6th Parallel Periodic Report of Belgium

2019 Parallel Report of the NHRI and MYRIA

Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting

Service de lutte contre la pauvreté, la précarité et l'exclusion sociale

Combat Poverty, Insecurity and Social Exclusion Service

Sixth Periodic Report of Belgium to the Committee of Human Rights of the United Nations *

Parallel Report

*This is a translation of the original version, submitted in French

Table of content

1 Institutions contributing to this report

1. **Unia** is an independent public institution that combats discrimination and promotes equal opportunities. **Our independence and engagement in favor of human rights are recognized by the Global Alliance of National Human Rights Institutions (status B).** We have interfederal competence, which means that, in Belgium, we are active at the federal level as well as the level of the regions and communities. Unia is charged with giving assistance to victims of discriminations 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 Convention of the United Nations 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. **The Service to Combat Poverty, Insecurity and Social Exclusion** is an autonomously functioning interfederal public institution, created in 1999 by a Cooperation Agreement between the Federal State, the Regions and the Communities concerning the continuation of the Poverty Reduction Policy.[1] Its mandate for the protection of human rights is based on the observation that poverty "*affects the inherent dignity and the equal and inalienable rights of all human beings"* and the common goals that the legislators have fixed for themselves, namely *"the restoration of the conditions of human dignity and the exercise of the human rights"*. The Service has received the explicit mandate to create a biennial *"Report on Insecurity, Poverty, Social Exclusion and Unequal Access to Rights; containing an evaluation of the effective exercise of social, economic, cultural, political and civil rights, as well of the inequalities that persist in relation to individuals' access to rights and also concrete recommendations and proposals to improve the situation"* (Article 2 of the Cooperation Agreement).

2 Methodology

4. We appreciate the opportunity to establish this brief presentation to inform the Human Rights Committee. Our contribution is based on different sources of information: reports submitted to Unia and Myria by individuals or associations; the results of Unia's monitoring and recommendation missions; our participation in various working groups, commissions, advisory boards; reports of the authorities and bodies concerned; biennial reports of the Service to Combat Poverty; reports and recommendations of civil society. Sources are generally identified in footnotes.

5. In terms of structure, our contribution is articulated around the List of Points established by the Committee for the submission of Belgium's sixth periodic report. The responses provided by the Belgian State in its report have been taken into account in order to avoid any repetition. This contribution therefore, aims to complement and, where appropriate, nuance this report. We also make a series of recommendations. 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.

3 Response to the List of issues

3.1 General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

3.1.1 Response to issues raised in paragraph 2 : Other new important facts

The new law regarding fraudulent recognition

6. A law of 2017 introduces the concept of fraudulent recognition [2] despite a critical opinion from the Council of State (Conseil d'Etat, CE), in particular on the failure to take into account the best interests of the child. This law allows a civil registrar, a local civil servant, to postpone and refuse recognition of a child if one of the parents tries to obtain in this way advantage 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 illegal resident. No protection against expulsion is provided for during the period of investigation. In the event of a refusal of recognition, no specific solution is provided.[3] This law is currently being challenged before the Constitutional Court.

Rights of children in state of Poverty

7. It is important to focus on the protection of the child by his or her family (art. 24) and on the protection of the family by the society and the State (art. 23), in particular against interference and intrusions into private and family life (art. 17) in poverty situations. The respect of privacy is currently being undermined, amongst other things by developments in the digital domain, security concerns and the emphasis on control. This pressure is even greater in situations of poverty, given the increased conditionality of social rights and associated controls, and the intensification of the fight against fraud in social benefits.[4]

8. It has been scientifically proven that children from families with a difficult socio-economical background are more likely to be placed in foster care than other children.[5] In fact, on the one hand, the rights of the children to grow-up in their own family is less respected in state of poverty and on the other hand, poverty makes it more difficult to keep the bond between parents and children intact during the period of foster care.[6]

9. This is certainly the case when one aims for a broad delegation of parental authority, as is foreseen in the law of 19 March 2017, amending the Civil Code in order to establish a legal statute for family caregivers.[7] The Combat Poverty Service and the organizations defending children's rights have underlined that this decision does not sufficiently take into account the circumstances, difficulties, and efforts of parents in a situation of poverty.[8] In the final remarks from the 12th of February 2019 regarding the fifth and sixth periodic report, the UN Committee on the Rights of the Child , requested Belgium to review this law.[9] On the 28th of February 2019, the Constitutional Court has abolished the possibility of a general delegation of certain important aspects of parental authority in the event of the child's long-term stay in a foster family in non-emergency cases.[10]

Recommendation

Provide parents and their children with protection against expulsion during the entire process of the determination of parentage. Support families experiencing poverty to avoid the placement of children into foster care. If a placement measure is required, invest in maintaining the relationship between the child in foster care and his or her parents.

3.2 Constitutional and legal framework within which the Covenant is implemented (art. 2)

3.2.1 Response to issues raised in paragraph 4 : National independent human rights institution

10. From 2018 onwards, Unia has been recognized as a NHRI type B. The Partnership Agreement of 12 June 2013 between the Federal State, the regions and the communities establishes a cooperation between the different levels of power in order to ensure the independence of Unia (the Agreement refers to the Paris Principles), its mandate and its territorial (throughout the territory) and material (for all levels of power) competences. Unfortunately, the conclusion of a partnership agreement between the Federal State and the federated entities for the establishment of a Type A NHRI is not up for discussion. On 1 July 2019, the Federal Law establishing a Federal Institute for the Protection and Promotion of Human Rights entered into force.[11] Even though Unia, Myria and the Combat Poverty Service welcome the creation of this Institute, it must be noted that, since its competence is limited to federal matters, a unique and transversal approach to human rights will not be possible.

11. In the meantime, the effectiveness and equal enjoyment of the rights deriving from the Covenant for persons residing in Belgium are ensured through human rights organizations that have either a partial mandate, a partial geographical competence or a relative independence. These institutions meet every month on their own accord and autonomously within the Human Rights Platform of which our 3 institutions are members. [12] The methods of concertation between the new Institute and these Belgian sectoral human rights organizations still needs to be clarified.

Recommendation

Conclude a partnership 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. Guarantee the independence of this new institution, among other things by providing it with sufficient financial resources.

3.3 Counter-terrorism measures (arts. 2, 7, 9, 10, 14 and 17)

3.3.1 Response to issues raised in paragraph 5 : Counter-terrorism measures and Human Rights

12. From 2010 onwards, Belgium has been a victim of terrorist attacks on several occasions. In response, many legislative and administrative measures that have an impact on fundamental rights have been adopted. The Counter-Terrorism Vigilance Committee (which brings together members of civil society) has analyzed the current legislative framework relating to the fight against terrorism in the light of human rights.[13] The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has also published a report in the aftermath of her visit to Belgium.[14] Unia analyzed in a report the complaints that it receives and that are linked to the climate of fear following the terrorist attacks or that are related to the counter-terrorism measures.[15]

13. **Issuing or withdrawing of security clearances** is a complex issue. In a number of sensitive sectors (airports, nuclear power plants, the army, the police, security services, etc.), everyone must undergo a "security screening" and receive an authorization before being hired. Sometimes, these authorizations are refused or withdrawn on the basis of vague information of unknown origin. An effective but complex appeal system is available to challenge these decisions. Unfortunately, in addition to its technical and formal nature, the very short deadlines within which the appeal must be introduced (sometimes less than 8 days) constitute a major obstacle. Another problem is the difficulty for the persons concerned to understand what they are being accused of. The files of which Unia has been informed all had the same motivation: the persons concerned would have "*links with radical circles*". During the consultation of their file, the applicants and their lawyer did not have access to the entire file and therefore it was very difficult for them to ensure adequate defense. These obstacles concern us in terms of the rights of defense and the right to effective remedies.

14. Unia questions the increase in the number of people registered for alleged links with terrorist activities and the difficulty for these people to control the reasons for this registration.[16] The consequences of the registration can be serious: impossibility to obtain a visa for certain countries, more frequent checks, prohibition to perform certain sensitive functions, etc. The reasons for this registration and, in many cases, its very existence, are not communicated to the person. The current control mechanism lacks transparency: individuals can ask an organization to indirectly control their data, but they are not informed of the nature of the executed control or its outcome. The Special Rapporteur of the United Nations has also reported this problem and encourages the government to "*ensure independent, effective and comprehensive oversight of powers related to data gathering, processing, sharing, and retention in the counter-terrorism context*".[17]

The withdrawal of the Belgian nationality

15. The guarantees invoked by the Belgian State are rather theoretical. A person sentenced for less than 5 years may also be deprived of his Belgian nationality on the basis of the notion of "a serious breach of the duties of a Belgian citizen" which is not defined by law.[18] There is legal uncertainty: a person who does not meet the conditions for disqualification by the criminal court on the basis of the Articles 23/1 or 23/2 may therefore subsequently be disqualified on the basis of Article 23 for the same facts for which he or she has been convicted. The decision is pronounced by the Court of Appeal and the person does not have a second hearing. The Constitutional Court validated this practice, considering that it was not a penalty but a civil measure and that there was no discrimination between the two procedures.[19] The Constitutional Court was of the opinion that the forfeiture of nationality of persons born in Belgium who obtained nationality after their birth, excluding Belgians at birth, is justified by the latter's "particularly strong links with the national community".[20] Contrary to the Council of State, who considered that the differences between these regimes could be a source of discrimination.[21]

Recommendation

Ensure effective means of appeal and an objective, independent and comprehensive monitoring in the context of the implementation of laws relating to the collection, processing, sharing and storage of personal data in the framework of the fight against terrorism, in order to better reconcile security requirements with fundamental rights.

3.4 Non-discrimination and the rights of persons belonging to ethnic, religious, linguistic or sexual minorities (arts. 2, 20, 22 and 24 to 27)

3.4.1 Response to issues raised in paragraph 6: Combating racially or religiously motivated offences and the Interfederal Plan against Racism, Racial Discrimination, Xenophobia and Intolerance

Population of Roma and Travelers

16. The Belgian Report (§29) mentions preventive measures and refers to the National Roma Integration Strategy published in 2012, and in particular, at the federal level, to the creation of a National Roma Platform. Due to a lack of funding and logistical support, this Platform has only held very few meetings and has currently disappeared completely.

17. On the 7th of May 2019, a large police operation (1.200 police officers were mobilized) took place to dismantle a network of criminals active in the fraudulent sale of second-hand cars. The caravans and cars of several Roma families were seized, and they were left homeless. This raises the question of the protection of mobile homes, which can currently be seized as they are not considered as a separate place of residence. Due to this, families with children and elderly persons can find themselves in the street overnight. A detailed report has been produced by Unia on this subject. It is available in French and is attached to this report.

COL 13/2013

18. The Belgian state uses (§31) 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 incomplete [22] due to the fact that :
    a) Certain police units do not have a reference officer and do not replace the officers, who, due to different reasons, no longer execute their functions. Furthermore, there is no centralized up-to-date list containing the contact data of all the reference officers;
    b) Certain 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) The number of files on hate crimes that are dismissed is very high. A study is ongoing to analyze these statistics in more detail and to study the reasons leading to these dismissals;

d) Unia has organized a training for the reference police officers and public prosecutors but was unable to do this for all the judicial districts. The training of new reference officers is also lacking;
e) The public prosecutors have to inform Unia of jurisprudence and decisions in files relating to Unia's field of expertise. However, the public prosecutors do not systematically respect this obligation. Therefore, Belgium does not dispose of a complete overview of the content of all the jurisprudence relating to hate crimes.

Evaluation of the antidiscrimination and antiracism laws (laws ADAR)

19. In contrast with the federal level, the Walloon Region and the Federation Wallonia/Brussels have not taken any actions for an interim evaluation of the anti-discrimination laws.

Interfederal action plan against racism

20. The Federal government and the governments of the regions and communities, are supposed to work together to develop an ambitious and broadly supported inter-federal action plan against racism, racial discrimination, xenophobia and intolerance. This plan has been expected since 2001. There is a need for consultation with actors in the field and in particular with organizations that defend the interests of victims of racism. The process is as important as the result itself and must involve all relevant actors: public authorities, social partners, civil society, judicial actors, and academia...

Statistics on racial violence and racist discriminations

21. The statistical data reporting concerning cases of "discrimination, hate crime and hate speech" for which files have been opened at the criminal courts remains problematic. The numbers presented in the report of the Belgian state (§36) do actually not reflect the real number of such cases in the criminal courts. This can be explained by several factors: the registration system used by the police is different from that used by the public prosecutor, the racist/hate motive of the offender is not systematically encoded by the police or the public prosecutor, the use of a new registration system by the office of the public prosecutor which does not always give the possibility to encode the racist/hate motive at the prosecution level, the limited number of categories for the registration of motives that can be used (and in which antisemitism and islamophobia are not even available as a separate category), etc.

22. In addition to the figures presented in the Belgian State report (§38), reports of discrimination concerning Afro-descendants increased sharply between 2012 and 2017. In all the areas taken together [23] these numbers have increased from 231 to 351.[24] The reports are particularly frequent in the areas of employment[25] (especially regarding women), housing and education.[26] There is an urgent need to pay particular attention to the working conditions of Afro-descendant women, who are very often forced into difficult, undervalued, low-paid jobs where they are often victims of racist comments and acts.

Link between discrimination and poverty

23. It is important to make the link between poverty and discrimination[27] : discrimination increases the risk of poverty. For example, circumstances of discrimination in the employment market reduce the chances of finding a job and therefore are increasing the state of poverty and precariousness. Persons in situations of poverty are frequently confronted with discrimination, for example in the housing sector. Access to good quality housing is particularly difficult for persons with an income from social assistance or social security benefits.[28]

24. With regards to education, Belgium has a school system that is heavily segregated on the basis of the socio-economical background of the students.[29] Beyond the problem that education is not fully free of charges, this segregation can be explained by the fact that parents of children from lower socio-economic backgrounds are less well informed about the functioning of the education system. This is a form of indirect discrimination.

3.4.2 Response to issues raised in paragraph 7 : Measures to combat incitement to hatred and racist propaganda

25. 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 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. Moreover, the prescription period for the legal action is only one year. 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.

26. **Online hate speech** is an offence in its own right, identified as such by various European and Belgian legal mechanisms. But in practice, these mechanisms are relatively powerless to stop the spread of hate on the Internet. In addition to the enormous quantity of these messages, several reasons may explain this weakness, such as the inadequacy of certain Belgian legal provisions (see the paragraph above). The technical and human resources made available to the prosecution bodies regarding this problem should be increased.

27. The federal government should commit itself to a prevention and prosecution policy with legal and practical measures to curb the effects of online hate. In practice, the determination of which content is illegal is currently largely left to the private actors who provide these services. In addition to this self-regulation of social networks, there is a need for structural contacts between national authorities and the social platforms, in particular with regard to the removal of illegal content, but also with regard to the transmission of information. The online platforms are in breach of their legal obligations to provide evidence to the Belgian authorities. Linking these initiatives and developing them on a Belgian scale, for example by including them in the National Security Plan, would help to protect Internet users from hate messages.

28. The lack of centralized and trustworthy **statistical data** (see §43 of the report of the Belgian State) concerning incitement to hatred and cyberhate is a recurrent problem.

29. A law criminalizing the **denial of genocide, recognized by an international court** (amongst others, the genocide against the Tutsis in Rwanda[30]) has finally been adopted in May 2019.[31] But this law does not include the Armenian genocide, as it has not been recognized as such by any international court.

3.4.3 Response to issues raised in paragraph 8 : Religious freedom

Full body swimsuit in public swimming pools

30. A lot of municipalities don't allow such swimsuits[32] in public swimming pools for reasons of safety and hygiene. Other reasons such as equality between men and women, human dignity and ecological reasons (a burkini absorbs too much water) are also invoked. Unia is of the opinion that a general ban on "burkinis" or other comparable swimsuits is discriminatory, because the ban excludes people (especially women) who want to wear such swimsuits for religious or medical reasons.[33]

Religious symbols in public schools

31. In most Belgian schools, the wearing of religious symbols is prohibited for pupils and teachers alike.

32. In Flanders there exists a general ban on the wearing of religious signs in primary and secondary schools for all pupils and teachers (with exception for teachers teaching religion).[34] 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.[35] However, the Raad van het Gemeenschapsonderwijs (Flemish Education Council) is refusing to apply this case-law and still applies the prohibition. Unia urges that these decisions are respected, in order to guarantee the legal efficiency.

33. From 2010 onwards, Unia has received up to 300 reports from adult female Muslim students. They have difficulties with the higher education institutions in Brussels and Wallonia, where it is forbidden to wear headscarves;[36] and also with finding schools and companies that allow them to wear religious symbols during internships.[37]

34. Unia also receives reports from female teachers in charge of Islamic religion classes, who are prohibited from wearing headscarves. This prohibition applies either outside the classroom or sometimes even within the classroom. The Council of State has repeatedly pronounced judgements in similar situations and overruled provisions prohibiting the wearing of headscarves by teachers in charge of Islamic religion classes.[38] Unia recommends the adoption of a Circular endorsing the position of the Council of State regarding the wearing of religious symbols by teachers in charge of philosophy and religion courses.

The official recognition of mosques

35. In Flanders, the minister responsible for this matter refused to recognize mosques for the entire period from 2014 to 2019. A study was commissioned at the end of the legislature to assess the criteria for this recognition. The results were presented in early 2019, but the Flemish government could not agree on a renewal of the criteria. However, the parliamentary committee of inquiry set up following the terrorist attacks in Brussels considers that the official recognition of mosques is one of the tools to combat radicalism.[39] Unia recommends that this blockage be removed as quickly as possible.

Diversity trainings for Police

36. In paragraph 50 of the report of the Belgian state, the partnership agreement of unlimited duration was mentioned, that has been signed between Unia and the police on the first of January 2013. Unia wishes to inform the Committee that this agreement has been suspended in December 2017 by mutual agreement.

3.4.4 Response to issues raised in paragraph 9 : Discrimination on the basis of language

37. Communication between citizens, and more particularly between tenants and landlords, is an objective to which Unia fully subscribes. However, there are more appropriate and relevant means to achieve this objective than the introduction of a language knowledge requirement before signing a lease in Flanders. The necessity and effectiveness of this measure have not been sufficiently demonstrated and alternatives have not been studied in depth. In practice, the requirement of knowledge of the language will therefore make little contribution to achieving the set objectives. Finally, the amount of administrative fines (from €25 to €5.000) and the fact that they can be applied several times may compromise the housing security of people who are not of Belgian origin.

3.4.5 Response to issues raised in paragraph 10 : Discrimination on the basis of sexual orientation

38. With regards to the available options for victims of homophobic transgressions (§66 of the report of the Belgian State), Unia underlines that the correct registration is essential in order to increase the knowledge about this form of discrimination. This is not the case for the previously mentioned reasons (§21). The introduction of a uniform monitoring system is essential.

39. The current **Interfederal action plan against discrimination and violence towards persons of the LGBTI community**[40] only covers the period from 2018 to 2019 and was lacking consultation of, and collaboration with, the different stakeholders. The next plan should be established after evaluation of the current plan and should be distributed among the different levels of authority and areas of activity. Particular attention should be paid to the local level.

40. Lastly, the Belgian law does not offer any specific protection against conversion therapies.

Recommendations

Develop an Interfederal action plan against racism. In this context, ensure the sustainability by civil society and anti-racism actors, among other things through a broader structural financial support.

Under Circular COL 13/2013:

- designate a reference officer for the prosecution of discrimination and hate crimes in each police district.
- harmonize the encoding of these offences and initiate monitoring of hate crimes.

Expand the competences of the regional services of the Walloon labor and housing inspectorate so that they are able to carry out situational tests.

Improve the mechanisms for the recognition of diplomas obtained abroad.

Revise Article 150 of the Constitution in order to remove procedural distinctions between the treatment of racist or xenophobic hate speech and other hate speech.

Include the fight against discrimination and hate crimes in the next national security plan and also add the fight against cyberhate into this plan.

Further develop the link between poverty and discrimination, among other things through the monitoring and the evaluation of inequalities.

Pursue teacher training work in relation to the specificities of poverty situations in order to reduce inequalities in education and, in the long term, on the employment market.

Ensure respect for the freedom of students to express their religious and philosophical beliefs in higher education and social promotion.

Adopt a Circular endorsing the position of the Council of State with regard to the wearing of religious symbols by teachers in charge of philosophy or religion courses.

Amend Belgian law to include a ban on conversion therapies.

3.5 Prohibition of torture and of cruel, inhuman or degrading treatment or punishment, security of persons and treatment of prisoners (art. 7)

3.5.1 Response to issues raised in paragraph 13 : Modification of article 417bis of the Criminal Code and principle of non-refoulement

Modification of article 417*bis* of the Criminal Code

41. For a certain number of crimes, the Criminal Code foresees an obligatory increase[41] or a facultative increase[42] of the punishment in the cases in which the motivation of the perpetrator is based on hatred or disdain for a person due to one of the protected criteria. But this is not applicable to cases of torture or inhuman or degrading treatment. This explains the fact that in 2015 a religious healer was pronounced guilty of crimes qualified as torture by the Correctional Tribunal [43], but without the investigation of the motivation with regards to homophobia. Even though some elements in the case made it possible that the sexual orientation of the victim played a role in the offense, this was not taken into consideration for the judgment and the subsequent punishment.

Principle of non-refoulement

42. The principle of non-refoulement is not always respected by the Belgian State, which is illustrated by the case law before the ECHR.[44] There is currently no procedure in the law to systematically apply the principle of non-refoulement to any foreigner who alleges a risk in the event of return. The Legislation Section of the Council of State pointed out the absence of appropriate provisions in Belgian law to implement the principle of non-refoulement.[45]

43. Myria has made an in-depth analysis regarding this obligation.[46] The appeal to the 'Conseil du Contentieux des Etrangers (CCE)' against an order to leave the country cannot guarantee compliance with the principle of non-refoulement. It cannot be considered effective, as it is not automatically suspensive. Since the report of the Commissioner General for Refugees and Stateless Persons (CGRS),[47] the 'Office des Etrangers' (OE) has adapted its practice and now organizes the examination of the risk of violation of Article 3 ECHR in the event of return and in the absence of an asylum application. In particular, it adjusted the "Right to be heard" questionnaire for police services at the time of arrest, the questions asked during the social interview on arrival in the detention center, the registration, in cases where it considers that a risk assessment should be carried out by the CGRS, of a "implicit asylum request".[48] Myria advocates the establishment of a system that clearly distinguishes between the return decision (which establishes the irregularity of the foreigner's stay and his obligation to leave the territory) and the removal decision (which identifies the country of return after analyzing the risk linked to Article 3 ECHR). Additional protections must be put in place. Often asylum authorities dismiss documents for effective appeal that could remove doubts about central elements of the protection request. They consider them to be inconclusive and do not check their authenticity beforehand. After the condemnation of the Belgian state in 2012 ,[49] two new cases occurred in 2018 in which the responsibility of the government was clearly mentioned.[50]

3.5.2 Response to issues raised in paragraph 14 : Law enforcement and prison staff

44. Several services monitor the work of the police. This fragmentation makes it difficult to obtain an overview of all complaints against the police for torture and inhuman and degrading treatment. Nor does the Belgian State publish reliable figures on the judicial follow-up of complaints of ill-treatment by the police. Finally, statistics on the disciplinary measures that are taken greatly underestimate the reality of the phenomenon of ill-treatment.[51]

45. The **'Comité P'**, the body responsible for monitoring police services, examines some of the complaints it receives itself, but entrusts most of them to the police forces (Commissioner General of the Federal Police, Head of the Local Police Force, etc.). Complaints against police officers are therefore often referred to local police districts. Once the case is resolved, the complainant may, if necessary, ask the 'Comité P' to reconsider his or her complaint. The result of this working method is that complainants attach little credibility to formal complaint procedures. In addition, the communication of the outcome of the complaint often takes place after a long period of time and the information that is provided is very brief. Measures should be taken to strengthen control mechanisms of the police force.

46. When a criminal complaint and a disciplinary procedure coexist, the prosecutor may close the criminal case without further action, referring to the existence of a disciplinary procedure.[52] Closure of the case without further action is sometimes itself considered as a reason for not imposing a disciplinary sanction.

47. Police officers accused of acts of violence often file complaints themselves against the victim for defamation or rebellion Unfortunately, to our knowledge, no statistics exist to measure the extent of this phenomenon.

48. With regard to **torture and inhuman and degrading treatment by police officers**, we would like to draw attention to two recent reports produced by associations. A report of the association 'Humain'[53] underlines the fact that persons who find themselves in a vulnerable situation often do not dare to file a complaint with the authorities controlling police work for abuse of power or intimidation by the police. A report from the association 'Médecins du Monde' regarding police violence towards migrants and refugees in transit in Belgium, mentions the fact that "*one in four migrants faces police violence in our country. The report shows that this violence is diverse, illegal and abusive: it includes physical violence such as punches, kicks and the use of batons, but also forced and arbitrary strip searches, racketeering, humiliation and blackmail to obtain fingerprints, as well as the illegal seizure of personal objects.*"[54]

Recommendations

Amend the Criminal Code to extend the optional or mandatory increase of the penalty on abject grounds or the possibility of examining the abject ground to a range of other offences (at least to: murder, abuse of authority, threats, torture, inhuman treatment, degrading treatment, theft with violence or threats and extortion).

Strengthen police control mechanisms and ensure that they are composed of independent experts recruited from outside the police itself.

Establish a system that clearly distinguishes between the return decision and the expulsion decision. Add additional guarantees, in particular by providing for the need for an automatic suspensive appeal to the 'Conseil du Contentieux des Etrangers' (CCE).

3.6 Security of person and treatment of prisoners (arts. 7, 9 et 10)

3.6.1 Response to issues raised in paragraph 15 : Detention of persons suffering from mental illness in prisons and psychiatric institutions

49. In recent years, Belgium has been condemned on several occasions by the European Court of Human Rights for violation of the fundamental rights of persons interned in penitentiary institutions.[55] In its judgment of 6 September 2016,[56] the Court pointed to the structural dysfunction of the Belgian system, which is the cause of the violation of Article 3 of the Convention, and applied Article 46 of the Convention to motivate Belgium to establish an internment system that respects the dignity of the prisoners.

50. Since then, several legislative and organizational reforms have been undertaken to improve the internment measures and reduce prison overcrowding. The law of 5 May 2014 restricts the scope of the internment measure. However, its implementation is problematic (see below). The law maintains **internment as a security measure** for persons with disabilities declared irresponsible for their actions and does not question the legitimacy of the measure that sends them to a specific detainment regime. In so doing, the law counteracts the recommendations of the UN Committee on the Rights of Persons with Disabilities.[57]

51. Forensic psychiatric centers (hereinafter referred to as FPCs) have been set up in Ghent and Antwerp (see below §106). The number of staffs fixed by Royal Decree[58] is insufficient, with serious consequences, particularly with regard to the quality of care provided.

52. In practice, it remains extremely difficult for internees to leave the FCPs.[59] It is very difficult for these persons to integrate in the existing psychiatric institutions due to lack of available places there and the inability of these facilities to house internees correctly.[60]

53. The report of the **Federal Centre for Health Care Expertise** shows that many prisoners are in **poor health condition**, suffer from serious psychological illnesses or disorders and consume a lot of medication, particularly for mental health problems.[61] The suicide rate is high and the shortage of medical doctors in the prison system does not facilitate access to care in prisons.

54. Similarly, the report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, carried out as part of its 2017 [62] visit, attests that the care of persons interned in prisons is strongly marked by a security approach, at the expense of the therapeutic imperative. Prison psychiatric facilities suffer from systemic problems such as a severe lack of health care staff ,[63] lack of training for prison officers in psychiatry,[64] limited provision of pharmacological treatment without other therapeutic options (group therapy, leisure, training, etc.)[65] and unsatisfactory management of psychiatric emergencies.[66]

55. **Concerning the Forensic psychiatric centers**, the Flemish Health Care inspection (Vlaamse Zorginspectie) has executed an audit of the FPC in Ghent.[67] The conclusions were that the Ghent FPC scored positively on a number of aspects, but there were many concerns regarding the lack of staff. This has a significant impact on the working conditions of health care staff, the quality of care provided to patients, the quality of life of internees, as well as the necessary supervision during isolation placements.[68] The Minister of Justice does not plan to review the fixed staff number.[69]

56. The construction of three new FPC's is foreseen before 2022. The FPC of Aalst has the task to receive interned persons *"for whom reintegration into society is not possible"*.[70] This *long stay* section evokes effective life imprisonment, which is very worrying in a constitutional state.[71]

57. In general, both in prisons and forensic psychiatric institutions, a regulated, clear and transparent policy on the use of restraint in the social defense sector is sorely lacking in Belgium. For example, solitary confinement is sometimes used as a disciplinary measure, the reasons for placement in isolation cells are unclear in the regulations and are widely interpreted, isolation measures are not always recorded, etc.[72]

58. The **text of the law from 2014 regarding internment and its application** poses several problems. Without being exhaustive, we note in particular:
    a) **The absence of a psychiatrist in the social protection chambers**, which are therefore deprived of a detailed knowledge of medical information, concepts, prescribed medications;
    b) **The absence of an exit route for undocumented internees** whose state of health has stabilized (this concerns 10% of the population of internees). The possibilities of being released are legally and institutionally almost non-existent. Internees remain imprisoned even though they no longer represent any danger to society and their state of health has stabilized. The only alternative is release for the purpose of removal from the territory. But the procedure is cumbersome and rarely successful. These people come from countries at war, from countries that do not wish their return or from countries whose situation is at the root of their mental disorders. It is to be feared that this figure of 10% will double in the coming years; [73]
    c) **The lack of possibility of appeal against the decisions of the social protection chambers** (there were possibilities of appeal against the decisions of the former social defense commissions);
    d) **The judges' freedom of interpretation with regard to the scope of the measure** and the divergences in the application of the law according to the ruling of the social protection chambers : the text of the law does not define the concepts of its scope of application and judges have freedom of interpretation.

3.6.2 Response to issues raised in paragraph 17 : Personal security and treatment of prisoners

59. The so called 'pot-pourri IV' law [74] of 2016 foresees a right of complaint to the Complaints Commission set up by the prison's supervisory Commission.[75] However, these Supervisory Commissions are composed of volunteers. Moreover, the missions entrusted to them (mediation, monitoring and complaint handling) are not necessarily compatible with each other.[76]

3.7 Prohibition of slavery and servitude (art. 8)

3.7.1 Response to issues raised in paragraph 18

60. Despite the authorities' efforts, particularly in the field of training, the detection and protection of underage victims of human trafficking remains problematic, particularly with regard to unaccompanied foreign minors.

Recommendations

Continue, intensify and diversify training efforts for first-line actors, judges, tutors and youth services.

Increase the resources (human and financial) of front-line actors to address this phenomenon and effectively protect victims of human trafficking.

3.8 Protection against arbitrary arrest and security of person (arts. 2, 9 et 10)

3.8.1 Response to issues raised in paragraph 19

Guarantees for persons deprived of their liberty

61. The Belgian State does not mention administrative arrests of 24 hours, nor the possible infringement of rights linked to this. The law regulating the functioning of the police[77] stipulates that persons who are under administrative arrest have to be informed in a language that they can understand with regards to their deprivation of liberty and its motivation.

62. Undocumented foreigners arrested for administrative reasons do not have the assistance of a lawyer during their detention in police stations. Problematic elements, for example arrests made in violation of the right to respect for the home or arrests based solely on ethnic profiling, are however likely to make the detention illegal. It is at the time of arrest at the police station that the foreigner should be able, within the framework of the right to be heard, to rely on information specific to his situation (elements related to his family or private situation, risk of ill-treatment in the event of return, etc.), before a decision concerning his person is made. It is therefore important that this hearing take place under the best possible conditions. In practice, it is however rare to benefit from the intervention of an interpreter, although this possibility is theoretically available to the persons concerned.[78]

Impacts of the reform of the system of free legal aid

63. The access to legal aid, both for prisoners and other persons, has become more difficult due to a reform of the legal system, in particular for persons living in poor and precarious circumstances [79], persons with a handicap and certain foreigners[80] (and especially the foreigners in closed detention centers).

64. Before the modification of the law,[81] there was an irrefutable presumption for certain categories of beneficiaries (e.g. persons who receive a replacement income or an integration income from the state). As a result, they automatically received this second-line legal aid. Following the reform, this presumption has become refutable, which creates additional conditions and controls as well as an increased administrative burden for both the applicant and the lawyer. The Combat Poverty Service points out that this measure (the control of the means of subsistence of persons whose status implies that they have only a low income) is contrary to the often-repeated wish of different authorities to move as far as possible towards the automatic granting of rights. Myria has been informed of several cases of people who did not file an appeal in time, due to the shortage of specialized lawyers.

65. An additional problem arises for cohabitants who do not constitute a household but are registered at the same address.[82] In fact, in assessing the right to second-line legal aid, the incomes of all persons registered at the same address are taken into account and added together, even if they are mere co-tenants. Cohabitants may, therefore, be partially or totally excluded from second-line legal aid despite having very limited financial resources. It must also be noted that the income thresholds are below the poverty risk threshold, which is nevertheless used by the Belgian State in its report within the framework of the European Union 2020 Strategy.

66. The law as amended initially stipulated that any second-line legal aid recipient must pay two lump-sum contributions.[83] This provision was annulled by the Constitutional Court because it constituted a violation of the principle of *'standstill'*: it was a significant setback in the protection of the right to legal aid, which was not justified on grounds of public interest.[84]

67. Legal Aid Offices have found that the number of appointments with lawyers has decreased.

68. In general, litigation fees (rise of scheduling fees, DPA-Deposit) have been considerably increased following the adoption of several laws and regulations,[85] making access to justice even more costly for each individual.

69. The reasoning behind these various legislative amendments was that it was too easy to go to court. The legislator wanted to make potential litigants more responsible... This idea, according to which people use the justice system too easily, does not seem to be based on any research and does not take into account the phenomenon of non-take-up of rights, the importance of which, according to the Combat Poverty Service, cannot be underestimated. [86] It is precisely, people experiencing poverty and precariousness that make too little use of their rights because they need to overcome many more obstacles.

70. With regard to **judicial assistance**, seven years after the judgment by the ECHR,[87] Myria is happy with the positive advancement in the modification of the Legal Code to foresee free judicial assistance for certain foreigners in state of illegal residence. However, the conditions of the new provision must be applied flexibly so as not to represent a disproportionate obstacle to access to justice for undocumented residents. The condition of attempting to regularize the prior stay is particularly questionable.

Recommendations

Establish additional safeguards in the context of the administrative arrest of individual foreigners in order to guarantee:

1) the right to be heard, providing that the police will interview the person in such a way that they can formulate all the elements relating to his or her personal situation that may have an impact on the decision to expel and will transmit the information to the 'Office des Etrangers' (OE) before any decision is taken;

2) taking into account of vulnerabilities;

3) the right of the foreigner to be informed, in a language he or she understands, of the reasons why he or she is being detained, by setting up a more systematic approach for the use of interpreters;

4) at the request of the person, the right to the assistance of a lawyer at the time of his or her administrative arrest by the police.

Evaluate access to justice for people experiencing poverty, including access to second-line legal aid, by involving relevant stakeholders in the evaluation, including delegates from associations in which poor people come together, in order to make the necessary changes. In particular, it is requested to examine financial obstacles as well as those related to processes and administrative procedures.

Flexibly apply the new judicial assistance provisions to foreigners.

3.9 Refugees and asylum seekers (arts. 7, 9, 10, 12 to 14 and 24)

3.9.1 Response to issues raised in paragraph 20

Detention of persons requesting international protection

71. In practice, persons requesting international protection at the border are systematically put into detention during the time that their request is examined. According to Myria[88], this practice is in breach of the international instruments.[89]

The conditions of detention

72. In practice, the rules applied to put people in isolation (for disciplinary measures, medical reasons or before a return procedure) are not always transparent. For example, a person is placed in isolation before removal from the territory (outside any regulatory framework).[90] Myria was questioned about the isolation of hunger strikers. The 'Office des Etrangers' (OE) indicates that the use of this practice is subject to disciplinary action following aggressive behavior or for medical reasons. Only a few controls are carried out and NGOs do not have access to isolation rooms.

Detention of families with children of minor age

73. The closed family units for families with minor children opened in August 2018, next to the 127bis detention center near the national airport. The Royal Decree on the functioning of detention centers has been amended to provide for specific measures for these families. A maximum of 14 days of detention is provided for (with a maximum of one extension). Between August 2018 and April 2019, nine families were detained, eight of them were expelled. One family remained in detention for more than 50 days (with a three-day break in an open return home). The Committee on the Rights of the Child, following a complaint lodged by the children of the family and using the possibility of taking provisional measures,[91] asked the Belgian authorities to release the family (allowing the authority to continue the removal from the territory). The authorities did not comply with this request and the family was expelled a few days later. Even if the Committee's decisions are considered non-binding, they should be followed by countries that have signed and ratified the Convention and its protocols, something that Belgium has not done.

74. Finally, this new practice presents different questions :

    a. Is there a time limit for detention of families with minor children (since the law stipulates detention that is longer than the 28 days that are foreseen)?

    b. What impact will the detention have on the children?

75. On 4 April 2019, following the introduction of an appeal in extreme urgency against the amendments to the Royal Decree on detention centers, the Council of State, suspended certain articles of the Royal Decree.[92] These provisions do not exclude the possibility of detention of young children where they are likely to be exposed to very significant airport noise pollution, whereas the duration of such detention may be up to one month. The detention of families with minor children is therefore currently stopped until the decision of the Council of State is made. The Minister for Asylum and Immigration and the 'Office des Etrangers' (OE) have already indicated that they wish to continue this practice after having met the requirements of the judgment (mainly to provide better noise isolation for the units).

Complaints procedure for foreigners in detention

76. In this area, there is little transparency. There is no information on the management and content of complaints. It is therefore difficult to evaluate this system. The complaints considered admissible in 2017 mainly concerned staff (6), medical care (4) and transport (4). Myria does not have any information on the content and the opinions given. Of the 23 complaints lodged in 2017, 2 were found to be unjustified and 2 partially justified. Myria refers to her analysis of the Complaints Commission.[93]

77. For complaints addressed directly to the director of the detention center, a system was implemented in 2014, but there is still no consistency between centers. It is therefore impossible to present reliable figures that reflect the real situation.

3.9.2 Response to issues raised in paragraph 21

Complaints regarding use of excessive violence against foreigners in detention and the monitoring systems

78. Myria regrets that there are no reliable figures. Many bodies are competent to deal with complaints (local police, Police Investigation Service 'AIG', 'Comité P'). In practice, the effective possibility of lodging a complaint is rather limited: on the one hand because detained persons are not always informed of this possibility (or supported in their actions if they have been expelled), nor reassured as to the impact that such a complaint could have on the expulsion or possible return process; and on the other hand because complaints lodged are not always handled with the required diligence, and sometimes remain unaddressed. It is very difficult to identify the perpetrators of violence given the absence of identification signs of those who escort the persons in most cases.[94] Myria is however sometimes contacted by persons who declare to have been victims of police brutality.[95]

79. Various UN bodies have already expressed their concern about the difficulties encountered by the persons concerned when filing a complaint of inhuman treatment during a removal operation. They point out that it is difficult to gather evidence since the person has been removed from the country and cannot be present during the investigation. In a report published in June 2017, the NGO Hungarian Helsinki Committee compared the effectiveness of investigations into alleged violations of Article 3 of the ECHR in seven EU Member States, including Belgium. This report notes that, despite the rather satisfactory quality of Belgian legislation to combat ill-treatment, indicators place Belgium at a lower level of protection than other European states, in particular due to the lack of reliable statistics and the difficulties in gathering evidence. In 2014, the United Nations Committee against Torture recommended that Belgium provide a specific register for recording complaints, allowing for reliable statistical analysis. To our knowledge, this Recommendation has still not been executed. Myria also contributed to the European Ombudsman's study on the respect of fundamental rights in the context of Frontex flights. It concludes that information and a brochure should be provided to any expelled person, in a language they understand, on the complaint procedure.

The Monitoring system of the AIG

80. The Police Investigation Service 'AIG', in charge of the control of expulsions, carried out 574 controls between 2013 and 2017. In 2017, there were 92 checks on 282 people out of a total of 7.901 attempted expulsions, including 1.475 with escorts. That is a decrease of 41% over 4 years. Controls are in the minority compared to the number of attempted expulsions. In its report, Myria criticized the AIG's control system on certain points, in particular on the lack of resources, as well as on their independence.[96] As for the presence of NGOs, which is not essential according to the Belgian State, the Police Investigation Service 'AIG' may not always be perceived as independent for the people who are being removed. Its employees have police skills that give rise to a suspicion of bias. The question of the identification of AIG staff members remains. Are they really identifiable by people undergoing expulsion? Since they do not use interpreters,

how can their mission and role really be understood by the people concerned? Shouldn't there be written communication, in a language understood by the person, about the role and missions of the staff of the Police Investigation Service 'AIG'? As for the use of video recordings, given the limited proportion of controls carried out on removals and the absence of other actors, a surveillance system through video recording of each of the removal attempts must be adopted. At the very least, the most sensitive areas should be monitored with cameras. To use a camera during removal, a modification of the camera law has been made. The interim report of the Commission Bossuyt[97] recognizes that the use of a video camera is possible.

Recommendations

Provide alternatives to detention under national law. Detention, in particular for applicants for international protection, should only be used as a last resort. Detention should pursue a legitimate aim on the basis of the principles of necessity, proportionality and subsidiarity and be as brief as possible.

Forsee in the regulations the systematic and prompt communication of all relevant documents, including medical documents, with the migrant and his lawyer, in order to logdge a complaint.

Improve transparency regarding the number of complaints submitted to either 'Comité P' or the AIG and the follow-up given to them.

Distribute, before each removal procedure, an information brochure (in a language understood by the expelled person) on possible complaint mechanisms, including the existing possibilities after the implementation of the removal.

More transparency and efficiency in the control carried out by the AIG, especially if the objective is to increase the number of forced repatriations.

4 Additional elements

4.1 Registration in the population registers (arts. 14, 16, 25)

81. Registration in the population registers has an impact on several civil and political rights, guaranteed by articles 14 (fair trial), 16 (legal personality) and 25 (participation in elections). The absence of registration leads to a more difficult or even impossible exercise of these rights. However, it appears that due to their housing situation, certain categories of people have limited access to this registration. These are people living in unrecognized or unhealthy housing (1), homeless people (2) and people living in mobile homes (3).

82. For the first group, the legislation foresees a right to provisional registration, but local authorities were sometimes reluctant to grant it because it would, in the end, lead to a definitive registration. To overcome this, a law [98] has been adopted making this registration definitively provisional, but the Combat Poverty Service requests that monitoring of its effects on the authorities' practices be carried out. [99]

83. For the second and third group of people, there is the so-called system of "reference address" allowing them to be 'fictitiously' registered at a third party's address in order to receive their mail there. Homeless people can be registered at the address of an individual or of a Public Social Service Center (CPAS). For various reasons, the use of the reference address of an individual is underutilized. In practice, the reference address with a Public Social Service Center (CPAS) is often problematic, which is noticed by the actors in the field[100] and by the jurisprudence. A new circular to clarify the regulations was prepared by the federal authorities but did not result in a publication before the elections of 26 May 2019. Persons living in a mobile home benefit from an additional possibility of registration as a reference address with a legal entity, which also has some practical difficulties in its application. Following a joint recommendation by Unia and the Combat Poverty Service to the Interior Federal Public Service (FPS), [101] the latter adopted a circular aimed at clarifying the system. [102]

Recommendations

Assess the effects of the recent amendment of the provisional registration regime on the application of the system.

Clarify the legislation and regulations relating to obtaining the reference address in order to avoid local differences in application by Public Social Service Center (CPAS) and communes.

4.2 Freedom of association (art. 22)

84. Freedom of association includes, in particular, the right of everyone to form or join an association. However, legislation on the rights of volunteers restricts this freedom for persons benefitting from replacement incomes, such as the unemployed and persons receiving an integration incomeNational Employment Office (ONEM) disposes of 12 days to communicate its authorization or refusal. In the same way, persons who benefit from an integration income and who wish to do volunteer work, also have to inform the Public Social Service Center (CPAS) beforehand, based on the article 6 §5 of the Royal Decree of 11 July 2002 regarding Social Integration.[103]

85. In the event of refusal by the payment agency or the National Employment Office (ONEM), or in the event of failure to declare the voluntary activity, the person is forced to stop volunteering under penalty of sanctions that may have serious consequences. According to the website of the National Employment Office (ONEM) , "*you lose your right to benefits, unduly received benefits will be reclaimed and you risk being excluded from benefits for several weeks*".[104]

86. In its latest biennial Report 'Citizenship and Poverty', the Combat Poverty Service noted that these regulations create a context of uncertainty and fear, in which the recipient of benefits either does not dare to participate in an activity or does not declare his activity in order to be able to continue with it. This fear is aggravated by poor knowledge, and therefore poor communication, on the part of all actors about what is allowed or not allowed. Indeed, the criteria used to justify an authorization or refusal of voluntary activity are determined internally within the payment organizations or the National Employment Office (ONEM) and are not accessible to the public. The predictability of decisions, therefore, remains so difficult that the associations themselves often prefer to advise a job seeker not to volunteer in order to avoid any risk. This communication of erroneous information and lack of transparency greatly reduces the exercise of the freedom of association of people who are often socially isolated.[105]

Recommendations

Amend Article 13 of the Law of 3 July 2005 on the rights of volunteers and Article 6 §5 of the Royal Decree of 11 July 2002 on Social Integration in order to remove the obligation to declare voluntary activity to the payment institution.

Inform all stakeholders (associations, Public Social Services (CPAS), recipients...) in a clear and comprehensive manner about the rights and obligations of benefit recipients who wish to volunteer.

Rue Royale 138 • 1000 Bruxelles

T +32 (0)2 212 30 00

www.unia.be

www.myria.be

www.luttepauvrete.be