

IHF FOCUS: Judicial system; religious intolerance; intolerance, xenophobia and racial discrimination; protection of asylum seekers and immigrants; women's rights; rights of the child.

The undemocratic structures of Belgian bar associations restricted barristers' freedom of expression and their independence. In some cases they also influenced the course of justice.

Belgium had adopted many laws against racially motivated acts, but in practice extremist right-wing parties became increasingly popular and the spread of racist and xenophobic propaganda was a serious cause for concern.

On the basis of a December 1999 decision by the Parliament, the status of certain categories of illegal immigrants was regularised. An independent commission was set up to examine applications on a case-by-case basis, but its work was extremely slow. New provisions on asylum seekers guaranteed them access to the asylum procedure, but it was feared that most of the claims would undergo the accelerated asylum procedure and be dismissed.

Religious freedom was affected by the system of recognition, which gave a few traditional religions privileged status. Members of non-recognised minority religions faced discrimination, defamation campaigns, and harassment, including criminal proceedings.

Judicial System

In 2000, the independence and freedom of expression of barristers remained jeopardised by their bar associations. The Presidents and Councils of the bar associations had wide discretionary powers that enabled them to influence the course of justice.

The intervention of some organs of the bar associations was increasingly contested both by barristers and persons on trial. These bar associations were accused of carrying out a corporatist policy and limiting the rights of the litigants.

Undemocratic Elections

In this field, criticism was targeted primarily at the Presidents and Councils of the bar associations who were not democratically elected. In the French Bar Association of Brussels (*L'Ordre français des Avocats du Barreau de Bruxelles*), barristers had to vote for as many candidates as there were positions available to ensure that their votes were valid. In practice, this meant that they often had to vote for candidates they did not wish to elect, as the number of candidates normally only slightly outnumbered the number of seats available.

Moreover, the same individuals always counted the votes and were always selected by the bar President. Observers were forbidden from monitoring the count.

Right to Choose a Lawyer of One's Choice

The President and Council of the bar had enormous and unfettered power: in practice, they were able to, and sometimes did, influence the course of justice. Under a pretext of tactlessness, bar presidents could and sometimes did force barristers to drop cases, depriving litigants of their chosen counsel, sometimes just before a hearing or deadline. These decisions were made with no compulsory formal procedure or motive and with effectively no opportunity for appeal.

Censorship of Barristers

Barristers who were critical of bar associations or magistrates were increasingly prosecuted. They faced unilateral sanctions and disciplinary action, often without details of the infraction to be prosecuted. The Presidents of the bar associations could therefore act as true censors: they could prevent barristers from defending certain theories, exposing certain arguments or criticising certain decisions.

Therefore, in Belgium, a President of the Bar, by a unilateral decision that he/she

could not justify and against which there was no effective recourse, was able to deprive a person on trial of his/her rights under the law, and of the possibility to obtain the protection of the legal powers. The bar authorities could therefore operate outside all control. For example, the Brussels Bar amassed a capital of 104,000,000 Belgian francs (about U.S.\$2,500,000) over a few years due to a significant increase in the compulsory fees that lawyers paid to the bar. This patrimony was allegedly not subject to tax, and there was no control over its management. Belgian lawyers did not dare to raise such issues.

Religious Intolerance

The relationship between the State and religions in Belgium is historically rooted in the principle of recognition and non-recognition of religions. However, recognition criteria were never enshrined in the Constitution, decrees or in law.

As of the end of 2000, six religions and secular humanism (*laïcité*) were recognised by the State. When the Belgian State was created in 1830, a number of religions had already been recognised under French rule: Catholicism and Protestantism (since 1802) and Judaism (since 1808). Anglicanism was recognised in 1835, Islam in 1974 and Orthodoxy in 1985. Secular humanism has indirectly enjoyed state recognition since the last revision of the Constitution (17 February 1994).

In the past, the Belgian State also used its discretionary power to recognise one or two movements inside spiritual families where diversity prevailed: the Greek and Russian Orthodox Churches in the Orthodox family; the EPUB (*Eglise Protestante Unie de Belgique*/ United Protestant Church of Belgium grouping together a number of historical churches) and Anglicanism (separately) in the Protestant family. Pentecostal and Evangelical Churches, which were denied separate recognition by the Ministry of Justice, tried to create a common platform with the EPUB to enjoy

the advantages of recognition. The policy of the Ministry of Justice in this regard was a clear form of state interference in the religious sphere.

Not all movements inside the Muslim community had joined the administrative representative body that was recognised by the State as the spokesperson of Islam. In the secular humanist family, only the *Centre d'Action Laïque* (Center of Laicist Action) was recognised by the State.

Eight federal ministries, the ministries of the three linguistic communities, the ministries of the three regions (Flanders, Wallonia and Brussels), the administrations of the ten provinces and the 589 municipalities were involved in financing the recognised religions and secular humanism, but Islam remained dramatically under-financed. On the one hand, the Federal State paid the salaries, retirement and lodging costs of ministers and also subsidised the construction and renovation of places of worship, but decided how many clerics were paid in each religion – thus reflecting clear interference by the State in the religious sphere. On the other hand, the municipalities had to pay any debts incurred by the ecclesiastical administrations of recognised religions without having the right to check their accounts.

In 2000, a number of political parties considered changing the financing system of religions and secular humanism so as to allow taxpayers to choose the belief system they wanted to finance through their income tax. However, no draft law had been presented to the Parliament by the end of 2000. As a result, the financing system remained discriminatory towards non-recognised religions and their followers.

Jehovah's Witnesses and other minority religions were denied the right to bring spiritual assistance to their members in hospitals, detention centres for asylum seekers and similar institutions, a right granted only to chaplains of recognised religions and moral advisers of secular humanism. In public schools of Belgium's

French-speaking community, Jehovah's Witnesses' children were obliged to attend either ethics classes (contradictory with their beliefs) or classes of another religion. In the Flemish-speaking community, the children were exempt from this requirement.

The Cult Issue

The list of 189 movements annexed to the report of the Parliamentary Commission on cults and the information brochure *Guru, You'd Better Watch Out!* widely distributed in schools and public places continued to be a reference source for private and public authorities. More cases of intolerance and discrimination towards individuals were recorded by Human Rights Without Frontiers in 2000: intolerance and victimisation in schools, at work and in the neighbourhood; hate speech in the media; defamation; slander; loss of jobs or promotions; loss of visitation rights or child custody in divorce settlements; denial of room rental; police crackdown, etc.

◆ On 26 October, a public meeting of the new religious movement *Sahaja Yoga*, a group with only 150 members in Belgium, was banned by order of the Mayor of one of the municipalities of Brussels. A dozen police officers accompanied by a bailiff appeared to ensure the ban was respected. The organisers of the meeting, scheduled for later that evening, were informed that it had been banned following orders from state security. The auditorium of the cultural centre in Woluwe St Pierre (Brussels) had been hired several months in advance for a presentation of the *Sahaja Yoga* movement, and the meeting had been advertised on the radio, posters, and leaflets. At 6.30 p.m. barricades were erected in front of the entrance to the cultural centre and a dozen uniformed and plainclothed police officers were present. Some of the officers stated that they belonged to the public relations department of the gendarmerie, others stated that they were a part of the state se-

curity services or the Belgian Brigade of Surveillance and Research (BSR). The bailiff also presented an affidavit. The organisers were informed that all their meetings were forbidden and that any discussion of *Sahaja Yoga* would result in arrest. The group has never been prosecuted for any illegal activities.

◆ In 1999, the Anthroposophic Society won its case in the first instance against the French Community (one of the federal entities of the Federal Kingdom of Belgium) with regard to defamatory statements spread in the cult prevention brochure *Guru, You'd Better Watch Out!*. The ruling was appealed and a hearing was held on 25 November 1999, leading eventually to a decision on 20 January 2000 to overturn the trial decision because of a "lack of urgency," as all the brochures had already been distributed. The Society planned to continue with proceedings. The brochure was not reprinted and its content was removed from the website of the French Community, probably because a new Minister, known to be more respectful of the rights of minority religions, took office after the June 1999 elections.

◆ The Buddhist group OKC accused of being a harmful sectarian movement in the brochure *Guru, You'd Better Watch Out!* lost its case in the first instance, due to the lack of emergency, but continues the proceedings.

◆ Another complaint lodged by the Anthroposophic Society against the creation of an Observatory of Cults called the Information and Advice Center on Harmful Cults was dismissed by the Arbitration Court. A complaint was lodged with the European Court of Human Rights in September 2000.

◆ The case *Vibration Cœur* (Vibrating Heart) v. The Belgian State was pending as of this writing. *Vibration Cœur*, a non-profit making association of five psychotherapists who hold training sessions for medical

practitioners, was noted on the list of 189 movements suspected of being harmful cults.

◆ In January 1999, Ms. Vo, the Belgian secretary of the non-profit making association Spiritual Human Yoga (SHY), was arrested by an anti-terrorist unit and imprisoned for 22 days. The spiritual leader of the movement, Master Dang, an American citizen, was also imprisoned for 65 days. He was released only after paying U.S.\$1.3 million in bail. Dozens of SHY practitioners were interrogated by the police to substantiate accusations of the illegal practice of medicine and financial embezzlement. Two years later, no progress had been registered in this case.

◆ Over one year after the raid of the anti-terrorist unit against the headquarters of the Church of Scientology, the case was still pending as of this writing.

◆ In 2000, charges against the Japanese movement Sukhyo Mahikari, under examination on suspicion of alleged financial embezzlement, were dropped.

In the fall of 2000, the Information and Advice Center on Harmful Cults was nearly operational. Its mission is to collect and grant public access to documents about so-called cults.

Intolerance, Xenophobia and Racial Discrimination

Belgium has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, and the ICCPR, Article 20(2) of which forbids any incitement to national, racial or religious hatred.

Further, Belgium adopted a separate law on 31 July 1981 aimed at cracking down on acts inspired by racism or xenophobia. In practice, however, its application was limited by several deficiencies, in particular the difficulty of providing evidence of racially motivated acts in a criminal court. To rectify this shortcoming, it was proposed

to have a general anti-discrimination law that would provide for a civil procedure under which claimants would be in a position to have their damages redressed and compensated.

An important evolution of the 1981 law was the 7 May 1999 amendment of Article 150 of the Constitution, under which press-committed acts motivated by racism and xenophobia were taken to an ordinary criminal court, thus avoiding the more complicated procedure of convening a people's jury, which had previously been viewed as one of the main drawbacks in applying the law.

Another relevant legislative act was the law of 12 February 1999, which added Article 15 to the 1989 law regulating the financing of political parties. The article provided for the limitation or cessation of donations to political parties hostile to human rights and freedoms. However, in 2000, the law still lacked an implementation mechanism. Moreover, it could only be applied after a certain political party was convicted of inciting racism and xenophobia under the anti-racist law of 1981.

The scope of racially motivated acts was wide-ranging, including problems encountered by foreigners with public services, discrimination in housing, employment, education, and access to public places. The major concern, however, was the rise of extremist right-wing parties and the spread of racist and xenophobic propaganda. This growing tendency culminated in the 30 percent support of the Vlaams Blok, an extreme-right Flemish party, at the municipal elections in the summer of 2000.

◆ The case against Vlaams Blok, which opened in 1999 for inciting racial hatred during airtime given to political parties on national television, was still pending at the end of 2000. This case in particular led to the additional law regulating the financing of political parties. In October 2000, the Center for Equal Opportunities took three associations to court on charges of collaborating and providing help to Vlaams Blok.

Whatever the outcome, the case was considered to be important in triggering further political discussions on the behaviour of political parties and their associate organizations.

In 2000, the Center for Equal Opportunities acted as a civil party in 80 cases of serious complaints involving racism and xenophobia. While most of these were still pending at the time of this writing, three important cases related to negationism and the spread of racism over the Internet ended in convictions. However, many complaints against acts of incitement to racial discrimination and hatred by the extreme-right media were thwarted by the incompetence of the judicial system dealing with cases of freedom of the press.

Protection of Asylum Seekers and Immigrants

On 22 December 1999, the Parliament voted on a regularisation law concerning certain categories of illegal immigrants and set up an independent commission to examine applications on a case-by-case basis. As defined by the Minister of Interior, the regularisation process was unique and provided for time limits for claims by persons who had entered Belgium by 1 October 1999. It was explicitly stated that this policy was based on the principle of humanity as much as on the principle of closed borders.²

A total of 32,662 dossiers concerning over 50,000 persons were submitted through the application process. With only 483 applications processed in nine months, it was stated that the work of the commission was paralysed due to the cumbersome bureaucratic procedure and the divergent opinions on its functioning. The need to accelerate the process was emphasised and 1 July 2001 was set as a deadline.

The regularisation process itself turned out to be just a segment of the political discussions in Belgium on immigration and

asylum issues. Throughout the last months of the year, the reform of the asylum procedure and the introduction of new migration policies were high on the political agenda.

The outcome of the political debate was the agreement reached by the Council of Ministers in November on an asylum policy, which provides for two types of procedures (normal and accelerated) in processing asylum claims.

Theoretically, the new provisions should guarantee each asylum seeker access to the asylum procedure. However, it was estimated that 80 percent of the claims would be defined as "manifestly unfounded" on the basis of fourteen criteria and as such be processed under the accelerated procedure within three weeks.³ The Federal Administration on Asylum took charge of collecting asylum claims and deciding on their eligibility.

Most NGOs dealing with asylum issues concluded that the new asylum procedure was more restrictive and less open than the previous one. It was feared that the accelerated processing of applications would reduce the chances of refugees to have their claims examined thoroughly.

Criticism was also expressed with regard to the degree of independence of the Federal Administration on Asylum; the ineligibility to the regularization procedure if right to asylum were not granted; the existence of a list of "safe countries;" and the establishment of registration centres at borders to serve as "filters," which was believed to lead to the decentralisation of the Foreigners' Office.

While 1999 saw a 60 percent increase in asylum claims compared with the previous year, the year 2000 confirmed the growing tendency with 24,343 claims submitted in the first nine months. Since 1998, however, only 8.4 percent of a total of 174,550 applicants have been granted the status of political refugee.⁴

In the meantime, the Government decided to limit social aid to asylum seekers by excluding financial support to provide

them with housing, legal aid and medical care. This decision was outspokenly criticised by human rights organizations as contradicting the right of every person to have his human dignity respected, as enshrined in Article 23 of the Constitution.

Though extensively discussed, the Council of Ministers could not reach an agreement on the introduction of new migration policies. It was decided in principle to set up an Observatory of Immigration under the Center for Equal Opportunities to analyse the migratory tendencies.

Despite the diversity of opinions on future policies, the common feeling among politicians was that migratory flows in Europe are on the rise and the Belgian Government announced its intention to launch a debate on European policies on migration when the country takes over the European Union presidency in July 2001.

"Closed Centres"

The issue of "closed centres" was also at the core of much political debate throughout the year and the asylum policy package adopted in November contained a draft royal decree on the functioning of the "closed centres" run by the Foreigners' Office in order to facilitate the deportation of illegal immigrants and asylum seekers whose claims were dismissed. The most important new aspect was the establishment of a control commission charged with collecting and examining individual complaints made by detainees.

The total capacity of the "closed centres" was 480 places in the so-called "127" and "127bis" centres in Melsbroeck and Steenokkerzel respectively, which are for asylum seekers who have lodged an asylum request at Brussels airport, as well as three centres for illegal immigrants in Merksplas, Bruges and Vottem. There were cases in which detainees at these centres were subjected to treatment that violated international human rights standards.

In July 1998, the Council of the State annulled the internal regulations of these

centers, finding them more severe than prison regulations. Since then, however, a lack of activity and idleness has prevailed over the need to ameliorate their conditions.

In October 2000, the death of an Albanian asylum seeker trying to escape from "127bis" one day before he was due to leave led to the revision of the "closed centres" concept. It was concluded that they were part of a mechanism that in the long run will have to be abolished.² The decision to abolish the practice of placing unaccompanied minors in "closed centres" was an important change to this effect.

The idea of extending the capacity of the open centres and building new ones was the subject of much political and public debate, as the increasing migratory flows strained the capacity of existing facilities. It was estimated that 555 new places should be opened in Wallonia, 440 in Flanders, and 300 in Brussels, while also emphasizing the possibility of having more private centres. At the end of 2000, there was only one private centres in Erezée, with a capacity of 45 places.

The reaction to the Government's intention to construct new centres for political refugees near Anvers in Flanders, however, met political and public resistance to the reception of more asylum seekers in an area where the spread of racist and xenophobic propaganda was on the rise and the extreme right-wing party, the Vlaams Blok, enjoyed increasing support.

Women's Rights

In 2000, as in previous years, hundreds of women were brought to Belgium via Mafia networks as victims of trafficking in human beings. They came primarily from Central and Eastern European countries, as well as from Asia and Sub-Saharan Africa. Lured to the country by promises of high-paid work, they were treated as sexual slaves on arrival.

In a circular dated 11 February 2000, the Prosecutor's Office defined the priori-

ties in combatting trafficking in human beings and outlined ways of coordination between the police and the Prosecutor's Office. Trafficking in women was set as the area of utmost priority as the number of women victims accounts for 79 percent of victims in Belgium. Although trafficking in human beings is a wide phenomenon, it has a disproportionately high impact on women. At the same time, sentences and fines given to traffickers – from two to six years' imprisonment and an average fine of 100,000–400,000 Belgian francs (approximately U.S.\$ 2,500–10,000) – seemed too little to have any dissuasive effect.

Moroccan wives who were repudiated by their husbands, according to Moroccan law, had to have the phrase "repudiated" on their Belgian identity papers, even though this provision did not exist in Belgian law. This administrative practice was both degrading and discriminatory, as Moroccan wives had no option to repudiate their husbands, a right only granted to their husbands and without any recourse to the courts.

Rights of the Child

The number of unaccompanied foreign minors arriving in Europe rose steadily in 2000. Approximately one thousand of such minors were officially registered in

Belgium, but the real number was believed to be much higher. The minors had no specific status or protection and those over 16 were sometimes placed in "closed centres." The Government promised to open a federal housing centre for a short and temporary stay while the administrative status of the minor was clarified, after which point they would be accommodated in houses and families. During the asylum procedure, a significant number of minors disappeared and were picked up by traffickers in human beings.

With regard to child custody decided in court, a mixed Belgian-Moroccan Commission was set up to meet twice a year to settle judicial differences between the two countries. In 2000, the Commission had 25 files of fathers who had "kidnapped" their children and taken them out of Belgium. In June, however, the Commission adjourned its work due to tensions between the negotiators on both Moroccan and Belgian sides. In the wake of several diplomatic demarches, the Commission reconvened in October. As a result of its work, six children were returned to Belgium and their fathers were sentenced to two years imprisonment for kidnapping. In light of similar problems with other nationals, Belgium should have to extend this practice with other country's governments.

Endnotes

- ¹ As reported by Human Rights Without Frontiers (IHF Cooperating Committee), January 2001.
- ² *Le Soir*, 7 January 2000
- ³ Belgium's Prime Minister, quoted in *Le Soir*, 14 November 2000.
- ⁴ *Le Vie Express*, No. 18, 10-16 November 2000.
- ⁵ Belgium's Minister of Interior, quoted in *La Libre Belgique*, 14-15 October 2000.