

ANTI-DISCRIMINATION LAW IN BELGIUM

Legal Memorandum

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EXECUTIVE SUMMARY

The purpose of this memorandum is to analyze the structure and content of anti-discrimination laws in Belgium. Because Belgium is a highly devolved federalist state, the legal framework for nondiscrimination is somewhat fragmented. Three federal laws protect people from discrimination, in addition to a variety of laws enacted by Belgium's territorial Regions and linguistic Communities.

At the federal level, the Racism Law forbids discrimination on the basis of race, color, nationality, descent, and national or ethnic origin. The Gender Law prohibits discrimination based on sex, including discrimination based on pregnancy, childbirth, motherhood, and sex change. Additionally, the Anti-Discrimination Law forbids discrimination on the basis of age, sexual orientation, civil status, birth, wealth, faith or personal belief, political orientation, language, current or future health status, handicap, physical or genetic disorder, or social origin. Two protective agencies, the Center for Equal Opportunities and Opposition to Racism and the Institute for the Equality of Women and Men, monitor discrimination, assist victims, and file discrimination charges.

While all of Belgium's Regions and Communities have adopted anti-discrimination legislation, the Center for Equal Opportunities and Opposition to Racism and the Institute for the Equality of Women and Men have no competence at the Regional or Community levels. Currently, only the Walloon Region and French Community have delegated authority over discrimination issues to these protective agencies, while the remaining Regions and Communities have implemented their own anti-discrimination mechanisms. This system poses challenges for enforcement, as federal, Regional, and Community-level anti-discrimination agencies may have overlapping mandates or leave gaps.

All adjudication is conducted by Belgian courts, which have interpreted some facets of anti-discrimination law narrowly. For instance, several courts have permitted the prohibition of certain Islamic head coverings. In 2011, parliament adopted an absolute ban on the wearing of the burqa and niqab. Although two Muslim women sought immediate judicial review, the Constitutional Court refused to suspend the ban.

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Statement of Purpose

The purpose of this memorandum is to analyze the structure and content of anti-discrimination laws in Belgium.

Introduction

Belgium is a highly devolved federalist state with three geographic Regions and four linguistic Communities.¹ Each Region and Community has an independent government (though the Flemish Region and Dutch-speaking Community have merged) responsible for culture, education, health, social assistance, and linguistic policy. Because Belgium's sub-entities have great autonomy, effective anti-discrimination policy requires strong laws and enforcement by the Regions and Communities, as well as the state.

Belgium's Constitution does not address discrimination in detail. Three federal laws protect people from discrimination, in addition to a variety of laws enacted by Belgium's territorial Regions and linguistic Communities. While two federal protective agencies monitor discrimination, assist victims, and file discrimination charges, they have no authority at the Regional or Community levels. The proliferation of agencies and laws has resulted in a complex anti-discrimination framework with the potential for gaps. As a result, implementation of Belgium's anti-discrimination laws is somewhat fragmented. Moreover, Belgium's anti-discrimination laws have recently been challenged by the passage of laws banning certain Islamic head coverings.

Constitutional Provisions

The 1831 Belgian Constitution does not contain detailed anti-discrimination provisions. While it provides that, "Belgians are equal before the law," and "enjoyment of the rights and freedoms recognized for Belgians must be provided without discrimination," it does not specify a list of protected characteristics.² The Constitution does, however, declare that "[n]o class distinctions exist in the state," and "[e]quality between women

¹ The Regions are Flanders (mostly Dutch-speaking), Wallonia (mostly French-speaking), and Brussels (bilingual). There is also a German-speaking Community that does not correspond to a particular Region.

² BELGIUM CONST. arts. 10-11 (1831), available at http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/grondwetEN.pdf.

and men is guaranteed.”³ Because of their general nature, these provisions are rarely invoked in private relationships, such as employment discrimination.⁴ Rather, they have been most effective when invoked against legislative or administrative acts that violate the principles of equality and non-discrimination.⁵

Legislative Provisions

In 2007, three new anti-discrimination laws were enacted in Belgium: the Racism Law, which modifies the July 30, 1981 Law to Punish Certain Acts Initiated by Racism or Xenophobia; the Gender Law, which aims to eliminate discrimination between men and women; and the Anti-Discrimination Law 2007, which aims to eliminate certain forms of discrimination.⁶ Although anti-discrimination legislation existed prior to 2007, the Belgium Government opted to reform the existing legislation in order to comply with a number of European Union (EU) directives on discrimination that had been transposed into federal law either incompletely or incorrectly.⁷ Moreover, the Constitutional Court had partially overturned the Anti-Discrimination Law 2003 because its list of itemized grounds of discrimination did not mention language or political opinion, which the Court held to be discriminatory per se.⁸

The Racism Law forbids discrimination on the basis of race, color, nationality, descent, and national or ethnic origin.⁹ With the exception of

³ BELGIUM CONST. art. 10 (1831).

⁴ European Network of Legal Experts in the Non-Discrimination Field, *Belgium – Main Legislation*, available at <http://www.non-discrimination.net/content/main-legislation-9>.

⁵ European Network of Legal Experts in the Non-Discrimination Field, *Belgium – Main Legislation*, available at <http://www.non-discrimination.net/content/main-legislation-9>.

⁶ International Law Office, *New Anti-discrimination Laws Incorporate EU Law* (Nov. 28, 2007), available at <http://www.internationallawoffice.com/newsletters/detail.aspx?g=54315d94-4cf8-41fb-afa2-b902aeaf242b&redir=1>.

⁷ International Law Office, *New Anti-discrimination Laws Incorporate EU Law* (Nov. 28, 2007), available at <http://www.internationallawoffice.com/newsletters/detail.aspx?g=54315d94-4cf8-41fb-afa2-b902aeaf242b&redir=1>. As a member of the EU, Belgium is required to adapt its laws to achieve certain end results laid out in EU directives. European Commission, *Application of EU Law – What is a directive?* (2012), available at http://ec.europa.eu/eu_law/directives/directives_en.htm.

⁸ International Law Office, *New Anti-discrimination Laws Incorporate EU Law* (Nov. 28, 2007), available at <http://www.internationallawoffice.com/newsletters/detail.aspx?g=54315d94-4cf8-41fb-afa2-b902aeaf242b&redir=1>.

⁹ *Racism Law*, art. 3 (Belgium, 1981), available at <http://www.equalrightstrust.org/ertdocumentbank/Loi%2030%20July%201981%20-%20racial%20hatred&xenophobia.pdf>; See also European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 8-9 (Jan. 1, 2012), available at <http://non-discrimination.net/report-measures-combat-discrimination-directives-2000-43-ec-and-2000-78-ec-country-report-2011-belgium>.

matters falling within the competence of the Communities or Regions, this applies to all employment (both public and private), the offering of goods and services, social security, medical care, and participation in economic, social, cultural, or political activities open to the public.¹⁰

The Gender Law prohibits discrimination based on sex, including discrimination based on pregnancy, childbirth, motherhood, and sex change.¹¹ It provides for equal treatment between men and women across the same areas of public and private life as the Racism Law.¹²

The Anti-Discrimination Law forbids discrimination on the basis of age, sexual orientation, civil status, birth, wealth, faith or personal belief, political orientation, language, current or future health status, handicap, physical or genetic disorder, or social origin.¹³ The Discrimination Law applies to the same areas of public and private life as the Racism and Gender Laws.¹⁴ In 2009, the Constitutional Court also applied the Discrimination Law to trade union affiliation, which no longer justifies different treatment.¹⁵

[discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf](http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf).

¹⁰ *Racism Law*, art. 5 (Belgium, 1981); *See also* International Law Office, *New Anti-discrimination Laws Incorporate EU Law* (Nov. 28, 2007), available at <http://www.internationallawoffice.com/newsletters/detail.aspx?g=54315d94-4cf8-41fb-afa2-b902aeaf242b&redir=1>.

¹¹ *Gender Law*, art. 4 (Belgium, 2007), available at http://www.diversite.irisnet.be/IMG/pdf/Legislations_Loi10mai2207genre-2.pdf; *See also* European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 9 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

¹² *Gender Law*, art. 6 (Belgium, 2007), *See also* International Law Office, *New Anti-discrimination Laws Incorporate EU Law* (Nov. 28, 2007), available at <http://www.internationallawoffice.com/newsletters/detail.aspx?g=54315d94-4cf8-41fb-afa2-b902aeaf242b&redir=1>.

¹³ *Anti-Discrimination Law*, art. 3 (Belgium, 2007), available at <http://www.ilo.org/dyn/travail/docs/2525/Loi%20du%2010%20mai%202007%20tendant%20à%20lutter%20contre%20certaines%20formes%20de%20discrimination.pdf>; *See also* European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 9 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

¹⁴ *Anti-Discrimination Law*, art. 5 (Belgium, 2007); *See also* International Law Office, *New Anti-discrimination Laws Incorporate EU Law* (Nov. 28, 2007), available at <http://www.internationallawoffice.com/newsletters/detail.aspx?g=54315d94-4cf8-41fb-afa2-b902aeaf242b&redir=1>.

¹⁵ Arrêt No. 64/2009, Cour Constitutionnelle Rapport, par. B.8.7 and B.8.15, available at <http://www.const-court.be>. Although not required by EU law, the Anti-Discrimination Law was amended in 2009 to incorporate the Constitutional Court's ruling that the exclusion of trade union affiliation from the grounds of discrimination listed in the 2007 Law was in breach of the constitutional principle of equality and non-discrimination. *See* European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011*

Because of Belgium's federalist structure, the Regions and Communities have developed their own laws that generally implement the EU directives on anti-discrimination. For instance, the Flemish Framework Decree for Equal Opportunities and Equal Treatment Policy contains civil and criminal provisions forbidding discrimination on the grounds contained in all three of the 2007 federal acts.¹⁶ However, contrary to the EU directives, it failed to create an independent, anti-discrimination agency.¹⁷ Likewise, the Brussels-Capital Region adopted three ordinances that ban discrimination in employment, the civil service, and social housing.¹⁸ However, they neither apply to the commercial supply of goods and services, nor create an independent anti-discrimination agency.¹⁹

Criminal Liability

Belgium's three federal anti-discrimination laws impose criminal penalties for incitement to discrimination, segregation, hatred, or violence

¹⁶ Belgium, 9-10 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

¹⁷ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 12-13 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

¹⁸ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 12-13 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

¹⁹ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 24 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

¹⁸ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 24 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf. The Treaty on the Functioning of the EU (TFEU) gives the European Commission authority to take action against member states that have not correctly applied EU law. First, the Commission may send a Letter of Formal Notice to the member state concerned, requesting information with regard to its noncompliance. The letter must be answered within a specific timeframe – usually two months. If the Commission is not satisfied, it may send a Reasoned Opinion, formally requiring the member state to comply with EU law and requesting information with regard to measures taken to comply. If the member state still fails to comply, the Commission may refer the member state to the European Court of Justice (ECJ). If the ECJ rules against the member state, the member state must take the necessary measures to comply with the judgment or face financial penalties. In 2011, the Commission initiated several infringement proceedings against Belgium for discriminatory tax practices, and referred 2 such cases to the ECJ. European Commission, *Infringement Procedures*, available at http://ec.europa.eu/information_society/policy/ecommm/implementation_enforcement/infringement/index_en.htm; European Commission, *Taxation and Customs Union – Infringement Cases by Country* (Dec. 6, 2012), available at http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/by_country/index_en.htm#belgium.

against a person because of a protected criteria.²⁰ This applies to speech or conduct that occurs in public, in a non-public place where people are entitled to meet, in the presence of an offended person and before witnesses, or in documents that have been disseminated to several people.²¹ Perpetrators of discrimination are punishable by fine or imprisonment.²²

The Anti-Discrimination Law also recognizes hate crimes, permitting judges to either double the minimum penalty or add two years of prison time in cases where the crime was motivated by bias.²³ These crimes include: indecent assault and rape; murder, manslaughter, and intentional injury; non-assistance to a person in danger; violation of the personal liberty and of the inviolability of private property; harassment; violation of tombs or burial; arson; and destruction of personal possessions or property.²⁴

In addition, the Criminal Code recognizes the distinct crime of interfering in religious practice through violence, threats, property destruction, or other disruptions.²⁵ Perpetrators may be punished by a fine or up to three months' imprisonment.²⁶ If the offense causes serious physical harm, the offender may receive up to five years' imprisonment.²⁷

Civil Liability

Belgium's anti-discrimination legislation nullifies contractual provisions that discriminate against a person because of a protected criteria, and victims of discrimination may obtain an injunction to stop discriminatory behavior under the threat of a fine.²⁸ In addition, employees

²⁰ *Racism Law*, arts. 19-28 (Belgium, 1981); *Gender Law*, arts. 26-31 (Belgium, 2007); *Anti-Discrimination Law*, arts. 21-26 (Belgium, 2007).

²¹ *Criminal Code*, art. 444 (Belgium, 1867), available at <http://legislationline.org/documents/section/criminal-codes>.

²² *Racism Law*, arts. 19-28 (Belgium, 1981); *Gender Law*, arts. 26-31 (Belgium, 2007); *Anti-Discrimination Law*, arts. 21-26 (Belgium, 2007).

²³ *Anti-Discrimination Law*, arts. 33-42 (Belgium, 2007); See also Human Rights First, *Hate Crime Report Card – Belgium*, (accessed Aug. 1, 2012), available at <http://www.humanrightsfirst.org/our-work/fighting-discrimination/hate-crime-report-card/hate-crime-report-card-belgium/>.

²⁴ *Criminal Code*, arts. 372-375; 393-405bis; 422bis; 434-438; 442bis; 453; 510-514; 521-525; 528-532; 534bis-534ter (Belgium, 1867).

²⁵ *Criminal Code*, art. 142 (Belgium, 1867).

²⁶ *Criminal Code*, arts. 142-43 (Belgium, 1867).

²⁷ *Criminal Code* art. 146 (Belgium, 1867).

²⁸ *Racism Law*, arts. 13, 17-18 (Belgium, 1981); *Gender Law*, arts. 20, 24-25 (Belgium, 2007); *Anti-Discrimination Law*, arts. 15, 19-20 (Belgium, 2007); See also European Commission, *National Activity Report Belgium Anti-Discrimination and Diversity Training*, 21 (May 2008) available at http://ec.europa.eu/justice/discrimination/files/antidiscrimination_training_belgium_en.pdf.

may file a complaint with the Social Inspection Services, the Center for the Equal Opportunities and Opposition to Racism, or the Institute for the Equality of Women and Men.²⁹ Employees who have been dismissed due to discrimination may sue to receive up to six months salary or actual damages suffered.³⁰ In court, the burden of proof shifts to the defendant if the alleged victim can demonstrate sufficient evidence of discrimination.³¹

Protective Agencies

Belgian law authorizes the Center for Equal Opportunities and Opposition to Racism and the Institute for the Equality of Women and Men, both independent governmental organizations, to monitor discrimination, assist victims, and file discrimination charges.³² All adjudication is conducted by Belgian courts, which have generally interpreted anti-discrimination laws narrowly, particularly with respect to bans on the Islamic headscarf.

Center for Equal Opportunities and Opposition to Racism

The Center for Equal Opportunities and Opposition to Racism (the Center) is a public institution that aims to “promote equality of opportunity and to combat all forms of discrimination, exclusion, restriction or preferential treatment” based on legally stipulated criteria.³³ It is competent to deal with all the protected grounds listed in the Racism Law and the Anti-Discrimination Law, apart from language.³⁴ Also, following the amendment of the Anti-Discrimination Law in 2009 to include trade union affiliation

²⁹ *Racism Law*, arts. 14-15 (Belgium, 1981); *Gender Law*, arts. 21-22 (Belgium, 2007); *Anti-Discrimination Law*, arts. 16-17 (Belgium, 2007). “When adverse action is taken vis-à-vis the person concerned within 12 months after the filing of the complaint, it belongs to the person against whom the complaint is directed to prove that the adverse action was adopted for reasons that are unrelated to this complaint.”

³⁰ *Racism Law*, art. 15 (Belgium, 1981); *Gender Law*, art. 22 (Belgium, 2007); *Anti-Discrimination Law*, art. 17 (Belgium, 2007).

³¹ *Racism Law*, art. 30 (Belgium, 1981); *Gender Law*, art. 33 (Belgium, 2007); *Anti-Discrimination Law*, art. 28 (Belgium, 2007).

³² Belgium also has four regional and one federal Ombudsman who have the authority to examine complaints, conduct investigations, and mediate disputes between citizens and administrative authorities within their respective jurisdictions.

³³ Center for Equal Opportunities and Opposition to Racism, available at <http://www.diversiteit.be/?>.

³⁴ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 180, 183 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

among the discriminatory grounds, it remains unclear whether the Center is competent in this area.³⁵

The Center receives discrimination complaints; provides information, support, and referrals to the victims of discrimination; provides advice to organizations or individuals upon request; and monitors and reports on discrimination issues.³⁶ While the Center is not empowered to adjudicate discrimination complaints, it may file a civil or criminal complaint against the alleged offender, with the consent of the alleged victim.³⁷ In 2010, the Center brought sixteen cases to court, mostly involving hate crimes.³⁸

The Center has no competence at the Regional or Community levels unless it has entered into Protocols of Collaboration with such entities. Currently, only the Walloon Region and French Community have delegated authority over discrimination issues to the Center.³⁹ The Flemish Community and Region have collaborated with the Center in establishing thirteen Equal Treatment Offices in Flanders' larger cities.⁴⁰ The German Community uses an Ombudsman to supervise the implementation of anti-discrimination law.⁴¹ In addition, the Economic and Social Council of the

³⁵ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 183 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

³⁶ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 183 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

³⁷ *Racism Law*, arts. 31-33 (Belgium, 1981); *Anti-Discrimination Law*, arts. 29-31 (Belgium, 2007); See also European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 169-170 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

³⁸ Center for Equal Opportunities and Opposition to Racism, *FAQ*, available at <http://www.diverseiteit.be/?action=onderdeel&onderdeel=57&titel=FAQ>.

³⁹ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 181 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁴⁰ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 181 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁴¹ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 181-182 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

German Speaking Community monitors the implementation of EU directives in the area of employment discrimination.⁴²

Institute for the Equality of Women and Men

The Institute for the Equality of Women and Men (the Institute) is a public institution that aims to “guarantee and promote the equality of women and men and to fight against any form of discrimination and inequality based on gender in all aspects of life through the development and implementation of an adequate legal framework, appropriate structures, strategies, instruments and actions.”⁴³ The Institute conducts studies and research in the field of gender and equality of women and men; makes recommendations and provides advice to the public authorities, individuals, and private institutions upon request; and monitors and reports on gender equality issues.⁴⁴ While the Institute is not empowered to adjudicate discrimination complaints, it may file a civil or criminal complaint against the alleged offender, with the consent of the alleged victim.⁴⁵

Like the Center for Equal Opportunities and Opposition to Racism, the Institute has no competence at the Regional or Community levels unless it has entered into Protocols of Collaboration with such entities. Currently, only the Walloon Region and French Community have delegated authority over gender discrimination issues to the Institute.⁴⁶ Additionally, many of the Regions and Communities have implemented their own equal opportunity mechanisms. For instance, Flanders and the Walloon Regions both have a Ministry of Equal Opportunities, the Brussels Region has a State Secretary of Equal Opportunities, and, in the French Community, the Prime Minister is responsible for equal opportunities.⁴⁷

⁴² European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 182 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁴³ Institute for the Equality of Women and Men, available at <http://igvm-iefh.belgium.be/en/>.

⁴⁴ Institute for the Equality of Women and Men, available at <http://igvm-iefh.belgium.be/en/>.

⁴⁵ *Gender Law*, arts. 34-36 (Belgium, 1981); See also Institute for the Equality of Women and Men, available at <http://igvm-iefh.belgium.be/en/>.

⁴⁶ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 15-16 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁴⁷ European Commission Sixth Framework Programme Integrated Project, *Context Study Belgium*, 24 (2008), available at http://www.quing.eu/files/results/cs_belgium.pdf.

Case Law

As previously mentioned, court cases brought by the Center for Equal Opportunities and Opposition to Racism have focused primarily on hate crimes and hate speech charges. In 2007, the Center intervened to assert racism as an aggravating factor in the murder of a woman and child by a right-wing extremist.⁴⁸ In a 2010 case initiated by the Center, the Court of Appeals of Mons upheld the punishment of a man who made a fascist salute while taking his oath as a city councilor.⁴⁹ The man was fined several thousand Euros and lost his rights to be elected and to sit in representative bodies.⁵⁰

Belgian courts have interpreted other parts of anti-discrimination laws narrowly. In a 2008 case brought by Government of the French Community against the Government of the Flemish Community, the Constitutional Court upheld a Flemish housing code that required public housing applicants to continuously demonstrate their intent to learn Dutch.⁵¹ The justification for this provision was to improve quality of life in public housing by promoting integration and improving communication.⁵² Because the regulation did not discriminate based on Dutch proficiency but rather the person's demonstrated intent to learn Dutch, the Court deemed the measure proportionate to the goal, but ruled that sanctions for violating the rule be ordered by a judge.⁵³

⁴⁸ Center for Equal Opportunities and Opposition to Racism *Proces d'Hans Van Temsche*, (Oct. 1, 2007), available at http://www.diversite.be/?action=artikel_detail&artikel=100&select_page=215.

⁴⁹ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 59-60 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁵⁰ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 59-60 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁵¹ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 31-32 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁵² European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 31-32 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁵³ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 31-32 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

In addition, lower Belgian courts have generally upheld the legality of regulations that forbid the public wearing of “visible religious, political or philosophical symbols,” including Islamic headscarves. In one case, the City of Charleroi banned teachers from wearing such symbols on school property on the grounds that it violated the principle of “neutrality” towards religion and impeded pupils’ freedom of thought.⁵⁴ When a dismissed teacher challenged the regulation, the Council of State held that the anti-discrimination decree of the French Community permits public and private “ethos-based organizations,” such as schools, to treat people differently based on religion.⁵⁵

Labor and administrative courts have also held that private companies may forbid employees from wearing headscarves. In 2011, an Antwerp labor court determined that a business could terminate a worker for wearing a headscarf in order to preserve the neutral image of the company.⁵⁶ Following this decision, the Center filed a strategic litigation action against the Hema store in Flanders for firing a Muslim employee after customers complained about her headscarf.⁵⁷ The woman was initially told that wearing a headscarf was permissible, but was later told to stop.⁵⁸ While the Center intended to pursue the case up to the European Court of Justice if necessary, the Labor Court of Tongres found in favor of the woman, holding that the store’s actions were discriminatory and awarding her six month’s

⁵⁴ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 66-67 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁵⁵ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 66-67 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁵⁶ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 73-75 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁵⁷ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 75 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁵⁸ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 75 (Jan.1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

salary in compensation.⁵⁹ The store has since adopted formal clothing requirements.⁶⁰

In January 2011, the Police Tribunal of Brussels held that a police regulation prohibiting face coverings in public was unlawfully broad, but may be permissible in limited circumstances such as airport security checkpoints.⁶¹ However, later that same year, the Belgian parliament adopted an absolute ban on the wearing of the burqa and niqab, with the punishing offense ranging from a fine to up to seven days' imprisonment.⁶² Although two Muslim women sought immediate judicial review, the Constitutional Court refused to suspend the ban.⁶³ Notably, the Human Right's Commissioner for the Council of Europe questioned whether the banning may run counter to European human rights standards, particularly the right to respect for one's private life and personal identity.⁶⁴

International Evaluation of Belgium's Anti-Discrimination Protections

The Migrant Integration Policy Index, which measures the strength of anti-discrimination frameworks, ranks Belgium seventh out of thirty-one states in Europe and North America with regard to protections against discrimination.⁶⁵ It found that Belgium's various governments have taken greater responsibility for equality by monitoring and implementing anti-discrimination legislation throughout the state, noting specifically the 2007 Anti-Discrimination Law, the 2008 Flemish Decree, the 2008 French Community Decree, and the 2008 Walloon Region Decree.⁶⁶ It also praised the cooperation between Belgium's Center for Equal Opportunities and

⁵⁹ DutchNews.nl, *Belgian Hema store wrong to sack headscarf-wearing worker* (Jan. 2, 2013), available at http://www.dutchnews.nl/news/archives/2013/01/belgian_hema_store_wrong_to_sa.php.

⁶⁰ DutchNews.nl, *Belgian Hema store wrong to sack headscarf-wearing worker* (Jan. 2, 2013), available at http://www.dutchnews.nl/news/archives/2013/01/belgian_hema_store_wrong_to_sa.php.

⁶¹ See also European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 67-68 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁶² Al Arabiya News, *Belgium Burqa faces challenges in court from veiled women* (July 23, 2011), available at <http://english.alarabiya.net/articles/2011/07/23/158981.html>.

⁶³ European Network of Legal Experts in the Non-Discrimination Field, *News Report* (Dec. 10, 2012), available at http://www.non-discrimination.net/content/media/BE-82-BELGIUM-FR-74_ConstitutionalCourtRejectedActionForAnnulment_Anti-burqaAct_Dec2012.pdf.

⁶⁴ Al Arabiya News, *Belgium Burqa faces challenges in court from veiled women* (July 23, 2011), available at <http://english.alarabiya.net/articles/2011/07/23/158981.html>.

⁶⁵ Migrant Integration Policy Index, *Anti-Discrimination* (2010), available at <http://www.mipex.eu/anti-discrimination>.

⁶⁶ Migrant Integration Policy Index, *Belgium* (2010), available at <http://www.mipex.eu/belgium>.

Opposition to Racism and the thirteen Equal Treatment Offices in Flanders.⁶⁷

Areas for improvement, however, include the need for more coordination between Belgium’s federal protective agencies and the Regions and Communities. Independent observers have noted that, with regard to the establishment of anti-discrimination agencies at the Regional and Community levels, “it would be opportune to give such a competence to...the Center for Equal Opportunities and Opposition to Racism and the Institute for Equality between Women and Men.”⁶⁸ As of December 1, 2011, Belgium has committed itself to “pursuing negotiations with the Regions and Communities with a view to turn the Center for Equal Opportunities and Opposition to Racism into an *inter-federal* Center.”⁶⁹

Additionally, greater coordination is needed between the Center for Equal Opportunities and Opposition to Racism and the Institute for Equality between Women and Men. In a 2008 case initiated by the Institute for Equality between Women and Men, “multiple discrimination based on gender, state of health, and age” could have been pled.⁷⁰ Rather than initiating contact with the Center for Equal Opportunities to extend the action, however, the Institute only alleged gender discrimination.⁷¹ In the end, the court rejected the claim because, in its opinion, there had been no discrimination based on gender.⁷²

Uncertainties regarding the division of competences between the federal state and the Regions and Communities have also complicated

⁶⁷ Migrant Integration Policy Index, *Belgium* (2010), available at <http://www.mipex.eu/belgium>.

⁶⁸ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 13 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁶⁹ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 14 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁷⁰ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 90 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁷¹ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 90 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁷² European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 90 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

implementation.⁷³ Although Belgium's Council of State has held that “the various entities may not legislate beyond their competences, even under the pretext of ensuring compliance with the State's international obligations,” this is not always followed.⁷⁴ For instance, while disability policy is allocated to the Communities, it is generally accepted that “this does not prohibit the Federal State or the Regions to provide that denying reasonable accommodation to a person with a disability amounts to discrimination.”⁷⁵

Conclusion

The Belgian legal framework to counter discrimination is complex and somewhat fragmented. While the Constitution does not address discrimination in detail, the 2007 Racism, Gender, and Anti-Discrimination Laws provide civil and criminal accountability mechanisms. In addition, the Regions and Communities have developed their own laws that generally implement the EU directives on anti-discrimination. Enforcement challenges include the need for collaboration between Belgium's federal protective agencies and the Regions and Communities, as well as between the federal agencies themselves.

⁷³ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 4 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁷⁴ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 4 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.

⁷⁵ European Network of Legal Experts in the Non-Discrimination Field, *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Country Report 2011 Belgium*, 6 (Jan. 1, 2012), available at http://non-discrimination.net/content/media/2011-BE-Country%20Report%20LN_final.pdf.