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parties under article 40 of the Convention**

Fifth periodic report

Belgium* **

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Table of abbreviations and titles

AIG	General Inspectorate of the Federal and Local Police
NPA	Not-for-profit association
CGRA	Office of the Commissioner General for Refugees and Stateless Persons
Committee P	Standing Police Monitoring Committee
Constitutional Court	New name of the former Court of Arbitration
CPT	European Committee for the Prevention of Torture
Fédasil	Federal Agency for the Reception of Asylum-Seekers
LPA/BRUNAT	Airport Police, Brussels National Airport
<i>M.B.</i>	<i>Moniteur belge</i>
Covenant	International Covenant on Civil and Political Rights
SPF	Federal Public Service

Introduction

In compliance with article 40 of the International Covenant on Civil and Political Rights, Belgium has the honour to submit its fifth periodic report to the Human Rights Committee.

In this report, the Belgian authorities present a detailed account of the implementation of the Covenant in our territory, where, in the performance of their duties, those authorities are competent to enforce standards relating to human rights that are enshrined in the Belgian Constitution and Belgian law. All contraventions of provisions designed as safeguards for fundamental rights are minutely examined, and political, administrative and judicial remedies for them are available.

During the preparation of this fifth report, the Belgian authorities made every effort to respond as fully as possible to the concerns, recommendations and requests for further information expressed by the Committee following its consideration of the fourth periodic report. The present report, in fact, refers explicitly to the Committee's concluding observations and seeks to explain the actions that have been taken in response thereto.

Furthermore, it is appropriate to note at this point that at the end of its concluding observations of 12 August 2002, the Committee invited Belgium to provide within one year further information on a number of specific issues that had given rise to particular concern, namely concluding observations 12 (acts of police violence), 16 (the rights of individuals in custody) and 27 (action to penalize acts of racism and groups advocating hatred and xenophobia). The Committee will find appended hereto the comments of the Belgian Government, which were forwarded to it in November 2005.¹

Concluding observation 8

While appreciating the many projects intended to give better effect to the Covenant, the Committee notes with concern that some have been under consideration for many years. It also regrets that several of its recommendations have not been applied.

The State party should make the adoption of projects and the concrete application of laws designed to give better effect to the Covenant a top priority.

Belgium refers the Committee to the general content of the report and, succinctly, to the introductory remarks above.

Concluding observation 29

The Committee sets 1 August 2008 as the date of submission of Belgium's fifth periodic report. It requests that the text of the State party's fourth periodic report and the present concluding observations should be published and widely disseminated throughout the country, and that the fifth periodic report should be brought to the attention of non-governmental organizations working in Belgium.

It should be noted that Belgian reports relating to implementation of the Covenant and the Committee's concluding observations are published on the SPF Justice site in French and Dutch.

¹ Annex 1.

Preliminary remark: the Belgian institutional context

Belgium is a federal constitutional monarchy comprising the Federal State, Communities and Regions. In the course of successive reforms of the State, the distribution of jurisdictions has evolved in accordance with two main themes.

The first of these pertains to the issue of language and, more broadly, culture. Belgium has three official languages: Dutch, French and German. At the present time, accordingly, Belgium comprises three Communities: the Flemish Community, the French Community and the German-language community. These correspond to population groups. The jurisdiction of the Communities thus relates to education, culture, and other “personalizable” matters (certain aspects of health care, for example).

The second theme dominating the reform of the State is rooted in history and, more specifically, the aspiration to greater economic autonomy observable in some quarters. Accordingly, three regions have been established: the Flemish Region, the Brussels Capital Region, and the Walloon Region. The regions have jurisdiction over socioeconomic issues such as land-use planning, housing, employment, energy and the like.

The Federal State retains jurisdiction in the areas of national defence, justice, finance, social security, a substantial part of public health and domestic affairs, among others. In addition, jurisdiction is shared among the Federal State, the Regions and the Communities in a number of areas. The Federal State, the Communities and the Regions thus have different responsibilities, which they carry out independently. In the field of foreign affairs, each entity (Federal State, Communities and Regions) is in charge of the foreign components of its domestic areas of jurisdiction. The Federal State, the Regions and the Communities have their own Governments and Parliaments, except in the case of the Flemish Community and the Flemish Region, where they have been merged.

Article 1
(Right of peoples to self-determination)

The relevant material here will be found in Titles I and II of the core document submitted by Belgium on 13 April 1994 (HRI/CORE/1/Add.1/Rev.1, 6 April 1995)².

² It should be noted that the other titles of that document are out of date. However, they are currently in the process of being updated.

Article 2 (Principle of legality and non-discrimination)

I. Responses to the Committee's recommendation

Concluding observation 6

The Committee is concerned at the fact that the State party is unable to affirm, in the absence of a finding by an international body that it has failed to honour its obligations, that the Covenant automatically applies when it exercises power or effective control over a person outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent assigned to an international peacekeeping or peace enforcement operation (art. 2).

The State party should respect the safeguards established by the Covenant, not only in its territory but also when it exercises its jurisdiction abroad, as for example in the case of peacekeeping missions or NATO military missions, and should train the members of such missions appropriately.

When members of such armed forces are deployed abroad, as for example in the context of peacekeeping or peace enforcement operations, Belgium ensures that all persons who come under its jurisdiction enjoy the rights recognized in the International Covenant on Civil and Political Rights. In that connection, the points outlined below should be noted:

- The provisions of the Covenant, and in particular the provisions relating to the prohibition of torture and inhuman or degrading treatment, are taught to all categories of National Defence personnel, not only during their basic training but also during their continuing training.
- The International Covenant on Civil and Political Rights is an integral part of Belgian law; its provisions can be adduced before a Belgian judge, who will enforce them in so far as they are directly applicable. Belgian courts, including both ordinary courts and administrative tribunals, have generally acknowledged the direct applicability of the Covenant and rule in accordance with its provisions more or less automatically, even though this statement can be said to be implicit in most instances. Court decisions illustrating the point may be consulted at the SPF Justice site www.just.fgov.be and elsewhere. In this context, Belgium must accept liability in cases where it has failed to meet its obligations under the Covenant.
- Soldiers participating in peace missions or NATO military missions who fail to fulfil any of the obligations to which they are subject under the Covenant are subject to trial before a Belgian court. If found guilty, they will be sentenced under the relevant provisions of the Belgian Criminal Code, including the provisions of Title I *bis* on serious violations of international humanitarian law, or under the relevant provisions of the Military Criminal Code.
- The legality of the rules of engagement, for troops sent on missions abroad, is increasingly being tested against the provisions of the Covenant and those of other human rights instruments. This is also happening in cases involving Belgian participation in missions for international organizations.

A State may incur international liability for contravening the Covenant where an international tribunal finds that the State in question has failed to fulfil its obligations under the Covenant. As the International Court of Justice emphasized in an advisory opinion, a

State's international liability and the obligation to make reparation for damage caused by its unlawful conduct arise from all its international obligations, including those contained in the Covenant³. In terms of legal principles, then, Belgium could incur international liability for breaches of the Covenant. In the event that this should happen, there can be no doubt that the State would comply with any decision of an international tribunal and would terminate such breaches without delay. However, this situation has never arisen. Belgium did incur international liability for failing to fulfil its international obligations in connection with the right of immunities enjoyed by Heads of State (International Court of Justice, *Case concerning the arrest warrant of 11 April 2000*, judgement of 14 February 2002, *Democratic Republic of the Congo v. Belgium*). It immediately terminated what the International Court of Justice had found were breaches of its international obligations by cancelling the warrant which the Court had ruled was incompatible with Belgium's international obligations and by amending the relevant domestic legislation.

Concluding observation 9

The Committee is concerned at the impact of the immediate application of the Act of 5 August 2003 on complaints lodged under the Act of 16 June 1993 relating to sanctions for serious violations of international humanitarian law (arts. 2, 5, 16 and 26).

The State party should guarantee victims' acquired right of access to an effective remedy without discrimination of any kind, insofar as the binding rules of general international law relating to diplomatic immunity do not apply.

Before the passage of the Act of 5 August 2003 on sanctions for serious violations of international humanitarian law, Belgian courts were competent to consider all serious violations of international humanitarian law (crimes of genocide, crimes against humanity and war crimes), with no requirement of a link of any kind between Belgium and the place where the crime was committed, the alleged perpetrator, the victim or the place where the damage had occurred.

Mainly as a result of the entry into force of the **Statute of the International Criminal Court** on 1 July 2002, it appeared that if the legislation were retained unchanged, Belgian courts would be perpetually in a state of competition with the International Criminal Court, inasmuch as they would have absolute universal jurisdiction.

In order to avoid transforming Belgian courts into international courts and to take note of the entry into force of the Statute of the International Criminal Court, the Belgian Parliament decided to maintain the jurisdiction of those courts only in cases in which there was a link, however tenuous, with Belgium.

This legislation enacted in 2003, supplemented by a new Act of 22 May 2006, maintains the **jurisdiction of Belgian courts** in the following cases: an offence committed in Belgian territory; by an alleged perpetrator who holds Belgian nationality; by an alleged perpetrator having his principal residence in Belgium; against a Belgian national; against a victim having political refugee status recognized by the Belgian authorities; against a victim whose effective, habitual and legal residence has been in Belgium for at least three years at the time of the offence; or in any circumstances giving rise to an international obligation to prosecute before a Belgian court under a number of rules of conventional or customary international law relating to sanctions for serious violations of international humanitarian law (as, for example, where the suspect is found in Belgian territory at any time after the commission of the offence).

³ International Court of Justice, advisory opinion *on the legal consequences of the construction of a wall in the occupied Palestinian territory*, 9 July 2004.

The above list shows that in adopting this approach, the Belgian authorities have maintained the competence of Belgian courts to consider serious violations of international humanitarian law in a much broader sense than is strictly required under Belgium's international obligations.

Moreover, where cases that do not meet any of the above-mentioned criteria were brought to court before the entry into force of the Act of 5 August 2003, that Act includes **transitional provisions** and maintains the jurisdiction of Belgian courts provided the alleged perpetrator was in Belgium at the time the Act came into force or provided an investigation of the case had been initiated before the entry into force of the Act.

In addition, the Act introduced into Belgian law a specific provision under article 1 *bis* of the Preliminary Title of the Code of Criminal Procedure whereby a person may not be prosecuted where prosecution would contravene the rules of *international immunities*.

Where a complaint alleging a serious violation of international humanitarian law is lodged in one of the numerous instances listed above in which Belgian courts have jurisdiction, the procedure depends on the circumstances. Two situations may be distinguished:

In the first place, a simplified procedure is adopted where there is reason to suspect that the violation was committed in Belgian territory or by Belgian nationals or persons having their principal residence in Belgium, i.e. in situations where there appears to be a strong connection with Belgium.

In the second place, in situations where there is a connection with Belgian territory but where it appears that the law is at risk of politicization or media manipulation, a judicial filter is used.

Where, for example, the violation has been committed in Belgian territory or the alleged perpetrator is a Belgian national or has his principal residence in Belgium, the complainant may lodge his complaint directly with an examining magistrate via the criminal indemnification claim procedure.

In the other instances listed above in which Belgian courts have jurisdiction, it is the Federal prosecution service that refers a complaint alleging serious violations of international humanitarian law. This referral is required, except in four situations in which the Federal prosecution service determines that there is a legal or judicial obstacle to prosecution: (1) where the complaint is manifestly unfounded, (2) where the facts alleged in the complaint do not indicate a serious violation of international humanitarian law, (3) where the complaint cannot give rise to a valid public right of action (essentially in situations where international immunity applies), the Federal prosecutor must apply to the Indictment Division of the competent Court of Appeal for a ruling acknowledging this fact, thereby relieving him of the obligation of referring the complaint to an examining magistrate. Lastly, the Federal prosecutor is authorized not to refer the complaint to an examining magistrate (4) where there is an international or national tribunal that is better placed to prosecute than a Belgian court in a matter concerning which a complaint could be lodged in Belgium.

It is noteworthy that the Federal prosecution service interprets this provision restrictively. In particular, it cannot be enforced where enforcement would be incompatible with the principle of *aut dedere aut judicare* in international law. Consequently, where Belgium is subject to an international obligation to prosecute, Belgian courts must be deemed to have jurisdiction until such time as effective procedures have been initiated in another country.

Furthermore, where a case has not been prosecuted, whether because a complaint would not be admissible in Belgium or because some other tribunal —foreign or

international— would be better placed to deal with the complaint, the acts alleged in the complaint are **referred by Belgium to the Prosecutor of the International Criminal Court** where they were committed after 30 June 2002, the date from which the ICC has had jurisdiction. It is then for the ICC to consider whether a prosecution should be undertaken if in its view the tribunal to which the complaint has been referred is not observing the principle of the right to a fair trial.

Concluding observation 11

The Committee is concerned at the fact that the right to an effective remedy for individuals illegally in Belgium is jeopardized by the fact that police officers are obliged to report their presence. It notes in addition that the lengths of stay authorized to enable illegal aliens who have lodged complaints to complete proceedings to assert their rights under the Covenant remain at the discretion of the Aliens Office (arts. 2 and 26).

Besides adjusting authorized lengths of stay, the State party should devise additional ways of guaranteeing such individuals the right to an effective remedy.

The Government of Belgium wishes to make it clear that the initiation of judicial proceedings and the consideration of those proceedings while under way do not, in principle, affect the administrative status of illegal aliens. The fact that judicial proceedings are in progress does not, of itself, serve to authorize such aliens to stay in the country. For example, the lodging of a complaint at criminal law is not under any circumstances a means of preventing or avoiding expulsion from the country. The appropriate course of action is for the individual concerned to avail himself of the administrative remedies referred to below under the Committee's concluding observation 23. None the less, in exceptional cases, an application for authorization to stay in the country or a visa application adducing the existence of ongoing judicial proceedings and the need for them to function satisfactorily might affect an alien's residency in Belgium, and consequently justify, where appropriate, a temporary postponement of the alien's expulsion or obtain authorization for him to return to Belgium at a later date.

Furthermore, it is essential to note that expulsion from the country does not necessarily obstruct the course of justice. There is nothing to prevent an alien who has been lawfully expelled from going to court, acting through counsel, to seek the initiation of an investigation by a magistrate if he deems such advisable, or to seek representation under the regulations governing criminal procedure, among other possibilities.

In this connection, it is important to bear in mind that the right of access to the courts is not an unlimited one; it may legitimately be made subject to restrictions provided it is not thereby emptied of its substance. For example, an expulsion order that has been issued and executed in accordance with the law does not constitute a disproportionate violation of the right of access to the courts, since the expelled individual is free to be represented by counsel. Moreover, restrictions on access to the courts resulting from an order to leave the country are not definitive, inasmuch as they do not constitute a prohibition. Once the expulsion order has been executed, it ceases to have effect, and consequently does not prevent the individual concerned from immigrating lawfully at a later date.

II. Changes since the previous report

In compliance with its obligations under the Convention on the Elimination of all Forms of Racial Discrimination, Belgium recently submitted a report to the Committee on

the Elimination of Racial Discrimination. Detailed information will be found in that report⁴. However, the main changes that have occurred in the situation are outlined below.

2.1 International commitments

On 30 March 2007, Belgium signed the Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, and its Optional Protocol.

2.2 Domestic developments

2.2.1 Action to enhance general protection for human rights

The special Act of 9 March 2003 *amending the special Act of 6 January 1989 on the Court of Arbitration (M.B., 11 April 2003)* altered the jurisdiction of the Court of Arbitration, which has been known as the Constitutional Court since the constitutional revision of 7 May 2007.

The Constitutional Court issues rulings in actions in annulment and preliminary issues, especially matters relating to the conformity of statutory instruments (Acts, decrees and orders) with certain provisions of the Constitution⁵.

Previously, this compliance assessment procedure applied only to articles 10, 11 and 24 of the Constitution, but the list has been expanded to include:

- The whole of Title 2 (articles 8 to 32) “On Belgians and their rights”, which covers numerous fundamental rights and freedoms (principle of non-discrimination, right to privacy and family life, respect for moral, psychological and physical integrity, right to education, and so on);
- Article 170, which safeguards the principle of lawful taxation;
- Article 172, which provides that no privileges with respect to taxes can be established, and that no exemption or reduction of taxes can be established except by legislation;
- Article 191, which provides that all foreigners in Belgian territory shall enjoy protection of their persons and property, except where otherwise provided by law.

It should be noted that, un keeping with the consistent jurisprudence of the Constitutional Court, the fundamental rights and freedoms enshrined in the Constitution and fundamental rights conferred by international treaties having a direct effect in Belgian law are upheld in Belgium without discrimination. These consistent rulings show clearly that the Court regarded itself from the outset as having jurisdiction to determine the conformity of Acts, decrees and orders with constitutional rights and freedoms through its compliance assessment procedure under articles 10, 11 and 12 of the Constitution (the Constitutional Court’s initial area of jurisdiction).

A magistrate is no longer required to ask a preliminary question in the following cases:

⁴ CERD/C/BEL/15, report submitted to the United Nations on 13 September 2006.

⁵ The Constitutional Court is also competent to rule on the conformity of an Act, a decree or an order with the rules set forth in the Constitution or regulations adopted thereunder to determine the respective areas of jurisdiction of the State, the Communities and the Regions, and on any inconsistency between decrees or orders issued by different jurisdictions, where the inconsistency arises from their respective areas of competence.

- Regarding an act assenting to a constituent treaty of the European Union, the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms or an additional protocol to that Convention. Henceforth, acts of assent to these treaties may be challenged only through an action in annulment brought before the Court of Arbitration within sixty days of publication of the act. The purpose of this restriction is to enhance the stability of international relations.
- In proceedings that do not lead to a ruling on the substance of the case, and more specifically in administrative (articles 17 and 18 of the coordinated laws on the Council of State) or civil (article 548 of the Judicial Code) applications for interim relief and proceedings to assess the continuation of preventive detention (Pre-Trial Detention Act of 20 July 1990).
- Where the Constitutional Court has previously ruled on an issue or application for the same purpose.

The other two exceptions formerly in effect for the lower courts remain unchanged: in the first place, where the court considers that the answer to the question is not essential for it to reach a decision, and in the second place, where the Act, decree or order does not clearly violate constitutional rules, including in particular constitutional rights and freedoms.

2.2.2 Action to combat discrimination

2.2.2.1 General provisions

Numerous measures have been implemented, both by the Federal State and by the federated entities, with a view to transposing new European directives dealing with discrimination: Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, amending Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Federal legislation

Until April 2007, federal legislation aimed at combating discrimination was based primarily on three statutory instruments: the Act of 30 July 1981 *to suppress certain acts motivated by racism or xenophobia*, the Act of 7 May 1999 *on equal treatment for men and women as regards working conditions, access to employment and career opportunities, access to a liberal profession and supplementary social security schemes*; and the Anti-Discrimination Act of 25 February 2003 *amending the Act of 15 February 1993 setting up a Centre for Equal Opportunity and Action to Combat Racism*.

After the Constitutional Court had handed down its judgement No. 157/2004 of 6 October 2004, a number of the provisions of the Anti-Discrimination Act of 25 February 2003 had to be amended. In addition, Belgium found that it had to enact amended legislation in line with the European Directives referred to above (2000/43/EC,

2000/78/EC, 2000/73/EC, 2004/113/EC). This gave rise to a far-reaching reform designed, first, to simplify the relevant legislation and make it more practical and, above all, more effective for victims, and second, to enhance the system of sanctions through effective practical measures. The reform was put into effect through the passage of three anti-discrimination Acts and an Act designed to adapt the Judicial Code to the new legislation:

- Act of 10 May 2007 to combat certain forms of discrimination (M.B., 30 May 2007);
- Act of 10 May 2007 amending the Act of 30 July to suppress certain acts motivated by racism or xenophobia (M.B., 30 May 2007);
- Act of 10 May 2007 to combat discrimination between men and women (M.B., 30 May 2007); and
- Act of 10 May 2007 adapting the Judicial Code to legislation designed to combat discrimination and suppress certain acts motivated by racism or xenophobia (M.B., 30 May 2007).

The three anti-discrimination Acts operate independently, although they are similar in terms of their structure.

The new legislation provides a general framework for combating discrimination within the Federal State's area of jurisdiction. The main features of the new system may be summarized as follows:

Scope of the new legislation

The scope of the new legislation includes employment (including access to employment, working conditions, the breaking of employer-employee relations, and affiliation to a trade union), the access to and supply of goods and services available to the public, social security and social protection, reference in an official document or record, and access to and participation in any economic, social, cultural or political activity that is open to members of the general public.

Behaviour prohibited by the legislation

Behaviour now prohibited by law falls into four categories: (1) direct or indirect discrimination; (2) incitement to discriminate (i.e. asking or ordering a person to perform a discriminatory action); (3) harassment where based on one of the protected criteria; and (4) refusal of reasonable accommodation for a person with a disability, i.e. refusal to take action designed to eliminate or offset the negative impact of an environment not suitable for a person with a disability.

The law makes provision for certain exceptions, including in particular positive action aimed at correcting certain situations in which groups of persons are subject to sociological discrimination, action involving a distinction or differential treatment, in conformity with the principle of equality, and a list of special cases.

Grounds for discrimination

The new legislation includes a more objective list of grounds for discrimination than was contained in older law. The list is closed, and is broadly similar to the list given in the Charter of Fundamental Rights of the European Union: race (which includes such characteristics as skin colour, origin and nationality), gender, age, sexual orientation, disability, religious belief, political belief, language, health, civil status, physical characteristics, and the like.

Procedure

As regards procedure in cases of alleged discrimination, the new legislation provides that a complaint may be lodged before a civil court, but also, in certain cases, a criminal court. In addition, there are various provisions concerning the lodging of a complaint, the sharing of the burden of proof, and the protection of victims and witnesses from possible reprisals.

- A person who considers that he has been a victim of discrimination may engage a lawyer or approach the prosecutor's office directly. However, a complaint may also be lodged through one of the associations formed to uphold human rights and combat discrimination or a representative or professional association or public body. Two public-interest organizations are competent for this purpose: the Centre for Equal Opportunity and Action to Combat Racism and the Equality Institute⁶. These bodies are legally mandated to provide victims with assistance and support in all their efforts to obtain redress and possess all the necessary expertise to perform that task.
- In order to protect potential victims of discrimination, the new system provides that once a complaint is lodged, no harmful action (such as dismissal, denial of promotion, and the like) may be taken against the person who has lodged the complaint or against witnesses, except on grounds unrelated to the complaint.
- Under the new legislation, the burden of proof in a civil action is "shared"⁷. The Acts provide that as soon as the judge is in possession of evidence pointing to a presumption of discrimination, it is no longer the victim who has to prove that discrimination has occurred, but rather the presumed offender who has to prove that he did not discriminate. Accordingly, the legislation sets forth a non-exhaustive list of situations in which the occurrence of discrimination may be presumed. This list includes, among other items:
 - Evidence indicative of a recurrent pattern of unfavourable treatment of persons who share a protected criterion (an example might be repeated refusal to allow persons of a particular origin or colour to enter a discotheque);
 - Evidence showing that the situation of the victim of unfavourable treatment is comparable to the situation of a reference person (an example might be the case of a woman performing the same work as a male colleague, having the same qualifications and the same seniority but being paid less);
 - General or more specific statistical data.
- The new legislation also takes a different approach to penalties. Formerly, a civil court could only determine that discrimination had occurred and order that it should cease in future, whereas the law now provides for a system of lump-sum indemnities. This avoids arguments over the amount of damages and thus means that the victim receives compensation and the offender is penalized in a shorter period of time. Furthermore, some offences entail criminal liability as well. These include:
 - Race-based discrimination;
 - Incitement to hatred based on discrimination (racial or other);

⁶ The Equality Institute was established pursuant to the Act of 16 December 2002 establishing the Institute for equality between women and men (cf. *infra*, developments under Article 3).

⁷ Provision for the sharing of the burden of proof was a feature of the old legislation as well. The 2007 Acts retained the principle and specified the applicable terms and conditions.

- Incitement to discrimination (racial or other);
- Membership of a group that engages in incitement to or encourages racial hatred;
- Discrimination by a civil servant;
- Any offence motivated by discrimination;
- The dissemination of ideas based on racial supremacism or racial hatred is now a criminal offence.

Measures taken by the federated entities

Walloon Region

With a view to meeting the requirements of the European Directives referred to above (2000/43/EC, 2000/78/EC, 2000/73/EC, 2004/113/EC), the Walloon Region is currently in the process of preparing a decree on equal treatment and action to investigate complaints, transposing those directives into Walloon law.

It is noteworthy that the prospective draft decree no longer simply incorporates the obligations specified by these directives into Walloon law, but makes the available protection from discrimination much broader, both in terms of the protected criteria and in terms of the scope of those criteria.

The decree is expected to be adopted shortly.

Flemish Authority

The decree of 10 July 2008 concerning a Framework for the Flemish Equal Opportunity and Equal Treatment Policy (*M.B.*, 23 September 2008) establishes a general framework for the Flemish Authority's equal opportunity and equal treatment policy. This decree transposes the above-mentioned European Directives (2000/43/EC, 2000/78/EC, 2000/73/EC, 2004/113/EC), and is in conformity with the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. The decree covers the entire jurisdiction of the Flemish Region and the Flemish Community (education, welfare, culture, employment, mobility and so on).

In this decree, the bases of action on behalf of equal treatment are more broadly defined than they need have been in order to comply with the European Directives. The bases specified are as follows: gender, sexual orientation, disability and state of health, full accessibility to infrastructures and information, race, skin colour, ethnic or national origin, religious or philosophical belief, and age.

The decree contemplates the establishment of "contact points on discrimination" (13 in urban areas and one in Brussels; eight of these contact points are currently in their start-up phase). Owing primarily to intensive networking and sustained cooperation, these contact points will serve as a single-window facility for citizens. They will focus mainly on prevention and action on complaints outside the courts.

German-language Community

The decree of 17 May 2004 *on ensuring equal treatment in the employment market* (*M.B.*, 13 August 2004) transposes the above-mentioned European Directives ((2000/43/EC, 2000/78/EC, 2000/73/EC, 2004/113/EC).

French Community

Under the French Community's decree of 19 May 2004 *on the implementation of the principle of equal treatment* (M.B., 7 June 2004), all discrimination is prohibited.

The decree of 22 March 2007 *concerning the equal treatment of persons in vocational training* (M.B., 24 January 2008) provides for non-discrimination and equal treatment of all persons in respect of vocational training in the Brussels Capital Region. This decree transposes Directive 2006/54.

The French Community is currently preparing a draft decree aimed at combating discrimination in the French Community. This draft decree is designed to transpose the above-mentioned European Directives (2000/43/EC, 2000/78/EC, 2000/73/EC, 2004/113/EC) into Belgian law

The objective of the draft decree is to establish a general framework for combating discrimination on the following grounds: nationality, supposed race, skin colour, descent or national or ethnic origin, age, sexual orientation, religious or philosophical belief, disability, gender and related grounds such as pregnancy, motherhood or transsexualism, civil status, birth, fortune, political views, language, current or future state of health, physical or genetic characteristics, and social origin.

The areas to which the decree will apply are as follows:

- Employer-employee relations, both in the French Community's civil service and in the field of education;
- Education;
- Health policy in so far as that lies within the French Community's jurisdiction;
- The access to and supply of goods and services in matters within the French Community's jurisdiction.

Brussels Capital Region

An order amending the order of 17 July 2003 *concerning the Brussels Housing Code* is currently under way. The new order will safeguard the principle of equal treatment in access to affordable and mid-range housing and will transpose the above-mentioned Directives 2000/43 and 2004/113, into law.

More specifically, a closed list of forms of discrimination, based on the relevant federal legislation, is included in the order. Four types of behaviour are distinguished: direct discrimination, indirect discrimination, harassment, and incitement to discriminate. The order states that acts of discrimination are liable to penalties, thereby enabling the justice system to prosecute and convict persons who commit such acts.

The order of 4 September 2008 *on promoting diversity and combating discrimination in the Brussels regional civil service* (M.B., 16 September 2008) has twin objectives:

- 1) Establishment of a general framework for the promotion of diversity in the public bodies of the Brussels Capital Region; and
- 2) The prohibition of discrimination and the promotion of equal treatment in employer-employee relations within the regional civil service. The draft order transposes into law the European Directives relating to equal treatment in employment policy (the above-mentioned Directives 76/207/EEC, 2000/43/EC, 2000/78/EC and 2002/73/EC).

The Government of the Brussels Capital Region can now issue a decree to bring this order into force.

Lastly, the concepts of equality and diversity have been integrated into the Brussels Capital regional administration since 2005. The Ministry for the Brussels Capital Region has had a Charter of Diversity and a Code of Ethics at its disposal since 2005, and it has had a Plan of Action for Diversity since 2006. An Equal Opportunity and Diversity Unit is mandated to track plans of action and the region's external equality policy.

2.2.2.2 *Specific provisions*

Action to combat homophobia in the Walloon Region

The Walloon Region has resolutely embarked on action to combat homophobia, which is a source of violations of basic rights. By encouraging and providing financial support for associations and federations of associations of homosexual persons, and through various programmes designed to combat homophobic attitudes in the workplace, the Walloon Region is endeavouring to enable homosexual persons to live in accordance with their sexual preference without discrimination.

Legislation relating to the well-being of workers

Legislation relating to the well-being of workers has recently been amended by the Act of 10 January 2007 *amending various provisions of law relating to the well-being of workers in the performance of their work, including provisions affording protection from violence and moral or sexual harassment at work* (M.B., 6 June 2007) and the Act of 6 February 2007 *amending the Act of 4 August 1996 on the well-being of workers in the performance of their work in respect of judicial proceedings* (M.B., 6 June 2007) and supplemented by a Royal Decree of 17 May 2007 *concerning the prevention of psychosocial stress caused by work, including violence and psychological or sexual harassment* (M.B., 6 June 2007). This legislation protects workers from harassment in the workplace on discriminatory grounds, including sexual or gender-based harassment.

Measures to promote and enhance diversity among staff members at all levels within the Belgian Federal Administration

In February 2005, the Minister for Civil Service launched its "2005-2007 Plan of Action to promote diversity". Under the plan, three target groups are identified: persons with disabilities, persons of foreign origin, and women in fields in which they are underrepresented⁸. A Diversity Unit has been established to oversee the implementation of the Plan of Action. A second Plan, designed to pursue the same goals as the first, is currently being developed.

Action to sensitize prison officials to discrimination-related issues

Persons who work at prison institutions receive basic training upon appointment. Since 1 September 2007, that training has been 13 weeks in length and has included theoretical courses at the CFPP (training centre for prison personnel) alternating with practical training on site with mentors providing guidance and support. Discrimination-related issues of all kinds (religious, sexual, etc.) are addressed directly in courses on occupational ethics, communication, or the part of the "officers' duties" course that deals with regulatory aspects as they relate to respect for religions. More broadly, respect for other persons (inmates, colleagues, supervisors) is a "red thread" running through the whole of prison officials' training.

⁸ The Plan of Action is available at the following address:
http://www.fedweb.belgium.be/fr/binaries/Diversit%C3%A9-plandactions2005-2007FR_tcm119-10630.pdf.

Article 3 (Equality between men and women)

Changes since the previous report

A detailed analysis of this article will be found in Belgium's fifth report *on its implementation of the Convention on the Elimination of All Forms of Discrimination against Women*, which was submitted to the United Nations on 22 June 2007. The paragraphs below, however, summarize the main changes that have occurred since the submission of Belgium's previous report on the Covenant.

1. International commitments

On 14 June 2004, Belgium ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which entered into force on 17 September 2004.

On 11 May 2005, Belgium signed Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 5 of which enshrines the principle of equality between spouses in respect of their rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during the marriage and in the event of its dissolution. This protocol is currently in the process of ratification.

2. Domestic developments

2.1 Anti-discrimination legislation

Since the previous report, a variety of anti-discrimination legislation has been enacted, both by the Federal State and by the federated entities, including legislation designed to combat gender-based discrimination. This legislation has been discussed in detail under article 2 above, and comments relating to it will be found there.

2.2 Establishment of the Equality Institute

The Equality Institute was established under the Act of 16 December 2002⁹. It is an independent public-interest body that is expressly mandated to combat gender-based discrimination, promote equality between women and men, and develop tools and strategies for incorporating a gender perspective into federal policies. The Institute is the successor to the former Equal Opportunity Directorate within the Federal Department of Employment.

The Institute's mandate comprises five strategic objectives: providing legal assistance to victims of gender-based discrimination; implementing "gender mainstreaming"; conducting research; supporting field workers; and preparing and applying government decisions and monitoring the effects of European and international policies.

The Institute has various resources at its disposal for carrying out its mandate in the area of providing complete assistance to a person alleging gender-based discrimination,

⁹ Act of 16 December 2002 *establishing the Institute for equality between women and men* (M.B., 31 December 2002).

ranging from information about rights and duties (and, where indicated, steering the victim to the appropriate authority) to legal action. Between these extremes, the Institute issues verbal or written advice (in some instances following an interview at its premises), provides mediation techniques, warns the alleged offender, or requests supplementary legal opinions from experts or lawyers. The Institute may bring action with the victim or on its own behalf (with the victim's consent), but—in view of its legal competence to combat gender-based discrimination—it may also initiate action without a specific victim, with a view to enforcing gender equality or on behalf of a group of victims.

Further information about the activities of the Equality Institute can be found at the Internet address: <http://www.iefh.fgov.be>.

2.3 Action on policies relating to gender equality

Monitoring of the implementation of resolutions adopted at the Fourth World Conference on Women held in Beijing in September 1995

Federal State

The Act of 12 January 2007 *monitoring the implementation of the resolutions of the Fourth World Conference on Women, held in Beijing in September 1995, and integrating the principle of gender mainstreaming in all federal policies* (M.B., 13 February 2007), provides that the Government shall take the necessary action to implement the objectives of the Fourth World Conference on Women, held in Beijing in September 1995.

Brussels Capital Region

The Order of 20 April 2006 *on the preparation by the Government of an annual evaluation report on its gender equality policy* (M.B., 9 May 2006) was adopted.

In 2007, an initial Beijing report and an initial regional plan of action on equal opportunity for men and women was adopted by the Brussels Government and Parliament. The declared objective is to ensure that gender equality is firmly rooted in the Brussels Capital Region.

Flemish policy on gender equality

The Flemish Minister for Equal Opportunity is expressly empowered to identify, eliminate and prevent inequality of opportunity resulting from gender (in addition to such inequality resulting from sexual identity and lack of physical accessibility). The Flemish policy on equal opportunity includes both a “vertical” component and a “cross-cutting” component, i.e. one that covers a number of strategic areas. The vertical policy on equal opportunity entails engaging in sensitization action in the form of campaigns in the media and information publications, conducting studies, supporting civil society, networking with political figures at the provincial level, and developing pilot projects, among other things.

Turning to the “cross-cutting” component of the Flemish equal opportunity policy, an “Open Method of Coordination” was introduced in 2005, making it feasible to include an equal opportunity perspective in all areas of that policy. Coordination is provided by the Flemish Minister for Equal Opportunity. The policy is based on the decree of 10 July 2008 concerning a framework for the Flemish equal opportunity and equal treatment policy (cf. article 2).

Plans of action addressing this issue are prepared in all areas of Flemish jurisdiction.

2.4 Participation by women in political and public life

In Belgium, as in many other countries, there are, generally speaking, fewer women than men in political and public life. Since January 2002, the Belgian Constitution has formally guaranteed the equality of men and women (article 10), and required legislative bodies to adopt measures designed to ensure such equality, in particular by promoting equal access by men and women to elective public office (article 11 *bis*). Since then, various measures have been taken to promote a balance between men and women in many areas of political and public life.

Introduction of parity on lists of candidates and results at federal and European elections

The year 2002 saw the passage of several Acts designed to ensure that more women would sit in the federal regional and European legislative assemblies¹⁰. These Acts prohibit political parties from presenting lists of candidates in which the difference between the numbers of candidates (designated candidates and alternates) of each sex is greater than one. They also specify that the top two candidates on each list must be of different sexes. Failure on the part of a political party to observe these requirements invalidates its list of candidates.

Parity on lists of candidates was adopted for the first time at the legislative elections of 18 May 2003. The outcome was that women members accounted for 34.7% of the Chamber of Representatives (compared to 19.3% at the 1999 elections) and 37.5% of the Senate (compared to 30% at the 1999 elections). The percentage of women candidates elected at the European elections of 13 June 2004 was 29.17%, slightly lower than the figure resulting from the 1999 elections (32%). In general, there has been a marked improvement in the presence of women in legislative assemblies following the application of the “parity laws.” It is noteworthy that other amendments to the Electoral Code (including in particular the enlargement of certain electoral districts or the introduction of a threshold of eligibility) have contributed to the increase in the numbers of women in assemblies.

Introduction of mixed executives

Ac hoc Act of 5 May 2003 *making provision for the presence of persons of different sex in the Flemish Government, the Government of the French Community, the Walloon Government, the Government of the Brussels Capital Region and the regional Secretaries of State of the Brussels Capital Region* (M.B., 12 June 2003) and the Act of 5 May 2003 *making provision for the presence of persons of different sex in the Government of the German-language Community* (M.B., 12 June 2003).

At the federal level, the presence of members of different sex in the Government is safeguarded directly by the Constitution.

¹⁰ Act of 17 June 2002 requiring equal representation of men and women on lists of candidates for election to the European Parliament (M.B., 28 August 2002); Act of 18 July 2002 requiring equal representation of men and women on lists of candidates for election to the Federal legislature and the Council of the German-language Community (M.B., 28 August 2002); *ad hoc* Act of 18 July 2002 requiring equal representation of men and women on lists of candidates for election to the Walloon Regional Council, the Flemish Council, and the Council of the Brussels Capital Region (M.B., 13 September 2002).

Presence of women on advisory bodies

Federal State

The Act of 3 May 2003 *to promote the balanced representation of men and women on bodies possessing advisory powers* (M.B., 12 June 2003), amending the Act of 20 July 1990, established instruments aimed at improving the scope of that Act:

- An official list of bodies to which the Act applies;
- A commission mandated to issue advisory opinions of general import on policy aimed at promoting balanced representation of men and women within advisory bodies, and on the implementation of legislative initiatives contained in the Act of 20 July 1990.

German-language Community

Decree of the German-language Community of 3 May 2004 *to promote the balanced representation of men and women on advisory bodies* (M.B., 20 September 2004).

Flemish Authority

Decree of 13 July 2007 *to promote more balanced participation by men and women in the advisory bodies and administration of the Flemish Authority* (M.B., 6 August 2007).

Action to promote and strengthen the presence of women at various levels within the Belgian federal administration

In February 2005, the Minister for Civil Service launched its “2005-2007 Plan of Action to promote diversity”. This plan sets out measures aimed at promoting women in fields in which they are underrepresented. A Diversity Unit has been established to oversee the implementation of the Plan of Action. A second Plan, designed to pursue the same goals as the first, is currently being developed.

Between 2005 and 2006, the percentage representation of women rose at all levels of the federal administration except the lowest (level D). The largest increase (+4.3%) was observed at level C, followed by level B (+2.9%) and level A (+1%)¹¹.

In 2006, women occupied 37.2% of level A posts, 45.8% of level B posts, 59.5% of level C posts, and 51.4% of level D posts. In all, the gender distribution within the federal administration was 50.1% men and 49.9% women, an increase of 3.1% in women’s representation.

These numbers indicate that the higher the rank in the administrative hierarchy, the lower the proportion of women. Women are clearly in the minority at level A, and are also in the minority at level B, but occupy a majority of level C and level D posts in the federal administration.

¹¹ The Belgian federal administration is organized on the basis of four levels, corresponding to different qualifications:

- level A: officials with a university degree or a long-cycle advanced studies diploma;
- level B: officials with a short-cycle higher education diploma;
- level C: officials with a secondary education certificate;
- level D: officials who have completed the first cycle of secondary studies, with no other diploma requirement.

In the case of management and human resource management¹² posts, which are the highest posts in the Belgian federal administration, women held 23 of the total of 184 posts (12.5%).

2.5 Other measures aimed at combating gender discrimination

Transmission of surname

Owing to the dissolution of the federal legislative chambers on 2 May 2007, the draft legislation on the transmission of family names referred to in the previous report (p. 12) was never enacted. New draft legislation aimed at introducing, among other things, equality between parents in the matter of the transmission of a surname to a child, have been tabled in the current legislature¹³. However, Parliament has not yet set a date for consideration and possible adoption of these bills.

Filiation

The provisions of Belgian law relating to filiation were amended by the Act of 1 July 2006 *amending the provisions of the Civil Code relating to the establishment of filiation and its effects* (M.B., 29 December 2006), primarily for the purpose of eliminating gender discrimination, as updated by the Constitutional Court. A detailed discussion of this issue will be found in the comments on Article 24.

2.6 Action to combat violence against women

National plans of action to combat conjugal violence

In 2001, the first National Plan of Action to combat conjugal violence was prepared in response to a decision adopted at the Interministerial Conference on Equal Opportunity on 14 November 2000. For the first time, all forms of action with a bearing on the effort to combat violence against women had been coordinated and developed on an organized basis.

Following assessment of this initiative, a new Plan of Action against conjugal violence for the period 2004-2007 was prepared and its scope extended to the Communities and Regions. The aim of this plan was to implement high-priority actions with a bearing on the effort to combat violence by a (former) spouse or other partner.

In this area, the Communities and Regions have jurisdiction mainly in matters of prevention (Communities) and action to provide victims with shelter and assistance (Regions).

The General Policy Statement issued by the Minister of Justice in April 2008 provides that a new Plan of Action is to be prepared following evaluation of the National Plan of Action against conjugal violence for 2004-2007, in consultation with the competent federal ministers and the Communities and Regions. This new Plan of Action is to be extended to all forms of violence against women, including in particular forced marriages,

¹² For the federal administration, these terms refer to posts of President, Director-General, Director and Director, Human Resources Service.

¹³ Draft bill amending the Civil Code with respect to transmission of the family name, to ensure the transmission of family identity by means of a double surname, *Doc. Parl.*, Ch. Repr., extr. sess. 2007, 0047/001; Draft bill amending article 335 of the Civil Code with respect to transmission of a surname to a child, *Doc. Part.*, Ch. Repr., ord. sess., 2007-2008, 0327/001; Draft bill amending article 335 of the Civil Code as it relates to the name of a child, *Doc. part.*, Ch. Repr., extr. Sess. 2007, 0231/001.

honour killings and genital mutilation¹⁴. Violence against the elderly will also receive special attention.

Measures to implement the National Plan of Action for 2004-2007

Numerous measures in a variety of areas have been taken to implement the National Plan of Action for 2004-2007. The items listed below are particularly noteworthy:

- Sensitization to violence-related issues:
 - A brochure entitled “Violence: how to escape it?” for victims and front-line workers has been published by the Equality Institute.
 - The French Community is also supporting a number of initiatives (including a quantitative and qualitative study on violence in relationships among young persons and a campaign aimed at raising awareness among young people of the issue of violence in such relationships) and is developing educational programmes.
 - The Flemish Community has established a number of general social welfare support centres (Steunpunt Algemeen Welzijnswerk).
 - The Brussels Capital Region has adopted a policy of combating conjugal violence. In that connection, it has conducted various sensitization and information operations and provided victims with assistance and support (platform for concerted regional action, production and distribution of a list of regional and local resources, training, organization of regional events and collaboration with the Brussels communes).
- Follow-up action in relation to perpetrators and victims:

SPF Justice allocated €2,487,635.16 in 2004, €3,069,591.61 in 2005 and €3,174,552.27 in 2006 for follow-up action in cases of perpetrators who were subject to court orders. Between 2004 and 2007, a total of €1,427,000 was earmarked in the federal budget to provide assistance for “volunteer” perpetrators.
- Data-gathering:

SPF Public Health has developed a data gathering and recording project in the area of domestic violence, using a sample of hospital emergency services. A study on the project has been published.¹⁵
- Criminal policy measures:

In 2006, the existing arsenal of means for dealing with domestic violence was reinforced by two new directives. These are designed to set out the main lines of criminal policy on conjugal violence; develop a uniform identification and registration system for police forces and prosecutors; determine minimum measures to be applied in every judicial district in the country; and provide instruments and references for the use of the police and judiciary officials concerned as a means of supporting their work. It is clear

¹⁴ General Policy Statement by the Minister of Justice, Jo Vandeurzen, April 2008, p. 29.

¹⁵ The study is available at the SPF Public Health Web site at the address: http://portal.health.fgov.be/portal/page?_pageid=56,512956&_dad=portal&_schema=PORTAL. (See “enregistrement violence intrafamiliale”). This Web site provides abundant information on domestic violence.

from these directives that Belgium's policy on conjugal violence and domestic violence is one of zero tolerance.

- The "Sexual Aggression Set":

Circular COL 10/2005 adopted on 15 September 2005 by the College of Senior Crown Prosecutors at Courts of Appeal is designed, first, to ensure that incidents of rape or indecent assault are adequately investigated, and second, to ensure that the psychological distress resulting from sexual aggression is minimized and secondary victimization thereby avoided¹⁶.

- Design of an Internet site:

The Federal State has joined forces with the French Community and the Flemish Community to launch a national Internet site dedicated to conjugal violence. The site is expected to be up and running by the end of 2008.

- Reception, shelter, guidance and support for victims of conjugal violence in the Walloon Region:

The decree of 12 February 2004 *on reception, shelter, guidance and support for persons in social difficulties* (M.B., 26 April 2004) introduced a major reform by grouping together under a single umbrella the various institutions providing reception, shelter, guidance and support for persons in social difficulties, including women who have been victims of conjugal violence.

This decree has yet to be implemented. However, an initial step has been taken in the form of funding for a partnership between an operator who assumes responsibility for perpetrators of acts of conjugal violence and shelters for battered women. Through an integrated cooperation process, the partners are endeavouring to develop practices that will ensure the safety of victims (partners and children) while also taking care not to infringe on the specific area in which each association or service works. All concerned share the main objective of developing integrated cooperation between their activities, primarily in situations in which the victims' lives (and/or those of the perpetrators) are at risk. This initiative was launched in 2006 and is expected to continue.

2.7 Other protective measures

Assignment of the family home to the spouse or legal cohabitant who has been the victim of physical violence at the hands of the other spouse or partner

The Act of 28 January 2003 *assigning the family home to the spouse or legal cohabitant who has been the victim of physical violence at the hands of the other spouse or partner, and supplementing article 410 of the Criminal Code* (M.B., 12 February 2003) provides that the family home shall be assigned to the spouse or legal cohabitant who has been the victim of physical violence at the hands of the other spouse or partner, and among other things prescribes more severe penalties for conjugal violence and provides a legal basis for the "temporary removal" of perpetrators of conjugal violence.

¹⁶ An initial Sexual Aggression Set was introduced in 1989.

Protection of women in the context of the asylum procedure

A variety of measures have been taken in the context of the asylum procedure in an effort to deal with specific problems relating to the status of women:

- An internal directive of 10 October 2006 on membership of a particular social group affords a means of consolidating all gender-related issues as legitimate grounds for recognition of refugee status in Belgium. Furthermore, an asylum-seeker is always free to choose whether a male or female officer shall be in charge of the CGRA (Office of the Commissioner General for Refugees and Stateless Persons) hearing;
- CGRA officers have all had training on the appropriate way to hear persons who allege that they have been victims of sexual abuse or other serious forms of violence, and also specific training on the rituals followed within a secret African society that practises genital mutilation. Awareness days for CGRA officers were organized by the Group for the Abolition of Sexual Mutilation (GAMS) in 2006 and 2007;
- A brochure entitled “Women and asylum” was issued in December 2007 by CGRA. The brochure sets out the rights and requirements of a woman asylum-seeker and places emphasis on certain aspects that may be important to her as a woman. The brochure is available in French, Dutch, English, Russian, Albanian, Lingala and Swahili;
- The Aliens Office has adopted the service note of 21 March 2008, which is designed to protect pregnant women in accordance with recommendation 21 of the second Vermeersch Commission.

Forced marriages

Under the Act of 25 April 2007 *inserting an article 391 sexies into the Criminal Code and amending certain provisions of the Civil Code to make forced marriage a criminal offence and broadening the grounds for annulment of such marriages* (M.B.15 June 2007), forced marriage is now a criminal offence and can be annulled.

Under article 391 *sexies* of the Criminal Code, every person who by violence or threats coerces someone into concluding a marriage incurs criminal liability. The attempt also incurs criminal liability. Inasmuch as forced marriage constitutes a violation of human rights that is prohibited by a number of international instruments, the purpose of the new Act is to protect the victim’s right to enter into marriage freely and with his or her consent and to protect his or her freedom, dignity and physical integrity.

Article 146 *ter* of our Civil Code, as inserted by the above-mentioned Act of 25 April 2007, now provides that “*Likewise, no marriage is valid when it is contracted without the free consent of the two spouses, and when the consent of at least one of the spouses was obtained through violence or threat.*”

The civil registrar may now refuse to perform the marriage if it is a forced marriage. In addition, a forced marriage that has been performed may now be declared null and void at the instance of the Office of the Public Prosecutor, the spouses themselves, or all interested parties.

Furthermore, where there are clear indications of a forced marriage, the prosecutor’s office may itself initiate legal proceedings with a view to annulment of the marriage.

French Community

At the initiative of the Minister of Secondary Education, a study on forced marriages in the French Community was conducted. The final results of that study were submitted in

June 2004, and are available at the French Community's Internet site¹⁷. Following the release of the findings, a prevention tool entitled "Marriage: there and back" was developed in 2006 by a family planning centre. It consists of an educational kit containing an audiovisual document on DVD which is designed to encourage intergenerational dialogue on the reality of arranged marriages, and four information booklets.

Dissolution of marriage abroad at the husband's unilateral decision

Article 57 of the Code of International Private Law, which entered into force on 1 October 2004, is concerned exclusively with repudiation. The Belgian Parliament took the view that that institution is alien to our conception of law and incompatible with the principle of equality between men and women. The principle set forth in article 57 is that repudiation in all its forms is not recognized, except where certain cumulative conditions apply, including in particular the woman's acceptance, with certainty and without constraint, of the dissolution of the marriage. These conditions must be verified by the authority before which recognition is being sought.

Essentially, repudiation may be recognized only in situations where the repudiation occurred in a foreign State in a case involving nationals of that State (or nationals of different States in which the institution is in use) whose lives were centred there, at any rate at the time of the repudiation¹⁸.

¹⁷ <http://www.egalite.cfwb.be/violence-entre-partenaires/mariages-forces>.

¹⁸ See also the circular of 23 September 2004 dealing with aspects of the Act of 16 July 2004 on the Code of International Private Law relating to personal status (*M.B.*, 28 September 2004). Further details on this issue will be found in the sixth periodic report submitted by Belgium on its implementation of the Convention on the Elimination of All Forms of Discrimination against Women, p. 123.

**Article 4
(Time of war and public emergency)**

There is nothing to report in respect of article 4 of the Covenant. The information contained in the fourth periodic report remains valid.

Article 5
(Ban on narrow interpretation of the Covenant)

Remarks pertaining to article 5 will be found in the initial report submitted by Belgium (CCPR/C/3/Add.3, paragraphs 66 and 67).

Article 6 (Right to life, death penalty, ...)

Changes since the previous report

1. International commitments

On 23 June 2003, Belgium ratified Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in all circumstances, which entered into force on 1 October 2003.

On 19 January 2006, Belgium signed Council of Europe Convention No. 196 on the Prevention of Terrorism. This Convention sets forth national prevention policies and rules for international cooperation with a view to preventing terrorism and protecting fundamental rights, in particular the right to life.

2. Domestic developments

2.1 Enshrinement of the abolition of the death penalty in the Constitution

On 2 February 2005, in line with the abolitionist tradition, the Belgian Federal Parliament enacted a new constitutional provision enshrining the principle of the abolition of the death penalty.¹⁹

2.2 Safeguards in the context of international legal cooperation

The Act of 9 December 2004 *on international mutual legal assistance in criminal matters* (M.B., 24 December 2004) was amended by article 2 of the Act of 23 December 2005 *containing various provisions* (M.B., 30 December 2005) to permit mutual legal assistance with countries that still apply the death penalty where the requesting State provides sufficient guarantees that accused persons will not be sentenced to death, or, if they are, that the sentence will not be carried out.

2.3 Euthanasia

Under the Euthanasia Act of 28 May 2002, a doctor who performs euthanasia does not commit an offence provided certain conditions are met.

Concurrently, the Act of 10 November 2005 *supplementing the Euthanasia Act of 28 May 2002 with provisions concerning the role of pharmacists and the use and availability of euthanizing substances* (M.B., 31 December 2005) provides that a pharmacist who issues a euthanizing substance does not commit an offence when filling a prescription in which the physician states explicitly that he is acting in accordance with the Act.

Furthermore, two Royal Decrees have been issued: the Royal Decree of 2 April 2003 *setting terms and conditions governing the wording, reconfirmation, revision or withdrawal of an advance declaration relating to euthanasia* (M.B., 13 May 2003), and the Royal Decree of 27 April 2007 *regulating the registration of an advance declaration*

¹⁹ Act of 2 February 2005 *amending the Constitution by the insertion of a new article on abolition of the death penalty* (M.B., 17 February 2005).

relating to euthanasia and the communication of such declaration to the physicians concerned through the services of the National Registry (M.B., 7 June, 2007).

2.3 Act of 11 May 2003 on *in vitro* embryo research

The Act of 11 May 2003 *on in vitro embryo research* (M.B., 28 May 2003) lays down the terms and conditions governing scientific trials or experiments on embryos situated outside the human body and establishes the Federal Commission on medical and scientific *in vitro* embryo research. The main features of the Act may be summarized as follows:

- The conditions under which *in vitro* embryo research may be conducted (consent, possible alternative research approaches, control, and so on) are established.
- Human reproductive cloning is prohibited, as are certain practices contemplated under article 5 of the Act, such as the implantation of human embryos in animals or the creation of hybrid beings, the implantation of research embryos in human subjects except for therapeutic purposes for the embryo's benefit or for observational research where the research does not damage the embryo, the use of *in vitro* embryos for commercial purposes, or eugenic treatments or sex selection, except where the purpose of the research is to eliminate embryos with sex-linked disorders.
- Provision is made for the establishment of a Federal Commission on medical and scientific *in vitro* embryo research. The Commission was officially launched on 6 June 2006. Its mandate is primarily to ensure that the Act is enforced, to suggest amendments to the Act, and to draft directives for the guidance of local ethics committees and scientific investigators.

Article 7 (Torture, inhuman and degrading treatment, organ transplants)

I. Responses to the Committee's recommendations

Concluding observation 10

The Committee is concerned at the small number of convictions in criminal and disciplinary proceedings of military personnel suspected of human rights violations during the United Nations operation in Somalia. It does note that the State party has removed the jurisdiction of military courts over acts committed by military personnel in peacetime (art. 2).

The State party should prohibit, and punish effectively, any conduct by military personnel, whether in peacetime or wartime, that is contrary to human rights, in particular the conduct set forth in articles 6 and 7 of the Covenant.

The abolition of military courts in peacetime²⁰ was prompted by the reasoning that there was no longer any justification for trying military personnel in courts other than those used to try civilians. The Act abolished only organizational and procedural aspects; it did not affect material instruments such as the Military Criminal Code. The underlying intent of this reform is that in so far as possible, soldiers who are charged with offences shall be subject to the conventional criminal justice procedure.

Moreover, under legislation originally enacted in 1993 and supplemented by a series of Acts passed in 1999, 2003 and 2006, Belgian courts have jurisdiction to consider any serious violation of international humanitarian law committed by a Belgian soldier, regardless of the place where the violation was committed, the nationality of the victim, or the presumptive perpetrator's current whereabouts. Given this fact, a victim may lodge a complaint directly before an examining magistrate by bringing an action for criminal indemnification. In this connection, it is noteworthy that prosecutions for serious violations of international humanitarian law (crimes of genocide, crimes against humanity and war crimes) are not subject to any statute of limitations under Belgian law.

Lastly, Belgian courts also have jurisdiction to consider serious violations of international humanitarian law having no other link with Belgium where they are committed by any person who is not a Belgian national but is subject to Belgian military law or is attached, in any capacity whatever, to a unit of the Belgian army serving abroad (article 10 *bis* of the Preliminary Title of the Code of Criminal Procedure).

Concluding observation 12

The Committee is concerned about the persistence of allegations of police violence, often accompanied by racial discrimination. According to certain reports, investigations are not always thorough and judgements, when handed down, are still mostly of a token nature (arts. 2 and 7).

²⁰ Act of 10 April 2003 making provision for the abolition of military courts in peacetime and their retention in wartime (*M.B.*, 7 May 2003).

The State party should put a stop to all police violence and step up its efforts to conduct more thorough inquiries. Actions alleging abuse or violence brought against members of the forces of law and order, and actions brought by the forces of law and order against alleged victims, should be routinely linked.

The Government of Belgium provided an interim response to this recommendation in a document submitted to the Committee in November 2005²¹. In addition to the contents of that report, the information given in the paragraphs below should be noted. In the first place, the various means of investigating allegations of violence on the part of members of police forces and punishing any perpetrators are outlined. In the second place, preventive measures that have been adopted within the Federal Police are described.

1. Punitive measures

The internal monitoring services of the Federal police and local police forces are always alert for complaints about their members alleging discrimination, racism or xenophobia. When information about mistreatment of any persons, regardless of whether the alleged mistreatment occurred while the person concerned was in custody or not, is brought to the attention of the competent authorities and services, a meticulous investigation is always conducted, accompanied, where indicated, by disciplinary action. A decision to take punitive action against a perpetrator, after an exhaustive investigation and examination of the evidence, is the prerogative of the disciplinary and/or judicial authorities. Where the investigation points to the conclusion that an offence has been committed, a formal charge is drawn up and forwarded to the prosecutor's office.

- As regards disciplinary action, there are a number of authorities that have the power to initiate an investigation into the facts alleged in such cases²². These are the Minister of Justice, the Minister of the Interior, Provincial Governors, burgomasters, prosecutors' offices, examining magistrates, the Chair of Committee P, the Inspector-General of AIG, and line and functional supervisors. Furthermore, the Equality Institute and the Centre for Equal Opportunity and Action to Combat Racism are empowered to initiate investigations, subject to the terms and conditions specified in law.

Until such time as the regular disciplinary authorities have not ruled in the matter, the senior disciplinary authorities have a right of evocation that empowers them to take the case under consideration and initiate the prescribed procedure²³.

The Discipline Board must be notified of every disciplinary decision by the originating authority. This information is used by the Chairs of the Board in two ways: as input to the data bank on discipline files, and for purposes of the annual report.

Every year, the disciplinary authorities take several hundred disciplinary actions for a wide variety of reasons. There were 607 such actions in 2003, 677 in 2004, 688 in 2005, 718 in 2006 and 724 in 2007.

It is immediately apparent that the numbers of disciplinary actions display a steady upward trend, and the annual total has increased by 20 per cent since 2003. The main reason for this increase is probably greater vigilance on the part of the disciplinary authorities and more frequent decisions to initiate disciplinary procedures.

Punishments for acts of police brutality account for approximately 10 per cent of all disciplinary actions. It is important to note that from the outset, instances of police brutality

²¹ Ad hoc report. See Annex 1.

²² Act of 13 May 1999 *relating to the disciplinary regulations applicable to members of police services*, article 26.

²³ *Ibid.*, article 18.

invariably give rise to judicial investigation and, where warranted, prosecution. Depending on the outcome, the disciplinary authorities may or may not impose a disciplinary penalty for the same act.

- As regards criminal prosecution, the Minister of Justice has, in theory, the power to initiate an investigation that may lead to a decision to prosecute. Under article 143 of the Judicial Code and article 274 of the Code of Criminal Procedure, there can be no doubt about the Minister of Justice's power to order prosecutions. In practice, that power is very seldom used.

In matters relating to legal action, punishment for breaches of law and disciplinary measures, the competent authorities have a comparatively free hand; cases of criminal liability, on the other hand, are the exclusive prerogative of the judiciary.

When a file is closed, the complainant is always kept informed, in detail, about any measures taken by the relevant authority.

Furthermore, it should be noted at this point that Committee P has provided information (mainly in the form of statistical data) on allegations of police brutality that came to its attention between 2003 and 2007²⁴. This information includes, among other things, the conclusions of an in-depth investigation into the use of constraint and force which was referred to in the interim response submitted to the Committee in 2005²⁵.

2. Preventive measures

As Belgium is characterized by cultural diversity, the Belgian authorities are always concerned to ensure that its diversity is preserved, to combat racism against immigrants, and to enhance cultural communication. Belgium's integrated, two-tier police forces are directly confronted with these cultural differences (victims of human trafficking, victims of acts of racism or discrimination, and so on).

Accordingly, measures of various kinds have been taken with a view to preventing police brutality accompanied by racial discrimination.

Designing a diversity policy

Since 2003, the Federal police have been developing a diversity policy for the integrated police force. The aim of the policy is to establish a police culture that incorporates, continuously and consistently, a "diversity" component within its structure as a means of ensuring that the service provided by the police is appropriate in terms of the expectations and heterogeneous characteristics of Belgian society. Outside consultations are a regular occurrence, the main partners being the Centre for Equal Opportunity and Action to Combat Racism and the Equality Institute.

In 2004, as part of the development of this policy, a network of diversity resource persons was established with a view to promoting the integration of police force personnel, but also with a view to upgrading service to the public. The primary mandate of this network is to use exchanges of experience and information as a means of identifying good practice in the area of diversity, including in particular issues involving individuals' cultural origins. Findings are input into a computerized diversity information bank which is available to all police force personnel.

²⁴ See Annex II.

²⁵ See Annex I.

A plan launched by the Federal authorities (Equal Opportunity, Justice and Interior) for combating racism, anti-Semitism and xenophobia has been in effect within the Federal police force since 2005.

In the general framework of recruitment and publicity activities, there has been a particular focus on two groups that are insufficiently represented in police forces: women and Belgian citizens of foreign origin.

The ongoing effort to promote diversity and equal opportunity has been given official expression in the culture and ethics component of the national security plan (NSP) for 2008-2011²⁶. The theme of officer integrity is one of 18 fields of action identified in the NSP as being central to the process of evolving toward a modern, high-quality police force.

Training

A number of training programme modules are devoted to such issues as racism, diversity of identity, cultural diversity, homophobia, and legislation aimed at combating discrimination and racism. These issues are addressed at the basic training and continuing training levels and also in courses for police officers who are assigned to specialized duties with a direct bearing on non-native population groups.

Two new training programmes were launched in 2007: one on diversity of identity and sexual orientation, which deals with homophobia, and one on legislation aimed at combating discrimination and racism. In 2007, five members of the internal monitoring service took the programme on the legal framework and the enforcement of laws against racism and discrimination.

Specific in-house training courses on receptiveness to other cultures and the various forms of intercultural communication are available to ordinary working police officers, such as patrolmen and frontier inspection service officers. These courses should lead to better mutual understanding and afford a means of avoiding rejection and stigmatization behaviours.

Code of ethics for police forces

Under the Act of 26 April 2002 *on essential aspects of the status of the members of police forces and various other provisions relating to police forces*, every police officer is subject to the code of ethics and shall receive a copy of it.

The code of ethics was adopted in the form of a Royal Decree on 10 May 2006²⁷.

This code is consistent with various international recommendations and instruments dealing with human rights, including the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe's Resolution 690 (1979) on the Declaration on the Police, and the European Code of Police Ethics (Recommendation Rec(2001)10 of the Committee of Ministers of the Council of Europe, 19 September 2001).

Sensitization to problems of racism and discrimination

Numerous articles and notices on the theme of integrity in general and the effort to combat racism in particular have been distributed within the integrated police forces since 2001. Prominent among these have been a notice dealing with respect for human rights and fundamental freedoms, a notice condemning racist behaviour, and anti-racist articles.

²⁶ The National Security Plan outlines security policy at the national level and determines security-related priorities for the period it covers.

²⁷ Royal Decree of 10 May 2006 *establishing the code of ethics for police forces* (M.B., 30 May 2006).

A specific sensitization campaign was organized in 2006 with the aim of disseminating information about the contents of circular COL 6/2006 of the College of Senior Crown Prosecutors, which sought to identify the racist and xenophobic motives of certain offences more clearly by introducing a separate box headed “Ref. prosecutor’s office” at the top of the report form. Another specific campaign was organized in 2007, this one on circular 14/2007, which dealt with the effort to combat homophobia.

Sensitization operations are also conducted directly in the field. In 2006 and 2007, units of the highway police (WPR) were sensitized to the antidiscrimination laws and the effort to combat prejudice and stereotyping.

In 2006, in collaboration with the Centre for Equal Opportunity and Action to Combat Racism, trainers within the Railway Police were given training designed to enable them, in their turn, to provide other members of that police force with sensitization/training in conflict management and intercultural communication.

Sensitivity training for senior officials is also in prospect for 2007 and 2008. In that connection, a number of additional support tools are currently being developed, including a diversity chart and a DVD on sensitization.

Development of a toolkit

A contract for a “scientific research” project aimed at development of a toolkit for the practical implementation of integrity within police forces was awarded to the Katholieke Universiteit Leuven (Catholic University of Louvain). The results of the project were submitted early in 2008.

The results were presented in the final project report. According to the investigators, a successful integrity policy is subject to a number of conditions which will have to be met in the years ahead if the desired outcome is to be realized.

Establishment of an advisory and expert opinion contact point on integrity

In 2007, a contact point mandated to issue —preventively and proactively— advisories on any questions that senior officials²⁸ might wish to ask in the area of integrity was initiated. This contact point should become operational some time in 2008.

Regulations governing the use of handcuffs

Until recently, the use of handcuffs by police officers was not regulated by law. It is clear from numerous parliamentary questions and court rulings that in practice, the possession and use of handcuffs by police officers was authorized by the police authorities. In the Royal Decree of 10 June 2006 on the uniform of the integrated, two-tier police forces (*M.B.*, 14 July 2006), handcuffs are part of the basic equipment of officers assigned to the operational side of police forces.

The purpose of the Act of 25 April 2007 *containing various provisions (IV)* (*M.B.*, 8 May 2007) was to amend the Police Functions Act by inserting an article 37 *bis*, which reads as follows:

“Without prejudice to the provisions of article 37, police officials and police officers shall handcuff an individual only in the following cases:

- 1. During the transfer, removal or surveillance of detainees;*

²⁸ The term “senior officials” as used here means chiefs of local police forces, Directors-General and Directors of the Federal police, and the main department heads in the Federal police (e.g. the head of the medical service and the head of the security detachment assigned to the royal palace).

2. *During the surveillance of an individual arrested pursuant to an administrative or judicial warrant, where such action is necessary in the circumstances, including in particular:*

- *The behaviour of the individual concerned at the time of arrest or during detention;*
- *The behaviour of the individual concerned when arrested and detained on previous occasions;*
- *The nature of the offence;*
- *The nature of the breach of public order;*
- *Resistance or violence on the part of the individual concerned at the time of his arrest;*
- *Where there is a risk of escape;*
- *Where the individual concerned represents a danger to himself, to the police official or police officer, or to another person;*
- *Where it appears that the individual concerned may attempt to destroy evidence or cause damage.”*

This article provides a legal basis for the use of handcuffs.

The same approach as is adopted in those provisions of law that regulate the use of constraint and force is applied to the use of handcuffs. In other words, handcuffs cannot be used automatically, since their use always requires the police official or officer concerned to take into account the criteria listed in article 37 *bis* above (such as danger to the individual being arrested or to another person, the risk of escape, etc). These criteria are not mutually exclusive and may be taken into account in both types of arrest.

In view of the provisions of law aimed at protecting minors, special regulations are essential for individuals in that category, not to prohibit the use of handcuffs as such, but to ensure that the individual concerned is treated in accordance with his protected status in the event that it should prove necessary to handcuff him.

Concluding observation 13

The Committee takes note of the delegation's explanations concerning the independence of the investigative services working for Standing Committee P, but observes that doubts persist concerning the independence and objectivity of those services (arts. 2 and 7).

The State party should adjust the membership of the investigative services with a view to ensuring that they are genuinely efficient and independent.

The Standing Police Monitoring Committee (Committee P) was established by the *Police and Intelligence Services (Monitoring) (Organization) Act*, adopted on 18 July 1991. The intent of that Act was to introduce external comprehensive monitoring of police services in Belgium by a neutral, independent pluralist institution that was answerable to Parliament.

Committee P is directed by a board of five working members, including a chairman, who are appointed for a term of five years, twice renewable. The board is assisted by an Administrative Department, which is headed by a registrar, and by an Investigation Department, the members of which work directly and exclusively under the Committee's

authority and responsibility, except when the Department is assigned judicial missions. Since 1 April 2007, complaints submitted to Committee P have been handled by the “complaints unit”, which is staffed by administrative members, i.e. not by police officers. For the time being, the complaints unit is run and generally coordinated by the Deputy Director-General for judicial affairs within the Investigation Department, under the supervision of a member of the board. Two members of the Investigation Department — temporarily seconded to the “complaints unit”— are responsible for the organization and operation of the new entity, working in close cooperation with the administrative staff. They are also well placed to contribute their knowledge of the structure of police forces and the types of investigation conducted within Committee P. The unit is currently staffed by twelve administrative members (i.e. not police officers).

The issue of the independence of the members of Committee P’s Investigation Department has been raised by the CPT, the United Nations Committee against Torture and the United Nations Human Rights Committee. Each of these bodies expressed concern about the independence of Committee P because a number of the members of its Investigation Department actually belong to police forces. With a view to ending any possibility of doubt as to its independence, Committee P discussed the issue in its annual activity report for 2004²⁹ under the heading “Externality, Independence, Neutrality and Effectiveness”. The content of the discussion is summarized below, and is supplemented by an account of recent factual developments and legislative enactments with a bearing on the commissioners who audit Committee P.

Committee P wishes to emphasize strongly at this point that apart from some rather theoretical, not to say philosophical speculation, it has never been aware of the slightest complaint or any actual specific recrimination directed at its independence, neutrality or impartiality.

Before dealing with its own situation, Committee P considers that it may be useful to shed some fresh light on the issue by reviewing the discussions on the subject that took place at a European forum for national police oversight bodies³⁰. Some of those bodies stand alone, others report to the national Parliament, still others to the Minister of Justice, the Minister of the Interior or the Prime Minister; some of them are branches of the public prosecutor’s office, others are an integral part of the country’s police. At the forum, a working group was assigned the task of formulating principles and standards governing the action of public institutions mandated to exercise oversight of police forces. The criteria that ultimately emerged, as regards the independence of oversight bodies, were largely based on the rulings of the European Court of Human Rights and the European Code of Police Ethics. The following passage is particularly noteworthy:

- *The public institution shall be governed and controlled by persons who are not current or serving police officers or law enforcement officials. Institutions might wish, however, to employ former, current or seconded police officers or other law enforcement officials;*
- *The public institution shall be publicly funded. The institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding;*

²⁹ Annual activity report for 2004, Standing Committee on the Monitoring of the Police Services, Parl. Docs, Chamber, 2004-2005, No. 1966/01, and Senate, 2004-2005, No. 3-1321/1, pp. 57 ff.

³⁰ The forum in question was EPAC (European Partners against Corruption), which is a European Union institution comprising member States’ national police oversight bodies and also their anti-corruption authorities.

- *The public institution may be part of the government of the state or constituted separately;*
- *The public institution shall be sufficiently separated from the hierarchy of the police or other law enforcement agencies that are subject to its remit;*
- *The public institution shall have the power and competence to, at its own discretion, address the general public and the media about aspect of its work and its sphere of responsibility.”*

Committee P fully meets all these criteria.

Furthermore, the issue of the independence and neutrality of persons who deal with complaints by members of the public against the police and conduct investigations in that connection was considered at an expert workshop organized by the Council of Europe at the instigation of the Commissioner for Human Rights, T. Hammarberg, on 26 and 27 May 2008³¹. Committee P was invited to give a presentation explaining its composition and operating procedures at a working meeting dedicated to independence and effectiveness; the presentation did not attract any particular comments from the participants. In the light of the discussion at the workshop, Committee P is convinced that its method of operating, the composition of its personnel and its personnel management are quite consistent with the recommendations of the European bodies in attendance. On the issue of the police investigating the police, the report of the expert workshop contains the following remark: *“The consensus was that a mixture of police and non-police investigators is necessary, particularly until an esprit de corps for complaints investigators is established.”*

In subsequent discussions, another consensus was reached to the effect that some types of judicial investigations could be entrusted only to persons who had had police training and experience (i.e. former police officers or working police officers made available for purposes of the investigation).

The Police and Intelligence Services (Monitoring) (Organization) Act of 18 July 1991 sets forth six policy criteria designed to enable Committee P to execute its external monitoring mandate under optimal conditions³². Those criteria are as follows:

- (1) **Monitoring should be external and independent** of police services, the executive, the judiciary, and command structures;
- (2) Monitoring should be ongoing, forming an integrated and consistent part of police force practice;
- (3) **Monitoring should be effective, its effectiveness being ensured by the availability of adequate resources and a mandate conferring the necessary powers to conduct in-depth investigations;**
- (4) Monitoring should be public, with maximum transparency, subject to such safeguards as may be necessary for the sake of confidentiality;

³¹ The theme of the workshop was “Police complaints mechanisms: ensuring independence and effectiveness”. The workshop gathered together representatives of police complaints mechanisms, police, prosecutors, government authorities, intergovernmental and non-governmental organizations as well as academic experts to meet with the Council of Europe Commissioner for Human Rights to discuss ways of dealing with complaints and assess their effectiveness and independence. As a follow-up to the workshop, the Commissioner will issue guidelines on the theme.

³² Draft Police and Intelligence Services (Monitoring) (Organization) Act, Explanatory memorandum, Parl. Docs, Chamber, 1990-1991, No. 1305/1, pp. 5 and 6.

(5) Monitoring should be specific in that it should be the sole mission of the monitoring body, whose work should supplement existing monitoring and inspection action organized by command structures and judicial authorities; and

(6) Monitoring should be lawful, conducted in all cases in accordance with the monitoring body's operational terms and conditions as set forth by law.

In responding to this concluding observation, the implementation of the criteria of independence and effectiveness will be discussed here in greater detail.

Independence of monitoring

A monitoring agency, specifically external in relation to police forces, answerable to the legislative power

Like Parliament's other collateral bodies, most notably the Court of Audit (which served as a model for the operation of Committee P), and also the Federal Mediators' Association, the Commission for the Protection of Privacy, the Higher Council of Justice, the Standing Committee on Intelligence Service Monitoring and so on, Committee P is a unique institution: neutral, independent, entirely separate from the executive and the judiciary, answerable to Parliament, and its operations funded by Parliament through a special allocation.

A Standing Committee has been established within the Chamber of Representatives to monitor the activities of Committee P: the Special Parliamentary Committee monitoring the Standing Police Monitoring Committee. The Special Committee meets with Committee P at least once every quarter. It may make recommendations on the way Committee P operates, ask questions and formulate requests on any matter relating to the supervision of police services or the observance of the Act of 18 July 1991 and regulations made thereunder. However, the Special Committee has no mandatory or prohibitory authority in respect of Committee P.

The role of Committee P is indissolubly bound up with the principle of the separation of powers: the Committee serves the legislative power to assist it in its Constitutional function of monitoring the executive power. Assuming no responsibility for the organization or operation of the police services it monitors, Committee P is an institution that is entirely separate, not only from the executive power and the police services³³ established under the authority of that power, but also from the judiciary.

This position of total separation from the police services, which are essentially an arm of the executive, is one of the fundamental differences between Committee P and other monitoring and inspection bodies such as AIG, the General Inspectorate of the Federal and Local Police and other internal monitoring services within police forces or zones. As a result, Committee P enjoys total independence from the police (from working officers to the overarching authority responsible for police services). The internal monitoring services just referred to are essentially arms of the executive power that are incorporated into the actual structure of police services³⁴ and thus mandated to monitor those services from

³³ Within the meaning of article 3 of the Act of 18 July 1991, namely, not only the Federal police and local police forces, but also the special inspection services that operate in certain specific areas of criminal law, such as Customs and Excise, the environmental police, Economic Inspection, Social Inspection and the like, as well as individuals who are authorized to look for and make note of offences.

³⁴ And, as such, governed by the Act of 7 December 1998 instituting an integrated, two-tier police service (*M.B.*, 5 January 1999).

within. Committee P, in contrast, stands alone as a comprehensive external police monitoring body.

Safeguards in terms of the independence of members of the board

The members of the board of Committee P, and the registrar as well, are appointed by the Chamber of Representatives, which can also remove them from office. Before taking up their duties, they are sworn in by the Speaker of the Chamber of Representatives. This appointment procedure clearly establishes Committee P's independence and neutrality and its difference in kind from other forms of monitoring and inspection.

The Act of 18 July 1991 specifies a number of conflict situations and prohibitions with a view to ensuring the full neutrality and independence of the members of Committee P. They may not occupy any electoral public office. Nor may they accept any employment or engage in any public or private activity that might jeopardize the independence or dignity of the Committee's function. They may not be members of the Standing Committee on Intelligence Service Monitoring, a police force, or an intelligence-gathering organization³⁵. A number of other safeguards are also noteworthy: (1) a member of the Committee may not be present when the subject under consideration is one in which he or any relative by blood or marriage to the fourth degree has a personal or direct interest³⁶; (2) every member of the Committee is liable to criminal prosecution if he divulges any confidential information to which he has become privy in the performance of his duties, even after expiry of his term of appointment³⁷, and (3) members of the Committee are subject to the provisions of the Act of 18 September 1986 instituting political leave for staff members of public services³⁸.

Method of reporting

Committee P submits a special report on each investigation to the Chamber of Representatives. The report contains a general description of all investigations or monitoring operations conducted and includes conclusions identifying any documents, activities or methods that might jeopardize individuals' constitutional rights or the coordination and effectiveness of police forces. The Committee must also report to the Chamber of Representatives and the Senate in the following instances: (1) annually, in the form of a general report on activities including conclusions, proposals and general recommendations; (2) whenever it deems it appropriate or at the request of the Chamber of Representatives or the Senate, in the form of an interim activity report which may contain general conclusions and proposals relating to a specific investigation; (3) when the Chamber of Representatives assigns it an investigation; (4) where it ascertains, after a reasonable period (but in any case more than 60 days), that its conclusions have not been followed up or that the measures taken are inappropriate or inadequate.

After having reported to Parliament, the Committee may decide to make all or part of its reports and conclusions public by any means it may see fit (publication, press release or the like).

Safeguards in terms of the independence of the members of Investigation Department P

The members of the Investigation Department of Committee P (Investigation Department P) may be divided into two categories:

³⁵ Act of 18 July 1991, article 4.

³⁶ Act of 18 July 1991, article 63.

³⁷ Act of 18 July 1991, article 64.

³⁸ Act of 18 July 1991, article 65.

(1) Statutory members in the strict sense of the term. These are either members taken on by Committee P as statutory staff of Investigation Department P or members appointed after secondment who have become statutory members of the Committee by a transfer mechanism provided for under article 22 *quater* of the Act of 18 July 1991³⁹.

(2) Statutory members appointed on a temporary basis. An appointment to Investigation Department P on a temporary basis is valid for a term of five years, renewable, for members seconded from some other service, as a rule a police force in which the individual concerned has had at least five years of experience in functions directly relevant to the policing activities. Under article 20 of the Act of 18 July 1991, at least half the members of Investigation Department P must be seconded from a police force in this fashion. However, an appointment of this type confers a specific status which is quite different from that of other members of a police force or individuals on secondment from a police force to another service or institution.

The composition of Investigation Department P is intrinsically linked to the missions it is required to carry out. There are three types of missions: (1) judicial police missions; (2) a certain amount of follow-up to complaints lodged by private individuals, and (3) inspection inquiries (thematic inquiries, follow-up inquiries, etc.) and audits. Missions in the first two of these categories require the input of investigators with experience and expertise relating to judicial inquiries, hearings, special police techniques, and so forth. Judicial inquiries entrusted to Investigation Department P are by their very nature highly sensitive and consequential, and hence call for specialized training in state-of-the-art police techniques. Experts from non-police backgrounds come into their own in audit missions or inspection inquiries.

It is important to recall at this point that when Committee P was first established, it was the intent of Parliament that as an interim provision —set forth in article 67 of the Act of 18 July 1991— the first members of Investigation Department P were to be appointed through secondment from a police force or other administrative service (subject to the conditions relating to experience set forth in article 20 of the Act). This explains why from the outset the Department's staff included a substantial number of investigators who had come originally from a police background but were temporarily totally separated from their original corps through a new appointment and a new status. The Minister of the Interior stated at the time that “Our intent is to initiate an evolutionary process. We propose to minimize risk at the outset by appointing only police officers within the Investigation Department. They have the training required to conduct police investigations. Other persons may be appointed as well in due course. Those persons will have the benefit of working as part of a team that can provide them with the necessary training and assistance. It is essential to bear in mind that the members of the Investigation Department are officers of the judicial police.”⁴⁰

³⁹ Article 22 *quater* of the Act of 18 July 1991 provides that “*Every member of the Investigation Department who at the end of his first renewable five-year term as contemplated in article 20, paragraph 2, obtains a rating of “good” at his final assessment may apply to Standing Committee P to be permanently transferred to the statutory staff of Standing Committee P’s Investigation Department.*”

Every member of the Investigation Department who at the end of his second renewable five-year term as contemplated in article 20, paragraph 2, obtains a rating of “good” at his final assessment shall have the right to transfer to the statutory staff of Standing Committee P’s Investigation Department.”

⁴⁰ Parl. Docs, Chamber, 1990-1991, No. 1305/8, p. 109.

At the same time, it is important to note that without prejudice to judicial investigations, the members of Investigation Department P operate directly and exclusively under the authority and responsibility of Committee P, which receives the reports on all investigations undertaken. It is Committee P, acting through its board members, that assumes responsibility both for opening investigations and for their conclusions (which are brought to the attention of Parliament). Committee P decides, in full independence, what investigations shall be undertaken and how they are to be conducted. Again without prejudice to Investigation Department P's judicial police missions, the reports produced and submitted are in all cases those of Committee P and not those of Investigation Department P or any individual investigator.

The Act of 18 July 1991 also provides a number of measures designed to safeguard the independence and neutrality of the members of Investigation Department P who are seconded from other governmental bodies. These include (1) the possibility of being permanently transferred to the statutory staff of Investigation Department P⁴¹; (2) the fact that members retain their rights in their original administrative service⁴²; (3) the fact that members are subject to the disciplinary authority of Committee P rather than that of their original service⁴³; (4) appointment to a higher rank⁴⁴; (5) and specific conditions relating to promotion^{45 46}. These various measures are also designed to enable Committee P gradually to reduce the relatively high proportion —as initially called for by the legislation— of investigators on secondment from an agency with police powers or a police force by encouraging the individuals in question either to return to their original administrative service or to transfer permanently into the statutory organic framework of Investigation Department P. Quite recently, the specific status and independence of the members of Investigative Department P was reinforced by the Federal Parliament on 17 February 2007, when it adopted a new “Status of the Director-General and members of Investigation Department P”. Owing to this status, the members of the Investigation Department are quite clearly independent from the police authorities and the whole sphere of police operations, and are expressly placed under the exclusive authority and management of Standing Committee P

Effectiveness of monitoring

Various means of investigation

In order to enable Committee P to perform its mandate of integrated, comprehensive monitoring of the way police forces carry out their duties, Parliament has given the Committee a variety of investigation tools that it can use to access information in its efforts to arrive at a reliable, relevant and, in so far as possible, complete picture of the world of policing and the problems it faces.

Without prejudice to the provisions of law relating to jurisdictional immunities and privileges, Committee P and its Investigation Department may invite any person whose testimony is deemed essential to a hearing. Members of police forces must respond to any written summons they receive; they may give evidence in connection with matters covered by professional codes of confidentiality⁴⁷. The Chair of Committee P may use bailiffs to have members of police forces called as witnesses. Such persons are required to swear an

⁴¹ Police and Intelligence Services (Monitoring) (Organization) Act of 18 July 1991, article 22 *quater*.

⁴² Act of 18 July 1991, article 20.

⁴³ Act of 18 July 1991, article 20 *bis*.

⁴⁴ Act of 18 July 1991, article 20.

⁴⁵ Act of 18 July 1991, article 22 *bis*.

⁴⁶ Act of 18 July 1991, article 22 *ter*.

⁴⁷ Act of 18 July 1991, article 24§1.

oath and give evidence; if they refuse to do so, they are liable to criminal prosecution. They are required to divulge to Committee P any confidential information to which they may be privy, except information pertaining to a judicial inquiry or investigation currently under way. If the police officer feels that he should not disclose the confidential information on the grounds that to do so would put another person's safety at risk, the issue is referred to the Chair of Committee P for a ruling⁴⁸. Committee P and its Investigation Department may request the assistance of experts or interpreters⁴⁹. Any police officer who refuses to testify before the Committee and any expert or interpreter who refuses to assist the Committee in its work is liable to criminal prosecution⁵⁰. In the performance of their duties, the members of Investigation Department P may request the assistance of the law enforcement authorities⁵¹.

Even in connection with non-judicial investigations, usually referred to as control investigations, the members of Investigation Department P are empowered to conduct searches of all premises where the members of a police force, within the meaning of article 3 of the Act of 18 July 1991, perform their duties and may seize any objects and documents that may be useful for purposes of the investigation⁵².

Furthermore, Committee P and the Director-General of Investigation Department P may impose binding time limits for police forces or their members to respond to questions asked by the Committee or its Investigation Department in the performance of their duties⁵³.

In addition, various players, stakeholders or other entities active in the public arena are required to provide Committee P with a variety of information, documents or files, in accordance with the provisions of articles 9, 10, 14, 14 *bis*, 14 *ter*, 19 and 26 of the Act of 18 July 1991. Specifically, Committee P must be provided with the items listed below:

(1) In all cases: a copy of every complaint and item of information received by the Federal Police Commissioner, the General Inspectorate of the Federal and Local Police and local police chiefs, together with a brief summary of the outcome of the inquiry upon completion of the said inquiry; disciplinary measures and sanctions taken against a member of a police force; a copy of every police force's annual report or any other report with a bearing on how it operates;

(2) Upon request: a copy of every process, document or item of information relating to criminal proceedings against a member of a police force for felonies or misdemeanours committed in the performance of their duties; any document that Committee P deems necessary for the execution of its mandate;

(3) Committee P is also informed whenever a charge is laid or an investigation initiated against a member of a police force. Lastly, members of police forces are required to prepare a report for the information of the Director-General of the Investigation Department when a police officer is found guilty of a felony or misdemeanour.

With a view to information sharing, cooperation and concerted action, information channels have been established in the form of protocols with the Federal police, local police forces, and the General Inspectorate of the Federal and Local Police. Other protocols with

⁴⁸ Act of 18 July 1991, article 24§2.

⁴⁹ Act of 18 July 1991, article 24§3.

⁵⁰ Act of 18 July 1991, article 25§4, end.

⁵¹ Act of 18 July 1991, article 25.

⁵² Act of 18 July 1991, article 27.

⁵³ Act of 18 July 1991, article 27 *bis*.

various stakeholders active in the public arena, including the magistrate who directs the police information management control unit, are currently in preparation.

Insistence on quality owing to a high qualification level, state-of-the-art in-service training, and modern working procedures

Committee P pays particular attention to the skills of the members of Investigation Department P. In addition to demanding qualifications (university degree, professional experience, in-service training, mastery of languages, etc.) and the application of a strict recruiting procedure, every applicant is subject to a practicum or probationary period. All these factors serve to attest the motivation and professionalism of the members of Investigation Department P. The in-service training that they receive, both in the field of criminal investigation and in the field of management, enhance their ability to cope with the situations that they are required to confront. The members of Investigation Service P must be familiar with legislation and regulations relating to police services, but they must also possess knowledge of international policing models (community policing, zero tolerance and the like), to say nothing of modern management, audit and quality control methods. These new investigation and monitoring practices were implemented within Committee P at the instigation of Parliament. The members of Investigation Department P, belonging as they do to a learning organization, undergo in-service training, including not only specialized training with a bearing on the issues of immediate relevance for the Department, but also training in such fields as total quality management, auditing methods, balanced scorecard, EFQM (European Foundation for Quality Management), CAF (Common Assessment Framework), ISO certification or other reference models or techniques (such as COSO), and so on. The monitoring procedures applied by the members of Investigation Department P are derived from the most recent management publications and courses in the subject given by outside consultants. The investigations assigned to them are conducted in accordance with pre-established procedures, based in many instances on a detailed plan that enables the investigator to perform a complete scan of a police force or unit, identify its strengths and weaknesses and formulate recommendations, and also, equally well, to examine a single current practice or the working climate prevailing within a particular unit.

The effectiveness of Investigation Department P's operations may be measured either over the short term or over the medium term. As soon as an investigation of a police force or unit is initiated, Committee P's investigators observe what might be termed an awareness phenomenon in most of the individuals they interview: in most cases, those individuals quickly and clearly realize that there is a problem and that the investigators are there, not to punish the culprits but to help them improve their operating methods or attitudes. The operation thus has clearly defined objectives: detecting dysfunctional aspects, making the individuals concerned aware of them, and enlisting their cooperation in working out solutions. In what are termed proactive operations, when Investigation Department P observes police practices, there is no immediate interaction, obviously. The influence of Investigation Department P will make itself felt through a written report on all its findings, accompanied by general recommendations. The report will be distributed to the police forces or units concerned and to the command structure. In most instances, the approach is constructive and positive. Its main purpose is not in the least to demonize individuals, but rather, without identifying them, to cite them as examples in an effort to direct the attention of all concerned to inappropriate or unacceptable forms of behaviour. This enables the force or unit as a whole to benefit from the findings of investigations or studies of this kind. Under certain circumstances, however, as for example where the facts or situations identified are exceptionally serious or specific, a different approach may be indicated. There have been cases in the past in which members of Investigation Department P have not hesitated to draw up a formal charge sheet and so initiate a prosecution. The Chair of

Committee P has the power to require the disciplinary authorities to initiate an investigation. For example, when the Chair informs the disciplinary authority of facts which may constitute a breach of discipline, that authority is required to ascertain whether disciplinary action is indicated and subsequently to inform the Chair of action taken in response to the information provided by him⁵⁴. In practice, needless to say, mission assignments take into account the fact that a given member of Investigation Department P is likely to have retained affinities with his particular police force or unit of origin. Naturally, a member of the Department who has been seconded from a police force or unit will never, under any circumstances, be ordered to conduct an investigation of his former colleagues.

Concluding observation 14

The Committee is concerned by fresh allegations of excessive force being used when aliens are deported, despite the entry into force of new guidelines (arts. 6 and 7).

The State party should put an end to the excessive use of force when aliens are deported. Those responsible for effecting such deportations should be better trained and monitored.

Since the previous report, various measures have been taken to make deportations more humane. Furthermore, it should be noted that the process of deportation is subject not only to internal monitoring by AIG (the General Inspectorate of the Federal and Local Police) within the Federal police itself, but also to external monitoring by Committee P. These measures are described in the following paragraphs.

1. Measures to implement the recommendations of the second Vermeersch Commission

The guidelines on deportation and repatriation referred to above were comprehensively overhauled, on the advice of, inter alia, the first Vermeersch Commission, which had been mandated to review them⁵⁵. In January 2004, a second Vermeersch Commission was appointed and tasked with reviewing the existing instructions on deportation in order to ensure that deportation operations were humanely conducted. The Commission submitted its final report, entitled "Foundations of a humane and effective deportation policy", on 31 January 2005, with recommendations for the various agencies concerned with deportation policy: the Aliens Office, the Federal police, the Government, SPF Foreign Affairs and SPF Justice.

Those recommendations covered the following themes: (1) enhanced legal protection for all the persons concerned, (2) avoidance of the use of violence by any of the officials involved, (3) more effective communication among the agencies involved in deportations, (4) more effective protection for persons in special categories, (5) integration of deportation policy into the asylum and migration system, and (6) action to ensure that the Commission's recommendations were properly followed up.

Some of these recommendations have been implemented, and action has been taken on various issues, including:

- Aliens (intensified voluntary return campaigns, publications on the asylum procedure, the DVD, pre-identification of detainees held by the detainee

⁵⁴ Act of 13 May 1999 relating to the disciplinary regulations applicable to members of police services, article 26.

⁵⁵ A fuller discussion of this issue was provided in the fourth periodic report (p. 36).

identification unit since 1 September 2005, and arrangements to avoid protracted stays in the transit zone⁵⁶;

- Personnel of closed centres (training modules on persuasion techniques, violence management, aggression management, and cultural diversity);
- Legislation (Act of 15 May 2006 *containing various provisions relating to transport* —*M.B.*, 10 June 2006— under article 16 of which any person committing acts of violence on board an aircraft is liable to penalties, and a circular on voluntary return signed by the Minister of the Interior and the Minister for Social Integration);
- Cooperation and more effective communication among the agencies involved in deportation (signing of a protocol between the Aliens Office and the Federal police detachment at Brussels National Airport, cooperation among social workers at closed centres and the Federal airport police’s psychosocial support team, design of an escort sheet to be used with every deportation, and action to encourage countries of origin to promote repatriation).

The report also recommended action to make deportation policy more transparent by spelling out the various levels in a forced repatriation:

- Level 1: Persons who have not complied with an order to leave the country may be expelled immediately when intercepted or when being held in a closed centre pending repatriation.
- Level 2: For persons being held who agree to leave without an escort, i.e. voluntarily, the Commission suggests a small “reward” (a maximum of 50 euros).
- Level 3: Persons who refuse to leave voluntarily are put aboard the first scheduled flight and taken under escort to a suitable destination. If they offer no resistance, they are given a small reward upon arrival.
- Level 4: Departure under escort with the use of force. Action at this level may become necessary when action at level 3 proves not to be feasible owing to lack of cooperation on the part of the person being deported. The possibility of a second attempt is not ruled out.
- Level 5: Departure aboard a secure flight. This is the final level, and no reward is given.

Along similar lines, a DVD has been produced for the purpose of providing persons who are in Belgium illegally with a clear picture of the options available to them if they agree to leave voluntarily, but also the coercive measures that may be used if they refuse to comply with a deportation ruling. The advantages and disadvantages of the various options are clearly explained. This DVD has been shown in closed centres since September 2006.

There are more specific recommendations dealing with the deportation of foreign unaccompanied minors. Special support measures are being implemented, with emphasis on the importance of ensuring that every minor is accompanied to his country of origin or to a country where he can be received by his family or some other person(s).

It is essential to develop reception facilities, and also, if necessary, vocational training programmes, in their countries of origin for unaccompanied minors who are deported. Accordingly, a survey should be conducted on the potential and limitations of such initiatives, which will entail in-depth cooperation between the authority and non-governmental organizations.

⁵⁶ This item is also discussed in the comments relating to concluding observation 17, under the chapter dealing with article 9.

In practice, a foreign unaccompanied minor will be deported only if he can be returned to his country of origin or a country where he has residency status with assurance that he will be received and provided with care appropriate to his needs, depending on his age and degree of independence, by his parents or other adults, or by governmental services or non-governmental organizations. A noteworthy example is a project under which SPF Interior, Development Cooperation and IOM have joined forces to provide support for NGOs that shelter minors and families in Kinshasa. Support and financial assistance are made available to the families. The children are taken into shelters operated by the NGOs. The resources required for their reintegration are also provided.

2. Monitoring actions

AIG, the General Inspectorate of the Federal and local police, inspects repatriation missions on a regular basis. These inspections may take a number of forms: “low-profile” monitoring⁵⁷, monitoring operations with “preventive” advance notice⁵⁸, or monitoring aboard “special” or “secure” flights⁵⁹. They may be conducted at any point in the repatriation procedure: when the person who is to be repatriated is turned over to a refugee centre, when he is in the Federal police facilities at Brussels National Airport, when he is being taken out to the aircraft or put aboard, or even during the flight, especially in the case of a secure flight.

Between 2004 and 2007, AIG handled nine complaints and conducted monitoring operations on 209 flights (including 78 special flights and 131 scheduled flights). In the course of these operations, one formal charge sheet was drawn up.

In recent years, Committee P has had to deal with complaints about the way action to remove aliens has been handled. The Committee’s findings are appended to this report⁶⁰.

The Committee notes the professionalism of police forces and the small number of complaints brought to its attention compared to the number of repatriation operations.

It also notes that repatriation missions are complex operations, and emphasizes that in many cases the parties involved have divergent “interests”: expulsion from the country vs. remaining in the country. Accordingly, various manoeuvres may be attempted solely for the purpose of delaying the actual departure, including self-mutilation, injuries requiring appropriate medical attention, the lodging of a complaint with an application for suspension of the repatriation procedure pending investigation, and the like).

Lastly, Committee P observes that the issue of repatriation operations is the subject of particular attention on the part of numerous Governmental agencies and that the situation may be regarded as being “under control”.

Concluding observation 18

The Committee is concerned that, despite the recommendations it made in 1998, the State party has not ended its practice of keeping mentally-ill people in prisons and psychiatric annexes to prisons for months before transferring them to social protection

⁵⁷ In “low-profile” monitoring, AIG personnel keep, by definition, a low profile, not identifying themselves to the police officers in charge of the repatriation mission.

⁵⁸ In “preventive” monitoring operations, the officers in charge of the repatriation mission are notified ahead of time that the mission will be monitored.

⁵⁹ “Special” flights are repatriation missions involving an official aircraft or one chartered expressly for the purpose by the Aliens Office.

⁶⁰ See Annex III.

establishments. It reminds the State party that this practice is inconsistent with articles 7 and 9 of the Covenant.

The State party should end this practice as quickly as possible. It should also ensure that providing mental patients with care and protection and managing social protection establishments both form part of the Ministry of Health's responsibilities.

In order to clarify the concepts at issue here, it will be useful to distinguish between "mental illness" and "detention". The former is a medical condition, while the latter has legal connotations. A person who is mentally ill will not necessarily be detained, but may be confined.

The issue of the detention of mentally ill persons is one that is being addressed both by the competent Federal authorities and by those of the federated entities (Communities) with a view to ensuring that social assistance is available for these persons in order them to become reintegrated into society.

We shall begin by describing the measures that have been taken by Federal institutions on the one hand and by Community institutions on the other.

1. At the Federal level, a variety of measures have been taken with a view to ensuring that every detainee receives any attention that his specific situation may require. These measures are currently being implemented.

- Following the Interministerial Conference on Public Health held in May 2004, the various Ministers with responsibility for health care proposed that pilot projects should be used to test a number of health care models for specific groups. The longer-term goal would be to establish mental health care delivery "circuits" (or "routes") ("zorgcircuits") and networks. To that end, the measures outlined in the paragraphs below have been initiated:

- Depending on the type of care required by a detainee, he will be steered to a particular institution, in the context of a "mental health care delivery circuit", which for the detainee will in a sense be a "detention route".
- Psychiatric care institutions will be of three kinds: high security (Antwerp and Ghent,
- Tournai and Mons), medium security (Bierbeek, Zelzate, Rekem, Titeca and Tournai), and low security.
- The Sentence Enforcement Courts (instead of social protection committees, as at present), working in close coordination with all the relevant agencies, will assume responsibility for the admission, progression and discharge of detainees in the care delivery circuit.
- Independent coordinators will provide liaison between the authorities that order committals (at present social protection committees, but in the future, Sentence Enforcement Courts) and psychiatric care institutions. Their task will be simultaneously structural (based on their practical knowledge of mental health care institutions and those of the justice system) and individual, inasmuch as they will make recommendations to the committing authority concerning the institution best suited to a particular detainee's needs.

These measures will be implemented pursuant to the Act of 21 April 2007 *on the detention of persons with mental disorders (M.B., 13 July 2007)*, which has not yet entered into force. However, pilot projects are already being implemented by SPF Public Health and SPF Justice.

- To accommodate high-risk detainees, two new centres (“Forensisch Psychiatrisch Centrum”) with a total capacity of 390 patients are to be established in Ghent and Antwerp. These centres should be operational by 2012 at the latest. A coordination forum has been set up to enable SPF Justice and SPF Public Health to discuss the medical care of detainees in the first place and, in the second place, security measures and the respective roles of SPF Justice and SPF Public Health at the future “Forensisch Psychiatrisch Centrum” (FPC) in Ghent. These prospective centres are to be integrated into the above-mentioned mental health care delivery circuits for detainees.

- Specific supplementary measures have also been taken for medium-risk detainees with mental disorders, with placement in specialized psychiatric hospitals.

- Renovation work designed to expand the capacity of the Paifve social protection establishment, adding accommodation for approximately 80 additional patients, began on 17 March 2008.

- However, experience has shown that in practice it is no easy matter to transfer detainees into social protection establishments, as their capacity is still inadequate. Accordingly, some of them are accommodated in psychiatric annexes to prisons. In an effort to upgrade the conditions in which these persons are detained, multidisciplinary teams have been operating there since June 2007. Each team comprises a psychiatrist, a psychologist, a social worker, an occupational therapist, a psychiatric nurse, a physiotherapist and an education specialist, and is supported by prison officers who have had specific training. In addition, it will soon be possible to accommodate larger numbers of inmates in psychiatric annexes, as in 2006 a decision was taken to reopen the Lantin psychiatric annex.

2. Under the special Act on institutional reform of 9 August 1980, social assistance to detainees with a view to their reintegration into society falls within the jurisdiction of the Communities (article 5, para. 1, II, 7). Accordingly, the Communities are taking preventive and follow-up measures designed for persons with mental illnesses.

Flemish Authority

The Flemish Community has jurisdiction in the area of social assistance to detainees with a view to their rehabilitation. In 2000, Flemish policy was articulated in the form of a “strategisch plan voor de hulpen dienstverlening aan gedetineerden” (strategic assistance and support plan for detainees). Since that time, the Flemish Authority has made a point of ensuring that all services available to free citizens are or may be available in prisons as well, to enable detainees to exercise their fundamental social rights and have a better chance of becoming fully and harmoniously reintegrated into society.

The strategic plan is currently in effect in eight prisons: Bruges, Antwerp, Wortel, Turnhout, Hoogstraten, Merksplas, Hasselt and Ghent. Early in 2008, the Flemish Government decided to make funding available for implementation of the strategic plan in other prisons in Flanders and Brussels during 2008.

Fuller details about the strategic plan will be found in the fourth periodic report⁶¹, which stated that the plan was structured around five strategies:

- development of a high-quality palette of assistance and services;
- that is adapted to the needs of detainees;
- is provided through various forms of cooperation within appropriate organizational structures;

⁶¹ CCPR/C/BEL/2003/4.

- has been given a stable social basis;
- and enjoys an effective development policy in terms of staffing and organization.

Noteworthy new developments are summarized below:

1. Development of a high-quality palette of assistance and services

- General social assistance: 13 general social assistance centres are currently receiving grants for 89.35 full-time equivalents (FTEs) for their mission of providing social assistance for persons facing trial. As soon as the plan has been implemented in all prisons (by the end of 2008), this total will increase to 98.35 FTEs.
- Care for inmates with mental disabilities:
 - In the first place, two day activity providers have been approved to organize motivational activities on a daily basis in two prisons where most of these persons are held, namely Ghent and Merksplas. Each of these providers, which are respectively Obra (Evergem) and 't Zwart Goor (Merksplas), is approved for 16 participants, who take part in supervised activities within the prison itself. The objective of this working method is, as always, to prepare the inmates concerned for suitably adapted guidance and support following their release.
 - In the second place, a decision has now been made to accommodate detainees with mental disabilities in special “units”. It is not always a simple matter to integrate these persons within an ordinary facility. For most of these facilities, security is a persistent problem; in addition, the other “users” do not always welcome persons who have committed offences in the past. Three “units”, each capable of accommodating 10 individuals, are now operational in Flanders.

More generally, the measures outlined below have been taken with a view to monitoring inmates more satisfactorily and reintegrating them into society:

- Mental health care: €800 000 (16 FTEs) will be spent on mental health care for detainees (including €400 000 for criminal offenders and €400 000 for other detainees) to provide assistance for (ex-)detainees with psychiatric problems. Furthermore, Flanders has nine Mental Health Centres (MHSs) that are accredited providers of specialized services for the treatment and guidance of persons who have committed sexual offences involving minors. These nine MHSs are tasked with looking after offenders in this target group and are funded for 24 FTEs.
- Employment: The institution known as VDAB (Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding, or the Flemish Employment and Occupational Training Board) has a structural presence in nine prisons at the present time, and has recently decided to extend its services to all Flemish prisons (there are six prisons in which VDAB does not currently have a structural presence). This extension will begin with the establishment of duty services, and is expected to be operational by September 2008. In bringing all prisons into the “Aan de Bak” programme, with its centralized management, VDAB is ensuring that a uniform minimum level of service will be available at all Flemish prisons. Eventually, this basic level (duty services) may, depending on practical experience and growth in employment mediation needs, evolve into an expanded array of VDAB services. Similarly, experience and suggestions for expansion emanating from the six “new” prisons may, in turn, give rise to changes in the services provided by VDAB in the prisons where the “Aan de Bak” programme is already functioning. VDAB hopes

that in this way it will be able to achieve qualitative development in its service provision package.

- Culture and sport: De Rode Antraciet (an organization that provides socio-cultural services for adults) is mandated to provide courses and socio-cultural and sports activities, working in close cooperation with other training organizations.
- Education: A new decree relating to adult education (decree of 15 June 2007 *on adult education – M.B.*, 31 August 2007) contains an extensive series of provisions aimed at making high-quality educational services available to detainees and covering all their needs. Further information about this decree will be found in the comments relating to article 10.

2. *Forms of cooperation and appropriate organizational structures*

Numerous partners are contributing to the task of developing a palette of assistance and services for prison inmates. In the first place, we may mention the various branches of SPF Justice. In addition, there is a long list of agencies from the Flemish Community that make their services available to prisons. These agencies report to different structures and authorities, and consequently some effort to achieve effective concerted action and meaningful cooperation will be necessary:

- Each of the eight prisons in which the strategic plan is currently operational has a strategic advisor at its disposal. As of September, every Flemish prison will have such an advisor. These advisors are members of the Flemish Authority's contractual staff.
- The various assistance and service organizations that are active in prisons are supported by experts in the organization of social assistance for persons awaiting trial.
- Social assistance for persons awaiting trial includes the services of individual counsellors, who steer detainees toward the available array of assistance and services and monitor their progress. These counsellors work closely with personnel from the psychosocial service arm of the Ministry of Justice.
- A cooperation agreement worked out with the Ministry of Justice was approved by the Flemish Government on 13 July 2001. In addition, a joint implementation plan was finalized with the Ministry of Justice early in 2007 with a view to optimizing cooperation at all levels within prisons.
- The strategic counsellor and the providers of social assistance to persons awaiting trial are to work together to develop a joint plan of approach.
- In the Flemish Community, there is a steering group known as "Hulp- en dienstverlening aan gedetineerden" (assistance and services to detainees) made up of representatives of cabinets, administrations and working members of the various agencies providing assistance and services to detainees in the fields of welfare, employment, health, culture, sport and education. This steering group produces follow-up and evaluation reports at regular intervals for submission to the Flemish Government.
- There is a supralocal Flemish Community-Justice working group that keeps a close watch on the implementation of the plan (and has also drafted an additional joint implementation plan).
- Every year, activity reports are issued on assistance and service availability in prisons.

II. Changes since the previous report

A detailed account relating to this article will be found in Belgium's second periodic report on the implementation of the Convention against Torture, submitted to the United Nations on 21 September 2006. However, the main changes that have occurred since the previous report are outlined in the paragraphs below.

2.1 International commitments

On 23 March 2004, Belgium ratified the European Convention on the Compensation of Victims of Violent Crimes.

On 24 October 2005, Belgium signed the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Since that time, a working group made up of representatives of the Federal Government and the federated entities has examined the legal and technical aspects of the ratification of that protocol, including in particular the obligation to establish a national mechanism to prevent torture.

2.2 Domestic developments

The criminal offence of torture

The Act of 18 May 2006 *providing for the insertion of a new subparagraph into article 417 ter of the Criminal Code (M.B., 1 December 2006)* expressly prohibits the use of the existence of a state of emergency as a pretext for torture.

Judicial cooperation with countries that apply the death penalty

The Act of 9 December 2004 *on international mutual legal assistance in criminal matters (M.B., 24 December 2004)* was amended by article 2 of the Act of 23 December 2005 *containing various provisions (M.B., 30 December 2005)* to permit mutual legal assistance with countries that still apply the death penalty where the requesting State provides sufficient guarantees that accused persons will not be sentenced to death, or, if they are, that the sentence will not be carried out.

Further information on the jurisdiction of Belgian courts in cases involving serious violations of international humanitarian law

Under legislation enacted successively in 1993, 1999, 2003 and 2006⁶², Belgium has established a far-reaching jurisdictional area allowing its courts to take serious breaches of international humanitarian law under consideration.

Serious breaches of international humanitarian law are criminal offences under article 136 *bis* of the Criminal Code (crimes of genocide, as defined in the 1948 United Nations Convention and the Rome Statute of the International Criminal Court), article 136

⁶² Act of 16 June 1993 *on the punishment of serious breaches of international humanitarian law (M.B., 5 August 1993)*; Act of 10 February 1999 *on the punishment of serious breaches of international humanitarian law (M.B., 23 March 1999)*; Act of 5 August 2003 *on the punishment of serious breaches of international humanitarian law (M.B., 7 August 2003)*; Act of 22 May 2006 *amending certain provisions of the Act of 17 April 1878 containing the Preliminary Title of the Code of Criminal Procedure, and a provision of the Act of 5 August 2003 on the punishment of serious breaches of international humanitarian law (M.B., 7 July 2006)*.

ter of the Criminal Code (crimes against humanity, as defined by the Rome Statute of the International Criminal Court) and article 136 *quater* (war crimes as defined by the Rome Statute of the International Criminal Court and other treaties of international humanitarian law to which Belgium is a party or by the customary rules of international criminal law that are binding upon Belgium).

Under Belgian law, any Belgian or alien who has committed a serious breach of international humanitarian law may be prosecuted, unless he enjoys international immunity at the time of prosecution (article 1 *bis* of the Preliminary Title of the Code of Criminal Procedure) or national immunity (constitutional rules).

Under Belgian law, liability to prosecution for serious breaches of international humanitarian law is not subject to any statute of limitations (article 21 of the Preliminary Title of the Code of Criminal Procedure).

Except as provided in the foregoing rules, Belgian courts have jurisdiction in all the cases listed below:

- Where the offence was committed in Belgian territory (Criminal Code, article 3);
- Where the person suspected of having committed the offence holds Belgian nationality or has his principal residence in Belgium (Preliminary Title of the Code of Criminal Procedure, article 6);
- Where the victim of the offence is a Belgian national or has refugee status in Belgium and has his habitual residence there, within the meaning of the 1951 Geneva Convention relating to the status of refugees, or a person whose effective, habitual and legal residence has been in Belgium for at least three years (Preliminary Title of the Code of Criminal Procedure, article 10, 1 *bis*);
- Where the offence is committed under circumstances giving rise to an obligation to prosecute under conventional or customary international law that is binding upon Belgium (Preliminary Title of the Code of Criminal Procedure, article 12 *bis*), which would be the case where, *inter alia*, the suspect is found in Belgian territory at any time after the commission of the offence.

Assistance to victims of acts of violence

Since 1985, victims of deliberate acts of violence, or, if they are deceased, their heirs and assigns, have had the right to submit claims for financial assistance, subject to certain conditions. If the perpetrator has not been identified or is insolvent, it is only just for the State to contribute to compensation for the victims, in a spirit of collective solidarity. Accordingly, a board has been established to determine whether a contribution by the State is justifiable and to set an appropriate amount. The existing mechanism has been improved since the previous report by the enactment of a number of items of legislation:

- The Act of 26 March 2003 *on the conditions governing awards by the Financial Assistance Board for the Victims of Deliberate Violence* (M.B., 22 May 2003), sets forth the conditions governing awards of assistance by the Financial Assistance Board for the Victims of Deliberate Violence. The purpose of the amendments introduced by the Act of 26 March 2003 is both to increase the amount of emergency assistance available and to broaden the grounds of eligibility, primarily for the benefit of foreign nationals who are victims of trafficking in human beings and are in the country illegally.
- The Act of 25 April 2004 *on the accreditation of certain non-profit associations established to support the victims of deliberate acts of violence* (M.B., 7 May 2004)

governs the accreditation of certain non-profit associations established to support the victims of deliberate acts of violence (*M.B.*, 7 May 2004).

- The framework legislation of 27 December 2004 (*M.B.*, 31 December 2004) created a new category of persons who may be eligible for financial assistance, namely voluntary rescuers. The Board's official title is now "Financial Assistance Board for the Victims of Deliberate Violence and Voluntary Rescuers".
- Council Directive 2004/80/EC relating to compensation for crime victims, adopted by the Council of the European Union on 29 April 2004, was transposed into Belgian law on 1 January 2006 by the Act of 13 January 2006 *transposing Council Directive 2004/80/EC of 29 April 2004 relating to compensation for crime victims* (*M.B.*, 31 January 2006). To be sure, this Directive has no bearing on victims' rights in Belgium because current legislation on compensation for victims already provides for the rights set out in the Directive. However, it does facilitate access to compensation procedures for Belgians and aliens who have been victims of crimes committed in other EU countries.

Article 8 (Prohibition of slavery)

I. Response to the Committee's recommendations

Concluding observation 15

While welcoming efforts to combat people-smuggling and trafficking in human beings, the Committee is concerned at the fact that residence permits are not granted to victims of trafficking unless they collaborate with the judicial authorities, and that they are given financial assistance in the event of violence only subject to restrictive conditions. It observes that there are still problems in coping with large groups of intercepted migrants (art. 8).

The State party should continue its efforts, do more to look after the victims of trafficking in human beings as such, and ensure that the victims of people-smuggling are properly looked after. The State party should provide the Committee with more detailed information and statistics on the actual implementation, in the criminal and other domains, of the measures adopted.

The issue of action to combat people-smuggling and trafficking in human beings has recently been overhauled, and consequently is discussed in detail in the following pages. However, to respond more specifically to this observation, there are a number of points that should be noted.

1. People-smuggling:

- Belgium has opted for an approach that is both integral (covering all aspects of the issue: prevention, search and prosecution, assistance and protection for victims) and integrated (involving the relevant authorities from many agencies).
- Victims of people-smuggling are received and provided with support and guidance at specialized shelters featuring structures adapted to their needs.
- The Act of 26 March 2003 *on the conditions governing awards by the Financial Assistance Board for the Victims of Deliberate Violence (M.B., 22 May 2003)* provides that subject to certain conditions, financial assistance may be available for victims of people-smuggling to whom the Aliens Office has issued an indefinite residence permit in the context of an investigation into people-smuggling.
- Cooperation with the judicial authorities is required, but mere statements by the individual concerned are enough to qualify him or her for the specific status of victim of people-smuggling. The giving of a statement should be interpreted broadly, in that it may also include the supplying of information by the victim. We may also note that during the procedure, the victim may be represented by institutions or specially authorized services.

2. In the matter of trafficking in human beings, being a victim does not confer entitlement to any particular benefits, except in cases involving certain aggravated forms of trafficking. In such cases, victims are granted a protected status equivalent to that enjoyed by victims of people-smuggling.

Victims of trafficking, as such, are not entitled to any special reception programme as a rule. However, it is important to note that they may be accepted at specialized shelters on other grounds, such as an application for asylum, eligibility under the system of

protection for foreign unaccompanied minors, or an application for residency on medical grounds.

II. Changes since the previous report

2.1 International commitments

On 11 August 2004, Belgium ratified the United Nations Convention against Transnational Organized Crime and its Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

On 17 November 2005, Belgium signed Council of Europe Convention No. 197 on Action against Trafficking in Human Beings, adopted on 16 May 2005. The ratification procedure is currently being finalized.

On 17 March 2006, Belgium ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted at New York on 25 May 2000.

On 25 October 2007, Belgium signed Council of Europe Convention No. 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse. The ratification procedure is under way.

2.2 Domestic developments

People-smuggling and trafficking in human beings

For more than ten years, Belgium has been pursuing a multidisciplinary approach to the issue of people-smuggling. This is an integrated approach to the task of dealing with the phenomenon, comprising both a punishment aspect and a humanitarian aspect.

Furthermore, people-smuggling and trafficking are included in the national security plans for 2004-2007 and 2008-2011 as high-priority security-related phenomena. The national security plan for 2008-2011 emphasizes certain partial phenomena of economic and sexual exploitation such as massage parlours and escort services. In the area of economic exploitation, the primary focus is on seasonal product sectors or sectors characterized by strong demand for cheap, unskilled labour or flexible anticipation of economic demand.

Protecting children is an integral part of action to combat people-smuggling. Under the Belgian Criminal Code, the smuggling of minors is not a separate offence, but the victim's being a minor constitutes an aggravating circumstance.

A. Legislation

A.1 The previous Act of 13 April 1995 containing provisions aimed at combating people-smuggling and child pornography was replaced, as regards provisions relating to people-smuggling, by the Act of 10 August 2005 *amending various provisions with a view to strengthening action to combat people-smuggling and trafficking in human beings and the practices of slum landlords (M.B., 2 September 2005)*. The primary objective of this Act was to bring our legislation into line with European and international law in these matters, including in particular the two additional protocols to the United Nations Convention against Transnational Organized Crime, i.e. the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol

against the Smuggling of Migrants by Land, Sea and Air, both signed at Palermo on 15 December 2000.

The Act of 10 August 2005 makes a clear distinction between people-smuggling and trafficking in human beings. These two offences are now clearly defined and action to combat them is based on specific provisions of law: the Criminal Code in cases of people-smuggling (article 433 *quinquies*) and the new article 77 *bis* of the Act of 15 December 1980 *on the entry, temporary and permanent residence and removal of aliens (M.B., 31 December 1980)* in cases of trafficking in human beings.

Under the new Act, people-smuggling is defined as a combination of behaviour (the recruitment, transport, transfer, harbouring or accommodation of a person, by conveyance or sale) and an exploitative purpose, whether prospective or actual (sexual exploitation, exploitation through begging, organ trafficking, forced delinquency). Furthermore, smuggling is no longer restricted to aliens only, and the crossing of a frontier is no longer a necessary condition, as was previously the case.

The new definition of this criminal offence also covers the sale of a child for purposes of exploitation, as contemplated under International Labour Organization (ILO) Convention No. 182 on the worst forms of child labour⁶³ and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In addition, people-smuggling for criminal purposes (such as selling drugs) is now an offence as well. Under the Act, however, the perpetrator of the offence or his accomplice must have been acting against his will. This legislative amendment is based on the ILO Convention.

Trafficking in human beings comprises “*Contributing in any way whatever, whether directly or through an intermediary, to enabling the entry, transit or residence of a person who is not a national of a State Member of the European Union upon or through the territory of such a State or of a State party to an international convention on the crossing of external frontiers that is binding upon Belgium, in violation of the legislation of that State, for the purpose of obtaining, directly or indirectly, a pecuniary advantage*” (article 77 *bis* of the above-mentioned Act of 15 December 1980).

Under the Act of 10 August 2005, there are three levels of aggravating circumstances, which are identical for smuggling and trafficking. The first level, which has to do with the situation of the offender, contemplates a person who has authority over the victim or who abuses the authority or power which he enjoys by virtue of his position. The second level covers aggravating circumstances arising from the victim’s status as a minor, the means used, the consequences of the offence and the circumstances in which it was committed. The final level of aggravating circumstances contemplates the involvement of a criminal organization and the unintended death of the victim.

A number of specific provisions of law relating to criminal procedure should be noted here:

1. In cases of sexual offences, including in particular people-smuggling for purposes of sexual exploitation, the period of the statute of limitations runs only from the day on which the victim turns 18 years of age. This represents a substantial improvement in the status of victims.
2. Under article 10 *ter* of the Preliminary Title of the Code of Criminal Procedure, any person, whether Belgian or alien, who has committed a serious act of

⁶³ International Labour Organization Convention No. 182, on the worst forms of child labour, adopted at Geneva on 17 June 1999.

sexual exploitation or sexual abuse in a foreign country is liable to prosecution in Belgium.

3. In addition, an application for a cease-and-desist order may now be made where it appears that social legislation is being contravened at premises where there are reasonable grounds for suspecting that offences contemplated in articles 379 and 380, 433 *quinquies* to 433 *octies* of the Criminal Code and article 77 *bis* to 77 *quinquies* (disorderly conduct, corruption, prostitution, etc.) are being committed.

Lastly, being a slum landlord is criminalized (slum landlords are defined as individuals who rent or sell substandard housing at exorbitant prices to persons in vulnerable situations with the aim of making abnormally high profits), but is no longer regarded as a particular form of people-smuggling, but rather as a criminal offence in its own right. The offence of being a slum landlord is defined in article 433 *decies*, and aggravating circumstances and the corresponding penalties are set forth in articles 433 *undecies* to *quaterdecies*. In addition, the new Act provides expanded protection against slum landlords for all persons, whether Belgian or foreign.

A.2 Taking into account the specific approach adopted in cases involving minors in accordance with the Youth Protection Act⁶⁴, adults have been known to use minors to commit offences, hoping thereby to avoid prosecution while continuing to profit from the offences committed by the minors.

The Act of 10 August 2005 *to supplement the protection of minors under the criminal law* amends the Criminal Code and provides more severe penalties for adults who commit criminal offences through the agency of minors (Criminal Code, article 433).

B. *Integrated approach*

B.1 Prevention

The prevention of people-smuggling and trafficking in human beings begins with awareness and information campaigns conducted by Belgian Development Cooperation in the victims' countries of origin. The aim of these campaigns is to inform the inhabitants of the regions in question, including women and children in particular, of the risks they are running. BDC's main awareness-heightening tool is fuller information at embassies and consulates about the practices of traffickers in human beings, such as their use of false documents.

Some campaigns are more closely targeted. One example is the "Stop child prostitution" campaign launched in 2004, which seeks to enhance travellers' awareness of the issue of child prostitution by providing them with advice on reacting to and reporting this kind of wrongdoing.

B.2 Identification and prosecution

The ministerial directive aimed at the development of a consistent identification and prosecution policy on people-smuggling and trafficking has been amended. A ministerial directive *concerning identification and prosecution policy on people-smuggling and trafficking in human beings*, designated Col 01/2007, entered into force on 1 February 2007. The new directive makes provision for a clearly defined framework and criteria (youth of victims, degree of affront to human dignity, seriousness of threats and acts of violence, presence of a criminal organization, extent of social impact and persistence of

⁶⁴ Act of 8 April 1965 *on the protection of young persons, the treatment of minors who have committed an act deemed to constitute an offence and reparation for damage caused thereby*, (M.B., 15 April 1965).

criminal activity) in order to pursue a uniform field policy. The directive covers more than “traditional” forms of exploitation, such as prostitution and economic exploitation; it also considers other forms that have appeared more recently, such as forced begging, organ trafficking and the like.

The directive provides for a coordination structure in every judicial district, a yearly meeting of the expert network on “trafficking in human beings”, which is made up of all reference magistrates who deal with trafficking cases, and action to organize proactive search operations aimed at the phenomena of people-smuggling and trafficking. The directive also focuses on the use of the existing resources of law to combat the lucrative financial aspects of people-smuggling and trafficking. In this framework, it is essential to make optimal use of specialized search methods.

The annexes to this directive include a list of approximately 70 indicators to people-smuggling and trafficking situations that can be used to make maximally accurate identifications of what may be deemed to be people-smuggling or trafficking and victims of those offences. The circular also mentions an important principle set forth in the law, namely that the victim’s consent to his or her own exploitation is irrelevant to the issue of whether trafficking is taking place. Only actual conditions of exploitation, as objectively determined from national criteria, should be taken into account.

Under this directive, victims are to be regarded primarily as victims of people-smuggling or trafficking, even where they are contravening Belgian law (if they are in the country unlawfully, for example, or are in breach of the social security regulations).

Training in the field of people-smuggling and trafficking is available for police officers. The Higher Council of Justice has also developed a two-day training programme for magistrates. Training courses were held in 2005 and again in 2006.

B.3 Assistance and protection for victims

Belgium has had an assistance and support system expressly designed for victims of people-smuggling and trafficking since 1993. The system covers various aspects. In the first place, the above-mentioned Act of 15 December 1980 governs aspects relating to residence in the country. In the second place, victims of smuggling and trafficking are also eligible for financial assistance as victims of deliberate acts of violence, subject to certain conditions.

Victims of people-smuggling or certain aggravated forms of trafficking in human beings are entitled to protection under articles 61/2 to 61/5 of the above-mentioned Act of 15 December 1980. These articles transpose into Belgian law the provisions relating to residence set forth in Council Directive 2004/81/EC of 29 April 2004⁶⁵. The Act provides protection for victims of the offence of people-smuggling within the meaning of article 433 *quinquies* of the Criminal Code or, in the circumstances specified in article 77 *quater*, paragraph 1, in respect exclusively of unaccompanied minors, to paragraph 5, victims of the offence of trafficking in human beings within the meaning of article 77 *bis* of the above-mentioned Act of 1980, who cooperate with the authorities.

A circular on the implementation of a multidisciplinary cooperation initiative relating to victims of people-smuggling and certain aggravated forms of trafficking in

⁶⁵ Council Directive 2004/81/EC of 29 April 2004 *on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.*

human beings has been adopted and was published in the *Moniteur Belge* on 31 October 2008⁶⁶.

One of the innovations introduced by the Act of 15 September 2006 is that the system of protection for victims of people-smuggling may also apply to victims of certain aggravated form of trafficking in human beings as contemplated in the above-mentioned Act of 15 December 1980, article 77 *quater*, paragraphs 1 to 5 (where the trafficking involved unaccompanied minors, where the perpetrator took advantage of a victim in a particularly vulnerable situation, and so on). In order to be eligible for protection under the system, victims must meet three cumulative conditions:

- Sever ties with the presumed perpetrators of the offence;
- Accept guidance and support provided by a recognized centre specializing in dealing with victims of people-smuggling and trafficking;
- Cooperate with the judicial authorities either by making statements or by filing a complaint against the perpetrators.

The procedure leading up to the granting of victim status is as follows:

Detection, information and guidance of victims

In most cases, victims of people-smuggling and trafficking are discovered by police and inspection services. These services formally advise victims that protected status is available, provide them with a copy of a leaflet published in a number of languages, and steer every potential victim to a specialized care centre.

Three centres specializing in the care, support and guidance of victims were established in 1995. They are funded jointly by the Federal Government and the federated entities (Communities and Regions). These centres are Pag-Asa (Brussels), Sürya (Walloon Region) and Payoke (Flemish Region). They have accommodation facilities (10 to 15 beds) at a secret address, and a head office that is responsible for organizing all contacts with outside partners⁶⁷.

These centres and the multidisciplinary teams that staff them (educators, social workers, criminologists and so on) are mandated to provide victims of trafficking with various forms of guidance and support (psychosocial, administrative, medical and legal).

Only these centres are authorized to apply to the Aliens Office for the issue and extension of residency documents⁶⁸.

However, these centres are not suitable for foreign unaccompanied minors. Accordingly, they should be steered to a centre specifically designed for victimized minors,

⁶⁶ This circular replaces the circular of 1 July 1994 on the issue of residence permits and occupation (work) permits to foreign nationals who are victims of people-smuggling and trafficking, and the Directives of 13 January 1997 to the Aliens Office, public prosecutors' offices, police services, welfare law inspectorate and welfare inspectorate on assistance to victims of people-smuggling and trafficking, as amended by the directives of 17 April 2003.

⁶⁷ Between 1999 and 2005, approximately 900 victims were taken in by these centres. Of this total, victims of sexual exploitation accounted for 34%, victims of economic exploitation, 18%, victims of trafficking, 19%, and persons who had initially been victims of trafficking and subsequently had been exploited in some fashion, 21%.

⁶⁸ The primary mission of the "Nest movement" NPA in Liège (which has an approved shelter, the "Thaïs centre", with a capacity of 10 beds) is to provide assistance for persons formerly involved with prostitution, but it also cooperates with associations active in the field of international people-smuggling and trafficking in human beings.

such as Esperanto in Wallonia⁶⁹, Juna in Flanders or Minor N'Dako in Brussels. These centres will provide shelter, while legal and administrative support and guidance are made available in cooperation with one of the three specialized centres. Moreover, victimized minors will be entitled to the same protection as foreign unaccompanied minors, where appropriate⁷⁰.

The period of reflection

The period of reflection consists of two phases for persons 18 years of age or older. During the first phase (45 days), the victim may reach a decision as to whether he or she will make statements about the persons or networks that exploited him or her, or he or she may prepare to return to his or her country of origin.

When the victim lodges a complaint or makes statements, he or she proceeds to the second phase of the period of reflection and is provisionally authorized to stay in the country. In that case, he or she is given a residence permit valid for up to three months.

During the second phase of the period of reflection, the Crown Prosecutor or the junior labour magistrate decides whether the investigation or prosecution is to go forward, assesses the victim's willingness to cooperate and determines whether he or she has severed his or her ties with the presumed perpetrators of the offence.

In cases involving unaccompanied minors, the period of reflection consists of only a single phase. A proof-of-registration document is issued to the minor concerned immediately. In addition, the competent authorities are required to take the overriding interests of the child into account throughout the procedure, and a guardian is appointed for him or her.

Recognition of the status of victim of people-smuggling and/or certain forms of trafficking in human beings

Once the magistrate has confirmed that the victim meets the three cumulative conditions (the investigation or prosecution has not yet been closed, the person concerned has clearly shown willingness to cooperate and has severed his or her ties with the exploiters), that he or she may be deemed a victim⁷¹ and that he or she does not represent a risk for public order or national security, the Minister or his authorized representative issues a certificate, valid for a period of six months, showing that the person concerned has been listed in the register of aliens.

Conditions for the issue, extension, renewal and withdrawal of residency documents and permits are determined from the course of the prosecution as it proceeds, provided the three cumulative conditions continue to be met. Where the magistrate considers that one of the offences in question may thereby be prevented, an indefinite residence permit may be issued to a victim who has made a significant contribution to the investigation.

Access to the Financial Assistance Board for the Victims of Deliberate Violence

The Act of 26 March 2003 *on the conditions governing awards by the Financial Assistance Board for the Victims of Deliberate Violence* broadened the grounds of eligibility for financial assistance to victims of people-smuggling to whom the Aliens Office has issued an indefinite residence permit in the context of an investigation into

⁶⁹ The Association Joseph Denamur is a service that accommodates 25 young foreign unaccompanied minors and 13 other young persons under the auspices of FEDASIL.

⁷⁰ The system of protection specifically designed for foreign unaccompanied minors is discussed in greater detail in the comments relating to article 24.

⁷¹ A victim of the offence contemplated in the Criminal Code, article 433 *quinquies*, or, in the circumstances set forth in article 77 *quater*, the offence contemplated in article 77 *bis*.

people-smuggling, thereby enabling such victims to apply to the Board for financial assistance, subject to certain conditions.

C. Difficulties encountered

It must be emphasized that, in spite of the tools Belgium has forged for combating people-smuggling and trafficking in human beings and the close cooperation among the various parties dealing with the problem, field workers decry the lack of financial resources, people and equipment available for dismantling trafficking networks and ensuring that victims can be looked after properly. It is often very hard to obtain statements from victims accusing their exploiters, partly because they fear reprisals against themselves or family members left behind in their home countries. People-smuggling and human trafficking are international phenomena involving the country of origin and transit countries as well as the country of destination. Closer cooperation with countries of origin is therefore essential.

D. Integrated approach

Owing to the large number of agencies involved in the effort to combat people-smuggling and trafficking in human beings, two bodies have been established expressly for the purpose of facilitating communication.

In order to provide coordination among various initiatives aimed at combating people-smuggling and trafficking, an interdepartmental coordination unit that had functioned since 1995 was upgraded by a Royal Decree of 16 May 2004 *on the effort to combat people-smuggling and trafficking in human beings* (M.B., 28 May 2004). Its role and operating procedures are now clearly defined. The unit brings together all Federal agencies (including operational as well as political agencies) that are active in combating the above-mentioned phenomena. Over and above its coordination function, the unit is also tasked with making critical assessments of the results of action to combat people-smuggling and trafficking.

An Information and Analysis Centre on People-Smuggling and Trafficking in Human Beings (CIATTEH) was established by the above-mentioned Royal Decree of 16 May 2004. The Centre reports to both the Ministry of Justice and the Ministry of the Interior. As of the time of writing, however, it is not yet fully operational. Its function will be to perform data-based strategic analyses for distribution to the various members of the unit, each of whom will then be in a position to launch, in his or her particular sphere of competence, appropriate political and operational initiatives aimed at combating people-smuggling and trafficking in human beings.

E. Statistical information

Statistical data on people-smuggling and trafficking in human beings will be found appended to this report⁷².

Abolition of forced labour

Article 30 *ter* of the Criminal Code was abrogated by article 169 of the Act *on the principles of prison administration and the legal status of inmates* (M.B., 1 February 2005). Under that article, "Every person sentenced to forced labour, penal servitude or a correctional term of imprisonment shall be set to work with a view to the rehabilitation and reintegration of the individual concerned and promotion of his occupational training..."

In terms of principles, however, there have been no significant changes from the provisions of the general regulations.

⁷² Annex IV.

Article 9 (Lawfulness of arrest and detention)

I. Response to the Committee's recommendations

Concluding observation 16

The Committee again voices concern over the rights of individuals in custody, bearing in mind the requirements of articles 7, 9 and 14 of the Covenant.

The State party should give priority to the amendment of its Code of Criminal Procedure, which has been planned for many years, and guarantee the rights of individuals in detention to notify their immediate families that they have been detained and to have access to a lawyer and a doctor within the first few hours of detention. Provision should also be made for routine medical checks at the beginning and end of periods in custody.

Under Belgian law, there are two kinds of deprivation of liberty: deprivation of liberty by judicial arrest, and deprivation of liberty by administrative arrest.

1. Deprivation of liberty by judicial arrest is governed by the Code of Criminal Procedure and the Pre-Trial Detention Act of 20 July 1990.

In the matter of the reform of the Code of Criminal Procedure referred to above, the work was adjourned in June 2006 by the Chamber of Representatives. The draft text had been very sharply criticized at the hearings by representatives of the judiciary, who feared that the new Code would tend to result in more lengthy procedures, thereby hampering prosecutions, including in particular prosecutions aimed at organized crime and terrorism. Subsequently, the Federal Parliament was dissolved in preparation for legislative elections. Belgium is currently considering how best to respond to this recommendation.

However, there have been improvements in respect of conditions of detention. The *Act on the principles of prison administration and the legal status of inmates (M.B., 1 February 2005)* lays down provisions relating to the conditions of detention, including in particular conditions applicable to individuals in pre-trial detention. The right to consult a physician is safeguarded by articles 89 to 98 of the Act.

2. Deprivation of liberty by administrative arrest is a coercive measure consisting of the withdrawal or restriction of an individual's freedom of movement for pressing administrative police reasons, in circumstances and subject to conditions laid down by, or by virtue of, the law. This type of deprivation of liberty may not extend beyond twelve hours, and is governed by the Police Functions Act of 5 August 1992. That Act was amended by the Act of 25 April 2007 *containing various provisions (IV) (M.B., 8 May 2007)*, which, *inter alia*, provides expressly for the right to notify a trust agent and the right to medical attention.

Detainee's right to notify a trust agent (Police Functions Act, article 33 *quater*)

The law now explicitly recognizes the right of any person under administrative arrest to ask to have a trust agent notified, and lays down conditions that must be observed by the police in the event of their refusal to grant that request. This may happen where the administrative police officer has reasonable grounds for suspecting that the notification of a third party might entail danger for public order and security. Those grounds are stated in the register of detentions.

In contrast, where the arrested person is a minor, the person who has custody of him or her is notified in all cases.

Detainee's right to medical attention (Police Functions Act, article 33 *quinquies*)

Under the law, every person under administrative arrest has the right to be examined by a medical doctor. The doctor is provided by the police, who assume the related costs. Where the detainee requests, in addition, medical attention from another doctor of his own choice, he assumes the costs himself.

3. Lastly, the Standing Police Monitoring Committee conducts inspection inquiries into holding cells and confinement in police stations⁷³. During the second half of 2006, the holding cells at eight Federal police stations and two local police stations, one of which was not yet operational, were visited by inspectors from the Committee's Investigation Department. In most cases, the visits were unannounced and took place in conjunction with other inspection duties. The corps commanders, department heads or their immediate colleagues accompanied the inspectors, who made their comments, if any, to them then and there. In some cases, a letter was sent to the corps commander or department head subsequent to the visit, urging compliance with certain recommendations made by the European Committee for the Prevention of Torture (CPT)⁷⁴, notably concerning cell cleanliness and surveillance of persons in custody.

Inspection of cell complexes, which Committee P has performed regularly since 1997, has encouraged many corps commanders and/or department heads to overhaul their facilities, update their internal guidelines and educate their staff about the vital necessity of respecting the basic rights of persons in custody. This procedure is clearly bearing fruit, since senior police officials frequently consult the Committee for its opinion.

Committee P, which has repeatedly highlighted the absence of a set of standards governing detention in police stations, welcomed the legislative innovations that have been introduced in this area recently⁷⁵ and which have largely taken into account the recommendations made by the CPT and Committee P. Implementation of all these initiatives on the ground should put an end to years of indecision and will have the merit of creating a uniform set of legal provisions in this area. Committee P will continue its sporadic cell inspections in both Federal police premises and local police stations in coming years.

Concluding observation 17

The Committee is concerned that foreigners held in closed facilities pending expulsion and then released by judicial decision have been held in the transit area of the national airport under questionable sanitary and social conditions. There are reports of periods of detention extending to several months in some cases. Such practices, in the

⁷³ Detailed information on the inspection inquiries conducted by Committee P will be found in the Committee's 2006 annual report, which is available at the site www.comitep.be.

⁷⁴ Report to the Government of Belgium on the visit carried out in Belgium by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 to 27 April 2005, published on 20 April 2006 (CPT/Inf(2006)15), Annex 1, "Law enforcement establishments".

⁷⁵ Following an amendment to the chapter on administrative arrest in the Police Functions Act (Act of 25 April 2007 introducing various provisions, *M.B.*, 8 May 2007) and the issue of a Royal Decree governing minimum standards, implementation and use of places of detention utilized by the police (Royal Decree of 14 September 2007, *M.B.*, 16 October 2007).

Committee's view, are akin to arbitrary detention and can lead to inhuman and degrading treatment (arts. 7 and 9).

The State party should put an immediate stop to the holding of foreigners in the airport transit area.

Cases of release in the transit area are most unusual, and have involved only a very small number of individuals. It is clear from the statistical data that the Aliens Office is concerned to keep these releases in the transit area down to a minimum: in 2007, there were only seven persons who had to stay temporarily (for two days) in the transit area, down from 23 in 2003. Accordingly, it is inappropriate to speak of an administrative practice. It is also important to bear in mind, in this connection, that any individual awaiting execution of a *refoulement* (expulsion) decision is always free to return to his or her country of origin.

The European Court of Human Rights noted in its ruling of 24 January 2008 in the case of *Riad and Idiab v. Belgium* that every State undeniably has the right to control entry to its territory. Accordingly, it may detain applicants for immigration. It is also clear from this ruling that individuals may be held in the international area, regardless of whether such detention is deemed to constitute a custodial measure or not, provided it is accompanied by safeguards ensuring that the individual so detained will not be deprived of the basic rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, articles 3 and 5 in particular.

This ruling has led to a decision that persons who have been released by the judiciary will no longer be held in the transit area. However, such release does not constitute permission to enter Belgian territory. Accordingly, expulsion orders will still be executed, and a ministerial order of house arrest may be issued if necessary.

II. Changes since the previous report

2.1 International commitments

On 6 February 2007, Belgium signed the International Convention for the Protection of All Persons from Enforced Disappearance, which was approved by the United Nations General Assembly on 20 December 2006.

2.2 Developments in domestic law

In addition to the provisions of law relating to administrative detention, which were discussed above in response to concluding observation 16, the information presented in the following paragraphs should be noted:

Administrative detention

The Police Functions Act, *relating to certain rights accorded to persons deprived of their liberty and to basic safeguards against mistreatment* was amended by the Act of 25 April 2007 *containing various provisions (IV)* (M.B., 8 May 2007). The enactment of this legislation spelled out various safeguards for persons in preventive detention and incorporated them explicitly into the Police Functions Act. These include entry in the register of detention, the duty to inform the arrested individual of his rights, the right to receive an adequate supply of drinking water and a meal, and the right to use adequate sanitary facilities, besides the right to notify a trust agent and the right to medical attention which were referred to earlier in response to concluding observation 16.

We may also note that entry in the register of detention, the right to receive an adequate supply of drinking water and a meal, and the right to use adequate sanitary facilities apply not only to individuals under administrative arrest, but also to individuals under judicial arrest⁷⁶.

Entry in the register of detention (Police Functions Act, article 33 bis)

Every instance of detention is entered in the register of detention. The keeping of such a register was one of the recommendations of the European Committee for the Prevention of Torture (CPT), which, after several visits to Belgium, mentioned the need to set down in writing certain aspects of the procedure and to maintain a separate record of detentions. Committee P made a similar recommendation.

The register must be a record of the sequence of events in the detention process, in chronological order, and must contain all information pertinent to the execution of the detention measure.

Right of the arrested person to be informed of his rights (Police Functions Act, article 33 ter)

- The arrested person's right to notify a trust agent (Police Functions Act, article 33 *quater*) (see above, response to concluding observation 16);
- The arrested person's right to medical attention (Police Functions Act, article 33 *quinquies*) (see above, response to concluding observation 16);
- The arrested person's right to receive an adequate supply of drinking water, to use adequate sanitary facilities, and depending on the time of day, to receive a meal (Police Functions Act, article 33 *sexies*).

Preventive detention

The Act of 31 May 2005 *amending the Act of 13 March 1973 on compensation for inoperative pre-trial detention, the Act of 20 July 1990 on preventive detention and certain provisions of the Code of Criminal Procedure (M.B., 16 June 2005)* includes various provisions relating to procedure in cases of preventive detention, with the intent to make that procedure more efficient and consistent. The amendments outlined below were introduced:

- The monthly review is limited in cases where it appears that there are no grounds for a criminal indictment. In such cases, on the occasion of the individual's second appearance before the council chamber, the chamber may decide that the preventive detention order shall remain in effect for three months.
- If the indictment division decides that the preventive detention should continue, its order constitutes a writ of detention for one month (or three months) from the date of the decision, instead of fifteen days.
- Monitoring in cases of long-term investigations is reinforced: where the preventive detention continues for over six months, the investigation is automatically subject to the oversight of the indictment division.
- The procedure can now be resolved in a single phase provided none of the parties has requested an additional investigation.

⁷⁶ The distinction between these two kinds of arrest is explained in the comments in response to concluding observation 16.

- The jurisdiction of the examining magistrate is extended to allow him to decide, on his own authority and with no possibility of appeal, that the accused person shall be released. The Crown Prosecutor no longer has the option of entering an objection to an examining magistrate's decision to set aside the warrant of arrest after an initial decision to leave it in effect has been overturned.
- In cases of conditional release, the conditions may be renewed only within the period of time initially determined and at the instance of the examining magistrate; otherwise, the conditions automatically cease to apply.
- A number of fundamental formalities are made subject to invalidation.
- In accordance with the ruling of the Constitutional Court of 26 November 2003, the time limit for filing an appeal from a decision of the Minister of Justice in respect of an inoperative preventive detention is now counted from the date of notification of the decision.

Detention of families with children in closed centres pending expulsion

Under the Act of 15 December 1980 *on the entry, temporary and permanent residence and removal of aliens* (M.B., 31 December 1980)⁷⁷, aliens may be detained pending expulsion. Detention is not a routine measure; it is used only as a last resort, except in cases that may involve a threat to public order or national security, or where the conditions governing entry as set forth in articles 2 and 3 of the above-mentioned Act of 15 December 1980 have not been met. Every alien who has been ordered to leave the country is free to return to his country of origin at his own expense or with the assistance of a non-governmental organization such as the International Organization for Migration, which offers voluntary return programmes.

The Belgian State's expulsion policy is based on, and gives priority to, voluntary return. Accordingly, the circular of 17 November 2006 *on the voluntary return of aliens with the assistance of the International Organization for Migration* (M.B., 19 December 2006) has been adopted by the Minister of the Interior and the Ministry of Social Integration.

Where an alien who is illegally in Belgium or an asylum-seeker whose application has been denied does not leave the country voluntarily, he may be detained in a closed centre pending his expulsion.

A study has been conducted by the "Sum research" organization on alternatives to the detention of families with children in closed centres pending their expulsion. All conclusions of that study are being examined with a view to their feasibility, including in particular their budgetary implications. Priority is being given to the development of a practical plan of action. It is essential for all initiatives, i.e. both projects currently under way and prospective future projects, to complement each other and form a consistent whole. Against this background, in March 2008 the Aliens Office launched a pilot project on compulsory reporting. In concrete terms, families whose applications for residency have been turned down are required to report to the Aliens Office for an interview in preparation for their return to their country of origin.

The Government has recently implemented an alternative to detention in closed centres for families with minor children, in the form of a coaching project. This is a pilot project that consists in providing these families with individually tailored guidance and support to enable them to return to their country of origin under optimal conditions.

⁷⁷ Articles 7, 8 *bis*, §4, 25, 27, 29 subparagraph 2, 51/5, §1, subparagraph 2 and §3, subparagraph 4, 52 *bis*, subparagraph 4, 54, 57/32, §2 subparagraph 2 and 74/6 or article 74/5.

Families are now accommodated in appropriate quarters, namely individual houses that have been occupied by the old gendarmerie. There they receive support and guidance from qualified coaches who attempt to win their confidence and help them, mainly by providing them with valid information, to prepare for their return to their country of origin. A final assessment of this pilot-project will be performed in a year.

Lastly, educational activities are now available for persons being held in closed centres.

Detention of foreign unaccompanied minors

Since 7 May 2007⁷⁸, foreign unaccompanied minors, identified as such or concerning whom there appears to be no doubt as to their status as minors, have no longer been confined in closed centres; they are accommodated, initially, in one of the orientation and observation centres managed by Fédasil, which are expressly designed for them.

However, where there is some doubt as to whether a particular individual is a minor, a medical test is performed within three working days, a period that can be extended for not more than three additional days, the individual concerned to be informed of the decision within 24 hours. During this time, the young person in question stays at a closed centre. Where the child's return to his or her family is justified in his or her best interests, the Chicago Convention applies.

Foreign unaccompanied minors who are already in Belgium are also not detained.

Further information on the system that has been established for the accommodation and care of foreign unaccompanied minors will be found in the comments relating to article 24, under the heading "Guardianship of foreign unaccompanied minors".

⁷⁸ Entry into force of the Act of 12 January 2007 *on the reception of asylum-seekers and certain categories of aliens* (M.B., 7 May 2007).

Article 10 (Treatment of persons deprived of their liberty)

I. Committee's recommendations

Concluding observation 7 (part referring to article 10)

The Committee regrets that Belgium has not withdrawn its reservations to the Covenant, in particular the reservations to articles 10 and 14.

The State party should reconsider its position on this matter.

Concerning the withdrawal of Belgium's first reservation to article 10 of the Covenant (segregation of accused persons from convicted persons), the following remarks should be considered.

At the time, the Government of Belgium, in taking the position it did, relied on the principle enshrined in resolution (73) 5 of the Committee of Ministers of the Council of Europe of 19 January 1973. More recently, the requirement has been made even more flexible by recommendation (83) 3 of 12 February 1987, which reads as follows: "*In principle, untried prisoners shall be detained separately from convicted prisoners unless they consent to being accommodated or involved together in organized activities beneficial to them.*" This segregation is now enshrined in the *Act on the principles of prison administration and the legal status of inmates (M.B., 1 February 2005)*, article 11 of which states that "*accused persons shall be held separately from convicted persons, except where they consent in writing not to be so held, in order to participate in common activities.*" That article entered into force on 15 January 2007. In view of the above information, it does not appear timely to withdraw the reservation.

Concerning the second reservation, it may be noted that in the near future, young offenders who have been referred to a regular criminal court for sentencing or who have been sentenced to a term of imprisonment or penal servitude will be held in a closed Federal centre reserved exclusively for them. That facility is expected to open some time during 2009.

It is noteworthy that these measures affect only juvenile offenders in respect of whom a referral order has been issued. Other young persons who committed an offence when they were minors and have not been referred from the juvenile court will not under any circumstances be held in a centre for adults.

It is thus clear from the foregoing that Belgium intends to respond to the provisions of article 10, including the issues covered in both the first and second reservations.

Concluding observation 19

The Committee is concerned at persistent prison overcrowding in Belgium, due in part to an increase in pre-trial detention, a rise in the number of long prison sentences and a reduction in numbers released on parole (arts. 7 and 10).

The State party should make greater efforts as part of a policy of seeking a reduction in numbers of detainees.

Belgium's penal policy is always open to alternatives to imprisonment. However, the following questions must be raised with regard to the drafting of the measures in question:

- How to respond to what seem to be the people's expectations in terms of security;
- How to punish without extending the scope of penal sanctions and to ensure that imprisonment is reserved for the situations which demand it;
- How to ensure the enforcement of sentences handed down by the courts (since failure to do so discredits criminal justice, gives rise to injustices, and creates a risk of imposition of heavier sentences);
- How to ensure the humane and useful enforcement of these sentences.

Belgium's criminal justice system already includes many measures designed to reduce the number of sentences of imprisonment. These measures are summarized below:

- The Act of 29 June 1964 on suspension, stay of proceedings and probation.
- The Pre-Trial Detention Act of 20 July 1990 offers the possibility of conditional release.
- In 1994 an article 216 *ter* was incorporated in the Code of Criminal Procedure authorizing the Crown Procurator to opt, in cases of certain offences, for a criminal mediation procedure with compensation of the victim. Pursuant to that article, the Crown Procurator may also invite the perpetrator to undergo medical treatment, therapy or training or to perform community service. This procedure may have the effect of extinguishing the prosecution.
- By the Act of 17 April 2002⁷⁹, Parliament introduced community service as a penalty in its own right in cases involving correctional offences and minor offences.

Moreover, the terms and conditions governing the serving of sentences of imprisonment (described in detail in the comments on developments in domestic law) include means of reducing the actual duration of sentences.

Lastly, statistical data on the work of Justice Centres relating to measures for reducing recourse to imprisonment are appended to this report⁸⁰.

Concluding observation 20

The Committee is concerned at the fact that, nearly seven years after the creation of the Dupont Commission, the State party has still not modernized its prison legislation. It does take note of the assurance by the delegation that a bill on the subject is to be discussed during the present session of the legislature as a matter of priority (art. 10).

The State party should swiftly pass legislation to define the legal status of detainees, clarify the disciplinary regime in prisons and guarantee the right of detainees to lodge complaints and appeal to an independent, readily accessible body against disciplinary punishment.

The Act on the principles of prison administration and the legal status of inmates was promulgated on 12 January 2005 (*M.B.*, 1 February 2005).

⁷⁹ Act of 17 April 2002 instituting community service as a penalty in its own right in cases involving correctional offences and minor offences (*M.B.*, 7 May 2002).

⁸⁰ Annex V.

This purpose of this Act is to establish a modern legal framework to govern the internal legal status of inmates and define the ensuing operational principles for the prison administration. Specifically, this Act includes provisions relating to the detainees themselves (living environment, community living conditions, contacts with the outside world —correspondence, visits, use of the telephone, contact with the media—, religion and philosophy, training and leisure activities, work, health care and health protection, social support, judicial assistance and legal aid), and also provisions relating to disciplinary issues (list of breaches of discipline and the penalties incurred, and the introduction of a hearing *inter partes* procedure). Lastly, the Act makes provision for a complaints procedure, with complaints handled by independent bodies, namely local commissions and the Central Supervisory Council of the prison administration.

The entry into force of this Act is the outcome of a substantial effort that is still in progress.

Concluding observation 21

The Committee welcomes the establishment of an Individual Complaints Board to look into complaints from aliens about the conditions under which they are held and the rules to which they are subject, but is concerned that complaints have to be lodged within five days and do not have the effect of suspending expulsion measures (arts. 2 and 10).

The State party should extend the deadline for lodging complaints and give complaints a suspensive effect on expulsion measures.

A Complaints Board was established pursuant to article 130 of the Royal Decree of 2 August 2002⁸¹.

The five-day deadline for lodging a complaint is a condition of admissibility and is set forth explicitly in the Royal Decree itself. The purpose of this time limit is to enable the Permanent Secretariat to gather supplementary information and evidence as quickly as possible after the incident.

The lodging of a complaint does not have a suspensive effect either on the expulsion order or on the execution of that order. This is necessary in view of the prospect of complaints being lodged solely for the purpose of avoiding expulsion. The Board is mandated to monitor the quality of accommodation in the centres and the enforcement of the Royal Decree establishing the operating rules for centres run by the Aliens Office and the regulations governing them. The complaints procedure is not intended to be a new means of appealing from a decision to hold an alien in a closed centre or a decision to expel him or her.

Since the establishment of the Board, 188 complaints have been lodged: 40 in 2004, 22 in 2005, 52 in 2006, 59 in 2007 and to date (as of 30 May 2008), 30 in 2008. The Permanent Secretariat has declared 106 complaints admissible since 2004. Those complaints met the Board's form and admissibility requirements. Of the 106 complaints, 44 were successfully resolved through mediation, while one was withdrawn by the complainant himself. To date, four complaints have been upheld and two partially upheld. The remaining complaints were examined in depth by the Board (on the basis of statements and findings by all parties, among other things), and dismissed in all cases. Judging from

⁸¹ The Royal Decree of 2 August 2002 *establishing the regime and regulations applicable to premises in Belgian territory run by the Aliens Office where foreign nationals are held, placed at the disposal of the Government and kept pursuant to the provisions cited in article 74/8, paragraph 1, of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (M. B., 12 September 2002).*

this record, it would not appear to be necessary either to set a longer deadline for the lodging of complaints or to give complaints a suspensive effect.

Moreover, under article 39/82, paragraph 4, of the Act of 15 December 1980, when an alien is subject to a removal or *refoulement* order which is about to be executed and has not yet filed an application for suspension, he or she may request suspension of the effects of the decision on an emergency basis. It is noteworthy, however, that the Constitutional Court, in its ruling of 27 May 2008, struck down that article in part, specifically its provision that an emergency application must be filed within 24 hours and that an expulsion order may be executed failing a decision by the Council within the prescribed time limit. However, the Court decided to leave the article in force until 30 June 2009. Draft legislation is currently in preparation in response to the Constitutional Court's action in striking down the article in question. The 24-hour limit will be replaced by a limit of five calendar days, which fully meets the Court's concerns.

(A fuller account of issues relating to these provisions will be found in the comments on article 12.)

Concluding observation 22

The Committee is disturbed that the rules governing the operation of INAD centres (for passengers refused entry to the country) and the rights of the aliens held there do not appear to be clearly established in law (arts. 2 and 10).

The State party should clarify the situation and ensure that the aliens held in such centres are informed of their rights, including their rights to appeal and to lodge complaints.

It should be noted that the only persons held in the INAD centre are those who are not in possession of the documents required for entry to the country upon arrival and who have not applied for asylum (seeking refugee status or subsidiary protection). Moreover, no alien is held in that centre for any longer than is strictly necessary in order to enable him to return to his country of origin (holding time ranges, on average, from a few hours to one or two days).

All the rights for which provision is made in the Royal Decree of 2 August 2002 *establishing the regime and regulations applicable to premises in Belgian territory run by the Aliens Office where foreign nationals are held, placed at the disposal of the Government and kept pursuant to the provisions cited in article 74/8, paragraph 1, of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens* (M. B., 12 September 2002) are enjoyed by residents of the INAD centre, except the right to go for walks outside. The provisions relating to visitors are not applicable, as visitors cannot enter the centre because of airport security regulations. In the event of a visit by the alien's lawyer or other trust agent, officers of the airport police escort the individual in question from the centre where he is being held to their own premises, and the visit takes place there.

Information sheets are given to every person who is held in a centre (the INAD centre or one of the closed centres). These sheets explain how the centre works, what occupants' rights and duties are, and what the operating procedures are. They are available in 14 languages. Pursuant to article 17 of the Royal Decree of 2 August 2002, an information leaflet is also given to every occupant of a centre.

Lastly, the construction of a new centre was launched in 2008 for the purpose of improving detention conditions. Once the new centre is built, the existing INAD centre will be used only for persons being held for less than twenty-four hours. In the new centre, all

the rights for which provision is made in the Royal Decree of 2 August 2002 will be available to all residents, including members of the target group of the present INAD centre.

II. Changes since the previous report

2.1 International commitments

There were no new international commitments during the period covered in this report.

2.2 Developments in domestic law

Since the previous report, the European Committee for the Prevention of Torture (CPT) has paid another visit to Belgium (18-27 April 2005). On that occasion, the Committee visited the Andenne and Namur prisons, and the main recommendations that were subsequently made focused primarily on cell layout, the condition of the discipline cells in Namur Prison, the so-called “extra” strict cell regime, medical confidentiality, the implementation of the Act of 12 January 2005 *on the principles of prison administration and the legal status of inmates* (M.B., 1 February 2005), and the quantity of prison work available. Belgium’s response to these recommendations has consisted of the following measures:

- Publication and partial entry into force of the above-mentioned Principles Act of 12 January 2005⁸².
- Renovation of the discipline cells at Namur Prison, which is currently under way.
- Passage of the Act of 17 May 2006 *concerning the external legal status of persons sentenced to deprivation of liberty and the recognized rights of victims in the context of the terms and conditions governing the serving of sentences, enshrining the establishment of the Sentence Enforcement Court* (M.B., 15 June 2006)⁸³ and the Act of 21 April 2007 *on the detention of persons with mental disorders* (M.B., 13 July 2007). The second of these Acts has not yet entered into force as of the date of this report⁸⁴.

Prison infrastructure

Belgium’s prison population is constantly growing. The system does not have enough capacity for the numbers of inmates it has to accommodate, and the problem is exacerbated by the fact that when essential renovation work must be carried out, the space available is further reduced.

Confronted with this issue, the Belgian authorities have adopted an approach consisting essentially of expanding the capacity of the country’s prison system.

The Minister of Justice has published a master plan for 2008-2012 under which prison capacity will be increased to accommodate a further 1,500 inmates. To attain this objective, 266 cells are to be added through a renovation programme aimed at restoring lost capacity, 396 cells are to be added through additions to existing sites, and new prisons are

⁸² This item is discussed at greater length further on in the chapter.

⁸³ This item is discussed at greater length further on in the chapter.

⁸⁴ This item is discussed at greater length further on in the chapter.

to be built. Some of these are already at the project stage, including one at Ghent that will accommodate 270 inmates, one at Antwerp that will accommodate 120, and one at Dendermonde that will accommodate 444, while plans have yet to be developed for three more prisons, one in Flanders, one in Wallonia and one in Brussels, each with enough capacity to accommodate 300 inmates.

Improved oversight and control of inmates

In addition, the recruitment of prison staff has been stepped up and the quality of their training improved. The training programme lasts three months and includes training in conflict management and a specific explanation of the Principles Act. The manning table of the external services is currently 98.6 per cent filled. It has been strengthened in order to improve security and working conditions, to cope with the increased capacity, and to comply with the above-mentioned Principles Act of 12 January 2005.

Supervision of prison establishments

Belgian prisons are subject to monitoring by a number of independent outside agencies. Various bodies are empowered to perform this task under supranational or national standards, including the CPT, the Federal Mediators' Association, the Centre for Equal Opportunity, Federal Members of Parliament, examining magistrates, Provincial Governors, burgomasters, the Central Supervisory Council and supervisory commissions.

The Royal Decree of 4 April 2003 amending the Royal Decree of 21 May 1965 containing the general prison regulations gave the Belgian State a Central Prisons Supervisory Council and local supervisory commissions. A Royal Decree of 29 September 2005, amending the earlier decree, further increased the independence, transparency and professionalism of these bodies.

Sentence Enforcement Courts

The Act of 17 May 2006 *establishing sentence enforcement courts* (M.B., 15 June 2006) established these courts, which have replaced parole boards and in the future will replace social protection committees.

At the present time, these courts have jurisdiction in cases involving sentences longer than three years and the terms and conditions governing their enforcement. Shorter sentences come within the jurisdiction of sentence enforcement judges. The Sentence Enforcement Court tracks the serving of sentences on the basis of reports submitted by the judicial assistants within Justice Centres who are responsible for providing convicted persons with social support and guidance. The Office of the Public Prosecutor to the Sentence Enforcement Court has authority to oversee the measures that are applied, and if necessary can bring an application for revision, suspension or revocation before the Court.

External legal status of persons sentenced to a term of imprisonment

The Act of 17 May 2006 *concerning the external legal status of persons sentenced to deprivation of liberty and the recognized rights of victims in the context of the terms and conditions governing the serving of sentences* (M.B., 15 June 2006) is designed to attain two objectives. In the first place, it enshrines a *genuine external legal status for inmates*⁸⁵. In the second place, it makes victims more fully involved in the sentence-serving phase.

⁸⁵ The expression "inmates' external legal status" covers the "extramural" aspects of a prison sentence, i.e. where the inmate concerned leaves the prison for a time.

This Act establishes a complete legal basis for various terms and conditions relating to the serving of a prison sentence: short-term leave, prison furlough, break in sentence, limited detention, electronic surveillance, provisional release pending expulsion, release on parole, and provisional release for medical reasons.

In addition, the Act clarifies the division of substantive jurisdiction between the Minister of Justice and the Sentence Enforcement Court. The principle applied was that the judiciary must intervene whenever the terms and conditions affecting the serving of a sentence have altered the convicted person's situation to such an extent as to constitute a change in the nature of his sentence. Moreover, to avoid the need to resort to the courts unnecessarily, such measures as short-term leave, prison furlough and break in sentence remain within the jurisdiction of the executive power, as these are isolated, short-term measures that do not alter the nature of the sentence handed down by the judge of the criminal court.

Policy on education and training for inmates

Flemish Authority

The decree of 15 June 2007 *on adult education* (M.B., 31 August 2007) contains a series of provisions designed to present inmates with a wide range of high-quality educational options that meet their needs. The decree, which governs the instruction provided by basic education centres and adult education centres, contains a number of direct provisions aimed at upgrading the education available to prison inmates. This decree also includes many other provisions that may be expected to have a favourable impact on education in prisons.

Social rehabilitation of inmates

French Community

The decree of 28 April 2004 *amending the decree of 19 July 2001 on support services for inmates for purposes of their social rehabilitation* (M.B., 21 June 2004) aims primarily to promote cooperation with youth assistance services and judicial protection services to ensure that children are able to have contact with a parent who is in prison, that they are accompanied on visits, and so on, in the children's interests.

Special regimes

Oversight by the Sentence Enforcement Court

The Act of 26 April 2007 *on oversight by the Sentence Enforcement Court* (M.B., 13 July 2007) provides that in the interests of protecting society, persons who have committed certain serious offences entailing personal injury may be placed at the disposal of the Sentence Enforcement Court for a period of five to 15 years upon completing their main sentence of imprisonment or penal servitude. However, this Act has not yet entered into force.

Foreign nationals in detention following a criminal conviction

Belgium's implementation of the Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons is beginning to produce its effects. By the end of March 2006, 180 transfer files to central European countries had been prepared and 55 had been forwarded to the States concerned. Diplomatic contacts are under way with signatory countries that have been identified as countries of destination (Bulgaria, Romania, Poland, Serbia, France, the Netherlands, Albania, Ukraine, Latvia, Moldavia,

Georgia and Lithuania): approximately 150 persons currently being detained are the subject of these contacts. In addition, diplomatic contacts are being actively pursued with countries that are not signatories, such as Morocco, in an effort to arrive at bilateral agreements. In that connection, on 22 March 2007, Belgium and Morocco signed a protocol on the transfer of sentenced persons between those two countries. It is also in the spirit of the new Framework Decision of the European Union —approved by the Council of European Ministers of Justice in February 2007— which makes these transfers between States Members of the European Union doubly automatic: neither the consent of the sentenced person nor that of the executing state is required. The signed decision is a balanced agreement that meets the criteria of the European Court of Human Rights.

Detention of juvenile offenders

- a. Juvenile offenders whose cases have been referred to a regular criminal court

Offenders who have been sentenced to a term of imprisonment or penal servitude will shortly serve their sentences in a federal institution reserved exclusively for juveniles.

- b. Placement centres for juvenile delinquents

In 2006, the issue of the protection of minors was extensively revised⁸⁶. Pursuant to that reform, only minors over 14 years of age who have committed a serious offence will be subject to this temporary placement measure: they must have committed a criminal offence for which, if they were of age, they would be liable to a sentence of five to 10 years' penal servitude, or a heavier sentence.

A new institution for French-speaking juvenile delinquents is to be built in Achêne, supplementing the Everberg centre.

- c. Decree issued by the Flemish Authority

The decree of 7 May 2004 *on minor status* (M.B., 4 October 2004) has led to a number of innovations within community institutions:

- A code of conduct for the use of isolation measures, and an associated common model containing coded data, ensuring that such measures can be recorded comparably and transparently;
- Action to safeguard a young person's right to consult his file through the preparation of a clearly written manual and a detailed procedure for the use of staff;
- The drafting of internal regulations;
- An information leaflet for young detainees on the justification for and use of various controls, including body searches, room inspections and spot checks for drugs.

Late in 2003, a "process implementation plan" was developed as part of an array of educational and therapeutic activities within community institutions providing special support for young people. The process was subsequently overhauled and progressively implemented beginning on 1 October 2004.

This new educational process affords a means of developing a unique system applicable specifically to these institutions. The system is based on the acquisition of skills in the field of education, with modules such as therapy/guidance, aggression control, teaching and empiricism. The objective is for all educators to learn to apply the system. Reskilling takes place in the field or in training centres. Parents who wish to do so may take

⁸⁶ A fuller discussion of this reform will be found in the comments to article 14.

the same training. The objective is to enable young people to resume an ordinary life as quickly as possible once they are back in their home setting.

With respect to *structural aspects*, community institutions conclude cooperation agreements with specific structures and initiatives. For example, there are agreements of this kind between community institutions and a number of “1 bis-voorzieningen” (structures that meet the “criteria set forth in article 1 bis”) in the context of the development of “Gestructureerde Kortdurende Residentiële Begeleiding” (GKRB) (structured short-term residential guidance). This is an intensive support and guidance programme for a specific population within community institutions.

Other examples are cooperation agreements with two NPAs, Oikonde-Tielt and Overstap. In view of the “context orientation” objective pursued by these community institutions, they are formally open to the development and strengthening of targeted structural cooperation agreements that will give the young persons entrusted to their care a better chance of becoming socially rehabilitated. Cooperation agreements in connection with initiatives in the area of restorative justice serve a similar purpose.

Detention of foreign nationals

Educational activities are organized in the centres. Measures aimed at upgrading the quality of these activities have been under way since 2003.

Persons suffering from mental disorders

The Act of 21 April 2007 *on the detention of persons with mental disorders (M.B., 13 July 2007)* is expected to reform this issue, which to date has been governed by the Act of 1 July 1964 *on social protection for defectives and habitual offenders*. The Act has two complementary objectives: to protect society while also providing appropriate therapeutic support for the perpetrators of felonies or other offences who suffer from mental disorders that have seriously affected their discernment and who represent a danger to society.

This Act has not yet entered into force. However, practical measures aimed at bringing about better detention conditions for these offenders are already under way. A fuller discussion of this issue will be found in the comments to concluding observation 18.

**Article 11
(Prohibition on imprisonment for inability to fulfil a
contractual obligation)**

In the light of the remarks relating to article 11 made in the initial report of Belgium (CCPR/C/31/Add.3, paragraphs 217-218), no further comment is called for here.

Article 12 (Right to leave a country)

Changes since the previous report

1. International commitments

There were no new international commitments during the period covered in this report.

2. Developments in domestic law

This issue, which has been governed primarily by Act of 15 December 1980 *on the entry, temporary and permanent residence and removal of aliens* (M.B., 31 December 1980), has seen many changes since the previous report, mainly as a result of the passage of the Act of 15 September 2006 *reforming the Council of State and creating the Aliens Litigation Council* (M.B., 6 October 2006) and the Act of 15 September 2006 *amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens* (M.B., 6 October 2006). It is also noteworthy that many of the changes discussed in the paragraphs below have resulted from the transposition of European directives. The following discussion summarizes the main changes with a bearing on applications for asylum and procedures relating to residence of aliens in the country.

2.1 Jurisdictional organization for procedures relating to residence of foreign nationals

The organization of bodies with jurisdiction in procedures relating to residence of aliens in the country was overhauled in depth by the Act of 15 September 2006 *reforming the Council of State and creating the Aliens Litigation Council* (M.B., 6 October 2006). The main objective of that Act was to enable the Council of State to concentrate on its two primary functions, namely its advisory function and its jurisdictional function.

Reform had become necessary because of the lengthy structural backlog in the administrative section of the Council of State, which formerly had jurisdiction in appeals from decisions issued under the Act of 15 December 1980. The measures that have been taken in that connection are outlined below.

- A new administrative body, the Aliens Litigation Council (CCE), has been established. This new body has full competence to rule on decisions issued under the above-mentioned Act of 15 December 1980. The CCE has also replaced the former Standing Commission on Refugee Appeals. In this connection, we may also note that applications for review, which entailed a cumbersome procedure, have been eliminated. However, a foreign national seeking the reversal of a decision may now bring an appeal before the CCE. The new procedure is simpler than the existing application for review, yet the applicant's rights are safeguarded equally well. The CCE examines the merits of the facts in the case, relying on the contents of the file.
- The Council of State is now competent only to quash decisions of the CCE on administrative grounds; it no longer hears appeals for reversal. In addition, in order to avoid the prospect of appeals to the Council of State intended merely to gain time, a filtering mechanism has been established. Appeals will be heard only if they have been ruled admissible upon preliminary examination.

2.2 Asylum

Reform of the asylum procedure

The procedure for recognition of refugee status (as defined by the Convention on *Refugee Status* of 28 July 1951) was changed by the Act of 15 September 2006 *amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens* (M.B., 6 October 2006) and the Act of 15 September 2006 *reforming the Council of State and creating the Aliens Litigation Council* (M.B., 6 October 2006). The reform accomplished by these two Acts has resulted in simplification of the asylum procedure.

The new asylum procedure is summarized in the paragraphs below.

1. Submission of application

Under the new procedure, the alien must submit his application to the Aliens Office, which places it on file, determines what the responsible State is for purposes of processing the application, fingerprints the applicant, and takes a statement from the applicant relating to his identity, origin and route to Belgium, and the possibility of his returning. The statement is signed by the applicant and forwarded to the CGRA along with the rest of the file. The Aliens Office also has jurisdiction in cases of multiple applications and applications including an aspect with implications for public order.

The Aliens Office has jurisdiction to determine the language of the procedure, and may decide to refuse to consider a new application if the asylum-seeker fails to submit any new material beyond what he had submitted under the former procedure. In that case, the applicant's only remedy is to bring an appeal for reversal before the Aliens Litigation Council.

2. Initial consideration of applications

Under the new procedure, the Office of the Commissioner General for Refugees and Stateless Persons (CGRA), an independent administrative body, has the power to recognize or deny refugee status, and also the power to grant or deny subsidiary protection status.

The reform abolishes the distinction between phases of admissibility and substance. Accordingly, the CGRA takes only one decision in each case. An appeal from that decision may be brought before the Aliens Litigation Council.

The CGRA automatically considers every asylum-seeker's application for subsidiary protection along with his application for asylum.

3. Possibility of appeal to the Aliens Litigation Council

The Aliens Litigation Council has sole jurisdiction to uphold or reverse the CGRA's decisions.

A written procedure is used for appeals brought before the Aliens Litigation Council. The parties and their lawyers may comment orally at the hearing. However, no evidence apart from the contents of the application is admissible.

Decisions of the Aliens Litigation Council may be appealed only to the Council of State.

4. Possibility of a final appeal to the Council of State

A filtering process is applied in these cases. Every appeal to the Council of State is immediately subjected to an admissibility procedure. An appeal is declared "inadmissible"

if the Council of State is not competent to hear the case, or if does not have jurisdiction, or if the appeal is frivolous or clearly inadmissible. Conversely, an appeal is declared “admissible” if the appellant alleges a breach of law or a rule of procedure, provided the appeal is not obviously without merit and provided the breach of law or procedure is of such a nature as to entail reversal and affect the scope of the decision.

The Council of State rules on the question of admissibility, issuing an ordinance within eight days. No hearings are held, and the parties do not appear. If the Council of State reverses the original decision, the file is returned to the Aliens Litigation Council, which must then issue a new ruling on the application for asylum, taking the Council of State’s ordinance into account.

Effect of granting an indefinite residence permit on a pending application for asylum

The Act of 22 December 2003 *containing various provisions* (M.B., 31 December 2003) reinstated article 55, which had been repealed by the Act of 15 July 1996. Article 55 now provides that an application for asylum submitted by a foreign national who has obtained an indefinite residence permit, where such application is still under consideration by the Minister or his duly authorized representative, the Commissioner General for Refugees and Stateless Persons or the Standing Committee on Appeals by Refugees, shall automatically be deemed unfounded, unless the said foreign national, within 60 days of the entry into force of this provision or the date of issue of the indefinite residence permit, sends a registered letter to the body examining his application requesting it to continue its consideration thereof.

In the event of a subsequent decision to remove or expel a foreign national to whom article 55 has been applied, certification of compliance with article 3 of the European Convention on Human Rights must be obtained from the Commissioner General for Refugees and Stateless Persons.

Compulsory place of registration for asylum-seekers

Formerly, under article 18 *bis* of the above-mentioned Act of 15 December 1980, restrictions could be placed on the temporary or permanent residence of foreign nationals in certain communes, to avoid an increase in the foreign population which might have been prejudicial to the public interest.

Partly in response to the recommendations of the United Nations Committee on the Elimination of Racial Discrimination, and partly in view of the distribution plan for asylum-seekers which has been in place since 1994, this article was repealed by the framework legislation of 22 December 2003 (M.B. of 31 December 2003). Pursuant to that legislation, the Federal Agency for the Reception of Asylum-Seekers (Fédasil) is now empowered to determine every asylum-seeker’s compulsory place of registration. Under the framework legislation Act of 9 July 2004, Fédasil is required to take into account occupancy rates in reception centres for asylum-seekers and to ensure that asylum-seekers are harmoniously distributed among communes, while also ensuring that in every case the place is suitable for the asylum-seeker concerned.

2.3 Subsidiary protection

The Act of 15 September 2006 *amending the Act of 15 December 1980 on entry into Belgian territory, temporary and permanent residence and removal of aliens* (M.B., 6 October 2006) transposes Directive 2004/83/EC of 29 April 2004 *on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection*

granted. This 2006 Act also incorporates the mechanism of subsidiary protection into the above-mentioned Act of 15 December 1980.

Subsidiary protection status may be granted to aliens who do not qualify for refugee status and who cannot be granted permission to stay on medical grounds but with respect to whom there are serious grounds for believing that they would be subject to a real risk of “serious harm” (*atteintes graves*) if sent back to their country of origin (or, in the case of stateless persons, to the country of habitual residence). “Serious harm” means: a death sentence or execution; torture or inhuman or degrading treatment or punishment in the country of origin; or serious threats to the life or person of a civilian, owing to blind violence in an internal or international armed conflict, when there are clear indications of a real risk that the civilian will suffer serious harm on return to his or her country of origin.

Furthermore, the alien does not have to be able or, when there is a real risk of serious harm, to be willing to take advantage of the protection of the country of origin (or, in the case of stateless persons, of the country of habitual residence).

In certain specific situations, listed in article 55/4 of the Act of 15 December 1980, an alien may be denied the benefit of subsidiary protection.

An alien who has been accorded subsidiary protection status receives a residence permit valid for one year, which may be extended or renewed. After five years from the date of submission of their applications, aliens possessing this status are granted indefinite residence permits.

Subsidiary protection status accorded to aliens ceases when the circumstances which justified its award cease to obtain or have changed to such an extent that the protection is no longer needed. It is necessary to determine in this connection whether the change in the circumstances in question is permanent and sufficient to eliminate any real risk of serious harm.

A residence permit may be withdrawn at any time during the limited period of stay if subsidiary protection status ceases or is denied.

Since 1 October 2006 every request for asylum has been examined from the standpoint of both refugee status and subsidiary protection status.

2.4 Temporary protection

The Act of 18 February 2003 *amending the Act of 15 December 1980* (M.B., 22 May 2003) transposed European Union Council Directive 2001/55/EC of 20 July 2001 *on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member States in receiving such persons and bearing the consequences thereof* and incorporated the temporary protection mechanism into Belgian law.

The above-mentioned Act of 15 December 1980 now provides that temporary protection shall be granted to persons belonging to specific groups described in an EU Council decision, taken pursuant to the above-mentioned Directive 2001/55/EC, recognizing an existing or imminent mass influx of displaced persons to States Members of the European Union.

Temporary protection is granted for a period of one year from the effective date of the decision and is extended automatically by six-month periods for a second period of one year.

This total period of two years may be extended by a new EU Council decision for a new period of not more than one year. The protection may also be terminated earlier by a Council decision.

In certain cases specified in article 57/32, paragraph 1, of the Act of 15 December 1980, individual aliens may be excluded from entitlement to temporary protection.

2.5 Family reunification

Conditions for family reunification

The Act of 15 September 2006 transposes Council Directive 2003/86/EC *on family reunification by third country nationals*. The changes resulting from this Act are of four kinds:

1. The category of foreign nationals who may enjoy the right to family reunification has been broadened. In addition to the spouse and unmarried minor children of an alien who is authorized to reside in Belgium, the right to family reunification may also be enjoyed by an adult child who has a disability, a foreign national who is a member of a registered partnership deemed to be equivalent to a marriage⁸⁷, and the parents of minor refugees who have been recognized as such.

2. A distinction is drawn between family reunification in the case of a foreign national who has been admitted or authorized to reside in Belgium for an unlimited period of time or authorized to settle in the country (new article 10 of the Act of 15 December 1980) and family reunification in the case of a foreign national who has been admitted or authorized to reside in Belgium for a limited period of time established by law (such as a student, a person with subsidiary protection status, a worker, a person who is himself entitled to residence for a limited period of time on family reunification grounds, and so on) (new article 10 *bis* of the Act of 15 December 1980). This distinction affords a means of bringing the residence entitlement of persons admitted on family reunification grounds into line with any restrictions on residence applicable to persons who are already residing in Belgium.

3. In addition to the existing conditions relating to proof of relationship by blood or marriage and the protection of public policy, public health and national security, every sponsor is now required to show that he has available to him accommodation regarded as normal for a family of comparable size in the same region. The accommodation must meet the general health and safety standards currently in force. The applicant must also show proof of medical insurance for himself and the members of his family, covering the risks that are ordinarily covered for Belgian nationals.

These conditions afford a means of eliminating certain unacceptable situations (substandard or even hazardous living conditions, practices of slum landlords, absence of medical insurance coverage and the like), and in addition are designed to combat various abuses such as sham marriages or adoptions.

In order to prevent forced marriages more effectively, Directive 2003/86/EC (article 4, paragraph 5) provides that Member States may require the sponsor and his/her spouse to be of a minimum age (at maximum 21 years) before the spouse is able to join him/her. We may note in this connection that these provisions are similar to the provisions of the Act of 15 December 1980, article 10, paragraph 1, subparagraph 4, and consequently the transposition of the directive into Belgian law did not require any fundamental changes in this area.

4. Recognition of the right of residence is now a two-phase process. Provision is made for a system of checks to make sure the foreign national meets the conditions set forth

⁸⁷ In practical terms, this had previously been a possibility in any case under the terms of the circular of 30 September 1997 *on the issue of a residence permit on the basis of cohabitation within a stable relationship*, which contemplated that very situation.

in article 10. In the course of an initial phase lasting two years, a person admitted to the country on family reunification grounds may have his or her residence permit withdrawn where it appears that the main conditions governing family reunification are no longer met (divorce, absence of a genuine marital relationship, etc.). In a second phase, during the third year, the residence permit may be withdrawn if the absence of a genuine marital relationship is supplemented by indications of a situation of convenience. Upon the expiration of this three-year period, the beneficiary of family reunification is recognized as having an autonomous right of residence for an indefinite period. However, the right of residence of the person concerned may be terminated if it appears that fraud has been committed.

Introduction of a DNA procedure

Under the above-mentioned Act of 15 December 1980, article 12 *bis*, paragraph 6, where a foreign national is unable to prove a claimed relationship by blood or marriage by official documents, a supplementary analysis may be performed.

On 1 September 2003, a circular letter was issued instituting a secure procedure for establishing relationship by means of DNA testing where the civil status documents submitted in support of an application are not probative or where the relevant civil status records have been destroyed. This procedure may be either requested by the sponsor when submitting his or her application for a family reunification visa, or suggested by the Aliens Office where the documents submitted or items contained in the applicant's file will compel it to deny the application unless a blood relationship can be demonstrated by means of a DNA test. It is important to note that DNA testing is used only as a last resort and is not a requirement imposed by the Aliens Office.

Criminalization of marriage of convenience

Under the Act of 4 May 1999 *amending certain provisions on marriage*, a marriage contracted with a view to benefiting in terms of residential status is deemed to be null and void. The Act of 12 January 2006 *amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens* (M.B., 21 February 2006) inserts a provision making the contracting of marriage with a view to benefiting in terms of residential status a criminal offence liable to prosecution.

Receiving a sum of money in consideration of the conclusion of a marriage of convenience and resorting to violence or threats in an attempt to compel a person to contract such a marriage are also criminal offences under the same provision.

2.6 Residency application procedure under exceptional circumstances or on medical grounds

As a rule, a foreign national wishing to reside in Belgium for longer than three months is required to submit an application at the Belgian diplomatic or consular post with responsibility for his place of residence or address abroad. However, under the former article 9, paragraph 3 of the above-mentioned Act of 15 December 1980, under exceptional circumstances a foreign national could apply for residency to the burgomaster of the commune in which he was currently residing.

Under the above-mentioned Act of 15 September 2006 amending the Act of 15 December 1980, this provision has been replaced by articles 9 *bis* and 9 *ter*, which have been newly inserted into the above-mentioned Act of 15 December 1980.

In general terms, this amendment establishes a specific legal framework for this type of residency application and draws a clear distinction between residency applications

submitted on grounds of exceptional circumstances as contemplated under article 9 *bis* and those submitted on medical grounds as contemplated under article 9 *ter*.

“Humanitarian” residency applications that had been submitted in Belgium based on the former article 9, paragraph 3 are continuing to be processed in accordance with the body of precedents previously developed within the Aliens Office.

- Under article 9 *bis*, where there are exceptional circumstances, and subject to the condition that the foreign national is in possession of an identity document⁸⁸, a residency application may be submitted to the burgomaster of the municipality where the foreign national is residing. The burgomaster will forward the application to the Minister or his duly authorized representative. The article contains a list of factors that shall not be deemed to constitute exceptional circumstances for purposes of a residency application. In this connection, we may note that this reform is also designed to discourage abuses of various procedures or the submission of successive applications for regularization alleging identical grounds. Under article 9 *bis*, paragraph 2, for example, grounds alleged in connection with other procedures will not be accepted.

Generally speaking, it may be said that in Belgium today, residence permits are issued to:

- Foreign nationals whose applications for asylum have been pending for unreasonably long periods, who are well integrated and do not represent a threat to public policy or national security;
- Persons whose return, for serious humanitarian reasons, would be impossible or extremely difficult.

There may be a very wide variety of circumstances in which it is appropriate to issue a residence permit. An exhaustive listing of those circumstances is not feasible. The basic principle that must be observed is that a residence permit is issued where not to do so might contravene the provisions of the Council of Europe’s European Convention for the Protection of Human Rights and Fundamental Freedoms or would be manifestly contrary to the consistent practice of the Council of State.

- Article 9 *ter* makes provision for a special procedure that is available to foreign nationals who are suffering from a medical condition for which appropriate treatment cannot be obtained in their country of origin or country of residence, such that to return them would entail a real danger to life or physical integrity, or at risk of inhuman and degrading treatment in the country of origin or residence.

2.7 Long-term residents

The Act of 25 April 2007 *amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens* (M.B., 10 May 2007) transposes Council Directive 2003/109/EC *concerning the status of third-country nationals who are long-term residents* and introduces the Community concept of a long-term resident into the Act of 15 December 1980.

The Act establishes, first, the conditions under which long-term resident status may be granted to third-country nationals who are lawfully residing in Belgium, and second, the conditions governing residence in Belgium by persons possessing that status in another Member State.

⁸⁸ In certain cases listed in article 9 *bis*, a foreign national is not required to be in possession of an identity document in order to submit an application.

2.8 Regulations relating to residency in the case of citizens of the European Union, including Belgian nationals, and members of their families

The above-mentioned Act of 25 April 2007 transposes Directive 2004/38/EC of 29 April 2004 *on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*. The resulting amendments are found in articles 40 to 47 of the Act of 15 December 1980. Their main effect is that the concept of a member of the family of a European citizen is expanded to include a member of a registered partnership deemed to be equivalent to a marriage in Belgium, and that a permanent residence permit will be issued to members of the family of a European citizen after three years. However, the residence permit may be withdrawn where it appears that there has been fraud.

2.9 Enlargement of the European Union

On 16 April 2003, the 25 Heads of State and Government of the current and future member States of the European Union signed the Treaty of Accession, which provided for the accession of 10 new States to the European Union on 1 May 2004. The 10 new member States were: Cyprus, Malta, the Czech Republic, Slovakia, Latvia, Slovenia, Poland, Hungary, Lithuania and Estonia.

Since 1 May 2004, the new European citizens have been free to travel to Belgium on a valid national identity card or passport. However, the treaty provides that there shall be a transition period for their access to the job market, except in the case of citizens of Cyprus and Malta. The transition period was introduced by the Royal decree of 25 April 2005 *amending the royal decree of 8 October 1981 on the entry, temporary and permanent residence, and removal of aliens (M.B., 17 May 2004)*. A ministerial circular of 30 April 2004 *on the temporary and permanent residence of nationals of the new member States of the European Union (Cyprus, Malta, the Czech Republic, Slovakia, Latvia, Slovenia, Poland, Hungary, Lithuania and Estonia) and members of their families, effective 1 May 2004, particularly during the transition period prescribed by the Treaty of Accession* specifies the consequences arising from the entry into the country and residence of the new European citizens. Pursuant to the circular of 10 May 2006 *concerning overtransposition of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States—extension of the transition period for the new Member States of the European Union—Change of address (M.B., 26 May 2006)*, the transition period for the new EU Member States was extended to 30 April 2009.

Under a circular of 20 December 2006 *on the temporary and permanent residence of nationals of two new Member States of the European Union, Romania and Bulgaria, and members of their families, from 1 January 2007, particularly during the transition period prescribed by the Treaty of Accession*, the provisions of the circular of 20 April 2004 shall apply to Bulgarian and Romanian nationals for a transition period extending until 30 April 2009. It is noteworthy that a circular of 22 December 1999 *on conditions governing the residence of certain nationals of central and eastern Europe who propose to engage in a self-employed economic activity or establish a business in the Kingdom*, which was still applicable to Romanian and Bulgarian nationals, has been abrogated since 1 January 2007.

Special provisions apply to employed persons during the transition period. Nationals from one of the new member States who were residing abroad on 1 May 2004 and who wish to take up employment in Belgium must obtain prior authorization (a work permit and a provisional residence permit for the period covered by the work permit are required). After working for an uninterrupted period of 12 months or longer, such nationals have access to the job market and may apply for permanent residence. Nationals of new member States who were lawfully resident in Belgium on 1 May 2004 and who were working there

as employees may apply for permanent residence after an uninterrupted period of work in Belgium of 12 months or longer. The transition period prescribed by the Treaty applies only to employed persons, not to self-employed persons or service providers. Nationals of a new member State who wish to engage in a self-employed economic activity or to provide a service in Belgium after 1 May 2004 are treated in the same manner as other European citizens.

2.10 Biometric data

Since 1996, under the above-mentioned Act of 15 December 1980 (article 51, paragraph 3), any asylum-seeker may be fingerprinted.

Furthermore, under the framework legislation of 27 December 2004 (*M.B.*, 26 May 2006), certain categories of foreign nationals may be required to provide biometric data. The purpose of this provision is to establish and/or verify the identity of the individual concerned or to determine whether he represents a threat to public policy or national security, or to comply with the requirements of European regulations and directives. In this context, the term “biometric data” refers to fingerprints and photographs (article 30 *bis* of the above-mentioned Act of 15 December 1980).

These measures may be taken in respect of any foreign national who:

- Applies for a visa (other than a family reunification visa) or a provisional residence permit at a Belgian diplomatic or consular post;
- Applies in Belgium for a residence permit valid for not more than three months;
- Applies in Belgium for entry (except for the purpose of family reunification) or for a residence permit valid for more than three months;
- Is about to be turned back at the frontier or has been served with an order to leave the country or is the subject of a royal expulsion order or a ministerial repatriation order.

2.11 Reception of asylum-seekers and certain other categories of foreign nationals

The Act of 12 January 2007 *on the reception of asylum-seekers and certain other categories of foreign nationals* (*M.B.*, 7 May 2007) redefines the status, mandate and jurisdiction of the Federal Agency for the Reception of Asylum-Seekers (Fédasil), and also partially transposes European Directive 2003/9/EC of 27 January 2003 *laying down minimum standards for the reception of asylum seekers* in Member States.

1. The fourth periodic report explains that the Federal Agency for the Reception of Asylum-Seekers was established pursuant to the Royal Decrees of 15 and 22 October 2001⁸⁹. The main features of the mandate of this agency and its area of jurisdiction, as defined under the above-mentioned Act of 12 January 2007, may be summarized as follows:

- Organizing, managing and overseeing the quality of material assistance made available to asylum-seekers. The agency has jurisdiction in respect of providing material assistance to asylum-seekers who are accommodated within the community reception structures that it manages, overseeing agreements with partners⁹⁰ relating to the provision of material assistance to asylum-seekers, designating, changing and

⁸⁹ CCPR/C/93 Add. 3, p. 66.

⁹⁰ The Agency may delegate to partners responsibility for providing asylum-seekers with material assistance as described in this Act. These partners include in particular the Belgian Red Cross, other competent bodies, public authorities, and associations.

cancelling compulsory places of registration⁹¹, and organizing the payment of daily living allowances and the provision of community services.

- Coordinating the voluntary return of asylum-seekers whom it has received, and also of other foreign nationals.
- Providing unaccompanied minors with material assistance during the observation and orientation phase⁹².
- Providing material assistance for minors residing unlawfully with their parents in Belgium, where a public social support centre has determined that they are in need of assistance and that the parents are not in a position to fulfil their duty of maintenance.

In terms of the assistance provided, Belgium was already in compliance with most of the rights enshrined in the directive, and consequently to a great extent the Act simply gives formal sanction to existing practice, while also bringing together a number of formerly isolated provisions into a single statute. In general terms, the Act safeguards equal treatment by making provision for material assistance throughout the asylum process (during both the administrative and the jurisdictional phases) and support and guidance tailored to individuals' needs, thereby enabling the asylum-seekers to lead a life in accordance with human dignity, regardless of the designated reception structure. It introduces a number of innovations into the existing reception system, the most important of which is the model of reception by stages. Material assistance is provided in two stages: within a community reception structure during the first four months, and subsequently, depending on the accommodation available, within an individual reception structure.

In addition, it is noteworthy that the Act fills what had been a number of gaps in Belgian law and regulations in terms of meeting the requirements laid down by the directive. In particular:

- Assessment of the specific needs of every asylum-seeker⁹³, and
- Information on asylum-seekers' rights and duties. Since 1 June 1997, an information brochure on this subject, published in 11 languages, has been distributed to asylum-seekers and used in the training of persons who work in reception structures.

Lastly, particular attention is given to vulnerable persons (minors, foreign unaccompanied minors, single parents accompanied by minors, pregnant women, persons with disabilities, victims of people-smuggling and trafficking in human beings, victims of violence or torture, and the elderly). Agreements are concluded with specialized institutions or associations⁹⁴.

⁹¹ This matter is discussed more fully in the comments on asylum (see above).

⁹² The protection system for foreign unaccompanied minors is discussed in detail in the comments relating to article 24.

⁹³ See also the Royal Decree of 25 April 2007 setting forth the terms and conditions governing assessment of the individual situation of every asylum-seeker.

⁹⁴ The reception of foreign unaccompanied minors and victims of people-smuggling and trafficking in human beings is discussed more fully elsewhere in this report. The issue of people-smuggling and trafficking is discussed in the comments relating to article 8. The system of protection for foreign unaccompanied minors is discussed in the comments relating to article 24.

2.12 Action to remove foreign nationals who are not authorized to reside in Belgium

Carrier's responsibilities

The Act of 22 December 2004 *amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens* (M.B., 18 January 2005) transposes European Union Council Directive 2001/51/EC of 28 June 2001 *supplementing the provisions of article 26 of the Convention Implementing the Schengen Agreement of 14 June 1985* into the above-mentioned Act of 15 December 1980.

Formerly, under the Act of 15 December 1980, article 74, paragraph 4, carriers that transported into Belgium passengers who did not possess the required documents or whose situation corresponded to one of those specified in article 3 (lack of means of subsistence, for example) were required to take them back to their country of origin or to any other country where they might be allowed entry.

The Act of 22 December 2004 extended this principle to include cases where a carrier that is to transport a foreign national from Belgium to another country refuses to take him on board, or where the authorities of a country of destination refuse him entry and send him back to Belgium, where he is refused entry (foreign nationals in transit).

The Act also provides that where a carrier clearly fails to meet its obligation to carry the passenger by not complying with two successive formal notices to do so (sent by registered letter), the minister or his duly authorized representative may arrange for the expulsion of the passenger. In such cases, the carrier is required to pay for the costs of the deportation, as well as the passenger's lodging, subsistence and health-care expenses.

Mutual recognition of decisions on the expulsion of third-country nationals taken by Member States of the European Union

The Act of 1 September 2004 *amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens* (M.B., 18 January 2005) transposes the European Union Council Directive 2001/40/EC of 28 May 2001 *on the mutual recognition of decisions on the expulsion of third-country nationals* into the above-mentioned Act of 15 December 1980.

Now, where it appears that a foreign national arrested on Belgian soil is named in an expulsion order issued by the competent administrative authority of a Member State of the European Union, the order in question may be recognized and executed. This system is not compulsory; the foreign national may be expelled on the basis of a decision taken by the Aliens Office or pursuant to a return or readmission agreement between member States of the European Union. During the procedure, the foreign national concerned may bring an appeal before the courts, seeking reversal of the detention order (Act of 15 December 1980, article 71).

Measures taken with a view to intensifying action to combat people-smuggling and trafficking in human beings and the activities of slum landlords

The Act of 10 August 2005 *amending various provisions with a view to intensifying action to combat people-smuggling and trafficking in human beings and the activities of slum landlords* (M.B., 2 September 2005) has brought significant changes to the effort to combat people-smuggling and trafficking in human beings. This Act is discussed more fully in the comments relating to article 8.

Article 13

(No expulsion without legal safeguards)

I. Response to the Committee' recommendations

Concluding observation 23

The Committee is concerned that the ministerial circular of 2002 giving suspensive effect to emergency remedies filed by asylum-seekers against expulsion orders has not been published; this is likely to leave the individuals concerned in a legally uncertain situation (arts. 2 and 13).

The State party should establish clear rules in its legislation to govern appeals against expulsion orders. It should give suspensive effect not only to emergency remedies but also to appeals accompanied by an ordinary request for suspension filed by any alien against an expulsion order concerning him or her.

The Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens was amended by the Act of 15 September 2006 reforming the Council of State and creating the Aliens Litigation Council (M.B., 6 October 2006). The primary provision introduced by the amendment is that foreign nationals facing expulsion may now lodge an administrative appeal before the Aliens Litigation Council requesting a review of the expulsion order. A secondary provision is that a judicial appeal may be lodged from the detention accompanying the expulsion order.

1. Primary provision: administrative appeal to the Aliens Litigation Council

Under article 39/2 of the above-mentioned Act of 15 December, the Aliens Litigation Council is competent to rule on appeals from individual decisions made pursuant to the Act.

It is essential to distinguish between appeals from decisions on asylum and subsidiary protection issued by the Office of the Commissioner General for Refugees and Stateless Persons and appeals from decisions relating to other procedures. By and large, the rules that apply to appeals brought before the Aliens Litigation Council are set forth in articles 39/56 to 39/85 of the above-mentioned Act of 15 December 1980. Moreover, it is noteworthy that decisions of the Aliens Litigation Council are not subject to challenge, opposition by a third party or review. They may only be appealed to the Council of State, as provided under article 14, paragraph 2 of the coordinated laws on the Council of State. An appeal of this kind has no suspensive effect.

A more precise response to this concluding observation will be found in the paragraphs below, which explain succinctly to what extent appeals to the Aliens Legislation Council have suspensive effect on the original decisions.

Appeals from decisions on asylum and subsidiary protection issued by the Office of the Commissioner General for Refugees and Stateless Persons (CGRA)

A foreign national has 15 days or one month⁹⁵ from the date of notification of the contested decision to bring an appeal.

During this period and during the consideration of the appeal, no measure for expulsion from Belgium or *refoulement* may be executed by force against the alien who has brought the appeal (new article 39/70 of the Act of 15 December 1980).

Appeals from decisions relating to other procedures

In some cases, the foreign national concerned is deemed to be immune from expulsion during the time limit for bringing an appeal and during the consideration of the appeal, except with his consent. The time limit for bringing an application for annulment in these cases is one month from the date of notification of the contested decision.

These situations are set forth in article 39/79 of the above-mentioned Act of 15 December 1980, as follows:

“1. *Decision denying residency to foreign nationals contemplated in article 10 bis, where the foreign national concerned is still residing in Belgium, has not overstayed the period authorized in his residence permit, and is not the subject of an expulsion order;*

2. *Decision refusing to recognize or terminating the foreign national’s residency right, where the decision has been taken under article 11, paragraphs 1 and 2;*

3. *Expulsion order issued to family members contemplated in article 10 bis, where the foreign national concerned is still residing in Belgium, has not overstayed the period authorized in his residence permit, and is not the subject of an expulsion order;*

4. *Return order, except where such order has already been the subject of an opinion by the Advisory Committee on Aliens, in accordance with article 20, paragraph 1;*

5. *Denial of an application for permanent residence;*

6. *Decision ordering a foreign national who has endangered public order or national security to leave specified places, to stay away from them, or to reside in a specified place;*

7. *Decision denying residency to a citizen of the European Union or a member of his family contemplated in article 40 bis, on the basis of the applicable European regulations, and a decision terminating the residency of a citizen of the Union or a member of his family contemplated in article 44 bis, i.e. where the foreign national no longer satisfies the conditions associated with his residence (however, article 44 bis was repealed on 1 June 2008);*

8. *Decision to expel a foreign national who is an EU citizen and as such not required to obtain a residence permit separate from the document authorizing his entry into Belgium;*

⁹⁵ This period is 30 days when an appeal from a decision to reject an application for refugee or subsidiary protection status is brought by an alien who is a national of a State member of the European Communities or a national of a State party to a treaty on membership of the European Union which has not yet entered into force.

9. *Decision denying a residency application submitted under article 58 by a foreign national who wishes to study in Belgium.*⁹⁶

In addition, the Aliens Litigation Council may order suspension of the execution of a decision by an administrative authority in cases where an appeal for annulment may be brought, provided serious grounds for reversing the contested decision are alleged and provided immediate execution of the decision might cause serious prejudice which it would be difficult to remedy. From a procedural standpoint, the petition for suspension and the appeal for annulment must be made in one and the same application, except in an emergency situation. An alien who is subject to a removal or *refoulement* order which is about to be executed and has not yet filed an application for suspension may, in an emergency situation, request suspension of the effects of the decision within the 24 hours following its notification. Such emergency applications for suspension must be considered within 48 hours of their receipt by the Aliens Litigation Council. If the president of the chamber or the judge hearing the application does not hand down a ruling within that time limit, he must notify the first president or the president. The first president or the president will then take the necessary steps to ensure that a ruling is made, at the latest, within 72 hours of the receipt of the application. If the Council does not give its decision within that time limit or if suspension is not granted, the execution of the removal order by force becomes possible once more (article 39/82, paragraph 4).

It is essential to note, however, that on 27 May 2008 the Constitutional Court handed down a decision partially abrogating the above-mentioned article 39/82, specifically the provision that an emergency application must be filed within 24 hours and the possibility of forcible execution if the Aliens Litigation Council failed to issue a ruling within 72 hours. With the abrogation of the 24-hour requirement, this decision also abrogated the whole of article 39/83, which provided that “unless the foreign national concerned agrees, a removal or *refoulement* order in respect of him may be executed by force, at the earliest, 24 hours after notification of the order.” However, the Constitutional Court decided to allow the effects of article 39/82 (specifically the time limit of 24 hours for filing an emergency application) to remain in force until 30 June 2009. The abrogation of the above-mentioned article 39/82, paragraph 4, for its part, entered into force at the date of the decision. Accordingly, at present and until such time as Parliament enacts legislation setting a new time limit, the Aliens Office can no longer expel a foreign national until the Aliens Litigation Council has ruled on his emergency appeal or his application for provisional measures.

Draft legislation is currently in preparation in response to the abrogation of this article by the Constitutional Court. The twenty-four hour time limit will be replaced by one of five calendar days; this fully satisfies the Court’s requirements.

2. **Secondary provision: judicial appeal from a detention order**

Aliens held in a specific place pending their expulsion under article 74/5 or article 74/6 may appeal against the expulsion order to the Council Chamber. After hearing the person concerned or his or her counsel and the Minister or his representative, the Chamber rules within five working days from the filing of the appeal. The Chamber determines whether the measures of deprivation of liberty and expulsion are in conformity with the law but may not give an opinion on their appropriateness.

⁹⁶ Articles 10 *bis* and 11 paragraphs 1 and 2, which are referred to in items 1, 2 and 3, deal with applications for family reunification with foreign nationals who are not citizens of the European Union; article 20, paragraph 1, subparagraph 4, deals with decisions to expel foreign nationals who do not reside permanently in Belgium and who have endangered public order or national security or have failed to observe the conditions associated with their residency, as provided by law.

The Chamber's decisions are subject to appeal. If the Chamber rules that the detention is unlawful, the alien is released, unless the ruling is appealed to the Indictment Division. In that case, the alien is held in detention and enforcement of the expulsion order is prohibited until the Indictment Division hands down its decision.

However, it is important to note that release does not affect the residency status of the foreign national in question: if he was in Belgium illegally before being detained, he is still, in principle, subject to expulsion.

An application for interim relief under article 584 of the Judicial Code may not be filed against an administrative decision pursuant to articles 3, 7, 11 or 19 of Title I, Chapter II, of the above-mentioned Act of 15 December 1980.

II. Changes since the previous report

2.1 International commitments

On 16 August 2007, Belgium ratified the Protocol amending the 1977 European Convention on the Suppression of Terrorism.

2.2 Domestic developments

Extradition to a Member State of the European Union

The European Arrest Warrant Act of 19 December 2003 (*M.B.*, 22 October 2003) replaced traditional extradition procedures with a European arrest warrant. This Act contains provisions designed to safeguard the human rights of the person facing extradition.

Article 4.5 of the Act provides that such a warrant issued for the purposes of extradition to a Member State of the European Union is to be refused by a Belgian court *where there are serious grounds for believing that its execution would have the effect of prejudicing the fundamental rights of the person concerned, as enshrined in article 6 of the Treaty on European Union*. That article states that *the Union must respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms*.

Inter-State transfer of convicted offenders

Under the Act of 26 May 2005 *amending the Act of 23 May 1990 on the inter-State transfer of convicted offenders and the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens* (*M.B.*, 10 October 2006), the rules governing the expulsion of foreign nationals who have been convicted of an offence are set forth in detail (articles 20, 21 and 56 of the above-mentioned Act of 15 December 1980).

Cases in which a foreign national residing lawfully in Belgium may be served with a ministerial repatriation order or a royal expulsion order are listed in articles 20 and 21 of the above-mentioned Act of 15 December 1980.

The law now provides that a recognized refugee or a foreign national born in Belgium or who arrived in the country before the age of 12 and has lawfully had his principal residence there ever since may not be repatriated or expelled. Foreign nationals who enjoy subsidiary protection status are covered in the new article 56, which states that such a person *"may be removed from the Kingdom only pursuant to a repatriation order served following the issue of an opinion by the Advisory Committee on Aliens or an expulsion order, in either case in accordance with article 20 to 26 of this Act. A foreign national who has been granted subsidiary protection status shall not under any circumstances be expelled to the country from which he fled because his life or freedom was endangered there."*

Article 14 (Right to a fair and public hearing)

I. Response to the Committee's recommendations

Concluding observation 7 (part referring to article 14)

The Committee regrets that Belgium has not withdrawn its reservations to the Covenant, in particular the reservations to article 14.

The State party should reconsider its position on this matter.

It will be recalled that when Belgium ratified the Covenant, it entered the following reservation: "Paragraph 5 of the article shall not apply to persons who, under Belgian law, are convicted and sentenced at second instance following an appeal against their acquittal of first instance or who, under Belgian law, are brought directly before a higher tribunal such as the Court of Cassation, the Court of Appeals or the Court of Assize."

Belgium recently signed Additional Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (CPHR), article 2 of which makes provision for a right of appeal in criminal matters. Ratification of this protocol is currently under way, but no reservations have been deemed necessary.

Both article 2 of Additional Protocol No. 7 to the CPHR and article 14, paragraph 5 of the International Covenant provide for a right of appeal in criminal matters, but it is essential to bear in mind that those two articles are worded differently, and consequently might lead to different judicial outcomes.

Article 2 of Protocol No. 7 to the CPHR reads as follows:

"1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

Article 14, paragraph 5 of the International Covenant on Civil and Political Rights reads as follows:

"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

Belgium did not enter any reservations to Protocol No. 7 to the CPHR, partly because Belgian domestic law appears to be consistent with it as regards the exceptions expressly stated in article 2, paragraph 2, partly because of the explanatory report on that protocol (according to which the modalities for the exercise of the right of appeal are determined by domestic law, with the added factor that in some countries, such review is limited to questions of law, such as the *recours en cassation*), and partly because of the existing body of rulings of the European Court of Human Rights, which has repeatedly found that the remedy known as the appeal for annulment (*pourvoi en cassation*) effectively safeguards the right of appeal in criminal cases.

In Belgium, all judicial decisions can be challenged; failing all else, there remains the appeal for annulment⁹⁷. Accordingly, we consider that the Belgian system is satisfactory in terms of providing a right of appeal in criminal cases within the meaning of article 2 of Protocol No. 7 to the CPHR.

The issue is framed differently in the case of article 14, paragraph 5, of the International Covenant on Civil and Political Rights, in view of the fact that there is no explanatory report and there are no explicit exceptions to the right of every person convicted of a crime to have his conviction and sentence reviewed by a higher tribunal. Accordingly, Belgium requests the Committee to state whether the availability of the remedy known as the appeal for annulment meets the requirements of article 14, paragraph 5 of the Covenant.

II. Changes since the previous report

2.1 International commitments

On 11 May 2005, Belgium signed Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. This protocol adds five new rights to the system provided for under the Convention, and Belgium's enforcement of those rights may in future be subject to scrutiny by the European Court of Human Rights. Two of them in particular may be noted here:

- The principle of *non bis in idem*, which under the Protocol becomes unconditional;
- The right of appeal in criminal matters.

Ratification of this protocol is currently under way.

On 14 September 2006, Belgium ratified Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, done at Strasbourg on 13 May 2004. This protocol introduces changes to the procedure before the European Court of Human Rights and the enforcement of its rulings.

2.2 Domestic developments

2.2.1 Access to justice

Act of 23 November 1998 on legal aid

The fourth report⁹⁸ contained an account of the reform of legal aid through the passing of the Act of 23 November 1998 and a number of implementing Royal Decrees.

The Royal Decree of 18 December 2003 *setting the conditions for obtaining some or all "main-line" legal aid and legal assistance free of charge (M.B., 24 December 2003)* should also be noted at this point.

⁹⁷ An appeal for annulment (*pourvoi en cassation*) is an extraordinary remedy, i.e. the entire case is not re-examined by the court, but only certain points (as where the lower court's ruling is alleged to be contrary to law, or there has been an alleged breach of formal requirements that are substantial or are prescribed on pain of nullity).

⁹⁸ CCPR/C/BEL/2003/4, p. 72.

Legal protection insurance

Pursuant to the Royal Decree of 15 January 2007 *setting the conditions that a legal protection insurance contract is required for exemption from the annual tax on insurance operations as provided under article 173 of the Code of Miscellaneous Fees and Taxes (M.B., 27 February 2007)*, everyone can now take out legal protection insurance for an annual premium of not more than €144. This insurance should cover the cost of litigation and the most frequent risks that are or may be within the jurisdiction of a Belgian court, in accordance with the rules of national or international jurisdictions currently in force in Belgium, regardless of the dispute resolution method adopted, and also, subject to the same conditions, litigation that is or may be within the jurisdiction of a court in the Netherlands, Germany, the Grand Duchy of Luxembourg or France, in accordance with the rules of national or international jurisdictions currently in force in those countries (except where the litigation is in one or more of the following areas: tax law, administrative law, personal and family law, and testamentary, donation and inheritance law).

Front-line social services and services to victims

The Justice Centres, which were established in 1999, one in every judicial district, deliver both front-line social services and services to victims. The Justice Centres Directorate was established on 1 January 2007 for the purpose of providing Justice Centres with support in the performance of their mandate and to ensure uniformity in their activities.

- Front-line social services are designed for the benefit of members of the public who have questions or problems in the Justice Centres' fields of competence. The individual's request is heard, relevant information provided, and where necessary he is directed to the appropriate service or resource. Front-line social services are free of charge, and anonymity is guaranteed.

- Services to victims are based on article 3 *bis* of the Preliminary Title of the Code of Criminal Procedure. The objective here is twofold:

- To avoid a secondary victimization that might result from a formal prosecution, with the attendant risk that the trauma caused by the offence itself may be compounded by a further trauma or aggravated by the necessity of dealing with the police, the judiciary or other officials;
- To enable the victim to overcome his or her trauma and achieve a new situation of equilibrium as quickly as possible.

In this context, the role of the judicial assistant is to ensure that victims and/or their families receive the attention they need during the judicial procedure and are able to assert their rights.

In addition, a working group made up of representatives of the public prosecutor's office and SPF Justice is currently in the final stages of redrafting the *ministerial directive of 1997 on services to victims in public prosecutors' offices and the courts*.

2.2.2 Action to reduce the backlog of court cases

Since the previous periodic report, a broad array of measures have been taken to combat the backlog of court cases.

The framework legislation of 22 December 2003

- For the sake of continuity in the treatment of the files of examining magistrates, juvenile court judges and attachments judges, the period during which, if

necessary, a sitting or supplementary judge may be assigned one of these missions alongside the magistrate formally designated to exercise the functions in question has been extended to six years. In addition, supplementary judges may henceforth be designated to exercise the functions of juvenile court judges for all trial courts within the district of the court of appeal (new article 80 of the Judicial Code).

- As a rule, a magistrate (as contemplated in article 58 *bis*, paragraph 1 of the Judicial Code) may not be appointed to any post or function other than that specified in his official notice of appointment for a period of three years following publication of that notice. In an effort to maintain a full complement of bilingual magistrates in the bilingual Brussels Capital Region, the new article 216 *bis* of the Judicial Code provides that henceforth this rule shall not be applicable to supplementary judges, supplementary deputy Crown Prosecutors or supplementary deputy junior labour magistrates who have passed the required bilingualism examination and have applied for a new post in the district where they are exercising their functions.

- In principle, magistrates may be assisted in their work by legal experts from public prosecutors' offices. The recruitment ceiling for such experts has been raised to 35 per cent of the number of magistrates. Greater use of these experts further eases the burden on judges (article 156 *ter* of the Judicial Code).

Act of 13 April 2005 amending various provisions of criminal law and criminal procedure with a view to reducing the backlog of court cases (M.B., 3 May 2005)

- Formerly, the criminal court judge would give his verdict on the trial and would rule on the civil issues in the same judgement. The victim, who had not been present during the trial but wanted to have a ruling on his interests, then had to bring an action before a civil court, and this entailed a long and costly procedure. However, under article 4 of the Preliminary Title of the Code of Criminal Procedure, there were some exceptions, including notice to appear based on a police report of an offence (article 216 *quater*) and procedures before the police courts. In those cases, the judge was required to reserve the civil interests *ex officio*, even in the absence of a claim for criminal indemnification if it was not feasible to rule on that aspect of the case. The injured party could then, without cost, have the case returned to the court concerned for a ruling on his claim and thus obtain reparation. The above-mentioned Act of 13 April 2005 extends this mechanism to all criminal cases, regardless of how the case has come to be referred to the court. Furthermore, the parties may request the setting of a procedural timetable, with the plaintiff having the option of soliciting a judgement after trial.

- Where the procedure is one of notice to appear based on a police report of an offence, the court must now hand down its ruling within two months (article 216 *quater* of the Code of Criminal Procedure).

- Pursuant to the new article 195 of the Judicial Code, an assistant judge having at least ten years of seniority may sit alone in judgement to replace a sitting magistrate who has been called to serve as an assessor to form the bench of a Court of Assize.

Act of 26 April 2007 amending the Judicial Code with a view to reducing the backlog of court cases (M.B., 12 June 2007)

This Act modernizes procedures in an effort to expedite and clarify them for persons awaiting trial. In particular, it provides that a procedural timetable is to be set in all cases. Specifically, under the new article 747 of the Judicial Code, the setting of a date for the final statement of conclusions and a date for the hearing of submissions are now required in all cases; there is no longer any need for one of the parties to submit a request for that

purpose or for the parties to reach agreement in the matter. However, the parties are free to agree on a date if they wish, and the judge will endorse their decision. In any case, placing the case on the court list is now the exception rather than the rule, and can be done only with the consent of all the parties. In this way, the joinder of issue is expedited, and furthermore the person awaiting trial will know from the outset what the key dates in the procedure are going to be.

In addition, the Act makes provision for closer monitoring and disciplinary action designed to ensure that judges conform to the legally binding time periods allowed for deliberation. The head of the professional association plays a central role in this monitoring function. The Act now provides that in the event of an unjustifiable delay, the magistrate shall be liable to disciplinary measures.

Lastly, under the Act a judge now enjoys unrestricted authority to levy a civil fine upon any party who makes any manifestly dilatory or abusive use of the procedure. This provision will discourage nuisance cases and will ensure that the resources of the judiciary can be devoted to purposes for which they are really necessary.

This recently enacted legislation is already undergoing an evaluation and assessment process in the light of practice, for the purpose of optimizing the handling of judicial procedures and endeavouring even more diligently to eliminate delay. This process may be expected to lead to amendments to the Act in the near future.

Conclusion of protocols with the judicial authorities

In 2004, protocols were concluded with the judicial authorities (Brussels, Antwerp, Termonde) containing various provisions, including notably more personnel (magistrates, legal experts, registrars and secretarial staff from public prosecutors' offices), the services of a human resources management specialist, the establishment of a mechanism for preventing "no-show" hearings, and various material aspects, such as premises, computer equipment and the like. In 2005, new protocols were concluded with the judicial authorities of Ghent, Liège and Antwerp, and in 2006 with the Mons Court of Appeal. For purposes of expanding manning tables, these protocols have been enshrined in legislation setting temporary manning tables and authorizing supernumerary appointments during a limited period determined by law. The objective here is to ensure that all cases can be heard within six months.

Extension of supplementary chambers

The supplementary chambers that were established for courts of appeal on the basis of article 106 *bis* of the Judicial Code as a means of reducing the backlog of court cases were extended in 2008 for a period of two years.

Extension of consular judges

The panel of a commercial court comprises a professional magistrate and two consular judges with backgrounds in business or accounting. Under the Act of 13 April 2005 amending article 45 bis, paragraph 2, of the Act of 15 June 1935 concerning the use of languages in judicial matters, the Act of 15 July 1970 establishing the size of panels of commercial court judges and amending the Act of 10 October 1967 containing the Judicial Code and article 205 of the Judicial Code (M.B., 4 May 2005), their numbers have been increased and eligibility for appointment has been extended to chartered accountants and chartered tax accountants.

Act of 21 February 2005 amending the Judicial Code in the matter of mediation (M.B., 22 March 2005)

This Act provides a highly desirable alternative to litigation while also relieving the judiciary of substantial numbers of cases. The Federal Mediation Commission is pursuing its work, including, in particular, its official mandate of approving prospective mediators.

Project Cheops

The implementation of Project Cheops, which is the computerization of all courts and the judicial procedure, will produce a powerful tool for reducing the backlog of court cases. Over and above the time saving during the procedure itself, the ready availability of computerized data will make it feasible to identify and analyse with great accuracy the main problems that arise in practice and tend to impede the progress of trials. The particular phases in the procedure that give rise to the most difficulties will also be identifiable.

Project "Determining Court Workloads"

On 4 June 2008, the Minister of Justice concluded an agreement with the judicial authorities of the Bench. The aim of this agreement is to develop a generic instrument for measuring the workload by the end of 2009. Initial results for the courts of appeal are also expected to be available by that time.

2.2.3 Independence of the judiciary

Establishment of a Judiciary Training Institute

The Act of 31 January 2007 *on training of the judiciary and establishing the Judiciary Training Institute (M.B., 2 February 2007)*, as amended by the Act of 24 July 2008 *amending the Act of 31 January 2007 on training of the judiciary and establishing the Judiciary Training Institute (M.B., 4 August 2008)*, was designed to upgrade the training of members of the judiciary, and to that end formulated two objectives: the introduction of high-quality professional training for magistrates, interns and judiciary personnel, and the establishment of a Judiciary Training Institute.

1. Formerly, specific training was required only for examining magistrates (and subsequently for sentence enforcement judges and some juvenile court judges as well), but now all magistrates with specific appointments are required to take specialized training in order to be able to exercise their functions (federal magistrates, attachments judges, juvenile court judges, judges or deputies sitting in sentence enforcement courts, examining magistrates, and so on).

2. The Act establishes the Judiciary Training Institute, the purpose of which is to develop, deliver and assess training programmes, not only for initial training but also for continuing training and training required for appointment to a specific function or future post. The Institute is autonomous, with its own corporate identity, composition and operation. It has its own budget, and is staffed for the most part by magistrates, lawyers and representatives from the academic community. In that connection, the main purpose of the Act of 24 July 2008 is to enhance the role played by the academic community in the Institute's activities: the Act provides that educational institutions shall be enlisted to deliver its programmes and that a larger proportion of its personnel shall be drawn from the ranks of the academic community.

2.2.4 Special procedures

Reopening of a criminal case following a ruling by the European Court of Human Rights

The Act of 1 April 2007 *amending the Code of Criminal Procedure in respect of the reopening of proceedings in criminal cases (M.B., 9 April 2007)* inserted articles 442 bis to 442 octies into the Code of Criminal Procedure.

Under the Act, “*Where it appears from a final ruling of the European Court of Human Rights that the European Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto (hereinafter “the European Convention”)* has been contravened, it shall be lawful to petition for the reopening, as regards the prosecution exclusively, of the proceedings that led to the petitioner’s conviction or the conviction of another person for the same offence upon the same evidence, before the European Court of Human Rights.”

Under the Act, the petition for reopening such a case is to be submitted to the Court of Cassation. The Court annuls the decision and hands down a new ruling on the initial application (having regard only to the contravention found by the European Court of Human Rights) where it had itself issued the decision that is being challenged. In other cases, the Court of Cassation annuls the challenged decision and refers the case to a court of the same rank as the court that issued the original decision, or else annuls the decision without a referral.

To date, the Court of Cassation has ordered the reopening of proceedings in two cases following rulings by the European Court of Human Rights⁹⁹.

Procedure in cases involving minors

The issue of the protection of minors has been overhauled, with the introduction of changes along two lines. In the first place, the Act of 8 April 1965 on the protection of minors has been revamped. In the second place, the federated entities, which have jurisdiction over some aspects, have adopted measures aimed at protecting the rights of minors more effectively.

The Act of 8 April 1965 was revamped by the Act of 15 May 2006 *on the protection of young persons and the treatment of minors who have committed an act deemed to constitute an offence (M.B., 2 June 2006)* and the Act of 13 June 2006 *on the protection of young persons and the treatment of minors who have committed an act deemed to constitute an offence (M.B., 19 July 2006)*, and has now become the “Act on the protection of young persons, the treatment of minors who have committed an act deemed to constitute an offence and reparation for damage caused thereby”. The new Acts of 15 May and 13 June 2006 entered into force, to a great extent, on 15 October 2006; the other provisions, which required supplementary measures, entered into force early in 2007. These Acts have two objectives: first, to give legislative sanction to certain practices that have developed in recent years, and second, to introduce certain innovations in the treatment of juvenile offenders. The main features of this legislation are summarized in the paragraphs below.

- There is increased emphasis on parental responsibility: parents are encouraged to be aware of their involvement in their children’s unlawful behaviour and to assume their responsibility in that connection. The parents are associated with the successive stages in the proceedings. In a few exceptional instances, parental training may be suggested (by the Crown Prosecutor) or ordered (by the juvenile court). The idea is to penalize the lack of interest shown by some parents in the delinquent behaviour of

⁹⁹ *Da Luz Domingues Ferreira v. Belgium*, 24 May 2007, and *Goktepe v. Belgium*, 2 June 2005.

minors for whom they are responsible, inasmuch as such lack of interest is a contributing factor in the minors' problem behaviour. In an effort to achieve maximum impact, the Communities organize parental training as a form of assistance.

- The new Act seeks to make young offenders accept responsibility for their acts by emphasizing the rights of victims and taking a reparative approach to juvenile delinquency.
- A wider and more diverse array of measures is made available to Crown Prosecutors and juvenile court judges. The development of alternative measures such as mediation or educational community service enables young offenders to participate in the work of "repairing" the damage they have caused and reduces the use of placement.
- Procedures and deadlines are spelled out in detail in the Act in order to safeguard minors' legal security more effectively.
- Juvenile courts are given jurisdiction in all cases involving mentally ill minors who have broken the law, regardless of whether their action is deemed to constitute an offence or not.
- Referral, which is a specific, exceptional option available to the juvenile court judge and consists in referring the case of a young offender (not more than 16 years of age at the time the offence was committed) to a regular criminal court for judgement in accordance with the ordinary criminal law and criminal procedure, becomes a last resort that may be used only in certain clearly defined cases.

The issue of which court shall have jurisdiction is also addressed: minors whose cases the juvenile court judge decides to refer elsewhere are now (since October 2007) considered by a specific chamber within the competent juvenile court. Formerly, such cases were sent to the correctional court, which is a regular criminal court that applies criminal law in cases involving adults. However, the Court of Assize is still competent for non-indictable offences.

Lastly, where an offender is sentenced to a term of imprisonment or penal servitude, the sentence is to be served in a closed Federal centre.

French Community

The decree of 19 May 2004 *amending the decree of 4 March 1991 on youth support* (M.B., 23 June 2004) made a number of substantial amendments, essentially aimed at safeguarding young people's rights more effectively, to the decree of 4 March 1991 on youth support.

The main innovations may be summarized as follows:

- The decree provides that a minor placed in a public institution may be put into solitary confinement in specific premises when he jeopardizes his own safety or that of other juvenile inmates, staff members or visitors. Formerly, such confinement could be extended beyond eight days. That option is now abolished; solitary confinement may be imposed only for a period not exceeding eight days;
- Appeals to the juvenile court from a decision to grant or deny an individual support measure or concerning the terms and conditions of its implementation could formerly be brought only by a minor who was over 14 years of age or by persons invested with parental authority; now, such an appeal can also be lodged by a person having the right to maintain personal relations with the minor concerned, including, in particular, grandparents.

Brussels Capital Region

The Joint Community Commission adopted the ordinance of 29 April 2004 *on youth support* (M.B., 1 June 2003). A cooperation agreement with the Communities (currently being drafted) will give material form to the entry into force of these new provisions. It will then be feasible to organize a meaningful youth support policy within the bilingual Brussels Capital Region.

Procedure in cases involving members of the armed forces

Under the Act of 10 April 2003 *making provision for the abolition of military courts in peacetime and their retention in wartime* (M.B., 7 May 2003), the separate procedure previously used in Belgium for members of the armed forces in peacetime was abolished on 1 January 2004. Since that date, members of the armed forces who commit offences have been identified, prosecuted and sentenced in the same way as civilians. The magistrates and other personnel who formerly worked in the military courts have been reassigned to the regular court system. In wartime, on the other hand, military tribunals and a military court may be established. If necessary, military tribunals and extraordinary military tribunals may be established during a campaign. Ultimately, the objective is to ensure that the wartime procedure conforms, in so far as possible, to the law of criminal procedure followed in peacetime.

Jurisdiction of Belgian courts in cases involving certain felonies and other offences committed outside Belgian territory

The scope of article 12 *bis* of the Preliminary Title of the Code of Criminal Procedure, which gives Belgian courts jurisdiction in cases involving certain felonies and other offences committed outside Belgian territory, has been amended by two pieces of legislation: the Act of 5 August 2003 *on serious violations of international humanitarian law* (M.B., 7 August 2003) and the Act of 22 May 2006 *amending certain provisions of the Act of 17 April 1878 containing the Preliminary Title of the Code of Criminal Procedure, and also a provision of the Act of 5 August 2003 on serious violations of international humanitarian law* (M.B., 7 July 2006)¹⁰⁰.

In the first place, the range of offences covered by the provision has been broadened under the above-mentioned Act of 2003. Whereas formerly offences had to be covered by a conventional rule, now they may be covered by a rule of conventional or customary international law or a rule of law derived from the European Union that is binding upon Belgium.

In the second place, in order to avoid “manifestly abusive use of the Act for political ends,” the Act of 2003 had made provision for a filter, giving sole authority for initiating a prosecution to the Federal prosecution service, which specializes in cases of this kind. Under the Act of 2003:

“Prosecution, including the inquiry into the facts of a case, may only be instituted at the request of the Federal prosecution service, which assesses any complaints. There is no right of appeal from this decision. Where a complaint is brought under the foregoing paragraphs, the Federal prosecution service instructs the examining magistrate to conduct an enquiry into the complaint unless:

¹⁰⁰ However, the Act of 25 May 2005 was partially abrogated by the Court of Arbitration in its ruling No. 62/2005, handed down on 23 March 2005.

1. *The complaint is manifestly unfounded; or*
2. *The acts alleged in the complaint are not deemed to constitute an offence under Book II, Title I bis of the Criminal Code, or*
3. *The complaint cannot give rise to any valid public right of action; or*
4. *It appears from the specific circumstances of the case that in the interests of the proper administration of justice and in compliance with Belgium's international obligations, the matter should be brought before an international court, a court in the place where the alleged violation occurred, a court of the State of which the perpetrator is a national or one of the place where he is currently residing, provided that that court displays the qualities of independence, impartiality and equity required by, inter alia, the relevant international commitments binding upon Belgium and that State.*

Where the Federal prosecutor decides to take no action on a matter, he informs the Minister of Justice of that decision, noting the points set out in the subparagraph above on which his decision is based. Where the decision to take no action is based solely on points 3 and 4 above or solely on point 4 above and the alleged violation was committed after 30 June 2002, the Minister of Justice shall inform the International Criminal Court of the violation in question.”

Such a system, with no room for oversight by examining magistrates, especially with respect to the first three points, was ruled unconstitutional. Accordingly, the Constitutional Court struck out the passage, *“Prosecution, including the inquiry into the facts of a case, may only be instituted at the request of the Federal prosecution service, which assesses any complaints. There is no right of appeal from this decision.”*

The above-mentioned Act of 2006 now draws a distinction between the first three grounds, for which *“the Federal prosecutor shall appear before the Indictment Division of the Brussels Court of Appeal and ask the court to declare that there are no grounds to proceed or that there is no valid public right of action, as the case may be. The court shall hear only the Federal prosecutor,”* and the fourth ground, where *“the Federal prosecutor shall take no action and shall inform the Minister of Justice of his decision. There shall be no right of appeal from this decision. Where the alleged violation was committed after 30 June 2002 and is within the jurisdiction of the International Criminal Court as to the subject-matter, the Minister of Justice shall inform the International Criminal Court of the alleged violation in question.”*

Cooperation with international criminal tribunals

The purpose of the Act of 29 March 2004 *on cooperation with the International Criminal Court and international criminal tribunals (M.B., 1 April 2004)* is, in the first place, to organize mutual judicial assistance between Belgium and the most important international criminal tribunals and, in the second place, to turn over to those tribunals individuals who have been found and arrested on Belgian soil. This Act replaces a 1996 Act which, even at that early date, organized judicial cooperation both with the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

Lastly, the above-mentioned Act of 29 March 2004 has been amended by two Acts providing for the extension of these rules of international judicial cooperation to the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia¹⁰¹.

¹⁰¹ The Act of 1 July 2006 *amending the Act of 29 March 2004 on cooperation with the International Criminal Court and international criminal tribunals, and inserting therein a new Title V on the Special Court for Sierra Leone* (M.B., 28 July 2006) and the Act of 1 July 2006 *inserting into the Act of 29 March 2004 on cooperation with the International Criminal Court and international criminal tribunals a new Title VI on the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea* (M.B., 2 August 2006).

Article 15 (Non-retroactivity)

I. Response to the Committee's recommendations

Concluding observation 24

The Committee is concerned that the Act of 19 December 2003 on terrorist offences gives a definition of terrorism which, in referring to the degree of severity of offences and the perpetrators' intended purpose, does not entirely satisfy the principle of offences and penalties being established in law (art. 15).

The State party should produce a more precise definition of terrorist offences.

The purpose of the Terrorist Offences Act of 19 December 2003 (M.B., 29 December 2003) was to transpose the Framework Decision of the European Union dated 13 June 2002 *on combating terrorism* and to bring Belgian legislation into line with the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.

In view of the risks of abuse which might arise as a result of the transposition of these international instruments into an anti-terrorism act, Belgium's legislature took a number of precautions to prevent any deviation in the application of this legislation. For example, in order to ensure the appropriate implementation of article 137 of the Criminal Code, which reproduces the definition of terrorist offence as it appears in the European Union's Framework Decision, Parliament inserted two other articles into the Criminal Code. Article 139 provides that "organizations whose true purpose is exclusively of a political, trade union, philanthropic, philosophical or religious nature or which pursue exclusively some other lawful objective shall not, as such, be deemed terrorist groups." Article 141 *ter* provides that "none of the provisions of the Criminal Code relating to terrorist offences shall be construed as designed to reduce or obstruct such fundamental rights and freedoms as the right to strike, freedom of assembly and association and freedom of speech, including the right to unite with other persons to found trade unions and to join such trade unions for the protection of their interests, and the associated right of demonstration."

Parliament retained these articles in the Act despite the fact that the Council of State expressed the view that these texts "amounted to a truism which has no place in the Criminal Code"; Parliament stated that "in this matter it is better to be unnecessarily explicit than dangerously silent and ambiguous" (*Doc. Parl., Ch. Rep.*, 2003-2004, DOC 51-0258/004, pp. 10-11).

A petition to annul the Act was brought before the Constitutional Court of Belgium (the former Court of Arbitration) by human rights associations, alleging inter alia violation of the principle of offences and penalties being established in law. The petition was dismissed by the Court (Court of Arbitration decision No. 125/2005 of 13 July 2005); this showed that Parliament had in fact complied with that principle when inserting articles 137 *et seq.* into the Criminal Code. In its decision, the Court stated: "The principle of legality in criminal matters proceeds from the idea that the criminal law must be formulated in terms which ensure that everyone will know, when deciding to adopt a course of conduct, whether that conduct is punishable. It requires the legislature to indicate, in terms which are sufficiently precise and clear and provide legal certainty, what acts are to be punished, in order that, on the one hand, a person adopting a course of action may first make a due

assessment of what the criminal consequences of that action will be, and, on the other hand, to ensure that not too much is left to the discretion of the judge. However, the principle of legality in criminal matters does not prevent the law from giving the judge a measure of discretion. It is essential to take into account the general nature of the law and the diversity and variability of situations, as well as of the matters to which the law applies and developments in the conduct which it is intended to punish.” (paragraph B.6.2).

To illustrate its argument, the Court then cited numerous rulings of the European Court of Human Rights (paragraph B.6.3).

Article 16
(Recognition as a person before the law)

In the light of the remarks relating to article 16 made in Belgium's third periodic report (CCPR/C/94/Add.3, paragraphs 183 and 194), no further comment is called for here.

Article 17 (Respect for private life)

I. Response to the Committee's recommendations

Concluding observation 25

The Committee is concerned that the Ministry of the Interior directive on double penalties, which has not been published, attaches conditions to the expulsion of aliens which make it impossible to comply fully with article 17 of the Covenant, inasmuch as it does not guarantee that aliens the majority of whose ties are to Belgium will not be expelled under any circumstances.

The State party should introduce further safeguards, publish rules to ensure that the individuals concerned are aware of and can assert their rights, and pass a law on the subject as quickly as possible.

The above-mentioned directive of 24 July 2002 *on double penalties* consisted of the Minister's instructions to the Government not to submit to him any draft order concerning certain individuals. This directive was binding only on the Government and was not effective against the world, and consequently there was no need for it to be published.

However, the Act of 15 December 1980 *on the entry, temporary and permanent residence and removal of aliens* was amended by the Act of 15 September 2006 *amending the Act of 15 December on the entry, temporary and permanent residence and removal of aliens* (M.B., 6 October 2006), and articles 20 to 25 of that Act now reproduce the content of the directive. (Further information about those provisions will be found in the comments on article 13.)

In addition, it is important to bear in mind that any decision to expel a foreign national takes into account the provisions of article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which safeguard respect for private and family life, and the rulings of the European Court of Human Rights. The reality of an effective family life and the prior existence of the alleged family life are always verified. In that connection, family life must be characterized by real, sufficiently close relations; kinship is not enough, there must also be *de facto* ties.

II. Changes since the previous report

2.1 International commitments

There were no new international commitments during the period covered in this report.

2.2 Domestic developments

The Undercover and Certain Other Methods of Enquiry Act

The Undercover and Certain Other Methods of Enquiry Act of 6 January 2003 (M.B., 12 May 2003) provided a legal basis for such 'undercover' methods as infiltration, observation, use of informers, interception of mail and discreet visual surveillance. Most of

these practices had previously been used on the authority of ministerial circulars. The Act thus creates a secure legal situation both for the suspects at whom they are directed and for the police officers who have to apply them. In addition, these measures are subject to an array of highly developed monitoring methods. The Act was amended by the Act of 27 December 2005 *providing for various amendments to the Code of Criminal Procedure with a view to improving methods of enquiry in the effort to combat terrorism and serious organized crime* (M.B., 30 December 2005) in response to a ruling handed down by the Constitutional Court on 21 December 2004, based on the absence of independent monitoring (by an examining magistrate or a regular court judge) of the use of such methods.

The Act of 27 December 2005 thus served to clarify some of the provisions of the Act of 6 January 2003 as regards the definition of reasonable grounds, the scope of the summary investigation and the judicial control required where observation and infiltration methods are adopted.

Moreover, the Act of 27 December 2005 makes provision for new methods of enquiry and the designation of examining magistrates specializing in the effort to combat terrorism. However, that Act in its turn was partially struck down by a ruling issued by the Constitutional Court on 19 July 2007¹⁰². Reparatory legislation is currently being drafted.

Grounds for search warrants

The European Court of Human Rights has ruled against Belgium on two occasions¹⁰³ for violating article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (CPRH). The Court found that a search warrant drafted in such broad terms that the individuals concerned had no information about the prosecutions giving rise to a duty of enquiry constituted unjustified interference with the respect for the home safeguarded under article 8.

In the light of these rulings, the Court of Cassation altered its jurisprudence. In its decision of 13 September 2005 in the matter of the grounds for search warrants, the decisive factor identified by the Court was that the individual whose premises were being searched should be able to make sure that the search did not exceed the warrant.

Video surveillance

The Act of 21 March 2007 *regulating the installation and use of surveillance cameras* (M.B., 31 May 2007) establishes the legal context in which video surveillance cameras may be set up and used (conditions, placement criteria, retention of images, monitoring, and so on).

Commission for the Protection of Privacy

Pursuant to the Act of 26 February 2003 *amending the Act of 8 December 1992 on the protection of privacy in respect of the processing of data of a personal nature and the Act of 15 January 1990 on the establishment and organization of a Crossroads Bank for Social Security with a view to fixing the status and extending the area of competence of the*

¹⁰² The provisions that were struck down were article 47 *ter*, paragraph 1, subparagraph 3; article 47 *decies*, paragraph 7; the second sentence of article 47 *undecies*, subparagraph 2; the second sentence of article 47 *undecies*, subparagraph 3; and article 235 *ter*, paragraph 6 of the Code of Criminal Procedure adopted on 18 November 1808.

¹⁰³ European Court of Human Rights, decision of 15 July 2003 in the matter of *Ernst et al. v. Belgium*; European Court of Human Rights, decision of 9 December 2004 in the matter of *van Rossem v. Belgium*.

Commission for the Protection of Privacy (M.B., 26 June 2003), the Commission for the Protection of Privacy, which formerly operated under the authority of the Minister of Justice, is now an organ of the Chamber of Representatives.

The purpose of this reform was to safeguard the Commission's independence more effectively. The Act also provides for the establishment of sectoral committees within the Commission with responsibility for ensuring that the processing of data of a personal nature in various specific sectors, such as social security, public authorities and the like, does not violate people's privacy. These committees are currently being organized.

Transsexuality Act

Under the Transsexuality Act of 10 May 2007 (*M.B., 11 May 2007*), a transsexual may now legally change sex through an administrative procedure before a civil registrar. Formerly, this was possible only through a judicial procedure. The administrative procedure is expected to be less emotionally stressful for the transsexual, and will allow him or her to change sex legally in a shorter time at reasonable cost.

Electronic identity card

Pursuant to the Act of 25 March 2003 *amending the Act of 8 August 1983 establishing a National Register and the Act of 19 July 1991 on population registers and identity cards and amending the Act of 8 August 1983 establishing a National Register (M.B., 28 March 2003)* and its implementing Royal Decrees, an electronic identity card was introduced in Belgium and is progressively replacing the conventional identity card.

The introduction of the electronic identity card ("eID") in new applications does not entail any changes in the data recorded on the card.

The holder of an electronic identity card can use it for almost all applications by means of the two basic functions: authentication and electronic signature. It is thus the new application that is associated with specific information, rather than the card itself. Accordingly, the issue of privacy must be clearly formulated for the particular application involved. At the present time, the use of RFID¹⁰⁴ technology does not afford an adequate level of security, and consequently that technology should be used with caution. It is important to be aware of its security weakness and to take appropriate precautionary measures.

¹⁰⁴ Radio Frequency Identification.

Article 18 (Freedom of religion and belief)

I. Response to the Committee's recommendations

Concluding observation 26

The Committee is concerned that not a single mosque has yet been granted official recognition in Belgium (arts. 18 and 26).

The State party should step up its efforts to ensure that mosques are recognized and that Islam enjoys the same advantages as other religions.

In response to this concluding observation, we shall begin by explaining the Belgian approach to the recognition of religions and the advantages that that entails. We shall then discuss the case of the Islamic religion in particular.

a. Recognition of religions in Belgium

Under article 181 of the Constitution, the salaries and pensions of ministers of recognized religions are paid out of the State budget, as are the salaries and pensions of members of the Central Lay Council.

Belgium has a system for recognizing religions. The recognized religions at present are Catholicism, Evangelical Protestantism, Judaism, Orthodox Christianity, Anglicanism and Islam. The country's non-denominational community is also recognized. Recognition of a religion involves the presumption that the religious or non-denominational movement can establish an organizational structure to act as a focal point between the religious or non-denominational community and the State in temporal matters. In matters relating to the recognition of religions and their enjoyment of the associated advantages, jurisdiction is shared between the Federal State and the federated entities. The Federal authority has jurisdiction as regards the recognition of new religions, the payment of salaries and pensions, and legislation dealing with the organized lay community. The federated entities, for their part, have jurisdiction as regards the recognition of local communities, the organization of bodies with responsibility for the upkeep of churches and other places of worship, the organization of what are termed philosophy courses, the distribution of air time for recognized religions in the public service media, and the organization of chaplaincy services in certain institutions.

b. The case of the Islamic religion

Establishment of an organizational structure

In the absence of a clear hierarchy, it has been somewhat difficult to appoint a representative body for the Muslim community. This was owing mainly to tensions within the Muslim community and to a number of judicial investigations involving some members of that community. Recently, however, it has proved feasible to designate an executive, and a recognition order identifying its members as the new representative body of the Islamic religion in Belgium was issued on 9 May 2008 (*M.B.*, 19 May 2008).

Recognition of local communities

Despite the difficulties outlined above, many Islamic communities have been recognized by the Belgian authorities since the previous report. In all, the Walloon Government recognized 43 Islamic communities on 22 June 2007, the Brussels Capital Region recognized five on 13 December 2007, and the Flemish Region had recognized seven as of 1 June 2008.

Examples of noteworthy developments since the previous report:

- Pursuant to the Royal Decree of 25 October 2005 establishing an authorized number of Islamic chaplains and advisers belonging to one of the recognized religions and moral counsellors in non-denominational philosophy belonging to the Central Lay Council to work in prison establishments and setting their salary scales (M.B., 10 November 2005), 24 registered Islamic counsellors, paid by the Belgian State, have been officially attached to Belgium's 36 prison establishments since 1 March 2007. The duty of Muslim chaplains, like those of other religions, is to provide inmates with religious and spiritual guidance and support.
- In the field of education, the Islamic religion course taught in the French Community is handled in the same way as courses on other religions.

II. Changes since the previous report

2.1 International commitments

There were no new international commitments during the period covered in this report.

2.2 Domestic developments

Establishment of the administrative council of the Evangelical Protestant religion

In 2005 an administrative council of the Evangelical Protestant religion was established pursuant to an administrative cooperation agreement between the United Protestant Church of Belgium (EPUB) and the Federal Synod (Evangelical).

Recognition of Buddhism in Belgium

On 20 March 2006, the Belgian Buddhist Union submitted an application for recognition in Belgium as a non-denominational philosophy.

On 30 March 2007, the Government gave its agreement in principle to a preliminary draft bill providing for the recognition of Buddhism in Belgium. Under an Act of 1 June 2008, a grant was included in the 2008 budget of SPF Justice. The principle of financial support was established by the Act of 24 July 2008 *containing various provisions* (M.B., 7 August 2008).

Establishment of the definitive structure of Buddhism in Belgium will require the enactment of legislation.

Cooperation agreement among the Federal State, the Walloon Region, the Flemish Community and the Brussels Capital Region

A Cooperation Agreement among the Federal Authority, the Flemish Region, the Walloon Region and the Brussels Capital Region *concerning the recognition of religions, salaries and pensions for ministers of religion, the upkeep of churches and establishments responsible for managing the secular affairs of recognized religions* was signed on 27 May 2004 (M.B., 14 June 2004) and broadened to include the German-language Community on 2 July 2008.

Measures adopted by the federated entities relating to recognized religions

Walloon Region

On 13 October 2005, three orders were adopted by the Walloon Government: an order *establishing model internal regulations for committees responsible for managing the secular affairs of recognized Islamic communities*, an order *providing for the organization of committees responsible for managing the secular affairs of recognized Islamic communities*, and an order *establishing model budgets and accounts for the use of committees responsible for managing the secular affairs of recognized Islamic communities* (M.B., 27 October 2005).

These orders formulate guidelines for the recognition of local communities, the designation of committee members, regulations governing committees' operations, and oversight in the matter of their internal regulations and their budgeting and accounting practices.

Brussels Capital Region

The ordinance of 29 June 2006 *on the organization and functioning of the Islamic religion and containing various provisions concerning recognized religions* (M.B., 7 July 2006), given effect by a government order of 17 July 2008 *establishing model budgets and accounts for the use of Islamic committees and formulating regulations governing the accounting of the Islamic communities of the Brussels Capital Region* (M.B., 13 August 2008) formulates rules governing the recognition of Islamic communities, the composition of committees, and oversight.

The ordinance of 29 June 2006 *containing various provisions concerning recognized religions* (M.B., 10 July 2006) formulates rules on the administrative bodies of recognized religions and buildings used for the practice of recognized religions.

Flemish Authority

In recent years, Flemish policy in the matter of recognized religions has been given material form through the adoption of a variety of measures. The result has been the recognition of more local communities, as will appear from the figures given below.

1. The objectives of the decree of 7 May 2004 *on the material organization and functioning of recognized religions* (M.B., 6 September 2004) were to endow recognized religions with more modern, more transparent and more uniform administrations, to eliminate representation of the civil authority within those administrations, to make their asset management more uniform and more flexible, to broaden the scope of government oversight on general issues (suspension/reversal of decisions) while narrowing it in specific matters (approvals), and to introduce strategic financial instruments (such as multi-year planning) that were modern and transparent.

The decree provides for the organization of one local administration per local entity (parish or community), i.e. a public institution constituting a corporate entity responsible for the religious entity's material organization, functioning and asset management.

A circular was issued on 25 February 2005 explaining this decree.

2. The Flemish Government's order of 30 September 2005 *establishing accreditation criteria for local church communities and communities of recognized religions* (M.B., 16 December 2005) clarified the situation and established for criteria. Previously, Flanders had no clearly defined criteria, with the result that the administrations of religious communities could never be certain why they had (or had not) been accredited. A circular *on the accreditation of local church communities and communities of recognized religions* was issued on 10 March 2006 explaining this order.

3. The Flemish Government's order of 13 October 2006 *on general regulations governing the accounting practices of the administrations of recognized religions and the central administrations of recognized religions* is also noteworthy in this connection, as is the Ministerial decree of 27 November 2006 *setting model accounting practices for the administrations of religious communities and giving effect to article 46 of the Flemish Government's order of 13 October 2006 on general regulations governing the accounting practices of the administrations of recognized religions and the central administrations of recognized religions*.

4. Following the adoption of these measures, various local church or religious communities have already applied to the Flemish Government for accreditation¹⁰⁵. It is a condition of accreditation that they must bring their organization and operational procedures into line with the provisions of the above-mentioned decree.

<i>Religion</i>	<i>Number accredited</i>
Protestantism	39
Anglicanism	7
Judaism	6
Orthodox Christianity	11

Information sessions on the new regulations are held on a regular basis for the Muslim community.

German-language Community

Human rights education (including respect for human rights, tolerance, gender equality and respect for religious and ethnic minorities) has been part of school curricula in the German-language Community since 1998. In that connection, the legislation on religion courses taught in schools was amended by a decree of 26 June 2006 *on educational measures* (M.B., 19 October 2006) allowing Orthodox Christianity, Islam and Anglicanism to be taught in schools.

The decree of 19 May 2008 *on the material organization and functioning of recognized religions* (M.B., 1 September 2008) lays down regulations relating to church buildings and the administrative councils of recognized religions with responsibility for managing their secular affairs, with effect from 1 January 2009.

¹⁰⁵ Religions that were already recognized before the entry into force of the decree of 7 May 2004 retain their accreditation.

Sects

A few years ago, there were a number of serious events that demonstrated what a hold sects had on individuals. In response, Parliament established a Commission of Enquiry. The Commission was mandated to consider what measures should be adopted in an effort to develop a policy designed to combat sects' illegal practices and the danger they represented for society and for individuals, especially minors. In its report, the Commission recommended that Belgian criminal law should be amended to include a provision making it an offence to abuse an individual's position of weakness. A draft bill was approved by Cabinet and tabled in the Chamber of Representatives on 13 July 2006 (*Doc. Parl., Ch. Repr., reg. sess., 2005-2006, 51-2637*). The purpose of the bill was to penalize fraudulent abuse of anyone's state of ignorance or vulnerability with a view to leading him or her to act or refrain from acting in such a way as seriously to jeopardize his or her physical or mental integrity or material assets.

As the legislature rose in 2007, this bill died on the order paper. However, a new bill with essentially the same content as the above-mentioned bill is currently under consideration by Parliament (*Doc. Parl., Ch. Repr., reg. sess., 2007-2008, 52-0493*).

Article 19 (Freedom of expression and means of communication)

Changes since the previous report

1. International commitments

There were no new international commitments during the period covered in this report.

2. Domestic developments

Confidentiality of sources used by journalists

The Act of 7 April 2005 *on the protection of journalistic sources* (M.B., 27 April 2005) lays down guidelines for determining to what extent the editorial staff and persons who contribute regularly and directly to the gathering, editing, production or dissemination of information for public consumption are entitled to protect their sources.

Restrictions on freedom of expression

The fourth periodical report¹⁰⁶ stated that in order to facilitate action against abuses of the Internet, especially abuses involving children, a protocol of collaboration was signed in 1999 by ISPA (the Belgian Internet service providers' organization) and the Ministers of Telecommunications and Justice. In particular, this agreement stipulated that if providers or users detected content which appeared to constitute child pornography, that content would be reported to a central judicial police contact point (NCCU) under an agreed procedure (p. 84). In September 2005 a working group was set up to evaluate that protocol. Suggested amendments were formulated, and a revised protocol is expected to be signed shortly.

In addition, a centralized system for reporting what appears to be unlawful information on the Internet has been operational since early in 2007. The site <http://www.ecops.be> is the Belgian point of reference for any user who wishes to report abuses found on the Internet, including misleading information, fraudulent proposals, child pornography, spam e-mail or unsolicited advertising.

¹⁰⁶ CCPR/C/BEL/2003/4, p. 83.

Article 20 (Prohibition of war propaganda and advocacy of racial hatred)

I. Responses to the Committee's recommendations

Concluding observation 27

The Committee notes with concern that a number of racist, xenophobic, anti-Semitic and anti-Muslim acts have taken place in Belgium. It is concerned that political parties urging racial hatred can still benefit from the public financing system, and observes that a bill designed to put an end to that situation is still being considered by the Senate (art. 20).

The State party should take all necessary steps to protect communities resident in Belgium against racist, xenophobic, anti-Semitic and anti-Muslim acts. It should have the above-mentioned bill passed as soon as possible, and consider sterner measures to prevent individuals and groups from seeking to arouse racial hatred and xenophobia, in pursuance of article 20, paragraph 2, of the Covenant.

Belgium has a number of provisions of law expressly designed to penalize racist acts and any groups hostile to human rights. The enforcement of anti-racist legislation by Belgian courts will also be discussed.

Legislation containing provisions expressly designed to penalize racist acts and any groups hostile to human rights

–Under the Act of 12 February 1999 *inserting an article 15 ter into the Act of 4 July 1989 on the limitation and control of expenditure in respect of Federal elections and the financing and accounting transparency of political parties, and an article 16 bis into the Acts on the Council of State as coordinated on 12 January 1973*, public funding can be withdrawn from political parties that openly display hostility to the rights and freedoms enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 15 *ter*). The Act of 17 February 2005 *amending the Acts on the Council of State as coordinated on 12 January 1973, and the Act of 4 July 1989 on the limitation and control of expenditure in respect of Federal elections and the financing and accounting transparency of political parties* (M.B., 13 October 2005) lays down the procedure that should be followed before the Administration Section of the Council of State and permits the actual implementation of the public funding withdrawal mechanism.

The mechanism has also been supplemented by the adoption of the Royal Decree of 31 August 2005 *regulating the time frame and procedure for dealing with applications under article 15 ter of the Act of 4 July 1989 on the limitation and control of expenditure in respect of federal elections and on the financing and accounting transparency of political parties* (M.B., 13 October 2005).

Under the Act, a complaint may be brought before the Council of State by a minimum of one third of the members of the electoral commission responsible for monitoring the funding of political parties, where it appears that the party has failed to respect human rights or engaged in racist behaviour. The Council of State is competent to rule on the merits of the complaint.

Public funding for political groups within the federated entities is accorded only to political parties constituting a recognized political group and may be withdrawn by the

parliaments of the French community, the Walloon Region or the Brussels Capital Region if a member of any such group has been convicted under the Act of 30 July 1981 *to suppress certain acts based on racism or xenophobia* or the Act of 23 March 1995 the Act of 23 March 1995 *prohibiting the denial, minimization, justification or approval of the genocide committed by the German National Socialist regime during the Second World War*, or where the political party itself has been convicted under article 15 *ter* of the Act of 4 July 1989 referred to above. The regulations of the Flemish Parliament also explicitly state that it may withdraw the funding allocated to a party found guilty of racism.

– The Act of 4 May 1999 *instituting criminal liability for corporate entities* applies, *inter alia*, to racist offences that are an integral part of the activities of the corporate entity concerned.

– On 27 March 2007, a draft bill that would have banned racist, negationist and neonazi organizations was tabled by Members of Parliament from all the Government parties at that time. However, the bill died on the order paper when Parliament rose in 2007.

The Minister of the Interior informed Parliament that he would like to have neonazi gatherings prohibited by law. Accordingly, a new draft bill was tabled in the Chamber of Representatives on 8 May 2008 *amending the Act of 29 July 1984 prohibiting private militias for the purpose of prohibiting undemocratic groups*.

– Lastly, the issue of racist, xenophobic or anti-Semitic acts has been addressed above in the comments to article 2, in which the new anti-discrimination legislation of 10 June 2007 and the Federal plan for combating racism, anti-Semitism and xenophobia, in particular, were discussed.

Application of anti-racist legislation to political parties

Trial of the former Vlaams Blok political party

Under an Act of 7 May 1999 amending article 150 of the Constitution, competence to try “press offences” of a racist nature was transferred from the Courts of Assize to the criminal courts, which means the criminal courts may henceforth try not only press offences punishable under the Act of 30 July 1981, but also other press offences such as defamation and libel (Criminal Code, article 443) and negationism (Act of 23 March 1995). This Constitutional amendment has greatly facilitated prosecution. An important aspect of article 150 of the Constitution is the narrower interpretation now given to the notion of “political offences”, which remain subject to the jurisdiction of the Courts of Assize. This, too, has made it easier to mount prosecutions to counter racism, as the trial of the former Vlaams Blok party clearly shows.

On 26 February 2003, the Brussels Court of Appeal upheld the criminal court’s ruling at first instance, declaring itself not competent to try the three NPAs linked to the Vlaams Blok party for violation of the 1981 Anti-Racism Act. In its judgement, the Court of Appeal stated that if the acts for which the three associations were being prosecuted were proved, they would have been committed by Vlaams Blok, a political party and thus in effect an institution, and would consequently have constituted a “political offence”, which the Court of Assize had sole competence to try.

On 18 November 2003, the Court of Cassation struck down this judgement, recalling that the concept of a “political offence” was clearly defined and that the circumstance of the offence’s having been committed in order to allow a political party to express itself did not imply a political offence within the meaning of article 150 of the Constitution. In this ruling, the Court of Cassation applied a much narrower interpretation of the concept of a “political offence” than the lower courts had done. It referred the case

for consideration to the Ghent Court of Appeal, which on **21 April 2004** handed down a final judgement sentencing the three NPAs to fines of €12,394.67 each for contravening the Act of 30 July 1981 (membership of a group inciting to racial discrimination; criminal liability of the NPAs under the Act of 4 May 1999, although this did not apply to the Vlaams Blok, since the party had no status as a corporate entity).

In its ruling, the Ghent Court of Appeal found that the Flemish nationalist party's propaganda was "standing incitement to segregation and racism" and noted that the party had not renounced its discriminatory 70-point manifesto. The Vlaams Blok petitioned the Court of Cassation for a reversal of the decision, but on 9 November 2004 the Court of Cassation upheld the judgement of the Ghent Court of Appeal. The Vlaams Blok party was then dissolved and on 14 November 2004 took on a new identity, Vlaams Belang, or "Flemish Interest".

Recent decision against the leadership of an extremist political party active in the French-speaking part of the country

On 18 April 2006, the Brussels Court of Appeal found the President of the Front National, Daniel Féret, and his assistant guilty of incitement to racial hatred, discrimination and segregation. The assistant was additionally sentenced to a 10-year suspension of the right to stand for election and 250 hours of community work in the field of immigrant integration. The Court condemned not only the tracts put out by the Front National, but also the party's manifesto. The President of the FN petitioned the Court of Cassation for a reversal of the decision, but the Court declined to do so.

Trial of Vlaams Belang under article 15 ter of the Act of 4 July 1989

Since May 2006, the *Vlaams Belang* party, which is the successor to the Vlaams Blok, has been on trial before the Council of State under article 15 *ter* of the above-mentioned Act of 4 July 1989. The Council of State is currently considering the case.

II. Changes since the previous report

2.1 International commitments

There have been no international commitments in this area since the previous report.

2.2 Developments in domestic law

Strengthening of anti-racism legislation in the interests of more effective enforcement

Belgian legislation aimed at combating discrimination, including racial discrimination, has been extensively amended since the previous report. A discussion in greater depth will be found in the comments on article 2 under the heading "federal legislation aimed at combating discrimination".

Sensitivity training for police officers

This issue was discussed in detail in the comments made in response to concluding observation 12.

Sensitivity training for prison officials

Officers working in prison establishments receive basic training upon appointment. Since 1 January 2006, that training has consisted of a six-week course featuring a horizontal approach to the issues of racism, xenophobia and discrimination.

Action to combat racism and promote intercultural dialogue

A Federal plan of action *to combat racism, antisemitism, xenophobia and violence associated with those phenomena* was approved on 14 July 2004. It has already been feasible to translate a number of the points covered in the plan into practical form, including:

- An information campaign aimed at the general public following the enactment of new Federal legislation on 10 May 2007.
- Awareness of anti-racism and anti-discrimination legislation integrated into the training of working police officers and recruits and the training of magistrates.
- Action on response to complaints: circular COL 6/2006¹⁰⁷, adopted in April 2006, has led to heightened awareness in public prosecutors' offices of racism or anti-Semitism as motives in some offences.
- Action to combat racism and discrimination on the Internet: an officer of the Centre for Equal Opportunity and Action to Combat Racism has been working on a full-time basis since 2005 on the issue of racism on the Internet. To date, a publication has been issued, a Web site set up and a training module developed¹⁰⁸.
- The effort to combat prejudice has given rise to action in the schools (the "Schools for Democracy" project, which ended in 2006).
- As regards the media, an awareness and research campaign has been conducted in cooperation with the Belgian Professional Journalists' Association¹⁰⁹.
- Progress has also been achieved in making police services aware of the issue of racism, primarily owing to a memorandum about the contents of circular COL 6/2006.
- A "Tolerance Barometer" has been developed. It has three components: it measures attitudes toward immigrants and/or ethnic minorities and attitudes toward ethnocultural and religious diversity in Belgium, using a quantitative survey of a representative sample of the Belgian population; it measures discrimination and racism using aggregated tests; and it measures extent of social exclusion among groups that are victims of racism and discrimination in certain areas of society, using statistical analyses based on existing data. The Tolerance Barometer is expected to afford a means of conducting periodic assessments of current policies to begin with, and subsequently it should be useful in developing more satisfactory methods that are more effectively targeted.

¹⁰⁷ Circular COL6/2006, a publication of the College of Senior Crown Prosecutors at Courts of Appeal, may be consulted at <http://www.hrpol.be/PDF/POLICE/FEDPOL/DGP/DPI/COL206-200620.pdf>.

¹⁰⁸ <http://www.cyberhate.be>.

¹⁰⁹ See <http://www.diversite.be/?action=onderdeel&onderdeel=111&titel=M%C3%A9dias>.

Enlargement of the operational scope of the Centre for Equal Opportunity and Action to Combat Racism

In February 2004, in the wake of an outbreak of anti-Semitic acts in Belgium, the Centre for Equal Opportunity and Action to Combat Racism was tasked with two new missions:

- Establishing a “watch unit” to be responsible for conducting a proactive policy of receiving, analysing and systematically following up on any complaint about anti-Semitic acts;
- Organizing, in collaboration with the Minister of Justice and public prosecutors’ offices, systematic coordination with the main Jewish community organizations on following up complaints.

Action to reinforce education for responsible, active citizenship*French Community*

The decree of 12 January 2007 *on action to reinforce education for responsible, active citizenship within organized or subsidized establishments* (M.B., 20 March 2007) has been applicable in all compulsory education schools since September 2007.

An educational coordination project entitled “Democracy or Barbarism” (DOB) is also being used to heighten teachers’ and pupils’ awareness of citizenship education and education for human rights¹¹⁰.

¹¹⁰ Further information will be found at <http://www.enseignement.be/dob>.

Article 21
(Right of peaceable assembly)

In the light of the remarks relating to article 16 made in Belgium's fourth periodic report¹¹¹, no further comment is called for here.

¹¹¹ CCPR/C/BEL/2003/4.

Article 22 (Freedom of association)

Changes since the previous report

1. International commitments

On 19 December 2003, Belgium ratified International Labour Organization No. 141 on Rural Workers' Organisations.

2. Domestic developments

French Community

The Decree of 17 July 2003 relating to support for associative action in the area of lifelong education aims at *“developing associative action in the field of lifelong education for a critical analysis of society, stimulation of democratic and collective initiatives, development of active citizenship and the exercise of social, cultural, environmental and economic rights from a perspective of people’s individual and collective emancipation, assigning priority to active participation of the target public and to cultural expression.”*

Article 23 (Protection of the family: right to marry and to found a family)

Changes since the previous report

1. International commitments

There were no new international commitments during the period covered in this report.

2. Domestic developments

The “Family Estates-General”

“Family Estates-General” conferences were organized between 2004 and 2006, bringing together institutional stakeholders at the federal, community, and regional levels as well as field workers, with the objectives of “understanding the family in all its variety and supporting it more effectively”¹¹².

Medically assisted procreation

The Act of 6 July 2007 *on medically assisted procreation and the use of surplus embryos and gametes (M.B., 17 July 2007)* has established a clear legal framework for medically assisted procreation, which was already a reality in Belgium.

This Act clearly defines authorized practices and sets the associated conditions (a written agreement with the prospective parents, anonymity in the donation of surplus embryos or gametes, action relating to filiation).

Support for parents in their educational tasks

The measures outlined below have been adopted with a view to supporting parents in their educational tasks.

- *Maternity leave:* Beginning on 1 January 2006, self-employed mothers received 71 child-care service vouchers when they resumed work after maternity leave. A child-care service voucher is a means of paying for home services (cleaning, laundry, ironing, preparation of meals, etc.) delivered by an approved provider. This is a form of public financial support. As of May 2007, the number of vouchers has been increased to 105, and self-employed mothers have been entitled to take eight weeks of maternity leave. Maternity leave for self-employed persons and the associated benefits had already been doubled once before, on 1 January 2003, to six weeks and €1924.06.

- *Parental leave:* Since 2006, parents have been entitled to take parental leave, i.e. leave enabling them to devote themselves to their children’s education, up to the child’s sixth birthday (in the past, they were required to take it during the child’s first four years), with a greater measure of flexibility. In 2006 the compensation benefit was increased to €637 per month for a full-time worker.

¹¹² The report on the Family Estates-General, containing recommendations available at the Web site <http://www.lesfamilles.be>, continues the work of providing information and disseminating results.

- *The stimulating role of the father:* Since 1 July 2002, fathers have been entitled to ten days of leave upon the birth of a child. An information campaign aimed at prospective fathers was organized, and awareness in the workplace was heightened through the European “active fathers” project, which in Belgium was coordinated by the Equality Institute. A brochure entitled “Choosing involvement” was published and 300 000 copies of it distributed through various channels. The theme was also made the subject of a short dramatic presentation (available on video and DVD) which was distributed by Government authorities and also by private employers and trade unions.

Support for families with disabled dependent children

The system of family allowances for disabled children was extensively overhauled as a result of amendments to the coordinated *Acts on family allowances for employees*. Under the Royal Decree of 3 May 2006 *amending article 47, paragraph 2, of the coordinated Acts on family allowances for employees*¹¹³ and the Royal Decree of 28 March 2003 *giving effect to articles 47, 56 septies and 63 of the coordinated Acts on family allowances for employees and article 88 of the framework legislation (I) of 24 December 2002 (M.B., 1 June 2006)*, family allowance supplements for certain categories of children were increased beginning 1 May 2006. In addition, a new category was established to enable certain children in exceptional situations to qualify for the same benefit.

The situation of self-employed workers with disabled children took a turn for the better in 2003, when the system of augmented allowances for disabled children under 21 years of age was overhauled pursuant to the framework legislation of 24 December 2002. Furthermore, the amount of the supplementary allowance was increased by Royal Decree beginning 1 May 2006. Lastly, an upward revision in the age limit for children with disabilities who are entitled to this benefit is currently under consideration both for self-employed workers and for employees.

Custody and living arrangements for children

Under the Act of 18 July 2006 *providing for equality in the living arrangements of children whose parents are separated and regulations governing enforcement in the matter of children’s living arrangements (M.B., 4 September 2006)*, children’s living arrangements should preferably be determined by agreement between the parents in all cases.

The agreement reached by the parents is endorsed by the court, except where it is clearly contrary to the child’s interests. Failing agreement between the parents, in cases where custody is shared, the court will, at the request of one of the parents, consider the feasibility of ordering, on a priority basis, that the child shall live with each parent equally. However, if the court considers that for specific reasons having to do with the particular case before it equal living arrangements are not the most appropriate solution, it may order that the child shall live primarily with one of the parties and secondarily, for a shorter period of time, with the other. The court’s ruling is framed with a view to ensuring above all that the interests of the children and those of the parents are taken into account.

Study on the issue of divorce in Flanders

In 2007, the Flemish Minister for Welfare introduced a number of measures aimed at providing support for parents and children involved in separation or divorce proceedings.

One of these concerns the designation of five additional resource persons in neutral meeting spaces, which are designed as a means of maintaining contact between parents and children, even in difficult divorce cases. Neutral meeting spaces are premises where fathers

¹¹³ *Acts on family allowances for employees*, coordinated on 19 December 1939.

or mothers can re-establish contact with their children after a divorce (under surveillance and with resource persons in attendance), regardless of whether the parents are involved in judicial proceedings (not to say a legal battle). The objective is to enable parents and children to work out the terms and conditions of visiting rights for themselves.

A second measure provides for additional resources for basic training and upgrading for family mediators working in welfare centres.

The third and fourth measures address the issue of increased participation by children in divorce proceedings through an appropriate working method on the one hand and a “divorce guide” on the other. The former project seeks to ensure that children whose parents have opted for mediation feel that they have been taken into account in the divorce. The latter project is structured around the fact that parents and children confronted with an evolving family situation need information. To respond to that need, a guide to divorce entitled “Twee huizen” (two houses) is being prepared; it contains information on various aspects of separation and the organization of a “post-separation” situation.

Lastly, training sessions for parents and children are being developed with welfare centres. Parents and children will learn how to develop the skills required in order to communicate with each other, take all concerned into account and express their feelings, with the aim of ensuring the children’s continued positive development.

Establishment of a support payments service (SECAL)

The Act of 21 February 2003 *establishing a support payments service within SPF Finance* (M.B., 28 March 2003) makes provision for the establishment of an alimony and child support payments service with a twofold mandate: to receive or recover alimony or child support payments due from the person liable for the support, and to pay out advances on child support payments for one or more specified periods. On 1 June 2004, the service began by recovering monthly alimony and child support payments and arrears on behalf of beneficiaries, i.e. children and/or ex-spouses.

Under the Royal Decree of 10 August 2005 *setting the date of entry into force of articles 3, paragraph 2, 4 and 30 of the Act of 21 February 2003 establishing a support payments service within SPF Finance* (M.B., 30 August 2005), the service has been authorized since 1 October 2005 to pay out advances on child support payments.

SECAL assists children, spouses who have been awarded support before or during divorce proceedings or after divorce, and cohabitants who have been awarded support, regardless of whether cohabitation has ended. However, assistance in the form of advances is restricted to child support payments exclusively, pending the issue of a Royal Decree extending this form of benefit to persons in other categories (spouses who have been awarded alimony before or during divorce proceedings or after divorce, and cohabitants who have been awarded support, regardless of whether cohabitation has ended).

Right to family reunification

The Act of 15 September 2006 *amending the Act on the entry, temporary and permanent residence and removal of aliens* (M.B., 6 October 2006) introduced far-reaching changes into the provisions of law pertaining to family reunification. (This issue was discussed in detail in the comments on article 12 above.)

Legal recognition of same-sex unions

Ever since Parliament passed the Act of 13 February 2003 legalizing marriage between persons of the same sex and amending certain provisions of the Civil Code (M.B., 28 February 2003), article 143, paragraph 1 of the Civil Code has provided that two persons

of the same sex may contract marriage. This means that the provisions of law relating to the conclusion, termination and effects of marriage (mutual duty of fidelity, duty of cohabitation, mutual duty of support and assistance, protection of the family home, etc.) apply to a marriage between persons of the same sex no less than to a marriage between persons of opposite sex. However, there is one fundamental difference: marriage between two persons of the same sex has no effect as regards filiation. Article 315 of the Civil Code, which provides that the mother's husband shall be presumed to be the father of any child born during the marriage or within 300 days after its termination, is thus not applicable.

The provisions of Belgian international private law relating to the conditions governing the validity of a marriage are stated to be those of the national law of each spouse. However, that law does not apply if it prohibits marriage between persons of the same sex, where one of the parties is a national of a State where same-sex marriage is lawful or who has his or her habitual residence within such a State.

Inheritance rights of legal cohabitants

Under the Act of 28 March 2007 *amending, in respect of the inheritance rights of surviving legal cohabitants, the Civil Code and the Act of 29 August 1988 on the rules of inheritance in the case of farm operations having regard to the furthering of their continuance* (M.B., 8 May 2007), persons who have made a declaration of legal cohabitation in accordance with article 1476 of the Civil Code may now inherit, by authority of law, a portion of their partner's estate. Formerly, a declaration of legal cohabitation produced no effects in respect of inheritance.

Restrictions on the right to marry

Criminalization of marriage of convenience

The Act of 12 January 2006 *amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens* (M.B., 21 February 2006) inserts a provision making the contracting of marriage with a view to benefiting in terms of residential status a criminal offence liable to prosecution. This issue has been addressed in the comments on article 12 above, and a fuller discussion will be found in that part of the report.

Criminalization of forced marriage

Under the Act of 25 April 2007 *inserting an article 391 sexies into the Criminal Code and amending certain provisions of the Civil Code to make forced marriage a criminal offence and broadening the grounds for annulment of such marriages*, an article 146 *ter* was inserted into the Civil Code (M.B., 15 June 2006) making forced marriage a criminal offence that can be annulled.

This issue has been addressed in the comments on article 3 above, and a fuller discussion will be found in that part of the report.

Divorce reform

Divorce in Belgium has been extensively reformed. The objective of the Act of 27 April 2007 *reforming divorce* (M.B., 7 June 2007) is to minimize the harmful effects of divorce on relations between parties and, even more importantly, to eliminate adversary divorce. The Act aims on the one hand to reduce very substantially argument over blame in the breakup of a marriage, and on the other hand to unify divorce procedures in order to enable transition from one to another. The main resulting changes are summarized below.

- Divorce on specific grounds, i.e. adversary divorce and divorce for de facto separation for more than two years, is replaced by divorce on the grounds of **inconsolable differences**. Differences are deemed to be inconsolable where they are such as to make it reasonably impossible for the spouses to continue or resume their life together. Evidence of inconsolable differences may be adduced by any means of law, and are presumed to exist after a de facto separation of more than six months or more than one year, depending on whether the petition for divorce is filed jointly by the spouses or by only one of them. Inconsolable differences are also deemed to be proved after reiteration of the petition for divorce at a new hearing, set after a period of three months or one year, depending on whether the petition is filed jointly or unilaterally. Once inconsolable differences have been established, the court issues a decree of divorce.
- Divorce by **mutual agreement** is still possible, but the procedure has been made more flexible: the requirements that the parties must be at least 20 years of age and that the marriage must have lasted at least two years have been abolished.
- The Act has also introduced amendments in the matter of alimony between spouses. In contrast, the provisions of law concerning child support remain unchanged. The main innovations in the matter of alimony are summarized below:
 - Where there is no agreement between the parties, the above-mentioned Act provides that in a case of divorce on the grounds of inconsolable differences, the court may, at the request of the spouse in need, order the other spouse to pay alimony;
 - The court shall determine the amount of the alimony, which shall be adequate to cover, at a minimum, the beneficiary's needs and shall not exceed one third of the income of the spouse making the payments;
 - One more significant innovation introduced by the Act is a time limit on the payment of alimony: alimony may not be paid for a period of time exceeding the duration of the marriage, unless there are exceptional circumstances.
- Lastly, the Act makes provision for the possibility of transition from one procedure to the other, in case relations between the spouses should change in the interim. For example, where the spouses have filed a petition for divorce by mutual agreement but one of them changes his or her mind in the course of the proceedings, one of the parties may petition the court for a transition to the procedure for divorce on the grounds of inconsolable differences.

Non-recognition of repudiation

The Act of 16 July 2004 *containing the Code of International Private Law (M.B., 27 July 2004)* formulates the principle of the non-recognition of repudiation. This issue has been addressed in the comments on article 3 above, and a fuller discussion will be found in that part of the report.

Mediation

Articles 734 *bis* to 734 *sexies* of the Judicial Code, dealing with family mediation, were abrogated by the Act of 21 February 2005 *amending the Judicial Code in the matter of mediation (M.B., 22 March 2005)*. Mediation in family matters is now integrated into the more comprehensive framework of mediation formulated in the Judicial Code (articles 1724 to 1737). Mediation may be adopted in the family disputes listed in article 1724 of the Judicial Code. Voluntary mediation (where one party suggests mediation quite apart from any judicial proceedings that may be under way, before, during or after those proceedings)

is to be distinguished from judicial mediation (where a judge who is to hear a case may, at the request of the parties jointly or on his own initiative but with the consent of the parties, order mediation at any time provided the case has not been taken under consideration).

Family mediation is also used in cases of international child abductions and efforts to reach agreement between parents, in the child's overriding interests, concerning his or her primary and secondary place of residence.

Article 24 (Protection of the child)

I. Response to the Committee's recommendations

Concluding observation 28

The Committee takes note of the new Act designed to boost the protection of children against the various forms of sexual exploitation, but is concerned at the frequency with which cases of sexual violence involving children occur (art. 24).

The State party should take all necessary steps to protect children in all areas in order to put an end to the cases of sexual violence of which they are victims.

In recent years, the issue of the protection of children from sexual violence has been an object of particular concern on the part of the Belgian authorities, and that concern has been expressed in a wide range of measures at both the international and national levels. Those measures are summarized below. In addition, statistical data on incidents identified, prosecutions and convictions are appended to this report¹⁴.

International level

– On 9 February 2006, Belgium ratified the Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography.

– On 25 October 2007, Belgium also signed Council of Europe Convention No. 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse. That Convention is the first international instrument under which the sexual abuse of children is criminalized, including abuse occurring at home or within the family and involving the use of force, coercion or threats. Pursuant to the Convention, States are required to take measures to prevent all forms of sexual exploitation and sexual abuse of children.

– Belgium worked in close collaboration with an independent expert, Professor Pinheiro, in drafting a United Nations study on violence against children.

The conclusions of Professor Pinheiro's study are a call to the international community. They imply, on the part of every State, measures and, where appropriate, national mechanisms expressly designed to prevent and combat all forms of violence against children. Belgium is currently considering the recommendations of the study in collaboration with all relevant agencies.

Mechanisms established within Belgium

Action to combat people-smuggling and trafficking in human beings

Belgium has established an extensive system for combating people-smuggling and trafficking in human beings. This issue has been addressed in the comments on article 8 above, and a fuller discussion will be found in that part of the report. However, in order to respond to this observation, it may be useful to review the provisions of law outlined below, all of which are concerned with children.

¹⁴ Annex VI.

- Article 433 *quinquies* makes trafficking in human beings a criminal offence, referring on the one hand to articles 379 and 380, paragraph 4, of the Criminal Code, which criminalize the exploitation of minors for purposes of debauchery, corruption or prostitution, and on the other hand to article 383 *bis* of the Criminal Code, dealing with child pornography.
- In cases of sexual offences, the period of the statute of limitations runs only from the day on which the victim turns 18 years of age. This represents a substantial improvement in the status of victims.
- Under article 10 *ter* of the Preliminary Title of the Code of Criminal Procedure, any person, whether Belgian or alien, who has committed a serious act of sexual exploitation or sexual abuse in a foreign country is liable to prosecution in Belgium.

Action to combat child abuse

In response to the 1997 report of the National Commission against Sexual Exploitation of Children, two working groups were established (one French-language and one Dutch-language) with a twofold mandate: to harmonize not only the judicial, protective and punitive approach but also the psychological, medical and social approach to child abuse. In 2006-2007, the working groups' recommendations were updated at the request of the Minister of Justice. The two working groups developed a step-by-step plan — a response protocol reinforcing coordination among the various agencies involved (police, judiciary, welfare workers) and establishing an equivalent assistance procedure for every child.

The response protocols were sent in the form of circulars to all public prosecutors' offices and police services. The protocol produced by the French-language working group was signed by all the competent authorities. The protocol produced by the Flemish working group also included a plan of approach to the issue of child abuse, with recommendations which are currently being examined within the Cabinet of the Minister of Justice.

Information and awareness brochures have been prepared and distributed by SPF Justice in cooperation with the Communities.

In addition, the Communities have developed their own initiatives.

French Community

The Decree of 12 May 2004 *on assistance to victims of child abuse* (M.B., 14 June 2004) makes provision for the protection of and assistance to children who have suffered abuse. Child abuse is defined as “any situation involving physical violence or mistreatment, sexual abuse, psychological violence or serious negligence jeopardizing the child's physical, psychological or affective development; an abusive attitude or abusive behaviour, whether intentional or unintentional.”

This decree is structured around four main lines of emphasis:

- A coordinated response to child abuse situations with involvement of all professional personnel concerned with the child and his or her family, having regard to their respective mandates, capabilities and areas of competence, with a view to organized action by a team of qualified authorities;
- Child abuse situations should be dealt with by multidisciplinary teams, namely the “SOS Children” teams, which possess a range of skills ensuring an approach that is simultaneously medical, psychiatric, psychological, social and legal;

- Establishment of a Support and Guidance Committee for Abused Children within ONE to serve as the internal scientific authority on all matters relating to support for child abuse victims and “SOS Children” teams;
- Continuing training for working professional personnel and information for the general public.

One final development should be noted, namely the establishment of the YAPAKA¹¹⁵ programme, the accomplishments of which include the “Temps d’arrêt” (Stop time) collection, a free publication, printed in 10 000 copies, that provides professional personnel with little booklets containing reference material and thoughtful articles on child abuse; the organization of training cycles, lectures and professional development days; an electronic newsletter which is available by subscription; action to heighten public awareness through TV and radio commercials, supplemented by a magazine; and a blog, 100 drine (<http://www.100drine.be>) aimed at adolescents.

Flemish authority

A Flemish Strategic Plan for the Prevention and Elimination of Violence, Moral Harassment and Sexual Harassment in Schools was finalized in 2003. It contains two parts devoted to children: a prevention plan and an action plan. The plan was sent to every school, and can be downloaded at the site <http://www.ond.vlaanderen.be/antisocial>. In addition, awareness campaigns on the issue were organized in 2004 and 2005.

Furthermore, a new protocol was developed in 2007, namely the “Plan van Anpak Kindermishandeling” (Plan for combating child abuse). This “directive” is currently being implemented in the various provinces. By 2009, the Kind en Gezin Agency expects to have developed a training course that will enable it to pursue its coaching for regional focal points on the management of child abuse in all forms.

Two new cooperation protocols

Child Focus (the European Centre for Missing and Sexually Abused Children) is dedicated to the task of providing, at both national and international levels, active support for investigations into cases of children who have disappeared or been abducted or sexually abused. In addition, the organization tries to combat and prevent these phenomena. In June 2002, a cooperation protocol was signed between CF’s non-police contact points and the judicial and police authorities who combat child pornography on the Internet.

In 2007, two new protocols were signed, regulating cooperation between Child Focus and the judicial and police authorities who deal with cases of missing and sexually abused children.

The first of these protocols governs cooperation between Child Focus, the judicial authorities and police authorities who deal with missing and sexually abused children. The protocol was originally signed in 1998, and was evaluated in 2001 and 2007.

The second protocol governs cooperation between Child Focus’s citizen contact point (childfocus-net-alert) and the police and judicial authorities in the issue of child pornography on the Internet.

In a recent report to the Human Rights Council (A/HRC/4/31), the Special Rapporteur on the sale of children, child prostitution and child pornography, J. M. Petit, commented on the effective operation of the Belgian organization, Child Focus.

¹¹⁵ All initiatives undertaken under this programme and its suggested tools may be consulted at the site <http://www.yapaka.be>.

Negotiation of a new protocol between the Federal State and ISPA (Internet Service Providers Association)

A protocol for collaboration to combat unlawful acts on the Internet, concluded between the Federal State and ISPA (Internet Service Providers Association) on 28 May 1999, was recently evaluated, and subsequently a new protocol was negotiated. This new protocol is yet to be signed by the competent ministers and the ISPA. The protocol provides that if an ISP observes some presumably unlawful content or a user attracts its attention to this type of information, it must inform the Federal Police integrated complaints office. This integrated contact point then decides what action to take on the possibly unlawful information. Should it decide to take the matter up, the file is then transmitted to the competent authorities for subsequent action. The ISPs undertake to cooperate with the competent authorities and to comply with their instructions, in accordance with the law.

Opening of an online integrated complaints window

A central system for the reporting of presumably unlawful information on the Internet. This system, known as the online integrated complaints window of the Federal police (<http://www.ecops.be>), has been operational since early 2007. It has thus become the Belgian reference point for any user wishing to report certain abuses noted on the Internet, including child prostitution.

Prevention of sex tourism

A number of new initiatives aimed at the prevention of sex tourism were programmed in 2007:

- A European conference on the theme “travelling abusers in Europe”, dealing with sex tourism. The conference brought together the travel industry, NGOs and police services, and its declared purpose was to optimize cooperation among the various concerned bodies.
- An approach to Belgian universities and/or specialized institutions of higher education with a view to encouraging them to organize specific training on this issue as part of their curricula.
- Organization of a new awareness and prevention campaign aimed at the general public, and updating of the Internet site of the previous campaign, <http://www.stopprostitutionenfantine.be>.

Evaluation of standards relating to sexuality involving or presenting primarily underage persons

Standards relating to forms of sexual violence toward minors have been evaluated in an effort to enhance the effectiveness of existing mechanisms. The standards that were evaluated in this fashion were: some of articles 372 to 389 of the Criminal Code (issues relating to morality) and articles 10 *ter* and 21 *bis* of the Preliminary Title of the Code of Criminal Procedure (foreign location, period of statutory limitation); the Act of 27 March 1995 *inserting an article 380 quinquies into the Criminal Code and abrogating article 380 quater, paragraph 2, of that Code* —now article 380 *ter*— (advertising of sexual services); the Act of 13 April 1995 *on the sexual abuse of minors*; the Act of 13 April 1995 *containing provisions aimed at combating people-smuggling and trafficking in human beings*, which was aimed primarily at child pornography; the Act of 28 November 2000 *on the protection of minors under the criminal law*; the ministerial circular of 16 July 2001 *on the making of audio-visual recordings of hearings of minors who have been victims of offences or have witnessed offences*, and the Protocol for collaboration to combat unlawful acts on the Internet (ISPA).

The evaluation covered issues relating to offences which, at the federal level, involved or presented primarily underage persons¹¹⁶.

II. Changes since the previous report

In addition to the measures discussed above in response to concluding observation 28, other measures have been taken in an effort to combat people-smuggling and aggravated forms of trafficking in human beings, child pornography, missing children and the exploitation of children. These measures are summarized in the paragraphs below.

2.1 International commitments

On 26 May 2005, Belgium ratified the Hague Convention of 29 May 1993 *on Protection of Children and Cooperation in Respect of Intercountry Adoption*.

The objects of the Convention are to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law; to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children; and to secure in Contracting States recognition of adoptions made in accordance with the Convention. The Convention establishes a legal framework for intercountry adoption by setting forth the conditions governing it, the proper procedure, and the effects, making provision for the establishment of specialized bodies.

2.2 Domestic developments

National plan of action on children

A national plan of action on children was adopted by the Federal State and the federated entities and, in March 2006, communicated to the Minister for Foreign Affairs for transmission to the Secretary-General of the United Nations. It may be consulted at the SPF Justice Internet site: <http://www.just.fgov.be>. The plan addresses a variety of issues, including the establishment of a national commission for the rights of children, health care, foreign unaccompanied minors, action to combat people-smuggling, action to discourage smoking, education, and the like. Some of these issues are discussed more particularly further on in this report.

Flemish Authority

The Flemish Community had prepared its own plan of action on the rights of the child as long ago as 2004 (see <http://www.vlaanderen.be/kinderrechten/>). In 2005, that plan was incorporated into Belgium's national plan of action on children. The Flemish plan of action was also one of the foundation-stones of the second "Vlaams jeugdbeleidsplan 2006-2009" (JBP2) (strategic plan for young people, 2006-2009), which was approved by the Flemish Government on 16 December 2005.

¹¹⁶ The report is available at the Internet address <http://www.dsb-spc.be/doc/pdf/Evaluation-lois-1995.pdf>.

National Commission for the Rights of the Child

A cooperation agreement providing for the establishment of a National Commission for the Rights of the Child was concluded between the Federal State and the federated entities on 19 September 2005. The establishment of the Commission was primarily a response to a recommendation formulated by the Committee on the Rights of the Child, and in recognition of the need for a mechanism to provide coordination among the several entities.

The Commission is mandated primarily to contribute to the preparation of the periodic reports submitted every five years on the implementation of the Convention on the Rights of the Child and other instruments with a bearing on the rights of the child. It also examines and oversees action to implement the recommendations of the Committee on the Rights of the Child and could, if necessary, issue an opinion on any of a number of issues arising in that connection.

The membership of the National Commission for the Rights of the Child is broadly based, including as it does all Ministers and Secretaries of State with responsibility for child-related issues, both at the Federal level and at the level of the federated entities. Civil society is also extensively represented on the Commission, with delegates for the rights of the child, representatives of the legal professions, the College of Senior Crown Prosecutors, the universities, the provinces, cities and communes, UNICEF Belgium, NGOs, associations representing children, and the like). This ensures that the Commission's second purpose is attained: the Commission initiates ongoing dialogue on the rights of the child between the political sphere and civil society.

The Commission is entirely funded by the Governments of the Federal State and the federated entities.

The “Vlaamse Kenniscentrum Kinderrechten” (Flemish centre for information on children’s rights)

In 2004, the Flemish Government decided on integrated follow-up action on its policy relating to the rights of children and young people. The International Convention on the Rights of the Child constitutes its legal and ethical frame of reference. The integration of Flemish policy on the rights of children and young people was given material form in the new decree of 18 July 2008 on the conduct of a Flemish policy in the matter of the rights of children and young people, which will replace both the decree of 15 July 1997 *instituting an impact report and monitoring of government policy on safeguarding children’s rights* and the decree of 29 March 2002 *on Flemish youth policy*. The new decree was the outcome of a far-reaching consultation exercise covering Flemish civil society. Youth organizations, youth activity organizations, and organizations concerned with children’s rights were contacted and intensively consulted. In addition, the Children’s Rights Commissioner, the Flemish Youth Council and the Flemish Coalition for Children’s Rights again addressed the Flemish Parliament. The integrated policy that is the object of the exercise is being pursued by various means, including the addition of “children’s rights” as a criterion for the youth policy plan that the Flemish Government is required to submit to the Flemish Parliament not later than 18 months after the beginning of each session, expansion of the impact report to include not only impacts on children but also on adolescents, the consolidation of existing activity reports on children’s rights and youth policy plan monitoring, the use of decrees to ensure the presence of persons responsible for children’s rights and youth policy within the Flemish administration, and the use of decrees to make provision for a youth monitor and grants for children’s rights.

The last-named of these initiatives is being realized by the establishment of a centre for information on children’s rights, which will serve as the lead Flemish institution in the

field of the rights of children and adolescents. The aim is to ensure that the expertise which has been developed in Flanders in the field of children's rights will enjoy a more structural and more autonomous position within Flemish policy in that area. The Centre will build on the expertise and experience of the Centre for Children's Rights established in 1978 by Professor Verhellen of the University of Ghent with support from the Flemish authorities. Another desideratum is operating grants and project grants for specific information- or awareness-related initiatives designed to promote children's rights (articles 35 and 38), and operating subsidies for reporting on children's rights (article 35).

Act to supplement the protection of minors under the criminal law

The Act of 10 August 2005 *to supplement the protection of minors under the criminal law* (M.B., 2 September 2005) inserts a provision into the Criminal Code under which persons who use minors to commit offences are liable to heavier penalties. This is necessary because adults, taking into account the specific approach adopted in cases involving minors in accordance with the Youth Protection Act, have been known to use minors to commit offences, hoping thereby to avoid prosecution while continuing to profit from the offences committed by the minors.

The same Act was used to insert into the Criminal Code most of the provisions governing criminal offences in the Youth Protection Act, thereby extending the protection of minors under the criminal law. Some of the provisions in question are concerned with the publication and dissemination of arguments in court in cases involving minors, while others are concerned with family allowances and welfare benefits.

International parental abductions and cross-border visiting rights

Concerted action is being developed by the Belgian Government both internationally (Hague Conference on International Private Law, Council of Europe, European Union) and nationally (cooperation among the various Belgian agencies with jurisdiction in the matter of international abductions of children: SPF Justice, SPF Foreign Affairs, judicial authorities, Child Focus).

Various initiatives have been undertaken with a view to more effective action by the public authorities in cases of international parental abductions.

- A Federal "International child abduction" contact point was inaugurated at SPF Justice on 27 January 2005. Its functions are as follows:
 1. Centralization and dissemination of all first-line information with a bearing on international child abduction and cross-border visiting rights (prevention aspect included). Brochures, telephone directory listings;
 2. Handling of individual cases, including coordination with other relevant agencies;
 3. Steering parties to other competent agencies, such as SPF Foreign Affairs, the Belgian courts or foreign courts, in cases that do not fall within the remit of SPF Justice;
 4. Psychological support for families in individual cases;
 5. An intervention fund used to provide financial assistance for families, primarily for the purpose of covering, in whole or in part, the cost of repatriating children or the travel expenses of a parents accompanying his or her child back to Belgium.

The Federal contact point is accessible 24 hours a day, seven days a week, via a dedicated telephone line. A dedicated e-mail address (raptparental@just.fgov.be) has also been set up to handle requests for information or assistance.

- Establishment of an interministerial coordination unit and a focus group comprising representatives from the competent federal authorities (administrations, magistrates, police officers) and various experts.
- Passage of the Act of 10 May 2007 *implementing Council Regulation (EC) No. 2001/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and matters of parental responsibility, the Luxembourg European Convention of 20 May 1980 and the Hague Convention of 25 October 1980 (M.B., 21 June 2007)*. This Regulation contains provisions supplementing the Hague Convention of 25 October 1980 *on the Civil Aspects of International Child Abduction* for the purpose of expediting judicial and legislative procedures aimed at securing the return of a child to the country of his or her habitual residence. New provisions are also applicable in the State in which the child is unlawfully present, including in particular a requirement that the child must be heard and a stipulation that the proceedings must not last more than six weeks from the date at which the matter is laid before the court. In addition, there are restrictions on the power of the court in the State in which the child is unlawfully present to refuse to allow him or her to return; in some cases, ultimate authority rests with the court in the country of the child's habitual residence.
- Reference magistrates in matters of international child abduction were designated in 2006 for the purpose of facilitating cooperation between the Federal contact point and the Office of the Public Prosecutor.
- A protocol on cooperation among Child Focus and the judicial authorities, SPF Justice and SPR Foreign Affairs *in matters of international parental abduction and cross-border visiting rights* was signed on 27 April 2007. Under that protocol, the various agencies concerned agree to exchange information on a regular basis and to hold coordination meetings on individual cases.
- An information leaflet on the issue of international parental abduction was published in 2006 by the Federal contact point in collaboration with SPF Foreign Affairs and Child Focus¹¹⁷.

Protection of minors on the Internet

Various initiatives aimed at generating awareness of the potential dangers lurking for minors on the Internet have been launched.

The Belgian SAFER INTERNET consortium was founded in 2005. It is part of the European Commission's "Safer Internet Plus" programme, and brings together all partners who can act at the national level for a safer Internet environment. In pursuit of this objective, various actions are being undertaken, including studies and awareness campaigns aimed at a broad audience. The platform for a safer internet has set up a web site of its own. It draws attention to the serious hazards that may await children and adolescents on the Internet and other forms of communication such as GMS, text messaging, etc.: child pornography, discrimination, sects, on-line gambling, technical risks and so on.

¹¹⁷ The leaflet is available at the SPF Justice web site: <http://www.just.fgov.be>.

The web sites below have been set up for the purpose of providing information about the dangers of the Internet and what to do about them:

- www.web4me.be (OIVO ICRI, 2005, aimed at 14-18 year-olds);
- www.saferinternet.be (2005);
- www.clicksafe.be (2002).

Flemish Authority

Two additional web sites dedicated to Internet safety for children:

- www.gezinsbond.be/veiligonline (for parents); and
- http://www.sensoa.be/downloadfiles_shop/seks_en_internet.pdf (for children).

Assistance to young people

German-language Community

The decree of 19 May 2008 *on assistance to young persons and the implementation of youth protection measures* (M.B., 1 October 2008) brought about a fundamental reform in the applicable provisions of law.

The main lines of emphasis set forth in this decree are as follows:

- Strengthening and professionalization of prevention in the area of assistance to young people;
- Setting of the conditions governing access to files for the young persons and parents concerned, while safeguarding all requirements concerning confidentiality and the privacy of the parties;
- Setting the objective of every measure aimed at providing assistance for young persons as it concerns the young person concerned and the persons with civil responsibility for him;
- Introduction of mediation as a possible option;
- Establishment of a board mandated to conduct an ongoing analysis of needs in the area of assistance to young people, enlisting field workers for that purpose, and to formulate proposals to the Government; and
- Action to safeguard young persons' right to their family life and making the removal of young persons from their family environment subject to strict conditions.

French Community

Five years after the establishment of the Observatory on Children, Youth and Assistance to Young People, its mandate and activities were formally set in the decree of 12 May 2004 *establishing the Observatory on Children, Youth and Assistance to Young People* (M.B., 18 June 2006), as follows:

- Preparation of a standing inventory of policies and social data in the area of children, youth and assistance to young people, and of institutions and associations with competence in that area;
- Development of indicators relating to the above-mentioned social data;
- Formulation of advisory opinions on all matters within its mandate;

- Conduct or commission scientific research and studies on matters within its mandate and maintain an inventory of previously published scientific research and studies dealing with children, youth and assistance to young people in the French Community;
- Implement in the French Community the provisions contained in articles 42 and 44 of the International Convention of 20 November 1989 on the Rights of the Child;
- Promote and work to create awareness of all initiatives aimed at improving the situation of children and young persons in the French Community;
- Formulate recommendations aimed at fostering cooperation between ONE and Government services and between those services and relevant associations.

One of the Observatory's duties is to report on its activities within the European Network of National Observatories on Childhood (known as ChildONEurope) with a view to organizing exchanges of information and data and to promoting, at the European level, good practices relating to children, youth and assistance to young people.

Moreover, a standing committee to monitor the Convention on the Rights of the Child (the "standing CRC committee") has been established within the Observatory.

Every year, the Observatory submits to the Council and the Government an activity report covering the year just ended and the current state of children, youth and assistance to young people in the French Community¹¹⁸.

Foreign unaccompanied minors

The issue of minors arriving in Belgium without being accompanied by a legal representative (father, mother or guardian) has become a serious source of concern in recent years, and consequently Belgium has developed a specific regime to provide these minors with legal representation. Under Title XIII, chapter VI (entitled "Guardianship of foreign unaccompanied minors") of the framework legislation of 24 December 2002 (*M.B.*, 31 December 2002), a guardianship service was established within SPF Justice. The service, which has been operational since 1 May 2004, is responsible for overseeing specific guardianship arrangements for unaccompanied foreign minors who are applying for refugee status or are in Belgium or at the border without the requisite permits, access or residence papers. The main lines of the system for dealing with foreign unaccompanied minors are outlined below.

In this connection, an activity report by the Guardianship Service for 2004 and 2005 and a manual for guardians are available at the SPF Justice web site¹¹⁹.

The Service's activities are divided into two phases: in the first place, taking charge of minors that have been reported and identifying them, and in the second place, monitoring the guardianship after a guardian has been appointed.

Taking charge of minors

Every authority that becomes aware of the presence of a foreign unaccompanied minor in Belgium or at the frontier is required to inform the Guardianship Service. The Service "takes charge" of the minor, whereupon it can proceed to find accommodation for the minor in question, working in cooperation with Fédasil, and to attempt to determine his or her identity.

¹¹⁸ The report, along with further information about the Observatory and its activities, is available at the site <http://www.oejaj.cfwb.be>.

¹¹⁹ www.just.fgov.be.

Identification consists in determining whether the individual concerned qualifies for guardianship, i.e. determining whether he or she is under 18 years of age, is not accompanied by a parent or guardian, comes from a country located outside the European Economic Area, and either has applied for asylum or does not meet the conditions for entry to or residence in Belgium.

If the person is identified as being a minor, a guardian is appointed for him or her.

Since 7 May 2007, all foreign unaccompanied minors who appear at the border, once identified as such, and regardless of whether they are asylum-seekers, are sent initially to one of the orientation and observation centres managed by Fédasil. At the present time there are two of these centres, Neder-Over-Heembeek (NOH) and Steenokkerzeel (SOZ). They cannot be kept there for longer than two consecutive periods of fifteen days. The first of these periods is to enable the Guardianship Service to identify the minor and appoint a guardian for him or her, and the next fifteen days are to enable the guardian to find other accommodation when the minor has not applied for refugee status. Where the minor has applied for refugee status, he or she stays in a specific reception facility managed by Fédasil. Otherwise, the minor may be sent to a reception facility managed by one of the communities, a Red Cross reception centre, or a local reception initiative run by a Public Social Welfare Centre.

*Guardian's responsibilities*¹²⁰

In the performance of their duties, guardians are subject to oversight by the Guardianship Service and the justice of the peace for the minor's place of residence.

In his capacity as the minor's legal representative, the guardian, assisted by a lawyer, undertakes any necessary judicial or administrative procedures¹²¹. The guardian must ensure that the minor has a suitable place to live, that he or she is enrolled in school, and that any medical or psychological issues are appropriately dealt with. The guardian also contacts the members of the minor's family, with his or her consent.

In this framework, the guardian may formulate a proposal for a definitive solution that is consistent with the child's best interests.

To that end, the Guardianship Service advises him to gather all relevant information in the course of interviews with the minor, his or her family members, and any social worker or other expert involved with the case, and to ensure that the child is involved in the task of identifying a guardianship arrangement that is consistent with previously gathered information, and also in the formulation of a proposal for a definitive solution for submission to the Aliens Office.

A definitive solution is defined in the circular of 15 September 2005 on the residency of foreign unaccompanied minors¹²² as being either:

- Family reunification in accordance with articles 9 and 10 of the Convention on the Rights of the Child; or

¹²⁰ Guardians are accredited by the Guardianship Service. They receive preparatory training. Continuing training is also organized for their benefit. The training covers issues related to the provisions of law concerning foreign nationals, social assistance, reception in centres, programmes run by the Red Cross and the International Organization for Migration, psychosocial guidance and support, and so on.

¹²¹ This does not imply, however, that a lawyer is present at every stage in an administrative procedure.

¹²² This circular will shortly be replaced by a draft circular *on the determination of a definitive solution in the matter of the residency of foreign unaccompanied minors where a procedure under the Act of 15 December 1980 has not been initiated*.

- Return of the minor in question to his or her country of origin or a country where he has residency status with assurance that he will be received and provided with care appropriate to his needs, depending on his age and degree of independence, by his parents or other adults, or by governmental services or non-governmental organizations; or
- Authorization to stay in Belgium for an unlimited period of time, subject to the provisions of the Act of 15 December 1980 *on the entry, temporary and permanent residence and removal of aliens*

After submission of the guardian's proposal, the Aliens Office determines which definitive solution is most appropriate after considering all items in the foreign unaccompanied minor's file.

Measures concerning the residency procedure

Under the circular of 15 September 2005¹²³, the Minors Unit within the Aliens Office is responsible for determining a definitive solution for the residency of certain foreign unaccompanied minors after consideration of all items in their files. The Unit is required to make sure that the solution is consistent with the child's best interest and respect for his or her fundamental rights. Pending a definitive solution as defined above, the Aliens Office issues a document authorizing residence on a temporary basis.

Measures adopted in cases of foreign unaccompanied minors seeking asylum

The minor is accompanied and represented by his or her guardian throughout the asylum procedure, and specific measures are adopted at the hearing.

The hearing before the asylum board is adapted to the individual minor whose case is being heard. In that connection, training courses on the issue of foreign unaccompanied minors have been developed for officials specializing in asylum cases.

A cartoon-style booklet (with an accompanying explanatory leaflet outlining the successive stages in the asylum procedure) has been distributed to all foreign unaccompanied minors seeking asylum since mid-February 2008.

In addition, with a view to preserving the family unit, the asylum authorities cooperate with the guardian and the Guardianship Service in an effort to ensure family reunification in the child's best interests.

Measures adopted in cases of foreign unaccompanied minors who are victims of people-smuggling or certain forms of trafficking in human beings

Minors who are victims of people-smuggling or certain aggravated forms of trafficking in human beings are treated in accordance with specific provisions; for example, they are entitled to the immediate issue of a residence permit. Further information on the system of protection for victims of people-smuggling and trafficking will be found in the discussion on efforts to combat these phenomena in the comments relating to article 8 above.

¹²³ Circular of 15 September 2005 on foreign unaccompanied minors.

Measures adopted in cases of foreign unaccompanied minors who are to be expelled from the country

Where a foreign unaccompanied minor is to be expelled from the country, special support measures are adopted. Further information will be found in the response to concluding observation 14.

European minors who are in a situation of vulnerability

The circular of 2 August 2007 *on European minors who are in a situation of vulnerability* (M.B., 17 September 2007) provided for the establishment of an ad hoc unit within SPR Justice tasked with taking charge temporarily of unaccompanied European minors with no valid residence permit and in a situation of vulnerability, i.e. a minor who may be at risk owing to his or her illegal administrative status, unstable social situation, pregnancy, disability, poor physical or mental condition, experience as a victim of people-smuggling or trafficking in human beings, or subsistence by begging.

Acquisition of nationality

Under article 10, paragraph 1 of the Belgian Nationality Code, Belgian nationality is granted to every minor child who is born in Belgium to non-Belgian parents and who would be stateless if he or she did not have Belgian nationality.

The Act of 27 December 2006 *containing various provisions* (M.B., 28 December 2006) restricts that possibility, providing that Belgian nationality may not be granted to a child where that child can obtain another nationality through an application made by his or her parents to their diplomatic or consular authorities.

The aim of this provision is to combat statelessness that is deliberately created by parents who refrain from undertaking administrative actions that would result in their child's acquiring or being granted another nationality. It does not apply to children whose parents possess refugee status.

Adoption

There have been substantial legislative changes since the previous report.

The Act of 24 April 2003 *reforming adoption* (M.B., 16 May 2003)¹²⁴ and the Act of 13 March 2003 *amending the Judicial Code in respect of adoption* (M.B., 16 May 2003), both of which entered into force on 1 September 2005, were aimed essentially at two objectives.

In the first place, they introduce into Belgian law the amendments required for implementation of the Hague Convention of 29 May 1993 *on Protection of Children and*

¹²⁴ This Act was subsequently amended by the framework legislation of 27 December 2004 (M.B., 31 December 2004), the Act *containing various provisions* of 20 July 2005 (M.B., 29 July 2005), the Act of 6 December 2005 *amending certain provisions relating to adoption* (M.B., 16 December 2005), the Act of 18 May 2006 *amending certain provisions of the Civil Code for the purpose of enabling adoption by persons of the same sex* (M.B., 20 June 2006), the Act of 31 January 2007 *amending the Judicial Code in respect of adoption procedure* (M.B., 27 February 2007) and the Act of 8 June 2008 *containing various provisions (I)* (M.B., 16 June 2008). These various Acts are designed primarily to insert transitional provisions, determine the terms and conditions governing appeals from decisions by the Federal Central Authority in cases of adoption in a foreign country, alter the adoption application procedure (unilateral application), and regulate the recognition of procedures allowing a child to be brought to Belgium for the purpose of his or her adoption where such procedures have been completed in a country of origin in which adoption is not practised.

Cooperation in Respect of Intercountry Adoption, which was ratified by Belgium on 26 May 2005.

In the second place, they close certain loopholes in the previous legislation, modernize adoption law, and introduce a number of innovations.

In terms of substance, the main amendments introduced by the above-mentioned Act of 2003 may be summarized as follows:

- Emphasis is placed on the desirability of the adoption from the standpoint of the adopted child. His or her consent is required where he or she has reached the age of 12. Moreover, the child may be adopted again where such action is warranted for very serious reasons;
- The consent of the child's original parents to the adoption is required, and may not be given before the child is two months old. Information on the consequences of adoption, but also on welfare and other forms of assistance that the parents may be able to obtain, as well as advice, must be made available to them;
- Persons intending to adopt minor children must be given prior preparation by the relevant services of their Community, and subsequently their skills and abilities as adoptive parents are assessed by a juvenile court judge on the basis of a social investigation;
- Adoption is open, subject to certain terms and conditions, to legal or de facto cohabitants, without distinction as to gender.

These provisions apply both to intercountry adoptions, whether within or outside the framework of the Convention, and to adoptions within Belgium where the child is not taken to or brought in from another country.

A number of agencies are involved in the adoption process, and central authorities have now been established. An International Adoption Service has been established within SPF Justice, and it has been designated the Federal Central Authority referred to in article 6 of the Hague Convention of 29 May 1993. The Service exercises information and national and international coordination functions, and it also has jurisdiction in the matter of the recognition and registration of adoptions in foreign countries. Besides the Federal Central Authority, four central authorities have been established in the Communities and the Brussels Capital Region (the jurisdiction of the last-named of these is restricted to the Flemish Community or the French Community, as the case may be). These Authorities are responsible for handling and following up individual cases of adoption (preparation for adoption, social investigation at a judge's request, kinship, post-adoption follow-up action).

The cooperation agreement between the Federal State, the Flemish Community, the French Community, the German-language Community and the Joint Community Commission *on the bringing into force of the Act of 24 April 2003 reforming adoption*¹²⁵ clarifies certain procedures and provides for concerted action by the Federal Authority and the communities in the matter of adoption, primarily in the form of the establishment of a joint action and follow-up commission (the membership of which includes representatives of the various ministers with responsibilities relating to adoption).

The procedure by which Belgian residents adopt a child living abroad (i.e., in the great majority of cases, intercountry adoptions) is as follows:

¹²⁵ This agreement is the subject of the Act of 19 April 2006 *assenting to the cooperation agreement between the Federal State, the Flemish Community, the French Community, the German-language Community and the Joint Community Commission on the bringing into force of the Act of 24 April 2003 reforming adoption* (M.B., 1 June 2006).

- The prospective parents apply to the Community Central Authority for permission to take a training cycle. After completing the training, they receive a certificate of preparation;
- They may then go before the juvenile court, which will order a social investigation, and on the basis of its findings the court will issue a ruling on the couple's fitness to adopt a child;
- The Office of the Public Prosecutor sends a report to the competent authority in the State of origin;
- From this point onward, the adoption process may follow either of two different courses:
 - Adoption under the auspices of an organization approved by the Community Central Authority;
 - Independent adoption either under the auspices of the Community Central Authority of the French Community or with a "kanaalonderzoek" (procedural analysis) approval issued by the Flemish Community;
- Completion of the adoption procedure in the foreign country;
- Recognition and registration of the adoption by the Federal Central Authority. The new Act provides for a single compulsory procedure: recognition by the Federal Central Authority of every adoption in a foreign country. Such recognition is granted following a verification process that is more or less stringent depending on whether the adoption was in a State party to the Hague Convention or another State.

Statistics show that as of 1 August 2008, the Federal Central Authority had recognized and/or registered 1407 adoptions and had denied recognition in 200 cases. Most children who were adopted internationally were under four years of age (83.5%), while 14.14% of them were between the ages of 4 and 15.

- The Act of 18 May 2006 *amending certain provisions of the Civil Code for the purpose of enabling adoption by persons of the same sex* (M.B., 20 June 2006, 2nd issue). The reference to adoptive parents of different sexes has been deleted from the Civil Code, and special provisions concerning the name of the adopted child have been introduced for both simple and plenary adoption. The principle is that the spouses or cohabitants of the same sex, in adopting a child, must decide which of them will pass on his or her family name to the child. The same family name will be given to any other children whom they may adopt together in the future.

In the case of the German-language Community, adoption reform was implemented by the decree of 21 December 2005 on adoption.

In the case of the French Community, adoption reform was implemented by two decrees: the decree of 31 March 2004 *on adoption* (M.B., 13 May 2004), and the decree of 17 February 2006 *assenting to the cooperation agreement of 12 December 2005 between the Federal State, the Flemish Community, the French Community, the German-language Community and the Joint Community Commission on the bringing into force of the Act of 24 April 2003 reforming adoption* (M.B., 5 April 2006).

In the case of the Flemish Authority, adoption reform was implemented by the decree of 15 July 2005 *regulating the intercountry adoption of children*, the Flemish Government order of 23 September 2005 *on intercountry adoption* and the Flemish Government order of 8 July 2005 *amending the Flemish Government order of 19 April 2002 on adoption services responsible for mediation in respect of national adoption*.

Apart from changes to Flemish regulations to bring them into line with the new provisions of the Civil Code and the Judicial Code, the main amendments are as follows.

Intercountry adoption (as regards the Flemish Authority)

- The Federal Government has competence in the matter of the keeping of data on the origins of adopted children and the right of those children to have access to the information in question, but a new area of competence has been devolved to the Flemish Central Authority, namely the keeping and consultation of adoption files. The child's right to discover his origins is thus safeguarded. Any adopted child who is 12 years of age may have access to his file, provided he is accompanied.

- Under the new decree, a support unit for post-adoption follow-up is also to be established. This support unit is tasked with networking existing services, developing a comprehensive vision of post-adoption follow-up, promoting adoption-related expertise for the benefit of existing assistance providers, supporting professionalization in the field of post-adoption follow-up, serving as a source of information and developing a centre of expertise, documentation and information, offering opinions on post-adoption follow-up to the Flemish Central Authority or the Flemish Government, and providing guidance and support for encounter groups on adoption. The support unit has been functional, approved and funded since 1 November 2007.

- Couples contemplating adoption who use an approved service pay only a lump-sum amount as a contribution to the application fee; the amount is calculated based on their income. It is clear that the intent of the decree is to make adoption accessible to persons in all income categories.

In addition, the procedural analysis process has been optimized and made more transparent. Couples who do not go through an adoption service must obtain the approval of the foreign agency handling their prospective adoption.

Domestic adoption (as regards the Flemish Authority)

The regulations governing domestic adoption have been only minimally adapted. The main change is that a preparatory course is now also required for couples intending to adopt a child whom they know. The course is organized by a new NPA known as "Eva-vorming".

Filiation

The matter of filiation has been extensively reformed under the Act of 1 July 2006 *amending provisions of the Civil Code concerning the establishment of filiation and its effects* (M.B., 29 December 2006). The primary objective of the reform is to eliminate the discrimination that has become apparent from many Constitutional Court rulings. However, the Act goes further, seeking to update and adapt the law on filiation to today's evolving social conditions.

The main changes are as follows:

Maternal filiation

The woman whose name appears on the birth certificate is still deemed to be the mother. The time limits and conditions applicable to any action to contest maternity are now aligned with those applicable to an action to contest paternity. Where the child's name does not appear on the birth certificate, the mother may recognize the child as heretofore. However, the rules governing maternal and paternal recognition have now been made uniform. Where maternal filiation is not established either through recognition or from the

birth certificate, an action to determine maternity may be brought (subject to the same conditions as apply in actions to determine paternity).

Paternal filiation

The paternity of the husband is still presumed. However, that presumption has now been somewhat attenuated. Parliament sought to reduce the number of bogus paternity cases by setting a new starting-point for the 300-day period beyond which the legal presumption of the husband's paternity is no longer applicable, except where the parents make a joint statement at the time the birth is declared. This is primarily the case where the child is born more than 300 days after the parents have been officially registered as having different addresses.

Furthermore, the right to contest the husband's paternity is no longer reserved exclusively to the mother, the husband or the child: the person who claims to be the child's father may also contest it. Where paternity is not established on the grounds of the presumption of paternity, the father may, as heretofore, recognize the child as being his.

The consent of a child who is of age or emancipated is still required. Where the child is a minor and not emancipated, the consent of the parent for whom filiation is established is required, in addition to the consent of the child where he or she is over 12 years of age, but in the event of disagreement, a judicial procedure may be initiated by the person seeking to recognize the child.

The application is denied where biological filiation is not established. Recognition is not possible in any case where the applicant has been convicted of rape upon the person of the mother during the legal conception period.

The confirmation procedure in cases involving recognition by a married father of a child conceived by a woman other than his wife has been abolished. As with maternal recognition, the husband or wife must be notified of the recognition (Civil Code, article 319 *bis*).

Contesting filiation

The provisions of law relating to actions to contest filiation have been amended to bring the rules governing action to contest the husband's paternity (and maternity) into line with those governing action to contest filiation as established by recognition. The new Act has eliminated differences in the way cases are handled based on the grounds for contesting filiation where it does not reflect reality. Henceforth, filiation can now be contested in all cases by each of the parents for whom filiation has previously been established, by the husband (or former husband) of the person who claims to be the parent, and by the child. Another major innovation is that a petition contesting filiation brought by a person claiming to be the child's biological parent is deemed to be without merit unless the petitioner's filiation is substituted for the filiation being contested. It is clear that Parliament was concerned to avoid the possibility that a child might find himself or herself devoid of filiation altogether after a successful action to contest his or her filiation.

Recognition of a stillborn child

Article 80 *bis* of the Civil Code has been amended to provide for a space in the birth certificate of a stillborn child to enter the information that the father and mother are not married and that the father did not recognize the child during the pregnancy. Concurrently, article 328 of the Civil Code provides that a child who dies without issue may be recognized, but only within the year following his or her birth.

Amendments to legislation governing surnames

Under the Act of 1 July 2006 *amending the provisions of the Civil Code relating to the establishment of filiation and its effects* (M.B., 29 December 2006), the regulations governing the conferring of a surname have been adapted to take a number of rulings of the Constitutional Court into account.

Every child whose paternal filiation only has been established, or whose paternal and maternal filiation have been established simultaneously, will still bear his or her father's surname (article 335, first Civil Code as amended).

Where the paternal filiation is established after the maternal filiation, the Act provides that the child's surname shall remain unchanged (article 335, paragraph 3), except where the father and mother together, or one of them, make a formal statement before the civil registrar to the effect that the child is to bear his or her father's surname. Formerly, the agreement of the spouse to whom the father was married at the time filiation was established was also required. This condition has now been abolished.

The second amendment consists of the addition of a new paragraph 4 to article 335 providing that "where a child's filiation is changed after he or she has reached the age of majority, his or her surname may be changed only with his or her consent". This provision applies regardless of how filiation has been established, except where the law provides otherwise (e.g. the special provisions of law that may apply in cases of adoption).

Article 25

(Right to participate in public affairs: right to vote and stand for election, and right to have access to public service)

I. Changes since the previous report

1. International commitments

There were no new international commitments during the period covered in this report.

2. Domestic developments

Right of foreign nationals to vote in local elections

Under article 8, paragraph 4 of the Constitution (as revised by the amendment of 11 December 1998):

“The right to vote contemplated in the preceding paragraph may be extended by law to persons residing in Belgium who are not nationals of a Member State of the European Union, subject to the terms and conditions prescribed by law.”

The Local Elections Act of 4 August 1932 was amended by the Act of 19 March 2004 *granting the right to vote in local elections to foreign nationals (M.B., 23 April 2004)*, which provides that a non-European foreign national may have his or her name added to the voters' list for the municipality in which he or she has established his or her principal residence provided, first, that he or she has lived continuously in Belgium for at least five years, and second, that he or she makes a formal declaration undertaking to abide by the Constitution and laws of the Belgian people and the Convention for the Protection of Human Rights and Fundamental Freedoms. However, non-European foreign nationals do not have the right to stand for elective office.

The extension of the right to vote to non-European foreign nationals is aimed at fostering the integration of immigrants into their local communities and re-establishing equal treatment in the matter of local voting rights between nationals of Member States of the European Union to whom the right to vote in local elections was granted under the Act of 27 January 1999 *amending the organic law of 19 October 1921 on provincial elections, the new Local Communities Act and the Local Elections Act, and implementing European Union Council Directive 94/80/EC of 19 December 1994* and nationals of other States.

Awareness campaigns have been conducted by regional governments and regional integration centres to inform the people concerned and encourage them to register to vote.

Article 26
(Prohibition of all discrimination)

See under articles 2 and 3 of the Covenant.

Article 27 **(Ethnic, linguistic, ideological and philosophical minorities)**

I. Changes since the previous report

1. International commitments

There were no new international commitments during the period covered in this report.

2. Domestic developments

Federal Commission on Intercultural Dialogue

In February 2004, the Federal Government established a Commission on Intercultural Dialogue as part of a project launched by the Prime Minister and the Deputy Prime Minister in December 2002, with the launch of a round table on “Living together better”. The Commission was made up of senior religious authorities and leading thinkers, representatives of various civil society associations, and social partners. The proposals formulated in the final report of the Commission on Intercultural Dialogue (which was published in May 2005) centre around one basic policy option: acceptance of the existence—and thus recognition—of the various cultural groups that make up Belgian society, and in particular acceptance of the existence of cultural minorities, who should be treated with dignity and respect¹²⁶.

This report is used as a reference tool for the development of policies and decisions with a bearing on intercultural or interreligious problems or disputes with which some public or private authority may be or has been confronted.

Minority integration policies in Flanders

The Flemish Authority is pursuing its goal of a Flanders in which all persons, regardless of their origins, can “live together in diversity”. To that end, it fosters equivalence and active, shared citizenship. The intent is to ensure that every Fleming will be able to participate actively in society. Civic integration is an appropriate way of giving that opportunity to “new Flemings”.

The main items of legislation in the area of Flemish civic integration policy include:

- The decree of 28 February 2003 *on the Flemish civic integration policy* (M.B., 8 May 2003)¹²⁷;
- The Flemish Government order of 15 December 2006 *implementing the Flemish civic integration policy* (M.B., 29 December 2006).

¹²⁶ Further information about the specific proposals formulated in the Commission’s report is available at the web site <http://cms.horus.be/files/99901/MediaArchive/rapport%20DI.pdf>.

¹²⁷ This decree was amended by the decree of 14 July 2006 amending the decree of 28 February 2003 on the Flemish civic integration policy (M.B., 9 November 2006) and the decree of 1 February 2008 amending the decree of 28 February 2003 on the Flemish civic integration policy (M.B., 21 February 2008).

The civic integration policy is intended for foreign nationals who are residing lawfully in the country and are eligible for long-term or permanent residence permits in Flanders (e.g. spouses of migrant workers, recognized refugees, etc.) and for certain groups of naturalized Belgian citizens.

Civic integration comprises an initial reception and “first-line reception” process based on the single-window principle. The municipalities inform migrants about Dutch language courses (offered at “Huizen van het Nederlands”, or Dutch Language Houses), reception offices (which provide migrants with guidance and support and organize social orientation courses), and the “Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding” (VDAB – Flemish Employment and Vocational Training Bureau), which facilitates migrants’ job market integration.

The aim of the civic integration process is to ensure that persons who have taken it will be capable of assuming responsibility for the further course of their lives, and to that end will possess an adequate command of the Dutch language. It comprises two segments, one primary and the other secondary:

- The primary segment of the civic integration process is coordinated by the reception office. It consists of a training programme accompanied by individualized support and guidance for each migrant. The training programme, the contents of which are set forth in a “civic integration contract” between the person going through the programme and the reception office, consists of Dutch language and social orientation courses and career counselling.
- After completing the primary segment of the civic integration process, the migrant may proceed to the second segment, the purpose of which is to enable him or her to participate fully in society for the further course of his or her life. For example, he or she may begin vocational training or training within a commercial firm. In addition, he or she may continue to study the Dutch language, enrol for higher education, or even choose to do volunteer work.

Lastly, any individual who is not a native Dutch-speaker may take Dutch language courses.

Education programmes for immigrant children who are not fluent in the language of their region of residence

Flemish Authority

Reception classes for immigrant children who are not native Dutch-speakers (OKAN) were first organized in 1991 as a feature of general primary and secondary education. The aim of these reception classes is to teach immigrant children Dutch as quickly as possible in order to integrate them into a type of instruction and a programme of studies that are suited to their individual capacities. Since 1 September 2006, reception classes have been considerably developed and adapted. Furthermore, general education teachers will be coached by the reception class. Nationality as a condition of eligibility has been replaced by language spoken in the home and/or mother tongue, and the child must also be a recent immigrant.

Immigrant children who are not native Dutch-speakers are defined as pupils to whom the following conditions apply at the time of enrolment (however, the Ministry of Education may make some exceptions):

- Dutch is neither their mother tongue nor the language spoken in the home;
- Their knowledge of the language of instruction is not adequate to enable them to pass the year;

- They have not yet taken a full school year in a school with Dutch-language instruction;
- They have not been living in Belgium for more than one unbroken year;
- They are five years of age or over for primary education, “BaO” (Basisonderwijs = primary education), or between 12 and 18 years of age for secondary education.

After an initial year in a reception class, an immigrant child of primary-school age may go on to a second year. Immigrant children of secondary-school age may enter regular school with additional support provided by the reception class.

Primary schools are required to prepare an individual work plan for every non-Dutch-speaking immigrant child, without exception. At the secondary level, the school is required to prepare a “comprehensive plan” tied to the objectives of the reception-class year. Beginning in the 2006-2007 school year, a new subject entitled “Dutch for new immigrants” will be taught in reception classes, along with courses in Religion and/or Moral Instruction and the four optional teacher hours per week per non-Dutch-speaking recent immigrant. For the secondary level, the University of Louvain has developed a reference framework for reception teaching with 15 general development objectives for non-Dutch-speaking recent immigrants, beginning with objectives relating to language knowledge that can be applied on a multidisciplinary basis.

French Community

The decree of 14 June 2001 *on the integration of new arrivals into the education system organized or subsidized by the French community* (M.B., 17 July 2001) entitles new arrivals to attend bridging classes with additional resources at their disposal. This decree provides for enhanced educational conditions for the benefit of both recent immigrants and their teachers.

An amended version of the “bridging classes” decree was adopted on 20 July 2006 with the aim of creating more flexible conditions for the establishment of bridging classes to reflect fluctuating numbers of immigrants in reception centres.
