

# ECRI REPORT ON BELGIUM

(sixth monitoring cycle)



**Adopted on 12 December 2019**

Published on 18 March 2020



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## FOREWORD

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The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance. It is composed of independent and impartial members 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 monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI’s country monitoring deals with all member States on an equal footing. The work takes place in five-year cycles. The reports of the first cycle were completed at the end of 1998, those of the second cycle at the end of 2002, those of the third cycle at the end of 2007, those of the fourth cycle at the beginning of 2014, and those of the fifth cycle at the end of 2019. Work on the sixth cycle reports started at the end of 2018.

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

ECRI’s reports are not the result of inquiries or testimonial evidence. They are, however, analyses based on information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both 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 ECRI report.

The sixth cycle country reports focus on three topics common to all member States: (1) Effective equality and access to rights, (2) Hate speech and hate-motivated violence, and (3) Integration and inclusion, as well as a number of topics specific to each one of them.

In the framework of the sixth 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 responsibility. It covers the situation up to 20 June 2019; except where expressly indicated, developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**



## SUMMARY<sup>1</sup>

### **Since the adoption of ECRI's fifth report on Belgium on 4 December 2013, progress has been made in a number of areas.**

As a result of its interfederal status, since 2014 Unia, or the Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination, has been able to provide access to services within its remit to every individual in the country regardless of the legislation that applies to them.

Interinstitutional co-operation and a clear apportionment of tasks between Unia, the Federal Centre with responsibility for migration (Myria) and the Institute for the Equality of Women and Men (IEFH) enables these institutions to perform the tasks outlined in their statutes in a co-ordinated and hence an efficient manner.

Certain "firewall" mechanisms have been set up to prevent public and private social service providers from sharing personal data on irregularly present migrants for the purposes of immigration control. As a result, migrants can enjoy access to fundamental rights such as education and health care without the fear of being reported and deported.

Belgian legislation guarantees respect for most aspects of the life of LGBTI persons on an equal footing with the rest of the population.

Belgium has several schemes to thwart hate speech by developing a counter-narrative and to combat hate on social networks proactively.

The authorities describe good practices in relation to the fight against hate-motivated violence. In addition, General Circular No. COL 13/2013 is considered an appropriate instrument through which to develop a dedicated policy in this area.

The federated institutions and certain cities are committed to providing free, multifaceted and individualised integration assistance for migrants, and grants are awarded to encourage local authorities to fit out transit sites for Travellers.

The process of assessing the application and effectiveness of the legislation against racism and discrimination has yielded an initial result in

the form of a report which clearly indicates the steps to be taken to improve the legislation and its application.

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

To date, there is no independent body with any competence on questions relating to discrimination on the ground of language despite the fact that the establishment of such a body is provided for by the relevant legislation.

In the education sphere, most teachers feel helpless or abandoned where it comes to managing diversity in the classroom; while projects to promote equality and human rights do exist, they are mostly one-off schemes which depend on the goodwill of education teams or are instigated by civil society; more particularly, there is a general lack of any kind of preventive approach towards harassment in schools.

The question of wearing headscarves at school is the focus of intense debate in Belgian society. In a federal state like Belgium, the regulations provide for a highly complex apportionment of powers between the Flemish-, French- and German-speaking communities.

It is still difficult for irregularly present persons who have been the victims of crimes to go to the police to file a complaint without running the risk of being arrested for immigration control purposes, and this is a breach of the principle of non-criminalisation of victims.

The system to collect data on hate speech and hate-motivated violence does not give a sufficiently reliable picture of the specific problems affecting different groups of victims.

Integration policies which focus on acquiring specific skills, in particular language skills, and familiarisation with the host society may not lead to the changes sought if they do not also promote cultural diversity in the population as a whole and do not seek to combat discrimination against migrants.

Because of the insufficient numbers of transit or long-term sites, Travellers are obliged to move around Belgium without stopping. This group is becoming increasingly marginalised and impoverished.

<sup>1</sup> For terminology, see the ECRI glossary <https://rm.coe.int/ecri-glossary/1680934974>.

The Committee to Evaluate Federal Anti-Discrimination Legislation needs, in particular, to be given suitable resources to carry out its duties in an appropriate and regular manner.

**In this report ECRI calls on the Belgian authorities to take additional measures in a number of areas and makes a series of recommendations, including the following:**

The Belgian authorities should designate or set up promptly an equality body with responsibility for discrimination on the ground of language.

Schools should include human rights education in their curricula and ensure that in their educational activities, they respect diversity and promote equal treatment. Teachers should be trained to prevent all manifestations of racism, racial discrimination, intolerance and harassment at school.

Decisions taken by schools regarding the wearing of religious symbols or clothing at school and in higher education establishments should respect the principle of lawfulness and be free of any form of discrimination.

No public or private service provider should be required to report persons it suspects of being irregularly present for the purposes of immigration control, the aim being to prevent any obstacles to the effective enjoyment by these persons of their fundamental rights.\*

A common coding system needs to be set up for police and public prosecutors to refine the collection of data on racist and homophobic/transphobic acts so as to be able to access reliable specific data on hate speech and violence motivated by hate.

Integration courses for immigrants should be strengthened by adding tools to promote cultural diversity and combat discrimination, thus making integration policies more effective by encouraging equality and intercultural dialogue.

An integrated approach to the issue of Travellers' access to housing should be adopted, authorising the federated authorities to take substitute action if and when local authorities fail to make transit sites available.

The Committee to Evaluate Federal Anti-Discrimination Legislation should be given adequate resources to carry out its duties in an appropriate manner.\*

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\* The recommendations in this paragraph 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. EFFECTIVE EQUALITY AND ACCESS TO RIGHTS

#### A. Equality bodies<sup>1</sup>

1. The Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination (Unia), which was set up in 2014,<sup>2</sup> is one of the two bodies which have inherited the powers of the former Centre for Equal Opportunities and Opposition to Racism, along with Myria, which is the federal body responsible for migration. The co-operation agreement between Unia and Myria now enables these independent institutions to carry out the tasks provided for in their statutes in a co-ordinated and hence more effective manner. Apart from the powers concerning discrimination on the ground of language and powers of investigation to obtain evidence,<sup>3</sup> Unia has all the powers recommended by ECRI<sup>4</sup> in paragraphs 13 and 14 of General Policy Recommendation (GPR) No. 2 on equality bodies. In 2016<sup>5</sup> ECRI already took a positive view of the independence and effectiveness<sup>6</sup> of Unia's work thanks to its inter-federal status and is pleased to be able to reiterate these findings.<sup>7</sup>
2. The Institute for the Equality of Women and Men (IEFH) is a public federal institution set up by a law of 16 December 2002,<sup>8</sup> tasked with guaranteeing and promoting gender equality and combating all forms of discrimination and inequality on the ground of sex, sex change, gender identity or gender expression.<sup>9</sup> As is the case with Unia, the IEFH has the power to examine and follow up on complaints, play the role of a mediator or bring cases to court. It may not rule on complaints, however, and nor does it have any investigative powers in order to collect evidence.
3. In its previous report on Belgium,<sup>10</sup> ECRI stressed that Article 5 of the aforementioned law provides that the IEFH 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 the light of the foregoing, ECRI considers that the IEFH meets neither the Paris Principles<sup>11</sup> nor the standards of independence outlined in §§ 2 and 22 of GPR No. 2 on equality bodies. In reply to these objections, the IEFH argues that the legislation makes a clear distinction between the tasks described in Article 5 of the Law of 2002, which are

<sup>1</sup> See ECRI glossary <https://rm.coe.int/ecri-glossary/1680934974>.

<sup>2</sup> Co-operation Agreement of 12 June 2013 between the Federal Authority, the Regions and Communities for creating an Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination in the form of a joint institution, within the meaning of Article 92bis of the Special Institutional Reform Act of 8 August 1980. *Moniteur Belge (M.B.)* (Belgian Official Gazette), 5 March 2014 – hereinafter: "co-operation agreement".

<sup>3</sup> Articles 3 to 6 of the co-operation agreement set out Unia's powers.

<sup>4</sup> Within the meaning of paragraph 21 of [ECRI General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level](#), as adopted on 13 June 1997 and revised on 7 December 2017.

<sup>5</sup> ECRI 2016: § 2, [Conclusions](#).

<sup>6</sup> Unia also has 14 physical contact points (contactpunten) in the main Flemish cities and four in the Walloon region.

<sup>7</sup> This analysis does not take into account the Flemish government's intention, announced on 30 September 2019, to end its cooperation within Unia with a view to creating a new institution with the powers of Unia concerning the Flemish Community and Region and those of the "Genderkamer" (the Flemish gender discrimination ombudsperson).

<https://www.vlaanderen.be/publicaties/regeerakkoord-van-de-vlaamse-regering-2019-2024>.

<sup>8</sup> Law of 16 December 2002 establishing the Institute for the Equality of Women and Men, M.B. 31 December 2002.

<sup>9</sup> Given that discrimination on the ground of sexual orientation (for LGB persons) and discrimination on the ground of gender (for transgender persons) are dealt with in two separate laws, Unia focuses on the ground of sexual orientation and the IEFH on the ground of gender.

<sup>10</sup> ECRI 2014: § 151, <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/belgium>.

<sup>11</sup> Principles relating to the Status of Human Rights National Institutions adopted under United Nations General Assembly Resolution 48/134 of 20 December 1993.

exercised under the authority of the minister responsible for gender equality policy, and the tasks carried out under Article 4 of the same law, which include assistance for victims, research work and support, and issuing recommendations and opinions to the authorities. For the latter tasks, the minister may only potentially issue positive injunctions. According to the IEFH, by restricting the minister's power to adopting such injunctions, the lawmakers sought to guarantee the Institute's independence.<sup>12</sup>

4. Although ECRI considers that the IEFH enjoys *de facto* independence with regard to a large number of its powers, it still comes under the authority of the relevant minister for activities as important as those described in Article 5. It is for this reason that ECRI believes that new legislation guaranteeing the full independence of the Institute in law and in practice and in all its functions would be a preferable response to the recommendations made in §§ 2 and 22 et seq. of GPR No. 2.
5. It should also be noted that the legislation on the IEFH does not take the same inter-federal approach as that adopted for Unia, instead setting up co-operation agreements with the federated entities. However, in the Flemish Community and the Flemish Region, a decree of 2015 established the position of gender discrimination ombudsperson, or *Genderkamer*,<sup>13</sup> at the Flemish ombudsperson's office.<sup>14</sup> The *Genderkamer* is an independent authority, dealing with complaints of gender-related discrimination (on grounds of sex, gender identity and gender expression) in the policy areas covered by the Flemish government (education, housing, sport, health care, etc.) both in the public and in the private sector.
6. In view of this somewhat complex array of independent bodies responsible for combating discrimination and promoting equality at various levels (inter-federal, federal and federate), ECRI emphasises the importance of inter-institutional co-ordination and a well-defined distribution of tasks, in accordance with the co-operation agreement signed by Unia and Myria. ECRI wonders whether a similar type of co-operation agreement could not be drawn up between the IEFH and the *Genderkamer*.
7. A law was adopted in April 2019 which provides for the establishment of a human rights institution, the Federal Institute for the Protection and the Promotion of Human Rights.<sup>15</sup> It is not clear from the law whether this will be a national human rights institution in line with the Paris Principles or a global body (an umbrella human rights body), which would co-ordinate the work of independent institutions.<sup>16</sup> In either case, ECRI considers it essential that the sharing of tasks between this new institution and those already existing be clearly defined.<sup>17</sup>
8. To date, there is no independent body with any competence on questions relating to discrimination on the ground of language.<sup>18</sup> Although no public body in Belgium has been assigned any specific powers in this area, the authorities claim that citizens may lodge a complaint with the relevant administrative authority about infringements of the legislation on languages. In ECRI's view the danger of political exploitation of tensions between language communities calls for the implementation of Article 29 of the Federal Anti-Discrimination Act (Anti-Discrimination Act),<sup>19</sup> which provides for

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<sup>12</sup> Bill for the establishment of the Institute for the Equality of Women and Men, Explanatory Memorandum, 2001-2002 parliamentary session, No. 50-1919/001, p. 5.

<sup>13</sup> <http://www.vlaamseombudsdienst.be/ombs/index.html>.

<sup>14</sup> Decree of 17 July 2015 amending the Decree of 7 July 1998 establishing the Flemish ombudsperson's office, M.B., 31 August 2015.

<sup>15</sup> House of Representatives of Belgium, doc. 54 3670/012 of 25 April 2019 <http://www.lachambre.be/FLWB/PDF/54/3670/54K3670012.pdf>.

<sup>16</sup> See, on this subject, §§ 7 and 8 of GPR No. 2.

<sup>17</sup> See, on this subject, § 9 of GPR No. 2.

<sup>18</sup> See, on this subject, § 4b of GPR No. 2.

<sup>19</sup> *Loi tendant à lutter contre certaines formes de discrimination*, 10 Mai 2007.

a body to be set up to deal with discrimination on the ground of language. The proposals to establish an interfederal Unia failed to assign this body the power to deal with such discrimination. ECRI sees this as a lost opportunity.

9. ECRI reiterates its recommendation that the Belgian authorities designate or set up promptly an equality body with responsibility for discrimination on the ground of language and give this body similar powers and independence to the Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination (Unia).

### **B. Inclusive education**

10. This section deals with education policies whose aims are to combat exclusion and marginalisation through an inclusive education devised for all, and to create a tolerant multicultural society in accordance with sections II and III of ECRI's GPR No. 10.<sup>20</sup>
11. In Belgium, human rights education laws and policies at the various levels of education and in basic and in-service teacher training<sup>21</sup> are not standardised because the subject falls within the remit of various federated authorities. As to higher education, promoting equality and combating racism and intolerance are left to the discretion of any education establishments which organise such activities. It is difficult therefore to give a comprehensive overview of the various educational measures, projects and activities in this sphere.
12. For example, the Flemish Community has a general regulatory framework to combat racism and discrimination. The authorities have also pointed out that there is a framework of final interdisciplinary objectives concerning citizenship in which human rights are included; these final objectives are a compulsory part of the curricula. In the French Community, the Decree on measures to combat some forms of discrimination<sup>22</sup> applies to education (primary, secondary, higher, further, etc.). The Brussels-Capital Region has set up regional school integration schemes through its 19 municipalities. Provision has been made for schools and local associations to assist and provide school support for young people with problems. At the level of the French Community Commission (COCOF), several measures have been taken including the Citizen School Project,<sup>23</sup> preventive and restorative practices, co-operation with civil society on approaches to pupil guidance, the vocational integration project, the school integration scheme for newly arrived pupils (DASPA) and the internal school integration scheme (DIAS).
13. Bearing in mind the wide range of regulations, laws and policies in this field, ECRI considers that all the authorities involved should ensure that schools include human rights education, measures to combat racism and discrimination, respect for diversity and promotion of equal treatment in their educational activities and their curricula.
14. In 2009,<sup>24</sup> ECRI recommended that the Belgian authorities pursue and step up their efforts to ensure that all children of foreign background are afforded equal opportunities in access to education. ECRI recommended in particular that they continue to take steps to promote a social mix in state schools and place greater emphasis 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

<sup>20</sup> ECRI General Policy Recommendation N°10 on combating racism and racial discrimination in and through school education.

<sup>21</sup> This section relates to education for all children and young people. Specific measures for the education of migrants and Roma pupils are dealt with under the heading of integration and inclusion.

<sup>22</sup> French Community Decree of 12 December 2008 on measures to combat some forms of discrimination, M.B. 13 January 2009.

<sup>23</sup> The Citizen School Project is a cross-cutting project being run in one of the schools that falls within the remit of COCOF (the Redouté-Peiffer Institute). The project involves all the members of the education team (teachers, youth workers, school management teams and other staff members). The idea is to return control over their lives at school to pupils and to restore them to the centre of the educational process by improving the learning environment.

<sup>24</sup> ECRI 2009a, <https://rm.coe.int/fourth-report-on-belgium/16808b55a8>.

Belgian society on the other. In its 2012 Conclusions,<sup>25</sup> ECRI considered that this recommendation had not been implemented.

15. The 2018 Education Diversity Barometer shows that there has been no improvement in the situation in this area either in the Flemish Community or in the French-speaking Community, and that there are major disparities in terms of performance according to pupils' socio-economic backgrounds, together with selection biases according to ethnic or social background and gender biases. This Barometer also shows us that most teachers feel helpless or abandoned when it comes to managing diversity in the classroom.<sup>26</sup>
16. In the light of this situation, it is vital for pupil diversity to be a major focus of attention in both basic and in-service teacher training. Schools must also do more to address matters of harassment, particularly harassment of pupils from minority groups, who are the most common victims; this is especially the case with LGBT pupils, as shown by a study commissioned by the NGO Çavaria.<sup>27</sup>
17. In its report published in 2014, ECRI recommended that the authorities implement at all levels, whether in the context of the Interfederal Action Plan against Homophobia and Transphobia or at federated entity level, measures to promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity. In particular, these measures should provide all pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.
18. The authorities have notified ECRI of a number of measures adopted since its last report.<sup>28</sup> However, while projects to promote equality and combat racism and homophobia or transphobia do exist, they are mostly one-off schemes which depend on the goodwill of education teams or are instigated by civil society. More particularly, there is a general lack of any kind of preventive approach towards harassment in schools.
19. In accordance with its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, ECRI recommends that the authorities ensure that schools include human rights education in their curricula; ensure that in their educational activities, they respect diversity and promote equal treatment, particularly through codes of conduct for pupils and staff; and ensure that teachers are trained to prevent all manifestations of racism, racial discrimination, intolerance and harassment at school, and to react promptly and efficiently when faced with such problems.
20. ECRI notes that the question of wearing headscarves at school is the focus of intense debate in Belgian society. In a federal state like Belgium, the regulations provide for a highly complex apportionment of powers at the level of the communities. In ECRI's view, this should not prevent the principle of neutrality from being clarified further with a view to making the regulations more uniform. The general ban on wearing headscarves in higher education establishments has been condemned by the Council of State, which has ruled that such a ban is possible in such establishments but must be justified by the specific context of the establishment, not by a directive to all higher education establishments. According to the information ECRI has received, there has not yet been any follow-up to this judgment, as many higher education and social advancement establishments belonging to the various education networks (official, subsidised independent, confessional or non-confessional) have internal regulations which prohibit their

<sup>25</sup> ECRI 2012a, <https://rm.coe.int/interim-follow-up-conclusions-on-belgium-4th-monitoring-cycle/16808b55c0>

<sup>26</sup> UNIA 2018a, [link](#)

<sup>27</sup> Cavaria 2018, <https://www.cavaria.be/>.

<sup>28</sup> See, for example, the website [www.schooluitdekast.be](http://www.schooluitdekast.be)

students from wearing religious symbols. Two legal cases concerning the wearing of headscarves are still under way with some universities.<sup>29</sup>

21. ECRI recommends that the Belgian authorities take all possible measures to ensure that decisions taken by schools regarding the wearing of religious symbols or clothing at school and in higher education establishments respect the principle of lawfulness and are free of any form of discrimination. Particularly when faced with adult students, the principle of neutral education should be compatible with their freedom to express their religious beliefs.

### C. Irregularly present migrants

22. There are no official data on the number of irregularly present migrants in Belgium because the Immigration Office only has figures concerning orders to leave the country or arrests of irregularly present migrants by the police. According to the federation of associations taking co-ordinated action to help refugees and foreigners, CIRÉ,<sup>30</sup> there would be some one million legally resident foreigners in Belgium, of whom two-thirds Europeans, and about 100 000 to 150 000 “undocumented” migrants (amounting to about 1% of the population).
23. In GPR No. 16,<sup>31</sup> ECRI recommends that governments set up “firewalls” to prevent public and private social service providers from sharing personal data on irregularly present migrants for the purposes of immigration control and enforcement. As a result, it should be possible for migrants to enjoy their rights without fear of being reported to the immigration authorities. While firewall mechanisms have been set up for access to certain fundamental rights such as education for minors or health care and housing, there is now an urgent need to simplify and harmonise procedures for users and service providers and to keep all of the stakeholders better informed. In some cases it is not so simple for irregularly present migrants to enjoy their rights without running the risk of setting off immigration control and expulsion procedures.
24. A law of 2017 establishes the concept of fraudulent acknowledgment of paternity and is intended to counter the phenomenon of collusive acknowledgment of children, which is also referred to as “babies for documents” (*bébés-papiers*). According to the local authorities there has been a sharp rise in this phenomenon and the law of 2017 is designed to counter it, the aim being not to prevent acknowledgment by foreigners but to ensure that the legislation on the residence of foreigners is not manipulated. However, the Council of State has criticised the legislation for failing to take account of the child’s best interests. According to Myria, the law considerably complicates the acknowledgment of children born out of wedlock when one of the parents is unlawfully resident (requiring documents which it is sometimes difficult to get from the foreigner’s country of origin and a long police investigation, which can sometimes last up to eight months). No protection against expulsion of the unlawfully resident parent or child seems to be afforded during investigations. It has also been pointed out that no specific remedy appears to have been put in place if acknowledgment is refused.<sup>32</sup> There is also a risk that the law will result in a difference in treatment between children born in Belgium to lawfully resident parents and children born in Belgium to parents one of whom is unlawfully resident.

<sup>29</sup> See also a case brought before the Constitutional Court on wearing headscarves at a higher education establishment. The preliminary question put to the court related to Article 3 of the French Community Decree of 31 March 1994 defining the Community’s neutral educational approach and was put to it by the Urgent Applications Division of the French-Speaking Brussels Court of First Instance (No. 6927). In this connection, see also the case-law of the European Court of Human Rights on “Wearing of religious symbols or clothing at school and at university”: [https://www.echr.coe.int/Documents/FS\\_Religious\\_Symbols\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Religious_Symbols_ENG.pdf).

<sup>30</sup> [https://www.smes.be/IMG/pdf/20180613\\_-\\_presentation\\_cire\\_table\\_e\\_changes.pdf](https://www.smes.be/IMG/pdf/20180613_-_presentation_cire_table_e_changes.pdf).

<sup>31</sup> ECRI 2016b, [ECRI General Policy Recommendation No. 16, adopted on 16 March 2016, on safeguarding irregularly present migrants from discrimination](#).

<sup>32</sup> On the subject of the Law on fraudulent acknowledgment, see Myria 2017a: 4, [link](#).



25. ECRI also notes the failure to make a clear distinction between the authorities in charge of implementing immigration control and those tasked with providing public services, particularly in the spheres of labour protection and justice. In the area of legal aid, a special measure has been taken to guarantee access to the courts for irregularly present migrants,<sup>33</sup> even though the reform of the legal aid system in 2017 did away with the irrebuttable presumption of the state of need of this category of migrants in some circumstances.<sup>34</sup> Clearly, however, it is still problematic for irregularly present persons who have been the victims of offences to exercise their right to file a complaint with the police without running the risk of being arrested. Despite the fact that the Immigration Office has given an informal undertaking not to detain foreigners who go to the police spontaneously to report an offence,<sup>35</sup> the requirement not to discriminate on the basis of residence status, which is notably imposed by the EU victims' rights directive (2012/29/EU), has not been explicitly transposed into Belgian legislation.
26. The right of unlawfully resident workers to recover back pay owed by their employers, where necessary through the courts, also meets obstacles in practice. Since the adoption of an amendment to the Criminal Code in 2016, anyone working illegally is considered to have committed an offence punishable by an administrative fine, and this represents a major obstacle to the recovery of wages and a breach of the principle of non-criminalisation of victims.<sup>36</sup> ECRI fears that ultimately this situation will lead to a distinction between two categories of worker: on the one hand, regularly present workers, whose rights "deserve" to be respected and on the other, all the "other workers", whose irregular status overrides respect for their workers' rights. Myria and some organisations representing workers and employers are entitled to appear in court to support victims. However, the implementing Royal Decree which was supposed to assign this power to other civil society bodies has not yet been adopted.
27. In accordance with its General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination, ECRI recommends that the authorities ensure that no public or private service provider is required to report persons it suspects of being irregularly present for the purposes of immigration control and enforcement. This applies in particular to providers in the areas of labour protection and justice, the aim being to prevent any obstacles to the effective enjoyment by unlawfully resident workers of their right to recover back pay owed by their employers and to have full access to complaint mechanisms.

#### D. LGBTI equality<sup>37</sup>

28. There are no exhaustive data on the lesbian, gay, bisexual, transgender and intersex (LGBTI) population in Belgium. Nonetheless, a large amount of information on LGBTI people is available as a result of certain measures taken by the country's authorities at various levels, which have yielded surveys and studies.<sup>38</sup> Such initiatives are examples of **good practices** in collecting and analysing data on the experience and perception of discrimination and racism from the point of view of potential victims, in accordance with ECRI GPR No. 4.<sup>39</sup>

<sup>33</sup> Legal aid consists in wholly or partly exempting those who do not have the necessary resources to cover the costs of legal proceedings from paying such costs.

<sup>34</sup> See, on this subject Myria 2017a: 37.

<sup>35</sup> See on this subject Myria 2016a: 28-31, [https://www.myria.be/files/Etre\\_etrangere\\_en\\_2016-final.pdf](https://www.myria.be/files/Etre_etrangere_en_2016-final.pdf).

<sup>36</sup> See on this subject Myria 2016b:192, [link](#)

<sup>37</sup> See ECRI glossary <https://rm.coe.int/ecri-glossary/1680934974>.

<sup>38</sup> Inter-federal Action Plan to Combat Discrimination and Violence against LGBTI persons 2018-2019, pp. 8-15.

<sup>39</sup> ECRI 1998b, [ECRI General Policy Recommendation No. 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims](#).

29. ECRI previously recommended that the authorities amend the anti-discrimination legislation at federal and federated entity level to take account of sexual orientation and gender identity. Most of the legislation at federal, regional and community level has since been amended to assimilate discrimination on the ground of gender identity or gender expression with discrimination on the ground of sex.<sup>40</sup> These two grounds have been introduced into the legislation on preventing risks at work<sup>41</sup> and in the decree of the Walloon Region of 2 May 2019 amending the decree of 6 November 2008 on combating some forms of discrimination. The German-speaking Community is preparing to amend its decree on the subject<sup>42</sup> in response to the recommendations.
30. Since 1 January 2015, Belgian co-mothers have been able to establish affiliation with their child without having to go through adoption. Since this change, homosexual couples have been treated in the same way as heterosexual ones.<sup>43</sup> The new Law of 25 June 2017 on transgender persons came into force on 1 January 2018.<sup>44</sup> Since this date, transgender persons are no longer required to satisfy certain medical conditions to officially amend their registered sex and first name. The new Law of 11 August 2017 setting out various health-related provisions lifted the life ban on blood donation for men who have had sexual relations with men.<sup>45</sup> Lastly, in June 2019 the Constitutional Court deemed unconstitutional certain aspects of the law of 25 June 2017 which amended the arrangements relating to transgender persons as regards mentioning a change in the person's registered gender in civil status documents.<sup>46</sup>
31. ECRI welcomes the fact that Belgian legislation guarantees respect for most aspects of the life of LGBTI persons on an equal footing with the rest of the population.
32. In May 2018, the third Interfederal Action Plan to Combat Discrimination and Violence against LGBTI persons was launched.<sup>47</sup> The plan covers practically all areas of family life and access to fundamental rights. It was co-ordinated at the level of the federal government. The Brussels-Capital Region, the Flemish Community, the Flemish Region and the French-speaking Community also have their own LGBTI action plans or anti-discrimination action plans which take account of specific aspects relating to LGBTI persons. Assistance for young people constitutes a major focus of these action plans. The interfederal LGBTI plan (covering measures at the federal level) and the horizontal action plan for equality of the Flemish Community and Region also include measures concerning intersex persons. As part of these plans, the federal state and the federated entities subsidise several civil society organisations which deal with LGBTI issues.

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<sup>40</sup> [Decree of 28 March 2014 amending the Decree of 13 July 2007 promoting more balanced participation by women and men in the consultative and administrative bodies of the Flemish authority and the Decree of 10 July 2008 establishing the framework for Flemish policy on equal opportunities and treatment](#), M.B. 1 April 2014; [Law of 22 May 2014 amending the Law of 10 May 2007 on combating discrimination between women and men with a view to extending it to gender identity and gender expression](#), M.B. 24 July 2014; [Decree of 13 November 2015 amending the Decree of 12 December 2008 on combating some forms of discrimination](#), M.B. 8 December 2015; [Order of 5 October 2017 on combating some forms of discrimination and promoting equal treatment](#), M.B. 19 October 2017.

<sup>41</sup> [Law of 28 February 2014 supplementing the Law of 4 August 1996 on the well-being of workers when performing their work with regard to preventing psychosocial risks at work including, in particular, violence and psychological or sexual harassment at work, and the Law of 28 March 2014 amending the Judicial Code](#), M.B. 28 April 2014, and the [Law of 4 August 1996 on the well-being of workers when performing their work with regard to judicial proceedings](#), M.B. 18 September 1996.

<sup>42</sup> [Decree of the German-speaking Community of 19 March 2012 on combating some forms of discrimination](#), M.B. 5 May 2012.

<sup>43</sup> [Law of 5 May 2014 on the establishment of the filiation of co-parents](#), M.B. 7 July 2014.

<sup>44</sup> [Law of 25 June 2017 on the reform of the rules concerning transgender persons with regard to the mention of a change in the registration of a person's sex in civil status documents and its effects](#), M.B. 10 July 2017.

<sup>45</sup> [Article 8 of the Law of 11 August 2017 setting out various health-related provisions](#), M.B. 28 August 2017.

<sup>46</sup> Judgment No.99/2019 of 19 June 2019.

<sup>47</sup> Inter-federal Action Plan to Combat Discrimination and Violence against LGBTI persons 2018-2019.

33. With regard to assistance for young people, the plan provides for the preparation of a brochure for children between the ages of 10 and 12 on the subject of LGB and T (Flemish Community and Flemish Region), the setting up of activities and instruments for young people and quality labels for bodies providing education on sex life and love life (French Community) and the mobilisation of social housing and accommodation centre managers to pay particular attention to young people's needs. The federal state and the Flemish Community have also conducted two studies on intersex persons and in the wake of these, campaigns have been launched to improve the information available to intersex persons, including the establishment of an information platform (Flemish Community), the preparation of two information brochures and the establishment of feedback groups (federal state).
34. In the employment sphere, various activities were planned including training for labour inspectors on LGBT issues (federal level and Walloon Region), a guide for transgender persons in employment, updated and disseminated by the IEFH, a support package based on the "*inclusieve organisatiecultuur*" toolbox, a method focusing on support programmes and the initial integration phase for LGBT persons in the workplace (Flemish Region) and awareness-raising for first- and second-line staff (German-speaking Community).<sup>48</sup>
35. Various measures have also been proposed in the health care field, including a preventive health policy with regard to the sexual health of LGBT persons, guarantees that the specific health care costs of transgender persons are reimbursed, establishing dialogue between LGBTI associations and the governing body of health care providers (federal authority), improved measures to prevent suicide among LGBT persons (Flemish Community), and measures to inform doctors and raise their awareness about the specific problems of transgender persons (Walloon Region). In the Federal Police LGBT issues are raised in the training provided for police officers and officers are encouraged to take part in diversity training.
36. ECRI welcomes the numerous activities carried out in the context of the Interfederal Action Plan for LGBTI Persons for the period 2018-2019. However, according to some of the persons ECRI interviewed, there was a lack of proper consultation with civil society organisations and other stakeholders such as universities and research centres during the conception phase of this action plan. ECRI believes that for this type of plan, the development process is just as important as its implementation, and that attention should be paid to the local level, where good practices have been tested with success.<sup>49</sup>
37. In this context, the City of Ghent has been singled out as a **good example** when it comes to devising an ambitious policy at local level for LGBTI persons. It draws on a broad coalition of stakeholders (civil society, universities, etc.) and brings together a range of measures in this area under the umbrella of a high-profile rainbow action plan. Ghent was also the first city in Belgium to set up a local policy for transgender persons, which was based on a survey of these persons' needs at local level.
38. ECRI recommends that the authorities ensure that, following the 2018-2019 Interfederal Action Plan to Combat Discrimination and Violence against LGBTI persons and based on an assessment thereof, provision should be made in the next plan for a proper consultation of the stakeholders, particularly civil society. The next interfederal plan should also have an impact beyond the various federal and federated levels, focusing in particular on the local level.

<sup>48</sup> Inter-federal Action Plan to Combat Discrimination and Violence against LGBTI persons 2018-2019, pp. 8-15.

<sup>49</sup> In May 2019, a monitoring report took stock of the measures taken. In June of the same year, a consultation was organised with civil society organisations, equality bodies and the administrations concerned.



## II. HATE SPEECH AND HATE-MOTIVATED VIOLENCE

### A. Hate speech<sup>50</sup>

#### Data

39. With regard to data on hate speech,<sup>51</sup> the authorities provided ECRI with the numbers of cases opened by Unia. However, as Unia only registers the reports submitted to it, these statistics do not make it possible in any sense to gain a full overview of the phenomenon of hate speech in Belgium.
40. The current system for the coding of hate speech offences by the police and the public prosecution department is based on the instructions in General Circular No. COL 13/2013.<sup>52</sup> In its last report on Belgium, ECRI hoped that this new circular would improve the registration of racist and homophobic/transphobic offences in general and hate speech-related offences in particular. However, despite an improvement in the IT coding system, the data collection system fails to give a precise picture of specific problems coming within a more general category. For example, within the category of “racism”, it is impossible to draw any distinction between antisemitic, islamophobic or anti-Roma acts. Closer co-operation between the police and public prosecutors would be useful in order to arrive at a common coding system. The office of the prosecutor attached to Belgium’s labour courts should be able to contribute to this joint effort.<sup>53</sup> Experts in the current coding systems (“MACH/REA/TPI” and “ISLP”) could be involved in this, along similar lines to what has been done in neighbouring countries.<sup>54</sup>
41. ECRI recommends that the authorities refine still further the regulations on data collection on racist and homophobic/transphobic acts by using a common coding system for police and public prosecutors and establishing subcategories for offences targeting particular victim groups so as to be able to access reliable specific data on hate speech-related offences.

#### Prevention of hate speech and measures to discourage hate speech by developing a counter-narrative

42. In GPR No. 15 on Combating Hate Speech, ECRI outlines several measures to prevent and combat this phenomenon effectively including awareness-raising and prevention, victim support, self-regulation, regulatory powers, civil and administrative responsibility and, lastly, the imposition of criminal sanctions in exceptional circumstances where no other less restrictive measure would be effective provided that the right to freedom of expression and opinion is respected.
43. Several measures are being taken in Belgium with the aim of combating hate speech by developing a counter-narrative. They include the Council of Europe “No Hate Speech” Campaign, which is conducted in the country’s three communities through various awareness-raising activities, which can be regarded as **good practices** in this area.<sup>55</sup> A federal campaign against racism was also launched on 21 March 2019 to denounce stereotypes through videos broadcast on social media and in train stations. In addition, the aim of the Belgian Better Internet Consortium (B-BICO) is to pool the expertise that is available on online security, education and promotion of a safer internet for children.<sup>56</sup> The Flemish Community subsidises the project

<sup>50</sup> See ECRI glossary <https://rm.coe.int/ecri-glossary/1680934974>.

<sup>51</sup> See UNIA 2018b and UNIA 2018c, [link](#).

<sup>52</sup> A contact judge for discrimination and hate crimes has been appointed in each judicial district. The circular also provides for contact police officers. In principle, each of the 187 police districts should have a contact officer. In total, over 200 contact persons have been appointed.

<sup>53</sup> This office (the *auditorat*) is the body of prosecutors which carries out prosecution tasks for the labour courts.

<sup>54</sup> See EU FRA 2018, <https://fra.europa.eu/en/publication/2018/hate-crime-recording>.

<sup>55</sup> [www.nonalahaine.be](http://www.nonalahaine.be) and [www.nohate.be](http://www.nohate.be).

<sup>56</sup> UNIA 2018c : 55, ([Le travail d’Unia en 2017 exprimé en chiffres](#)).

*Integratiepact*, which promotes mutual respect and measures to combat discrimination and racism by civil society partners in the broadest sense. The Parliament of the French Community has adopted a decree on promoting citizenship and interculturalism<sup>57</sup> and promoted a campaign run with associations in Brussels and Wallonia in 2017 on combating prejudice. In 2016, COCOF launched a special appeal for projects to strengthen links between inhabitants and counter inward-looking attitudes and social exclusion in disadvantaged neighbourhoods. Lastly, certain projects to counter prejudices and stereotypes were launched for the five-year legislature from 2016 to 2020 under the “Living together” priority heading.

### **Support for persons targeted by hate speech**

44. Unia supports victims of hate speech by processing individual complaints and, in some cases, acting as a civil party in court proceedings. On its website,<sup>58</sup> Unia outlines the steps that all internet users can take themselves. These include requests to remove content addressed to the platforms or administrators of the pages concerned and other suggestions for responses to hate messages. Various contact points have been set up in the German-speaking Community to provide assistance and guidance for victims of hate speech. COCOF supports the work of associations such as MRAX<sup>59</sup> as part of its policy of social cohesion and support for persons targeted by hate speech.

### **Self-regulation**

45. Unia and other Belgian bodies have taken advantage of the impetus of the Code of Conduct prepared by the European Commission with information technology companies<sup>60</sup> to improve relations with social network platforms, taking part in four monitoring exercises since May 2016. Various sectors have their own codes of conduct. This is the case in particular with the audio-visual media and the press (the Audiovisual Council, the Council for Journalism or Raad van Journalistiek and the Journalists’ Ethics Council, for example). The Raad van Journalistiek, which is an independent body responsible for dealing with questions and complaints relating to journalists’ professional practices, and the Journalists’ Ethics Council for the French- and German-speaking Media play an important role in journalists’ professional ethics and self-regulation. The application of these institutions’ codes of ethics has given rise to a number of decisions.<sup>61</sup>

### **Application of civil, administrative and criminal legislation**

46. The Law of 25 December 2016 on improving investigation methods introduced certain new methods with regard to computer systems. Investigating judges now have the power to investigate computer systems secretly under operational rules similar to those that apply to telephone tapping. It is also possible for the prosecution service, in cases of extreme emergency, to issue a verbal order for data to be extracted from the internet when there is a threat of a terrorist attack, of dissemination of messages inciting others to commit acts of terrorism or of dissemination of child pornography. The Judicial Directorate in charge of combating serious and organised crime (DJSOC) within the Federal Criminal Investigations Police has its own internet research section (the i2-IRU). This section has been designated as the national contact point (Internet Referral Unit – IRU) for matters

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<sup>57</sup> This decree perpetuates an arrangement which made it possible to finance over 650 educational and cultural projects between 2015 and 2018. As a result of its adoption, the budget was increased from €1 450 000 to €1 995 000. The decree also provides for a biennial anti-racism campaign and the establishment of a Council for Citizenship and Interculturalism, which will be responsible for following up on these policies. It offers more robust funding for operators in terms both of duration (three years) and of the sums available for projects.

<sup>58</sup> For more information, see the Unia website: [link](#).

<sup>59</sup> <http://mrax.be/wp/>.

<sup>60</sup> European Commission, 2016, May 31, [http://europa.eu/rapid/press-release\\_IP-16-1937\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1937_en.htm).

<sup>61</sup> These decisions can be consulted via this [link](#).

relating to terrorism and online hate speech and hate crime, with a view to seeking the withdrawal of content and accounts comprising features which constitute offences.

47. Following numerous hate comments after the death of two young Belgians abroad in August 2016 and January 2017, some political activists talked of the need to combat hate on the social networks more actively. As part of its tasks, Unia regularly files complaints against perpetrators of hate speech in both the real and the virtual world and even against website administrators. Although many legal proceedings have been discontinued, a body of case-law in this area is gradually being formed in Belgium.<sup>62</sup> For instance the Court of Antwerp handed down a ten-month suspended prison sentence to the administrator of the Facebook page of the *Vlaamse Verdedigings Liga* for incitement to racial hatred.<sup>63</sup> The Mechelen Criminal Court recently sentenced a woman to six months of imprisonment and a fine of €1 800 for racist hate speech online, in a case in which Unia advised and supported the victim during the proceedings.<sup>64</sup> Lastly, a man posted racist comments on Facebook following an attack in Istanbul in which a young Belgian of Turkish origin was killed. Following an investigation, it became clear that this man was in the habit of posting hate speech on social networks, mainly against persons of foreign origin. The court sentenced the perpetrator to six months of imprisonment and a fine of €4 000 for incitement to hatred, violence and discrimination.<sup>65</sup>
48. In its last report ECRI recommended that the exception provided for in Article 150 of the constitution<sup>66</sup> should be extended to incitement to homophobia because, in practice, this distinction resulted in *de facto* impunity for press offences other than racism or xenophobia.<sup>67</sup> Several factors combine to make the distinction made in Article 150 untenable, particularly the broad interpretation of press offences, which according to the Court of Cassation, should also include digital dissemination and therefore also covers the spread of hate speech via social networks. There is also the problem that these differing rules create inequality between victims and are at odds with the intentions of those who drafted the legislation.<sup>68</sup> ECRI's recommendation was taken up by the 2018-2019 Interfederal Action Plan to Combat Discrimination and Violence against LGBTI persons and the Committee to Evaluate Federal Anti-Discrimination Legislation. So far, none of this has resulted yet in a revision of the constitution, which requires a two-thirds parliamentary majority. However, Article 150 of the constitution is now in the list of articles which can be revised during the 2019-24 legislature.
49. ECRI recommends that the authorities extend the exception for racist or xenophobic press offences provided for in Article 150 of the constitution to incitement to homophobia so that such cases can be brought before the ordinary courts.
50. The anti-racism and the anti-discrimination acts contain various criminal provisions relating to the dissemination of hate speech. One relates to the offence of incitement<sup>69</sup> and the other to the prohibition on dissemination.<sup>70</sup> Such hate messages may also come from persons holding a position of authority and/or performing an exemplary function (such as teaching or educational staff or police

<sup>62</sup> Many other examples are available on the website [www.Unia.be](http://www.Unia.be).

<sup>63</sup> See UNIA 2017, July 4, [link](#)

<sup>64</sup> See UNIA 2017, March 19, [link](#)

<sup>65</sup> See UNIA 2017, October 16, [link](#)

<sup>66</sup> Under Article 150 of the Constitution, "A jury is sworn in for all criminal matters, as well as for political and press offences, with the exception of press offences motivated by racism or xenophobia".

<sup>67</sup> UNIA 2017a: 82-83.

<sup>68</sup> ECRI 2014: § 73).

<sup>69</sup> Article 20 of the Anti-Racism Act and Article 22 of the Anti-Discrimination Act.

<sup>70</sup> Article 21 of the Anti-Racism Act.

employees). According to Unia, the impact of such messages is much greater and far-reaching for society. Therefore, the relevant legislation should provide for an increased sentence for some categories of person if they are found guilty of disseminating hate speech.<sup>71</sup>

51. On this issue, ECRI points out that the UN's Rabat Plan of Action<sup>72</sup> recommends that when assessing the aspects which might make an instance of hate speech a criminal offence, account should be taken of the capacity of the perpetrator to exercise influence on others and the context in which the comments were made. ECRI also points out that GPR No. 7 on national legislation to combat racism and racial discrimination requires the law to include effective, proportionate and dissuasive sanctions for offences of racism or racial discrimination.<sup>73</sup> ECRI considers therefore that Unia's proposal to provide for a legal aggravation of the sentence for certain categories of person found guilty of disseminating hate speech is in line with GPR No. 7.
52. ECRI recommends that the authorities provide for a legal aggravation of the sentence for the dissemination of hate speech by certain categories of persons exercising public office.
53. ECRI also recommended in its last report that Belgium should ratify the Additional Protocol to the Cybercrime Convention concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Unfortunately the ratification procedure has not yet been completed.
54. ECRI reiterates its recommendation for Belgium to ratify the Additional Protocol to the Cybercrime Convention concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

## **B. Violence motivated by hatred**

### **Data**

55. As already mentioned in the section on the identification of cases of hate speech, the registration of crimes motivated by hatred is based on the instructions contained in General Circular No. COL 13/2013. The prosecution service's statistical analysts have been able to collate information on the progress on these cases and the reasons why cases were closed between 2014 and 2018. The police statistics of the General National Data Bank have also given ECRI an overview of the number of hate-motivated crimes registered under the heading "Protection of persons" from 2000 to 2017. In 2000 787 crimes were given a discrimination coding, which includes "racism and xenophobia" and other hate crimes<sup>74</sup> based on sexual orientation, sex, disability, religion and other grounds. In 2017 there were 1 228 crimes.
56. ECRI welcomes this data collection work. Nonetheless, improvements need to be made to the data collection mechanism for criminal offences linked to racist and homophobic/transphobic violence so as to establish more detailed and explicit statistics. For example, there is no specific code to classify these crimes as "violence motivated by hatred" when the data is collected, as these crimes are not identified as such in Belgian legislation. Any breach of the anti-discrimination laws constituting a criminal offence is generally classified as "discrimination" by the police or public prosecutor. The police or prosecution databases do not specify whether an incident

<sup>71</sup> UNIA 2017a: 91, rec. 25 [link](#).

<sup>72</sup> The adoption of the Rabat Plan of Action is the culmination of a process set in motion by the UN High Commissioner for Human Rights to conduct an exhaustive review of the implementation of legislation, case-law and policies related to the fight against hate speech.

<sup>73</sup> A bill of 23 June 2016 amended the Criminal Code to promote alternative means of dealing with crime motivated by racism or xenophobia and to combat repeat offences of discrimination more effectively.

<sup>74</sup> In the present report, hate crime should be understood as any criminal offence motivated by hate or prejudice on grounds such as "race", colour, language, religion, citizenship, national or ethnic origin, sexual orientation or gender identity, whether real or presumed. For further information about the notion of hate crime, see <http://hatecrime.osce.org/what-hate-crime>.

is violence motivated by hatred or another form of discrimination. These data should comprise aggravating grounds so that offences motivated by hatred can be more readily identified.

57. Among the hate crimes reported by the official sources, the attack committed on 24 May 2014 at the Jewish Museum in Brussels, which resulted in four deaths, warrants a special mention and gave rise, in Belgium and throughout Europe, to a wave of emotion and indignation and a movement of sympathy towards the Jewish community in Belgium.<sup>75</sup> In March 2019 the perpetrator of these “four terrorist murders” was sentenced by the Assize Court of Brussels to life imprisonment. The judgment also established the antisemitic nature of the attack.<sup>76</sup>

### The authorities’ response

58. The authorities describe several **good practices** with regard to combating violence motivated by hatred.<sup>77</sup> For example, a checklist has been drawn up for police officers and prosecutors including indicators with which to identify cases of violence motivated by hatred. Standard questionnaires have also been devised, enabling such cases to be identified through interviews with the victim, witnesses or the suspect. The municipal police in the City of Ghent has set up a special contact point for violence motivated by hatred targeting LGBTI persons. It includes an electronic mailbox that can be accessed via a button on the Ghent Police website. In addition, a telephone hotline has been set up for emergency cases. There is also a structured consultation procedure between the prosecutor’s office, the police, Unia and the LGBTI organisation Çavaria.
59. On its visit to the Kazerne Dossin Museum<sup>78</sup> in Musselin (Mechlen), the ECRI delegation learnt about **good practices** in the area of training provided for police officers on the subject of discrimination and exclusion with the aim of affording them the means of analysing these phenomena and acting professionally.<sup>79</sup> ECRI regrets, however, that an end has been brought to the indefinite agreement between Unia and the Minister of the Interior, through which it was possible to hold many training courses for the police relating both to police structures and to the relations cultivated by the police with the public and civil society partners. In this context, ECRI expresses its concerns about reports that cases of racial profiling<sup>80</sup> have become more widespread, particularly in the context of measures to combat irregular immigration.<sup>81</sup> Even if in practice Unia continues to provide training to the police, ECRI hopes that co-operation between Unia and the Minister of the Interior will be re-established under an agreement aimed at enabling police employees to regularly attend the training provided.
60. Following the adoption of General Circular No. COL 13/2013, ECRI recommended that the authorities proceed without any further delay to designate in each police district a contact person responsible for racism and homo/transphobic issues, that these persons should be networked and that there should be close communication between the contact person in the police district and the contact prosecutor in the corresponding prosecution department. An evaluation of the circular is being carried out but it has not yet been finalised. In general, the experts on the Committee to

<sup>75</sup> The deadliest terrorist attack in Belgium history took place in March 2016, when 32 persons died and 300 were injured in three coordinated attacks.

<sup>76</sup> <https://www.unia.be/fr/articles/attentat-au-musee-juif-de-belgique-le-caractere-antisemite-a-ete-reconnu-pa-1> .

<sup>77</sup> Pages 26 and 27 of the draft compilation of information collected in preparation for ECRI’s visit to Belgium in February 2019.

<sup>78</sup> Kazerne Dossin, memorial, museum and documentation on the Holocaust and human rights <https://www.kazernedossin.eu/FR/> .

<sup>79</sup> <https://www.kazernedossin.eu/FR/Nieuws/Opleiding-in-Kazerne-Dossin-maakt-politieagenten-b> .

<sup>80</sup> Racial profiling is understood to mean: “The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities”, paragraph I.1 of ECRI GPR No. 11 on combating racism and racial discrimination in policing.

<sup>81</sup> *Politiques policières de prévention du profilage ethnique en Belgique*, Amnesty International, 2018.



Evaluate Federal Anti-Discrimination Legislation found that the circular was an appropriate instrument through which to establish a dedicated policy on the topics of violence motivated by hatred and discrimination. However, the committee has also issued recommendations on the correct application of the circular, recommending in particular that: (i) contact prosecutors and officers are appointed in all the constituent bodies of the public prosecutor's office and the police force; (ii) these contact persons are given regular training; (iii) contact officers draw up standard questionnaires and checklists for the police; (iv) contact prosecutors monitor processing times and the standard of investigations; (v) efforts should continue within the judiciary and the police to raise awareness, increase the willingness of victims to report offences and provide quality support for victims; (vi) attention is paid to the importance of drawing up reports of a high standard and properly recording all the facts.<sup>82</sup>

61. ECRI recommends that the authorities ensure that the recommendations made by the Committee to Evaluate Federal Anti-Discrimination Legislation are implemented, particularly those on the correct application of General Circular No. COL 13/2013.

### III. INTEGRATION AND INCLUSION

#### A. Migrants

62. As in many other countries, Belgium's population includes immigrants who will probably remain there for many years. ECRI believes that this can be to countries' benefit and that they should make a conscious effort to invest in their integration and inclusion policies. In this section, ECRI will consider the measures taken by Belgium to integrate immigrants, including refugees, persons with temporary rights of residence and asylum seekers.
63. Out of a Belgian population of 11.3 million, 11.7% are of foreign nationality and a further 8.8% were foreign at birth but have since acquired Belgian nationality. Together, therefore, the two categories constitute 20.5% of the total population. To give a further illustration of the origin of these migrants, in 2016, 56% of the registered immigrants into Belgium were EU citizens. More detailed analysis shows that there is an upward trend in foreign immigration into Belgium;<sup>83</sup> for more than fifty years, Morocco has been one of the main sources of immigration into the country; since 2014, residence permits for family reunion have been the main legal ground for non-EU immigration into Belgium; and the second ground has been the granting of refugee or subsidiary protection status.
64. Asylum seekers<sup>84</sup> are not included in the immigration statistics. They are included when they are granted refugee status or have been issued with an initial residence permit on other grounds. For example, in 2017, there were 15 373 applications for international protection in Belgium: 25% lodged by Syrians, followed by Afghans, Palestinians and Guineans. Of the final decisions, 54.5% resulted in the granting of international protection.<sup>85</sup>

#### Language and integration courses

65. Persons of foreign origin who have obtained residence rights in Belgium can, or must, take part in various courses and other facilities to help them adapt to their new social environment. Some of these courses are open to everyone, whereas others

<sup>82</sup> Committee to Evaluate Federal Anti-discrimination Legislation 2017, [First Evaluation Report](#), § 419.

<sup>83</sup> However, a far from negligible number of foreign nationals leave the country each year, for example, in 2016 there were 136 000 arrivals but also 81 000 departures <https://www.myria.be/fr/chiffres/populations-et-mouvements>.

<sup>84</sup> In 2017, the federal parliament enacted legislation transposing into Belgian law the European directive on asylum procedure, which introduces new terminology. The law now refers to applications for international protection rather than asylum applications.

<sup>85</sup> <https://www.myria.be/files/FR2018-4.pdf>.

are specifically designed for “newly arrived” persons<sup>86</sup> and are compulsory (see paragraph 68). The integration of immigrants is a community responsibility that has been devolved in the Brussels-Capital Region and the Walloon Region to the French-speaking commission, COCOF. In Flanders, integration is the responsibility of the Flemish government (*Vlaamse Regering*). The government of the German-speaking Community is also in charge of integration. This means that the system for receiving and integrating immigrants differs between the Flemish Region, the Walloon Region, German-speaking Community and the Brussels-Capital Region, where there are French-speaking and Dutch-speaking programmes. The various arrangements have been laid down in decrees.<sup>87</sup>

66. During its visit to Belgium, the ECRI delegation met officials of the municipality of Molenbeek and the Mayor of Mechelen (Malines) to with a view to forming a more accurate understanding of the impact at local level of **promising practices** aimed at the integration and inclusion of immigrants and persons of foreign origin. In Mechelen, the delegation noted the positive effect of the town’s intercultural integration policies on the local population, which comprises more than 100 nationalities.<sup>88</sup> In Molenbeek, the delegation visited an out-of-school education centre for young Roma and was informed of a social reintegration project for former “foreign fighters”<sup>89</sup> following their release from prison. ECRI considers that, as the first port of call for newly arrived and long-term resident migrants, local authorities still play a crucial role in the implementation of integration policies, even though these policies are mainly the responsibility of the federated entities.
67. In its 2014 report on Belgium, ECRI said that the federated entities should carry out assessments of how integration programmes were working, particularly their added value from an employment standpoint. A number of studies have since been undertaken to assess the impact of integration programmes:<sup>90</sup> according to the most recently available Migrant Policy Integration Index (2015)<sup>91</sup> Belgium was ranked 7<sup>th</sup> out of 38 states. The 2017 social and economic monitoring report of the Federal Public Service Employment, Labour and Social Dialogue (SPF), drafted in conjunction with Unia, and a 2018 study on non-EU nationals’ access to the labour market mention the measures put in place in Belgium.<sup>92</sup> In May 2019 the Walloon social research and statistics institute (IWEPS) published an assessment of the impact of integration and employment placement programmes for newly arrived migrants in the region,<sup>93</sup> which can be regarded as an example of **good practice** in assessing the impact of integration programmes.
68. In 2014, ECRI also noted that the various community and regional integration programmes were not automatically compulsory throughout the country and that this could lead to differences of treatment according to place of residence. The integration programme is now compulsory throughout Belgium, except in the Brussels-Capital Region, where it is scheduled to become so in 2020. In the Flemish

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<sup>86</sup> The Brussels French-speaking and Walloon decrees define newly-arrived persons as foreign nationals aged over 18 who have been living in Belgium for fewer than three years, hold a residence permit valid for more than three months and are entered in the aliens register of a Walloon or Brussels municipality. In the Flemish decree, they are defined as foreign nationals aged 18 or over who have come to take up long-term residence in Flanders or Brussels and persons of Belgian nationality born outside Belgium and at least one of whose parents was not born in Belgium.

<sup>87</sup> <https://www.vivreenbelgique.be/sejour-en-belgique/accueil-et-integration-des-primos-arrivants>

<sup>88</sup> The mayor of Mechelen received the 2016 World Mayor Award of the City Mayors Foundation for the town’s successful management of diversity.

<sup>89</sup> Fighters who have returned to Belgium from Syria.

<sup>90</sup> See Mandin 2014.

<sup>91</sup> All the EU countries, plus Australia, Canada, Iceland, Japan, South Korea, New Zealand, Norway, Switzerland, Turkey and the United States: <http://www.mipex.eu/belgium>.

<sup>92</sup> EMN 2019, <https://emnbelgium.be/fr/publication/lintegration-des-ressortissants-de-pays-tiers-sur-le-marche-du-travail-en-belgique-et>.

<sup>93</sup> IWEPS 2019, <https://www.iweps.be/wp-content/uploads/2019/05/RR33-Evaluation-parcours-integration-ULg-complet.pdf>.

Region and Community and in the Walloon Region and the German-speaking Community, newly arrived migrants who fail to comply with their integration programme obligations<sup>94</sup> following a written warning are liable to an administrative fine.

69. ECRI had reservations about the effectiveness of these penalties and recommended that integration programmes be accompanied by incentives and rewards rather than sanctions.<sup>95</sup> To take one particular example, language learning clearly has to be encouraged as a tool of integration, since interpersonal communication is an essential ingredient of a properly functioning community. However, there are better ways of securing good community relations than simply insisting on compulsory language skills. According to Unia, there is insufficient evidence to justify the need for or effectiveness of compulsion; moreover, compulsory language courses exhibit certain weaknesses and insufficient consideration has been given to alternatives to compulsory measures. For instance, the aforementioned assessment of Walloon integration programmes shows that there is a lack of language courses which match students' different starting points.<sup>96</sup> To remedy this problem, courses are now given to groups ranging from five to 15 participants selected with the aim of arriving at some degree of homogeneity.
70. ECRI again welcomes the federal authorities' commitment to providing free, multifaceted and individualised integration assistance. However, the results of the most recent assessment of integration policies in the Walloon Region seems to show that completion of such courses does not necessarily lead to change, particularly in terms of employment or integration into the local community. According to this assessment, no systematic attempt has been made to encourage cross-cultural understanding, recognition of cultural differences and efforts to combat discrimination, to ensure that newly arrived persons feel fully included in the host society.<sup>97</sup> As regards the Flemish integration policies and civic integration measures, the authorities informed ECRI that the objectives reflected an approach that included everyone and consisted in enabling autonomous and proportional participation, access to services, active citizenship and strengthening social cohesion. However, no information has been provided on any assessment of the concrete measures taken. ECRI points out that integration policies must go beyond acquiring specific skills, in particular language skills, and familiarisation with the host society, and should aim to promote cultural diversity in the population as a whole and to combat discrimination. In this respect, reference is made to the recommendation made in paragraph 83.

### **Employment and housing**

71. The third monitoring report on socio-economic data drafted by the SPF Employment in conjunction with Unia in 2017, shows that being a foreign person with a migration background is a critical determinant of inequalities in the labour market.<sup>98</sup> There appear to be two main explanations for this situation: firstly certain structural aspects of the Belgian labour market, such as its segmentation, and secondly the specific difficulties, such as discrimination, experienced by foreign nationals and those of foreign origin. Moreover, under Article 10 of the Belgian Constitution, subject to certain legally defined specific cases, eligibility for civil and military service is

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<sup>94</sup> In connection with the obligatory aspect of the civic integration programme (*inburgering*), See ECRI 2014: §§101-103.

<sup>95</sup> ECRI 2014: §110.

<sup>96</sup> IWEPS 2019: 105.

<sup>97</sup> IWEPS 2019: 100, footnote 72.

<sup>98</sup> The fourth monitoring report on socio-economic data will be published in 2020.



confined to Belgian nationals. This means that persons of immigrant origin are still often excluded from posts in the public sector, the country's main employer.<sup>99</sup>

72. ECRI believes that it is essential to improve access to employment through measures to remove the aforementioned structural barriers. General measures of this sort have recently been introduced or strengthened. For example, a Royal Decree laying down positive action measures in the private sector was published on 1 March 2019.<sup>100</sup> In the Flemish Region, the so-called small- and medium-sized enterprise portfolio (*kmo-portefeuille*) now authorises commercial undertakings to employ private consultants to assist them with positive action.<sup>101</sup> However, not enough use has been made so far of this employment policy option. In 2018 Actiris<sup>102</sup> introduced a “new arrivals” project aimed at helping those concerned to find employment. In addition, the various sectors of the labour market have concluded an agreement (*Sectorconvenant*) with the Flemish government in which they agree to introduce sector-based non-discrimination codes of conduct.
73. There are also specific measures on behalf of refugees. For example, a project covering the entire Flemish Region is designed to make refugees better informed and aware of the possibilities for setting up businesses.<sup>103</sup> The project started in November 2016 and is continuing until June 2020. It has a budget of €2 250 000 and sets out to provide information to more than 3 500 refugees and to enable 600 of them to establish their own businesses. In the cities of Antwerp and Ghent, a project entitled *Vluchtelingen en werk* (refugees and work) has been sponsored by the European Social Fund section of the regional Work and Social Economy Department and is specifically aimed at improving refugees' access to the labour market
74. The aforementioned evaluation of integration policies in the Walloon Region recommends the establishment of effective procedures for identifying migrants' skills by adapting the skill accreditation system and qualification equivalence procedures to meet their needs. In this context, ECRI refers to its GPR 14<sup>104</sup> on combating racism and racial discrimination in employment, particularly concerning the adoption of best practices to help employers to promote equality and diversity in the workplace, conduct their businesses better and increase productivity. GPR 14 recommendations also include proposals concerning arrangements for the recognition of qualifications.
75. ECRI recommends that the authorities increase co-operation with employers to improve immigrants' employment opportunities. It draws their attention to its General Policy Recommendation No. 14 on combating racism and racial discrimination in employment, which includes valuable examples of positive measures to facilitate migrants' access to employment, and mechanisms for the recognition of qualifications.
76. Housing, like employment, is a key pillar of migrants' social inclusion. In 2014, the housing diversity barometer found that the Belgian housing market encouraged selection and discrimination because of the shortage of good quality and affordable accommodation.<sup>105</sup> In the Flemish region, there has been a significant increase in

<sup>99</sup> Unia and Myria have for long called for the rule to be reversed, which would require a revision of the Constitution: public sector posts should be open to everyone, subject to certain exceptions.

<sup>100</sup> [http://www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=fr&caller=summary&pub\\_date=19-03-01&numac=2019200431](http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=19-03-01&numac=2019200431)

<sup>101</sup> The so-called KMO Portfolio is a Flemish public policy initiative to support the day-to-day, innovative and international aspects of commercial undertakings' operations by means of financial assistance for training, advisory services, consultancy, technological research and coaching.

<sup>102</sup> Actiris is the Brussels Region employment office.

<sup>103</sup> *Vluchtelingen en ondernemerschap* (refugees and entrepreneurship).

<sup>104</sup> ECRI 2012b.

<sup>105</sup> UNIA 2014, [link](#).

applications from recognised refugees for rent allowances. Certain structural aspects of the Belgian housing market, such as ageing of the social housing stock, an inadequate supply of social housing, increasing poverty levels and growing numbers of persons living alone or in one-parent families, still provide a barrier to migrants' access to housing. Certain structural changes to the housing market are needed to improve the situation. However, the diversity barometer also highlighted the need for more targeted measures to counter discrimination in the housing market. These proposals are still relevant and include further steps to raise awareness of the need to combat discrimination in this area, agreeing codes of good practice and "situation tests"<sup>106</sup> to establish that discrimination has occurred in such areas as visits to properties or the negotiation of tenancy contracts. On this point, ECRI notes the efforts of the federated authorities and the Brussels-Capital Region. A DISCRIMIBRUX study, carried out by the University of Ghent and the Vrije Universiteit Brussel (VUB) in 2017, used a wide range of tools such as testing, situation tests and "mystery shopping",<sup>107</sup> to assess discriminatory attitudes in access to rented housing. Similarly, the action plan on combating discrimination in the Flemish Region focuses on awareness-raising and increasing the social housing stock.

### Acquiring legal status

77. The procedure for granting residence permits under the relevant federal law of 18 December 2016,<sup>108</sup> requires the Federal Immigration Office to assess migrants' efforts to integrate into the host community before extending certain foreign nationals' temporary or permanent residence permits. In this context, Myria questions the federal authorities' power to penalise insufficient efforts to integrate, a possibility open solely to the federated entities, who can already fine foreign nationals who fail to take part in compulsory integration courses. Myria adds that the way the authorities determine whether this condition has been met lacks transparency and the outcome is unforeseeable for the persons concerned, even though they risk withdrawal of their residence permit.<sup>109</sup> Myria has therefore recommended that the possibility to withdraw the right of residence should not be utilised, since it leaves too much discretion to the administrative authorities. While there continue to be many obstacles to integration (see the programmes on employment and housing) ECRI strongly encourages the authorities to take account of this recommendation.
78. The same 2016 federal government legislation makes it obligatory for persons wishing to settle in Belgium to sign a new arrivals declaration, failing which their residence application will be deemed inadmissible. The document sets out a number of "fundamental norms and values" with which foreign nationals arriving in Belgium must comply. The obligation to sign this declaration is not yet in force, as no co-operation agreement has been signed with the Communities. At the request of the Walloon Minister responsible for equal opportunities, Unia has submitted an opinion on this declaration. The main points raised in the opinion are: (i) the wording is not objective or neutral and it is specifically aimed at a particular community, which is questionable; (ii) the declaration simply lays down the duties of new arrivals, without specifying their rights and the state's duties towards them; (iii) the wording should essentially be symbolic and informative in nature and non-binding; (iv) it should not

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<sup>106</sup> Experimental testing using situation tests is a method which aims at establishing evidence of discrimination in practice. It consists in creating artificially similar factual evidence based on circumstances similar to those which the actual victim experienced. The process tests the actions of the alleged discriminator by analysing the employer's response to the employee's personal characteristics. See on this point GPR No. 14, Explanatory Memorandum, p. 22.

<sup>107</sup> This technique consists in posing as a landlord with estate agencies by asking them to discriminate in their choice of potential tenants.

<sup>108</sup> Law of 24 November 2016 adding a general residence condition into the Law of 15 December 1980 on entry to Belgium, residence, establishment and expulsion of foreign nationals, M.B., 16 January 2017.

<sup>109</sup> See Myria 2017: 22, [link](#).

be confined solely to new arrivals but should be aimed at the widest possible range of persons on an equal footing; (v) the tone used must be positive and must invite all concerned to take part in public life and defend the common interest. ECRI shares this analysis and is particularly concerned about the lack of objectivity and neutrality of this declaration, which is specifically directed at a particular community and which, if it is imposed as it stands, would not be conducive to integration.

79. ECRI strongly recommends that the authorities ensure that the content of the "declaration" established by law and currently aimed at newly-arrived immigrants in Belgium be reviewed in full, paying particular attention to wording the text in an objective and neutral manner, and ensuring that it has a symbolic significance, that it is informative and non-binding and that it is aimed at the widest possible range of persons so as to guarantee equal treatment of immigrants newly-arrived in the country.

80. Since 2013, the conditions for granting Belgian nationality have been five years' continuous residence, paid employment, social integration and command of one of the official languages to at least level A2 of the European Framework of Reference, which entails both spoken and written knowledge.<sup>110</sup> This means that persons who are illiterate, even if they speak Dutch, French or German and are fully integrated, cannot qualify for Belgian nationality. According to Myria, since the introduction of this condition there has been a 5 to 6% decline in the number of women acquiring Belgian nationality. It has therefore recommended that the legislation be amended to provide that for persons who can neither read nor write, spoken language skills corresponding to A2 level will suffice.<sup>111</sup> ECRI considers that people integrate more readily if they secure citizenship of the country in which they live and therefore enjoy the same rights as nationals. ECRI therefore strongly encourages the authorities to take account of this proposed amendment to facilitate access to Belgian nationality for persons who are illiterate.

### Participation in public life

81. Any citizen of a European Union member state and all other foreign nationals who have been resident in Belgium for at least five years are eligible to vote in local authority elections if they have first been included in the electoral register. ECRI considers that migrants' inclusion also entails active participation in public life and developing prosperity of the local community, which in turn means more opportunities to take part in local public affairs.

82. As mentioned above, nearly all Belgium's integration programmes are aimed at new arrivals who are not necessarily Muslims; yet political debate in the country is often targeted at certain ethnic and religious groups, in particular at Muslims and their practices, such as their dress practices, ceremonies and food related practices, even though the vast majority of this group is made up of Belgian citizens or long-term residents. It is true that some of the Belgian Muslim community suffer problems of access to employment, housing and education (concerning education see paragraphs 20-21). Nevertheless, this blanket association of the terms integration and Muslim reflects a misguided understanding of integration as a one-way street in which migrants and Belgian nationals of migrant origin will adapt to the majority society. ECRI therefore wishes to emphasise once again that integration does not simply refer to migrants' responsibility to integrate, but is rather a two-way process in which the majority population also has responsibilities.<sup>112</sup>

<sup>110</sup> As well as the so-called "Article 12 b" declarations of nationality, which are the normal legal procedure, there is a naturalisation procedure, in the form of a statute enacted by the Chamber of Representatives granting nationality to foreigners who have given evidence of "exceptional merit" or who have had the legal status of stateless persons for at least two years.

<sup>111</sup> See Myria 2018b, [link](#).

<sup>112</sup> See ECRI 2009a: § 117.

83. ECRI recommends that the authorities strengthen their integration courses for immigrants by adding elements concerned with promoting cultural diversity and combating discrimination, thus making integration policies more effective by encouraging equality and intercultural dialogue.

#### B. Roma, Sinti and Travellers<sup>113</sup>

84. There are four main groups of Roma and Travellers in Belgium: Travellers of Belgian origin; Sinti; descendants of Roma who migrated to Belgium in the mid-19th century and Roma immigrants from eastern Europe. There are no official statistics on this group because collecting data on ethnic origins is prohibited in Belgium. The most numerous groups comprise Roma who have migrated from eastern Europe, estimated to number 20 000 in Flanders and Brussels in 2012,<sup>114</sup> and indigenous Belgian Travellers, estimated at 7 000.
85. A national Roma integration strategy came into operation in 2012, based on a partnership between the federated entities, the federal authorities and civil society representatives. Each authority has drawn up measures reflecting its own specific powers and responsibilities aimed at improving Roma access to education, employment, health care and housing. A Belgian National Roma Platform<sup>115</sup> was launched in May 2016, with the support of the European Commission, to encourage active dialogue between the relevant parties, including the Belgian Roma communities, and consider various topics. In its third year of operation, 2018-19, the platform has been particularly concerned with organising working meetings to ensure proper communication between all the parties concerned.
86. In addition to these co-ordination measures, there are a number of special programmes. For example, four current projects in Antwerp, Ghent and Brussels focus on support for Roma who are seeking employment or training. With specific regard to the federated institutions, the integration policies of the Flemish Community and Region are also concerned with Travellers and in particular their housing (see the next paragraph), but none of them are specifically aimed at other Roma groups. In the French Community, to ensure that Roma children enjoy full access to education, teachers and school heads can call on support services to help them deal with individual and family problems that impede Roma children's successful inclusion in the school system. In the Brussels-Capital Region, ECRI's delegation could witness **good practices** in the specialised support for Roma children, which is provided by the Public Welfare Centres (CPAS) or the "Foyer" NGO. The ECRI delegation also visited an out-of-school education centre for young Roma pupils in Molenbeek. Moreover, with regard to housing, it should be also mentioned that the Brussels-Capital Region has established a number of "Housing First" programmes aimed specifically at Roma.
87. On a number of occasions, ECRI and other monitoring bodies<sup>116</sup> have criticised the shortage of well-situated and properly equipped transit sites for Travellers to camp on.<sup>117</sup> ECRI has gathered the following information on the availability in 2019 of well-equipped sites: the Flemish Region offers five active transit sites, in, Asse, Ghent, Hal (Halle), Ham and Kortrijk (Courtrai) and 33 public long-stay sites with a total of 573 places. The only short-term transit site in the Brussels-Capital Region was closed in July 2012 and there are just 27 residential places. In the Walloon Region, there is a specially equipped site in Namur while two other sites, in Mons and Sambreville, are not yet ready. Eight other municipalities - Amay, Ath, Bastogne, Charleroi, Hotton, Ottignies-Louvain-la-Neuve, Verviers and Wasseiges - offer

<sup>113</sup> See the ECRI glossary <https://rm.coe.int/ecri-glossary/1680934974>.

<sup>114</sup> Flemish Community 2012.

<sup>115</sup> SPP IS, <https://www.mi-is.be/fr/themes/pauvrete/integration-des-roms/plateforme-nationale-belge-pour-les-roms>

<sup>116</sup> See European Committee on Social Rights 2012.

<sup>117</sup> See ECRI 2009a: §§119-126; ECRI 2012a; and ECRI 2014: §§ 130 -135.

reception facilities on one or more sites, with varying standards of layout and equipment.

88. In the light of this information on transit and permanent sites, ECRI considers that there is still a shortage of such places. The authorities have informed ECRI that measures are being taken to improve the situation. For the period 2016-19, the Flemish Region has made grants for the acquisition, fitting out, extension and renovation of transit sites (2016: €2 251 000, 2017: €5 551 000, 2018: €4 309 000, 2019: €4 309 000). The Walloon Region awards grants to local authorities wishing to provide sites for Travellers. In 2018, 11 local authorities out of a total of 253 undertook to provide temporary sites for Travellers within their boundaries. On 2 May 2019, the Walloon Parliament adopted a new decree aimed at expanding residential facilities for this group. Although Brussels has established a grants policy similar to that of the Flemish Region, a satisfactory way of ensuring an adequate number of residential places has still not been found. As a result, between 2003 and 2018 the number of long-term places, public and private, for Travellers fell from 60 to 27. Yet the number of such families who live in Brussels for various reasons, such as birth, education or employment, and who are in need of a place, has doubled from about 70 to 140.<sup>118</sup>
89. ECRI notes that the effectiveness of the aforementioned measures largely depends on the goodwill of the relevant local authorities, which at best are reluctant to provide many transit or long-term sites, for fear of attracting too many Travellers to their areas. As a result, and due to the absence of such short- and long-term provision, Travellers are obliged to move around Belgium without stopping. This group is becoming increasingly marginalised and impoverished, with in some cases appalling living conditions. Some have suffered for years from such conditions, which prevent them from enjoying such fundamental rights as education and health care.
90. ECRI wishes to emphasise the importance of the recommendations made by Unia and various NGOs to establish a more stable life for Travellers.<sup>119</sup> For example, if local authorities fail to use the funds made available by their regions to provide and manage long-term residential sites, the relevant region should make it a duty for each local authority to open a small residential site and/or meet the cost itself of fitting out and managing such sites in its territory. Moreover, although persons living in caravans can register at reference addresses supplied by individuals or organisations in order to facilitate a whole series of administrative procedures, in practice there are insufficient organisations prepared to provide such addresses. CPASs should therefore be legally authorised to provide caravan dwellers with reference addresses. Finally, the Walloon Region has been recommended to follow the example of its Flemish and Brussels-Capital counterparts by giving legal recognition to caravans as a type of housing.<sup>120</sup>
91. ECRI recommends that the authorities adopt an integrated approach to the issue of Travellers' access to housing, and in particular: authorise the federated authorities to take substitute action if and when local authorities fail to make available a sufficient number of transit and/or residential sites; take the necessary steps to enable caravan dwellers to acquire a reference address; and recognise caravans as a legal type of housing throughout the country.
92. With regard to dialogue between the Roma community and the authorities, ECRI draws attention to the importance of Roma mediators as an additional factor in the

<sup>118</sup> Data supplied by the Foyer NGO, organisation based in Molenbeek, actively involved in the integration of Travellers <http://www.foyer.be/?lang=fr>.

<sup>119</sup> UNIA 2018b, <https://www.unia.be/fr/legislation-et-recommandations/recommandations-dunia/adopter-une-politique-daccueil-des-gens-du-voyage>. On this issue, see also the problems relating to the seizure of caravans in connection with police operations in <https://www.unia.be/fr/articles/saisie-des-caravanes-des-gens-du-voyage-une-situation-critique-pour-les-familles>.

<sup>120</sup> The decree of 15 March 2018 amending the Walloon Housing and Sustainable Homes Code introduces in Article 1 a definition of "light dwelling". Currently, however, it offers purely symbolic recognition that has no practical consequences.



effective implementation of the various integration policies for all the country's Roma groups. The Roma mediators should therefore be financed by the regions or the federal state to ensure their continued existence and to establish a country-wide network of mediators to enable them to share their knowledge and expertise. ECRI refers, in this context, to Recommendation CM/Rec(2012)9 of the Council of Europe's Committee of Ministers on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma, which urges official recognition of the professional status of mediators, taking measures, where necessary, to make their employment more stable, and ensuring fair remuneration and adequate working conditions.

#### IV. SUBJECTS SPECIFIC TO BELGIUM

##### Assessment of the full array of anti-discrimination legal instruments

93. In its fifth monitoring cycle report on Belgium, published on 25 February 2014,<sup>121</sup> ECRI recommended “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”.
94. On 18 November 2015, the Belgian authorities issued a Royal Decree laying down the composition of the committee of experts, the rules governing the members' appointment, and the form and practical content of their report, thus implementing Article 52 (3) of the Act of 10 May 2007. Following its appointment in July 2016, the committee was required to produce two reports. The first was submitted in February 2017<sup>122</sup> and will serve as the basis for a possible revision of Belgium's anti-discrimination legislation. A second report will be published in May 2021.
95. ECRI congratulates the Belgian authorities and the committee of experts on the publication of this first report, which offers, among other things, a highly valuable and critical overview of Belgium's laws against racism and discrimination: it is certainly an example of **good practice** in the assessment of the application and effectiveness of the legislation.
96. In its last report on Belgium, ECRI also recommended “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 identify possible gaps”. The committee's first evaluation report does not consider the Regions' and Communities' anti-discrimination legislation since these instruments fall outside its terms of reference.<sup>123</sup> Legal provision is made for evaluations of anti-discrimination legislation at federal level,<sup>124</sup> in the French Community,<sup>125</sup> in the Walloon Region for the gender criterion,<sup>126</sup> in Brussels-Capital Region in the field of employment<sup>127</sup> and in the German-speaking Community.<sup>128</sup> The Flemish government also plans to carry out an assessment of the Flemish Decree on Equal Opportunities, with a view to optimising and updating the legal protection it offers, its application and its continued operation.

<sup>121</sup> ECRI 2014, <https://rm.coe.int/fifth-report-on-belgium/16808b55ab>.

<sup>122</sup> Committee to Evaluate Federal Anti-Discrimination Legislation 2017.

<sup>123</sup> Nevertheless, the committee has made certain specific references to the federated entities' legislation when it has considered it relevant, either to point up problems of consistency or co-ordination between the various legislative systems, or to highlight areas where certain items of entity legislation could serve as a basis for reforming federal statutes, §§ 5 and 6.

<sup>124</sup> Article 52 of the anti-discrimination legislation.

<sup>125</sup> Article 61 of the [French Community Decree](#).

<sup>126</sup> Article 33 of the [Walloon Region Decree](#).

<sup>127</sup> Article 10 of the [Brussels-Capital Region Order](#).

<sup>128</sup> Article 44 of the [German-speaking Community Decree](#).

97. ECRI recommends that the authorities appoint new experts to the Committee to Evaluate Federal Anti-Discrimination Legislation as soon as possible, so that the committee can resume its activities; that the committee is given adequate resources to carry out its duties in an appropriate manner; and that civil society organisations be consulted as representatives of victims of discrimination. Finally, ECRI reiterates its recommendation that the evaluation of anti-discrimination legislation at the federal level be combined with an evaluation of the relevant legislation at the federated entities' level so as to identify possible gaps.





## INTERIM FOLLOW-UP RECOMMENDATIONS

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ECRI requests priority implementation from the Belgian authorities for the following two recommendations:

- (§ 27) In accordance with its General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination, ECRI recommends that the authorities ensure that no public or private service provider is required to report persons it suspects of being irregularly present for the purposes of immigration control and enforcement. This applies in particular to providers in the areas of labour protection and justice, the aim being to prevent any obstacles to the effective enjoyment by unlawfully resident workers of their right to recover back pay owed by their employers and to have full access to complaint mechanisms.
- (§ 97) ECRI recommends that the authorities appoint new experts to the Committee to Evaluate Federal Anti-Discrimination Legislation as soon as possible, so that the committee can resume its activities; that the committee is given adequate resources to carry out its duties in an appropriate manner; and that civil society organisations be consulted as representatives of victims of discrimination. Finally, ECRI reiterates its recommendation that the evaluation of anti-discrimination legislation at the federal level be combined with an evaluation of the relevant legislation at the federated entities' level so as to identify possible gaps.

ECRI will conduct an interim follow-up to these two recommendations no later than two years after publication of this report.



## LIST OF RECOMMENDATIONS

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

1. (§ 9) ECRI reiterates its recommendation that the Belgian authorities designate or set up promptly an equality body with responsibility for discrimination on the ground of language and give this body similar powers and independence to the Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination (Unia).
2. (§ 19) In accordance with its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, ECRI recommends that the authorities ensure that schools include human rights education in their curricula; ensure that in their educational activities, they respect diversity and promote equal treatment, particularly through codes of conduct for pupils and staff; and ensure that teachers are trained to prevent all manifestations of racism, racial discrimination, intolerance and harassment at school, and to react promptly and efficiently when faced with such problems.
3. (§ 21) ECRI recommends that the Belgian authorities take all possible measures to ensure that decisions taken by schools regarding the wearing of religious symbols or clothing at school and in higher education establishments respect the principle of lawfulness and are free of any form of discrimination. Particularly when faced with adult students, the principle of neutral education should be compatible with their freedom to express their religious beliefs.
4. (§ 27) In accordance with its General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination, ECRI recommends that the authorities ensure that no public or private service provider is required to report persons it suspects of being irregularly present for the purposes of immigration control and enforcement. This applies in particular to providers in the areas of labour protection and justice, the aim being to prevent any obstacles to the effective enjoyment by unlawfully resident workers of their right to recover back pay owed by their employers and to have full access to complaint mechanisms.
5. (§ 38) ECRI recommends that the authorities ensure that, following the 2018-2019 Interfederal Action Plan to Combat Discrimination and Violence against LGBTI persons and based on an assessment thereof, provision should be made in the next plan for a proper consultation of the stakeholders, particularly civil society. The next intergovernmental plan should also have an impact beyond the various federal and federated levels, focusing in particular on the local level.
6. (§ 41) ECRI recommends that the authorities refine still further the regulations on data collection on racist and homophobic/transphobic acts by using a common coding system for police and public prosecutors and establishing subcategories for offences targeting particular victim groups so as to be able to access reliable specific data on hate speech-related offences.
7. (§ 49) ECRI recommends that the authorities extend the exception for racist or xenophobic press offences provided for in Article 150 of the constitution to incitement to homophobia so that such cases can be brought before the ordinary courts.
8. (§ 52) ECRI recommends that the authorities provide for a legal aggravation of the sentence for the dissemination of hate speech by certain categories of persons exercising public office.

9. (§ 54) ECRI reiterates its recommendation for Belgium to ratify the Additional Protocol to the Cybercrime Convention concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
10. (§ 61) ECRI recommends that the authorities ensure that the recommendations made by the Committee to Evaluate Federal Anti-Discrimination Legislation are implemented, particularly those on the correct application of General Circular No. COL 13/2013.
11. (§ 75) ECRI recommends that the authorities increase co-operation with employers to improve immigrants' employment opportunities. It draws their attention to its General Policy Recommendation No. 14 on combating racism and racial discrimination in employment, which includes valuable examples of positive measures to facilitate migrants' access to employment, and mechanisms for the recognition of qualifications.
12. (§ 79) ECRI strongly recommends that the authorities ensure that the content of the "declaration" established by law and currently aimed at newly-arrived immigrants in Belgium be reviewed in full, paying particular attention to wording the text in an objective and neutral manner, and ensuring that it has a symbolic significance, that it is informative and non-binding and that it is aimed at the widest possible range of persons so as to guarantee equal treatment of immigrants newly-arrived in the country.
13. (§ 83) ECRI recommends that the authorities strengthen their integration courses for immigrants by adding elements concerned with promoting cultural diversity and combating discrimination, thus making integration policies more effective by encouraging equality and intercultural dialogue.
14. (§ 91) ECRI recommends that the authorities adopt an integrated approach to the issue of Travellers' access to housing, and in particular: authorise the federated authorities to take substitute action if and when local authorities fail to make available a sufficient number of transit and/or residential sites; take the necessary steps to enable caravan dwellers to acquire a reference address; and recognise caravans as a legal type of housing throughout the country.
15. (§ 97) ECRI recommends that the authorities appoint new experts to the Committee to Evaluate Federal Anti-Discrimination Legislation as soon as possible, so that the committee can resume its activities; that the committee is given adequate resources to carry out its duties in an appropriate manner; and that civil society organisations be consulted as representatives of victims of discrimination. Finally, ECRI reiterates its recommendation that the evaluation of anti-discrimination legislation at the federal level be combined with an evaluation of the relevant legislation at the federated entities' level so as to identify possible gaps.

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The European Commission against Racism and Intolerance (ECRI) is a unique human rights monitoring body which specialises in questions relating to the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance in Europe; it prepares reports and issues recommendations to member States.

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