

Face Equality International (FEI) Research Project

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Belgium

No.	Question		Answer
1.	<p>a. Do people with facial disfigurements (marks, scars, etc.) have any legal protection against discrimination?</p> <p>b. Which law relates or mentions the legal protections?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>a) In Belgium, people with facial disfigurement are protected against discrimination not because they are deemed to have a disability and would be afforded special protection for that, but because discrimination is recognized when based on “physical characteristics”, which constitute one of the possible “other discrimination criteria” recognized under the 2007 Antidiscrimination Act which includes facial disfigurements. The protection is therefore not afforded through the lens of disability but through the lens of discrimination.</p> <p>b) The main piece of Belgian legislation aimed at combatting discrimination is the Act of May 10, 2007 to combat certain forms of discrimination (the “2007 Antidiscrimination Act”). It replaces the Act of February 25, 2003 relating to discrimination (the “2003 Act”, available here in English). The 2007 Antidiscrimination Act relates to general anti-discrimination grounds (<u>discrimination grounds</u>: racial criteria, religious or ideological beliefs, disability, age, sexual orientation, “other discrimination criteria”, including “physical characteristics” <i>inter alia</i>). It exists in parallel with the “Gender Act” (<u>discrimination grounds</u>: gender, pregnancy, gender identity, sexual characteristics, parenthood <i>inter alia</i>) and the “Antiracism Act” (<u>discrimination grounds</u>: citizenship, national or ethnic origin, race, skin color <i>inter alia</i>), both also adopted in 2007 but not relevant to facial disfigurement. The Antidiscrimination Act is implemented by a series of decrees (see further details on some of them in answer to Q3 below).</p> <p>→ link to the 2007 Antidiscrimination Act, available only in French and Flemish. The background to the 2007 Antidiscrimination Act and additional explanations are available in English here.</p> <p>Further, the UN Convention on the Rights of Persons with Disabilities was also ratified by Belgium on 2 July 2009 (see here), hence it would apply to offer legal protection for persons with disabilities.</p>

			<p><u>Other sources:</u></p> <ul style="list-style-type: none"> - Belgium Disability Forum, “People with disabilities enter the Belgian Constitution” (15 March 2021) - link to a 2013 European Parliament country report on Belgium for the study on member states’ policies for children with disabilities (DG for internal policies – Policy Department C – Citizen’s rights and constitutional affairs) - UN website - Unia - an independent public institution that fights discrimination and defends equality in Belgium (see here) <ul style="list-style-type: none"> o link to Unia’s website homepage o link to Unia’ Discrimination Lexicon (to date November 2019) o link to Unia’s statistics webpage
2.	<p>a. What is this country’s legal definition of disability / discrimination?</p> <p>b. When do people with a facial disfigurement fit within that definition?</p> <p>c. How does being excluded from that definition affect the protection of their rights?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>a) Discrimination is the unfair or unequal treatment of a person on the basis of personal characteristics. Anti-discrimination legislation condemns discrimination as well as harassment, hate speech or hate crimes against a person or group of people. It defines not only the different forms of discrimination, but also the personal characteristics taken into account. These are known as the "protected criteria". (see here)</p> <p>Going beyond the requirements of the EU Directive 2000/78/CE, the 2007 Antidiscrimination Act recognizes “other discrimination criteria” in addition to racial criteria, religious or ideological beliefs, disability, age and sexual orientation <i>inter alia</i>, and includes “physical characteristics” as one of them. (see here)</p> <p>b) Within the definition of the concept of “physical characteristics” are included “innate characteristics or ones that have appeared independently of a person’s will (e.g.: birthmarks, burns, surgical scars, mutilations, etc.), which are stigmatising or potentially stigmatising for the person.” (see here)</p> <p>→ <i>We understand this definition as covering facial disfigurements.</i></p>
3.	<p>Are there aspects of disability and/or disfigurement law that ensure a legal right to</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>The Belgian Constitution gives legal rights to persons with disabilities:</p>

	<p>healthcare, education or employment?</p>		<ul style="list-style-type: none"> - The new Article 22ter provides that every person with a disability has the right to full inclusion in society, including the right to reasonable accommodation. The law, decree, or rule referred to in Article 134 shall guarantee the protection of this right. (see here) - Article 10 guarantees the equality of Belgian citizens and the exercise of rights and freedoms for all Belgian citizens without any discrimination. <p>Further Belgian legislation ensures legal rights, namely:</p> <ul style="list-style-type: none"> - The Decree of 10 July 2008 establishing a Flemish policy framework for equal opportunities and equal treatment. This prohibits discrimination on the grounds of disability, health status, physical or genetic characteristics in the areas of education, health care, access to goods and services available to the public, and participation in economic, social, cultural and political activities. - Similarly, the Decree of 12 December 2008 combatting certain forms of discrimination in the French community prohibits discrimination on the grounds of disability and applies to education, health policy, employment, and access to goods and services available to the public. <p>(see here, section 3.1.2)</p> <p>In detail, by area:</p> <ul style="list-style-type: none"> (i) Healthcare <ul style="list-style-type: none"> The 2003 Act prohibits direct and/or indirect discrimination relating to various protected criteria including state of health, disability, and physical characteristic (Article 2, s 1 and 2 of the 2003 Act). Notably, the 2003 Act was amended on 7 July 2022: “current or future state of health” was changed to a general “state of health” (see here) (ii) Accommodation <ul style="list-style-type: none"> The failure to implement reasonable adaptations or accommodations for a person with a disability also constitutes discrimination under the 2003 Act (Article 2, s 3). The scope of the 2003 Act applies to persons in the public and private sectors in relation to: <ul style="list-style-type: none"> - Access to and supply of goods and services available to the public; - Employment; - Official documents or reports; - Access to and participation in any economic, social, cultural or political activity available to the public (see here)
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<p>4.</p>	<p>a. How effective are the legal protections? Please describe evidence available of the effect of the legal protections.</p> <p>b. What are deficiencies or areas for improvement in these legal protection measures as they apply and affect people with facial disfigurement?</p> <p>c. What evidence exists to prove that the information and resources guaranteed by law are actually available to disabled persons?</p>		<p>Remedies available to persons with disabilities and/or facial disfigurement include filing a report with Unia/Interfederal Center for Equal Opportunities (Unia report form) who will investigate the report and offer advice on the situation. Unia may mediate between the parties, and in very limited cases (with the consent of the individual), take a case to court. (see here).</p> <p>Based on Unia's statistics covering the period 2017-2023 (link), 16795 criteria of discrimination were identified in cases (a case can include several criteria). 869 of these criteria were "other discrimination criteria" (which include physical characteristics) .</p> <p>We found no precedents in Belgian case law related to a case of discrimination on the basis of facial disfigurement specifically.</p>
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