

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 on the Elimination of Racial Discrimination (CERD)
with a view to examining the periodic report
of the Belgian State**

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The purpose of this document is to inform the CERD of Belgium's current shortcomings in the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

Implementation of the Convention

FEDERAL INSTITUTE FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

1. During its second Universal Periodic Review (UPR) in 2016, more than thirty states recommended that Belgium speed up the creation of a national human rights institute (NHRI) in line with the Paris Principles.

2. The Federal Institute for the Protection and Promotion of Human Rights, the Belgian NHRI, which was created by the law of 12 May 2019, before the last federal elections in Belgium and has just been installed, unfortunately does not offer any progress in the fight against linguistic discrimination (see next chapter). Indeed, the future Institute will not deal with individual complaints. Yet, among the discrimination that non-citizens may have to suffer is discrimination based on language.

3. APFF and ADHUM, despite its satisfaction at finally seeing an NHRI created in Belgium, deplore the fact that civil society was not brought together to discuss 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 30 April 2018, civil society has not been brought together to discuss the text of this draft law.

4. Two UN committees have recently expressed concern about the shortcomings of the future Belgian NHRI.

5. In the context of the examination of Belgium's sixth periodic report¹, the Human Rights Committee (CCPR) questioned, in October 2019, the coordination between the sectoral human rights institutions and the new Federal Institute.

6. 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 to receive complaints"*.

7. During the examination of Belgium's fifth periodic report², the Committee on Economic, Social and Cultural Rights (CESCR) expressed *"concern that the mandate of the Federal Institute for Human Rights is, for the time being, limited to the federal level and that it has no competence to receive individual complaints"*.

8. 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 requests concerning individual situations.

9. It should also be noted that the Flemish Region (federated entity) decided in its government agreement of 2019 to withdraw from the cooperation agreement with UNIA, which is valid until

¹ CCPR/C/BEL/CO/6, paragraphs 9 and 10

² E/C.12/BEL/CO/5, paras. 7 and 8

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 to withdraw by 15 September 2022 at the latest. The creation of an additional institution that would focus on Flemish competences alone would be highly detrimental to the development of the implementation of the Convention in the domestic legal order.

10. 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 edifice designed to protect and promote human rights in Belgium.

11. In any case, the expertise accumulated over the last 25 years by UNIA would be lost.

LINGUISTIC DISCRIMINATION

12. Since the 2007 anti-discrimination laws, language has been included as one of the grounds for discrimination that the law aims to combat³ (Article 3). The Belgian legislator entrusted the Interfederal Centre for Equal Opportunities (called UNIA) with the task of ensuring the proper implementation of the anti-discrimination law.

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

14. As a result, UNIA cannot deal with reports where the discrimination is based on language. UNIA told the Federal Parliament that it receives an average of 135 reports per year on the basis of language. Victims of language discrimination are still left to fend for themselves.

15. In the first evaluation report of the 2007 anti-discrimination laws⁴, the experts, chaired by Françoise Tulkens - who was a Belgian judge at the European Court of Human Rights from 1998 to 2012 - point 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 to deal with 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 assistance, information and advice of a public institution specially created for this purpose. »*

16. After recalling that UNIA cannot intervene in cases of language discrimination and that in cases of discrimination on both language and another ground, the language dimension is disregarded, the experts state that *'this inconsistency in the protection against discrimination, which creates inequality between victims, should be remedied'*. They recommend that *'Article 29 §2 of the Anti-Discrimination Act should be implemented and an equality body should be appointed with competence for the language ground'*.

17. *On the occasion of Belgium's fifth periodic report⁵, 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 recommends that Belgium designate a body responsible for dealing with complaints of discrimination based on language.*

³ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007051035&table_name=loi

⁴ https://www.unia.be/files/Documenten/Aanbevelingenadvies/Commission_dévaluation_de_la_législation_fédérale_on_fighting_discrimination.pdf

⁵ E/C.12/BEL/CO/5, paras. 18 and 19

RECOMMENDATIONS

In conclusion, the APFF and the ADHUM recommend that the Belgian State :

- **provide for the Federal Institute for the Protection and Promotion of Human Rights to deal with individual complaints;**
- **to appoint an 'ad hoc' public body to deal with discrimination on the basis of language as provided for in Article 29 §2 of the Anti-Discrimination Act.**