



Mr. Vitit MUNTARBHORN  
Independent Expert on sexual orientation and  
gender identity  
C/o Office of the High Commissioner for  
Human Rights  
United Nations at Geneva

Brussels,

**Our reference / Concerns:** Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (19 April 2017) – request for information.

Dear Mr. Muntarbhorn,

Unia, the Belgian interfederal equality body, took notice of your report from 19 April 2017 on 'protection against violence and discrimination based on sexual orientation and gender identity'. In your report, you appeal Governments and other entities concerned to send relevant information on certain issues for your next report.

Unia is an independent public institution that combats discrimination and promotes equal opportunities. It is competent for, among other things, the criterion sexual orientation (however not for the criterion (trans)gender). Annexed to this letter, you will find more information concerning our institution and the Belgian legal framework regarding sexual orientation and antidiscrimination.

We would like to draw your attention to the following issues that, according to Unia, should be addressed by the Belgian (federal and regional) authorities. You are of course very welcome to solicit our institution for more detailed information on these issues.

- *Discrimination*

The Belgian antiracism, antidiscrimination and gender laws are currently evaluated by the Belgian Parliament. Unia has prepared [its own evaluation report](#) regarding the antiracism and antidiscrimination law with 27 specific recommendations for the federal Parliament. Both laws offer an extensive protection, but according to Unia, there is still room for improvement. Although Unia's recommendations for improvement are formulated in a general way, some of them are particularly relevant for LGB's. For instance recommendation 14 regarding positive action, recommendation 15 regarding the protection of victims of reprisals and recommendation 16 regarding the compensation of victims by means of a lump sum. We invite you to take notice of the evaluation report and the recommendations listed therein.

*Unia urges for a review of certain provisions of the antidiscrimination law (and antiracism law) according to the 27 recommendations formulated in its evaluation report.*

- *Hate Speech*

Hate speech often occurs in written form e.g. on Facebook. The Belgian constitution states that so-called 'press crimes' must be assessed before a court of assizes (and thus before a popular jury). The constitution only makes an exception to this general principle for 'racist' press crimes. They can be assessed by an ordinary criminal court.

The consequence is that homophobic (and other non-racist) press crimes or not prosecuted in practice since the court of assizes is not convened for press crimes. A few years ago, for instance, there was a lot of commotion concerning a book that mentioned that homosexuals should be killed by throwing them off tall buildings. It was not possible to undertake legal action against the dissemination of this book.

*Unia urges for a review of the provisions regarding hate speech in the constitution in order to get an equal treatment of racist and non-racist press crimes.*

- *Hate Crimes*

The Belgian criminal code provides for certain crimes in an optional or compulsory increase of the sentence when the crime is based on a so-called 'hate motive' (e.g. assault and battery, rape, graffiti, stalking, and arson). For other crimes, that can affect LGB's in particular, the criminal code does not foresee an increase of the sentence when the crime is based on a so-called hate motive (e.g. torture, theft committed by violence or threat, and extortion).

*Unia urges for a review of the provisions regarding hate crimes in the criminal code to make it possible to examine the hate motive for crimes such as theft committed by violence or threat, and extortion.*

- *Policy – action plan about homophobic and transphobic hate crimes*

In the Rainbow Index from Ilga-Europe (2017), Belgium went from the second to the fourth place. One of the reasons why Belgium went down in this ranking was the absence of an updated intergovernmental action plan to combat homophobic and transphobic discrimination and an updated intergovernmental action plan against homophobic and transphobic violence. Such action plans were elaborated in 2012 but were only valid for the period 2013-2014.

*Unia urges for the actualization of the intergovernmental action plan to combat homophobic and transphobic violence and the intergovernmental action against homophobic and transphobic violence.*

- *Policy – intersectional or multiple discrimination*

The federal Secretary of State announced in her policy letter that she will pay attention to the issue of intersectional and multiple discriminations within the LGBT-community "since more and more people find themselves at the intersection of different identities." Some people are for instance homosexual and of foreign origin.



*Unia welcomes the attention that will be paid to this issue and urges to approach the issue of intersectional and multiple discriminations in an open way (this is: also beyond the sphere of the discrimination of LGBT's).*

- *Policy – adoption by same-sex couples in the French-speaking Community*

Same-sex couples have access to joint (national and international) adoption. In practice, joint adoption by same-sex couples is mainly limited to national adoption. The law on adoption is a federal competition, however, the Communities in Belgium are competent for the allocation of a particular child to a particular same-sex couple (the so-called 'matching').

Recent figures on joint national adoption by same-sex couples show a considerable discrepancy between the Flemish and the French-speaking Community. In the Flemish Community, roughly 50% of all joint national adoptions are adoptions by same-sex couples, whereas in the French-speaking Community this is only roughly 10%. Same-sex couples seem to encounter more impediments in the French-speaking than in the Flemish Community with regard to joint national adoption.

*Unia urges to examine the difference with regard to joint national adoption in the Flemish and the French-speaking Community and to take the appropriate measures to counter discrimination in this field.*

So far the issues regarding LGB's on which Unia would like to draw your attention. We hope that the above information will be useful for the elaboration of your next report and we are looking forward to reading it.

Yours sincerely,

Patrick CHARLIER  
Director

Els KEYTSMAN  
Director

## Annex

### Information concerning Unia and the Belgian legal framework regarding sexual orientation and antidiscrimination

#### 1. Unia

Unia is an independent public institution, established in Belgium in 1993, that combats discrimination and promotes equal opportunities. Unia has inter-federal competence, which means that the institution is active at the federal level of Belgium as well as the level of the Regions and Communities.

Unia is competent in the field of antidiscrimination for the so-called racial criteria (presumed race, skin colour, nationality, ancestry (Jewish origin) and national or ethnic origin) as well as for the so-called non-racial criteria (disability, religion or belief, sexual orientation, age, wealth, civil status, political beliefs, trade union membership, state of health, physical or genetic characteristics, birth and social background).

Anyone in Belgium, who feels that he or she has been discriminated against, or who has witnessed discrimination, can report this to Unia. In 2016 Unia opened 104 individual files regarding sexual orientation (on a total of 1907 files)<sup>1</sup>. Roughly speaking one-third of the files regarding sexual orientation concerns discrimination (e.g. in the field of employment, goods, and services or education), one third hate crimes and one-third hate speech. Sometimes files regarding other discrimination grounds, such as the state of health, also have a link with the criterion sexual orientation, for instance in the case of discrimination against persons with HIV.

Unia provides individual support to citizens who have experienced or witnessed discrimination and also performs other tasks. The institution formulates targeted advice and recommendations for (public) authorities and (public or private) organizations. It organizes campaigns for raising awareness and informing the public. It offers customized training and makes available an online training tool (eDiv). Finally, it informs through publications and statistics (such as the 'barometer' on education, work, and housing).

Unia has a website ([www.unia.be](http://www.unia.be)) where you can find extensive information on our institution and activities.

In Belgium, there are separate institutions that deal with issues of equality between woman and men and gender-based discrimination: the Institute for the Equality of Women and Men and (for the Flemish Region) the 'Vlaamse Genderkamer'. They are competent for, among other things, transsexuality, gender identity and gender expression (regulated by a separate so-called gender law). In what follows, we will only deal with SO, since Unia is not competent for GI.

#### 2. Belgian legal framework regarding SO

Belgium opened-up marriage in 2003. Same-sex couples were granted access to co-parent and joint (national and international) adoption in 2006. 'Automatic Parenthood' for co-mothers became possible in 2015. Belgium also has a law on legal cohabitation (1998) and a law on

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<sup>1</sup> [www.unia.be/fr/publications-et-statistiques/publications/le-travail-dunia-exprime-en-chiffres-pour-lannee-2016](http://www.unia.be/fr/publications-et-statistiques/publications/le-travail-dunia-exprime-en-chiffres-pour-lannee-2016)



medically assisted procreation (which is also available for single women and lesbian couples) (2007).

In 2003 a (federal and general) antidiscrimination law, covering among other things sexual orientation, became in force (besides an already existing antiracism law from 1981). Both laws were thoroughly revised in 2007.

Belgium is a federal state that has, besides a federal Government and Parliament, three Communities (the Flemish Community, the French-speaking Community, and the German-speaking Community) and three Regions (Flanders, Wallonia, and Brussels) with their own Governments and Parliaments. Communities mainly deal with so-called personal affairs, whereas Regions deal chiefly with socioeconomic affairs. Since Unia is an interfederal institution, it is also competent for the decrees and ordinances ('laws') of the Communities and Regions. Article 6, § 2 of the cooperation agreement from 12 June 2013 gives an overview of the legislation for which Unia is competent.<sup>2</sup>

### 3. Antidiscrimination law

The antidiscrimination law<sup>3</sup> covers, among other things, sexual orientation. It has provisions on (a) discrimination, (b) hate crimes and (c) hate speech.

#### (a) Discrimination

The antidiscrimination legislation in Belgium has a broad field of application and not only covers fields such as employment and occupation, and the provision of goods and services, but also the participation in every economic, social, cultural or political public activity. This means that Unia opens and investigates individual discrimination files regarding various fields such as employment (19% of all files opened in 2016 regarding sexual orientation), goods and services (15%) and education (3%).

Belgium has made a lot of progress in the field of equal rights for LGB's in recent years. The legal equality of LGB's is largely accepted by the Belgian population, but there is still a great deal of so-called homonegativity (e.g. 'there is too much attention for LGB's', 'LGB's should behave normally' ...). This attitude reflects itself in the files opened by Unia. A teacher, for instance, received written homophobic remarks from his pupils while using an electronic board during his classes. Unia always tries to reach an alternative dispute resolution, in the case of the teacher by contacting the director of the school, and only in a limited number of cases Unia will take the matter to court.

#### (b) Hate crimes

In 2012 two homosexual men were murdered, within weeks of each other, in Belgium solely because of their homosexuality. It triggered the Governments to work out two interfederal action plans about homophobic (and transphobic) violence and discrimination for the period 2013-2014.

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<sup>2</sup> [https://www.unia.be/files/Z\\_ARCHIEF/20140119.pdf](https://www.unia.be/files/Z_ARCHIEF/20140119.pdf)

<sup>3</sup> <https://www.unia.be/fr/legislation-et-recommandations/legislation/loi-du-10-mai-2007-tendant-a-lutter-contre-certaines-formes-de-discrimination>

The Belgian criminal code provides for certain crimes in an optional or compulsory increase of the sentence when the crime is based on a so-called hate motive. This concerns e.g. crimes such as assault and battery, rape, graffiti, stalking, and arson. If such a crime is committed and is motivated by hate regarding e.g. the sexual orientation of the victim, Unia can take the case to court. Unia did this for instance in the two murder cases mentioned above. For certain crimes, the criminal code does not foresee an increase of the sentence when the crime is based on a so-called hate motive. Such crimes are e.g. torture, theft committed by violence or threat, and extortion. Sometimes homosexual men use dating sites to seek contact and are subsequently robbed. For this kind of crime, it is not possible to investigate the (homophobic) hate motive and eventually increase the sentence. Unia urges for a review of the provisions regarding hate crimes in the criminal code, to make it possible to examine the hate motive for crimes such as theft committed by violence or threat.

(c) Hate speech

The growth of the social media has led to a real explosion of hate speech. Unia is often questioned on the limits to freedom of expression. The Belgian antidiscrimination law states that it is forbidden to incite others in public to discrimination, hate or violence vis-à-vis persons or groups on the basis of a protected criterion.

Unia deals with hate speech in different ways. It motivates victims to practice counterspeech, negotiates with social media such as Facebook and Twitter and contributes to campaigns against hate speech such as the No Hate-campaign. In some cases a formal complaint is initiated at the office of the public prosecutor or the case is even taken to court.

4. Circular COL 13/2013 (17 June 2013)

A circular was published in 2013 by the Minister of Justice, the Minister of Internal Affairs and the College of Attorneys General at the Courts of Appeal. This circular from 17 June 2013, with reference COL 13/2013<sup>4</sup> forms an important tool in the fight against discrimination and hate crimes. The circular provides for the appointment of 'reference' magistrates and 'reference' police officers specialized in discrimination and hate crimes. In addition, the circular contains instructions on the detection and prosecution of discrimination and hate crimes. There are also guidelines for the registration of discrimination and hate crimes by the police and for the cooperation between the police, the public prosecutor, and Unia.

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<sup>4</sup> [www.unia.be/files/Z\\_ARCHIEF/getfile.pdf](http://www.unia.be/files/Z_ARCHIEF/getfile.pdf)