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ECRI REPORT ON BELGIUM

(fifth monitoring cycle)

Adopted on 4 December 2013

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FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of the year 2007 and those of the fourth cycle will be ended at the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fifth round country-by-country reports focus on four topics common for all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own and full responsibility. Except where expressly indicated, it covers the situation up to 20 June 2013 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

SUMMARY

Since the adoption of ECRI's fourth report on Belgium on 19 December 2008 progress has been made in a number of fields.

Legislation at federal and federated entities' level is now mostly in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

Protocols of co-operation signed between the Centre for Equal Opportunities and Opposition to Racism (the Centre) and federated entities allow the Centre to fulfill its statutory tasks also in the fields covered by the anti-discrimination legislation of these entities.

Numerous judicial proceedings have been initiated against individuals and legal entities advocating hatred and violence. In a number of judgments the Belgian courts have used the option provided by the Anti-racism and Anti-discrimination Acts of 2007 to suspend the civil and political rights of persons convicted of racism or racial discrimination, including hate speech.

Media self-regulatory bodies are particularly active in combating the dissemination of hate speech through the media.

A number of good practices exist in the sports scene to combat and prevent forms of hate speech that do not reach the criminal punishment threshold but constitute nevertheless intolerant and inflammatory discourse.

The Belgian authorities have launched an action plan to combat homophobic and transphobic violence and in particular to improve its reporting, investigation and prosecution.

A number of integration policies implemented at federated entities' level have a dimension which goes beyond the pure reception of immigrants, promoting intercultural dialogue and giving a positive image of cultural diversity in Belgium.

Legislation guarantees respect of most aspects of family and private life of lesbian, gays, bisexual and transgender persons (LGBT) on an equal footing with the rest of the population.

ECRI welcomes these positive developments in Belgium. However, despite the progress achieved, some issues give rise to concern.

Despite progress made in the ratification procedure, Belgium has not yet ratified Protocol No. 12 to the European Convention on Human Rights.

Anti-racism and anti-discrimination legislation is scattered in a number of laws at federal and federated entities level. As a consequence, protection against racism and discrimination is not the same on all grounds, in particular on the grounds of religion and language. Moreover, to date, there is no independent body competent on matters relating to discrimination based on language.

The application of the legislation remains problematic in certain areas due to the fact that no decrees have been adopted providing guidance in fields such as positive discrimination and occupational requirements.

The assessment of the 2007 anti-racism and anti-discrimination legislation has not been carried out yet, despite a specific provision of the law in this sense.

The legislative process to turn the existing Centre for Equal Opportunities and Opposition to Racism into an inter-federal institution is not yet completed. Data on hate speech and racist and homo/transphobic violence is too fragmentary or too general to give a clear picture of the situation in the country as regards these phenomena. Moreover, the phenomenon of under-reporting of racist crime is of serious concern.

The situation concerning hate speech on the Internet is extremely worrying with a sharp increase in racist webpages and discussion fora on Belgian sites.

A number of facets of the integration programmes at federated entities' level are questionable, if not discriminatory.

Ethnic and religious groups, in particular Muslims, continue to face in general many disadvantages, including discrimination in key fields of life.

There is still a shortage of properly equipped transit sites for Travellers, in particular in the Walloon Region and in the Brussels-Capital Region where there are almost no reception areas.

Contrary to sexual orientation, discrimination on the basis of gender identity is not a prohibited ground per se. Moreover, acceptance of homosexuality is not so widespread among the young and the level of awareness-raising on LGBT issues differs greatly from federated Community to federated Community.

In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.

Belgium should ratify Protocol No. 12 to the European Convention on Human Rights as swiftly as possible.

The Anti-discrimination Federal Act should include a number of provisions already contained in the Anti-racism Federal Act in order to improve protection against discrimination on religion and language grounds. An assessment of the application and effectiveness of the anti-racism and anti-discrimination legislation should be carried out without any further delay.*

Belgian authorities should finalise promptly the legislative process to turn the Centre into an inter-federal institution. Special care should be taken to ensure that this institution is fully independent.*

The authorities should ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable information on hate speech offences and the reaction of the criminal justice system is made available.

Belgian authorities should step up their efforts to counteract the presence of racist expression on the Internet.

The authorities should make sure that the civic integration programme, in itself very interesting, is not discriminatory thus deviating from its essential integration aim.

The authorities should amend the anti-discrimination legislation at federal and federated level to include gender identity among the prohibited grounds.

* This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Common topics

1. Legislation against racism[1] and racial discrimination[2]

- **Protocol No. 12 to the European Convention on Human Rights**

1. ECRI's fourth report published in 2009 recommended that Belgium ratify "as swiftly as possible" Protocol No. 12 to the European Convention on Human Rights (ECHR), which contains a general prohibition of discrimination. The authorities have informed ECRI that the complex ratification procedure, requiring the prior approval of all parliaments of the federated entities, is about to be completed; to date, apart from the Flemish Parliament, all other parliaments have adopted decrees approving the ratification of the Protocol.[3]

2. ECRI reiterates its recommendation that Belgium ratify Protocol No. 12 to the European Convention on Human Rights as swiftly as possible.

- **General legislative framework**

3. Articles 10 and 11 of the Belgian Constitution enshrine the principle of equal treatment, prohibiting discrimination. On a number of occasions these articles have been invoked against either legislative norms or administrative acts, which violate the principles of equality and non-discrimination.[4]

4. At federal level most of the legislation against racism and discrimination is contained in three federal acts adopted on 10 May 2007: the Federal Act amending the Act of 30 July 1981 on the punishment of certain acts inspired by racism or xenophobia (the Anti-racism Federal Act); the Federal Act to combat certain forms of discrimination (the Anti-discrimination Federal Act); and the Federal Act pertaining to the fight against discrimination between women and men[5] (the Gender Equality Federal Act). The main purpose of these acts is to implement the EU directives on combating discrimination, but in several respects this federal legislation goes beyond what is required by the directives.[6]

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[1] According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

[2] According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

[3] The complex institutional structure of Belgium requires that ratification of many international treaties passes through as many as seven parliaments. Belgium is a federal state composed of three Regions – the Flemish Region, the Walloon Region and the Brussels-Capital Region – and three linguistic Communities – Flemish, French and German-speaking. Each of these federated entities must approve the ratification of international treaties when they deal with their internal competencies, but the Flemish Region and the Flemish Community have a single parliament and a single government. Besides the five parliaments of the federated entities, the ratification of a treaty must be approved by the two houses of the federal parliament – the Senate and House of Representatives.

[4] See, for example, judgments of the Constitutional Court no. 157/2004 on Law of 15 February 1993 establishing a Centre for Equal Opportunities and Opposition to Racism, and nos. 17/2009, 39/2009, 40/2009 and 64/2009 regarding actions in annulment launched against the Anti-discrimination Federal Act.

[5] This federal Act is relevant for section II.2 of this report on Policies to combat discrimination and intolerance against Lesbian, Gay, Bisexual and Transgender (LGBT) persons, because discrimination of transgender people is mostly covered under the ground of "sex".

[6] Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation; and

5. The Anti-racism Federal Act and the Anti-discrimination Federal Act contain almost identical provisions and cover both criminal and civil matters. The main difference is that discrimination on grounds of citizenship, alleged race, colour, descent and national or ethnic origin is prohibited by the Anti-racism Federal Act (Article 3), while discrimination on grounds, inter alia, of religion, language and sexual orientation[7] is prohibited by the Anti-discrimination Federal Act (Article 3).

6. Regions and Communities have also adopted legislation in their respective fields of competence, with the aim to harmonise their laws with the 2007 federal acts.[8]

7. ECRI considers that the Belgian legislation[9] is mostly in line with its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. The analysis which follows will focus on its lacunae.

- **Criminal law**

8. The Anti-racism Federal Act criminalises the dissemination of ideas based on racial superiority or hatred (Article 21) and the participation in groups or associations which manifestly and repeatedly advocate discrimination and segregation based citizenship, alleged race, colour, descent and national or ethnic origin (Article 22). Similarly this act also punishes discrimination in access to goods and services (Article 24) and in employment (Article 25). Since similar provisions are not contained in the Anti-discrimination Federal Act, a) the dissemination of ideas and participation in groups or associations which advocate discrimination and segregation based on language or religion and b) discrimination in employment and access to goods and services based on language and religion, which are among the numerous protected grounds of this act, are not considered criminal offences.[10]

9. ECRI recommends that the authorities amend the Anti-discrimination Federal Act to include provisions similar to Articles 21, 22, 24 and 25 of the Anti-racism Federal Act criminalising the public dissemination of ideas, participation in activities of groups and associations aimed at contributing to discrimination and segregation against a person or a grouping of persons on the grounds of their language and religion, as well as discrimination in employment and access to goods and services based on the grounds of language and religion.

10. The federal law relating to the repression of serious violations of humanitarian international law of 10 February 1999 provides for a lifelong prison sentence in case of genocide. The federal law of 23 March 1995[11] criminalises also the denial, minimisation, justification or approval of genocide. However, it concerns only the genocide committed by the Nazi regime during the Second World War.[12]

- **Civil and administrative law**

11. Article 13 of the Anti-discrimination Federal Act makes an exception to the prohibition of differential treatment for the professional activities of public or private organisations the ethos of which is based on religion or philosophical

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Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

[7] This is relevant for sections I. 2 and 3 and II.2 of this report.

[8] See further on this under Civil and administrative law.

[9] See above paragraph 5.

[10] For the types of compensation provided in case of discrimination in these sectors see further at paragraphs 20 et seq.

[11] « Loi tendant à réprimer la négation, la minimisation, la justification ou l'approbation du génocide commis par le régime national-socialiste allemand pendant la seconde guerre mondiale ».

[12] See under Integration concerning proposals to include therein other instances of genocide.

beliefs.[13] This means that, in employment matters, a distinction based on "a religious or philosophical belief" does not constitute discrimination when this belief is a professional requirement which is essential for the objective of the organisation's activity, provided that the objective is legitimate and the requirement is proportionate.[14]

12. A problem of interpretation of the terms "religious and philosophical belief" arises when private companies impose limitations on the right to wear religious symbols at work (in particular the headscarf) in order to preserve their "neutrality" which they claim to be an essential characteristic of their business ethos.[15]

13. Apart from the exception provided for by Article 13, Article 8 of the Anti-racism and Anti-discrimination Federal Acts provide for the possibility of justifying certain differences in treatment in employment matters (the exception does not apply to the other areas covered by these acts) where a characteristic related to a protected ground constitutes a genuine and essential occupational requirement, if the objective is legitimate and the requirement is proportionate. It is left to the judge to decide, on a case-by-case basis, whether the conditions are satisfied in order for this exception to apply.

14. ECRI notes that the concept of occupational requirement is difficult to identify in abstracto. In light of this, paragraph 4 of the above-mentioned Articles 8 provided for the possibility to adopt a royal decree (arrêté royal) containing a non-exhaustive list of situations where a given characteristic is a genuine and essential occupational requirement. However, this decree has never been adopted. ECRI has been informed that in 2010 a consultation on this point was organised by the Ministry of Equal Opportunities, without, however, any concrete outcome despite a number of proposals made.

15. ECRI recommends that the authorities adopt, as provided for by the 2007 Anti-discrimination and Anti-racism Federal Acts, the royal decree containing a list of examples in order to offer guidance on whether a given characteristic is a genuine and essential occupational requirement.

16. Paragraph 5 of GPR No. 7 provides for the possibility of positive measures.[16] According to Article 10 of the Anti-racism and Anti-discrimination Federal Acts "positive action measures" may be taken if their purpose is to eliminate a manifest inequality. The circumstances in which and the conditions under which a positive action measure may be taken are to be determined by a royal decree. However, this decree has not been adopted yet, despite a specific recommendation made on this in ECRI's fourth report. This decree should help the adoption of such measures whilst avoiding abuses.

17. ECRI reiterates its recommendation to the authorities to adopt, as provided for by the 2007 Anti-discrimination and Anti-racism Federal Acts, the royal decree determining the circumstances in which and conditions under which positive action measures can be taken.

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[13] Enterprises de tendance, such as a Christian nursing home or a secular association.

[14] This article follows almost word-by-word Article 4(2) of the Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation.

[15] See further under Integration an analysis of the most recent case law recognising, at least in principle, the employer's right to impose certain limitations on the wearing of religious symbols by employees.

[16] "Temporary special measures designed either to prevent or compensate for disadvantages suffered by persons designated by the grounds enumerated in paragraph 1 b) (henceforth: enumerated grounds), or to facilitate their full participation in all fields of life. These measures should not be continued once the intended objectives have been achieved".

18. According to paragraph 6 of GPR No. 7, discrimination by association should be considered as a form of discrimination. The three acts of 2007 were enacted for the transposition of the EU anti-discrimination directives, which do not prohibit this form of discrimination expressly. However, legal experts take the view that the preparatory works (travaux préparatoires) of the acts clearly indicate that the general prohibition of discrimination should also apply to this form of discrimination.[17]

19. Paragraph 12 of GPR No. 7 recommends that the law should provide for effective, proportionate and dissuasive sanctions for discrimination cases and such sanctions should include the payment of compensation for both material and non-pecuniary damage to the victims.

20. The 2007 acts provide for two types of compensation. Firstly, the victim can claim for non-pecuniary damage a flat rate amount fixed by law. Currently this amount is 650 €, which can be increased to 1,300 € in certain circumstances. In case of discrimination in the employment sphere, the fixed-rate compensation is three months' wages or six months' wages respectively, under the same criteria. Secondly, the law does not prevent the victim from choosing to go for full compensation, in which case, however, s/he will have to prove the extent of the damage actually incurred. ECRI has been informed that the flat rate compensation system has worked well in the employment sphere, the three months' wages or six months' wages' compensation being a deterrent for the employer, favouring friendly settlements between employers and employees.

21. However, ECRI has been also informed that the flat rate compensation being very low outside employment matters (650 € in most of cases), it does not motivate the other party to negotiate a friendly settlement; the only possibility left to the victim is to initiate a complex legal procedure if s/he wants to claim full compensation in respect of the damage.

22. ECRI recommends that the authorities review the system of fixed rate compensation for non-pecuniary damages by adequately increasing the amount of the lump sum provided for by paragraph 2 of Article 16 of the Anti-racism Federal Act and paragraph 2 of Article 18 of the Anti-discrimination Federal Act in order to make it a sufficient deterrent for discriminatory treatment.

23. The flat rate amount for non-pecuniary damages may be increased to 1,300 €. However, this will not happen if the defendant can show that the less favourable treatment would also have occurred had there been no discrimination. According to ECRI, a non-pecuniary damage award is justified because a discriminatory motive was among the elements taken into account. For discrimination to have taken place, it is not necessary that ethnic origin, or any other ground such as citizenship, alleged race, colour, language or religion, should constitute the only or the determining factor in the difference in treatment. It is enough that that this ground is among the factors leading to such difference in treatment.[18] ECRI therefore considers that the amount of non-pecuniary damage should not vary depending on whether or not the decision might have been justified for other reasons.

24. Article 52 of the Anti-discrimination Federal Act provides that every five years from the date of its entry into force, the House of Representatives and the Senate have to carry out an assessment of the application and effectiveness of the three

[17] European Network of Legal Experts in the Non-Discrimination Field, Belgium; http://www.non-discrimination.net/content/main-principles-and-definitions-8.

[18] On this point see ECRI's GPR No. 7, more specifically paragraph 7 of the Explanatory Memorandum. See also, mutatis mutandis, the judgment of the European Court of Human Rights, Grand Chamber, E.B. v. France, paragraph 80, Application No. 43546/02.

2007 acts. This assessment has not been carried out yet. However, the Institute for the Equality between Women and Men commissioned recently an evaluation study yet to be published on the Gender Equality Federal Act and the Centre published a note on the points to be considered when the 2007 antidiscrimination legislation will be evaluated; these points have been taken into account in drafting this report.

25. ECRI recommends that the authorities carry out without any further delay the assessment of the application and effectiveness of the legislation against racism and intolerance as contained in the 2007 acts in accordance with Article 52 of the Anti-discrimination Federal Act, in order to identify any gaps that need to be closed or any improvements or clarifications that might be required.

26. The division of competence between the federal authorities, the Regions and the Communities means that the federated entities must also adopt anti-discrimination legislation, so as to ensure that all fields of life, including those within their competence, are covered. New legislation has been adopted to supplement the 2007 federal legislation designed to transpose the EU directives prohibiting discrimination in the Communities' and Regions' fields of competence, such as employment, education and health.[19]

27. This proliferation of laws has resulted in a complex anti-discrimination legislative framework at federated entities' level with potential for gaps. According to ECRI's fourth report, "a watchful eye" needed to be kept on this federated entities' legislation. This was because the end result had not always been a fully harmonised anti-discrimination legislation across the whole of Belgium. While most of the federated level's legislation is now in line with the 2007 federal acts, legal experts have pointed out certain cases of minor inconsistencies.

28. ECRI recommends combining the evaluation of the anti-discrimination legislation at the federal level with an evaluation of the relevant legislation at the federated entities' level so as to uncover possible gaps.

- **Independent authorities**

29. The Centre for Equal Opportunities and Opposition to Racism (the Centre), created by law in 1993[20], is a federal public service, but independent in the fulfillment of its missions to combat racism, xenophobia, antisemitism and intolerance at national level. The Institute for the Equality of Women and Men (the Institute), established in 2002, has the mandate to guarantee and promote the equality of women and men and to fight against any form of discrimination and inequality based on gender in all aspects of life.[21]

30. To date, the only ground for discrimination prohibited by the anti-discrimination laws that has not yet been assigned to a specialised body is language, despite the fact that Article 29 of the Anti-discrimination Federal Act provides for the designation of the body which will be competent to deal with discrimination based on language.

31. In its fourth report, ECRI warned of the dangers of exploiting the tensions that exist between Dutch-speakers and French-speakers for political gain. The situation in the country does not seem to have improved. In ECRI's view, prompt

[19] The relevant anti-discrimination law at federated entities' level includes the 2008 Flemish Decree (dealing with competencies of the Flemish Community and the Flemish Region), the 2008 French Community Decree and the 2008 the Walloon Region Decree. The German-speaking Community and the Brussels Capital Region have also adopted anti-discrimination legislation.

[20] Law of 15 February 1993 establishing a Centre for Equal Opportunities and Opposition to Racism.

[21] See further on the Institute under section II.2 on LGBT persons.

action is therefore needed to designate one of the existing independent institutions or set up a new independent body competent on matters relating to discrimination based on language in accordance with the 2007 anti-discrimination legislation. ECRI considers it a missed opportunity that plans to reform the Centre and create new independent bodies ignore the need for a body competent to deal with discrimination based on language.

32. ECRI reiterates its recommendation urging the Belgian authorities promptly to designate or set up the body competent to deal with discrimination based on language and to confer on this body powers and independence similar to those enjoyed by the Centre for Equal Opportunities and Opposition to Racism.

33. In its fourth report ECRI concluded that the Centre had carried out its functions in an independent manner without any interference from the State, thus enjoying de facto independence. While maintaining this assessment, ECRI notes that the Sub-committee on Accreditation (SCA) of the International Coordinating Committee (ICC) of National Human Rights Institutions (NHRI) considered that the Centre, despite its commendable effort to extend its mandate, was not yet in full compliance with the 1993 Paris Principles[22] in view of the fact that the members of "the governing body are appointed by the federal government"[23].

34. In October 2011, 11 local contact points were established in the Walloon Region in order to provide legal advice to victims of "discrimination". The decree of 2 July 2008 concerning the Flemish policy on equal opportunities and equal treatment provided for the setting up of anti-discrimination points. At present there are 13 such points in the biggest towns in the Flemish Region.

35. In July 2012, a cooperation agreement between the Federal State, the Regions and the Communities was concluded to turn the Centre into an Inter-federal Centre. The agreement was finalised on 12 June 2013 and sent to all parliaments for their agreement. The Centre will continue to focus on promotion of equal opportunities and the fight against discrimination according to the anti-discrimination legislation at both federated and federal levels. The above-mentioned co-operation agreement should further strengthen the Centre's role at all levels. The Inter-federal Centre will not deal any more with issues of migration, human trafficking and fundamental rights of foreigners – which are of exclusive federal competence – and a new federal centre for the analysis of the migratory influx, the protection of fundamental rights of foreigners and opposition to human trafficking will be created. ECRI encourages the authorities to ensure that the considerable expertise built in these areas by the Centre is maintained in the new federal institution.

36. The creation is also foreseen of an overall structure (Institut coupole pour les droits de l'homme), which will coordinate the missions of the Inter-federal Centre, of the Inter-federal Institute for the Equality of Women and Men, and of the new Federal Centre on migration, foreigners and trafficking. ECRI considers it important that these new institutions have a clear division of tasks.[24]

37. ECRI has been informed that the above-mentioned inter-federal co-operation agreement will strengthen the current Centre's independence. In particular, the board members of the Inter-federal Centre will be appointed by the federal and

[22] Principles relating to the status and functioning of national institutions for the protection and promotion of human rights, known as the "Paris Principles", set out in United Nations General Assembly resolution 48/134 of 20 December 1993 (A/RES/48/134).

[23] Report and Recommendations of the Session of the SCA Geneva, 29 March -1 April 2010.

[24] The agreement of July 2012 was submitted to the Council of State which published an opinion in February 2013 with a number of remarks on the substance as well as on the wording of the agreement.

federated parliaments and will be subject to a number of incompatibilities so that representatives of the federal or federated authorities cannot be elected to this position.

38. ECRI recommends that the Belgian authorities conclude as soon as possible the legislative process to turn the Centre for Equal Opportunities and Opposition to Racism into a fully independent inter-federal institution dedicated to helping all victims of discrimination on the grounds within its competence.

2. Hate speech[25]

39. The 2007 Acts make it a criminal offence publicly to incite to discrimination, hatred or violence against a person, a group, or a Community on the basis of the so called "protected grounds", including inter alia alleged race, colour, religion, language, citizenship and national or ethnic origin, as well as sexual orientation. Of course, hate speech may also be dealt with by means of other, general criminal provisions, such as slander, defamation and insults.

- Data

40. The Federal Police, the Prosecution Service, the Institute, the Centre, together with the Flemish anti-discrimination points, and Antiracist NGOs are the main sources of statistical information on hate speech offences. However, the data collected by these different bodies is not always classified in the same manner.

41. Until now, the Federal Police and the Prosecution Service did not record hate speech as a specific category of a criminal offence. The data collected comprises the following categories: "racism, xenophobia, discrimination (other than racism and xenophobia) and homophobia". Ordinary criminal offences with a "racist or xenophobic" motivation are also included. For the period 2007-2012, a total of 5,732 cases of "racism, xenophobia, discrimination and homophobia" were recorded by the Prosecution Service (1,067 in 2007, 1,047 in 2008, 987 in 2009, 865 in 2010, 873 in 2011 and 893 in 2012). As of 10 January 2013, 4,522 of these recorded cases were closed without further action. Between 2007 and 2012, 579 of such cases resulted in a criminal trial with a total of 230 convictions. The above-mentioned statistics indicate that a large number of cases are dropped by prosecutors.[26]

42. The Centre reported that the reliability of the data produced by the police and by the Prosecution Service is weak. For example, while it is possible to find data on the crime motivation (e.g. racism) at the Federal Police level, it is not possible to find the same data at the local police level. ECRI notes that the initial classification by the police is important for the further investigation of the case. Also the data produced is not always consistent with the number of cases transmitted by individual prosecutors. In 2011 the Centre dealt with 559 cases related to claims of "racism and discrimination", which represents a decrease of 10% in relation to similar cases dealt in 2010. To this data should be added a total of 198 cases related to discrimination on grounds of "religious or philosophical beliefs".

43. In sum, even if all the above-mentioned data gives an overall idea, it is too fragmentary or too general to give a clear picture of the situation in the country as regards hate speech.

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[25] This section covers racist and homo/transphobic speech. For a definition of "hate speech" see Recommendation No. R(97)20 of the Committee of Ministers to the member States on "hate speech", adopted on 30 October 1997.

[26] The reasons for this may be: no offence found, lack of evidence, prescription and expediency such as the absence of prior criminal history or the young age of the alleged offender.

44. In 2006, circular No. COL 6/2006 issued by the Board of Prosecutors sought to fine-tune the codes used to register "racist and xenophobic" criminal offences in order to record also offences and crimes with a "racist motivation". Another circular of the same year, No. COL 14/2006, prescribed a uniform way for the registration of all "homophobic" crimes and offences, which expressly takes account of their "homophobic" nature.

45. ECRI has received information that the circulars are not well known by the police. In addition, the system of contact prosecutors responsible for "racism and discrimination" issues in each judicial district is not functioning properly and it should be further enhanced by providing additional training for these prosecutors and facilitating contacts both among these prosecutors and between them and other parties concerned, such as the police and the Centre. ECRI has been informed that in view of the above mentioned criticism, a new circular (COL13/2013) entered into force in June 2013 replacing circulars No. COL 6/2006 and COL 14/2006 with the aim, inter alia, of a more effective identification and recording of "racial discrimination" acts and "hate crime".

46. The importance of reliable data as a condition sine qua non for countering the hate speech phenomenon should be underlined. ECRI hopes that the new circular will lead to an improvement in the recording of racist and homo/transphobic crime in general and, in particular, hate speech offences.

47. ECRI recommends that the authorities ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable data on hate speech offences and the follow-up given to them by the criminal justice system is made available.

- **Racist public discourse**

48. In 2009, ECRI's fourth report noted that "significant progress" had been made in combating racist discourse in public. In particular: a number of political figures were prosecuted for disseminating racist ideology; a royal decree determined the procedures for enforcing the 1999 Act[27], the so called "draining law", under which public funds granted to a party represented in the Federal Parliament or the Senate may be withdrawn if the party is hostile towards the rights and liberties guaranteed under the ECHR; a "cordon sanitaire" was introduced by mainstream Belgian political parties, under which they refused to negotiate with the extreme right-wing and nationalist parties so as to prevent them from ever coming to power.[28]

49. However, it has proven difficult to apply the "draining law" in order to discontinue public funding for political parties because the very short time limit requirements it provides for and the strict interpretation given by the Council of State to the concept of "hostile signs". For these reasons a case brought against Vlaams Belang to strip it of public funding did not succeed.[29] In the meantime, this party

[27] The law of 12 February 1999 inserted an article 15ter in the law regarding party financing which states that if a political party as a result of its own activities or the actions of its components, lists, candidates or elected officials, clearly and consistently shows hostile signs towards the rights and freedoms guaranteed under the ECHR, it can be stripped of its funding by the Council of State.

[28] This concerned mainly the Vlaams Belang party, the direct predecessor of the Vlaams Blok party, which advocated systematic discrimination based on race and nationality.

[29] After a lengthy procedure, which also involved a judgment of the Constitutional Court on the constitutionality of the law, in 2011 the Council of State decided not to strip the party of its public funding. In its decision No. 213879 of 15 June 2011, even if it considered that the party's statements were downright disturbing and likely to offend, it did not deem them to be hostile towards the rights and freedoms guaranteed under the ECHR in the sense of "encouraging" the violation of legal norms that were in force.

has continued its propaganda which includes openly anti-Roma and xenophobic statements.

50. Concerning the so called "cordon sanitaire", this seems to work at least at federal level. Vlaams Belang lost many votes in recent elections (at European, federal and federated levels) and a number of former Vlaams Belang's representatives joined the Flemish Nationalist Party (NVA), which is now the biggest political force in the Flemish Region.

51. ECRI regrets to note that since its fourth report on Belgium a number of leaders of and militants from extremist parties have continued making statements in public against the other linguistic Community in the name of extreme nationalism combined with intolerant and xenophobic arguments against foreigners and minority groups. ECRI considers that this exploitation of the climate of political tension that exists between the linguistic Communities is particularly deplorable as it not only encourages inter-Community prejudice and stereotyping but can fuel hatred also against ethnic minorities and migrants.

52. The Belgian courts have used the option provided by the Anti-racism and Anti-discrimination Acts of 2007 to suspend the civil and political rights of persons convicted of racism or racial discrimination, including hate speech.[30] The Senate is currently discussing the text of a draft law providing for the automatic suspension of civil and political rights as an accessory penalty for any offence punished by the 2007 acts and the 1995 law prohibiting the denial or approval of the genocide committed by the Nazi regime during the Second World War.

53. ECRI encourages the authorities to pursue their efforts to combat racism and intolerance in political discourse by reviewing the effectiveness of the measures introduced for this purpose and supplementing them if necessary.

- **Extremist groups**

54. At the time of its fourth report on Belgium, ECRI was concerned about the existence of Neo-Nazi and extreme right wing groupings active in Belgium, which regularly organised gatherings and concerts at which Nazi chants were sung. In particular, concern was raised about the Belgian branch of the Neo-Nazi organisation Blood and Honour. It seems that the police encounter difficulties to follow extremist activities taking place at private meetings which it is not possible to ban. The Centre acted as plaintiff in the trial of three members of the group Blood and Honour, who have been sentenced to three months' imprisonment for their contribution to the organisation of neo-Nazis concerts.[31]

55. More recently, the spokesperson of Sharia4Belgium, a radical Salafist organisation, was sentenced in Antwerp to two years' imprisonment for incitement to hatred towards non-Muslims.[32] The Centre considered that the

[30] See for example, judgment of 4 June 2012 by the Criminal Court of Termonde against two members of Vlaams Belang.

[31] Judgment of 9 March 2011 by the Criminal Court of Veurne in "dossiers judiciaires introduits par le Centre", the 2011 report of the Centre, p.147.

[32] The latest facts concerned a press conference in June 2012, where the spokesperson of Sharia4Belgium praised a woman in a niqab who had been arrested during an identity check earlier in June and injured a female police agent during her arrest, depicted the police agents involved in the arrest as well as the western democracies and values in pejorative terms, and declared Islam to be the superior religion and way of life. A recording of this press conference was made available on the You Tube channel of Sharia4Belgium. Already in 2010 and 2011, this small group organised public disturbances and launched several video messages widely disseminated by the Internet.

spokesperson's statements incited hatred and violence against non-Muslims and constituted a violation of the anti-discrimination legislation and filed a lawsuit.[33]

56. To date, several draft laws banning non-democratic groups are pending in the House Representatives.[34] These drafts, submitted in 2010 and 2011, were originally intended to deal with neo-Nazism, but they can be applied to other forms of extremism.

57. After the incidents surrounding the case of Sharia4Belgium, the authorities announced a plan to boost the fight against "racism and radicalism". These phenomena would be tackled in a transversal way; prevention, coordination and law enforcement would be the key elements of the plan. ECRI is of the opinion that this plan should be combined with an assessment of the application and effectiveness of the 2007 acts as recommended earlier in this report, in particular the provisions prohibiting hate speech.

- **Racism on the Internet and in the media**

58. Recent years have seen a sharp increase in racist webpages and discussion fora that can be accessed from Belgian sites. Despite the measures taken, all the governmental and non-governmental observers agree that the situation is extremely worrying.

59. The Centre in 2011 received 248 files concerning the media of which 90% concerned the Internet. These claims concerned sites that disseminate hate speech against immigrants or persons of immigrant background, in particular Moroccans and Turks, Black persons, and Jews (21%). Other recurring complaints were about electronic chain mail denigrating "minority" or religious groups (38%), social network (in particular Facebook) users posting denigratory messages (17%) and discussion fora (14%).

60. The Centre also reported that in 2011 out a total of 198 cases relating to "racism and discrimination on religious or philosophical grounds", half of them concerned hate speech statements on the Internet or other media targeting the Muslim or Jewish Communities. For example, the total number of reports to the Centre in 2011 (82) alleging antisemitism was the second highest since 2004 (in 2009, the Centre had observed a peak that can be associated with the military operation by the Israeli army in the Gaza strip) and represented an increase of 40% in respect to the previous year. Half of these cases concerned antisemitic expression including death threats or negationist viewpoints, often made on the Internet.

61. The Centre established a cyber-hate unit (cellule cyberhaine) to develop a methodology to combat this phenomenon and analyse claims received with the aim of providing an appropriate response according to the type of cyber-hate. Priority is given to raising the awareness of the authors of "racist" comments and the persons who reported them of the prohibition of hate speech. Legal action is considered an appropriate response only in exceptional circumstances. A workshop on this topic was held in 2009 and resulted in a brochure providing citizens with the tools for responding to the increasing phenomenon of hate speech on the Internet.

62. ECRI regrets in particular that most of the recommendations addressed by the Centre to the authorities to counter hate speech on the Internet have not been implemented so far. These include the amendment of the Act of 11 March 2003

[33] So far the Centre has acted as plaintiff in three cases against this group.

[34] See for example, Proposition de loi n°s 809/1 à 8 (Peter Vanvelthoven, David Geerts, Laurent Devin) modifiant la loi du 29 juillet 1934 interdisant les milices privées en vue d'interdire les groupements non démocratiques.

on electronic commerce to create a clear legal framework for the responsibilities, as a result of the dissemination of hate speech messages, of service providers of Web 2.0 and moderators of discussion forums, blogs and sites; the setting up of a list of "racist" websites in consultation with the Federal Computer Crime Unit of the Federal Judicial Police (FCCU)[35] and the Centre; the training of police on the content and application of legislation relevant to combating hate speech on the Internet; the reinforcement of co-operation between the judiciary and the police (in particular the FCCU) in combating cyberhate. In addition, ECRI considers that strengthening co-operation and mutual assistance, between competent authorities at international level, could improve action against the dissemination of hate speech through the Internet.

63. ECRI recommends that the Belgian authorities step up their efforts to counteract the presence of racist expression on the Internet, in line with the recommendations of its General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet. ECRI also recommends that authorities co-operate at international level with other states to avoid any legal loopholes that would make it possible to disseminate such material.

64. Moreover, contrary to what was recommended by ECRI in its fourth report, Belgium has not yet ratified the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

65. ECRI reiterates its recommendation to ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

66. In the case of written and published materials, there is a special protection regime according to which these cases can only be tried by the Assize Court. The fear of acquittal by a jury, which is composed by a majority of ordinary citizens and a minority of professional judges, might explain partly why the so called press crime is seldom prosecuted. However, in 1999 an exception was introduced to Article 150 of the Constitution: if these offences have "racist or xenophobic" motivation they can be brought before ordinary courts exclusively composed of professional judges.[36]

67. With regard to articles published and reports broadcast in the media, cases of racism are rare in the traditional media. However, discussion fora hosted by newspaper websites are not immune to the current climate of hostility and intolerance towards groups such as the Muslims and immigrants. Raad voor de Journalistiek (Council for Journalism), the independent body for self-regulation of the Flemish press established in 2002, and the recently created Council for Ethical Journalism for the French and German-language media play a significant role in the area of deontology and self-regulation of the profession. They are particularly active on the issue of journalists' behaviour in combating the dissemination of hate speech through the media.

[35] https://www.ecops.be/webforms/Default.aspx?Lang=EN. Even if a Belgian online reporting service has been created, this unit deals only with child pornography and cybercrime, and is not active on the issue of racism on the Internet.

[36] According to Article 150 of the Constitution "The jury is created in all criminal matters and for political and press offences, except for press offences motivated by racism and xenophobia".

- **Racism in sport**

68. A legal framework exists in Belgium where "la loi football" of 21 December 1998 provides sanctions for those who, individually or in groups, incite to injuries or hatred with respect to one or more persons, whether in a stadium, in its perimeter or elsewhere on Belgian soil. Moreover, the International Federation of Football Association's (FIFA) Disciplinary Code, included in the disciplinary regulations of the Belgian Union Football, also provides for penalties for supporters, players and even clubs if "racist and offensive" slogans are chanted or displayed in football stadiums. These regulations seem to go beyond the anti-discrimination law, since they punish all kinds of "intolerant" statements and insults without requiring a specific intent in order to establish the existence of the offence. Early in 2013 the Minister for Internal Affairs and Equal Opportunity announced that the football clubs in the first division need to have a supporter's liaison officer, as provided in the European Union Football Association's (UEFA) guidelines, in order to deal efficiently with problems related to aggressive supporters' attitudes.

69. In this context the Centre is alerted regularly of "intolerant and offensive" slogans from football supporters, trainers and players. In these cases the Centre has chosen not to engage in lawsuits, but to report the above mentioned cases to the Belgian Union Football, and to be heard during the disciplinary procedure relating to the violation of sporting association's rules. Consequently, disciplinary sanctions have been imposed on the basis of racist and antisemitic insults. At the same time, a number of awareness-raising initiatives[37] against racism and intolerance have taken place involving football clubs.

70. ECRI considers that the good practices in reporting, the adoption and implementation of disciplinary measures and the numerous awareness-raising initiatives are quite relevant in combating and preventing forms of hate speech that may not reach the criminal punishment threshold but constitute nevertheless intolerant and inflammatory discourse.

- **Hate speech targeting sexual orientation / gender identity**

71. As already mentioned, the 2007 acts prohibit hate speech on the basis of the so called "protected grounds", including sexual orientation. The discrimination ground of gender identity is not prohibited *per se* by the current legislation.[38]

72. A barrier to the application of these legal provisions, as far as sexual orientation is concerned, is the above-mentioned special protection regime in the case of written and published material. The only exception to this regime, about offences inspired by "racist or xenophobic motives", does not concern any other discrimination. For the reasons explained in paragraph 66, this makes it unlikely that a prosecution is brought against a person accused of "homophobic" incitement in written and published material.

73. ECRI recommends that the authorities consider extending the exception to Article 150 of the Constitution to homophobic incitement so that prosecution can be brought before ordinary courts.

[37] In 2011 the project Respect United was launched, together with a charter with 11 rules to combat racism in football and to draw attention for diversity and respect. The Football Union is working on a new action plan for the next season www.belgianfootball.be/fr/plus-que-du-football-la-charte-sociale-de-lurbsfa. A number of awareness raising initiatives are also taken at federated levels by the competent authorities and local football clubs.

[38] See further on this under the subsection on Legislative issues of the section on LGBT persons.

74. In 2011, the Center examined 89 cases of discrimination related to sexual orientation. From this data it is not possible to extrapolate cases related to hate speech. However, they concerned mainly mocking, various indiscretions and harassment at work, neighborhood quarrels or insults in public places, and cases related to media.

75. In terms of monitoring and reporting of hate speech, the Centre is responsible for LGB persons on grounds of sexual orientation. Since direct discrimination based on sex change is treated for the purpose of the Gender Equality Federal Act as a direct discrimination on grounds of sex, the Institute is competent for hate speech against transgender persons.[39]

3. Racist and homo/transphobic violence

- **Data**

76. As it is the case for hate speech, ECRI reiterates the need for an improvement of the data collection mechanism on criminal offences related to racist and homo/transphobic violence. This mechanism should produce more detailed and easy to read statistics. The already mentioned new circular (COL 13/2013) on the registration of homophobic crimes is a positive step in this direction.

77. In 2011 the Centre acted as plaintiff in nine criminal cases involving violence and asked the public prosecutor to investigate 16 “racial discrimination” cases involving forms of physical violence, related to “racism, homophobia and antisemitism”.

78. The violence committed against Jews continues to be a disturbing reality.[40] However, in 2011 the number of reports brought to the attention of the Centre relating to material damage and vandalism accompanied by an antisemitic motivation was significantly lower than in previous years. In 2011, a web-site[41] reported seven physical assaults, including one against a person who was speaking Hebrew on the street and one against a girl and a further three cases of vandalism, including two against buildings belonging to Jewish organisations. In 2012 the same web-site reported a similar number of incidents. Moreover according to a recent European Union Agency for Fundamental Rights (FRA) survey, in Belgium 7% of the Jewish respondents experienced physical attack or threats of violence because they were Jewish in the 12 months preceding the survey.[42]

79. A number of hate crime incidents against Muslims and Christians are also reported by various sources.[43] The Centre reported one physical assault and one case of property damage against a “mixed-race” couple in Schaerbeek, carried out by a non-identified group of persons in 2011.

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[39] See further on this under the subsection on Independent authorities of the section on LGBT persons.

[40] As concerns measures against antisemitism including violence, ECRI has been informed that the antisemitism monitoring unit (Cellulle de veille anti-sémitisme), located within the Centre, will be strengthened. This unit will be chaired by representatives of the Ministries of Justice and Equal Opportunity. Its composition will be reviewed so as to include representatives of the police, the judiciary and the Centre, as well as representatives of the Jewish Community.

[41] www.antisemitisme.be.

[42] FRA 2012 Survey on Perceptions and Experiences of Antisemitism among Jews in selected EU Member States: selected results on Belgium.

[43] See for examples the 2011 edition of Hate Crimes in the OSCE Region – Incidents and Responses, published in November 2012 by the OSCE/ODIHR.

80. Despite the fact that the Prosecution Service reports only five homophobic criminal offences in 2012 and no cases of murder, in the same year media reported several violent crimes perpetrated against individuals on the basis of their real or perceived sexual orientation, including two murders.[44] In addition, these official statistics regrettably do not include specific data on transphobic crime.

81. Research carried out on behalf of the Belgian Ministry of Justice a few years ago showed that one LGBT in three felt unsafe at least three times a month on account of his/her sexual orientation or gender identity with one LGBT having been the victim of physical aggression.[45] A more recent LGBT survey published in 2013 by FRA, indicates that at least one in two LGBT persons was physically/sexually attacked or threatened with violence in the last 12 months in Belgium.[46]

82. The Prosecution Service has acknowledged that the number of "homophobic" cases registered by the prosecution (only 42 in five years) cannot give an accurate image of the phenomenon. They have explained that LGBT people file complaints with the police without specifying that they concern homo/transphobic aggression or that the victims decide not to file a complaint with the police at all. In addition, the police do not always mention in the initial records the "homophobic" nature of the offence (although this figures as compulsory in Directive point 1 of Chapter III of COL No. 14/2006) or that the administrative staff omit to enter the specific code in the IT system.

83. Once again, ECRI notes a problem of incorrect registration and/or underreporting of violence. In particular LGBT people are so unlikely to complain that some violent offences against them are not reflected at all in the available statistics.[47]

- **The authorities' response**

84. A law modifying Article 405quater of the Criminal Code and aimed at enhancing the penalties for criminal offences perpetrated on the basis inter alia of grounds of discrimination prohibited by the 2007 acts was adopted in January 2013. The new law has added "sex change" (changement de sexe) among the prohibited grounds.

85. According to the previous text of Article 405quater, the judge could choose whether to double the penalties in the presence of aggravating circumstances such as "racist motivation". The current Article 405quarter provides that the judge must now apply the heavier penalties when the aggravating circumstance is proven.

86. ECRI takes positive note of the intention of the legislator to give with these amendments a strong signal about acts that are believed to have no place in societies such as homophobic murders. However, this is not the first time that the authorities chose to amend the legislation as the only response to hate crime phenomena. One may wonder whether these piecemeal changes, often simply consisting in heavier penalties, are consistent with a thoughtful criminal policy against racist and homo/transphobic violence. This question is particularly

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[44] In early May 2012, a man died in the Liège Region, after being beaten and abandoned in a field. In July of the same year another man was murdered in a park in Liège. The previous week a gay couple had been severely beaten in Aalst.

[45] Question écrite n° 4-5989 du 7 décembre 2009 du Sénateur Bart Tommelein à la Ministre de l'intérieur.

[46] 2013 EU LGBT survey data explorer http://fra.europa.eu/en/publications-and-resources/data-and-maps.

[47] See further at paragraphs 91 et seq.

relevant in the absence so far of an assessment of the application and effectiveness of the 2007 Anti-racism and Anti-discrimination Federal Acts.

87. ECRI recommends that the authority proceed to an overall evaluation of the current criminal legislation on racism and homo/transphobia before any amendment to it.

88. Moreover, ECRI notes that alternative measures are still rare in the Prosecution Service's records related to the follow-up given by the criminal justice system to racist and homo/transphobic violence cases.[48] ECRI underlines the importance of alternative measures, including restorative justice when this is feasible.[49] ECRI is therefore of the opinion that the judiciary should continue to be provided with specific training on this.

89. To counter the phenomenon of under-reporting, in its fourth report ECRI urged the authorities to designate within the police contact persons responsible for improving the response of police to complaints of racism from individuals, along the lines of the contact prosecutor in each court district specialising in "racism and discrimination" issues in the prosecution service. The new Circular COL/2013 foresees the designation of a contact person within the police responsible for racism and homo/transphobic issues. COL 13/2013 also foresees contact persons within the judiciary.

90. ECRI recommends that the authorities proceed without any further delay to designate in each police district a contact person responsible for racism and homo/transphobic issues. These contact persons should be networked and there should be close communication between the contact person in the police in the police district and the contact prosecutor in the corresponding prosecution department.

91. In order to counter the problem of under-reporting especially among LGBT people, the Institute and the Centre disseminate information on how to enforce the rights of LGBT to potential victims of discrimination and trans/homophobic violence. The study Being Transgender in Belgium[50] published in 2009 also contributed to the dissemination of relevant information. In addition both the Centre and the Institute maintain close and regular contacts with LGBT associations; numerous conferences and seminars are organised on the subject contributing to spreading information on the rights and remedies available to victims; the websites of the Institute and the Centre are a useful source of information. The Brussels-Capital Region, in partnership with Brussels police and LGBT NGOs, launched in April 2011 a campaign against violence towards people because of their sexual orientation or their gender identity.[51] The draft resolution on allowing anonymous complaints of homophobic violence and the proposed

[48] Between 2007 and 2012 only 1,08% of cases were closed following payment of a fee (transaction) and 0,99% a friendly settlement (mediation). On the contrary, ECRI takes note of the high number of complaints that have been discontinued (78,89% of the registered cases), of which 30% for discretionary reasons.

[49] The study Vers des measures alternatives published by the Centre in 2012 found that alternative measures are rarely applied for the following reasons: lack of a clear policy to be followed by the judiciary in this type of cases, lack of alternative measures adapted to the specificity of hate crime (there are, for example, no awareness raising courses for persons convicted of hate crime) and the reluctance of both parties involved (the victim and the offender) to accept mediation and friendly settlement. The Centre has developed a consistent practice of applying alternative measures by providing mediation and friendly settlement in certain cases before resorting to legal procedures.

[50] "Being Transgender in Belgium: mapping the social and legal situation of transgender people", Institute for the Equality of Women and Men, Brussels, 2009.

[51] The campaign also included a website to provide help and advice to victims of violence and aggressions of a "homophobic, lesbophobic, or transphobic nature", http://www.signale-le.be.

parliamentary resolution to improve the respect for the rights of LGBT people in Belgium[52] should also be mentioned.

92. In the wake of the events related to crime perpetrated against gay men in 2012, the government adopted an action plan in two parts to combat homophobic and transphobic violence and in particular to improve its reporting, investigation and prosecution. ECRI is looking forward to the implementation of this ambitious plan. However, ECRI considers that this plan should not be limited to preventing and fighting homo/transphobic violence, but should be extended to racist violence.

4. Integration policies

93. In Belgium, the main beneficiaries of integration policies are recently arrived non-citizens and Belgians of foreign origin (d'origine allocthone). Foreigners and persons of foreign origin are principally from Central and Eastern Europe; Morocco[53]; Sub-Saharan Africa and Turkey. Many are Muslims.[54] A high number of new arrivals are refugees and asylum seekers or come to Belgium for the purpose of family reunification, which constitutes the reason for more than half of newly granted residence permits in 2011.[55] None of the integration programmes in Belgium specifically targets groups that could be considered as historical minorities[56], with the exception of Travellers who have been present in Belgium over several generations and have Belgian citizenship.[57]

94. Integration in Belgium is an issue cutting across the division of competencies between the federal and the federated entities. The 1980 Institutional Reform Act passed on to the Communities the competence of "reception and integration of immigrants." As a consequence, different federated authorities run their own integration policies and programmes. Therefore, no Belgian integration policy as such exists but different policy options have been taken at Community level.

95. ECRI also notes that the vocabulary used in integration programmes is not immune from controversy in Belgium. For example the term "allochtones"[58] has been criticised for labelling a category of Belgian citizens and is now being replaced in the media by terms such as "Belgians of foreign origin" or "of immigration background". ECRI has been informed that the Municipality of Gent decided to ban the term allochtone from its official documents.

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[52] Doc. parl., House Sess. Ord., 2011-2012, doc. No. 53-2136 and doc. No. 53-2352.

[53] In May 2012, the Flemish Minister of Integration, responsible for the Flemish Community, launched a starter's kit providing information about the Flemish Region to Moroccans wanting to migrate to this Region and/or Brussels. Only migrants with an approved request, who are planning come to the Flemish Region and/or Brussels, receive the kit. Yearly, approximately 2,500 family members come from Morocco to this Region or Brussels. Many new arrivals do not know Dutch, which - the Flemish authorities emphasise - hinders their integration into Flemish society.

[54] See for example ECRI's 4th Report on Belgium and Réseau européen contre le racisme, Rapport alternatif d'ENAR 2010-2011, Le racisme et les discriminations qui y sont associées en Belgique, Radouane Bouhlal & Ibrahim Akrouh, mars 2012.

[55] Immigrant Citizens Survey in 15 European Countries, joint publication of the King Baudouin Foundation and the Migration Policy Group, Brussels 2012.

[56] Such as at the French-speakers in the Flemish Region and in the area of the German-speaking Community, and the Dutch-speakers and German-speakers in the Walloon Region.

[57] See further on Travellers under the section on Interim follow-up measures.

[58] The 1998 Flemish Community's decree on the Flemish policy towards ethno-cultural minorities defines "allochtones" as persons who are legally resident in Belgium, whether or not of Belgian nationality, and simultaneously fulfill the following conditions: a) at least one parent or grandparent was born in Belgium b) they are at a disadvantage because of their ethnicity or their precarious socio-economic situation.

- **Federal level**

96. The federal authorities are responsible for important areas impacting on integration, such as migration, including family reunification[59], and non-citizens' voting rights which can be seen as an important means to foster integration.[60] Since 2006, non-citizens may vote but not stand as candidates in municipal elections. In order to vote they must sign a declaration to the effect that they undertake to uphold the Constitution, the laws of Belgium and the ECHR. ECRI's fourth report on Belgium reported criticisms of the obligation to sign such a declaration, which has been described as hurtful and as a brake on the exercise of the right to vote. The federal government has also a role to play in the implementation of integration policies by means of the Immigration Policy Support Fund and, finally and foremost, is responsible to combat racism and racial discrimination.

97. In addition, integration requirements are now explicitly mentioned in the new law on nationality entered into force on 1 January 2013, which has considerably tightened the conditions for acquiring Belgian nationality as compared to the previous law.[61] The new law makes therefore a link between acquiring citizenship and the integration programmes of the federated entities. However, these programmes do not apply the same standards[62], which may lead to differences in access to nationality incompatible with a federal state.

98. In view of this, ECRI is of the opinion that it is necessary to ensure better convergence between the federated entities' integration policies. Federated entities should focus on defining in a concerted manner a minimum common denominator of their integration programmes and mould it into a cooperation agreement between them and the federal government.

99. In March 2012, Belgium launched a national strategy for Roma to combat discrimination in employment, education, housing and access to healthcare, in line with the priorities of the EU Roma Integration Strategy.[63] Consideration is given to coordinate actions at federated level and to gather reliable data, both of which are essential if policies are to be implemented effectively.[64]

- **Federated entities' level**

100. Today Communities are not the only federated entities competent in the field of integration: The French Community has transferred its legislative competencies to the Walloon Region and the French Community Commission in the Brussels-

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[59] The Law of 8 July 2011 provides for new and stricter rules on family reunification. In particular, there are restrictions on the family reunification of third-country family members of a Belgian national. The Belgian national must now prove a certain level of income and some family members (parents) are excluded from the right to reunite. This rule does not apply to EU citizens who want to bring third-country family members to Belgium. This fact is seen by the Centre as an example of reverse discrimination, i.e. a country's own citizens enjoy less favourable treatment than other EU-citizens.

[60] See the preamble of the Convention on the Participation of Foreigners in Public Life at Local Level.

[61] This is particularly relevant for the fast track procedure through which foreigners can acquire Belgian nationality after five years of legal residence, if they are already "linguistically, socially and economically integrated before they apply". The normal procedure also requires ten years of legal residence, proof of knowledge of one of the national languages and that the candidate "participates in the welcoming Community".

[62] See further on this under Federated entities' level.

[63] Belgium also joined the pilot group composed of 14 EU member States who will work with the European Commission to implement the European Framework for National Roma Integration Strategies.

[64] A number of Roma NGOs encouraged the Belgian authorities to work more closely with Roma, Sinti and Traveller organisations, be regularly in dialogue with them and involve them in the implementation, as well as in the monitoring of the implementation of the Strategy. See on this, the statement by the European Roma Information Office, 2 December 2012.

Capital Region. In the Brussels-Capital Region, the Common Community Commission also has responsibilities while the Flemish Community Commission only acts as a decentralised authority for the Flemish Community.

101. The 2003 civic integration decree of the Flemish Government, modified by subsequent decrees in 2006, 2008 and 2012, aims to achieve a cohesive society based on the values of shared citizenship and active participation (inburgering). Civic integration concerns all adult foreigners enrolled in a Flemish municipality (with the exception of foreigners residing there temporarily and asylum seekers whose application for asylum was lodged within the last four months) and all Belgian adults of foreign origin (d'origine allochtone), who were not born in Belgium and have at least one parent not born in Belgium.

102. The programme, which is free of charge, is made up of two parts.[65] The first part is obligatory for all the above-mentioned categories of persons except for citizens of EU member States, the European Economic Area (EEA) and Switzerland. Those who are ill, aged over 65 years, or have obtained a certificate or diploma in the Belgian or Dutch educational system and those living in Brussels are not obliged to attend the course. All these categories of persons can attend the course on a voluntary basis; however, once they start attending it, it becomes compulsory until one completes at least 50% of the course.

103. The obligatory dimension of the first part of the civic integration programme consists in a) contacting a reception office within three months from the time when the obligation to follow the integration course has come into effect b) signing an integration contract and c) regularly attending the course (at least 80%). Failure to comply with these requirements can result in an administrative fine between 50 and 5 000 € or might give rise to the withdrawal of certain benefits for people who are dependent on social assistance and be an obstacle to social housing. The payment of the fine does not put an end to the obligation to attend the course. For the period 2011-2012, out of 1 163 fines imposed, 569 have not yet been paid.

104. ECRI welcomes the commitment of the Flemish authorities to provide free, multi-faceted and individualised integration assistance.[66] Furthermore, ECRI recognises that speaking the host country's language(s) and receiving social and career guidance is essential for a successful integration process. However, ECRI expresses doubt about the added value of the programme's obligatory dimension.

105. Firstly, even if Belgium is bound to respect the freedom of movement of EU nationals and some others, making the integration courses obligatory only for third country immigrants could stigmatise these groups, giving the false impression that they are unwilling to make an effort to follow the integration programme on their own. Secondly, the programme puts together two completely different categories of beneficiaries, newly arrived immigrants and Belgian citizens of foreign origin, who have different motivation, needs and expectations. This situation may render the courses less efficient and can even become counter-productive from the perspective of integration. Thirdly, without any direct reward in terms of employment's opportunities (this also concerns the second part of the programme which gives only the possibility to attend regular university courses or vocational training), the advantage of the completion of the

[65] The first part comprises classes in Dutch as a second language, a social guidance course designed to nurture familiarity with Flemish society and career guidance. Those who have regularly attended the training programme obtain an integration certificate, with which they can directly join the second part of the integration programme, comprising university courses and vocational training.

[66] By way of example, in 2012 out of 35 815 newcomers belonging to the target group of civic integration, 14 845 contacted a reception office and 11 791 signed an integration contract.

programme is minimal, apart from not being punished with a fine and avoiding the risk of the withdrawal of social assistance.[67]

106. In addition, ECRI has been informed of the decision of the City of Antwerp to charge a fee of 250 € when a non-EU foreigner registers at the foreigners' department. The municipal authorities claim that this sum is needed to cover the costs of the registration. The Governor of the Province of Antwerp has suspended this measure. ECRI considers this kind of measures particularly worrying in view of the primary role that local authorities play in favouring (or hindering) integration.

107. In the Walloon Region, the integration policy is based on the decree of 4 July 1996 on the integration of non-citizens and people of foreign origin, amended in 2003 and in 2009. This policy comprises the setting up and subsidising of seven Regional integration centres. These centres are responsible for providing, through local authorities and NGOs, services to the target groups in order to assist with their integration. The services offered vary according to the local situation of each centre, but basically consist of classes in French as a foreign language and assistance with administrative procedures. The integration policy of the Walloon Region is based on voluntary participation. In addition, the direct involvement of NGOs, to which the Walloon authorities provide the material and financial resources, brings often to the programme a wider perspective, including mediation facilities and exchanges between non-citizens and citizens or citizens of foreign origin. Despite its potential adaptability to the different local realities, the Walloon Region's integration programme has been criticised for its lack of precise goals, coherent structure and adequate funding for its implementation.

108. The Walloon Region is now working on a modified integration programme for newcomers. The programme is addressed to non EU (non EEA and non-Swiss) foreigners residing in the Region for less than three years. It provides for the establishment of contact points to which the foreigner must address him/herself in person in order to obtain an assessment of his/her situation and sign an integration contract accepting to follow a tailor-made education course and training with the possibility to attend, at a later stage, professional training. As it is the case in the Flemish Community, this new integration programme will be obligatory. However, its mandatory component should be limited to the obligation to contact the information point, receive information on relevant administrative procedures and undergo an assessment of personal needs for training. Failure to comply with these obligations will result in an administrative fine of between 50 and 2 500 €.

109. In sum, ECRI considers that a number of facets of the integration programmes are questionable if not even discriminatory. For example, the fact that it is not similarly obligatory (at least so far) in the entire territory of Belgium results in different treatment on the basis of place of residence; the programme is addressed to categories of persons who might have completely different needs and expectations (i.e national and non-nationals), which might be counterproductive with respect to the integration policy's results; the fact that the vast majority of the administrative fines for non-attendance remains unpaid casts doubts on the usefulness of this measure; doubts are raised also about its added value in terms of employment opportunities. ECRI is of the opinion that all this requires an assessment of the integration programmes by the federated entities's authorities.

[67] For certain categories of persons the grant of social assistance is linked to an integration contract between the beneficiary and the authorities. Non-respect can lead to the suspension of the assistance.

110. ECRI recommends that the authorities make sure that the civic integration programme, in itself very interesting, is not discriminatory thus deviating from its essential integration aim. ECRI also recommends combining any obligation to participate in these integration programmes with incentives and rewards, limiting sanctions to circumstances where incentives have failed and integration without participation in these measures is not likely.

111. Despite these specific remarks and recommendations, ECRI is aware that a number of integration policies implemented at federated entities' level have a dimension which goes well beyond the pure reception of immigrants. For example, in 2011 the Walloon Government adopted the first Walloon Plan for Equality, which aims to fight against discrimination and comprises a number of intercultural and social inclusion policies. Similarly, the Flemish initiatives in this area should not be seen as limited to the inburgering. For example, the Minderhedenforum (Minorities Forum) is a well-functioning structure sponsored by the Flemish authorities bringing together various ethnic-cultural organisations and seeking to enhance their role and participation in interculturalism and dialogue with the majority population.

- **Policies' results**

112. The overall picture provided here below shows that ethnic and religious groups, in particular Muslims, continue to face in general many disadvantages, including discrimination in key fields of life.

113. Those of foreign origin run a greater risk of living in poverty than the rest of Belgian citizens. In June 2012 the Knowledge Platform Flemish Poverty Support Point published figures to this effect in respect of Moroccan, Turkish or Eastern European origin: 54% of Flemings of Moroccan origin, 36% of Flemings of Eastern European origin and 33% of Flemings of Turkish origin have a higher poverty risk. Also 20% of children of foreign origin have a higher chance of ending up in poverty.[68] Concerning employment, a number of studies show that among nationals of foreign origin there is a high rate of unemployment despite a high level of higher education qualifications in certain cases.[69]

114. In the public debate, Muslims are often represented in a negative way as the part of the population that is most unlikely to integrate; this provides fertile ground for prejudice and discrimination. A segment of the Belgian population and some authorities at local level have openly shown their opposition towards some of the ways in which Muslim religion manifests itself, in particular the use of headscarf in school, in the civil service and even in the private sector. The law banning the full veil[70] and the failure of a number of local authorities to authorise the opening of mosques have further strengthened the Muslim Community's feeling that they are the target of discrimination. The Centre reported that in 2011 out of a total of 164 cases alleging racism or discrimination against Muslims in 58% there were real signs of "Islamophobia" and in almost 25% of these cases there was a violation of the anti-discrimination legislation.

115. In particular, discrimination in employment and access to goods and services affects Muslims. A number of cases where national courts considered the right to wear a headscarf in employment situations either in the context of claims of religious discrimination or claims of breach of Article 9 of the ECHR (freedom of

[68] Belgium, De Standaard Online (2012) 'Meer dan de helft Vlaamse Marokkanen heeft verhoogde armoedekans', 11 June 2012.

[69] See the 2012 report of the Flemish Service for Employment Mediation and Professional Education published and the 2011 ENAR report on Belgium.

[70] On 6 December 2012, the Constitutional Court rejected a series of actions in annulment against this law.

religion) have sparked a heated public debate echoed by the media.[71] They highlight the presence of structural obstacles to integration via employment in particular for Muslim women. This can be attributed to the absence of a legislation regulating matters related to the wearing of religious symbols at work.

116. For example, on 23 December 2011 the Antwerp Labour Court of Appeal confirmed a Labour Court's judgment that there had not been direct discrimination in a case where an employee was dismissed for wearing a headscarf because this was incompatible with the neutrality that the company pursued.[72] A more recent headscarf case[73], concerning a former employee of the Belgian branch of Hema, a Dutch street retailer, was decided in favour of the employee. However, ECRI notes that in its reasoning the domestic court gave again considerable weight to the question whether the company had or not a neutrality policy, thus confirming a contrario the approach of the previous judgement.[74]

117. In light of the above, ECRI expresses doubts as to whether the above-mentioned integration programmes are adequate and effective. ECRI finds that there seems to be still a conceptual problem with Belgium's integration policies: the assumption is that everything will be all right once immigrants learn the official language, get acquainted with the host society and develop certain skills. On the contrary, ECRI considers integration to be not solely an onus on migrants or nationals with a migration background, but instead a two way process, involving the responsibility of the majority population as well. Therefore the natural component of integration policies should be intercultural dialogue, including inter-religious dialogue and inter-Community dialogue.

118. In 2009 the federal government launched the Assises d'Interculturalité, in co-operation with civil society, which resulted in recommendations drawn up in 2010 in order to make Belgium a more cohesive country.[75] Despite the fact that a follow-up monitoring mechanism had been proposed, ECRI regrets to note that the recommendation concerning the mechanism was not implemented like many other recommendations[76] of the Assises, which seem to remain merely good intentions.

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[71] Affaire Hema "la question n'est pas totalement résolue", by Patrick Charlier, Le Soir of 2 January 2013.

[72] In the case of Eweida and Others v. the United Kingdom of 15 January 2013 the European Court of Human Rights examined on one side the applicants' desire to manifest their religious belief and on the other side the employers' wish to project a corporate image. According to the Court, in the case of Ms Eweida while this aim was legitimate, the UK domestic courts accorded it too much weight, thus violating Article 9 of the ECHR. However, the Court came to a different conclusion in respect of the other three applicants, thus deciding that there was no violation of Article 9.

[73] Labour Court of Tongres, judgement of 2 January 2013.

[74] The court noted that Hema had already integrated the headscarf in its staff's uniform in the neighbouring Netherlands and the company had tried to justify the worker's dismissal purely on Belgium "local customs" (i.e. intolerance of the customers who complained to Hema). The court ruled therefore that Hema, in the absence of a clear neutrality policy and dress code that could oblige the employee to take off her headscarf, had no justifiable reason to sack her on the basis of her wearing a headscarf.

[75] http://www.belgium.be/fr/actualites/2010/news_assises_interculturalite_rapport_final.jsp.

[76] Such as freedom of wearing religious symbols by public officials, limiting their ban only to senior officials; the establishment of a system of socio-economic monitoring; the development of a temporary quota system that would promote the recruitment of persons belonging to "minorities"; the extension of the concept of reasonable accommodation for people with disabilities to other situations, including those related to freedom of religion or belief; the deletion in the law against the denial of the Holocaust of the explicit reference to the genocide committed by the Nazi regime during the Second World War, so that it can apply to other instances of genocide.

119. The recommendations resulting from the Assises d'Interculturalité could be considered one of the many ways in which cultural and linguistic diversity can enrich Belgian society thus positively complementing the integration programmes at federated entities' level.

120. ECRI recommends that the authorities pay special attention to the findings and recommendations of the Assises d'Interculturalité and examine the possibility of their implementation in practice.

121. Apart from sporadic and isolated initiatives to measure the results of integration programmes, several actors have pointed out the non-existence of monitoring, making it impossible to have an accurate picture of the situation as far as integration is concerned in Belgium. To counter this problem, since 2006 the Centre has been working on introducing a system of socio-economic monitoring based on the ethnic origin of individuals in order to combat discrimination more effectively. This monitoring involves the collection of objective, anonymous and validated data derived from existing administrative databases, taking account of the ethnic origin of individuals and their parents.[77] ECRI takes note with interest that it is possible that this socio-economic monitoring leaves its pilot project phase and is adopted at national level so that a coherent data collection system will make it possible to assess the extent of integration of the different groups of concern to ECRI in key fields of life such as employment, education, health and housing.

122. ECRI reiterates its recommendation that the authorities consider collecting data broken down according to categories such as citizenship, ethnic origin, language and religion and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. Such a system should be drawn up in close co-operation with all those concerned, including civil society organisations, and should take into consideration the possible existence of multiple discrimination.

II. Topics specific to Belgium

1. Interim follow-up recommendations of the fourth cycle

123. In the first interim follow-up recommendation addressed to Belgium in its fourth report, ECRI invited the authorities to pursue and step up their efforts to ensure that: all children of immigrant background are afforded equal opportunities in access to education; further steps are taken to promote a social mix in state schools; and a greater emphasis is placed, in initial and in-service teacher training, on the need to combat racism and racial discrimination, on the one hand, and on the ways in which diversity enriches, on the other.

124. In its 2012 conclusions[78] on the follow-up given by the authorities to the above-mentioned recommendations, ECRI noted that the situation did not seem to be exactly the same in the three Communities. However, ECRI acknowledged that a number of measures had been taken by the federated entities to mitigate the disadvantages suffered by pupils with an immigrant background and the problems related to the lack of a social mix in some schools, as well as to provide relevant initial and in-service teacher training. ECRI concluded that all these

[77] ECRI has been informed that a report on the possibility of implementing this monitoring system at national level is being drafted and will be published in September 2013.

[78] Conclusions on the implementation of the recommendations in respect of Belgium subject to interim follow-up, CRI(2012)26, 21 March 2012, http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Belgium/BEL-IFU-IV-2012-026-ENG.pdf.

measures required fine-tuning and, above all, needed to be evaluated to measure their results.

125. Concerning the French Community, which has a higher percentage of pupils of immigrant background (about 20%) than the other two Communities, ECRI notes that the enrolment decree of April 2009 should have been evaluated in 2012 with regard to both the educational achievement of children of immigrant background and the promotion of social mix in schools. Unfortunately ECRI has been informed that this assessment could not be completed due to lack of relevant data, the majority of which will be available only in 2014. In the meantime a recent academic study noted that the gap in educational achievement between ethnic Belgian children and children with an immigrant background continues to be wide.[79]

126. Concerning the Flemish Community, in November 2011 a new decree was adopted to reorganise enrolment in primary and secondary education as from the school year 2013-2014. The new decree insists on social mix and cohesion and an evaluation of its results is foreseen. ECRI notes that according to the most recent Migrant Policy Integration Index (MIPEX III)[80], the Flemish Region obtained an overall score for education of 76 points out of 100, which is one the best results in the 31 States evaluated by the MIPEX, with Belgium scoring as a whole 66 points.

127. With regards to the German-speaking Community, it seems that all planned measures improving access to education of children of immigrant background and favouring social mix will be implemented as from 2014.

128. With regards to initial and in-service teacher training on the prevention of racism and racial discrimination, the above-mentioned study on newcomers in the education system in the French-speaking part of Belgium indicates that initial and in-service teacher training does not focus on preparing teachers to teach in a diverse society.[81] This finding on poor teachers' training is shared by the Centre in its 2011 annual report. The above-mentioned report of the Assises Interculturalité proposed a series of integration measures, such as promoting the recruitment of teachers who do not belong to the ethnic majority.

129. ECRI maintains its 2012 conclusions that an evaluation should be made by the authorities of the recent initiatives introduced in the field of access to education with children of immigrant background and promotion of social mix at school. ECRI considers that an evaluation of the impact of teachers' training on their ability to deal with the problems related to a school population increasingly composed of children of immigrant background is still required.

130. Concerning its second interim follow-up recommendation, ECRI noted that there were not enough well-located and properly equipped sites for Travellers[82] to camp and requested priority implementation from the Belgian authorities of its recommendation to create a sufficient number of such sites. ECRI's interim follow-up conclusions noted that measures had been taken to provide Travellers with more and suitable sites, but that problems persisted and that more needed

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[79] Institut de Recherche, Action et Formation sur les Migrations, Newcomers in Educational System: The Case of French-Speaking Part of Belgium, published in Sociology Mind 2012.

[80] MIPEX is an interactive tool to assess and compare integration policy in all European Union Member States plus Norway, Switzerland, Canada and the USA up to 31 May 2010.

[81] See footnote 79.

[82] "Gens du voyage" in French. In Belgium there are four main groups of Roma and Travellers: the Gens du voyage (indigenous Belgian Travellers) numbering about 7,000; the Manush (Belgian Sinti), numbering about 1,500; the Roma descendants of migration which took place in the mid-19th century numbering about 700; and migrant Roma from Eastern Europe. The first three groups have Belgian nationality.

to be done urgently to increase the number of transit sites enabling Travellers to camp properly.

131. In addition, following the Collective Complaint No. 62/2010 International Federation of Human Rights (FIDH) v. Belgium, the European Committee of Social Rights concluded that Belgium violated the European Social Charter as it does not treat caravan dwellers correctly; there are insufficient available sites for Travellers and the urban planning regulation is not adapted to their stay.

132. As regards the current availability of properly equipped sites, ECRI has been able to gather the following information[83]. The Flemish Region has now four short-term transit sites and several local temporary transit sites in different municipalities (where Travellers can stay for up to 90 days a year). In addition, there are 30 residential sites for long-term stays. In the Brussels-Capital Region the only existing short-term transit site was closed in July 2012. Moreover, there is a small residential site in the Molenbeek municipality, which is likely to be closed soon. In the Walloon Region, three temporary transit sites are already available but not yet properly equipped. They should be ready by 2014.

133. ECRI notes that considerable differences continue to exist between the three different parts of the country. In particular the Flemish Region seems to have a more structured policy, in terms of funding, legislation and practice. The Walloon Region favours negotiation and consultation with representatives of the Traveller Community and municipalities over legislation and responds to transit site needs on a case by case with ad hoc sites.[84]

134. To sum up, ECRI considers that properly equipped transit sites continue not to be sufficient in number, in particular in the Walloon Region and in the Region of Brussels-Capital where there are almost no reception areas.

135. ECRI reiterates its recommendation that the Belgian authorities find at the earliest opportunity solutions to enable Travellers to camp, by creating a sufficient number of well-located and properly equipped sites.

136. Concerning its recommendation that the Belgian authorities run an awareness-raising campaign aimed at the general public to combat all forms of intolerance towards and rejection of Travellers, ECRI notes a number of recent measures. For example, a Belgian Council of Roma, Sinti and Travellers was recently created as an advisory body that seeks to represent these Communities in Belgium. Among the Council's priorities there is fighting discrimination and anti-Gypsyism and raising awareness in Belgian society about their customs and traditions. In the Flemish Community provision has been made for several awareness-raising programmes under the Strategic Plan for Travellers.

137. In its third interim follow-up recommendation, ECRI urged the authorities to designate within each police unit a contact person responsible for improving the response of police to complaints of racism from individuals, along the lines of the contact prosecutors specialising in racism and discrimination issues in the prosecution service. ECRI has already dealt on this issue in paragraphs 89 et seq.

[83] Information provided by the Council of Europe Ad Hoc Committee on Experts on Roma Issues (CAHROM), by the NGO Ligue des Droits de l'Homme and by the Belgian authorities.

[84] CAHROM Reports already quoted.

2. Policies to combat discrimination and intolerance against LGBT persons[85]

- Data

138. Comprehensive data on the LGBT population in Belgium does not exist since Article 6 of Law of 8 December 1992 on the protection of privacy[86] prohibits collecting data related to the sexual life of a person without the person's consent. According to the authorities, this prohibition includes also the sexual orientation or gender identity of a person. However, there are several indications about the LGBT population, thanks to a legislation which guarantees respect of most aspects of family and private life of LGBT on an equal footing with the rest of the population.[87]

139. As concerns transsexual people[88], the national civil registry's statistics indicate that, between 1993 and 2012, 631 individuals officially registered their change of sex and name in Belgium. This data of course does not give a comprehensive idea of the number of transgender people[89] in Belgium, since only those who have undergone a full sex transition (see further on this) can have the change of their sex and name officially registered. As regard same-sex marriage, legally recognised in Belgium since June 2003, between that date and 2010, out of a total of 307,886 marriages, 15,219 were between same-sex couples.[90] Statistics indicate also that in 2010 out of a total of 72,191 civil partnerships, 2,245 were between same-sex couples. As concerns child adoption, in 2011 a quarter of all national adoptions[91] were made by lesbian or gay couples, showing a higher number of adoptions by same-sex-couples in the Flemish Community[92] than in the French Community.

140. ECRI recalls that Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. ECRI considers that privacy concerns in collecting data should not prevent the authorities from conducting anonymous surveys with questions aiming to elicit information about LGBT persons' experiences of discrimination and intolerance. It is clear that without such information there can be no solid basis for developing and implementing policies to address intolerance and discrimination of LGBT. A number of good practices indicate that the authorities are aware of this.[93]

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85 Concerning the definition of LGBT cf. Council of Europe, Discrimination based on sexual orientation and gender identity in Europe, 2011, pp. 21 and 139 et seq.

86 Loi relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel.

87 The 2013 ILGA "Rainbow Map", reflecting the national legal policy and human rights situation of LGBT in Europe, assigns to Belgium the second highest score among the 47 Council of Europe member States.

88 "Transsexual people identify with the gender role opposite to the sex assigned to them at birth and seek to live permanently in the preferred gender role", Trans and intersex people and discrimination: definitions and factual perspectives, FRA 2012.

89 "Transgender people live permanently in their preferred gender. Unlike transsexuals, however, they may not necessarily wish to or need to undergo any medical interventions", ibidem.

90 The last available statistics in 2011 confirm this ratio: same-sex marriages represent about 5% of all marriages each year.

91 Since 2006 adoption by same-sex couples is allowed.

92 In Belgium, child adoption is a competence of the Regions. Figures from the Flemish Adoption Centre show that in 2012 about half of the 30 children available for domestic adoption in the Flemish Community were assigned to same-sex couples. However, the NGO ILGA reported that in the French Community, there was only one national adoption by a same-sex couple out of 33 in 2013.

93 See for example Recherche exploratoire sur les représentations de l'homosexualité dans la fonction publique belge, Cap –Sciences humaines, 2007.

141. ECRI recommends that the authorities pursue systematic research and data collection concerning intolerance and discrimination on grounds of sexual orientation and gender identity, including a general attitude survey on LGBT related questions.

- **Legislative issues**

142. As already stated the Anti-discrimination Federal Act of 10 May 2007 prohibits discrimination on the basis, among other grounds, of sexual orientation.[94] Moreover there are at present at least 11 legislative texts at federated level with relevance to discrimination on the basis of sexual orientation. Contrary to sexual orientation, gender identity[95] is not a prohibited ground per se. It has been already indicated that discrimination of transgender people is mostly covered under the ground of "sex" which is the object of a separate piece of legislation, the Gender Equality Federal Act. Article 4, paragraph 2 provides that for the purposes of the Act direct discrimination based on change of sex is treated as direct discrimination on grounds of sex.

143. ECRI notes therefore that discrimination on grounds of sexual orientation (for LGB persons) and discrimination on grounds of gender (for transgender persons) are covered by two separate pieces of legislation at the risk of entailing a number of discrepancies in their application. A number of NGOs noted that the ground "sex change" is narrower than the ground "gender identity", which is a recognised prohibited ground of discrimination in a number of international legal and political texts, and they called upon the authorities to include "gender identity" as an explicitly prohibited discrimination ground.

144. In January 2013 the government presented the first part of the Action Plan aimed at combating homophobia and transphobia (the Action Plan). Inter alia, the Action Plan recommends adding gender expression[96] and gender identity as explicit grounds of discrimination in the various anti-discrimination laws at federal, Community and Regional level.[97]

145. ECRI recommends that the authorities amend the anti-discrimination legislation at federal and federated level in order to include gender identity among the prohibited grounds of discrimination.

146. Concerning civil legislation, Belgium has adopted a number of laws in the last two decades, protecting the private and family lives of LGBT persons. The Law of 23 November 1998 establishing the so called "legal cohabitation" (civil partnership) does not distinguish between heterosexual and same-sex cohabitants, and grants them the same rights; the Law of 13 February 2003, allows same-sex marriages; the Law of 18 May 2006 allows for national and international adoption by same-sex couples.[98]

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94 "Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender", the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

95 "Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modifications of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerism", ibidem.

96 "Gender expression refers to peoples' manifestation of their gender identity, and the one that is perceived by others", Trans and intersex people and discrimination, FRA 2012.

97 A draft amendment to the Flemish decree will be approved in September 2013, according to which "gender identity" and "gender expression" will become explicit grounds of prohibited discrimination.

98 However, international adoption is not often feasible due to the reluctance or even the explicit prohibition in some countries of origin to entrust children for adoption to same-sex couples.

147. The Transgender Federal Act of 2007 provides transgender people with a legal basis for the registration of the change of their sex and name. However, this law makes legal gender recognition dependent on inter alia certification by a psychiatrist that the person concerned is convinced that s/he belongs to the opposite gender, sex reassignment surgery and the medical certification of the permanent inability to procreate. Due to these rather stringent conditions, this law applies to only some transgender people (i.e. transexuals). According to it, people who do not undergo sex change surgery cannot legally register their change of sex and name.

148. An analysis of this legislation was conducted by the Institute in consultation with organisations representing transgender people and work is underway to put forward recommendations concerning reformulation of the criteria for gender reassignment, measures for protecting privacy[99] and the need for a transition identification document.[100]

- **Asylum**

149. In Belgium, applications for asylum and subsidiary protection on the basis of sexual orientation are in principle treated in the same way as any other application for asylum and subsidiary protection. According to the 2011 annual report of the Commissioner General for Refugees and Stateless Persons, sexual orientation and gender identity were among the main persecution grounds[101] put forward in gender-related asylum applications. In 2010, 522 asylum cases on these grounds were recorded, out of which 156 received refugee status. ECRI notes with interest that the authorities have adopted a series of instructions and operational notes which provides guidance to officers who are called upon to examine gender-related asylum claims, including sexual orientation and gender identity.[102]

- **Independent authorities**

150. Since discrimination on grounds of sexual orientation (for LGB) on the one hand and discrimination on grounds of gender (for transgender people) on the other hand are covered by two separate pieces of legislation, two entirely different bodies deal with discrimination on this matter, one on the ground of sexual orientation (the Centre) and the other on the ground of gender (the Institute). This report has already dealt extensively under Legislation with the Centre's mandate.

151. The Institute for the Equality for Women and Men was created by the Law of 16 December 2002 to guarantee and promote gender equality and to fight against any form of discrimination and inequality based on gender in all aspects of life through the development and implementation of an adequate legal framework, appropriate structures, strategies, instruments and actions. ECRI notes that Article 5 of the above-mentioned law provides that "the Institute is responsible for the preparation and implementation of government decisions" and it "exercises these missions under the authority of the Minister of equality between women and men". In light of the above, it would appear that the Institute

[99] When a birth certificate is amended a note remains referring to the original status.

[100] This refers to the phase during which the official sex designation and gender identity do not correspond with one another. This transition period may last for years due to the medical requirements imposed by the Belgian law to change sex.

[101] According to Article 1A(2) of the 1951 Convention relating to the Status of Refugees the term "refugee" shall apply to any person who has "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion".

[102] A specific unit in the office of the Commissioner deals exclusively with applications for asylum or subsidiary protection based on gender identity or sexual orientation; this helps developing specific expertise in this area.

is not in line with the already-mentioned standards of independence set out in the Paris Principles which are referred to by ECRI's GPR No. 2[103], as well as by the Explanatory Memorandum of the above-mentioned Recommendation of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity.

152. In connection with the inter-federalisation of the Institute for the Equality of Women and Men, ECRI recommends that the authorities consider enshrining the independence of the Institute for the Equality for Women and Men in the new legislation in order to ensure that its full independence is secured both in law and in fact.

153. Since direct discrimination based on sex change is treated for the purpose of the Gender Equality Federal Act as direct discrimination on grounds of sex, the Institute is competent for discrimination against transgender people. However, this applies only to transgender people who have undergone or are planning to undergo sex reassignment treatment.

154. ECRI is aware that a number of issues in this subsection are specific to transgender people. Of course this should not prevent the Institute and the Centre from enhancing cooperation on LGBT issues, thus further strengthening protection of these vulnerable groups as a whole. ECRI therefore welcomes the fact that both the Institute and the Centre have been tasked by the Action Plan to create a network of experts. This network will be responsible for the exchange of scientific knowledge and research results and for identifying gaps in the implementation of the Action Plan. It will also be responsible for the evaluation of the Action Plan.

- **Access to employment, housing and health**

155. According to a recent survey of the EU Agency for Fundamental Rights (FRA), the majority of LGBT persons in Belgium avoid revealing their sexual orientation at work fearing rumours, hints and derisions.[104] Transgender people are obviously even more vulnerable to harassment and discrimination in employment due to their gender expression. ECRI has been informed by the Institute that they face numerous problems: 54% of them declare that they hide their gender identity at work and 15.6% are unemployed despite a relative high level of education. According to the Institute there is a need to raise further awareness about transgender issues and the rights and responsibilities of employers and workers. Awareness-raising activities should target the competent authorities and especially employers' organisations, temporary staff agencies and trade unions.

156. Regarding good practices, in the Flemish Region a programme focusing specifically on employment opportunities for transgender persons was set up and a brochure entitled Transgender on the work floor, with advice and practical tips for employers, was published.

157. ECRI hopes that the second phase of the Action Plan, adopted in June 2013 and inter alia dedicated to discrimination in the field of employment, will be able to deal adequately with equal conditions of access to employment, career advancement, terms of dismissal, salary and other working conditions, including

[103] See above at paragraphs 33 et seq.

[104] 2013 EU LGBT survey data explorer http://fra.europa.eu/en/publications-and-resources/data-and-maps.

ways to prevent, combat and punish sexual harassment and other forms of victimisation.[105]

158. There is little data concerning access to housing for LGBT persons. LGBT NGOs have suggested that discrimination on the ground of sexual orientation be addressed in the Diversity Barometer, a research conducted by the Centre which in 2014 will focus on diversity in the housing sector.

159. Concerning access to health, the study Being transgender in Belgium pointed out that 60% of transgender persons have sought medical or psychological assistance related to their gender identity. 62% of respondents had contemplated suicide and 22% had attempted suicide. The study showed that support for transgender persons is not sufficient and that access to health for transgender people is not optimal. According to the study, generalist physicians and psychologists often do not have sufficient information to welcome properly and advise transgender people. In view of this a Transgender Info Point opened on 15 March 2013 at the center for sexology and gender issues of the university hospital of Ghent.

160. According to transgender associations, a major problem is the high cost of mandatory gender reassignment treatment and the lack of a clear legal framework for the refunding of the expenses by private insurers or the National Institute for Sickness and Disability. ECRI is aware that the issue of the mandatory gender reassignment treatment should be addressed in the context of the case-law of the European Court of Human Rights related to Article 8 of the ECHR which protect the right to respect for private life. ECRI is also aware that on this specific issue, States enjoy a certain margin of appreciation.[106] According to Recommendation CM/Rec(2010)5 prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.[107]

- **Education and awareness-raising**

161. As already noted in Belgium education is a matter within the competence of the Communities. The Flemish authorities have produced a number of manuals to guide teachers on how to address LGBT issues in schools. In addition a web site[108] provides tips for gender neutral and LGBT-friendly schools. The Flemish authorities fund the educational work of LGBT organisations.[109] In the French Community, on 26 June 2012, the Decree defining the priority mission of teaching in primary and secondary education[110] was amended, making education in emotional, social and sexual life (EVRAS) a mandatory subject. However, LGBT organisations have criticised this decree for its vagueness and proposed that the Action Plan adopt a definition of EVRAS in accordance with the WHO standards and expressly include the fight against homophobia and transphobia among its objectives.

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[105] See on this Contribution by Arc-en-Ciel Wallonie to the above mentioned second phase of the Plan at http://arcenciel-wallonie.be/web/acw/component/content/article/105-nouveau/437-nos-42-pistes-pour-lutter-contre-lhomophobie.html.

[106] See for example paragraphs 70 and 71 of the judgement of the European Court of Human Rights in the case Van Kück v. Germany, 12 June 2003, application No. 35968/97.

[107] As a way of example, Austria and Germany have abolished mandatory surgery for transgender persons.

[108] www.genderindeblender.be.

[109] At the initiative of the Flemish minister of education and equal opportunities a common declaration was signed by the different educational networks concerning gender awareness and LGBT-friendly school policies.

[110] Décret du 24.07.1997 définissant les missions prioritaires de l'enseignement fondamental et de l'enseignement secondaire et organisant les structures propres à les atteindre.

162. In preparation of the above-mentioned Action Plan a study on the opinions and behaviour of students of secondary education in the Region of Brussels-Capital was conducted between 2008 and 2011 regarding immigration, homosexuality, political participation, religious beliefs and social life. The study indicates that the acceptance of homosexuality is not so widespread among the young.

163. ECRI recommends that the authorities implement at all levels, be it in the framework of the Inter-federal Action Plan against homophobia and transphobia or at federated entities' level, measures to promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity. In particular, these measures should provide pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.

164. Also sport and media are crucial fields for raising awareness to the issue of discrimination towards LGBT persons. In Belgium, sport is another matter within the competence of the Communities, which work in cooperation with LGBT NGOs in this field. ECRI also finds it encouraging that the Belgian authorities, in the first part of the Action Plan, have stressed the pivotal role that the media play in either reproducing or criticising stereotypes related to sexual orientation, gender identity and gender expression. For these reasons, ECRI considers important that the Action Plan should be followed by specific activities to raise media's awareness of their responsibilities in this field.[111]

[111] In the autumn of 2013 a Flemish action plan against homophobia in soccer will be launched by the Flemish minister of education and equal opportunities, together with a media campaign.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of Belgium are the following:

- ECRI recommends that the authorities carry out without any further delay the assessment of the application and effectiveness of the legislation against racism and intolerance as contained in the 2007 acts in accordance with Article 52 of the Anti-discrimination Federal Act, in order to identify any gaps that need to be closed or any improvements or clarifications that might be required.

- ECRI recommends that the Belgian authorities conclude as soon as possible the legislative process to turn the Centre for Equal Opportunities and Opposition to Racism into a fully independent inter-federal institution dedicated to helping all victims of discrimination on the grounds within its competence.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§2.)ECRI reiterates its recommendation that Belgium ratify Protocol No. 12 to the European Convention on Human Rights as swiftly as possible.

2. (§9.)ECRI recommends that the authorities amend the Anti-discrimination Federal Act to include provisions similar to Articles 21, 22, 24 and 25 of the Anti-racism Federal Act criminalising the public dissemination of ideas, participation in activities of groups and associations aimed at contributing to discrimination and segregation against a person or a grouping of persons on the grounds of their language and religion, as well as discrimination in employment and access to goods and services based on the grounds of language and religion.

3. (§15.)ECRI recommends that the authorities adopt, as provided for by the 2007 Anti-discrimination and Anti-racism Federal Acts, the royal decree containing a list of examples in order to offer guidance on whether a given characteristic is a genuine and essential occupational requirement.

4. (§17.)ECRI reiterates its recommendation to the authorities to adopt, as provided for by the 2007 Anti-discrimination and Anti-racism Federal Acts, the royal decree determining the circumstances in which and conditions under which positive action measures can be taken.

5. (§22.)ECRI recommends that the authorities review the system of fixed rate compensation for non-pecuniary damages by adequately increasing the amount of the lump sum provided for by paragraph 2 of Article 16 of the Anti-racism Federal Act and paragraph 2 of Article 18 of the Anti-discrimination Federal Act in order to make it a sufficient deterrent for discriminatory treatment.

6. (§25.)ECRI recommends that the authorities carry out without any further delay the assessment of the application and effectiveness of the legislation against racism and intolerance as contained in the 2007 acts in accordance with Article 52 of the Anti-discrimination Federal Act, in order to identify any gaps that need to be closed or any improvements or clarifications that might be required.

7. (§28.)ECRI recommends combining the evaluation of the anti-discrimination legislation at the federal level with an evaluation of the relevant legislation at the federated entities' level so as to uncover possible gaps.

8. (§32.)ECRI reiterates its recommendation urging the Belgian authorities promptly to designate or set up the body competent to deal with discrimination based on language and to confer on this body powers and independence similar to those enjoyed by the Centre for Equal Opportunities and Opposition to Racism.

9. (§38.)ECRI recommends that the Belgian authorities conclude as soon as possible the legislative process to turn the Centre for Equal Opportunities and Opposition to Racism into a fully independent inter-federal institution dedicated to helping all victims of discrimination on the grounds within its competence.

10. (§47.)ECRI recommends that the authorities ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable data on hate speech offences and the follow-up given to them by the criminal justice system is made available.

11. (§63.)ECRI recommends that the Belgian authorities step up their efforts to counteract the presence of racist expression on the Internet, in line with the recommendations of its General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet. ECRI also recommends that authorities co-operate at international level with other states to avoid any legal loopholes that would make it possible to disseminate such material.

12. (§65.)ECRI reiterates its recommendation to ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

13. (§73.)ECRI recommends that the authorities consider extending the exception to Article 150 of the Constitution to homophobic incitement so that prosecution can be brought before ordinary courts.

14. (§87.)ECRI recommends that the authority proceed to an overall evaluation of the current criminal legislation on racism and homo/transphobia before any amendment to it.

15. (§90.)ECRI recommends that the authorities proceed without any further delay to designate in each police district a contact person responsible for racism and homo/transphobic issues. These contact persons should be networked and there should be close communication between the contact person in the police in the police district and the contact prosecutor in the corresponding prosecution department.

16. (§110.)ECRI recommends that the authorities make sure that the civic integration programme, in itself very interesting, is not discriminatory thus deviating from its essential integration aim. ECRI also recommends combining any obligation to participate in these integration programmes with incentives and rewards, limiting sanctions to circumstances where incentives have failed and integration without participation in these measures is not likely.

17. (§120.)ECRI recommends that the authorities pay special attention to the findings and recommendations of the Assises d'Interculturalité and examine the possibility of their implementation in practice.

18. (§122.)ECRI reiterates its recommendation that the authorities consider collecting data broken down according to categories such as citizenship, ethnic origin, language and religion and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. Such a system should be drawn up in close co-operation with all those concerned, including civil society organisations, and should take into consideration the possible existence of multiple discrimination.

19. (§135.)ECRI reiterates its recommendation that the Belgian authorities find at the earliest opportunity solutions to enable Travellers to camp, by creating a sufficient number of well-located and properly equipped sites.

20. (§141.)ECRI recommends that the authorities pursue systematic research and data collection concerning intolerance and discrimination on grounds of sexual orientation and gender identity, including a general attitude survey on LGBT related questions.

21. (§145.)ECRI recommends that the authorities amend the anti-discrimination legislation at federal and federated level in order to include gender identity among the prohibited grounds of discrimination.

22. (§152.)In connection with the inter-federalisation of the Institute for the Equality of Women and Men, ECRI recommends that the authorities consider enshrining the independence of the Institute for the Equality for Women and Men in the new legislation in order to ensure that its full independence is secured both in law and in fact.

23. (§163.)ECRI recommends that the authorities implement at all levels, be it in the framework of the Inter-federal Action Plan against homophobia and transphobia or at federated entities' level, measures to promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity. In particular, these measures should provide pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.

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