



Human Rights in Belgium
Racism and Xenophobia
2007-2008

HUMAN RIGHTS WITHOUT FRONTIERS INTERNATIONAL

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Racism and xenophobia

Legal framework

The Law of 10 May 2007 on Combating Certain Forms of Discrimination introduced several changes to the Belgian legal framework against racism and discrimination.¹ Firstly, the new law's field of application is extended in order to offer increased protection to victims of discriminatory acts. Secondly, the law further increases the number of crimes for which criminal punishment is augmented in case the crime is committed with a discriminatory or racist motive. Thirdly, and most importantly, the new law amends one of the major problems of the old law, by introducing a shift in the burden of proof from the victim to the perpetrator.² While under the old system the victim of a discriminatory or racist act was required to prove to a certain degree the existence of a discriminatory or racist motive, this is no longer required under the new law. As soon as the victim claims that discrimination or racism is involved, it is up to the alleged perpetrator to disprove these allegations. In other words, discrimination or racism is suspected until proven otherwise.

In December 2007, the NGO *Liga voor Mensenrechten* (League for Human Rights) appealed to the Belgian Constitutional Court, demanding the court to declare article 21 of the Law of 10 May 2007 Amending the Law of 30 July 1981 Criminalising Certain Acts Led by Racism or Xenophobia,³ unconstitutional and in contravention with the ECHR.⁴ In the opinion of the league, this article entails an unacceptable limitation to the freedom of expression.⁵ While the league deems it necessary to continue criminalising the spreading of hatred through racist speech, it states that “[i]n article 21 of the antiracism law, the mere spreading of images that are based on racial hatred, is also criminalised. The dissemination of unpleasant racist images should not be criminalised, but combated in public debate”.⁶

In March 2007, a Belgian parliamentarian introduced a legal proposal that would outlaw racist, negationist and neo-Nazi organisations. This proposal was a reaction to the increasing phenomenon of parties and concerts organised by racist organisations such as *Blood and Honour* and *Bloed Bodem Eer en Trouw* ('Blood Soil Honour and Loyalty'). Such events cannot be preventively forbidden under the current legislation. This proposal of law was massively criticised, even by human rights NGOs such as the 'League for Human Rights' for sloppy wordings that pave the way to broad interpretations and thus potentially threaten the existence of any organisation that holds opinions that are in contravention with one or more democratic principles, no matter whether the organisation's opinions or intentions have an ideological, a religious or a political underpinning.⁷ In April 2008, the words of the proposal were taken

¹ Law of 10 May 2007 Combating Certain Forms of Discrimination, *Belgisch Staatsblad*, 30 May 2007.

² Article 28 Law of 10 May 2007.

³ Law of 10 May 2007 Amending the Law of 30 July 1981 Criminalising Certain Acts Led by Racism or Xenophobia, *Belgisch Staatsblad*, 30 May 2007.

⁴ De Morgen, "Liga voor Mensenrechten wil vernietiging antiracismewet", 4 December 2007. For further information, see the website of the League for Human Rights, at http://www.mensenrechten.be/main.php?item_content=7002.

⁵ Article 21 states "punished with a prison sentence of one month to one year and a fine of fifty to one thousand euro, or with one of these punishments alone, is he that, in the circumstances meant in article 444 of the Criminal Code, disseminates images that are founded on racial superiority or racial hatred" - in French: "[q]uiconque, dans l'une des circonstances indiquées à l'article 444 du Code pénal, diffuse des idées fondées sur la supériorité ou la haine raciale, est puni d'un emprisonnement d'un mois à un an et d'une amende de cinquante euros à mille euros, ou de l'une de ces peines seulement."

⁶ De Morgen, "Liga voor Mensenrechten wil vernietiging antiracismewet", 4 December 2007. For further information, see the website of the League for Human Rights, at http://www.mensenrechten.be/main.php?item_content=7002.

⁷ See *De Standaard*, 17 April 2007.

over by a Belgian Senator and introduced as a legal proposal in the Senate.⁸ However, by the end of 2008 it had not been voted.

In 2007, the Belgian federal government was expected to finish the development of a comprehensive national action plan against racism. However, due to the persistent political crisis and instability, it had not been accepted by the year's end.

In 2008, the Government of the Flemish Region passed a decree⁹ setting up a legal framework for the prevention of and the fight against discrimination, including racial discrimination,¹⁰ and for the promotion of equal opportunities, especially in favour of social groups confronted with exclusion.¹¹ In order to achieve its objectives, the Decree provides for the design of an integrated action plan within fifteen months from the time of the installation of the new Flemish Government (regional elections are scheduled to take place in June 2009).¹² The Decree moreover foresees the possibility for the Flemish Government to recognise and subsidise so-called equal opportunities bureaus. These will be tasked to develop preventive actions, to offer support to victims of discrimination and to promote the non-judicial (*e.g.* through friendly settlement) conclusion of complaints of discrimination brought to its attention.¹³ Last but not least, the Decree also stipulates the criminal sanctions applicable to direct or indirect acts of discrimination, including any instruction or order leading to it.¹⁴ A maximum prison sentence of one year can be inflicted to the offender (two years if it is a public official).¹⁵

Data on racism in Belgium

Data available in 2007

The lack of adequate data collection mechanisms indicating the level of racial discrimination in society continued to be a major problem in Belgium although the federal police had recently started keeping records of racist crimes. Despite the absence of centralised and accumulated data, several reports from other sources, general statistical data and anecdotal evidence, confirmed the deeply-rooted presence of racism in the country.

⁸ Belgische Senaat, Wetsvoorstel betreffende het verbod op racistische, negationistische en neonazistische organisaties, Wetgevingsstuk nr. 4-706/1, available at <http://www.senate.be/www/?MIval=/publications/viewPub.html&COLL=S&LEG=4&NR=706&VOLGNR=1&LANG=nl> (accessed 16 November 2008).

⁹ Decree of 10 July 2008 concerning a Framework for the Flemish Equal Opportunities and Equal Treatment Policy, *Belgisch Staatsblad*, 23 September 2008. This decree is particularly relevant in the context of racism and discrimination since it is applicable to several important areas of society, such as education, employment, housing and health care, in which discrimination remains prevalent in Belgium and over which the regional governments hold crucial competences.

¹⁰ The Decree targets discrimination in its widest possible forms and aims to create equal opportunities for all people, no matter their gender, sexual preference, physical health (disabled persons), race, skin colour, ethnic or national origin, belief or religious conviction. See art. 6 of the Decree.

¹¹ Art. 5 of the Decree of 10 July 2008 concerning a Framework for the Flemish Equal Opportunities and Equal Treatment Policy.

¹² *Ibid.*, art. 10.

¹³ *Ibid.*, art. 42.

¹⁴ *Ibid.*, art. 15.

¹⁵ *Ibid.*, art. 31 and 32.

On 13 September 2006, Belgium submitted its periodic report to the UN Committee on the Elimination of Racial Discrimination.¹⁶ The UN committee issued its concluding observations in 2008 (See p. 5-6).

A pilot study conducted in 2006 by the **European Monitoring Centre on Racism and Xenophobia** on migrants' experiences with racism and xenophobia in the EU confirms that many foreigners suffer from discrimination in all spheres of society in Belgium¹⁷: at school or other educational facilities (39% of the respondents); by the police (38%); in the employment sphere either on the workplace or in the process of applying for a job (37%); with regard to commercial transactions, including the denial of access to such transactions (28%); in or with regard to the access to restaurants or shops (20%); by public institutions (18%).

In August 2007, the **European Union Agency for Fundamental Rights (FRA)** commented on racism in Belgium in its *Report on Racism and Xenophobia in the Member States of the EU*.¹⁸ The FRA then categorized Belgium in the group of countries providing for sanctions against racism but stressed that they were not very severe or frequent.

According to the FRA, the Belgian state agency "**Centre for Equal Opportunities and Opposition to Racism**" (CEOOR/CECLR) received 987 complaints with regard to acts of racism and discrimination over the course of 2006, which represents a slight decrease in comparison with 2005. Over the course of the entire year of 2006, CEOOR received 650 complaints about racist acts.¹⁹ Most complaints were noted in the following sectors of society: employment; media, internet and propaganda; and community life.

With regard to racism in the sector of employment, the **FRA** report points to difficulties for people of a non-EU ethnicity to find a job. Of the 16 examined EU countries, Belgium had the highest unemployment rates for citizens of non-EU countries compared to EU-citizens during the second quarter of 2006. Unemployment rates were the highest for Moroccan and Turkish nationals (45% for men, 56% for women). Figures for the entire year of 2006 presented the following picture: unemployment rates for Belgian nationals were 7.5%; for EU nationals they amounted to 11.4% while for non-EU nationals, the figures rose to 31.1%.²⁰ However, there were some signs of positive changes: in the Flemish part of Belgium, unemployment rates in September 2007 were down by approximately 20% for all ethnicities, compared to figures for September 2006.²¹

The fact that discrimination on the job market is one of the major problems facing people from a different ethnicity in Belgium is confirmed by a report by the **European Network Against Racism**, which indicates that, when given the choice between two people with a *curriculum vitae* of equal qualifications, nearly half of the interviewed Belgian employers openly admit that they would rather not hire a candidate

¹⁶ Committee on the Elimination of Racial Discrimination, fourteenth and fifteenth periodic report submitted by Belgium, 13 September 2006, CERD/C/BEL/15.

¹⁷ European Monitoring Centre on Racism and Xenophobia, *Migrants' experiences of racism and xenophobia in 12 EU Member States*. Pilot study, May 2006, at <http://eumc.europa.eu/eumc/material/pub/merx/Migrants-Experiences-web.pdf> (accessed 8 October 2007).

¹⁸ European Union Agency for Fundamental Rights, "Report on Racism and Xenophobia in the Member States of the EU", at http://fra.europa.eu/fra/material/pub/racism/report_racism_0807_en.pdf (accessed 14 October 2007).

¹⁹ Centre for Equal Opportunities and Opposition to Racism, *Annual Report 2006*, June 2007, at www.diversiteit.be/images/jaarverslag-2006-nl.pdf (accessed 8 October 2007).

²⁰ According to Federal Ministry of Economy, Department of Statistics.

²¹ According to the Flemish Labour Mediation Service (*Vlaamse Dienst voor Arbeidsbemiddeling*) at <http://arvastat.vdab.be/nwwz/index2.htm> (accessed 10 October 2007). The exact figures were: -20.8% for Belgians; -21.1% for ethnic EU citizens; and -19.4% for ethnic non-EU citizens, with a decrease by 19.6% for ethnic Maghreb or Turkish people.

who does not originate from the EU.²² The results of this study have in recent years been confirmed by several examples of Belgian employers refusing to hire people of usually Turkish or Moroccan origin because “the customers would not want to be served by a foreigner”, or with scepticism such as: “A foreigner that will sell security installations, I have never seen that!”²³ While the former case had not been definitely ruled upon by the Belgian courts by the end of 2007, the latter concluded in the conviction of the involved company for discrimination in March 2007.

Figures released by the **Belgian Federal Police** in August 2007 confirmed the rise in racist and/or xenophobic incidents over recent years. While in 2002, the Federal Police in Belgium registered 853 cases of racism and/or xenophobia, this figure rose to 968 in 2003, 1,083 in 2004, 1,285 in 2005 and 1,355 in 2006.²⁴

Concerning the prevalence of racist crimes in Belgium, information provided to HRWF by the **Department of Statistical Analysis of the Belgian Council of General Prosecutors' Offices** (*Collège des Procureurs Généraux*) offers valuable insight into the most recent figures gathered by the prosecutors' offices at the first instance courts. The figures show that the number of racist crimes has continued to rise over the course of the past years. While the prosecutors' offices had been confronted with 722 cases of racially motivated crimes in 2004, this figure rose to 825 cases in 2005 and 965 cases in 2006.²⁵

The information provided by the Department of Statistical Analysis moreover indicates the state of affairs with regard to racially motivated crimes as of 10 July 2007.²⁶ At that date, of the 2,512 cases of racist crimes that had been recorded from 2004 to 2006, 1,868 cases (74%) had been filed without suit, 53 cases (2%) had been settled outside or inside of court, and 60 cases (2.5%) had been brought to court.²⁷

Data available in 2008

In 2008, the **United Nations Committee on the Elimination of Racial Discrimination (CERD)** released its concluding observations on the report submitted by Belgium to the Committee in 2006.²⁸

In its report, the CERD commends Belgium for the adoption of the Law of 10 May 2007 Amending the Law of 30 July 1981 Criminalising Certain Acts Led by Racism or Xenophobia and for the design of the 2004 federal action plan to combat racism, anti-Semitism and xenophobic violence.²⁹

²² European Network Against Racism, *Reageren op racisme in België, 2006*, at http://www.enar-eu.org/en/publication/national_leaflets/Belgium_NL.pdf (accessed 8 October 2007).

²³ *De Standaard*, 4 October 2007, “Feryn en Euro-Lock achterna”.

²⁴ Centre for Equal Opportunity and Action to Combat Racism, *Discriminatie en Diversiteit. Jaarverslag 2007*, p. 52, at http://www.diversiteit.be/?action=publicatie_detail&id=32&thema=2 (accessed 1 November 2008).

²⁵ 2006 is the most recent year for which figures were available at the time of writing.

²⁶ This is the most recent date for which figures were available at the time of writing.

²⁷ No information was provided by the Department of Statistics on the end-result of the trials, since this does not lie within the responsibility of the *Collège des Procureurs-Généraux*. Moreover, cases not included in these statistics found themselves at stages of the procedure during which no final decision on the prosecution had been made and were therefore not mentioned.

²⁸ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination, Belgium, 11 April 2008, CERD/C/BEL/CO/15.

See <http://www.unhcr.org/refworld/country,,CERD,,BEL,4562d8b62,4885cf9d0,0.html>

²⁹ *Ibid.*, paras. 4 and 6.

The CERD also welcomes the existence of the Centre for Equal Opportunity and Opposition to Racism, but expresses its regret over the continued non-existence in Belgium of an independent national human rights institution.³⁰

In the remaining part of its observations, the Committee expresses its concern over a number of issues and cases of racism and discrimination. The CERD remains concerned over the prevalence of hate speech in Belgium, as well as by the judicial procedure brought before the Constitutional Court by the *Vlaams Belang* party, based on the allegation that article 21 of the Law of 10 May 2007, which declares that the dissemination of ideas based on racial superiority and hatred is a criminal offence and a violation of the freedom of expression.³¹ In the context of judicial procedures brought against *Vlaams Belang* in Belgium for “hostility towards rights and liberties guaranteed by the European Convention on Human Rights”, the CERD is concerned over the fact that Belgium has not adopted any legislation implementing article 4 (b) of the Convention on the Elimination of Racial Discrimination, prohibiting and declaring illegal organisations which promote and incite racial discrimination.³²

In its report, the Committee further expresses concern about the limited number of criminal cases of racist offences brought to justice and the high number of complaints that are discontinued, especially with regard to racial violence, hatred and discrimination committed by members of the police force.³³

The Committee also regrets the lack of availability of detailed statistical information on investigations, prosecutions and convictions with regard to racist offences.³⁴

The Committee finally expresses its concerns over two specific issues. Firstly about the findings of a study from the National Institute on Criminal Statistics and Criminology which concludes that foreigners in the penal system receive more severe sentences than people of Belgian origin.³⁵ Secondly about the fact that ethnic minorities are often overrepresented in social urban housing – up to 90 per cent in some cases according to the CERD – which it states has resulted in *de facto* segregation in certain neighbourhoods of large cities.³⁶

The Committee also warns that this phenomenon may lead to the use of ethnic criteria to allocate social housing, which would constitute racial discrimination.³⁷

In 2008, comprehensive aggregated statistical data on racism and racial discrimination in Belgium remained unavailable. However, through the combining of quantitative and qualitative data from a variety of sources, it nevertheless becomes possible to indicate the widespread presence of racism in the country.

In 2007, the most recent year for which complete statistics are available, the **Council of the General Prosecutors’ Offices** registered 951 cases of racism and/or xenophobia.³⁸ This figure is nearly identical to that of 2006 and thus represents an apparent stabilisation in the number of cases related to racism investigated by the Prosecutor’s Offices in Belgium. Of the nearly 1,000 cases treated in 2007, the Prosecutor’s Offices dismissed 60%, provided information services in 21% of the cases, started a formal

³⁰ Ibid., para. 10.

³¹ Ibid., para. 11.

³² Ibid., para. 12.

³³ Ibid., para. 13.

³⁴ Ibid.

³⁵ Ibid., para 14.

³⁶ Ibid., para. 15.

³⁷ Ibid.

³⁸ Centre for Equal Opportunity and Opposition to Racism, *Discriminatie en Diversiteit. Jaarverslag 2007*, p. 51, at http://www.diversiteit.be/?action=publicatie_detail&id=32&thema=2 (accessed 1 November 2008).

investigation in 2% of the cases, reached a settlement between victim and perpetrator in 1% of the cases, and ordered a subpoena leading to a criminal trial in 2% of the cases.³⁹ This means that only a small proportion of all cases - in absolute numbers 51 - actually led to a formal investigation and/or a legal conclusion, offering the possibility of some form of justice to the victim.

Also in 2007, the **Centre for Equal Opportunity and Opposition to Racism (CEOOR/ CECLR)** received 1,690 complaints of racism, racial discrimination and incitement to racial hatred.⁴⁰ This figure represents a remarkable increase of 58% compared to the figure of 2006 and the average figure of 1,000 complaints received per year.⁴¹ The complaints were related to the following areas of society: internet/propaganda/media (27%); community life (15%); employment (13%); housing (8%); public services (8%); private services (8%); education (7%); law and order providers (5%); personal living sphere (2%); justice (2%); and others (6%).⁴² The most remarkable evolution was related to the spreading of hate through the internet, which witnessed a tripling of complaints received in 2007 as compared to the figure of 2006.⁴³ This rise was particularly caused by the explosive increase in the number of chain mails spread preaching hatred towards Muslims.⁴⁴ In most of the cases of racial discrimination reported, the reason for the discrimination was found to be related to the nationality and ethnic origin of the complainant (47%), followed by other major factors such as his/her colour of skin (16%), religion and conviction (7%) and Jewish origin (4%).⁴⁵ Following examination of all cases, the **CEOOR/CECLR** dismissed 55% and found that the remaining 760 cases concerned incitement to hatred, violence and discrimination (17%), direct or indirect discrimination (16%), inadequate public service provision (6%), hate crimes (3%), plaguing (2%) and negationism (1%).⁴⁶

The NGO **Mouvement contre le Racisme, l'Antisémitisme et la Xénophobie (MRAX)** reported treatment of 144 cases of racism in 2007, as compared to 142 in 2006 and 124 in 2005.⁴⁷

In 2008, official figures released by the Flemish institution responsible for employment matters - the **Vlaamse Dienst voor Arbeidsbemiddeling (VDAB)** - showed a spectacular decrease in recent years of unemployment rates among youth of Maghreb or Turkish origin living in the Flemish Region. The decline of 40.4% over the period of June 2005 to June 2008 was even bigger than the average decline of 35.3% for all Flemish youth.⁴⁸ However, more detailed figures released by the same institution showed that in September 2008 the number of unemployed youth from Maghreb or Turkish origin in possession of a diploma of higher education had risen by 4.3% as compared to September 2006, while unemployment rates among higher educated Flemish youth had decreased by nearly 10% during the same period.⁴⁹ According to a representative of **KifKif** - an intercultural organisation advocating a positive exchange between natives and immigrants and asylum seekers in Belgium - this trend shows that during a period of economic slowdown, non-native and non-EU youth are the first to suffer from the negative consequences of an economic decline, in the form of increased unemployment rates.⁵⁰

³⁹ Ibid., p. 52.

⁴⁰ Centre for Equal Opportunity and Opposition to Racism, *Discriminatie en Diversiteit. Jaarverslag 2007*, p. 40, at http://www.diversiteit.be/?action=publicatie_detail&id=32&thema=2 (accessed 1 November 2008).

⁴¹ Ibid., p. 42.

⁴² Ibid.

⁴³ Ibid., p. 47.

⁴⁴ Ibid.

⁴⁵ Ibid., p. 46.

⁴⁶ Ibid., p. 47.

⁴⁷ Ibid., p. 53.

⁴⁸ *De Standaard*, "Daling werkloosheid is grootst bij allochtonen", 11 October 2008.

⁴⁹ *De Standaard*, "Hooggeschoolde allochtoon sneuvelt eerst", 24 October 2008.

⁵⁰ Ibid.

Examples of racist incidents in 2007

Over the course of 2007, several new cases of discrimination based on ethnic origin surfaced.

- In April 2007, the owner of a restaurant was convicted for racism after he had advised a fired employee to return to the 'boesboes' (slang for jungle) in his resignation letter.
- Another 2007 case concerned an e-mail that the *Deutsche Bank* in Belgium had reportedly sent to a job centre in October in order to fill in open positions at its offices. The e-mail ended with the sentence: "*ATTENTION: ne souhaite pas de personnes exotiques pour aucun poste*" (Attention: we do not wish persons of an exotic origin for any post).⁵¹
- Several job centres have reported that they frequently receive messages from companies that do not wish to employ foreigners. One Flemish job centre stated that "[m]ost of them bluntly say that they do not want brown people, 'makakken' (Note by HRWF: a Flemish insult for people of Moroccan origin,) or Mohammed, but only white, Dutch-speaking persons".⁵² The same job centre added that they are "disgusted by these practices, but competition on the market forces us to join in".⁵³
- In a case of racial discrimination in discotheques, the owner and several doormen of a nightclub were convicted for racism after they had denied access to the nightclub to a group of Belgian youths since one of them was from Moroccan origin. After this incident, the doormen had beaten the youths and insulted the Moroccan youth as "filthy Arab".⁵⁴
- Racial discrimination in the housing market is less prevalent than in employment; 5% of complaints at the CEOOR concerned housing. However, the issue remains problematic in Belgium, which is proven for instance by the case of a tenant who was convicted for racism in December 2006 after having published a real-estate advertisement that stated that the apartment on offer was located in a "foreigner-free" building.⁵⁵

The following cases of racist violence attracted massive media attention in Belgium in 2007.

- In October 2007, Hans Van Themsche, a 19-year old Belgian student, was convicted for life for a racially motivated murder and attempted murder he had committed in May 2006. He had killed a 24-year-old Malinese woman and the 2-year-old Belgian girl she cared for, and seriously injured a 47-year-old Turkish woman. Both the case and the trial led to massive discussions on racism in Belgium and to the organisation of events to combat the general atmosphere of intolerance towards foreigners.
- In a case of negationism, the Court of First Instance of Mons found a blind person guilty of violation of the Negationism Act in December 2007. During a quarrel with a non-native

⁵¹ *De Standaard*, "'Exotische personen niet welkom'", 4 October 2007.

⁵² *De Standaard*, "'T-Interim Kortrijk krijgt straf voor discriminatie'", 25 October 2007.

⁵³ *Ibid.*

⁵⁴ Centre for Equal Opportunities and Opposition to Racism, *Discriminatie in discotheeken: de rechter veroordeelt voor het eerst een uitbater van een discotheek in Brussel*, at http://www.diversiteit.be/CNTR/NL/racism/topics/dancings/RAC_THEMES_DANCINGS_DISCRIMINATIE+IN+DISCOTHEEK_05-05-2007.htm (accessed 8 October 2007).

⁵⁵ European Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member States of the EU*, p. 82, at http://fra.europa.eu/fra/material/pub/racism/report_racism_0807_en.pdf (accessed 14 October 2007).

neighbours, he had said he regretted “that the task of ‘Adolf’ in the extermination of foreigners had not been brought to a successful conclusion” and that “it’s a pity they didn’t let him finish, because it would have been better”.⁵⁶ In determining the sentence of five months on probation and a fine of €550, the Court took into account the specific lack of respect shown by the person who unjustly assumed that his handicap allowed him to utter insulting negationist remarks.⁵⁷

Examples of racist incidents in 2008

- In July 2008, the European Court of Justice (ECJ) pronounced its judgment in the case of CEOOR/CECLR *vs.* the Company Feryn, referred to it by the Labour Court of Appeal of Brussels in 2007.⁵⁸ The case concerns a Belgian company (Feryn) specialised in the sale and installation of up-and-over and sectional doors, which publicly announced that it was in need of fitters but that it would not recruit “immigrants” (*i.e.* non-natives) because of the company’s assumption that its customers would be reluctant to give them access to their private residence for the duration of the works.⁵⁹ The Labour Court of Appeal of Brussels asked the European Court of Justice for its interpretation on whether these public statements constituted direct discrimination, even if there is not an immediately identifiable victim. In its important judgment, the ECJ states that “[t]he 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 candidature and, accordingly, to hinder their access to the labour market, constitutes direct discrimination in respect of recruitment. [...] The existence of such direct discrimination is not dependant on the identification of a complainant who claims to have been the victim.”⁶⁰ The European Court of Justice’s judgment does not constitute a final ruling in the matter but merely its interpretation of European Community law applied to this case. It is now for the Labour Court of Appeal of Brussels to pronounce its final judgment based on the answer it received from the ECJ. However, it is highly likely that the Belgian Court will follow the authoritative opinion of the European Court of Justice.
- In a case of racial discrimination in a fitness place dating back to 2005, the Belgian Courts found the owner of the fitness company guilty of discrimination in September 2008 because he repeatedly refused requests made by non-natives, in particular people from a Maghreb or Turkish origin, to join the gym, due to their foreign origin and/or skin colour.⁶¹ The case came to light when the CEOOR/CECLR received dozens of complaints by people being refused access, denied the right to be put on a waiting list and even to be handed an information pamphlet.⁶² One of the complainants consequently contacted the company over the phone and was told that there were still many places available.⁶³ Suspicions of racial discrimination were confirmed by a television programme in which a Belgian citizen from Moroccan origin was

⁵⁶ Centre for Equal Opportunities and Opposition to Racism, *Discriminatie en Diversiteit. Jaarverslag 2007*, p. 33, 64 and 65, at http://www.diversiteit.be/?action=publicatie_detail&id=32&thema=2 (accessed 1 November 2008).

⁵⁷ Ibid.

⁵⁸ European Court of Justice, *Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v. Firma Feryn NV*, Case C-54/07, 10 July 2008.

⁵⁹ Ibid., paras. 15 and 16.

⁶⁰ Ibid., para. 25.

⁶¹ Centre for Equal Opportunity and Opposition to Racism, *Fitnesszaak mag niet discrimineren*, at http://www.diversiteit.be/index.php?action=artikel_detail&artikel=68&select_page=23 (accessed 1 November 2008).

⁶² Ibid.

⁶³ Ibid.

refused access to the gym hall while a native Belgian was registered as a new client only minutes later.⁶⁴

- In a case of racism perpetrated by Belgian police officers in 2003, the Court of Appeal of Antwerp convicted the police commissioner of the head police station in Antwerp in 2008 for his part in and responsibility for the racist acts.⁶⁵ The case concerned the arrest of five people of Turkish origin on the day of the Muslim Festival of Sacrifice. During their interrogation at the police station, the suspects were treated in a violent manner and insulted by one of the police officers who said “five little lambs have been brought in. The Festival of Sacrifice can begin.”⁶⁶ The Belgian Court found the treatment of the suspects by the police officers to amount to racism, declaring that “this insult was only the sad highpoint of a performance in which the suspects were treated in a discriminatory, hateful and violent manner, because of their Turkish origin.”⁶⁷
- In November 2008, the European Parliament lifted the parliamentary immunity of MEP Frank Vanhecke, the former president of the *Vlaams Belang* party, thus clearing the way for his prosecution in Belgium in a case of racism dating back to 2005. The case concerned the spreading of a newspaper style publication in the city of Sint-Niklaas, in which Maghreb youth were being falsely accused of grave robbing. Frank Vanhecke is facing prosecution as the responsible publisher of the publication.⁶⁸
- In a case of revisionism/negationism dating back to 2001, the Court of First Instance of Brussels found two persons guilty of denying the Holocaust for racist motives. In June 2008, both persons were sentenced to one year imprisonment and a fine of € 25,000 - heavy sentences under Belgian law - for the spreading of pamphlets, brochures and stickers minimizing and even denying the Holocaust, glorifying Hitler’s regime and restoring its ‘honour’.⁶⁹ The documents were spread through an organisation called *Vrij Historisch Onderzoek* (Free Historical Investigation) set up by one of the two convicted, but the Court ruled that the negationist and revisionist statements were not based on historical investigation but instead revealed racist motives.⁷⁰
- In November 2008, a video appeared on *YouTube* in which Michel Delacroix, President of the Walloon extreme rightwing party *Front National* and member of the Belgian Senate, was seen on vacation, singing an anti-Jewish song along with a member of the Flemish extreme rightwing party *Vlaams Belang*.⁷¹ The song, which was based on the melody of a song by a French singer-songwriter of Jewish origin, had lyrics such as “[m]y little Jewish girl is in Dachau. She lies in the unextinguished chalk. She left her ghetto to be burnt alive”.⁷² Following the public release of the video, the *Front National* immediately removed Michel Delacroix from his position as President of the party and from the party bureau, but strangely enough did not take any steps to

⁶⁴ Ibid.

⁶⁵ Centre for Equal Opportunity and Opposition to Racism, *Hof van Beroep veroordeelt Bart Debie voor racism*, at http://www.diversiteit.be/index.php?action=artikel_detail&artikel=9&select_page=23 (accessed 1 November 2008).

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ *De Standaard*, “Vlaams Belang maakt martelaar van Vanhecke”, 19 November 2008.

⁶⁹ *De Morgen*, “Negationist Siegfried Verbeke krijgt één jaar cel”, 19 June 2008.

⁷⁰ Ibid.

⁷¹ *De Standaard*, “FN voorzitter neemt ontslag na zingen nazi-lied”, 7 November 2008.

⁷² Ibid.

persuade him to relinquish his seat in the Belgian Senate.⁷³ The member of *Vlaams Belang* was completely dismissed from his party after the video appeared.⁷⁴

- In another case of negationism, former senator and vice-president of the *Vlaams Blok* party (now *Vlaams Belang*) Roeland Raes, was convicted in December 2008 and sentenced to a probationary sentence of four months imprisonment as well as financial compensation of 1,000 Euro for damages to be paid out to the CEOOR/CECLR and the *Forum of Jewish Organisations*. The case was dating back to 2001, when in his official capacity he openly questioned and minimized the extent and systematic nature of the Holocaust in a television interview.⁷⁵
- In a case of neo-nazism, three leading figures of the neo-nazi organisation *Blood and Honour Flanders* were arrested in October 2008 on suspicion of violation of Belgian anti-racism legislation.⁷⁶ The suspects were responsible for the organisation of musical concerts by neo-nazi bands, which usually gathered an audience of hundreds of neo-nazis and during which nazi-songs were sung, the Hitler salute was made and “Heil Hitler” was shouted by the audience.
- In another case of neo-nazism, the Belgian Prosecutor’s Office completed its investigation into the criminal activities of the neo-nazi group *Bloed, Bodem, Eer en Trouw* (Blood, Soil, Honour and Loyalty) in December 2008. This group, led by a professional member of the Belgian military who was a former member of *Blood and Honour*, was shut down by the Belgian police in September 2006 on suspicion of terrorism. 11 of its members, including its leader, will now be prosecuted for that crime, as well as for racism and negationism. Although the group had collected a large arsenal of weapons and explosives, it had not yet set in motion any of its plans to destabilize Belgium.⁷⁷

⁷³ Ibid. Under the Belgian electoral system, a seat in the Senate belongs to the individual elected and not to his/her party. However, it is common practice for political parties to - behind doors - persuade a convicted Senator to voluntarily relinquish his seat.

⁷⁴ Ibid.

⁷⁵ *De Standaard*, “Roeland Raes. Als negationist veroordeeld”, 13 December 2008.

⁷⁶ *De Standaard*, “Drie organisatoren van naziconcerten opgepakt”, 22 October 2008.

⁷⁷ *De Standaard*, “Parket wil neonazi’s voor de rechter”, 2 December 2008.

Human Rights Without Frontiers recommends that

Belgium implement the Concluding Observations of the Committee on the Elimination of Racial Discrimination concerning its 14th and 15th Periodic Reports which provide among others that it

establishes an independent national human rights institution, with a broad mandate to promote and protect human rights, in accordance with the Paris Principles;

strengthens its measures to prevent and combat xenophobia and racial prejudice amongst politicians, public officials and the general public, as well as to promote tolerance between all ethnic and national groups;

adopts legislation to ensure the full and adequate implementation of article 4 of the Convention in its domestic legal system, especially provisions declaring illegal and prohibiting organizations which promote and incite racial discrimination, in accordance with article 4 (c);

takes all necessary measures to ensure that protection and remedies against any acts of racial discrimination are effective, and that complaints are promptly, thoroughly and impartially investigated and persons charged with offences prosecuted and tried;

collects detailed information on the investigation, prosecution and conviction of racially motivated offences as well as on reparations provided to victims of such acts;

reinforces information campaigns and education programmes on the Convention and its provisions, as well as strengthens its training activities for police and those working within the criminal justice system on the mechanisms and procedures provided for in national legislation in the field of racial discrimination;

develops a focused strategy, taking into consideration general recommendation No. 31, for changing the situation in order to ensure that all persons irrespective of race, colour, descent, or national or ethnic origin are treated equally in the penal system;

adopts effective measures to prevent de facto segregation and address the underlying factors, especially as such segregation has a negative impact on the enjoyment of economic, social and cultural rights of the individuals affected;

ensures that members of the police forces are adequately trained in human rights and that all allegations of ill-treatment and excessive use of force are investigated;

strengthens its measures to improve the schooling of Roma children, as well as employment opportunities for Roma and Travellers;

collects detailed information on the enjoyment of social, economic and cultural rights of Roma and Travellers, as well as on the impact of the measures taken to increase and improve sites on residential land for caravan-dwellers and improve access to health care and other basic facilities;

takes into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chapter I), when implementing the UN Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention.

Human Rights Without Frontiers International (HRWF Int'I) is a non-governmental organization with an objective to promote democracy, the rule of law and human rights in a global perspective. HRWF Int'I has branches in Belgium, China, Nepal, Bhutan and the US. and cooperates with associate member organizations in Armenia, Bulgaria, Georgia, Iraq, Japan, Russia, etc.

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See our report "*Human Rights in Belgium 2008*": <http://www.hrwf.net>

