



CRI (97) 49

European Commission Against Racism and Intolerance

First report on Belgium

Adopted on **1 January 1994**

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

The first series of eleven ECRI's country-specific reports² were transmitted to the governments of the countries concerned in July 1997. The reports are accordingly now made public. The following report contains ECRI's analysis and proposals concerning Belgium.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This first series of eleven reports,

¹ The report prepared by the Swiss Institute (ref: CRI (97) 38), covering relevant legislation in member States of the Council of Europe is available from ECRI's Secretariat.

² Reports on Belgium, the Czech Republic, Finland, Greece, Hungary, Iceland, Ireland, Lithuania, Luxembourg, Malta and Poland.

for which the procedure was completed by June 1997, will be followed by other series of reports on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

REPORT ON BELGIUM³

Introduction

Belgium is a parliamentary democracy with a long democratic tradition, which over the last few decades has been undergoing a complex and peaceful process of federalisation carried out in several stages through the creation of communities and regions. Belgium is now a Federal State, with three economically autonomous Regions: Region of Brussels-capital, Flanders region and Walloon region - and three linguistic Communities - Dutch-speaking, French-speaking and German-speaking. The three Communities are based mainly on linguistic, but also cultural and social differences.

Belgium is a highly industrialised country which, like most other Western European countries, has suffered from an industrial decline and other economic problems, such as the problem of unemployment, in recent years. Some groups have made an erroneous connection between these problems and the arrival and presence of immigrants. Despite the many and genuine efforts made by the authorities and other parties to curb racism and intolerance - in particular the institution of the Centre for Equal Opportunities and the Fight against Racism should be commended in this respect - there does seem to have been some rise in racism and intolerance over recent years.

Some of the key areas identified by ECRI as meriting particular attention include:

- the possibility of "fine-tuning" certain legal provisions in force;
- the particular problems faced by young people from immigrant backgrounds, particularly in large conurbations;
- the general climate of public opinion towards immigrants and refugees.

³ Note: Any development subsequent to 7 June 1996 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

I LEGAL ASPECTS⁴

A. International legal instruments

1. Belgium has ratified most of the relevant international legal instruments in the field of combating racism and intolerance. It is felt that it would be useful to consider the question of accepting Article 14 of CERD, as well as that of ratification of the UNESCO Convention against Discrimination in Education, the European Charter on Regional or Minority Languages and the Framework Convention for the Protection of National Minorities.

B. Constitutional Provisions

2. Articles 10 and 11 of the Belgian Constitution of 1994 establish the principles of equality and non-discrimination. Article 23 guarantees everyone's right to cultural and social self-fulfilment. In conformity with Article 191, any "foreigner" on Belgian territory enjoys the protection afforded to persons and property, except in cases specified by the law.
3. One possible amendment to the Constitution might be the revision of its Article 150, which, by endowing the Assize Courts with sole competence to deal with press offences, is the reason for the difficulty experienced in prosecuting the perpetrators of such offences, given the complexity of the procedure currently followed by these Courts.

C. Criminal Law Provisions

4. The law of 1981, modified in 1994, which aims at repressing certain acts of racism or xenophobia and which enables certain associations, public institutions, and other organisations having legal personality for at least five years, to bring court cases in their own name on the basis of this law, represented an important step forward in the fight against racism and intolerance in Belgium. However, some criticisms have been voiced concerning the effectiveness of this law: it has been claimed that it is hard to prove that the intention was to incite to racial hatred, as the law requires; that racist insults and racial defamation are not specifically incriminated and can therefore only be prosecuted under ordinary criminal law; that incitement to racism and xenophobia are generally committed by press-related means of communication which means that, since the Constitution specifies that press offences fall within the sole jurisdiction of the assize court, such offences are rarely prosecuted given the cumbersome nature of the relevant procedure and the adverse effects of the publicity surrounding such procedures. It is felt that the law of 1981 might be re-examined, bearing these criticisms in mind, with a view to its possible amendment. For example, the current virtual impunity enjoyed by authors of racist tracts might be remedied by introducing a more flexible procedure before the assize court or by bringing certain clearly-defined press offences before the criminal courts: these possibilities are to be examined by Parliament. It is noted that the particular issue of press offences is being considered, and it is hoped that a solution will be found in the near future.
5. A law prohibiting the vindication, minimisation or negation of the crime of genocide perpetrated during the Second World War by the Nazi regime was added in 1995 to the range of instruments to combat racism and intolerance.

⁴ A full overview of the legislation existing in Belgium in the field of combating racism and intolerance is provided in the publication CRI (95) 2 rev. prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography).

6. Persons whose rights and liberties have been violated for racist or xenophobic motives have, according to the Constitution and Laws, the right to legal or administrative recourse. However, official statistics show that the effectiveness of legal recourse is not sufficient, even if contacts between the public prosecutor's office and the Centre for Equal Opportunities and the Fight against Racism (CECLR), combined with increased awareness-raising among public prosecutors, have recently led to a greater attention being paid to allegations of violations of the anti-racist law.

D. Civil and Administrative Law Provisions

7. Article 1382 of the Civil Code permits an injured party to begin civil proceedings against the person who committed the act in question. However, in the field of racial discrimination, the enforcement of these civil law provisions is in practice very difficult and uncertain, since it is difficult to identify and prove the discriminatory act. This is an area in which ways to improve the effectiveness of legislation should be examined.

E. Specialised bodies

8. The institution of the "Centre for Equal Opportunities and the Fight against Racism" (CECLR), set up in 1993, which has wide independence in carrying out investigations and research, making proposals and recommendations to the public authorities, acting as a mediator, acting as a civil party before the courts, etc, can be cited as one example of how a specialised body of this type may be organised.

II POLICY ASPECTS

F. Reception and status of non-citizens

9. Belgium remains a country of immigration, despite the ban on traditional immigration decided upon in 1974. The acquisition of nationality can play an important role in the integration process of immigrants. Two major reforms of the Belgian nationality code in 1991 (automatic granting of nationality to third generation immigrants and quasi-automatic granting of nationality to second generation immigrants) and in 1995 (creation of a single simplified form of naturalisation), have greatly facilitated the process of acquisition of Belgian nationality and increased naturalisations. It is noted that the services dealing with naturalisation requests were strengthened for the entry into force of the new procedure on 1 January 1996.
10. The tension noticed between young second- or third-generation immigrants, and their Belgian neighbours and law enforcement bodies led to the implementation as from 1991 of a policy to improve the situation. Thus, a "multicultural" department was set up within the *gendarmerie*, measures were taken within the police force to improve the recruitment of members of minority groups, and various actions were undertaken to improve relations between the police and immigrant populations. These initiatives have already produced some results and should be continued and strengthened.

G. Education and training

- *Awareness-raising among the general public*

11. The fight against racism and intolerance cannot be successful unless public opinion is aware of the dangerous effects of these phenomena on society as a whole. Some ideologies and racist acts in Belgium, even if the latter are relatively infrequent, show

the need to raise the awareness of the general public of the dangers of racism. The most effective means of awareness-raising are education and the media, and it is therefore advisable to continue with the efforts already underway, targeting in particular young people, politicians, law enforcement officials etc.

H. Employment

12. Discrimination in employment is still a problematic area in most countries, and the situation is not improved by the current difficult economic climate. The Belgian authorities seem well aware of these problems, and have put into practice a series of measures designed to improve the equality of opportunities for immigrants in the employment field. According to the CECLR, most complaints received involve discrimination in the private sector; however there are also complaints of difficulties experienced by non-citizens (particularly non-EU nationals) in entering the public sector. In this latter respect, laws and regulations have authorised the statutory recruitment of citizens of the European Union and the contractual recruitment of non-EU citizens. It is felt that the range of measures in the field of discrimination in employment should be further developed and explored, including training and awareness-raising for potential employers and staff responsible for recruitment and management and training for members of minority groups to help them to enter the labour market.

I. Media

13. The role of the media in combating racism and intolerance is particularly important. Even if the media does not itself cause prejudice or racist attitudes, some elements of the press often contribute - as is the case in Belgium - to reinforcing them.
14. In this respect, the following recommendations published in 1994 by a Working Group of the General Association of Professional Journalists in Belgium, which conducted a survey on the information concerning allochthonous populations diffused in the written press and on the television, should be supported: 1) do not mention nationality, country of origin, ethnic affiliation, skin colour, religion or culture unless this information is relevant; 2) avoid unjustified generalisations concerning these groups; 3) avoid creating problems unnecessarily and avoid exaggeration - speak about immigrants in "normal" situations and give them a positive image; 4) a critical approach to the extreme-right and racism - name clearly the author of racist statements or opinions and their context.

J. Other areas

- *Intercommunity relations*

15. The constructive dialogue set up between the Belgian authorities and the immigrant communities, in particular the Muslim community, is welcomed. The temporary spokesbody of the latter - pending the final acknowledgement of an actual representative body - is the "Belgian Muslim Executive Council", consisting of 17 members. It is hoped that this dialogue with bodies representing the diverse immigrant communities in Belgium will be developed further in the future.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Belgian government on 13 July 1994.

ECRI accepts no responsibility for the data below.

*Main groups of non-EU nationals (figures as of 31 December 1993): Morocco: 152 600; Turkey: 90 333; Zaire: 15 537; USA: 12 425; Algeria: 11 277; Ex-Yugoslavia: 8 164; Tunisia: 7 022; Poland: 6 233; India: 4 317; China: 3 126
26 932 asylum-seekers in 1993.*

Population of Belgium: 10,130,574 (January 1995). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography).

BIBLIOGRAPHY

This bibliography lists the main sources consulted during the examination of the situation in Belgium: it does not cover all the various sources of information (media, contacts within the country, national NGOs etc) which were utilised.

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