



**International Convention on  
the Elimination of All Forms  
of Racial Discrimination**

Distr.: General  
27 May 2013  
English  
Original: French

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**Committee on the Elimination of Racial Discrimination**

**Consideration of reports submitted by States  
parties under article 9 of the Convention**

**Sixteenth to nineteenth periodic reports of States parties  
due in 2012**

**Belgium\*, \*\***

[2 October 2012]

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\* This report contains in a single document the sixteenth to nineteenth periodic reports of Belgium due in 2012. For the fourteenth and fifteenth periodic reports of Belgium and the summary records of the Committee's meetings at which the reports were considered, see: CERD/C/BEL/CO/15 and CERD/C/SR.1857 and 1858.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited by the editorial services.

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\*\*\* Annexes can be consulted in the files of the secretariat.

## Introduction

1. Pursuant to article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as “the Convention”), Belgium has prepared a new report on the legislative, administrative and other measures which give effect within the country to the international obligations resulting from the ratification of the Convention.

2. The fourteenth and fifteenth periodic reports of Belgium, presented as a single document, were considered at meetings of the Committee on 25 and 26 February 2008. The Concluding Observations of the Committee in relation to that report were officially published on 11 April 2008.

3. On 1 April 2009, in response to paragraph 30 of the Concluding Observations of the Committee (CERD/C/BEL/CO/15), Belgium provided additional information on its response to the concerns mentioned in paragraphs 10, 14, 16 and 22 (CERD/C/BEL/CO/15/Add.1).

4. The present document submitted to the Committee on the Elimination of Racial Discrimination responds to paragraph 31 of the aforementioned Concluding Observations, which recommended that Belgium should submit its sixteenth to nineteenth periodic reports as a single document, in the form of an update to the previous report and responding to the issues raised in those Concluding Observations adopted by the Committee on 5 March 2008.

5. The present report endeavours to provide detailed responses to those comments, which are contained in Section C of document CERD/C/BEL/CO/15, entitled “specific concerns and recommendations”.

6. Replies to those comments are included in this report.

7. Belgium takes this opportunity to reiterate the importance it attaches to the work of United Nations treaty monitoring bodies and to emphasize the significance of their contributions to the protection and promotion of human rights.

8. That support was reflected in the submission in 2012 of three country reports relating to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

9. During the second half of 2010, when Belgium held the Presidency of the Council of the European Union, it organized a number of conferences which demonstrated its attachment to human rights. These included the Equality Summit, on combating discrimination and promoting equal opportunities in the field of employment (15–16 November 2010) and the Expert Conference on European Integration Modules (15–16 December 2010). The Brussels-Capital Region also took the opportunity to organize, from 10 to 25 November 2010, the *Quinzaine de l'égalité des chances et de la diversité* (two weeks for equal opportunities and diversity). In light of its very positive outcome, this initiative was repeated in 2011 and 2012.

10. Although various initiatives have been implemented by the different entities making up the country (see below), Belgium has not yet adopted a national plan of action against racism as called for by the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001) and the outcome document of the Durban Review Conference

held in 2009 (“Durban II”). Discussions between the federal Government and the country’s Regions and Communities with a view to adopting such a plan took place until 2007, coordinated by the Centre for Equal Opportunities and Action to Combat Racism. Those discussions were terminated as a result of the various elections which followed (federal in June 2007, regional in June 2009 and federal in June 2010) and the lengthy negotiations for the formation of a federal government which followed the 2007 and 2010 elections.

## **Article 1**

### **Definition of discrimination**

#### **A. A new definition of discrimination, designed to create consistency and homogeneity in the legislation establishing a federal framework in the area of equal treatment**

11. In 2007, significant changes were made to the legislation creating a federal framework in the area of equal treatment and action against discrimination, which is discussed further later in this report. The following three laws were enacted:

- The Act of 30 July 1981, penalizing certain actions inspired by racism and xenophobia, as amended by the Act of 10 May 2007 (*Moniteur belge* (Belgian Official Gazette), 30 May 2007);
- The Act of 10 May 2007, penalizing certain forms of discrimination (*Moniteur belge*, 30 May 2007); and
- The Act of 10 May 2007, on gender discrimination (*Moniteur belge*, 30 May 2007).

12. Those changes entailed a new definition of racial discrimination in relation to that which had been embodied in previous legislation and which had been modelled on article 1 of the Convention. The legislators chose to provide a consistent definition of discrimination regardless of the category to be protected (such as gender, age, sexual orientation, disability or religious or philosophical beliefs), transposing the following European Union directives:

- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; and
- Directive 2006/54/EC of the European Parliament and of the Council, of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

13. Not all differences in treatment constitute discrimination; only those which cannot be justified in accordance with legal standards constitute illegal discrimination. Regarding racial discrimination, the requirements for such justification are particularly strict in comparison with other protected categories (see below).

14. The definitions used in legislative instruments adopted by the Regions and Communities (decrees and orders<sup>1</sup>), in order to incorporate the provisions of the aforementioned European Union directives into national law in areas which come under their authority, are similar to those contained in federal legislation and should therefore not

<sup>1</sup> Belgian legal instruments (laws, decrees and orders) in the area of non-discrimination are listed in paragraph 179 of the core document.

create any disparities in the understanding of discrimination in general and racial discrimination in particular.

## **B. Definitions**

15. Discrimination may be direct or indirect, and includes harassment and incitement to discriminate.

### **Direct discrimination**

16. Direct discrimination is defined as any direct distinction which is based on any of the criteria for protection and which cannot be justified in accordance with any of the three federal laws. Direct distinction is defined as the situation which arises when, on the basis of one of the criteria for protection, one person is treated less favourably than another is, has been or would be in a comparable situation.

17. In principle, the concept of direct discrimination comprises no element of intent. Nonetheless, when the victim chooses to bring the case to the criminal courts, it must be proved that the person responsible for the discrimination has consciously sought the discriminatory result (special intent).

18. The Act of 30 July 1981 provides that, outside the area of employment, no direct distinction based on presumed race, skin colour, parentage or national or ethnic origin can ever be justified. Only the criterion of nationality allows for objective justifications, provided that they are motivated by a legitimate goal and that the means for attaining that goal are appropriate and necessary.

19. In the area of labour relations, that same Act specifies that a direct distinction based on one of the aforementioned four criteria may not be prohibited if it is motivated by an essential and decisive requirement, which must be interpreted strictly according to the law and treated as an exception to the general prohibition of discrimination.<sup>2</sup>

### **Indirect discrimination**

20. Indirect discrimination is also prohibited; it is defined as any "indirect distinction which is based on one of the criteria for protection and cannot be justified" in accordance with any of the three federal Acts. "Indirect distinction" is intended to denote a situation which arises when an apparently neutral provision, criterion or practice is likely to cause, in relation to other persons, a particular disadvantage for a person belonging to one of the protected categories.

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<sup>2</sup> The law provides that such a requirement may exist only when:

- A particular characteristic linked to a presumed race, skin colour, parentage, national or ethnic origin is essential and defining owing to the specific nature of the professional activity concerned or the context in which it is exercised; and
- The requirement is based on a legitimate goal and is proportionate to it.

While the law embodies this concept, it should be noted that its content is difficult to define. Furthermore, it is for the courts to determine on a case-by-case basis what constitutes an essential professional requirement. The law provides, however, that a Royal Order debated in Cabinet and submitted to certain authorities for their opinion could establish an illustrative list of situations where a particular characteristic constitutes such a requirement. As of the date of this report, the King has not yet made use of that faculty.

21. Here again, the concept comprises no element of intent. Nonetheless, when it is applied in the context of a criminal procedure, intent to discriminate must be proven. It should be noted that indirect distinctions may always be justified provided that they are objectively warranted by a legitimate goal and that the means for attaining that goal are appropriate and necessary.

### **Harassment**

22. Harassment, when based on one of the legally protected criteria, is considered as prohibited behaviour and treated as such. The law defines it as undesirable behaviour linked to one of the protected criteria with the intent or result of violating the dignity of the person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

23. Unlike distinctions in treatment, which are not necessarily discrimination, harassment may not be justified and cannot be considered otherwise than as intentional behaviour.

### **Incitement to discriminate**

24. Incitement to discriminate is defined as any behaviour which incites any person to discriminate, on the basis of one of the protected criteria, against a person, group or community or one of their members.

25. Construing such incitement as discrimination is justified by the legislators' desire to prevent certain persons from evading the prohibition of discrimination through the use of intermediaries. Such behaviour, which is punished by the criminal and civil law separately from the discrimination itself, requires an element of intent in the criminal law. It can be applied even if the incitement has not brought about actual discrimination.

## **Article 2 Policies to combat racism**

### **A. International commitments**

26. Since 2006, Belgium has ratified the following instruments:

- The Protocol amending the European Convention on the Suppression of Terrorism (ratified on 16 August 2007);
- The Additional Protocol to the Criminal Law Convention on Corruption (26 February 2009);
- The Council of Europe Convention on Action against Trafficking in Human Beings (27 April 2009);
- The Convention on the Rights of Persons with Disabilities (2 July 2009);
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities (2 July 2009);
- International Labour Organization (ILO) Convention No. 155 concerning Occupational Safety and Health and the Working Environment, 1981 (28 February 2011);
- ILO Convention No. 161 concerning Occupational Health Services, 1985 (28 February 2011);

- The International Convention for the Protection of All Persons from Enforced Disappearance (2 June 2011);
  - ILO Convention No. 150 concerning Labour Administration: Role, Functions and Organisation, 1978 (21 October 2011);
  - ILO Convention No. 168 concerning Employment Promotion and Protection against Unemployment, 1988 (21 October 2011);
  - Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (13 April 2012).
27. Belgium has recently signed:
- The Council of Europe Convention on the Prevention of Terrorism (19 January 2006);
  - The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (25 October 2007);
  - The European Convention on the Adoption of Children (Revised) (1 December 2008);
  - The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (24 September 2009);
  - The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (16 November 2009);
  - The Optional Protocol to the Convention on the Rights of the Child on a communications procedure (28 February 2012);
  - The Council of Europe Convention on preventing and combating violence against women and domestic violence (11 September 2012).
28. For most of the conventions and protocols that have been signed by Belgium, the parliamentary assent procedures necessary for their ratification are being finalized.

## **B. Constitutional and legislative amendments and developments**

### **1. Strengthening federal, community and regional legislation on equal treatment**

#### *The background to reform*

29. In 2007, Belgium undertook an overhaul of its legislative arsenal in order to comply with recommendations formulated by the European Commission regarding the transposition of the aforementioned three Directives.<sup>3</sup>

30. The overhaul of the Act of 30 July 1981 (on racism), as amended in 2003, and the Act of 25 February 2003 (anti-discrimination) was motivated by the consequences of an annulment decision by the Constitutional Court which had made them difficult to implement.<sup>4</sup> The Court had decided that all victims of discrimination were not given equal treatment because some motives were reprehensible from the criminal law viewpoint whereas others were punished only by the civil law. It had further decided that it was

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<sup>3</sup> Directives 2000/43/EC (racism), 2000/78/EC (equal treatment in employment and occupation) and 2006/54/EC (equal treatment of men and women in matters of employment and occupation).

<sup>4</sup> Constitutional Court, No. 157/2004, 6 October 2004.



inappropriate to exclude certain motives, such as language or trade-union membership, from the scope of the anti-discrimination law and, consequently, had struck down the restrictive list of discrimination criteria. This had led to some legal uncertainties which needed to be remedied by new legislation.

31. The need for more effective federal laws to combat discrimination and reduce the disparities between its various forms ultimately convinced the legislators that such a reform was desirable. Steps were then taken to harmonize the concepts used, the material scope of the legislation, the criminal-law dimension and the civil and procedural aspects. This also had the advantage of permitting the various laws to evolve “symbiotically”.

*Three new laws and new criteria for protection*

32. The Act of 10 May 2007, amending the Act of 30 July 1981, incorporated Council Directive 2000/43/EC into Belgian law and set up a general framework, in relation to certain areas of economic activity,<sup>5</sup> to combat discrimination based on nationality, presumed race, skin colour, parentage or national or ethnic origin. Nationality was added to the list of criteria in 2007.

33. Two other Acts were adopted on 10 May 2007 (see above), one to combat gender discrimination, the other against discrimination in general and listing 14 criteria for protection such as religious and philosophical beliefs, age, disability and sexual orientation.

*Innovations introduced by the reform: improved protection for the victims and witnesses of an act of racial discrimination*

34. The innovations introduced by the legislative reform are listed below. They relate mainly to penalties and the improvement of civil procedures protecting the victims of acts of discrimination.

- The protection of victims from reprisals, which is intended to be applicable both in labour relations and elsewhere, has been extended to the witnesses of discriminatory acts whereas it had previously been limited to plaintiffs.
- Stronger penalties have been introduced for employers who fail to comply with a judicial decision or judgement issued following an application for an injunction (civil procedure). These can be a term of imprisonment of one month to one year and a fine of €50 to €1,000.
- The plaintiff can now receive fixed-rate compensation for the moral damage suffered in case of discrimination. This compensation may be applied for following an injunction action, whereas formerly proceedings on the merits would have been needed. This possibility provides for a considerable saving in terms of court proceedings and also offers an effective way for the victim to be compensated.
- The invalidity of clauses contrary to the Acts of 10 May 2007 has been extended to provisions other than those of an employment contract (for example, provisions contained in labour regulations or in a collective employment agreement).

<sup>5</sup> Access to goods and services and supply of goods and services to the public; social protection; employment benefits; supplementary social security cover; mention in an official document or report; affiliation to or participation in a workers’ or employers’ organization, including the advantages offered by such organizations; access to, participation in or other exercise of an economic, social, cultural or political activity available to the public and labour relations in respect of recruitment, employment conditions and dismissal.

- New mechanisms for proof of discrimination have been introduced, such as the recurrence of a situation. The law provides a more comprehensive definition of the principle of the shifting burden of proof and sets a permanent framework for a judge to presume the existence of discrimination, thereby placing part of the burden of proof upon the defendant.<sup>6</sup>
- The amended law retains the existing offence of incitement to hatred, discrimination or violence towards a person or group. It also confirms the provisions of 2003 which introduced an abject motive (aggravating circumstances) in relation to a series of criminal offences.
- The Act of 30 July 1981 (as amended by the Act of 10 May 2007) also contains specific provisions not contained in the other two anti-discrimination Acts (on gender and general discrimination), pursuant to the Convention:
  - Article 21 penalizes the dissemination of ideas based on racial superiority or hatred. This offence, reflecting article 4 of the Convention, requires the existence of special intent and is punished by a term of imprisonment of one month to one year and/or a fine of €50 to €1,000. The appeal brought against this article by Vlaams Belang for violation of the freedom of expression was rejected by the Constitutional Court.<sup>7</sup>
  - Article 22 punishes any person belonging to a group or association which manifestly and repeatedly advocates racial discrimination or segregation.
  - Article 24 adds to the civil-law arsenal with criminal penalties for racial discrimination in goods and services (such as housing, hotels and catering and transport) and in employment.

#### *Regional and Community-level initiatives*

35. The Regions and Communities have also incorporated the aforementioned European Directives into their own laws, adopting decrees and orders in the areas falling within their authority. In the interest of consistency, the provisions adopted by the various legislative bodies are very similar. A list of these instruments is provided in paragraph 179 of the core document.

## **2. Deprivation or suspension of certain civic and political rights**

36. Belgian courts have continued to make use of the authority, provided for in legislation enacted in May 2009, to deprive those contravening anti-racism legislation of their civic and political rights.

37. An example of this is the decision of the criminal court of Termonde, dated 4 June 2012, to convict two members of Vlaams Belang of having offended against the Act of 30 July 1981, as amended by the Act of 10 May 2007. Following the destruction of a number of tombstones in a cemetery in Sint-Niklaas, the two offenders had falsely blamed the desecration on young immigrants, in an article in the local Vlaams Belang publication, referring to their “deviant culture”. One of the offenders was sentenced to four months’ imprisonment, suspended for three years, and a fine of €1,375. As an accessory penalty, his civic and political rights were suspended for ten years.

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<sup>6</sup> The shared burden of proof is not applicable in criminal procedures.

<sup>7</sup> Constitutional Court, decision No. 17/2009, 12 February 2009.

38. A proposal currently before Parliament would make the suspension of political rights an automatic accessory penalty for all offences against the Act of 30 July 1981, the Act of 23 March 1995 (penalizing the denial, minimization, justification or approval of the genocide perpetrated by the national-socialist regime in Germany during the second world war) and the Act of 10 May 2007 penalizing certain forms of discrimination. The proposed legislative measures mentioned in the previous report were not adopted.

39. A number of provisions in electoral law entail automatic ineligibility for persons convicted of the offences described in the Act of 30 July 1981 and the Act of 23 March 1995. This is true of the Walloon code on local democracy and decentralization, which provides that those convicted of such acts are ineligible for election to the municipal council, the provincial council or the sectoral council for 18 years following their conviction.

### 3. Punishment of racist violence by courts of law

40. Since the new anti-discrimination legislation entered into force, the Belgian courts have mentioned racist motivation in a number of their decisions.<sup>8</sup>

41. On 12 October 2007, Hans Van Themsche, aged 19, received a life sentence from the *Cour d'assises* (criminal court) of Antwerp. In 2006, in the streets of Antwerp, he had shot dead a 2 year-old girl and her Malian wet nurse and attempted to kill a Turkish woman, with the avowed intention of killing as many foreigners as possible. The aggravating circumstance of racism was taken into account by the court.

42. In its decision of 14 March 2008, the *Cour d'assises* of Hainaut convicted three young men of attempted murder after they had, as an act of vengeance, thrown a Molotov cocktail at black prostitutes in the Charleroi area. The court sentenced the attackers to 15, 18 and 20 years' imprisonment respectively.

## C. Other measures

### 1. Promoting awareness in target groups

#### *Actions to promote awareness among judges and prosecutors*

43. The Judicial Training Institute was created under the Act of 31 January 2007; this established an independent federal body responsible for designing and implementing the integrated policy for the development and training of judges and other officials in the judicial system in order to promote high-quality justice.

44. During the period covered by this report, the Institute organized a number of training days (one in 2007 and two sessions of two days each in 2008 and 2012) devoted to combating various forms of discrimination, including racial discrimination.

45. This training activity is designed for judges, judicial trainees, legal clerks and prosecution lawyers, clerks of the court and judicial assistants. The purpose is to make participants aware of the various instruments provided by the legislators and the guiding principles for dealing with the challenge represented by the emergence in Belgian society of the concept of "otherness in diversity", aiming to ensure equality for all in all aspects of society.

<sup>8</sup> For other decisions, see the website of the Centre for Equal Opportunities and Action to Combat Racism: [www.diversite.be](http://www.diversite.be).

*Awareness and training for police officers and prison staff*

46. Respect for human rights (including the general principle of non-discrimination) is the central theme of the training of all police officers throughout their careers, where they learn the national and international legal frameworks which will guide all their actions. All this training is regulated and subject to a continuous process of evaluation and improvement. During their basic training they are specifically taught how to intervene in and report on offences against anti-discrimination and anti-racism laws. Continuing training is also given in relation to the legal framework and the application of the law. Police officers are also trained in managing diversity and intercultural dialogue. Under an agreement between the Centre for Equal Opportunities and Action to Combat Racism and the Federal Police, the Centre provides many training courses to the police and joint activities are conducted (Activity report 2011, annex I).

47. The training of prison staff, including those working in federal centres for minors and psychiatric patients, has a strong human-rights orientation. It includes 17 hours' initial instruction in ethics, of which six hours are spent on theory, three on case studies and eight on studying high-risk relationships. The initial training also includes a 14-hour module on the internal status of detainees. This expressly covers the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the standards developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Prison Rules. In addition to the compulsory initial training, specific courses are available to prison staff throughout their careers.

*Other awareness-raising activities of the various authorities*

48. Many activities have been conducted by the State, the Communities and the Regions to promote diversity. Combating racism and racial discrimination plays an important part in this context. Information campaigns on new legislative instruments have also been organized, and a list of these events is attached to this document (annex II).

**2. Programmes and policies for integration***(a) The Roma and Travellers<sup>9</sup>**(i) National strategy for the integration of the Roma*

49. The Council of Europe estimates that there are 30,000 Roma people in the country's territory, or 0.29 per cent of the population.

50. In March 2012, responding to a European Commission communication entitled "An EU Framework for National Roma Integration Strategies up to 2020",<sup>10</sup> Belgium adopted a national Roma integration strategy (annex III). In this framework document, which sets out issues and goals for the integration of the Roma people in Belgium, the federal, community and regional authorities freely develop measures in their areas of competency.

51. The framework covers the various political fields in which progress can be made towards social and economic integration for the Roma people, such as combating discrimination, employment, education, housing and access to health care. Aside from these

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<sup>9</sup> This subject is also discussed later in this report, in the sections relating to articles 5 (employment) and 7 (teaching and education) of the Convention.

<sup>10</sup> COM 2011 173/4.

four main areas, particular attention is also given to more cross-cutting goals such as the Roma people's participation in society.

52. To coordinate the policies of the various entities, a working group was established on 21 March 2011, comprising representatives of the country's various governmental authorities (federal, regional and community) and representatives of cities and communes and of bodies which represent the Roma or collaborate with them.

53. At the federal level, a Roma and Travellers' council has been established to promote equal opportunities and involvement in national politics.

54. A local authorities' guide to organizing temporary residence for Travellers has been published by the Centre for Equal Opportunities and Action to Combat Racism (annex IV).

(ii) Policies implemented at the regional level

**Walloon Region**

55. There have been a number of activities designed to improve coordinated provisions for Travellers in the Walloon Region. A specific working group comprising representatives of all the ministerial offices has launched a pilot scheme for that purpose with seven Walloon communes. An agreement and a project have been concluded to enable communes to participate fully in the proposed mechanism, which relates both to the organization of residence for the Travellers and the purchase and development of sites. It should be noted that grants for the purchase and development of sites are not limited to the seven communes involved; they are available to all communes wishing to receive them. The objective of this pilot scheme, which is being assessed by the working group, is to create tools to help communes to respond better to demand for such services. In addition to other activities, it is also involved in preparatory discussions for the drafting of a decree on coordinated provisions for Travellers.

56. Every year, the Walloon Region spends approximately €1 million on promoting access to fundamental rights at the local level through social cohesion plans conducted by 147 communes (out of the total of 253 French-speaking communes). Through these plans, the communes engage in activities to provide for Travellers in their territory.

57. Action has also been taken to improve awareness among key actors. Communes, public social services centres, provinces and police zones have received a letter (signed by the ministers responsible for local authorities and social action) recommending a number of common-sense measures to be taken in order to facilitate and harmonize relations between the communes, Travellers and the sedentary population. A practical guide to the management of Travellers' temporary stays in the Walloon Region has been produced, published by the Interdepartmental Directorate of Social Cohesion of the government of the Walloon region and drafted jointly with its mediation centre for Travellers. The Region has shown its support for the Centre — whose work includes informing and supporting the public authorities in managing Travellers' temporary residence and providing an interface between communes, Travellers and the sedentary population — by concluding a multi-year agreement.

58. Lastly, an inventory has recently been prepared, listing sites which can be made available to local authorities for major assemblies of Travellers (about 200 caravans).

**Brussels-Capital Region**

59. The Order of 1 March 2012 amending the Housing Code recognizes wheeled dwellings as bona fide housing. The President of the National Association of Travellers was consulted during the drafting of that legislative text.

60. The Brussels-Capital Region was also actively involved in the work of the Roma and Travellers' Council. It has also included the issue of providing for Travellers among the priorities of the Regional Development Plan.

### **Flemish Community**

61. In recent years there has been a sharp rise in immigration from Central and Eastern European countries. This growth is mainly due to the opening on 1 May 2009 of the labour market to a number of those countries. The new immigrants include a specific group: the Roma people.

62. Virtually all Flemish cities and communes are home to migrants from Central and Eastern Europe (for data, see annex III, p. 9). This immigration, particularly that of the Roma, raises significant challenges in the areas of education, employment, housing, civic integration, well-being, discrimination and participation in society, particularly for municipalities.

63. In 2012, the Flemish authorities launched a plan of action entitled "Migrants from Central and Eastern Europe" to give a coordinated response to these challenges and improve the integration of the Roma explicitly but not exclusively. This involves a coordinated policy towards migrants and provides for actions, when needed, specifically targeting the Roma in the areas of education, employment and housing.

64. The social situation of Travellers (Roma, Sinti and Manush) in Flanders remains very precarious. Several studies have shown that many Travellers are disadvantaged in the areas of education, employment, participation and health care and also in terms of their image. In 2011, figures collected by the Migration and Integration Crossroads showed that in Flanders and the Brussels-Capital Region, 967 families of Travellers were resident in caravans. It was estimated that 1,000 of them travelled around Flanders every year, mostly in spring and summer.

65. In order to improve Travellers' habitats, the Flemish authorities provide a 90 per cent subsidy for the development, extension, acquisition and renovation of public sites for residential caravans and public transit sites. To ensure good conditions for the temporary residence of nomadic communities of Travellers, provincial governors have been tasked, in circular No. BB2010/05, with providing proper coordination, and communes are expected to work proactively to provide spaces for temporary residence (ad hoc campsites) for those communities. The Flemish Caravans Committee, which meets regularly, takes initiatives, coordinates and advises the relevant Ministers in relation to the development of sustainable and well-adapted sites for Travellers.

66. To support those responsible for initiatives for the acquisition, development, renovation or extension of campsites, the Flemish authorities have produced a manual entitled *Wonen op wielen* (Living on Wheels). It was fully revised in 2010 and updated on the basis of experiences in the development and management of such campsites.

67. While seeking to improve Travellers' housing situations, the Flemish authorities are also involved in actions in other policy areas. To improve those communities' social status and integration, there are currently activities in the areas of employment, education, housing, integration and well-being. These activities are included and monitored in the framework of the strategic plan for Travellers which is currently being prepared.

*(b) Integration policy in the Walloon Region*

## The Global Plan for Equal Opportunities

68. On 24 February 2011, the Walloon government adopted the first Walloon Equality Plan, whose main objective is to combat various types of discrimination and draw attention to similarities between certain forms of exclusion.

69. The Plan comprises specific cross-cutting measures targeting the various groups protected from discrimination, such as women, gays and lesbians, persons with disabilities and foreign nationals and persons of foreign origin. It also includes sectoral measures in the areas of employment, training, housing, balancing work and personal life, economics and agriculture.

70. A working group has been created to follow up the Plan. In 2012, the Minister responsible for equal opportunities presented initial government measures to implement it, including a plan for diversity and equality among public servants in the Walloon Region and a decree creating global plans for equality in state-owned enterprises, particularly targeting people of immigrant origin.

## Decree of 4 July 1996 amended by the decree of 30 April 2009

71. Integration policies in the Walloon Region are implemented in the framework of the decree of 4 July 1996 on the integration of foreign nationals and persons of foreign origin. That decree was recently amended by the decree of 30 April 2009 in order to:

- Adapt to changes in integration target groups and in their needs;
- Specify the responsibilities of regional integration centres;<sup>11</sup>
- Approve and subsidize local social development initiatives;
- Take into account European directives and recommendations; and
- Specify those goals of Walloon policy which are of a cross-cutting nature.

72. The decree explicitly calls for subsidizing local social development initiatives for the integration of migrants. To that end, a call for project proposals is issued yearly, formally targeting recent arrivals as the priority group. In 2010, 110 associations were supported in

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<sup>11</sup> The functions of the regional integration centres are as follows:

- Supporting local social development initiatives and coordinating integration activities in the framework of local integration plans;
- Promoting social, economic, cultural and political participation by foreign nationals and persons of foreign origin and cross-cultural exchanges;
- Coordinating the reception, guidance, support and integration of foreign nationals who have recently settled in the Walloon Region;
- Training social workers in the area of integration of foreign nationals and persons of foreign origin and cross-cultural dialogue, as well as the training of staff in services which deal with them, even partially;
- Local collection of available statistical data;
- When proposed by their managing boards and subject to agreement by the Integration Commission of the Walloon Region, organizing front-line integration activities, for a determined period, to implement the local integration plan if partners in associations and the public authorities do not do so themselves or if they so request, particularly in relation to the provision of lessons in the French language and Belgian institutions.

the framework of the call for proposals and 163 applications for support were received in 2011; for example, the following activities were developed:

- Actions or mechanisms for reception, administrative and social assistance, information and translation;
- Literacy initiatives for a target group consisting mostly of foreign nationals or persons of foreign origin and specific lessons in French as a second language;
- As a preventive measure, activities to provide help with homework, remedial teaching and language refresher courses; and
- From time to time, activities to improve knowledge of the host country, mutual awareness and coexistence between people of different origins (cross-cultural interaction, non-violent communication), familiarization with the language or culture of the country of origin and leadership and awareness-raising activities developed from time to time through (cross-)cultural weeks, days, campaigns and publications.

#### Reception and integration of recent arrivals in the Walloon and Brussels-Capital Regions

73. On 12 May 2011, the Board of the French Community Commission of the Brussels-Capital Region (COCOF), the government of the Wallonia-Brussels Federation (the French Community) and the government of the Walloon Region agreed to jointly organize and establish a genuine reception and integration programme for recent arrivals at the local level to provide them with the support and information they need in order to live fully independent lives.

74. To preserve and strengthen that coherent approach, a more formal common framework was established between the three governments through a memorandum of understanding whose main characteristics are described below. They fix common benchmarks for the creation of support mechanisms for the reception programme, with modalities to be set by the government of the Walloon Region and the Board of COCOF.

75. The reception programme, which has not yet been launched, will:

- Be designed for new migrants;
- Combine at least three elements: French as a Foreign Language (FFL) or literacy, citizenship and socio-professional guidance;
- Be voluntary;
- Be offered at the local level;
- Emphasize the use of existing initiatives and bodies;
- Be organized jointly by the Walloon Region, the French Community Commission and the Wallonia-Brussels Federation.

#### **Target population**

76. The beneficiaries of the reception programme will be foreign nationals who have arrived recently and have not been staying in Belgium without a permanent residence document for over three years.

77. Reception programmes focus particularly on foreign nationals — in the context of an employment contract, a family reunification or a period of study — and asylum seekers, refugees, unaccompanied minors and applicants for residence documents.



### Structure of the reception programme

78. The reception policy encourages the structuring of the process, which must include a coherent supply of services, and at least:

- Personalized social assistance, particularly in the administrative field, general guidance and housing support;
- A placement test to determine each person's basic skills and knowledge of the French language, and help in enrolling in an appropriate French language course or a literacy and French language course;
- Initiation into citizenship and practical life in Belgium, with a cross-cultural approach;
- A professional skills assessment and guidance towards the integration mechanisms which are best adapted to the individual's situation;
- Appropriate information on school enrolment for children, the duties of parents and their role as partners in children's education, as well as local initiatives to promote, for the children of recently-arrived migrants, educational integration and involvement in extracurricular activities;
- Promoting awareness of local social and cultural life.

### Actors in the reception policy the Walloon and Brussels-Capital Regions

79. The actors in the reception policy include:

- Regional integration centres (Walloon Region only);
- The communes and public social services centres;
- Training services developed by the government authorities or by associations (such as socio-professional integration, on-the-job training and social development), personal services in the psychological, medical and social spheres (social services, health centres), participation in cultural and social life (such as continuing education), assistance for young people in the social, cultural and educational fields (such as learning support) and educational opportunities such as bridging classes.

80. A guidance note giving greater detail on aspects of the reception process for newly-arrived migrants in the Walloon Region is annexed to this document (annex V, pp. 42–50).

(c) *Integration policy of the French Community Commission of the Brussels-Capital Region*

81. On 13 May 2004, the French Community Commission of the Brussels-Capital Region adopted a decree relating to a social cohesion programme.<sup>12</sup> Under the programme, coexistence initiatives are to be promoted by the Commission in partnership with communes and over 270 local associations active in disadvantaged Brussels neighbourhoods. The latter have been listed in 13 communes selected on the basis of the social problems present in their populations and in priority areas defined by the Regional Development Plan.

<sup>12</sup> For a definition of social cohesion, see the fourteenth and fifteenth reports (CERD/C/BEL/15), paras. 108–112.

82. In addition to contracts for the 13 communes, the decree provides for the funding of projects having a regional or intercommunal scope and projects which are not included in communal contracts.

83. In setting priorities for Brussels in the second five-year period (2011–2015), the Board of the French Community Commission took account of assessments conducted by the Regional Centre for the Promotion of Social Cohesion and statistical data assembled by the Environmental and Land Management Institute and the Health and Social Observatory, relating to problems and needs in Brussels neighbourhoods. The following are three priority areas for the five-year contracts (2011–2015):

- Support and assistance for school students;
- Literacy and French-language teaching for adults having little or no education;
- Reception and assistance for new arrivals.

84. In addition to that specific legislation, the French Community Commission prohibits all discrimination based on ethnic origin or any other grounds in all its legislation relating to health and assistance.

(d) *Flemish integration policy*<sup>13</sup>

(i) Integration policy

85. Integration policy in the Flemish Region is governed by the decree of 28 April 1998 as amended by the decree of 30 April 2009. These instruments provide for the creation of an integration policy commission which is responsible for organizing inclusive, cross-cutting integration policy through the establishment of a strategic plan to anticipate new challenges and developments relevant to that policy.

86. Flemish integration policy relates to society as a whole. All people, regardless of their origins and social status, should participate in a society in which individuals from different backgrounds can coexist and cooperate. The idea of “active citizenship shared by all” is vitally important. In that framework, two categories of people receive particular attention: those who are legal, long-term residents of Belgium and who were not Belgian nationals at birth, or at least one of whose parents was not a Belgian national at birth, particularly those who are in a clearly disadvantaged situation, and persons living legally in Belgium and who live or have lived in a caravan, or whose parents live or have lived in a caravan, except for residents of campsites or areas for weekend stays.

87. Flemish integration policy is three-dimensional, covering proportionate participation, accessibility and coexistence with diversity.

- Proportionate participation is to be achieved by strengthening specific categories of people defined in the integration decree. This emancipation policy requires concerted action with the people concerned, but the latter also need to take their responsibilities, take part in the development of society and be consulted on the subject.
- Accessibility relates to the provision of suitable services and assistance through regular organizations and facilities. The attention given to specific categories of people as defined in the integration decree is part of a wider policy of integration and of provision of quality services to all citizens.

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<sup>13</sup> Including Flemish integration policy in Brussels.

- In seeking to ensure coexistence with diversity, the integration policy seeks to promote openness and mutual respect between individuals and contacts between people of differing origins. Targeting society as a whole, it aims to broaden the base for a diversified society. Coexistence with diversity is the responsibility of all citizens, a responsibility which should be accepted and put into practice with their cooperation.

88. The three dimensions of the integration policy demand efforts to improve equality of treatment and combat discrimination based on birth, philosophical beliefs or convictions, language, nationality, presumed race, skin colour or national or ethnic origin or ancestry. To that end, measures must be taken in response to cases of unequal treatment or discrimination and citizens who are the victims of such practices must be empowered to defend their rights.

89. The Flemish government allocates €19 million per year to integration policy.

90. Local authorities also play an important part. Cities and communes wishing to receive an integration grant must develop local three-dimensional integration policies.

#### Reception of irregular migrants

91. The decree on Flemish integration policy also relates to foreign nationals whose residence in Belgium is illegal and who request help or reception because of their precarious situations. This aspect of the decree focuses on human assistance, mostly provided in the areas of health care and education and emphasizing guidance towards the making of judicious choices for the future, particularly by providing information on voluntary return programmes.

#### (ii) Civic integration policy<sup>14</sup>

##### Amendment of the Decree on Civic Integration of 28 February 2003

92. The Decree on Civic Integration of 28 February 2003 has been amended three times, by the decrees of 14 July 2006, 1 February 2008 and 17 February 2012.

93. The primary goal of the decree of 14 July 2006 was to better define the target group of the Flemish civic integration policy (which is obligatory) and set up a more effective penalty mechanism, the administrative fine procedure.

94. The decree of 1 February 2008 brings the target group into line with new federal residence regulations. Among other things, the decree creates an obligation for asylum seekers to take a social orientation course if their asylum procedure lasts longer than four months. When that period expires they become eligible for other parts of the civic integration procedure.

95. The provisions for asylum seekers were further amended by the decree of 17 February 2012, which abolishes compulsory priority civic integration for them; nonetheless, they retain the right to integration in Flanders and Brussels following the fourth month of the asylum procedure.

<sup>14</sup> “Inburgering”.

## Targets of the civic integration policy

## (a) Target group of the civic integration policy

96. The target group of the civic integration policy comprises foreign nationals aged 18 and over who arrive for the purpose of settling in Flanders or Brussels in the long term and are included in the National Register. Any Belgian national aged 18 and over born outside Belgium, at least one of whose parents was born outside Belgium, also belongs to this group.

97. Foreign nationals temporarily resident in Flanders or Brussels are not included and are not entitled to the civic integration programme. This group comprises, in practical terms, certain migrant workers and non-European students. Asylum seekers whose asylum applications have been submitted fewer than four months earlier are also excluded.

## (b) Duty of civic integration

98. Persons in two categories are required to follow a civic integration programme: first, persons who have migrated to Belgium recently and settled in Flanders and, second, ministers of religion officiating in a local church or religious community recognized by the Flemish government.

99. The duty of civic integration is not applicable in Brussels. Citizens of a member State of the European Union, of the European economic area or of Switzerland, as well as the members of their families, are exempted from that duty. That exemption does not apply to family members of Belgian nationals or to recent arrivals holding Belgian nationality who have recently settled in Flanders.

100. As of 1 March 2009, recent arrivals to whom that duty applies but who fail to fulfil it and those having rights who do not comply with their civic integration contracts may be subject to an administrative fine. The system of administrative fines is not applicable in the Brussels-Capital Region.

## Civic integration programme

101. The civic integration programme provides new citizens with a springboard by enabling them to acquire knowledge and develop their skills.

102. The primary civic integration programme is organized by the reception office and comprises a training programme supported by personalized individual support for new arrivals, which includes:

- Dutch-language lessons;
- Career guidance;
- Social orientation.

103. The civic integration programme is set out in a civic integration contract, specifying the components of the training programme to be followed by the newly-arrived migrant and the time and place of the lessons. To that end, the reception office takes account as much as possible of the new arrivals' learning needs and their desires, the views of the *Huis van het Nederlands* (Dutch Language House) and, where appropriate, those of the Flemish Job-seekers' Service. Other bodies are also closely involved in the programme. Adult education centres, basic education centres and university language centres offer courses in Dutch as a second language. Communes, public social services centres, the Internal Administration Agency and providers of social housing are also legally obliged to inform new arrivals of their rights and obligations in terms of civic integration.

104. To sign a civic integration contract is to undertake to follow the training programme regularly; this means that the newly-arrived migrant must attend at least 80 per cent of the lessons provided in the programme. When the primary civic integration programme is completed, the migrant receives a civic integration certificate.

(a) Social orientation course

105. During the social orientation course, newly-arrived migrants learn the values and standards of Flemish and Belgian society. The course includes practical items such as how to use public transport, where to obtain medical help and what reception and education facilities are available for children. It always takes as its starting point the new arrivals' existing knowledge and learning needs. Participants acquire the necessary skills and knowledge to make an active contribution to society.

106. The social orientation course, which is provided by the reception office, normally comprises 60 teaching hours. The newly-arrived migrants may receive the teaching in their mother tongues or a contact language.

(b) Career guidance

107. Career guidance is intended to help newly-arrived migrants to make career choices on the basis of their wishes and experience and their existing qualifications.

108. Three types of career guidance are provided:

- New arrivals having "professional prospects" can be assisted in their job-seeking activities or in the creation of an independent enterprise;
- Those having "educational prospects" are assisted in their studies;
- All new arrivals have "social prospects" and receive assistance to enjoy sociocultural activities, community volunteering and recreational facilities.

109. Reception offices in Flanders receive help from the Flemish Job-seekers' Service in providing career guidance to new arrivals having professional prospects. However, they themselves provide the other types of assistance. The Brussels reception office offers all three types of guidance.

(c) Provision of a personal guide

110. Each new arrival is provided with a personal guide who assists him or her with the civic integration programme, taking into account the person's professional and family situation; language is not an obstacle.

111. The personal guide is responsible for administrative monitoring of the civic integration programme. He or she will reorient the migrant to the Dutch Language House and the Flemish Job-seekers' Service or Actiris in Brussels, when necessary, and will draw up the civic integration contract and monitor the attendance of the new arrival during the training programme. He or she is primarily a trusted person who can be approached by the migrant in relation to a variety of issues. For example, he or she may offer assistance in obtaining recognition of diploma equivalency or in finding an appropriate school for the migrant's children, a lawyer, a psychologist or suitable housing.

112. It is, however, important that the new arrival should personally seek solutions for the issues on which he or she is requesting help. Since the personal guide knows the migrant's basic skills, aptitudes and network, the help provided will diminish in the course of the programme and become unnecessary when it has been completed.

(d) Secondary civic integration programme

113. After receiving the civic integration certificate, recently-arrived migrants can join the secondary civic integration programme. This is organized by the regular authorities and enable the migrants to put into practice the choices they have made as a result of the skills and knowledge acquired during the primary civic integration programme. This enables them to obtain training, either vocational or in an independent business. Furthermore, they are offered additional courses in Dutch as a foreign language and study other subjects.

**3. Combating racism on the Internet**

114. Since 2005, the Centre for Equal Opportunity has devoted resources to combating racism on the Internet. Two staff members have been recruited to devise a method to fight against the phenomenon and analyse reports of such behaviour.

115. The strategy involves proposing an appropriate reaction depending on the type of “cyberhate” phenomenon (blogs, forums, social networks, spam e-mails). Particular attention is also given to promoting awareness of and sharing information about the authors of racist comments and the persons who have reported them. Prosecutions may follow if the seriousness of the offences warrants them.

116. A seminar on this subject, held on 29 October 2009, led to the production of an information pamphlet illustrating that strategy and providing citizens with tools for reacting to the growth of Internet hate speech (see annex VI).

**4. Combating anti-Semitism and Islamophobia**

*Watchdog unit against anti-Semitism*

117. Between 2006 and 2012, the leadership and secretariat of the watchdog unit were provided by the Centre for Equal Opportunities and Action to Combat Racism. The unit comprised representatives of the Ministries of Justice, the Interior and Equal Opportunities and of the Jewish community.

118. When the new federal Government had taken office in 2012, the Minister of the Interior entered into various discussions with the representatives of Jewish organizations in Belgium. The Council of Ministers then decided to strengthen the watchdog unit through increased involvement by the ministers concerned. It was decided that the unit’s meetings would be chaired alternately by representatives of the Ministries of the Interior and Justice. Senior representatives of public prosecutors’ offices would also be involved, as would police chiefs from cities having sizeable Jewish communities. The Centre would continue to provide the secretariat.

119. Two major areas are under consideration with a view to improving effectiveness:

- Strengthening security measures around schools and places of worship through improved coordination between police forces and internal security services;
- Encouraging the victims of anti-Semitic behaviour to make formal complaints and, in parallel, improve the reception of victims at local police stations and the preparation of police reports, by appointing contact police officers and prosecutors for incidents of racism and anti-Semitism.

120. Data are collected by the Centre, which works closely with a voluntary organization, [www.antisemitisme.be](http://www.antisemitisme.be), to assemble information on such incidents.

121. The reported instances of anti-Semitism include death threats and holocaust denial. Other incidents in recent years have included verbal and physical aggression against both

adults and children, particularly in Brussels and Antwerp. Synagogues and private property belonging to Jews have also been vandalized.

122. The numbers of cases and reports have been relatively steady in the past six years, at around 60 per year. There were, however, increases in 2009 (over 100 incidents) and 2011 (82).<sup>15</sup> Furthermore, the upward trend in anti-Semitism on the Internet since 2006 was confirmed in the years that followed (see statistics in annex VII, tables 1 to 3).

#### *Combating Islamophobia*

123. Intolerance on grounds of cultural and religious differences has grown steadily in recent years. The societal debate on integration often focuses on Islam and the widespread tendency to conflate terrorists and religious extremists with the Muslim population as a whole.

124. Until 2009 it was hard to assess the scale of this phenomenon because of a shortage of data. Since then, the annual reports of the Centre for Equal Opportunities and Action to Combat Racism have provided estimates of the numbers of Islamophobic acts or utterances, using the following frame of reference (see annex VIII, pp. 56–60 of the Centre’s annual report, “Discrimination 2008”):

- Islamophobic acts or utterances punishable under the Act of 10 May 2007 penalizing certain forms of discrimination;
- Islamophobic acts or utterances which are not covered by that same Act;
- Non-Islamophobic acts or utterances.

125. In the past three years, 490 cases have been opened in response to Islamophobic sentiment (164 in 2011, 139 in 2010 and 187 in 2009). Many of them relate to comments posted on the Internet; others concern incidents in the workplace or issues of coexistence caused by Islamophobia (see figures in annex VII, table 4).

### **Article 3 Condemnation of racial segregation and apartheid**

126. There is no mechanism of racial segregation or apartheid in Belgium; nonetheless, Belgium strongly condemns such practices.

127. Apartheid is considered as a crime against humanity when it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Whether committed in wartime or peacetime, this crime is punishable by a life sentence (article 136 *ter* of Title 1 *bis* of the Criminal Code).

128. Committing the practices of apartheid or other inhuman and degrading practices based on racial discrimination and involving outrages upon personal dignity is considered as a crime under international law when it takes place in the circumstances set out in the Geneva Conventions of 12 August 1949 (and their additional Protocols) and the Rome Statute of the International Criminal Court. This offence is punishable by a prison sentence of 10 to 15 years, subject to the application of more severe penalties for grave outrages upon personal dignity (article 136 *quater* of Title 1 *bis* of the Criminal Code).

<sup>15</sup> The Centre has noted a certain correlation between the numbers of reports, and therefore of incidents, and developments in the Israeli-Palestinian conflict.

129. Furthermore, article 22 of the Act of 30 July 1981, amended by the Act of 10 May 2007, punishes any person belonging to a group or association which manifestly and repeatedly advocates racial discrimination or segregation (see above).

## **Article 4**

### **Condemnation of all racist propaganda and organizations**

#### **A. Prohibition of all organizations which promote and incite racial discrimination**

130. Combating organizations which incite discrimination and penalizing their members have always been priorities for Belgium. There have been many relevant decisions in that regard, including the following.

131. On 9 March 2011, three members of the group Blood and Honour Vlaanderen, known for its organization of neo-Nazi concerts, were sentenced to three months' imprisonment, suspended for two of them, by the criminal court of Veurne.

132. On 10 February 2012, the spokesman of the radical Islamic movement Sharia4Belgium, prosecuted for incitement to hatred and violence towards non-Muslims, was sentenced in absentia to two years' imprisonment and a fine of €50 by the criminal court of Antwerp. The verdict was confirmed on 30 March 2012, although the sentence was slightly reduced. The movement wishes to establish sharia law in Europe and is well known in Belgium. Its spokesman has also been the subject of other prosecutions and convictions for similar activities.

133. A number of draft laws relating to the banning of undemocratic groups are currently before Parliament. This issue has recently received particular attention from the Government following the trouble generated by Sharia4Belgium in May 2012. The proposed laws, submitted in 2010 and 2011, aim to combat neo-Nazism but are also intended to tackle other radical phenomena.

#### **B. Funding of parties which threaten freedom – Vlaams Belang**

134. As the Committee noted in its recommendations, a submission based on article 15 *ter* of the "draining law" (*droogleggingswet*) of 4 July 1989 was submitted to the Council of State on 17 May 2006, seeking to remove the State funding allocated to Vlaams Belang. The latter was blamed for expressions of hostility towards fundamental rights on many websites belonging to the movement, its components and its agents, from which it had not distanced itself.

135. At the request of Vlaams Belang, the Constitutional Court considered a number of requests for preliminary rulings relating to the compatibility of the aforementioned article 15 with freedom of expression and freedom of assembly and association. The Court confirmed<sup>16</sup> that article 15 could not be judged to be contrary to those liberties provided that it was interpreted in the manner set out in its decision No. 10/2001 of 7 February 2001, in which it had clarified the concept of "hostility" (as used in article 15 *ter*), which could only be understood as manifest incitement to violate a current legal rule (for example, incitement to commit acts of violence and to oppose the philosophy of the European Convention on Human Rights and its protocols and the rules mentioned therein).

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<sup>16</sup> Constitutional Court, decision No. 195/2009, 3 December 2009.



136. Consequently, it is not the expression of an opinion which must be taken into consideration for the application of article 15 *ter* but the consequences of that expression. The question of whether an opinion undeniably incites people to violate one of the essential principles of democracy must therefore be considered according to its contents and context. There is also a requirement to demonstrate the existence of a specific hostile moral element, necessarily entailing the presence of strong feelings and thoughts of rejection, hatred and ill will.

137. In light of these principles, the Council of State described the ideas expressed as acerbic and contentious and recognized that they were likely to arouse animosity between certain parts of society and ultimately to contribute to polarization and a climate of intolerance.<sup>17</sup> Nonetheless, although it judged that those ideas were frankly worrying and likely to offend and be hurtful, it did not consider that they “incited” violation of a current legal rule in the strict sense in which that verb must be understood. The party, therefore, did not lose its State funding.

## **Article 5**

### **Prohibition of discrimination in all its forms**

#### **A. Updating of provisions relating to certain foreigners living in Belgium**

##### **1. Procedure before the Aliens Litigation Council**

*Act of 15 September 2006, reforming the Council of State and creating an Aliens Litigation Council (Moniteur belge, 6 October 2006)*

138. This Act, setting out a number of measures to absorb and control the backlog of cases before the Council of State, provides for the latter to concentrate on its two central tasks, namely its advisory and jurisdictional functions. Certain non-jurisdictional tasks which had still been carried out by its administrative section were abolished. The Council’s power to decide cases relating to individual decisions affecting foreign nationals was reallocated to a new Aliens Litigation Council, which also took over all the tasks of the Permanent Refugee Appeals Commission.

*Act of 23 December 2009 containing various provisions relating to migration and asylum (Moniteur belge, 31 December 2009)*

139. The purpose of this Act was to abolish the distinction between the 8-day and 15-day deadlines which had existed in full remedy actions, setting the deadline at 15 days, and temporarily to increase the number of judges available to the Aliens Litigation Council.

*Act of 29 December 2010 containing various provisions (Moniteur belge, 31 December 2010)*

140. This Act modified certain procedural provisions of the Aliens Litigation Council in order to simplify them. For example, notifications could be sent by ordinary registered letter.

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<sup>17</sup> Council of State, decision No. 213.879, 15 June 2011.

## 2. Asylum

*Act of 15 September 2006 amending the Act of 15 December 1980 on the entry, residence, settlement and expulsion of foreign nationals<sup>18</sup> (Moniteur belge, 6 October 2006)*

141. The purpose of this Act was to simplify asylum procedures. The starting point was the abolition of the distinction between admissibility and the merits of the asylum request and of the corresponding procedural stages to be conducted by different legal bodies. The General Commissioner for Refugees and Stateless Persons (CGRA) would decide whether a foreign national should be considered as a refugee or given subsidiary protection status. Any negative decision by the CGRA could be subject to a full jurisdiction appeal to the Aliens Litigation Council, which could confirm, cancel or amend its decision, in which case the case would be returned to the CGRA. A decision of the Aliens Litigation Council could be appealed to the Council of State; however, that appeal could be successful only if procedural requirements had been infringed or if the decision was voided owing to procedural irregularities.

142. The Act also incorporated into national law Council Directive 2004/83/EC of 29 April 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection, and on the content of the protection granted. The Directive required a subsidiary protection status, from which asylum seekers could benefit as an alternative to refugee status. In that framework, a specific procedure was introduced to authorize residence for gravely ill foreign nationals.

*Act of 22 December 2008 containing various provisions (Moniteur belge, 29 December 2008), amending articles 51/8 and 52 of the Act of 15 December 1980 on asylum requests and recognition of refugee status*

143. This Act, amending articles 51/8 and 52 of the Act of 15 December 1980, provides that the Minister or his or her representative may decide not to take an asylum request into account if the foreign national who has previously made the same request fails to provide additional evidence to show that there are serious indications of well-justified fear that he or she will be persecuted in the terms of the Geneva Convention, as defined in article 48/3, or that the applicant would face a real risk of suffering serious harm as defined in article 48/4. The additional evidence must relate to events or situations which have arisen since the final phase of the procedure during which the applicant could have produced it.

144. The CGRA may also decide not to award refugee status or subsidiary protection status to a foreign national if the latter lodges an application for asylum at the frontier and the application is manifestly based on motives unrelated to asylum. This may be because the application is fraudulent or because it complies neither with the criteria provided for in article 1 A (2) of the Geneva Convention as determined in article 48/3 nor with the criteria for subsidiary protection as provided for in article 48/4.

*Act of 28 April 2010 containing various provisions (Moniteur belge, 10 May 2010)*

145. This Act adds articles 57/7 *bis* and 57/7 *ter* to the Act of 15 December 1980. The changes relate to assessment by the CGRA of the persecution or serious harm suffered by the asylum seeker.

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<sup>18</sup> See Foreign Nationals Entry, Residence, Settlement and Expulsion Act of 15 December 1980, below.

*Act of 19 January 2012, amending the Act of 15 December 1980 (Moniteur belge, 17 February 2012)*

146. A list of safe countries of origin was drawn up in 2011.<sup>19</sup> Such a list is adopted at least once yearly by a Royal Decree discussed in the Council of Ministers.

147. The new article 57/6/1 of the Act of 15 December 1980 empowers the CGRA to disregard an international protection application from a national of one of the countries listed as safe unless it is clear from the applicant's evidence that there is a well-founded fear that he will be persecuted or good reasons to believe that he is at genuine risk of suffering serious harm. The CGRA has 15 days in which to reach a decision and the Aliens Litigation Council has two months to process any appeal against that decision.

### 3. Reception

*Act of 12 January 2007 on the reception of asylum seekers and certain other categories of foreign nationals (Moniteur belge, 7 May 2007)*

148. This Act partially incorporated Council Directive 2003/9/EC of 27 January 2003, on minimum standards on the reception of applicants for asylum in member States, into national law. It repealed article 54, paragraphs 1 and 3, of the Act of 15 December 1980, specifying that the Federal Agency for the Reception of Asylum Seekers (Fedasil) was the competent authority for designating a compulsory place for any asylum seeker, whether he or she had applied for refugee status under the Geneva Convention or for subsidiary protection status.

149. Under article 3 of the Act, any applicant for asylum is entitled to reception which will enable him to live in accordance with human dignity. Reception means the material assistance provided pursuant to the present Act or the social assistance provided by public social services centres in accordance with the Organic Law of 8 July 1976 on public social services centres.

*Royal Order of 22 December 2009 amending article 17 of the Royal Order of 9 June 2009 implementing the Act of 30 April 1999 on the employment of foreign workers (Moniteur belge, 12 January 2010)*

150. This Royal Order allows access to the labour market (with a category C work permit) for asylum seekers whose application has received no response for six months.

*Act of 19 January 2012 amending the legislation on the reception of asylum seekers (Moniteur belge, 17 February 2012)*

151. On 27 October 2011, Parliament approved an Act intended to resolve the employment crisis. It amended the law on reception and public social services centres, comprising the following changes:

- The right to reception (or to social assistance) is restricted to the first asylum application. Nonetheless, in case of multiple applications, reception is allowed following the transfer of the file to the CGRA. Pending that transfer, only medical assistance continues to be provided by Fedasil.
- The right to reception is not granted to:

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<sup>19</sup> Albania, Bosnia and Herzegovina, India, Kosovo, Montenegro, Serbia and the former Yugoslav Republic of Macedonia.

- Persons who do not use or have ceased to use the reception place allocated to them.
- Asylum applicants having sufficient income (the amount of the social integration allowance for claimants with dependants). In such cases, only medical assistance continues to be provided by Fedasil.
- There is no longer an automatic right to reception while an appeal to the Aliens Litigation Council is pending or for foreign nationals who have signed a voluntary return agreement. In these two cases, the right to reception will end when the deadline of the order to leave Belgian territory (communicated to the asylum applicant) expires.
- The right to reception is no longer granted during an appeal to the Council of State.

#### 4. Entry and residence

*Act of 21 April 2007, amending the Act of 15 December 1980, introducing a specific procedure for admitting third-country nationals for the purposes of scientific research (Moniteur belge, 26 April 2007)*

152. This Act partly incorporates into national law Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research. The purpose of that Directive is to promote the admission and mobility of third-country nationals for stays exceeding three months for research purposes, to make the Community more attractive for researchers from all over the world and promote its position as an international centre of research.

*Act of 25 April 2007, amending the Act of 15 December 1980, on conditions for granting and removing long-term resident status and on the residence of EU nationals and family members of Belgian nationals (Moniteur belge, 10 May 2007)*

153. This Act incorporates into national law, among other things: the provisions relating to entry, residence and departure of Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents and of Directive 2004/38/EC of 29 April 2004 on the right of EU citizens and their family members to move and reside freely within the territory of the member States.<sup>20</sup>

154. It provides conditions for the granting and withdrawal of long-term resident status for third-country nationals staying legally in Belgian territory and conditions for holders of that status in another member State staying in Belgium.

155. It also amends regulations on residence for citizens of the Union and their family members. Residence for the family members of Belgian nationals is also reformed.

*Act of 7 June 2009, amending the Act of 15 December 1980, on medical opinion (Moniteur belge, 3 August 2009)*

156. This Act enables doctors who are not public employees to submit an opinion under the procedure for residence authorization on medical grounds when that opinion cannot be provided by a doctor who is a public servant, either because the position is vacant or because the doctor is overworked.

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<sup>20</sup> But also article 11 (2) (d) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member States for granting and withdrawing refugee status.

*Act of 29 December 2010 introducing various modifications to the procedure for residence authorization on medical grounds (Moniteur belge, 31 December 2010)*

157. This Act modifies provisions for the application of article 9 *ter* of the Act of 15 December 1980. It arose out of a decision of the Constitutional Court, dated 26 November 2009.<sup>21</sup> This related to differences in treatment, which were judged to be unconstitutional, between the conditions of admissibility of an application for subsidiary protection status on medical grounds and those of a similar application on non-medical grounds. The amended article 9 *ter* provides for an adapted approach to determining identity reliably in such situations.

158. The legislators have also modified a number of other elements relating to the admissibility stage:

- An application is admissible when it is signed by the Minister or his or her representative and includes the address of the applicant's actual place of residence in Belgium.
- The applicant must prove his medical condition in accordance with legal provisions, by means of a standard medical certificate. The latter must list the medical condition, its level of seriousness and the treatment required.
- Lastly, Immigration Office staff are bound by the rules of professional secrecy in relation to their access to medical information in the performance of their duties.

*Act of 8 January 2012, amending article 9 ter of the Act of 15 December 1980 (Moniteur belge, 6 February 2012)*

159. This Act modifies the procedure provided for in article 9 *ter* of the Act of 15 December 1980, to enable seriously ill foreign nationals to obtain residence authorization if their departure would have an unacceptable humanitarian impact. It is also intended to restrict any abuse of this procedure.<sup>22</sup>

## 5. Expulsion

*Act of 6 May 2009 containing various provisions on asylum and immigration (Moniteur belge, 19 May 2009)*

160. This Act amends article 39/82, paragraph 4.2, and article 39/83 of the Act of 15 December 1980.

<sup>21</sup> Constitutional Court, decision No. 193/2009, 26 November 2009.

<sup>22</sup> Modifications have been made to all the stages of the procedure.

- When lodging his or her application, the foreign national must provide all the required recent information concerning his or her illness and the treatment available in his country of origin. The standard medical certificate provided for that purpose must be no more than three months old on the date of submission of the application.
- An application may be ruled inadmissible if the doctor considers the disorder upon which the application is based is clearly not an "illness" as described in the law (that is, it is not sufficiently serious).
- An application may be denied at the admissibility stage if the foreign national fails to attend the appointment mentioned in the invitation to meet the medical officer or expert (without providing a valid reason for that failure within 15 days following that date).
- An application for a residence permit for medical reasons may be declared inapplicable if the foreign national has received a permanent residence permit for another reason, unless the foreign national requests, by registered mail within 60 days, that the application be pursued.

161. Pursuant to article 39/83 of the same Act, unless the person concerned consents to it, an expulsion or return measure affecting the foreign national shall not be enforced sooner than five days following the notification of the measure; that period is to include no fewer than three working days. This replaces the 24-hour period previously provided for. In practice, however, if the foreign national lodges his or her emergency appeal within 15 days (in case of detention) against the notification of its decision, the Aliens Litigation Council may issue an order preventing the expulsion until it issues its decision. The Minister has, however, appealed for this jurisprudence to be overruled by the Council of State. While that appeal does not automatically result in the suspension of the procedure, if a suspension request is attached to it and if an expulsion decision is taken subsequently, an application for temporary suspensory measures may be made. Any violation of article 3 of the European Convention on Human Rights is considered by the Aliens Litigation Council, including cases of emergency appeal (except for instances of belated appeal, for example).

*Act of 19 January 2012, amending the Act of 15 December 1980 (Moniteur belge, 17 February 2012)*

162. This Act partly incorporates into national law Directive 2008/115/EC of the European Parliament and of the Council (16 December 2008) on common standards and procedures in member States for returning third-country nationals staying in the country illegally and article 23, paragraph 4(c)(i), and articles 30 and 31 of directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member States for granting and withdrawing refugee status.

163. It modifies regulations in relation to the expulsion and detention of foreign nationals residing in the country without authorization. The law aims to promote voluntary return, but without compromising the effectiveness of return procedures. Thus, the grace period granted to foreign nationals receiving an order to leave Belgian territory is, in principle, increased to 30 days. The purpose of this is to enable the person concerned to use the allotted time in order to organize his or her voluntary return. The grace period can, however, be reduced to seven days in certain cases; it may be even shorter or even be denied. The latter is true, for example, when the person presents a flight risk, that is, a real and present likelihood of evading the authorities.

164. If voluntary return cannot be achieved within the allotted period or if individual circumstances warrant it, the deadline may be extended. The foreign national who fails to comply with the allocated voluntary departure date or to whom no such date has been allocated will receive a ban on entry to the territory of the European Union. Belgium has chosen to set a maximum duration of three years for such entry bans; this is raised to five years in case of deception, and even higher if there has been a serious threat to public order or national security. If the foreign national can demonstrate a justification related to study or employment, he or she may have access to a procedure for lifting the ban once two thirds of its duration has passed. The Minister or his or her representative may also lift the ban at any time for humanitarian reasons.

*Act of 15 March 2012, amending the Act of 15 December 1980 and the Act of 17 May 2006, concerning the external legal status of persons sentenced to a period of imprisonment and victims' rights in enforcement procedures (Moniteur belge, 30 March 2012)*

165. This Act provides a legal framework for the transfer of foreign nationals having served their sentences to a detention centre for deportation or for them to be deported directly from prison. Under the amended version of the Foreign Nationals Act of 17 May 2006, they may be released from prison two months before the end of their sentences in

order to be deported. Thus, they may be repatriated or transferred to a detention centre no more than two months before the expiry of their sentences.

*Act of 22 April 2012, amending the Act of 15 December 1980 and the Act of 12 January 2007, on the reception of applicants for asylum and certain other categories of foreign nationals (Moniteur belge, 30 May 2012)*

166. This Act authorizes the Minister or his or her representative to designate a detention centre for asylum seekers and their family members who have received final decisions on their asylum applications. This formulation is applicable to both applicants having lodged asylum applications in Belgium and those whose applications have been declared inadmissible. During their stay in the detention centre, foreign nationals are assisted by government officials to prepare for their repatriation.

*Circular of 10 June 2011 relating to the authority of the bourgmestre in the deportation of a third-state national (Moniteur belge, 16 June 2011)*

167. On 10 June 2011, the Secretary of State for Migration and Asylum Policy issued a circular to clarify the role of communes in the deportation of third-State nationals and the returns management policy of the Belgian State.

168. The purpose of the circular is to achieve effective execution of expulsion orders while initially encouraging voluntary returns by foreign nationals staying in the country illegally. The system's effectiveness depends on proper collaboration among all the authorities concerned.

169. In this framework, the SEFOR Bureau, partly funded by the European Return Fund, was established in May 2011 as part of the Immigration Office. Its task is to promote voluntary return, to train actors and raise their awareness regarding the application of the new circular and to monitor its correct implementation.

## **6. Family reunification**

*Act of 15 September 2006, amending the Act of 15 December 1980 (see above)*

170. This Act modifies the provisions of the Act of 15 December 1980 concerning reunification for the families of non-EU nationals. This change responds to the adoption by the Council of the European Union of Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

*Act of 8 March 2009, amending article 12 bis of the Act of 15 December 1980, on proof of relationship (Moniteur belge, 2 July 2009)*

171. Under this Act, where a foreign national proves unable to demonstrate a claimed relationship by blood or marriage by means of official documents, other forms of proof may be accepted in accordance with article 30 of the Act of 16 July 2004 implementing the Code of Private International Law or with international conventions on the same subject. Failing that, the Minister or his or her representative may conduct interviews with the arriving foreign national and the foreign national with whom he or she is being reunited, may conduct any investigation which is considered necessary and, where appropriate, may propose further analysis.

*Act of 8 July 2011, amending the Act of 15 December 1980, on the conditions of family reunification (Moniteur belge, 12 September 2011)*

172. This Act modifies the family reunification procedure for third-State nationals in order to prevent abuses. It also introduces a change regarding the right to family reunification for Belgian nationals.

*Act of 26 November 2011 modifying and complementing the Criminal Code, to penalize the abuse of vulnerable persons and extend their protection from ill-treatment (Moniteur belge, 23 January 2012)*

173. This Act amends article 77 *quater* of the Act of 15 December 1980, incriminating all abuse of the vulnerable situations of persons as a result of illegal or precarious administrative status, a precarious social situation, age, pregnancy, sickness, infirmity or physical or mental deficiency.

## **7. Unaccompanied foreign minors**

*Act of 12 September 2011, amending the Act of 15 December 1980, on the award of temporary residence permits to unaccompanied foreign minors (Moniteur belge, 28 November 2011), and Royal Order of 7 November 2011 (Moniteur belge, 28 November 2011)*

174. Specific residence rules for unaccompanied foreign minors are now enshrined in the law. These provisions are contained in article 61 (14 to 25) (Act of 12 September 2011) of the Act of 15 December 1980 and article 110 *sexies* to *undecies* (Royal Order of 7 November 2011) of its implementing Order of 8 October 1981. Formerly, they were contained in the Ministerial Circular of 15 September 2005, which was cancelled on 14 November 2011.

175. The residence application is submitted by the guardian of the unaccompanied foreign minor. Subsequently, during the consideration of the application, the minor is interviewed in the presence of his or her guardian and, where necessary, of an interpreter. Two significant new elements have been introduced:

- The presence at the interview of the minor's legal representative if the minor requests it;
- The production of a written record of the interview.

176. The purpose of the residence application and the consideration by the Immigration Office is to determine a durable solution for the minor, which may be one of the following:

- Family reunification in the country where the parents are residing legally;
- Return to the country of origin or to the country where the minor is authorized to reside, subject to appropriate assurances of reception and care;
- Authorization to reside in Belgium; or
- Prohibition of the detention of minors in closed centres.

177. Article 74/19 (Act of 19 January 2012, see above) of the Act of 15 December 1980 states that unaccompanied foreign minors may not be held in facilities as described in article 74 (8), paragraph 2. This confirms the practice in place since April 2007 of not placing them in detention.

178. Article 74/16 of the Act of 15 December 1980 states that an unaccompanied foreign minor may be deported if the Immigration Office has verified that there are guarantees of reception and assistance for him or her in the country of origin or a country where he or she



is authorized to reside. Before deciding to deport the minor, the Minister or his or her representative takes into account any durable solution proposed by the guardian and the best interests of the child.

## 8. Strengthening of provisions to combat trafficking in and smuggling of human beings

### *National Action Plan*

179. In 2008, a National Action Plan for 2008–2012 was adopted in order to propose possible legislative and regulatory changes and measures to promote awareness and for improved prevention, punishment of traffickers and proper protection for victims, with specific measures targeting minors. The Plan also tackles issues of coordination, information-gathering and policy evaluation. A new Plan of Action for 2012–2014 has been drawn up by the office of the Interdepartmental Coordination Unit for the Prevention of Trafficking. Among other things, the new Plan is based on the establishment of a scoreboard reflecting the degree of implementation of the previous Action Plan, on current issues and on opinions expressed by the competent departments. It was submitted to the Council of Ministers on 22 June 2012. The Coordination Unit is now in charge of its execution. Also, in the National Security Plan for 2012–2015, trafficking in and smuggling of humans once again appear on the priority list of 10 criminal phenomena to be dealt with.

### *Circulars designed to combat all forms of trafficking in and smuggling of humans*

180. Directive COL 01/2007 by the Minister of Justice, the purpose of which is to combat all forms of trafficking, created specialized judges' positions in all judicial districts (in both public prosecutors' offices and the labour inspectorate). Local coordination meetings between actors involved on the ground are held regularly. Directive COL 01/2007 includes a list of 70 trafficking indicators to facilitate the identification of such situations. There is also a common circular on human trafficking for the Ministries of Justice and the Interior, the office of the Secretary of State for Migration and Asylum Policy and the College of Public Prosecutors (COL 4/2011) and a circular of the College of Public Prosecutors on assistance for irregular immigrants (COL 10/2010).

### *Victim protection*

181. The integrated protection system is organized by the circular of 26 September 2008 on the introduction of multidisciplinary cooperation for the victims of smuggling and/or of certain aggravated forms of trafficking. It defines procedures for identifying cases (using the indicators of circular COL 01/2007) and referring them to the courts and for reception of and assistance to potential victims. It also provides a reminder of the conditions to be met in order to benefit from the status of victim: (1) cutting off all contact with the alleged traffickers; (2) accepting assistance from a specialized centre; and (3) cooperating with the judicial authorities. It should be noted that the Act of 15 September 2006, which incorporates Directive 2004/81/EC of 29 April 2004 into national law and aims to strengthen the prevention of clandestine immigration, provides for residence permits to be issued to trafficked victims who cooperate with the competent authorities against the alleged offenders in such cases. Belgium has also decided to extend this system to the victims of certain aggravated forms of human trafficking.

182. The circular of 26 September 2008 also specifies the role of each actor at the various stages of the procedure: police and inspectorate services, the Immigration Office, specialized reception centres and judges. It also creates specific directives for unaccompanied foreign minors who are potential victims of trafficking (appointment of a guardian, assistance for the minor and cooperation by the competent authorities) and for

trafficked victims working for diplomatic staff in service jobs (special identity card, interview with a member of the Protocol and Security Service, and so on).

183. This circular was evaluated in 2011 and each recommendation was reviewed to ensure that its implementation was entrusted to the competent department; the results were taken into account in preparing the new Action Plan. It has been considered necessary to follow a particular method in respect of minors, and a specific evaluation for them is currently under way.

184. For over 20 years, Belgium has had specialized reception structures for the victims of human trafficking. Three reception centres (one in each of the country's regions) offer them accommodation, where necessary, and psychosocial, administrative and legal assistance. In 2006, 172 new victims were helped by these reception centres. For the years from 2007 to 2010, the figures were 179, 196, 158 and 141, respectively (for additional information, see the Centre's annual trafficking report for 2010, p.67, annex IX). In 2011 there were 152 victims (report due in October 2012).

185. No statistical data are available regarding the reparation measures offered to the victims. This does not mean that there are no such measures. Victims supported by reception centres may be assisted by a lawyer in defending their rights; the courts generally award damages to those who choose to bring civil actions. Recovering the amounts awarded can, however, be problematic, particularly owing to the actual or organized insolvency of the offenders (see the Centre's annual trafficking report, due in October 2012). In such cases, victims can request assistance from the Commission for Financial Support for the Victims of Intentional Acts of Violence. No precise data are available in this regard in respect of human trafficking, because the information is often entered under other criminal offences such as physical or sexual abuse. Nonetheless, 10 decisions have been found in 2005–2011 relating to the award of compensation to trafficked women. Formerly, the law excluded those residing illegally in the country from receiving help from the Commission, although exceptions were permitted for those who had open-ended residence permits in the framework of an investigation into trafficking. Access to the Commission has now been extended to all victims (Act of 30 December 2009 implementing various provisions in the area of justice, article 10 (a)).

#### *Prosecutions and convictions*

186. Data from the College of Public Prosecutors show that in 2010, 662 trafficking-related cases, of which 337 related to smuggling and 325 to trafficking, were referred to the prosecutors. In 2011 the number rose to 873, with 358 smuggling cases and 515 trafficking cases (see annex X). These were, however, preliminary descriptions; subsequent investigation may reveal that the facts do not support charges of smuggling or trafficking.

187. Data from the central criminal records show that in 2010 there were 64 convictions for trafficking offences. The main penalties imposed were 60 prison sentences (nine of under one year, 30 of one to three years, 18 of three or four years and three of five years or more) and 61 fines. Property was confiscated in 37.5 per cent of cases. These data are incomplete because the recording of information relating to 2010 has not yet been finished. The numbers of convictions may therefore have been underestimated by some 15 per cent (for further information, see annex XI). Data for 2011 are not yet available.

188. Information relating to earlier years can be found in the annual trafficking report for 2010 of the Centre for Equal Opportunities and Action to Combat Racism (annex IX, pp. 62–72). Those data, however, were encoded in accordance with the previously existing regulations (article 380 of the Penal Code and article 77 *bis* of the Act of 15 December 1980, relating to the smuggling and trafficking of humans), which made no distinction

between the offences of smuggling and trafficking. It is therefore difficult to compare those data with more recent figures.

*Transposition in progress*

189. The Belgian Government is preparing to incorporate into national law Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. Current legislation is mostly in conformity with this Directive.

## **B. Legislative provisions on acquisition of Belgian nationality**

190. The process of acquiring Belgian nationality has been modified a number of times in the past 25 years. Currently, the most recent modification in that respect dates back to the Act of 27 December 2006. A significant piece of draft legislation to make acquiring nationality more neutral from the immigration viewpoint was approved in July 2012 by the Justice Committee of the House of Representatives; it was due to be adopted in a plenary session in October 2012 and discussed by the Senate.

*Act of 27 December 2006 introducing various provisions and modifying the Belgian Nationality Code, naturalization and assimilation of residence abroad with residence in Belgium*

191. The main purpose of this Act is to clarify and rectify certain provisions of the Nationality Act of 1 March 2000, which sought to promote the integration of foreign nationals in Belgium through the acquisition of Belgian nationality without calling into question the major policies enshrined in that Act. The following innovations were also introduced:

- Legal residence is required at the time when the application is submitted or the change of nationality is declared;
- The prohibition of dual nationality was abolished; and
- Persons having obtained Belgian nationality through deception can now be stripped of it.

*The proposed legislation*

192. The proposed legislation is designed to streamline the system, retaining two major pathways for acquiring Belgian nationality via a short procedure (after five years of legal residence) or a long procedure (ten years). Naturalization is restricted to exceptional cases.

193. Generally, the proposal makes it harder to acquire Belgian nationality. Short procedures for the declaration of nationality are accompanied by social, economic and linguistic integration criteria (knowledge of one of the three national languages), although one or the other of these criteria may be waived for some categories of foreign nationals.

194. Two criteria have been selected for the long procedure: knowledge of one of the three national languages and participation by the foreign national in the life of his or her host community.

195. Lastly, the proposal would abolish the possibility, currently available to the candidate for nationality, to make his or her application from outside Belgium.

### C. Right to marriage and choice of spouse

196. Reference is made to the information provided in article 23 of the fifth report of Belgium, dated 28 January 2009, on the application of the International Covenant on Civil and Political Rights (CCPR/C/BEL/5, 17 July 2009) and in its fourth report on the implementation of the International Covenant on Economic, Social and Cultural Rights.

#### *Sham marriage*

197. The aforementioned Act of 12 January 2006, amending the Act of 15 December 1980 on the entry, residence, settlement and expulsion of foreign nationals, inserts a criminal-law provision making it an offence to enter into a marriage for the purpose of obtaining an advantage in respect of resident status. The authorities opted for a tiered system of penalties, with more severe punishments where a financial gain has been pursued or where a person has been coerced to enter into a marriage.

#### *Forced marriage*

198. Under the Act of 25 April 2007, which inserted article 391 *sexies* into the Criminal Code and modified a number of provisions of the Civil Code in order to penalize forced marriages and provide for an extended range of ways to annul them (*Moniteur belge*, 15 June 2007), forced marriage became a criminal offence and such marriages can now be annulled.

199. Article 146 *ter* of the Civil Code, inserted by the Act of 25 April 2007, provides that no marriage is valid if it is contracted without the freely given consent of both spouses and the consent of at least one spouse has been obtained through violence or the threat of violence. The civil registrar may refuse to conduct the wedding ceremony if faced with a forced marriage; also, any forced marriage which has taken place is null and void and may be denounced as such by the public prosecutor's office, the spouses themselves or any other interested party.

200. Where there is serious evidence of forced marriage, the prosecutor may on his or her own initiative begin proceedings to annul it.

201. Lastly, article 391 *sexies* of the Criminal Code penalizes any person who, through violence or the threat of violence, coerces someone to enter into a marriage. Any attempt to do so is also penalized. Since forced marriage is a human rights violation prohibited by several international agreements, the law seeks to protect victims' rights to enter into marriage with free consent and to protect their freedom, dignity and physical integrity.

202. A Belgian court recently issued a verdict in a case of forced marriage. On 9 and 12 December 2011, the *Cour d'assises* (criminal court) of Mons found guilty of murder, with the aggravating circumstance of a discriminatory motive, several members of the family of a young Pakistani woman aged 20 who had been killed because she refused a marriage arranged by them. The father and brother were also found guilty of attempted forced marriage. The brother was sentenced to 15 years' imprisonment, the sister to 5 years' detention, and the parents to 25 and 20 years' imprisonment respectively. Following an appeal on points of law by the victims' parents, the Court of Cassation reversed the sentences passed by the trial court in Mons. It did not, however, cancel the aggravating circumstances of the honour killing and the victim's sex. Furthermore, since 2009, the trial courts' database includes a specific code for charges of forced marriage. The data show that 12 cases of forced marriage were processed by public prosecutors in 2010 and 15 in 2011. As of 10 January 2012, those cases were at the following stages: inquiries were taking place in six of them, 11 had been closed with no action taken, five cases remained to be assigned, investigations were in hand in four, and a hearing was pending in the remaining one. At that

date, only one verdict had been reached out of the 27 cases. Other decisions will be issued subsequently. There is also a code for use by the police. Their statistics show 13 formal complaints of forced marriage in 2010 (11 which had taken place and two attempted). Improved awareness among victims and better detection on the part of law enforcement will probably result in greater numbers of complaints.

#### *Objection to marriage*

203. The Act of 19 February 2009, modifying the Civil Code and article 1399 of the Judicial Code in relation to objection to marriage (*Moniteur belge*, 11 March 2009, ed. 2), abolishes the provisions concerning objection to marriage. When the formality of the publication of banns was replaced by the marriage declaration, the provisions relating to objection lost most of their sense. Objection had been subject to a relatively costly and risky procedure whereby the person opposing the marriage could be made to pay damages; that discouraged people from raising such objections. The abolition of objection to marriage does not prevent the Royal Prosecutor from taking action if the marriage is against public order. The registrar still has an active role to play, and must verify that the future spouses meet the formal and substantive conditions and there is no impediment to the marriage. Once the marriage has been contracted, the spouses themselves, the public prosecutor's office or any interested party can still ask for the marriage to be annulled under article 184 of the Civil Code.

### **D. Participation of non-Belgian nationals in elections**

204. As in 2006, nationals of both European Union and other countries will be able to vote in the communal elections of 14 October 2012 if they have registered to vote. Awareness campaigns have once again been conducted by the regional authorities to encourage foreign nationals to register, if they have not already done so, and to participate in the election of their local authorities.

205. A total of 7,966,698 people, including 7,825,301 Belgian nationals, are registered on the electoral rolls. Data from the Federal Department of the Interior show that 120,826 nationals of other EU countries (18.48 per cent of the total resident in the country) and 20,571 non-EU nationals (14.02 per cent) have registered to vote.

206. By comparison, in 2006, 110,973 EU nationals (20.94 per cent) and 17,065 non-EU nationals (15.71 per cent) had registered.

### **E. Right to freedom of thought, conscience and religion**

207. Reference is made to the previous report, with the following clarifications.

208. The Muslim Executive of Belgium has experienced internal organizational difficulties and a new survey of its members was conducted by Royal Order of 9 May 2008. Aside from the processing of individual cases, the task of the Executive has been to set a procedure for the renewal of its membership. Since it was not invited to do so, the survey ended on 31 December 2011 and the presiding officers of the Executive are taking care of everyday business.

209. On 13 October 2005, the Walloon government adopted three Orders on the organization of committees responsible for the secular affairs of recognized Islamic communities. The Flemish and Brussels-Capital Regions and the German-speaking Community have adopted rules in those three areas through legislation.

210. On 1 June 2011, a law was enacted in Belgium to prohibit the wearing in public places of any clothing which completely or mostly conceals the face (*Moniteur belge*, 13 July 2011). The adoption of this legislation is motivated by reasons of public safety; it provides for any offender to be sentenced to a fine of €15 to €25 and one to seven days' imprisonment. A number of actions for the suspension or annulment of this law have been brought before the Constitutional Court. The two appeals for suspension were denied because the plaintiffs had failed to demonstrate sufficiently that the application of the law was likely to cause them serious harm which would be difficult to repair.<sup>23</sup> The Constitutional Court has yet to reach verdicts on the actions for annulment.

## **F. Employment and labour**

### **1. Federal level**

#### *Anti-discrimination Acts of 10 May 2007 – monitoring of social legislation*

211. In addition to the anti-discrimination legislative arsenal set up by the Acts of 2007, practical implementation measures were also required to combat discrimination effectively. One such measure, in the field of labour relations, was the Royal Order of 24 October 2008 and the Cooperation Protocol between the Directorate-General for Supervision of Social Legislation and the Centre for Equal Opportunities and Action to Combat Racism.

#### *Royal Order of 24 October 2008 appointing the officials responsible for monitoring compliance with the Act of 10 May 2007 and its implementing Orders*

212. This Royal Order makes the Directorate-General for Supervision of Social Legislation of the Federal Department of Employment, Labour and Social Dialogue responsible for monitoring the anti-racism and anti-discrimination laws of 10 May 2007 in the area of labour relations.

213. In practice, it takes note or acknowledges receipt of formal complaints, requests additional information on the reported events and motives, makes inquiries into the possible evidence available and asks whether the complainant's identity may or may not be used. It is important to verify whether the complaint is based on one of the grounds of discrimination and ask the complainant to formulate and clarify his or her grievances.

214. The Acts specify that the employer may take no negative measure against the person who has made a complaint except for reasons unrelated to it (see above). When the dispute is submitted to the Labour Court, the burden of proof lies on the employer.

215. In 2007–2011, the Directorate-General for Supervision of Social Legislation recorded 66 complaints. The statistics make no distinction between the different forms of discrimination. None of the complaints ultimately went to court, but there were seven warnings and three administrative orders. Some files opened in 2011 are still pending.

#### *Cooperation Protocol between the Directorate-General for Supervision of Social Legislation and the Centre for Equal Opportunities and Action to Combat Racism*

216. The Directorate-General for Supervision of Social Legislation is the only inspectorate service with authority to monitor the application of the aforementioned federal legislation. It has investigative powers and, in case of an offence, it can use its authority to

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<sup>23</sup> Constitutional Court, decision No. 177/2011 of 17 November 2011 and decision No. 148/2011 of 5 October 2011.

settle the case judicially or use its discretionary power to bring about an extrajudicial settlement.

217. On 22 October 2010 a cooperation protocol was concluded between the Directorate-General and the Centre for Equal Opportunities and Action to Combat Racism. The purpose of this collaboration is to bring about extrajudicial settlements, to the extent possible, of disputes regarding discrimination in the workplace. The two institutions prefer to promote awareness among offenders and persuade them to take measures to prevent discrimination and foster diversity. Judicial settlements should therefore be the exception to the rule. In practical terms, this collaboration involves the sharing of data and know-how between the two bodies, through focal points.

#### The Equality and Diversity Label

218. In 2005, the Multicultural Business Unit of the Federal Department of Employment, Labour and Social Dialogue, whose role and tasks were described in the previous report, created an instrument known as the “Equality and Diversity Label”.

#### Project framework and general description

219. The purpose of this pilot project is to promote the integration of disadvantaged people in the labour market and combat the discrimination that they suffer. It is involved in intensifying the campaign against discrimination in the labour market to ensure greater social cohesion and higher employment rates, ensuring real equality of treatment and opportunities in the area of employment through a process of special recognition offered to businesses in both the private and public sectors.

220. The added value made available to businesses through a diversity labelling procedure is the promotion and implementation of a policy of diversity management in organizations and enterprises, with an outlook of continuing improvement.

#### Objectives of the Equality and Diversity Label

221. This initiative requires a change in “business culture” in human resources management, through a system of planning: analysis of the equality and diversity policy, design of a plan of action and its implementation with annual audits to ensure continuing improvements. The advantage of this system is to encourage voluntary organizations to establish a prior analysis of internal diversity practices to identify problems and solve them by stages through the plan of action. It also motivates organizations to bring about changes in corporate culture through continual improvement over a three-year period.

#### Consultation and dialogue

222. About 60 actors in the field of labour, including experts, bodies advocating for the interests of particular groups and workers’ and employers’ organizations, have cooperated in the design of tools to implement diversity management, taking into account the sensibilities of all actors involved.

223. From January 2007, 15 pilot businesses and organizations launched the labelling process. In March and June 2007, based on the presentation of the audit report, an advisory committee met to submit reasoned opinions to the Ministers of Employment and Equal Opportunities as to whether a label should be awarded.<sup>24</sup>

<sup>24</sup> This Committee comprises representatives of the social partners, the Centre for Equal Opportunities and Action to Combat Racism, the Institute for Gender Equality and experts on diversity.

224. In order to monitor and support pilot businesses and organizations in the implementation of the plans of action, individual meetings were held from April 2008 onwards. This monitoring was in the form of self-assessment, preceding the evaluation audit which took place during May 2008. For each business, if the label was awarded to it individually based on the audit results, the committee submitted a reasoned opinion to the Minister on the award, withdrawal or renewal of the label.

225. The Multicultural Business Unit has continued the monitoring of and support for the pilot organizations. A number of collective meetings have taken place involving organizations and businesses, and a variety of ceremonies have been conducted since February 2009. The last verification audit was held in May and June 2011, and the label has not been used since then. It was, however, mentioned in a government statement of 1 December 2011, with a view to assessing, improving and promoting it.

#### Equality and Diversity Network

226. In parallel with the Equality and Diversity Label project, a network was created at the request of the organizations and businesses involved, managed by the Employment Section of the Federal Department of Employment, Labour and Social Dialogue. Its members have met several times to share experiences and a number of thematic conferences have been held. In order to join the Network officially, the organization or business is required to sign a charter.

#### Diversity policy within Belgian public service

227. The Belgian federal administration is determined to offer job and career opportunities while respecting equal opportunities and combating all forms of discrimination. To this end, a diversity policy has been created, implemented through the establishment of the Action Plan for Diversity, 2005–2007 and the creation of a “diversity unit” within the Federal Department of Personnel and Organization to monitor the plan. The related activities are implemented by that Department, the diversity process of Selor (the selection board of the federal administration) and the Administrative Training Institute (IFA). A “diversity managers’ network” has also been set up within state institutions at the initiative of the diversity unit; its members’ main task is to ensure that diversity themes are mainstreamed in their institutions’ human resources policies.

228. The federal administration’s diversity policy is inclusive and is mainstreamed in all human-resources processes in order to produce sustainable results, from selection through training to career management, working conditions and internal and external communication.

229. The Action Plan includes activities in five areas: raising awareness in senior management, recruitment and selection, reception and integration, training and the development and support of human-resources and diversity managers. The Plan for 2011–2014 is based on the same thinking.

230. Among many other activities, SPF P&O has produced a “Charter for Diversity in the Federal Administration”, which was signed by senior managers in March 2006 on the occasion of the launch of the “Diversity is our wealth” campaign, whose aims included familiarizing people of foreign origin with the federal authorities. The signatories of the Charter committed themselves to exclude all forms of discrimination from their organizations and to undertake pro-diversity activities.

231. Specific recruitment channels are used in order to make people of foreign origin aware of selection tests; for example, the *Testez les tests* (Test the Tests) project aims to ensure cultural neutrality in selection methods.



232. In order to have a picture of other pro-diversity actions by the Belgian federal administration, members of the Committee are invited to visit the website [www.diversite.belgium.be](http://www.diversite.belgium.be) and also to study annex II.

233. The Flemish Community, the French Community and the Brussels-Capital Region have also adopted action plans and set up diversity policies in their administrative structures.

#### Creation of socioeconomic monitoring

234. The Federal Department of Employment, Labour and Social Dialogue is involved in a project launched by the Centre for Equal Opportunities and Action to Combat Racism seeking to set up socioeconomic monitoring to determine the composition of the labour market in terms of workers' national origins. Initial results should be published in early 2013.<sup>25</sup>

235. In light of the particular problems facing certain groups of foreign nationality or origin in their labour-market integration, as well as the difficulty of detecting direct discrimination, a long-term mechanism has been proposed to collect and analyse data on the labour-market situations of people of foreign origin according to their backgrounds in terms of nationality.

236. The proposed instrument would be based on the principle of monitoring using objective, anonymous aggregate data from an existing administrative database or databases. The resulting instrument will cross-reference individual data and those relating to matters such as national backgrounds with conventional socioeconomic data such as business size and sector, wage structure and location.

237. The purpose of studies using the data collected through socioeconomic monitoring will be to measure and interpret trends in the ethnic stratification of the labour market so that policies can be implemented in the area of diversity and equal opportunities. This instrument will provide regular updates of the data needed for defining and evaluating public policy and the activities of social partners in the area of combating discrimination and promoting diversity.

#### Diversity Barometer

238. The Diversity Barometer project, led by the Centre for Equal Opportunities and Action to Combat Racism, aims to create a tool for long-term structural measurement which can provide a scientific survey of behaviour (degree of discrimination), attitudes (degree of tolerance) and real participation (degree of participation) in Belgian society. The results and reports of the Barometer will be intended primarily for political leaders but also for social partners, civil society and supranational authorities, in order to comply with the duty of monitoring and assessment arising out of international human rights conventions. The Centre will regularly report on the areas most directly affected by diversity (employment, housing and education) and will publish a barometer every two years on one of those three areas. The first one, on employment, was published in 2012 (annex XII, results obtained in relation to discrimination on grounds of national origin). The next, due in 2014, will be about housing, and 2016 will see the publication of a barometer of education. A new cycle will begin in 2018 with another barometer on employment, which will allow for comparison of results after a six-year interval.

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<sup>25</sup> Also involved are the National Registry, the Social Security Crossroads Bank, the Communities and the Regions.

#### Collective labour agreements

##### Collective Labour Agreement No. 38 on the recruitment and selection of workers

239. Collective Labour Agreement No. 38, adopted by the National Employment Council, enshrines the principle of equal treatment in the recruitment and selection of workers. Article 2 *bis* of the Agreement prohibits any difference in treatment on grounds of gender, marital status, medical history, race, skin colour, ethnic origin or nationality, age, political or philosophical beliefs, membership of a trade union or other organization, sexual orientation or disability. Failure to comply with this principle is a criminal offence. The text has been amended a number of times, most recently on 10 October 2008, introducing a code of conduct on equal treatment in recruitment and selection.

##### Collective Labour Agreement No. 95 on equal treatment at all stages of the employment relationship

240. The purpose of Collective Labour Agreement No. 95, adopted by the National Employment Council on 10 October 2008, is to promote respect for equal treatment at all stages of the employment relationship. It follows the commitment, entered into by the social partners under the 2007–2008 multisectoral agreement, to promote through various actions the principle of equal treatment at the multisectoral, sectoral and enterprise levels in relation to all stages of the employment relationship. This concept is interpreted broadly and is intended to be applicable to employment, conditions for access to employment, working conditions and regulations in relation to dismissal.

241. The Agreement prohibits all discrimination on grounds of age, gender, sexual orientation, marital status, medical history, race, skin colour, ancestry or national or ethnic origin, political or philosophical beliefs, disability or membership of a trade union or other organization.

242. The employer may make no distinction based on any of these criteria when they are unconnected to the function or nature of the business, unless permitted or required to do so by legal provisions.

## 2. Walloon Region

### *Helping persons of foreign origin in the area of employment in the Walloon Region*

243. Although the requirement of a work permit is an issue for persons wishing to enter the labour market, it represents a guarantee of respect for their rights as workers.

244. The monitoring conducted by the Employment and Work Permits Directorate ensures compliance with employment regulations and the rights of individuals, mostly but not solely as workers. In this area, the Directorate works closely with the Social Inspectorate, and a variety of functional relationships are maintained with the Walloon Region Department of Employment and Training (FOREM) in the framework of employment policy.

245. The Directorate takes part in various informative or training sessions, held about once a month, usually at the request of external partners.

### Activities in the area of employment and training

246. In December 2009, FOREM launched a project entitled MODA (Operating modalities for adaptability and accessibility requests). This relates to a note added at the end of invitations addressed to job-seekers, asking them to contact FOREM and fill in a form if they have a disability or experience difficulty in understanding the French language.

Officials from the Equality and Diversity Unit of FOREM deal with such requests for assistance; they will contact the job-seeker concerned as soon as an adaptation or change has been made so that he or she can receive an appropriate service.

247. Other types of requests have been added since the project began, such as translation requests for job-seekers' registration or re-registration.

Activities in cooperation with regional integration centres

248. In October 2010, during Employment Week, the FOREM regional office in Verviers gave a presentation on diversity during a breakfast meeting with employers.

249. FOREM and the Employment and Training Centre of Liège, in partnership with other bodies, have taken part in the DISISMI (specific socio-professional integration mechanism for migrants) project, led by the Regional Centre for the Integration of Foreign Nationals or Persons of Foreign Origin in Liège, in partnership with other entities. The purpose of the project is to improve the employability and integration of foreign nationals and persons of foreign origin living in the Liège area. It offers specific services within a coherent network of complementary actors, fostering communication between advisers, social workers or other agents of the institutions represented, and seeking to facilitate the passage of migrant workers from the office of one government department to another or to a voluntary body.

250. Since 2007, most of the regional integration centres have developed services to assist the socio-professional integration of migrants in the framework of the European Social Fund/Migrants portfolio.

### 3. Brussels-Capital Region

251. In the area of job training, a number of EU directives, such as Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, were incorporated into national law by the Decree of 22 March 2007 on equal treatment in job training (*Moniteur belge*, 24 January 2008). The Decree is applicable to those involved at any level in guidance, training, teaching, development or retraining within all training bodies under the authority of the French Community Commission, that is, Bruxelles Formation, approved centres, socio-professional placement bodies and continuing-education centres for self-employed people and small and medium-sized enterprises.

252. The government of the Brussels-Capital Region issued an Order on 7 May 2009 concerning the diversity plan and diversity label. It affects six groups targeted by the implementation of diversity plans within businesses, including workers of foreign origin. Every plan must incorporate statistics and a plan of action in relation to each target group. The action taken by the businesses is on a voluntary basis and is encouraged by means of a bonus and ultimately, if the goals are achieved, the award of a label after two years. Since the Order was issued, 19 labels have been granted.

### 4. Flemish Community

253. The Flemish government has continued and strengthened its policy to foster proportionate participation and diversity in the labour market. This includes measures to encourage businesses, organizations and municipalities to adopt diversity policies in order to foster labour-market participation by at-risk groups. The Employment and Social Economy Department of the Flemish Region is responsible for the design, coordination and implementation of the policy.

254. This policy is supported by the Flemish government, social partners and organizations representing the at-risk groups, all of which are involved in its design and application. Three at-risk groups receive particular attention owing to their low employment rates and high jobless rates: older workers, those with occupational disabilities and persons of foreign origin. All activities under this policy are also designed to promote gender equality.

255. The main tools of the policy are:

- Diversity plans: on certain conditions, businesses, organizations and municipalities may receive a subsidy for the development, planning and application of diversity plans;
- Structural projects for social partners and organizations representing the at-risk groups;
- Diversity projects focusing on the development of tools and methods and the sharing of experience, targeting specific categories within at-risk groups.

256. The diversity plans are required to devote particular attention to at least one at-risk group through the adoption of quantified targets in terms of labour-market entry, advancement, job retention and training.

257. The quantified targets for the at-risk group consisting of workers of immigrant origin for 2006–2011 are as follows.

<i>Quantified target</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>
Entry	1 581	3 938	2 159	1 544	2 762	7 356
Advancement	607	914	604	350	605	1 691
Job retention	556	1 568	1 606	1 337	1 967	6 736
Training	2 365	6 874	3 457	3 691	3 372	10 926

258. The outcomes of the diversity plans implemented show that the quantified targets adopted were attained or even surpassed in almost all cases.

259. In the case of the Roma people, it was decided that the problem should be tackled as part of the general policy, and the Flemish Job-seekers' Service has developed a package of services for them:

- Roma workers having EU nationality, except for Bulgarian and Romanian nationals (they are mostly Slovak nationals), are encouraged to seek employment or undergo training.
- For Roma having Bulgarian and Romanian nationality, the Flemish Job-seekers' Service currently offers basic services in the form of information meetings, in addition to registration and mediation towards trades that are in demand in the labour market. Since contacting the Flemish Job-seekers' Service is a very difficult procedure for many Roma, the Service has launched a pilot project which involves anticipating their needs and visiting them for information meetings.

260. At the Flemish Job-seekers' Service, the Roma are sometimes placed in general groups, but more often into experimental courses targeting at-risk (vulnerable) groups such as the Poverty course. Many Roma have very little schooling and sometimes find it difficult to "learn how to learn"; they may know little of the Dutch language and many are practically illiterate. Some also have accessibility issues, are living in poverty and are faced with housing problems.

261. In 2012, an integrated project in access to entrepreneurship will be developed for those who are seeking to integrate, focusing particularly on Central and Eastern European migrants (Roma). This will be a shared project involving the Flemish Job-seekers' Service, Syntra and the Economy, Education and Civic Integration Departments, designed to inform Central and Eastern European migrants regarding regulations in the area of entrepreneurship and encourage them to participate in the project.

262. In parallel with the integrated Roma policy, training and job placement activities targeting nomadic people (Roma, Sinti and Travellers) were launched in 2012, with a particular focus on self-employed status. Access to training was facilitated.

263. The Action Plan to Combat Discrimination in Employment, adopted in early 2008, enshrined the declarations of intent in relation to anti-discrimination measures signed on 26 October 2007 by intermediaries in the labour market, organizations of at-risk groups and social partners. The Plan is based on four activities:

- Emphasizing the complementarity of diversity and anti-discrimination measures, in response to the dual goals contained in the Decree of 8 May 2002 on proportionate participation in the labour market, which particularly focuses on the principles of equal treatment and proportionate representation;
- The recording, processing and submission of reports and complaints relating to work-related discrimination;
- Monitoring and examining the phenomenon of discrimination in the labour market;
- Training and sharing of know-how in the area of discrimination.

264. In the formulation and implementation of activities, emphasis was placed on maximum harmonization with the Flemish decree on equality of opportunities and treatment and federal anti-discrimination legislation.

265. The implementation of the Action Plan has seen a number of successful outcomes:

- Completion of the electronic complaint form on the website [werk.be](http://werk.be);
- Cooperation agreement of 5 June 2009 between the Centre for Equal Opportunities and Action to Combat Racism, the Equality Unit of the Department of General Government Policy — as spokesperson for the local discrimination focal points in major Flemish cities, see below — and the Employment and Social Economy Inspectorate;
- On this basis, a consensus was reached as to what can be considered as a complaint or report;
- In some subregional areas, cooperation on “non-discrimination” is functioning at local levels, involving all relevant stakeholders;
- Internships and training courses relating to anti-discrimination laws and regulations have been organized for inspectors, “diversity field workers” and consultants;
- Regarding training in the policy for the promotion of proportionate participation and diversity in the labour market, a link has been established with anti-discrimination measures;
- Greater attention has been given, particularly in diversity plans, to the prevention of indirect discrimination.

266. The evaluation of the Action Plan showed that it must continue to be updated. This was done between December 2011 and June 2012, in cooperation with all stakeholders: social partners, the various intermediaries in the labour market (voluntary, public-sector and

private-sector mediation) and organizations of at-risk groups. Implementation of the updated Plan is expected to begin in July 2012.

## **5. Convictions for racial discrimination in employment**

267. Of the verdicts handed down during the period covered by the present report, the following two are noteworthy.

268. On 26 March 2007, the Employment Tribunal of Ghent convicted a company working in the field of security of direct discrimination on grounds of ethnic origin. Its manager had e-mailed an employee, asking him to reject the job application of a Belgian national of Turkish origin, explaining that he had never seen a foreigner sell security equipment. To prevent any recurrence of such an incident, the court ordered the company to pay a financial penalty of €2,500.

269. A garage-door installation company stated that it would not hire workers of foreign origin because its customers would prefer to deal only with workers of Belgian origin. Following a preliminary ruling, the case was referred to the Court of Justice of the European Union, which ruled that an employer which publicly stated its intent not to hire workers of foreign origin was guilty of discrimination.<sup>26</sup> The Labour Tribunal of Brussels used the same reasoning in its decision of 28 August 2009, ordering that the discrimination should cease and that the verdict should be published in several daily newspapers.

## **G. Non-discrimination in the exercise of the right to housing**

### **1. Walloon Region**

270. Housing support measures in the Walloon region focus mainly on people with low incomes, regardless of their origin.

271. In the social-housing sector, social support has become a priority, seeking to achieve, for example, people's harmonious integration into their housing and environment. Social mixing is also considered important.

272. In the area of private-sector rentals, removal and rental allowances are an important way of lowering housing costs for those with very low incomes. Persons of foreign origin are overrepresented among the recipients of these allowances.

273. Ways of promoting access to property ownership for low-income families include loans to large families. Between 2001 and 2011, the proportion of loans granted to families of foreign origin rose from 16.7 per cent to 22.1 per cent.

274. A variety of measures have been adopted to improve the reception of Travellers in the Walloon region (see above, under article 2).

### **2. Brussels-Capital Region**

275. The reception of Travellers is a priority issue within the Regional Development Plan of the government of the Brussels-Capital Region (see above, under article 2).

276. Measures to facilitate housing access for vulnerable households are essentially based on income criteria in order to avoid any phenomenon of spatial segregation based on ethnic origin. Social mixing also receives particular attention in the implementation of housing plans, ensuring that social-housing rentals, rented property for middle-income households

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<sup>26</sup> Court of Justice of the European Union, judgement of 10 July 2008, Case C-54/07, Feryn.

and private homes are located close together. This concern for social mixing (of income levels, cultures and generations) is the third priority in the Regional Development Plan.

### **3. Flemish Community**

277. The (social) policy on housing is based on four principles which play a part in the allocation of and access to housing: availability, housing security, habitat quality and financial viability.

278. The application of regulated access and the allocation of social dwellings by actors in the field of social housing (such as social housing corporations, social housing rental agencies, communes and public social assistance centres) are supervised by an independent inspectorate which is required to ensure observance of classification and objective regulations on registration and allocation, including local allocation rules. This prevents the involvement of considerations other than objective motives when a decision is to be made on allocation or on the eviction of a tenant from a social-housing unit. Attention is also paid to strict compliance with the priority treatment of (a) persons with disabilities, (b) persons who have become homeless as a result of a rehousing decision caused by renovation or demolition work, expropriation or when a dwelling has been declared unfit or uninhabitable and (c) other categories of people who are entitled to priority treatment under local allocation rules. In cases where there may have been non-compliance with legal priority or where considerations likely to result in segregation may have been applied, the decision concerned is cancelled so that a correct decision can be taken.

279. The overrepresentation of certain protected groups, the creation of “specific social mixing”, or other motives unconnected with one of the legally specified conditions for access or allocation, can never constitute objective motives and may not be set down as conditions for access to (social) housing.

280. No problem has yet been observed concerning the application of willingness to learn Dutch as a condition<sup>27</sup> or of conditions linked to a form of segregation which would constitute a violation of the right to housing.

281. It should be noted that Flemish integration policy gives particular attention to the reception of Travellers (see above, under article 2).

### **4. Penalization of racial discrimination in the exercise of the right to housing**

282. As in the employment field, discrimination in the exercise of the right to housing is punishable under Belgian law. On 23 June 2010, for example, the criminal court of Antwerp ordered an estate agent to pay compensation of €250 and to carry out community service work for having, at the request of the other inhabitants of the building, refused a would-be tenant because of his origin and had so informed him in writing.

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<sup>27</sup> For reporting on language clauses, see CERD/C/BEL/CO/15/Add.1.

## **Article 6**

### **Remedies and judicial action on complaints**

#### **A. Measures to improve the implementation of criminal-law provisions against racism**

283. Measures have been adopted to improve the implementation of criminal-law provisions against racism and other forms of discrimination.

284. A contact prosecutor specializing in the areas of racism and discrimination has been appointed in each judicial district, to closely monitor complaints in those areas and refer them to the public prosecutor's office.

285. The College of Public Prosecutors has adopted the circular COL 6/2006 (annex XIII), which came into force on 3 April 2006, in order to refine the terminology for identifying the racist motives of certain offences. As a result, when dealing with offences inspired by racist or xenophobic motives, the police and the public prosecutor must expressly mention that motivation when recording the offence. It is also provided that in case of doubt, reference may be made to the contact prosecutor (see above) who monitors the correct application of the circular. The latter also specifies that at all stages of the procedure, it must always be possible to add or remove the mention of the racist nature of the offence.

286. The Centre for Equal Opportunities and Action to Combat Racism organized a seminar on racial violence in 2007, with the participation of representatives of the police and public prosecutors' offices. The goal was to determine, following the entry into force of the aforementioned circular, whether the police and prosecutors were dealing with such offences appropriately and whether the prosecutors could produce reliable statistics.

287. In April 2012, a working group was formed, comprising judges and members of the Federal Department of Justice, the Federal Department of the Interior and the Centre for Equal Opportunities and Action to Combat Racism, to refine the method for recording complaints, particularly in relation to racist and homophobic violence. It had been observed that the reports on offences and the ways in which they were recorded perhaps failed to emphasize sufficiently that the events in question had a racist aspect. The working group will also discuss promoting awareness in that area.

#### **B. Statistical data**

##### *Complaints of racist and xenophobic acts*

288. The College of Public Prosecutors has provided statistics on official complaints of racist and xenophobic acts. They are broken down by judicial district and cover the years from 2006 to 2011 (annex XIV, tables 1 to 6).

289. During that period, 5,215 cases of racism or xenophobia — 1,033 in 2006, 936 in 2007, 899 in 2008, 840 in 2009, 767 in 2010 and 740 in 2011 — were investigated by public prosecutors in Belgium (tables 1 and 3). As in the previous years, the judicial district of Brussels stands out as the one where there are the greatest numbers of such complaints.

290. Of the total number of cases opened, 4,138 were closed with no action taken (table 4): 2,757 for technical reasons, such as the absence of an offence, insufficient charges or prescription, 1,251 because it was considered inappropriate to proceed (for example, because the offender was very young or had no previous criminal record) and 130 for other reasons (table 5).



291. Of the cases brought to the courts, 354 led to decisions of the criminal court. In all, there were 240 convictions, 44 suspensions et 56 acquittals (table 6).

*Convictions for racist and xenophobic acts*

292. The Criminal Law Policy Service, part of the Federal Department of Justice, has provided statistics on criminal convictions in the area of racism and xenophobia for 2006–2010. The figures show an increase in convictions for such offences during the period:

- In 2006, 31;
- In 2007, 29;
- In 2008, 36;
- In 2009, 45;
- In 2010, 51.

293. Figures for 2011 and 2012 are not yet available. Statistics on convictions can be found at the website of the Criminal Law Policy Service: [www.dsb-spc.be](http://www.dsb-spc.be).

*Reports and cases recorded by the Centre on the basis of criteria protected by the Act of 30 July 1981 and actions brought before the courts*

294. The website of the Centre for Equal Opportunities and Action to Combat Racism ([www.diversite.be](http://www.diversite.be)) lists the decisions of Belgian courts under the Act of 30 July 1981, as amended by the Act of 10 May 2007, and the Act of 23 March 1995 penalizing the denial, minimization, justification or approval of the genocide perpetrated by the national-socialist regime in Germany during the second world war, as well as jurisprudence in combating trafficking in humans.

295. The Centre also publishes yearly figures on the numbers of reports and cases it receives based on the criteria protected by the Act of 30 July 1981 (presumed race, skin colour, parentage or national or ethnic origin). For more detailed figures, see annex VII, tables 5 and 6.<sup>28</sup>

- In 2006, 987 reports;
- In 2007, 1,691 reports;
- In 2008, 983 reports;
- In 2009, 1,081 reports and 827 cases;<sup>29</sup>
- In 2010, 1,266 reports and 627 cases;
- In 2011, 1,348 reports and 559 cases.

296. Although the Centre also brings cases to court, it always prefers dialogue with the person or organization suspected of an offence and emphasizes extrajudicial settlement. It will bring a case to court (3 per cent to 5 per cent of the total) only if it has significant

<sup>28</sup> For the annual report “Discrimination 2011” of the Centre for Equal Opportunities and Action to Combat Racism, see annex XV.

<sup>29</sup> In 2009, the Centre set up a new system for the processing and registration of cases. Beginning in that year, a distinction is made between reports and cases. See page 64 of the “Discrimination 2011” report for an explanation of these two concepts.

societal importance, if the seriousness of the offence warrants it or where it has proved impossible to find another satisfactory solution.

297. In the past six years, the Centre has decided to bring 72 cases to court following alleged violations of the Act of 30 July 1981 and/or the Act of 23 March 1995 (annex VII, table 7):

- In 2006, 20;
- In 2007, 13;
- In 2008, 15;
- In 2009, 9;
- In 2010, 6;
- In 2011, 8;
- In 2012, 1.<sup>30</sup>

298. It should be noted that these figures relate to the numbers of cases which the Management Board of the Centre decided to take to court; however, they did not necessarily all result in court rulings, because in some cases an agreement may have been reached before that stage was reached, the victim may have decided not to continue the procedure, or the latter may have been still pending on the date of the present report.

299. Only 40 of the cases were in fact dealt with by the courts, 32 of which resulted in convictions for racism or revisionism and the other eight cases were dismissed, mostly owing to insufficient evidence. The main penalties included 19 prison sentences, of which some were suspended (13 of less than one year, one each of one, two and three years and two of five years), five community-service orders (of 46 to 250 hours), verdicts were deferred in two cases, there were two financial penalties of €2,500 each, two persons were deprived of civil and political rights, one for 5 years, the other for 10, three were disqualified from standing for election (for five, seven and ten years respectively) and 13 received fines ranging from €100 to €4,789. In 28 cases, the victims and civil parties were awarded damages ranging from the token amount of €1 to €7,500 (for additional details, see annex VII, table 8).

#### *Flemish Community*

300. The Decree of 10 July 2008 establishing a framework for Flemish policy on equal opportunities and treatment provides for the creation of 13 local complaints offices (*Meldpunten*). These integrated local contact points can receive and record complaints of discrimination with a view to providing mediation between the parties. When no settlement can be achieved through mediation and one of the parties wishes to begin judicial proceedings, the complaints office will refer the case to the Centre for Equal Opportunities and Action to Combat Racism.

301. In 2011, the Flemish anti-discrimination policy received its first evaluation. The resulting report focuses mostly on the creation, functioning and evaluation of the local offices, which have a dual purpose: first, they assist victims of discrimination and provide mediation in order to end discriminatory behaviour; second, they develop preventive initiatives (in relation to housing issues and restrictive admission policies in the hotels and catering sector). To that end, they participate in networks of associations and organizations.

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<sup>30</sup> Figure for 1 January to 30 June 2012.

302. Complaints are recorded through a central database to which the Centre is also connected. In 2009, the Flemish local offices recorded 19 reports of incidents related to racial criteria. In 2010, they received 367 reports and opened 240 files based on those criteria. Lastly, in 2011, the figures were 384 reports and 264 files.

*French Community/Walloon Region*

303. Eleven local contact points were opened in October 2011 to welcome and support citizens in the framework of the fight against certain forms of discrimination. They are located in the *Espaces Wallonie* (Walloon Region Centres) and cover the whole of the region. They are set up in collaboration with the Mediation Services of the French Community and the Walloon Region, which provide the legal advice services in the *Espaces Wallonie*.

304. The French Community has appointed the Centre for Equal Opportunities and Action to Combat Racism to promote equal treatment among all persons without discrimination on grounds of nationality, presumed race, skin colour, parentage or national or ethnic origin, age, sexual orientation, religious or philosophical beliefs, disability, marital status, birth, wealth, political convictions, current or future state of health, physical or genetic characteristics or social background. The Institute for Gender Equality has been appointed to deal with any gender-based discrimination.

305. A cooperation protocol was signed in February 2009 between the French Community and those two independent bodies, giving them the authority to:

- Deal with individual situations relating to discrimination based on the various criteria for protection;
- Inform the public and promote awareness;
- Provide training to staff;
- Submit opinions and recommendations to the Community authorities; and
- Provide leadership for the preparation of studies on subjects related to anti-discrimination measures.

306. The implementation of the cooperation protocol is coordinated by the Equal Opportunities Department of the Ministry of the French Community. In practical terms, the Department promotes contacts among the various actors, ensuring that the best use is made of the potential and resources of all those involved in fighting discrimination. Since 2009, the Centre and the Institute have provided legal assistance to the victims of discrimination and, in particular, have provided them with a great deal of information on their rights. They have also been involved in informal conciliation in certain cases.

307. The cooperation protocol between the French Community and the Centre provides for them to share all useful information of general interest relating to the application and implementation of the Decree of 12 December 2008 on combating certain forms of discrimination. This sharing of information is to take place within the provisions of the Act of 8 December 2008 on the protection of private life in relation to the processing of personal data. An agreement to this effect is currently being finalized.

308. Regarding the processing of such data and, in particular, in relation to informal conciliation, the Centre and the Institute have worked together with those involved in conciliation in the French Community. Regular meetings are also held in the framework of an informal platform comprising conciliation actors who are likely to be involved in anti-discrimination measures under the authority of the French Community.

309. In 2009, 2010 and 2011, the Centre and the Institute dealt with 202 cases coming under the authority of the French Community.<sup>31</sup>

310. A similar protocol was signed with the Walloon Region in 2009.

## **Article 7**

### **Non-discrimination in the fields of teaching, education, culture and information**

#### **A. Flemish Community**

##### **1. Recent policy developments in the Flemish Community in combating discrimination in the area of education**

311. The Flemish Community has taken new measures to combat discrimination in the area of education.

312. Pursuant to the Decree of 25 November 2011, the promotion of social inclusion and harmonious mixing of students in all schools is fundamental to the law in relation to enrolment. This new enrolment policy, which came into force on 1 September 2012, encourages social mixing in schools.

313. Policy in relation to languages also contributes to the attainment of goals.<sup>32</sup> It focuses strongly on foreign languages and strong emphasis is placed on the languages spoken in the home, through activities such as individual reading and reading aloud, fostering the enjoyment of reading; promoting the pleasure of reading; creating activities devoted to the culture of reading aloud — in Dutch and in the languages spoken in the home — with parental participation; and encouraging parents who speak foreign languages to create a linguistically rich environment at home.

314. Tutoring projects for students have become structural since 2011, creating win-win situations for students from the third cycle of primary education (the fifth and sixth years) to the same cycle of secondary education) and students enrolled in higher education. Those in the first category are supported in terms of their “learning how to learn” abilities and the desire to learn; the second group learns to develop abilities in the area of diversity.

315. Monitoring of compliance with the school attendance requirement is broadened, with particular attention to recent arrivals.<sup>33</sup>

316. Procedures are evaluated and corrected, where necessary, to ensure rapid recognition of foreign certificates and diplomas.

317. In higher education, entry, advancement and graduation by students who are foreign nationals have been improved through the removal of financial and other obstacles. A fund has been set up to encourage such students; it is still functioning and will be replaced on 1 January 2013.<sup>34</sup>

318. Preschool attendance is also encouraged among the target groups of integration policy.

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<sup>31</sup> These cases relate to all the criteria protected under the federal Acts of 10 May 2007 and therefore do not relate only to racial discrimination.

<sup>32</sup> Concept note entitled *Samen taalgrenzen verleggen* (Moving language frontiers together).

<sup>33</sup> Plan of Action against Behaviour Problems.

<sup>34</sup> Plans of action on combating poverty and promoting integration.

319. A cooperation agreement for the arbitration of complaints has been signed by the Centre for Equal Opportunity and the Flemish Education Council. Its goal is to achieve the best possible settlement of disputes relating to unequal opportunities, racism or discrimination in education and to achieve more efficient processing of complaints in that area.

## 2. Inclusive policy towards target groups

320. Inclusive policies are applied in relation to target groups in the area of education. There is a particular focus on children and young people from social backgrounds where their talents are insufficiently cultivated. Education policy emphasizes measures to ensure children attend school and maximize the numbers of students who graduate successfully. The enthusiasm and involvement of all actors in education at all levels, as well as parents and students, are crucially important.

321. The policy area of education and training is represented in the working group for the Flemish plan of action entitled “Migrants from Central and Eastern Europe” (see above) of the Minister for Civic Integration. On the initiative of the working group, coordinated actions are undertaken to benefit migrants in that category, including Roma. For education, in particular, it seeks to strengthen involvement by the parents of such students and to keep schools informed of the subsidies available for projects relating to the Roma.

322. Other activities are provided for by the Plan of Action against School Absenteeism and Other Forms of Excessive Behaviour. This Plan specifies that the duty of school attendance is also applicable to the Roma. In this framework, the target group can also be informed regarding the importance of education and of learning the Dutch language, in cooperation with local authorities. To ensure information and awareness in schools and among teachers regarding migrants from Central and Eastern Europe, training courses and seminars are devoted to that target group. Partnerships between schools and integration centres are encouraged. Local initiatives are promoted in communes where there are large numbers of such migrants; for example, these may involve encouraging representatives of schools and the teaching profession to participate in teleconferencing and other meetings for the generation of ideas and joint problem solving.

323. The policy area of education and training is also represented in the Flemish steering group on Travellers, which is preparing a Flemish plan of action in that regard (see above). The plan will include proposals for activities in relation to education.

## 3. Wearing of symbols of belief

324. In 2010 and 2011, the Flemish Education Minister held a considerable number of meetings in relation to the open wearing of symbols of belief. These involved all the concerned actors: legal experts, experts in various areas of philosophy, ethics and sociology, the various educational networks, the *Vlaamse Scholierenkoepel* (a coordinating organization of Flemish school students), the pressure group *Boeh!* (Boss Your Own Head), and Muslim teachers and leaders of opinion. Based on opinions expressed during those discussions, a number of possible policies have been considered, ranging from full authorization, through authorization with some restrictions, to prohibition in certain circumstances. These proposed policies will now be evaluated in terms of their feasibility and effectiveness. In any scenario, the importance of dialogue with all interested parties and the participation of both students and parents are emphasized.

#### 4. Training and awareness programmes on issues covered by the Convention

325. The education magazine *Klasse* ([www.klasse.be](http://www.klasse.be)) regularly keeps parents, students and teachers informed on issues related to the Convention. It also organizes information campaigns.

326. The themes of tolerance and the fight against racism and xenophobia are often dealt with in Flemish primary and secondary schools through strategic objectives.

327. In the framework of the interdisciplinary final objectives introduced in 2010, subjects related to human rights and active citizenship are present explicitly in areas 5 (political and legal aspects of democratic society) and 7 (sociocultural). The strategic objectives in area 7 relate to the knowledge, abilities and attitudes necessary for coexistence in a multicultural, democratic society. These ideas are based on the fact that, while school students are future citizens, they are also members of society during their schooling. The goal is therefore to enable them, while still at school, to understand the existing participation procedures, fundamental rights and freedoms and the functioning of democracy.

### B. French Community

#### 1. New decrees in the area of education

328. Three new decrees have been adopted in the French Community.

329. The Decree of 3 April 2009, relating to regulation of student enrolment for the first cycle (the first two years) of secondary education, aims to set up an objective and transparent enrolment mechanism which will promote social mixing. The following are its main goals: fairness in the organization of enrolments, transparency for parents and students, simplicity for teaching and administrative teams, equal access and treatment and combating student failure while supporting mixing. It is intended that the decree will be modified for each school year and its implementation will be evaluated after the third year, using criteria such as the existence of support and assistance measures, the development of pilot partnerships between schools at different socioeconomic levels, progress towards mixing and, lastly, the system of allocation of school places.

330. The Decree of 18 May 2012, which establishes DASPA, a reception and school enrolment system for newly-arrived migrants in schools managed or subsidized by the French Community, provides for the students to be enrolled at their request or with the agreement of those exercising *de facto* or *de jure* parental authority over them or, if they are unaccompanied minors, at their request or with their agreement.<sup>35</sup> Each student may remain in the reception class for anything from a week to a year, a duration which can be extended to a maximum of 18 months. Students enrolled in such classes may take all or part of their

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<sup>35</sup> In order to be considered as newly arrived, students must:

- (a) Be aged at least 2½ and less than 18;
- (b) Either have submitted an application for recognition of refugee status or have received such recognition in accordance with the Foreign Nationals Entry, Residence, Settlement and Removal Act;
- (c) Or be a minor accompanying a person who has submitted an application for recognition of refugee status or has received such recognition in accordance with the Act;
- (d) Or be recognized as stateless;
- (e) Or be a national of a State receiving development assistance from the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD);
- (f) Or have arrived in Belgium less than one year earlier.

class hours with those enrolled in ordinary classes in the same school or establishment or other schools or establishments. The aim of these reception classes is to bring students up to the level needed and to provide intensive French-language instruction for those who do not speak the language well enough. The government may, for a determined period, add other countries to the list of developing countries if it considers those countries to be in a situation of serious crisis.

331. The Decree of 28 April 2004, relating to differential funding of primary- and secondary-education establishments, takes into account students' socioeconomic indexes in the distribution of subsidies or grants to schools. This decree does not relate solely to migrants; this is also true of the decree of 30 April 2009, whose purpose is to organize differential structures within the schools of the French Community in order to ensure that all students have equal chances of social emancipation in a high-quality educational environment.

## 2. Raising awareness among actors in education

332. An awareness campaign entitled *Discrimination toi-même* ("Discrimination yourself") was launched in October 2010, particularly targeting young people aged from 12 to 18. In a concrete but "fun" manner, it defines phenomena such as discrimination, freedom of expression, incitement to hatred, incitement to discriminate, racism, sexism, harassment, homophobia and disability. Also targeting teachers, instructors, associations and actors in the field, the campaign aims to help all those involved to understand the importance of laws to fight certain forms of discrimination and to be aware of existing legal provisions in that area. Some 47,000 copies of the campaign pamphlet *Discrimination toi-même* were distributed.

333. In addition to wide dissemination of the campaigns *Discrimination toi-même* and *La discrimination c'est mal* ("Discrimination is a bad thing", 2012) to all actors in the school system (see annex II), a joint effort was organized with the School Assistance Service of the Ministry of the French Community, in the framework of a plan of action to provide the conditions for learning in a calm environment, and with the Emergency Assistance to Schools service, to complete a practical guide to preventing and managing violent incidents in the school environment. A new draft edition has been prepared, revised in light of the anti-discrimination decree, and is expected to be published in 2012.

334. The Decree of 12 December 2008 on combating certain forms of discrimination also aims to inform and raise awareness among staff members whose work involves conciliation and mediation. In 2010 and 2011, 164 persons were trained in this area.<sup>36</sup>

<sup>36</sup> In 2010:

- School mediators working in Brussels and the Walloon Region and outreach agents;
- Senior staff of the schools inspectorate (coordinating inspector-general, inspectors-general and coordinating inspectors);
- The inspectors of psycho-medical and social centres;
- Members of the informal platform.

In 2011:

- Head teachers (in the framework of information workshops);
- New members of the informal platform;
- Agents of the School Assistance Service;
- Mediators from the Walloon Region and the Walloon-Brussels Federation and provincial coordinators.

335. Generally speaking, it became clear that resources were limited and a considerable number of actors required this training. In the course of 2011, cooperative projects were set up with the School of Public Administration (EAP) and the Institute for In-service Training (IFC) in order to mainstream the issue of discrimination in their training modules. The following projects are being prepared:

- With EAP: introduction of a half-day awareness module for staff members in the French Community;
- With IFC: introduction in 2012 of a two-day module as part of the continuing training of school inspectors.

### **3. Opinions and recommendations in the area of education**

336. A variety of collaborative projects have been created with the actors concerned to enable the Centre for Equal Opportunities and Action to Combat Racism and the Institute for Gender Equality to conduct their research as well as possible in order to issue complete and reasoned opinions and recommendations.

337. In January 2012, the Centre recommended that the Minister for Higher Education should send a circular to establishments in the field of higher education and social advancement, ensuring that no limitations would be placed on students' freedom to express their convictions; this included the wearing of religious symbols.

### **4. Plan of Action for Equality and Diversity in the Audiovisual Media**

338. In 2010, the Minister of Culture, Audiovisual Media, Health and Equality launched a Plan of Action for Equality and Diversity in the Audiovisual Media in the French Community for 2010–2013. Spread over a three-year period, this Plan aims to conduct two distinct but complementary activities, in the shape of two annual publications:

- The Annual Barometer of Equality and Diversity is a quantitative analysis of the representation of the various components of diversity in the programmes of media companies in the French Community during a reference week. It provides a picture of diversity in television, which is a prerequisite of substantive actions and should make it possible to measure the outcomes of whatever efforts take place. The first such Barometer was published in March 2011 (<http://www.csa.be/diversite>).
- The Panorama of Good Practices aims to identify good practices in terms of equality and diversity in television. These good practices relate to all the components of diversity (gender, age, origin, socio-professional group, disability) and all the links in the audiovisual chain, such as production, training, recruitment and dissemination. The Panorama also reports on initiatives taking place in other countries, as well as relevant analyses and discussions. Its goal is to raise awareness of equality and diversity among professionals in the French-speaking audiovisual media, in terms of both information content and editorial staff, so that they will develop a positive approach to those issues.

## **Replies to the Committee's concluding observations and recommendations in relation to the previous report (CERD/C/BEL/CO/15)**

### **Paragraph 10 of the concluding observations**

339. The issue of setting up a national human rights institution has been under consideration in Belgium for several years. Discussions took place following the Coalition



Agreement of 2003 and the Office of the United Nations High Commissioner for Human Rights was asked in 2006 to give an opinion on two options. These were (1) an extension of the mandate of the Centre for Equal Opportunities and Action to Combat Racism, and (2) the creation of a Belgian commission on fundamental rights, proposed by a group of non-governmental organizations (NGOs). The opinion provided evaluated the two options without recommending one of them in particular.

340. The issue of creating a national human rights institution was raised again in the most recent Coalition Agreement, dated 1 December 2011, which provides that in accordance with the country's international obligations, "a national human rights commission must be created, in collaboration with the Communities and Regions. The existing institutions will be taken into account". That commitment arose out of a recommendation from the Human Rights Committee to Belgium in 2010 and the recommendations made to it in the context of its first universal periodic review in May 2011.

341. Pursuant to the Coalition Agreement, it was decided that an inter-federal human rights body should be set up in collaboration with the Communities and Regions. On the initiative of the Ministers of Equal Opportunities and Justice, a working group will be created in September 2012, comprising representatives of the Prime Minister, the Deputy Prime Ministers, the Regions and the Communities. Consultations will be held with academics and voluntary-sector actors having recognized expertise in human rights. Under the aegis of the Ministers of the Interior and Justice, this working group will prepare a draft cooperation agreement establishing an umbrella institute of human rights at the inter-federal level. The proposal will be submitted no later than 30 June 2013. This body will include the Inter-federal Centre for Equal Opportunities and Action to Combat Racism (see below), the Institute for Gender Equality and the Federal Centre for the Analysis of Migratory Flows, the Protection of the Fundamental Rights of Foreign Nationals and Action against Human Trafficking, and will give greater visibility to target groups such as children and persons with disabilities. Account will be taken of other existing bodies at the federal level and that of the entities making up the federation.

342. In light of the legal mandate of the Centre for Equal Opportunities and Action to Combat Racism, its status and the specific tasks given to it under article 14 of the Convention, Belgium considers that the Centre carries out the tasks of an independent promotion, protection and monitoring mechanism as recommended in the Durban Declaration and Programme of Action (art. 163) and the final declaration of the Review Conference (arts. 45, 100 and 103).

343. Pursuant to a cooperation agreement concluded in June 2012, the Centre will become inter-federal for its anti-discrimination and anti-racism functions. Its tasks will be expanded to include competence for the Regions and Communities, in addition to its authority at the federal level. In concrete terms, this means that every Belgian citizen will have a single contact point if he or she is the victim of discrimination based on the legally-defined criteria. The new Inter-federal Centre for Equal Opportunities and Action to Combat Racism will operate from 30 June 2013 and will no longer deal with migration, human trafficking and the fundamental rights of foreign nationals. Since these are essentially areas coming under federal competence, a federal centre for analysis of migratory flows, protection of fundamental rights and combating human trafficking will be created in parallel with the Inter-federal Centre (see press release by the Minister of the Interior and Equal Opportunities, annex XVI).

**Paragraph 11 of the concluding observations: response on pages 9–14, 23 and 24**

**Paragraph 12 of the concluding observations: response on page 25**

**Paragraph 13 of the concluding observations: response on pages 12, 49–57 and in annex II**

**Paragraph 14 of the concluding observations: Belgium has already replied to this recommendation (see paragraphs 3–6 of document CERD/C/BEL/CO/15/Add.1)**

**Paragraph 15 of the concluding observations: response on pages 24, 25, 47–49 and 53–56**

**Paragraph 16 of the concluding observations: Belgium has already replied to this recommendation (see paragraphs 7–11 of document CERD/C/BEL/CO/15/Add.1)**

**Paragraph 17 of the concluding observations**

*Assistance for unsuccessful asylum seekers*

344. Under article 6 (1) of the Act of 12 January 2007 on the reception of asylum seekers and certain other categories of foreign nationals (see above), the asylum seeker may choose to accept a personalized return itinerary agreed with Fedasil. This itinerary emphasizes voluntary return. Within five days of a negative decision by the office of the Commissioner-General for Refugees and Stateless Persons (CGRA), Fedasil makes an initial offer of assistance for the person's return, in which he or she is provided with information regarding the choices available for the return journey. The itinerary is set out in a document to be signed by the asylum seeker or undocumented migrant and by his or her family members, and which describes their rights and obligations and sets out a calendar for the return journey.

345. When an asylum seeker has been served with an expulsion order, the return itinerary must be established and executed within the deadline set out in the order. No later than the date on which the asylum seeker has been served with the order, the Immigration Office must be kept informed of the situation and the state of readiness of the return itinerary, which is then managed jointly by Fedasil and the Immigration Office.

346. If Fedasil or the Immigration Office believes that the asylum seeker is not cooperating sufficiently with the return journey and his or her departure has been delayed solely owing to his or her behaviour, the management of the return journey and the related administrative file are transferred to the Immigration Office for forced deportation. To that end, the Immigration Office may modify the asylum seeker's compulsory place of registration. In that case, he or she will be held in a detention centre so that the deportation order may be carried out.

347. Article 54 (1) of the Act of 15 December 1980 provides that, between the notification of the final decision on the asylum application and the expiration of the expulsion deadline, the Minister or his or her representative may designate a detention centre for the asylum seeker and his or her family members.

348. At the detention centre, the foreign national is provided with material assistance including clothing, board and lodging, which are provided in kind, a daily cash allowance and access to a voluntary return programme. He or she receives any necessary medical and psychosocial assistance and effective access to first- and second-line legal assistance as provided for in articles 508 (1) to 508 (23) of the Judicial Code.

349. Thus, it is clear that the asylum seeker is to be held in detention before deportation only if he or she has failed to cooperate. Articles 7, 8 *bis* (4), 27 (3) and 74 (9.3) of the Act of 15 December 1980 stipulate that a foreign national who has received a deportation order is to be detained pending his or her expulsion only if less coercive measures have been unsuccessful. Article 74 (14) of the Act states that the deportation decision is to provide for a 30-day departure deadline.

350. A third-State national who, under article 6, is not authorized to remain in Belgium for over three months is entitled to a deadline period of 7 to 30 days. That person may, by submitting a reasoned request to the Minister or his or her representative, apply for an extension of the deadline provided that he or she demonstrates that voluntary return is not feasible within the deadline. For this purpose, account is taken of the foreign national's particular circumstances such as length of stay, children enrolled in schools, the finalization of plans for voluntary return and other family and social connections.

351. Throughout the deadline period for voluntary return, the third-State national is protected from forced deportation. To avert any flight risk during that period, he or she may be required to comply with preventive measures.<sup>37</sup> Under certain circumstances, the deadline provided for by article 6 (1) may be waived.<sup>38</sup>

#### Detention of asylum seekers

352. Asylum seekers are detained in the circumstances set out in article 74 (6), paragraph 1, or 74 (6), paragraph 1 *bis* of the Act of 15 December 1980.

- Under article 74 (6), paragraph 1, a foreign national staying in the country illegally may be detained only following a negative decision of the CGRA on his or her asylum request, pursuant to article 52, in order to ensure that he or she actually leaves the country. Paragraph 1 *bis* lists exceptional circumstances in which a foreign national may be detained before that decision is taken. This detention may take place only if the foreign national is in the country illegally and the objective circumstances listed in the Act clearly demonstrate abuse of the asylum procedure.
- Nonetheless, the existence of these circumstances do not mean that the asylum request will not be considered. The application will be given priority treatment by

<sup>37</sup> The preventive measures are defined by the Royal Order of 19 June 2012, amending the Royal Order of 8 October 1981 on the Entry, Residence, Settlement and Expulsion of Foreign Nationals and the Royal Order of 20 July 2001 on the staffing and functions of the federal and local police in the framework of supervision of forced return (*Moniteur belge*, 2 July 2012). Under that Order, the Minister or his or her representative may require the foreign national concerned to report regularly to the competent authorities, deposit an appropriate financial guarantee and provide copies of his or her identity documents. These preventive measures are taken on an individual basis and may be cumulative.

<sup>38</sup> 1. There is a flight risk, or  
 2. The third-State national has failed to comply with the preventive measure imposed, or  
 3. The third-State national represents a danger to public order and national security, or  
 4. The third-State national has failed to comply with the deadline associated with a previous deportation order, or  
 5. The foreign national's stay in Belgium has been terminated pursuant to article 11, paragraph 2.4, article 13, paragraph 2*bis*, paragraph 3.3, paragraph 4.5 or paragraph 5, or article 18, paragraph 2, or  
 6. The third-State national has lodged more than two asylum requests, unless there are new elements in his application. In this case, the deportation decision provides for no deadline or a deadline of less than seven days.

the CGRA, and if its decision is negative it will be dealt with as a priority matter by the Aliens Litigation Council.

- These exceptional circumstances, which may indicate an abuse of the asylum procedure, require detention of the person concerned and rapid processing of the asylum application. If there is evidence to the contrary, the Minister or his or her representative may decide that the person should not be detained.
- Lodging an asylum application does not make the applicant exempt from being deprived of his or her liberty. If that were the case, immigration policy would be completely undermined.
- A detention decision may be made in order to carry out deportation or to avert a flight risk, or may become necessary if the foreign national represents a threat to public safety and national security.

353. The legislators have provided for various types of detention pursuant to the Dublin Regulation.<sup>39</sup>

354. First, there is detention during the period needed for determining the State responsible, under the Dublin Regulation, for processing the asylum request (both at the frontier and within the country). In such cases, the Belgian State is aware of an asylum request made by the asylum seeker to another member State. The applicant is detained because there is a risk that he will not depart voluntarily. This is done on the basis of article 51 (5) (1), subparagraph 2, of the Act of 15 December 1980 and article 71 (2 *bis*) of the Royal Order of 8 October 1981 on the entry, residence, settlement and deportation of foreign nationals. The duration of the detention is restricted to the time necessary for the responsible State or a maximum of one month, which can be extended for a further month in highly complex cases.

355. There can also be detention on the basis of a decision that Belgium is not responsible for the asylum application and that another State party to the Dublin Agreement is responsible (either at the border or within the country). As with article 354, it is presumed that the asylum applicant does not intend to leave voluntarily. Furthermore, transfer modalities have to be agreed with the responsible “Dublin State”; in this context, the other “Dublin State” may request a controlled handover (Dublin Regulation, articles 19 (3) and 20 (1) (d)). Also, article 19 (4) of the Regulation states that “Where the transfer does not take place within the six-month time limit, responsibility shall lie with the member State in which the application for asylum was lodged”. The legal basis is article 51 (5) (3), subparagraph 4, of the aforementioned Act. The duration of the detention is limited to one month, not including any period during which the asylum seeker may have been deprived of liberty pursuant to article 354.

#### Alternatives to detention for families with minor children

356. Since 1 October 2008, low-security accommodation consisting of single-family homes, as provided for in article 74 (8) (1 and 2) of the Act, are made available to undocumented families (including unsuccessful applicants for asylum) as an alternative to detention in closed facilities pending the execution of a deportation order. This accommodation enables families to enjoy infrastructure which meets their needs. Children may live there with their parents or guardians, family members who are minors and relatives up to the second degree of consanguinity, without having to share the housing unit

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<sup>39</sup> Council Regulation No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member State responsible for examining an asylum application lodged in one of the member States by a third-country national.

with other adults or families. This accommodation was initially reserved for families currently located within the country. The Royal Order of 22 April 2010 amending the Royal Order of 14 May 2009, which established the regime and operating rules applicable to accommodation facilities under article 74 (8) (2) of the Act, extended access to those facilities to families currently located at the border. In this case, the accommodation facility is considered to be a determined site on the border, to ensure the application of the Convention on International Civil Aviation (Chicago Convention) of 7 December 1944, as it relates to *refoulement*, when families fail to satisfy entry requirements.

357. Since the recent adoption of the Act of 16 November 2011 (*Moniteur belge*, 17 February 2012), the detention of undocumented families with minor children for the purpose of deportation is restricted to narrowly defined cases provided for by law, and must always be for the shortest possible period.

#### Cessation of the practice of holding migrants in the airport transit zone

358. The Committee's recommendation refers to the condemnation of Belgium by the European Court of Human Rights (ECHR) in its *Riad and Idiab* decision of 24 January 2008. It should be emphasized that this decision related specifically to the conditions of detention of the two plaintiffs in the airport transit zone. Since that decision, Belgium has ended the practice whereby, by court order, persons held in detention centres could be released into an airport transit zone.

359. The foreign national is freed as soon as the court order for his or her release is received; nonetheless, that release does not make his or her residence in the country legal.

360. Thus, when the person's specific situation has been considered, if it fails to satisfy the requirements for entry and residence, a new deportation order may be issued on the basis of article 7 of the Act. The foreign national may be ordered to leave the country, and may comply voluntarily. If he or she fails to comply within the given deadline, a new decision may be taken to place the person in detention so that the expulsion can be carried out. This may result in the person being placed in a detention centre or under house arrest for whatever period is strictly necessary for the execution of the deportation.

#### Paragraph 18 of the concluding observations

361. Belgium wishes to point out that the Committee has erroneously quoted a decision of the ECHR dated 12 October 2006 (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*). In that case, Belgium was not accused of excessive use of force when the deportation took place. It was mostly condemned for the conditions of detention in a closed facility unsuitable for a 5 year-old child and its subsequent deportation to the Democratic Republic of the Congo.

#### *Complaints, investigations and penalties in cases where mistreatment or excessive use of force is alleged*

362. On the subject of external supervision of deportation operations, article 8 (6) of Directive 2008/115/EC of 16 December 2008 requires each member State to provide for an effective forced-return monitoring system.<sup>40</sup> The legislation transposing this provision into Belgian law (the Act of 19 January 2012, *Moniteur belge*, 17 February 2012), confirms the role of the inspectorate of federal and local police forces as the body monitoring forced

<sup>40</sup> This directive provides common standards and procedures applicable in the member States to the return of undocumented third-State nationals.

returns,<sup>41</sup> taking account of its independence in relation to the authorities which decide on deportations (Immigration Office) and the police services charged with enforcing them (Brussels Airport Police). The number of checks carried out, up to the stage of boarding the aircraft, arrival in the country of return or within that country, has increased sharply thanks to funding from the European Return Fund (54 checks carried out in 2011; already 45 for the first quarter of 2012).<sup>42</sup> That European funding will probably continue into 2013. The authority of the inspectorate will probably soon be extended to include the whole forced-return process and to all the actors involved rather than police officials alone. When an incident occurs, the members of the inspectorate, as police officials, can intervene directly to put an end to illegal acts and, if necessary, to report the incident; this is something that a member of an NGO could not do. Furthermore, they cannot be subject to any restriction in the course of their duties (general and permanent right of inspection). In particular, access to sensitive areas of the airport, including the military airport, raises no screening issues for members of the inspectorate. Lastly, they are also subject to professional confidentiality, which guarantees discretion in operations of this type, particularly before they are carried out.

363. In light of the inspectorate's strengthened supervision of forced returns and the aspects mentioned above, the presence of NGOs does not appear to be necessary. As for the use of video recordings, Belgium continues to subscribe to the observations contained in the final report of the Vermeersch II Commission, dated 31 January 2005. The report noted that the use of videos is undesirable for a number of reasons, which are mostly technical and logistical.

364. Since there has been no major incident during deportation operations since 2008, it can be concluded that the training provided has been effective. The staff of the Brussels Airport Police, like all police officers, receive basic, continuing and functional training in which respect for human rights is emphasized. Given the tasks of the airport police, they are made even more aware of the importance of human rights and the vulnerability of the foreign national to be deported. The airport police therefore receive specific compulsory training lasting six months, which includes a considerable practical section (modules relating to issues such as controlling violent incidents and dealing with recalcitrant persons) as well as more theoretical matters such as immigration checks and forged documents. Any officer who will be serving as a deportation escort is required to follow a training course involving practical simulations. Consideration is being given to extending that course and making it into an official continuing training exercise. Currently, the staff responsible for migrant returns have developed a real expertise enabling them to carry out their tasks in accordance with the police code of ethics and their internal instructions.

365. Since 2006, the inspectorate has received only six complaints from persons claiming to have been subjected to excessive use of force during a repatriation. The cases were passed on to the judicial authorities when the necessary reports had been drafted. The inspectorate has not been informed of or given responsibility for further developments in those investigations. Since 2007, the inspectorate has, in one instance and on its own initiative, reported a police officer for his conduct in the context of a deportation.

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<sup>41</sup> Until this point, while Committee P also monitored repatriations, its power of intervention was limited; in 2004, the Minister also monitored repatriations, but his or her powers were limited because, until 2004, the Minister of the Interior had specifically entrusted that task to the inspectorate of federal and local police forces.

<sup>42</sup> The figures for checks conducted by the inspectorate of federal and local police forces for the previous years are 36 in 2007, 18 in 2008, 17 in 2009 and 12 in 2010.

366. Pursuant to article 14 *bis* of the Act of 18 July 1991 on monitoring police forces, intelligence services and the Coordinating Body for Threat Analysis, the activities and methods of the inspectorate are supervised by the Permanent Police Oversight Committee (“Committee P”). The latter exercises marginal supervision of the inspectorate’s fulfilment of its duties in relation to deportations. It can also receive individual complaints in that regard: there were six such complaints in 2010 and four in 2011. The judicial authorities can also refer to the Committee investigations relating to deportations (in the period 2010–2011 there was only one such case, in 2011).

Competent judicial mechanisms used for reconsidering expulsion and deportation orders

367. The Minister or his or her representative may decide to expel a foreign national by means of a royal or ministerial expulsion order (articles 20–26 and article 43.2 of the Act of 15 December 1980), only after the arguments raised by that person and the foreseeable impact of his or her deportation to the destination country have been duly considered and account has been taken of the general situation in that country and the particular circumstances of the case. It is always verified that the person concerned is not in danger of being transferred to a country where his or her life will be threatened, in accordance with article 3 of the European Convention on Human Rights. The Minister or his or her representative takes account of the views of the competent authorities. These would include the CGRA, if the foreign national has lodged an application for asylum, and the judicial authorities, when a deportation order is to be issued or executed. Belgium applies the principle of *non-refoulement* (article 33 of the 1951 Convention relating to the Status of Refugees), the European Convention on Human Rights (arts. 3 and 8), the second preambular paragraph of the Dublin Regulation, articles 18 and 19 of the Charter of Fundamental Rights of the European Union and article 78.1 of the Treaty of Rome (Treaty establishing the European Economic Community).

368. In the consideration of each case, account is always taken of the foreign national’s right to respect for private and family life. This needs to be balanced with the protection of public safety and national security, in accordance with the principle of proportionality.<sup>43</sup> When an undocumented migrant commits an offence or a serious crime, it is essential that the significance of his or her family life and ties to Belgium should be evaluated in relation to the seriousness of the act committed. This measurement varies with each case and therefore requires individual consideration.

369. Expulsion and deportation orders may be subject to petitions to the Aliens Litigation Council for suspension and annulment. The Minister or his or her representative rules on applications for postponement or cancellation of such measures. If the persons concerned are deported, their details are added to the Schengen Information System (SIS) database. Should they return and be intercepted in Belgium, the police will contact the central SIS

<sup>43</sup> In accordance with the jurisprudence of the European Court of Human Rights, this balancing must take account of the following: (1) in relation to the protection of private and family life, the level of social integration and the presence of family members in Belgium, as well as the strength of family ties, the foreign national’s birth in Belgium or the date of his or her arrival, the possibility of integration in the country of origin (for example, his or her knowledge of the language, the presence of family members and the frequency of past returns) and links with that or another country; (2) in relation to the protection of public order and national security, the seriousness of the offence, the nature of the acts allegedly committed and the reasons for the verdict, the nature and significance of the sentence passed, repeat offending and the risk thereof, the duration of the expulsion measure (in Belgium, ten years), and illegal residence.

office with a view to taking the person back into custody (if possible) so that he or she can serve the remainder of his or her sentence.

370. Since 2008, there have been six cases of deportation (one in 2008 and five in 2010) and three sensitive cases which have led to expulsion orders. Two of the latter involved persons convicted of terrorist offences who invoked article 3 of the European Convention on Human Rights in order to avoid deportation. In those two cases, the residence status was analysed. As already mentioned, the right to private and family life is duly taken into account. Routine checks may involve consulting the Schengen system, requesting a list of visitors to the person in prison, or contacting state security services. Currently, the three persons subject to expulsion orders have not yet been deported. In two cases, the Council of State quashed the decision of the Aliens Litigation Council, which had cancelled the deportation order; the cancellation petitions are therefore pending again. In the third case a cancellation petition to the Aliens Litigation Council is pending.

#### Use of force by police

371. In carrying out their legal duties the police sometimes have to use force, subject to strict compliance with the legal conditions which govern such situations: legality, proportionality and subsidiarity.

372. The use of force is entirely governed by the domestic and international legal framework and, consequently, by human rights law, including the prohibition of mistreatment and of all forms of torture whether or not they are motivated by some form of discrimination. Any contravention of these principles may result in criminal or disciplinary penalties. Furthermore, any use of force is required to be reported, systematically and specifically.

373. To ensure that police tasks are carried out correctly and that rules are complied with regarding the use of force and the protection of human rights, Belgium has implemented supervisory mechanisms at the level of the three federal authorities. These mechanisms function systematically, on a regular or occasional basis, as the case may be. Citizens may have recourse to this supervisory structure in case of non-compliance; it is also used for evaluation of the performance of police work and the adoption of corrective measures where necessary. In addition to the penal and disciplinary mechanisms available, any infringements are sanctioned through statutory staff assessment procedures.

#### **Paragraph 19 of the concluding observations**

374. On 31 July 2001, when Belgium signed the Framework Convention for the Protection of National Minorities, it expressed a reservation regarding the concept of "national minority": "The Kingdom of Belgium declares 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."

375. A working group has been created and has met a number of times, but no such definition has yet been agreed in Belgium.



**Paragraph 20 of the concluding observations: response on pages 34–36****Paragraph 21 of the concluding observations: response on pages 56–57****Paragraph 22 of the concluding observations: Belgium has already partly replied to this recommendation (CERD/C/BEL/CO/15/Add.1, paragraphs 7–11).****Further responses are found on pages 13–18, 45–47 and 54–55**

376. In July 2012, the European Committee of Social Rights of the Council of Europe concluded that Belgium had violated a number of provisions of the European Social Charter in relation to Travellers.

377. In particular, the Committee judged that the failure to recognise caravans as dwellings in the Walloon Region and the existence in the Flemish and Brussels-Capital Regions of housing quality standards that were not adapted to caravans constituted a violation of two articles of the Social Charter which, in combination, guaranteed the families' right to enjoy social and economic protection free from discrimination. Belgium notes this decision and will communicate its explanations and intentions to the European Committee of Social Rights in autumn 2012.

**Paragraph 23 of the concluding observations**

378. At the time of its universal periodic review in May 2011, Belgium agreed to examine its interpretative declaration in relation to article 4 of the Convention, and initial consultations with the actors concerned have taken place. Draft legislation to prohibit undemocratic organizations is currently before Parliament (see above).

**Paragraph 24 of the concluding observations**

379. This concerns a technical amendment to article 8 (6) proposed by Australia in 1992, to which Belgium has no substantive objection. Nonetheless, no procedure has yet been initiated for its ratification.

**Paragraph 25 of the concluding observations: response on page 5****Paragraph 26 of the concluding observations**

380. Belgium attaches great importance to respect for migrants' rights but cannot consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. One of the particularities of that Convention is that it confers the same rights upon regular and irregular migrants, contradicting national and European regulations which clearly make the distinction between the two categories.

381. Nonetheless, Belgium takes account of the goals of that Convention and continues to cooperate with its European partners on legal protection for migrant workers in the framework of overall European migration policy.

## List of annexes

- Annex I Activity report 2011 – Collaboration between the Centre for Equal Opportunities and Action to Combat Racism and the Federal Police  
[www.diversite.be/?action=publicatie\\_detail&id=145&thema=2&select\\_page=216](http://www.diversite.be/?action=publicatie_detail&id=145&thema=2&select_page=216)
- Annex II Awareness campaigns not mentioned in the report
- Annex III National Roma Integration Strategy  
[ec.europa.eu/justice/discrimination/roma/national-strategies/index\\_fr.htm](http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_fr.htm)
- Annex IV Guide to organizing temporary residence for Travellers  
[www.diversite.be/?action=publicatie\\_detail&id=132&thema=4](http://www.diversite.be/?action=publicatie_detail&id=132&thema=4)
- Annex V Guidance note on the reception process in the Walloon Region – Report for 2011 on Integration Policies in the Walloon Region
- Annex VI Pamphlet on Online Hate Speech of the Centre for Equal Opportunities and Action to Combat Racism  
[www.diversite.be/?action=publicatie\\_detail&id=110&thema=3](http://www.diversite.be/?action=publicatie_detail&id=110&thema=3)
- Annex VII Statistics from the Centre for Equal Opportunities and Action to Combat Racism
- Annex VIII Annual report, “Discrimination 2008” by the Centre for Equal Opportunities and Action to Combat Racism (definition of Islamophobia)  
[www.diversite.be/?action=publicatie\\_detail&id=106&thema=2](http://www.diversite.be/?action=publicatie_detail&id=106&thema=2)
- Annex IX Annual report for 2010 by the Centre for Equal Opportunities and Action to Combat Racism on human trafficking  
[www.diversite.be/?action=publicatie\\_detail&id=135&thema=5&select\\_page=216](http://www.diversite.be/?action=publicatie_detail&id=135&thema=5&select_page=216)
- Annex X Human trafficking statistics from the College of Public Prosecutors for 2010–2011
- Annex XI Additional information on human trafficking from the Criminal Law Policy Service
- Annex XII Fact sheet *Baromètre de la diversité – Emploi 2012*. See complete study at  
[www.diversiteit.be/?action=onderdeel&onderdeel=293&titel=Cijfers+Arbeid+en+Tewerkstelling&setLanguage=2](http://www.diversiteit.be/?action=onderdeel&onderdeel=293&titel=Cijfers+Arbeid+en+Tewerkstelling&setLanguage=2)
- Annex XIII Circular COL 6/2006, on the recording of racist and xenophobic acts
- Annex XIV Statistics on racism and xenophobia from the College of Public Prosecutors for 2006–2012
- Annex XV Annual report “Discrimination 2011” by the Centre for Equal Opportunities and Action to Combat Racism  
[www.diversite.be/?action=publicatie\\_detail&id=147&thema=2](http://www.diversite.be/?action=publicatie_detail&id=147&thema=2)
- Annex XVI Press release by the Minister of the Interior and Equal Opportunities on the new inter-federal status of the Centre for Equal Opportunities and Action to Combat Racism  
[www.milquet.belgium.be/fr/interf%C3%A9d%C3%A9ralisation-du-centre-pour-l%E2%80%99C3%A9galit%C3%A9-des-chances-et-la-lutte-contre-le-racisme-ainsi-que](http://www.milquet.belgium.be/fr/interf%C3%A9d%C3%A9ralisation-du-centre-pour-l%E2%80%99C3%A9galit%C3%A9-des-chances-et-la-lutte-contre-le-racisme-ainsi-que)
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