Mr. Victor BORLOZ-MADRIGAL

Independent expert on sexual orientation and gender identity

Via e-mail : ie-sogi@ohchr.org

Brussels,

**Our reference / Concerns :** Your call for inputs of the 6th of May 2019

**Contact person** : Rik Reusen / 0032 2 212.30.57 / rik.reusen@unia.be

Dear Mr. Borloz-Madrigal,

Unia, the Belgian National Equality Body and National Human Rights Institution (B-Status) , is an independent public institution that combats discrimination and promotes equal opportunities.

Annexed to this letter, you will find more information concerning our institution and the Belgian legal framework regarding sexual orientation and antidiscrimination.

Unia is competent for, among other things, sexual orientation (however not for (trans)gender[[1]](#footnote-1)). We took notice of your letter of the 6th of May 2019 in which you call for input for the report on protection against violence and discrimination based on sexual orientation and gender identity. We are happy to provide you with the following information, within the scope of our powers.

Key areas (1.)

Research on LGBTI in Belgium is not conducted in a systematic way although some new research was commissioned over the last years, notably by the Flemish and Federal governments. The only systematic way of doing research was established by the Flemish government (Policy Research Centre on Equality Policies) but its existence was not prolonged in 2015. The existing ad hoc approach is problematic.

The Flemish School Climate Survey Report, research commissioned by çavaria, the Flemish advocate of LGBTI+ people and the umbrella organisation of LGBTI+ organisations., made clear that LGBT do not necessarily feel accepted or even safe in their school environment. Two fifths (41.1%) reported feeling unsafe at school in the past year because of their sexual orientation. More than a fourth (26.9%) of LGBT students felt unsafe because of how they expressed their gender.[[2]](#footnote-2)

In 2018 our institution conducted the research ‘Diversity Barometer Education’ on exclusion in the education system, covering the three education systems of Flanders, the French speaking part and the German speaking part of Belgium. Results highlighted that although teachers showed great acceptance of LGB in principle, they did not know how to deal with these differences within their class rooms and found it difficult to elaborate on the subject with their pupils. Results also showed that teaches were in favor of more time / attention for this subject. Therefor we advocate that standard teacher formation should include training teachers on how to teach on LGB and how to deal with the SOGI-diversity in their classrooms.[[3]](#footnote-3)

More information on the key areas can be found under the section of complaint mechanisms (4.).

Root cause and structural factors (2.)

Our institution conducted a survey on homophobia in 2016[[4]](#footnote-4) revealing prevailing stereotypes towards LGB in different domains. In general we can say that in Belgium there is a good degree of acceptance of LGBT+ when it comes to the principle of equality, but that this acceptance shrinks when people are confronted with LGBT+ expressing themselves in the public domain.

Some results of the survey:

* 28% of the respondents was not in favor of using illustrations of same sex couples in school manuals
* 17% affirms that the teacher of their children should hide the fact the he/she is in fact LGB
* 18% of the responds would have a problem with taking a shower together after sports if one of his/her team members would be gay

The Belgian antidiscrimination law states that it is forbidden to incite others in public to discrimination, hate or violence vis-à-vis persons or groups on the basis of a protected criterion.

Hate speech often occurs in written form. The Belgian constitution states that ‘press crimes’ must be assessed before a “Cour d’assises”(and thus before a popular jury). The constitution only makes an exception on this general principle for racist press crimes. They can be assessed by an ordinary criminal court. The consequence is that homophobic (and other non-racist) press crimes or not prosecuted in practice since a ”Cour d’assises” is nearly never convened for press crimes. A few years ago there was a lot of commotion concerning the book ‘The Way of the Muslim’ which was sold in Belgian bookshops. It mentioned that homosexuals should be killed by throwing them from buildings. Unia has wanted to give a signal regarding this book and filed a complaint with the Public Prosecutor's Office against the distribution of the book, but considering the foregoing it's unlikely that a “Cour d’assises” will be convened to deal with this complaint. Unia urges for a review of the provisions regarding hate speech in the constitution in order to get an equal treatment of racist and non-racist press crimes.

State efforts (3.)

Concerning the interfederal action plan against discrimination and violence towards LGBTI. This action plan was critized for its lack of consultation and collaboration with civil society organizations and other stakeholders like academics. In the next plan, more efforts should go in consulting these stakeholders.

More attention should go to so called “subgroups” that remain invisible in the plan but need special attention, an intersectional approach could be helpful here in determining specific actions for specific groups.

The action plan did not include the local level, although this level is very important in building a truly inclusive society for LGBT+. Interesting things are happening at the local level: For example the city of Ghent is a pioneer in developing an ambitious LGBT-policy at the local level: building on a broad coalition of stakeholders (civil society, academics, ..) and bringing actions together in a visible rainbow action plan . Ghent was also the first city in Belgium to establish a local policy on transgender persons, starting with an academic analyses of the needs experienced by transgender people vis a vis the local level.

Complaints mechanisms (4.)

Unia provides individual support to citizens who have experienced or witnessed discrimination. Persons who are victims of discrimination, hate speech or hate crimes on the basis of their sexual orientation can report this to Unia.

Unia has the mandate to receive and handle reports(“complaints”), within its competences, and to carry out any mission of mediation or reconciliation that it deems useful. Unia is also authorized to take legal action (this is always done with the explicit consent of the victim, if the victim is known).

In 2018 Unia opened 125 cases regarding sexual orientation (which is 4,9% of all cases opened by Unia in 2018). Roughly speaking one-third of the cases regarding sexual orientation concerns hate crimes (“Society”), one-third hate speech (“Media”) and one-third discrimination in the field of (most of all) employment, goods and services and education.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| Society | 24 | 21 | 42 | 31 | 26 | 42 |
| Media | 20 | 23 | 22 | 30 | 18 | 31 |
| Employment | 19 | 20 | 13 | 20 | 17 | 19 |
| Goods and services | 12 | 8 | 8 | 16 | 8 | 17 |
| Police and Justice | 7 | 5 | 2 | 1 | 5 | 6 |
| Education | 7 | 1 | 2 | 3 | 3 | 3 |
| Various activities | 2 | 2 | 1 | 3 | 5 | 5 |
| Other / Unclear | 3 | 0 | 1 | 0 | 0 | 2 |
|  | 0 | 0 | 1 | 0 | 2 | 0 |
| Total | **94** | **80** | **92** | **104** | **84** | **125** |

In cases of discrimination, Unia first tries to reach an extrajudicial solution with the parties involved (*alternative dispute resolution*). In case of punishable hate speech, Unia prefers a constructive dialogue, unless it concerns organized or extremely blatant hate speech (such as incitement to violence). In cases of hate crimes, Unia respects the judicial investigation and does not take extrajudicial action against the suspect.

It’s never the first choice of Unia to go to court and even then Unia focuses mainly on strategic litigation. In fact, there are between 6 and 7% of judicial outcomes in cases declared founded. Some of the recent court cases in which Unia is involved concern, for example, :

* Homophobic statements by a police officer to colleagues;
* Blows and injuries to a homosexual couple as part of a neighbors' quarrel;
* A twitter call to attack homosexuals during the Pride.

Actions taken to raise public awareness and sensitization (6.)

In 2018 Unia noted that before, during and after the annual Pride (in Brussels and Antwerp) several incidents of hate speech and hate crimes were reported. That’s why Unia has sent in April 2019, in consultation with the organisers of the Pride, a letter to the Chief of Police of Brussels. In its letter, Unia asked for extra vigilance before, during and after the Brussels Pride in May 2019 and asked to ensure good care for the possible victims. The Chief of Police replied that, among other things, he instructed the hierarchical line to remind the staff in the field of the importance of good care for the possible victims. The contact point for the reporting of homophobic incidents was simplified and improved. In addition agreements were made in case of incidents and a specific reporting sheet was developed. To date, Unia has not received any reports of the 2019 Pride in Brussels.

So far the issues on which Unia would like to draw your attention. We hope that the above information will be useful for the elaboration of your next report and we are looking forward to reading it.

Yours sincerely,

Patrick CHARLIER Els KEYTSMAN

Director Director

**Annex**

**Information concerning Unia and the Belgian legal framework regarding sexual orientation and antidiscrimination**

1. Unia

Unia is an independent public institution, established in Belgium in 1993, that combats discrimination and promotes equal opportunities. Unia has interfederal competence, which means that the institution is active at the federal level of Belgium as well as the level of the Regions and Communities.

Unia is competent in the field of antidiscrimination for the so-called racial criteria (presumed race, skin colour, nationality, ancestry (Jewish origin) and national or ethnic origin) as well as for the so-called non-racial criteria (disability, religion or belief, sexual orientation, age, wealth, civil status, political beliefs, trade union membership, state of health, physical or genetic characteristics, birth and social background).

Anyone in Belgium, who feels that he or she has been discriminated against (e.g. on the ground of his or her sexual orientation), or who has witnessed discrimination, can report this to Unia. Sometimes files regarding other discrimination grounds, such as the state of health, also have a link with the criterion sexual orientation, for instance in the case of discrimination against persons with HIV.

Unia provides individual support to citizens who have experienced or witnessed discrimination and also performs other tasks. The institution formulates targeted advice and recommendations for (public) authorities and (public or private) organizations. It organizes campaigns for raising awareness and informing the public. It offers customized training and makes available an online training tool (eDiv). Finally, it informs through publications and statistics (such as the ‘barometer' on education, work, and housing).

Unia has a website ([www.unia.be](http://www.unia.be)) where you can find extensive information on our institution and activities.

In Belgium, there are separate institutions that deal with issues of equality between woman and men and gender-based discrimination: the Institute for the Equality of Women and Men and (for the Flemish Region) the ‘Vlaamse Genderkamer’. They are competent for, among other things, transsexuality, gender identity and gender expression (regulated by a separate so-called gender law). In what follows, we will only deal with SO, since Unia is not competent for GI.

1. Belgian legal framework regarding SO

Belgium opened-up marriage in 2003. Same-sex couples were granted access to co-parent and joint (national and international) adoption in 2006. ‘Automatic Parenthood’ for co-mothers became possible in 2015. Belgium also has a law on legal cohabitation (1998) and a law on medically assisted procreation (which is also available for single women and lesbian couples) (2007).

In 2003 a (federal and general) antidiscrimination law, covering among other things sexual orientation, became in force (besides an already existing antiracism law from 1981). Both laws were thoroughly revised in 2007.

Belgium is a federal state that has, besides a federal Government and Parliament, three Communities (the Flemish Community, the French-speaking Community, and the German-speaking Community) and three Regions (Flanders, Wallonia, and Brussels) with their own Governments and Parliaments. Communities mainly deal with so-called personal affairs, whereas Regions deal chiefly with socioeconomic affairs. Since Unia is an interfederal institution, it is also competent for the decrees and ordinances (‘laws’) of the Communities and Regions. Article 6, § 2 of the cooperation agreement from 12 June 2013 gives an overview of the legislation for which Unia is competent (unia.be/files/Z\_ARCHIEF/ 11\_april\_2014\_0.pdf).

1. Antidiscrimination law

The antidiscrimination law (unia.be/files/Z\_ARCHIEF/10\_mai\_2007.pdf) covers, among other things, sexual orientation. It has provisions on (a) discrimination, (b) hate crimes and (c) hate speech.

1. Discrimination

The antidiscrimination legislation in Belgium has a broad field of application and not only covers fields such as employment and occupation, and the provision of goods and services, but also the participation in every economic, social, cultural or political public activity. This means that Unia opens and investigates individual discrimination files regarding various fields such as employment, goods and services and education.

Belgium has made a lot of progress in the field of equal rights for LGB’s in recent years. The legal equality of LGB’s is largely accepted by the Belgian population, but there is still a great deal of so-called homonegativity (e.g. ‘there is too much attention for LGB’s’, ‘LGB’s should behave normally’ …). This attitude reflects itself in the files opened by Unia. A teacher, for instance, received written homophobic remarks from his pupils while using an electronic board during his classes. Unia always tries to reach an alternative dispute resolution, in the case of the teacher by contacting the director of the school, and only in a limited number of cases Unia will take the matter to court.

1. Hate crimes

In 2012 two homosexual men were murdered, within weeks of each other, in Belgium solely because of their homosexuality. It triggered the Governments to work out two interfederal action plans about homophobic (and transphobic) violence and discrimination for the period 2013-2014.

The Belgian criminal code provides for certain crimes in an optional or compulsory increase of the sentence when the crime is based on a so-called hate motive. This concerns e.g. crimes such as assault and battery, rape, graffiti, stalking, and arson. If such a crime is committed and is motivated by hate regarding e.g. the sexual orientation of the victim, Unia can take the case to court. Unia did this for instance in the two murder cases mentioned above. For certain crimes, the criminal code does not foresee an increase of the sentence when the crime is based on a so-called hate motive. Such crimes are e.g. torture, theft committed by violence or threat, and extortion. Sometimes homosexual men use dating sites to seek contact and are subsequently robbed. For this kind of crime, it is not possible to investigate the (homophobic) hate motive and eventually increase the sentence. Unia urges for a review of the provisions regarding hate crimes in the criminal code, to make it possible to examine the hate motive for crimes such as theft committed by violence or threat.

1. Hate speech

The growth of the social media has led to a real explosion of hate speech. Unia is often questioned on the limits to freedom of expression. The Belgian antidiscrimination law states that it is forbidden to incite others in public to discrimination, hate or violence vis-à-vis persons or groups on the basis of a protected criterion.

Unia deals with hate speech in different ways. It motivates victims to practice counterspeech, negotiates with social media such as Facebook and Twitter and contributes to campaigns against hate speech such as the No Hate-campaign. In some cases a formal complaint is initiated at the office of the public prosecutor or the case is even taken to court.

1. Circular COL 13/2013 (17 June 2013)

A circular was published in 2013 by the Minister of Justice, the Minister of Internal Affairs and the College of Attorneys General at the Courts of Appeal. This circular from 17 June 2013, with reference COL 2013 /13 forms an important tool in the fight against discrimination and hate crimes. The circular provides for the appointment of ‘reference’ magistrates and ‘reference’ police officers specialized in discrimination and hate crimes. In addition, the circular contains instructions on the detection and prosecution of discrimination and hate crimes. There are also guidelines for the registration of discrimination and hate crimes by the police and for the cooperation between the police, the public prosecutor, and Unia.

1. The center for the equality of woman and men; <https://igvm-iefh.belgium.be/en> [↑](#footnote-ref-1)
2. The Flemish School Climate Survey Report, Çavaria, 2017; <https://cavaria.be/sites/default/files/2019-04/scholierenenquete_2017_eng.pdf> [↑](#footnote-ref-2)
3. <https://www.unia.be/fr/publications-et-statistiques/publications/barometre-de-la-diversite-enseignement> [↑](#footnote-ref-3)
4. <https://www.unia.be/fr/publications-et-statistiques/publications/lhomophobie-en-belgique-anno-2016-rapport-de-recherche> [↑](#footnote-ref-4)