

Alternative report
of the Association for the Promotion of the Francophonie
in Flanders (APFF) and the Association for the Promotion of Human
Rights and Minorities (ADHUM)
to the Committee against Torture (CAT)
for the examination of the periodic report
of the Belgian State

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I. Introduction

The purpose of this document is to inform the CAT of Belgium's current shortcomings with regard to implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Association for the Promotion of the French-speaking World in Flanders (APFF) and the Association for the Promotion of Human Rights and Minorities (ADHUM) regularly intervene in the Belgian and foreign media to denounce the situation of the French-speaking minority in Flanders. They closely follow the parliamentary debates. They also participate in the work of the UN and other organizations dedicated to the protection and promotion of human rights.

This report is based on more than 20 years of experience.

II. Implementation of the Convention

Article 2

Paragraph 6 of the list of questions

FEDERAL INSTITUTE FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

1. During its third Universal Periodic Review (UPR) in May 2021, more than thirty states recommended that Belgium accelerate the creation of a national human rights institute (NHRI) in accordance with the Paris Principles¹.

2. The Federal Institute for the Protection and Promotion of Human Rights, the Belgian NHRI, which was created by the law of May 12, 2019, before the last federal elections in Belgium and has just been installed, unfortunately does not offer any progress in the fight against language discrimination (see next chapter). Indeed, the future Institute will not deal with individual complaints. Yet, among the discriminations suffered by the French-speaking minority in Flanders are discriminations based on language. As you will see below, French speakers in Flanders are harassed by the authorities, which leads to physical and mental suffering. In particular, there is a feeling of oppression, which has been going on ever since the first plans of the Flemish authorities for the periphery were enacted in the nineties.

3. Three UN committees have recently and successively expressed concerns about the shortcomings of the future Belgian NHRI.

4. In the context of the review of Belgium's sixth periodic report², the Human Rights Committee (CCPR) questioned, in October 2019, the coordination between the sectoral human rights institutions and the new Federal Institute.

5. The CCPR recommended that Belgium give the Institute *"a comprehensive mandate and all the necessary means to fully carry out its mandate, including the possibility of receiving complaints.*

6. During the examination of Belgium's fifth periodic report³ in February 2020, the Committee on Economic, Social and Cultural Rights (CESCR) expressed *"concern that the mandate of the Federal*

¹ A/HRC/WG.6/38/L.5, paras. 35.22 - 35.47, 36.6, 36.7

² CCPR/C/BEL/CO/6, paragraphs 9 and 10

Institute for Human Rights is, for the time being, limited to the federal level and that it lacks the competence to receive individual complaints.

7. The CESCR recommended that the Belgian State broaden the mandate of the national human rights institution, in accordance with the Paris Principles, which would apply to the federal State and the Regions. It also encourages the Belgian State to examine the possibility of endowing the Institute with the capacity to receive and examine complaints and petitions concerning individual situations.

8. During the review of Belgium's twentieth to twenty-second periodic reports⁴ in April 2021, the Committee on the Elimination of Racial Discrimination (CERD) expressed concern *"that the Institute currently has a limited mandate, covering only those fundamental rights that fall under federal jurisdiction. (...) And that "the Institute does not have a mandate to receive and process individual complaints.*

9. CERD recommended that Belgium *"adopt the necessary measures, in consultation with civil society and other stakeholders, to bring the Federal Institute for the Protection and Promotion of Human Rights into full compliance with the Paris Principles, in particular by ensuring that its mandate covers the whole range of human rights for the entire territory of the State party, including the federal and regional levels. It also recommends that the Federal Institute be given the mandate to receive and process individual complaints, including cases of linguistic discrimination concerning minorities.*

10. It should also be noted that the Flemish Region (federated entity) decided in its 2019 government agreement to withdraw from the cooperation agreement with UNIA, valid until March 2023. If the Flemish Parliament wants to withdraw from this agreement, it must notify the parliaments of the other entities of the country of its decision by September 15, 2022. The creation of an additional institution that would focus on Flemish competences alone would be highly detrimental to the evolution of the implementation of the Convention in the Belgian domestic legal order.

11. The departure of Flanders from UNIA, which is currently Belgium's type B NHRI, would result in a loss of 10% of UNIA's resources and a serious complication of the whole institutional edifice designed to protect and promote human rights in Belgium. In any case, the expertise accumulated over the past 25 years by UNIA would be lost.

12. **RECOMMENDATION #1: Allow the Federal Institute for the Protection and Promotion of Human Rights to handle individual complaints.**

PARTICIPATION OF CIVIL SOCIETY

13. APFF and ADHUM, despite their satisfaction at finally seeing an NHRI created in Belgium, deplore the fact that civil society was not brought together to review the text of the draft law before it was adopted. Contrary to the commitment made during our visit to the office of the Minister of Justice on April 30, 2018, civil society has not been brought together to discuss the text of this bill and has not been consulted as part of the parliamentary process.

14. Belgium had accepted Poland's recommendation to "engage civil society in the process of implementing the follow-up to the UPR recommendations.

15. The APFF participated on 27 April 2016 in the civil society debriefing following the second

³ E/C.12/BEL/CO/5, paras. 7 and 8

⁴ CERD/C/BEL/CO/20-22, paras. 7 and 8

Universal Periodic Review (UPR) of Belgium. This debriefing had, at the time, been organized by the Federal Public Service Foreign Affairs (editor's note: Ministry of Foreign Affairs), responsible for the elaboration of reports to the UN.

16. On December 19, 2019, FPS Foreign Affairs organized an information and dialogue session with civil society at the Egmont Palace. The APFF, which participated in the meeting, had deeply regretted that this meeting was the one and only follow-up meeting that civil society actors had been invited to participate in since the 2016 debriefing. This meeting took place after the law establishing the Federal Institute for the Protection and Promotion of Human Rights was passed on May 12, 2019.

17. At its third Universal Periodic Review (UPR) in May 2021, a few weeks ago, Belgium was again recommended to "Cooperate regularly with civil society on the recommendations of the Universal Periodic Review" (Malaysia 35.48). This therefore also applies to the recommendations concerning the NHRI.

18. **RECOMMENDATION #2: Actively and regularly engage with civil society in the follow-up to UN recommendations and in the drafting of country reports.**

LINGUISTIC DISCRIMINATIONS

19. Since the Belgian anti-discrimination laws of 2007, language has been included as one of the grounds of discrimination that the law aims to combat⁵ (Article 3). The Belgian legislator has entrusted the Interfederal Centre for Equal Opportunities (called UNIA) with the task of ensuring the proper implementation of the anti-discrimination law.

20. However, an exception was made to this jurisdiction for disputes or litigation based on discrimination on the basis of language. Article 29 §2 of the law provides that the King (i.e. the federal executive, represented by the Federal Government) must designate the body that will be competent for discrimination based on language, a provision that has never been implemented.

21. As a result, UNIA (the Belgian Interfederal Centre for Equal Opportunities and the Fight against Discrimination) cannot deal with reports when the discrimination is based on language. UNIA explained to the Federal Parliament that it receives an average of 135 reports per year concerning the language criterion. Victims of linguistic discrimination are still left to fend for themselves after almost fifteen years of the adoption of this law.

22. In the first evaluation report on the 2007 anti-discrimination laws⁶, the experts, chaired by Françoise Tulkens - who was a Belgian judge at the European Court of Human Rights from 1998 to 2012 - pointed to the lack of a competent body to deal with language discrimination. *"Article 29 §2 of the law entrusts the King with the task of designating the body that will be competent for discrimination based on language. To date, however, this designation has not been made. Therefore, victims of discrimination on the basis of language cannot, unlike victims of discrimination on the other grounds mentioned in the legislation, benefit from the help, information and advice of a public institution specially created for this purpose. »*

23. After recalling, on the one hand, that UNIA cannot intervene in cases of language discrimination and, on the other hand, that in cases of discrimination on both language and another ground, the language dimension is disregarded, the experts state: *"this inconsistency in the anti-discrimination protection system, which creates inequality between victims, must be remedied"*. They recommend that

⁵ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007051035&table_name=loi

⁶ https://www.unia.be/files/Documenten/Aanbevelingenadvies/Commission_dévaluation_de_la_législation_fédérale_on_the_fight_against_discrimination.pdf

"Article 29 §2 of the Anti-Discrimination Act should be implemented and that an equality body should be appointed which is competent for the language ground".

24. On the ⁷occasion of Belgium's fifth periodic report, the Committee on Economic, Social and Cultural Rights (CESCR) asked Belgium *"to implement the recommendations issued by the Commission for the Evaluation of Federal Legislation on the Fight against Discrimination. It also recommended that Belgium designate a body responsible for dealing with complaints of discrimination based on language.*

25. **RECOMMENDATION #3: Designate a public body to deal with discrimination based on language as provided for in Article 29 §2 of the Anti-Discrimination Act.**

EXAMPLES OF HARASSMENT

1. RESPECT FOR LANGUAGE FACILITIES

26. The maintenance of language facilities for French speakers in Flemish municipalities with a special language regime, a regime that dates back to the language laws of 1963 and that was conceived at the time as a permanent and non-repetitive regime, is no longer accepted by Flanders, which considers that these facilities were conceived as a transitional measure to allow French speakers to integrate into the Flemish region. This argument is indefensible! If the legislator had wanted to introduce a transitional measure, he would have written it into the law.

27. However, several special bills have been tabled in the House and Senate by the extreme right and Flemish nationalists to abolish the facilities. The municipal authorities of Renaix (a municipality with a special regime in the Dutch-speaking region with facilities for French-speaking people) have also launched a procedure against the Belgian state to abolish the facilities regime. The Brussels Court of First Instance dismissed the case and they have decided to appeal.

28. In Renaix, several complaints were filed with the Permanent Commission for Language Control (CPCL), concerning the posting of notices in public places (town hall, OCMW, recycling park, library, swimming pool, ...) as well as the publication of the official information magazines and website of the municipality, which are only in Dutch. These complaints were recognized, in July 2020, as admissible and well-founded, as the CPCL stipulates that *"Renaix must draft notices and communications intended for the public in French and Dutch, giving priority to Dutch".*

29. Since 1997, circulars adopted by the Flemish Government, applicable both to local services and to the Flemish Government services, have aimed at imposing a restrictive regime related to the use of French in administrative matters in the municipalities with a special language regime in the Dutch language region, in contradiction with the interpretation that had always been valid, namely the fact that this regime of facilities is permanent and non-repetitive, i.e. that the beneficiaries do not have to renew their request for obtaining documents in their language.

30. However, article 129 §2 of the Belgian Constitution provides that only the federal legislator, acting by a special majority, can modify the existing legal regime in the municipalities with facilities, which means, conversely, that any other level of power, and in particular the Flemish Government, is materially incompetent under the Constitution to modify it by means of a circular.

31. The Flemish interpretation contained in these circulars was challenged before the courts and tribunals, and before the administrative courts, as early as 1998. The culmination of this litigation is

⁷ E/C.12/BEL/CO/5, paras. 18 and 19

the ruling of December 6, 2018⁸ of the Court of Cassation, the highest court in Belgium, (i.e. twenty years later) which sets out at the level of the judiciary the correct interpretation to be given to the language facilities regime.

32. As a reminder, the Council of State, in general assembly, the highest administrative court in the country, has already had the opportunity to judge, by ruling of June 20, 2014⁹, that the same circular "Peeters" is invalid and illegal, as well as *"the interpretation that consists of requiring the interested party a specific step each time he wishes to benefit from the use of French, disproportionately restricts the rights guaranteed in Articles 25, 26 and 28 (ed. note: of the laws on the use of languages in administrative matters), and is contrary to law."*

33. This double jurisprudence is therefore legally incontestable and determines the incompetence of the Flemish Community to regulate the use of languages in municipalities with a special regime: once he has requested the use of French, the French-speaking individual domiciled in a municipality with a special regime must have his choice confirmed by the administration concerned once and for all. However, Flanders refuses to recognize the res judicata authority of these court decisions, in defiance of the rule of law, and continues to enforce these illegal circulars, which certainly constitutes a form of harassment against the French-speaking populations who benefit from these facilities and who are deprived of the effective exercise of their elementary linguistic rights.

34. RECOMMENDATION #4: Enforce the permanent and non-repetitive legal regime of language facilities, as confirmed by the Belgian administrative and judicial courts.

35. RECOMMENDATION #5: Remove from the internal legal order the restrictive Flemish government circulars that have been declared illegal by the Belgian administrative and judicial courts.

2. USE OF FRENCH IN DELIBERATIVE ASSEMBLIES

36. Since the 1970s, French-speaking municipal councillors in municipalities with a special language regime in the Dutch-speaking region have still not been able to express themselves in their own language at deliberative assemblies.

37. However, the constant jurisprudence of the Permanent Commission for Linguistic Control (body that controls the application of the language laws) states that "the oral use of languages within the municipal council is free both in public and in camera sessions" and that "the municipal councillors of the municipalities referred to in article 23 of the laws on the use of languages in administrative matters are free to use Dutch or French when they address the college orally or in writing".

38. The decision of the Court of Arbitration (now Constitutional Court) of 10 March 1998¹⁰ stipulates "expressis verbis" that "the obligation to use Dutch during the meetings of the municipal council applies exclusively to the burgomaster and the other members of the college of burgomasters and aldermen, and therefore does not apply to the other members of the municipal council".

39. However, since this incontestable ruling, Flanders continues to refuse, in its capacity as supervisory authority, to allow French-speaking municipal councillors in these municipalities to express themselves

⁸ http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20181206-11

⁹ http://www.raadvst-consetat.be/?page=news_archive&lang=fr&newsitem=225&year=2014

¹⁰ https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=98-05-21&numac=1998021201

in French during the meetings and deliberations of the municipal council, invalidating all interventions in this language.

40. Thus, on April 22, 2021, during the municipal council of Drogenbos (a municipality with facilities on the outskirts of Brussels), a municipal councillor who wanted to express himself in French had his microphone cut off by the president of the municipal council, which borders on inadmissible violence, beyond the infringement of the freedom of expression

41. Recommendation no. 258 of the Congress of Local and Regional Authorities of the Council of Europe of 2 December 2008, entitled "Local democracy in Belgium: the non-appointment of three mayors by the Flemish authorities",¹¹ highlighted this practice, which is contrary to the European Charter of Local Self-Government and directly applicable in Belgian domestic law.

42. The legal opinion 02/2016/04 of Professor Moreno, from the University of Madrid, also considers that the European Charter of Local Self-Government is a legal instrument that must guarantee, in terms of the use of languages, the possibility for local politicians to exercise a real representative function, and that the jurisprudence of the Constitutional Court, according to which the obligation to use Dutch during the meetings of the local council, does not apply to the local councillors.

43. This opinion followed the complaint filed by six local representatives of the municipalities with facilities on 18 May 2015 with the Chamber of Local Authorities of the Council of Europe questioning the Congress of Local and Regional Authorities on the exclusive use of Dutch in the municipal councils.

44. For the Council of Europe, the persistent refusal of the Flemish authorities to recognize the opinions and recommendations of the Council of Europe and to implement the ruling of the Constitutional Court borders on arbitrariness. The Flemish authorities seriously disregard the democratic standards set by the Council of Europe in the field of local democracy.

45. Local democracy in the communes with facilities, as the Council of Europe reminds us, can no longer suffer from being hindered in this way by the impossibility for French-speaking communal councillors to express themselves in the language of their electors, which is contrary to universal suffrage and to the vision of a representative democracy.

46. RECOMMENDATION #6: To ensure that the authority of the decision of the Constitutional Court of March 10, 1998, as confirmed by the authorities of the Council of Europe, is respected and to allow freely, without constraints, the French-speaking communal councillors of the communes with facilities to express themselves in the language of their electors, who are in the majority in most of the communes with facilities

47. RECOMMENDATION #7: Give full legal effect to the interventions formulated in French by the municipal councillors of all the municipalities with facilities located on the territory of the Flemish Region.

3. ACCESS TO FRANCOPHONE EDUCATION

48. On July 23, 1968, the European Court of Human Rights¹² ruled that a provision of Belgian language legislation in administrative matters did not respect the European Convention on Human Rights. In the case known as "the linguistic regime of education in Belgium", the Court ruled that article 7, §3, of the Belgian law of August 2, 1963 on the use of languages in administrative matters

¹¹ <https://rm.coe.int/democratie-locale-en-belgique-la-non-nomination-de-trois-bourgmestres-/168071938f>

¹² [https://hudoc.echr.coe.int/fre#{\"itemid\":\[\"001-62083\"\]}](https://hudoc.echr.coe.int/fre#{\)

"did not comply with the requirements of article 14 of the European Convention on Human Rights combined with the first sentence of article 2 of the Additional Protocol, insofar as it prevents certain children, solely on the basis of their parents' residence, from having access to the French-language schools existing in the six communes of the Brussels periphery that have their own status (...) ».

49. This legal provision prohibits French-speaking children whose parents reside in a unilingual Flemish commune without linguistic "facilities" in the Brussels periphery from enrolling in a French-speaking school in one of the six communes with "facilities" (communes with a special regime provided for by law), simply because their residence is not in one of these communes: the Court deduced from this that there was discrimination based on language.

50. More than fifty years after this judgment, it must be noted that the situation prevailing in these six communes remains unchanged with regard to the impossibility for children whose parents reside outside these six communes to have access to the French-language nursery and primary schools established there: the provision deemed contrary to the ECHR is still present in the Belgian domestic legal order and continues to be applied there.

51. The Parliamentary Assembly of the Council of Europe, on September 26, 2002, recalled that the condition of residence in order to benefit from French-language education, a condition expressly condemned by the 1968 judgment, was discriminatory.

52. It called on *"the Kingdom of Belgium to implement fully, without further delay, the judgment of the European Court of Human Rights of 23 July 1968, according to which, among other things, the children of parents who do not reside in the six municipalities of the Brussels periphery with linguistic facilities must nevertheless be allowed to attend the French-speaking schools of these municipalities.*

53. A new similar case is currently pending before the European Court of Human Rights to hopefully confirm this case law and force the Belgian state to amend the federal legislation.

54. **RECOMMENDATION #8: Remove the residence requirement in Belgian law to allow French-speaking students who live in another municipality to enroll in a French-speaking school in a peripheral municipality known as "with facilities".**

4. USE OF FRENCH IN THE PRIVATE SPHERE

55. Since the Flemish government's 1996 plans, the use of languages in the private sphere has been undermined in Flanders; thus, through a public association called "De Rand", the Flemish authorities regularly conduct campaigns aimed at reducing the presence and use of French, particularly in commercial relations (e.g., inviting shopkeepers to use only Dutch in their dealings with their customers, in their leaflets, or on their signs)

56. Despite the fact that these practices are unconstitutional - Article 30 of the Belgian Constitution enshrines linguistic freedom - these authorities are trying to impose the use of Dutch in private relations.

LIST OF RECOMMENDATIONS

RECOMMENDATION #1: Allow the Federal Institute for the Protection and Promotion of Human Rights to handle individual complaints.

RECOMMENDATION #2: Actively and regularly engage with civil society in the follow-up to UN recommendations and in the drafting of country reports.

RECOMMENDATION #3: Designate a public body to deal with discrimination based on language as provided for in Article 29 §2 of the Anti-Discrimination Act.

RECOMMENDATION #4: Enforce the permanent and non-repetitive legal regime of language facilities, as confirmed by the Belgian administrative and judicial courts.

RECOMMENDATION #5: Remove from the internal legal order the restrictive Flemish government circulars that have been declared illegal by the Belgian administrative and judicial courts.

RECOMMENDATION #6: To ensure that the authority of the decision of the Constitutional Court of March 10, 1998, as confirmed by the authorities of the Council of Europe, is respected and to allow freely, without constraints, the French-speaking communal councillors of the communes with facilities to express themselves in the language of their electors, who are in the majority in most of the communes with facilities

RECOMMENDATION #7: Give full legal effect to the interventions formulated in French by the municipal councillors of all the municipalities with facilities located on the territory of the Flemish Region.

RECOMMENDATION #8: Remove the residence requirement in Belgian law to allow French-speaking students who live in another municipality to enroll in a French-speaking school in a peripheral municipality known as "with facilities".