

## **Council of Europe contribution for the 24<sup>th</sup> UPR session regarding Belgium**

### **Prevention of torture**

#### *2011 ad hoc visit*

On 26 June 2012, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Tilburg prison from 17 to 19 October 2011, together with the Belgian and Dutch Governments' response (the report in English and the response in French are attached below).

In application of an Interstate Convention concluded in October 2009, the Dutch authorities make available to Belgium the premises of Tilburg Prison and its staff, for the purpose of detaining persons serving final sentences imposed by Belgian courts. By this means, the Belgium authorities are attempting to combat the overcrowding which currently affects their country's penitentiary system while waiting for the results of the "Master Plan for a more humane prison infrastructure".

The CPT delegation received no allegations of ill-treatment of prisoners by prison staff at Tilburg Prison. On the contrary, the great majority of inmates emphasised the professional attitude and respect shown to them by the prison staff.

However, the information gathered indicated clearly that the prison was experiencing a serious problem of inter-prisoner violence. This problem was, in particular, linked to the high occupancy rate in what were formerly soldiers' dormitories, with eight beds in each, and the mixing together of different categories of sentenced prisoners in this accommodation. In its report, the CPT recommended that priority be given to gradually reducing the number of beds in the dormitories.

Regarding activities, the CPT noted that all prisoners were employed in a workshop (20 hours per week). However, possibilities for educational activities and vocational training were extremely limited.

Difficulties were also observed in communications between staff and certain prisoners due to language barriers. In this respect, the Committee in particular underlined that prisoners who are the subject of a disciplinary procedure should be able to read the documentation and related decisions in a language which they understand.

The report also stressed a number of practical difficulties in relation to medical care and contact of prisoners with the outside world.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.<sup>1</sup>



Belgium-Tilburg  
report 2011.pdf



Belgium-Tilburg  
response 2011.pdf

#### *2012 ad hoc visit*

On 13 December 2012, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Belgium from 23 to 27 April

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<sup>1</sup> pp. 25-29.

2012, together with the Belgian Government's response (both documents in French are attached below).

The main purpose of the visit was to review the prevailing situation in the Belgian prison system, in particular the conditions of detention in establishments for prisoners awaiting trial and issues connected to strikes by prison staff and other industrial action resulting in a reduced work rate within prisons.

During its first visit to Forest Prison, the CPT observed that certain cells in the establishment were not provided with running water or sanitary facilities, while prisoners in other cells had to sleep on mattresses placed directly on the floor.

The CPT made a series of recommendations to remedy these problems. Apart from the difficult material conditions to which most of the prisoners were exposed, the Committee regretted the almost total lack of activities at their disposal, the long waiting time to obtain a "table visit", and the low staff/inmate ratio.

The purpose of the follow-up visit to Andenne Prison was to assess the situation in the establishment at the time of the spontaneous strike by prison staff which had just ended. The delegation observed in particular the shortage of staff and the numerous restrictions imposed on prisoners during the strike. The report reviews the various measures taken by the Belgian authorities to deal with the prison staff strikes, which did not produce any conclusive results. According to the CPT, systematic recourse to the police or civil defence teams during such strikes cannot be considered a long-term solution to major problems caused by industrial action. The Committee therefore reiterated the recommendation which it made to the Belgian authorities in 2005 that a "guaranteed service" be introduced within prisons. This should be implemented without delay.

In its report, the CPT also analyses the issue of prison overcrowding, which has steadily worsened in Belgium over the past years. None of the measures taken to date, with the exception of early releases, have brought about a structural, lasting decrease in overcrowding. The Committee stressed that "Prison overcrowding implies not only despicable conditions of detention, combining lack of privacy and violence, but it also deprives prisoners of certain fundamental rights". Further, prison overcrowding involves considerable human and budgetary costs. Finally, prison overcrowding is one of the reasons frequently invoked by prison staff when they go on strike. The Committee therefore recommended that a national conference be organised, involving all interested parties, the objective of which would be to draw up the general framework of a new criminal justice and prisons policy.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.<sup>2</sup>



Belgium report  
2012.pdf



Belgium response  
2012.pdf

## **Fight against racism and intolerance**

On 25 February 2014, the European Commission against Racism and Intolerance (ECRI) published its fifth report on Belgium.<sup>3</sup> ECRI's Chair, Mr Christian Ahlund, noted steps forward, but also a number of issues, such as the problematic application of the anti-discrimination legislation in certain areas and certain questionable aspects of the integration programmes.

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<sup>2</sup> pp. 37-46.

<sup>3</sup> A summary of the report can be found on pp. 9-10.

On the positive side, the Centre for Equal Opportunities and Opposition to Racism will be able to work at all state levels due to an agreement between the federal authorities and the federated entities. Numerous judicial proceedings have been initiated against individuals and legal entities advocating hatred and violence. An ambitious action plan to combat homophobic and transphobic violence has been launched and legislation guarantees respect of most aspects of family and private life of LGBT persons on an equal footing with the rest of the population.

However, despite specific provisions of the law, there is no independent body competent on questions relating to discrimination on ground of language, no guidance is provided in the fields of the implementation of positive discrimination measures and no assessment of the anti-racism and anti-discrimination legislation has been carried out yet. Data on hate speech and racist violence are too fragmentary to give a clear picture of the situation in the country. Ethnic and religious groups, in particular Muslims, continue to face many disadvantages, including discrimination in key fields of life.

The report contains findings and recommendations regarding the following issues:

- Legislation against racism and racial discrimination<sup>4</sup>
- Hate speech<sup>5</sup>
- Racist and homo/transphobic violence<sup>6</sup>
- Integration policies<sup>7</sup>
- Interim follow-up recommendations of the fourth cycle<sup>8</sup>
- Policies to combat discrimination and intolerance against LGBT persons<sup>9</sup>

The following two recommendations were selected for priority implementation to be revisited two years later:

- an assessment of the application and effectiveness of the legislation against racism and intolerance should be carried out without any further delay ;
- the process to turn the Centre for Equal Opportunities and Opposition to Racism into an inter-federal institution should be completed as soon as possible.

ECRI's report on Belgium is attached hereafter.



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## **Protection of minorities**

### *Framework Convention for the Protection of National Minorities*

Belgium has signed but not yet ratified the Framework Convention for the Protection of National Minorities. For this reason, it is not concerned by the monitoring procedure undertaken by the Council of Europe Advisory Committee on this Convention.

### *European Charter for Regional or Minority Languages*

Belgium has not yet signed or ratified the European Charter for Regional or Minority Languages. Thus, the country is not covered by the monitoring carried out by the Committee of Independent Experts under the Charter.

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<sup>4</sup> paras. 1-38.

<sup>5</sup> paras. 39-75.

<sup>6</sup> paras. 76-92.

<sup>7</sup> paras. 93-122.

<sup>8</sup> paras. 123-137.

<sup>9</sup> paras. 138-164.

## **Action against trafficking in human beings**

On 25 September 2013, the Group of Experts on Action against Trafficking in Human Beings (GRETA) published its first evaluation report on Belgium<sup>10</sup>, together with the final comments of the Belgian Government.

According to GRETA's report the Belgian authorities have taken a number of important steps to prevent and combat trafficking in human beings, such as putting in place a comprehensive legal and policy framework and setting up specialised anti-trafficking structures, but several challenges remain.

GRETA welcomes in its report the multidisciplinary approach to the identification and referral of victims of human trafficking in Belgium. However, GRETA considers that the Belgian authorities should pay increased attention to trafficking in children, particularly those exploited for the purpose of forced begging or committing of offences. In order to improve the identification of victims of trafficking, the Belgian authorities should step up the training provided to all front-line actors.

The provision of assistance to trafficking victims is entrusted to specialised NGOs working in close co-operation with the authorities. GRETA asks the authorities to ensure that the assistance is adapted to the victims' needs, paying special attention to child victims and victims who are Belgian and EU citizens. Further, GRETA considers that more should be done to ensure that child victims of trafficking are granted a residence permit on the basis of their best interests and not of their willingness or ability to co-operate with the authorities. GRETA also urges the Belgian authorities to put in place repatriation assistance arrangements for victims of trafficking who are EU citizens.

In its report, GRETA welcomes the determination demonstrated by the Belgian authorities to carry out proactive investigations and prosecute acts of trafficking both for the purpose of sexual exploitation and labour exploitation. However, adjustments are still required to facilitate and guarantee access to compensation for trafficking victims.

On the basis of GRETA's report<sup>11</sup>, the Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings adopted, on 7 October 2013, the following recommendations addressed to the Government of Belgium:

- pay increased attention to measures against child trafficking, including through improving the detection and identification of child victims of trafficking and ensuring that they are granted a residence permit on the basis of their best interests and not of their willingness or ability to co-operate with the authorities;
- increase their efforts to discourage demand for services provided by persons subjected to trafficking, both for the purpose of labour and sexual exploitation;
- ensure that the referral and assistance mechanisms put in place are adapted to the needs of each victim of trafficking and that they are implemented by all specialised and front-line actors, including through training for the relevant professionals;
- systematically inform victims and possible victims of trafficking of the possibility of benefiting from a recovery and reflection period and ensuring that are actually granted one;
- ensure that there are repatriation assistance arrangements suitable for all victims of trafficking, regardless of whether they are EU nationals or not, with due regard for the rights, safety and dignity of the person concerned and the state of judicial proceedings;
- continue efforts in the field of prosecution of traffickers, in particular through training on trafficking in human beings for judges and making full use of the existing procedural measures aimed at protecting victims and witnesses.

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<sup>10</sup> A summary of the report can be found on pp. 7-8.

<sup>11</sup> Appendix I provides a complete list of GRETA's proposals to the Belgian authorities.

GRETA's report on Belgium and the Committee of the Parties' recommendations to the Belgian authorities are attached below.



GRETA\_2013\_14\_FGCP\_2013\_8\_BEL\_en.  
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### **Preventing and combating violence against women and domestic violence**

Belgium has signed but not yet ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. For this reason, it is not yet concerned by the monitoring procedure under this Convention.

### **Execution of judgments and decisions of the European Court of Human Rights**

At 31 December 2014, there were 59 cases against Belgium pending before the Committee of Ministers for supervision of their execution. 13 of these cases were a "leading case", i.e. raising a new structural/general problem and requiring the adoption of general measures, the other cases being "repetitive cases" concerning issues already raised before the European Court of Human Rights. The main cases or groups of cases revealing such structural problems is listed below:

- ❖ Excessive length of judicial proceedings – *Dumont v. Belgium*, Application No. 49525/99, judgment final on 28/07/2005
- ❖ Detention in view of expulsion - *Muskhadzhiyeva and Others v. Belgium*, Application No. 41442/07, judgment final on 19/04/2010
- ❖ Detention in view of expulsion – *M.S. v. Belgium*, Application No. 50012/08, Judgment final on 30/04/2012
- ❖ Poor detention conditions – *L.B. v. Belgium*, Application No. 22831/08, Judgment final on 02/01/2013

The document attached presents a brief description of the violations and the latest detailed decisions taken by the Committee of Ministers and the responses given thereto by the respondent state.



Status execution  
judgments BEL.doc

### **Social and economic rights**

Belgium ratified the European Social Charter on 16/10/1990 and the Revised European Social Charter on 02/03/2004, accepting 87 of the Revised Charter's 98 paragraphs.

It accepted the Additional Protocol of 1995 providing for a system of collective complaints on 23/06/2003, but has not yet made a declaration enabling national NGOs to submit collective complaints.

#### Cases of non-compliance

*Thematic Group 1 "Employment, training and equal opportunities"*

► Article 1§2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The restrictions on foreigners, non-nationals of EEA member states or Swiss nationals occupying posts in the federal civil service go beyond those permitted by the Charter.

(Conclusions 2012)

► Article 1§4 - Right to work- Vocational guidance, training and rehabilitation

It has not been established that people with disabilities are guaranteed an effective right to mainstream training.

(Conclusions 2012)

► Article 10§3 - Right to vocational training - Vocational training and retraining of adult workers

It has not been established that nationals of other States Parties legally resident or regularly working in Belgium are guaranteed equal treatment as regards access to continuing training in the German-speaking community.

(Conclusions 2012)

► Article 10§4 - Right to vocational training - Long term unemployed persons

It has not been established that the equality of treatment as regards access to training for long-term unemployed persons is guaranteed to nationals of other States Parties in German-speaking community.

(Conclusions 2012)

► Article 10§5 – Right to vocational training – Full use of facilities available

Nationals of other States Parties legally resident or regularly working in Belgium are not granted equal treatment regarding financial assistance for training.

(Conclusions 2012)

► Article 15§1 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Vocational training for persons with disabilities

It has not been established that people with disabilities are guaranteed an effective right to mainstream education and training

(Conclusions 2012)

► Article 15§2 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities

It has not been established that people with disabilities are guaranteed an effective right to mainstream education and training

(Conclusions 2012)

► Article 18§3 – Right to engage in a gainful occupation in the territory of other States Parties - Liberalising regulations

The foreign worker's residence permit may be revoked if he/she loses his/her job and he/she may be obliged to leave the country as soon as possible.

(Conclusions 2012)

► Article 25 – Right of workers to protection of their claims in the event of the insolvency of their employer

The average time to satisfy workers' claims in case of insolvency of their employer is excessive.

(Conclusions 2012)

#### *Thematic Group 2 "Health, social security and social protection"*

► Article 12§4 – Right to social security – Social security of persons moving between States

1. Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

2. The retention of accrued benefits is not guaranteed for nationals of all other States Parties.  
(Conclusions 2013)

► Article 13§1 – Right to social and medical assistance - Adequate assistance for anyone in need

Guaranteed income for the elderly (GRAPA) is not granted to foreigners without resources unless they are covered by EU law or are nationals of States which have concluded reciprocity agreements with Belgium.

(Conclusions 2013)

► Article 14§1 – Right to benefit from social services – Promotion or provision of social services

1. Social services are not organised in such a way that they are adapted to needs;

2. Effective and equal access to social services is not ensured to all persons.

(Conclusions 2013)

► Article 14§2 – Right to benefit from social services – Public participation in the establishment and maintenance of social services

It has not been established that: (i) the conditions under which non-public providers take part in the provision of welfare services are adequate; (ii) supervisory machinery exists throughout the country to ascertain the quality of the services provided by non-public bodies; (iii) users are consulted regarding the development of the policies relating to all social welfare services.

(Conclusions 2013)

#### *Thematic Group 3 “Labour rights”*

► Article 2§3 – Right to just conditions of work - Annual holiday with pay

Workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

(Conclusions 2014)

► Article 2§5 – Right to just conditions of work - Weekly rest period

Weekly rest day may be postponed over a period exceeding twelve successive working days.

(Conclusions 2014)

► Article 4§1 – Right to a fair remuneration - Decent remuneration

1. It has not been established that the average minimum wages suffice to ensure a decent standard of living;

2. The average minimum wages of young workers do not suffice to ensure a decent standard of living.

► Article 4§2 – Right to a fair remuneration - Increased rate of remuneration for overtime work

The compensatory time-off for overtime hours in the public sector is not sufficient.

(Conclusions 2014)

► Article 6§4 – Right to bargain collectively - Collective action

The restrictions on the right to strike do not comply with the conditions established by Article G of the Charter given that they are neither prescribed by law nor proportionate to the aims set out in Article G of the Charter.

(CES and Others v. Belgium (No. 59/2009))

(Conclusions 2014)

#### *Thematic Group 4 “Children, families, migrants”*

► Article 7§5 – Right to special working conditions between the ages of 15 and 18 – Fair pay

The allowances paid to apprentices are inadequate.

(Conclusions 2011)

► Article 7§6 – Right to special working conditions between the ages of 15 and 18 - Inclusion of time spent on vocational training in the normal working time

It has not been established that, in practice, training attended by young workers at their request and with their employer's consent is regarded as working time and remunerated as such.

(Conclusions 2011)

► Article 7§8 – Right to special working conditions between the ages of 15 and 18 - Prohibition of night work

It has not been established that the legal prohibition on night work applies to the great majority of persons under the age of 18.

(Conclusions 2011)

► Article 17§1 – Right of mothers and children to social and economic protection – Assistance, education and training

1. Corporal punishment is not prohibited in the home and in childcare institutions in all communities of Belgium.

2. Minors can be detained in adult prisons.

(OMCT v. Belgium (No. 21/2003))

(Conclusions 2011)

Please find attached below Conclusions 2011, 2012, 2013 and 2014 regarding Belgium as well as the country fact sheet.



Belgium2011\_en.pdf Belgium2012\_en.pdf Belgium2013\_en.pdf Belgium2014\_en.pdf Belgium\_en 2015.doc