

BELGIUM

CESCR E/1995/22

144. The Committee considered the initial report of Belgium on articles 1 to 15 of the Covenant (E/1990/5/Add.15) at its 15th, 16th and 17th meetings on 11 and 13 May and, at its 27th meeting on 20 May 1994, adopted the following concluding observations.

A. Introduction

145. The Committee thanks the State party for the comprehensive report submitted and for the detailed additional information, including extensive statistical data, provided both orally and in writing by the delegation in response to the Committee's questions and comments. The Committee regrets, however, that the report was submitted nearly 10 years late. In this regard, it takes note of the explanations provided by the Belgian Government according to which the delay was due to a number of concomitant factors connected, among other things, with the continuous process of reform of the State, which is reflected in changes in the responsibilities of its internal administrative authorities, with the density and complexity of the social welfare system created in Belgium, and with budgetary restraints which have a negative impact on the level of staffing of the country's public services. Nevertheless, the Committee wishes to emphasize that those explanations should not be considered by the Belgian Government as justification. States parties must comply with the reporting obligations they have freely assumed under the Covenant. The Committee hopes that the frank and excellent dialogue which has just begun between the Committee and the State party will continue in the future on a regular basis.

B. Factors and difficulties impeding the implementation of the Covenant

146. The Committee is concerned about the fact that Belgian authorities, referring to article 2, paragraph 1 of the Covenant, relating to progressive measures to be taken by States parties to implement the Covenant, are of the view that the provisions of the Covenant do not have direct effect and cannot be directly invoked by complainants before Belgian courts and tribunals. On the other hand, the Committee notes that the International Covenant on Civil and Political Rights and other conventions, such as the European Social Charter, to which Belgium is a party, are directly applicable under Belgian law. The different status of the International Covenant on Economic, Social and Cultural Rights in domestic law appears to be confirmed by a decision of the Court of Cassation of 1990. The Committee does not share the view of the Belgian authorities and recalls that in its General Comment No. 3 (1990) on the nature of States parties obligations under article 2 of the Covenant, it refers to a number of provisions in the Covenant, such as those of article 8 on the right to strike and those of article 13 on the right to education, which seem to be capable of immediate application by judicial and other organs in many national legal systems. The Committee is of the view that any suggestions that the provisions indicated are inherently non-self-executing seem to be difficult to sustain.

C. Positive aspects

147. The Committee commends Belgium on the measures it has taken to give effect to the provisions of the Covenant and especially on the inclusion of economic, social and cultural rights in the new text of the Belgian Constitution of February 1994.

148. The Committee also commends the State party on its comprehensive health insurance system which could be considered a model for other countries. It notes with particular satisfaction that, since 1990, maternity insurance has constituted a specific branch of social security in Belgium and that maternity allowance no longer constitutes an obstacle to the hiring of women workers.

149. The Committee also notes with satisfaction the measures taken in Belgium to guarantee income for elderly persons and, in particular, to grant an allowance to elderly persons who have very limited means or a minimum pension.

150. In addition, the Committee welcomes the information that the legal provisions establishing criteria in the calculation of pensions, which appear to be discriminatory between men and women, are in the process of being reviewed in order to ensure equal treatment and to add an invalidity scheme.

151. The Committee also notes that with regard to strikes by public servants, in recent years disciplinary punishments had not been applicable and that the Council of State in its ruling on the application of article 44 of the Royal Decree of 1991 stated that it implicitly guaranteed public servants' right to strike.

D. Principal subjects of concern

152. The Committee is concerned about the lack of legislative measures still existing in Belgium with regard to the establishment of clear and objective criteria to regulate the access of employers' and workers' organizations to the National Labour Council and to various commissions of the public and private sectors where collective conventions are elaborated. It recalls, in this connection, that the enactment of such legislative measures has been repeatedly recommended by the ILO Committee of Experts on Conventions and Recommendations.

153. In addition, the Committee notes with concern that the most vulnerable groups of society in Belgium are not always adequately protected. In this regard, it is particularly concerned about the reductions made in 1993 with regard to subsidies and certain social benefits, such as some categories of reimbursable medicines. The Committee regrets that this negative trend is developing in Belgium as well as in other European countries.

154. Moreover the Committee, while noting with satisfaction that the right to housing has been inscribed in the recently revised Constitution of Belgium, expresses concern about the adequacy of the measures taken actually to enforce that constitutional provision. In that respect the attention of the Government is drawn to section E below.

E. Suggestions and recommendations

155. The Committee recommends that the right to strike should be explicitly inscribed in Belgian

law.

156. The Committee recommends that the legislative measures, which are under elaboration, to regulate the access of employers' and workers' organizations to the National Labour Council and other organs should be speedily enacted.

157. The Committee recommends that the Belgian authorities should take appropriate measures to promote investment programmes and encourage, in particular, the construction of low-cost rental housing. In this connection, the Committee refers to its General Comment No. 4 (1991) concerning the right to adequate housing and points out that in situations indicating a clear deterioration in the enjoyment of that right, urgent measures should be taken by the authorities concerned. The Committee, in view of the problems in the housing sector, which are still considerable, urges the Government to establish an official, nationwide commission on housing, comprising representatives of Government, non-governmental organizations and other relevant groups. In view of the non-discrimination clauses contained in article 2 (2) of the Covenant, the Committee strongly urges the Government fully to ensure that persons belonging to ethnic minorities, refugees and asylum seekers are fully protected from any acts or laws which in any way result in discriminatory treatment within the housing sector. In view of information received by the Committee that not all social housing units are occupied by lower income groups, the Committee urges the Government to undertake all necessary measures to ensure that lower-income groups have access to social housing which is affordable. The Committee urges the Government more intensively to apply existing laws allowing the Government to requisition properties and housing left unoccupied by owners.

158. Finally, the Committee requests the Government of Belgium to submit its second periodic report by 31 May 1997.

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463. The Committee considered the second periodic report of Belgium on the implementation of the Covenant (E/1990/6/Add.18) at its 64th to 66th meetings, held on 17 and 20 November 2000, and adopted, at its 78th and 79th meetings, held on 28 November 2000, the following concluding observations.

A. Introduction

464. The Committee welcomes the submission of the second periodic report of the State party, which was prepared in general in conformity with the Committee's guidelines. A delegation of officials competent in various fields provided extensive written and oral replies to the Committee's list of issues. The Committee welcomes in particular the open and constructive dialogue with the Belgian delegation.

B. Positive aspects

465. The Committee notes with satisfaction the positive attitude of the State party towards the active participation of civil society in promoting and protecting economic, social and cultural rights, and the fact that the delegation of the State party invited a representative of a national non-governmental organization to address the Committee during the dialogue.

466. The Committee also notes with appreciation the State party's indication of its support for the Committee's work with regard to the draft optional protocol to the Covenant.

C. Factors and difficulties impeding the implementation of the Covenant

467. The Committee notes with concern that there are not sufficient mechanisms to coordinate and ensure uniformity of compliance, at both the federal and regional levels, with the State party's international human rights obligations.

468. The Committee notes that article 23 of the Constitution of Belgium represents a step forward in that it incorporates a number of economic, social and cultural rights, leaving the guarantee of such rights to statutes and royal decrees. However, such legislation has so far not been adopted. While article 23, read in conjunction with other fundamental rights guarantees of the Constitution of Belgium, could be interpreted to be applicable directly in the domestic legal order, such interpretation still depends on the exercise of discretion by the national courts.

D. Principal subjects of concern

469. The Committee regrets that the State party has not established a comprehensive national plan of action for human rights, in accordance with paragraph 71 of the 1993 Vienna Declaration and Programme of Action.⁹

470. The Committee also expresses its concern about the lack of an independent national

human rights institution, established in accordance with the Paris Principles,¹⁰ which would serve to monitor the entire range of human rights in the country.

471. The Committee is deeply concerned that there is no specific legislation which outlaws acts of xenophobia and racism, and in particular the activities of right-wing racist political parties, which are increasingly present on the political scene, especially in Flanders.

472. The Committee expresses its concern about the discriminatory effects against women of the so-called rule regarding cohabitants in the unemployment insurance regime of Belgium.

473. The Committee is also concerned about the persistent gap between the unemployment rates of men and women and the discrepancy between them with regard to wages.

474. The Committee expresses its concern about the considerable unemployment among young people and the fact that that State party has not sufficiently addressed the long-term unemployment of persons over 45 years of age, nor the situation of those who have been forced into early retirement.

475. The Committee is also concerned about the phenomena of paedophilia, prostitution of children, child pornography and violence against children.

476. In the light of article 11 of the Covenant, the Committee is concerned about the significant shortage of social housing in Belgium, especially in Flanders. The Committee is also concerned that larger families, as well as single-parent and low-income families, are at a disadvantage in qualifying for such social housing.

477. The Committee is deeply concerned that the State party has not established adequate mechanisms to ensure uniformity in the application of educational standards, including international norms on education, in all regions, owing to the fact that the regional governments have primary responsibility in the formulation of educational policy. The Committee also regrets that the delegation provided uneven information on the implementation of the right to education in the different regions.

478. The Committee notes with concern that, in 1998, Belgium devoted only 0.35 per cent of its GDP to international cooperation, while the United Nations recommendation in this regard is 0.7 per cent for industrialized countries.

E. Suggestions and recommendations

479. The Committee recommends that, in the next periodic report, the State party provide more details on the mechanisms adopted to coordinate and ensure uniformity in activities by the various levels of government aimed at complying with international human rights obligations, in the light of article 28 of the Covenant.

480. The Committee urges the State party to formulate and adopt a comprehensive plan of action for human rights, as called for in paragraph 71 of the Vienna Declaration and Programme

of Action.

481. The Committee also urges the State party to establish an independent national human rights institution, in accordance with the Paris Principles.

482. The Committee recommends that the State party, having ratified the Covenant, take appropriate steps to guarantee fully the direct applicability of the Covenant in the domestic legal order.

483. The Committee recommends that the State party adopt measures to ensure that xenophobia, racism and activities of racist organizations, groups or political parties are outlawed, with a view to complying with the principle of non-discrimination, set forth in article 2, paragraph 2, of the Covenant.

484. The Committee urges the State party to revise the rule regarding cohabitants in the unemployment insurance regime, in order to eliminate its indirect discriminatory impact on women.

485. The Committee recommends that the State party undertake more active measures to address the inequality of employment between men and women and the discrepancy in wages between them, as well as to promote women's access to all levels of the labour market.

486. The Committee encourages the State party to combat unemployment among young people and the long-term unemployment of workers over the age of 45, through appropriate vocational and technical training. The Committee would welcome more information in the State party's next periodic report on the measures taken and on the results achieved.

487. The Committee urges the State party to take effective measures to combat paedophilia, child prostitution, child pornography and violence against children, and to seek international cooperation in this regard.

488. The Committee urgently requests more detailed information in the State party's next periodic report on the situation of social housing in Belgium, especially in Flanders. The Committee also recommends that the State party take measures to eliminate the disadvantage of larger families, as well as of single-parent and low-income families, in qualifying for such social housing.

489. The Committee recommends that the State party establish an adequate mechanism to monitor and ensure uniformity of educational standards, such as those arising from international legal obligations, throughout the country. In addition, the Committee would welcome information in its next periodic report that reflects adequately and in a balanced manner the situation of education in all regions and communities.

490. The Committee requests more information in the State party's next periodic report concerning the initiative introduced in September 1999 to assist Flemish secondary school students who are in conflict with the educational system and, if the initiative has proved

successful, the Committee suggests that consideration be given to its introduction in all the regions.

491. The Committee looks forward to receiving information from the State party in its next periodic report on the enjoyment of the right to participate in and benefit from cultural life, such as access to cultural activities and cultural property, especially by disadvantaged and marginalized groups in society, persons with disabilities and older persons.

492. The Committee recommends that the State party review its budget allocation for international cooperation with a view to increasing its contribution, in accordance with the United Nations recommendation.

493. The Committee encourages the Government of Belgium, as a member of international bodies, in particular IMF and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant, in particular the obligations contained in article 2, paragraph 1, concerning international assistance and cooperation.

494. The Committee requests the State party to include in its next periodic report information on how the State party has taken into consideration the suggestions and recommendations contained in the present concluding observations. The Committee looks forward to receiving the third periodic report of Belgium no later than 30 June 2005.

495. The Committee encourages the State party to disseminate widely the present concluding observations.