

Belgium

Report published in February 2014

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Belgium/BEL-CbC-V-2014-001-ENG.pdf>

- **Context information from ECRI**

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The Belgian authorities have launched an action plan to combat homophobic and transphobic violence and in particular to improve its reporting, investigation and prosecution.

Legislation guarantees respect of most aspects of family and private life of lesbian, gays, bisexual and transgender persons (LGBT) on an equal footing with the rest of the population.

The legislative process to turn the existing Centre for Equal Opportunities and Opposition to Racism into an inter-federal institution is not yet completed. Data on hate speech and racist and homo/transphobic violence is too fragmentary or too general to give a clear picture of the situation in the country as regards these phenomena.

The authorities should ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable information on hate speech offences and the reaction of the criminal justice system is made available.

46. The importance of reliable data as a condition sine qua non for countering the hate speech phenomenon should be underlined. ECRI hopes that the new circular will lead to an improvement in the recording of racist and homo/transphobic crime in general and, in particular, hate speech offences.

47. ECRI recommends that the authorities ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable data on hate speech offences and the follow-up given to them by the criminal justice system is made available.

75. In terms of monitoring and reporting of hate speech, the Centre is responsible for LGB persons on grounds of sexual orientation. Since direct discrimination based on sex change is treated for the purpose of the Gender Equality Federal Act as a direct discrimination on grounds of sex, the Institute is competent for hate speech against transgender persons.

76. As it is the case for hate speech, ECRI reiterates the need for an improvement of the data collection mechanism on criminal offences related to racist and homo/transphobic violence. This mechanism should produce more detailed and easy to read statistics. The already mentioned new circular (COL 13/2013) on the registration of homophobic crimes is a positive step in this direction.

80. Despite the fact that the Prosecution Service reports only five homophobic criminal offences in 2012 and no cases of murder, in the same year media reported several violent crimes perpetrated against individuals on the basis of their real or perceived sexual orientation, including two murders. In addition, these official statistics regrettably do not include specific data on transphobic crime.

82. The Prosecution Service has acknowledged that the number of “homophobic” cases registered by the prosecution (only 42 in five years) cannot give an accurate image of the phenomenon. They have explained that LGBT people file complaints with the police without specifying that they concern homo/transphobic aggression or that the victims decide not to file a complaint with the police at all. In addition, the police do not always mention in the initial records the “homophobic” nature of the offence (although this figures as compulsory in Directive point 1 of Chapter III of COL No. 14/2006) or that the administrative staff omit to enter the specific code in the IT system.

- **Legislative issues**

142. As already stated the Anti-discrimination Federal Act of 10 May 2007 prohibits discrimination on the basis, among other grounds, of sexual orientation. Moreover there are at present at least 11 legislative texts at federated level with relevance to discrimination on the basis of sexual orientation. Contrary to sexual orientation, gender identity⁹⁵ is not a prohibited ground per se. It has been already indicated that discrimination of transgender people is mostly covered under the ground of “sex” which is the object of a separate piece of legislation, the Gender Equality Federal Act. Article 4, paragraph 2 provides that for the purposes of the Act direct discrimination based on change of sex is treated as direct discrimination on grounds of sex.

143. ECRI notes therefore that discrimination on grounds of sexual orientation (for LGB persons) and discrimination on grounds of gender (for transgender persons) are covered by two separate pieces of legislation at the risk of entailing a number of discrepancies in their application. A number of NGOs noted that the ground “sex change” is narrower than the ground “gender identity”, which is a recognised prohibited ground of discrimination in a number of international legal and political texts, and they called upon the authorities to include “gender identity” as an explicitly prohibited discrimination ground.

144. In January 2013 the government presented the first part of the Action Plan aimed at combating homophobia and transphobia (the Action Plan). Inter alia, the Action Plan recommends adding gender expression and gender identity as explicit grounds of discrimination in the various anti-discrimination laws at federal, Community and Regional level. ECRI recommends that the authorities amend the anti-discrimination legislation at federal and federated level in order to include gender identity among the prohibited grounds of discrimination.

147. The Transgender Federal Act of 2007 provides transgender people with a legal basis for the registration of the change of their sex and name. However, this law makes legal gender recognition dependent on inter alia certification by a psychiatrist that the person concerned is convinced that s/he belongs to the opposite gender, sex reassignment surgery and the medical certification of the permanent inability to procreate. Due to these rather stringent conditions, this law applies to only some transgender people (i.e. transsexuals). According to it, people who do not undergo sex change surgery cannot legally register their change of sex and name.

148. An analysis of this legislation was conducted by the Institute in consultation with organisations representing transgender people and work is underway to put forward recommendations concerning

reformulation of the criteria for gender reassignment, measures for protecting privacy⁹⁹ and the need for a transition identification document.

150. Since discrimination on grounds of sexual orientation (for LGB) on the one hand and discrimination on grounds of gender (for transgender people) on the other hand are covered by two separate pieces of legislation, two entirely different bodies deal with discrimination on this matter, one on the ground of sexual orientation (the Centre) and the other on the ground of gender (the Institute). This report has already dealt extensively under Legislation with the Centre's mandate.

153. Since direct discrimination based on sex change is treated for the purpose of the Gender Equality Federal Act as direct discrimination on grounds of sex, the Institute is competent for discrimination against transgender people. However, this applies only to transgender people who have undergone or are planning to undergo sex reassignment treatment.

154. ECRI is aware that a number of issues in this subsection are specific to transgender people. Of course this should not prevent the Institute and the Centre from enhancing cooperation on LGBT issues, thus further strengthening protection of these vulnerable groups as a whole. ECRI therefore welcomes the fact that both the Institute and the Centre have been tasked by the Action Plan to create a network of experts. This network will be responsible for the exchange of scientific knowledge and research results and for identifying gaps in the implementation of the Action Plan. It will also be responsible for the evaluation of the Action Plan.

155. According to a recent survey of the EU Agency for Fundamental Rights (FRA), the majority of LGBT persons in Belgium avoid revealing their sexual orientation at work fearing rumours, hints and derisions. Transgender people are obviously even more vulnerable to harassment and discrimination in employment due to their gender expression. ECRI has been informed by the Institute that they face numerous problems: 54% of them declare that they hide their gender identity at work and 15.6% are unemployed despite a relative high level of education. According to the Institute there is a need to raise further awareness about transgender issues and the rights and responsibilities of employers and workers.

156. Regarding good practices, in the Flemish Region a programme focusing specifically on employment opportunities for transgender persons was set up and a brochure entitled Transgender on the work floor, with advice and practical tips for employers, was published.

159. Concerning access to health, the study Being transgender in Belgium pointed out that 60% of transgender persons have sought medical or psychological assistance related to their gender identity. 62% of respondents had contemplated suicide and 22% had attempted suicide. The study showed that support for transgender persons is not sufficient and that access to health for transgender people is not optimal. According to the study, generalist physicians and psychologists often do not have sufficient information to welcome properly and advise transgender people. In view of this a Transgender Info Point opened on 15 March 2013 at the center for sexology and gender issues of the university hospital of Ghent.

160. According to transgender associations, a major problem is the high cost of mandatory gender reassignment treatment and the lack of a clear legal framework for the refunding of the expenses by

private insurers or the National Institute for Sickness and Disability. ECRI is aware that the issue of the mandatory gender reassignment treatment should be addressed in the context of the case-law of the European Court of Human Rights related to Article 8 of the ECHR which protect the right to respect for private life. ECRI is also aware that on this specific issue, States enjoy a certain margin of appreciation. According to Recommendation CM/Rec (2010) 5 prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

161. As already noted in Belgium education is a matter within the competence of the Communities. The Flemish authorities have produced a number of manuals to guide teachers on how to address LGBT issues in schools. In addition a web site¹⁰⁸ provides tips for gender neutral and LGBT-friendly schools. The Flemish authorities fund the educational work of LGBT organisations. In the French Community, on 26 June 2012, the Decree defining the priority mission of teaching in primary and secondary education was amended, making education in emotional, social and sexual life (EVRAS) a mandatory subject. However, LGBT organisations have criticised this decree for its vagueness and proposed that the Action Plan adopt a definition of EVRAS in accordance with the WHO standards and expressly include the fight against homophobia and transphobia among its objectives.

163. ECRI recommends that the authorities implement at all levels, be it in the framework of the Inter-federal Action Plan against homophobia and transphobia or at federated entities' level, measures to promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity. In particular, these measures should provide pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.

10. (§47) ECRI recommends that the authorities ensure that the new regulations for collecting data on racist and homo/transphobic incidents are applied in practice so that specific and reliable data on hate speech offences and the follow-up given to them by the criminal justice system is made available.

14. (§87) ECRI recommends that the authority proceed to an overall evaluation of the current criminal legislation on racism and homo/transphobia before any amendment to it.

15. (§90) ECRI recommends that the authorities proceed without any further delay to designate in each police district a contact person responsible for racism and homo/transphobic issues. These contact persons should be networked and there should be close communication between the contact person in the police in the police district and the contact prosecutor in the corresponding prosecution department.

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information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.

86. ECRI takes positive note of the intention of the legislator to give with these amendments a strong signal about acts that are believed to have no place in societies such as homophobic murders. However, this is not the first time that the authorities chose to amend the legislation as the only response to hate crime phenomena. One may wonder whether these piecemeal changes, often simply consisting in heavier penalties, are consistent with a thoughtful criminal policy against racist and homo/transphobic violence.

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88. Moreover, ECRI notes that alternative measures are still rare in the Prosecution Service's records related to the follow-up given by the criminal justice system to racist and homo/transphobic violence cases. ECRI underlines the importance of alternative measures, including restorative justice when this is feasible. ECRI is therefore of the opinion that the judiciary should continue to be provided with specific training on this.

The new Circular COL/2013 foresees the designation of a contact person within the police responsible for racism and homo/transphobic issues.

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91. In order to counter the problem of under-reporting especially among LGBT people, the Institute and the Centre disseminate information on how to enforce the rights of LGBT to potential victims of discrimination and trans/homophobic violence. The study *Being Transgender in Belgium* published in 2009 also contributed to the dissemination of relevant information. In addition both the Centre and the Institute maintain close and regular contacts with LGBT associations; numerous conferences and seminars are organised on the subject contributing to spreading information on the rights and remedies available to victims; the websites of the Institute and the Centre are a useful source of information. The Brussels-Capital Region, in partnership with Brussels police and LGBT NGOs, launched in April 2011 a campaign against violence towards people because of their sexual orientation or their gender identity. The draft resolution on allowing anonymous complaints of homophobic violence and the proposed parliamentary resolution to improve the respect for the rights of LGBT people in Belgium should also be mentioned.

92. In the wake of the events related to crime perpetrated against gay men in 2012, the government adopted an action plan in two parts to combat homophobic and transphobic violence and in particular to improve its reporting, investigation and prosecution. ECRI is looking forward to the implementation of this ambitious plan. However, ECRI considers that this plan should not be limited to preventing and fighting homo/transphobic violence, but should be extended to racist violence.

139. As concerns transsexual people, the national civil registry's statistics indicate that, between 1993 and 2012, 631 individuals officially registered their change of sex and name in Belgium. This data of course does not give a comprehensive idea of the number of transgender people in Belgium, since only those who have undergone a full sex transition (see further on this) can have the change of their sex and name officially registered. As regard same-sex marriage, legally recognised in Belgium since June 2003, between that date and 2010, out of a total of 307,886 marriages, 15,219 were between same-sex couples. Statistics indicate also that in 2010 out of a total of 72,191 civil partnerships, 2,245 were between same-sex couples. As concerns child adoption, in 2011 a quarter of all national adoptions were made by lesbian or gay couples, showing a higher number of adoptions by same-sex-couples in the Flemish Community than in the French Community.

145. ECRI recommends that the authorities amend the anti-discrimination legislation at federal and federated level in order to include gender identity among the prohibited grounds of discrimination.