

Belgium

Interfederal Centre for Equal Opportunities and Opposition to Racism (UNIA)

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 is an inter-federal institution, and covers federal and regional fields of competence in Belgium. 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. As inter-federal equality body, [Unia promotes human rights in Belgium](#) in a broad way and submits parallel reports to UN treaty bodies and [informs civil society](#).

Myria and the Interfederal Combat Poverty Service (also ENNHRI members) 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 (which had been accredited with B-status between 1999 and 2014). 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.

A [bill](#) to create a new institution, the [Federal Institute for the Protection and Promotion of Human Rights](#), was approved in April 2019. In July 2020, the members of the Governing Board were appointed by a vote in the Federal Parliament, and they held their first meeting in September 2020. The Secretariat of the Institute was staffed in February 2021 and is expected to be further consolidated in Spring 2021. The Federal Institute has a human rights mandate limited to federal matters that are not covered by pre-existing bodies active in the field of human rights, which is a limitation in view of the UN Paris Principles. It has been setting up cooperation with other ENNHRI members in Belgium, including the B-status accredited institution Unia. The institution joined ENNHRI in 2021 as an associate member and [declared](#) to take active steps towards achieving A-status accreditation.

Impact of 2020 rule of law reporting

Follow-up by State authorities

A senator attended the meeting organized in Brussels by the German Presidency on the 29th of October 2020 in the frame of the 2020 Rule of law report. The federal advisory committee on European issues of the Belgian senate has engaged in a national dialogue on rule of law with Commissioner Reynders (16 December 2020).

References

- https://www.senate.be/www/?MIval=/index_senate&MENUID=55000&LANG=fr

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There have been no changes in the regulatory framework applicable to Unia in the past year.

Enabling space

Unia is regularly invited to take part in different parliamentary assemblies and is sometimes consulted by the ministerial cabinets regarding the law-making process. Unia's recommendations are generally taken into account, although not always in a timely and systematic manner.

In the frame of the COVID-19 pandemic, Unia was invited to weekly meetings (initiated by the governments) designed at assessing and solving the negative impact of the regulations on the most vulnerable groups in society. The NHRI's recommendations were mostly taken into account, even if many challenges remain.

Unia's limited mandate is an obstacle. However, through its competences as equality body and CRPD's independent mechanism, Unia can still deal with a wide range of issues. Unia's limited resources prevent it from dealing with issues related to checks and balances in a more systematic and comprehensive manner.

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

Unia restructured its lobbying work in order to ensure a higher impact of its recommendations. For example, Unia integrates more systematically UN Treaty Bodies' recommendations in its lobbying strategy at national level.

Flanders announced its intention to withdraw from Unia in 2023 to create its own anti-discrimination institution. This withdrawal might have an impact on the efficiency of the fight against discrimination in Belgium.

In 2019, a law established a Federal Institute for the Protection and Promotion of Human Rights. The competence of this Institute is currently limited to federal and residual matters in relation to other already existing sectoral bodies. In the meantime, the effectiveness and equal enjoyment of human rights are ensured through a range of public bodies that have either a partial mandate, a partial geographical competence or a relative independence. These institutions meet every month on their own accord and autonomously within the Human Rights Platform of which Unia is member. In particular, the Human Rights Platform is composed on a voluntary basis of Unia; Myria; Combat Poverty, Insecurity and Social Exclusion Service; Federal Institute of Human Rights; Federal Ombudsman; Data Protection Authority; Institute for the Equality of Women and Men; Ombudsman of the German-speaking Community; Regional Ombudsman of Wallonia and Federation of Wallonia-Brussels; Flemish Office of the Children's Rights Commissioner; Delegate-General for Children's Rights; National Commission on the Rights of the Child; Committee R; Committee P; High Council of Justice; Central Prison Supervisory Council. The methods of concertation between the new Institute and the Belgian sectoral human rights organizations still needs to be clarified.

Human rights defenders and civil society space

Negative attitudes towards civil society and attacks on their work: An MP recently attacked "Police Watch", an emanation of the Ligue des droits humains, whose aim is to collect testimonies of victims of police violence/abuses and give access to information and studies on the topic via a website. The website fills a gap as Belgium does not have reliable and comprehensive data on this phenomenon. Following what is reported in press releases, the MP considered that Police Watch encourages negative attitudes toward the police and announced that he would ask the Ministry of interior to start an enquiry on the website and to suspend anticipatively its public funding. The Ligue des droits humains issued a statement on this issue. These developments are not related to COVID-19 context, although more police abuses seem to be reported since the beginning of the COVID-19 restrictions.

References

- <https://www.lalibre.be/belgique/politique-belge/coronavirus-pieter-de-crem-ecrit-aux-bourgmestres-et-gouverneurs-pour-leur-rappeler-les-regles-en-vigueur-5ee7630c7b50a66a59772430>
- General interdiction: <https://www.police.be/5334/actualites/ordonnance-de-police-mesures-covid-19-interdiction-des-manifestations-rassemblant-du>
- Demonstration of January 24th, 2021:
https://www.rtf.be/info/regions/bruxelles/detail_manifestation-contre-la-justice-de-classe-a-bruxelles-le-comite-p-decompte-11-plaintes-et-la-police-de-bruxelles-ixelles-a-ouvert-une-enquete?id=10685797 and
<https://plus.lesoir.be/356290/article/2021-02-20/manifestation-contre-la-justice-de-classe-bruxelles-un-syndicat-de-police>.
- Negative attitudes towards civil society and attacks on their work:
- About the lack of data on police violence and abuses in Belgium, see p. 29 of the comparative study made by the Hungarian Helsinki Committee in 2017:
https://www.helsinki.hu/wp-content/uploads/HHC_investigation_ill-treatment_comp_EN.pdf
- Website of Police Watch: <https://policewatch.be/>
- Press releases: <https://www.dhnet.be/actu/faits/philippe-pivin-flingue-l-observatoire-des-violences-policieres-de-la-ligue-des-droits-humains-c-est-anti-policier-603911f29978e2610ae1720d> and <https://www.bruzz.be/politiek/federaal-parlementslid-pivin-eist-duidelijkheid-rond-police-watch-2021-02-28>
- Statement of Ligue des droits humains: <https://www.liguedh.be/la-lutte-contre-les-violences-policieres-un-combat-legitime-qui-derange/>

Checks and balances

Executive powers were clearly reinforced since the beginning of the Covid-19 outbreak. While the government was granted special powers by the Parliament until June 2020, the legal basis for their decisions taken after this date is more doubtful. In the absence of a law that would give a dedicated legal basis to their measures, the government decided to base its decisions mainly on article 182 of the law of 15 May 2007 relating to civil protection, obviously not intended for

situations like the pandemic. This has been heavily criticised by civil society actors, yet has not been condemned by the Council of State, which has not considered itself competent to assess the constitutionality check in that case. More details are exposed in the COVID section of the present report.

Unia participates in the legislative and policy processes. For example, the two heads of the Institution, Patrick Charlier and Els Keytsman, presented the report on COVID-19 and human rights in front of the different parliaments and advocated for Unia's recommendations.

Unia can litigate and intervene before courts. However, rule of law being only indirectly linked to its mandate, litigation and third-party interventions are circumscribed to cases regarding discrimination and violations of CRPD.

As an NHRI, Unia reports to regional and international actors, as it did last year when contributing to 2020 ENNHRI Rule of law Report, and through the latter to the European Commission Report.

References

- On the meaning of "Special powers" in Belgium:
<http://www.vocabulairepolitique.be/pouvoirs-speciaux/> and
https://www.dekamer.be/kvvcr/pdf_sections/news/0000012118/MAG_Edition_Speciale_06-2020_FR_BAT.pdf
- Law of 15 May 2007 relating to civil protection:
https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=2007000663&la=F
- Opinion of 25 University teachers in constitutional law:
<https://plus.lesoir.be/335482/article/2020-11-02/carte-blanche-sortez-le-parlement-de-la-quarantaine>
- Opinion of the Ligue des droits humains : <https://www.liguedh.be/la-deuxieme-vague-de-la-covid-19-une-menace-pour-nos-droits-et-libertes/>
- List of laws adopted during the second wave of the pandemic:
http://www.droitbelge.be/news_detail.asp?id=1037
- Opinion of the lawyer's bar associations (representing about 20.000 lawyers):
<https://avocats.be/sites/default/files/10.02.2021%20-%20Carte%20blanche%20-%20L%27Etat%20de%20droit%20bientot%20sous%20respirateur.pdf>

Functioning of the justice system

An important step has been recently taken to improve the access to legal aid, by raising the income limit to be able to benefit from the aid. However, for people whose incomes are just above the limit for the legal aid, the litigation fees increased following the adoption of several laws and regulations (for example, the initial litigation fee for an appeal is 400€). There is also a 21% VAT tax applied on lawyer's and bailiff's costs.

The coalition of NGOs Plateforme Justice pour Tous (i.e., 'Justice for all', to which Unia is an observer member), produced an alternative report for the 2020 session of the Committee on economic social and cultural rights on access to justice in Belgium (1).

The *Conseil Supérieur de la Justice* is the independent public organism in charge of the external control on the functioning of the judiciary. It published several reports and recommendations on i.e., access to justice, quality and efficiency of the justice system, etc. (2)

Unia addresses the problem of access to justice through reports to the UN Treaty Bodies as well as, more concretely, by offering legal advice and supporting victims of discrimination or racism in justice, and by attending the Plateforme Justice pour Tous as an observer member. Otherwise, however, Unia's mandate does not specifically cover this topic, which makes it difficult to further address the problems.

References

- https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fBEL%2f41232&Lang=en
- <https://csj.be/fr/>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

In the COVID-19 context, most regulations linked to the pandemic are taken by the governments and not by the parliaments anymore. The timeframe and publicity of the law-making process are completely different: governmental decisions (*arrêtés ministériels*) can be adopted in a very short time and without publicity. For this reason, Unia has no possibility to share its opinion on these regulations or to suggest improvements prior to their adoption.

Emergency measures at federal level are taken on a questionable legal basis. Executive powers were clearly reinforced since the beginning of the COVID-19 outbreak.

At federal level, we can distinguish two periods. The first started in March 2020, when the Parliament voted a law giving "special powers" to the government and ended in June 2020. The second started in July 2020 until now.

During the first period, executive powers adopted decisions (*arrêtés de pouvoirs spéciaux*) based on the "special powers" law voted by the Parliament for 3 months. These decisions were then confirmed in December by the Parliament.

However, the legal basis for the decisions taken in the second period is more doubtful. In the absence of a law that would give a dedicated legal base to their measures, the government decided to base its decisions mainly on article 182 of the law of 15 May 2007, relating to civil protection. The law provides that "[t]he Minister [having the Interior in his or her attributions] or his or her delegate may, in the event of dangerous circumstances, in order to ensure the protection of the population, oblige the population to move away from places or regions particularly exposed, threatened or disaster-stricken, and assign a place of temporary residence to the persons concerned by this measure; he or she may, for the same reason, prohibit any movement or movement of the population." and is obviously not intended for situations like the pandemic. The Council of State has so far not condemned the use of this provision by the government (the Council of State indeed did not consider itself competent to perform this constitutionality check).

The use of this legal basis is, in contrast, heavily criticised by civil society actors (lawyers, constitutional law professors, Ligue des droits humains, etc.).

Access to the courts became limited and complicated. Each court made its own rules, with almost no coordination, which caused issues regarding access to information, especially for persons not represented by a lawyer.

The curfew (from 10pm or 12pm depending on the region) imposed on the whole Belgian territory can be questioned in terms of proportionality. The curfew was lifted on May 8th 2021, after 7 months.

Generally speaking, places of detention are particularly impacted by the COVID-19 outbreak and the measures taken in response. Diverse organisations addressed the situation of specific groups particularly impacted. Amnesty International Belgium published a report exposing the disproportionate impact of the situation on nursing homes residents. The 2020 Ligue des droits humains annual report addresses the situation in the prisons. Myria (Federal migration centre) addresses in a report COVID's impact on migrants detained in closed centres and conducted three visits in such centres in May 2020. Finally, Unia published a report (on the general impact of Covid on the rights of persons with disabilities (based on a consultation with the latter), including those accommodated in specialised structures.

The COVID-19 outbreak worsened already existing inequalities, impacting disproportionately the most vulnerable groups in society (people in poverty, undocumented migrants, women, older people, younger people, prostitutes, detainees, persons with disabilities, etc.). There is a risk that the measures taken (1) will not be able to correct this trend. There is also a tendency to rely heavily on the executive power during the emergency situation. This can be justified under some conditions, including a strict limitation in time and sufficient parliamentary oversight. The legal base currently mobilized by the executive power for adopting decisions might not guarantee sufficient safeguards in this respect.

Unia issued press releases for the most pressing issues and published two reports on human rights and COVID (with recommendations targeted at both short term and long-term impact of the crisis). Unia also takes into account its findings when contributing to national action plans (for example, the National Action Plan against racism). Finally, those issues are addressed in Unia's reports to UN Treaty bodies and other international bodies.

Unia's report on COVID-19 and human rights (published in November 2020) tackle discrimination issues through a broader human rights approach. A dedicated report addresses the specific situation of persons with a disability and Covid-19's impact on their human rights.

COVID-19 regulations have negatively impacted civic space through the limitation of freedom of assembly. At national level, demonstrations were limited to 20 persons until the 30th of June, and

to 50 after that date. The current (as of March 1st, 2021) limitation is 100 persons. However, some localities decided to be more restrictive, sometimes completely forbidding any demonstration.

Some of the demonstrations that took place were heavily repressed. For example, a demonstration against police violence on the 24th of January, attended by about 100 persons, lasted one hour before leading to 245 arrests (among which 86 children). Dozens of complaints and testimonies of police violence/abuses appeared in the press and on social networks in the following days and were later confirmed by one of the police unions. More police abuses seem to be reported since the beginning of the COVID-19 restrictions.

Unia can receive complaints and whether process them or redirect them to the competent institutions when necessary. Unia's report on COVID and human rights published in November 2020 was (among other sources) based on the analysis of the complaints received.

Unia published an opinion on human rights and COVID in August 2020, promoting human rights in general and the notion of proportionality more specifically.

References

- Measures taken: <https://www.luttepauvrete.be/wp-content/uploads/sites/2/2021/01/210129-apercu-covid-19-FR.pdf>
- Access to courts during the pandemic (first wave): <https://www.lecho.be/dossiers/coronavirus/la-justice-sort-deconfite-du-confinement/10224386.html>
- Places of detention: Amnesty International's report on nursing homes: <https://www.amnesty.be/infos/actualites/article/belgique-face-covid-maisons-repos-angle-mort-54199>
- Annual report 2020 of Ligue des droits humains: https://www.liguedh.be/wp-content/uploads/2021/02/EDH_2020%E2%80%94web.pdf
- Myria's report on closed centres for migrants and COVID's impact: <https://www.myria.be/fr/publications/visites-de-myria-dans-les-centres-fermes>
- Unia's report on COVID-19 impact on persons with disabilities: https://www.unia.be/files/Documenten/Publicaties_docs/Resultats_consultation_impact_COVID_sur_les_personnes_handicapees_et_leurs_proches.pdf (pages 33 and 34 about accomodation centre for persons with disabilities)
- Unia, "COVID-19 : les droits humains mis à l'épreuve", 2020, <https://www.unia.be/fr/publications-et-statistiques/publications/covid-19-les-droits-humains-a-lepreuve-2020>.
- Unia, "COVID et droits humains : impact sur les personnes handicapées et leurs proches", 2020, <https://www.unia.be/fr/publications-et-statistiques/publications/limpact-de-la-crise-du-coronavirus-sur-les-personnes-en-situation-de-handic>.

