

# THE BELGIAN POLICY REPORT ON MIGRATION AND ASYLUM: WITH A SPECIAL FOCUS ON IMMIGRATION AND INTEGRATION

## Foreword

As the subjects are usually interconnected it has proved difficult to distinguish at all times between “political developments”, “changes in legislation”, “policy implementation issues”, “central policy debates”. This report is based on the expert opinion of a number of partners, on (annual) reports, parliamentary and legislative documents, articles in the press and the author’s own knowledge.

## Introduction:

### General trends of immigration and emigration

The following are some figures concerning the population, asylum and regularisation applications, the visas granted and removal measures carried out.

Belgium has a **population** of over ten million inhabitants, of whom less than 10% are foreign nationals. On 1 January 2003 there were 10,355,844 inhabitants recorded in the population registers, of whom 9,505,767 were Belgian citizens (nearly 92%), 566,665 came from the other 14 EU member states (5.5%), 83,000 from other European countries (0.8%) – of whom something more than half from Turkey – 34,380 from Asia (0.3%), 24,565 from America (0.2%), 127,671 from Africa (1.2%) – of whom 83,600 from Morocco – and less than 1000 from Oceania. Net immigration for 2003 amounted to 27,790 people, for while 81,913 newcomers were registered, 54,123 left the country. Asylum seekers are not included in the population figures, no more than are certain international officials resident in Belgium.

Significant shifts occurred with regard to the presence of asylum seekers during the reference period. **Asylum applications** have sharply declined during the past few years. This is a general tendency in Europe but particularly became clear after two important political decisions taken at the end of the year 2000: firstly, it was decided that in future no financial but only material assistance (reception in asylum centres) would be given to asylum seekers; secondly, the *LIFO principle* (“*Last in – First out*”) was established with the asylum authorities: this means that the last applications are examined with first with regard to their admissibility, so that the asylum seekers are very quickly informed of the results of the examination into their applications. The speedy settling of new asylum applications has a dissuasive effect and has meant that the abuse of asylum procedures has sharply fallen.

While in 2,000 there were still 42,691 people lodging applications for asylum, these figures fell to 24,549 in 2001 and to 18,805 in 2002.

In 2003 there were 16,940 asylum applications in Belgium (this is the 6<sup>th</sup> place within the EU).

While in 2002 and the previous years most asylum seekers came from Europe, in 2003 40% came from Africa, 38% from Europe and 22% from Asia. Approximately a third came from the Democratic Republic of the Congo (1,778 or 10.5 % of the total number of applications),

Russia (1,680 or 9,9%), Iran (1,153 or 6,8%) and Serbia-Montenegro (Kosovo) (675 or 4%). The remaining asylum seekers mainly came from Cameroon (625), Serbia (Kosovo not included, 502), Turkey (618), Rwanda (450), Algeria (400), Slovakia (390), Togo (365), Angola (355), Guinea (354), Pakistan (341) and Albania (340). A significant increase was also observed from China (Tibet).

By the end of July 2004, 8,573 asylum applications had been lodged (which, if extrapolated to a yearly basis, would come to 14,670 applications for 2004), a further fall in comparison with 2003. Most applicants are from the DR of the Congo (874 or 10.2%), followed by Russia (715 or 8.3 %), Slovakia (425 or 5.0%), Serbia-Montenegro (401 or 4.7%) and Serbia-Montenegro (Kosovo) (340 or 4%), Turkey (3.9%), Guinea (3.5%), Iran (3.1%), Cameroon (3.1%) and Armenia (2.8%) (source: Immigration Service). The number of asylum applications declared admissible has risen, which may show that the asylum procedure is less subject to abuse (cf. above).

In 2003 more than double the number of decisions were taken in connection with **regularisation applications** on humanitarian grounds (on the basis of Article 9.3 of the Law of 15 December 1980) than in 2002 (8,759 in 2003 as against 3,550 in 2002). Most decisions concerned Moroccans, Yugoslavs, (Kosovars), Romanians, Congolese, Turks and Ecuadorians. The great majority of these applications were answered negatively.

During the first half of 2004 approximately a fifth of regularisation applications (for humanitarian reasons) were successful.

In 2003 short-stay visas or tourist visas for Belgium were granted to 134,813 people. Long-stay visas were granted to 25,398. The figures for 2004 are not yet known.

76 people lost their Belgian **citizenship** in 2003 and 33,709 people became naturalised Belgians. The figures for 2004 are not yet known.

2,820 people **left** Belgium voluntarily in 2003, 7,742 were forcibly **removed** and 3,548 were refused entry or directed to another border. This comes to a total of 14,110 departures and removal (for comparison: in 2001: 14,977 and in 2002: 14,821). The number of refused entries and voluntary departures from Belgium has fallen with respect to previous years, while forcibly removals have risen.

From the 2,820 voluntary removals 2,814 returned home in 2003 in accordance with the REAB (Return and Emigration of Asylum Seekers ex Belgium) programme of the IOM; this is a fall of 400 with respect to 2002 and a fall of 700 with respect to 2001. REAB is a return programme intended in principle for asylum seekers who return to their country of origin, in which a small financial contribution is given. A great number of those who call on the REAB-programme, however, have never lodged an asylum application (1,124 out of the 2,814). The majority of them left for Brazil.

As of the end of July 2004, 1,865 people had returned voluntarily in accordance with a return programme and 5,213 had had to be forcibly removed from the territory (repatriations and returns). The removals were suspended for a while early in the year following an intervention by the police which was the consequence of the sentence of some police officers as a result of the death (in 1998) of an illegal foreigner during her forced removal.

Most of these people returned –voluntarily or not – to Romania, Bulgaria, Poland, Brazil and Albania.

## **2. Political Developments**

### **a. Political changes**

During the reference period Belgium, a federal state, experienced both federal and regional elections.

Both during the Federal elections of May 2003 and the campaigns for the European and regional elections of June 2004, the problems of immigration and the integration of foreign immigrants were the subject of much discussion.

#### The Federal elections

The Federal elections took place on 18 May 2003 and led to the forming of a “purple” government, so-called because it was made up of *a coalition of (French-speaking and Flemish) Liberal and Socialist parties*. The electorate gave nearly two thirds of the seats to this purple coalition. This new government is led by Guy Verhofstadt, the former chairman of the Flemish Liberal Party. This is the second government led by Verhofstadt and so it is called the *Verhofstadt II government*. The Verhofstadt I government was a so-called “*rainbow coalition*”, meaning that besides the Socialist and Liberal parties (purple) the Flemish and French-speaking Green parties were also represented. This “*rainbow coalition*” ruled from June 1999 to May 2003.

#### The regional elections

The elections of 13 June 2004 had a double purpose, as both regional and European elections were organised on the same day. So Belgians had not only to choose their European representatives but also the representatives for their regional parliaments. One must not forget that Belgium has no fewer than five regional parliaments, which have arisen out of the federalising of the state. There are three regions which have a territorial and economic basis (the Flemish region, the (bilingual) Brussels Capital Region and the Walloon Region) and three linguistic and cultural communities (the Flemish Community, the French-speaking Community and the German-speaking Community). Each Region and each Community has its own Parliament, except in Flanders, where the regional and community bodies have been merged.

The regional elections of 13 June 2004, for the first time since the coming into existence of the federalised Belgian state, led to asymmetrical sub-governments. The same asymmetry is to be observed with respect to the Federal government. The great winners of the regional elections on the Flemish side are the Vlaams Blok, a Flemish nationalist party, which got 24 % of the votes (+8,4% in comparison with the previous regional elections) and on the French-speaking side, the Socialist Party (PS) which achieved a score of 36.9% (+7.5%) in Wallonia and 33.4% (+ 14.7%) in Brussels (within the French-speaking electorate) and which dominates the Francophone political landscape. Among the French-speaking electorate the nationalist party also succeeded in making a break-through: 8.1 % of the Walloon voters, and

5.4% of the (French-speaking) Brussels voters gave their vote to the Front National. In some Walloon districts we can talk of a (definitive?) break-through of the nationalist party.

Research has emphasised that the traditional parties have lost a good deal of their support to the nationalist parties because of the approval of voting rights for immigrants.

The Walloon government is composed of the Socialist and Christian Democrat parties and is chaired by a socialist. The Brussels government is made up of the same parties (Flemish and French-speaking socialists and christian democrats), but also the French-speaking Green party and the Flemish Liberal party and is also chaired by a (French-speaking) socialist. Flanders is ruled by a coalition of Socialist, Christian-Democrat and Liberal parties. The Flemish government is led by the former chairman of the Christian-Democrat party.

A noteworthy fact is the appointing of three ministers or ministers of state of non-European origin: Belgians of respectively Moroccan, Turkish and Congolese origin have been appointed to the various governments.

Notwithstanding the fact that in principle the regional elections have no influence on the federal government, the latter underwent some changes as a result of them, among which the most striking concerns the portfolio of foreign affairs given up by Minister Louis Michel for an appointment as European Commissioner in Development Aid.

#### The Federal coalition agreement

The Federal coalition agreement of July 2003 was set out in a policy document entitled “*A creative and solidarity-minded Belgium*”. This document gives a lot of attention to international cooperation in various areas in the sphere of Justice and the Interior, where the government wants to achieve the following objectives.

On the level of justice, in addition to stepping up the fight against terrorism, Belgium would like closer **international cooperation in criminal proceedings**, with the immediate introduction of the European warrant of arrest. In order to help overcome the pressing problem of the lack of space in its prisons, Belgium would like to institute a system of operational cooperation with Central and East European and North African countries, whereby offenders – who have built up no lasting social relationships in Belgium and have no asylum proceedings in course – would be tried on the spot. Also on the agenda is the ratification of the two protocols concerning the trafficking in and smuggling of human beings of the UN Convention of 12 December 2000 on transnational organised crime.

The government would also like to have stronger international cooperation and a legal framework for the collecting, storing and communication of biometric material (e.g. in visas). There is also a judicial approach to some problems in the area of immigration. Accordingly the fight against the trafficking in human beings must be intensified and the judicial authorities need to give it priority. Amendments to the laws are also envisaged in order to distinguish clearly between the trafficking in and smuggling of human beings, and to achieve greater legal security for the victims of human trafficking.

The coalition agreement says also that **the fight against the abuse of immigration procedures** must be taken in hand, particularly marriages of convenience and/or fraudulent family reunifications. Illegal work must be fought through the elaboration of a legal

framework which will punish people commissioning clandestine labour. Attention should also be paid to the situation of the domestic staff employed in embassies and consulates.

With regard to the **residence of foreign immigrants**, the transposition of the European directives concerning family reunification and long-term residence of third country nationals into national law before February 2005 is on the agenda. There must also be judicial protection for all non-accompanied minors, in compliance with the recommendations of the UN Committee for the rights of the child.

The government also wants to work on a **humane and realistic asylum policy** through the improvement of the procedures of the asylum authorities and by introducing subsidiary protection. On the other hand, the government wants to make manifestly unfounded and reckless appeals to the highest administrative court of justice, the Council of State, impossible and to speed up legal proceedings in course. It aims at establishing special sections for families in the closed centres.

It is clear from the coalition agreement that Belgium wants to remain an *open society* within which different cultures can work together through a ‘*shared citizenship*’. This idea implies that naturalisation (integration) will be promoted and emancipation encouraged. The Centre for Equal Opportunities and Opposition to racism, a governmental organisation, has accordingly been commissioned, in cooperation with other Federal entities, to draw up proposals arising out of the dialogue with all cultural and philosophical currents and sensibilities present in Belgian society.

The **integration of foreign immigrants** must be furthered by improving the reception of the newly arrived (family reunification, the long-term residence of nationals of third-party countries). There must be special attention to the conflicts and tensions which can arise in the context of an intercultural society (“permanent dialogue with all the cultural and philosophical currents”). There must be an effort to achieve efficient Muslim institutions which will guarantee the development of an open and tolerant Islam.

The intensification of **the fight against racism and ethnic discrimination** must take place by means of the effective prosecution by the courts of offences of a racist or negationist kind. If necessary the Constitution will be amended accordingly. The distributing of racist pamphlets must be combated. The Regions and Communities will be asked to draw up a long-term plan, in cooperation with the social partners, with regard to the fight against discrimination in work.

#### The regional coalition agreements:

The Brussels and Walloon coalition agreements, unlike the Flemish, contain hardly any provisions in the matter of immigration and integration.

The new **Flemish coalition agreement** of 2004 is entitled: “*Give confidence, take responsibility*”. The most striking element in this – with respect to the problems of immigration and integration at any rate – is **obligatory integration**. So for the first time a Minister for Integration has been appointed. The competences of this minister previously formed part of those of the Minister for Welfare, Health and Equal Opportunities.

The diversity of a multicultural society is an enrichment for our society, but is nevertheless a test for social cohesion. Those who wish to, and may, settle down in our country must not just take up the position of being “receiving” spectators. The authorities must provide satisfactory opportunities and eliminate existing discriminations, but the newcomer also carries his own responsibility and has duties. Accordingly additional financial means will be made available to offer routes to integration. In principle not only all newcomers who wish to settle permanently in Flanders, but also all ‘oldcomers’ in search of work but ignorant of the Dutch language, must follow obligatory Dutch-language lessons. Anyone who does not complete the route to integration or the Dutch classes (without legitimate reason) will bear the costs of the classes himself, or access to social housing could be denied.

Furthermore the problem of inveterate truancy of (immigrant) children must be tackled; it will not be accepted that pupils refuse to go to certain lessons because of their beliefs or philosophy of life. The authorities and the neighbourhood, the children and the parents must all accept their responsibilities.

The recognition of foreign diplomas and their equivalences must be speeded up. With regard to housing there must be a particular endeavour to achieve a better spread of the siting of social housing between and within all towns and municipalities. The problem of slum landlords must be resolutely tackled. Concentrations of illegal immigrants and asylum seekers in certain areas must be avoided as far as possible.

Initiatives aimed at consultation between (Federal, Flemish and local) administrative bodies to achieve a more harmonised policy and more vigorous and targeted approach to the problems of illegality and concentrations of asylum seekers must be encouraged. Furthermore great attention must be given to work, education, welfare, media, culture, sport and youth policies (as driving forces that can facilitate coexistence between different communities).

The **Brussels Coalition Agreement** of 2004, resulting from the regional elections of 2004, announced measures to be taken against discrimination in recruiting Brussels residents of foreign origin and the setting up of common working groups with the two other Regions which, in certain areas (outskirts of Brussels), have problems finding workers.

The new **Walloon Government** continues to build on the so-called “*Contract for the Future*”, which pays great attention to social cohesion.

Among the recommended measures, several concern the integration and reception of newcomers:

- organisation of systematic information for newcomers, suitable for their situation and involving in particular language learning and literacy, occupational integration and training, familiarity with Belgian practices and institutions, the rights and obligations of citizens and administrative support;
- allowing access for people of foreign origin to the public service;
- simplification of the procedures involved in granting work permits;
- appreciation of the traditions of immigrants as a factor of cultural enrichment.

The legal framework concerning integration remains that based on the Decree of 4 July 1996 of the Walloon Region and the Decision of the Walloon government of 6 March 1997 concerning the integration of aliens and people of foreign origin, amended in the decision of 19 December 2002 (published on 12 February 2003) (cf. below).

## Central policy debates

Just as in neighbouring countries, political debate has become crystallised around specific sensitive questions which also, but not exclusively, arise out of the international political situation. The most intense controversy concerned the wearing of “conspicuous religious symbols” in public places and voting rights for immigrants.

### The headscarf controversy:

The controversy which arose in France about the wearing of the headscarf in public places (among which schools) and the Law of 15 March 2004 passed concerning it, also gave rise to different positions in Belgium.

The Vice-Premier and Minister for the Interior, Patrick Dewael, in a remarkable opinion piece, initiated the debate. According to the Vice-Premier the veil can be a symbol of inequality between man and woman and an element of oppression; girls are often put under pressure to wear it. An intense debate raged for some weeks in the press.

Belgian justice (see among other things the ruling of 22 December 2000 of the Supreme Court) again finds that it is permissible for Muslim women to appear veiled on an identity card (some municipalities had refused to renew identity cards because the Muslim women appeared veiled on them). A circular letter of 7 October 1992 (and amended in 1996) from the Ministry of the Interior stipulates that it is not required that the hair and ears should be visible if the person concerned can claim “legitimate religious reasons”.

### Voting rights for immigrants

With reference to (municipal) voting rights for immigrants, intense discussions also took place. The disparity between the Flemish and French-speaking parties was striking: while the former were mainly against voting rights for immigrants, the latter were mostly for. After discussions and negotiations lasting weeks, voting rights for immigrants were finally approved (see below).

### The transit zone

There was constant discussion of the long-term stay of some foreign nationals in the transit zone of the National Airport. This concerned foreign nationals who did not satisfy the entry conditions to the jurisdiction and who, while awaiting deportation, were kept in a closed centre on the border. These people can exercise two kinds of appeal: they can on the one hand appeal to the hearing in chambers of the Criminal Court for misdemeanours against the decision to confine them in a closed centre on the border and, on the other, lodge an appeal with the Council of State, for nullification – combined by a demand for suspension or not – of the decision to refuse them entry.

On their release from the closed centre these foreign nationals consequently find themselves in the transit zone of the airport because the uncontested decision to refuse them entry remains valid and they cannot be admitted into the jurisdiction. Many of these foreigners refused to leave and therefore remained sometimes for weeks in the transit zone of the airport.

This situation drew the attention of the political world and of non-governmental organisations.

### The Council of State

During the reference period there was a further explosive increase in the number of cases brought before the Council of State which concerned the subject of aliens. In July 2004, the Minister for the Interior, as provided for in the Federal coalition agreement, announced measures to be taken to eliminate this backlog and to make dilatory and reckless appeals impossible in the future.

### The expulsion of illegal immigrants

In March 2004 the first repatriation at the Benelux level took place. The Minister for the Interior supports the intention of the European Commissioner, Vitorino, to provide for European cooperation in this respect, and also Community financing of the European return policy.

With regard to the problem of “difficult repatriations” (chiefly people who violently resist being removed) Professor Vermeersch of the University of Ghent was again commissioned to carry out a study. In 1999, as a consequence of the death in 1998 of an refused Nigerian female asylum seeker, during attempted repatriation, a Committee had already been established on the instructions of the Government, under the chairmanship of the professor emeritus and moral philosopher, Vermeersch (the so-called ‘Vermeersch Committee’) with the task of assessing the expulsion of asylum seekers whose legal remedies had been exhausted. The Committee then, inter alia, gave an opinion about the various phases of the removal, including the admissible means of coercion. The latter may not compromise the health or security of the refugees being expelled. The recommendations made by the Committee were transformed into ‘best practices’ for removal.

After the sentence of some police officers in 2003 a new Commission was constituted - again under the leadership of the moral philosopher - which was given the task of drawing up a new strategy for forced removal because it was obvious that still more clarity had to be created. One of the recommendations is that the illegal immigrants who have to be repatriated should first be shown a video in which it would be made clear how the return flight would take place. Anyone agreeing to return without resistance should receive compensation.

The removal of other groups has also become problematic. The number of illegal immigrants intercepted while trying to reach the United Kingdom through the port of Zeebrugge increased again in 2004. At the end of 2003 their numbers had fallen drastically as a result of various measures (including the demolition of a number of squats) and the ministerial decision to confine intercepted illegal immigrants nearby the coast with a view to their forced return.

### Trafficking in and smuggling of human beings

According to the Federal Public Prosecutor 7 out of 10 asylum seekers come to Belgium through traffickers in or smugglers of human beings. The asylum seekers who enter Belgium by their own efforts are becoming rarer.

According to Payoke, one of the three recognised reception centres for the victims of the trafficking in and smuggling of human beings, there was an increase in the number of victims of Chinese origin, while the number of those of Nigerian origin declined.

Again according to the police, there has been a significant increase in Brussels in the ascertained number of beggars with children or babies, chiefly of Romanian origin. Some NGOs also complain of the abuse of begging gypsy children.

Another disquieting phenomenon – which clearly points to the existence of well organised groups of traffickers in human beings – is the theft of identity cards and passports from a number of local government offices. As a result of this the Minister for the Interior announced that non-Belgians would be given electronic rather than paper identity cards. Another phenomenon regarding the smuggling of human beings can be observed in the context of family reunification. The Immigration Service increasingly has to deal with “family reunifiers” who present no, or only dubious, birth certificates. In the case of doubt with regard to family ties, use is therefore made of DNA tests.

### Racism and anti-Semitism

Both in 2003 and 2004 some serious racist and anti-Semitic incidents occurred, which affected public opinion considerably.

With regard to this problem we can mention a report produced by a research group of the University of Leuven (*‘Between acceptance and resistance. A sociological study of attitudes to asylum, reception and migration’*) which was presented in 2004. It appears from this that something less than half of those interviewed (between 40% and 48%) are favourable to the idea of letting “some” more immigrants into Belgium, preferably people from poor rather than rich countries. 15% of the interviewees do not want to admit any more immigrants. A large majority feel that Belgium has comparatively too many asylum seekers.

The Centre for Equal Opportunities and Opposition to Racism announced the creation of an observatory concerning racism and discrimination at the end of 2004.

Following two recent 2004 studies, there is a positive change with time in the attitude of people (towards asylum seekers) who live near an asylum centre (see: *‘From exasperation to hospitality. The geographical and discursive dimension of attitudes towards asylum seekers. Case studies from Flanders and Brussels* of the University of Ghent and of the Catholic University of Leuven and *‘Francophone Belgians and asylum seekers’* of the Free University of Brussels and the University of Liege).

In 2004 Professor Foblets of the Catholic University of Leuven and the University of Antwerp carried out a study of the conflict between the traditions and customs of immigrants and the legal regulations of their new country (*‘What do people of foreign origin think of justice and the courts in Belgium’*, Ghent, Academia Press, 2004). One of her conclusions is that the comprehension of judges for foreign cultures has declined over the years. She points out at the same time that there is a very significant difference between the rulings of Dutch-speaking and French-speaking judges. Professor Foblets won an important scientific award, the Francqui Prize, for her study.

According to a new report of the Council of Europe concerning racism and intolerance ('Third Report on Belgium') (January 2004), poor opportunities on the job market for immigrants and increasing hostility towards Jewish citizens and Muslims are the great sticking points in the fight against racism in Belgium.

### Sham Marriages

In his new policy statement the Prime Minister declared that sham marriages would become punishable. The government is investigating how sham marriages can be countered.

Also, members of the opposition in the Federal parliament (in this case the Flemish Christian-Democrat party), submitted a legislative proposal in April 2004 for the active penalisation of sham marriages. (Belgium would appear to exercise a particular power of attraction in this area because of the lack of any real policy).

The proposal provides for a prison sentence of two months and a fine of €30,000 for people entering into a sham marriage. Foreign immigrants who have entered into such a marriage would lose their resident permits and the Belgian citizenship they might have acquired on the basis of the marriage. In addition a central data bank would be set up to prevent candidates for a sham marriage applying to other municipalities, following the refusal of a particular municipality to celebrate it.

In addition a uniform approach on the part of the municipalities and public prosecutors is called for. A reporting point should be set up at the Centre for Equal Opportunities and Opposition to Racism where victims of a sham marriage can get help.

At the moment the civil-status officials play an active role in combating sham marriages and can refuse to celebrate a marriage if they have good grounds for doubting its genuineness.

The city of Antwerp is particularly confronted with the problem and has tackled it actively. During the period from 1 January 2004 to 30 March 2004, 222 files concerning sham marriages were opened. In 2003, there were 413 files, in 40 % of which the proposed marriage was rejected. In this case the legal authorities must give a ruling on the celebration of the marriage. The Minister for the Interior hopes to introduce additional provisions into the law when the European directive concerning family reunification is transposed, in order to tackle the problem of sham and forced marriages.

### Parliamentary discussions and questions

The parliamentary discussion of asylum and immigration took place mainly in the Interior Affairs Committee of the House of Representatives and particularly concerned following questions: asylum policy, the problem of illegal immigrants and the residence, integration of and discrimination against foreign nationals.

In Parliament the minister was mostly questioned in connection with the settling and regularisation of older, still outstanding asylum requests, the situation of unaccompanied minors, the illegal aliens in the transit zone, the abuse of the procedure for and the backlog of the Council of State, the head-scarf issue, joint flights for the repatriation of illegal immigrants, the lifting of the decision freeze with respect to asylum applications of asylum seekers from Afghanistan, the occupying of churches and the non-repatriation of certain

intercepted illegal migrants, (the impossibility of) employment for asylum seekers, with respect to those of Iranian origin, the possible abuse of family reunification and sham marriages and the increasing level of racism and anti-Semitism.

The other questions were very varied in kind and concerned international questions (e.g. the Eurodac system, the bilateral return agreements, the British proposal to set up ‘*safe havens*’, the desire of the United States for the provision of biometric data for nationals not subject to a visa obligation, the visa obligation for Chinese business people and tourists, the opening of a new French asylum centre near the Belgian border, the qualification guideline), the immigration policy in general (including the situation of illegal immigrants in the major cities, the dispersing of immigrants over the Belgian territory, DNA tests in the context of family reunification, the regulation of and situation in closed centres, the setting up of a *gender* office with the asylum authorities, the application of the law on aliens through sport clubs, the abuse of the legislation on foreign nationals in the attempt to prolong illegal residence), the discrimination problem as well as immigration issues of a criminal character (e.g. the racket of stolen and false passports, the so-called double punishment, social security fraud through the abuse of birth certificates).

#### Some noteworthy episodes

In 2003 various events took place (the occupation of churches and (threats of) hunger strikes of people chiefly of Afghan or Iranian origin, and to a lesser extent people of Kurdish and Chechen origin). A noteworthy fact was that some of the hunger strikers were in fact in a legal, but precarious, residence status (asylum applications pending).

### **3. Changes in Legislation**

Although during the reference period Belgium experienced no major reforms of the law with regard to the policy on immigrants, certain legislative measures were taken in a number of sensitive areas (including the matters of guardianship regulations for unaccompanied foreign minors, voting rights for immigrants and the fight against discrimination). Furthermore, by means of implementation decrees or specific guidelines, a number of improvements were brought about in the procedures and daily practice of the competent authorities. This overview is limited to the legislative measures taken at the Federal level.

#### **a. Migration (immigration and integration) and asylum**

##### Unaccompanied foreign minors

By unaccompanied foreign minors is understood illegal foreigners from third countries under 18 years of age who are not accompanied by a guardian or legal representative.

The situation of unaccompanied minors has been found to be a problem for several years, on the one hand because of their growing numbers and, on the other, because of the fact that they frequently disappear. Between 1995 and 2000 there was an increase in the number of unaccompanied minors lodging asylum applications in Belgium, rising from 820 applications in 1995 to 1,295 in 2000. In 2003, the Immigration Service registered 1,768 unaccompanied foreign minors of whom 955 were illegal and 813 had applied for the asylum status. Most asylum seekers are girls between 16 and 18 years of age. Clear links were detected with the

traffic in human beings with regard to adolescents coming from West Africa and Central and Eastern Europe.

Belgium was also urged by the Committee for the Rights of the Child of the United Nations to establish a specific regulatory framework for unaccompanied minors. In its recommendations the UN Committee urged Belgium to create specialised reception centres for unaccompanied minors and to provide for guardianship.

The Finance Act of 24 December 2002 provided for the establishing of a guardianship department for unaccompanied foreign minors within the Ministry of Justice, responsible for the coordination and the supervision of the material organisation of this guardianship (Chapter 6 of Title XIII).

This guardianship scheme was subject to the approval of a Royal Decree presented to the Council of Ministers and to a cooperation agreement between the Federal Government and the Communities for the organisation of the reception. On 22 December 2003 a Royal Decree for the application of Title XIII, Chapter 6 “*Guardianship of unaccompanied foreign minors*” of the Finance Act of 24 December 2002 was signed (published on 29 January 2004).

The decree indicates the composition and operation of the Guardianship department and also the recognition procedures and criteria of the guardians of the unaccompanied foreign minors. For each minor a guardian is appointed whose task it is to represent the minor in his administrative procedures. The Guardianship department is responsible for the coordination and supervision of the material organisation of the work of the guardians.

The department must take steps to identify the unaccompanied foreign minors and, if necessary, to verify their age by means of a medical examination, and also to establish contacts with the Immigration Service, the authorities competent for reception and accommodation, as well as with the authorities of the countries of origin of the minors, in order to trace their families or to find other reception structures. It must see to it that within the shortest time possible a long-term solution is sought for in the interest of the minors. In addition there are tasks concerning the appointing and training of the guardians.

There are problems finding enough candidates for guardians.

The cooperation agreement with the Communities has not yet been concluded. An agreement was however reached during a special Council of Ministers in April 2004 regulating the reception of unaccompanied minors.

### Voting rights for immigrants

Belgium, following the Netherlands, has granted new political rights, namely the right to vote in municipal elections, to foreign nationals who have been living legally in the country for at least five years.

The right of immigrants to vote at the municipal level was approved in March 2004 after stormy parliament debate. Some parties were opposed to immigrant voting rights and/or linked the question to the adaptation of the nationality law (the so-called *fast-Belgian-law* of 1 March 2000). The nationality law was in fact considerably relaxed in 2000 in order to give foreigners the possibility of acquiring and exercising new rights through the choice of

nationality and then constituted an alternative to the municipal voting rights for non-EU nationals. A consensus was finally reached within the political majority.

The Law of the 19 March 2004 to recognise the active right to vote in municipal elections for foreign nationals (published on 23 April 2004) accords this right to non-EU citizens who have been living legally on the territory for five years. However, three limitations were set to this right: they acquire the right to vote but not to be elected; they must register in the voting register and when registering must sign a declaration committing themselves to observe the Constitution, the laws of the land and the European Convention of Human Rights.

### The asylum procedure

Three implementation decrees, signed on 11 July 2003 and entering into force on 27 April 2004, legally established the existing *good practices* of the asylum authorities, and also determined a number of additional guarantees with regard to the procedure. This concerns the Royal Decree laying down certain procedural elements which must be followed by the Immigration Service which is responsible for investigating the asylum application on the basis of the Law of 15 December 1980, the Royal Decree for regulating the functioning and proceedings of the Office of the Commissioner General for the Refugees and Stateless Persons and the Royal Decree establishing the functioning of the Office of the Commissioner General for the Refugees and Stateless Persons.

With regard to the Immigration Service, what is involved among other things is: information to be given to asylum seekers, the submission of documents supporting the application, interviewing the asylum seeker with particular attention to minors and possible *genderbased* asylum applications, the obligations of the officers during the interview (including the obligatory assessment of the credibility of the application), as well as the interview report and the motivation of the decisions, concerning asylum seekers detained at the border, the training and instruction of officers, and also the role of interpreters.

With regard to the Office of the Commissioner General for the Refugees and Stateless Persons (CGRS), what is involved among other things is: the organisation of the CGRS (training course centre and legal unit), the professional ethics of officers, judicial procedures for the CGRS (including the obligation to interview the asylum seeker at least once, calling for and requesting information), interviewing the asylum seeker (including the obligatory assessment of the credibility of the application) with particular attention to minors and possible *genderbased* asylum applications and with regard to interview notes, the right to assistance, with regard to the role of interpreters, supporting documents deposited, with regard to the decisions taken (including the urgent appeal) and the closing of the file, and also the other competences of the CGRS (advisory competence and the issuing of documents). A final application decree concerns the general functioning of the CGRS.

### Conditions concerning the member states entering on 1 May 2004

The Royal Decree of 8 October 1981 concerning access to the territory and the residence, establishment and removal of foreign nationals was amended in a few points by the Royal Decree of 25 April 2004 in order to take account of conditions affecting the implementation of the transitional period provided for in the Accession Treaty of eight (not Cyprus or Malta) of the ten states acceding on 1 May 2004 (published on 17 May 2004). A new chapter was added concerning nationals coming to Belgium to exercise paid employment and their family

members, and also regarding the documents required for entry into the territory (national passport or valid national identity card).

### Circulars

Various circulars aimed at improving the operation of the authorities competent for procedures in the area of immigrant policy were signed by the Minister. Among other things they concern: the application of the regularisation on humanitarian grounds provided for in Art. 9.3 of the Aliens Law (19 February 2003); revised guidelines concerning assistance to the victims of the trafficking in human beings (17 April 2003); the role of the police services in the removal of families with children of schoolgoing age younger than 18 years (29 April 2003); data amendments and collection in the waiting list (16 May 2003); residence cards for foreign nationals (22 May 2003); concerning the index for unaccompanied foreign minors (23 April 2004) and their residence regulations (30 April 2004); the residence and establishment of nationals of the new member states during the transitional period provided for by the Accession Treaty (30 April 2004).

### **b. General legal changes affecting migrants, refugees and asylum seekers**

At the Federal level a number of legislative measures were taken concerning the fight against racism and discrimination, and also against the trafficking and smuggling of human beings, which are not without importance for the immigration and asylum questions.

The fight against discrimination was given effective form by the Law of 25 February 2003 for the combating of discrimination and the amendment of the Law of 15 February 1993 concerning the establishing of a Centre for Equal Opportunities and Opposition to Racism, published on 17 March 2003. This law prohibits any form of discrimination in social intercourse. It also has consequences for the legislator: it prohibits any form of direct or indirect discrimination in selection and appointment criteria, promotion opportunities and working conditions. In addition the law specifies the penal provisions and civil law consequences in the event of discrimination, and adapts the mandate of the Centre for Equal Opportunities and Opposition to Racism.

The Law of 20 January 2003 to strengthen the legislation against racism (published on 12 February 2003) brought in a number of amendments to the law for the punishing of actions inspired by racism or xenophobia (30 July 1981), and also to the law to establish a Centre for Equal Opportunities and Opposition to Racism (15 February 1993) and the law providing for the disciplinary regulations of the members of the police forces (13 May 1999).

In order to optimise the fight against the smuggling of and trafficking in human beings, an Interdepartmental Unit for this combat was established in accordance with Royal Decree of 16 May 2004 concerning the fight against the smuggling of and trafficking in human beings (published on 28 May 2004), which has as task the implementation of efficient coordination between the departments concerned, the assessment of the development of the results of this combat, and also the drawing up of policy proposals and recommendations. In addition this Royal Decree also led to the establishment of an Information and Analysis Centre for the Trafficking in and Smuggling of Human Beings, on the basis of which a computerised information network is being built up which should serve as a foundation for strategic analyses to be carried out by strategic partners. This Centre is answerable to the Ministers for Justice and the Interior.

It is worth mentioning also that as a result of the publishing of the new code of international private law in July 2004, a number of North African women's organisations are of the opinion that repudiation should also be applicable in Belgium, on the model of the new Moroccan family law (see Art. 57 of the code).

#### **4. Implementation of EU legislation at national level**

During the reference period a number of Community measures were transposed into Belgian law. Concerned are measures regarding the temporary protection, regarding the Eurodac system (comparison of the finger prints of asylum seekers), regarding the state responsible for the processing of asylum applications lodged within the EU (the so-called Dublin II Regulation).

The Laws of 18 February 2003 amending the Law of 15 December 1980 (published on 10 and 11 April 2003) , transposed into Belgian law the Council directive of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. It provides for a status of temporary protection for homeless people who as a consequence of events in their country arrive in massive numbers in Belgium. To the Law of 15 December 1980 a new chapter was added which governs this specific status (Chapter IIbis, Art. 57/29-57/36). This chapter determines the duration of the status (6 months extendible to 2 years), the residence status (residence authorisation), the reasons for denying the status or excluding people from it, regulations regarding family members, and also the termination regulations. With the Royal Decree of 3 May 2003 (published on 3 June 2003) the provisions concerning temporary protection have come into force.

The centralised comparison system of the fingerprints of asylum seekers and of certain categories of illegal immigrants for the purpose of effective application of the Dublin Regulation, also called the *Eurodac System*, came into force in Belgium on 15 January 2003, and also in the other European member states.

The Council Regulation of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (also called *Dublin II Regulation*), which replaced the Dublin agreement of 1997, has been applicable in Belgium since 1 September 2003, as it is also in the other EU member states (except Denmark).

On 10 June 2004 the Minister for the Interior proposed two bills to amend a number of provisions of the Law of 15 December, with a view to transposing into Belgian law the directive of 28 May 2001 about the mutual recognition of decisions regarding the removal of the nationals of third-party countries. A provision has also been added to the chapter concerning access to the territory (new Article 8bis) of the Aliens Law, the chapter concerning the supplementary security measures has been amended (Art. 27 and 29) and Article 71 (appeal to the judicial authorities) added to.

Finally, preparations have begun to transpose the following Community legislative measures into Belgian law: the Directive of 27 January 2003 laying down minimum standards for the

reception of asylum seekers, the Directive of 22 September 2003 on the right to family reunification, the directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, the Directive of 25 November 2003 on the status of third-country nationals residing on a long-term basis in the territory of the Member State, the Directive of 28 June 2001 supplementing the provisions of Article 26 of the Agreement applying the Schengen Agreement of 14 June 1985 (concerning the responsibility of transporters), and the directive approved on 30 March 2004 on minimum standards for the qualification and status of third countries nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (also called qualification directive) where the status of subsidiary protection is introduced.

A number of these preparations have already reached an advanced stage. The regulation which will require the greatest modifications to the Law of 15 December 1980 and to the Belgian asylum authorities is the transposition of the subsidiary status into Belgian law, as this status, at least in this form, is not known in Belgian legislation.

## **5. Policy Implementation issues**

### **a. Gates of entry (visa, family reunification, quota systems, etc..)**

The number of visas issued in the context of family reunification has risen considerable in the past few years in Belgium. This, among other things, is the direct consequence of the regularisation operation organised in Belgium in 2000, which took several years. This operation regularised the residence position of some 50,000 foreign nationals who were illegally or temporarily resident in Belgium. Regularisation provided for the granting of a residence permit of unlimited duration, whereby the persons concerned acquired the unconditional right to family reunification and actively exercised this right.

#### Quota systems

Belgium still today has no quota system with regard to labour immigration. The Minister for the Interior is a supporter of creating a European legal framework with regard to legal immigration, particularly labour immigration, in order to meet the labour-market needs of each member state. He starts from the premise that economic migration is a fact and that it is better to regulate it rather than leave it to criminal organisations, and accordingly admit a certain number of economic immigrants into the European Union. They must beforehand learn the language of the country and have an offer of work.

### **b. Labour market and employment (measures to reduce unemployment; training, etc....)**

On 8 May 2002 a decree providing for proportionate participation in the labour market, a powerful instrument at the Flemish level, transposed the European non-discrimination directives into Flemish law: the decree prohibits all discrimination on the grounds of race, ethnicity, nationality, whether in the areas of occupational training, career guidance, work placing, or in that of the terms of employment for public officers and school staff.

Proportionate participation in the labour market, independent monitoring of the decree, the processing of complaints and the possibility of sanctions are furthermore provided for, just as the Flemish government services and intermediaries on the labour market are obliged to establish an annual action plan and progress report.

Proportionate participation by 2010 is a priority. With a view to this, 550 diversity plans and good practice procedures were launched by the VESOC (Vlaams Economisch-Sociaal Overlegcomité – Flemish Economic-Social Consultative Committee) in 2002 and 2003 (budget: €13,632,000).

Worth mentioning is the fact that in the Flemish Region the number of foreign nationals working has risen faster than the total of Belgians working (3.5% as against 0.6%). However, there is still much to be done: the percentage of foreign nationals working (37.5%) is lower than that of the total population (63.5%). The Ministry of Employment has established specifically adapted subsidy regulations for small and medium-sized enterprises (SMEs): Flemish SMEs can claim a once-off subsidy of a maximum of €10,000 if they pursue an active diversity policy. The UNIZO (Unie van Zelfstandige Ondernemers – Union of Independent Entrepreneurs) has set up a service point “Diversity”, which together with the Flemish Department for Employment-Finding (Vlaamse Dienst voor Arbeidsbemiddeling - VDAB) organises suitable language courses in the work place.

The OCIV (Overlegcentrum voor de integratie van vluchtelingen – Consultation Centre for the Integration of Refugees) reports that only 8% of refugees and asylum seekers have jobs consistent with their level of studies and are paid on the basis of the diplomas obtained abroad. The OCIV argues, among other things, for further specific language lessons and speeded-up recognition of foreign diplomas.

The Walloon Region and the French Community Committee of the Brussels Capital Region also transposed directives 2000/43/EC (application of the principle of equal treatment of people regardless of race or ethnic origin) and 2000/78/EC (institution of a general framework for equal treatment in work and professions) into regional law through, respectively, the “Decree of 27 May 2004 concerning equal treatment in the area of employment and professional training” (Walloon Region – published on 23/06/2004) and the “Decree of 19 May 2004 providing for application of the principle of equal treatment” (published on 07/06/2004).

### **c. Housing and reception of asylum seekers:**

All governments continue to attach great importance to affordable good-quality accommodation for everyone (Belgians and foreign nationals). Decent accommodation is not only a basic right, bad accommodation and slum districts also increase the feeling of insecurity. An additional problem is the fact that many foreign nationals live precisely in those districts which are noted for bad housing (because of the lower prices).

90% of asylum seekers who can be taken into consideration for Social Welfare support do not stay in the municipalities to which they were assigned. 55% of all asylum seekers live in Antwerp, Brussels, Liege, Ghent, Charleroi or Mons. In the end not even 10% of people would appear actually to live in the municipalities to which they were directed. The major urban centres have been complaining for years that quite a few Social Welfare Agencies from the outlying municipalities dump their asylum seekers on them.

The governments have considerably stepped up the **fight against slum landlordism** (though the introduction of stiffer penalties and more inspections). At the beginning of July 2004 the Federal government approved a bill making it possible to tackle slum landlords more effectively: instead of the previous fines (up to €25,000 per slum dwelling) slum landlords now risk up to 5 years in jail and the fines have been raised to €25.000 per victim. The trafficking in and smuggling of human beings can be penalised with 20 years in jail and a fine of €150,000; gangs organising begging can get up to 3 years jail (or 5 for using minors or when violence is used) and a fine of €50,000.

Discrimination in the area of housing also continues to be a problem. The **Law of 25 February 2003** for the combating of discrimination (cf. above) also gave to the legislator greater scope for action in this area by introducing civil law procedures and by extending the definition of discrimination. Art. 2 § 4, for instance, prohibits discrimination concerning ‘the delivery or making available of goods or services to the public.’

The Flemish Minister for Housing has specified in a circular that the social housing companies, barring exceptions, may not assign any accommodation to illegally resident people. Asylum seekers are taken into consideration for renting social accommodation.

The reception of asylum seekers remains a Federal matter. In 2003, two Federal reception centres had to close their doors after a legal battle on the part of local residents against the competent ministry. The new Minister for Social Integration and Fedasil (the department responsible for the reception of asylum seekers) has, among other things, established the main force lines as being: a resolute distinction between the reception of asylum seekers and the asylum proceedings; the approval of a new global law concerning the quality and reception circumstances of the asylum seekers (responding to the European Directive concerning minimal reception conditions); working out a framework for a policy for the voluntary return of asylum seekers (as an alternative to illegality or removal).

Social support in the immediate environment of admissible asylum seekers needs to be promoted by, among other things, further development of local reception initiatives. The Minister for Social Integration has announced that the length of stay in asylum centres must be limited to a maximum of 6 months.

Fedasil is also responsible for material support to illegally resident foreign minors, through its reception centres. This new competence follows on the ruling of the Court of Arbitration of 22 July 2003 which defined the recognition criteria for the provision of social services to illegally resident foreign minors (if a child is in need because the parents of the illegally resident foreign minor fail to fulfil their parental duties, the child has a right to the provision of social services (material assistance) which will only be supplied in a Federal reception centre).

The Federal Coalition Agreement of July 2003 finally stipulates that unaccompanied minors will not longer be received in closed centres on the border, but in secure institutions suitable for their age. The Communities will be involved with regard to the organisation and financing of these institutions, and also with regard to support for these young people.

#### Caravan dwellers

The numbers of caravan dwellers in Flanders and Brussels is estimated at 10,000. Given the central problem of insecure living conditions, which also has a great impact on other areas of life (education, employment, etc.) the provision of satisfactory, viable caravan sites is an important aim of the Flemish policy on minorities. In 2003 municipalities constructing caravan sites were further subsidised.

The Walloon authorities also pay special attention in their policy to caravan dwellers.

**d. Welfare system (health care, social security issues, etc.)**

In the Belgian Federal system “person-linked” matters are fully transferred to the federal states.

These matters are subdivided, among other things, into **health policy** and **assistance to people**, to which belong the policies on social welfare and on the reception and integration of immigrants.

In 1991 the Federal Government, in consequence of disturbances in the Brussels area involving youths of foreign origin, established a **Stimulus Fund for the Immigrant Policy** which is aimed at financing projects in the context of the policy of integrating young people of foreign nationality or origin.

The funds come from the net proceeds of the National Lottery. For 2003 a subsidy of €7,524,000 was provided for, of which 75% is intended for projects in the five major cities. Special attention is also paid to projects which are aimed at female and/or mixed groups. The secretariat service is supplied by the Centre for Equal Opportunities and Opposition to Racism.

114 Dutch-language projects were approved in Flanders and Brussels in 2003 (the projects are no longer aimed solely at young people between the ages of 3 and 25 years). They are various in kind and concern training, prevention of truancy, spending on infrastructures for sporting and socio-cultural premises for the benefit of young people of foreign origin, etc. Projects specifically directed at women and elderly people were also initiated.

The Decree of 5 November 2003 concerning preventive health policy is aimed at ethnic-cultural minority groups, as these are harder to reach (e.g. prevention of Aids and sexually transmissible diseases).

**e. Specific integration measures (integration programmes, language learning, school)**

The aliens policy in the strict sense (admission, legal residence position, removal of aliens) is exclusively a Federal matter, but the integration policy, as already indicated, has been partially transferred to the federal states which since 1980 have developed integration policies with their own emphases. Also education and training are, as person-linked matters, competences exercised by the Communities.

## The Flemish Community

### **Integration policy**

The competent ministers, their departments and the Flemish public institutions are responsible for carrying out the policy on minorities within their own policy areas. In order to maintain coherence and avoid conflicts, a coordinating minister and coordinating committee have been provided for. The Interdepartmental Ethnic-Cultural Minorities Committee (ICEM) fulfils this function until now.

The Flemish minorities policy is a 3-track policy (an emancipation policy for the established groups, a reception policy for newly arrived foreign nationals and a relief policy for people without a legal residence status) and is aimed at five target groups: established immigrants, refugees, travelling population groups, newcomers speaking other languages and undocumented migrants.

According to the ICEM the years 2002 and 2003 were the “bloom years” of the experimental period with regard to integration.

In 2003 the **integration decree** was passed in the Flemish Parliament and it came into force on 1 April 2004. The decree encourages the integration process of newcomers by means of routes to integration. Organisationally these routes start from reception bureaux. The primary route comprises a basic course in Dutch, social orientation and career orientation. In the secondary route the concentration is on moving up to regular education and employment possibilities. The integration policy for newly arrived minors is limited to the primary route. Integration courses were initially not obligatory for partners (family reunification) of (naturalised) Belgians. This gave rise to some criticism because according to members of parliament of foreign origin and the Flemish Minority Centre, the people concerned were principally immigrants and so the integration decree partially failed in its objective. Above all there would also appear to be a shortage of courses.<sup>1</sup>

On 26 March 2004 the Flemish government approved the strategic plan for minorities for the period 2004-2010. The plan is directed at the whole population (*‘the raising of the intercultural competency of the political and social institutions’*) and declares that a catch-up operation is necessary in order to eliminate the disadvantage suffered by minorities, particularly in the area of education and employment. Before 2003 work was done on the basis of the Strategic Plan for Minorities of July 1996 and the Decree on Minorities of April 1998.

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<sup>1</sup> The competent minister let it be known in October 2004 that he wanted a shift in the priority target groups: it should no longer be, as is the case now, just asylum seekers whose applications have been declared admissible, seeing that many of them will not be recognised as refugees. The new target groups are all ‘newcomers’ (also in the event of family reunification or family formation and if they are married to a Belgian), unemployed ‘oldcomers and ‘oldcomers’ with schoolgoing children. He also advocates that imams and other foreign religious functionaries should learn the language and culture, seeing that they serve as models and often are interlocutors within their community. For them, however, the obligatory character is not applicable because of the separation of Church and State.

In addition, the social interpreter network ('Babel') was further developed: social services in Flanders and Brussels could call free of charge on the services of 106 independent interpreters (in some ten languages).

In 2003 the VRT (Flemish TV) focused further on the image and participation of foreign nationals in the media. To that end the VRT signed the Diversity Charter in April 2003. Initiatives were also taken in the health and welfare sectors.

## **Education**

On 1 September 2002 the Decree of 28 June 2002 concerning equal educational opportunities came into force. Its principal aim is the prevention of exclusion and discrimination in education and the promotion of social cohesion. Its main thrust is three-fold: the fundamental right to enrolment in the school of one's choice, enhancing the local sense of responsibility with regard to the right of enrolment and the combating of disadvantage by the establishing of local consultative platforms, and additional support for schools with many pupils in disadvantaged situations.

With regard to the right of enrolment, the relevant conditions of the decree are intended to implement, within the education sector, the "*directive of the Council of the European Union of 29 June 2000 providing for application of the principle of equal treatment of persons regardless of race or ethnic origin*" and constitute a further step in the application of Articles 5 and 6 of the "*International Convention on the Elimination of All Forms of Racial Discrimination*". More work is also being done on measures within higher education: recognition of acquired skills so as to be admitted to the *bachelor* educational level.

On 10 February 2004 a draft decree was accepted in the Education Committee which is intended to make it possible for the administrations of higher education institutes to take "inequality correcting" measures. The NARIC (National Academic (& Professional) Recognition and Information Centre) of Flanders is continuing to work on the recognition of foreign diplomas, the training of teachers of "Islamic religion" is further supported and finally additional financial efforts are being made for NT2 ("Nederlands als Tweede/Vreemde Taal" – Dutch as Second/Foreign Language) courses, among other things by establishing 7 "*Houses of the Dutch Language*".

Following the Coalition Agreement of the new Flemish Government of July 2004 foreign diplomas should be recognised and declared equivalent more quickly.

### *The French Community-the Walloon Region*

On 1 January 1994 the French Community transferred competence regarding assistance to people to the Walloon Region and to the French Community Committee of the Brussels Capital Region.

### *The Walloon Region*

As already indicated above, the legal framework concerning the integration sector continues to be based on the Decree of 4 July 1996 of the Walloon Region and the Decision of the Walloon Government of 6 March 1997 concerning the integration of foreign nationals or

persons of foreign origin, amended by decision of 19 December 2002 (published on 12 February 2003).

This decree provides, inter alia, for the establishing of six regional centres for the integration of foreign nationals or people of foreign origin in the French-speaking area (Charleroi, La Louvière, Liege, Mons, Namur and Verviers). They have as objective to provide for the development of integration activities on the social, socio-economic, cultural and educational levels, in the area of accommodation and health, preferably in the framework of agreements concluded with the local authorities and associations. The decision also provides for the subsidising of local initiatives undertaken in the same areas by local authorities, inter-municipal bodies, non-profit organisations or other associations.

Finally the Decision created, within the Economic and Social Council, a Walloon Advisory Council for the integration of foreign nationals and of persons of foreign origin, whose competence it is to advise about the access possibilities of foreign nationals to social, cultural, legal, economic, administrative and political rights. A “separate paragraph” (special attention) covered the reception of travelling population groups (Rom). The Decree also ensures the control of projects financed in the framework of the Federal Stimulus Fund for the policy on immigrants.

In 2003 (among the projects) special attention was also paid to intercultural mediation and communication. Again in 2003 a new initiative was put to the test: the “Carrefour Interculturel Wallon”, where consultation between NGOs, the authorities, the scientific world, etc., should take place (but for which no regulatory framework has yet been created). The finance-decree budget of 2004, passed on 18 December 2003, provides for the obligatory annual drafting of a descriptive activity report to the Government.

The “Direction Générale de l’Action Sociale et de la Santé » (DGASS), besides numerous national projects (among others in the mental health area, mediation centres for caravan dwellers, language courses, literacy programmes), took an active part on the international level in 2003 in working groups on immigration and integration in the framework of the Council of Europe. It worked on immigration together with regions of France, Germany, Luxembourg and Belgium and took part in the IWI (*Immigrated Women Integration*) project in Milan and the Equal – Vitar project which tries to promote the integration of people from Sub-Saharan Africa (study has shown, it so happens, that people from this part of Africa are better trained than the average immigrant into Belgium). Furthermore the DGASS is in receipt of recommendations about various files coming from the European Union, the Council of Europe, the United Nations, the World Health Organisation and the Assembly of the Regions of Europe.

#### **f. Naturalisation**

By naturalisation is understood the acquiring of Belgian nationality as a result of a voluntary step on the part of the would-be Belgian. This procedure does not concern the obtaining of Belgian nationality through a declaration of nationality (quasi ‘automatic obtainment’) This procedure is intended for foreign nationals who were born and have since lived in Belgium, or who were born abroad but have one Belgian parent, or again foreigners below the age of 18 who have been resident in Belgium for more than 7 years.

Naturalisation on the other hand is intended for foreign nationals who have been resident in Belgium for three years and who wish to acquire Belgian nationality. They have to submit an application accordingly to the municipal authorities of their place of residence or directly to the House of Representatives. This matter is in fact the privilege of the House of Representatives, based on Article 9 of the Constitution. The Committee for Naturalisation of the House of Representatives pronounces about the naturalisation applications and obtains advice from various authorities, namely the Immigration Service with regard to residence, National Security and the Public Prosecutor's Office for aspects connected with public order and security.

On 15 January 2004 the House of Representatives naturalised 3,891 people. On 27 March 2003, during a previous session, 2,027 foreigners were naturalised, an important increase in comparison with the previous years. During the reference period, therefore, a total of 5,918 foreigners were naturalised. Between 1996 and 2000 approximately 9,000 persons were naturalised; from the end of 2000 to the end of 2002 there were 9,800 naturalisations. The increase from 2000 on is explained by the entering into force that year of the so-called "*fast-Belgian-law*" whereby foreign nationals, after a legal residence of only 3 years (and refugees after only 2 years), may submit an application for naturalisation. From a global point of view there has been a fall in the number of naturalisations relative to the number of applications processed: 79% in 1996, 74% in 1997, 70% in 1998; 61% in 1999, 58% between 2000 and 2002 and finally 46 % in 2003.

The procedure has at the same time become free of charge. More and more demands seem likely to be made to tighten up this law. It constituted a sort of alternative in the previous governmental period to the right to vote in municipal elections for non-EU nationals (cf. above). From the beginning there were complaints about the overburdening of the Public Prosecutors' Offices and National Security and the risk of abuse. At the same time the right to vote in municipal elections for non-EU nationals, as already comprehensively indicated, has now finally been approved.

#### **g. Return**

With regard to the removal of illegally resident foreign nationals, Belgium has concluded readmission agreements at the Benelux level with a number of Eastern European countries, from where many of the illegal immigrants come. The Benelux readmission agreements largely came into force in 2003 and 2004: namely the ratified agreements with Croatia (22 July 2004), Hungary (26 March 2003), Romania (29 April 2003), Slovenia (29 April 2004), Slovakia (17 March 2004) and Yugoslavia (29 April 2004). Furthermore Belgium concluded a bilateral readmission agreement with Albania on 14 July 2004.

#### **Conclusion**

Despite the fall in the number of asylum applications, the controversy about foreign immigrants lost none of its intensity during the reference period, on the contrary. The fact that Belgium experienced two elections during this period and the fear of a further advance of the nationalist parties, which appeared justified, is certainly not irrelevant to this. The emphasis in the discussion of the immigrant problem seems to have shifted to integration and the problems which can arise as a consequence of different population groups having to live together. The fact that asylum applications declined further in 2003 and that the number of removals

increased is a possible explanation. The “*asylum crisis*” that Belgium experienced some years ago seems to have been averted. Also in the neighbouring countries the trend now seems to be that of greater attention to the integration problem.

In public discussion two themes have been very much to the fore: the discussion of the so-called “*conspicuous religious symbols*” and the right to vote at the municipal level for non-European immigrants. With regard to substance there was also a difference to be observed between Flemish and Francophone public opinion. With regard to the right to vote in municipal elections, for instance, the great majority of Flemings were against, while the majority of French-speakers were for. With regard to integration measures, their obligatory character in Flanders is noteworthy, while in French-speaking Belgium they are optional. At the same time relations with the Muslim community have an important place, probably also because of the international political situation.

Some disquieting anti-Semitic incidents also occurred during the reference period, to which the government responded resolutely.

Despite the increased efforts of all the governments concerned, discrimination in the areas of employment, education and housing remains real and worrying. In a not-inconsiderable part of the media and public opinion the discussion concerning immigrants becomes linked with the problem of security. Besides, the nationalist parties, which have a high profile when it comes to the foreign immigrant problem (and this usually directly connected with crime and insecurity), to a great extent monopolised the debate on immigrants. It is therefore also more than clear that the immigration and integration problem will continue to be a hot subject in the Belgian political arena.

Finally, greater international cooperation appears in practice to have come about. With regard to the return of illegal foreign immigrants, for instance, a number of flights have been carried out at the Benelux level and the (border) controls concerning the high-speed train between London and Paris take place in the Brussels Central Station in cooperation with the British services.

## **6. Summary**

### ***a. Highlights of migration and asylum politics***

The considerable fall in the number of asylum applications since 2001, without any prejudice to the Geneva Convention, has meant that the present asylum procedure is no longer called into question as used to be the case in the past. The two political measures taken in 2000 have in fact had the desired effect. On the one hand, the reception of asylum seekers in reception centres, instead of the granting of financial assistance, has put an end to a multitude of abuses and to the attractiveness of Belgium as a host country. On the other, the L(ast)I(n)F(irst)O(ut) principle has guaranteed smoother examination of asylum applications so that applicants know more quickly what their real chances are of being recognised as refugees. The harmonisation sought at European level has also had the effect of placing the asylum matter in a broader context and has meant that the transposition of accepted European guidelines into national law will require a number of new legislative initiatives at the national level. In fact, one of the challenges at present facing Belgium is the transposition of the so-called

‘qualification guideline’, transposing into law the status of subsidiary protection, as also the ‘procedure guideline’ when this has been accepted at European level.

Attention is being given to a more global policy with regard to foreign immigrants. The fight against all sorts of abuses and illegal activities, in particular the trafficking in and smuggling of human beings, and also illegal immigration, is being stepped up in order to achieve better regulation of immigration flows. The stricter approach to illegal immigration in general and to the phenomena which often go together with it, is also evidenced by the interest in new technological instruments as well as information systems and biometrics, which are seen as effective means of combating fraud. But the enormous possibilities provided by these instruments also give rise to questions about their limits. The interoperability of information systems and the distinguishing features which for security reasons must be given in travel and residence documents must never make one lose sight of the protection of the privacy of the individual.

Work is also being done on cooperation with the countries of origin or transit of migrants by, among other things, concluding readmission agreements in (as far as Belgium is concerned) the Benelux context. The removal policy is being further underpinned and more attention is being given to the relief possibilities which may exist on the spot. An efficient removal policy (voluntary if possible, forced if necessary) is considered as *a sine qua non* condition for a real, pro-active migration policy. In this light it can again be reported that the majority of migrants leaving Belgium (voluntarily or forced) return to countries where immigration would at first sight not appear to be problematic: countries which are already members of the EU (Poland, Slovakia, Lithuania) or will soon become so (Romania, Bulgaria) and Brazil. Despite the fact that significant progress has already been achieved in this area (primarily because of the readmission agreements), better cooperation and dialogue with the most important “sending countries” would seem indispensable, and this not only to stabilise or reduce the number of illegal immigrants, which has again begun to rise. Regularisation can in no case be the only or ultimate means of eliminating illegal immigration.

Under the pressure of international events, the advance of religious extremism as well as the success of right-wing nationalistic parties and the continuing disadvantage of large groups of long-established immigrant groups (of whom the majority have even had Belgian citizenship for a long time), greater attention is now being paid to immigrants already present in Belgium and ‘newcomers’ who come to settle here. Among the latter are the foreign nationals who come to Belgium in the context of family reunification. The Belgian state wants to promote the integration process of these people by acting against existing forms of discrimination and by developing integration programmes. These programmes may differ in form and scope in accordance with regional sensitivities and the profile of the newcomers. Thus in Flanders the approach adopted is that of the compulsory integration of the ‘newcomers’. In the Brussels and Walloon region, however, there is no obligatory character in the integration programmes provided for.

Attention is also being paid to legal immigration, in particular labour immigration, as a means of checking the parallel economy. A stricter approach to the informal economy, which undoubtedly is an important pull factor for illegal immigration, deserves great attention. Studying the possibility and desirability of introducing a European quota system would appear to be a priority for Belgium. So far the discussion of foreign immigrants has probably taken too little account of demographic problems, such as population ageing.

The challenge for the future lies, for one thing, in the integration of the foreign nationals now present in such a way as to optimise the harmonious coexistence of different population groups in a multicultural society, but also in improving control of immigration flows so that proper account is taken of the security of the citizens.

Greater harmony in the immigration and integration policy, not only in Belgium (where it is fragmented between the Federal and regional authorities) but also at the European level, seems to us to be necessary.

Finally, the Minister for the Interior wants to tackle existing abuses in the area of family reunification. In Belgium, family reunification is in fact an unconditional right so that foreign nationals making claims on the basis of it easily obtain residence permits and possibly also Belgian citizenship. In this context a new phenomenon has recently arisen, that of Dutch nationals coming to take up residence with their spouses of foreign origin in order to be able to take advantage of the more favourable Belgian conditions with regard to family reunification. These advantageous conditions are a consequence of the fact that Belgium equates the spouse of a Belgian or EU national with an EU national and sets no restrictions with regard to family reunification. As other EU member states do set restrictions, Belgian policy in this area is a great attraction factor. A number of abuses have been ascertained, at various levels.

There is also among the foreign communities in Belgium, in particular the Moroccan and Turkish communities, still the phenomenon of the arranged marriages of girls of the second (or third) generation. Their spouses are regarded as first-generation immigrants and also have to be integrated. If their marriage is dissolved, these first-generation immigrants can in their turn make claims on the basis of the right of family reunification, which in fact happens in some cases. Many marriages are also entered into, both in Belgium and abroad, with the sole purpose of obtaining residence permits. The Minister for the Interior wants to put an end to these abuses. The transposing of the European guidelines on family reunification could consequently be coupled with a tightening up of the policy on family reunification. The Minister is also an advocate of establishing a databank where (rejected) sham marriages would be centralised but so far no political agreement has been found for this.

Although recent events in the Netherlands have again emphasised that the fight against terrorism continues to demand the greatest attention, we need to take care that the discussion of the immigrant problem does not become completely intertwined with that concerning security (terrorism and organised crime) in order to avoid dualism in our society. It is clear already that the problem of immigration will remain a sensitive, topical subject for decades to come, and that this will certainly not change with the possible extension of the EU to the borders of the Middle East. More than ever an integrated approach to all problems relating to immigration (security, human rights, racism, economic prosperity, harmonious coexistence) seems to be necessary, which by definition requires an international approach: in other words: dialogue and cooperation with other receiving, transit and sending countries and the foreign community itself.

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