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ECRI REPORT ON BELGIUM

(fourth monitoring cycle)

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FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 19 December 2008 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

SUMMARY

Since the publication of ECRI's third report on Belgium on 27 January 2004, progress has been made in a number of fields covered by that report.

The Federal Action Plan to combat racism, antisemitism, xenophobia and related violence was adopted in 2004. Some of the measures set out in this plan have been implemented and others are in progress. In particular, tools for monitoring racism and racial discrimination are about to become operational; these include the tolerance barometer and socio-economic monitoring.

The Belgian authorities have also launched initiatives to promote intercultural dialogue. Several projects for preventing discrimination and increasing diversity in the field of employment have been initiated or supported by the Belgian authorities.

Measures have been taken to improve the implementation of the criminal law provisions to combat racism, including training and awareness-raising for police officers, prosecutors, judges and lawyers. The prosecution services now have contact prosecutors responsible for racism and discrimination issues, tasked with following up any complaints made in these areas and referring them to the Prosecutor General's Office. Circular No. col 6/2006 issued by the Board of Prosecutors General at the Courts of Appeal allows for greater account to be taken of racist motivations in the nomenclature of criminal offences.

The adoption on 10 May 2007 of a series of laws to combat discrimination and racism is a welcome development. These laws have improved the civil-law machinery penalising racial discrimination and other forms of discrimination on several points and they clarify the requirements for adducing evidence of discrimination before the civil courts. Information and awareness-raising campaigns have helped publicise this new federal legislation.

The Centre for Equal Opportunities and the Fight against Racism (hereafter: the Centre) has continued to play a leading role in the fight against racism and racial discrimination in many respects. The extension of its mandate to cover migration-related issues and non-citizens' fundamental rights has helped strengthen this role.

Significant progress has been made as regards the introduction and use of tools for combating racist discourse in politics, even though the problem of racist political discourse persists. Judicial proceedings have been initiated against individuals and legal entities taking part in organisations advocating racism. The administrative mechanism allowing for the suspension of public funds granted to political parties displaying hostility to freedoms and human rights is now operational; one set of proceedings is currently in progress.

A circular aiming to combat racist discourse in sport has been adopted and the authorities are stepping up their surveillance of racism on the Internet.

With regard to non-citizens, the Guardianship department for unaccompanied minors has been set up in the Ministry of Justice and has been operating since 2004. As of May 2007, unaccompanied minors are no longer placed in detention centres (closed centres). Alternative solutions to the detention of families with children in closed centres were put into place in October 2008. Measures have been taken to train civil servants working in the migration field and raise their awareness of cultural diversity. Non-EU non-citizens have been given the right to vote in municipal elections.

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

There are a number of shortcomings in the system of collecting data on the application of the criminal law provisions against racism, making it impossible to have a comprehensive overview of the response of the justice system to racist acts and expressions. It is imperative that these problems be resolved insofar as the authorities must deal with persistent cases of racist expressions and violence.

Despite the measures taken by the authorities, extreme right-wing parties are continuing to spread their racist, antisemitic, islamophobic and xenophobic propaganda and there are some Neo-Nazi and extreme right-wing groupings active in Belgium. With regard to racism, and in particular Islamophobia and antisemitism on the Internet in Belgium, in recent years there has apparently been a sharp increase in racist websites and discussion forums that can be accessed from Belgian sites. This climate is one of the reasons for the persistence of incidents of racist violence in Belgium.

There are continuing allegations of instances of racial discrimination and in particular racial profiling, by the police. There are also continued reports that racially motivated abusive behaviour by police officers is not, for a variety of reasons, receiving sufficient attention and those responsible are not being punished.

The persistence of direct and indirect racial discrimination in employment, access to housing and public services is a problem affecting primarily non-citizens and people of immigrant background, particularly persons of Moroccan or Turkish origin, and those from the countries of sub-Saharan Africa and Eastern Europe. Muslims, and especially women wearing the headscarf are also sometimes subject to this type of discrimination.

Travellers also suffer from prejudices and discrimination in employment and housing, in particular because of the shortage of transit sites where itinerant Travellers can camp.

Education is a sector where direct and indirect racial discrimination persists, even though the authorities have taken measures to try and deal with this problem. Immigrant children and children of immigrant background and whose language is not the one spoken at school tend to perform less well at school than children of Belgian origin for several reasons, including de facto segregation at school and the racism which they allegedly sometimes encounter there.

The report highlights problems linked to tension between linguistic communities and also allegations of discrimination based on language. It is worrying to hear that the tensions that exist between the Dutch-speaking and French-speaking communities are being exploited more and more openly in politics. Measures have been taken in recent years at local and regional level to oblige certain groups to learn or undertake to learn Dutch. These measures seem to have little effect and to be dangerous for the exercise of certain individual rights such as access to social housing. Above all, they stigmatise the groups concerned. There are also reports of wrongful use being made by some employers of the language level required as a recruitment criterion. The fact is that, to date, there is no body specialising in the fight against discrimination that is competent to deal with questions of discrimination based on language.

While the new legislation on non-citizens and asylum seekers has led to some progress, it has also given rise to more stringent requirements for the exercise of certain rights, especially as regards adequate housing for family reunification. Progress as regards the detention and deportation conditions of non-citizens has not been sufficient and cases of abuse continue to be notified. There is an urgent need to find solutions to regularise the situation of undocumented non-citizens who are in an extremely precarious position.

With regard to the measures concerning the integration of immigrants and persons of immigrant background, incentive-type measures are a welcome development but the resources available for these measures are not sufficient to meet the heavy demand, especially insofar as suitable language classes are concerned. The civic integration programme in the Flemish Region is obligatory for some non-citizens. The obligation to attend this programme, which is presented as purporting to integrate non-Dutch speakers, would appear to be ineffective, or indeed counter-productive in that it stigmatises the persons in question and jeopardises the exercise of their individual rights.

In this report, ECRI recommends that the Belgian authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.

ECRI recommends that the Belgian authorities ratify Protocol No. 12 to the European Convention on Human Rights as swiftly as possible. It recommends that an evaluation be made of the legislative arrangements to combat racism and racial discrimination and that all members of the justice system be trained in and made aware of the content of this legislation.

ECRI recommends that the authorities consolidate the institution of the Centre and make it an inter-federal organ. It recommends that prompt action be taken to designate or set up an independent and impartial body competent to deal with discrimination based on language.

ECRI recommends that the authorities continue their efforts to combat direct and indirect racial discrimination in the fields of employment and housing, by introducing, where possible and necessary, positive action measures.

ECRI strongly recommends that the Belgian authorities pursue and step up their efforts to ensure that all children of immigrant background are afforded equal opportunities in access to education. ECRI recommends in particular that they continue to take steps to promote a social mix in state schools and place greater emphasis in initial and in-service teacher training on the need to combat racism and racial discrimination, on the one hand, and on the ways in which diversity enriches Belgian society, on the other hand. *

ECRI recommends that the Belgian authorities pursue and step up their efforts to combat racism in political discourse by applying the procedures introduced for this purpose, by regularly reviewing their effectiveness and by supplementing them if necessary. It is also imperative to step up the fight against racist discourse on the Internet.

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

ECRI strongly recommends that the Belgian authorities find at the earliest opportunity solutions to enable Travellers to camp, by creating a sufficient number of well located and properly equipped sites. It also recommends that the authorities run an awareness-raising campaign aimed at the general public to combat all forms of intolerance towards and rejection of Travellers and to combat any related racial discrimination. *

ECRI recommends that the authorities review the new measures taken at local and regional level to oblige certain groups to learn or undertake to learn Dutch, ensuring that such measures do not have a counter-productive effect on the integration process.

With regard to non-citizens, ECRI recommends that the Belgian authorities do everything possible to find alternative solutions to detention for non-citizens in an irregular situation and for asylum seekers, especially minors, and that they continue to combat all abuses in connection with the detention and deportation of non-citizens.

ECRI recommends that all currently serving police officers and those undergoing initial training be instructed in and alerted to the need to combat racism and racial discrimination, stressing the importance of dealing with and recording complaints appropriately. Furthermore, ECRI urges the authorities to designate within each police unit a contact person responsible for improving the police response to complaints regarding racist acts by private persons, along the lines of the contact prosecutors specialising in racism and discrimination issues in the prosecution service. *

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Existence and Implementation of Legal Provisions

International legal instruments

1. In its third report, ECRI recommended that Belgium ratify Protocol No. 12 to the European Convention on Human Rights, which contains a general prohibition of discrimination and was signed by Belgium on 4 November 2000. The Belgian authorities state that they are in favour of ratifying the Protocol and that the ratification procedure is under way. The Flemish authorities, in particular, agreed to ratification of the Protocol on 20 July 2006 while the other federated entities had already given their formal approval before 2005.

2. ECRI recommends that Belgium ratify Protocol No. 12 to the European Convention on Human Rights as swiftly as possible.

3. In its third report, ECRI recommended that Belgium ratify the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Belgium signed this Protocol on 28 January 2003 and the Belgian authorities have stated that the ratification procedure is under way.

4. In its third report, ECRI recommended that Belgium ratify the Framework Convention for the Protection of National Minorities, taking into account Resolution 1301 (2002) of the Parliamentary Assembly of the Council of Europe, asking Belgium to ratify the convention while withdrawing the reservation made at the time of signing[1]. The Belgian authorities have indicated that ratification of the Framework Convention, signed by Belgium on 31 July 2001, is currently being discussed by the federated entities whose prior approval is required.

5. In its third report, ECRI recommended that Belgium sign and ratify the European Charter for Regional or Minority Languages, the Convention on the Participation of Foreigners in Public Life at Local Level[2] and the UNESCO Convention against Discrimination in Education. The Belgian authorities have stated that efforts are under way to enable them to sign these three instruments.

6. Belgium has not signed the International Convention on the Protection of All Migrant Workers and Members of their Families.

7. ECRI recommends that Belgium ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

[1] Text of the reservation: "The Kingdom of Belgium declares that the Framework Convention applies without prejudice to the constitutional provisions, guarantees or principles, and without prejudice to the legislative rules which currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority will be defined by the inter-ministerial conference of foreign policy." See Resolution 1301 (2002) of the Parliamentary Assembly of the Council of Europe on the protection of minorities in Belgium, § 20 – i). See also Parliamentary Assembly of the Council of Europe, Recommendation 1766 (2006), "Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe", 10 April 2006.

[2] On this subject, see also: "Non-citizens: - Integration policies".

8. ECRI recommends that Belgium ratify the Framework Convention for the Protection of National Minorities, taking into account Resolution 1301 (2002) of the Parliamentary Assembly of the Council of Europe.

9. ECRI recommends that Belgium sign and ratify the European Charter for Regional or Minority Languages, the Convention on the Participation of Foreigners in Public Life at Local Level, the UNESCO Convention against Discrimination in Education and the International Convention on the Protection of All Migrant Workers and Members of their Families.

Criminal law provisions to combat racism

10. In its third report, ECRI recommended that Belgium ensure effective implementation of the provisions establishing racist motivation as a specific aggravating circumstance and the exhaustive nature of the range of offences to which the specific aggravating circumstance applies. It also recommended that the Belgian authorities step up their efforts to provide training to police officers, judges and prosecutors on issues pertaining to the implementation of the legislation against racism.

11. The Criminal Code provides that hatred, contempt or hostility based, *inter alia*, on presumed race, skin colour, descent, national or ethnic origin, nationality, religious beliefs or language are aggravating circumstances in the case of a number of offences. The list of offences concerned includes murder, intentional wounding, harassment, defamation, arson and destruction or damage of movable property. ECRI notes with interest that under the Act of 10 May 2007 which aims to combat certain forms of discrimination, this list has been extended to include graffiti and damage to immovable property (Article 534quater of the Criminal Code).

12. The Act of 30 July 1981 criminalising certain acts inspired by racism or xenophobia outlaws incitement to hatred, violence and racial discrimination, dissemination of ideas based on racial superiority or hatred and participation in racist associations. The Act of 23 March 1995 prohibits denial of the genocide committed by the Nazi regime.

13. ECRI notes with interest that since its last report, the Belgian courts have, on a number of occasions, applied the criminal law provisions which provide for an increased penalty if an offence is racially motivated[3]. They have also applied the provisions prohibiting denial of the genocide committed by the Nazi regime (Act of 23 March 1995), handing down suspended or non-suspended prison sentences to persons who made revisionist statements, fining them and/or withdrawing their civil and political rights. The provisions of the Act of 30 July 1981 against racism have also been applied on several occasions by the Belgian courts, which have handed down non-suspended prison sentences in the most serious cases[4].

14. ECRI is pleased to note that since its last report, a number of measures have been taken to improve the implementation of the criminal law provisions to combat racism. In particular, a contact prosecutor responsible for racism and discrimination issues has been appointed in each court district to closely monitor any complaints made in these areas and to refer them to the Prosecutor General's Office. The contact prosecutors have received specialist training and have met on a number of occasions, the first being in 2006. The

[3] For further details, see below: "Racist violence".

[4] For further details, see below: "Racism in public discourse".

system could be further enhanced, however, by providing additional training for these prosecutors and facilitating contacts both between these prosecutors and between them and the other parties involved in combating racism.

15. Circular No. col 6/2006 issued by the Board of Prosecutors General at the Courts of Appeal on 21 March 2006 sought to fine-tune the nomenclature for identifying the racist motivations of certain offences. Under the terms of this circular, in the case of an ordinary offence with a racist motivation, the police and the prosecution service must specifically mention this motivation at the time of recording the offence. If there is some doubt, the matter can be referred to the contact prosecutor (see above) who will see to it that the circular is properly implemented. The circular states that it must always be possible to add or delete a reference to the racist nature of an offence at every stage of the procedure, based on the findings made by the prosecutors.

16. Since the last report, a whole series of measures have been taken to raise awareness of racism and to train police officers, prosecutors, judges and lawyers in the applicable legislation in this area. ECRI welcomes this commitment to training and educating the key players involved in implementing the criminal law provisions to combat racism. It notes, however, that except for some mandatory initial training, the courses are optional and not everyone chooses to take them.

17. ECRI notes that a large number of cases are dropped by prosecutors, without any real possibility of knowing why. In some cases, the decision to drop proceedings is entirely justified, as in cases where, even after investigation, the identity of the perpetrators remains unknown. It would be helpful however to have more detailed information and discussions between contact prosecutors on this subject in order to establish why cases are dropped and, where necessary, to find ways of ensuring that racist offences do not go unpunished.

18. More generally, both the authorities and civil society agree that further improvements need to be made to the system of collecting data on the application of the criminal law provisions against racism. Such data are collected, but in a rather piecemeal fashion and by different bodies which do not always use the same criteria. For example, the Centre for Equal Opportunities and the Fight against Racism (hereafter: the Centre)[5] publishes any relevant Belgian case-law of which it is aware. The anti-racist NGOs also collect data about any complaints that come to their attention. The police and the prosecution service have their own collection systems. While all these efforts and information are useful, they are not enough to allow close monitoring of trends in terms of racist incidents and the follow-up given to them by the criminal justice system. Much more needs to be done to provide instruments for collecting reliable data on the application of the criminal law provisions to combat racism. The authorities have stated that they are giving serious consideration to this matter in an effort to find and introduce suitable, useful mechanisms[6].

19. ECRI recommends that the Belgian authorities assess the implementation of the criminal law provisions against racism in order to identify, including notably from recent case-law, any gaps that need closing or any improvements or clarifications that might be required, so that changes can then be made if necessary. In this respect, ECRI draws the authorities' attention to its General

[5] Concerning the Centre for Equal Opportunities and the Fight against Racism, see below: "Anti-discrimination bodies and other institutions".

[6] On this point, see also: "Conduct of the police".

Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination which contains guidelines in this area.

20. ECRI recommends that the Belgian authorities continue to provide initial and in-service training for all members of the justice system – police officers, prosecutors and judges – regarding the criminal law provisions prohibiting racism, so as to ensure that these provisions are applied in a satisfactory manner. It further recommends that lawyers be given the opportunity to receive training in these provisions.

21. ECRI recommends that the Belgian authorities consolidate and strengthen the system of contact prosecutors responsible for racism and discrimination issues, for example by creating a forum to enable the prosecutors concerned to share their expertise, and by providing them with additional training.

22. ECRI strongly encourages the Belgian authorities to improve and to supplement the existing arrangements for collecting data on racist incidents and the follow-up given to them by the criminal justice system. In this respect, it draws the authorities' attention to the section of its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing which concerns the role of the police in combating racist offences and monitoring racist incidents[7].

Legislation to combat racial discrimination

- *Content of the legislation to combat racial discrimination*

23. In its third report, ECRI recommended that the Belgian authorities consider strengthening and supplementing the civil law provisions on racial discrimination and training judges in the existing provisions.

24. ECRI is pleased to note that the Acts of 10 May 2007[8], which came into force on 9 June 2007, have improved the judicial machinery for combating racial discrimination and other forms of discrimination on several points[9]. In general, the experts on combating discrimination take the view that the current federal legislation is satisfactory. The main purpose of the acts is to implement the EU directives on combating discrimination[10] but in several respects, the new legislation even goes beyond what is required by these directives. It incorporates a great many of the suggestions made in ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. For example, the new legislation prohibits direct and indirect discrimination not only on the grounds of presumed race, skin colour, descent or national or ethnic origin but also on the grounds of nationality, religious belief and language, in many fields of life (including employment, access to public services and housing), in both the private and the public sector.

[7] See part III of the General Policy Recommendation.

[8] Act of 10 May 2007 aimed at combating certain forms of discrimination, Act of 10 May 2007 amending the Act of 30 July 1981 criminalising certain acts inspired by racism and xenophobia; Act of 10 May 2007 adapting the Judicial Code to the legislation aimed at combating discrimination and criminalising certain acts inspired by racism or xenophobia. These three acts were accompanied by the Act of 10 May 2007 aimed at combating discrimination between women and men. They were all published in the Belgian Law Gazette (Moniteur belge) on 30 May 2007.

[9] In its Judgment n° 17/2009 of 12 February 2009, the C onstitutional Court rejected an application to strike down 3 of these laws under reserve of interpretation for certain provisions.

[10] EU Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and EU Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

25. The new legislation also establishes as a criminal offence certain forms of discrimination based on a number of the grounds mentioned above. As before, the law prohibits intentional discrimination, whether direct or indirect, and irrespective of the perpetrator, on the grounds of presumed race, skin colour, descent or national or ethnic origin. Where the perpetrator is an official or public officer, the possible prison term is doubled. In the case of the other two grounds (language and religious belief), only intentional discrimination on the part of an official or public officer is punishable under criminal law.

26. The main improvements made by the new legislation concern the civil law branch. The definitions of key concepts such as indirect discrimination have been clarified. The acts provide for greater protection from retaliatory measures against the victim or a witness if they report a discriminatory act.

27. The new legislation introduces a system of fixed-rate compensation for non-pecuniary damages in case of discrimination. The victim can choose between either seeking reimbursement for actual harm suffered or claiming a fixed-rate compensation of EUR 650. The second possibility should make it easier to obtain compensation through the courts. There has been some criticism, however, that the fixed sum is too low to be a sufficient deterrent. Granted, the victim can opt to seek compensation for the actual costs incurred, enabling them to claim more, but this also makes the procedure more complicated. The fixed amount of compensation can be increased to EUR 1,300 in certain circumstances, for example where the non-pecuniary damage sustained is considerable. In case of discrimination in the employment sphere, the fixed-rate compensation is three months' wages or six months' wages respectively, under the same criteria.

28. The amount of the damages may equally be increased if the defendant cannot show that the less favourable treatment would also have occurred had there been no discrimination. It is difficult to see why the law varies the amount of compensation for non-pecuniary damages depending on whether or not the offender had the possibility of justifying the decision with a non-discriminatory motive. The non-pecuniary damage which extends from the refusal is justified because a discriminatory motive was among the elements taken into account. ECRI recalls that for racial discrimination to have taken place, it is not necessary that ethnic origin should constitute the only factor or the determining factor in the difference in treatment. It is enough that this ground is among the factors leading to such difference in treatment[11]. It therefore considers that the amount of damage should not vary according to whether or not the decision might have been justified for other reasons.

29. Under the new legislation, complaints about discrimination which come before the civil courts are to be automatically communicated to the prosecution service or, depending on the nature of the act, to the Labour Inspectorate, both of which can issue an opinion, intervene in the procedure or even initiate legal proceedings. The Centre has the right to initiate legal proceedings in discrimination cases, except for cases involving discrimination based on gender or language[12].

[11] On this point, see ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, and more specifically § 7 of the Explanatory Memorandum. See also, mutatis mutandis, the judgment of the European Court of Human Rights, Grand Chamber, E.B. v. France, § 80, Application No. 43546/02.

[12] On this point, see below: "Anti-discrimination bodies and other institutions".

30. Under the acts of 10 May 2007, "positive action measures" may be taken if the purpose of the measure is to eliminate a manifest inequality. The measure must be temporary and must not needlessly restrict the rights of others. As well as these general requirements, it is stated that the circumstances and conditions necessary for the undertaking of a positive action measure to combat discrimination are to be determined by royal decree. ECRI notes with interest that positive action measures are thus permitted and are tightly controlled by Belgian law, which should help to avoid any abuse. It hopes that in cases where there is manifest inequality[13], consideration will be given to the possibility of using these measures in strict accordance with the conditions mentioned above.

31. In its third report, ECRI asked for clarification of the rules on the possibility of using a situation test as a way of collecting evidence of racial discrimination. The Acts of 10 May 2007 specify the methods of collecting evidence that may be used in civil proceedings. They provide for the sharing of the burden of proof in discrimination cases. Accordingly, where the victim alleges facts from which it may be presumed that there has been discrimination, it is for the respondent to prove that there has been no discrimination.

32. The legislation provides examples of facts from which it may be presumed that discrimination has occurred, making it clear that there are others in addition to those listed. In the case of *direct* discrimination, such facts include 1) information that indicates a pattern of adverse treatment of individuals who share a particular protected characteristic, e.g. several independent complaints to the Centre or one of the interest groups authorised to bring legal proceedings; or 2) information indicating that the situation of the person who was treated adversely is comparable to the situation of the reference person. In the general opinion of legal commentators, situation tests, which involve setting up situations in order to prove a difference in treatment between persons in comparable situations, are thus now among the means of establishing facts from which it may be presumed that discrimination has occurred. It remains to be seen how the courts will interpret this precise point.

33. The facts from which it may be presumed that there has been *indirect* discrimination based on a protected criterion include: 1) general statistics about the situation of the group to which the victim of the discrimination belongs or facts of general knowledge; 2) the use of an inherently suspect distinguishing criterion; or 3) elementary statistical material demonstrating adverse treatment.

34. The new legislation provides that every five years from the date of its entry into force, the legislative Chambers are to carry out an assessment of its application and effectiveness, after consulting the Centre and the Institute for the Equality between Women and Men and on the basis of a report by a committee of experts.

35. While the federal legislation to combat racial discrimination appears to be generally satisfactory, the division of competence between the federal authorities, the Regions and the Communities means that the federated entities must also adopt such legislation, so as to ensure that all fields of life, including those within the competence of the federated entities, are covered. For example, insofar as education is a matter for the Communities, it is important that the Communities adopt provisions prohibiting discrimination in education if coverage of this field is to be secured. In this respect, the Regions and the Communities are all in the process of adopting, or have already adopted,

[13] See below: "Discrimination in various fields".

legislation to supplement the federal legislation designed to transpose the EU directives prohibiting discrimination. The Walloon Region, for example, has a draft decree on equal treatment while the French Community has another on combating certain forms of discrimination and the Brussels-Capital Region adopted antidiscrimination ordinances on 4 September 2004. The German-speaking Community passed a decree in 2004 (revised in 2007) safeguarding equal treatment in the labour market. Lastly, in 2007, the Flemish government revised the 2002 decree on proportionate participation in the labour market and on 2 July 2008 passed a decree on equal opportunities and equal treatment. In the case of some of these decrees and draft decrees, harmonisation with the federal legislation is among the aims of the drafters, but there is no guarantee that the end result will be fully harmonised anti-discrimination legislation across the whole of Belgium. A watchful eye will therefore need to be kept on this point.

36. ECRI recommends that the Belgian authorities continue to extend the civil and administrative legal framework for combating racial discrimination in order to cover all types of discrimination in all fields of life, with due regard for ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. In particular, care should be taken to bring the provisions adopted by the various federated entities into line with the federal legislation so as to have a coherent and comprehensive body of anti-discrimination laws.

37. ECRI recommends that the Belgian authorities rapidly adopt the royal decree determining the circumstances and conditions necessary for the undertaking of a positive action measure to combat discrimination.

- *Implementation of legislation to combat racial discrimination*

38. The new legislation to combat racial discrimination is too recent to allow an assessment of its implementation. ECRI notes, however, that even before this legislation was passed, the courts penalised racial discrimination on several occasions, notably at the request of the Centre which can initiate legal proceedings or assist victims of discrimination in court. The new legislation should help, therefore, to confirm and strengthen this tendency, not least by encouraging the civil courts to be less cautious about the kind of evidence that can be considered as a means of proving discrimination.

39. One example of a court penalising racial discrimination was the decision given by the Labour Court of Ghent on 26 March 2007. In the case in question, a company operating in the security sector was found to have carried out direct discrimination based on ethnic origin because the manager of the company had sent an e-mail to an employee, asking him to reject an application from a Belgian of Turkish origin, on the principle that it was "unheard of" to have "a foreigner selling security devices". In order to prevent any recurrence of such behaviour, the judge issued an order requiring the company to pay a fine of EUR 2,500 to the victim and EUR 500 to the Centre which had also initiated proceedings. The Court ordered that the decision be published in the newspapers. The Centre has indicated that, since then, the company in question has pledged to eliminate discrimination from its staff policy and to do more to implement a diversity plan.

40. To give another example, the Centre brought a case before the Labour Court of Brussels against a manufacturer of garage doors after one of its directors publicly stated that his company did not wish to recruit "allochthonous" persons, i.e. foreigners, on the ground that his customers were against this. The Court

found that discrimination had occurred but refused to penalise it, whereupon the Centre appealed to the Labour Court of Brussels which referred a preliminary question to the Court of Justice of the European Communities (ECJ). On 10 July 2008, the ECJ accordingly gave its first ruling on the interpretation of Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Belgian legislation invoked was designed to implement the provision of this directive that prohibits direct discrimination in access to employment. The ECJ's ruling thus serves to clarify in a number of respects the scope not only of the Belgian legislation but also of Directive 2000/43/EC, which applies in all Member States of the European Union. In particular, the ECJ found that the fact that an employer declares publicly that it will not recruit employees of a certain ethnic or racial origin, something which is clearly likely to strongly dissuade certain candidates from submitting their candidatures and, accordingly, to hinder their access to the labour market, constitutes direct discrimination in respect of recruitment within the meaning of the directive[14].

41. Since the publication of ECRI's third report on Belgium, a number of measures have been taken to inform potential victims and to train the key actors in the justice system about the legislation for combating racial discrimination. In particular, a campaign to ensure more effective application of the anti-discrimination laws was conducted among persons liable to encounter discrimination at work. For example, ten seminars were held in 2007 to explain the content of the anti-discrimination laws in the field of employment to prevention officers within companies, employers, trade unions and members of the legal profession.

42. ECRI recommends that the Belgian authorities continue their efforts to inform the public about the existing provisions prohibiting racial discrimination and about any provisions that might be adopted in the future. It also draws attention to the need to maintain and step up efforts to train all members of the justice system in the new legislation for combating racial discrimination and to focus more specifically on the arrangements for sharing the burden of proof, as prescribed by the new legislation.

Anti-discrimination bodies and other institutions

43. In its third report, ECRI recommended that the Belgian authorities keep under review the adequacy of the human and financial resources allocated to the Centre for Equal Opportunities and the Fight against Racism (hereafter: the Centre) in order to ensure that it is able to carry out its tasks effectively.

44. ECRI draws attention to the important contribution made to the fight against racism and racial discrimination by the Centre, which plays a major role in these matters on numerous fronts. Its mission is to promote equal opportunities and to combat all forms of discrimination, exclusion, restriction or preference based on presumed race, colour, descent, national or ethnic origin, sexual orientation, civil status, birth, property, age, religious or philosophical beliefs, actual or future health status, disability and physical characteristics. To do this, the Centre has a wide range of powers and responsibilities which include providing assistance to victims, the right to initiate legal proceedings in certain circumstances, training for officials and other actors, information campaigns and the right to make recommendations to the authorities.

[14] ECJ, 10 July 2008, Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV, case C-54/07, §28.

45. Since the adoption of ECRI's third report, the Centre has also been given the task of informing the authorities about the nature and extent of migration flows and of ensuring that the basic rights of foreigners are respected. To this end, the Centre undertakes studies and assessments, carries out regular visits to closed centres for non-citizens in an irregular situation and monitors changes in the legislation on non-citizens. The Centre is also responsible for encouraging, co-ordinating and monitoring policy as regards smuggling and trafficking in human beings.

46. Whenever the Centre has been assigned a new task and new responsibilities, the authorities have seen to it that it receives the corresponding human and material resources, so that it can continue to perform its tasks properly. The Centre itself has underlined the importance of giving it a role in matters relating to migration and foreigners' fundamental rights, as these issues are closely linked to racism and racial discrimination. This extension of the Centre's remit should enable it to obtain an overview of the problems and suggest suitable solutions.

47. To date, the only ground for discrimination that has not yet been assigned to a specialised body is language[15]. Under Section 29 of the Act of 10 May 2007 designed to combat certain forms of discrimination[16], the King is to designate the body which will be competent to deal with discrimination based on language. At the time of writing, no such body had yet been designated. Elsewhere in this report, however, ECRI warns of the dangers of exploiting the tensions that exist between the Dutch-speaking and French-speaking communities[17] for political gain. It also refers to measures requiring persons to show that they speak Dutch or are at least willing to learn it in order to gain access to certain social rights, measures that have been criticised by human rights organisations for being discriminatory[18]. It also mentions the wrongful use being made by some employers of mother tongue as a criterion for recruitment[19]. Prompt action is therefore needed to set up a body to adjudicate on matters relating to discrimination based on language. It is obviously vital that this body be independent and impartial if the operation is to be successful.

48. ECRI notes that each federated entity has already introduced, or is in the process of introducing, local mechanisms for advising and assisting victims of discrimination. The Flemish decree on equal opportunities and equal treatment of 2 July 2008, for example, provides for the setting up of "anti-discrimination points" in the 13 biggest towns and cities in Flanders and in Brussels. These points will provide support to victims of discrimination and develop local prevention schemes, notably through mediation. At present, the Centre is only mandated to implement federal legislation, except where there is a co-operation agreement with certain federated entities. In its view, the best solution here would be to conclude an agreement that would turn the Centre into an inter-federal entity. It would then be able to provide the same support and protection to victims of discrimination and hate crimes all over the country, irrespective of the legislation invoked. ECRI notes that there are plans to sign such an agreement, as the entities concerned are all quite in favour of this arrangement, but that owing to the political crisis facing Belgium at the time of writing, signing

[15] With regard to gender-based discrimination, there is an Institute for Equality between Women and Men which has similar powers and responsibilities to those of the Centre.

[16] See above: "Legislation to combat racial discrimination".

[17] See below: "Racism in public discourse".

[18] See below: "Discrimination in various fields: - Access to housing and public services" and "Non-citizens: - Integration policies".

[19] "Discrimination in various fields: - Employment".

has been delayed. Should such an agreement be signed, the Centre would obviously have to be provided with the necessary funding and structural support to enable it to carry out its extended activities.

49. Given the key role played by the Centre in combating racism and racial discrimination, ECRI recommends that the Belgian authorities pursue and step up their efforts to consolidate the institution of the Centre. Special care should be taken to diligently consult the Centre and to co-operate with it fully, in particular by heeding its opinions and recommendations in its areas of expertise.

50. In particular, ECRI strongly recommends that the Belgian authorities finalise the co-operation agreement between federal entity and federated entities to turn the Centre into an inter-federal entity dedicated to helping all victims of discrimination on the grounds within its competence.

51. ECRI urges the Belgian authorities to promptly designate or set up the body competent to deal with discrimination based on language and to confer on this body powers and independence similar to those enjoyed by the Centre. In this respect, it draws attention to its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination which provide guidelines on the status and competences of such a body. ECRI places particular emphasis on the need to ensure that the specialised body to combat discrimination based on language is independent and impartial.

II. Discrimination in Various Fields

Employment

52. In its third report, ECRI recommended that the Belgian authorities implement the legislation prohibiting racial discrimination in employment. It called for further efforts to raise the awareness of companies about the issues of discrimination and diversity, stressing in particular the need to adopt specific action plans and to encourage the dissemination of best practices in this area.

53. ECRI is pleased to note that the Belgian authorities as a whole and the actors involved in the employment sector, such as the trade unions, temporary employment agencies and a number of employers themselves, have been very active in recent years in preventing discrimination and increasing diversity in the workplace. There are too many initiatives to mention all of them but ECRI wishes to draw attention to a number of schemes which seek to promote diversity in employment[20].

54. The federal authorities have set up a Multicultural Enterprise Unit which has been working since 2001 to raise companies' awareness in this area. The pilot project "Equality Diversity Seal of Approval", introduced in 2006, has grown in size and a number of private companies and public institutions have since been awarded the Seal[21]. However, some people feel that the Seal is awarded too easily. A system of socio-economic monitoring is to be introduced shortly, which should provide a better insight into the problems experienced by minority groups in terms of access to employment and enable the most appropriate

[20] Concerning the implementation of the legislation to combat racial discrimination in employment, see above: "Legislation to combat racial discrimination".

[21] Concerning the award of this seal to the police, see below "Conduct of the police".

measures to be taken to resolve them[22]. Collective Agreement No. 38 of 1983 concerning the recruitment and selection of workers was adapted to cover discrimination at every stage of a contract of employment. Management and unions within the National Labour Council adopted on 10 October 2008 a "Code of Conduct for Equal Treatment during the recruitment and selection of workers". This Code is appended to Collective Agreement No. 38. A new Collective Labour Agreement, No. 95, on equal treatment at all stages of working relationships, has also been adopted. Finally, the National Labour Council has drafted an opinion on "affirmative action".

55. In Flanders, the equal opportunities policy includes measures to promote proportionate participation by minority groups in the labour market and diversity within companies. There is a diversity action plan at regional level as well as a number of company-wide diversity schemes. Also worth mentioning is the financial assistance granted by the Flemish authorities to initiatives such as "Jobkanaal", a co-operation agreement between Flemish employers' organisations to encourage the recruitment of persons who are disadvantaged in terms of access to employment. The Region provides financial support for trade union diversity consultants and organisations working to promote the employment of immigrants. The authorities are also developing a diversity policy within the Flemish administration, setting targets to be achieved by the administration in this area.

56. The Walloon Region has taken numerous measures to promote diversity within companies, including the creation of a "diversity and human resources" prize. It relies on the Regional Integration Centres[23] and a system of "job coaching". The Brussels-Capital Region and the German-speaking Community have also taken steps to achieve greater diversity in employment.

57. All these positive moves cannot mask the persistence of racial discrimination in employment, whether it is direct or indirect and whether it relates to access to employment or to conditions of employment. Research shows that given the same qualifications, applications from immigrants or persons of immigrant background are far more likely to be rejected by employers[24]. Some employers still make their decision solely on the basis of the applicant's ethnic origin. Discrimination can also be the result of failure to recognise qualifications obtained abroad. The authorities have indicated that they are looking into the matter with a view to improving the situation in this area and enabling non-citizens to obtain jobs that match their qualifications.

58. One matter that has yet to be resolved is the specific case of offers of employment which stipulate that a specific mother tongue is needed for a particular position when in fact there is no justification for such a requirement. The Centre, which is not competent to deal with discrimination based on language, has nevertheless stepped in: in 2006 it published a memorandum on the mother-tongue requirement in offers of employment, in which it called for this requirement to be replaced by other, more objective criteria. According to the Centre, offers containing mother-tongue criteria can constitute discrimination on the basis of ethnic origin.[25]

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[22] On this point, see below: "Monitoring racism and racial discrimination".

[23] See below: "Vulnerable/target groups: - Non-citizens: - Integration policies".

[24] See for instance : ORBEM, ULB et KUL, Discrimination des étrangers et des personnes d'origine étrangère sur le marché du travail de la Région de Bruxelles-Capitale, Recherche dans le cadre du Pacte social pour l'emploi des Bruxellois, janvier 2005, 96 p.

[25] According to the Centre, offers which contain mother-tongue criteria can constitute deliberate discrimination on the basis of origin or ethnicity if it is shown that the author's intention is to exclude certain

59. ECRI recalls that any language requirement for obtaining employment must be reasonable and justified and must fulfil the particular need of the employment in question. Failing that, any requirement for an unduly high level of language skills would be construed as discrimination on the basis of language, and should be penalised accordingly[26].

60. ECRI recommends that the authorities continue their efforts to combat direct and indirect racial discrimination in employment and to promote cultural diversity within companies in co-operation with the key players in this area and in particular the trade unions, employers' organisations and temporary employment agencies.

61. ECRI recommends that the Belgian authorities pay particular attention to any discrimination in access to employment that might arise from unjustified requirements concerning knowledge of languages in the light of the above-mentioned memorandum issued by the Centre. Further steps should be taken to raise the awareness of employers and temporary employment agencies in this respect and also to penalise any discrimination that might have occurred.

Education

62. ECRI is concerned by reports indicating that immigrant children and children of immigrant background and whose language is not the one spoken at school tend to perform less well at school than children of Belgian origin. It also appears that they are more likely to be steered into vocational secondary education and so are less likely to go on to higher education[27].

63. Generally speaking, the disadvantage suffered by children of immigrant background in education is seen as being one of the challenges facing the Communities, which have responsibility for education, although the situation varies somewhat depending on the school system in place. A number of factors have been advanced to account for the disadvantage suffered by children of immigrant background, including language-related difficulties and the fact that many families of immigrant background have a lower socio-economic status. ECRI is concerned to note that other factors such as racism or racial discrimination are also believed to play a role in some cases, in particular as regards access to schools but also because of the behaviour of certain pupils, parents and even some teachers, unaware of the benefits that cultural diversity can bring. ECRI is particularly concerned about allegations that some schools screen children before admitting them. According to a recent study by a group of NGOs, some schools look at factors such as pupils' ethnic origin when deciding whether or not to admit them, a practice that is not acceptable. One isolated but nevertheless shocking case involved a state school which refused to enrol two pupils on the ground that their mothers wore the headscarf. As a result of this screening, which is practised by some schools and not by others, and also because of the de facto segregation that exists in housing[28], a number

applicants for reasons unconnected with their qualifications and which are related solely to their nationality or origin. Such mother-tongue criteria also constitute indirect, albeit involuntary, discrimination, in that they lead to potential applicants being excluded solely on the basis of considerations that have no bearing on their actual competence, either because such persons would not apply in the mistaken belief that they do not meet the language requirements, or because they would be automatically excluded during the selection process. See the memorandum in the appendix to the Centre's 2006 annual report.

[26] See above "Legislation to combat racial discrimination" and "Anti-discrimination bodies and other institutions".

[27] With regard more specifically to access to education for Travellers' children, see below: "Vulnerable/target groups: - Travellers".

[28] On this point, see below "Discrimination in various fields – Access to housing and public services".

of schools find themselves with a high proportion of immigrant children. In some cases, indeed, such children make up almost the entire school population. ECRI finds it shocking that these schools, in particular those that come under the French Community, are sometimes referred to as "black schools" in contrast to the purportedly "white" or "elite" schools, and also as "ghetto schools" or even "dustbin schools". These terms, which in ECRI's opinion should be avoided when referring to schools, are nevertheless an indication of the seriousness of the situation and the problems facing Belgium when it comes to achieving equal opportunities in education.

64. ECRI notes with interest that the Belgian authorities are aware of the disadvantage suffered by pupils of immigrant background whose mother tongue is different from that of their school and of the problems caused by the lack of social mix in some schools. The Communities have taken a number of measures to remedy the situation. Since 2002, the Flemish authorities have introduced an integrated equal opportunities policy in education which involves allocating extra funds to schools which meet a series of criteria including having a high proportion of socio-economically disadvantaged children and/or children who do not speak Dutch at home. Local consultation platforms allow dialogue between all the parties involved. Also since 2002, parents have had the right to enrol their children in the school of their choice in Flanders. As of 2007, the French Community has issued decrees (enrolment decree, and currently, social mix decree) in order to remedy the lack of social mix in certain schools**.**

65. For newly arrived immigrant pupils in schools where the language of instruction is different from their own, each Community has introduced a system of educational support to make it easier for the children to adapt. In Flanders, the children are placed in "reception classes" with intensive tuition in Dutch. Both the French and the German-speaking Communities have a system of "bridging classes" which are a transitional arrangement to enable children to join the mainstream classes as soon as possible. They also provide for the setting-up of integration councils in schools which offer bridging classes.

66. All of the Communities have teaching modules designed to educate children, in a variety of ways, about human rights and mutual respect. Teachers likewise receive training in this area and some schools run educational projects to commemorate the Holocaust or to develop children's knowledge and appreciation of cultural diversity. In view, however, of the above-mentioned concerns about cases of intolerance and discrimination in schools, further efforts should be made to make pupils and also teachers more aware of the need to combat all forms of racism and to value the cultural enrichment that immigration provides.

67. There are opportunities for some immigrant children or children of immigrant background to study the language and culture of their country of origin at school, but such courses are funded and provided by the state of origin.

68. ECRI strongly recommends that the Belgian authorities pursue and step up their efforts to ensure that all children of immigrant background are afforded equal opportunities in access to education. ECRI recommends in particular that they continue to take steps to promote a social mix in state schools and place greater emphasis in initial and in-service teacher training on the need to combat racism and racial discrimination, on the one hand, and on the ways in which diversity enriches Belgian society, on the other hand[29].

[29] See ECRI General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, which provides guidelines in this area.

69. ECRI recommends that the Belgian authorities adopt a more systematic approach to teaching the languages and cultures of countries of origin.

Access to housing and public services

70. A number of studies show that racial discrimination in housing has long been a problem in Belgium. This discrimination is said to be both direct and structural in nature.

71. The structural discrimination consists of de facto segregation. Some of the poorer neighbourhoods have a very high proportion of immigrants or persons of immigrant background. Consideration should be given to the need to promote the social mix in certain neighbourhoods in order to avoid the creation of ghettos, while at the same time taking care not to discriminate against any group when taking measures to this end.

72. As regards direct discrimination, some private landlords still reject – or ask estate agents to reject – applications from prospective tenants or buyers on the basis of their origin. Such behaviour, however, is against the law, which states that an owner or estate agent may be held liable if they behave in a discriminatory manner. ECRI has received reports that there have been instances of black persons, or persons of Moroccan or Turkish origin, or women wearing the headscarf being discriminated against in access to housing. In some cases, the courts have penalised landlords for racial discrimination although, according to NGOs, the number of cases that come to court remains low in relation to the extent of the problem.

73. ECRI notes with interest that in 2007, the Centre launched a campaign to prevent and combat discrimination in housing. This campaign is aimed at all the key actors in this area, ranging from tenants to estate agents and landlords.

74. ECRI strongly encourages the Belgian authorities to continue taking measures to combat racial discrimination in access to housing and public services by taking positive action measures to ensure actual access to these rights[30] and also by continuing the awareness-raising campaigns and penalising any individuals or services which disregard the ban on racial discrimination.

75. The Flemish Housing Code was amended on 15 December 2006 and now requires applicants for social housing in Flanders to show a willingness to learn Dutch. There are several ways in which an applicant can demonstrate their willingness to learn Dutch, including enrolling for and regularly attending free Dutch language classes. The measure applies to all would-be tenants, whatever their nationality, including French-speaking and German-speaking Belgians. Exemptions may be granted, in case of serious illness, for example.

76. The new provisions of the Code also require that newly arrived non-citizens enrol in and regularly attend the obligatory primary civic integration programme[31]. The Flemish authorities have explained that they introduced these measures to ensure the security and reliability of social housing, by means of a minimum level of mutual understanding. Non-compliance with these new provisions can lead to the refusal of access to social housing or to the termination of a social housing contract already obtained. These new requirements thus need to be seen in the wider context of the obligatory

[30] Concerning positive action measures, see above “Legislation to combat racial discrimination”.

[31] On this programme, see below: “Non-citizens: - Integration policies”.

measures taken in the name of integration and in particular language as a key factor in such integration.

77. At the time when these new requirements were introduced into the Flemish Housing Code, some concern was expressed by human rights organisations and representatives of the minority groups concerned. The *Liga voor Mensenrechten* (Flemish Human Rights League) and *Vlaams Overleg Bewonersbelangen*, a Flemish association that provides assistance with housing, filed an application with the Constitutional Court to strike down the relevant provisions; the Court delivered its judgement on 10 July 2008[32]. In its judgment, the Court set strict limits on the ways in which these requirements could be applied. It ruled out the possibility of imposing the requirement to show a willingness to learn Dutch on French-speakers residing in one of the Flemish municipalities with special language arrangements allowing the use of French in dealings with the authorities.

78. Above all, the Constitutional Court considered that the obligation to show one's willingness to learn Dutch was not disproportionate to the objective which was to enable everyone to lead their lives in keeping with human dignity since: 1) it related only to a basic knowledge of the language, 2) courses were available free of charge and the persons concerned were free to demonstrate their willingness to learn Dutch by any other means; 3) no obligation of result could be imposed, so neither actual knowledge of the language nor its use on completion of the course or other form of instruction could be either required or verified by the lessor. The Court also ruled on the penalties that could be imposed on a would-be or existing social housing tenant who refused to comply with the obligation to show a willingness to learn Dutch or to follow the civic integration programme. The Court held that such sanctions were not incompatible with the principle of non-discrimination provided that "they are proportionate to the nuisance or damage caused by such refusal". Cancellation of a lease for failure to comply with these requirements was possible only after a "prior judicial review".

79. ECRI is aware of the importance of language as a factor for integration and, generally speaking, it supports efforts to achieve an integrated society in Belgium. ECRI calls for the utmost vigilance, however, regarding these new requirements and generally speaking, any measure involving an obligation related to language or integration as a condition for entitlement to social benefits. ECRI considers that imposing administrative sanctions or refusing – or even withdrawing – access to a social right requires the introduction and operation of a whole battery of administrative procedures so that the authorities can check that people are complying with their obligations and, at the same time, ensure that the penalties applied are proportionate to the aim pursued and do not unduly restrict the exercise of individual rights such as the right to housing or the right to private and family life. In ECRI's view, these administrative procedures call for human and financial resources which could be better employed providing incentives for integration. That is why ECRI encourages the authorities instead to offer incentive measures, whose aims are to encourage integration or the learning of a language, and among these measures, free courses which will be effective as long as they are fully suited to the needs of the persons concerned.

80. ECRI recalls that to avoid discrimination, care must be taken to ensure that any difference in treatment arising from such measures is reasonable and justified, i.e. that it has a legitimate purpose and that the means used to achieve it are

[32] Belgian Constitutional Court, judgment No. 101/2008 of 10 July 2008.

proportionate to the end, as stipulated in particular by the Constitutional Court in the case mentioned above, but also more broadly by the European Court of Human Rights in its case-law on the principle of non-discrimination. ECRI wonders, therefore, about the actual effectiveness of measures which purport to integrate non-Dutch-speakers but which, according to representatives of the groups concerned (French-speaking Belgians and ethnic minorities in Flanders), serve rather to stigmatise non-Dutch-speakers by giving the impression that integration is entirely their responsibility and that, unless forced to do so, non-Dutch-speakers would never make the effort to learn Dutch. ECRI notes here that integration is a two-way process which entails mutual recognition between the majority population and minority groups[33]. It should allow minority groups to be an integral part of society and should be clearly distinguished from assimilation: integration does not mean erasing differences.

81. ECRI believes that the Belgian authorities at every level should guard against taking measures that could have a discriminatory effect on persons whose mother tongue is not Dutch. ECRI notes that any system of penalties or rights that are conditional on integration or learning a language should be based on the principle of proportionality between the aim pursued and the measures taken to achieve that aim and should fully respect the rights of individuals, in particular the right to private and family life.

82. ECRI recommends that the authorities review the new requirements related to language and integration in the Flemish Housing Code to ensure that this new legislation does not have a counter-productive effect on the integration process by stigmatising persons whose mother tongue is not Dutch or by jeopardising their individual rights. ECRI considers that imposing administrative sanctions or refusing access to social housing is not an appropriate way of persuading the persons concerned to learn a language or to attend integration classes and that positive incentives should be regarded as sufficient means of persuasion.

83. Alongside the Flemish Region's amendments to the Housing Code, recent years have seen the introduction in a number of municipalities in Flanders, in particular those near Brussels and the border with the Walloon Region, of a requirement to demonstrate a certain proficiency in Dutch or at least a willingness to learn Dutch as a condition for entitlement to various public services. One municipality, for example, requires anyone wishing to purchase municipal land to show that they are willing to learn Dutch. Under another regulation in the same municipality, only Dutch-speakers may hire municipal halls; proof of willingness to learn Dutch being insufficient in such cases. The Flemish authorities have pointed out that these are all decisions which municipal councils have taken independently and which therefore apply only to the municipalities concerned. As a supervisory authority, however, the Flemish government can step in and revoke a measure taken by a municipality provided that a complaint is filed within the statutory time-limit. For example, it revoked a municipal council order prohibiting children who did not speak Dutch from using municipal playing fields on the ground that it was discriminatory. In another case, the Flemish government had to intervene after a municipality asked residents to report any shopkeepers who displayed information in a language other than Dutch. This is in breach of Belgian law, which provides for the free use of languages in private relations. In the other cases mentioned above, the Flemish government has stated that having received no formal complaints from either citizens or local councillors, it has had no occasion to rule on the validity of the measures taken.

[33] On integration, see also "Non-citizens: - Integration policies".

84. The measures taken by some municipalities concerning knowledge or learning of Dutch come at a time of political tension between Dutch-speakers and French-speakers which has intensified in recent months[34]. ECRI understands that Flanders, whose official language is Dutch, and in particular the Flemish municipalities on the periphery of Brussels-Capital, a bilingual region, and near the border with the Walloon Region, which is French-speaking, are taking measures to increase the use of Dutch by inhabitants and to protect the status of Dutch, as enshrined in law. In this respect, ECRI welcomes all the measures which the Flemish authorities, at every level, have been taking for a number of years now to encourage inhabitants to learn Dutch and to provide them with opportunities to do so. Incentives include Dutch classes and Dutch "conversation tables" (discussions organised to enable participants to practise the language). As regards the obligatory measures taken by municipalities, ECRI refers to the above comments on the Flemish Housing Code, in particular as regards the need to ensure that the means are proportionate to the aim to be achieved in order to avoid discrimination based on language or origin.

85. ECRI strongly encourages the Belgian authorities to continue taking measures to promote the learning of the local official language (whether it be Dutch, French or German) by inhabitants who have a different mother tongue, not least in order to facilitate communication between such persons and public services.

86. ECRI recommends that the authorities review the measures taken at municipal level, requiring persons to know or learn Dutch in order to gain access to certain services. It is important to refrain from taking any measure that would have a counter-productive effect on the integration process by stigmatising persons whose mother tongue is not Dutch or by jeopardising their individual rights.

III. Racism in Public Discourse

Racism in political discourse

87. In its third report, ECRI expressed concern at the continuing presence of racist and xenophobic discourse in politics in Belgium and at the increasing success of parties that resorted to racist or xenophobic propaganda. It also voiced concern at the nationalist propaganda of *Vlaams Blok*, which was helping to foster a climate of tension in relations between the different Regions and Communities of Belgium. It called for a more robust institutional response to the exploitation of racism and xenophobia in politics, in particular by prosecuting the dissemination of racist or xenophobic printed material and withdrawing public financing from parties that showed manifest hostility towards the rights and freedoms guaranteed by the ECHR.

88. ECRI notes with interest that, since its last report, significant progress has been made as regards the introduction and use of tools for combating racist discourse in politics.

89. A number of political figures have been prosecuted for disseminating racist ideology. In 2006, the leader of the National Front (FN) and his parliamentary attaché were sentenced to community service and fined under Section 5 of the Act of 30 July 1981 criminalising certain acts inspired by racism and xenophobia for incitement to racial hatred through election materials and various caricatures. Under Section 5bis of the same Act, the FN leader was deprived of his political rights for seven years. In addition, three candidates from the New Belgian Front (FNB) were given a suspended sentence of one

[34] On this point, see also below: "Racism in public discourse".

month's imprisonment and ordered to pay compensation for the legal costs incurred by the Centre, for having distributed racist tracts during municipal elections.

90. On 9 November 2004, the Court of Cassation upheld the decision of the Court of Appeal of Ghent of 21 April 2004 to fine three associations[35] linked to *Vlaams Blok* more than EUR 12,000 each for violating Section 3 of the Act of 30 July 1981 which prohibits participation in organisations that advocate racism. The courts have thus abandoned their former position, which was criticised by ECRI and which was that only the Assize Courts were competent to deal with cases of this kind because they were "political offences". Following this case, *Vlaams Blok* renamed itself *Vlaams Belang* (Flemish Interest) and had to adopt a new, less extremist and xenophobic platform, although the changes are more of a cosmetic nature, the general ideology of the party having remained the same.

91. As regards the withdrawal of public financing from parties which display hostility to freedoms and human rights, ECRI is pleased to note that the Royal Decree of 31 August 2005 determining the procedures for enforcing the 1989 Act (under which public funds granted to a party represented in the Assembly may be withdrawn) came into force on 13 October 2005. An action for the withdrawal of public funds was brought in 2006 against *Vlaams Belang*, but had to be suspended for procedural reasons. A new case brought in 2007 is still pending before the Council of State.

92. Under a co-operation agreement between the Centre and the Post Office, the latter can consult the Centre on any written material which it is asked to distribute and which is thought to be incompatible with the anti-racist laws. This agreement was revised in July 2006. It is planned to introduce similar arrangements between the Centre and other private delivery companies.

93. Lastly, the "cordon sanitaire" introduced by the main Belgian parties, under which they refuse to negotiate with the extreme right-wing parties so as to prevent them from ever coming to power, has probably helped to weaken these parties, with the 2007 general election seeing a levelling off or even decline in support compared with the regional elections in 2004. It can also be observed that the extreme right-wing parties have not really played a key role in the political crisis that has been going on since the general election on 10 June 2007, even though one of the main themes of Vlaams Belang is Flemish independence.

94. Caution is needed, however, as the extreme right-wing parties are continuing to spread their racist, antisemitic and xenophobic propaganda. A number of leaders and militants from extremist parties have also been making racist statements in public against the other linguistic community in the name of extreme nationalism. Such exploitation of the climate of political tension that exists between the French-speaking and Dutch-speaking communities is particularly deplorable as it encourages certain sections of society on both sides to succumb to inter-community prejudice and stereotypes. It is important to emphasise, however, that the great majority of French-speaking and Dutch-speaking Belgians refuse to fall into this trap.

95. ECRI strongly recommends that the Belgian authorities pursue and step up their efforts to combat racism in political discourse by applying the procedures introduced for this purpose, by regularly reviewing their effectiveness and by supplementing them if necessary.

[35] Vlaamse Concentratie, Nationalistisch Vormingsinstituut and Nationalistische Omroepstichting.

Racism in the media and on the Internet

96. The 2004 Federal Action Plan to combat racism, antisemitism, xenophobia and related violence[36] calls for special attention to be given to racist and antisemitic ideologies that are spread over the Internet. On 21 March 2006 a symposium was held on "cyberhate: racism and discrimination on the Internet", following which a website was created to enable anyone who came across a racist site to report it: www.cyberhate.be. A guide for Internet users, entitled "delete cyberhate" has been distributed by the Centre. A number of individuals who have broadcast statements inciting to racial hatred have been prosecuted. In 2005, for example, several persons were fined for broadcasting a racist version of a popular children's song over the Internet. In June 2006, the operators of the "Belgian Islamic Centre of Molenbeek" website were sentenced to a 10-month term of imprisonment, 5 months of which were suspended, and fined EUR 15,000 for clear incitement to hatred against the Israeli people and Jews in general. A steering group has been set up by the authorities to combat racism over the Internet. A circular is being prepared by the prosecution service on combating cybercrime in general.

97. Despite the measures taken in recent years, all the governmental and non-governmental observers agree that the situation is extremely worrying as regards racism on the Internet in Belgium and that recent years have seen a sharp increase in racist webpages and discussion forums that can be accessed from Belgian sites. The problem concerns racist propaganda sites that disseminate hate speech against immigrants or persons of immigrant background, in particular Moroccans, Turks, black persons and Jews. Another recurring concern is electronic chain mail, and in particular e-mails containing messages denigrating Muslims. The problem, of course, is not confined to Belgian sites, so effective action in this area requires international co-operation as well.

98. The Internet discussion forums are in some cases a source of racist and nationalist comments about the same groups as those listed above but also about French-speaking Belgians and/or Walloons on the one hand, and Flemings on the other hand. The discussion forums which cause problems tend to be those hosted on racist websites but also, in some cases, those used by readers of the main French-language or Dutch-language Belgian newspapers to comment on articles that appear in these papers. The articles which attract these comments are themselves devoid of racist connotations. Yet even though these discussion forums are supposed to be moderated, numerous examples show that they regularly feature racist, in some cases virulently racist, rhetoric, accessible to all, without any action ever being taken against the authors or any effort made to remove the offending material from the forum.

99. With regard to articles published and reports broadcast in the media, ECRI notes from a recent university study on the French-language and Dutch-language media that most of the media are making an effort to provide objective reporting on minority groups and the racism and discrimination that they encounter and that cases of racism are "extremely rare". The media are not immune, however, to the lure of sensationalism, publishing newspaper articles that promote racist stereotypes and prejudice. In 2008, for example, an article on Muslim children in Belgian schools appeared in a large-circulation Belgian newspaper under the heading: "How Islam is infecting schools" ("*Comment l'Islam gangrène l'école"*). On 13 November 2008, the AJP (Association of

[36] See below: "The anti-racism action plan".

Professional Journalists) issued an opinion on this article in which it recommended "avoiding generalisations and unjustified over-simplifications, properly nuancing articles covering persons of immigrant background, and avoiding polarisation or "us and them" perspectives". It also stated: "Journalists are requested to ensure that they follow stories to the greatest extent possible, up to their final form, and including as regards the choice of headlines, illustrations and images." ECRI notes with interest that the 1994 Recommendations made by the General Association of Professional Journalists regarding information on persons of immigrant background are being revised in collaboration with the Centre. Other moves to combat racism in the media have been made in the form of seminars and training for journalists. A number of initiatives are aimed at creating more diversity among media professionals.

100. ECRI strongly recommends that the Belgian authorities pursue and step up their efforts to combat the presence of racist expressions on the Internet. It recommends that they co-operate at international level with other states to avoid any legal loopholes that would make it possible to disseminate such material. In particular, ECRI draws attention to its General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet[37].

101. ECRI encourages the Belgian authorities to continue their efforts to raise awareness among the media, without encroaching upon their editorial independence, to the need to prevent not only their own coverage but also readers' discussion forums hosted on their websites from contributing to the creation of a climate of hostility and intolerance towards members of minority groups. It recommends that they engage the media and members of the relevant civil society organisations in a debate about the best means of achieving this.

Racism in sport

102. In recent years, there have been several instances of verbal violence of a racist (especially directed at black players) and antisemitic nature in football stadiums in Belgium. These incidents have led the authorities to adopt measures to combat racism in football. ECRI notes with interest that the Federal Ministry of the Interior adopted on 14 December 2006 a circular setting out "instructions to combat hurtful, racist and discriminatory words and chanting at football matches (Circular OOP 40, C 2007/00472). It contains a large number of awareness-raising measures and also makes provision for referees to halt a match, temporarily or definitively, if supporters chant racist slogans. A Charter sponsored by top celebrities in the Belgian football world to combat all forms of racism and discrimination in football stadiums was adopted at federal level. An awareness-raising campaign with the title "Don't fool about in stadiums, say no to racism" was run in 2006 and 2007 and a comic strip "Football in colour" was published. In some cases, Belgian clubs were penalised by the competent sporting authorities when racist insults were uttered by their supporters.

103. ECRI strongly encourages the Belgian authorities to pursue and strengthen their efforts to combat racism in sport. It draws the authorities' attention to its General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport.

[37] See also the recommendation made above by ECRI to ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems under "International legal instruments".

Neo-Nazi groups and other extreme right-wing movements

104. ECRI is concerned to learn about the existence of Neo-Nazi and extreme right-wing groupings active in Belgium[38]. They regularly organise public meetings and concerts in which Nazi chants are sung. The organisation Blood and Honour also regularly organises events such as the commemoration of Hitler's birthday. Admittedly, these gatherings are attended by no more than a few hundred people at a time, and often considerably fewer.

105. These organisations and their racist and antisemitic activities have been condemned by Belgian human rights and anti-racist NGOs, according to who to date the authorities have not paid sufficient attention to the organisation of concerts and other similar events. For example, an open letter signed by 65 well-known Flemish figures was sent in October 2008 to the Federal Ministers of Justice and the Interior calling on the authorities to put an end to the activities of the Neo-Nazi organisation *Blood and Honour*. ECRI notes, however, that the police has a follow-up mechanism for this type of organisation through a Protocol agreement between the different police forces involved. The Belgian authorities have sometimes taken action, for example closing down two Internet sites which were selling Nazi propaganda material. Some members of a branch of Blood and Honour, (BBET- Bloed Bodem Eer Trouw) have nonetheless been the subject of proceedings which are now pending before investigating judges. These individuals, some of whom belonged to the military, are suspected of terrorist activities, as well as of disseminating via the internet racist statements and statements denying the Holocaust. The fact remains that it is difficult for the police to follow up on extremist activities which take place within the framework of private meetings and that it is not possible to preventively prohibit such private meetings held by extremist movements. Three Bills have been introduced with the aim of strengthening the legal arsenal for fighting against the activism of Neo-Nazi groups within Belgian territory.

106. ECRI also notes the existence of extreme right-wing movements whose primary, ultra-nationalist message is a call for a "homogenous Flanders", and whose extremist discourse is directed towards all non-Flemish people, particularly the French-speaking Belgians living in Flanders, especially on the borders with Brussels-Capital and Wallonia. Small groups regularly organise demonstrations attracting media attention in the municipalities with a high proportion of French-speaking residents, violently criticising the French-speaking municipal councillors and publicly hurling racist insults at them in full view of the media. This remains a marginal phenomenon. However, in view of the media coverage and the context of the current political crisis between French-speakers and Dutch-speakers, it is of serious concern to ECRI which believes it essential for action to be taken as swiftly as possible against all "nationalist" discourse which equates in reality to hate speech against individuals on account of their ethnic origin or language. ECRI is aware of the need to uphold the freedom of association and assembly and the freedom of speech, but would point out that the European Convention on Human Rights which protects these freedoms provides for restrictions to the exercise thereof under certain conditions, especially where there is a danger to law and order and interference with the rights of others.

107. ECRI strongly recommends that the Belgian authorities strengthen the mechanism to monitor extreme right-wing organisations by keeping a close watch on their activities and taking action to condemn on moral grounds and to prevent and penalise incitement to hatred of persons or groups of people on the

[38] On violence perpetrated by the extreme right, see below: "Racist violence".

grounds of their ethnic origin or language, whether in the form of demonstrations or concerts. ECRI considers that the law should provide for the possibility of the dissolution of organisations promoting racism and put in place mechanisms to punish de facto groupings for their racist activities[39].

IV. Racist Violence

108. Even though acts of racist violence remain rare in Belgium, since the last ECRI report there have been a number of racist attacks, one of which has proved fatal; this illustrates the fact that the problem of racist violence must be closely monitored. The attacks recorded were directed primarily against Blacks, immigrants or Belgians of immigrant background, asylum seekers and Jews. The Centre regularly highlights the link between racist violence in Belgium and the circles in which the perpetrators of these acts move. A large number of perpetrators of racist violence belong to extreme right-wing or other extremist movements and have been immersed in racist hate-speech. This has clearly played a role in prompting them to engage in such conduct.

109. The most striking example of this phenomenon is undoubtedly the Van Themsche case. In October 2007, Hans Van Themsche, 19 years old, was sentenced to life imprisonment by the Antwerp Assize Court for shooting dead a 2-year old child and her Malian nanny and for the attempted murder of a Turkish woman in the streets of Antwerp in 2006, with the stated aim of "killing as many foreigners as possible". The Court held racism to be an aggravating circumstance and the trial showed that the perpetrator had grown up in an extreme right-wing environment, which had fed his hatred of foreigners and prompted him to act as he did. This holds true for many other cases brought recently before the Belgian courts: with regard to the racist physical attack on two young women of North African origin in Liège in 2008, one of the persons responsible was well-known for his Neo-Nazi activities and links with extreme right-wing political groups. In another case concerning the beating up of non-citizens in Bruges in 2007, the perpetrators were identified as belonging to the skinhead movement.

110. As indicated elsewhere in this report, the authorities are attempting to respond to these acts of violence in a variety of ways. The police and the courts are becoming increasingly aware of the need to take account of racist motives when dealing with cases. However, in view of the seriousness of the incidents recorded in recent years, the authorities' response to racist violence needs to be improved and such violence needs to be prevented, in particular by addressing the problem of racist organisations, whether or not they are political, and racism in public discourse in general and on the Internet in particular[40]. Moreover, the cases brought before the courts would appear to represent only the tip of the iceberg insofar as NGOs claim that the people who contact them in connection with racist attacks often prefer not to report these incidents to the police[41].

111. ECRI reiterates its recommendations formulated above concerning the implementation of criminal law provisions to combat racism in the context of the fight against racist violence. ECRI strongly recommends that the Belgian

[39] See General Policy Recommendation No. 7 on National legislation to combat racism and racial discrimination, in particular paragraphs 17 and 18-g) as well as the corresponding passages in the Explanatory Memorandum.

[40] On these two points, see below: "Racism in public discourse".

[41] On this point, see below: "Conduct of the police".

authorities step up their efforts to monitor the actions of extreme right-wing groups and duly punish the perpetrators of racist violence.

112. ECRI also recommends that the Belgian authorities undertake research into the causes of racist violence in Belgium and take preventive measures in this connection, targeting in particular racism in public discourse. ECRI draws attention to its other recommendations on this issue in this report.

V. Vulnerable/Target Groups

Muslim communities

113. Muslims are subject to a variety of forms of racism and intolerance, as described in several sections of this report[42]. In particular, some factions of public opinion make no distinction between terrorists, religious extremists and the Muslim population as a whole. In some cases, it is claimed that these prejudices lead to discrimination, especially in the employment sector, as Muslims are refused posts on account of the suspicion in which they are held. Women who wear the headscarf in particular encounter difficulties in access to employment, housing and goods and services available to the public[43].

114. As yet, there are no general regulations on the issue of the headscarf in schools and each school is able to decide for itself whether it is to be allowed or not. In general, no particular problems have been noted but representatives of the Muslim community have commented that only three schools in Brussels allow the headscarf to be worn, which creates a difficult situation in the capital[44].

115. In its third report, ECRI encouraged close co-operation between the Belgian authorities and the Belgian Muslim Executive with a view to achieving swift progress on the practical enjoyment of the rights of members of the Muslim communities in Belgium. The Belgian authorities have told ECRI that the Muslim Executive, set up in 1998, had experienced a number of problems in recent years, partly on account of ongoing investigations regarding misuse of social assets which had caused some tension within the Executive and partly because internal opposition between different groups had had an adverse effect on cohesion. These problems had led the Belgian authorities to suspend the allocation of grants. ECRI is pleased to learn that in 2008 the authorities had rescinded their decision to suspend the allocation of grants and that the Belgian Muslim Executive will carry out reflexions in order to find a new basis for ensuring its representativeness within the Muslim community on a new basis. Progress has also been made regarding the official recognition of mosques throughout Belgium; many have already been officially recognised and others are about to be so. Official recognition of a mosque brings with it entitlement to receive public grants and the right for the imam to be paid by the authorities as is the case for the places of worship and clergy of the other recognised religions.

116. ECRI strongly recommends that the Belgian authorities pursue and step up their efforts to combat racist stereotypes and prejudices and other manifestations of religious intolerance by certain members of the majority population towards members of Muslim communities effectively. In this respect, it draws attention to its General Policy Recommendation No. 5 on combating

[42] See in particular: “Racism in public discourse” and “Racist violence”.

[43] See, for example, above: “Discrimination in various fields: - Education”.

[44] On access to education, see above: “Discrimination in various fields: - Education”.

intolerance and discrimination against Muslims, which contains detailed guidelines on measures to be taken in this field.

117. ECRI recommends that the Belgian authorities pursue their efforts and dialogue with the Belgian Muslim Executive in order to make further progress in the field of the rights of Muslims to exercise their freedom of religion.

Jewish communities

118. On this point, see below: "Antisemitism".

Travellers

119. According to estimations, Travellers number between 10 000 and 20 000 in Belgium[45]. They have been present in Belgium over several generations and they have Belgian citizenship. They generally wish to maintain their culture of travelling, and a number of them adopt or wish to preserve an itinerant lifestyle. Travellers having the nationality of neighbouring countries, especially France, also come regularly to Belgium. They camp primarily in the summer in Wallonia, around Brussels and in Flanders, depending on the seasonal work available in these regions[46]. There is one transit site in Flanders and other transit sites are being built. In the Walloon Region, the only official site for Travellers is the Bastogne site. There is no official site in the Brussels-Capital Region. At present, Travellers camp on public and sometimes private sites which are not suitably equipped, particularly as regards access to water, electricity and sanitary facilities. This leads to tension with the authorities and the local population, sometimes involving "heavy-handed" expulsions. There is an urgent need to find solutions to build appropriate sites in all parts of Belgium. ECRI reiterates that an itinerant lifestyle in a caravan is part of the culture and identity of Travellers and that accordingly, as the European Court of Human Rights has underlined on several occasions, it is their right to respect for their private and family life that is at stake.

120. On 20 February 2004, the Council of the Brussels-Capital Region adopted a motion for a resolution calling on the government to create several transit sites in which Travellers could camp for a period not exceeding three weeks, but no site has yet materialised. The Flemish Region takes account of the situation of Travellers under its policy for ethnic and cultural minorities and by giving financial support to associations liaising between the authorities and Travellers. It seeks, by means of subsidies, to encourage municipalities to create transit sites, but so far without any significant result. Similarly, the Walloon Region has taken steps to try and solve the problem of the shortage of sites for Travellers. In 2007, it set up an inter-ministerial working group to co-ordinate the Walloon government's action to meet the needs of Travellers. An association, the Travellers Mediation Centre in Wallonia, was set up in 2003. It reached an agreement with the Walloon Region and plays a key role as mediator between Travellers and the regional and local authorities. Walloon legislation provides for large subsidies for municipalities willing to build transit sites within their borders and in 2008 the Walloon Region encouraged municipalities to avail themselves of this possibility. While some municipalities in Flanders and Wallonia have expressed an interest in creating a transit site, using regional aid, the plans are often abandoned because of pressure from local residents, hostile to the idea of the temporary encampment of Travellers in their municipality. In

[45] In November 2008 the Council of Europe Roma and Travellers Division estimated that there are between 20,000 and 40,000 Roma in Belgium, including 10,000 to 20,000 who are itinerant.

[46] Regarding the Roma from East European countries, see below: "Non-citizens".

general, there is a shortage of official and suitable transit sites in Belgium. ECRI believes that a human-oriented approach to the problem should be adopted by seeking provisional solutions for Traveller families pending a lasting solution.

121. Because of the lack of sites, Travellers are in a very delicate position from a number of angles, including access to employment or self-employment. Solutions appropriate to the Travellers' lifestyle also need to be found for access to public services. ECRI is particularly concerned about the education of itinerant children. While some measures to provide schooling for Travellers' children have been taken in Flanders, it would appear that they are not sufficient to guarantee equal opportunities for the children concerned with regard to access to education, and in particular access to higher education. In the other Communities, no particular measures have been taken apart from the general distance teaching arrangements which are not a suitable solution. As a result, itinerant Travellers' children receive little or no schooling. Some are not even registered at school. It is therefore a matter of urgency that mechanisms are put in place to ensure that itinerant children receive schooling, for example by considering setting up itinerant schools.

122. Everywhere in Belgium there are also Travellers who have opted for a sedentary lifestyle. For example, in Flanders, some of them live permanently on thirty or so specially developed residential sites. Even though these families do not travel, their children encounter difficulties in having access to education. These difficulties are linked more to socio-economic problems and rejection which also affect other ethnic groups. Accordingly, efforts must be made to ensure that the measures recommended by ECRI in the section on access to education cover the situation of sedentary Travellers[47].

123. ECRI is concerned that today, throughout Belgium, Travellers – whether itinerant, semi-itinerant or sedentary – are subject to racism and racial discrimination. This problem is the reason for the difficulties encountered in finding encampment sites; at the same time, the failure to find a lasting solution to the problem of acceptance of the Travellers' lifestyle helps perpetuate the stereotypes and the prejudices with which they are viewed. Furthermore, due to a lack of information, some members of the majority population confuse the situation of Travellers with that of Roma from East European countries. ECRI is particularly concerned about information that racist comments have been made by public figures, including certain local leaders, and by members of the majority population who sometimes join forces to eject Travellers who camp in their municipality on the basis of racist prejudices and generalisations.

124. Pending a lasting solution regarding transit sites, ECRI urges the Belgian authorities to do all they can in order to find, in consultation with the Travellers, human solutions which respect the latter's dignity and lifestyle choices.

125. ECRI strongly recommends that the Belgian authorities find at the earliest opportunity solutions to enable Travellers to camp, by creating a sufficient number of well located and properly equipped sites. It also recommends that the authorities run an awareness-raising campaign aimed at the general public to combat all forms of intolerance towards and rejection of Travellers and to combat any related racial discrimination.

[47] See above: "Discrimination in various fields: - Education".

126. ECRI strongly recommends that solutions be found as a matter of urgency to ensure that children of itinerant or semi-itinerant Travellers have access to effective and sustained schooling, adapted to their lifestyle.

Refugees and asylum seekers

127. In its third report, ECRI recommended that the Belgian authorities closely monitor the use of detention with respect to asylum seekers and take steps to ensure that it is used only as a last resort. It also recommended that they ensure that the standards concerning reception of asylum seekers are set at the level of the highest existing standards in reception centres and to take steps to integrate the centres into the local communities. Lastly, ECRI recommended that legal provisions be established to regulate the granting of subsidiary protection.

128. The Act of 15 September 2006 amending the Act on access to the territory, residence, establishment and deportation of foreign nationals and the Act of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners have profoundly modified the legislation applicable to the asylum-seeking procedure with a view to transposing Directive 2003/86/EC of the Council of the European Union of 22 September 2003 on the right to family reunification. In particular, ECRI is pleased to note that it has established a new status of subsidiary protection.

129. ECRI notes that the stated aim of the 2007 Act is to improve conditions in the reception centres for asylum seekers and to integrate them into the local environment. Since then, measures to improve the quality of reception have been introduced.

130. The Belgian authorities state that asylum seekers are held in detention only when it is strictly necessary for the transfer to another EU member state under the provisions of the Dublin Regulation and that they give priority to voluntary returns in their returns policy. However, ECRI notes that the general view of organisations protecting the interests of asylum seekers is that the use of detention is too systematic. For the other issues regarding asylum seekers, see below under "Non-citizens".

131. ECRI strongly recommends that the Belgian authorities do not detain asylum seekers except in cases of extreme necessity.

132. ECRI recommends that an assessment be made of the application of the new asylum legislation, in particular the subsidiary protection procedure, and that all the necessary steps be taken in consultation with the competent non-governmental actors, including the United Nations High Commissioner for Refugees, the Centre and NGOs defending the interests of asylum seekers, so as to ensure that the rights of asylum seekers and refugees are fully protected in practice.

Non-Citizens

– *Racism and xenophobia towards non-citizens*

133. Elsewhere in this report[48], ECRI observes that problems of racism, xenophobia and discrimination persist in Belgium. These problems primarily affect non-

[48] See, in particular, "Discrimination in various fields", "Racism in public discourse" and "Racist violence".

citizens[49] living in Belgium and persons of immigrant background. ECRI has been told on several occasions that persons of Moroccan and Turkish origin and those coming from Sub-Saharan Africa are especially vulnerable. However, since the arrival in greater numbers of east Europeans in Belgium, they too suffer from these forms of racism. In particular, the Roma from these countries are subject to double discrimination linked to their status of non-citizens, some of them moreover being in an irregular situation, and racist prejudices targeting the Roma in general[50].

134. In this context, ECRI draws the authorities' attention to all of its recommendations on the fight against racism and racial discrimination made in this report insofar as both non-citizens and persons of immigrant background are the main targets of racism and racial discrimination in Belgium.

– *Legislation and practice relating to non-citizens' right of residence*

135. In its third report, ECRI made a number of recommendations relating to the legislation on non-citizens' right of residence and the application thereof, and more particularly regarding non-citizens' fundamental rights. In short, ECRI recommended that improvements be made to the law and practice in the following areas: policy on administrative detention, detention conditions and deportation of non-citizens, guardianship of unaccompanied minors and the training of civil servants in contact with non-citizens in their duties.

136. ECRI notes with interest that since its last report legislation on non-citizens' right of residence has been radically modified, in particular by the Act of 15 September 2006 amending the Act on access to the territory, residence, establishment and deportation of foreign nationals. It has introduced improvements in terms of guaranteeing the rights of non-citizens, especially regarding asylum[51]. It has set up a new judicial body, the Council for Alien Law Litigation. Nonetheless, NGOs have criticised the hardened approach resulting from some of the new provisions, such as the adequate housing condition to qualify for family reunification.

137. New recommendations on deportations were drawn up in 2005 by a committee specifically set up for this purpose and the authorities claim that they have already implemented many of these. For example, a DVD in several languages is shown to non-citizens likely to be issued a deportation order providing them with information on how the deportation will take place. However, the information provided by the civil society actors competent in this field regarding continuing abusive behaviour by civil servants involved in carrying out forced deportations is cause for concern.

138. In its third report, ECRI recommended that a system of guardianship be introduced for non-citizen unaccompanied minors. In May 2004, the Guardianship department was set up in the Ministry of Justice. Since 7 May 2007, unaccompanied minors are no longer detained in closed centres, which is a marked improvement in view of the dreadful situation in which unaccompanied minors could find themselves as a result of being detained in particularly unsuitable conditions. The year 2008 will have been marked by a notable step forward: the promise that alternatives would be developed to the detention of families with children in closed centres was translated into practice

[49] The term "non-citizens" should be understood as meaning "citizens of third countries", ie persons who do not have Belgian nationality.

[50] Concerning Travellers, see above: "Vulnerable/target groups: - Travellers".

[51] See above: "Vulnerable/target groups: - Refugees and asylum seekers".

through the opening, in October 2008, of nine freestanding houses. These are intended to house, in the lead-up to their departure, families subject to a binding departure order, as well as families whose transfer to another EU member state Belgium is either seeking or has obtained within the framework of the Dublin Regulation. Parents and their children will be housed in these individual houses, without being locked up. They will be supported by a coach whose main task will be to prepare them for their departure. Some problematic issues remain, however: this alternative does not apply to all children, reflections on other options are at a standstill, the legal basis for "holding" people in individual houses is as yet undetermined, and therefore so too are the possible avenues of redress that may apply to these measures.

139. In its third report, ECRI recommended that a commission be set up to deal with complaints regarding detention conditions in closed centres. ECRI notes with interest that the Commission dealing with individual complaints by persons held in closed detention centres came into operation in 2003. However, in the view of all of the non governmental actors specialising in this field and of the Centre, which is responsible for visiting closed centres, it is essential to review the powers of this commission and the procedure for dealing with complaints. At present, this commission receives very few complaints, and those it does receive relate to trivial matters, which contrasts with the seriousness of the difficulties encountered by the occupants of these closed centres. With regard to closed centres in general, an NGO association has published an analysis of the situation in closed centres for foreigners, containing a detailed report on all the problems identified and the solutions that should be implemented. The Centre's 2007 Migration Report also suggests some major avenues to explore. ECRI hopes that these reports will be closely examined by the Belgian authorities and that they will help them take the requisite measures.

140. NGOs defending the rights and interests of non-citizens place particular emphasis on the urgent need to find solutions to regularise the situation of undocumented non-citizens**,** ie non-citizens in an irregular situation on Belgian territory. The latter are often exploited by unscrupulous employers or landlords, who take advantage of their extremely vulnerable position. Undocumented non-citizens are defenceless against this or similar abuse, preferring not to go to the police because of the problems this might cause – and apparently has caused in certain isolated cases – because of their irregular situation[52]. In recent years, associations of undocumented non-citizens have, by means of demonstrations, occupation of places such as churches and hunger strikes, protested at the lack of any regularisation measures by the authorities and the resulting exposure to arbitrary decisions. NGOs believe it is essential to lay down clear, objective and permanent regularisation criteria and to set up a commission to apply them.

141. ECRI notes with interest that measures have been taken in recent years to train civil servants working in the migration field in Belgium and raise their awareness of cultural diversity. NGOs working in this field believe progress still needs to be made.

142. ECRI recommends that the Belgian authorities evaluate the implementation of the new legislation on non-citizens, verifying, amongst other things, that the new requirements relating to family reunification comply with the right to private and family life of the persons concerned and making any subsequent adjustments that are necessary.

[52] See also below: "Conduct of the police".

143. ECRI strongly recommends that the Belgian authorities do everything possible to find alternative solutions to detention for undocumented non-citizens and for asylum seekers. It recommends that they continue to combat all abuses in connection with the detention and deportation of non-citizens.

144. ECRI recommends that the Belgian authorities fully implement their decision of principle to put an end to the detention of non-citizen minors in a irregular situation, including when accompanied by their parents, notably by ensuring that in practice this applies to all non-citizen minors.

145. ECRI strongly recommends that the Belgian authorities review in detail the system of complaints to the Commission dealing with individual complaints by persons held in closed detention centres, so as to ensure that there is an independent and effective system.

146. ECRI recommends that clear, objective and permanent regularisation criteria and procedure be introduced as rapidly as possible for undocumented non-citizens.

147. ECRI recommends that staff working in the migration field be given training on the new legal provisions and that they continue to be made aware of the need to respect cultural diversity.

– *Integration policies*

148. The integration of non-citizens is a question cutting across the division of responsibilities between federal and federated entities. The federal government has a role to play in implementing an integration policy, for example by means of the FIPI, the Immigration Policy Support Fund, responsible for financially supporting projects to promote the social integration of persons of foreign origin, prevent discrimination and encourage intercultural dialogue. At federal level, there is also the Centre's initiative in creating a website (newintown.be) enabling newly arrived immigrants or those advising them to obtain useful information on administrative and other matters.

149. The federal authorities also govern another key factor in integration which is non-citizens' voting rights. In its third report, ECRI recommended that Belgium extend to non-European Union (EU) long-term residents the right to vote in local elections. ECRI is pleased to note that with the passing of the Act of 19 March 2004, the individuals in question are entitled to vote in municipal elections (but not in provincial elections) if they have been resident in Belgium for five consecutive years. Non-citizens who are not nationals of EU member states were thus able to vote for the first time in the municipal elections of 8 October 2006.

150. Unlike nationals of EU member states, other non-citizens may vote but not stand as candidates in municipal elections and they must sign a declaration to the effect that they undertake to uphold the Constitution, the laws of the Belgian people and the ECHR. There has been some criticism regarding the limitations of this new right, including in connection with the impossibility of standing for election. The obligation to sign a declaration undertaking to uphold the Constitution, the laws of the Belgian people and the ECHR has been described as hurtful and as a brake on the exercise of the right to vote. ECRI notes that neither Belgian nationals nor those of European Union member states have to sign such an undertaking before voting. The obligation to sign such a declaration appears superfluous and stigmatising since clearly everybody residing in Belgium is bound by these texts, including all non-citizens, whether

from an EU member state or not, and all Belgian nationals whether or not they have signed a declaration.

151. It is possible here to cite only some of the measures taken by the Regions to promote integration. Some initiatives are referred to elsewhere in this report[53]. The Brussels-Capital Region has its own diversity plans, geared specifically to the Brussels situation. ECRI would like to mention in greater detail the integration policies implemented, on the one hand, in the Walloon Region and, on the other, in the Flemish Region. ECRI notes with interest that these policies quite rightly comprise a dimension to combat discrimination and strive for equal opportunities, discussed elsewhere in this report, as key factors in integration.

152. In the Walloon Region, the integration policy is based on the decree of 4 July 1996 on the integration of non-citizens and people of foreign origin, amended in 2003 and currently being further amended as this report is being written. This policy comprises the setting up and subsidising of seven regional integration centres. These centres are financed by public funds and are responsible for providing services to the target groups in order to assist with their integration. The services on offer vary in line with the local situation of each centre, but basically consist of classes in French as a foreign language and assistance with administrative procedures, including with the help of interpreters. The integration policy of the Walloon Region is based on voluntary participation by non-citizens in language and other courses. Some towns, such as Namur, have set up mediation and social interpreting facilities to promote exchanges between non-citizen residents or those of immigrant background and the municipality's social and educational services, and to ensure peaceful co-existence between all residents. These integration measures are on the whole well-received, but NGOs working in this field regard them as inadequate to meet the demand which has risen exponentially, particularly with regard to classes in French as a foreign language. The measures adopted in the Walloon Region rely to a large extent on the involvement of associations defending the interests of non-citizens or people of immigrant background. However, actors from the associations say that the Walloon Region does not give them all the material and financial resources they need to fulfil this task.

153. In the Flemish Region, the integration policy is based primarily on the Flemish civic integration decree (*inburgering* in Dutch) of 28 February 2003 applying to non-citizens and persons of foreign origin. It provides for an integration programme (*Inburgeringstraject*), comprising individual coaching following registration at the reception office until the "integration certificate" is obtained. The programme is made up of a primary part and a secondary part. The primary part is designed to help make the person concerned independent and is based on an integration contract between the reception office and the individual. It comprises classes in Dutch as a second language (the number of hours is fixed in accordance with the results of a test to ascertain the individual's level), a social guidance course (60 hours on average) designed to nurture familiarity with Flemish society, and career guidance. The substance of each contract is determined in line with the aptitudes and knowledge of the individual concerned.

154. Those who have regularly attended the training programme obtain an "integration certificate", with which they can enrol on the secondary integration programme. This is designed to enable those following the programme to participate fully in society. They can enrol on a university course, a vocational

[53] See, for example, under "Discrimination in various fields: - Employment and - Education".

training course or training for becoming self-employed. They may also pursue their Dutch language studies.

155. The primary integration course, which is free of charge, is a right for a large number of non-citizens or Belgian nationals of immigrant background. It is also an obligation for newly arrived immigrants, except for those arriving from the member states of the European Union, the European Economic Area (EEA) and Switzerland, in accordance with free movement agreements with these states. If a person required to follow the primary integration programme does not attend regularly, the reception office has a duty to inform the authorities who may impose administrative fines. There are some possible exemptions from the obligation to attend the programme, such as for those who are ill, the elderly, people having a secondary or higher education diploma in Flanders, and those living in Brussels. There is a small number of people who are not entitled to take part in the programme, for example students and non-citizens with no legal status. By way of example, in the Antwerp reception office in 2007, 3,798 people took part in an integration programme; for 2,488 of these, the programme was obligatory and the remaining 1,310 attended the programme in a voluntary capacity.

156. The Flemish authorities have said that an evaluation study of the integration programme dating from 2007 gave rise to the following recommendations: "there is a need to improve access for people wishing to integrate, including those who have been living in Flanders for longer than one year. The reception offices have to become more professional in their approach. There is a need to reduce the number of participants who do not complete the programme. There is also a need to be wary of the risk of making the integration programme too bureaucratic and enable people to move onto an appropriate secondary integration programme without undue delay, especially for those wishing to do this in an educational context." The Flemish authorities added that the evaluation study found that "90% of participants are satisfied with their progress and 50% of new arrivals find a job, and have as much chance of finding work as the average Flemish job-seeker." ECRI welcomes the commitment of the Flemish authorities to provide those who so wish with free, multi-faceted and individualised integration assistance. With regard to the voluntary aspect of the programme, ECRI draws the authorities' attention to the necessary adjustments regarding the quality of what is on offer, especially in the light of the evaluation exercise referred to above.

157. The greatest vigilance is essential regarding the obligatory dimension of the integration programme. Some human rights NGOs and representatives of minority groups believe that it would be preferable if this programme did not have an obligatory status but was maintained and strengthened in its optional form. According to them, making it obligatory brings no real added value but rather stigmatises those required to attend it, giving the impression that they would be able to integrate only if they were obliged to do so. Since it is not possible to impose this programme on nationals of the member states of the EU and the EEA or on Swiss nationals, only certain categories of non-citizens are obliged to follow this course, which could give the false impression that the degree of integration or capacity to integrate depends on a person's country of origin. Furthermore, ECRI considers that vigilance is essential insofar as the obligatory nature of the programme is reinforced for non-citizens who have limited income as successful completion of the programme is today one of the conditions for entitlement to certain social rights in Flanders, such as social housing[54]. As a result, the impact of these obligatory measures is by necessity

[54] On access to social housing, see also above "Discrimination in various fields: - Access to housing and public services".

greater for non-citizens on lower incomes who come from certain regions of the world.

158. As ECRI points out elsewhere in this report, integration is a two-way process entailing mutual recognition between the majority population and minority groups. ECRI therefore refers to its previous comments on the question of obligatory measures taken in the field of integration[55]. In this context, it must at least be ensured that the obligatory courses fit in with the constraints which may affect some of the people required to follow them, particularly those who have restrictive working hours or children who need to be taken care of during the courses.

159. ECRI recommends that the Belgian authorities pursue their integration policy efforts, ensuring that integration is perceived as a reciprocal process involving both the majority and minority communities. To this end, it recommends that they continue to place an emphasis on measures to encourage and promote integration by deploying all the human and financial resources required for the success of this approach. It also recommends that they continue to place their initiatives to combat racial discrimination in the context of their integration policy and always present these initiatives to the public as essential measures to bring about an integrated Belgian society.

160. With regard to the optional Flemish integration programme, ECRI recommends that the authorities continue to evaluate its effectiveness and take all the necessary steps to ensure that it is fully suited to those following the courses.

161. Concerning the obligatory dimension of the integration programme, ECRI recommends that the authorities monitor its implementation in order to take any remedial action required. It is important to ensure that this measure does not have a counterproductive effect on the integration process by stigmatising and disadvantaging those for whom the programme is obligatory in relation to others, or by jeopardising their individual rights[56]. ECRI specifically requests that the authorities make sure that the integration programme, in itself very interesting, is not deviated from its essential aims and cannot be used to discriminatory ends.

VI. Antisemitism

162. ECRI notes the persistence of intolerant acts and expressions directed against persons belonging to the Jewish community. These acts and the authorities' response to them are dealt with throughout this report[57]. In relation to antisemitic acts, in its 2007 report "Discrimination-Diversity", the Centre noted that the number of complaints of antisemitism had remained relatively stable over the previous four years, although there had been an increase in complaints of antisemitism on the Internet. The antisemitic expressions reported included death threats and revisionist viewpoints. Other instances of antisemitism noted in recent years concerned verbal and physical attacks on Jews, including on children, especially in Brussels and Antwerp. There were also instances of vandalism of synagogues or private property belonging to Jews. Those responsible for these acts are often connected with extreme right-wing movements or with Muslim fundamentalists. Data on antisemitic acts is collected in close collaboration between the Centre and a group of volunteers

[55] See above: "Discrimination in various fields: - Access to housing and public services".

[56] See also the recommendation relating to the Flemish Housing Code, above: "Discrimination in various fields: - Access to housing and public services".

[57] See, in particular: "Racism in public discourse" and "Racist violence".

who have set up a website (www.antisemitisme.be) on which such acts are reported.

163. The Belgian authorities are aware of the problem of antisemitism and have taken measures to try and eradicate it, notably the establishment of a racism watchdog body, comprising not only the Centre but also representatives of public authorities as well as associations representing the Jewish communities in Belgium. All the steps taken are aimed at combating not only antisemitism but racism in general and some of these are described elsewhere in this report.

164. ECRI strongly recommends that the Belgian authorities pursue and strengthen their efforts to combat antisemitism. It encourages the Belgian authorities to seek out and identify the causes of antisemitism in order to adopt optimum measures to prevent and combat this phenomenon. In this connection, ECRI draws the attention of the authorities to its General Policy Recommendation No. 9 on the fight against antisemitism.

VII. Conduct of the Police

165. In its third report, ECRI recommended that the authorities ensure that all cases of discrimination, racism and xenophobia on the part of the police were thoroughly investigated, brought before the relevant judicial and non-judicial control mechanisms, and punished. ECRI encouraged the Belgian authorities to consider ways for monitoring the frequency of police checks on individuals, in order to uncover any possible pattern of disproportionate checks on certain groups of the population. It also encouraged the authorities to pursue their efforts to recruit persons of immigrant background to the police and ensure that these persons remain and progress in the police.

166. ECRI has already highlighted above the progress achieved in the recording of and follow-up to racist incidents, but has pointed out that data collection still needs to be further improved[58].

167. ECRI is concerned to learn that according to several sources, there are still cases of racial discrimination on the part of police officers. It notes in particular that police officers reportedly use racial profiling in their decisions, for example regarding spot checks carried out in the streets. It would appear that immigrants or persons of immigrant background are targeted to a disproportionate extent in these checks, although it is difficult to ascertain the actual situation given the absence of accurate and reliable data in this field. A further recurring criticism relates to the difference in the way complaints reported to the police are dealt with, depending on whether such complaints are made by people from the majority or by people from minority groups. It is claimed that complaints from members of minority groups, whether relating to racist acts or other offences, are not always taken seriously and are sometimes not even recorded. For example, police officers called to verify a discriminatory refusal to allow a person into a discothèque may refuse to record the complaint even though criminal law prohibits intentional racial discrimination. The fact is that, whatever the offence reported to the police, they are obliged by law to draw up an official report.

168. ECRI is also concerned to learn from several sources that the conduct of police officers on occasion leaves something to be desired from the point of view of the prohibition of racism. There are serious allegations about ill-treatment with a racist motivation by police officers. Human rights NGOs believe that all too

[58] See above: "Criminal law provisions to combat racism".

often a complaint of ill-treatment results in a report of forceful resistance, which would tend to discourage complainants. Some of the victims or witnesses of racist violence by police officers have met with a refusal to record their complaint. Lastly, a number of people do not report their complaint out of fear of encountering difficulties given that they are in an irregular situation in the country.

169. Complaints against the police can be dealt with either by the internal police review body, or by the General Police Inspectorate which comes under the Ministry of the Interior and by the Standing Police Monitoring Committee (Comité P). The latter is a parliamentary body dealing in particular with the general functioning of the police and which verifies that the rights guaranteed by the constitution are upheld. Cases concerning the police falling under criminal law are dealt with by the prosecution service. In 2008, the Court of Cassation confirmed the sentence handed down to a former Antwerp police superintendent of a four-year term of imprisonment, three of which were suspended, for drawing up false police reports, administering blows and causing injuries and incitement to racism. He was also deprived of his civil and political rights for five years, which had serious consequences since he had meanwhile become a local political official of *Vlaams Belang*.

170. According to the Centre, the authorities entrusted with controlling the police could be more transparent. The current lack of transparency does not foster confidence in the police monitoring services. Comité P regularly publishes a report on internal (occurring between police officers) and external (between the police and members of the public) racism and discrimination. The latest report is from 2007 and states that in that year the Committee had received 118 complaints of racism and discrimination. The information published in this type of report is very detailed and provides the percentage of results obtained in relation to the number of complaints. This report could be further improved, for example by creating sub-categories for statistics in the category of "discrimination, racism and xenophobia". The report could also indicate the type of result obtained for the type of act described in the complaint to give a clearer picture of the situation. ECRI notes that Comité P's investigation department comprises primarily police officers appointed for a renewable five-year term of office and seconded from a police department to which they will return after their time spent at Comité P. As a consequence, the latter is generally perceived as being insufficiently independent from the police. Nevertheless, the investigation department is hierarchically subordinate to Comité P - which is itself composed of 5 members, 4 of whom are magistrates and one civilian - and as such does not have the power to decide autonomously. ECRI notes with interest that Comité P has announced that it will take additional measures to ensure the independence of those among their personnel who are seconded from a police force.

171. In this context, ECRI finds it encouraging that the Equality and Diversity Department of the Federal Police Directorate of Internal Relations was awarded the federal "Equality and Diversity" seal of approval in March 2007, confirmed for one year in September 2008. The Equality and Diversity Department was set up in 2001 and since 2003 a "diversity" policy designed to increase the representation of persons of immigrant background to ensure that the police better reflects Belgian society has been implemented in police departments. As of 2005, a network of "diversity" resource persons has been in place, and is currently being rolled out to cover the whole country. Its goal is to develop good practices in the fields of diversity, combating discrimination and prejudice, including those of a racist nature. This diversity policy has several strands: information campaigns for the target audience, an assessment of candidates'

abilities and, in the light of this assessment, the opportunity to follow pre-training courses, designed to increase the chances of passing the police entrance examinations. These courses include language classes. This policy is not limited to people of immigrant background and the impact on the latter is not yet what one might have hoped. ECRI believes that this policy, based on positive measures focusing on persons of immigrant background, is a good practice and should be continued and strengthened in order to give people of immigrant background a genuine opportunity to pass the police entrance examinations. Efforts should also be made to ensure that once recruited, police officers of immigrant origin remain in their jobs and have access to promotions. Indeed, it would seem that in some local police services, such officers are sometimes not accepted by their colleagues and not appreciated by their superiors. If the above-mentioned policy is maintained in the long term, it should help increase diversity in the police.

172. If this policy is accompanied by measures aimed at fighting cases of discrimination against minority groups by the police, it will help to improve the image of the police among minority groups and the image of minority groups among the police, and therefore relations between the two.

173. Under an agreement with the police, the Centre provides training to some police officers on "anti-discrimination and anti-racism legislation". There are also training courses in intercultural communication. It is generally held that there is a need to strengthen further and extend measures to train and raise the awareness of police officers and other law enforcement staff on the subject of racism in order to achieve progress in the way in which the police deal with members of minority groups and the way they respond to complaints of racist acts by private individuals.

174. ECRI recommends that all currently serving police officers and those undergoing initial training be instructed in and alerted to the need to combat racism and racial discrimination, stressing the importance of dealing with and recording complaints appropriately. Furthermore, ECRI urges the authorities to designate within each police unit a contact person responsible for improving the response of the police to complaints of racism from individuals, along the lines of the contact prosecutors specialising in racism and discrimination issues in the prosecution service[59].

175. In particular, the contact persons responsible for racism and racial discrimination issues should be networked and there should be close communication between the contact person in the police unit and the contact prosecutor in the corresponding prosecution department.

176. ECRI recommends that the Belgian authorities strengthen the independence of Comité P and improve communication between that committee and the bodies forwarding complaints to it, or that they create a body independent of the police and the prosecution service, tasked with investigating alleged cases of racial discrimination and abusive racist conduct by the police. ECRI also urges the authorities to ensure, where relevant, that the people responsible for these acts or conduct are punished appropriately and publicly.

177. In particular, ECRI urges the Belgian authorities to take steps to prevent and prohibit racial profiling by the police. It draws their attention to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing which provides guidelines in this field.

[59] For further details, see above: "Criminal law provisions to combat racism".

VIII. Monitoring Racism and Racial Discrimination

178. ECRI notes with interest that the Belgian authorities, whether at federal, federated or local level, are aware of the importance of having reliable indicators on the situation of racism and racial discrimination. A number of studies, surveys – particularly among potential victims of racism – and statistics relate to these issues. This information gives some idea of the situation, but is too fragmentary and insufficient to give an overall picture of the situation in the country.

179. Both anti-racism NGOs and all of the Belgian authorities stress that there are no measurement instruments and that there is a need to put in place a system for collecting data on racism and racial discrimination. Such systems should make it possible to pinpoint more accurately trends in and causes of acts of racism, identify direct and indirect racial discrimination and find appropriate solutions to the problems detected. Several initiatives are in progress to this end, only some of which are referred to in this report. The collection of data concerning criminal law provisions to combat racism referred to above is one such initiative[60]. In addition, the Belgian authorities are in the process of putting in place a "tolerance barometer". Since 2006, the Centre has been working on introducing a system of "socio-economic monitoring" based on the national origin of individuals in order to combat discrimination more effectively. This socio-economic monitoring involves the collection of objective, anonymous and validated data derived from existing administrative databases, taking account of the national origin of individuals and their parents.

180. ECRI strongly encourages the Belgian authorities to continue putting in place a complete and coherent data collection system making it possible to assess the situation regarding the different minority groups in Belgium and ascertain the extent of instances of racism and direct and indirect racial discrimination. In this regard, it recommends that they consider collecting data broken down according to categories such as nationality, national or ethnic origin, language and religion and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. Such system should be drawn up in close co-operation with all the actors concerned, including civil society organisations, and should also take into consideration the possible existence of double or multiple discrimination.

IX. The Anti-Racism Action Plan

181. On 14 July 2004, the federal government adopted the principles of a federal action plan to combat racism, antisemitism, xenophobia and related violence in order to implement the recommendations of the World Conference on Racism (Durban, 2001). This plan also draws on ECRI recommendations, particularly those formulated in its third report on Belgium. The plan, involving all the federal and federated entities, focuses on the following 10 points: implementation of anti-discrimination legislation, follow-up of complaints, the Internet as a vehicle for racist and antisemitic ideologies, distribution of racist pamphlets, combating prejudice, the media, police forces, state security, measures to protect target groups, and the setting up of a tolerance barometer. The Centre is responsible for following this up and an evaluation report was drafted on 11 January 2007; its main conclusions have been taken into account in drafting this ECRI report. ECRI notes that the plan has given rise to significant progress in the fight against racism and racial discrimination, even

[60] See above: "Criminal law provisions to combat racism".

though some projects are still being implemented. In order to combat racism, it is essential to radically change mentalities, which is a long-term undertaking. The fight against discrimination, and in particular structural discrimination as it exists in access to employment, education and housing also requires long-term measures if it is to be successful. It is for this reason that the federal and federated authorities in Belgium must sustain and strengthen the efforts made so far.

182. ECRI recommends that the Belgian authorities pursue their approach to the fight against racism by fully implementing their federal action plan against racism, antisemitism, xenophobia and associated violence and by allocating all the necessary resources to ensure its success.

X. Intercultural Dialogue

183. The natural counterpart to the fight against racism is intercultural dialogue, one of the key components of peaceful co-existence between all members of society. ECRI considers that intercultural dialogue includes inter-religious dialogue and inter-community dialogue and should highlight all the many ways in which cultural and linguistic diversity enriches Belgian society.

184. On this point, ECRI is pleased to note to see that the Belgian authorities have decided to take action via several initiatives, some of which are referred to elsewhere in this report[61]. The Commission on Intercultural Dialogue was set up by the federal government in February 2004. The objective of this Commission was to review issues relating to the multicultural society taking shape in Belgium as elsewhere in Europe. This Commission published a final report in May 2005, detailing its activities and making recommendations to the Belgian authorities[62]. Conferences on interculturality are scheduled for 2009 and examples of good practice in this field are currently being compiled in order to present at these conferences cogent intercultural dialogue mechanisms.

185. ECRI recommends that the Belgian authorities pursue their efforts to promote intercultural dialogue within Belgian society and give a positive image of cultural diversity in Belgium. In particular, special attention must be paid to the findings and recommendations of the Commission on Intercultural Dialogue which has highlighted the extent to which the fight against racism and racial discrimination is one of the keys to bringing about an integrated society.

[61] See in particular "Vulnerable/target groups: - Muslim communities".

[62] Commission on Intercultural Dialogue, Final report, May 2005, 246 pages, consultable on the website of the Centre for Equal Opportunities and the Fight against Racism, www.diversite.be.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Belgium are the following:

- ECRI strongly recommends that the Belgian authorities pursue and step up their efforts to ensure that all children of immigrant background are afforded equal opportunities in access to education. ECRI recommends in particular that they continue to take steps to promote a social mix in state schools and place greater emphasis in initial and in-service teacher training on the need to combat racism and racial discrimination, on the one hand, and on the ways in which diversity enriches Belgian society, on the other hand[63].

- ECRI strongly recommends that the Belgian authorities find at the earliest opportunity solutions to enable Travellers to camp, by creating a sufficient number of well located and properly equipped sites. It also recommends that the authorities run an awareness-raising campaign aimed at the general public to combat all forms of intolerance towards and rejection of Travellers and to combat any related racial discrimination.

- ECRI recommends that all currently serving police officers and those undergoing initial training be instructed in and alerted to the need to combat racism and racial discrimination, stressing the importance of dealing with and recording complaints appropriately. Furthermore, ECRI urges the authorities to designate within each police unit a contact person responsible for improving the response of the police to complaints of racism from individuals, along the lines of the contact prosecutors specialising in racism and discrimination issues in the prosecution service[64].

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

[63] See ECRI General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, which provides guidelines in this field.

[64] For further details, see above: “Criminal law provisions to combat racism”.

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46. Fédération des Centres régionaux pour l'Intégration des personnes étrangères ou d'origine étrangère en Wallonie (Fé.C.R.I.), « Osmoses – Revue de l'Interculturalité en Wallonie n°48 », juillet, août et septembre 2008

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Belgium

ECRI wishes to point out that the analysis contained in its report on Belgium, is dated 19 December 2008, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Belgium was subject to a confidential dialogue with the authorities of Belgium. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the authorities of Belgium requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

Quatrième rapport de l'ECRI sur la Belgique
Observations complémentaires des Autorités belges

1. L'Office des Etrangers

De manière générale, il convient d'apporter quelques précisions sur la loi du 15 septembre 2006 afin de ne pas confondre les procédures d'asile et de regroupement familial.

Cette loi modifie la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (M.B. 6.10.2006), est entrée en vigueur le 1er juin 2007 et :

1) transpose la directive 2003/86/CE relative au regroupement familial des membres de familles de ressortissants non membres de l'Union Européenne.

2) réforme la procédure d'asile.

3) transpose la directive 2004/81/CE du Conseil de l'Union européenne du 29 avril 2004 relative au titre de séjour délivré aux ressortissants de pays tiers qui sont victimes de la traite des êtres humains ou ont fait l'objet d'une aide à l'immigration clandestine et qui coopèrent avec les autorités compétentes

4) transpose la Directive 2004/83/CE du 29 avril 2004 concernant les normes minimales relatives aux conditions que doivent remplir les ressortissants des pays tiers ou les apatrides pour pouvoir prétendre au statut de réfugié ou les personnes qui, pour d'autres raisons, ont besoin d'une protection internationale, et relatives au contenu de ces statuts (généralement appelée « directive qualification » ou « directive relative à la protection subsidiaire »).

5) développe la procédure d'autorisation de séjour sur base de l'article 9 bis et 9 ter.

La loi du 15 septembre 2006 instaure une nouvelle procédure, qui peut être vue comme un meilleur encadrement de l'article 9, alinéa 3, de la loi sur les étrangers, sera d'application. Cet article est en effet supprimé et remplacé par l'introduction des articles 9 bis et 9 ter.

Concernant l'article 9 bis, il a pour objectif de créer un cadre précis pour la demande d'obtention d'une autorisation de séjour introduite par un étranger auprès du bourgmestre du lieu de sa résidence lors de circonstances exceptionnelles.

Il est ainsi clairement indiqué qu'un document d'identité, c'est-à-dire un passeport ou un titre de voyage équivalent, est indispensable : la demande d'autorisation de séjour ne peut être que déclarée irrecevable si l'identité d'une personne est incertaine. Il existe toutefois deux cas dans lesquelles la production d'un document d'identité n'est pas nécessaire : le cas du demandeur d'asile dont la demande d'asile ou le recours au Conseil d'Etat

est encore pendant, et le cas de l'étranger qui démontre qu'il lui est impossible de se procurer le document exigé en Belgique. Dans ces deux situations, des circonstances exceptionnelles doivent être invoquées. Si aucune circonstance exceptionnelle n'est invoquée, la demande sera déclarée irrecevable comme dans les autres cas.

La réforme de l'article 9, alinéa 3, de la loi du 15 décembre 1980, tend également à décourager l'abus de diverses procédures ou l'introduction de demandes de régularisation successives dans lesquelles des éléments identiques sont invoqués. Ainsi, l'article 9bis, §2, prévoit que des éléments invoqués dans le cadre de l'article 9 bis de la loi, qui ont déjà été invoqués dans le cadre d'autres procédures, ne seront pas retenus.

A l'exception du cas spécifique visé à l'article 9ter, les demandes d'autorisation de séjour « humanitaire » introduites en Belgique continueront à être traitées sur base de la jurisprudence précédemment développée au sein de l'OE. Aucune liste de critères donnant droit à une autorisation de séjour « humanitaire » n'a été fixée. Il serait en effet utopique de croire qu'en la matière, chaque situation peut être prévue par un texte réglementaire.

Cependant, d'une manière générale, on peut dire qu'on accorde aujourd'hui une autorisation de séjour en Belgique :

- aux étrangers dont la demande d'asile a traîné pendant un délai déraisonnablement long, qui sont bien intégrés et ne représentent pas de danger pour l'ordre public ou la sécurité nationale.

- les personnes dont le retour, pour des motifs humanitaires graves, s'avère impossible ou très difficile.

Il peut s'agir de circonstances très diverses, dans lesquelles la délivrance d'un titre de séjour s'impose. Une énumération limitative de ces cas est impossible. Le principe de base à observer est que le refus d'octroyer un titre de séjour à l'étranger pourrait constituer une infraction aux dispositions de la Convention européenne de sauvegarde des droits de l'homme ou serait manifestement contraire à la jurisprudence constante du Conseil d'État.

Concernant l'article 9 ter, il crée une procédure particulière en ce qui concerne les étrangers qui souffrent d'une maladie pour laquelle un traitement approprié fait défaut dans le pays d'origine ou de séjour, pour lesquels le renvoi représente un réel danger pour leur vie ou leur intégrité physique, ou qui implique un réel risque de traitement inhumain et dégradant dans le pays d'origine ou de séjour.

La loi du 25 avril 2007 modifiant la loi du 15 décembre 1980 a aussi transposé les deux directives suivantes:

1) la directive 2003/109/CE du 25 novembre 2003 relative au statut des ressortissants de pays tiers résidents de longue durée ;

2) la directive 2004/38/CE du 29 avril 2004 relative aux droits des citoyens de l'Union et des membres de leur famille de circuler et de

séjourner librement sur le territoire des états membres. Le séjour des membres de la famille des belges est également modifié.

2. Le Gouvernement flamand

Le Gouvernement flamand accorde beaucoup d'importance à une société humaine diversifiée, au sein de laquelle les gens de toutes les communautés ethniques, culturelles et religieuses que compte la Flandre vivent non pas les unes *à côté* des autres, mais les unes *avec* les autres. C'est dans ce but que les autorités flamandes, dans leurs domaines de compétences, ont développé une politique qui doit servir de cadre. En premier lieu vient un certain nombre de décrets destinés à gommer le retard factuel dont certains groupes de populations sont malheureusement victimes dans la vie quotidienne (égalité des chances dans l'enseignement et l'emploi). Il n'y a pas de place en Flandre pour la discrimination ni le racisme. Parallèlement, les autorités ont élaboré une politique d'intégration civique qui doit apporter à tous les arrivants, anciens et nouveaux, le néerlandais, une introduction aux règles de base de la société flamande, au besoin les accompagner sur le marché du travail vers un poste correspondant à leurs capacités et leurs attentes. Tout ceci vise à améliorer l'autonomie de l'intégrant et à lui fournir des instruments pour une citoyenneté active. Ce faisant, les pouvoirs publics flamands mènent une politique qui est similaire à celles qui ont vu le jour ces dernières années aux Pays-Bas, en France, en Autriche et au Danemark, ou font ailleurs l'objet d'un processus de décision politique.

Naturellement, les autorités flamandes œuvrent à ce que tous les Flamands, quelle que soit leur origine, aient une meilleure connaissance de la diversité au sein de la société. C'est ainsi que l'on accorde de l'attention — dans les objectifs et les termes finaux de l'enseignement, depuis la maternelle jusqu'au dernier degré du secondaire — au respect de la diversité, aux droits de l'homme et aux libertés fondamentales, à la lutte contre le racisme et à la connaissance de l'autre. Le même but est poursuivi en appuyant les initiatives dans les médias susceptibles, de façon informative ou humoristique, de favoriser la diversité. Des mesures sont prises dans toutes les politiques flamandes afin de rassembler des Flamands de toute origine. Enfin, les autorités flamandes procurent un soutien financier significatif aux organisations des minorités culturelles, qui ne sont nullement supposées devoir « s'assimiler » à la majorité.

Un ensemble de mesures orientées vers tous les habitants de la Flandre et un relèvement annuel significatif des budgets disponibles permettent en d'autres termes aux pouvoirs publics, assistés par le tissu associatif fort qui caractérise la Flandre, d'apporter une contribution à l'intégration des groupes de populations dans notre société multiculturelle, basée sur le respect et la reconnaissance mutuels.

Le Gouvernement flamand se réjouit dès lors que l'ECRI apprécie à sa juste valeur la volonté des pouvoirs publics flamands de proposer un parcours d'intégration civique gratuit, multiforme et personnalisé. Il a noté que l'ECRI remet en question l'obligation, pour certains intégrants, de suivre ce parcours, comme cela s'est déjà passé dans plusieurs autres rapports (notamment au sujet du parcours d'intégration civique aux Pays-Bas). Dans la situation actuelle, les autorités flamandes sont convaincues que cette

application, qui n'a d'ailleurs aucune répercussion sur le droit de séjour des personnes concernées, est la façon la plus adaptée pour garantir la participation de groupes particulièrement fragiles, comme les femmes de milieux traditionnels. Elles estiment avoir correctement évalué les droits individuels et l'intérêt de la société. Elles sont conscientes que beaucoup de ces intégrants, anciens et récents, seraient prêts à participer à cette intégration civique sans y être obligés, comme en témoignent les nombreuses évaluations positives des participants. Plusieurs mesures d'encadrement, comme l'accueil des enfants, une contribution aux frais de transport, le travail avec un parcours personnalisé tenant compte de la situation individuelle et une série de cours du soir et du week-end, permettent d'atténuer considérablement les conséquences de cette obligation. Certaines des observations de l'ECRI sont des éléments susceptibles d'être examinés lors de la prochaine évaluation de l'intégration civique flamande, à laquelle sont périodiquement contraintes les autorités flamandes selon les termes du décret d'intégration civique.

Contrairement à ce qui semble formulé dans le rapport, le Code du logement flamand (*Wooncode)* ne vise nullement à établir un lien entre un droit social et une condition d'intégration. La bonne volonté dont doit faire preuve le locataire d'un logement social à apprendre le néerlandais s'il n'en connaît pas encore les bases n'a pas comme objectif une politique d'intégration ni d'accueil par rapport à ces locataires, mais plutôt la sécurité et la viabilité du logement social, au moyen d'un niveau minimal de compréhension mutuelle. La condition d'apprentissage de la langue apporte une réponse aux problèmes concrets auxquels le logement social est confronté partout en Flandre. Le niveau de connaissances linguistiques de chaque individu peut d'ailleurs être démontré de diverses façons et les autorités flamandes ont mis en place des cours de néerlandais gratuits. Dans son arrêt 101/2008 du 10 juillet 2008, la Cour Constitutionnelle a considéré que cette condition d'apprentissage de la langue répond au principe d'égalité, à l'interdiction de discrimination et au droit au logement, ainsi qu'aux dispositions analogues du droit international, à condition de tenir compte de la situation particulière dans les communes à facilités linguistiques pour Francophones. Les autorités flamandes se sentent alors renforcées par cet arrêt de la plus haute instance judiciaire du pays, dont la composition est doublement paritaire, entre néerlandophones et francophones d'une part, entre politiciens et experts du monde académique de l'autre.

Le Gouvernement flamand rappelle qu'il faut faire la distinction entre les conséquences de la structure constitutionnelle et politique de la Belgique, qui par une série de réformes a évolué d'un État unitaire unilingue vers une fédération multilingue, et la politique relative aux minorités ethniques et culturelles. La structure de l'État belge est basée sur un certain nombre d'équilibres mutuels, non modifiables unilatéralement, destinés à permettre aux deux grandes communautés du pays de vivre ensemble (parité entre les deux communautés dans les organes fédéraux, lois de majorité spéciale, cadre linguistique pour les administrations bilingues, unilinguisme légal de principe dans chaque région de langue néerlandaise, française et allemande). Ces équilibres ont évidemment une répercussion sur la situation des Néerlandophones, Francophones et Germanophones, mais leur situation ne se différencie pas fondamentalement de ceux des membres des minorités ethniques et culturelles récentes.

Le Gouvernement flamand apprécie la confirmation par l'ECRI de la légitimité et du principe de territorialité qui est l'un des fondements de la structure de l'État belge et l'encouragement à favoriser la connaissance du néerlandais en Flandre. Il se demande cependant comment la création d'un nouvel organe devant éviter la discrimination sur base de la langue pourrait apporter une quelconque contribution aux côtés de la Cour Constitutionnelle chargée de faire respecter l'interdiction de la discrimination, du Conseil d'État et de la Commission permanente de contrôle linguistique soucieux de la législation linguistique, ainsi que des cours et tribunaux. Un tel organe ressemble plutôt à une possibilité complémentaire de litiges d'inspiration politique.

Les principes de base du fédéralisme belge ont comme conséquence que chaque pouvoir public a pour tâche, dans ses compétences matérielles, de donner corps à une politique en matière d'égalité des chances, de traitement et de la lutte contre la discrimination. Les pouvoirs publics comprennent que l'ECRI accorde de l'importance à la cohésion mutuelle entre les différents règlements. Il ne faut cependant pas perdre de vue que ces derniers visent à convertir les mêmes directives européennes et sont donc basés sur les mêmes principes. Le Gouvernement flamand souscrit aux objectifs du Centre pour l'Égalité des Chances et la Lutte contre le Racisme à former un organe interfédéral et espère que les négociations sur un accord de collaboration, qui se trouvent à un stade avancé, pourront être menées à bien lors de la prochaine législature des gouvernements communautaires et régionaux.

3. Le Comité P

1. En ce qui *concerne l'allégation d'un manque de transparence dans le chef du Comité P*

Le §170 du rapport fait état d'un manque de transparence dans le chef du Comité P.

1.1. Les relations entre le Comité P et le Centre pour l'égalité des chances et la lutte contre le racisme

La première partie du §170 fait référence à un manque de transparence du Comité P dans ses relations avec le Centre pour l'égalité des chances et la lutte contre le racisme. Ce point a fait l'objet d'une analyse dans le rapport annuel 2006 du Comité P après que le Centre ait lui-même formulé plusieurs critiques relatives à sa collaboration avec le Comité P dans son rapport annuel 2006.

Après avoir examiné les attentes du Centre à son égard ainsi que les obligations légales auxquelles il est tenu envers le Centre, le Comité P est arrivé à la conclusion que les attentes du Centre en termes de communication d'information ne correspondent pas à ce qui lui est permis en vertu de la législation en vigueur. Il apparaît dès lors au Comité P que l'opinion formulée par le Centre à son encontre n'est pas fondée. Le Comité P invite l'ECRI à prendre connaissance du point relatif aux relations entre le

Centre et le Comité P, tel qu'analysé dans son rapport annuel 2006[1]. Entre-temps, il tient à souligner que des contacts ont eu lieu entre le Comité P et le Centre et que les malentendus qui ont pu exister à l'époque ont été levés.

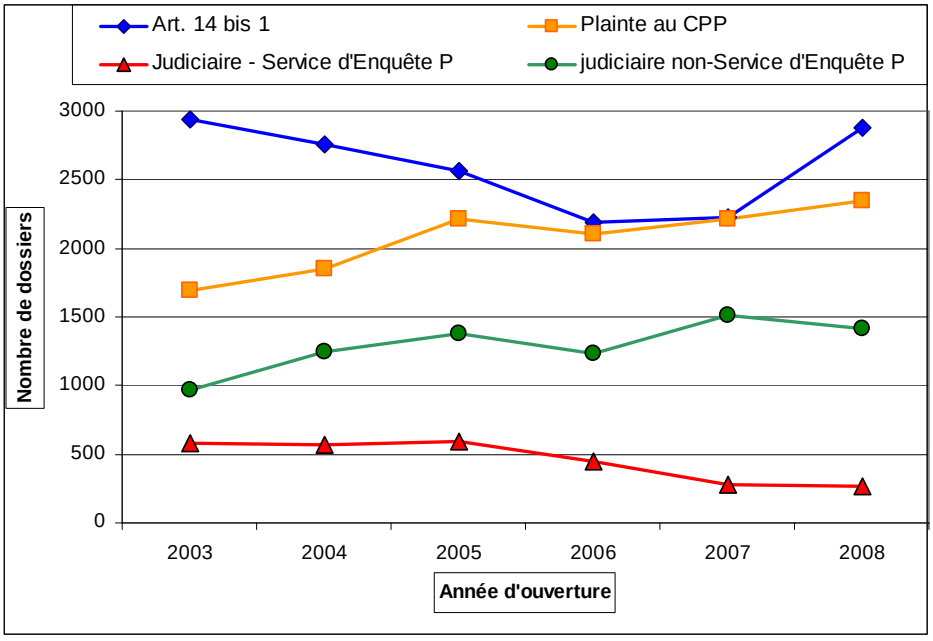
1.2. L'allégation d'un manque de transparence dans les rapports du Comité P

Le §170 du rapport fait ensuite référence au dernier rapport en date du Comité P en matière de racisme, dont les données remontent à 2007. L'ECRI renvoie aux 118 plaintes reçues en 2007 par le Comité P concernant des allégations de racisme et discrimination et regrette que le rapport n'indique ni le contenu des plaintes ni le résultat des enquêtes précédentes, ce qui rend difficile de se rendre compte de la situation.

Les informations reprises ci-dessous visent à communiquer les données chiffrées les plus récentes en matière de discrimination, racisme et xénophobie pour la période 2003-2008. Pour la période 2005-2008, des données concrètes sont fournies à propos des suites données aux plaintes concernant des allégations de racisme, discrimination ou xénophobie.

Le graphique suivant montre l'évolution du nombre de dossiers ouverts au Comité P, par typologie, quelles que soient les allégations concernées et ce selon l'année d'ouverture du dossier au Comité P.

Graphique 1



Note bene : La ligne bleue « Art. 14bis 1 » concerne les dossiers communiqués au titre de l'article 14*bis*, alinéa 1er de la loi organique du Comité P concernent la transmission d'office par le commissaire général de la police fédérale, l'inspection générale de la police fédérale et de la police locale et les chefs de corps de la police locale d'une copie des plaintes et dénonciations qu'ils ont reçues concernant les services de police ainsi qu'un bref résumé des résultats de l'enquête lors de la clôture de celle-ci.

[1] Disponible sur le site Internet du Comité P www.comitep.be

Le tableau 1 ci-après donne un aperçu du nombre de dossiers ouverts au Comité P, par typologie, quelles que soient les allégations concernées :

Tableau 1

Typologie	2003	2004	2005	2006	2007	2008
Dossiers communiqués par les services de police (Art. 14 bis, al. 1er de la loi)	2934	2759	2568	2187	2231	2874
Plaintes déposées directement auprès	1689	1853	2216	2100	2219	2351
Enquêtes judiciaires non-effectuées par le Service d'Enquête P (art. 14, al.2 et art.26 de la loi)	972	1241	1384	1235	1513	1411
Enquêtes judiciaires effectuées par le Service d'Enquêtes P	575	568	592	439	281	265
Total	6170	6421	6760	5960	6245	6901

Le tableau 2 donne un aperçu du nombre de dossiers, par typologie, contenant une allégation de racisme, xénophobie ou discrimination :

Tableau 2

Typologie	2003	2004	2005	2006	2007	2008
Dossiers communiqués par les services de police (Art. 14 bis, al. 1er de la loi)	21	20	23	24	15	34
Plaintes déposées directement auprès du Comité P	49	51	55	55	65	64
Enquêtes judiciaires non-effectuées par le Service d'Enquête P (art. 14 al.2 et art.26 de la loi)	19	16	25	11	19	16
Enquêtes judiciaires effectuées par le Service d'Enquêtes P	23	21	16	13	15	3
Total	112	108	119	103	114	117

Le tableau 3 établit le rapport entre le nombre de dossiers, contenant une allégation de racisme, xénophobie ou discrimination, et le nombre total de dossiers, par typologie :

Tableau 3

Typologie	2003	2004	2005	2006	2007	2008
Dossiers communiqués par les services de police (Art. 14 bis, al. 1er de la loi)	0,7%	0,7%	0,9%	1,1%	0,7%	1,2%
Plaintes déposées directement auprès du Comité P	2,9%	2,8%	2,5%	2,6%	2,9%	2,7%
Enquêtes judiciaires non-effectuées par le Service d'Enquête P (art. 14 al.2 et art.26 de la loi)	2,0%	1,3%	1,8%	1,1%	1,3%	1,1%
Enquêtes judiciaires effectuées par le Service d'Enquêtes P	4,0%	3,7%	2,7%	3,0%	5,3%	1,1%
Total	1,8%	1,7%	1,8%	1,7%	1,7%	1,7%

Pour la période allant du 01.01.2005 au 31.12.2008, le Comité P a pris connaissance de 453 dossiers contenant une allégation de discrimination, de xénophobie ou de racisme (à savoir : 119 pour 2005 ; 103 pour 2006, 114 pour 2007 et 117 pour 2008). Parmi ces 453 dossiers, 47 concernent des enquêtes judiciaires exécutées par le Service d'enquêtes du Comité P, sous la surveillance des autorités judiciaires.

Parmi les 453 dossiers contenant une allégation de discrimination, de xénophobie ou de racisme, 118 dossiers sont encore en cours actuellement (information janvier 2009). Parmi les 335 dossiers clôturés, 25 concernent des affaires dans lesquelles les allégations de discrimination, de xénophobie ou de racisme ont été déclarées fondées.

Parmi les 27 dossiers concernant des affaires dans lesquelles le Comité P a déclaré fondées les allégations de discrimination, de xénophobie ou de racisme ont été reconnues :

- Dans 16 dossiers, le Comité P a déclaré la plainte fondée et a constaté une faute individuelle. Les résultats de l'enquête indiquent l'existence d'une faute individuelle dans le chef d'un fonctionnaire de police ou à compétence de police. Dans 12 dossiers, il a été demandé à la hiérarchie d'envisager d'adresser une remarque ou une admonestation à l'intéressé pour éviter qu'il reproduise son erreur. Dans l'ensemble de ces 12 dossiers, une communication par retour du courrier de la part de la hiérarchie ou de l'autorité policière fait état de la mise en oeuvre des solutions proposées, entraînant ainsi la clôture du dossier au niveau du Comité P. Dans 4 dossiers, il a été demandé à la hiérarchie d'envisager de poursuivre l'examen des faits au plan disciplinaire ou statutaire, avec une éventuelle sanction disciplinaire à la clé.

- Dans 4 dossiers, le Comité P a déclaré la plainte fondée et a constaté un dysfonctionnement individuel. Les résultats de l'enquête indiquent l'existence d'un dysfonctionnement individuel dans le chef d'un fonctionnaire de police ou à compétence de police. Dans deux dossiers, il a été demandé à la hiérarchie d'envisager d'adresser une remarque ou une admonestation à l'intéressé pour éviter que le dysfonctionnement se reproduise. Dans les autres dossiers, il a été demandé à la hiérarchie d'envisager de poursuivre l'examen des faits au plan disciplinaire ou statutaire, avec une éventuelle sanction disciplinaire à la clé.

- Dans 7 dossiers, le Comité P a déclaré la plainte fondée et a constaté un dysfonctionnement organisationnel. Les résultats de l'enquête indiquent un dysfonctionnement de nature organisationnelle. Il a été demandé à la direction de prendre les mesures nécessaires pour en éviter la répétition. Dans 4 de ces 7 dossiers, une communication par retour du courrier de la part de la hiérarchie ou de l'autorité policière fait état de la mise en œuvre des solutions proposées, entraînant ainsi la clôture du dossier au niveau du Comité P.

À côté de ça, 119 dossiers contenant une infraction en matière de discrimination, racisme et/ou xénophobie ont été transmis au procureur du Roi. Pour 55 de ces dossiers, le Comité P a reçu une information concernant les suites qui ont été données à ces plaintes. Dans chacun des cas, le

parquet a pris une décision de classement sans suite. Les 64 dossiers restant sont soit encore en cours, soit des dossiers pour lesquels le Comité P n'a pas encore reçu d'information concernant les suites données par le parquet.

Dans 19 autres plaintes, le dossier a été clôturé au niveau du Comité P parce que le plaignant était inconnu ou refusait de collaborer à l'enquête (8), parce que l'auteur était inconnu (4) ou parce que le Comité P a du se déclarer incompétent pour traiter la plainte (7).

Pour 138 plaintes, le Comité P a pris la décision que la plainte était non fondée ou dénuée d'éléments de preuve ou qu'il y avait absence de faute.

Pour les autres plaintes, le Comité P ne dispose pas d'information dans sa base de données concernant la décision finale.

Les constatations du Comité P peuvent se résumer de la manière suivante : Sur les 335 dossiers « IN » qui ont été ouverts pendant la période 2005-2008 et qui ont été clôturés entre-temps, on trouve :

- 27 dossiers dans lesquels une faute a été retenue. La « sanction » pour le fonctionnaire de police concerné varie de la remarque à l'admonestation et au blâme ou à la demande d'examiner les faits sur le plan disciplinaire ;

- 119 dossiers ont été transmis au procureur du Roi, parmi lesquels 55 ont fait l'objet d'une décision de classement sans suite. Pour les autres 64 dossiers, le Comité P n'a pas encore été informé des suites données ;

- 138 dossiers ont été clôturés car non fondés, dénués d'éléments de preuve ou absence de faute ;

- 19 dossiers ont été clôturés pour d'autres raisons (plaignant/auteur inconnu, incompétence du Comité P) ;

- Pour les autres dossiers, soit il n'y a pas d'informations disponibles dans la banque de données du Comité P, soit il s'agit de dossiers en cours.

Cela nous mène à la conclusion que dans quelque 8% des plaintes concernant des allégations de discrimination, racisme ou xénophobie, il est effectivement question d'une faute dans le chef du fonctionnaire ou du service de police concerné.

Toutes les plaintes dans lesquelles le procureur du Roi a été amené à prendre une décision ont fait l'objet d'une décision de classement sans suite sur le plan pénal.

Également en matière de transparence du Comité P, nous tenons également à signaler la communication en direction du Centre pour l'égalité des chances de toutes les données demandées, notamment en matière de discipline au sein des services de police et, entre autres, les informations relatives à la nature et au taux des sanctions.

2. En ce qui concerne l'allégation d'un manque d'indépendance dans le chef du Comité P

Au §170 de son projet de rapport, l'ECRI note que *« le service d'enquêtes du Comité P est composé essentiellement d'agents de police qui sont nommés pour cinq ans renouvelables et détachés d'un service de police dans lequel ils ont vocation à retourner après leur temps passé au Comité P. Par conséquent, ce dernier est généralement perçu comme n'étant pas suffisamment indépendant de la police »*. Plus loin, au §176 de son projet de rapport, l'ECRI recommande aux autorités belges de renforcer l'indépendance du Comité P.

Sans qu'il soit question ici de se défendre par rapport à la mise en cause de son indépendance, le Comité P tient toutefois à éviter l'amalgame qui est fait entre le fait que certains membres de son Service d'enquêtes soient détachés d'un service de police pour une période de 5 ans renouvelable et la mise en cause de l'indépendance de l'institution « Comité P » elle-même. Il convient dans ce cadre de bien avoir à l'esprit que le Service d'enquêtes P est hiérarchiquement soumis au Comité P - qui, lui-même, est composé d'un collège de 5 membres, parmi lesquels 4 magistrats et un civil – et qu'en conséquence, le Service d'enquêtes P ne dispose pas de compétence de décision autonome. On signalera également que fin 2008, début 2009, le Comité P a pu discuter du statut de ses enquêteurs avec sa Commission parlementaire d'accompagnement et prendra des mesures additionnelles pour assurer au mieux l'indépendance de ceux qui, parmi les membres de son Service d'enquêtes, sont détachés d'un service de police.