

BELGIUM

CERD A/33/18 (1978)

92. Several features of the initial report of Belgium were welcomed by the Committee: that it provided information relating to all the provisions of the substantive articles of the Convention as well as the additional information envisaged in general recommendations III and IV of the Committee; that that information was organized on the basis of the sequence of requirements followed in the Convention; and that the full texts of the relevant constitutional and legislative provisions were supplied.

93. It was observed that the language of article 6 of the Belgian Constitution of 1831, proclaiming that “there shall be no distinction of classes in the State”, was much more restrictive than the reference to “race, color, descent, or national or ethnic origin” appearing in article 1, paragraph 1 of the Convention. The representative of Belgium, in his reply, noted that “the Belgian Constitution had been drafted in a different age, when the primary concern of the drafters had been to ensure that the country did not revert to the ways of the previous régime. However, its meaning had been extended as conditions in the country changed, and it was now interpreted to cover all forms of racial discrimination”. He referred to article 6 bis, which declared that “enjoyment of the rights and freedoms to which Belgians are entitled shall be secured without discrimination”.

94. In connection with article 2, paragraph 1 (e), of the Convention and the statement in the report that there were no racial minorities in Belgium in the strict sense of the word, reference was made to a case which had been submitted to the European Court of Human Rights and which raised the question of whether what was involved was merely a population of a single ethnic origin which because of historical circumstances spoke two different languages or whether the language problem had an ethnic background. The representative of Belgium asserted that the integration of the Flemish and Walloon populations of Belgium had been such that it could no longer be claimed that there were any indigenous ethnic minorities in the country, and that the only remaining distinction between Belgians was one of language.

95. With regard to the information on the status of migrant workers, which was supplied in connection with the reporting State’s application of article 2, paragraph 2, of the Convention, it was noted with gratification that foreign workers in Belgium enjoyed the same rights as Belgian workers as far as labour legislation was concerned. However, with respect to the additional statement - that that equality was not expressly written into the legislation but was due to the fact that the latter’s field of application was not restricted by conditions relating to nationality - the hope was expressed that Belgian legislators would give some thought to the advisability of expressly recognizing the principles in question. The efforts made by the Government of the reporting State to give material and moral assistance to the new immigrants were noted with satisfaction; it was observed, however, that in addition to those measures, there might be need for some action affecting the attitude of the majority of the population with respect to immigrant workers.

96. The Committee took note of the information on pending legislative measures aimed at giving

effect to the provisions of article 2, paragraph 1 (d) and article 4, subparagraphs (a) and (b), of the Convention. It was asked whether the contemplated penal reforms had become law since the submission of the report. The representative of Belgium stated that, subsequent to a prolonged ministerial crisis in his country, another draft was being prepared for submission by the new Government. He assured the Committee that “the points raised and comments made in the Committee would be transmitted to the Belgian administration for consideration during the formulation of the draft”.

97. Several members of the Committee commented on the draft provisions of the proposed legislation, as contained in the report under consideration. The failure of those provisions to give effect to the provisions of article 4, subparagraph (b), of the Convention was noted with regret by all Committee members who participated in the discussion. In his reply, the representative of Belgium referred to the existence of “small groups likely to practice or advocate discriminatory practices” but asserted “that they were very few in number, and their activities were generally confined to holding meetings, distributing pamphlets and painting slogans on walls”. While the Government could “prohibit such groups”, it had “considered that it could take action as effectively against individual offenders as against the groups to which they belonged”. He observed that “public opinion often feared measures which had the appearance of censorship for fear that those provisions might later be abused” and that, in any case, “Belgian law did provide for the possibility of prohibiting activities contrary to the public order”.

98. It was noted with surprise that the Penal Code, in articles 327 and 329, provided for much severer penalties for incitement to violence for reasons other than racist ones than those provided in the proposed legislation, in draft article 2, for incitement to violence against groups by reason of the ethnic or national origin of their members.

99. With reference to the statement of interpretation deposited by Belgium at the time of its ratification of the Convention, it was observed that in view of articles 29 and 30 of the Universal Declaration of Human Rights, it could not be asserted that freedom of expression and association could not be restricted in any way.

100. Reference was made to the provisions of article 5, subparagraph (e) (i) and (v), of the Convention. It was noted that the proposed legislation gave effect to the undertaking of States parties under article 5, subparagraph (f), but failed to prohibit discrimination in the hiring of workers, as was required by subparagraph (e) (i) of article 5. With regard to the requirements of article 5, subparagraph (e) (v), members of the Committee noted the statements in the report under consideration that “the system of selection prevailing in the schools penalizes the culturally most impoverished sections of the population, including many children of migrant workers” and that the reorganized teaching programmes would attempt to remedy that situation in all State educational institutions by 1978. It was asked whether the new programmes had in fact been put into effect and whether primary school education had come to be provided in the languages of the main groups of immigrants in accordance with the recommendations of UNESCO. The representative of Belgium stated that immigrant children were generally integrated with Belgian pupils in regular schools but could receive special tuition in their own language and culture.

101. Additional information on the application of article 6 of the Convention was requested. In

particular, it was asked whether victims of discrimination could have recourse not only to the European Commission on Human Rights but also to national administrative jurisdiction; and whether, in the latter case, recourse could be had to the regular courts or to a constitutional court dealing with such cases. The representative of Belgium affirmed that there were internal remedies which could be invoked; indeed, petitions could be made to the European Court only after all internal remedies had been exhausted.

102. The detailed information on the implementation of article 7 of the Convention was welcomed by members of the Committee.

103. It was noted that the report provided no information on judicial measures taken to give effect to the provisions of the Convention; and information on such cases of racial discrimination as might have come before the courts was requested. The representative of Belgium stated that the existing statistics on the processes of Belgian law did not make it possible to determine how many cases involving discrimination were taken to court in any year; he hoped that such information could be provided in the next periodic report.

104. With reference to the statement that in Belgium the European Convention on Human Rights was directly applicable in internal law and was regarded as taking precedence over national legislation, it was asked whether that applied to all international agreements to which Belgium was a party. The representative of Belgium stated that “international instruments signed and ratified by the Belgian Government were self-executing if such was the intention of those who drafted them and if they were so worded as to enable courts to refer to them directly without necessitating recourse to internal law for implementation”.

105. The fact that information on the status of the relations of the reporting State with the racist régimes in southern Africa was furnished in the report was welcomed by all members of the Committee; however, the statements that that question was outside the purview of the Convention and that “the complete isolation of the South African régime might tend to strengthen it in its present racist policy”, which were endorsed by some members of the Committee, were strongly disagreed with by several other members.

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222. The information contained in the second periodic report of Belgium (CERD/C/16/Add.2) was considered by the Committee together with the supplementary information given by the representative of the reporting State in his introductory statement which included some comments on the report and concerning questions raised during the consideration of the initial report.

223. The Committee expressed its appreciation of the report which was considered to be full, very informative and frank.

224. In connection with article 2 of the Convention, some members asked how the Act of 16 July 1973 protected the cultural development of the three national communities in Belgium and what were the composition and activities of the Cultural Councils mentioned in the report. Efforts made by the Government to improve the lot of migrant workers were commended. At the same time, attention was drawn to the statement in the report that legal confirmation of the equality of Belgian and foreign workers, which in practice has never been called into question, would only cause doubt and insecurity, and information was sought on the steps being taken or planned to eliminate segregation and discrimination which, according to the report, existed in Belgium. The financial and administrative assistance accorded to the Islamic religion in Belgium was noted with satisfaction. A question was asked how a religion could achieve the status of being “recognized” and what happened in the case of non-recognized religions.

225. Some members regretted the Belgian Government’s position of principle in connection with relations with the racist régimes in southern Africa, and it was stressed that the Committee could not be denied the right to inquire into the way in which States parties discharged their obligations under article 3 of the Convention. Two members, however, expressed the opinion that such legal obligations were limited to territories under the jurisdiction of States parties. The question was asked whether the Belgian Government had ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid.

226. With regard to article 4 of the Convention, it was noted that it was difficult to understand the argument of the report that drastic measures in connection with the racist or “Nazi” groups existing in Belgium should be avoided lest such activities should be driven underground and made difficult to control. It had always been the Committee’s view that the provisions of article 4 of the Convention were mandatory on States parties and it was hoped that its opinion would be brought to the attention of Belgian legislators.

227. The Committee had no doubt that Belgium respected the rights and freedoms of article 5 of the Convention, in particular the rights to freedom of opinion and expression and to the freedom of peaceful assembly and association. However, article 29.2 of the Universal Declaration of Human Rights provided for limitations in order to secure respect for the rights and freedoms of others. It was pointed out in this connection that the existence of racist groups in Belgium tended to restrict the freedom of others and the matter had to be settled in accordance with the provisions of the Convention.

228. In connection with legislative, judicial and administrative measures relating to the need to assure to everybody protection and remedies through the competent national tribunals and other State institutions, clarification was requested concerning the self-executing nature of certain conventions in Belgium. It was noted that under article 1382 of the Civil Code the judge was empowered to order the payment of compensation for any individual act which caused damage. Information was sought as to whether the victim could obtain damages in the case of a minor offence.

229. As far as article 7 of the Convention was concerned, it was felt that the report provided ample information concerning the implementation of this article.

230. Replying to the comments of the members of the Committee, the representative of Belgium pointed out that the Cultural Councils for the French, Dutch and German communities were composed of deputies and senators and that their tasks extended, in particular, to the defense of languages, scientific research, the cultural heritage, young people, public information, life-long education and leisure activities. Foreign workers enjoyed the same rights in Belgium as national workers. However, Belgium, like other host countries, still had to make considerable efforts to improve their living conditions. The Belgian legislation, while fully guaranteeing freedom of religion, recognized not religions as such, but the authorities responsible for administering their earthly goods.

231. In reply to the questions concerning Belgium's relations with the régimes in southern Africa, he said that that problem was highly political in nature and, therefore, fell within the competence of the General Assembly, the Security Council and their subsidiary organs, in which Belgium made its position known and was determined to co-operate with all Member States. Belgium had not ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid for juridical reasons.

232. With reference to article 4 of the Convention, he acknowledged that no specific provision of criminal law had yet been promulgated to prohibit organizations and organized propaganda activities which incited racial discrimination. The majority of the population feared that specific restrictive measures might one day be abusively applied. Belgian groups with racist tendencies were often mere de facto associations that would go underground or change their name if too radical measures were adopted. But the authorities already possessed effective means for punishing offences committed by such groups.

233. In connection with article 6 of the Convention, he pointed out that the self-executing character of certain international treaties was in fact determined by case law. The possibility of invoking a particular article of the Convention had so far remained an "academic" question since no petition concerning acts of racial discrimination had ever been referred to any court. He said that the next report would provide information on the remedies available to victims of acts of racial discrimination and the compensation they could claim.

CERD A/39/18 (1984)

234. The third and fourth periodic reports of Belgium, submitted in one document (CERD/C/88/Add.5), were considered by the Committee together with the introductory statement made by the representative of the reporting State, who referred in particular to information provided in the report on legislative changes made in Belgium with a view to complying with obligations under the Convention. She also stated that with regard to the situation in South Africa and relations with that country, Belgium had always held that the Convention imposed upon States parties obligations in respect of persons and groups covered by their territorial jurisdiction and that international politics were not relevant to the Committee's proceedings. Nevertheless, Belgium had always been prepared to associate itself with any initiative, involving the condemnation of the practice of racial segregation in South Africa and to remind the South African authorities of the need to end the policy of apartheid. Furthermore, through its participation in the United Nations Council for Namibia, its bilateral contributions and its co-operation with various international organizations providing humanitarian assistance, Belgium directly and actively assisted the victims of apartheid. Her Government also believed that only through dialogue and the promotion of peaceful change in conformity with the purposes and principles of the Charter could respect for the dignity of the human person be ensured in that region.

235. The Committee commended the Government of Belgium for its comprehensive report and for its efforts in bringing its internal legislation into line with the Convention. It also appreciated the fact that the Government had taken into account the Committee's guidelines in preparing its report.

236. In connection with article 2, members drew attention to the Government's policy concerning foreign workers who constituted a high percentage of the total population of the country. More information was requested on steps taken or contemplated to prevent the segregation of and discrimination against foreign workers in the labour market, on measures against the exploitation of the illegally recruited foreign workers and on special economic and social assistance programmes for foreign workers aimed at solving their housing and educational problems. It was also asked what the Government's policy was with regard to foreign workers attempting to obtain resident status and citizenship and what measures were taken or being contemplated to integrate them in the Belgian society. It was noted that some of the communal advisory councils for immigrants established in Belgium had been disbanded and it was asked what the Government had done to revive them; how, in their absence, the interests of immigrants in the community were represented; and what the practical results of the advisory councils for immigrants were in solving the problems faced by immigrants in their communities. Furthermore, commenting on information concerning the various ethnic groups or minorities living in Belgium, members wished to know the results of the most recent census of the population; what the relations were between the larger and the smaller ethnic groups; whether there were currently problems between those groups; whether they all enjoyed the same opportunities and what was their economic status.

237. With reference to article 3 of the Convention, it was recalled that the Committee's guidelines suggested that States parties should provide information on the status of their diplomatic, economic and trade relations with the Government of South Africa. In this connection, members asked whether Belgium had investments in South Africa and whether there were cultural, sporting or other

contacts between the two countries, whether Belgium had acceded to the Code of Conduct of the European Economic Community regarding investments in South Africa, and whether it had legislation designed to discourage investments in that country.

238. With regard to article 4, paragraph (a), of the Convention, members of the Committee focused their attention on the Act of 30 July 1981 whereby certain acts on racism or xenophobia were made punishable by law in Belgium. They observed that articles 1 and 2 of the Act raised certain problems by requiring that certain offences must be committed publicly in order to be punishable. It was pointed out that certain discriminatory measures which could be taken through correspondence or in the rental of a private apartment would not be covered by the provision of the Act only because they were not taken publicly, and it was asked what approach the authorities of Belgium would take in such cases. With reference to article 4, paragraph (b), of the Convention, a similar clarification was requested on the provisions of article 3 of the Act, that members or supporters of an association which advocated racial discrimination could be punished only when their activities advocating racial discrimination were manifested and repeated and took place publicly. In this connection, members wished to receive the full text of articles 1 to 5 of the Act of 30 July 1981. They also wished to know what were the results achieved by the Act, whether the enforcement of the Act had led to the disappearance of the Nazi organizations or racist groups in Belgium and, if not, what were the policies to combat them, what was the status of the investigation into contacts between those groups and similar groups in other countries, whether the media had adopted any procedures for self-censorship or a code of conduct in respect of racist propaganda, and who was competent to declare racist an organization dedicated to the promotion of xenophobia. With reference to article 4, paragraph (c), of the Convention, it was noted that the decision concerning the refoulement of families of foreign workers was in the hands of the authorities responsible for border control and it was asked whether there was some procedure or special measures to prevent discriminatory practices at the border, especially when the individual concerned had not met the necessary requirements because he or she was unaware of them. It was also asked whether there were measures to reprimand a border control official who acted in a discriminatory or arbitrary fashion and what procedure had been used to resolve such cases which might have occurred.

239. With reference to article 5 of the Convention, more information was requested on the literacy rate among immigrants, on the percentage of their children attending primary and secondary schools and universities, on the drop-out rate among them and on how the language barrier was overcome.

240. As regards article 6 of the Convention, it was asked whether the fact that the Convention was part of Belgian domestic law and prevailed over ordinary law could mean that there existed a sort of general administrative remedy against acts by public authorities which were at variance with the provisions of the Convention. The wish was also expressed to receive a summary of cases involving racist and xenophobic organizations which had come before the courts.

241. Turning to article 7 of the Convention, members wished to be informed of the legislative and other measures which the Belgian Government had adopted to implement its provisions, particularly in the field of education and with special reference to the children of immigrants. It was also asked whether the oral expression of racist opinions by teachers was punishable under the Act of 30 July 1981.

242. Replying to questions of the Committee, the representative of Belgium explained that the establishment of the communal advisory councils for immigrants had been an experiment launched towards the end of the 1960s at the local community level. While the results had varied from commune to commune, a certain lack of interest on the part of the foreigners had been noted. Nevertheless, if immigrants had problems, they could always resort to the communal authorities even where there were no advisory councils.

243. With regard to article 3 of the Convention, she pointed out that Belgium had acceded to the code of Conduct of the European Economic Community, that it did not encourage investment in South Africa or grant any economic or trade facilities to promote contacts, that there were no official trade missions sent to South Africa, and that the sporting contacts depended on private initiatives. In 1977, Belgium had suspended its cultural agreement with South Africa and had reintroduced the visa requirement for South African nationals, a measure which was strictly applied.

244. As regards article 4 of the Convention, the representative stated that the requirement laid down in the Act of 30 July 1981 regarding the public nature of certain activities should be interpreted broadly, in accordance with article 444 of the Criminal Code of Belgium. The Act would not apply in the case of a landlord who refused to rent a private apartment to a foreigner, because it would be very difficult to present legal evidence of the grounds for the refusal, unless there were witnesses. Furthermore, measures to counter the activities of organizations practicing or advocating racial discrimination had to be considered in the specific context of Belgium, where the right of association constituted a tangible manifestation of independence from the authorities. It was for the courts to determine the racist or discriminatory nature of such associations on the basis of evidence presented by the Public Prosecutor and on the basis of statements by the parties and the associations themselves. Her Government was of the view that if excessively radical measures were adopted against those associations, there was a danger that they might be driven underground, which would naturally make it more difficult to take action against them. The requirement that the activities of such associations be known to the public in order to be punishable by law seemed a matter of common sense since it would be rather difficult to prove any practice of racial discrimination if those practices were not a matter of public knowledge. On the other hand, the press was at liberty to adopt such measures as it considered useful in helping journalists to perform their duties within the framework of the Act of 30 July 1981. The representative stated that article 4 of the Act was applicable to border control officials. She also pointed out that the Act was fairly recent and it was still too early to assess the results of its implementation.

245. As to the supremacy of the Convention and international instruments in general over domestic legislation, she explained that it was for the courts to rule on the executory force of such instruments. The courts gave precedence to the provisions of the international instrument when there was any conflict with domestic legislation.

246. The representative finally stated that further information in reply to questions raised by the Committee would be provided in her Government's next periodic report.

CERD A/47/18 (1992)

44. The Committee considered the fifth, sixth, seventh and eighth periodic reports of Belgium (CERD/C/194/Add.3) at its 939th, 940th and 950th meetings, on 3, 4 and 11 August 1992 (see CERD/C/SR.939, 940 and 950).

45. The reports were introduced by the representative of the State party, who noted that there had been a number of legislative and constitutional reforms undertaken in Belgium since the submission of its last report. The laws concerning the acquisition of nationality had been amended in July 1991 to extend Belgian nationality automatically to children born in Belgium of parents who were themselves born in Belgium. Responsibility for matters concerning the entry and departure of foreigners had been shifted from the Ministry of Justice to the Ministry of the Interior. While regulations in those matters might appear to be discriminatory, equality of treatment lay at the base of all Belgian policies regarding aliens, who enjoyed the same civil liberties as Belgian citizens. That was in accordance with the obligations of Belgium under a number of international human rights instruments, including the Convention. The highest court in Belgium, the Court of Cassation, had recognized the primacy of the provisions of those international instruments over domestic law even when the latter predate the former. The provisions of those instruments may be invoked by citizens and foreigners alike in judicial and administrative proceedings.

46. In regard to racism and racial discrimination, there were no ethnic minorities in Belgium other than immigrants, most of whom were of either Moroccan or Turkish origin. Both of those communities had been the object of discrimination, racism and xenophobia. For that reason, the Office of the Crown Commissioner had been created three years before with the responsibility of examining the situation of immigrants in Belgium, with a view to proposing policy changes necessary for their protection and their insertion in society. The proposals of the Commissioner are reviewed by the Interministerial Conference on Immigration, which is presided over by the Prime Minister.

47. Members of the Committee expressed their appreciation for the large amount of information submitted by the Government of Belgium in its report. It was noted, however, that ongoing legislative reform was not a valid reason for the non-submission of reports by States parties. On the contrary, Governments undertaking such reforms should be reporting regularly to the Committee. It was also noted there had been little reference in the report to minorities which were not French-or Dutch-speaking, to the ways in which their rights were ensured or to the status of foreigners in Belgium who accounted for some 9 per cent of the work force. In particular, more demographic data relating to ethnic differences would be welcome in the next report, as well as greater information on complaints procedures for victims of racial discrimination, and upon the outcomes of such complaints.

48. With regard to article 1 of the Convention, members of the Committee pointed out that, in order to have a more accurate picture of the actual situation in Belgium, the Committee needed statistics on unemployment, delinquency and drug abuse rates among minority groups as compared with the rest of society. In regard to paragraph 4 of the article, information was requested on any special measures of "positive discrimination" undertaken to promote the equality of groups subject to racial

discrimination. Clarification was requested as to the difference between the situation of foreigners from the European Community and those from other countries in regard to employment and standard of living.

49. Concerning article 2 of the Convention, members of the Committee wished to know how the provisions of the Convention had been integrated into national legislation and how they had been applied. Information was requested on integrationist and multicultural organizations in Belgium and how such organizations were being encouraged by the Government. Reference was made to the system of quotas regarding immigration and details were requested as to the number of persons refused entry into Belgium under that restriction. Information was requested concerning recourse procedures in cases of refusal of entry, and about the position of Zairean nationals.

50. Members of the Committee noted that there was no information contained in the report concerning article 3 of the Convention regarding racial segregation and apartheid. More information concerning the application of those provisions was requested.

51. With reference to article 4 of the Convention, members of the Committee wished to know whether those provisions of the Criminal Code dealing with acts of racism and xenophobia (arts. 151, 444 and 448) had been invoked in the courts and, if so, with what result. Reference was also made to the Act of 30 July 1981, which appeared to be incomplete with regard to article 4 of the Convention. Clarification was requested as to whether racist organizations were themselves considered illegal or if it were only the racist acts of their members that were prohibited. Members noted that the Government was inclined to limit free speech out of concern over racism and asked why similar restrictions on freedom of association were not applied in regard to racist organizations.

52. In respect of article 5 of the Convention, members of the Committee wished to know if there was a distinction between nationals of countries of the European Community and nationals of other countries in regard to voting rights in Belgium and access to posts in the administration. Further information was requested regarding the Act of 15 December 1980 and, in particular, restrictions on the exercise of the freedom of expression, assembly and association. Members wished to know on which grounds a professional identity card was accorded or refused to a migrant worker. How were persons protected against racial discrimination in matters relating to the choice of employment, equal pay, trade union rights and the right to housing? Members of the Committee also wished to have information on recent developments relating to the Technical Committee, described in paragraph 95 of the report, created to deal with matters concerning the appointment of Islamic teachers.

53. Concerning article 6 of the Convention, members of the Committee noted that while 1,269 complaints of racist and xenophobic acts had been filed with the authorities, there had been only 12 convictions. What were the factors behind such a low conviction rate? It was also pointed out that, as the protection against racial discrimination increased, the number of complaints of discrimination filed could also be expected to increase. Why was the number of such complaints filed annually in Belgium so low and decreasing even further? More detailed information on the jurisprudence in the area of racial discrimination was also requested.

54. With regard to article 7 of the Convention, members of the Committee wished to have

information on the recommendations made by the Crown Commissioner's Office concerning education and housing. Clarification was requested as to whether the Government subsidized only Christian schools or if such support extended to Islamic schools also. Members wished to know if training programmes had been developed for magistrates, police and other officials who deal with immigrants.

55. In his reply, the representative of the State party referred to questions of the members concerning the position of the Convention in Belgian law. He explained that where it was clearly stated in the text of a treaty that a provision had direct effect, then such provisions were considered "self-sufficient" in Belgian law and could be invoked before any Belgian court. However, where there was no such indication, direct applicability was a question for the courts to determine. Most of the provisions of the Convention with which the Committee was concerned were not "self-sufficient" and thus the Belgian legislature had to take certain measures to give them direct effect. One such measure had been the 1981 Act on the prevention of acts of racism and xenophobia, which had been discussed in the report under consideration by the Committee.

56. The representative pointed out that the Belgian system was based on the fundamental concept of "linguistic territories", of which there were four: the Flemish, Walloon, German-speaking and bilingual territories. In response to questions about the German-language community, he stated that there were 64,000 German-speaking Belgian nationals out of the country's total population of some 10 million. Belgium, however, did not recognize minorities as such, as the communities had equivalent powers and mechanisms. There were three regions, namely, the Flemish region, the Walloon region and the Brussels capital region, which was bilingual. Those entities had mechanisms similar to those operating at the national level, with an executive power, a legislative power and a certain degree of financial autonomy. It was in the frontier areas between those linguistic territories that problems might arise and it was there that a special arrangement had been devised to ease or facilitate transition and adaptation from one territory to another.

57. Associations representing particular groups could, of course, be formed and were encouraged, even receiving subsidies in many cases. The general emphasis in Belgium, given the current trend towards a multicultural society, was to encourage individual integration into a community. In more general terms, Belgium would have no problem in ratifying an international convention on minorities, especially since the terminology proposed referred to individuals belonging to minorities.

58. Regarding the status in Belgium of nationals of European Community countries as compared to nationals of other States, that was a matter determined by the relevant provisions of the Treaty of Rome and the Treaty of Maastricht. Under the former, the right of workers to freedom of movement was recognized only for nationals of the European Community, whereas the latter applied the same principle regarding the right to vote and to stand for election. In the representative's view, such differential treatment did not constitute discrimination but rather was justified by the need to further the objective of European integration.

59. Concerning political, social and economic rights, discrimination was now practically non-existent. Previously, there had been some discrimination regarding social security benefits against Moroccan and Turkish nationals who had lived in Belgium for most of their lives, but now that discrepancy had been remedied. Aliens enjoyed exactly the same rights as Belgians where

participation in trade-union activities was concerned. With respect to education, there were unfortunately some schools attended primarily or even exclusively by non-Belgians, as a result of a concentration of foreign residents in the areas concerned. Steps had been taken in recent years to improve the situation by promoting educational opportunity and improved teacher training. Additionally, there was currently one subsidized Islamic school, a nursery school, and it was expected that the number would increase in the future.

60. On the subject of the appointment of a Crown Commissioner for Immigration and the creation of a national centre for racial equality, a draft law had already been through a first reading and it was hoped that the centre would begin operation in 1993. It would be responsible for research and documentation and was to provide advice and make recommendations to the authorities on the application of the 1981 Act on the prevention of acts of racism and xenophobia, as well as other means of action against all forms of racial discrimination. It was to be directly accountable to the Office of the Prime Minister, to which it would be required to report annually, and would also help prepare the report to the Committee on the Elimination of Racial Discrimination.

61. With regard to discrimination against asylum-seekers at the border, frontier customs officials and law enforcement agents had no decision-making powers: their function was simply to take note of applications and to transmit them to authorities. It was true that complaints had been made to the Government of Belgium of discriminatory treatment by certain frontier officials and an inquiry was now under way. In the meantime, steps had been taken to improve the training of such officials so that their role was more clearly defined. Between 1988 and 1991, Zairean nationals had accounted for between 8 and 13 per cent of all asylum-seekers. They were accorded the same treatment as asylum-seekers of other non-European Community States, but in view of events that had taken place in Zaire in 1991-1992, the Government of Belgium had decided to suspend any removal measures against Zairean nationals pending clarification of the situation. In 1991, there had been almost 14,000 Zairean nationals resident in Belgium, representing only 1.5 per cent of the total resident foreign population.

62. In regard to article 4, the intent of the 1981 Act was not to eliminate but rather to punish acts of incitement to racial hatred and violence. The Act was very broad in scope so as to empower the judiciary to deal with all situations referred to it. At the same time, freedom of expression was sacred in Belgium and was enshrined in the Constitution and great caution had to be exercised in allowing any derogation from that principle. The Act thus contained stringent requirements as to proof of racist or xenophobic actions and stipulated that the actions in questions were necessarily carried out in public. A Senate proposal to amend the 1981 Act had been introduced at the beginning of 1992, with a view to making it more effective by imposing stricter penalties, making the refusal to allow occupation of a dwelling a punishable offence, including broader provisions for prosecution in the event of discriminatory offers of services or publicity and new provisions concerning the refusal to employ or the decision to dismiss a person on grounds of race, color, origin, etc. It should be noted that in all cases proof of racist intention must be adduced.

63. In regard to associations manifestly and repeatedly promoting or inciting racial discrimination, proof of intention was required. Legal proceedings could be brought against actual persons, as opposed to legal entities, the intent of the legislation being to undermine the existence of such associations through actions against individual members guilty of racist acts or incitement.

Additionally, various racist and paramilitary associations had been dissolved and individuals convicted under a separate law dating back to 1934.

64. With reference to article 14 of the Convention, and in particular, paragraphs 1 and 2 thereof, Belgium had shown its willingness to respond positively by initiating admittedly lengthy procedures for incorporating those provisions in legislation. It was pointed out that the European Community itself provided individuals with a variety of remedies in the event of grievance, and that complaints had recourse to the European Commission on Human Rights.

Concluding observations

65. The Committee noted with great interest the major constitutional and legislative reforms adopted in Belgium which have introduced positive changes in relations between the French-speaking and Dutch-speaking communities. Nevertheless, it requested Belgium, in its next periodic report, to provide further information on the German-speaking community and other minorities with Belgian nationality. In that regard, more demographic data were needed, together with information on the measures and policies designed to ensure the exercise of human rights by those minorities on an equal footing with the majority communities.

66. The Committee gave consideration to the Act of 30 July 1981 for the suppression of certain acts based on racism and was of the view that, while it represented progress in the campaign to combat racial discrimination in Belgium, the scope of the Act was too limited and thus was not complying fully with the provisions of article 4 of the Convention. The Committee also requested further substantive information on complaints lodged with the courts in connection with the implementation of the Act, and on the existence of groups currently promoting racial discrimination.

67. The Committee also accorded special attention to the situation of aliens resident in Belgium and asked for further information on the exercise by such persons of the rights referred to in article 5 of the Convention on an equal footing with Belgian nationals, with special reference to the employment conditions of immigrant workers, which were of concern to the Committee.

68. The Committee hoped that the next periodic report would be submitted in good time.

CERD A/52/18 (1997)

210. The Committee considered the ninth and tenth periodic reports of Belgium, submitted in one document (CERD/C/260/Add.2), and adopted the following concluding observations at its 1211th and 1212th meetings (see CERD/C/SR.1211 and 1212) on 20 March 1997.

A. Introduction

211. The Committee welcomes the ninth and tenth periodic reports submitted by the Government of Belgium in one document and the opportunity thus offered to continue its dialogue with the State party. It expresses to the Belgian Government its satisfaction regarding the quality of the report, although it regrets that it was not submitted within the time limit. It also thanks the high-level delegation for the additional information submitted orally in reply to the numerous questions asked by members of the Committee and considers its dialogue with the delegation to have been fruitful and constructive. The Committee noted the desire of the State party, as evidenced by the ongoing review of the operation of the police services and judicial institutions, to implement a more active policy for prosecuting racial offences.

B. Positive aspects

212. The Committee noted with interest the statement by the State party to the effect that - with a view to the accession of Belgium to article 14 of the Convention - steps have been taken at the federal level and clarification has been requested from the United Nations High Commissioner for Human Rights/Centre for Human Rights concerning the procedure for implementing article 14, paragraph 2.

213. The Committee took note with satisfaction of the institutional and statutory measures recently adopted by the Belgian authorities to combat racism and xenophobia. It noted the amendments to the Act of 30 July 1981 designed to curb certain acts motivated by racism or xenophobia. Those measures led to the establishment in 1993 of the Centre for Equal Opportunity and Action to Combat Racism, the primary function of which is to receive complaints of racial discrimination and, if necessary, institute court proceedings. In addition, the Act of 12 April 1994 introduced changes to increase penalties and extend the scope of penalties for public expressions of intent to practice racial discrimination, for discrimination in the provision of goods or services and for discrimination in employment, with regard to which the right to institute proceedings was granted to workers' and employers' organizations.

214. The Committee noted with satisfaction the various measures taken regionally to ensure the integration and participation of foreigners, in particular the promulgation of the decree of 4 July 1996, the purpose of which is to approve and subsidize centres in the Walloon Region for the integration of foreigners or persons of foreign origin.

215. The Committee took note of the penalties introduced by the Act of 15 December 1980 as reprisals against the organizers of illegal immigration networks and traffic in persons, particularly foreigners.

216. The Committee also noted with great interest and appreciation the role of the Centre for Equal Opportunity and Action to Combat Racism in preventing discrimination by considering complaints of acts of racial discrimination, by setting up training courses for the police and gendarmerie and the judicial police and by organizing information campaigns for foreigners and campaigns to enhance public awareness of action to combat racism. The Committee is also pleased to welcome the initiatives taken in the spheres of education and information to overcome the prejudices which give rise to racial discrimination.

C. Principal subjects of concern

217. The Committee noted the entry into force of the Act of 23 March 1995 prohibiting the denial, minimization, justification or approval of the genocide committed by the German national socialist régime during the Second World War, thus filling a gap in the law. Concerns are, however, expressed that the scope of that Act, which does not refer to all types of genocide, is too restricted.

218. The Committee expressed serious concerns about case law in Belgium which interprets as a press offence any written material containing a criminal expression which is printed, reproduced and distributed. It is a matter for concern that the Act of 1981, amended in 1994, and the Act of 1995, both of which tend to apply severer sanctions to acts inspired by racism and xenophobia, are not implemented in this connection.

219. Particular concern is again expressed regarding the Belgian Government's declaration on the provisions of article 4 of the Convention. The Committee also noted with concern that the State party has not taken any legislative measures to declare illegal and prohibit organizations which incite to racial discrimination, as article 4 (b) of the Convention provides. Strong concern was also expressed at the existence in the Flemish Community of a political party with an extremist and xenophobic ideology.

220. Although Belgium's legislative system tends to eliminate most provisions which restrict the rights of foreigners and refugees, the Committee regretted that, with regard to article 5 of the Convention, the report contained no information concerning the economic, social and cultural situation of Belgian citizens of foreign origin - Moroccans, Turks, Italians or others - or that of persons established in Belgium but not Belgian citizens.

221. Concern was expressed at the allegation that the Public Prosecutor's Department and the police are less zealous in the prosecuting of offences in cases where the victim is not of European origin.

222. Concern was also expressed about article 18 bis of the Act of 15 December 1980, permitting the limitation of the temporary or permanent residence of foreigners in certain communes.

223. The Committee expressed regret at the lack of detailed information on complaints of racist and xenophobic acts received by the Centre for Equal Opportunity and Action to Combat Racism. Further information was also requested on the number of complaints of racial discrimination taken to court, the nature of such complaints and how they were handled.

224. The Committee noted with regret that the report submitted by the State party made no explicit

reference to the Committee's conclusions and recommendations following its consideration of the previous report and that it had not been widely publicized.

D. Suggestions and recommendations

225. The Committee suggests that all necessary efforts should be made to ensure the full implementation of the Convention in Belgian law and the possibility of invoking it before the courts.

226. The Committee recommends that the Belgian legislative system ensure greater consistency in formulating new laws and, in particular, that adjustments be made to the Constitution and the laws to permit more effective criminal prosecution of racist, negatory or discriminatory writings as such. The Committee suggests that the Act of 23 March 1995, which prohibits the denial, minimization, justification or approval of the genocide committed by the German national socialist régime during the Second World War, should be broadened to cover the different types of genocide. The Committee recommends that the State party include in its next periodic report information on the results of putting into effect recently adopted legislation, as mentioned above, and the obstacles encountered in so doing. The Committee is not satisfied with the replacement in the Act of 12 April 1994 of the concept of "national or ethnic origin" by the concepts of "origin" or "nationality" and suggests an amendment in keeping with the terms used in article 1, paragraph 1, of the Convention.

227. The Committee recommends that the Belgian Government take the necessary legal steps to implement article 4 (b) of the Convention, according to which States parties shall declare illegal and prohibit organizations "which promote and incite racial discrimination". The Committee also recommends that the State party include in its next report information on complaints of discrimination under article 4 of the Convention and on how the courts handled them.

228. The Committee recommends that the State party include in its next report statistical data on the ethnic composition of the Belgian population, and especially the percentage of Belgian citizens of foreign origin in the country and in the various communities, and the number of persons established in Belgium who are not Belgian citizens. Detailed information on their socio-economic situation, particularly the unemployment rate in the various ethnic communities, would be much appreciated.

229. The Committee recommends that the Belgian Government ensure, by means of appropriate information and training, that the judicial authorities and the police treat persons of European and non-European origin in the same way.

230. The Committee recommends that the State party reconsider article 18 bis of the Act of 15 December 1980, which appears to be in breach of article 5 (d) (i) of the Convention.

231. The Committee recommends that additional information be provided on the activities of the Centre for Equal Opportunity and Action to Combat Racism, along with detailed information on the number of complaints of racial discrimination filed with the courts, the results of proceedings instituted in cases of racial discrimination and the compensation granted, where appropriate, to the victims of that discrimination.

232. The Committee recommends that the Belgian Government take account, in preparing its next report, of these conclusions and recommendations of the Committee. It suggests that the State party ensure that the report and these conclusions are widely distributed to the public in the various languages used in Belgium.

233. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention.

234. The Committee recommends that the State party's next periodic report should be an update of the last report and that it should address all the points raised during the consideration of the report.

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38. The Committee considered the eleventh, twelfth and thirteenth periodic reports of Belgium (CERD/C/381/Add.1), which were due on 6 September 1996, 1998 and 2000 respectively, at its 1509th and 1510th meetings, held on 13 and 14 March 2002 (CERD/C/SR.1509 and 1510). At its 1520th meeting (CERD/C/SR.1520), held on 21 March 2002, it adopted the following concluding observations.

A. Introduction

39. The Committee welcomes the detailed reports submitted by the State party, while regretting the late submission of the eleventh and twelfth periodic reports. The Committee was encouraged by the attendance of a delegation composed of representatives of many government departments at the federal, community and regional levels, and expresses its appreciation for the constructive oral responses of the delegation to the questions asked.

B. Positive aspects

40. The Committee welcomes recent developments that have taken place in the State party in the field of human rights. It notes, in particular the enactment of new laws and the ratification of a number of international treaties, such as the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Rome Statute of the International Criminal Court.

41. The Committee welcomes the declaration made by the State party under article 14 of the Convention.

42. With regard to article 4 of the Convention the Committee notes with appreciation the State party's efforts in the field of legislative reform, especially the amendment to article 150 of the Constitution, which transfers jurisdiction over acts motivated by racism and xenophobia committed through the media to lower instance criminal courts. It also welcomes the imposition of financial sanctions on anti-democratic political parties that disseminate racism and xenophobia.

43. The Committee notes with appreciation the work of the Centre for Equal Opportunity and the Struggle against Racism, and in particular the agreement reached between the postal authorities and the Centre with a view to preventing the distribution of material containing racist propaganda and xenophobic statements.

44. The Committee notes measures taken by the State party to counter the dissemination of racist statements on the Internet.

45. The Committee welcomes the measures taken by the State party to raise awareness of racism and racial discrimination, in particular in the army and among criminal justice officials. It also welcomes the measures taken to limit the information given by the judicial and police authorities to the press regarding the ethnic origin and the nationality of the alleged offenders.

46. The Committee also welcomes the election of a body representing the Muslim communities with a view to maintaining and developing dialogue with the public authorities in Belgium.

47. With regard to article 5 of the Convention, the Committee takes note of measures in Flanders forbidding discrimination, including on racial or ethnic grounds, in collective labour agreements, and of measures facilitating the education of migrant children. The Committee also takes note of measures in the Walloon region for the education of children of illegal migrants and for the study by migrant children of their mother tongue on the basis of bilateral agreements with their country of origin.

C. Concerns and recommendations

48. The Committee notes that the primacy of the provisions of the Convention over internal laws depends on the evaluation by the judge as to whether such provisions are directly applicable. It recommends that the State party include in its next periodic report specific information on the status of the Convention in domestic law and on court cases, if any, in which the Convention was invoked.

49. The Committee notes that a draft general law on racial discrimination is under consideration by the Parliament and encourages the State party to adopt it as soon as possible.

50. The Committee notes that no reference is made in the report to article 3 of the Convention. The Committee recommends that the State party provide in its next periodic report relevant information on any trend towards segregation of communities, especially in large cities, and measures taken by the authorities to prevent such developments.

51. The Committee is concerned that there is no legislation prohibiting racist organizations and propaganda activities. It is also concerned about the increasing influence of xenophobic ideology on political parties, especially in Flanders. In this context, the Committee requests the State party to give more information on the application of the 1998 law on withdrawing financial support to political parties that incite racism or racial hostility, or disseminate racial propaganda. Taking into account the mandatory nature of article 4 of the Convention, the Committee also recommends that the State party enact legislation that declares illegal and prohibits any organization which promotes or incites to racism and racial discrimination and consider withdrawing its reservation to this article. In this context, the Committee draws the attention of the State party to its general recommendation XV.

52. The Committee expresses concern about reports according to which the legal provisions designed to prosecute and punish acts of racism and racial discrimination are not applied. It also expresses concern at the length of procedures for the investigation of complaints by victims of racial discrimination. The Committee recommends that the State party ensure that all acts of racism and racial discrimination are investigated and that the alleged perpetrators, if found guilty, be punished.

53. Concern was also expressed about several cases of racist incidents in police stations involving law enforcement officials, where the victims were immigrants and asylum-seekers. The Committee is also concerned about reports that children belonging to ethnic minority groups have experienced verbal violence. The Committee recommends that the State party take all necessary measures to

prosecute racially motivated acts of violence by law enforcement officials and to prevent such verbal offences against members of minority groups, and continue its efforts to promote intercultural tolerance, understanding and respect.

54. With regard to the amendment to article 150 of the Constitution, the Committee requests the State party to provide detailed information in its next periodic report on the number of cases brought before the Belgian courts and the decisions taken with regard to acts of racism, racial discrimination or incitement to racial hostility, in which the media, especially the press, were involved.

55. The Committee is concerned about the difficulties of access to employment and housing of members of ethnic minorities. The Committee recommends that the State party take all necessary measures to facilitate the occupational integration, in both the public and private sectors, and the access to housing, of persons belonging to ethnic minorities. The Committee recommends that the State party provide in its next periodic report information on the situation in all regions of the State party, including on complaints of racial discrimination and on redress, if any, provided to the victims.

56. While noting the positive efforts undertaken by the State party in the field of education against racial discrimination, the Committee expresses concern about the absence or insufficiency of educational measures for some professional groups, such as judges, prosecutors, lawyers and civil servants. The Committee recommends that the State party give full effect to the provisions of article 7 of the Convention by adopting effective measures, particularly in the fields of education and training, in order to prevent racial discrimination.

57. While noting the satisfactory measures taken in the State party, especially by the Centre for Equal Opportunity and the Struggle against Racism, following the events of 11 September 2001 in the United States, in order to promote tolerance between religious communities, the Committee regrets occurrences of racial acts against persons belonging to ethnic minorities, especially those of the Muslim faith. The Committee recommends that the State party include in its next periodic report detailed information on the development of the situation and measures taken in this field.

58. The Committee recommends that the State party include in its next periodic report detailed information on the work of the Centre, the number of complaints received, as well as the outcome of cases brought before the courts.

59. Noting the responsibility of the Federal State for the implementation of the Convention, the Committee recommends that the State party provide in its next periodic report detailed information on the demographic composition of the population and socio-economic data disaggregated by gender and national and ethnic group for all its regions and communities.

60. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at national level.

61. The Committee reiterates its appeal to the State party to ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

62. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the Committee's concluding observations on them be similarly publicized.

63. The Committee recommends that the State party submit its fourteenth periodic report jointly with its fifteenth periodic report, due on 6 September 2004, that it be an updating report, and that it address the points raised in the present concluding observations.