

## **Belgium<sup>1</sup>**

**IHF FOCUS: anti-terrorism measures; freedom of expression; torture and ill-treatment; prisons and detention facilities; freedom of religion; national and ethnic minorities; international humanitarian law; intolerance, xenophobia and racial discrimination; asylum seekers and immigrants; trafficking in human beings.**

The main human rights concerns in Belgium in 2003 were related to ill-treatment, the prison system, xenophobia and racial discrimination, and the rights of asylum seekers and immigrants.

In May, the UN Committee against Torture (CAT) examined Belgium's initial report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The CAT expressed concern, among other things, about cases of use of excessive force during demonstrations and the expulsion of foreigners; about the possibility of ordering the isolation of juvenile delinquents; and the ineffective functioning of administrative commissions and organs of internal control of prisons.

CAT recommended respect for the independence of the Belgian jurisdiction from executive power concerning the exercise of universal competence on the matter of grave violations of international humanitarian law. In July, amidst strong criticism from civil groups and human rights organizations, the government agreed to amend the universal jurisdiction law, known as "anti-atrocity law," to cover only cases when Belgian interests were directly involved.

In June, the European Commission on Racism and Intolerance (ECRI) released its third periodic report on Belgium expressing concern over the continuing presence of racist and xenophobic discourse in politics in the country and the increasing success of parties that resort to racist or xenophobic propaganda. The court proceedings against three non-profit associations linked to the extreme right Vlaams Blok moved on to a new stage after the case was transferred to the Court of Appeals of Gent.

In December, the Parliamentary Assembly of the Council of Europe (PACE) released its report on "Dutch-speakers' Right to Health Care in Brussels and the Surrounding Municipalities" in their own language.

### **Anti-Terrorism Measures**

The fight against terrorism in general and a framework decision of the Council of the European Union in particular, initiated a process of adopting a bill on terrorist offences and terrorist groups. On 13 November, the Chamber of Representatives approved the draft text without any in-depth discussions on its possible ramifications. The bill was then submitted to the Senate's Justice Committee for analysis and opinion.<sup>2</sup>

Lawyers and civil groups questioned the purpose of adopting a separate law since the Penal Code contained a sufficient number of provisions related to terrorist offences. The League for Human Rights expressed concern that the definition of terrorist offences as having the objective to "destabilize the fundamental economic and social structures of a country or an international organization" might lead to criminalization of some social movements.<sup>3</sup> Preventive detention was envisaged for all terrorist offences.

On 6 January, a bill was adopted to legalize several special tools for investigation and inquiry. Four categories were introduced: observation, infiltration, use of informers and criminal analysis. These included interception of telephone conversations and the search of houses in the absence of a

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<sup>1</sup> As reported by Human Rights Without Frontiers (IHF cooperating committee).

<sup>2</sup> Press Service, 28 November 2003, at <http://www.liguedh.org>.

<sup>3</sup> Press Service of the League for Human Rights, 2 December 2003, at [www.liguedh.org](http://www.liguedh.org).

criminal offence. Three organizations—the French and Dutch branches of the League for Human Rights as well as the Syndicate of Lawyers for Democracy—criticized the law and submitted a demand to the Arbitrage Court to nullify it.

### **Freedom of Expression**

While the rights of freedom of speech and of the press were generally respected, there was mounting concern over violation of journalists' right to confidentiality of their sources.

- On 1 July, the European Court of Human Rights (ECtHR) unanimously held Belgium in violation of article 10 (freedom of expression) of the European Convention on Human Rights (ECHR) for searching journalists' homes and workplaces. The searches were carried out to obtain evidence in connection with the prosecution of members of the State Legal Service for breach of confidence following leaks in a highly sensitive criminal case.<sup>4</sup> In June 1995, extensive searches had been conducted in the offices of four Belgian media outlets (*Le Soir*, *Le Soir Illustré*, *De Morgen*, and RTBF in Liège and Brussels) and in the private houses of five journalists (Philippe Brewaeys, Walter de Bock, Martine Ernst, René Haquin, Alain Guillaume). The ECtHR considered that the intervention was intended to prevent the disclosure of information received in confidence, and to protect the reputation of others. The ECtHR ruled that the means employed had not been reasonably proportionate to the legitimate aims pursued.

In January, the PACE released the first report by the general rapporteur on the media.<sup>5</sup> In the analysis on Belgium, the report drew attention to two cases of violation of journalists' rights to protect their sources. The first was the case of José Masschelin, a reporter for the daily *Het Laatste Nieuws* who was jailed on 14 March 2002 for possession of a confidential file concerning paedophilia. The second was the case of two reporters, Douglas de Coninck and Marc Vendermeir, from the daily *De Morgen* who on 29 May 2002 were ordered to pay €25 for every hour they continued to refuse to reveal their sources for an article on the Belgian State Railways.

In June, Senator Bourgeois submitted to the Chamber of Representatives a bill related to the protection of journalists' sources of information reaffirming that this was an important component of freedom of expression.<sup>6</sup>

### **Torture, Ill-Treatment and Police Misconduct**

In May, the CAT issued its conclusions and recommendations on the initial report of Belgium submitted in August 2001, two years after the country had ratified the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.<sup>7</sup> The CAT expressed concern, among other things, about cases involving use of excessive force during demonstrations or the expulsion of foreigners, at the possibility of ordering the isolation of juvenile delinquents aged 12 and over for up to 17 days, and at the ineffective functioning of administrative commissions and organs of internal control of prisons. It recommended that Belgian authorities ensure that all officials committing acts of ill-treatment be liable to criminal charges, proceed with allegations of excessive use of force by public officials, and align their conduct with the convention guidelines on the use of force in dealing with public demonstrations and expulsions of foreigners.

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<sup>4</sup> See chamber judgement on the case of *Ernst and Others v. Belgium* (Application No. 33400/96) of 15 July 2003, at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=403075803&Notice=0&Noticemode=&RelatedMode=0>.

<sup>5</sup> See "Freedom of expression in the media in Europe" (Doc. 9640 revised), 14 January 2003, at <http://assembly.coe.int/Documents/WorkingDocs/doc03/EDOC9640.htm>.

<sup>6</sup> See <http://www.lachambre.be>.

<sup>7</sup> CAT, *Conclusions and Recommendations of the Committee against Torture, Belgium*, 27 May 2003, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.30.6.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.30.6.En?OpenDocument).

- On 10 February, the Brussels Council Chamber decided to transfer back to the Correctional Tribunal of Brussels a case of five former police officers for their involvement in the fatal repatriation of Semira Adamu, a 20-year-old Nigerian, on 22 September 1998. Before the take-off of the plane, the police officers had employed the so-called "cushion technique," which was a restraining method authorized by the Ministry of Interior at the time but subsequently banned. On 12 December, four police officers were convicted. The escorting police officers received a suspended sentence of one year and their superior a suspended 14-month imprisonment. The fifth police officer, who was in charge of contacts with passengers, was acquitted.
- On 30 June, after ten years of court proceedings, the 14<sup>th</sup> Chamber of the Brussels Court of Appeal convicted a police officer for beating and insulting a person of Tunisian origin on 8 July 1993. He had been sentenced to eight months imprisonment with a suspension of five years and €5,000 of damages to be paid to the victim. The League for Human Rights and the Movement against Racism, Anti-Semitism and Xenophobia, who acted as civil parties on the side of the victim, asked for one euro as a symbolic payment.

Belgium's Permanent Commission for Control of Police Services (*Comité P*), established by law in 1991 as an external monitoring institution, was entrusted with the task of overseeing the functioning of police and law enforcement structures. As part of the general reform of the police, each police unit was required to have an investigation mechanism to examine allegations of misbehaviour on the part of the police officers. Such mechanisms, however, were not in place in all units.

### **Prisons and Detention Facilities**

The conclusions and observations of the CAT dealt at length with Belgium's prison system and the rights of persons in custody. Failures were mainly related to the lack of legislation sufficient to ensure the rights of persons subject to judicial or administrative arrest to have access to a lawyer immediately upon arrest and to be clearly informed of their rights. Concern was expressed with regard to access to health care, the lack of qualified personnel, the insufficient training of supervising staff, and the lack of recourse mechanisms against disciplinary sanctions and malfunctioning of the prison monitoring system.<sup>8</sup>

The report recommended the improvement of the prison law, in particular to define the judicial status of detainees and to clarify the prison disciplinary regime, and to guarantee the right of prisoners to file complaints before an independent and rapidly accessible body.

During the year, the Chamber of Representatives adopted a bill on principles concerning the administration of the prison system and the judicial status of detainees.<sup>9</sup> The adoption was preceded by several years of work on the subject, launched with the creation of a legal commission under the chairmanship of Lieven Dupont in 1997, with the task of elaborating on the principles of the legislative reform. The commission report was finalized in February 2000 and was submitted to the parliament in 2001. The adopted bill in 2003 underlined as a priority the need to examine the conclusions of the commission and prepare for legislative changes.

The Ministry of Justice established another commission, known as the Holsters Commission, which was entrusted with a study on punishments with a special focus on alternative sanctions. On 9 May, the commission submitted its report, which is expected to serve as a basis for a bill. On 11 March, the justice committee of the Chamber of Representatives had a special plenary sitting on the law on detention quotas, submitted to the parliament on 22 November 2002.

Overcrowding was a chronic failure of the prison system. As of 23 April, 8,086 places were available for a total of 9,209 prisoners. The number of people in custody was on the increase and there

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<sup>8</sup> Ibid.

<sup>9</sup> See <http://www.lachambre.be>.

were many debates across the political spectrum on extending the scope of punishments alternative to imprisonment as well as the possibility of provisional release of detainees.

## **Freedom of Religion**

### *State and Religion*

The relationship between the state and religions in Belgium was historically rooted in the principle of recognition and non-recognition of religions. However, recognition criteria were never enshrined in the Constitution, in decrees or in laws. Six religions (Catholicism, Protestantism, Anglicanism, Judaism, Islam and Orthodoxy) and secular humanism (*laïcité*) were recognized by the state. They enjoyed facilities and advantages that were denied to all other religious groups.

The state financed only recognized religions. State subsidies were provided by all taxpayers, including those who professed a non-recognized religion or who did not adhere to any religion or belief system. This system was not equitable in so far as taxpayers were unable to prohibit the state from using their income tax to finance religions and secular humanism that were openly opposed to non-recognized minority religions.

On 6 February, the Executive of the Muslims in Belgium, a representative body elected in December 1998, tendered its resignation following a report submitted to the Council of Ministers on 6 December 2002, which proposed, among other things, the replacement of some of the members of the Executive of the Muslims in Belgium. Earlier in 2002, several elected candidates were thought to have connections with fundamentalist circles and were rejected by the Ministry of Justice after the Intelligence Service had carried out a controversial screening.

In the aftermath of various crises inside the Executive of the Muslims as well as between the Executive, its General Assembly and the Belgian state, a new royal decree recognizing the members of the new Executive of the Muslims of Belgium was signed on 18 July and published on 25 July in the official gazette.<sup>10</sup> The mandate of the new Executive started on 1 May 2003 and would come to an end on 31 May 2004.

The question of wearing headscarves (*hijabs*) at educational establishments gained momentum in the wake of the publicized ban at Athénée Royal of Brussels 2 in Laeken. In June, the school decided to ban, as of the school year 2003, the wearing of all head-coverings and dozens of registrations were refused.

On the basis of article 9 of the ECHR, the government of the French Community handed over all responsibility to the schools under its authority. The proportion of French-speaking schools in Brussels refusing to enroll Muslim students wearing headscarves rose to 84% of all public and Catholic schools, according to statistics published by the sociologist Mina Bouselmati in her book *Le voile contre l'intégrisme* ("The Veil against Fundamentalism"). She estimated that a third of the students in Brussels schools were Muslim and 2% of them wore a head covering. According to the educational authorities, the refusal to enrol young Muslim girls wearing a headscarf reached 87% in those public schools under the authority of the City of Brussels, 88% in Catholic schools, whilst less than half (41%) were refused in the French Community schools.<sup>11</sup>

Following the debates in France and Germany on the issue, two Belgian senators submitted on their own initiative a draft resolution inviting the federal and federated authorities of the country to adopt new legislative acts banning the wearing of religious insignia in public places, including public hospitals.

### *Minority Religions*

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<sup>10</sup> See "Moniteur Belge", 25 July 2003.

<sup>11</sup> See *Le Soir*, 27 August 2003

The state had in place mechanisms and agencies—Center for Information and Advice on Harmful Sectarian Organizations (Sect Observatory) and Inter-Ministerial Coordination Agency for the Fight against Harmful Sectarian Organizations—to identify so-called “harmful cults,” warn the public and fight against them.

The recruitment method of members to the Sect Observatory far from guaranteed their impartiality. Indeed, half of the members were nominated by the Council of Ministers for approval by the House of Representatives, while the other half was directly appointed by the House of Representatives. Representatives of political parties, the Catholic Church, various anti-sect movements and ideologies were to be found among the members. Its independence was also scarcely guaranteed as it was under the authority of and financed by the Ministry of Justice.<sup>12</sup>

In September, the Sect Observatory issued its second biennial report.<sup>13</sup> It did not take any specific steps to clear the 189 movements suspected by the Parliamentary Commission on Sects of being sectarian and harmful, except the Baha'is and the Mormons. It targeted not only new religious movements but also groups working in the field of psychological and physical well-being.<sup>14</sup> However, according to the report, there were no harmful Islamic sectarian organizations in Belgium. The public information service on harmful sectarian organizations was quite opaque as neither the targeted movements nor researchers had access to the contents of the data circulated by mail and by email on the basis of enquiries. The budget of the Sect Observatory was not mentioned anywhere in its report. It must also be stressed that the work of the Inter-Ministerial Agency for the Coordination of the Fight against Sects was also quite opaque as it did not have to release a public report about its activities.

The mandate of the Board of Sect Observatory, which came to an end on 30 April just before the federal elections, was prolonged until 31 October. However, by 31 December, no new board had been appointed yet and vacancies had not been filled for years.

The number of new religious movements involved in judicial proceedings remained extremely limited. Three cases had been pending for several years: the spiritual leader of Spiritual Human Yoga and his secretary (since 1999), the leader of the Buddhist group OKC and his secretary (since 1997), and the Church of Scientology (since 2000).

### **National and Ethnic Minorities**

Belgium signed the Council of Europe's Framework Convention on National Minorities in 2001. However, the convention was not ratified due to the fact that the federated entities were not in a position to agree on the concept of “national minority.”

Belgium as a federal state comprises three communities, three regions and four linguistic regions (three monolingual and one bilingual). The 1962-1963 language laws have fixed the language boundaries, which were still valid as of the end of 2003. The principle of territoriality was thereby introduced, stipulating that in monolingual regions the use of the language of the region was compulsory for all public administrative acts. The same laws provided for linguistic facilities for the inhabitants of 27 communes contiguous to a different linguistic region, who had the right to request that, in their dealings with the authorities, language other than that of the region in which the communes were located should be used. Six of the 27 communes with facilities lie on Flemish territory in the Brussels periphery and have a large share, sometimes a majority, of French-speaking inhabitants. Though the official language in these communes is Dutch, these inhabitants have the right to request that French be used in their dealing with the public authorities. Brussels is officially a

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<sup>12</sup> See Anne Morelli, “A quoi sert donc l’Observatoire des sects” *Le Soir* 7 January 2003

<sup>13</sup> See <http://www.ciaosn.be>. For a detailed analysis of the report by Human Rights Without Frontiers, see [http://www.hrwf.net/html/belgium\\_2003.html](http://www.hrwf.net/html/belgium_2003.html).

<sup>14</sup> The report introduced for the first time the category of “le bien-être physique et mental,” at <http://www.ciaosn.be>.

bilingual city, with a majority of French-speaking inhabitants. Resolution 1301 (2002) of the PACE reiterated that Belgium was one of the countries with “significant minorities who need to be protected and whose rights are not officially recognized.”<sup>15</sup> The assembly spelled out their proposals for groups in Belgium that should be considered as national minorities under the Framework Convention: at state level, only German-speakers should be considered a minority; and at local and regional level, French-speakers should be considered a minority in the Dutch-language and German-language regions, while Dutch-speakers and German-speakers should be considered minorities in the French-language region.

On 3 December, the PACE released its report *Dutch-Speakers’ Right to Health in Brussels and the Surrounding Municipalities* in their own language, including the opinion of the Committee on Legal Affairs and Human Rights.<sup>16</sup> On 1 October 2002 five Belgian local councilors sent a petition to the assembly on problems, which existed with regard to the possibility for Dutch-speakers to receive treatment using their mother tongue. Boris Cilevics (Latvia, Socialist Group) was appointed as rapporteur. The preliminary findings during his visit to the country on 10 September 2003 led him to conclude that there was serious discontent among the Dutch-speaking population with respect to the language situation in the hospitals in Brussels and the surrounding municipalities. As both Dutch and French languages were official languages, the issue was not related to minority protection. As concluded by the Committee on Legal Affairs and Human Rights, it was primarily a question of discrimination on the grounds of language.

### **International Humanitarian Law**

In July, despite strong criticism from civil groups and human rights organizations, the government agreed to amend the so-called Anti-Atrocity Law (adopted in 1993 and amended in 1999)<sup>17</sup> to strip it of any claim to jurisdiction except when Belgian interests are directly involved.

The Anti-Atrocity Law put into practice the principle of “universal jurisdiction” recognized under international law. It gave Belgian courts the authority to prosecute persons accused of genocide, crimes against humanity or war crimes regardless of where the crime took place or whether the accused or the victims were Belgian nationals.

There had been one trial under this law by the end of 2003. In June 2001, four Rwandans were convicted by a Belgian jury on charges of involvement in the 1994 genocide in their country. Complaints were filed against a number of former and present heads of state. Many of them were not actively pursued. It was also ruled that officials in office were protected by state immunity.

### **Intolerance, Xenophobia and Racial Discrimination**

Belgium has ratified the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights (ICCPR). As of January, the country had a new Anti-Discrimination Law, which provided not only for legal protection against racial discrimination, but also against discrimination based on sexual orientation, handicap, state of health, religious or philosophical beliefs, and age.<sup>18</sup> The new law supplemented the 1981 Anti-Racism Law, which was limited by several deficiencies, in particular, the difficulty of providing evidence of racially motivated acts in a criminal case.

The new law provided important solutions to the shortcomings of the 1981 Anti-Racism law. First, discrimination was defined in broad terms as an act, whether intentional or not. That was a new civil approach, dealing with discrimination as a situation that must be rectified rather than as a crime. Second, the responsibility of proving the case was shifted from the victim to the defendant. If the

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<sup>15</sup> Council of Europe Resolution 1492 (2001) as quoted in Resolution 1301 (2002), at <http://assembly.coe.int>.

<sup>16</sup> See <http://assembly.coe.int/documents/workingdocs/doc03/edoc10009.htm>.

<sup>17</sup> Act on the Punishment of Grave Breaches of International Humanitarian Law.

<sup>18</sup> Act of 20 January 2003 reinforcing the legislation against racism published in *Moniteur Belge*, 12 February 2003.



victim presented a case, which established a suggestion of discrimination, it was up to the defendant to prove non-discrimination. The law provided for a civil procedure under which claimants would be in a position to have their damages redressed and compensated in the quickest manner possible.

The implementation of the provisions of the Anti-Racism Law had been entrusted to the Center for Equal Opportunities and Fight against Racism (CECLR), established in 1993. With the adoption of a new act of 25 February 2003, which established racist and discriminatory motives as an aggravating circumstance, the Center was empowered with the jurisdiction to deal with the expanded scope of motives of discrimination (with the exception of cases of sexual discrimination).<sup>19</sup> There were two important cases under the Anti-Racism Law:

- On 4 June, the Correctional Tribunal of Brussels proclaimed its competence to deal with the case of Daniel Féret, federal deputy and president of the extreme-right National Front party (FN), and George-Pierre Tonnelier, responsible for the Internet site of the party. Between 1999 and 2001, the party distributed brochures inciting racism and segregation. Féret and Tonnelier appealed the decision. On 4 November, the Court of Appeal in Brussels considered the appeal premature and inadmissible. The prosecution asked for the reopening of the procedure and the Court of Appeal decided to commence an investigation. The Center for Equal Opportunities and Fight against Racism, the League for Human Rights and the Movement against Racism, Anti-Semitism, and Xenophobia acted as civil parties bringing charges against the racist character of the propaganda and parts of the political program of the National Front party.
- On 2 December, Hubert Defrouny, leader of the French-speaking extreme right, was convicted on charges of racism by the Correctional Tribunal of Liege. He was sentenced to five months imprisonment and a fee of €90. It was his third conviction under the Anti-Racism Law. He is known as the author of a racist publication distributed in the municipality of Beyne-Heusay during the municipal elections campaign in October 2000.

In its third periodic report on Belgium of 23 June the European Commission on Racism and Intolerance (ECRI) expressed concern at the continuing presence of racist and xenophobic discourse in politics in the country and at the increasing success of parties that resort to racist or xenophobic propaganda.<sup>20</sup>

An important legislative act was the 1989 law regulating the financing of political parties and its 1999 amendment, which provided for limitation or cessation of donations to political parties hostile to human rights and freedoms. In 2001, the Council of Ministers adopted a decree for the application of the 1989 law allowing for the expropriation of public funding to parties “manifesting hostility towards human rights.” The ECRI report recommended the adoption of implementing arrangements enabling the Council of State to rule on withdrawal of public financing from parties that displayed manifest hostility towards the rights and freedoms guaranteed by the ECHR. On 28 January 2004, the Interior Committee of the Chamber of Representatives adopted a draft law to that effect. The Vlaams Blok representatives voted against the bill.

- In 2000, the Center for Equal Opportunities and Fight against Racism and the League for Human Rights took to court three non-profit associations on charges of providing services and assistance to Vlaams Blok. The Center and the League wanted to prove that racial discrimination underlies the Vlaams Blok political doctrine. In 2001, the Correctional Tribunal of Brussels decided that the case fell within the scope of political offences and as such had to be judged by people’s jury. In 2002, following the appeal lodged by the Center and the League as civil parties in the case, the public prosecutor called for the conviction of the three

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<sup>19</sup> Act of 25 February 2003 amending the 1993 law on the establishment of the Center for Equal Opportunities and Fight against Racism, published in *Moniteur Belge*, 17 March 2003.

<sup>20</sup> ECRI, *Third Report on Belgium*, 23 June 2003, at [http://www.coe.int/t/E/human\\_rights/ecri/1-ECRI/2-Country-by-country\\_approach/Belgium/Belgium\\_CBC\\_3.asp#TopOfPage](http://www.coe.int/t/E/human_rights/ecri/1-ECRI/2-Country-by-country_approach/Belgium/Belgium_CBC_3.asp#TopOfPage).

associations in front of the Brussels Court of Appeals. On 26 February the Court of Appeal equally proclaimed its incompetence to deal with the case. On 18 November the Court of Cassation overruled the decision of the Brussels Court of Appeals. The case will be tried before the Court of Appeals of Gent.

In 2003, there was one conviction under the 1995 Law against Negationism.

- On 9 September the Correctional Tribunal of Antwerpen sentenced Siegfried and Herbert Berbeke to one-year suspended imprisonment and a fine of €2,500. Their civil rights were suspended for a period of ten years. They were convicted for distributing negationist material and for managing a negationist Internet site.

On 28 January the government signed the Additional Protocol to the Council of Europe Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems. The protocol remained to be ratified.

### *Anti-Semitism*

Manifestations of anti-Semitism were on the increase in the country in the period following the second *intifadeh* of October 2000. Though the registered cases were fewer in 2003 when compared to the sharp increase recorded in 2002, the 35,000-strong Jewish community was the continued target of verbal abuse and harassment as well as of public oral and written expressions, such as anti-Semitic slogans uttered during demonstrations and anti-Semitic graffiti sprayed on Jewish owned shops or at public places.

- On 13 June an attempt was made to bomb the synagogue on Rue De La Boucheterre in Charleroi. The attempt was foiled by the rapid intervention of the fire brigade located nearby. The suspect, claiming that he had acted in the name of Allah, was arrested. He was said to be mentally insane.
- On 18 March a Molotov cocktail was thrown at the Clinique Synagogue in Brussels. Neighbours noticed the flames and extinguished the fire. The door of the synagogue was damaged.

### *Islamophobia*

In the aftermath of 11 September 2001, tendencies towards Islamophobia increased in intensity. The hostile climate continued to be fuelled by extreme right parties and some political figures in other parties. The most common offense was the publication and dissemination of printed material targeting Muslims and persons of Arab origin.

The ECRI report warned against the strong tendency to read current manifestations of anti-Semitism and Islamophobia exclusively or predominantly as intercommunity problems, notably opposing Arabs and Jews or Muslims and Christians. ECRI stated that an adequate response to these developments could only originate from concerted efforts of all relevant actors composing Belgian society and should imply a thorough implementation of the legal provisions against racism and discrimination in respect of all perpetrators and for the benefit of all victims, with special emphasis on the provisions against incitement to racial violence, hatred and discrimination.<sup>21</sup>

A positive development was the initiative of the federal government to convene a national roundtable around the theme "Living together" and to entrust the Centre for Equal Opportunities and Fight against Racism with the establishment of local coordination units aimed at proposing concrete actions promoting mutual respect and respect of the rule of law. It also set up a common platform

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<sup>21</sup> Ibid.



bringing together the federal government, the regions and the communities to evaluate existing policies on the issue of "living together" and make proposals for further action.

### **Asylum Seekers and Immigrants**

After a period of decrease in the number of asylum seekers at the end of 2002 and during the first few months of 2003, their numbers began to rise from May onwards reaching a total of 1,732 applications at the end of 2003. Most asylum seekers had their claims examined through the accelerated procedure. The first instance decision on the procedure to be applied was taken by the Aliens Office, on the basis of both formal considerations (such as whether the applicant had transited through a "safe third country") and substantial considerations (such as whether the claim was "manifestly unfounded"). This decision could be challenged before the General Commissariat for Refugees and Stateless Persons (GCRSP). Figures indicated that the Aliens Office decided on an accelerated procedure for around 90% of the total amount of asylum applications and that this decision was confirmed by the GCRSP for around 70% of these.

In 2002 and beginning of 2003, the Council of Ministers adopted a series of documents on Belgium's asylum and immigration policies. The lack of parliamentary debates on the issue rendered the government vulnerable to criticism, as there was a general feeling that the policies were opaque and lacked transparency.

In its third periodic report, ECRI recommended that any measures taken with regard to immigrants and asylum seekers, even when deemed to be sojourning illegally in the country, should reflect the principle that they were not criminals. ECRI drew attention to the fact that key institutions such as the police and border controls needed to rectify their misconceptions and combat their prejudices concerning immigrants.

Two basic principles ran across the fault lines of the asylum and immigration policies. First, Belgium applied a restrictive interpretation of criteria envisaged in the 1951 Geneva Convention. Second, the country had no legal provisions regulating the granting of subsidiary protection to persons who did not fulfil criteria for being granted refugee status, but who were in need of protection for humanitarian reasons.

The government was confronted with a series of protests by asylum seekers.

- At the end of July, six Kurdish asylum seekers from Turkey went on hunger strike at the Red Cross Center of Nonceveux (Aywaille) protesting their expulsion orders. Their application was found inadmissible and they appealed the decision before the GCRSP. Their lawyer introduced a regularization demand for each one of them. They also demanded the Ministry of the Interior to suspend their expulsion to Turkey. On 2 September, they called off their strike following negotiations with a GCRSP representative guaranteeing their non-expulsion for a period of three months.
- At the end of July, some 300 Afghan asylum seekers went on hunger strike at the Saint-Croix church in Brussels demanding collective regularization of their status. Earlier, some 1,100 Afghans had received orders to leave Belgian territory. The government first appointed an intermediary to carry on talks with the strikers. The talks, however, ended in failure and the interior minister sent the federal mediator to reconcile the differences between the government and the asylum seekers. The strike was called off after 22 days as a result of the negotiations held. The asylum seekers agreed to the settlement of each individual case rather than to a collective solution, which the government firmly denied.
- In September, several Iranian asylum seekers occupied the premises of the Free University of Brussels to demand equal treatment of their applications. After eight weeks, out of which 25 days were on hunger strike, their lawyers came to an agreement with Belgian authorities guaranteeing that their demands will be seriously studied.

- On 27 December, a number of Iranian asylum seekers went on hunger strike protesting the way their demands had been reviewed by the Aliens Office. The interior minister stated that their applications were processed in a legal and objective way.

During the year, 7,742 asylum seekers and illegal residents were subject to forced repatriation. A steady increase of forced repatriations had been registered since 2000: 3,001 in 2000, 5,722 in 2002, and 7,510 in 2002. The interception of persons entering the country illegally was also on the rise with 6,000 people facing immediate *refoulement*. On the other side, the voluntary returns decreased with 2,820 cases in 2003 compared with 3,225 in 2002 and 3,633 in 2001. With all methods included, as many as 14,110 people had to leave the country during the year.

There were six closed centers in Belgium, which were administered by the Foreigners' Office under the authority of the Ministry of the Interior. Two of the centers were situated at the border: the centre INAD at the Brussels airport for "non-admissible" cases, where foreigners were detained before their *refoulement*; and the transit center 127 for foreigners who lacked the necessary documents to enter the country and ask for asylum.

The other four centers were in different regions of the country for immigrants waiting for their documents to be processed. Despite the publication, in October 2002, of a decree calling for humanization of the closed centers, conditions there were not improved and their very existence was continuously criticized by civil liberty groups. The League for Human Rights organized campaigns demanding the closure of the centers.

A persistent problem was the detention of accompanied and unaccompanied minors and especially reports that unaccompanied minors were in some cases returned to their countries of origin reportedly without previous verification of their return to family or appropriate agencies there. The much publicized case of Tabitha,<sup>22</sup> a Congolese girl of five years at the time of her stay in the 127 closed center, gave impetus to the establishment of the "Minors in Exile" platform involving around 40 NGOs and public institutions.

In December 2002, a framework law was passed providing for the automatic assignment of a tutor to each unaccompanied minor in Belgium as well as an order to discontinue the placement of unaccompanied minors in closed centers. However, the law could not be enacted before the attribution of competences between the federal states and the communities were clarified and the tutelage system could not be installed as soon as the urgency of the matter warranted.

The number of unaccompanied minors in the border closed centers decreased to 16 for the first half of 2003 compared with 127 in 2001 and 59 in 2002. From January to August 2003, 349 minors were registered as asylum seekers, while the police intercepted 433 minors living illegally in the country. In the first half of the year, eight unaccompanied minors were repatriated.

### **Trafficking in Human Beings**

In a report published in November, the CECLR drew attention to the scope of the organized criminality as regards trafficking in human beings. Out of 795 criminal cases in 2001, 114 (14.3%) were related to trafficking. It was known that trafficking was the core business of 69 criminal organizations, while for the rest of 45 organizations it was a complementary activity. Analyzing the situation, it was concluded that all cases of trafficking were linked to criminal organizations. The CECLR acted as a civil party in several court cases.

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<sup>22</sup> See Report on Belgium, *IHF Report 2003 Human Rights in the OSCE Region: Europe, Central Asia and North America*, at <http://ihf-hr.org>.

- On 7 April, the Correctional Tribunal of Antwerp convicted seven persons for trafficking in human beings, exploitation of prostitution, and organized crimes. An aggravating circumstance was the fact that one of the victims was a minor. The two principal suspects were sentenced to 7 years imprisonment.

The long overdue amendments to the 1997 directive on assistance to victims of trafficking in human beings were finally adopted on 17 April and promulgated on 27 May. The new provisions enabled victims to extend their period of stay as long as the investigation and court proceedings were in course. Victims were to be granted residence permit when their complaint or declaration had led to a first-instance conviction.