

## Belgium

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*Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia), Belgian Federal Migration Centre (Myria) and The Combat Poverty, Insecurity and Social Exclusion Service*

### Independence and effectiveness of the NHRIs

#### International accreditation status and SCA recommendations

Unia was [accredited](#) with B-status in May 2018. During its accreditation, the SCA noted that the mandate provided to Unia is limited and does not cover the full range of human rights. Unia has a strong mandate to combat racism and discrimination, including as part of its function as the National Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities.

Myria and the Interfederal Combat Poverty Service are not accredited, due to their restricted human rights mandate. However, the three institutions (Unia, Myria and the Combat Poverty Service) work collaboratively to promote and protect human rights in Belgium.

Myria and Unia are both legal successors of the former Centre for equal opportunities and opposition to racism. They have agreed on a protocol for co-reporting on the UN human rights instruments. This protocol was submitted in the accreditation process, that led to the recognition of Unia as a NHRI with a B status.

Legislation to establish a new Federal Belgian NHRI was approved in 2019 (with a mandate limited to federal matters only, which is an [important limitation](#) in view of the Paris Principles). Despite steps in this direction, a new NHRI has not yet been operational.

#### Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Elections took place in May 2019. Governments were rapidly created in the different regions and communities but not at federal level. This situation leads to difficulties in defining new human rights strategies and policies at federal level.

In March 2020, due to the COVID-19 crisis, a federal government of emergency, with a limited program and duration was created.

This situation delays the adoption of the long-awaited National Action Plan against Racism and of the new National Plan against homophobia and transphobia. Setting up an inter-federal National Human Rights Institution is also impossible in the current context.

Belgium has still not established a type A NHRI. In the meantime, the effectiveness and equal enjoyment of the human rights for persons residing in Belgium are ensured through organisations that have either a partial mandate, partial geographical competence or relative independence.

In 2019, a law creating a Federal Institute for the Protection and Promotion of Human Rights was passed. The ambition was to lay the foundations for an A status NHRI. However, the competence of this Institute would be limited to federal matters and does not cover subjects such as education, health, transport, housing, assistance to persons, culture, the environment, etc. In order for this Institute to truly become an A status NHRI, with a broad mandate covering the whole of Belgium and all levels of power, a cooperation agreement should be concluded between the federal state and the federated entities.

Belgium does have a B status NHRI (Unia) which is competent in the field of anti-discrimination and has been designated as an independent mechanism for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities. Unia is competent throughout Belgian territory and for all levels of government. Flanders, making reference to the creation of the Federal Institute for the Protection and Promotion of Human Rights, has announced to withdraw from the cooperation agreement as of March 2023 and to create its own anti-discrimination institution. This will impact Unia financially and structurally. While nothing guarantees that an A-status NHRI will be effective by March 2023, the withdrawal will have a negative impact on the effectiveness of the fight against discrimination in Belgium, creating confusion and unclarity for the citizens.

The former Secretary of State for asylum and migration also tweeted about the future NHRI on the 18th February 2018 : *"Dat beweer ik helemaal niet. De raad van State doet dat heb er geen mensenrechten instituut vr nodig. En al zeker geen met Keytsman ah hoofd."* [ I'm not saying that at all. The Council of State does that. Don't need a human rights institution for it. And certainly not with Keytsman at the head.]. Mrs Els Keytsman is the current director of Unia.

### References

- Loi du 12 mai 2019 portant création d'un Institut fédéral pour la protection et la promotion des droits humains, M.B., 21 juin 2019: <https://www.tribunaux-rechtbanken.be/fr/nouvelle-l%C3%A9gislation/loi-du-12-mai-2019-portant-cr%C3%A9ation-dun-institut-f%C3%A9d%C3%A9ral-pour-la-protection-et>.
- [https://www.rtf.be/info/belgique/detail\\_le-gouvernement-flamand-devra-cooperer-avec-unia-pendant-les-3-prochaines-annees?id=10332071](https://www.rtf.be/info/belgique/detail_le-gouvernement-flamand-devra-cooperer-avec-unia-pendant-les-3-prochaines-annees?id=10332071)
- <https://www.unia.be/fr/articles/accord-de-gouvernement-flamand-les-questions-qui-restent-en-suspend>
- <https://twitter.com/FranckenTheo/status/965138131908349952>

## Human rights defenders and civil society space

**Funding cuts** to civil society is reported in Flanders, where the government took the decision in 2019 to withdraw financial support previously granted to different civil society organisations, including organisations active in the defence of the rights of minorities.

As regards **freedom of assembly and freedom of expression**, a case is worth reporting concerning a court action initiated by police authorities against a human rights group (the Ligue des droits humains (LDH)). In an exhibition co-organised by LDH, images were shown of police interventions carried out in the public space against migrants, social movements and organised citizens, with the aim of illustrating and debating the attacks on the freedom of demonstration and expression suffered by certain social movements, activists and journalists. The exhibition organisers have been summoned to court by the Brussels-Capital-Ixelles police zone and four of its members. The police officers considered that their right to privacy and image had been violated, as well as their right to honour and reputation, because they appeared recognizable in photos showing them in the performance of their duties. The Brussels Court of First Instance ruled in October 2019 that there was no reason to prohibit the dissemination of unblurred images of police officers in the performance of their duties.

Cases of **harassment against human rights defenders** can also be reported. Els Keytsman, director of Unia, was one of the victims of online harassment by an individual known by the pseudonym "Fidelio". This person was also the author of racist comments on the Internet. He was convicted by the criminal court in June 2019. Unia was a civil plaintiff in the case.

### References

- Funding civil society organisations in Flanders:
- [https://www.standaard.be/cnt/dmf20190930\\_04636977](https://www.standaard.be/cnt/dmf20190930_04636977)
- <https://www.vrt.be/vrtnws/nl/2019/11/22/daf/>
- <https://www.levif.be/actualite/belgique/le-gouvernement-flamand-taille-dans-les-subsides-accordes-au-secteur-culturel/article-news-1214067.html>
- Exhibition Ligue des droits humains: <https://plus.lesoir.be/250444/article/2019-10-01/carte-blanche-quand-la-police-menace-le-droit-dinformer>
- Fidelio case: <https://www.hln.be/nieuws/binnenland/rechter-veroordeelt-man-die-anoniem-haat-spuide-op-twitter-tot-celstraf-en-boete-sociale-netwerken-zijn-geen-wetteloos-gebied~ab68a561/>

## Checks and balances

An issue which can be reported in connection to the **respect by the government of the legislative and judiciary functions** concerns the refusal by the executive to implement a decision of the legislator concerning the resources to allocate to the judiciary, in particular on the number of magistrates needed to ensure proper functioning of the courts. This refusal was condemned in March 2020 by the Court of First Instance of Brussels, at the request of the French and German speaking bars. According to the Court, "the executive power can neither restrict nor extend the scope of these laws, nor, therefore, modify the number of jobs taken over from the legal frameworks". The Court also warned that "the executive power cannot replace the legislative power with its own assessment of the human needs necessary for the proper functioning of justice".

In the aftermath of the terrorist attacks of 2016, many measures were adopted without any **consultation of rights holders**. A report about the measures adopted after the terrorist attacks was issued in 2017 by Unia.

### References

- <https://www.lecho.be/economie-politique/belgique/general/la-justice-condamne-l-etat-pour-avoir-illegalement-sous-finance-la-justice/10215862.html>
- <https://www.unia.be/fr/publications-et-statistiques/publications/mesures-et-climat-consequences-post-attentats>

## Functioning of justice systems

Issues can be reported concerning **access to legal aid and legal assistance**. A law adopted in 2016 had the effect of making access to free legal aid more difficult. Before the modification of the law, there was an irrefutable presumption according to which certain categories of beneficiaries whose status supposes a low income (e.g. persons who receive a replacement income or an integration income from the state) would be automatically granted almost free legal assistance by a lawyer for the whole duration of the procedure. Following the reform, this presumption has become refutable, which creates additional conditions and controls as well as an increased administrative burden for both the applicant and the lawyer - even if these are categories of persons whose income is below the set threshold which is itself below the poverty risk line. The way income is calculated also poses problems: for example, for persons who are not members of the same household but who are registered at the same address (cohabitants), all incomes are taken into account and added together, even if they are simply flatmates. As a result, cohabitants can be excluded in full or in part from second line legal assistance despite having very low financial means.

Requiring checks on livelihood for persons whose status supposes a low income for the purpose of granting free legal aid is in the opinion of the Combat Poverty Service contrary to the automatic granting of rights. Myria has also been informed of several cases of people who couldn't file an appeal in due time, due to the difficulty in finding a specialized lawyers to appoint under the legal aid system (given that lawyers' participation in the legal aid scheme is on a voluntary basis and is overall not convenient for them in terms of administrative burden and economic return). In addition, litigation fees have been considerably increased between 2012 and 2017, with a raise of different fees linked to the procedures and the introduction of VAT taxes for lawyers and bailiffs, making access to justice more costly for everyone.

These concerns are rejected as unfounded by the government, that considers that the access to legal aid and justice in general is better than before. Unia, Myria and the Combat Poverty Service reported the situation to the Human Rights Committee and the Committee on Economic Social and Cultural Rights in the shadow reports to the Committees. Our Institutions are also members with observer status of the Plateforme Justice pour Tous.

Furthermore, **discriminatory practices** can be reported which impact on the exercise of the right to an effective remedy by minority groups. In particular, the lack of information about access to legal assistance to migrants and foreigners in a language they understand

has an impact on the rights of vulnerable groups such as undocumented migrants or transit migrants, including when they face police misconduct. Undocumented migrants' right to access to justice is also negatively impacted by the risk of setting off immigration control and expulsion procedures, due to the failure to make a clear distinction between the authorities in charge of implementing immigration control and those tasked with providing public services, including justice, as the European Commission against racism and intolerance (ECRI) pointed out in its latest report on Belgium. As a result, Myria observes that many undocumented migrants fear to report even serious acts to the police (including domestic violence).

Belgium has also failed to implement the judgement of 18 September 2018 by the European Court of Human Rights in the case *Lachiri v. Belgium*, where the Court held that the exclusion of Ms. Lachiri from the courtroom of a case in which she was a civil party, on the sole ground that she wore a headscarf covering her hair out of religious conviction, constituted a violation of her right to religious freedom under article 9 of the European Convention on Human Rights. The exclusion was based on the interpretation given to an ancient law which provides that litigants must uncover their heads in court.

The government's **failure to execute judgments** can be raised in relation to a case where state authorities were condemned by the Brussels Court of Appeal for the refusal to deliver visa to a Syrian family in 2016. The Appeal Court request the Belgian state to deliver the visa but the authorities refused to execute the judgment. Although the European Court of Human Rights has recently considered the appeal introduced in this matter inadmissible (case no 3599/18, *M.N. and other v Belgium*), this type of situation illustrates issues concerning the respect of the right to a fair trial.

In terms of positive developments as regards access to justice, the Belgian legislator introduced in 2019 the possibility to bring forward a **judicial action of collective interest**. The new rules allow legal entities who defend human rights and fundamental freedoms as recognized by the Constitution and international human rights instruments binding Belgium - for example, organisations combating poverty – to file a collective complaint. The action of collective interests was the result of a judgment by the Constitutional Court and several notes of advice to the legislator. One such note of advice was made by the Combat Poverty Service.

### References

- Loi du 6 juillet 2016 on legal aid  
[http://www.ejustice.just.fgov.be/mopdf/2016/07/14\\_1.pdf#Page7](http://www.ejustice.just.fgov.be/mopdf/2016/07/14_1.pdf#Page7)
- Shadow report of Plateforme Justice pour Tous to the Committee on Economic, social and cultural rights:  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fBEL%2f41232&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fBEL%2f41232&Lang=en)
- Unia's, Myria's and Combat Poverty Service's contribution to the 6th Periodic Report of Belgium to the Human Rights Committee of the United Nations:  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fBEL%2f35803&Lang=fr](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fBEL%2f35803&Lang=fr)
- Concerning access to justice by undocumented migrants: European Commission against racism and intolerance (ECRI) 2020 report (esp. paragraphs 23 and 25):  
<https://rm.coe.int/ecri-sixth-report-on-belgium-/16809ce9f0> );  
<https://www.Myria.be/fr/publications/note-police-et-migrants-en-transit>
- On M.N. v Belgium: <https://www.justice-en-ligne.be/L-Etat-belge-refuse-d-executer-l>
- Lachiri case: <https://www.coe.int/en/web/execution/-/belgian-equality-body-submits-new-communication-in-freedom-of-religion-case>

## Media pluralism

In June 2018, three journalists from French-speaking Belgian radio and television (RTBF) were **arrested** while covering a demonstration. The demonstration was taking place in front of the closed centre 127bis, a place of detention for migrants. The three journalists were released without charges a few hours later.

### References

- [https://www.rtbef.be/info/medias/detail\\_une-equipe-de-la-rtbf-arretee-par-la-police-lors-d-une-action-au-centre-127-bis?id=9950937](https://www.rtbef.be/info/medias/detail_une-equipe-de-la-rtbf-arretee-par-la-police-lors-d-une-action-au-centre-127-bis?id=9950937)

## In-focus section on COVID-19 measures

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

There are different regional parliaments in Belgium and the measures adopted have therefore differed from one region to another. Special powers have been voted by all Parliaments, including at the federal level. Special powers enable the executive to take a large number of measures whose impact on fundamental rights is important. The measures taken so far are time-limited. However, some groups are more impacted by the measures taken and it will be necessary to analyse their proportionality.

It is too early to conclusively assess the most significant impacts of the measures taken on the rule of law and the proportionality of these measures to the threats posed. However, a certain **lack of transparency in the implementation of the measures** can be observed. Young people seem to be subject to more stringent control: most fines for violating containment measures have been imposed on people aged 20 to 30. These controls may add up to difficult socioeconomic conditions: very small accommodation, poor evaluations of schooling outcomes, ordinary policing. The impact on other vulnerable groups such as people in detention also seems particularly serious: detainees have complained about the failure to ensure social distancing, lack of medical follow-up, lack of protective equipment, difficult access to a lawyer, lack of flexibility in reporting deadlines for appeals.

Many measures have been adopted with a clear **lack of rights holders' consultation**. Unia has been monitoring the situation, including individual cases (through the individual complaints received) as well as the media and a legislation observatory set in place in this context. Structural problems are identified and tackled as soon as possible. A report will be issued in the coming months.

Unia's disability department has also launched a special consultation on COVID-19's impact on disabled people for civil society organisations.

Myria visited the closed immigration detention centre of Merksplas from which several complaints came during April 2020.

The Combat Poverty Service made an overview of the COVID-19 measures relating to situations of poverty and insecurity and made a special note as SDG-voice in the context of "to leave no one behind". Recently, the Flemish government has set up a taskforce

“vulnerable households”. To this end, the Combat Poverty Service supports involving the relevant stakeholders.

Unia, Myria and the Combat Poverty Service jointly made a note about protective measures respecting fundamental rights. Future action will also be undertaken as a result of further cooperation between Unia, Myria and the Combat Poverty Service, and in cooperation with the official taskforce units in Belgium.

More recently, in May 2020, new laws aiming at perpetuating some of the measures adopted by the Ministry of Justice during the crisis were proposed in the Parliament. This was done without proper consultation and before any evaluation of the impact of those measures. Emergency was invoked to limit as much as possible the time allocated (3 days) to the High Council of Justice to analyse the proposal. This led to multiple reactions from civil society.

### Most important challenges due to COVID-19 for the NHRI’s functioning

The main challenge is **access to information**. There is a lack of clarity when it comes to the structure of the different taskforces and centres of decision created within the Belgian government following the COVID-19 outbreak. This entails important challenges in identifying relevant points of contact for our different areas of work. Civil society being strongly impacted as well, the information flow is slower which doesn’t allow Unia to gather the necessary information in a timely manner.

Another challenge encountered is related to the balance between fundamental rights. Due to widespread public fear, there is a tendency to implement health measures that disproportionately restrict other fundamental rights (freedom of movement, right to education, right to private and family life in particular for people living in institutions, etc.).

Telephone hotlines and e-mail communications are maintained despite reduced capacity due to confinement measures and teleworking requirements.

## References

- About the position of the High Council of Justice : <https://www.levif.be/actualite/belgique/le-conseil-superieur-de-la-justice-se-rebiffe/article-news-1298461.html>
- <https://asm-be.be/2020/justice-et-crise-sanitaire-halte-aux-coups-de-force-du-ministre-geens/>
- Overview of COVID-19 measures relating to situations of poverty and insecurity: <https://www.armoedebestrijding.be/themas/COVID-19/>
- Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, To leave no one behind: aandacht en ondersteuning voor mensen in armoede en bestaansonzekerheid in het COVID-19-beleid, 24 maart 2020 : <https://www.armoedebestrijding.be/wp-content/uploads/2020/03/200323-communicatie-COVID-19-.pdf>
- Unia, Myria, Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, COVID-19: Beschermingsmaatregelen mét respect voor de grondrechten, 20 maart 2020: <https://www.armoedebestrijding.be/wp-content/uploads/2020/03/200320-PB-COVID19-NL.pdf>
- Unia about 65+ rights : <https://www.unia.be/fr/articles/unia-assouplir-les-mesures-sans-discrimination-fondee-sur-lage>

