



DANISH INSTITUTE FOR  
HUMAN RIGHTS

**COWI**

# The social situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium

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## A. A Summary of the Overall Situation of LGBT Persons

- [1]. Belgium is considered a liberal country regarding LGBT issues and attitudes toward granting the right to same-sex marriage are high above the EU average. Same-sex couples gained the right to marry or register in civil union in 2003 and the right to adopt children in 2006.
- [2]. Belgium is a federal state with a complex political and institutional structure. Six legislatures with their own areas of competency mean that there are seven legislative texts (each partially implementing EU Directive 2000/78/EC) with relevance to discrimination on the basis of sexual orientation. The *Centre for Equal Opportunities and Opposition to Racism* (CEOOR) is the body competent to deal with issues relating to discrimination on the ground of sexual orientation. Their annual report of 2006 shows that 7 per cent of all complaints concerned sexual orientation. Most of them (111 in total) were related to social problems (for example fights with neighbours), denial of access to goods and services, representations of homosexuality in the media and discrimination on the labour market. Seven complaints concerned hate crime.
- [3]. Findings in existing research show that 60 per cent of LGB persons in Brussels have experienced verbal assaults, LGB youngsters are at higher risk for suicidal behaviour and LGBT persons and issues are largely invisible in schools.

## B. The collection of data

- [4]. The material for this report has been collected from four sources:
  - A legal country report carried out for this study, written by Catholic University of Leuven Institute for Human Rights Professor Paul Lemmens, Ben Heylen, Evelien Vandeven and Jogchum Vrielink.<sup>1</sup>
  - A sociological country report reviewing available data on the situation concerning homophobia and discrimination on grounds of sexual orientation, written by Alexis Dewaele and David Paternotte.<sup>2</sup>

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<sup>1</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

<sup>2</sup> A. Dewaele and D. Paternotte (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium*, Sociological Country Report.

- Data collected through interviews held in Belgium with the Flemish NGO *Holebifederatie* and the Wallonian NGO *Arc en Ciel Wallonie*, the federal *Centre for Equal Opportunities and Opposition to Racism* (CEOOR), and the Flemish *Ministry of Education*.
- Data collected through an online questionnaire sent out to the stakeholders mentioned above.

## C. Key Findings

### C.1. Attitudes Toward LGBT persons

- [5]. European-level surveys examining acceptance and attitudes toward homosexuality were carried out in 2006 and 2008.
- [6]. The 2008 *Eurobarometer* asked, 'How would you personally feel about having a homosexual (gay man or lesbian woman) as a neighbour?' (1 meaning 'very uncomfortable' and 10 meaning 'very comfortable'). The figure in Belgium was 8.8, compared with the EU average of 7.9 (Sweden was highest with 9.5 and Romania the lowest with 4.8).<sup>3</sup>
- [7]. The 2006 *Eurobarometer* examined attitudes toward same-sex marriage in every Member State. Forty-two per cent of EU citizens said such marriages should be allowed throughout Europe; the figure was 62 per cent in Belgium (Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent). With regard to adoption, the level of acceptance decreases in the EU and in Belgium. Thirty-one per cent of Europeans felt that homosexual couples should be allowed to adopt children throughout Europe; the figure was 43 per cent in Belgium (Netherlands scored highest with 69 per cent and Poland and Malta the lowest with 7 per cent).<sup>4</sup>
- [8]. As time has gone by, Belgians have become more positive toward LGBT persons. However, the broad acceptance of LGBT persons goes along with a more implicit negative attitude toward homosexuality and bisexuality. Belgian society can still be described as heteronormative, with heterosexuality being the standard and homosexuality and bisexuality tolerated as long as they are invisible and LGBT persons follow the prevailing normative standards.

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<sup>3</sup> European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

<sup>4</sup> Eurobarometer 66 (2006), available at: [http://ec.europa.eu/public\\_opinion/archives/eb/eb66/eb66\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf), pp. 43-46.

Unfortunately, there is no data on the attitudes of the Belgians toward transgender persons and transsexuals.<sup>5</sup>

## C.2. Criminal Law - Hate Crime

- [9]. Apart from the Brussels-Capital Region and the French Community, legislation at all other levels includes one or more criminal provisions regarding discrimination or hate speech on the basis of sexual orientation. However, the specific conduct that is criminalised differs greatly on different legislative levels.<sup>6</sup> At the time of writing, the French Community is in the process of adopting new legislation.
- [10]. The Anti-Discrimination Act introduces three types of criminal provisions: ‘Incitement to hatred, discrimination and violence’. This recognises crimes committed out of hatred or contempt for persons on the basis of sexual orientation as aggravating circumstances. It also prohibits discriminatory conduct by civil and public servants.<sup>7</sup>
- [11]. Violent Homophobic acts have rarely been studied in Belgium. Limited information on hate crime in Brussels indicates, however, that verbal aggression is the most common offence, and was experienced by 60 per cent of LGB respondents. Furthermore, 20 percent of LGB respondents had been threatened, 10 per cent had been physically attacked, 9 per cent had been robbed or experienced damages to their belongings and 3 per cent had been raped or physically assaulted. The offenders were mostly males between 18 and 30 acting in a group, and were mostly unknown to the victim. Many crimes were not reported because of a lack of confidence in police and justice, the fear of coming out or a former bad experience with the police.<sup>8</sup>
- [12]. The Minister of Justice issued a letter in 2006 on the registration of all homophobic crimes and offences. It prescribes a uniform method for the registration of such crimes, which expressly takes account of their homophobic nature, enabling a better view of the extent of such complaints and contributing to more reliable statistical information.<sup>9</sup>

## C.3. Freedom of Assembly

- [13]. Freedom of assembly is protected by the Belgian Constitution. However, meetings in public are subject to police regulation.

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<sup>5</sup> A. Dewaele and D. Paternotte (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium*, Sociological Country Report.

<sup>6</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX..

<sup>7</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

<sup>8</sup> M. Poelman and D. Smits (2007) *Agressie tegen holebi's in Brussel-Stad* Antwerp/Apeldoorn.

<sup>9</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

- [14]. There are no known cases where an LGBT assembly was refused or banned. Nor are there any known cases of LGBT assemblies being grossly disrupted. The city centre has been made available to the Belgian Lesbian and Gay Pride every year since 1996. There have, however been demonstrations against the rights or demands of LGBT persons.<sup>10</sup>

#### C.4. Family and Other Social Issues

- [15]. It is possible for same-sex couples to marry (since 2003) and to adopt children (since 2006), or to have a registered civil union (the *wettelijk samenlevingscontract* or *contrat de cohabitation légale*).
- [16]. Research shows that 42 per cent of LGB respondents wish to have a child (36 per cent of men and 55 per cent of women). More than 80 per cent of children of LGBT persons were born in a former heterosexual relationship, 16 per cent were conceived by In Vitro Fertilization, 8 per cent children were adopted and 3 per cent have other origins, such as co-parenting or surrogacy. For female same-sex couples, it is relatively easy to have children, for instance through assisted insemination.<sup>11</sup> Theoretically, male same-sex partners can adopt children, but as the adoption process is long and few countries allow adoption by same-sex couples, very few have been able to adopt a child from abroad so far.<sup>12</sup>

#### C.5. The Labour Market

- [17]. In the area of private employment, the federal Anti-Discrimination Act should be mentioned. The Act, which prohibits discrimination on the basis of a number of grounds including sexual orientation, covers a broad range of spheres including employment. All spheres must respect federal jurisdiction, so the Act is not applicable to employment matters or goods and services under the authority of the communities or regions. Second, the private sphere may be excluded from the scope of the Act: the Act only explicitly applies to discrimination in the public domain.<sup>13</sup>
- [18]. Though some awareness exists concerning LGBT discrimination and the difficulties of coming out at work, little is known about the position and representation of LGBT persons within various employment sectors in Belgium. Research shows that LGBT persons

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<sup>10</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

<sup>11</sup> J. Vincke, A. Dewaele, W. Van den Berghe and N. Cox (2006) 'Zzip – een statistisch onderzoek met het oog op het verzamelen van basismateriaal over de doelgroep holebi's', Ghent.

<sup>12</sup> Field trip meeting with *Holebifederatie* and *Arc en Ciel Wallonie* (Belgium, 3 March 2008).

<sup>13</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

are faced with barriers to building satisfying careers.<sup>14</sup> These barriers include direct discrimination such as being fired or passed over for promotion, but also indirect discrimination such as fear of coming out, unsatisfying or poor relationships with colleagues, negative reactions to coming out and abuse by managers. Up until now, Public Authorities have not prioritised improving working conditions for LGBT persons, although awareness is growing that action should be taken. In public as well as in private companies, diversity at work—including LGB relevant issues—has recently received more attention. There is no information on the position of transsexuals and transgender persons on the labour market.<sup>15</sup>

## C.6. Education

- [19]. Education is a competency of the communities, which means that there are different structures in place in the Flemish-, French- and German-speaking communities.
- [20]. Homosexuality and bisexuality is relatively invisible due to the cultural predominance of heterosexuality in the school environment.<sup>16</sup> A survey showed that 82 per cent of LGB teachers had talked to one or more of their colleagues about their sexual orientation. Yet they were less open to their pupils (37 per cent), parents of pupils (17 per cent), school management (34 per cent) and the principal of their school (45 per cent).<sup>17</sup> The same research identified an inadequate amount of LGBT-relevant information and training for pupils and teachers.<sup>18</sup> In Flanders, the Flemish government have tried to address the impediments young LGBT persons experience at school (for example through investment in educational materials and awareness raising campaigns), and there are some recent comparable initiatives concerning education in the French-speaking part of Belgium.<sup>19</sup> See Annex 1 for Good Practice.

## C.7. Health Service

- [21]. The Anti-discrimination Act of 2007 also covers discrimination on the basis of ‘current and future state of health’, a ground that is relevant for the protection of persons with HIV or AIDS. This is (indirectly)

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<sup>14</sup> Social and Economic Council Flanders (SERV), ‘*Holebi’s en de arbeidsmarkt*’, SERV 2005; John Vincke, Alexis Dewaele, Wim Van den Berghe and Nele Cox, ‘*Zzip – een statistisch onderzoek met het oog op het verzamelen van basismateriaal over de doelgroep holebi’s*’, Gent 2006.

<sup>15</sup> A. Dewaele and D. Paternotte (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium*, Sociological Country Report.

<sup>16</sup> Greet de Brauwere (2002) *Onderzoek naar de situation van Vlaamse holebi-leerkrachten*, Gent.

<sup>17</sup> Greet de Brauwere (2002) *Onderzoek naar de situation van Vlaamse holebi-leerkrachten*, Gent.

<sup>18</sup> K. Pelleriaux and J. van Ouytsel (2003) *De houding van Vlaamse scholieren tegenover holebiseksualiteit*, Antwerp.

<sup>19</sup> A. Dewaele and D. Paternotte (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium*, Sociological Country Report.

also relevant for LGB persons, mainly for gay men, as discrimination of homosexuals regularly seems to be connected with fears and prejudices regarding HIV/AIDS and other sexually transmitted diseases.<sup>20</sup>

- [22]. HIV/AIDS and safe sex-related behaviours are the most studied topics in Belgium concerning gay and bisexual men. Seventy-four per cent of new HIV diagnoses in Belgian males are due to homosexual contacts. Unsafe sex between men is also increasing. Therefore, the current situation concerning AIDS and HIV is seen as critical.<sup>21</sup>
- [23]. Recently the influence of LGBT stigmatization on their mental health has received attention. Several reports refer to LGBT persons as a vulnerable group: LGB youngsters are at higher risk for suicidal behaviour and they report more depressive feelings than their heterosexual peers. According to a Flemish report, the odds are twice as high for LGB persons to have a chronic disease compared to the average Flemish citizen.<sup>22</sup>

## C.8. Religion

- [24]. Catholicism is the main religion in Belgium (about 75 per cent of the population considers itself Catholic), though the day-to-day attitudes of Belgians are largely secularised. In Belgium, the Catholic Church has been relatively silent concerning marriage between and adoption by same sex partners.<sup>23</sup>
- [25]. Persons of Turkish or Moroccan background are among the most visible groups of immigrants. Research shows that the most homophobic 16-year-old pupils are male and/or have a Muslim background.<sup>24</sup>

## C.9. Sports

- [26]. There are few initiatives in Belgium concerning LGBT issues and sport participation. Research on these issues is largely unavailable. Some LGB sport associations have been created to meet the needs of LGBT persons wanting to do sport in a LGB-friendly atmosphere. For many LGB athletes it is difficult to come out in a heteronormative

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<sup>20</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrieling (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

<sup>21</sup> Sensoa (2007) [Flemish expert and research organisation for sexual health and HIV], '*Nieuwe HIV diagnoses in 2006*', Antwerp.

<sup>22</sup> K. van Heeringen and J. Vincke, '*Suicidal acts and ideation in homosexual and bisexual young people: a study of prevalence and risk factors*', *Social Psychiatry and Psychiatric Epidemiology* 35(11): 494-499.

<sup>23</sup> A. Dewaele and D. Paternotte (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium*, Sociological Country Report.

<sup>24</sup> M. Hooghe, E. Quintelier, E. Claes, Y. Dejaeghere and A. Harrell (2007) '*De houding van jongeren ten aanzien van holebi-rechten. Een kwantitatieve en kwalitatieve analyse*', Leuven.



sport environment, where stereotypical gender roles are predominant.<sup>25</sup>

## C.10. Media

- [27]. Written expressions are subject to a special protection regime that the Belgian Constitution offers to ‘press crimes’. Such crimes are brought before a jury, meaning that in practice press crimes, including hate speech, are never prosecuted, given the risk of an acquittal by the jury.<sup>26</sup>
- [28]. Information about the representation of LGBT persons in the Belgian media is very scarce. Lesbians rarely appear on television, the diversity in homosexual characters is quite low and explicit homosexual scenes are seen as too ‘sensitive’. There is virtually no attention paid to transgender persons or transsexual issues.<sup>27</sup>
- [29]. However, *Holebifederatie* has once been approached by a Flemish producer who wanted the help of NGOs in developing a lesbian character in a soap series. Overall, *Holebifederatie* considers the media to portray a neutral picture of LGBT persons.<sup>28</sup>
- [30]. The picture seems slightly different for the French-speaking media. Attention for LGBT issues is low, and journalists generally seem to have little knowledge about LGBT issues.<sup>29</sup>

## C.11. Asylum and Subsidiary Protection

- [31]. In Belgium, persecution or ill-treatment on the ground of the sexual orientation is considered a valid reason for granting asylum or subsidiary protection.<sup>30</sup> There were no data available as to how the law is applied or how many cases there have been.

## C.12. Family Reunification

- [32]. The Aliens Act, amended in April 2007, gives a definition of ‘family members’ that includes spouses, partners with a registered partnership equivalent to marriage and partners with a registered partnership not equivalent to marriage, as well as their descendants and ascendants.

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<sup>25</sup> D. de Vos, P. de Knop, M. Theeboom and L. Bollaert (2000) ‘*Sporten als holebi. Een springplank of een struikelblok tot integratie?*’, Onderzoek in opdracht van de Vlaamse Gemeenschap.

<sup>26</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

<sup>27</sup> A. Dewaele and D. Paternotte (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium*, Sociological Country Report.

<sup>28</sup> Field trip meeting with *Holebifederatie* and *Arc en Ciel Wallonie* (Belgium, 3 March 2008).

<sup>29</sup> Field trip meeting with *Holebifederatie* and *Arc en Ciel Wallonie* (Belgium, 3 March 2008)..

<sup>30</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

LGBT partners of EU and non-EU citizens are thus treated in the same way as heterosexual partners.<sup>31</sup>

- [33]. Family formation by partners who want to marry in Belgium is made possible through the granting of a special visa, which is valid for 90 days. Given the possibility of a same-sex marriage in Belgium, family formation applies to same-sex partners. Under the Belgian Code of Private International Law, it is necessary, but also sufficient, that one of the partners is of a country that allows same-sex marriages.<sup>32</sup>

### C.13. Transgender Issues

- [34]. Discrimination against transgender persons is largely covered in Belgian legislation under the ground of ‘sex’ (rather than under the ground of ‘sexual orientation’). With the exception of federal legislation, this makes little difference to the applicable principles and procedures. On the federal level, where discrimination on the ground of sex is the object of a separate piece of legislation (the Sex-discrimination Act of 2007), it does entail a number of discrepancies as compared with discrimination on the ground of sexual orientation. One such peculiarity results from the fact that an entirely different equality body is responsible for combating gender discrimination, namely the Institute for the Equality of Women and Men.<sup>33</sup>
- [35]. A recent Act (May 2007) provides for a legal basis for the change of sex and name for transgender persons.<sup>34</sup> The law structures the administrative procedure and should provide transgender persons with a faster, cheaper and psychologically less burdensome way of changing their official documents.<sup>35</sup> There are, however, some preconditions for an official change of sex: the existence of a constant and irreversible inner conviction to belong to the other sex; a physical adaptation to the other sex; and the incapability of the person to beget children in accordance with his/her former sex. These conditions need to be confirmed by a statement from a psychiatrist and a surgeon.<sup>36</sup> For a change of name, a transgender person must give proof of medical treatment, but this does not need to include a sex change operation.
- [36]. Transgender persons have mainly been studied from a pathological and medical perspective, and little or no information is available on

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<sup>31</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

<sup>32</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

<sup>33</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

<sup>34</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

<sup>35</sup> A. Dewaele and D. Paternotte (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium*, Sociological Country Report.

<sup>36</sup> P. Lemmens, B. Heylen, E. Vandeven, and J. Vrielink (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Belgium*, FRALEX.

their health and well-being. Attention to transgender issues is new in Belgium, and the transgender movement is in its early years.<sup>37</sup>

#### C.14. Multiple Discrimination

- [37]. Elderly LGBT persons are a group with specific needs, and care institutions and facilities are often inexperienced in the needs of this group.<sup>38</sup>

#### D. Good Practice

- [38]. Good practices are described in Annex 1.

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<sup>37</sup> A. Dewaele and D. Paternotte (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium*, Sociological Country Report.

<sup>38</sup> A. Dewaele and D. Paternotte (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Belgium*, Sociological Country Report.