

Committee on the Elimination of Racial
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Parallel Report

of the

NHRI

U N I A

and

M Y R I A

CONTACTS FOR UNIA :

Marisa FELLA : marisa.fella@unia.be

Emilie VAN DEN BROECK: emilie.vandenbroeck@unia.be

Rik REUSEN : rik.reusen@unia.be

CONTACT FOR MYRIA :

Alexandra BUCHLER : alexandra.buchler@myria.be

Deborah WEINBERG: deborah.weinberg@myria.be

**Parallel report to
the 20th to 22th Periodic report
of Belgium
2021**

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1 Institutions contributing to this report

1. **Unia** is an independent public institution that combats discrimination and promotes equal opportunities. **Unia's independence and engagement in favour of human rights are recognized by the Global Alliance of National Human Rights Institutions¹ (status B)**. Unia has interfederal competence, which means that, in Belgium, Unia is active at the federal level and the level of the regions and communities. Unia is in charge of assisting victims of discrimination based on the protected criteria stipulated in the antidiscrimination laws executing the European directives 2000/43 and 2000/78. As of 12th of July 2011, Unia has also been designated as an independent promotional mechanism for the promotion, protection, and monitoring of the implementation of the United Nations' Convention on the Rights of Persons with Disability.
2. **Myria**, the Belgian Federal Migration Centre, is an independent public body. It analyses migration, defends the rights of foreigners and combats human smuggling and trafficking. Myria promotes public policies based on evidence and human rights and has also been appointed as Independent National Rapporteur regarding human trafficking.
3. Myria and Unia are both legal successors of the former Centre for equal opportunities and opposition to racism. They have agreed on a protocol for co-reporting on the UN human rights instruments. This protocol was submitted in the accreditation process, that led to the recognition of Unia as a NHRI with a B status.

2 Methodology

4. We appreciate the opportunity to establish this brief presentation to inform the Committee on the Elimination of Racial Discrimination. Our contribution is based on different sources of information: reports submitted to Unia and Myria by individuals or associations; the results of our monitoring and recommendation missions; our participation in various working groups, commissions, and advisory boards; reports of the authorities and bodies concerned; reports and recommendations of civil society. Sources are identified in endnotes.
5. In terms of structure, our contribution is articulated around the Concluding observations on the sixteenth to nineteenth periodic reports of Belgium, with reference to the relevant paragraphs in brackets (co §x). When there is a link with a question from the List of Question (CERD/C/BEL/Q/20-22) recently released by the Committee, the reference to the paragraphs is also specified in brackets (LOI §x). The responses provided by the Belgian State in its report have been taken into account to avoid any repetition. This contribution, therefore, aims to complement and, where appropriate, nuance this report. We also make a series of recommendations and suggest questions that could be asked to Belgium by the Committee during the Session. We hope that this contribution will represent a useful source of information for the Committee and that the recommendations raised below can be addressed during the Session.

¹ <https://www.unia.be/en/articles/unia-recognised-internationally-as-a-national-human-rights-institution>.

3 Implementation of the covenant

3.1 Follow up on the concluding observations on the 16th to 19th periodic reports

3.1.1 National action plan against racism (co §6 – LOI §4)

6. Structured consultations aimed at exploring the possible actions are currently taking place. Unia and the NAPAR coalition² are consulted. This ongoing process towards adopting a national action plan against racism should translate itself in the actual adoption of an inter-federal (national) action plan by all Belgian governments. Belgium should ensure the participation of civil society in all key stages of the plan's development. The plan, once adopted, should be implemented. Belgium should consider setting up a body to monitor its implementation. This monitoring and periodic evaluation body could be made up of the Equal Opportunities Units, representatives of the different entities, civil society representatives, academic experts and Unia.
7. The structural dimension of racial discrimination is not yet sufficiently recognized. It is a central issue met with significant resistance. This action plan should clearly recognize and aim at correcting it by establishing structural measures.

Recommendation

R1. Adopt an ambitious inter-federal (national) action plan against racism by the end of the year 2021 and put in place a monitoring body for the implementation.

R2. Ensure participation of civil society and academics at all key stages of the national action plan's development.

3.1.2 Establishment of a national human rights institution (co §7 – LOI §5)

8. Belgium still lacks a type A NHRI. It has a type B NHRI, Unia, which is competent throughout the territory and for all government levels. Flanders has announced its intention to withdraw from Unia in 2023 to create its own anti-discrimination institution. This withdrawal might have an impact on the efficiency of the fight against discrimination in Belgium.
9. In 2019, a law established a Federal Institute for the Protection and Promotion of Human Rights. However, this Institute's competence is currently limited to federal and residual matters in relation to other already existing sectoral bodies.

² [NAPAR coalition](#) is a group of about 60 organisations of the civil society advocating for a National Action plan against racism.

10. All the human rights institutions, including the Federal Institute for Human Rights, meet every month on their own accord and autonomously within the Human Rights Platform.³

Recommendation

R3. Conclude a cooperation agreement between the federal state and the federated entities in order to create a national human rights institution with territorial jurisdiction over the whole of Belgium and material jurisdiction covering all levels of power.

3.1.3 Special measures (co §8)

11. The Royal Decree of 11th February 2019 makes it possible for private companies and sectors to adopt a positive action plan (“affirmative action”). However, the Antidiscrimination Act of 10 May 2007 requires two Royal Decrees, one for the public and one for the private sector. There is still a need for a second Royal Decree, making it possible for the public sector to adopt these positive action plans. At this point, only the private sector is covered by a Royal Decree.
12. The Royal Decree itself is a step ahead, but there are still some issues to be dealt with. The decree requires that the Minister of Work approves the published action plans to make sure there is legal certainty for these companies and sectors. There is a need for good practices. Employers are uncertain as to what types of positive actions will be allowed and what will be refused. A thorough evaluation of the action plans and the work of the evaluation commission will be critical for this system’s chances of success. Another critical factor for success will be the promotion of the measure introduced by the Royal Decree. The Minister of Work and the administration have to make sure that companies interested in this kind of action plans are aware of the possibilities to use it.

Recommendation

R4. The current Royal Decree focuses on the private sector; a similar Royal Decree for the public sector should be adopted.

Suggested questions

Q1. What actions will the government take to promote the possibility for companies to develop action plans regarding special measures?

³ The Human Rights Platform exists since 2014 and is currently composed of the following institutions: Unia; Myria; Combat Poverty, Insecurity and Social Exclusion Service; Federal Institute of Human Rights; Federal Ombudsman; Data Protection Authority; Institute for the Equality of Women and Men; Ombudsman of the German-speaking Community; Regional Ombudsman of Wallonia and Federation of Wallonia-Brussels; Flemish Office of the Children's Rights Commissioner; Delegate-General for Children's Rights; National Commission on the Rights of the Child; Committee R; Committee P; High Council of Justice; Central Prison Supervisory Council.

3.1.4 Anti-Semitism and Islamophobia (co §10 - 11)

13. Article 150 of the Constitution leads to a different treatment of **hate speech**: it is foreseen that press offences are to be tried by the Assize Court, except when they are motivated by racism. As the procedure is too long and costly, the Assize Court is nearly never convened for these offences. However, hate messages published on social networks motivated, for example, by homophobia are considered press offences. In practice, these crimes go unpunished. In conclusion, racially motivated press offences are tried before the criminal court, while non-racist (e. g. homophobic or Islamophobic) press offences are never prosecuted in practice. Auditions and discussions about article 150 are currently taking place in Parliament, which is a good first step. But these discussions should lead to reform before the end of the legislature (May 2024).
14. The lack of centralized and trustworthy statistical data concerning incitement to hatred and cyberhate and the lack of systematic information regarding court cases relating to acts of islamophobia and anti-Semitism (§56 of the report of the Belgian State) is a recurrent problem.

Recommendation

R5. Revise Article 150 of the Constitution to remove procedural distinctions between the treatment of racist or xenophobic hate speech by writing and other hate speech (Islamophobic or homophobic, for example).

Anti-Semitism

15. **Anti-Semitism** remains a serious concern. During the Aalst Carnival in 2019 and 2020, floats displaying anti-Semitic imagery circulated. This gave rise to numerous complaints to Unia.⁴ Unia issued a report,⁵ pleading for a more inclusive carnival and insisting that the local authorities should work at depolarizing and de-escalating.
16. Instances of anti-Semitism persist in Belgium, especially on the Internet.⁶ In 2018, following an FRA report on anti-Semitism in Belgium, the Senate adopted a Resolution on combating anti-Semitism⁷, which invites the government to implement various measures. Unia issued an opinion about this Resolution.⁸
17. The future National action plan against racism (see §§ 6 and 7) should tackle anti-Semitism.

Wearing of religious symbols (co §11)

18. Unia distinguishes between discriminations on the basis of religious belief (of which Muslims can of course be victims) and Islamophobia. The former may fall under the latter in some cases, but not systematically.
19. In most Belgian schools, wearing religious symbols is prohibited for pupils and teachers alike. In the **Flemish Community**, there is a ban on the wearing of religious signs in primary and secondary schools for all pupils

⁴ UNIA (2019), [Carnival and the limits of freedom of expression](#), p. 5.

⁵ UNIA (2019), [Carnival and the limits of freedom of expression](#).

⁶ UNIA (2018), [Anti-Semitism remains painfully persistent, particularly on the Internet](#).

⁷ BELGIAN SENATE (2018), [Resolution on combating anti-Semitism](#).

⁸ UNIA (2018), [Avis sur la proposition de résolution relative à la lutte contre l'antisémitisme](#).

and teachers (with an exception for teachers teaching religion) of the public schools network (GO!).⁹ The Council of State stated that such a prohibition of any conspicuous philosophical signs at school constitutes an infringement of the right to freedom of religion.¹⁰ However, the Council of the Flemish public schools network ('GO! onderwijs van de Vlaamse Gemeenschap') refuses to apply this case-law and still applies the prohibition. Unia urges that these decisions are respected to guarantee legal efficiency. The Flemish coalition agreement of 2019 also announced a general ban on headgear for pupils and staff of provincial and community schools. This legislation has not been adopted yet. In the **French Community**, there is no general ban. However, many schools forbid the wearing of philosophical signs. Unia received 33 cases in 2018 relating to religious or philosophical beliefs in education.¹¹ Most of these cases relate to the ban of philosophical or religious symbols, usually headscarves.

20. From 2010 onwards, Unia has received up to 300 reports from adult female Muslim students. They had difficulties with the higher education institutions in **Brussels and Wallonia**, where it was forbidden to wear headscarves;¹² and also with finding schools and companies that would allow them to wear religious symbols during internships.¹³ On 4th June 2020, the Constitutional Court¹⁴ ruled that a higher education institution can prohibit wearing religious symbols. The Court considers that the objective of protecting students who do not wish to make their beliefs visible from the social pressure that might be exerted on them by those who wish to make their beliefs visible, is legitimate. The Court also states that a general ban is not mandatory. Therefore, higher education institutions may also allow the wearing of convictional signs and opt for a policy of inclusive neutrality. It is unfortunate that the Court didn't take into account that the students in the higher education system are adults. The **French Community** announced that it will accept religious symbols in the higher education institutions that she runs from September 2021 onwards. A similar decision was taken by the **COCOF** (the French Community Commission) for the higher education and social promotion institutions for which it is the organizing authority.
21. Unia also sometimes receives reports from female teachers in charge of Islamic religion classes prohibited from wearing headscarves. This prohibition applies either outside the classroom (in the school precinct) or sometimes even within the classroom. The Council of State has pronounced judgements in similar situations and overruled provisions prohibiting the wearing of headscarves by teachers in charge of Islamic religion classes.¹⁵

⁹ It was the public schools network (GO!) that introduced this ban, approved in 2013 by the Flemish Education Council (a public authority that heads 700 public primary and secondary schools located in the Flemish Region). Since then, an administrative circular from the board of directors of the Flemish community schools has prohibited the wearing of any ostentatious philosophical signs in the school. On this basis, several schools have adopted internal regulations providing for the same prohibition.

¹⁰ According to the Council of State, the contested circular had been adopted following serious problems in schools in the Antwerp region. But the applicants' schools were not in a similar situation that could justify such a prohibition in their internal regulations. This conclusion was also confirmed by a judgment of 23 February 2018 of the Tongeren Court of First Instance concerning a school located in Maasmechelen.

¹¹ UNIA (2019), [Rapport Chiffres 2018 – Renouer avec les droits humains](#).

¹² One of the reasons given for banning religious symbols in schools, particularly public schools, is public service neutrality. Schools also invoke the need to protect students from pressure from other students or teachers wearing the headscarf. Schools also believe that not banning religious symbols could threaten their diversity, as they fear attracting many students who would be affected by the ban in other schools.

¹³ UNIA (2016), [Enseignement supérieur et de promotion sociale en Fédération Wallonie-Bruxelles : Port de signes religieux – Recommandation au Ministres de l'enseignement supérieur et au Ministre de l'enseignement de Promotion sociale](#).

¹⁴ C.C., 4th June 2020, [n°81/2020](#).

¹⁵ C.E., 27 March 2013, n°223.042 ; Council of State., 17 April 2013, n°223.201; Council of State., 5 February 2014, n°226.345 et 226.346; Council of State., 1^{er} February 2016, n°223.672 du 1^{er} February 2016.

Recommendation

R6. Provide an exception to allow the wearing of religious symbols by teachers in charge of philosophy and religion courses following the position of the Council of State.

22. Many municipalities don't allow full-body swimsuits¹⁶ in public swimming pools for safety and hygiene reasons. Other reasons such as equality between men and women, human dignity, and ecological reasons (a burkini absorbs too much water) are also invoked. Unia believes that a general ban on "burkinis" or other comparable swimsuits is discriminatory because it excludes people (especially women) who want to wear such swimsuits for religious or medical reasons.¹⁷
23. In recent cases, women were denied access to an ice-cream bar, to the terrace of a restaurant, to gym facilities, and they experienced difficulties in the housing market because they wear a hijab. The justifications invoked in these cases refer to the incompatibility of the wearing of a hijab with the atmosphere within the premises (in particular in the case of restaurants) or reasons of safety and hygiene.¹⁸ Concerning gyms, we notice in practice that they apply a ban on headgear due to so-called safety reasons, but at the same time, they are willing to provide exceptions for medical reasons.
24. The Flemish government agreed on the prohibition of visible religious signs (and other signs of convictions) for public servants who work in direct contact with the population.¹⁹ The government still has to decide on how to put this measure into practice.
25. Relating to the wearing of religious symbols in courts and tribunals, the Lachiri case (§58 of the Belgian State report) led the Ministry of Justice to write a letter to the judges, informing them of the Court's jurisprudence. However, Unia kept receiving complaints about several courts in Belgium which still applied that restriction to headscarf. Unia undertook two communications towards the Department of the Execution of Judgments of the European Court of Human Rights: in March 2019²⁰ and in March 2020.²¹ Since then, an amendment to the Judicial Code was prepared by the administration. But, as of March 3rd, it was not yet submitted to the Parliament. Belgium should undertake every necessary step to ensure that article 759 of the Judicial Code is effectively amended without delay and, at the latest, before the end of 2021.

Recommendation

R7. Amend article 759 of the Judicial Code before December 2021 and replace the term "uncovered" with "respectfully".

¹⁶ The burkini is a full-body swimsuit designed to comply with religious rules that require women to dress modestly. It covers the body from head to ankles, leaving the face, hands, and feet visible. It can also be worn for other reasons, such as medical problems.

¹⁷ UNIA (2017), [Avis juridique remis aux responsables des piscines publiques en Flandre sur le port du maillot de bain intégral](#).

¹⁸ Court of Appeal of Ghent, 8 October 2015, Tribunal of First Instance Brussels 4 February 2020, 22 December 2009, Court of Appeal of Brussels, 8 September 2015 and Tribunal of First Instance Brussels, see www.unia.be (jurisprudence and alternatives).

¹⁹ VLAAMSE REGERING, [RegeerAkkord 2019-2014](#), p. 10 and p. 138.

²⁰ UNIA (2019), [First communication towards the Department of the Execution of Judgments of the European Court of Human Right](#).

²¹ UNIA (2020) [Second communication towards the Department of the Execution of Judgments of the European Court of Human Right](#).

3.1.5 Police and racially motivated acts of violence (co §12 & 13)

Circular No. 13/2013 (co §12 – LOI §8)

26. The Belgian state uses the regulations provided by the circular COL 13/2013. Unia wishes to draw the attention of the Committee on the fact that the implementation of this text is problematic and incomplete²² since :
- a) Most police units have now designated a reference officer, but timely appointment of a new officer when a reference officer leaves is still a challenge. Furthermore, there is no centralized, up-to-date list containing the contact data of all the reference officers;
 - b) Some police officers refuse to establish an official report following the complaint of a victim or only establish a “simplified report” (not transmitted to the office of the public prosecutor). This has consequences in terms of the under-reporting of hate crimes and hate speech;
 - c) Due to problems in the computer systems of the police and the public prosecutor's office and to some incompatibilities between these systems, the hate motive is not systematically registered as required by the circular. A workshop organized by the FRA and ODIHR led to recommendations, and a working group²³ has been tasked to look for solutions;
 - d) The public prosecutors have to inform Unia of the upcoming hearings (“*avis de fixation*”) as well as of the jurisprudence and decisions in cases relating to Unia’s field of expertise. However, the public prosecutors do not systematically respect this obligation. Therefore, Belgium does not have a complete overview of the case law relating to hate crimes.
 - e) Victims should benefit from material conditions guaranteeing discretion at the police stations and receive information about the existing possibility of support (Unia, victim support services). This should be more systematically implemented.

Recommendation

R8. Ensure the full implementation of the circular COL13/2013.

R9. Continue and finalise the collaborative project started by the Equal Opportunities Unit of the FPS Justice to improve the collection of complete and reliable statistical data regarding hate crimes, and ensure the full implementation of its conclusions.

Recent cases of police violence

27. Since 2014, many cases of police violence have been reported in the Belgian newspapers and to Unia. Unia is concerned that abuses and violence committed by police officers are still too often considered by Belgium as an isolated rather than a structural problem and, consequently, not dealt with in a coherent and systemic approach.
28. For example, **just for the month of June 2020** : two children (11 and 13 years old) were arrested by police officers in Brussels, and one of them handcuffed²⁴; a 19-year-old boy named Mounaime complained that he had been beaten up by police officers²⁵ on the sidelines of a protest “Black Lives Matters”²⁶; the same day,

²² COMMISSION D’ÉVALUATION DE LA LÉGISLATION FÉDÉRALE RELATIVE À LA LUTTE CONTRE LES DISCRIMINATIONS (2017), [Premier rapport d’évaluation](#), n°361 et s.

²³ This working group is composed of magistrates and reference police officers, technical specialists of police and judicial encoding systems, statisticians of the Public Prosecutor's Office, Unia, IEWM and is coordinated by the Equal Opportunities Unit of the FPS Justice.

²⁴ THE BRUSSELS TIME (2020), [Outrage after Brussels police arrest and handcuff minors](#).

²⁵ THE BRUSSELS TIME (2020), [Police investigate allegations of brutality against Brussels teen](#).

²⁶ THE BRUSSELS TIME (2020), [Belgian Network for Black Lives shocked by riots and police violence](#).

a woman of Moroccan-Tunisian origin alleged that she had been controlled and mishandled by the police until her boyfriend (a well-known Belgian singer) intervened²⁷; and A 71-year-old Black MEP complained that she had been violently pressed against a wall because she tried to film a police intervention in the street. Police replied that she had insulted them.²⁸ Between 2014 and 2019, Unia received 355 cases relating to police services, among which about 70% are about racial criteria.²⁹

29. In its 2016 report³⁰, the Hungarian Helsinki Committee points, among other problems, the unusual length of investigations, mild sanctions for the convicted police offenders, absence of centrally gathered data, inadequacy of disciplinary procedure, lacks of specific safeguards, etc.
30. As regards migrants, in a report³¹ on transit migration published in 2018, the NGO Médecins du Monde notes that out of 440 migrants interviewed, a quarter declared that they had been the victim of police violence in Belgium: kicking, punching, or truncheon use on people already under control, strip searches with no understandable explanation, people stripped naked and stripped naked in the presence of fellow prisoners or police officers of the opposite sex, deprivation of food or access to decent sanitation, sleep deprivation, intimidation, in particular to take migrants' fingerprints. Almost one in two people claiming to be a victim would refuse to tell the details of these acts of violence to a humanitarian NGO guaranteeing their anonymity, chiefly because they have other priorities or do not see the point of doing so, but also out of fear of police reprisals.³² The Comité P indicates that it received only 5 complaints on this subject between 2017 and 2018. It nevertheless recognizes that it is complicated for migrants without a fixed base in Belgium to initiate legal proceedings.³³
31. In August 2020, the dissemination of the video recording of the police intervention preceding the death of Jozef Chovanec, a Slovak national who died following a police intervention in a cell at Charleroi airport in February 2018 caused a major shock in the public opinion and political world. Investigations were made by several institutions³⁴ and others are still ongoing. The High Council of Justice (CSJ) regretted that the prosecution only denounced certain acts to the police authorities after the mediatisation of the case. This had the consequence for instance that no disciplinary proceedings were conducted until then against the police officer who made a Nazi salute. In the meantime disciplinary proceedings are opened in addition against several senior officers. The CJS also recommended in its reports the placement of cameras with sound recording in places of deprivation of liberty and rapid and priority processing of this type of cases.
32. In April 2020 a young Sudanese migrant was victim of violence committed during the lockdown by a police officer. The latter was sentenced to a conditional sentence of one-year prison term by the Brussels Criminal Court³⁵.

²⁷ ARCHYDE (2020), [Sophie Dewulf, the partner of singer Arno, tacked to the wall by police when she walks her dog: she filed a complaint \(video\)](#).

²⁸ POLITICO (2020), [Belgian police say MEP who accused them of racist violence insulted them](#).

²⁹ UNIA (2020), [Rapport chiffres 2019](#), p. 43 et 44.

³⁰ HUNGARIAN HELSINKI COMMITTEE (2016), [Investigation of torture in Europe. A comparative analysis of seven jurisdictions](#), pp. 16-27.

³¹ MEDECINS DU MONDE (2018), [Violences policières envers les migrants et les réfugiés en transit en Belgique. Une enquête quantitative et qualitative](#).

³² MEDECINS DU MONDE (2018), [Violences policières envers les migrants et les réfugiés en transit en Belgique. Une enquête quantitative et qualitative](#).

³³ COMITE P (2019), [Le contrôle et la détention de transmigrants par la police à l'occasion d'arrestations administratives massives](#), §35 et §78 ; MYRIA, Myrianote, [Police et migrants de transit. Respecter la dignité et enquêter sérieusement sur les violences](#) (2019).

³⁴ COMITE P (2020), [Flux d'information dans le cadre de l'arrestation de monsieur Chovanec](#) ; CONSEIL SUPERIEUR DE LA JUSTICE (2020), [Enquête particulière affaire « Jozef Chovanec »](#).

³⁵ RTBF (2020), [Une peine d'un an de prison avec sursis pour le policier qui a porté des coups à un migrant](#).

Ethnic and discriminatory profiling (LOI §6)

33. Recent studies on ethnic profiling have been carried out³⁶. But Belgium still does not have comprehensive, objective and reliable statistics on the number of stop and search or on the prevalence of discriminatory profiling. There is no legal framework that allows a citizen to know the reason for a police control, which affects the relationship of trust between police and citizens and prevents the police from objectifying the phenomenon.
34. Many experiments are currently underway in Belgium and abroad to improve the police actions' transparency, including the use of bodycams. This is the case in the police zones of Brussels West, Turnhout, De Haan, Antwerp, Mechelen-Willebroek, Lokeren, Bruxelles-Capitale, Ixelles, etc.

Recommendation

R10. Introduce the legal obligation for police officers to issue a receipt specifying the reasons for the control and the possible remedies.

R11. Analyse and evaluate the experiments currently underway with regard to their impact on the professional practices of police officers: how are they taken into consideration in the way the intervention is approached? How much additional workload does their use mean?

Forced return of foreigners (co §13)

35. Several difficulties are still encountered in the monitoring of forced returns in the context of migration carried out by the General Inspectorate of Federal and Local Police (AIG)³⁷ :
- lack of full institutional/financial/operational/functional independence and impartiality ;
 - there are regularly difficulties in identifying the members of the AIG during the return operations on commercial flights (absence of any distinctive exterior badge or identity marker or clothing) ;
 - possible language difficulties in communicating with the returnee (no interpreter or interpretation sometimes done by police);
 - lack of transparency as a result of the lack of publication of annual and individual reports;
 - insufficient human and financial resources negatively impacting the monitoring capacity. In 2019, the AIG carried out 96 checks, among which 79 of them led to the effective removal of 105 people, on a total of 6.061 being forcibly removed from Belgium the same year (1,7% of the total effective removal operations that were effectively completed).
36. As mentioned in the State report, some NGOs were granted accreditations which allow certain members of their staff to visit detention centres on a regular basis to meet migrants. However, this right granted to NGOs is not explicitly provided for by law, which is likely to weaken their position. Furthermore, NGOs only have access to migrants detained in the closed centres but not to those in the process of a removal procedure (at the airport or during transportation).

³⁶ UNIA (2020), *Sélectivité policière. Rapport et position paper* ; LIGUE DES DROITS HUMAINS (2017), *Contrôler et punir. Etude sur le profilage ethnique* ; AMNESTY INTERNATIONAL BELGIQUE (2018), *On ne sait jamais, avec des gens comme vous. Politiques policières de prévention du profilage ethnique en Belgique* ; FRA (2017), *EU-Midis II*.

³⁷ MYRIA (2017), *Retour, détention et éloignement des étrangers en Belgique- Un retour, à quel prix ?*, pp. 76-79.

37. Therefore the recommendations made in the previous Concluding observation are still relevant, including the need to implement an objective surveillance system by **video recording** for each removal attempt.³⁸ This should be done by using fixed or mobile cameras and filming at least the most sensitive areas and moments. The law of March 21, 2018³⁹ has considerably increased the possibility of using cameras, including body-cams by the police allowing this use during removal operations. Objections to their use⁴⁰ therefore do not seem justified.
38. The State report also refers to a complaint mechanism. But different criticisms can be made concerning the Complaint Commission:
- lack of sufficient guarantees of independence and impartiality;
 - mechanism insufficiently effective from the point of view of the person filing the complaint;
 - lack of sufficient procedural guarantees;
 - lack of transparency.⁴¹
39. Furthermore, this system is only applicable to complaints concerning the detention of migrants. For the removal procedure, the migrant can file a complaint with the police, the Comité P or the AIG, or the judicial authorities. There is a lack of clarity as to the number of complaints filed and the follow-up of these complaints among the different services or authorities in the context of a removal procedure. This number should in any case be interpreted with caution. A certain proportion of foreigners who consider themselves victims of violence do not file complaints. This mechanism is not always known to them. There is in fact no systematic procedure for informing them of the possibilities or for explaining how to make a complaint in the event of an allegation of abuse during a removal procedure.

³⁸ MYRIA (2015), [The European Ombudsman's own-initiative inquiry concerning the means through which Frontex ensures respect of fundamental rights in joint return operations. The Belgian Federal Migration Centre's contribution](#), pp. 7-8.

³⁹ Law of 21 March 2018 amending the law on the police function, with a view to regulating the use of cameras by the police, and amending the law of 21 March 2007 regulating the installation and use of surveillance cameras, the law of 30 November 1998 on the intelligence and security services and the law of 2 October 2017 regulating private and specific security.

⁴⁰ See § 71 of the contribution of the Belgian State.

⁴¹ MYRIA (2015), Rapport annuel migration 2015, [La commission des plaintes : 2004-2014 : dix ans après... les mêmes constats](#), pp. 167-168.

Recommendation

R12. Guarantee more transparency on the activities of the AIG and its recommendations based on its observations.

R13. Implement an objective monitoring system by recording video of each of the removal attempts.

R14. Strengthen the legal framework for visits to closed centres for institutions that already have a right of access and of NGOs that carry out visits.

R15. Create an information brochure on possible complaint mechanisms distributed in a language understood by the foreigner, before each removal procedure.

R16. Guarantee more transparency with regard to the number of complaints filed either with the Comité P or with AIG, and the follow-up given to them.

R17. Use of a checklist that details all legal obligations with relation to the removal procedure and the monitoring thereof.

Suggested questions

Q2. How many complaints following the removal or an attempt of removal of a migrant have been introduced during the concerned period and before which authorities and what was the judicial and disciplinary follow-up for each of these complaint?

3.1.6 Persons of foreign origin in the criminal justice system (co §14 – LOI §15)

40. There is no collection of ethnic data in Belgium. In their report on their 2019 visit to Belgium, the Working Group of Experts on People of African Descent recommended that Belgium “*collect, compile, analyse, disseminate and publish reliable statistical data, disaggregated by race and on the basis of voluntary self-identification, and take all necessary measures to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance*”.⁴²

3.1.7 Structural discrimination against non-citizens in relation to economic, social and cultural rights (co §15)**Labour market (LOI §13)**

41. Unia and the Federal Public Service Employment, Labour and Social Dialogue published in 2019 a Socio-Economical Monitoring⁴³ that provides statistical data on employment, unemployment, and under-employment disaggregated by region, sex, age, national origin, and level of education. The data collected show only a slight improvement. People of foreign origin are still more excluded from the labour market than people of Belgian origin. At this pace, it will take decades before the participation of people of foreign

⁴² HUMAN RIGHTS COUNCIL (2019), [Visit to Belgium. Report of the Working Group of Experts on People of African Descent](#), p. 17.

⁴³ UNIA et SPF EMPLOI, TRAVAIL ET CONCERTATION SOCIALE (2019), [Monitoring socio-économique – Marché du travail et origine](#), pp. 27-86.

origin in the labour market in our country matches that of people of Belgian origin. In recent years, progress has been made at the various policy levels. But an integrated approach is necessary to make further progress.

42. Myria, in the framework of its cooperation within the national contact point of the European migration network, co-published, with National Contact point Belgium and DEMO (UCLouvain), a report on the Socio-Demographic Profile and Socio-Economic Careers of people granted international protection.⁴⁴
43. The new legal frameworks on situation tests of Brussels-Capital Region and at the federal level are good steps forward. However, there is a requirement of a prior complaint, which considerably limits the possible use of the new legislation.

Recommendation

R18. Strengthen the effective implementation of anti-discrimination legislation in the field of employment, including by the introduction of targeted monitoring based on statistics, such as datamining.

44. The public service is one of Belgium's first employers⁴⁵. But the Belgian Constitution still reserves employment in public services only to Belgians⁴⁶ with a derogation for EU citizens for employment not linked to public sovereignty.⁴⁷ This restriction can therefore interfere with the integration of migrants. Also more and more third-country nationals are seeing the extension of their residence permit submitted to the condition of having a job. This rule, therefore, limits in practice their possibility to meet this condition required for the extension of their stay.

Recommendation

R19. Reverse the rule that currently prevails in the Constitution: employment in public services should be accessible to all, with some exceptions - for example, for employment which implies the exercise of public sovereignty (*imperium*).

45. According to the EU sanction directive,⁴⁸ third-country national workers without legal residence have the right to recover back payments of their wages owed by their employer, if necessary through legal action. Myria and other organisations representing workers and employers have the competence to take legal action to support victims. The Royal Decree implementing this competence, which must be attributed to other civil society organisations, has still not been adopted. Also, since an amendment to the Social Criminal Code in 2016, any person who works illegally commits an offence punishable by an administrative fine. This represents a significant obstacle to wage recovery and a violation of the principle of non-criminalization of victims.⁴⁹

⁴⁴ EMN NATIONAL CONTACT POINT BELGIUM and DEMO – UCLouvain (2019), [Socio-demographic profile and socio-economic careers of people granted international protection in Belgium 2001-2014](#).

⁴⁵ For example, in 2012, it employed 479.000 people. Source: UNIA (2015), [Monitoring Socio-économique](#), pp. 65-66.

⁴⁶ Art. 10, al.2 of the Constitution, *M.B.*, 17 février 1994.

⁴⁷ Art. 18 and 45 of the Treaty on the Functioning of the European Union.

⁴⁸ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals ; Loi du 11 février 2013 prévoyant des sanctions et des mesures à l'encontre des employeurs de ressortissants de pays tiers en séjour illegal, *M.B.*, 22 février 2013.

⁴⁹ MYRIA (2016), *Rapport annuel traite et trafic des êtres humains*, pp. 77-78.

46. Workers who are in an irregular situation should be able to lodge a complaint with the police, the Social Inspectorate, or the Control of Social Laws without the risk of being automatically arrested or placed in a detention center. A change could be brought to the administrative report that the police addresses to the Immigration Office to systematically mention that the migrants in an irregular situation has presented himself spontaneously in order to lodge a complaint as a victim.

Recommendation

R20. Adopt a Royal Decree to designate additional organisations that can take legal action to support migrants in irregular situation willing to recover back payments of their wages.

R21. Ensure that an undocumented victim can enjoy the same rights as any other victim, particularly to avoid the risk of arrest and forced expulsion by the police when filing a complaint and at subsequent stages of criminal proceedings.

Housing

47. Unia's Barometer of diversity in the housing was published in 2014⁵⁰ and was followed by similar studies commissioned by cities at the local level, like Ghent, Mechlin, and Leuven⁵¹ and by the region of Brussels. The private rental market is in crisis: there are insufficient adequate and affordable houses. The offering in social housing remains too low. This creates an environment of thorough selection and even discrimination. So-called race or ethnicity is still all too often being used as a criterion for selection. But collecting evidence of discrimination is particularly complicated. Therefore, regional housing inspection services should be allowed to receive individual complaints and to perform situation testing. The region of Brussels has taken considerable steps in this direction, even if the system could still be improved in terms of efficiency. The other two regions should materialise as soon as possible their intention⁵² to introduce this possibility in their respective legislations.

Recommendation

R22. Allow housing inspectorates throughout the country to receive individual complaints and carry out situation testing.

48. The Flemish government reintroduced the obligation to learn a specific level of Dutch (A1) for renters if they want to benefit from social housing (§142 of the report of the Belgian State). This measure's necessity and effectiveness have not been sufficiently demonstrated and alternatives have not been studied in depth. In practice, the requirement of knowledge of the language will make little contribution to achieving the set objectives. The CERD-committee commented on a previous version of this measure.⁵³ Also, the Flemish government agreement of 2019 plans to generalise the 'local anchoring' criteria to the whole of Flanders. 10 years of legal residence in the municipality, including 5 years without interruption, would be required before social housing is allocated.

⁵⁰ UNIA (2014), *Baromètre de la diversité Logement*.

⁵¹ See: <https://www.unia.be/fr/articles/tests-de-situation-utiles-contre-la-discrimination>.

⁵² The resolution of the Flemish Parliament is a good first step as well but should be concretised as soon as possible by a legislation.

⁵³ COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, CERD/C/BEL/CO/15, 07/03/2008, p. 5.

3.1.8 Restrictive access to social assistance for migrants (co §16)

49. In the last years, the Belgian Health Care Knowledge Centre (KCE) has conducted several studies on the health care situation of migrants. In 2015, it concluded that the procedures to obtain urgent medical aid for undocumented migrants are too complex, variable, and costly. It suggested reforming the system to simplify and harmonise it.⁵⁴ In a recent study, the KCE noted that asylum seekers do not have equal access to health care depending on their place of housing. It suggested a reform of the organisation of health care for asylum seekers aiming to create one comprehensive and uniform system.⁵⁵
50. The Act of 19 January 2012, which amended article 57 quinquies to the Organic Law of 8 July 1976 on public social assistance centres and which provided that nationals of European Union member States shall not qualify for urgent medical care and social assistance for three months after their arrival in Belgium has been declared null and void by the Constitutional Court who argued that the restriction violated the EU regulations.⁵⁶
51. Myria observed a tendency in more restrictive conditions on the duration of residence in Belgium to have access to social benefits. Despite the negative recommendations of the Council of State, new conditions of residence had been in force for the allocation of income replacement benefits (IRB)⁵⁷ issued to persons with disabilities⁵⁸ and issued to elderly persons⁵⁹. The applicant had to have effectively stayed in Belgium for a minimum of ten years, including at least five years without interruption. This resulted in indirect discrimination of migrants with disabilities and elderly migrants. Even though the new condition was applied to both Belgians and non-Belgians, it had an adverse effect on those that exercised their right to free movement. The Constitutional Court declared in both case the Act null and void because it violated the standstill-principle in the Constitution and European regulations.⁶⁰

Recommendation

R23. All the concerned actors should examine the possibility of reforming urgent medical aid system for undocumented migrants to make the system more effective and accessible.

⁵⁴ KCE (2015), [What health care for undocumented migrants in Belgium?](#).

⁵⁵ KCE (2019), [Asylum seekers in Belgium: options for a more equitable access to health care. A stakeholder consultation.](#)

⁵⁶ Constitutional Court, 30 June 2014, [nr. 95/2014](#).

⁵⁷ The income replacement benefits (IRB) are issued to persons with disabilities who, due to their physical or mental situation, are only able to earn at most 1/3 of what could be earned by an able-bodied person on the employment market. See <https://www.socialsecurity.be/citizen/fr/handicap-invalidite/interventions-etallocations/allocation-de-replacement-de-revenus>. The aim of the new condition was, inter alia, to prevent fraud after a significant increase in requests for IRB made by Bulgarians and Romanians since 2012. However, the number of requests for IRB do not prove any fraud by Romanians and Bulgarians. The increase in applications is likely due to the accession of these countries to the EU. See NATIONAL SUPERIOR COUNCIL OF PERSONS WITH DISABILITIES (Conseil Supérieur National des Personnes Handicapées), [Advice N° 2017/17](#).

⁵⁸ Art. 23 of the Act of 26 March 2018 on reinforcement of economic growth and social cohesion, M.B. 30 March 2018, p. 31620 which amended art. 4 §1 of the Act of 27 February 1987 on income replacement benefits to persons with disabilities.

⁵⁹ Art. 3 of the Act of 27 January 2017 which amended the Act of 22 March 2001 on the income replacement benefits for elderly persons, M.B., 6 February 2017.

⁶⁰ CONSTITUTIONAL COURT, n°6/2019, 23 January 2019 and Constitutional Court, n°41/2020, 12 March 2020.

3.1.9 The acquisition of Belgian nationality and family reunification (co §17)

52. According to new legislation adopted in 2018⁶¹, following an integration ‘class’ is not anymore sufficient to prove social integration: one needs to succeed in her or his ‘integration parcours or trajectory’. In Brussels, French-speaking foreigners legally residing in Belgium for more than 3 years have no access to the integration courses (reserved to newcomers). Before, they could prove their integration by following a course in one of the organizations recognized by the Brussels regional authorities. This will not be the case anymore except for those foreigners that started a course before the first of August 2021. In practice the access to these courses was limited since March 2020 due to the Covid 19 pandemia. This mainly concerns foreigners who cannot prove their integration by a Belgian diploma, professional training of at least 400 hours, or by 5 years of uninterrupted work. This exclusion of the integration course limits the access to the Belgian nationality for foreigners that are already in more vulnerable positions. Access to the Belgian nationality for illiterate persons is still very problematic. Contrary to the Netherlands and France, Belgium has still not foreseen the possibility for illiterate foreigners to prove their language skills orally.
53. Myria also observed that the combination of both the restricted conditions for the Belgian nationality and the removal of the possibility to obtain the nationality through marriage had a significant impact on the acquisition of the Belgian nationality by women. Women represented 53% of the nationality acquisitions in 2012 (20.900 women versus 18.800 men). In 2014 they represented only 49% (9.300 women versus 9.600 men), a proportion that remains quite similar since (49,6% in 2019)⁶². This evolution at the Belgian level is clearly different from the evolutions observed in the whole of the EU countries, where women represent more than 50% of the nationality acquisition .

Recommendation

R24. Remove all measures detrimental to the access to citizenship for foreigners in more vulnerable positions and women.

R25. Foresee the possibility for illiterate foreigners to prove their language skills by an oral conversation.

Statelessness persons

54. The ratification by Belgium of the 1961 Convention on the Reduction of Statelessness is a very positive step. Nevertheless, no residence status has yet been created for recognized stateless people. The Constitutional Court (since 2009)⁶³ and the Court of Cassation⁶⁴ considered that the absence of this status is violating the Constitution. For refugees recognized by the 1951 Convention of Geneva, the Belgian law granted such a residence status, whereas this is not the case for stateless persons recognized under the 1954 Convention of New York. The absence of such a residence status is therefore considered as discrimination. The legislator has still not adopted the necessary instrument to redress this discrimination.

Recommendation

R26. Create a residence status for recognized stateless people.

⁶¹ Act of 18 June 2018 laying down miscellaneous provisions relating to civil law (§172 State Report).

⁶² MYRIA, *La réforme du Code de la nationalité belge (2012) et ses impacts sur le genre* (2021).

⁶³ Cour Const., n° 198/2009, 17 December 2009 ; Cour Const., n° 1/2012, 11 January.

⁶⁴ Cass., 27 May 2016, n° C.13.0042.F.

Family reunification

55. Myria observed that the number of (initial) refusals of family reunification is significantly higher for certain nationalities. The average number of refusals of family reunification for third-country nationals was about 20% between 2017-2019. For certain nationalities such as Somalia, Eritrea, and Guinea this number is significantly higher (about 50%) in comparison to other nationalities. Clearly, a high number of (initial) refusals are related to 'fraud' or the recognition of a foreign marriage certificate because of reasons of a so-called 'marriage of convenience'. The negative opinion of the public prosecutor often contains very general motivations referring to 'a general practice in cases of family reunifications of Somali/Eritrean people' or 'it is known that in other cases of family reunification Somali/Eritrean women do not settle with their spouse', without reference to any sources.⁶⁵ Thereafter, the Immigration Office does not conduct any further assessment. These generalized motivated decisions may indicate discrimination based on origin/nationality or at least prejudices based on cultural habits and lack of an individual assessment.

Recommendation

R27. Provide trainings for civil servants of the civil registry and magistrates on racism, discrimination and prejudices.

56. An Act of 2017⁶⁶ introduces the concept of fraudulent recognition of a child despite a critical opinion from the Council of State, in particular on the failure to take into account the best interests of the child. The local officer of civil registrar may postpone and refuse the recognition of a child if one of the parents tries to obtain an advantage in this way in terms of residence, even if the biological link between the parent and the child is established. In practice, this law considerably complicates the recognition of children born outside of wedlock when one of the parents is an undocumented resident. No protection against expulsion is provided during the period of investigation. In the event of a refusal of recognition, no specific solution is provided. The Act has been challenged before the Constitutional Court. In May 2020 the Court⁶⁷ has only partially declared the Act null and void regarding the fact that no appeal procedure against the decision of refusal is provided. Some crucial questions have not been addressed by the Court, as the unreasonable delay and the absence of protection against expulsion during the procedure⁶⁸.
57. Since 2011⁶⁹, more restrictive conditions apply to family reunification with Belgian and third country nationals than with other EU citizens or Belgian having exercised their right to free movement. The difference in treatment occurs at different levels: family reunification is not possible with ascendants of Belgians and third country nationals and the assessment on the means of subsistence is more restrictive. Before this legislation, Belgians were benefiting from the same regime than EU citizens. These more restrictive conditions create a disadvantage for Belgians of non-European Union origin. In an action for annulment against this law, the Constitutional Court judged it in overall conformity with the Belgian law⁷⁰. The Court considered that "most family reunifications concern Belgians, born in Belgium, of immigrant origin, or who became Belgians thanks to the law introducing an accelerated naturalisation (...). The legislator could reasonably take into account the fact that, as a result of several legislative amendments,

⁶⁵ For ex. Aliens Litigation Council, nr. 232 272, 6th of February 2020; nr. 220 288 of the 25th of April 2019.

⁶⁶ Loi du 19 septembre 2017 modifiant le Code civil, le Code judiciaire, la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et le Code consulaire, en vue de lutter contre la reconnaissance frauduleuse et comportant diverses dispositions en matière de recherche de paternité, de maternité et de comaternité, ainsi qu'en matière de mariage de complaisance et de cohabitation légale de complaisance, *M.B.*, 4 October 2017.

⁶⁷ Cour Const., [nr. 58/2020, 7th of May 2020](#).

⁶⁸ MYRIA (2018), *Mémoire en tierce intervention*, https://www.myria.be/files/M%C3%A9moire_Myria.pdf

⁶⁹ Act of 8 July 2011 amending the Act of 15 December 1980 on the entry, residence, settlement and expulsion of foreign nationals.

⁷⁰ Cour Const., nr. 121/2013, 26 September 2013.

access to Belgian nationality has been facilitated in recent years, so that the number of Belgians likely to submit an application for family reunification for the benefit of their family members has significantly increased.” This justification seems questionable. Although these stricter conditions are applied to all Belgians and have as such an important impact on all Belgians with a lower socio economic status⁷¹, it essentially impacts those with a foreign origin since they are more often engaged in foreign relations or have more often foreign family members, resulting in a potential indirect discrimination of migrants.

58. There is an ongoing discussion in the case law on the practice of the Immigration Office on whether the means of subsistence can only be provided by the applicant himself or also by other family members, and if social benefits for people with disabilities or elderly can be taken into account in this assessment.

Suggested question

Q3. What were the actions taken so far by Belgium to insure that the new rules on fraudulent recognition of a child or the conditions for family reunification with a Belgian do not lead to indirect discrimination ?

3.1.10 Discrimination against Roma and Travellers (co §18-19)

Adequate housing for Travellers (LOI §11)

59. **Evictions of Traveller families** are mainly driven by the lack of culturally adequate housing for this group in all of the three regions in Belgium.⁷² There is a general lack of places on both permanent and temporary residential sites. This forces Traveller families to live on camping sites (among a growing number of permanent residents on campings), in houses and on private terrains. A small but increasingly vulnerable group is forced to travel around on a continuous basis.⁷³ Additionally there are no action plans setting concrete targets on the number of places that ought to be created in the future in order to gradually create a sufficient number of culturally adequate places.
60. Travellers on **private terrains** (living in caravans with their families on a terrain they own or rent) are nevertheless vulnerable to eviction since many of these terrains do not align with urban planning rules. Although the three regions have legally recognized caravans as dwellings, this has not decreased the risk of evictions on those private terrains. In practice, it proves impossible to legally construct a private residential terrain because of a number of practical and procedural barriers.⁷⁴ As far as we know, no steps are being taken to remedy this situation.
61. On 7 May 2019, the police raided several trailer sites in the fight against car scams (Operation Strike). At the time, 90 caravans belonging to families were seized. Since then, many of these families have been left without a roof over their heads, had their bank accounts frozen without explanation and/or had their caravans confiscated or their plate number deregistered. In October and November 2020, Unia collected testimonies showing that, to date, some people have not been questioned or prosecuted, did not get back

⁷¹ Because of the stricter condition relating to the means of subsistence.

⁷² International Federation of Human Rights (FIDH) v. Belgium, [Complaint No. 62/2010](#). FRA (2020), [Roms et Gens du voyage en Belgique](#), p. 5.

⁷³ COMMISSARIAAT VOOR DE RECHTEN VAN HET KIND (2014), [Knelpuntennota woonwagengebwoners](#).

⁷⁴ H. DEGOL (2018), [Beleidsdossier Voyageurs op zoek naar een eigen plek](#).

their caravans, or no longer have access to banking services. The European Roma Rights Center (ERRC) lodged a collective complaint with the European Committee of Social Rights.⁷⁵

62. The **Covid-19 crisis**, with the restrictions to the freedom of movement, has an impact on Travellers. In Wallonia, a circular⁷⁶ was sent in November 2020 to the municipalities. It is recommended to avoid expulsion from the terrains where Travellers are currently staying. The circular remains a non-binding text and therefore does not imply a modification of the usual administrative police powers of municipalities. However, it should be underlined that the regional and local authorities took the particular pandemic situation in consideration when dealing with Travellers.
63. In March 2020, the **Committee on Economic, Social and Cultural rights** recommended that Belgium “(a) prohibit forced eviction without the allocation of alternative housing; (b) intensify its efforts to equip residential sites for Roma families; (c) ensure that caravans are effectively protected as a place of residence; and (d) systematically record all cases of evictions.”⁷⁷

Suggested question

Q4. What were the actions taken so far by Belgium to implement the recommendation of the CESCR about right to housing for Travellers and Roma families living in caravans ? What are the actions planned ?

Roma (LOI §10)

64. The **national Roma strategy** is no longer an instrument that is being used by any government in Belgium. This strategy did not benefit from any dedicated budget. The evaluation agreed upon by the federal government did not take place. There currently does not exist any Roma action plan on the federal or any regional level. There is no coordination of actions in place within political levels (regions/federal level) nor is there any coordination between political levels (federal – regional/local governments).
65. In March 2020, the **Committee on Economic, Social and Cultural rights** recommended that Belgium “ensure effective implementation of the national strategy for the integration of Roma people, through the adoption of an inter-federal action plan including specific measures for Roma women and children and receiving a specific and adequate budget. It also recommends the adoption of an inter-federal action plan to combat antigypsyism.”⁷⁸ Belgium should implement this recommendation as soon as possible.

⁷⁵ European Roma Rights Center (ERRC) v. Belgium, [Complaint No. 185/2019](#).

⁷⁶ [Circular of 3 November 2020](#).

⁷⁷ [E/C.12/BEL/CO/5](#), §41.

⁷⁸ [E/C.12/BEL/CO/5](#), §21.

Recommendations

R28. An evaluation and update of the inter-federal Roma action plan is needed. Special attention should go to vulnerable subgroups: Roma youth and women.

R29. There should be a coordinated action on antigypsyism, in the frame of the National Action Plan on racism, as it remains a huge challenge in Belgium.

Suggested question

Q5. What were the actions taken so far by Belgium to implement the above-mentioned recommendation of the CESCR ? What are the actions planned regarding an inter-federal Roma action plan?

3.1.11 Treatment of asylum seekers (co §20) and detention

66. Two laws⁷⁹ that entered into force in 2018 substantially amend the Aliens Act⁸⁰ and aim to transpose the directives on procedures⁸¹ and reception⁸². They also implement elements of the Dublin III regulation.⁸³ But certain elements of this law relating to detention, including alternatives to detention for asylum seekers, must be provided for by a Royal Decree which has not yet been adopted. Therefore they are currently no alternatives to detention in Belgium, except those intended for families : open family homes known as 'maisons de retour', literally 'return homes' and home monitoring based on an agreement with the Immigration Office. In 2019, 148 families were called to participate to the home monitoring system. 85 families responded to this summons. Among these, 4 left the territory voluntarily.
67. The Belgian Aliens Act now mentions⁸⁴ that the applicant for international protection cannot be detained for the sole reason of having made an application. However, it does not provide that less coercive measures than detention should be considered at the border.
68. The State report explicitly mentions that in principle, less coercive measures cannot be effectively applied to applicants for international protection who are detained at the border because such measures would involve de facto entry into the territory. This is not in conformity with the reception directive which, in article 8, provides, with regard to any applicant for international protection, and therefore also at the border, that detention is only possible if 'it proves necessary and on the basis for a case-by-case assessment "and only if" other less coercive measures cannot be effectively applied'. The absence of such a reference entails the almost systematic detention of asylum seekers at the border.

⁷⁹ Law of 21 November 2017 amending the law of 15 December 1980 and law of 17 December 2017 amending the law of 15 December 1980. In July 2017 Myria sent a note to the attention of the Committee on the Interior, General Affairs and of the Civil Service, as part of the process of adopting these laws, which essentially examines the aspects related to detention, expulsion and effective remedy.

⁸⁰ Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals.

⁸¹ Directive 2013/32 / EU of 26 June 2013 on common procedures for the granting and withdrawal of international protection.

⁸² Directive 2013/33 / EU of 26 June 2013 establishing standards for the reception of persons seeking international protection.

⁸³ Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a national of a country third party or stateless person.

⁸⁴ Following the adoption of the law of 21 November 2017 amending the law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners.

69. Furthermore the State reports explains that for families the open return houses are legally considered to be “a specific place”, located at the borders⁸⁵, although these houses are in fact located on the territory. This has as consequence that, from a legal point of view, the families in return houses are not considered to have entered the Belgian territory. They can therefore be removed from Belgium at the responsibility and charge of the air craft operator⁸⁶. A similar legal fiction could be applied to open reception centers. Therefore adults applying for asylum at the borders could remain in open reception centers during the examination of their application rather than in detention centers, as it is currently almost systematically the case.
70. In addition, the State report also specifies that in certain cases the access to the territory will be granted. However there are no official data on the number of asylum seekers at the border and among them the number of those who are granted access to the territory. Such data would enable to evaluate whether an individual assessment is made concerning the decision to detain an asylum seeker at the border.
71. Finally, the new law also introduced into the Aliens Act the fact that aliens are allowed to enter the Kingdom ‘in respect of whom a decision has not been taken by the Commissioner General for Refugees and Stateless (CGRS) Persons within four weeks after receipt of the request for international protection sent by the Minister or his delegate’.⁸⁷ This is intended to transpose Article 43 of the Procedure Directive, which provides that if ‘no decision has been taken within four weeks, the applicant is granted the right to enter the territory of the Member State’. However, in practice, applicants regularly continue to be detained beyond this four-week period. This is done on the basis of a change in status of detention, which transforms detention at the border into detention as an applicant for international protection in the territory, without effectively changing anything about the practical situation the person is in.⁸⁸ Furthermore, the Belgian law considered that this four-week period starts at the point when the file is transmitted to the CGRS, once Belgium has been identified as the responsible State. However, this is not included in the procedure directive and this deadline should therefore be considered as starting from the moment when application is made, as confirmed by the European Court of Justice⁸⁹ and more recently by the Belgian constitutional Court⁹⁰.
72. The Belgian State report explains the maximum detention times for applicants for the ‘Dublin’ international protection but does not really answer the question of what measures have been put in place to show that detention is only used as a last resort.
73. It should also be pointed out that if the return directive refers to the existence of a risk of absconding to justify detention (art.15), the Dublin III Regulation refers to a ‘non-negligible’ risk of absconding (Article 28). While Belgian law uses this terminology, it does not make it possible to distinguish these two scenarios and to determine on the basis of what criterion the risk should be considered as ‘non-negligible’.

⁸⁵ On the basis of a legal fiction established by decrees.

⁸⁶ Point 5.8 of the Annex 9 to the Convention on International Civil Aviation (also known as Chicago Convention) of 7 December 1944.

⁸⁷ Article 74/5 of the law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners as modified by the law of 21 November 2017.

⁸⁸ This practice already existed before the entry into force of the law and therefore continued despite its adoption. See: MYRIA, *La migration en chiffres et en droits*, 2016, p. 235 as well as for more information, Nansen, *Note 2018/01-Demandeurs d’asile à la frontière: procédure à la frontière et détention*, April 2018.

⁸⁹ CJEU, *FMS et autres c. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, 14 May 2020, C 924/19 et PPU C 925/19.

⁹⁰ Const. Court, nr 23/2021, 25 February 2021.

Recommendations

R30. Establish alternatives to detention for all foreigners who are administratively detained, including by adopting the Royal Decree provided for by law for applicants for international protection.

R31. End the almost systematic detention of applicants for international protection at the border by putting in place alternatives to detention.

R32. Increase the resources allocated for alternatives to detention.

Suggested questions

Q6. When does Belgium plan to adopt a Royal Decree which will introduce alternatives to detention for applicants for international protection? What about other categories of foreigners?

Q7. In recent years, how many people have applied for international protection at the border and, among them, how many have been detained?

Q8. What measures are in place to ensure that the use of detention of aliens under the Dublin Regulation only occurs as a last resort? Among the foreigners who are to be subject to a Dublin transfer, what is the proportion of people who are detained in closed centres?

3.1.12 Trafficking in persons (co §21)

74. In its annual reports, Myria as an independent national rapporteur on trafficking of human beings draws regularly attention on a number of persisting problems in this area. Even though human trafficking is officially a priority, first-line actors and prosecutors lack financial and human resources to tackle the phenomenon and to detect and protect victims. Other priorities are assigned to police officers and leaving staff is not replaced. Labour inspection services face similar problems regarding resources. The centres specialized in the reception of human trafficking victims still do not benefit recurrent funding. However, possible improvements are mentioned in the agreement of the federal government of September 2020⁹¹, that provides for the release and allocation of resources to these services, specifically for the fight against human trafficking. Moreover, a better understanding by the (non-specialized) first-line services on their obligation to inform and refer victims to the specialized support services is needed. Despite the efforts the authorities are putting on trainings, the detection and the protection of minor victims of human trafficking remains problematic.

Recommendations

R33. As mentioned in the federal government's agreement of September 2020, provide necessary resources to first-line actors, the judiciary and the specialized shelters.

R34. Continue, intensify and diversify the training efforts toward first-line actors, public prosecutors, guardians and youth support services.

⁹¹ Accord de gouvernement, 30 September 2020, www.belgium.be/sites/default/files/Accord_de_gouvernement_2020.pdf.

3.2 Additional issues regarding the implementation of the Covenant

3.2.1 Access to bank services

75. Both Unia and Myria observed a limited access to bank services for certain groups of migrants. Since the transposition of the 4th European anti-laundry directive into Belgian legislation⁹² in 2017, banks tend to apply the identification obligation in a very restrictive way to migrants originating from certain countries or to migrants who have no permanent residence in Belgium. Even though the guidelines of the National Bank⁹³ are less strict, banks have become very reluctant to open bank accounts to these group of persons, especially for foreigners originating from countries with a higher risk of money laundering or terrorism finances. By consequence, certain migrants do not have access to general bank accounts as well as to basic bank services.

Recommendation

R35. Ensure more transparency and surveillance on the compliance policy of banks regarding general and basic bank services.

3.2.2 Covid 19 Pandemic

76. The covid-19 crisis has had a serious impact on the enjoyment of fundamental rights, particularly for people in vulnerable situations.⁹⁴ But fear has also led some people to point fingers and be suspicious of groups in the population, without clear reason or evidence – for example people from Asian origin, asylum seekers, Jewish people, Muslims, people of colour and, in general, people of foreign origin.⁹⁵

Consequences on the rights of foreigners

77. After a suspension of the possibility to apply for international protection⁹⁶, applications had to be submitted during an appointment obtained via an internet form. This was an obstacle for more vulnerable applicants⁹⁷. Applicants were only given a place in a reception facility after this appointment. Following a court decision, the Belgian state had to review the system in order to guarantee rapid registration and reception.⁹⁸ Therefore, people who wish to introduce an application for international protection can again present themselves at the Registration Centre.
78. The right to family reunification is also affected: from March to July 2020, it was impossible to submit or issue visa applications. After July, the suspension of visa activities was officially lifted for family reunification,

⁹² Act of 18 September 2017 on the prevention of money laundering or terrorist financing and limiting the use of cash.

⁹³ NATIONAL BANK OF BELGIUM, *Object of the identification and identity verification: Comments and recommendations* www.nbb.be/en/financial-oversight/combating-money-laundering-and-financing-terrorism/customer-and-transaction-du-7 .

⁹⁴ UNIA, MYRIA, SERVICE DE LUTTE CONTRE LA PAUVRETÉ, LA PRÉCARITÉ ET L'EXCLUSION SOCIALE (2020), *COVID-19 : des mesures de protection dans le respect des droits fondamentaux*.

⁹⁵ UNIA (2020), *COVID-19 : les droits humains mis à l'épreuve*, p. 32 to 37.

⁹⁶ From 17 March until 2 April 2020.

⁹⁷ From April 2020 until 29 October 2020.

⁹⁸ Civ. Bruxelles (réf.), 5 octobre 2020, n° 2020-105-C.

but in practice there are still important obstacles to apply, such as the limited capacity of visa application centers. These restrictions and obstacles result in important difficulties to apply within important deadlines⁹⁹, the expiry of visas already issued, and/or in an extension of the duration of separation. or Travel restrictions also still impact visits between partners who are in a relationship that is not registered.¹⁰⁰

79. Although local administrations were supposed to handle applications for acquiring Belgian nationality, this was in practice impossible for many people.¹⁰¹ Despite this practical impossibility, no general provision was adopted to adapt the deadlines imposed to the candidates, although the deadlines imposed to prosecutors were extended.¹⁰²
80. Despite the release of some of the foreign nationals in administrative detention at the beginning of the pandemic, visits to these detention centres¹⁰³ revealed certain difficulties: detention of certain vulnerable persons, lack of guarantees on the possibility of removal within a reasonable time, access to an effective complaint mechanism regarding detention conditions, implementation of preventive measures and social distancing, the infrastructure of the facilities, etc. At the end of 2020, several centers were affected by several infections with COVID-19.
81. The application of preventive measures against the coronavirus has consequences for the fight against human trafficking and on the referral and care of victims of trafficking. Several problems have been identified. The specialised reception centres for victims of human trafficking have received relatively few reports during the current crisis. They fear that even more victims of human trafficking "than usual" have gone undetected. Furthermore relating to sexual exploitation, several police services could not proceed to systematic controls of the private prostitution. Internet checks to detect situations of exploitation in private prostitution should then be reinforced (human and ICT resources). In addition during this crisis, vulnerable workers are more at risk to be exploited. Undocumented workers being illegally employed do not have always the possibility to work and to be accommodated in a safe sanitary place with respect for social distancing. It is therefore important that the various frontline services also pay sufficient attention to human trafficking indicators and the detection of presumed victims of human trafficking during health checks of workplaces and workers' accommodation in potentially high-risk sectors.

Enforcement of Covid measures by police

82. Like everyone else, young people were confined. For many of them, it was not easy to comply with the social distancing measures. Young people living in the city with their family in small flats often had nowhere else to go than in the public spaces. The application of the various ministerial decrees aimed at combatting the spread of the virus proved difficult, both in terms of understanding the measures and their application (date of entry into force; proportionality). The activity of the police, in the forefront of containment and decontamination control, appeared to increase. Figures from the public prosecutor's office indicate that on September 9, 2020, 13% of the cases registered under the specific prevention code Covid concerned youth prosecution. We do not have qualitative data. However, we received signals from applicants or civil society

⁹⁹ Age of majority of the applicant or of the person who is the subject of family reunification, time limit of one year after obtaining international protection status, etc.

¹⁰⁰ De facto partners have to proof a stable and long-term character of the relationship (having lived together for 6 months in Belgium or in another country, or having a relationship of at least one year, during which they have physically seen each other physically at least twice, for at least 20 days; or having a child together). Both de facto partners have to at least 18 years old and unmarried.

¹⁰¹ MYRIA (2020), *La migration en chiffres et en droits 2020, cahier nationalité*, p. 7, www.myria.be/files/CHAP_8-Nationalite-FR-AS.pdf.

¹⁰² Loi du 20 décembre 2020 portant des dispositions diverses temporaires et structurelles en matière de justice dans le cadre de la lutte contre la propagation du coronavirus COVID-19, art. 53, *M.B.*, 24 December 2020.

¹⁰³ MYRIA (2020), *Visites de Myria dans les centres fermés de Merksplas, Bruges et Vottem entre le 10 avril et le 14 mai 2020 dans le cadre de la pandémie de COVID-19*.

confirming the activity of the police and the difficulty of young people to respect the social distancing measures. Tensions between the police and the young people were and are still regularly reported in the newspapers.¹⁰⁴

Recommendation

R37. Assess the impact of the covid-19 crisis on the various fundamental rights, disaggregating the data by subgroup (socio-economic, migrants, prisoners, children, people with disabilities, the elderly,...) and put in place a systematic and coordinated policy to correct these disadvantages, designed with civil society.

3.2.3 People of African Descent

83. In February 2019, the Working Group of Experts on People of African Descent visited Belgium. It established that racism and racial discrimination against people of African descent continues to be a serious concern in all the areas of life (employment¹⁰⁵, housing¹⁰⁶, education¹⁰⁷, medias, etc.). The Working Group concluded that *“root causes of present-day human rights violations lie in a lack of recognition of the true scope of the violence and injustice of colonization”* and made a series of recommendations, that should be implemented urgently.

Recommendation

R38. Implement the recommendations made by the Working Group of Experts on People of African Descent and monitor the progress and the impact.

R39. Introduce the mandatory teaching of the colonial history of Belgium at all levels of the education system.

¹⁰⁴ See for example : <https://www.alterechos.be/police-et-jeunes-bilan-dun-confinement-sous-tension/> (May 2020) and <https://plus.lesoir.be/358911/article/2021-03-05/bruxelles-la-police-doit-recreer-un-cadre-de-confiance-avec-la-jeunesse-et-les> (March 2021).

¹⁰⁵ SERVICE PUBLIC FÉDÉRAL EMPLOI, TRAVAIL ET CONCERTATION SOCIALE et UNIA (2020), [Monitoring socioéconomique 2019 : marché du travail et origine](#).

¹⁰⁶ UNIA (2014), [Baromètre de la diversité – logement](#).

¹⁰⁷ UNIA (2018), [Baromètre de la diversité – enseignement](#).

UNIA
MYRIA

Rue Royale 138 ○ 1000 Bruxelles

T +32 (0)2 212 30 00

www.unia.be

www.myria.be

