

BELGIUM

Follow-up - State Reporting

i) Action by Treaty Bodies, including reports on missions

CERD, A/64/18 (2009)

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Chapter IV. Follow-up to the consideration of reports submitted by States parties under article 9 of the Convention

48. In 2009, Mr. Amir served as coordinator and Mr. Prosper as alternate coordinator for follow-up to the consideration of reports submitted by States parties.

49. Terms of reference for the work of the coordinator on follow-up¹ and guidelines on follow-up to be sent to each State party together with the concluding observations of the Committee² were adopted by the Committee at its sixty-sixth and sixty-eighth sessions, respectively.

50. At the 1923rd meeting (seventy-fourth session) and the 1897th meeting (seventy-fifth session), held on 2 March and 17 August 2009 respectively, the coordinator on follow-up presented a report on his activities to the Committee.

51. Since the closing of the seventy-third session, follow-up reports on the implementation of recommendations regarding which the Committee had requested information were received from the following States parties: Austria (CERD/C/AUT/CO/17/Add.1), Belgium (CERD/C/BEL/CO/15/Add.1), Bosnia and Herzegovina (CERD/C/BIH/CO/6/Add.2), Canada (CERD/C/CAN/CO/18/Add. 1), Italy (CERD/C/ITA/CO/15/Add.1), New Zealand (CERD/C/NZL/CO/17/Add.1), Republic of Korea (CERD/C/KOR/CO/14/Add.1), Republic of Moldova (CERD/C/MDA/CO/7/Add.1), Turkey (CERD/C/TUR/CO/3/Add.1) and United States of America (CERD/C/USA/CO/6/Add.1).

52. At its seventy-fourth and seventy-fifth sessions, the Committee considered the follow-up reports of Belgium, Bosnia and Herzegovina, Israel, Italy, New Zealand, the Republic of Korea and the United States of America and continued the constructive dialogue with these States parties by transmitting comments and requesting further information.

¹ For the terms of reference of the work of the coordinator on follow-up, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV.

² For the text of the guidelines, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 18 (A/61/18)*, annex VI.

Follow-up - State Reporting

ii) Action by State Party

CERD, CERD/C/BEL/CO/15/Add.1 (2009)

Information provided by the Government of Belgium on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/BEL/CO/15)

[24 March 2009]

Introduction

1. The Committee on the Elimination of Racial Discrimination ("the Committee") considered the fourteenth and fifteenth periodic reports of Belgium, submitted in one document (CERD/C/BEL/15), at its 1857th and 1858th meetings, held on 25 and 26 February 2008. At its 1870th meeting, held on 5 March 2008, it adopted its concluding observations (CERD/C/BEL/CO/15), in which it asked the State party to provide, within one year, information on the way it has followed up on the Committee's recommendations contained in paragraphs 10, 14, 16 and 22. Belgium hereby submits additional information on the follow-up to those recommendations.

I. RECOMMENDATION CONTAINED IN PARAGRAPH 10

2. Political debate is still under way on the establishment of "an independent national human rights institution, with a broad mandate to promote and protect human rights, in accordance with the Paris Principles". As Belgium indicated in its oral presentation to the Committee, the project raises a number of institutional issues as the country already has several institutions working in human rights-related fields. Exhaustive discussions have already taken place following the preparatory work, and various options have now been submitted for a careful review which will take into account the views expressed, the Paris Principles and the domestic institutional framework.

II. RECOMMENDATION CONTAINED IN PARAGRAPH 14

3. With regard to the Committee's recommendation to "develop 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", Belgium indicated during its presentation to the Committee that it did not dispute the findings of the study referred to by the Committee and would consider taking steps to resolve the issue. Some measures had been taken prior to the study as part of the overall legislative and executive efforts to eliminate discrimination.

4. It should, however, be stressed that the National Institute on Criminal Statistics and Criminology has already drawn two conclusions from its research: (a) it is imperative that the

judiciary review its own practices; and (b) regulatory amendments are unnecessary as existing legislation already covers discrimination comprehensively.

5. The Belgian authorities consider awareness-raising training and initiatives as the best way to tackle discrimination. In that connection, it is worth mentioning that specialized, compulsory training has been given to future juvenile court judges since 2007, and has proved to be the most effective way of raising their awareness of the various aspects of discrimination. The greatest benefits of the training will, of course, be seen in the medium term.

6. This specialized training is one of a number of measures taken by Belgium as part of its efforts to eliminate racial discrimination against minors (whether of foreign origin or not).

III. RECOMMENDATION CONTAINED IN PARAGRAPH 16

A. Comments on the language proficiency requirement in the Flemish Housing Code

7. Article 92, paragraph 3, of the Flemish Housing Code sets out requirements for social housing tenants, which include a willingness to learn Dutch. Any Belgian or foreign adult applying for social housing to whom no legal exemption is applicable and who cannot demonstrate an adequate knowledge of Dutch (i.e., who does not have a Dutch-language certificate or equivalent) is asked to take a beginner's course in Dutch (a European-standard basic language course). Currently, applicants can also prove their knowledge of the language by sitting a straightforward test run by social housing associations which a number of association members are trained to give.

8. With regard to costs and supply, the course is still accessible to all. Training is carried out within the official framework of adult education centres, university language centres and basic education centres and its costs are borne in full by the authorities, meaning lessons are free of charge. The beginner's course does not require learners to sit an exam and a certificate is given to those with at least 80 per cent attendance. Lessons times are flexible and accessible enough to accommodate housing applicants who work.

9. Migrant children usually learn the basics of Dutch as part of their formal education.

10. No potential tenant has ever been turned down on the basis of the language proficiency requirement. In 2008, nearly 2,500 potential tenants who did not pass the language test were given free language training, while almost 120 individuals had already followed an integration procedure which offers language training. In addition, around 1,000 new arrivals enrolled on a language course of their own volition, without having been referred to one by a welcome centre or other public body.

11. The language proficiency requirement should in no way be viewed as a measure to control the allocation of social housing. It is a measure that should improve the atmosphere in social housing complexes, as it aims to achieve better communication between residents and thus a more acceptable living environment. The domestic legal system deems the language clause to be responsible, legitimate, proportional and non-discriminatory (see below, paras. 12-15). The

language proficiency requirement is a response to the practical problems encountered in social housing complexes throughout Flanders. In other words, the Flemish authorities are responding to residents' need for proper communication, which aids mutual understanding and prevents or solves the problems that commonly arise among neighbours. This is done through various channels, for example during social housing registration or during the integration procedure, which provides added value and benefits those concerned. The requirement therefore has no discriminatory effect.

B. Review of the language proficiency requirement by the higher courts

12. In Judgement No. 101/2008 of 10 July 2008, the Constitutional Court ruled that the language proficiency requirement in the Flemish Housing Code does not breach the principle of equality enshrined in article 10 of the Belgian Constitution, the prohibition of discrimination in article 11 or the right to housing in article 23, or the relevant provisions of international law or the standards of European law (article 11 of the International Covenant on Economic, Social and Cultural Rights, article 31 of the European Social Charter and article 34, paragraph 3, of the Charter of Fundamental Rights of the European Union). In its judgement, the court ruled that the language proficiency requirement is not applicable to prospective or current tenants of the social housing referred to in the decree that is located in language-border or outlying communes and who wish to make use of language facilities. The Flemish authorities feel vindicated by this judgement from the highest court in the country, which is composed of equal numbers both of Dutch-speakers and French-speakers, and of academic and political representatives.

13. In its decision No. 39.536/VR/3 of 24 January 2006 on the draft decree amending the decree of 15 July 1997 containing the Flemish Housing Code, the legislative section of the Council of State had already confirmed that social housing tenants were merely required to commit to making an effort and that the language requirement should be considered legitimate. The Council of State believes that a justifiable link exists in this case between the language knowledge expected and the objective pursued.

14. It can be concluded that both the Flemish authorities and the highest federal courts consider a language proficiency requirement to be a legitimate and broad protective measure which should promote peaceful coexistence and communication within social housing complexes, and not a measure that might violate the fundamental individual rights of the person who is obliged to seek social housing. In addition, the Constitutional Court judges that the language proficiency requirement is not in conflict with the international obligations of Belgium.

C. Comments on language (proficiency) requirements of local authorities

15. In addition to the Flemish Housing Code, a number of regulations have been adopted at the local level, including in the Zaventem commune, under which the sale of communal land or the application of other local policy measures is subject to language-proficiency or language requirements. In each case, the decision to adopt such regulations was taken by communal councils in the context of self-government, as regulated by article 41 of the Belgian Constitution, and the European Charter of Local Self-Government.

16. Pursuant to article 162 of the Constitution, decisions taken by communes are subject to administrative supervision according to the provisions set out by the Flemish Parliament in articles 248-261 of the Communal Decree of 15 July 2005. Accordingly, local authority decisions take immediate effect upon their adoption by the relevant communal body, but may be subject to review, provided the review is carried out within the time limit set by the decree. Under the decree, local authority decisions are submitted for review only if a complaint, claim or other communication is referred to the supervisory authority within the time limit stipulated by the Communal Decree. Once the deadline has passed, only the competent courts can review the legitimacy of communal council decisions and then only where specific cases are referred to them.

17. In the exercise of its supervisory role, the Flemish Government respects communal self government, and does not seek to replace the local authorities in areas for which they have political responsibility. In the case of Zaventem, the Flemish Government received no complaints from any citizens or communal councillors from the local political majority or the opposition, whether French-speaking or not. Therefore Flanders did not review the commune's decision in the context of its administrative supervision. In their supervisory capacity, the Flemish authorities apply the law strictly, as evidenced by their approach to decisions by communes wishing to restrict the use of another language where the law provides for its use. For example, in 2008, the Flemish Government overturned a decision of the communal council of Liedekerke which banned children who did not speak Dutch from using communal play areas.

IV. RECOMMENDATION CONTAINED IN PARAGRAPH 22

A. Measures taken by the Flemish authorities to tackle discrimination against Roma

1. Overview of the social and economic situation of Travellers and Roma

18. The main problem facing Travellers, Sinti and Roma is the great uncertainty in their housing situation, which has a significant impact on other aspects of their lives (education, work, etc.). A Flemish minister, Mr. Keulen, specifically addresses the problem of the Travellers, Sinti and Roma in a general policy paper on civic integration, 2004-2009: "The Flemish Government will devote the necessary attention to Travellers, Sinti and Roma and, more specifically, to their children's education. It will review the most important aspects of the problem in collaboration with the ministers of welfare and education and will set objectives to encourage those children to go to school. It will also endeavour to improve employment opportunities for Travellers, Sinti and Roma, in association with both the Minister of Labour and the Minister of Enterprise. Numerous individuals are in fact self-employed on account of their way of life and their interests."

19. With a view to achieving the above-mentioned objectives, a study is currently being conducted on the situation of itinerants as regards work, education, health care, well-being, the Dutch language, youth, etc., in order to obtain precise figures on itinerants in the various areas. The study's findings will be examined in 2009 and addressed through a strategic plan for itinerants, which will be submitted to the Flemish Government for approval. Besides itinerants, the Roma are a target group that is difficult to help, given that most of them do not live in

caravans. A study will be carried out in 2009 to take stock of the specific social and economic situation of the Roma.

20. Roma and itinerants are targeted by organizations working in the integration sector, which receives subsidies from the Flemish authorities. The sector's ultimate goal is to ensure that all individuals are seen as full citizens of society. Agreements concluded between a number of communes and the Flemish authorities set specific targets for itinerants, ranging from ensuring social cohesion at grass-roots level to referring residents to services and regular employment.

2. Caravan sites

21. Itinerants are first and foremost faced with a lack of designated caravan sites. The main problem encountered by Travellers, Sinti and Roma is the great uncertainty in their housing situation, which has a significant impact on other aspects of their lives (education, work, etc.). Existing sites in residential areas are overcrowded, which affects not only the itinerants themselves, but also the other residents in the area. The current Flemish Government has set itself the fundamental goal of ensuring that there are enough adequate, legal caravan sites: "The Flemish Government will look carefully at the specific living conditions of Travellers, Sinti and Roma. A fundamental goal of the Flemish Government will be to create enough caravan sites, in association and after consultation with the local and provincial authorities" (from the aforementioned general policy paper).

22. In Flanders, the number of itinerant families currently exceeds the number of sites available, principally because of the natural growth of the itinerant population. The Flemish Government provides support to those behind initiatives to acquire and create residential and temporary caravan sites by subsidizing 90 per cent of the costs (Decision of 12 May 2000). This policy of support, which aims to ensure a high-quality supply of sites, has resulted in increased demand over recent years, meaning new caravan sites have been created in a greater number of communes. The 2007 budget quadrupled to _4,273,000 from the 2006 budget of _1,011,000 and stabilized in 2008 at _4,337,000. The recent trend to establish new caravan sites has continued into 2009, and _4,445,000 has been allocated in 2009 for the acquisition, conversion, renovation and expansion of sites for itinerants. Flanders currently has 30 residential caravan sites with a total of 474 pitches. There are at present six short-stay sites (Antwerp, Huizingen, Dendermonde, Gent, Kortrijk and Haren (Brussels-capital region)), where a total of 105 pitches are planned.

B. Walloon region

23. An inter-ministerial working group on such topics as social welfare housing, land-use planning and the environment was set up in June 2007. The Minister of Health, Social Welfare and Equal Opportunities, Didier Donfut, notes that this group was given the task of "exploring possible ways of making Travellers' reception and stay as harmonious as possible".

24. Under the communal action plan to implement the right to decent housing, local authorities can obtain a subsidy for creating a caravan site.
