

State of the Rule of Law in Europe in 2022

Reports from National Human Rights Institutions

Belgium



Belgium

Federal Institute for the protection and promotion of Human Rights (FIRM-IFDH), Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia), Federal Migration Centre (Myria) and Combat Poverty, Insecurity and Social Exclusion Service

This report was written by four ENNHRI member institutions: the Federal Institute for the protection and promotion of Human Rights (FIRM-IFDH), the Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia), the Federal Migration Centre (Myria) and the Combat Poverty, Insecurity and Social Exclusion Service. The report was coordinated by FIRM-IFDH, and the latter is responsible for any editorial errors contained therein.

Furthermore, the four author institutions would like to point out that this report is incomplete: some elements relevant to the evaluation of the rule of law in Belgium are not mentioned, generally because the institutions have not had the opportunity to deal with this issue in recent months. The report therefore reflects the work of the institutions better than it provides a complete view of the strength of the rule of law in Belgium.

Impact of 2021 rule of law reporting

Follow-up by State authorities

Similarly to what happened in 2020, the federal advisory committee on European issues of the Belgian engaged in a national dialogue on rule of law with Commissioner Reynders on 13th December 2021. To the best of our knowledge, there was no other action or initiative.

References

- Sénat de Belgique, Le rapport 2021 de la Commission européenne sur l'État de droit, 13 December 2021:
https://www.senate.be/www/?Mlval=/index_senate&MENUID=55000&LANG=fr&PAGE=/event/20211213-ComEurop/20211213-ComEurop_fr.html

NHRI's Recommendations to National and European policy makers

The institutions recommend the competent authorities to:

- Bring together the institutions and national authorities responsible for the follow-up of the Commission's rule of law report to help increase the impact of the annual rule of law reporting
- Organize an audition of the institutions by Parliament about the rule of law report

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

At present, Unia is the only accredited institution in Belgium, currently holding a B-status. Myria and the Combat Poverty Service (also ENNHRI members) are not accredited, due to their restricted human rights mandate. FIRM/IFDH is also not yet accredited. However, all ENNHRI members work collaboratively to promote and protect human rights in Belgium.

Unia is effectively the successor to the Centre for Equal Opportunities and Opposition to Racism ('the Centre') which was officially created by an Act of Parliament of 15 February 1993 as an independent public body initially dedicated to the opposition to racism and the promotion of equal opportunities. The Centre for Equal Opportunities and Opposition to Racism was given B status in 1999, confirmed by a reaccreditation in March 2010. The interfederalisation of the Centre for Equal Opportunities in July 2012 prompted institutional change that resulted in the creation of two distinct juridical entities, Unia and Myria and the status associated with the parent institution was lost. Consequently, Unia and Myria decided to conclude a cooperation agreement. When Unia submitted a new request for accreditation in 2017, its statement of compliance referenced and took into account this cooperation agreement.

Unia was accredited with B-status in May 2018. During its accreditation, the SCA noted that Unia interprets its mandate broadly and undertakes a range of activities to promote all human rights, both on their own and in cooperation with other human rights bodies in Belgium. Yet, the SCA encouraged Unia to advocate for appropriate amendments to its enabling law to vest it with the mandate to promote and protect all human rights. In addition, the SCA put forward recommendations regarding the need for protection from criminal and civil liability for official actions and decisions undertaken in good faith, the selection and appointment of members of the decision-making body, and the need to ensure that the decision-making body includes full-time members. Unia has informed the SCA, after the accreditation, that this last recommendation can be a difficult observation to

address, and clarified the role, standards and functions of Unia's Interfederal Management Board.

FIRM-IFDH was created in 2019 with the aim of establishing an A-status NHRI in Belgium and will apply for accreditation as soon as possible. FIRM-IFDH has a human rights mandate limited to federal matters that are not covered by pre-existing bodies active in the field of human rights. However, to cover human rights issues as broadly as possible, FIRM-IFDH works in collaboration or in complementarity with other public institutions, both at the federal and the regional level.

In September 2019, the Flemish Government has announced its intention to cease its cooperation agreement with Unia, which is valid until March 2023. Since then, the Flemish Government has put forward an initiative for creating the Flemish Institute for Human Rights. In December 2021, the Flemish Government endorsed a preliminary draft decree providing the framework for the establishment of the new institution. The Flemish Government expressed the intention that the new Institute would comply with the UN Paris Principles and eventually seek to be accredited with A-status. In response to these developments, ENNHRI published a statement clarifying the applicable international standards. In line with the definition of an NHRI in the GANHRI Statute, no sub-national or regional institutions are accredited as NHRIs, the only historical exception being the United Kingdom. ENNHRI continues to provide its advice to Belgian authorities regarding the applicable international standards and the prospect of the establishment of an NHRI in full compliance with the Paris Principles in Belgium.

References

- GANHRI Sub-Committee on Accreditation Report – May 2018: https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_May_2018-Eng.pdf
- ENNHRI advises on possible establishment of Flemish Institute for Human Rights and the UN Paris Principles: <https://ennhri.org/news-and-blog/ennhri-advises-on-possible-establishment-of-flemish-institute-for-human-rights-and-the-un-paris-principles/>

Regulatory framework

FIRM-IFDH

The national regulatory framework applicable to the institution has not changed since 2021.

FIRM-IFDH has no constitutional basis. While the institution does not handle individual complaints and does not provide legal assistance to individuals, it has the power to conduct strategic litigation before courts as well as awareness raising initiatives. FIRM-IFDH is also entrusted a general mandate to issue advices and reports on, monitor the respect of and promote human rights, including with regards to access to justice. Mandate includes follow-up on the decisions and recommendations of international courts and mechanisms, including on access to justice.

FIRM-IFDH believes its regulatory framework should be strengthened. As FIRM-IFDH is only competent for matters within the mandate of the federal authorities, there currently is no human rights institution with overall competence over human rights issues for the matters under the mandate of the Belgian federated entities (Communities and Regions). This is notwithstanding the mandate of institutions, which currently have an interfederal mandate, such as Unia and the Combat Poverty Service, and the mandate of regional human rights institutions, such as the commissioners for children's rights. The mandate of these institutions being limited to specific human rights issues, this leave important gaps in the protection of human rights. The federal government announced its intention to expand FIRM-IFDH's mandate to issues under the competence of the Belgian federated entities (the so-called 'interfederalisation' of FIRM-IFDH's mandate). This can be done by adopting a cooperation agreement between the federal state and federated entities, but no steps have been taken toward this end. On the contrary, the Flemish community is in the process of establishing a Flemish Human Rights Institute. While the process and details remain unclear for now, this may fill the above-mentioned gap at the Flemish level, but could also cause more delay and further complexify the situation. At the level of the French- and German-speaking Communities and Regions, no steps have been taken in any direction so far.

The federal government also stated it would give FIRM-IFDH the mandate to handle individual complaints. If granted, it would require increasing significantly FIRM-IFDH's budget. No steps have been taken in 2021 toward this end.

References

- Law of 12 May 2019 holding the establishment of the Federal Institute for the protection and promotion of Human rights (2019/12931), published 21 June 2019: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2019051210&table_name=loi
- Belgian federal governing agreement, 30 September 2020: https://www.belgium.be/sites/default/files/Accord_de_gouvernement_2020.pdf

Unia

Unia is an independent intergovernmental public body and the former federal Centre for Equal Opportunities and Opposition to Racism. A cooperation agreement between and undersigned by the Federal government and the governments of the Regions and the Communities extended to cover the competencies of the Regions and Communities in addition to federal competences. This agreement opened up new opportunities for dialogue and collaboration between the government and civil society at different levels and in different parts of the country.

The national regulatory framework applicable to the institution has not changed since 2021.

Unia has no constitutional basis but has a legal basis through a cooperation agreement between the communities, the regions and the federal State. This cooperation agreement has the same rank as a law within the pyramid of norms.

The NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals, conducting awareness raising initiatives and being granted the power to access and monitor prisons through its mandate under the Convention on the Rights of Persons with Disabilities (CRPD).

Unia believes its regulatory framework should be strengthened. Unia was recognized as a National Institution for the protection of Human Rights, B status, by the competent international bodies². And if NHRIs, when they act as equality bodies, are to make a difference in the fight against discrimination, they must have investigation powers when allegations of discrimination are made, including the creation of an obligation to receive an answer to questions submitted by the NHRI, and to receive any useful document while respecting the provisions relating to privacy.

References

- Cooperation agreement between the federal authority, the Regions and the Communities aimed at creating an Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination in the form of a joint institution, in the sense of article 92bis of the Special Act of 8 August 1980 on the Reform of the Institutions: https://www.unia.be/files/Z_ARCHIEF/cooperation_agreement_0.pdf

² In 2014, the former Centre for Equal Opportunities and Opposition to Racism lost its status as national human rights institutions in the context of the split into Unia and Myria. Unia was thus required to demonstrate its independence and expertise anew.

The Combat Poverty, Insecurity and Social Exclusion Service

The Combat Poverty Service is a non-accredited, interfederal, institution that covers federal and regional fields of competence in Belgium. It approaches poverty and its eradication on the basis of different human rights and submits parallel reports to UN treaty bodies. The Service works together with Unia, Myria and the Federal Institute for the Protection and Promotion of Human Rights (also ENNHRI members) to promote and protect human rights in Belgium. It is also a member of the Human Rights Platform, where different human rights institutions meet every month. There have been no changes in the regulatory framework applicable to the Combat Poverty Service in the past year.

References

- Cooperation Agreement between the Federal State, the Communities, and the Regions concerning the continuation of the Poverty Reduction Policy, published 16 December 1998 and 10 July 1999:
<https://www.combatpoverty.be/publications/Cooperation%20Agreement.pdf>

Myria

Myria, the Federal Migration Centre, is an independent, non-accredited, federal body. It analyses migration, defends the rights of foreigners and combats human smuggling and trafficking. Myria promotes public policies based on evidence and human rights.

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

References

- Act of 17 Augustus 2013 adapting the Act of 15 February 1993 creating a Centre for Equal Opportunities and Opposition to Racism with a view to transforming it into a Federal Centre for the Analysis of Migration Flows, the Protection of the Fundamental Rights of Foreigners and the Fight against Human Trafficking, Belgian Official Bulletin, 5 March 2014:
<https://www.myria.be/files/170813.pdf>

Enabling and safe space

Overall, institutions generally have a satisfactory framework in Belgium which enables them to carry out their tasks. However, a number of changes are required to strengthen their effectiveness and independence, and the creation of new regional institutions raises some concerns.

Federal Institute for the Protection and Promotion of Human Rights (FIRM-IFDH).

FIRM-IFDH only became operational in February 2021. We have had introductory meetings with all relevant Parliamentary commissions and political groups, several relevant administrations and public institutions. So far, there seems to be a good understanding of our mandate, role and independence.

FIRM-IFDH is being invited on a regular basis to issue advisory opinions on draft legislation. In addition, FIRM-IFDH has issued advisory opinions of its own initiative, which has been welcomed by Parliament. At this stage, FIRM-IFDH is not automatically called upon by Parliament on relevant legislation pertaining to human rights. This can be explained by the relative newness of FIRM-IFDH, but remains nevertheless a point of attention. FIRM-IFDH has not been involved yet in any process of policy development. Therefore, FIRM-IFDH will continue and further develop its advocacy and awareness-raising activities, as to be on the radar of Parliament and policy makers on a permanent basis.

There is no legal obligation to provide a response to FIRM-IFDH's recommendations or to consider FIRM-IFDH's advisory opinions. There is no obligation for Parliament to organize a public hearing on FIRM-IFDH's annual report or its recommendations.

As regards measures to protect and support the institution, heads of institution and staff against threats and harassment and other forms of intimidation, board members and staff have been granted immunity by law and cannot be held accountable under civil or criminal law for any decisions, acts or activities within the limits of their mandate.

In particular, FIRM-IFDH draws attention to three elements:

1. **Mandate:** FIRM-IFDH's mandate is limited to matters under federal competence and to residuary matters for which no other independent public institution is competent for. In order to cover human rights issues as broadly as possible, FIRM-IFDH works in collaboration or in complementarity with other public institutions, such as Unia, Myria, the Combat Poverty Service, the Central Monitoring Council for Prisons, etc. In addition, the announced creation of a Flemish Human Rights institute, which – in the absence of any institution with an overall mandate to protect human rights on matters under the competences of the Flemish community and region – is a positive development, risks to further complicate the promised 'interfederalisation' of FIRM-IFDH's mandate. In addition, it will create more complexity for citizen's who deal with human rights issues which would be partly under the mandate of FIRM-IFDH and partly under the mandate of the new Flemish institute.

2. **Independence:** FIRM-IFDH's independence is well established and guaranteed by law. Yet, a point of attention is the ongoing exercise of Parliament to create more synergy between the various public institutions created by Parliament, in view of centralising certain support services (e.g. IT, translations, accountancy, printing services, HR processes, reception services...). FIRM-IFDH has recently sent a position paper to Parliament drawing attention to the fact that this exercise, if taken too far, may affect FIRM-IFDH's independence under the Paris Principles, with reference to the SCA-GANHRI general observations. It notably highlighted the need to ensure the independence of the shared service centre from Parliament and also emphasized the need for FIRM-IFDH to retain its independence with respect to the recruitment of future staff. Finally, it stressed the need to make sure that proposed new staff regulations respect the independence and freedom of expression of FIRM-IFDH's staff.
3. **Mandatory response to recommendations:** there is currently no legal obligation to respond to FIRM-IFDH's recommendations or to consider its advisory opinions, nor an obligation for Parliament to have a public hearing on its annual report and recommendations. Such an obligation was proposed by the recent Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs, but does not exist as such in the Paris Principles.

Unia also advised stakeholders and the Flemish government relating to the creation of a new human rights institution in Flanders, following the Flemish government's decision to withdraw from Unia in 2023. The current proposal of legal framework for the new Flemish institution does not fully respect the standstill principle. Indeed, contrary to Unia, the Flemish institution would not be allowed to litigate before courts. This would lead to a diminished protection for the victims of human rights abuse.

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

Although the authorities are generally well informed of Unia's interfederal mandate, role and independence, the multiplicity of human rights institutions in Belgium contributes to the confusion of the message. The creation of a new institution intended to be the regional human rights institution in Flanders in 2023 (for regional competences) may further increase the complexity of the Belgian institutional landscape and access to justice for victims of human rights abuse.

Unia is regularly invited to take part in different parliamentary assemblies and is sometimes consulted by the ministerial cabinets regarding draft legislation. For example, in 2021, Unia presented its annual report to the Federal Parliament and exchanged with the MPs on different topics, was auditioned on the socio-economic impact of migration, on a draft law

banning nazi symbols as well as on a draft law on the prohibition of anti-democratic groups.

Unia's recommendations are generally taken into account, although not always in a timely nor a systematic manner. There are no measures or practices in place in Belgium to ensure timely and reasoned response to Unia's recommendations.

As regards measures to protect and support the institution, heads of institution and staff against threats and harassment and other forms of intimidation, there is no functional immunity from threats, pressure or coercion guaranteed, even for persons in managerial or supervisory positions, for acts related to the exercise of their mandate. Such functional immunity should be introduced in the legislation.

References

- Unia statement on the future Flemish human rights Institute:
<https://www.unia.be/fr/articles/le-gouvernement-flamand-discute-de-la-creation-dun-unia-flamand>
- ENNHRI Statement on the future Flemish human rights Institute:
<https://ennhri.org/wp-content/uploads/2021/11/ENNHRI-statement-on-Flemish-initiative.pdf>

NHRI's recommendations to national and regional authorities

- Persons in managerial or supervisory positions in the Equality body and public independent human rights institutions that do not yet benefit from it, for acts related to the exercise of their mandate, to protect them from threats, pressure or coercion.
- Create an obligation to index the budget of the Equality body and public independent human rights institutions that do not yet benefit from it, in line with changes in the cost of living (particularly wages). Create an obligation to accompany any new mission or mandate given to the NHRI and the Equality Body by a recurrent and sufficiently large additional budget to ensure its effectiveness.

Human rights defenders and civil society space

Human rights defenders in Belgium generally have a good level of protection against threats, violence and intimidation. Civil society is generally strong, with some specific concerns with apparent financial retaliations against some organizations. However, there are some specific areas of concern, such as the impact on civic space and rights defenders

of measures taken in the context of the fight against terrorism or the banning of associations considered undemocratic.

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

In June 2021, FIRM-IFDH [commented](#) on three law proposals aimed at prohibiting and allowing the dissolution of certain groups and organizations formed for the purpose of inciting hatred, violence or discrimination. These proposals also meant to allow sanctioning those who set up, assist or are members of such organizations. While FIRM-IFDH welcomed the legislator's continued commitment to combating organizations that incite hatred, discrimination and violence, it noted that the current legal framework was sufficient to that end. It further stressed that alternative sanctions to the dissolution constituted more proportionate sanctions, less likely to impact the right of association. FIRM-IFDH also emphasized that any dissolution of an association or a group should be decided by the judiciary and not by the executive. Unia was likewise auditioned on this same issue.

In its [report](#) to the UN the Committee against torture, FIRM-IFDH criticized the use of the concepts of "radicalism" and "radicalization" by Belgian authorities to preventively manage the terrorist threat. It highlighted the increasing tendency to use vague and ill-defined concepts in order to justify i.a. bans on working in certain sensitive areas, refusals to grant Belgian nationality, the closure of establishments by communal authorities, refusal to issue a Belgian passport or travel document, revocation of a residence permit as well as expulsion of foreigners from Belgian territory. FIRM-IFDH found that, while there exists no legal definition of the concepts of "radicalism" and "radicalization", Belgian authorities nonetheless relied on working definitions given [by the National taskforce](#) coordinated by the Coordination Unit for Threat Analysis, which lack precision, notably describing radicalism as "the willingness to accept the most extreme consequence of an opinion and to follow it up with action". This finding was taken up by the Committee against torture in its August 2021 [concluding observations](#) on the fourth periodic report of Belgium. They had also previously been made by the [Special Rapporteur](#) on the promotion and protection of human rights and fundamental freedoms while countering terrorism. FIRM-IFDH considers that the use of imprecise concepts such as "radicalism" and "radicalization" can have a deterrent effect and prevent speech on some topics deemed too sensitive by the authorities, as well as incite individuals not to associate to discuss those issues, thus limiting disproportionately freedom of expression and association. This is especially the case as parliament members have labelled groups of individuals or civil society organisations as "radical" in the context of discussions on the aforementioned law

proposals aimed at prohibiting and allowing the dissolution of certain groups and organizations formed for the purpose of inciting hatred, violence or discrimination.

References

- FIRM-IFDH, 14 June 2021, Report of the Federal Institute for the Protection and Promotion of Human Rights to the Committee against Torture, available in English: <https://www.federalinstitutehumanrights.be/file/cc73d96153bbd5448a56f19d925d05b1379c7f21/dbfb742c3ae04d5f41f7f92036b579a03a5671a9/read-the-report.pdf>
- FIRM-IFDH, 23 June 2021, Observation No. 1/2021, available in [French](#) and [Dutch](#).
- United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium, UNGA., 40th session, 8 May 2019, A/HRC/40/52/Add.5.
- Committee against Torture, Concluding observations on the fourth periodic report of Belgium, 30 July 2021, 41st sess., CAT/C/BEL/CO/4

NHRI's role in promoting and protecting civil society space and human rights defenders

FIRM-IFDH has not yet produced a general report on the issue of "Defend the human rights defenders". This is one of its priorities for 2022.

Unia is a member of ENNHRI and of Equinet. Both organisations regularly invite their members to join actions in support of threatened NHRIs and equality bodies, including threats and actions taken against their staff. Unia contributed by sending letters and sensibilising Belgian national authorities to situations arising in third countries. FIRM-IFDH, Myria and the Combat Poverty Service also took part in some of those actions, including sensibilising the government on supporting the Afghan Independent Human Rights Commission following the Taliban takeover of Afghanistan.

References

- FIRM-IFDH's Strategic Priorities for 2022: <https://www.institutfederaldroitshumains.be/publications/plan-annuel-2022>

Checks and balances

Checks and balances are historically strong in Belgium. However, several worrying trends show a weakening of these checks and balances, notably due to a lack of respect for judicial decisions, in particular European ones, insufficient execution of certain judgments,

and an important conflict of interest within the Data Protection Authority. These issues have arisen in relation to three specific areas: migrants' rights, to access to information and to the independence of human rights public institutions.

Migrants' rights

Myria notes several problems relating to access to information and judicial review for foreigners. These include:

1. **Persistent problems with information to access international protection.** Myria notes that the Belgian regulation does not comply with the obligation to inform and relay an asylum application addressed to an incompetent authority (police, magistrate...), contrary to the case law of the ECJ (25 June 2020, [VL v. ministerio fiscal](#)). In Belgium, the incompetent authority to which an asylum application is submitted is not obliged to transmit this application to the Office des Étrangers. [There is a lack of training to make these authorities](#), the police, prosecutors and magistrates, aware of the dual obligation (information and transmission of the application to the Office des Étrangers) under EU law.
2. **No automatic suspensive appeal for foreigners at risk of refoulement** (Article 19 Charter). The Belgian procedure does not provide for an appeal with suspensive effect ipso jure against a return or removal decision for foreigners who claim a serious risk of ill-treatment in the country of origin, residence or transit, despite two judgments of the ECJ ([B. v. CPAS de Liège](#), § 46; [LM v. CPAS de Seraing](#), § 35, both from 30 September 2020). As soon as a foreigner invokes a grievance which is not manifestly ill-founded, the appeal lodged must be fully suspensive. It is up to the legislator to reform the law in this sense, and to the courts to leave the legislation unapplied pending the legislative amendment ([B. v. CPAS de Liège](#), § 57).
3. **Refusal to refer questions to the ECJ for a preliminary ruling.** In a [judgment of 23 December 2020](#), the Court of Cassation refused to refer a preliminary question to the ECJ on the compatibility of the Belgian procedure for appealing against a decision to detain a foreigner administratively with European standards. This decision is also concerning because it appears to be contrary to the [Saqawat judgment](#) of the ECtHR (§§72-73).

Freedom of access to information

Access to public information is generally not a problem for researchers in Belgium. However, a researcher recently raised awareness on difficulties encountered to receive information about the functioning of a data warehouse called "OASIS". OASIS is a data warehouse for social security, operational since 2005, that is also used to profile individuals

in order to fight social fraud. In a recent scientific paper, Elise Degrave, an academic specialised in information technology law, reports that she was denied access to information about OASIS. Moreover, she underlines that the legal framework for OASIS was missing between 2004 and 2018. A legal provision was introduced in 2018, but still lacks clarity and specificity.

Independence of public institutions:

In February 2021, after writing to the Parliament, two directors of the Data Protection Authority (Alexandra Jaspar and Charlotte Dereppe) sent a letter to the European Commission about conflicts of interests on the part of some members of their institution. On 9 June 2021, a letter of formal notice was sent to Belgium by the Commission. Following a lack of appropriate response and the retention of the members found in conflict of interests, a reasoned opinion was sent to Belgium on 12 November 2021.

This conflict of interests remains to be unsolved. Instead, a parliamentary working group was tasked to investigate serious misconduct of some of the five directors, including the two whistle blowers. This investigation do not cover all the persons for which a conflict of interest had been flagged. The two whistle blowers have denounced harassment and bullying measures, and Alexandra Jaspar resigned from her position on 8 December 2021.

Furthermore, a law proposal "amending the law of 3 December 2017 establishing the Data Protection Authority (...)" was submitted to the Parliament on 26 November 2021, creating an "Advisory Board". Several actors within the Belgian civil society have raised concerns that some or all of the members whose independence is being questioned could be offered a position in the Advisory Board.

References

Migrants' Rights

- Myria, la migration en chiffres et en droits (2021), cahier « Protection Internationale »: <https://www.myria.be/fr/publications/le-rapport-migration-2021-sous-forme-de-cahiers>
- Cass., arrêt du 23 décembre 2020, P.20.1196.F.: <https://juportal.be/content/ECLI:BE:CASS:2020:ARR.20201223.2F.4/FR?HiLi=eNpLtDK2qs60MrAutjl0tFIK0DMY0DM0tDTTc1OyZrQyhAoXwlXTQMJJGKqBwrUAslR3w==>

Freedom of access to information:

- Degrave, E 2020, 'The Use of Secret Algorithms to Combat Social Fraud in Belgium', *European review of digital administration & law*, vol. 1, no. 1-2, pp. 167-178: <http://www.aracneeditrice.it/pdf2/978882553896015.pdf>

Independence of public institutions:

- European Commission, June infringement package: key decisions, 9 June 2021 : https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743
- European Commission, October infringements package: key decisions, 12 November 2021: https://ec.europa.eu/commission/presscorner/detail/en/inf_21_5342
- RTBF (national television), Alexandra Jaspar, l'une des directrices de l'Autorité de Protection des données démissionne: "L'APD est un chien de garde qui ne mord pas !", 8 December 2021: https://www.rtb.be/info/belgique/detail_alexandra-jaspar-l-une-des-directrices-de-l-autorite-de-protection-des-donnees-demissionne-l-apd-est-un-chien-de-garde-qui-ne-mord-pas?id=10893477
- Ligue des droits humains, Lettre au Parlement, 8 December 2021: <https://www.liguedh.be/wp-content/uploads/2021/12/21.12.08-Lettre-parlement-APD.docx.pdf>
- Proposition de loi modifiant la loi du 3 décembre 2017 portant création de l'Autorité de protection des données, visant à modifier la composition du centre de connaissances pour garantir l'indépendance de ses membres: <https://www.lachambre.be/FLWB/PDF/55/2347/55K2347001.pdf>

Trust amongst citizens and between citizens and the public administration

In its role of handling complaints, Unia has received many reports of distrust or at least a certain distance from decisions taken by public authorities, including, sometimes, as regards the scientific findings on which such decisions are based, in particular in the context of the ongoing public health crisis. Unia has been addressed questions and has been involved in debates that show the difficulty of finding a democratic compromise in which divergent points of view are not excluded. In particular, the implementation of the Covid Safe Ticket has polarised our society. The introduction of this instrument has led to an important increase of complaints: between 21 August and 15 October 2021, an initial count of complaints about the pandemic and the Covid Safe Ticket had reached 1,255 (almost half of the 2,357 complaints received during the same period). While it is true that it has been an opportunity for those who already held radical views to find a sympathetic

ear with many, the communication and implementation of these measures by the authorities have also contributed to this effect.

References

- Unia, Report "COVID-19, les droits humains à l'épreuve", 2021 : <https://www.unia.be/fr/publications-et-statistiques/publications/covid19-les-droits-humains-a-lepreuve-2021>

NHRIs as part of the system of checks and balances

In 2021, FIRM-IFDH and Unia have undertaken actions to contributing to a healthy and effective system of checks and balances in Belgium. Furthermore, Unia litigated before courts and cooperates with regional actors on a regular basis. Examples of such initiatives are outlined in the paragraphs which follow.

In an advisory opinion(1) to the Belgian parliament, FIRM-IFDH strongly emphasized the need for more transparency in the use of artificial intelligence (AI) and algorithmic systems by public authorities, including modifying legislation in order to allow human rights defenders and civil society to effectively scrutinize the use of AI by the authorities and its impact on the enjoyment of human rights. Transparency on how those tools are developed and used is of paramount importance to ensuring respect for the rule of law and access to information by civil society. It is also of the utmost importance to ensure the capacity of the judiciary to provide redress in situations where the rights of individuals may have been breached by the actions of authorities using these systems. In order to achieve this transparency, FIRM-IFDH suggested the creation of a registry inventorying the uses of AI and algorithmic systems, how they were created, and the safeguards adopted to ensure they don't contribute to human rights violations.

In another opinion (2), FIRM-IFDH highlighted the need to ensure the existence of effective remedy when a citizen is denied access to administrative documents. It stressed the importance of the right of access to information as part of a wider approach to effective checks and balances. In yet another opinion (3), FIRM-IFDH stressed the importance to notify individuals who have been subjected to surveillance measures by security and intelligence services, as a necessary precondition to an effective remedy for the persons affected by those measures.

FIRM-IFDH has also developed a systematic practice of monitoring the execution of judgments of the ECtHR against Belgium. In this way, FIRM-IFDH has made numerous bilateral contacts to evaluate respect for the right to an effective remedy, access to justice or the right to free elections. More importantly, FIRM-IFDH, in collaboration with the Conseil central de surveillance pénitentiaire (CCSP-CTRG)(4), sent a Rule 9 communication

to the Council of Europe criticising the execution of the *Clasens* and *Detry* judgments, with regard to the prevention of torture and inhuman and degrading treatment in prison. Another Rule 9 communication on the detention of foreigners, drafted with Myria, is currently being finalized. A similar implementation monitoring process has also been put in place for decisions of the European Committee of Social Rights (ECSR). FIRM-IFDH reported to the Committee (5) in June 2021 on the lack of follow-up to Belgium's condemnation by the Committee for tolerating corporal punishment of children.

Likewise, Unia submitted a communication under Rule 9.2 to the Committee of Ministers for the follow-up of the implementation of the case *L.B. v. Belgium*(6), which concerns the 7 years-long detention of a man suffering from mental health problems in psychiatric wings of prisons. Unia also submitted third parties interventions to the ECSR, as in the collective complaint n°141/2017 (*FIDH et Inclusion Europe c. Belgique*). The Committee ruled that Belgium does not comply to the Charter when it comes to inclusion of children with intellectual disabilities in the school system. Unia was also auditioned on numerous occasions by Parliament, among which by the Interior's Commission regarding three bills related to groups that incite to discrimination, hatred or violence(7).

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Functioning of the justice system

The Belgian judicial system continues to function well, and several ambitious reforms have been announced in 2021 or have started to be implemented. However, the multiple condemnations of Belgium by the European Court of Human Rights in the Bell Group remain unexecuted, almost 20 years after the first conviction. Several issues regarding respect of migrants' rights are also outstanding.

Right to an effective remedy and a fair trial in relation to migrants' rights

Effective remedy to guarantee the right to reception for applicants for international protection

Since October 2021, dozens of asylum seekers have found themselves without the possibility of registering their application and without access to the reception to which they are entitled on the basis of the law and the Reception Directive (2013/33/EU). Those migrants receive little information about the possibilities of judicial review. The Brussels Labour Tribunal has rejected some appeals due to the absence of Annex 26, the document proving the registration of the application for international protection (see, i.e., judgments of [10 December 2021](#) and [26 November 2021](#)). However, the impossibility of access to the administrative premises of the Arrival Centre prevented the migrants from obtaining this document. This case law appears to be contrary to EU law, which guarantees the right to reception without any particular formality (see [VL v. ministerio fiscal](#), 25 June 2020, § 92 and fol.). Failure to provide a judicial remedy has consequences for access to reception and international protection itself.

Signature of a waiver of appeal or court order by foreigners at the border without full information

Myria has encountered situations where detained foreign nationals sign voluntary return documents that explicitly state a waiver of appeal or court order. These documents are

rarely signed in the presence of a professional interpreter and the foreigner is sometimes unable to discuss them with his or her lawyer. Belgium has already been condemned twice by the ECtHR for a return considered as "voluntary" by the authorities, deemed contrary to Article 3 ECHR ([M.A. v. Belgium](#), 27 October 2020, §§ 26-31, §§ 60-61 ; [M.S. v. Belgium](#), 31 January 2012, §§ 120-125). In M.A., such a document was signed without an interpreter and without prior consultation with a lawyer and, according to the applicant, under the threat of an uniformed man stating that a sedative would be administered to him if he refused, despite the fact that a prohibition on his deportation had been issued by the court of first instance (see § 28).

Insufficient information for foreigners at the border on their right to international protection and effective remedy

Myria is concerned by the insufficient transposition of Article 8 of the [Procedure Directive](#) by Belgium and the difficult access to information, to an interpreter and to legal aid for foreigners intercepted by the border police, including when they are [potential applicants for international protection or victims of human trafficking](#). Its recommendations for a harmonised procedure for detecting and informing vulnerable groups at all Belgian border points and the integration of this procedure into training for all police officers involved remains relevant. Furthermore, the [practical tool of the European Agency for Fundamental Rights](#) presenting 10 principles to be respected by border guards remains too rarely used in Belgium.

Wearing of religious symbols in courts

In 2018, a [Muslim woman appealed to the ECHR](#) after she was denied access to a court hearing because she was wearing a headscarf. The judge had applied the Judicial Code to the letter: the person attending the hearing must be "uncovered, respectful and silent". This potentially included various religious symbols, as well as head coverings for medical reasons. Belgium was condemned by the ECHR, which considered that this practice violated freedom of religion. The Minister of Justice at the time did not want to amend the Judicial Code and merely sent a circular to the courts and tribunals to draw their attention to Belgium's conviction.

However, Unia kept receiving complaints about courts in Belgium that refused access to court for wearing a headscarf. Unia addressed two communications to the Department of the Execution of Judgments of the ECHR in March 2019 and in March 2020. Belgium has now amended article 759 of the Judicial Code, removing the words "uncovered".

Access to justice for underprivileged people

Given that in recent years a number of regulatory changes have increased the barriers to accessing justice, the Combat Poverty Service keeps pointing out the difficult access to justice for people with a low income and asks an evaluation of these measures, based in part on its [Biennial Report 'Sustainability and Poverty'](#). Partly based on advice from the Combat Poverty Service, second-line legal assistance was made accessible to more people by raising the lower financial threshold necessary for claiming it. This is thus made progressively more accessible each year. In 2021 as well, [the lower limit was increased by 100 euros for a single person](#).

Magistrates' view on poverty

For the sixth time, The Combat Poverty Service organized a [reflection day about magistrates' views on poverty](#), in collaboration with the Institut de Formation Judiciaire (Institute for Judicial Training). During this reflection day, magistrates and magistrates to be, as well as social organizations, exchange views on the effectiveness of the exercise of human rights in poverty situations and practices of cooperation.

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NHRI's recommendations to national and regional authorities

The Combat Poverty Service recommends to improve financial access to justice for people living in poverty, including by:

- evaluating the application of the legislation to legal protection insurance;
- reducing the financial thresholds (registration fees, VAT on lawyers' fees, etc.);
- evaluating the system of second line legal aid and its accessibility (financial access thresholds, administrative charges incumbent on lawyers and plaintiffs, creation of lawyers' practices specializing in legal aid, etc.).

Media freedom, pluralism and safety of journalists

The Brussels Criminal Court handed down a judgment on 13 April 2021 in the case Djunga and unambiguously condemned the dissemination of hate messages online. In September 2018, Cécile Djunga, a journalist of the public television (RTBF), published a video on social networks in which she expressed her suffering following the racist messages she had been the target of since the beginning of her career. In reaction to this video, several hate messages were sent to her and her employer. The investigation identified the author of one of these messages with particularly hateful and threatening content: "[...] Africa will always welcome you with open arms if you find Belgium so unbearable! If you were to be attacked (hopefully fatally) I would not denounce your attacker I would congratulate him

or her!". This was not the first time that the author had expressed himself in this way. He was therefore prosecuted both for his remarks against Cécile Djunga and for other publications with racist and antisemitic content.

Belgium is ranked 11 in the 2021 World Press Freedom Index.

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Corruption

The Belgian government had until 17 December 2021 to transpose Directive 2019/1937 on the protection of whistle blowers. Unfortunately, this deadline has not been met by the federal government nor any of the federated entities. This situation is not unique in Europe, but it is all the more regrettable that there is currently no legislation that sufficiently protects whistle blowers in Belgium, especially in the private sector. FIRM-IFDH has had the opportunity to discuss the transposition of this directive with the federal government, the competent authorities and several partners during the last months of 2021. In its exchanges with the federal government FIRM-IFDH has called for a set of measures to improve the support and protection of whistle blowers, with a focus on an integral approach to whistle blower support measures. Furthermore, FIRM-IFDH advocated that an independent monitoring of whistle blowers protection should be included in the transposition of the directive to periodically assess the quality of their protection in Belgium. This matter will require sustained examination in the coming months by human rights institutions.

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

The adoption of the Pandemic Act is a step forward in rule of law terms, since it provides for a legal framework that is better tailored to addressing an epidemic outbreak. Concerns however remain regarding the phasing out of COVID-19 measures and their short- and long-term impact on vulnerable groups.

Emergency regimes and related measures

In early 2021, following criticism of its reliance on the 2007 Act on Civic Safety to adopt measures to address the pandemic, the Government introduced a bill in parliament specifically designed to provide a more appropriate legal basis for emergency measures in the context of an epidemic outbreak. FIRM-IFDH submitted [an advisory opinion on this bill to parliament](#), which was partly taken into account in the [Act of 14 August 2021 concerning measures of administrative police during an epidemic emergency](#) ('Pandemic Act').

The evaluation of the Pandemic Act by NHRIs is mixed. The Pandemic Act provides a more appropriate legal basis for the COVID-19 measures, and, accordingly, is a major step forward. In addition, the Pandemic Act contains important safeguards against abuse of emergency powers. The Pandemic Act was 'activated' for the first time by the [Royal Decree of 28 October 2021](#) declaring an epidemic emergency, to enable the government to take the necessary measures to deal with the 2021 fall/winter wave. [Recommendations on the need for a stronger parliamentary oversight](#) regarding the measures themselves were not taken into account. As a result, a strong concentration of power regarding the emergency measures remains at the executive level.

Overall, the use of measures complying with rule of law standards increased in 2021. Some concerning measures were abandoned, such as the use of local administrative sanctions in preference to criminal enforcement measures, with very different implementation from one region to another. This gave rise to many questions in terms of equality, proportionality and legal remedies. The use of local administrative sanctions seems fortunately to have been abandoned in the more recent management of the pandemic. On the other hand, the use of FAQs to communicate sanitary measures, albeit less frequent than in 2020, remained concerning and led to confusion since they could be stricter or broader than the actual rules.

From October 2020 onwards early May 2021, strict measures were in place, including a curfew, limitations to the number of people one could meet at home or outside, closures of businesses (cultural venues, bars, restaurants, nightlife, ...). Between May 2021 and September 2021, most of these emergency measures were gradually lifted.

The government introduced the so-called Covid Safe Ticket (CST), for which a legal basis was created by the [Cooperation Agreement of 14 July 2021](#). The CST allows to limit access to particular venues (e.g. bars, restaurants, ...) to persons either fully vaccinated, recovered or recently tested, but gave rise to concerns about the duration and the scope of the measures, as well as its impact on social cohesion. FIRM-IFDH [considers](#) the CST system in its present form to be compatible with human rights standards. FIRM-IFDH however

invited the relevant authorities to periodically evaluate the proportionality of this measure, considering that restrictions on the social life of the unvaccinated could become disproportionate if the CST system is maintained for too long. At present the Government has not yet indicated a tentative end date for the system. Furthermore, [Unia received reports](#) of persons whose Covid Safe Ticket was required outside the legal scope of the measure (employment, health cares, schools, etc.). In particular, Unia has received several reports of refusal of care to unvaccinated people. Remedies for refusal of access to health care are not very transparent and difficult to implement, impacting the right to health care, especially for the most vulnerable.

Since November 2021, stricter measures have been adopted once again, to address the fourth COVID-19 wave, including the reintroduction of mandatory teleworking where possible, and limitations on activities. To anticipate a fifth COVID-19 wave, cultural venues and movie theatres were again closed altogether in December 2021. However, this measure was withdrawn after a successful challenge before the [Council of State](#).

More generally, access to services and assistance became more difficult over the past two years. Overall, [COVID-19 crisis reinforced and exacerbated existing inequalities](#).

Many services, such as municipal services or aid organizations, often oriented themselves towards appointment-only contacts, which highly raises the threshold for people in precarious situations. Digitalization of these services, which grew immensely during the pandemic, hampered their access to assistance and benefits, as well to information concerning COVID-19 and vaccination. Given the digital divide, this evolution is particularly worrying. COVID-19 protection measures strongly affected people in precarious jobs: social protection for loss of income was much less efficient for those at the edge of the labor market.

The lack of awareness and enjoyment of rights remained concerning. This was evidenced, i.a., by [an analysis of the Combat Poverty Service on the application for a free rail pass](#) provided in the context of the COVID-19 crisis: nearly 3.5 million residents of Belgium applied for the pass, but with lower take-up among those in a lower socio-economic position.

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

The following list is exemplative (and not exhaustive) of some possible medium and long-term implications from the Covid-19 outbreak and its related measures.

Weakened parliamentary oversight: Unia deems the dominant role of the executive in the management of the health crisis risks leading to a form of habituation to the situation. It would hinder the possibility for civil society to influence the legislative process and leads to a widening gap between the population and the policy makers. FIRM-IFDH considers the Pandemic Act unlikely to weaken parliamentary oversight in the long term, since the exceptional powers for the executive are linked to a temporary declaration of epidemic emergency. However, concerns predating the pandemic do remain regarding the quality of parliamentary oversight over the executive in Belgium, given the strong disciplining power of political parties over their members of Parliament.

Measures or practices affecting human rights that are not or no longer legitimate or proportionate to the threats posed might remain in place: For example, [questions remain](#) on the stockage, exchange and use of personal and health data by public authorities, whose use may continue after the health crisis.

Impact on most vulnerable people: Restrictions on individual and collective rights burden unevenly on the population. The most vulnerable persons are disproportionately affected: young and older people, people with disabilities, Roma and Travelers, people living in poverty, etc. The medium and long-term implications of the pandemic on these populations are difficult to assess with precision, due to a lack of available data, but [some trends have been identified](#).

For example, because of COVID-19 restrictions, it is difficult for people in poverty to gather with other members of their associations and to discuss policy directions. Access to services and assistance is increasingly provided digitally upon appointment. This leads to a greater risk of non-take-up of rights and service provision, particularly for people in precarious situations. There is also concerns that the greater distance between services and citizens will increase social isolation, and the need for psychological assistance.

In its [impact analysis of the draft of the Belgian Relaunch Plan](#), the Combat Poverty Service noted a strong emphasis on further digitalization and on smart mobility. At the same time, too little attention is paid to additional initiatives for people in a vulnerable position, with regard to the digital divide and to the lack of quality jobs for low-skilled people. This risks to further increase inequalities.

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Good practices set in place by state authorities

The authorities have generally tried to limit the negative effects of the measures taken by consulting (mostly a posteriori) the publics affected. Remedial measures have been adopted in some cases.

From the start of the COVID-19 pandemic, the various levels of government within the country have taken measures. In the [overview of the Combat Poverty Service of all COVID-19 related measures](#) taken by all governments in order to support people in situations of poverty or insecurity, several interesting measures can be identified.

For example, energy and water cuts, as well as evictions have been halted for a while. Some control measures regarding social benefits were also suspended. In addition, the degressivity of benefits - whereby benefits are reduced according to the duration of the

benefit - was temporarily halted. A number of measures of social security - such as the wide application of temporary unemployment for employees and the bridging right for the self-employed - have limited the loss of income for many families. On the other hand, a great number of people in precarious jobs have seen their situation worsen, and it was only later – upon insistence of various actors - that measures were adopted to provide a supplementary benefit to people on social welfare. Another interesting measure concerned [the expansion of the target group of persons benefitting of a social fare for electricity and gas](#), recently extended until the end of March 2022.

Several of these measures, should arguably be structurally anchored.

An important concern was also the consultation and involvement of the stakeholders in the design and definition of authorities' responses to the crisis, and the question of how proposals by stakeholders and rights defenders, including human rights institutions, could find their way into policy choices. To this end, task forces were established at various policy levels, allowing for input from stakeholders and an exchange between policies and actors.

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Role of the institutions and most important challenges due to COVID-19 for the institutions' functioning

Unia

An interdisciplinary working group dedicated to monitoring COVID-19-related measures and policies and their human rights implications was established within Unia in 2021. Unia has [published various opinions, reports and views on the pandemic](#) and its human rights implications. These documents are gathered in a specific section of its website to guarantee its access to the public and decision makers.

The Unia CRPD Support Committee acted as a sounding board for the difficulties encountered by people with disabilities, which then helped strengthen Unia's opinions and recommendations. For example, a [recommendation from September 2021](#) deals with triage in hospitals.

Unia has developed a checklist for decision-makers to help them take human rights into account when measures are decided.

As regards the impact on the institution's work and related challenges to its functioning, Unia is still receiving a very high number of individual reports related to the Covid crisis. This situation creates a significant workload. In addition, health measures and the obligation to protect workers lead to a context in which visits and inspections can hardly be carried out, which has a particular impact on the CRPD service, which is responsible for visits to the psychiatric annexes of prisons.

FIRM-IFDH

FIRM-IFDH has published two [Advisory Opinions](#) related to the Government's COVID-19 policy. In addition, FIRM-IFDH has raised certain COVID-19 related concerns in [its parallel report to the Committee against Torture](#). In particular, FIRM-IFDH voiced its concerns about certain policing techniques (e.g., tear gas) used in the context of anti-lockdown protests in 2021, and on the severe impact of sanitary measures in prison on the rights of detainees (e.g., rights to family visits, activities, education, etc.) and the failure to consider them as a priority category for vaccination. It also stressed that sanitary measures had impacted the possibility for persons held in police custody to physically meet their lawyer, thus weakening the protection against ill-treatment in custody.

As regards challenges to the institutions' functioning, given the nature of its mandate (no inspection powers or National Preventive Mechanism function), the activities of FIRM-IFDH were not negatively affected by COVID-19.

The Combat Poverty Service

The Service concluded that existing inequalities were enhanced during the COVID-19 pandemic: the most vulnerable groups in society are more heavily impacted by the virus and related health protection measures. The Service repeated its message from the [Biennial Report in the context of climate policy](#) – to leave no one behind – through press releases and recommendations. Within the context of the SDGs, regular links could also be made with human rights.

The Service published its [Biennial Report 'Solidarity'](#), based on a consultation from July 2020 to November 2021 with associations of people in poverty and other actors. The

Service organized 10 digital meetings, each attended by 30 to 50 people, half of them being people in poverty. Their commitment and energy to participate in these meetings despite COVID-19 can be highlighted. The [Biennial Report](#) has a focus on the health crisis, its impact in situations of poverty, and the meaning of solidarity in society and current conditions. This report has been addressed to the Interministerial Conference “Integration in Society”, and transmitted to various governments, and, through them, to their parliaments and advisory bodies.

In April 2020, the Service started to make an overview of all COVID-19 related measures taken by all governments in order to support people in situations of poverty or insecurity. [The last updated version dates from July 2021](#). This important instrument can inspire governments and has shown which groups have been less included in governmental policies (e.g. tenants).

As a member of the Task force about vulnerable groups on the federal level, the Combat Poverty Service organized and supported a stakeholder discussion of the Flemish Taskforce ‘vulnerable families’.

The Combat Poverty Service also made recommendations in favor of accessible communication about COVID-19 but about how to reach vulnerable groups for vaccination, and as well as stressing out the existence of the digital divide. The Service was member of the communication and societal dialogue cell of the Taskforce Vaccination of the corona Commissioner, and created a [specific webpage](#) with an overview of communication materials for people in precarious situations, health workers, and social workers.

Finally, the Combat Poverty Service made recommendations and press releases around [the coverage of precarious groups in the vaccination strategy](#), the [extension of the target group of the social tariff for electricity and gas](#), the [financial accessibility of self-testing](#) and the [design of the Belgian Relaunch Plan](#).

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NHRI's recommendations to national and regional authorities

The institutions recommend the competent authorities to:

- Duly consider the impact on human rights, in particular those of persons belonging to vulnerable groups, and the proportionality before adopting new measures and policies. For instance, the authorities may use a human rights checklist, such as the one developed by Unia.
- Ensure that the objective(s) pursued by each measure are clearly defined in advance, and that the proportionality of each measure (e.g. the Covid Safe Ticket) is periodically assessed, while ensuring that the objectives are clearly distinguished from the means used to achieve them.
- Ensure that additional and structural funding is provided to crucial sectors such as health care, education, organized care for vulnerable groups (elderly, persons with a disability,...), etc.
- Systematically carry out an impact analysis of new measures for people in precarious situations, both ex ante (in advance, when the measures are being developed) and ex post (after a certain period of implementation), with attention to the non-take-up of rights, at each policy level, as a means for the effectiveness of the exercise of the rights envisaged by the various human rights texts.

Other relevant developments or issues having an impact on the national rule of law environment

Belgium has been repeatedly condemned by the ECtHR and criticized by the Committee on the Prevention of Torture and UN human rights bodies for the structural problem of severe prison overcrowding. While the authorities have taken measures to decrease overcrowding (including through the transfer of offenders with mental health problems to two new forensic psychiatric centers), severe overcrowding persists (at an average of around 10 %, while certain prisons even have an overcrowding rate of 50% or more). Belgium currently ranks third in terms of prison overcrowding on the Council of Europe's list. Alternatives to a prison sentence and alternative ways of serving a prison sentence (e.g. electronic surveillance or the probation sentence) have been introduced in recent years. However, as pointed out in the [parallel report of FIRM-IFDH to the UN Committee to Torture](#), these have mostly resulted in net-widening effects: rather than being imposed as an alternative for (the serving of) a prison sentence, these are mostly imposed on persons who would otherwise not have been imprisoned or would have been conditionally released.

In [its report to the UN CAT Committee](#), FIRM-IFDH expressed concern about the exceptions in the conditions of detention of persons accused of or convicted of terrorist offences. The detention of so-called "radicalised" detainees is characterised by a certain opacity, by the absence of legal remedies and by isolation measures that contravene fundamental rights. These measures have led Fionnuala Ní Aoláin, the UN Special Rapporteur on the protection of human rights while countering terrorism, [to express her "deep concern"](#) about these measures. It is recommended to review the use of security measures with regard to so-called "radicalised" detainees and to create a clear legal framework to avoid arbitrary decisions by prison authorities. Furthermore, the authorities must determine objective criteria for identifying so-called "radicalised" prisoners rather than leaving this identification to the judgement of prison officers. Finally, it is also necessary to provide for an effective remedy against the classification of a person as "radicalised" under general principles of the rule of law.

In May 2021, in the context of Belgium's Universal Periodic Review, several countries expressed concerns about police violence and ethnic profiling. Belgium still does not have complete, objective and reliable statistics on the number of police stops-and-searches or on the prevalence of discriminatory profiling. No legal framework allows a citizen to know the reason for a police check, which affects the relationship of trust between police and citizens and prevents the police from objectively assessing the phenomenon. Unia calls for

the introduction in the legislation of an obligation for the police to issue a receipt specifying the reasons for the control and the remedies available. In addition, FIRM-IFDH calls for the need to collect reliable data on the prevalence of illegitimate violence committed by police officers, and to expressly recognize, in legislation, the right of citizens to film police officers when the public interest is at stake.

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NHRI's recommendations to national and regional authorities

The institutions recommend the competent authorities to:

- Continue the efforts to reduce the problem of prison overcrowding, including through ensuring that alternatives to a prison sentence or alternative ways of serving detention effectively contribute to a decrease of the prison population.
- Review the use of security measures with regards to so-called "radicalised" detainees and provide a strict framework that respects their fundamental rights in order to avoid any form of arbitrary decision by the prison authorities, in accordance with the recommendations of the UN Special Rapporteur.
- Ensure that reliable data are collected on the prevalence of illegitimate violence committed by police officers.