

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Belgium

ECRI wishes to point out that the analysis contained in its third report on Belgium, is dated 27 June 2003, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Belgium was subject to a confidential dialogue with the Belgian authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Belgian authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

THIRD REPORT ON BELGIUM

Observations of the Belgian authorities

Observations of the “Service public fédéral de la justice” (Federal Justice Department)

1. Legislation, Fundamental Rights and Freedoms Department - Human Rights Department

89.

More detail needs to be given in this paragraph of the exploitation of racism and xenophobia in politics:

A court case involving the interpretation of Article 150 of the Constitution as amended on 7 May 1999 is currently pending before the Court of Cassation.

Prior to the amendment, the Assize Courts had jurisdiction, under Article 150, for press and political offences. As the relevant unwieldy process involved a meeting of the Assize Court, this meant de facto impunity for such offences.

Article 150 was therefore amended in order to prevent that impunity. An exception was introduced in 1999 to the Assize Court's jurisdiction over press offences of a racist nature. Such offences are thus subject to trial by the criminal court.

However, in the case which is currently pending before the Court of Cassation, the courts of first instance and appeal ruled that the case was a matter for the Assize Court, and not for the criminal court. The parties involved were non-profit making organisations responsible for Vlaams Blok propaganda. Thus the view was taken that the offence was a political one, so still within the jurisdiction of the Assize Court.

It should be noted that this interpretation conflicts completely with the long-established and constant case-law of the Court of Cassation, which interprets the concept of the political offence in a highly restrictive manner. It requires the offence to have both a political motive and to have had an actual effect on the political system of the state. The parties claiming damages, the Crown Counsel's Department and the Centre for Equal Opportunities therefore decided to appeal to the Court of Cassation.

- Finally, it should be noted that a number of issues raised by the ECRI are taken up in the government agreement suggesting action to be taken in response (cf below).

2. Police Department

14, 18.

It is expressly stated in the training programme for judges and judicial service trainees on combating racism and discrimination that the requisite attention will be given to the new ideas underlying the recent legislative amendments (law of 20 January 2003 and law of 25 February 2003).

54.

In the comments on this specific point, the report states that progress is currently being recorded because the statistical instruments of the Federal Justice Department make it possible to collect qualitative data at the various levels of the criminal justice system. No express reference is made to the statistical analysis of the detection and prosecution of racism in Belgium.

The statistical analysts took 19 February 2003 as the cut-off date for their memorandum. This contains a detailed examination of "the way in which the prosecuting authorities, in their prosecuting function, and the criminal courts, in their function of penalising criminal acts, play their role in respect of racism". Attention is then given to the large numbers of racist cases in the criminal justice system (on the basis of each initial report or each complaint made to the prosecuting authorities, to their processing, to outflow (the progress of cases and, where applicable, the decisions already taken by the prosecuting authorities), and, finally, to the persons tried for racism.

72.

Explicit reference may be made in this sphere to the activities of the Equal Opportunities Unit in the Internal Relations Directorate of the Directorate General of Human Resources of the Federal Police.

Hitherto, the Unit's activities consisted mainly of attracting the largest possible number of Belgians of foreign origin to serve in the police (ie any naturalised person with at least one parent of foreign origin; Belgians of either European or non-European origin). A second task that will be further developed in the future is the integration of different cultures, with members of the police having their attention drawn to the advantages of an intercultural society.

The Directorate General of Human Resources was awarded the Turkish Union of Belgium's integration prize in April 2002 for its dynamic work in the context of its diversity policy. This prize was awarded for the efforts made to recruit Belgians of Turkish origin to the police and to integrate them.

Furthermore, several local police areas are also engaged in diversity initiatives. The Diversity Unit of the Antwerp local police force is carrying out awareness-raising activities relating to diversity (aimed at five target groups, including immigrants). These are initially internal awareness campaigns, but the intention is also to send a signal to citizens.

Government agreement

Most of the problem areas singled out by ECRI are covered by the federal government agreement:

- a. The government will see to it that an intercultural society develops and will encourage integration and stimulate emancipation;*
- b. All the necessary attention will be given to improving the reception of new migrants, both adult and minor;*
- c. Racism and discrimination will be combated as effectively as possible;*
- d. The fight against discrimination based on candidates' origin in the employment sphere will be stepped up;*
- e. The government will endeavour to implement a humane and realistic asylum policy;*
- f. An open dialogue will foster a better organisation of Islam.*

Observations of the Federal Department of the Interior

1. Integrated Police Department - Administrative and Technical Secretariat

70.

It has to be said, where the recommendation that complainants be informed by the police is concerned, that a specific procedure for centralisation and analysis of complaints (described in paragraph 2.1.4 of the document at appendix I) has been introduced for the federal police, the same central service systematically providing complainants with information about the follow-up of their complaints by the department or structure complained of.

72.

The “Equality of Opportunities and Diversity” Department of the Directorate General of Human Resources has, since April 2001, been responsible for devising and coordinating measures to promote diversity within the police. On the basis of a multidisciplinary approach and of an open attitude to all the stakeholders, a programme of activities, both internal (the police as an employer) and external (the police as a public service), has been developed so as to create a police culture which encompasses diversity.

The efforts made, through targeted information and specific support, to promote the recruitment by the police of Belgian nationals of foreign origin are now backed up by the particular attention paid to their subsequent integration with a view to preventing any possible workplace discrimination.

In the same spirit, the previous policy against sexual harassment has been broadened to include violence and psychological harassment, so that an integrated and comprehensive policy is pursued in this area as well.

2. Directorate General of the Aliens Office

33.

The Aliens Office, like the government, has clear information about the number of aliens detained with a view to deportation and the number of persons effectively removed from Belgian territory.

Monthly statistics and annual reports for each centre are provided to non-governmental organisations on request.

35.

Asylum-seekers are not held purely and simply because they have requested asylum.

The law on aliens is strict about the circumstances in which an asylum-seeker may be held:

- Refugees who present themselves at the border without the requisite documents for lawful entry in to Belgian territory and who make their asylum application at the border may be detained while the admissibility of their application is being considered (Article 74/5 of the law of 15 December 1980);*
- The law also allows refugee asylum-seekers in respect of whom Belgium considers that it does not have competence in pursuance of the Convention Implementing the Schengen Agreement to be held for as long as is necessary for the state deemed competent to issue a laissez-passer (Article 51/5);*
- Refugee applicants who submit their application within Belgian territory and whose urgent application is under examination may be detained if the Minister considers that exceptionally serious circumstances justify that detention (Article 63/5);*

- Like any alien in an unlawful situation, refugee asylum-seekers whose application has been rejected may be detained for the purposes of deportation from Belgian territory (Article 74/6).

36.

The procedure and operating rules of the commission and the permanent secretariat referred to in Article 130 of the royal decree of 2 August 2002, which sets down the arrangements and operating rules for closed detention centres, were laid down in a ministerial decree of 23 September 2003.

The commission responsible for dealing with individual complaints by persons held in closed detention centres started work following publication of the ministerial decree appointing its members (Moniteur belge, 28 October 2003).

38.

Those asylum seekers whose applications have been deemed inadmissible by the Aliens Office may submit an urgent appeal with suspensive effect to the CGRA (General Commissariat for Refugees and Stateless Persons).

If the CGRA rejects such an appeal, on the grounds that an asylum application is ill-founded, an appeal with suspensive effect may be lodged with the CPRR (Permanent Commission for Refugee Appeals).

If an alien lodges an extremely urgent appeal to the Conseil d'Etat, the policy (as instructed by the Minister) is not to execute the measure decided against him or her until such time as the Conseil d'Etat has taken its decision.

40.

Articles 20 and 21 of the law of 15 December 1980 already provide for certain conditions and for the family situation to be taken into account.

When a ministerial decree is adopted to return a person to his or her country of origin, or when a royal decree on expulsion is adopted, an attempt is always made to strike a fair balance between the alien's right to respect for family life and the protection of public safety and national security, in accordance with the case-law of the European Court of Human Rights relating to Article 8 of the European Convention on Human Rights.

The possibility of amending and improving the relevant statutory provisions is nevertheless under consideration.

It should be noted that no royal decrees on expulsion were adopted in 2003.

46.

Belgium does not envisage a collective decision to regularise the residence of persons whose asylum applications have been under examination for several years. Thus no new regularisation campaign is planned. Applications will therefore be examined on a case-by-case basis.

47.

Aliens whose asylum applications are being examined for admissibility by the responsible Belgian authority retain the possibility of lodging an appeal with suspensive effect to an independent quasi-judicial authority. This guarantee continues, even if the admissibility of their applications is being examined under an accelerated procedure.

48.

Where subsidiary protection is concerned, the Belgian authorities are currently awaiting approval of the Council directive laying down minimum standards for the qualification and status of third-country nationals and stateless persons as refugees, or as persons who otherwise need international protection.