Alternative report of the Ligue des droits humains to the 103rd session of the Committee on the Elimination of Racial Discrimination for the consideration of the twentieth to twenty-second periodic reports submitted by Belgium

- March 2021 -

For almost 120 years, the Ligue des Droits Humains (hereinafter LDH) has been defending fundamental rights in Belgium, in complete independence from political powers. As a watchdog, the LDH observes, informs and calls on public authorities and citizens to remedy situations that infringe fundamental rights.

This alternative report of the LDH is based on the twentieth to twenty-second periodic report submitted by Belgium in 2019 in accordance with article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination ("the Convention" hereafter).

The answers provided by the Belgian State in its official report have been taken into account in order to avoid any repetition. The LDH therefore only aims at completing, moderating or criticizing if necessary, the report presented by Belgium and at formulating recommendations.

Table of contents

1. Policy to combat racism (Art. 2, p. 4)

A. International commitments (Art. 2, A p. 4)

On 4 November 2000, Belgium signed the 12th Additional Protocol to the European Convention on Human Rights (ECHR) [1]prohibiting any discrimination in the enjoyment of rights provided by law and in the conduct of public authorities on any ground such as sex, alleged race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. However, this protocol has not yet been ratified.

Belgium has also not signed the International Labour Organisation Convention No. 118 on Equality of Treatment (Social Security) of 28 June 1962[2] and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[3], and has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment[4] nor the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems[5].

Finally, particular attention should be paid to the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) of 11 May 2011, which states that the implementation of the Convention must be ensured without any discrimination between women, regardless of their status (migrant, refugee) or situation. Belgium must take the necessary specific measures for these women.

The LDH stresses the importance of ratifying the above-mentioned conventions with regard to the promotion of the fundamental rights of persons of foreign origin or belonging to minorities, and invites the Belgian authorities to proceed with their ratification and their effective implementation.

B. Constitutional and legislative changes and developments (Art. 2, B p. 4)

The laws of 10 May 2007 to combat discrimination, which transpose the European Directives 2000/43/EC and 2000/78/EC[6], expressly authorise the authorities to implement positive action measures and to make direct or indirect distinctions for this purpose (Article 10, § 1 common to both laws). However, these laws provide that "the hypotheses and conditions under which a positive action measure may be implemented" shall be determined by Royal Decree (Article 10, § 3, common to both laws).

On 11 February 2019, a Royal Decree setting out the conditions for positive action was adopted with regard to the private sector. It determines the situations and conditions under which a positive action

[1] Rome, 4 November 2000.
[2] Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, Geneva, 46th ILO Session, 28 June 1962.
[3] Adopted by General Assembly resolution 45/158 of 18 December 1990.
[4] New York, 18 December 2002.
[5] ETS 189 - Cybercrime (Additional Protocol), Strasbourg, 28.I.2003.
[6] Act of 10 May 2007 to combat certain forms of discrimination and the Act of 10 May 2007 amending the Act of 30 July 1981 to suppress certain acts inspired by racism and xenophobia (*M.B.*, 30 May 2007).

measure can be taken in the workplace. Such measures can be implemented by means of collective labour agreements, drawn up by sector or by company and after approval of the positive action plan by the Minister of Employment. Companies wishing to draw up an action plan in-house will be able to do so without recourse to the approval procedure.

Nevertheless, the Federation of Enterprises in Belgium (FEB) itself deplores the fact that the remarks of the social partners, formulated in the unanimous opinion no. 2.098 of the National Labour Council of 25 September 2018[7], have not been taken into account, leaving them with imprecisions, in particular as to which actions remain prohibited because they do not meet the substantive conditions of positive action and therefore continue to constitute discrimination[8]. **This mechanism should be effectively promoted as well as support for the companies concerned. The setting of quantified anti-discrimination targets should accompany these measures.**

At the same time, and while people of belgian origin predominate in the public sector compared to the private sector[9], the Belgian State has failed to adopt a decree applicable to the public sector determining the conditions to be respected to guarantee the legality of such measures.

This predominance of people of Belgian origin in the public sector in general must be qualified in that it contains striking exceptions which only reinforce the proof of its discriminatory nature. There are indeed under- and over-representations of several origins depending on whether the sector is more or less remunerative. Gender segregation also operates according to the stereotypes of these fields (e.g. foreign men are over-represented in the transport sector and foreign women in the health care sector).

Faced with the structural discrimination affecting certain populations, the fight against discrimination must involve proactive measures. **It is therefore urgent to adopt a royal decree applicable to the public sector to allow full and complete application of the anti-discrimination laws of 10 May 2007**.

[7] http://cnt.be/AVIS/avis-2098.pdf

[8] https://www.feb.be/domaines-daction/ethique--responsabilite-societale/egalite-des-chances/un-nouvel-ar-permet-dadopter-des-plans-daction-positive-conformes-a-la-legislation-anti-discrimination_2019-06-04/

[9] In 2014, 76.6% of all people working in the public sector were of Belgian origin, 8.4% were from an EU14 country, 2.7% were of North African origin and 1.4% were from another African country. The other origins represent less than one percent of those working for the public sector. Unia, socio-economic monitoring 2017, https://www.unia.be/files/Documenten/Publicaties_docs/1215_UNIA_Monitoring_2017_-_FR-Anysurfer.pdf

A. **Other measures (Art. 2, C, p. 5)**

1. **National Plan against Racism (Art. 2, C.1, p. 5)**

In 2001, Belgium committed itself in Durban to develop a National Action Plan against Racism. At the beginning of 2019, the minister responsible for equal opportunities met with a coalition of civil society organisations to draw up this action plan. This plan is therefore expected in 2021 and will have to be implemented by the different Belgian governments.

In this context, the Flemish region has chosen to leave the inter-federal anti-racism centre, UNIA (which is a type B NHRI according to the Paris principles), i.e. to end the collaboration and funding of this institution, in order to create its own body.

Fearing for the division of responsibilities between the federal and regional levels, the recommendations of UNIA and Myria in their joint report should be endorsed : a monitoring body should be set up to supervise the implementation of the action plan at the various levels of authority, with periodic evaluations and the participation of civil society representatives and experts.

2. **Establishment of a national human rights institution (Art. 2, C.2.1, p. 5)**

a. The Federal Institute for the Protection and Promotion of Human Rights

On 12 May 2019, a law establishing a Federal Institute for the Protection and Promotion of Human Rights was passed, with the aim of meeting the Paris Principles[10].

The establishment of such an institution is indeed necessary to fill the gaps and limitations of the current institutional architecture for the protection of fundamental rights. Many international bodies monitoring respect for fundamental rights - whether from the United Nations [11]or the Council of Europe [12]- have for many years recommended that Belgium set up such an institution. The Belgian State has committed itself to doing so on several occasions, both at national[13] and international[14] level. It is therefore to fill this gap that this law was adopted.

While this is a welcome step forward, a number of questions remain unanswered.

[10] Law of 12 May 2019 establishing a Federal Institute for the Protection and Promotion of Human Rights, *M.B.* 21/06/2019.
[11] See, inter alia, CRC/C/BEL/CO/5-6, para. 12; E/C.12/BEL/CO/4, para. 8; CEDAW/C/BEL/CO/7, para. 13; CAT/C/BEL/CO/3, para. 9; CERD/C/BEL/CO/16-19, para. 7; CRPD/C/BEL/CO/1, para. 49; etc.
[12] See, inter alia, Report by the Council of Europe Commissioner for Human Rights, Thomas HAMMARBERG, following his visit to Belgium from 15 to 19 December 2008, 17 June 2009, CommDH(2009)14, §§ 10 and 56.
[13] See inter alia Government Agreement of 10 October 2014, p. 227; Policy Note - Equal Opportunities, House of Representatives, 21 December 2012 (DOC 53 2586/013), p. 32.
[14] See, inter alia, Human Rights Council, Report of the Working Group on the Universal Periodic Review - Belgium, 11 April 2016 (A/HRC/32/8), pt. 138-21 - 138-52.

First of all, fundamental rights are a cross-cutting issue, which affects the competences of all the country's entities. As an overall monitoring body for the situation of fundamental rights in Belgium, an A-level institution in terms of the Paris Principles criteria must be able to monitor the respect and implementation of rights and freedoms in all areas of public action, whether these are the responsibility of the federal state, the regions or the communities, or even the local authorities. One of the contributions of this new institution should be to help clarify the responsibilities of each of the country's entities in implementing Belgium's international human rights obligations. However, it is only a federal body, which does not cover all the prerogatives of the federated entities and local authorities. However, the questions that arise for these levels of power are also thorny.

Secondly, the prerogatives of this institution are relatively limited. For example, it is not possible for individuals to lodge complaints with it. The Institute is conceived as an advisory body, which risks greatly limiting its possibilities of action.

Finally, it will be necessary to ensure that this institution is provided with the necessary resources to enable it to carry out its tasks. Indeed, without a significant budgetary, human and political investment in this structure, there is a risk that it will not be able to take the full and complete measure of the challenges of defending fundamental rights in Belgium.

Furthermore, in view of the fragmented situation of the Belgian institutional landscape, questions remain. For example, how will the Institute reconcile its mandate with that of the other existing institutions, which do not all have the expertise or the means necessary to carry out their missions (think of the Central Prison Supervision Board, the Standing Police Monitoring Committee, the Data Protection Authority, etc.)? How will the relations between these various bodies be organised?

For all these reasons, the LDH is pleased with this progress but remains reserved about the real scope of this evolution. Adopted at the end of the legislature without any real debate, legitimate questions on the extension of its competences, on its referral of complaints by individuals, and on the means at its disposal remain unanswered to this day.

The LDH therefore continues to advocate for the creation of a real NHRI that is competent to ensure the respect of all fundamental rights applicable in Belgium and that has the means to fulfil its mission.

b. The Standing Police Monitoring Committee (Committee P)

The Standing Committee on Oversight of the Police Services (Committee P) was established to provide the Federal Parliament with an external body responsible for overseeing the police services. Through inspection enquiries and the examination of complaints, Committee P provides a picture of police work and is charged with acting as a control mechanism over the work of the police forces, both on behalf of the Federal Parliament and the citizens[15]. Although it describes itself as an independent institution, Committee P is criticised by many international bodies for its lack of independence and objectivity, particularly because of the composition of its Investigation Department. This department is composed of police officers, from different services, who are responsible for monitoring the work of members of the police force. In this context, the UN Committee against Torture has repeatedly recommended to

[15] See: http://comitep.be/.

the Belgian State to take "*relevant measures to further strengthen the control and supervision mechanisms within the police, in particular Committee P and its Investigation Department, which should be composed of independent experts recruited from outside the police*"[16]. Similar recommendations have been made by the UN Human Rights Committee (the Committee "expresses *concern that doubts remain about the independence and objectivity of Committee P and its ability to deal with complaints against police officers in a transparent manner*"[17]) and more recently by the UN Human Rights Council[18].

There is another police oversight body, the General Inspectorate of the Federal and Local Police (AIG), which is a government department under the authority of the Ministers of the Interior and Justice[19]. It is a supervisory body for police services subject to the Executive. The AIG is also subject to various criticisms and is not considered to be truly independent[20], since the Ministers of Interior and Justice determine the policy of this body. In addition, AIG investigators are in reality officers seconded from their police departments[21], to which they may later return[22].

The independence of Committee P must therefore be guaranteed, particularly in view of the persistent allegations of ethnic profiling in Belgium[23].

c. The Central Supervisory Board of Prisons (CCSP)

Belgium, which has signed the Optional Protocol to the UN Convention against Torture (OPCAT)[24], has announced its intention to ratify it[25], in line with its numerous commitments to do so, both at national[26] and international[27] level. However, to date, no enabling legislation has been published. When a State

[16] CAT, Concluding observations on the third periodic report of Belgium, CAT/C/BEL/CO/3, §13, e, January 2014: file:///C:/Users/LDH/Downloads/G1440047.pdf; CAT, Concluding observations on the second periodic report of Belgium, CAT/C/BEL/CO/2, §11, 19 January 2009: file:///C:/Users/LDH/Downloads/G0940326.pdf.

[17] HUMAN RIGHTS COMMITTEE, Draft concluding observations of the Human Rights Committee -Belgium, CCPR/C/BEL/CO/5, 16 November 2010, §15: file:///C:/Users/LDH/Downloads/G1046712.pdf See also: ECRI, ECRI report on Belgium (fourth monitoring cycle), 26 May 2009, p. 46, No. 170: https://rm.coe.int/quatrieme-rapport-sur-la-belgique/16808b55a9.

[18] HRC, Draft report of the Working Group on the Universal Periodic Review -Belgium,A/HRC/WG.6/24/L.6,3 February 2016, items 140.23-140.24, https://www.upr-info.org/sites/default/files/document/belgium/session_24_-_january_2016/a_hrc_wg.6_24_l.6_0.pdf.

[19] See: https://www.aigpol.be/fr/index.html.

[20] M. BEYS, Quels droits face à la police? Manuel juridique et pratique, Jeunesse & Droit Editions - Couleur Livres Editions, Liège-Brussels, 2014, p. 523.

[21] Art. 4 § 3 of the Act of 15 May 2007 on the Inspectorate General and on various provisions relating to the status of certain members of the police services, M.B., 15 June 2007.

[22] M. BEYS, *op. cit.*

[23] See *below*.

[24] As approved by the United Nations General Assembly. UN General Assembly Resolution 57/199 adopting the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, 9 January 2003: https://treaties.un.org/doc/source/docs/A_RES_57_199-F.pdf.

[25] S. DELAFORTRIE, S. and C. SPRINGAEL, Assent to the Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Council of Ministers Press Release, 22 February 2018: https://www.presscenter.org/fr/pressrelease/20180222/assentiment-au-protocole-relatif-a-la-convention-contre-la-torture-et-autres-t.

[26] Council of Ministers, Assent to the Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, 22 February 2018; GOVERNMENT AGREEMENT, 10 October 2014, p. 124: https://www.premier.be/sites/default/files/articles/Accord_de_Gouvernement_-_Regeerakkoord.pdf.

[27] HRC, Report of the Working Group on the Universal Periodic Review - Belgium, A/HRC/32/8, 11 April 2016, items 138-2 -138-7: http://bdf.belgium.be/resource/static/files/import/belgique_epu/2016-04-11-report-on-upr-of-belgium.pdf.

ratifies the OPCAT, its main obligation is to set up an independent National Preventive Mechanism to undertake regular visits to places of deprivation of liberty and to make recommendations to the authorities.

Belgium intends to ratify the OPCAT following the adoption of the law of 25 December 2016[28] reforming the existing prison monitoring system and giving the task of monitoring places of deprivation of liberty to the Central Prison Monitoring Council[29] and the Prison Monitoring Commissions[30]. However, this law has been heavily criticised by NGOs[31], academics[32] and official bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)[33] and by the Prison Supervision Boards themselves[34]. Indeed, this law falls far short of OPCAT standards and could lead to problematic conflicts of interest at several levels.

The Belgian State, as it has committed itself to do on numerous occasions, should also ratify the OPCAT and set up an NPM in accordance with international standards. In order to do so, it is imperative that all the principles of the OPCAT are implemented before any ratification of this instrument, including

- extending the mandate of the NPM to all places of deprivation of liberty;

- guaranteeing the financial and human resources of this institution, as well as the diversity of functions within it (specialists in the law on foreigners, minors, etc.), ensuring that its members have the required professional skills and knowledge;

- by strictly separating the functions of supervision itself from the functions of processing and judging complaints. In this respect, the law of 25 December 2016 must be reviewed in this sense: the mediation role of the supervisory boards between prisoners and the prison administration is incompatible with a judicial role between these same actors.

[28] Act of 25 December 2016 amending the legal status of detainees and the supervision of prisons and containing various provisions relating to justice, known as the Potpourri 4 Act, *M.B.*, 30 December 2016.
[29] See: http://www.ccsp-ctrg.be/fr.
[30] See: http://www.ccsp-ctrg.be/fr/commissions.
[31] HUMAN RIGHTS LEAGUE, The vote in parliament of the Pot-Pourri IV Law: a missed opportunity to ratify the Protocol against Torture, 25 November 2016: http://www.liguedh.be/6-le-vote-au-parlement-de-la-loi-pot-pourri-iv-une-occasion-manquee-de-ratifier-le-protocole-contre-la-torture/.
[32] O. NEDERLANDT, "La surveillance des prisons et le droit de plainte des détenus : jusqu'où ira le bénévolat ?", J.T., 23 September 2017, n° 6698, p. 541.
[33] CPT, Report to the Government of Belgium on the visit to Belgium carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 March to 6 April 2017, Strasbourg, 8 March 2018, §§ 101-102: https://rm.coe.int/16807913b1.
[34] O. NEDERLANDT, op. cit. p. 554.

3. Collaboration between Unia and Myria (Art. 2, C.2.3, p. 6)

Since indirect discrimination on the basis of origin, nationality or ethnicity may make it possible to exclude certain candidates for reasons unrelated to their qualifications, particularly in the field of access to employment[35], education or housing, the fact that discrimination on the basis of language and linguistic characteristics (command or accent) remains excluded from the competences of the Unia Interfederal Centre constitutes a loophole and an inconsistency in the protection against discrimination in Belgium.

Indeed, it is important to note that in Belgium there is no body competent to deal with discrimination on the basis of language: linguistic discrimination is not dealt with by any body, which is criticised by the Commission for the Evaluation of Federal Anti-Discrimination Legislation[36]. Furthermore, the Belgian state signed the Council of Europe's Framework Convention for the Protection of National Minorities[37] on 31 July 2001, but has never ratified it. The government should put an end to this shortcoming and eliminate any interpretative declaration that reduces the scope of the text of the Framework Convention.

The LDH encourages the analysis of multiple, so-called intersectional, discriminations by taking into account language as a factor of racial discrimination.

[35] https://www.unia.be/files/Documenten/Aanbevelingen-advies/AAR_174_-_Avis_portant_sur_le_crit%C3%A8re_de_langue_maternelle_dans_les_offres_demploi.pdf

[36] UNIA, Evaluation - Loi du 10 mai 2007 modifiant la loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme ou la xénophobie (M.B. du 30-05-2007) (anti-racism law) - Loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination (M.B. du 30-05-2007) (anti-discrimination law), February 2016, § 145: https://www.unia.be/files/Documenten/Evaluation_2016.pdf.

[37] Adopted in Strasbourg on 1 February 1995.

2. Anti-Semitism and Islamophobia (Art. 2, C.4, pp. 7-11)

A. Combating persistent antisemitism

Your Committee asked Belgium about the impact of measures taken to combat the persistence of antisemitism in Belgium. The LDH is aware of a 2018 study conducted by the European Union Agency for Fundamental Rights entitled "Experiences and Perceptions of Antisemitism - Second Survey on Discrimination and Hate Crime against Jews in the EU"[38].

The research results cover twelve Member States, including Belgium, in which 96% of the estimated Jewish population of the EU resides. Almost 5,900 people who identify as Jewish participated in the survey, which was conducted online in May and June 2018.

The results of the survey illustrate the inadequacy of measures to combat antisemitism in Belgium. Thus, among the data collected by the FRA, it is noted that :

- 86% of the respondents in Belgium believe that antisemitism is still a very big problem in our country, which is an increase of 8% compared to the survey published in 2012, with an average of 85% of the respondents for the 12 states;
- Anti-Semitic comments on the Internet are a major problem for respondents in almost all Member States covered by the survey (89%), and for over 92% in Belgium;
- In Belgium, for 87% of the interviewees, antisemitism has increased over the last 5 years, with this percentage remaining stable since the survey was published in 2012;
- A total of 39% of respondents had personally experienced at least one incident (verbal insults, harassment and/or physical attack) in the past 12 months. Belgium has the third highest rate of incidents with an average of 28% for the countries surveyed;
- 42% of the respondents in Belgium, compared to an average of 38% in the other countries surveyed, indicated that they had already considered emigrating because they did not feel safe as Jews and
- In total, 25% of respondents in Belgium had felt discriminated against on the basis of their religion in the past 12 months, compared to an average of 21% in the countries surveyed.

The LDH is concerned about the increase in these figures compared to the study carried out in 2012 and recommends that the State strengthen its policy to fight anti-Semitism, taking into account the results of this survey.

[38] https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-experiences-and-perceptions-of-antisemitism-survey_en.pdf

B. Combating the persistence of Islamophobia: headscarves and discrimination in employment, social welfare and education (Art. 7, A, p. 35)

Your Committee asked Belgium about the impact of measures taken to combat the persistence of Islamophobia in Belgium.

The issue of the wearing of religious symbols, both in public spaces (or in private spaces accessible to the public) and in the workplace and education, remains a tense and unresolved issue in Belgium. While the state of the law in this area is clear, at least as far as adults[39] are concerned, there are still many cases of interference with the fundamental rights of the persons concerned, as shown in particular by the condemnation of Belgium by the European Court of Human Rights in Lachiri v. Belgium[40] .

The elimination of discrimination against women includes their « right to participate in recreational activities, sports and all aspects of cultural life »[41]. In this respect, the LDH intervened three times in 2019[42] regarding discrimination based on the wearing of the Islamic headscarf in two sports halls [43]and at the Société des Transports Intercommunaux de Bruxelles (STIB), the employer and main public transport operator in Brussels[44]. Dress codes that disproportionately affect Muslim women undermine both their autonomy by denying their ability to make independent decisions about how to dress and their religious freedom. It discriminates against them. **The LDH highlights these intersectional discriminations[45], based on both religious belief and gender, and insists on the specific attention they require.**

[39] See J. RINGELHEIM, "Les interdictions de port du foulard visant des femmes adultes", LDH analysis, Brussels, October 2017 (https://www.liguedh.be/analyse-port-du-foulard-islamique-et-droits-fondamentaux/) and J. RINGELHEIM and V. VAN DER PLANCKE, 'Neutrality of the State and fundamental rights' (http://www.liguedh.be/wp-content/uploads/2016/03/voile_colloque%20du%20fdf_18.09.pdf).

[40] ECHR, Lachiri v. Belgium, 18 September 2018. For a commentary on this decision, see J. RINGELHEIM, "L'arrêt Lachiri : la Cour européenne des droits de l'homme condamne la Belgique pour l'interdiction de porter d'un signe religieux par une partie civile dans un tribunal", Justice en ligne, 26 November 2018, in http://www.justice-en-ligne.be/article1116.html.

[41] Statement by Mr Rupert Colville, "Press briefing on France and Bolivia", UN High Commissioner, 30 August 2016, available at https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20430&LangID=F

[42] Cases R.G. n°19/504/A and R.G. n°19/538/A before the Court of First Instance (French-speaking chamber) of Brussels; R.G. n°19/1755/A before the Labour Court (French-speaking chamber) of Brussels.

[43] The two gyms in question prohibit the wearing of head coverings on the basis of neutrality. Unfortunately, this principle is too often invoked to justify restrictive policies in a context of widespread suspicion of Muslims, with a disproportionate impact of these restrictions on Muslim women. For several years, bans on the wearing of the Islamic headscarf by adult women have been increasing in various areas in Belgium (see for example H. MORMONT, "Discrimination et port du foulard au travail dans le secteur privé : la Cour de cassation dans le sillage de la Cour de justice de l'Union européenne", Justice en ligne, 28 February 2018, in http://www.justice-en-ligne.be/article1034.html). The structural dimension of this exclusion also has an impact on the way society perceives Muslim women.

[44] The STIB, for its part, pursues a policy of 'exclusive neutrality' applied to all its staff. This policy is mentioned in Article 9(3) of its working regulations: 'the wearing of any insignia other than that of the service is prohibited for staff in uniform, as well as for those in civilian clothes during their period of service'. The STIB is the largest employer in Brussels, employing many workers of foreign origin and with low qualifications, but whose staff is - according to their figures - only 10.75% female (https://www.lalibre.be/economie/entreprisesstartup/de-plus-en-plus-de-femmes-a-la-stib-5d0c8e727b50a62b5b1a5faa). As the largest employer in the Brussels Region, such a ban on the wearing of headgear, apparently neutral but inexorably leading to the exclusion of certain people, is therefore likely to affect the Brussels labour market, particularly against women of the Muslim faith, generally of non-European origin, whose employment rate is already one of the lowest in Belgium (among others: https://www.unia.be/fr/articles/publication-du-monitoring-socio-economique-2017-emploi-et-origine).

[45] Center For Intersectional Justice and Actiris Brussels, Analysis of the transposition of the concept of intersectionality in the framework of the reform of diversity and anti-discrimination instruments.

In practice, although this practice has been condemned by the courts, the right to social integration of women wearing the headscarf is also threatened by public social action centres that practice a discriminatory hiring policy and sanction women who refuse a job by unjustifiably removing their headscarf on the grounds that they are not willing to work with the withdrawal of the social integration income[46].

The principle of neutrality continues to be used to legitimise bans on the wearing of headscarves in places of education and teaching. In the Flemish school network, a general directive from 2013 for a general ban on headscarves was found to be contrary to freedom of religion[47]. In higher education, the Constitutional Court[48] ruled that a higher education institution in the French community had the right to prohibit the wearing of signs of philosophical or religious affiliation, including head coverings, in certain circumstances[49].

Freedom must remain the rule and prohibition or constraint the exception. **The LDH considers that the internal regulations of schools and educational establishments, under the guise of neutrality, risk ratifying the wider phenomenon of the exclusion of female students of the Muslim faith from education**[50]. In this respect, ELEC notes the decision of the French Community to authorise the wearing of religious symbols in the higher education and social promotion establishments for which they are responsible from September 2021[51] in an inclusive perspective that respects fundamental freedoms.

https://cdn.uc.assets.prezly.com/62f1d507-711d-45a3-980f-f138828686c2/-/inline/no/cij-rapport-le-role-de-lintersectionnalite-dans-la-lutte-contre-les-discriminations-compressed.pdf).

[46] Judith Lopes Cardozo, "Veiling the right to integration", available at http://www.asbl-csce.be/journal/Ensemble103.pdf.

[47] UNIA, La politique du réseau scolaire flamand GO! en matière de symboles religieux est contraire à la loi | Unia, Brussels, 27 August 2019. https://www.unia.be/fr/articles/la-politique-de-go-en-matiere-de-symboles-religieux-est-contraire-a-la-loi; Trib. 1ère instance Louvain, 27-08-2019 available at https://www.unia.be/fr/jurisprudence-alternatives/jurisprudence/tribunal-de-premiere-instance-de-louvain-27-aout-2019.

[48] C.C., 4 June 2020, no. 81/2020.

[49] See https://www.unia.be/fr/articles/signes-convictionnels-dans-lenseignement-superieur.

[50] A.I. "Choice and prejudice: discrimination against Muslims in Europe", 24 April 2012, available at http://www.amnesty.org/fr/library/asset/EUR01/001/2012/en/85bd6054-5273-4765-9385-59e58078678e/eur010012012en.pdf.

[51] Unia, "Higher Education and Social Promotion in the Walloon-Brussels Federation: Wearing of Religious Signs - Recommendation to the Ministers of Higher Education and the Minister of Social Promotion Education", 2016, https://www.unia.be/fr/legislation-et-Recommendations/Recommendations-dunia/port-de-signes-religieux-et-reglement-dordre-interieur-enseignement-superie.

3. Compliance with anti-discrimination legislation by the Police (Art. 2 C.6. , p. 12)

In their recommendations to the Belgian State[52], the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the UN Committee against Torture (CAT) and the UN Human Rights Council [53]stipulated, among other things, that « *The State party should take the necessary measures to combat ill-treatment effectively, including ill-treatment based on any form of discrimination, and punish the perpetrators appropriately* »[54]. In spite of this, allegations of ill-treatment by law enforcement officials [55]and even convictions by the European Court of Human Rights persist[56].

In order to follow these recommendations, the Belgian State should :

● **Guaranteeing the identification of members of law enforcement agencies**: the law of 4 April 2014 amending Article 41 of the law on the police function of 5 August 1992, with a view to guaranteeing the identification of police officers and agents while improving the protection of their privacy[57] aims to allow the identification of police officers in all circumstances, in accordance with the case law of the European Court of Human Rights[58]. However, this law is very rarely applied and, when it is, it is in an uneven and differentiated manner that varies from police zone to police zone. Furthermore, the law does not set out any sanctions for police officers who do not respect their obligation to be identifiable or who deliberately prevent identification. The Belgian State must ensure compliance with this obligation in order to combat inhuman and degrading treatment;

● **Guarantee the right to film and photograph police actions**: it is important to recall that there is no general ban on photographing or filming police actions[59]. The role of images in the fight against the illegitimate use of force by the police is no longer in question[60]. Apart from certain exceptional and limited cases, citizens and journalists have the right to film or photograph police actions, either to

[52] Report to the Government of Belgium on the visit to Belgium by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 8 March 2018, CPT/Inf (2018) 8, §§ 12 ff. See also Report to the Government of Belgium on the visit to Belgium by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 20 April 2006, CPT/Inf (2006) 15, §§ 11 and 12; Report to the Government of Belgium on the visit to Belgium by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 23 July 2010, CPT/Inf (2010) 24, §§ 13 ff.

[53] Human Rights Council, Draft report of the Working Group on the Universal Periodic Review - Belgium, Geneva, 11 April 2016 (A/HRC/32/8), pt. 139.8 - 139.10.

[54] Committee against Torture, Concluding observations: Belgium, 19 January 2009, CAT/C/BEL/CO/2, § 13.

[55] Report to the Government of Belgium on the visit to Belgium by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 8 March 2018, CPT/Inf (2018) 8, §§ 12 ff.

[56] ECHR (G.C.), Bouyid v. Belgium, 28 September 2015.

[57] Act of 4 April 2014 amending Article 41 of the Police Act of 5 August 1992, with a view to guaranteeing the identification of police officers and agents while improving the protection of their privacy (M.B. 28-05-2014).

[58] ECHR, Hristovi v. Bulgaria, 11 October 2011, §§ 92-93. See also The Human Rights Defender, Report on police-citizen relations and identity checks, p. 32; Art. 45 of the European Code of Police Ethics.

[59] Tribunal de première instance de Bruxelles, Section civile, Judgement 2019/22791 of 24 October 2019, roll no. 2019/1239/A; Tribunal de police du Brabant Wallon, Division Wavre, Judgement 2018/233 of 12 November 2018, roll no. 18A14; D. Voorhoof, 'Geen verbod op filmen van politieagenten', De Juristenkrant, no. 380, 19 December 2018.

[60] This was recently illustrated by the so-called "Chovanec" case, named after the Slovak citizen who died in a cell at Charleroi airport (https://www.rtbf.be/info/belgique/detail_tout-comprendre-a-l-affaire-chovanec-le-fil-des-evenements-les-dates-et-les-personnages-cles?id=10572722), or the conviction by the Brussels Criminal Court of a police officer for assault and battery on a young Sudanese migrant (see https://bx1.be/bruxelles-ville/la-police-accusee-de-violences-sur-un-migrant-soudanais-a-bruxelles-une-enquete-ouverte/ and https://www.lavenir.net/cnt/dmf20200717_01492092/il-avait-violente-un-migrant-un-policier-condamne-a-un-an-de-prison-avec-sursis).

inform or to collect evidence of the course of events[61]. This right should be strongly reaffirmed by the Belgian authorities, as cases of problematic, even illegal, interventions by the police are multiplying. For example, journalists[62] and NGOs (including the LDH) are regularly harassed because they are doing their job, or even prosecuted[63]. These unacceptable practices, which are contrary to both freedom of expression and freedom of the press, should stop immediately ;

● **Guarantee the independence of the Investigation Department of the Standing Police Oversight Committee (Committee P)**, in line with international recommendations[64] ;

● **Ensuring that medical elements are taken into account[65]** : Belgian law does not provide for a mandatory medical report for any person deprived of liberty by the police. However, it does provide for the right to medical assistance without condition for any person deprived of liberty[66]. However, this right is not always respected and is applied very differently depending on the police station and the police officers, as the necessary royal decree has still not been adopted despite numerous national and international reminders, as attested by Committee P[67] . The doctor does not always draw up a complete certificate or report on the possible injuries sustained and almost never examines the compatibility with the causes described by the patient, as provided for in the Istanbul Protocol[68]. The CPT deplores the lack of specific recording of injuries for persons entering police stations in Belgium[69]. The taking of photographs of any injuries is not provided for by any regulation and is not practised. As a result of all these elements, victims of violence have difficulty obtaining detailed medical certificates to facilitate proof in court. The Belgian State should remedy these shortcomings by strictly applying the Istanbul Protocol.

Moreover, concerning more specifically the ill-treatment of people in an irregular situation, in October 2018 the NGO Médecins du Monde published a survey on police violence against migrants and refugees in transit in Belgium[70] . They interviewed 440 people in May, June and July 2018. "*Of these 440 people, 25% stated that they had been victims of police violence in Belgium. 59 people agreed to participate in a more in-depth interview via a semi-directive questionnaire. After examination, 51 of these testimonies were found to be valid for a total of 101 violent acts*. » [71]

[61] According to the Council of Europe's European Commission for Democracy through Law ("Venice Commission"), states should not "*prevent participants and third parties from photographing or filming the police operation (…)*".
[62] See https://www.rtbf.be/info/medias/detail_une-equipe-de-la-rtbf-arretee-par-la-police-lors-d-une-action-au-centre-127-bis?id=9950937
[63] See http://www.liguedh.be/droit-de-filmer-laction-policiere-la-justice-appelee-au-secours-des-droits-fondamentaux/. Or http://www.liguedh.be/les-forces-de-police-ne-sont-pas-au-dessus-des-lois/.
[64] See *above*.
[65] For more information, see https://www.liguedh.be/wp-content/uploads/2021/01/Analyse_LDH_Le-r%C3%B4le-du-certificat-m%C3%A9dical_version-longue_decembre-2020.pdf.
[66] Article 33quinquies of the Law of 5 August 1992 on the police function.
[67] https://comitep.be/document/onderzoeksrapporten/2019-12-09%20privations%20de%20libert%C3%A9%20dans%20les%20lieux%20de%20d%C3%A9tention%20de%20police.pdf.
[68] UN High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 9 August 1999.
[69] CPT, Report to the Belgian Government concerning the visit to Belgium from 24 September to 4 October 2013 carried out bythe CPT, CPT/Inf (2016) 13, Strasbourg, 31 March 2016, para. 27.
[70] Médecins du Monde, Police violence against migrants and refugees in transit in Belgium - A quantitative and qualitative survey, October 2018 (https://medecinsdumonde.be/system/files/publications/downloads/MdM%20rapport%20Geweldmigratie%20FR%20HD.pdf).
[71] *Ibid,* p. 4.

- Almost 60% of respondents said they had experienced violence in the field;

- 64% of those arrested were forced to strip completely naked, which was felt to be a humiliating and degrading experience by 72%, accompanied by beatings and insults;

- Of the 13 people who refused to give their fingerprints, all were victims of torture as defined by the Istanbul Protocol;

- 41% of the respondents who were arrested said that they were not given food or water for more than 15 hours. 13% also said that they were not allowed to use a toilet, while one person even explained that he had to relieve himself in a bucket for 48 hours;

- 41% of respondents who had been arrested said they had not recovered the possessions they had been deprived of during their imprisonment." [72]

As we learn from the MYRIA report on the police and transit migrants[73], Committee P does not question these findings but does not reach the same conclusions for two reasons: its investigation was limited to mass administrative arrests of transit migrants (planned operations that generate fewer difficulties) and the method used did not allow Committee P to come into contact with migrants in conditions conducive to giving relevant testimony.

To be precise, these migrants in transit are in fact "undocumented" persons on the territory: they do not want to apply for asylum in Belgium and therefore have no rights. Being illegally resident in Belgium is an offence under article 75 of the law of 1980 on access to the territory, residence, settlement and removal of foreigners[74], which makes illegal residence an offence punishable by a prison sentence and a fine. **The LDH is constantly asking for the decriminalisation of illegal residence: this article of the law, which prevents undocumented migrants from exercising their rights in Belgium, must be removed.**

Finally, in 2016, the LDH published a report on the persistence of ethnic profiling practices by members of the police force[75]. Similarly, the UN Human Rights Council also issued recommendations to the Belgian state on the subject to: "*Ensure effective coordination at the local, regional and federal levels of measures taken to monitor the prevalence of illegal ethnic profiling and racism, particularly in view of the current terrorist threat in the country; (...) Improve police training to raise awareness of racial profiling; (...) Impartially investigate all cases of ill-treatment and excessive use of force by law enforcement officials, including where such acts are racially motivated; (...) Conduct an evaluation of the use of ethnic profiling by the police*[76].

[72] *Ibid*.

[73] Myria, Police and Transit Migrants - Respecting Dignity and Seriously Investigating Violence, September 2019, in https://www.myria.be/fr/publications/note-police-et-migrants-en-transit, pp. 4-5.

[74] M.B. of 31-12-1980.

[75] Ligue des Droits Humains, 'Controlling and Punishing? Exploratory study on ethnic profiling in police checks: words of targets', Brussels, 2016 (http://www.liguedh.be/wp-content/uploads/2017/03/rapport_profilage_ethnique_ldh.pdf). See also Amnesty International Belgium, 'On ne sait jamais avec des gens comme vous - Politiques policières de prévention du profilage ethnique en Belgique', Brussels, May 2018 (https://www.amnesty.be/IMG/pdf/rapport_profilage_ethnique.pdf); P. Charlier, Protéger nos libertés et garantir notre sécurité, La Libre Belgique, 8 December 2015 (http://www.lalibre.be/debats/opinions/proteger-nos-libertes-et-garantir-notre-securite-5665a7da35708494c9581fef).

[76] Human Rights Council, Draft report of the Working Group on the Universal Periodic Review - Belgium, Geneva, 3 February 2016 (A/HRC/32/8), Recommendations 138.73, 138.74, 139.8, 139.9 and 140.25.

All of these recommendations were accepted by the Belgian state, in the person of its Minister of Foreign Affairs. However, despite the reports published on the subject, the testimonies of members of the police themselves and the statements of the Minister of Foreign Affairs at the United Nations Human Rights Council, the issue does not seem to be a priority for the political authorities. Therefore, the Belgian State should resolutely fight against this phenomenon, in particular by considering the introduction of a systematic recording of identity checks using a form by the police officers who carry out these checks, a copy of which (the receipt) should be provided to the person checked. It could also encourage the adoption of an explicit circular from the public prosecutors concerning the prohibition of this practice and guidelines for the police force. Finally, it could invest in police training and make appeal mechanisms more effective, in line with the international recommendations mentioned above[77].

4. Procedures for the removal of foreign nationals (Art. 2, C.7, p. 13)

A. Monitoring of removal procedures

The inadequacy of the AIG's controls is clear, with sporadic controls not being effective. Moreover, Myria notes a 41% decrease between 2013 and 2017 in the number of removal checks carried out by the AIG at the airport police in Zaventem. In 2017, 92 checks were carried out there for 7.901 removal attempts made from this airport[78].

The Royal Decree of 19 June 2012 amending the Royal Decree of 8 October 1981 on access to the territory, stay, establishment and removal of foreigners and the Royal Decree of 20 July 2001 on the functioning and staff of the General Inspectorate of the Federal Police and the local police in the context of the control of forced return (M.B., 2 July 2012) specifies that controls are carried out 'according to *the human and budgetary means available*'. However, in its 2018 annual report, the AIG stresses that its budgetary situation prevents it from "*functioning properly and meeting the legal obligations and missions assigned*"[79]. Visiting associations and citizens visiting the closed centres gather recurrent testimonies of cases of excessive brutality (insults, threats, physical violence) during expulsions (at boarding, on board the plane and during transport to the closed centre, in the event of a failed expulsion attempt).

The authority in charge of controls should be external to the police services, enjoy full independence (the AIG depends on the Minister of Justice), and carry out frequent controls. Belgium's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading

[77] For more information, see https://www.liguedh.be/sept-organisations-lancent-une-campagne-contre-le-profilage-ethnique-par-la-police-belge/.

[78] Myria, MyriaDoc#8 #8 Retour, détention et éloignement des étrangers en Belgique 2018, décembre 2018, p. 6..

[79] General Inspectorate of the Federal and Local Police, Activity Report 2018, p. 53.

Treatment or Punishment [80]would require it to entrust this monitoring task to a fully independent body.

The Standing Police Monitoring Committee (Committee P) limits itself to indirect monitoring. It notes that it is "*particularly difficult to ensure effective external control*" and that discreet observation is impossible[81]. Monitoring by NGOs is simply not possible, as they are still denied access to the cells and the deportation area today.

At the borders, there are no controls on the refoulements carried out by the airlines, which sometimes use private companies to organise escorts.

In October 2020, the European Court of Human Rights unanimously condemned the Belgian state for its inhumane migration policy after the deportation of a Sudanese man without determining the risks of his return, with the cooperation of representatives of the Sudanese security services, and without taking into account a court decision prohibiting the deportation[82]. It thus violated both Articles 3 and 13 of the European Convention on Human Rights.

The LDH welcomes this victory but deplores the lack of consideration of the government of the time for fundamental rights and the separation of powers. Its concern about the migration policy remains unabated. The Belgian State must stop aiming at return at all costs and ensure the respect of the right to seek asylum through procedures that guarantee the respect of human rights and international obligations.

5. Prohibition of discrimination in all its forms (Art. 5)

A. Persons of foreign origin in the criminal justice system (Art. 5, A, p.14)

The National Institute of Criminalistics and Criminology (INCC) published a research study in 2005 entitled « 'Foreign origin' and decision-making processes in youth courts »[83]. This study showed that the foreign origin of a minor who commits an offence results in a harsher procedure for the minor. Thus, minors of foreign origin are over-represented in court cases, with a particular emphasis on young people from the Maghreb. Foreign origin also has a significant impact on the decisions taken by the public prosecutor and judges, tending to take more restrictive measures towards them than towards

[80] New York, 18 December 2002.

[81] Indeed, the presence of the control authorities at the place of deportation is '*automatically and inevitably detected, since the conditions of access to these places automatically imply awareness of the presence of the controllers*' (Standing Police Monitoring Committee, 'Some Significant Complaints on Repatriation', Interim Report 2006, p. 2).

[82] ECHR, Court (Third Section), 27 Oct. 2020, No. 19656/18; see LDH press release "Belgian State condemned for its inhuman migration policy". LDH press release *"Belgian State condemned for its inhumane migration policy"* https://www.liguedh.be/letat-belge-est-condamne-pour-sa-politique-migratoire-inhumaine/

[83] C. VANNESTE, *'Origine étrangère' et processus décisionnels au sein des tribunaux de la jeunesse'*, in QUELOZ N., BÜTIKOFER REPOND F., PITTET D., BROSSARD R., MEYER-BISCH B., *Délinquance des jeunes et justice des mineurs. Les défis des migrations et de la pluralité ethnique - Youth Crime and Juvenile Justice. The challenge of migration and ethnic diversity*, Editions Staempfli, Collection KJS - CJS (Crime, Justice and Sanctions), Volume 5, Bern, 2005, 631-650.

minors of Belgian origin. For example, reprimand, the mildest measure, is applied to 25% of minors of Belgian origin and only 19% of minors of foreign origin. On the other hand, placement in a public institution concerns 22% of minors of Belgian origin compared to 29% of minors of foreign origin.

The consultation of the annual report 2017 of the Directorate General of Penitentiaries does not allow us to conclude that things have changed. Indeed, this report shows that almost 45% of Belgian prisons are populated by foreign citizens, representing citizens from more than 130 countries[84].

The LDH is concerned about this situation and hopes that the Belgian authorities will take it into account when developing criminal policy.

B. People of foreign origin in the labour market (Art. 5, B, p.14)

Unia and the Federal Public Service Employment, Labour and Social Dialogue published in 2019 their fourth "Socio-economic monitoring" report[85], which aims to identify the position of workers on the market according to their origin (Belgian, European or non-European) and their migration history. The results reveal the existence of discrimination on the Belgian labour market: people of non-EU nationality encounter numerous obstacles to entering the market, unlike their Belgian or European counterparts. These obstacles are said to be structural, linked to the structure of the labour market itself and to direct and indirect discrimination. While all target groups may be impacted by factors related to gender, unequal educational opportunities, high job access thresholds, low mobility and the segmentation of the Belgian market between active and dependent careers, people of foreign origin face specific barriers. Certain categories of workers of foreign origin are systematically either under-represented or over-represented in certain occupational sectors. Correspondingly, foreigners with a status that shows better integration into Belgian society (long-term status, acquisition of Belgian nationality, etc.) fare somewhat better on the labour market[86].

Finally, gender, absent from previous reports, is now taken into account as an additional factor and allows the impact on women's employment from several origins to be visualised. The result is that women face far more difficulties than men, irrespective of their family status, and that they work part-time far more often than men.

The report concludes that the situation of people of foreign origin in our market is worse than in any other EU country.

In conclusion, the authors of the Monitoring make a number of recommendations aimed at structurally improving the functioning of the labour market and fostering the sustainable integration of people with a migrant background. **The LDH stresses the need for a comprehensive approach to firmly**

[84] Annual Report 2017 of the Directorate General of Penitentiaries, in

https://justice.belgium.be/sites/default/files/rapport_annuel_dg_epi_2017_0.pdf, p. 46.

[85] Unia, Socio-economic monitoring "Labour market and origin" 2019,
https://www.unia.be/files/Documenten/Publicaties_docs/Monitoring_FR_-_WEB-AS.pdf

[86] In addition to obtaining refugee status, there is one factor that specifically impacts on the labour market integration of this category of people: time. Having more time means that refugees can better adapt to their new environment, social norms and practices, circumstances, institutions, learning a national language and developing their social network (B. Herman and A. Rea, "The long and winding road to employment: the labour market integration careers of refugees in Belgium", European Journal of International Migration [Online], vol. 33 - No. 4 | 2017, URL: http://journals.openedition.org/remi/9467; DOI: https://doi.org/10.4000/remi.9467).

combat inequalities in education, to implement a general policy aimed at strengthening the acceptance of diversity in society, while ensuring the systematic involvement of the people concerned. Intersectionality and specific and combined forms of racism should be taken into account and integrated into a better legal framework to combat discrimination legally. Finally, it calls for proactive enforcement of the law, inter alia through regular labour market testing.

C. Access to decent housing for people of foreign origin

In Belgium, access to housing is a right that is structurally in crisis: there is a lack of social housing, the number of people in precarious situations is increasing, and rental market prices are rising without any control being exercised to guarantee decent and affordable housing for everyone. Discriminated tenants are then forced to fall back on housing that is too small, too expensive or even unhealthy, which leaves tenants little room for manoeuvre to assert their rights to decent housing (heating to be repaired, poor insulation, etc.). Homelessness is also on the increase and the health crisis has hit people in difficulty harder.

Furthermore, Belgian law allows the landlord to terminate a lease early and unilaterally upon payment of compensation[87]. The legislation does not require any rehousing solution, which is a violation of the right to decent housing[88].

In its recent concluding observations[89], the Committee on ESC rights expressed concern about the difficulties migrants, especially non-EU nationals, face in accessing housing and recommended that Belgium **ensure the effectiveness of anti-discrimination laws in accessing housing.** The Committee also recommended ensuring a wider supply of affordable and better quality housing, including an increase in the supply of social housing.

The LDH endorses the observations made by the Committee on ESC rights and invites the Belgian authorities to follow its recommendations: to strengthen the measures taken to prevent discrimination against migrants, refugees and asylum seekers in the exercise of their economic and social rights; to ensure the effectiveness of anti-discrimination laws in the workplace, particularly in the private sector, and in access to housing; to guarantee a dignified standard of living for asylum seekers, including in the event of a subsequent application or disciplinary sanction.

[87] Art.3, § 4, Law of 20 February 1991 on leases relating to the principal residence of the lessee.
[88] N. BERNARD, De l'adéquation de la résiliation du bail sans motif à la situation particulière des personnes âgées, obs. sous Civ. Bruxelles, 14 mars 2018, in Revue de jurisprudence de Liège, Mons et Bruxelles, Vol. 2019, no.12, (2019), p.3.
[89] Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth periodic report of Belgium, adopted by the Committee at its sixty-seventh session (17 February-6 March 2020), 26 March 2020, §22, 23, 38 and 39.

D. Access to health services for people staying illegally in Belgium

1. *Reform of emergency medical aid*

Article 57 §2 of the organic law of 8 July 1976 of the Public Centres for Social Action grants urgent medical aid (hereinafter AMU) to foreigners who are staying illegally in the Kingdom, subject to proof of their indigence by means of a social enquiry[90]. The Royal Decree of 12 December 1996 defines the contours of urgent medical aid, providing as follows: "*Urgent medical aid, as referred to in Article 57, § 2, paragraph 1 of the law of 8 July 1976 on the organisation of public social aid centres, concerns aid that is* ***exclusively medical in nature*** *and whose* ***urgent nature is*** *attested to by a medical certificate. This aid cannot be financial aid, housing or other social aid in kind. Urgent medical aid may be provided both on an outpatient basis and in a care facility, as referred to in Article 1, 3°, of the Act of 2 April 1965 on the assumption of responsibility for assistance granted by the public social welfare centres. Urgent medical aid may cover* ***both preventive and curative*** *care »*[91]*(free translation)*.

Numerous criticisms linked to the restrictive interpretation of this notion and the disparity of application procedures of the Public Social Welfare Centers on the one hand and health professionals on the other have rendered this right ineffective[92]. In addition to these problems, there are also administrative burdens that discourage both beneficiaries and health professionals[93].

On 16 January 2018, a bill aimed at reforming the AMU for foreigners in irregular residence was tabled for consideration by the Health Committee of the House of Representatives [94]. The former Minister of Social Integration justified this reform by the need to fight against abuses based on figures from a report drawn up by a single doctor of the Auxiliary Health and Disability Insurance Fund (hereafter CAAMI) and whose analysis sample is not clear[95] . This report restricts urgent medical assistance *to* "*necessary, unavoidable and essential health care*" and "*to be delivered rapidly to avoid a medical situation that puts a person or his or her entourage at risk" [96]. This definition is open to criticism, as it departs from the Royal Decree of 12 December 1996, which does not limit AMU to emergency care alone but to all preventive and curative medical care*[97]*.*

In addition, this project aims to introduce a procedure to control the urgency of the care and to sanction financially a posteriori the care providers[98]*. The* medical officer of the CAAMI is responsible for the following tasks[99].

---

[90] Organic Law of 8 July 1976 on Public Social Action Centres, *M.B.*, 5 August 1976, art. 57 §2.
[91] Royal Decree of 12 December 1996 on urgent medical aid granted by the public social welfare centres to foreigners staying illegally in the Kingdom, *M.B.,* 31 December 1996, art.1.

[92] V. HENKIBRANT and S. MOKRANE, "Le point sur l'aide médicale urgente à destination des étrangers en séjour illégal", *R.D.E.*, 2013, p. 225.
[93] *Ibid.* , p. 225.
[94] Draft law amending articles 2 and 9ter of the law of 2 April 1965 on the assumption of responsibility for assistance granted by public social welfare centres, *Doc.parl.,* Ch., sess. ord. 2017-2018, n°54-2890/1.

[95] Médecins du Monde, "Urgent medical aid in danger: Parliament is about to vote on a dangerous law", https://medecinsdumonde.be/presse/aide-medicale-urgente-en-danger-le-parlement-sapprete-a-voter-une-loi-dangereuse#undefined
[96] idem
[97] idem
[98] CIRE, "Une redéfinition de l'aide médicale urgente qui ne dit pas son nom?", March 2018, p.9
[99] idem

Médecins du Monde, Medimmigrants, the CIRE and other field actors have spoken out in favour of simplifying and harmonising urgent medical assistance, but the current reform makes the AMU system even more complex, thus risking making access to health care even more difficult for this already vulnerable population[100].

2. *Unaccompanied foreign minors*

Unaccompanied foreign minors (hereinafter referred to as MENA) are entitled to health care benefits under the compulsory health care insurance scheme under certain conditions, regardless of their administrative status and thus their lack of residence rights.

In practice, several issues tend to make this right ineffective. The Federal Centre of Expertise for Health Care reports difficulties in meeting the conditions for access to compulsory insurance[101]. Indeed, MENA cannot join a mutual insurance company free of charge, but they must attend school for at least three consecutive months[102].

However, it is difficult for some MENA to meet this condition for the following reasons[103]:

- Due to the war situation, MENA from e.g. Afghanistan have never been to school and are illiterate at the age of 16 or 17.
- In their country of origin, they are considered adults and thus have difficulties in complying with the rules and the school framework, which are often too theoretical.
- Dropping out of school to work "*to pay for their trip or to pay the ransom of a family member held by human traffickers*".
- Reasons for severe mental disorders or psychological instability that prevent concentration and normal, uninterrupted schooling.

Furthermore, the shortage of guardians and the lack of information from guardians and health professionals about the coverage extended by Fedasil or the Public Social Welfare Center lead to ineffectiveness of health coverage on the one hand, and inequalities in access to care between MENA on the other[104].

[100] Draft law amending articles 2 and 9ter of the law of 2 April 1965 on the assumption of responsibility for the relief granted by public social welfare centres, *Doc.parl.,* Ch., sess. ord. 2017-2018, n°54-2890/5, p. 18.
[101] Federal Centre for Expertise in Health Care, *Asylum seekers: options for fairer access to health care. A stakeholder consultation - Summary,* KCE Report 319Bs, Brussels, 2019, p. 28.
[102] *Ibidem*, p. 28.
[103] *Ibidem*, p. 28.
[104] *Ibidem,* p. 28.

3. *Regularisations on medical grounds (9 ter)* [105]

Article 9ter of the law of 15 December 1980 introduces the residence permit for medical reasons. Recent figures for medical regularisations show a decrease in applications in recent years.

In 2019, 1237 applications for medical regularisation were submitted, 15% less than in 2018[106] . The Office made a decision on 1818 applications, of which only 192 were positive decisions[107].

In the *Paposhvili* judgment, the European Court of Human Rights condemned Belgium for violations of Articles 3 and 8 of the European Convention on Human Rights, which respectively prohibit inhuman and degrading treatment and guarantee the right to respect for private and family life[108]. It considers that it is forbidden to remove a seriously ill foreigner when there are "*substantial grounds for believing that the person, although not at imminent risk of death, would, owing to the absence of or lack of access to adequate treatment in the country of destination, face a real risk of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in severe suffering or a significant reduction in life expectancy*"[109].

According to the Court, it is the responsibility of the authorities of the sending State to assess the alleged risk through adequate procedures and rigorous monitoring[110]. In the present case, Belgium decided to expel Mr Paposhvili to Georgia without carrying out an assessment of the real risk of inhuman and degrading treatment either in the context of his application for medical regularisation or in the context of the removal procedures[111]. The Court considers that "*the fact that such an assessment is carried out in extremis at the time of the forced execution of the removal order does not in itself meet these concerns, in the absence of any indication as to the scope of such an examination and its effects on the enforceability of the order to leave the territory*"[112]. Mr. Paposhvili eventually died in Belgium in 2016[113].

More recently, in its judgment of 20 November 2019 [114], the Constitutional Court found that the appeal for annulment of a decision rejecting an application for a residence permit on medical grounds was ineffective within the meaning of Article 13 of the European Convention on Human Rights[115]. Indeed, the Constitutional Court expressly recognises that "*the requirement of an effective remedy implies that the remedy used must have suspensive effect as of right and that, if necessary, new evidence may be produced, so that the judge can examine the applicant's current situation at the time of ruling*"[116]. However, it immediately qualified this statement by stressing that "*all the remedies available to the applicants, including the remedies for opposing the enforcement of a removal order, must be taken into*

[105] For more information on the issue of medical residence permits (9b), see the white paper written by the LDH on this subject: https://www.liguedh.be/livre-blanc-9ter/
[106] Myria, 'Regularisation of residence', *Annual Report Papers 2020*, p. 3.
[107] *Ibidem,* p.3.
[108] ECHR, *Paposhvili v. Belgium*, 13 December 2016. See in particular: C. VERBROUCK, "Quelques mises au point concernant les étrangers malades et la jurisprudence de la Cour européenne des droits de l'Homme*", Newsletter ADDE*, n°145, September 2018,
[109] ECHR, *Paposhvili v. Belgium*, 13 December 2016, §183.
[110] ECHR, *Paposhvili v. Belgium*, 13 December 2016. See also: Myria, "Regularisation of residence and the rights of illegal residents", *Migration Report 2017*, p. 165.
[111] ECHR, *Paposhvili v. Belgium*, 13 December 2016, §199-§202; See also; Myria, "Regularisation of residence and rights of illegal residents", *Migration Report 2017*, p. 165.
[112] ECHR, *Paposhvili v. Belgium*, 13 December 2016, §202.
[113] Myria, "Regularisation of residence and the rights of illegal residents", *Migration Report 2017*, p. 165.
[114] C.C., 20 November 2019, no. 186/2019.
[115] C. VERBROUCK and C. VAN HAMME, "Même la Cour constitutionnelle belge oublie la jurisprudence strasbourgeoise, spécialement l'arrêt *Paposvhili contre Belgique* de la Cour européenne des droits de l'homme" *Cahiers de l'EDEM*, March 2020.
[116] C.C., 20 November 2019, No. 186/2019, (point B.3).

account"[117]. In this case, the Court considers that the applicant therefore has an effective remedy with regard to all the judicial means available[118].

However, the Court's reasoning seems to disregard the *Paposhvili* judgment, which requires States to examine the risk of violations of Articles 3 and 8 of the ECHR in a comprehensive and timely manner before the enforcement phase of any expulsion decision, and not only at the enforcement stage[119].

In addition to this condemnation, the Federal Ombudsman[120], the Bioethics Committee, Myria, the League for Human Rights and a consortium of associations denounce the ineffective nature of the medical regularisation procedure[121]. It is therefore more than necessary for Belgium to set up a full appeal, with automatic suspensive effect and in accordance with the requirements of respect for fundamental rights in accordance with the case law of the European Court of Human Rights[122].

Given the need, not only in view of the human suffering increased by the irresponsible attitude of the Immigration Office, but also in view of the new international jurisprudence to which Belgium must conform, **the LDH strongly reaffirms the urgency of changing the law and the functioning of the "9ter" service.**

E. Acquisition and loss of Belgian nationality (Art. 5, F, p.25)

1. Acquisition of nationality and "integration".

A change of philosophy has been taking place in recent years with regard to nationality: nationality is no longer the instrument of integration (as was the case since 1984 and especially since 2000), but becomes a consequence of it. Thus, a foreigner who wishes to acquire Belgian nationality must prove his or her integration by meeting the criteria listed by the legislator: linguistic knowledge, social integration, economic participation and participation in the life of the host community. [123]

The abolition of the possibility of obtaining nationality by marriage is a restriction that has already had a greater impact on women. The requirement of economic participation impacts them again in that it forces them more often to accept precarious and/or part-time work, whereas the acquisition of

[117] C.C., 20 November 2019, no. 186/2019, (point B.6, B.7, B.8). See also C. VERBROUCK, 'Le cloisonnement des procédures de demande de protection internationale et de demande d'autorisation de séjour pour motifs médicaux ne respecte pas les droits fondamentaux', *R.D.E.*, 2019, p. 516; C. VERBROUCK and C. VAN HAMME, 'Même la Cour constitutionnelle belge oublie la jurisprudence strasbourgeoise, spécialement l'arrêt *Paposvhili contre Belgique* de la Cour européenne des droits de l'homme' *Cahiers de l'EDEM*, March 2020.

[118] C. VERBROUCK and C. VAN HAMME, "Même la Cour constitutionnelle belge oublie la jurisprudence strasbourgeoise, spécialement l'arrêt *Paposvhili contre Belgique* de la Cour européenne des droits de l'homme" *Cahiers de l'EDEM*, March 2020.

[119] C. VERBROUCK, *op.cit.,* p. 517; C. VERBROUCK and C. VAN HAMME, "Même la Cour constitutionnelle belge oublie la jurisprudence strasbourgeoise, spécialement l'arrêt *Paposvhili contre Belgique* de la Cour européenne des droits de l'homme" *Cahiers de l'EDEM*, March 2020.

[120] Federal Ombudsman, "The functioning of Section 9ter of the Immigration Office", 2016.

[121] C. VERBROUCK, *op.cit.,* p. 517.

[122] C. VERBROUCK, *op.cit.* p. 517; Myria, "Regularisation de séjour et droit de personnes en séjour irrégulier", *Migration Report 2017*, pp. 165-166.

[123] D. DE JONGHE AND M. DOUTREPONT, 'Le Code de la nationalité belge, version 2013: de 'Sois Belge et intègre-toi' à 'Intègre-toi et sois Belge'', *Journal des tribunaux, 4 May 2013, pp. 313-320.*

nationality would favour their access to work and therefore also their integration in general (for example by improving their knowledge of a national language through work) (see above, concerning the relationship to time for the integration of refugees).

The LDH denounces this logic of exclusion of the most precarious followed by the legislator by requiring economic participation and reiterates its fear, accentuated by the context of the economic crisis we are experiencing, that the procedure will lock the candidates into a vicious circle: no job, no nationality. No nationality, no job. However, nationality is an important lever for the economic and social integration of migrants, with monitoring confirming that obtaining nationality continues to correspond to a higher employment rate.

2. Deprivation of nationality

The Belgian Nationality Code has been largely modified since 2012[124]. This reform was to be accompanied by the introduction of a procedure for the recognition of stateless status with the principle of issuing a temporary residence permit and the ratification of the 1961 Convention on the Reduction of Statelessness. This ratification took place in 2014. However, Belgium reserved « the right to deprive of his or her nationality a person who did not derive his or her nationality from a Belgian author on the day of his or her birth or who was not granted his or her nationality by virtue of the Belgian Nationality Code in the cases currently provided for in Belgian legislation »[125].

At present, three articles govern deprivation of nationality in the Belgian Nationality Code: Article 23, which concerns general cases of deprivation, and Articles 23/1[126] and 23/2[127], which allow certain categories of Belgians convicted or suspected of criminal acts to be deprived of their nationality, according to a separate procedure.

In the context of the reinforcement of the fight against terrorism, the law of 20 July 2015 inserted an article 23/2 in the Belgian Nationality Code introducing a double novelty: on the one hand, all terrorist offences, regardless of their seriousness, are covered by the possibility of deprivation of nationality and, on the other hand, deprivation becomes possible even if the terrorist offence was committed more than ten years after obtaining Belgian nationality.

The formulation and articulation of these provisions poses a number of difficulties in terms of legal certainty and respect for the fundamental rights of the recipients of this measure (for the rest, see the

[124] Law amending the Belgian Nationality Code in order to make the acquisition of Belgian nationality neutral from an immigration point of view, M.B., 14 December 2012.
[125] New York Convention on the Reduction of Statelessness of 30 August 1961, Annex 4, Declarations and Reservations.
[126] Inserted in the Belgian Nationality Code by the law of 4 December 2012 amending the Belgian Nationality Code in order to make the acquisition of Belgian nationality neutral from an immigration point of view, M.B., 14 December 2012. According to the preparatory work, this article aimed to introduce a simplified procedure for the deprivation of nationality before the judge hearing the criminal proceedings on the merits for an exhaustive list of offences considered to be 'of such gravity that they reveal the perpetrator's lack of willingness to integrate, as well as the danger that he or she represents for society'. See also C.C., judgment no. 122/2015, 17 September 2015, B.3.5.
[127] Inserted in the Belgian Nationality Code by the law of 20 July 2015 aimed at strengthening the fight against terrorism

report of the Vigilance Committee on Combating Terrorism[128]) resulting from the combination of different procedures applied to different categories of persons having Belgian nationality and committing different types of offences.

These different provisions therefore apply to certain categories of persons to the exclusion of others, without objective justification. For example, Articles 23 and 23/2 of the Belgian Nationality Code state that only « Belgians who did not derive their nationality from a Belgian author or adopter on the day of their birth and Belgians who were not granted their nationality by virtue of Articles 11 and 11bis » can be stripped of their Belgian nationality. They thus create two categories of Belgians.

Establishing abstract categories creates a risk of discrimination in practice. The differences in treatment between different categories of Belgian citizens generated by this legislation are regularly criticised: the Belgian State has indeed drawn a line between Belgians of so-called "ethnic origin" and Belgians from immigrant families. This difference in treatment raises serious questions. In a society that is becoming increasingly international and in which more and more individuals have several nationalities, it seems contrary to the right to private and family life to allow for the loss of nationality of an individual who has "always" lived in Belgium and who has no ties or even does not master the language of the country of his or her other nationality.

Furthermore, it appears that the loss of nationality, in the event of a loss of nationality for committing offences (particularly terrorist offences), constitutes a form of "disempowerment" of the Belgian State[129]. It must be admitted that some citizens, educated here, deviate and commit offences. Like all other citizens, Belgians with an immigrant background must have the possibility to 'rebuild their lives' after committing offences, even serious ones. Getting rid of them by sending them to a state with which they have no connection and which has played no role in what they have become is not a responsible solution in line with human rights, equal treatment or the ban on discrimination.

In this respect, the Ligue des droits humains recommends the deletion of articles 23/1 and 23/2 insofar as they create sanctions relating to the forfeiture of nationality that discriminate against Belgians who did not derive their nationality from a Belgian author or adopter on the day of their birth.

[128] The Counter-Terrorism Watchdog Committee, the T Committee, coordinated by the League for Human Rights, publishes an annual report analysing counter-terrorism measures from a human rights perspective. All reports are available on its website: www.comitet.be . The issue of disqualification has been addressed: in the 2017 report, pp. 15-22; 2019 report, p. 18; 2020 report, pp. 55-66; 2021 report, pp. 75-85.
[129] T Committee, *2021 Report*, p. 77.