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Parallel Report
of the

NHRI

U N I A

and

M Y R I A

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**Parallel report to
the 5th Periodic report
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2020**

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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 as well as the level of the regions and communities. Unia is in charge of 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. 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 Economic, Social and Cultural Rights. 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 List of Points established by the Committee for the submission of Belgium's fifth 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 and, when appropriate, 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.

3 Response to the List of Issues Prior to Submission

3.1 Issues of particular relevance

3.1.1 Response to paragraph 2: Right to adequate housing

Reasonable accommodation in Brussels

6. In paragraph 2b of the report of the Belgian State, it is said that some antidiscrimination measures were included in the new regional measures on housing. But the Brussels Capital Region has not included refusal of reasonable accommodation as a specific form of discrimination in its housing code.² This is a **setback regarding reasonable accommodation** (art. 5, § 3 CRPD).

Testing by Housing inspection services

7. Collecting evidences of discrimination in the access to private housing is particularly complicated. Therefore, regional housing inspection services should be allowed to receive individual complaints and to perform tests of situation.

Travellers

8. **Evictions of Traveller families** are mainly driven by the well documented lack of culturally adequate housing of this group in all of the three regions in Belgium.³ 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.⁴ 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.
9. Travellers on **private terrains** (living in caravans with their families on a terrain they own or rent) are very vulnerable to eviction since almost none of these terrains aligns 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.⁵ As far as we know, no steps are being taken to remedy this situation.
10. On the 7th of May 2019, a large **police operation** (1.200 police officers were mobilised), named "**Strike**" by the media, took place to dismantle a network of criminals active in the fraudulent sale of second-hand cars. Several caravans of Traveller families were seized and some were alienated. 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 become homeless overnight. Detailed reports have been produced by Unia on this subject.⁶ Additional judicial procedures relative to the whitewashing of money through the acquisition of terrains will eventually lead to the seizure and alienation of these, also because some private banks are now asking for an immediate repayment of the existing mortgage loans on some of these. This will worsen the already mentioned problem of shortage of terrains where Travellers can stay with minimal legal security. Hence the responsibility of competent authorities (the Regions and the local authorities) to set up and manage public residential terrains has become even greater.

Recommendations

1. The Brussels Capital Region should include refusal of reasonable accommodation as a specific form of discrimination in its housing code.
2. The governments (of the three regions concerned) should immediately work out a reliable estimation of the need for culturally adequate places for Traveller families.
3. Additional time-bound measures should be taken to gradually but effectively create sufficient places for travellers both on permanent and temporary residential sites.
4. Effective measure should be taken to resolve the urban planning problems of most of the private terrains in order to reduce evictions of travellers.

3.2 Implementation of the Covenant

3.2.1 Response to paragraph 4: National Human Rights Institution

11. 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.⁷ Even though Unia and Myria 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.
12. 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 2 institutions are members.⁸ The methods of concertation between the new Institute and these Belgian sectoral human rights organizations still needs to be clarified.

Recommendation

5. 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.

3.2.2 Response to paragraph 7: Right of refugees and asylum seekers to an adequate standard of living

13. Since August 2018, Belgium is facing a higher influx of applicants for international protection in the reception network than the outflow. This follows the closure of reception places in the last years with the objective to return to the existing capacity from before the asylum influx of 2015. The federal Reception Agency, Fedasil, had raised the necessity to create 7,000 to 8,000 buffer places, to be prepared in case of a new increased inflow. But this has not been followed by the government.⁹ With this new pressure on the reception network, some asylum seekers have been deprived of reception in the early stage of their asylum procedure. Furthermore, the government decided to limit drastically the reception in individual apartments, despite the fact that the latter solution is more respectful of the right to family and private life and much cheaper for the state budget (15 euros/night cheaper).¹⁰
14. In addition, during the examination of the admissibility of a subsequent application for international protection by the Commissioner General for Refugees and Stateless Persons (CGRS), a significant proportion of asylum seekers (96 to 97 % from 2016 to 2018)¹¹ are deprived of reception, without a reasoned decision being taken by Fedasil based on their particular situation. This practice violates the law¹² and its interpretation by the Constitutional Court. Indeed, the Court considers that it is legitimate to exclude from reception people who abuse the procedure by submitting successive applications « with the sole aim of retaining their right to reception ». However, the Court underlines the importance for the reception and asylum authorities to « organise the necessary consultations so that the reception right » of the person concerned « is examined in full knowledge of the facts ».¹³ These consultations have never been set up.
15. Furthermore, since the implementation of the EU Reception directive in national law¹⁴, in March 2018, Fedasil must guarantee “a dignified standard of living” including to asylum seekers whose right to material reception conditions is reduced or withdrawn. Previously they only benefit from the right to medical assistance. According to the information provided by Fedasil at the international protection contact meeting of Myria, asylum seekers whose right to material reception conditions is reduced or withdrawn receive some information on the reception facilities for homeless people but are not provided with any kind of housing. Only vulnerable people could exceptionally benefit from accommodation provided by Fedasil.¹⁵ As the European Court of Justice stated,¹⁶ this practice violates the right to human dignity, which requires that “the person concerned should not find himself or herself in a situation of extreme material poverty that does not allow that person to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene”. According to the law, “a dignified standard of living” must be provided by the authorities for all applicants for protection whose reception has been limited, and not only for vulnerable individuals.

16. Finally, despite the negative recommendations of the Council of State,¹⁷ a new condition on the duration of residence in Belgium has been in force since 1 June 2018 for the allocation of income replacement benefits (IRB) issued to **persons with disabilities**.¹⁸ From now on, the applicant must have effectively stayed in Belgium for a minimum of ten years, including at least five years without interruption.¹⁹ This could result in indirect discrimination of migrants with disabilities. Even though the new condition applies to both Belgians and non-Belgians, it will have an adverse effect on those that exercise their right to free movement.²⁰ A procedure against the new condition is pending at the Constitutional Court.²¹ In a similar case the Constitutional Court has declared null and void a new regulation with a similar condition of residence of 10 years, whereof 5 years uninterrupted, for an income replacement benefits (IRB) issued to elderly persons.²²

Recommendation

6. Take all measures to guarantee a dignified standard of living to all asylum seekers, including those who make a subsequent application and those who received a disciplinary sanction.

3.2.3 Response to paragraph 11: Non-discrimination

Evaluation of antidiscrimination laws

17. In 2015, a **commission of experts** was installed with the purpose of evaluating the federal laws on anti-discrimination, racism and gender discrimination. A first report with recommendations was produced in 2017²³ and a final report will be available in 2021. This first report was discussed in the federal parliament in the presence of the secretary of state for equal opportunities.
18. The federal government appointed a commission of experts in 2016 who drew up an evaluation report²⁴ for the Parliament on the federal anti-discrimination laws. Unia proposed its own evaluation report²⁵ on the Anti-Racism and Anti-Discrimination Law on the basis of its own expertise and dossier treatment. In the evaluation report Unia formulates 27 recommendations based on casuistry and points of attention. Unia's report was presented to the Parliament during a committee meeting on 31 January 2018²⁶. Several members of the committee asked questions that Unia answered on 14 March 2018²⁷. A similar exercise was made for the evaluation of the anti-discrimination decree of the German-speaking Community.

Situation tests

19. The new legal frameworks on **situation tests** of Brussels-Capital Region and at 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. The use of datamining should be considered as one of the solutions in order to solve that issue.

National Roma strategy

20. 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 current 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).

Recommendations

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

What actions were taken or are expected to be taken soon by the federal government based on the recommendations of the commission of experts, in particular in strengthening the impact of the federal laws on non-discrimination, racism and gender discrimination?

How many tests of situation were performed so far at federal and regional levels? And what were the results of the tests performed? How did the Walloon Region meet its commitment on the subject?

What measures are taken by the governments (federal and regional) to assist local authorities confronted with the challenges of the presence of vulnerable Roma people?

3.2.4 Response to paragraph 12: Right to work (1)

Socio-economical monitoring

21. Unia and the Federal Public Service Employment, Labour and Social Dialogue published in 2017 a Socio-Economical Monitoring²⁸ that provides statistical data on employment, unemployment and under employment disaggregated by region, sex, age, national origin and level of education. Myria, in the framework of its cooperation within the national contactpoint of the European migration network, co-published, with National Contactpoint Belgium and DEMO (UCLouvain) a report on the Socio-Demographic Profile and Socio-Economic Careers of people granted international protection.²⁹

Persons with disabilities

22. Recent and publicly available figures concerning the number and situation of persons with disabilities in Belgium are sorely lacking. Data on persons with disabilities are only available in a fragmented form, making it difficult to track trends and intervene in a targeted way in applicable policies.
23. The **rate of employment** of persons with disabilities remains very low and far below the European average. Only 23% of Belgians with disabilities aged between 15 and 64 have jobs, whereas 74% of them are inactive. In the same age group, 63% of Belgians without disabilities have jobs. There is therefore a very large gap between the employment rate of Belgians with disabilities and Belgians without disabilities.³⁰ This mainly concerns persons with low levels of education and women with disabilities, who have the lowest employment rate.
24. Public administrations are still not managing to reach their own **quotas or numerical objectives** which are rather low (2 to 5%).
25. Not enough resources are directed towards job search and **employment support in a mainstream setting**. Most public funding is still directed towards employment in sheltered workshops. For example, 100 million euros are invested in sheltered workshops in Wallonia (9000 beneficiaries) and 27 million in Brussels (1450 beneficiaries). But for employment mainstream setting, only 50 million are invested in Wallonia and 2 million in Brussels.

26. The standard **professional training** is not very accessible to persons with disabilities. Policy plans exist, but the implementation is very slow. In this regard, the situation of French-speaking deaf persons is particularly worrisome because they only very rarely benefit from professional sign language interpreting during standard professional trainings.
27. Persons with disabilities are still encountering too many obstacles to starting an **independent professional activity**, either full-time or part-time.³¹

Recommendation

9. The authorities should establish an inter-ministerial conference on the employment of people with disabilities to implement structural solutions to the problems identified above. They should develop an ambitious and transversal action plan to remove barriers to employment, to enable access to regular employment, and to improve support for people with disabilities in regular employment.

Suggested questions

What are the coordinated measures at the inter-federal level to increase the rate of employment of persons with disabilities for the public sector and the private sector?

What are the measures (including budgetary) taken to enable persons with disabilities to effectively have access to services for professional and continuous education that are available to the general public?

What measures have been adopted to facilitate persons with disabilities to start an independent professional activity?

3.2.5 Response to paragraph 13: Right to work (2)

Access to work for asylum seekers

28. By a royal decree from October 2015,³² the delay to access the labour market for asylum seekers was reduced from six to four months. This measure contributes to a quicker integration process.

Inaccessibility to many employments in public service for third country nationals

29. The public service is one of the first employers in Belgium³³ but the Belgian Constitution still reserves employment in public services only to Belgians³⁴ with a derogation for EU citizens for employment not linked to public sovereignty.³⁵ This restriction can therefore interfere with the integration of migrants. In addition 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

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

3.2.6 Response to paragraph 14: Right to just and favourable conditions of work

30. According to the EU sanction directive,³⁶ 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. In addition, 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.³⁷
31. Workers who are in 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 irregular situation has presented himself spontaneously in order to lodge a complaint as a victim.

Recommendations

11. A Royal Decree should be adopted to designate additional organisations that can take legal action to support migrants in irregular situation willing to recover back payments of their wages.
12. Furthermore, measures should be adopted to ensure that an undocumented victim can enjoy the same rights as any other victim, in particular to avoid the risk of arrest and forced expulsion by the police when filing a complaint and at subsequent stages of criminal proceedings.

3.2.7 Response to paragraph 18: Right to social security (1)

32. As stated in the State's report, the plan referred to in the List of issues prior to submission was abandoned by the Government. Instead, a policy on the reintegration of persons after a long-term work incapacity entered into force in 2017. Although the policy aims to facilitate a return to work, 68% of the persons in this new procedure were fired on the basis of medical 'force majeure' (definitive inability to work).³⁸ This legislation does not sufficiently make the link between long-term illness or chronic disease, disability and the right to reasonable accommodations and does not leave sufficient room for consultation with the employee.

Recommendation

13. The federal authority should carry out an evaluation of the legislation about reintegration in close consultation with associations representing people with disabilities and people with long-term illnesses.

Suggested question

What measures have been adopted by the authorities to ensure the respect for the rights to reasonable accommodations for workers experiencing long-term illnesses during the reintegration?

3.2.8 Response to paragraph 19: Right to social security (2)

33. The 2017 survey on income and living conditions (SILC)³⁹ revealed that 22% of the people who stated to be severely limited by a disability are at **risk of poverty**. One person in 10 suffers from severe material deprivation. The risk of poverty for persons with disabilities is 12% higher than for persons without disabilities.
34. The **replacement income** issued to persons with disabilities is beneath the poverty threshold (75%).⁴⁰ In 2016, the government 'forgot' to revise the replacement income according to the consumer index (+2%). Despite compensating for this later, persons with disabilities lost 6 months of indexation.⁴¹
35. The recent years have been characterised by the dysfunction of the Directorate General for Persons with disabilities, which issues allocations and other social benefits. Their poorly adapted, defective ICT systems (as well as a constant reduction of personnel) have led to **extreme backlogs** in processing requests. At the beginning of the year 2019, 28.000 requests are still pending (a lot of these requests have a delay of one or two years) and it remains difficult to get in touch with the administration. The Federal Ombudsman received 580 complaints about this in 2017 (an 150% increase). The National Superior Council of Persons with disabilities (Conseil Supérieur National des Personnes Handicapées) has been calling attention to these problems for years.
36. In the face of this and due to the lack of flexibility of the system of allocations for persons with disabilities, **barriers to employment** are only increasing (the uncertainty of being able to quickly find means of income in case of employment issues).

Recommendation

14. A revision of the benefits system should be planned in order to guarantee sufficient income for persons with disabilities. A specific attention should be given to the removal of any employment traps.

3.2.9 Response to paragraph 20: Violence against women and children

37. In Belgium, specific provisions in the legislation aim to protect migrants with a legal stay based on family reunification and who are victims of domestic violence. They will be authorised to remain legally in Belgium and be protected against forcible return although they live separately from their violent family member. However the situation is different for those who have applied for family reunification- and are therefore legally staying in Belgium- but have not yet received their first one year residence permit. Indeed, this protection is in practice ineffective during the examination of their request, which can last between 6 months to 1 year.
38. In case of a negative decision from the Immigration Office regarding the application of these protective provisions, the judicial control is marginal. Therefore, Myria has made a recommendation, since 2015, to change the law in order to provide a full jurisdiction of the Court for family reunification cases (the Aliens litigation Council).⁴²

39. Furthermore, these protective provisions are not applicable to undocumented migrants, who become victims of domestic violence.⁴³ The right to complain to the police for undocumented migrants who are victims of criminal offences remains problematic, even in case of serious violence against women or children. The Immigration Office informally made the commitment not to detain foreigners who have spontaneously presented themselves to the police to file a complaint.⁴⁴ However, the obligation not to discriminate victims of crime on the basis of their residence status, imposed by the EU Victims Directive (2012/29/EU), is not specifically reflected in Belgian legislation.
40. In practice, undocumented victims of domestic violence often fear to report abuses to the police because they are afraid to receive an order to leave the territory, to be detained and then forcibly be returned to their country of origin. It happens indeed that crime victims whose resident status is undocumented or uncertain are detained. As mentioned above as regards the right to just and favorable conditions of work, measures should be adopted to ensure that an undocumented victim of crime, such as a victim of violence, can enjoy the same rights as any other victim.

Recommendations

15. The Aliens law should be changed in order to provide the Court a full power of jurisdiction for family reunification cases.
16. Measures should be adopted to ensure that an undocumented victim of violence can enjoy the same rights as any other victim of crime.

3.2.10 Response to paragraph 25: Right to physical and mental health

Migrants

41. 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 to reform the system in order to simplify and harmonise it.⁴⁵ 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 with the creation of one comprehensive and uniform system.⁴⁶
42. Furthermore, Article 9ter of the Aliens Act of 1980⁴⁷ provides the legal grounds for granting residence permit for medical reasons. The law specifies several factors: the seriousness of the illness, the likelihood of receiving treatment in the foreigner's own country, and access to this treatment. However, the procedure contains several obstacles that hinder the protection of the rights of those in needs of such medical stay. This is the case for instance with the appeal procedure as regards the limitation of the scope of review of the judge or the absence of the possibility of seeking specialised and independent medical expertise. The appeal procedure should become a suspensive appeal of full litigation in order to comply with the case law of the European Court of Justice and ensure an effective and efficient protection of the rights of the migrants.⁴⁸

Persons with disabilities

43. Access to **high-quality healthcare** is compromised for persons with disabilities because of the inaccessibility of medical infrastructure and equipment. Healthcare staff has little training in considering the needs of persons with disabilities and the right to reasonable accommodations. In the absence of information in an accessible format and suitable tools, certain persons with disabilities⁴⁹ are not able to give their free and informed consent.

Persons with disabilities detained in prisons and interned

44. The report of the Federal Centre for Expertise in Healthcare⁵⁰ indicates that many inmates are in poor health, suffer from serious illness or psychological disorders and take a lot of medication, particularly for mental health problems. The suicide rate is high and the shortage of doctors complicates access to medical care in the prisons. The report recommends transferring the competence of prisoner healthcare from the Ministry of Justice to the Ministry of Health.
45. Following multiple condemnations⁵¹ by the European Court of Human Rights, the number of internees detained in prison decreased significantly. However, on 30 May 2018, **530 internees were still in prison**, 182 in psychiatric annexes and 368 in the social protection sections.⁵²
46. Two **medico-legal psychiatric centres** were established in Flanders for internees, each housing 250 persons.⁵³ The operation of the centres shows shortcomings with regard to the quality of care and obtaining consent in medical treatments.^{54 55} Committed persons are only able to leave these centres with great difficulty. They have a hard time entering regular psychiatric establishments because of a shortage of places and reluctance to admit internees there.⁵⁶

Recommendations

Migrants

17. All the concerned actors should examine the possibility to reform the system of urgent medical aid for undocumented migrants to make the system more effective and accessible.
18. The procedure to obtain a legal stay on basis of medical reason, especially the appeal procedure, should be revised.

Persons with disabilities

19. The authorities must take measures to improve the accessibility of healthcare facilities and services (including outpatient services) to persons with disabilities
20. Authorities should integrate a module on the needs of persons with disabilities in the training of all healthcare professionals.
21. The authorities must ensure that prevention campaigns are accessible to all, by providing easy-to-read information, subtitles and sign language interpretation. They must also ensure that information on patient's rights and hospital complaints procedures are accessible to all patients.
22. The authorities must guarantee the right to reasonable accommodation for all persons with disabilities in prison and ensure their access to health care.
23. The authorities must move internees that are still in a prison to an appropriate setting and provide them with the health care services they require.
24. The authorities must facilitate the departure of internees from the medico-legal psychiatric centre.
25. Belgium must achieve its declared intention to entrust the Ministry of Health with healthcare services « provided to internees » or « in prison ».

3.2.11 Response to paragraph 26: Right to education (1)

47. Unia published in 2018 a comprehensive **report about diversity in education**.⁵⁷ For the French-speaking Community, data about the socio-economical background of the students are collected by proxies and are not linked with the curriculum of the students. Individual direct data about the socio-economical background should be collected in the future and linked with the curriculum of the students. The report also confirms that there is a de facto social segregation of the students who have a lower socio-economical background or are not Belgian (there is no data available about the ethnic origin outside of nationality).
48. In Flanders, the government adopted a **new inscription-decree**. This decree drops the "double quota-system"⁵⁸ ("dubbele contingentering") in secondary education (12-18yrs). This system was designed to realise a social mix of pupils (in terms of socio-economic origin) in schools. The new government agreement includes the ambition to drop this measure in primary education (6-12yrs) as well. The government agreement also includes the wish to drop the system of online-registration in schools "as soon as possible". Both these evolutions are worrying: these double quota system and the online registration guarantee an equal right for all parents to register their children in a school of their choice.

49. In 2014 the Flemish Government had adopted the **M-decree** that organized and facilitated **the inclusion of pupils with disabilities**. But the new government agreement (2019) holds the ambition to drop this M-decree and replace it with a “accompaniment-decree”. This decree will likely affect the rights of parents of pupils with disabilities: the schools regain the final say to allow or disallow a pupil with disabilities in their school. Moreover, we are worried the pupils with disabilities and their parents will not be invited as stakeholders in the development of this new decree. This would infringe on the principle “nothing about us, without us”.

3.2.12 Response to paragraph 27: Right to education (2)

50. In 2013, the Flemish Education Council (a public authority at the head of 700 public primary and secondary schools in the Flemish Region) approved an Administrative Circular of the Board of the Flemish Community schools, prohibiting the **wearing of any conspicuous philosophical signs at school**. On this basis, several school boards adopted internal regulations prohibiting the wearing of any conspicuous philosophical signs on the school premises. Several pupils wearing religious symbols (Islamic headscarf and turban) filed actions before the Council of State and different Courts of First Instance. The rulings are consistent in the sense that a general prohibition was always considered to be an interference with the right to freedom of religion. However, the Flemish Education Council refused to lift the general ban. The impact of this ban on pupils who wish to wear religious symbols is not clear at the moment, because the Flemish Government is not able to provide official figures that can quantify and objectify the impact (for example starting homeschooling or even leaving school) of this ban.
51. 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.⁵⁹ Most of these cases relate to the ban of philosophical or religious symbols, usually headscarves.

4 Additional elements

52. The **access to legal aid** has become more difficult due to a reform of the legal system, in particular for persons living in poor and precarious circumstances, persons with a handicap and certain foreigners (and especially the foreigners in closed detention centres).
53. Before the modification of the law, 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.
54. In October 2019, the Belgian representatives explained at the Human Rights Committee that the figures of second-line legal aid have increased. It might be explained by the fact that the lawyers must now fill a new application when they need to appeal a judgement. Before, the same application was valid for the first procedure and the appeal.

55. Myria has been informed of several cases of people who couldn't file an appeal in due time, due to the shortage of specialized lawyers. Unia has evidences of cases in the frame of the "Strike Operation" where people wouldn't be granted legal aid due to a shortage of evidences of their financial situation. Their banking account are frozen and the bank refuses to deliver an attest. The Public Centre of Social Welfare (CPAS) request the proof of the account being frozen before granting the minimal income. But without an attest of indigency provided by the CPAS, the legal aid is denied, and they cannot get the attest from the bank.
56. In general, litigation fees (rise of scheduling fees, DPA-Deposit) have considerably increased following the adoption of several laws and regulations, making access to justice even more costly for everyone.
57. The Combat Poverty Service and « Plateforme Justice pour Tous » submissions to the Committee give more explanations on this very important topic.

Recommendation

26. 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.

5 Endnotes

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

² Ordinance of the Brussels Capital Region on the Brussels housing code of 17 July 2003, article 194. Reasonable accommodations are only included as justification ground for indirect discrimination (article 197).

³ International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkjmH2bYG/content/no-62-2010-international-federation-of-human-rights-fidh-v-belgium?inheritRedirect=false.

⁴ COMMISSARIAAT VOOR DE RECHTEN VAN HET KIND (2014), Knelpuntennota woonwagenbewoners, <http://docs.vlaamsparlement.be/pfile?id=1073903>

⁵ H. DEGOL (2018), *Beleidsdossier Voyageurs op zoek naar een eigen plek*, <http://www.rimo.be/sites/default/files/public/publication/uploads/pdf/publication-20180712-2018-beleidsdossier-wwb.pdf>.

⁶ UNIA (2018), *Situation des gens du voyage après l'opération de police dite "Strike" du 7 mai 2019*, <https://www.unia.be/fr/publications-et-statistiques/publications/situation-des-gens-du-voyage-apres-loperation-de-police-dite-strike-du-7-mai-2019>.

⁷ Loi du 12 mai 2019 portant création d'un Institut fédéral pour la protection et la promotion des droits humains, *M.B.*, 21 juin 2019.

⁸ The Human Rights Platform is composed on a voluntary basis of Unia, Myria, the Collegium of the federal Ombudsmen, the Privacy Protection Commission, The Institute for the Equality of Men and Women, the Ombudsman of the German speaking Community, the Ombudsman of Wallonia and the Federation Wallonia-Brussels, the Commissioner for the Rights of the Child, the General Delegate for the Rights of the Child, the National Commission for Children's Rights, the Combat Poverty Service, Insecurity and Social Exclusion Service, the 'Comité R', the 'Comité P', the High Council of Justice and the Central Prison Supervisory Council.

⁹ European Migration Network (2019), *Annual Report on Migration and Asylum in Belgium 2018*, pp. 30-35.

¹⁰ The average price of one day reception per person in Fedasil centers- usually collective housing- was 49.82 euros in 2012 while this amount was 35.40 euros for a reception in individual housing managed by Ciré and Vluchtelingenwerk Vlaanderen in 2013. Belgian Federal Parliament, *Questions et réponses écrites, QRVA 53 121*, 15 July 2013, pp. 236-238.

¹¹ MYRIA (2019), *La migration en chiffres et en droit*, p. 59.

¹² Art. 4 §3 de la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers, *M.B.*, 7 mai 2007.

¹³ Cour Const., n°135/2011, 27 July 2011, point B.7.1 to B10.

¹⁴ Art. 4 §4 de la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers, *M.B.*, 7 mai 2007 ; Directive (UE) 2013/33 of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

¹⁵ MYRIA (2019), *Report of the international protection contact meeting of 16 January 2019*, pp.31-32.

¹⁶ Court of Justice of the European Union, C-233/18, *Zubair Haqbin*, 12 november 2019, § 46.

¹⁷ The Council of State judged that this provision should be considered as "a measure representing a significant step backwards in terms of protection". Council of State, Legislation Section, opinion 62.368/1/2/3/4 of 1 December 2017 on a pre-draft law on reinforcing economic growth and social cohesion, 58.

¹⁸ 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-et-allocations/allocation-de-remplacement-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, <http://ph.belgium.be/fr/avis/avis-2017-17.html>.

¹⁹ Article 23 of the act of 26 March 2018 on reinforcement of economic growth and social cohesion, *M.B.*, 30 March 2018, p. 31620.

²⁰ National Superior Council of Persons with disabilities (Conseil Supérieur National des Personnes Handicapées), Advice N° 2017/17.

²¹ Cour Const., n°7016, *M.B.*, 26 October 2018.

²² Cour Const., n°6/2019, 23 January 2019.

²³ F. TULKENS, M. BOSSUYT (2017), *Commission d'évaluation de la législation fédérale relative à la lutte contre les discriminations*, https://www.unia.be/files/Documenten/Aanbevelingen-advies/Commission_d%c3%a9valuation_de_la_l%c3%a9gislation_f%c3%a9d%c3%a9rale_relative_%c3%a0_la_lutte_contre_les_discriminations.pdf.

²⁴ www.unia.be/files/Documenten/Aanbevelingen-advies/Commission_d%c3%a9valuation_de_la_l%c3%a9gislation_f%c3%a9d%c3%a9rale_relative_%c3%a0_la_lutte_contre_les_discriminations.pdf

²⁵ [www.unia.be/files/Documenten/Publicaties_docs/Evaluation_2e_version_LAR_LAD_Unia_PDF_\(Francophone\).pdf](https://www.unia.be/files/Documenten/Publicaties_docs/Evaluation_2e_version_LAR_LAD_Unia_PDF_(Francophone).pdf)

²⁶ Chambre des représentants de Belgique, Evaluation des lois antidiscrimination du 10 mai 2007 – Rapport fait au nom des commissions réunie de la Justice et de la Santé Publique, de l'Environnement et du Renouveau de la Société, DOC (54) 2117/001, 2017-18.

²⁷ Ibid.

²⁸ UNIA et SPF EMPLOI, TRAVAIL ET CONCERTATION SOCIALE (2017), *Monitoring socio-économique – Marché du travail et origine*, <https://www.unia.be/fr/publications-et-statistiques/publications/monitoring-socio-economique-2017-marche-du-travail-et-origine>, pp. 27-86.

²⁹ 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*, https://www.myria.be/files/integrated_version_EMN_Myria_WEB.pdf.

³⁰ STATBEL (2018), *Survey on the labour force 2017.*, <https://statbel.fgov.be/fr/nouvelles/23-des-personnes-avec-un-handicap-ont-un-emploi>.

³¹ The greatest obstacles are the financial capital and social security, followed by the lack of entrepreneurial skills, the support for professionals and security and stability, as revealed in STICHTING INNOVATIE EN ARBEID (2018), *Rapport Ondernemen met een arbeidshandicap in Vlaanderen*, https://www.serv.be/sites/default/files/documenten/StIA_2018_OndernemenMetEenArbeidshandiciap_RAP.pdf

³² Arrêté royal du 29 octobre 2015 modifiant l'article 17 de l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers, *M.B.*, 9 novembre 2015.

³³ For example, in 2012, it employed 479.000 people. Source: UNIA (2015), *Monitoring Socio-économique*, pp. 65-66.

³⁴ Art. 10, al.2 de la Constitution, *M.B.*, 17 février 1994.

³⁵ Art. 18 and 45 of the Treaty on the Functioning of the European Union.

³⁶ 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 illégal, *M.B.*, 22 février 2013.

³⁷ MYRIA (2016), *Rapport annuel traite et trafic des êtres humains*, pp. 77-78.

³⁸ CONSEIL NATIONAL DU TRAVAIL (2018), *Avis n°2.099*, <http://www.cnt-nar.be/AVIS/avis-2099.pdf> p. 11.

³⁹ SILC (2017), *Statistics on income and living conditions*, <https://www.bfs.admin.ch/bfs/fr/home/statistiques/situation-economique-sociale-population/enquetes/silc.assetdetail.1822743.html>.

⁴⁰ The Handilab study carried out by the University KUL/Lucas in 2012 showed that the amount of the benefits did not protect persons with disabilities from poverty. A reform of the system of benefits was planned by the previous government, but never materialised.

⁴¹ The social benefits are automatically increased by 2% each time the health index exceeds a certain level (“the pivot index”). This automatic link between the social benefits and the evolution of the index of consumer prices is intended to prevent excessive erosion of purchasing power as a result of inflation. But in 2017, the income replacement benefits did not increase along with other social benefits. It took the insistence of associations of persons with disabilities for this error to be rectified (<https://www.socialsecurity.be/citizen/fr/archive/actualite/personnes-handicapees-augmentation-de-l-allocation-de-replacement-de-revenus-de-2-9>).

⁴² Myria (2015). For more details on this thematic, see S. DAWOUD (2017), “Gezinshereniging en geweld: worden slachtoffers in België afdoende beschermd?”, *T. Vreemd.*, n°1, pp.6-24.

⁴³ A. VAN DEN DURPEL (2019), *Safe Reporting of Crime for Victims and Witnesses with Irregular Migration Status in Belgium*, pp. 8-9; S. DAWOUD (2017), “Gezinshereniging en geweld: worden slachtoffers in België afdoende beschermd?”, *Tijdschrift voor vreemdelingenrecht*, nr. 1, pp. 19, 22, 24 https://www.agii.be/sites/default/files/bestanden/documenten/analyse_intrafamiliaalgeweld_tvr_2017_0.pdf.

⁴⁴ Myria (2016), *Être étranger en Belgique en 2016*, pp. 28-31.

⁴⁵ KCE (2015), *What health care for undocumented migrants in Belgium?*, 2015, <https://www.kce.fgov.be/en/what-health-care-for-undocumented-migrants-in-belgium>.

⁴⁶ KCE (2019), *Asylum seekers in Belgium: options for a more equitable access to health care. A stakeholder consultation*, https://www.kce.fgov.be/sites/default/files/atoms/files/KCE_319_Asylum_seekers_in_Belgium_Report.pdf.

⁴⁷ Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, *M.B.*, 31 décembre 1980.

⁴⁸ MYRIA (2016), *Comment mieux garantir les droits fondamentaux des étrangers gravement malades ?*, *Avis à la Chambre des représentants, Commission de l'Intérieur*, https://www.myria.be/files/Myria_avis_9ter_FR.pdf.

⁴⁹ We would cite, among others, persons with intellectual deficiencies and the hearing impaired or deaf.

⁵⁰ KCE (2017), *Health care in Belgian prisons. Current situation and scenarios for the future*, https://kce.fgov.be/sites/default/files/atoms/files/KCE_293Cs_Prisons_health_care_Synthese_1.pdf.

⁵¹ These sentences had to do with the fate of internees in the psychiatric annexes of prisons. Among these sentences, we would especially cite the judgement of 6 September 2016, referred to as the ‘pilot judgement’, in which the Court pinpoints the structural dysfunction inherent to the Belgian system and urges Belgium to organise its internment system in a way that respects the dignity of the prisoners.

⁵² Parliamentary question n° 2794 (28 June 2018) by Gilles Vanden Burre to the Minister of Justice on the situation of Internees in prison and the answer of the Minister of Justice, <http://www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-B165-866-2794-2017201824031.xml>

⁵³ The reforms of the internment system, provide, in the future, the construction of additional medico-legal psychiatric centres in Flanders, in Wallonia, and in Brussels. We should also point out that the Masterplan Internement (Commitment Masterplan) provides for the creation of a centralised long-term unit with 120 beds in Aalst for internees with profiles that present an increased safety risk who cannot be housed in the medico-legal psychiatric centres. These ‘long stay’ sections effectively represent a permanent detention, which is very worrisome in a constitutional state. On this subject, see OBSERVATOIRE INTERNATIONAL DES PRISONS (2017), *Pour le droit à la dignité des personnes détenues*, <http://oipbelgique.be/fr/wp-content/uploads/2017/01/Notice-2016.pdf>, pp.211.

⁵⁴ FLEMISH CARE INSPECTORATE DIVISION (2017), *Standardised questioning forensic psychiatric centre Ghent and follow-up audit*.

⁵⁵ The Flemish newspaper ‘De Morgen’ of 21 September 2016 (p. 10) published a number of disturbing testimonials about the consequences of the understaffing in the medico-legal psychiatric centres.

⁵⁶ On the date of 13 December 2017, only 34 patients had left the Ghent medico-legal psychiatric centre since its opening. 118 patients had requested to be admitted to various external care facilities. 83 patients were denied the request, 35 others were still waiting for a response. On this subject, see the parliamentary question of 13 December 2017 by Ms. GOEDELE UYTTERSROT to the Minister of Justice on "the outbound flows of committed persons" (n° 22506), <http://www.lachambre.be/doc/CCRI/pdf/54/ic780.pdf#search=%2222507%22>, p.34.

⁵⁷ UNIA (2018), *Baromètre de la diversité – Enseignement*, https://www.unia.be/files/Documenten/Publicaties_docs/1210_UNIA_Barometer_2017_-_FR_AS.pdf.

⁵⁸ With this system, schools have to create 2 contingents for the pre-inscription: one is for the “indicator students” (coming from disadvantaged families) and the other for “non-indicator students”.

⁵⁹ UNIA (2019), *Rapport Chiffres 2018 – Renouer avec les droits humains*, https://www.unia.be/files/Documenten/Jaarrapport/Rapport_Chiffres_2018_FR.pdf.

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