



Mr. Victor BORLOZ-MADRIGAL
Independent expert on sexual orientation
and gender identity

Via e-mail : ie-sogi@ohchr.org

Brussels, 01 -03- 2019

Our reference / Concerns : Your request for information from 5 February 2019.
Contact person : Paul Borghs / 02/212.30.99 / paul.borghs@unia.be

Dear Mr. Borloz-Madrigal,

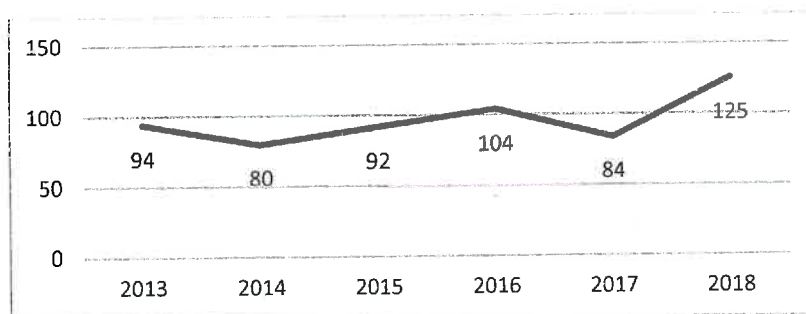
Unia, the Belgian interfederal equality body, is an independent public institution that combats discrimination and promotes equal opportunities.

Annexed to this letter, you will find more information concerning our institution and the Belgian legal framework regarding sexual orientation and antidiscrimination.

Unia is competent for, among other things, the criterion sexual orientation (however not for the criterion (trans)gender). We took notice of your letter from 5 February 2019 in which you appeal Governments and other entities concerned to send relevant information about various matters relating to data collection. We are happy to provide you with the following information, within the scope of our powers.

Remarks with regard to the data collection of Unia

Unia provides individual support to citizens who have experienced or witnessed discrimination. Anyone in Belgium who feels that he or she has been discriminated against on (among other things) the basis of his or her sexual orientation, or who has witnessed such discrimination, can report this to Unia and ask for individual support. Each year Unia receives dozens of complaints regarding sexual orientation and, as the figures below show, the number of individual files regarding the criterion sexual orientation rose considerably in 2018 compared to the previous years:



Roughly speaking one-third of the files regarding sexual orientation concerns hate crimes ("Society"), one-third hate speech ("Media") and one-third discrimination in the field of (most of all) employment, goods and services and education:

	2013	2014	2015	2016	2017	2018
Society	24	21	42	31	26	42
Media	20	23	22	30	18	31
Employment	19	20	13	20	17	19
Goods and services	12	8	8	16	8	17
Police and Justice	7	5	2	1	5	6
Education	7	1	2	3	3	3
Various activities	2	2	1	3	5	5
Other / Unclear	3	0	1	0	0	2
Total	94	80	92	104	84	125

Unia would like to underline that it guarantees the privacy of all the persons that appeal to its services. Unia does not take any steps and does not contact third parties without the consent of the persons concerned.

General remarks regarding the data collection on hate crimes

A joint Circular COL 13/2013 of the Minister of Justice, the Minister of the Interior and the College of Attorneys General at the Courts of Appeal deals with "the policy of investigation and prosecution with regard to discrimination and hate crimes (including gender discrimination)". This Circular is intended to make the investigation and prosecution policy uniform for violations of the anti-discrimination laws. The Circular gives instructions regarding the registration procedure. A correct registration is very important to gain insight into the discrimination phenomenon. In practice, Unia notes that the registration is not done properly. The local police zones do not all use the same system and some systems are not optimally equipped. Often, only the most serious crime is registered and not the discriminatory background. This is also due to the lack of knowledge about the anti-discrimination legislation. Moreover, the registration systems of the police and the public prosecutor's office are different and there is no coordination between the police and the public prosecutor's office about the registration.

*When the **police** detects an offence, the underlying crime is registered under the appropriate thematic code. If, moreover, the police discovers that the motive for the offence is racist, xenophobic, sexist, homophobic or directed against persons with disabilities, this motive of 'discrimination and violence motivated by hate' will be mentioned in the prosecutor's 'contextual field'. The crimes for which a motive is indicated in the 'contextual field' are recorded in the data collection systems (these are 'ISLP' in most local police areas and 'FEEDIS' in most federal police entities). At the moment, it is not possible to specifically select the acts of violence motivated by hate, out of the National Data Bank of the police. The codes used in the police nomenclature are not sufficiently detailed to select these acts of violence motivated by hate. This will require technical adaptations (adaptation of the flow and structure of the data bank ...).*

*The **magistrate** to whom the report is addressed will verify if the 'secondary prevention code' is correct. If the reason is not discriminatory, this request will be stroke out. If the relevant fact-finding test shows that the reason is well one of the criteria protected by the law and that the 'secondary prevention code' has not been mentioned, it will be added by the magistrate of the prosecutor's office. The statistics on discrimination are collected and provided by the College of Prosecutors on the basis of their systems.*

***Violence motivated by hate** is not defined as such in the Belgian legislation. Therefore, there is no specific code for classifying these crimes as "hate motivated violence" in the data collection. Any violation of the laws on non-discrimination constituting a criminal offence is generally classified as 'discrimination' by the police or by the public prosecutor. The police or prosecutor's data bases do not specify if the incident is an act of violence motivated by hate or constitutes another form of discrimination.*

In its *Memorandum* Unia asks the next federal government to introduce a uniform monitoring system to analyse statistics on violations of anti-discrimination laws. Unia also asks to improve the reliability of the registration tools of the relevant 'statistical' services of the police (including the disciplinary section) and of the public prosecutor's office.

So far the issues 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 interfederal 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 (e.g. on the ground of his or her sexual orientation), or who has witnessed discrimination, can report this to Unia. 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) 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 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 (unia.be/files/Z_ARCHIEF/11_april_2014_0.pdf).

3. Antidiscrimination law

The antidiscrimination law (unia.be/files/Z_ARCHIEF/10_mai_2007.pdf) 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, goods and services and education.

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 intergovernmental action plans about homophobic (and transphobic) violence and discrimination for the period 2013-2014.

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 (www.unia.be/files/Z_ARCHIEF/getfile.pdf) 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.

