaint against a Muslim whose wife was about to deliver a baby because he was repeatedly prevented to provide her with adequate medical treatment on the grounds that he was a man.

Doctor Philippe Becx in the city of Bree was called upon to perform an emergency caesarean on a Muslim woman to save the baby's life. However, when the anaesthesiologist arrived in the theatre, the husband barred the entrance, refusing his wife to be treated by a male doctor, entered the operating room, and demanded a female anaesthesiologist. Since doctor Becx was the only anaesthesiologist present in the hospital, this was impossible.

Only after two hours of discussion between the husband, the hospital staff and an imam who had been asked to mediate, were they able to convince the husband to accept the anaesthesia to be performed by the male doctor. Even then, the husband demanded that his wife be completely wrapped in cloth, so that only the patch of skin in which the anaesthetic was to be injected, would not be covered. He also demanded the anaesthesiologist to leave the operating room after he had injected the anaesthetic; the doctor had to follow the remainder of the operation from outside the room, giving his indications through the slightly opened door.

Eventually, the operation was successful and both the mother and her baby survived. However, the anaesthesiologist has now filed a complaint against the husband for impeding him in performing his duty to assist people in need of medical help, while he himself would have been liable in case of eventual complications. The husband was also charged with the crime of wilful neglect since he has jeopardized the life of his wife and unborn child through his actions.

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<sup>157</sup> Reuters press release « Belgian city allows bandanas, keeps headscarf ban », 29 August 2007

<sup>158</sup> De Standaard, "Discharge of teacher for wearing a headscarf deemed unjustified", 23 October 2007.

The professional organisation of anaesthesiologists supports the claim.

This is not the single case of this nature in Belgium. A few weeks earlier, male gynaecologists had already complained of Muslims refusing their services. This phenomenon is especially present in cities with a big migrant community, such as Brussels and Ghent. In both cities, the heads of the gynaecological departments in the major hospitals have reported the increasing occurrence of the discussed phenomenon.

### 12.5. Catholic conscientious objection

- In early November 2007, Catholic pharmacist Paul Vannes of Sint-Pieters-Leeuw (Brussels periphery), indicated by use of a letter in his window and one on his counter that he would not sell products that are intended to be used for euthanasia and products that are not in accordance with his religious beliefs. Among these products are condoms, birth control pills, and morning-after pills. In defending his position, Vannes said that “condoms are not medical products and that his pharmacy would not sell products that prevent or terminate life.”

In refusing to sell the said products, the pharmacist said he was acting in accordance with the recent statement made by Pope Benedictus XVI at an international congress of Catholic pharmacists, declaring that they have the right to refuse to provide their customers with medicines that support abortion, euthanasia or other “immoral” effects on grounds of conscientious objection.<sup>159</sup>

## **13. Case Law of the European Court of Human Rights**

In 2007, the European Court of Human Rights (ECtHR) delivered judgments on fifteen cases lodged against Belgium. It found Belgium in violation of the fundamental human rights and freedoms of its citizens on fourteen occasions, whereas one case ended up in a settlement. All but one of the cases in which the court found against Belgium concerned the right to a fair trial, most of them the issue of concluding judicial proceedings within ‘reasonable time’, as provided by articles 5(3) (right to liberty and security) and 6 (right to a fair trial) of the ECHR, but also the right to defence and an effective remedy, and access to a court. One judgment against Belgium concerned freedom of expression and journalistic confidentiality.

### 13.1. Article 5 of the ECHR – Liberty and security of person

#### *13.1.1. Lelièvre v. Belgium*

The case of *Lelièvre v. Belgium*, in which the ECtHR delivered its final judgment on 8 November 2007,<sup>160</sup> concerned the pre-trial detention of Mr. Michel Lelièvre, suspect in the Dutroux paedophile case. Mr. Lelièvre complained in front of the European Court that his pre-trial detention had been unreasonably long and had therefore violated article 5(3) of the ECHR. Mr. Lelièvre had been detained for nearly eight years, awaiting the decision of the *Cour d’Assises* in the Dutroux case. The ECtHR found that objective reasons justified keeping the applicant in detention, including the prevention of his flight from justice. However, since under the ECHR pre-trial detention should always be the last

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<sup>159</sup> De Morgen, 3 November 2007, Catholic pharmacist refuses to sell contraceptives and euthanasia kits on grounds of conscientious objection.

<sup>160</sup> European Court of Human Rights, *Lelièvre v. Belgium*, application no. 11287/03, 8 November 2007, at <http://cmiskp.echr.coe.int/tpk197/portal.asp?sessionId=4590226&skin=hudoc-en&action=request>

resort, the court also found that Belgian authorities had failed to seriously consider the many alternatives for pre-trial detention provided by Belgian law despite repeated requests to this end made by the applicant. Therefore, the court found that the preventive detention was not substantiated by relevant and sufficient reasons. In addition, the court stated that the nearly two year's period between the closing of the investigative procedure and the start of the trial was unreasonably long. Based on these considerations, the European Court found Belgium in violation of article 5(3) of the ECHR.

### 13.2. Article 6 of the ECHR – Right to a fair trial

#### *13.2.1. Nagler and Nalimmo B.V.B.A. v. Belgium*

In its final judgment in the case of *Nagler and Nalimmo B.V.B.A. v. Belgium*<sup>161</sup> on 17 July 2007, the ECtHR found against Belgium concerning a civil matter that had been tried *in absentia* of the defendants. The main problem was the fact that the defendants' lawyer had been steering towards a trial *in absentia*, *inter alia* by requesting the defendants by telephone to leave the courtroom on the day of the first hearing, where the lawyer himself did not appear. The applicants were condemned on first instance and subsequently appealed the court's decision, arguing that their lawyer had been negligent in failing to uphold his obligation to represent his clients in court. The Court of Appeal confirmed the first instance decision, arguing that the defendants' lawyer had sufficiently proven that the choice for a trial *in absentia* was a deliberate strategy and not the result of neglect. The applicants complained against the national courts' decision in front of the ECtHR for excess of the 'reasonable time' limit.

The ECtHR agreed with the applicants and found a violation of article 6 of the ECHR since neither the complexity of the case, nor the behaviour of the defendants could justify the excessive time delays, including a three year and a half procedure in the first instance and a two-year gap between the issuing of the final report of the rapporteur and the actual decision of the Court of Cassation.<sup>162</sup>

#### *13.2.2. Brichet and Bouzet v. Belgium*

The case of *Brichet and Bouzet v. Belgium*, in which the ECtHR delivered its final judgment on 24 July 2007,<sup>163</sup> concerned the disappearance of 12-year-old Elisabeth Brichet on 20 December 1989. Immediately following her disappearance, Elisabeth's parents initiated a criminal investigation against unknown persons. The kidnappers and murderers of Elisabeth, Mr. Fourniret and Ms. Olivier, were only arrested in 2004 and brought before a court in May 2007. This case before the ECtHR eventually did not lead to a conviction of Belgium since the applicants and the Belgian state came to a friendly settlement, entailing a EUR17,500 monetary compensation.

#### *13.2.3. De Saedeleer v. Belgium*

In the case of *De Saedeleer v. Belgium*, the ECtHR delivered its final judgment against Belgium on 24 July 2007.<sup>164</sup> The case concerned a gynaecologist who had been the subject of both a disciplinary and an administrative procedure. Since the applicant had not initiated proceedings at the ECtHR within the

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<sup>161</sup> European Court of Human Rights, *Nagler and Nalimmo B.V.B.A. v. Belgium*, application no. 40628/04, 17 July 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590270&skin=hudoc-en&action=request>

<sup>162</sup> The Supreme judicial body in Belgium, both in civil and in criminal cases.

<sup>163</sup> European Court of Human Rights, *Brichet and Bouzet v. Belgium*, application no. 44899/98, 24 July 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590298&skin=hudoc-en&action=request>

<sup>164</sup> European Court of Human Rights, *De Saedeleer v. Belgium*, application no. 27535/04, 24 July 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590324&skin=hudoc-en&action=request>

time limit of six months after the definitive national decision in the administrative case, the ECtHR found this part of the complaint inadmissible. Regarding the civil disciplinary procedure, the court noticed that the entire proceedings lasted for almost ten years (from 1 September 1994 until 6 May 2004) despite the fact that the case did not exhibit any particular complexity that would justify such lengthy proceedings. The court subsequently found, *inter alia*, that since the proceedings had not made any progress at all in front of the Court of Cassation for a period of two years, the ‘reasonable time’ principle had been violated.

#### 13.2.4. *Da Luz Domingues Ferreira v. Belgium*

In the case of *Da Luz Domingues Ferreira v. Belgium* concluded on 24 August 2007<sup>165</sup> the ECtHR found a breach of the right to defence, guaranteed under article 6 of the ECHR. The applicant was a Portuguese national with permanent residence in Belgium, who had been indicted and convicted for acts relating to prostitution in Belgium while he was incarcerated in Germany. The applicant complained of a violation of article 6 of the ECHR since he had been convicted without ever having appeared before a Belgian court and therefore had been denied the right to defend himself in person.

The ECtHR found that the applicant himself was to a large extent responsible for what he called a ‘legal’ impossibility to appear in front of the Belgian courts due to his incarceration in Germany, since he was clearly aware of the date set for the trial and had not undertaken sufficient steps to either be able to appear before the Belgian courts or at least prove his ‘legal’ impossibility to appear.

Nevertheless, the ECtHR also ruled that, despite the fact that the defendant had clearly shown the will to act against his conviction *in absentia*, he had been denied this right on two separate occasions on grounds that he had disregarded procedural obligations and failed to meet the deadline set for appeals. According to the ECtHR the applicant had not been informed of the required formalities that had to be completed in order to legally appeal his conviction, as a result of which there had been a violation of the right to defence under article 6 of the ECHR.

#### 13.2.5. *Barbier v. Belgium*

The case of *Barbier v. Belgium*, in which the ECtHR delivered its final judgment on 20 September 2007,<sup>166</sup> concerned a trial on the non-payment of costs under an architectural contract. The official starting point of litigation was 1 July 1982 and the final decision was formulated by the Brussels Court of Appeal on 16 March 2004 – almost twenty-two years after the judicial proceedings had been launched.

The ECtHR found particularly problematic the fact that due to a huge backlog of cases nearly five years had passed between the inscription of the case on the roll of the Court of Appeal and the actual hearing of the case. Reiterating its previous case law, the ECtHR stated that a chronic overload of the roll of court did not constitute a valid reason for the long duration of the trial and consequently found Belgium in violation of article 6 of the ECHR for exceeding the ‘reasonable time’ requirement.

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<sup>165</sup> European Court of Human Rights, *Da Luz Domingues Ferreira v. Belgium*, application no. 50049/99, 24 August 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590354&skin=hudoc-en&action=request>

<sup>166</sup> European Court of Human Rights, *Barbier v. Belgium*, application no. 24731/03, 20 September 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590401&skin=hudoc-en&action=request>

### 13.2.6. *De Clerck v. Belgium*

The ECtHR also found Belgium in violation of the ECHR in the case of *De Clerck v. Belgium*, in which the final judgment was delivered on 25 September 2007.<sup>167</sup> The case concerned criminal proceedings against a private company for tax fraud, which had started on 30 November 1990 and had not been finalised by the time the case was submitted to the ECtHR. The criminal proceedings were even put on hold on 7 June 2007 and the case was referred back to the roll of court *sine die*. As a result, the case had dragged on for almost seventeen years.

While the ECtHR recognised the complexity of the case as one of the factors that might have justified lengthy proceedings, it concluded that complexity alone could not justify the excessive length of the trial. Nor could, according to the ECtHR, delays on the part of the applicant be considered as having contributed to the prolonging of the trial. The ECtHR concluded that the final factor contributing to the excessive length of proceedings was the behaviour of government authorities. For this reason, the ECtHR found Belgium in violation of article 6 of the ECHR for not concluding the proceedings within a ‘reasonable time’. Moreover, the court found a violation of article 13 of the ECHR (right to an effective remedy) since the Belgian legal system at the time did not offer the defendants at any stage of the proceedings the possibility to lodge a complaint for the long duration of the investigation.<sup>168</sup>

### 13.2.7. *Loncke v. Belgium*

In *Loncke v. Belgium* the ECtHR ruled against Belgium for violation of article 6 of the ECHR. The final judgment was delivered on 25 September 2007.<sup>169</sup>

The case concerned the owner of a second-hand car-shop who was prosecuted for tax evasion for an amount up to EUR 3.7 million. The main concern was a section of the applicable tax law that at the time of the trial still required the consignment of the outstanding sum of money before an appeal against a negative first instance decision could be deemed admissible. Since the applicant was unable to consign the money, his appeal was declared inadmissible. The applicant subsequently complained of a violation of his right to access to court and his right to a fair trial.

The ECtHR confirmed that the amount of money requested from the applicant as consignment was substantial and disproportionate to his actual financial situation, as a consequence of which it was highly probable that he would be unable to meet the demand set by the financial administration. The court consequently found a violation of article 6 ECHR on the ground that the sum requested for consignment constituted a disproportionate measure in protecting the rights of the financial administration and thereby impeded the applicant’s effective right to access to court.

### 13.2.8. *Turck v. Belgium*

The case of *Turck v. Belgium* dealt with long legal proceedings arising from an order to move a stationary caravan due to a redefinition of the zone in which it was located as unsuitable for

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<sup>167</sup> European Court of Human Rights, *De Clerck v. Belgium*, application no. 34316/02, 25 September 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590430&skin=hudoc-en&action=request>

<sup>168</sup> This lacuna in Belgian law has since been solved by a decision of the Court of Cassation. See case *Raway and Wera v. Belgium*.

<sup>169</sup> European Court of Human Rights, *Loncke v. Belgium*, application no. 20656/03, 25 September 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590442&skin=hudoc-en&action=request>

inhabitation. The ECtHR ruled on the case on 25 September 2007,<sup>170</sup> finding the excessive length of the proceedings to be in violation of article 6 of the ECHR.

The applicant had first filed a complaint to the Council of State<sup>171</sup>, after which it took nearly seven years for the first instance to deal with the case. In its decision, the ECtHR stated that since the case could not be regarded as complex, the excessive length of the proceedings was solely caused by the behaviour of the authorities. The court consequently found Belgium in violation of art. 6 ECHR for exceeding the reasonable time limit.

### 13.2.9. *Nicolai de Gorhez v. Belgium*

The case of *Gorhez v. Belgium*, in which the ECtHR delivered its final judgment on 16 October 2007,<sup>172</sup> concerned a civil case in which the applicant was requested by his bank to repay the open sums of his cancelled credit. The ECtHR found Belgium in violation of article 6 ECHR for exceeding the ‘reasonable time’ limit, since the entire proceedings took more than thirteen years for three instances, including a four-year period in which the parties did not appear in front of court.

### 13.2.10. *Hamer v. Belgium*

The case of *Hamer v. Belgium*, in which the ECtHR delivered its final judgment on 27 November 2007,<sup>173</sup> concerned a dispute between the applicant and the Belgian authorities over a holiday house that had been constructed without the necessary permits. In this case, a Belgian Court of Appeal had already found that the reasonable time limit had been surpassed. However, the Court of Appeal nonetheless pronounced the defendant guilty, ordering him to restore the site to its original state, thus requiring him to tear down the building.

In its judgment, the ECtHR considered the order to tear down the house to constitute a form of punishment, leading it to still consider the application despite the fact that the Belgian courts had already found a violation of the reasonable time limit principle. The ECtHR stated that, while the judicial proceedings in front of the Belgian courts only took three years and a half for three instances, the investigative proceedings lasted for over five years. Due to the excessive length of investigation Belgium was in violation of article 6 of the ECHR.

### 13.2.11. *Iwankowski v. Belgium*

Also in the case of *Iwankowski v. Belgium*, on which the ECtHR decided on 27 November 2007,<sup>174</sup> the ECtHR found a violation of the ‘reasonable time’ principle stated in article 6 of the ECHR. The case concerned a civil suit in which the applicant had demanded damages for injuries suffered due to a traffic accident. The legal proceedings in the case had lasted nearly six years and a half, including an experts’ investigation of over two years, for one instance.

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<sup>170</sup> European Court of Human Rights, *Turck v. Belgium*, application no. 43542/04, 25 September 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionSimilar=4590504&skin=hudoc-en&action=similar&portal=hbkm&Item=18&similar=frenchjudgement>

<sup>171</sup> The Council of State (*Conseil d’État, Raad van State*) is the highest administrative judicial body in Belgium.

<sup>172</sup> European Court of Human Rights, *Nicolai de Gorhez v. Belgium*, application no. 11013/05, 16 October 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590617&skin=hudoc-en&action=request>

<sup>173</sup> European Court of Human Rights, *Hamer v. Belgium*, application no. 21861/03, 27 November 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590664&skin=hudoc-en&action=request>

<sup>174</sup> European Court of Human Rights, *Iwankowski and others v. Belgium*, application no. 6203/04, 27 November 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590682&skin=hudoc-en&action=request>

### 13.2.12. *Raway and Wera v. Belgium*

The case of *Raway and Wera v. Belgium* involved a civil case in which the applicants sued their architect and contractor for damages caused by construction flaws in their house. The ECtHR delivered its final judgment on 27 November 2007,<sup>175</sup> finding a violation of the ‘reasonable time’ principle because the court case had lasted over fifteen years before reaching its conclusion. The court pointed in particular to the fact that the proceedings in first instance took as long as seven years (including a three years and a half for an experts’ opinion), as well as to the fact that the case had spent nearly two years *sine die* in front of the Court of Cassation. The ECtHR furthermore stated that Belgium had violated article 13 of the ECHR (right to effective remedy) since at the time of the judicial proceedings in Belgian courts, the law did not provide for effective recourse over the long duration of the proceedings. This problem has since been resolved by a judgment issued by the Belgian Court of Cassation in which the court interprets a certain article of the civil code in a sense that allows parties in a trial to claim compensation for damages caused by an excessive duration of the trial.<sup>176</sup>

## 13.3. Article 10 ECHR – Right to freedom of expression

### 13.3.1. *Tillack v. Belgium*

The case of *Tillack v. Belgium*, in which the ECtHR delivered its final judgment on 27 November 2007,<sup>177</sup> concerned two articles written by the applicant, a German journalist who had been detached to Brussels in order to follow European Union developments, for the German weekly *Stern*. The articles were published in the beginning of 2002 and were both based on confidential documents of the European Anti-Fraud Office (OLAF). The first article related to allegations made by a European official on irregularities committed by certain European institutions, and the second referred to internal investigations conducted by OLAF on the basis of these allegations. Rumours circulated within OLAF that the journalist had paid a European official 8,000 German marks in exchange for the confidential information.

In March 2002, OLAF accused the applicant of active corruption of an EU official and opened an internal investigation to identify the official who had leaked the confidential information to the applicant. In 2004, a criminal investigation was initiated against the applicant and in March 2004 the Belgian judicial authorities searched the applicant’s private house and his professional office, seizing nearly all documents and professional instruments belonging to the applicant. The applicant subsequently requested the Belgian courts to order the release of his documents and instruments, claiming that his freedom of expression prohibited the authorities to take measures that were intended to oblige him to reveal his source. However, the Belgian courts, up until the Court of Cassation, ruled in favour of the Belgian authorities, stating that the applicant’s freedom of expression was not unlimited and did not protect him against the seizures, which were conducted for sufficient and relevant reasons. The applicant consequently brought his case in front of the ECtHR.

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<sup>175</sup> European Court of Human Rights, *Raway and Wera v. Belgium*, application no. 25864/04 27 November 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590703&skin=hudoc-en&action=request>

<sup>176</sup> Court of Cassation, 28 September 2006. The ECtHR is of the opinion that at least since 27 March 2007 this judgment can no longer be ignored by the public and should therefore be used by parties in a court case who wish to claim damages for excessive duration of the trial. See para. 76 of the ECtHR’s judgment.

<sup>177</sup> European Court of Human Rights, *Tillack v. Belgium*, application no. 20477/05, 27 November 2007, at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=4590805&skin=hudoc-en&action=request>

In its judgment, the ECtHR assessed whether the seizures had met the necessary requirements for a valid interference with the freedom of expression, formulated in article 10(2) of the ECHR. It found that the measures were prescribed by law, namely by the Criminal Investigation Code. Secondly, the court accepted that they pursued a legitimate aim – namely the protection of the public order, the prevention of infractions on the penal code and the prevention of the dissemination of confidential information in order to protect the reputation of others. Thirdly, the court examined whether the measures were necessary in a democratic society, which entails that they should be proportionate to the pursued aim and relevant and sufficient to achieve this aim. The court stated that the right of a journalist to protect the identity of his sources is not merely a privilege that can be granted or withdrawn in function of the question whether the source is acting in a legitimate or illegitimate manner, but an essential attribute of the right to information.

The court moreover noted the extensive impact of the measures taken by the authorities, namely the seizure of sixteen folders of documents, two boxes of archives, two personal computers, four portable telephones and a metallic piece of furniture, without making an inventory of the seized material. Based on these findings, the court concluded that the reasons invoked by the authorities for the seizures were certainly relevant, but did not sufficiently justify the measures taken. The court therefore judged these measures to be disproportionate to the aim pursued and consequently it found Belgium in violation of the freedom of expression entailed in article 10 of the ECHR.

#### **14. Recommendations**

In light of the human rights concerns raised in this report, HRWF Intl' makes the following recommendations to the Belgian government and other public authorities:

1. To ensure that legal regulations and practices concerning the treatment of **asylum seekers** comply fully with principles of human respect and are in conformity with international human rights standards. To this end, Belgian authorities should:
  - modify the new appeals procedure introduced by the 15 September 2006 law<sup>178</sup> with the aim of ensuring that the applicants' fundamental rights to defence is not violated on appeal;
  - make sure that child asylum seekers under no circumstances are accommodated in closed centres.
2. To guarantee respect for the fundamental **rights of detainees** by fully implementing the Basic Law of 12 January 2005 Concerning the Prison System and the Legal Position of the Detainees, which thus far has partially remained a dead letter.
3. To refrain from any legal reforms with regard to **juvenile delinquents** that could lead to the abolition of the youth criminal justice system, including *de facto* lowering of the age of criminal responsibility for young offenders, as a result of which young offenders would be treated in the similar manner as adult offenders.
4. To improve **detention conditions** by taking efficient measures to ameliorate the continued overcrowding in prisons. The first steps to this end include:
  - Amending the criteria by which prison capacity is defined so as to help establish the required resources to guarantee adequate detention conditions;
  - Developing and implementing alternative solutions to pre-trial detention for detainees awaiting trial.

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<sup>178</sup> Law Amending the Law of 15 December 1980 Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners.

5. To anchor in legislation guarantees that all victims of human trafficking who are willing to cooperate with authorities to combat human trafficking are granted legal residence and other protection regardless of the outcome of criminal proceedings against perpetrators.
6. To enhance measures to tackle **racially motivated discrimination**, violence, hostility, and hate speech by promptly investigating, prosecuting and punishing such acts. In order to facilitate efficient measures against racism and xenophobia, Belgian authorities should oblige the responsible authorities to keep detailed date on racially motivated crimes.
7. To strengthen activities aiming at eradicating all forms of **discrimination against women**, especially in the sectors of employment, education, equal remuneration, pension rights, and political participation.
8. To address the problem of **maltreatment of children** and **domestic violence** in the most serious manner possible, including insisting that all public officials promptly act on any suspected cases of maltreatment or acts of domestic violence, and by carrying out opinion-building campaigns against the wide-spread acceptance of corporal punishment of children.
9. To ensure that all rights introduced by the recent positive legislative changes that have placed **LGB rights** on an equal legal footing with those of heterosexual in all sectors of public life are fully implemented in practice. Particular attention should be paid at removing all obstacles from the way of adoption of children by LGB people.
10. To rigorously implement the National Action Plan on Social Inclusion 2006-8 aimed at fighting **poverty**, by especially addressing the lack of affordable, qualitative social rental housing; problems in guaranteeing high-standard education to all children regardless of their social background; and the disproportionate risk of single-parent families to end up in poverty.
11. To ensure that Belgium's laws, decrees and practices regulating the **use of languages** are in conformity with international standards, especially with the Council of Europe Framework Convention for the Protection of National Minorities and the International Convention on the Elimination of all Forms of Racial Discrimination, and aim at the convention's prompt ratification.
12. To guarantee the full implementation of **labour rights** as guaranteed by law. This entails:
  - Refraining from any attempts to force legal registration of trade unions, which is not required by Belgian law;
  - Prompt transposition into national law the EU Directive on workers' information and consultation rights (2002/14/EC);
  - Amending legislation with the aim of abolishing the legal loopholes that allow employers to circumvent the right to reinstatement of employees dismissed for their labour activities, and undermine the legitimate use of the right to strike.
13. To recognize **religious non-discrimination, tolerance and diversity** as fundamental values, and take steps in the direction of abolishing the institutionalised religious discrimination based on the system of hierarchy of communities of faith and belief. Consequently, the authorities should:
  - Treat all communities of faith and belief on an equal footing, especially with regard to the financing of state-recognized religions and belief systems, with regard to the attendance of classes of state-recognized religions or belief systems in francophone public schools and with regard to the access to chaplains, spiritual and philosophical advisers in the army, in prisons, hospitals, homes for handicapped and elderly people;
  - Engage in genuine dialogue with the Muslim community in a spirit of non-interference in the activities of its representative bodies, for the purpose of promoting the community's integration in Belgian society and ensuring its self-governance;

- Refrain from singling out new religious and spiritual movements, declare publicly that the list of 189 movements investigated by the parliamentary enquiry commission on sects has no juridical value, denounce defamatory public campaigns against those movements and revise the June 2, 1998 “Law Creating an Information and Advisory Center on Harmful Sectarian Organizations.”