Belgium 2024

Information from: Federal Institute for the Protection and the Promotion of Human Rights (FIRM-IFDH); Unia (Interfederal Centre for Equal Opportunities and Opposition to Racism); Myria (Federal Centre for the analysis of migration flows, the protection of fundamental rights of foreigners and the fight against human trafficking); Combat Poverty, Insecurity and Social Exclusion Service; Central Monitoring Council for Prisons (CTRG-CCSP)

Foreword

This country-specific report was written by four ENNHRI members: the Federal Institute for the Protection and Promotion of Human Rights (FIRM-IFDH), Unia, Myria, and the Combat Poverty, Insecurity and Social Exclusion Service. Additionally, one non-ENNHRI Member, the Central Monitoring Council for Prisons (CTRG-CCSP), co-wrote the report as well. It also received additional input from three independent public human rights institutions: the Data Protection Authority (APD-GBA), the Institute for the Equality between Women and Men (IGVM-IEFH) and the Flanders Human Rights Institute (FLANHRI). FLANHRI has been established in 2023 as a regional independent supervisory institution for human rights and discrimination for the competences of the Flemish region and community. This report was coordinated by FIRM-IFDH.

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Follow-up to last year’s rule of law recommendations

State authorities follow-up to regional actors' recommendations on rule of law

In its 2023 rule of law report, the European Commission made four recommendations to Belgium to improve its domestic rule of law. The first two recommendations concerned the reform of its integrity framework (focusing on rules for gifts and benefits for members of Parliament and on revolving doors policies) and lobbying. The institutions working on this report have not worked on those issues in 2023 and thus will not comment on their follow-up by Belgian authorities. The following section will therefore focus on the Commission's other two recommendations, namely the need for better financing for the justice system and access to official documents.

1. Adequate human and financial resources for the justice system

In 2023, the Commission recommended to "[f]urther continue efforts made to provide adequate human and financial resources for the justice system as a whole, taking into account European standards on resources for the justice system". A similar recommendation had already been made in 2022.

Thanks to EU Recovery Instrument funding, Belgium's Minister of Justice has announced that the additional resources planned by this legislature to strengthen the judiciary amount to 300 million € per year (including 50 million for digitalization) between 2020 and 2024. In its 2023 contribution to the European Commission's stakeholders' consultation, FIRM-IFDH expressed concerns over the Minister of Justice's 'carrot-and-stick' approach to these funds, conditioning the allocation of additional financial resources with the fulfilment of certain measurable objectives. This criticism stemmed from the difficulty of measuring the outcomes, the weakening of the separation of powers induced by such an approach and risks to the quality of the work performed to reach those objectives. The intention to continue developing such an approach appears to have been maintained throughout 2023 but little data is publicly available on its outcomes.

The Commission should urge the Belgian State to ensure that the conditionality attached to additional resources does not have the unwarranted effect of threatening the quality of the work of the judiciary as well as the independence of the judiciary, nor impede citizens' effective access to justice. Furthermore, the conditionality should avoid leading to sanctions for understaffed and underfunded courts and tribunals if they fail to meet the objectives due to lack of resources.

2. Access to official documents

The Commission also repeated its 2022 recommendation to "strengthen the framework for access to official documents, in particular by improving request

and appeal processes, taking into account European standards on access to official documents."

Ratification at the federal level of the Council of Europe Convention on Access to Official Documents ('Tromsø Convention') is underway. The federal government submitted a draft law to parliament, which is currently pending in the parliament's commission on foreign affairs. Legislation assenting to the Convention had already been adopted by the federated entities.

The Government submitted a legislative proposal to parliament in 2023 aimed at improving right to access to official documents. The bill currently remains under consideration. In spite of some positive elements, including the expansion of the law to previously uncovered entities, office staff, this legislative proposal appears to fall short of the necessary reforms. Among other things, the general regime regarding access to documents and the specific regime concerning access to environmental documents – as well their respective appeal bodies – are not merged, and the general appeal process is yet to be strengthened (including allowing for binding decisions). It should also be made clear that refusal grounds, meaning that a refusal is only acceptable if concrete circumstances justify the use of this refusal ground.

3. Other crucial rule of law issues

In addition to the recommendations made by the Commission, a number of major concerns regarding respect for the rule of law remained unresolved in 2023, and tended to worsen:

- Prison overcrowding;
- The judicial backlog in both civil and criminal courts;
- The lack of care for internees whose numbers continue to rise;
- And finally, the non-enforcement of judgements by Belgian authorities. This issue has been critically illustrated by the condemnations of the State's refusal to provide asylum seekers with a dignified reception.

These points are examined more closely below.

NHRIs' follow-up actions supporting implementation of regional actors' recommendations

In 2023, the Federal Advisory Committee on European Affairs of the Belgian Parliament (which brings together members of the House of Representatives and the Senate) held two hearings on the follow-up to the European Commission's Rule of Law reports, in the presence of Justice Commissioner

Didier Reynders. The 2022 report was discussed on January 10 2023 and the 2023 report on December 5. FIRM-IFDH took part in the second hearing, presenting ENNHRI 2023 report on the state of the rule of law in Europe – a chapter on Belgium, developed by FIRM-IFDH in coordination with its partners and raising a number of concerns about the rule of law challenges in Belgium, such as the deliberate non-compliance with national and European judgments by State authorities.

Other actions were also undertaken throughout 2023 in order to support implementation of last year's recommendations, including on the provision of adequate resources for the justice system and the reform of the right to access to official documents.

1. Adequate resources for the justice system

In May 2023, FIRM-IFDH reiterated its conclusion with respect to the "immediate penal transaction" mechanism in its memorandum towards elections. The immediate penal transaction mechanism allows a police officer to demand a (monetary) penalty to be paid immediately by the (alleged) perpetrator of an offence. Following a new law introduced in 2023, refusing an immediate penal transaction is ground for an "order to pay" from the public prosecutor. This allows the prosecutor to order the payment of a sum to an offender who has not accepted a penal transaction. FIRM-IFDH called for the abolition of the immediate penal transaction mechanism. Failing that, it recommends that its application be more limited. . Despite FIRM-IFDH's recommendations, the law allowing the combination of the immediate penal transaction and the order to pay was nonetheless adopted in July 2023.

2. Access to official documents

In 2022, FIRM-IFDH issued an advisory opinion on two – nowadays still pending – legislative proposals submitted by members of parliament regarding the reform of access to official documents , as well as an advisory opinion upon the request of the Minister. FIRM-IFDH called for the ratification at the federal level of the Council of Europe Convention on Access to Official Documents ('Tromsø Convention'), which is currently underway as the federal government has submitted a legislative proposal to parliament.

State authorities follow-up to NHRIs' recommendations regarding rule of law

FIRM-IFDH, Unia, Myria, CTRG-CCSP and the Combat Poverty Service's 2023 Rule of Law Report contains 17 recommendations aimed at improving the rule of law in Belgium. A number of these recommendations are related to issues examined at greater depth hereunder, such as the independence and effectiveness of the two National Human Rights Institutions (Unia and FIRM-

IFDH), access to official documents, protection of human rights defenders and civil society. This section therefore only examines the state of affairs of some recommendations not mentioned otherwise.

1. Provide FIRM-IFDH with a legal right to access all relevant public premises, including places of deprivation of liberty, and to all relevant individuals.

Such a provision is currently not foreseen in the Act of 12 May 2019, but was part of the Sub-committee on accreditation's (SCA) recommendations regarding FIRM-IFDH. This recommendation was emphasized several times in discussions between FIRM-IFDH and the Government, including regarding the forthcoming reform of the Act of 12 May 2019, which intends to create a National Prevention Mechanism in Belgium. This recommendation remains unimplemented so far.

2. Favour the use of criminal law – with its stronger human rights guarantees – to administrative law as an instrument used by local authorities to prevent and pursue crimes and misdemeanours.

This recommendation was the main theme of FIRM-IFDH's 2022 annual report. The tendency to use administrative law instead of criminal law has continued. In 2023, the Government suggested introducing an administrative ban on entering certain recreational areas and a reform of penal transaction mechanisms. Both reforms would again expand the scope of administrative measures that could be taken against an offender and would replace some criminal proceedings.

3. Creation of a public registry on AI to be used by public authorities

Belgian authorities should create a registry of the uses of AI by public authorities. The registry should describe the AI in question and how it is used by public authorities. It should also include information on the learning capacity of the AI, as well as information on the datasets used to train it. The creation of this registry would be a notable first step to increase possibilities of democratic oversight. It would enable civil society to engage meaningfully with public authorities on the uses of AI and would enable national human rights institutions to provide expertise on the human rights implications on certain uses of AI. The creation of the registry would also increase possibilities for rights-holders to obtain redress for human rights violations. Indeed, the current prevalent opacity concerning the uses of AI in Belgium prevents rights-holders from asserting their rights. It also prevents public authorities, including courts and tribunals, from effectively ensuring that rights are respected. So far, this registry has not yet been created.

4. Systematic notification of the use of AI to assist individual decision-making processes by public authorities

Along the same lines, Belgian authorities should systematically notify individuals when AI is being used to assist decision-making processes for individual decisions. Under current data privacy regulations, individuals have the right not to be subject to a decision based solely on automated processing which produces legal effects affecting him or her (art. 22 GDPR). However, there is no similar right where the use of AI may have played a significant role in informing a decision, but where the decision-making process was only partly automated. In such a case, human oversight can still be minimal due to several factors: lack of time, lack of understanding of the functioning of the AI, over-reliance on the said AI. Systematically notifying individuals that an AI has been used to inform decisions concerning them would therefore be a step forward. It would increase transparency and allow individuals to request additional human oversight. It would also enable them to request the assistance of NHRIs to assess whether they have been subject to human rights violations.

Addressing automated human rights violations will mean reconsidering the gaps in the material scope (e.g. the civil law concept of services does not include all forms of publics service). It would also mean adapting and revisiting some of the core concepts to respond to the changing nature of the violations. For example, the shift of the burden of proof (as stated in article 28 of the anti-discrimination Act) is complex specifically in an AI context because, where there is a complete lack of transparency, there are no opportunities to substantiate a suspicion of discrimination. In an automated context, effective redress is even more challenging. Therefore, cooperation between the relevant enforcing institutions will be vital. National authorities should support NHRIs and ensure that they have adequate and meaningful powers to address the new challenges posed by AI.

5. CTRG-CCSP's systematic follow-up procedure

In 2023, CTRG-CCSP has initiated a procedure to systematically follow-up on its recommendations, in consultation with the prison administration and the Régie des Bâtiments/Regie der Gebouwen, which is responsible for real-estate infrastructure in prisons. The aim of this procedure is to account for all initiatives taken to implement each of the recommendations detailed in CTRG-CCSP's reports or its advisory opinions.

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Independence, effectiveness, resilience and establishment of NHRIs

International accreditation status and SCA recommendations

Belgium currently has two NHRIs accredited with B-status, signifying partial compliance with the Paris Principles.

In March 2023, the SCA accredited FIRM-IFDH with B-status. At that time, the SCA included recommendations in relation to the NHRI's human rights mandate, annual report, pluralism, selection and appointment, and adequate funding. Further information on the recommendations and the actions undertaken in follow up are detailed in the section below.

When the SCA accredited Unia with B-status, it included recommendations in relation to human rights mandate, interaction with the international human rights system, selection and appointment, full-time members, and functional immunity.

FLANHRI was created in 2022 with a broad human rights mandate within the competences of the Flemish Region and the Flemish Community. FLANHRI works in collaboration or in complementarity with other public institutions, both at the federal and the regional level.

Follow-up to SCA Recommendations and relevant developments

FIRM-IFDH

In March 2023, GANHRI's Sub-Committee on Accreditation (SCA) decided to accredit FIRM-IFDH with a B status. Its accreditation was accompanied by a number of core recommendations:

1. Residual-federal mandate

The SCA recommends that FIRM-IFDH's residual-federal mandate be expanded and strengthened through changes to its enabling Act or through other legal instruments. It also notes that the 2019 Act and the federal government's declaration provides for FIRM-IFDH's future inter-federalization. As this

legislature's term is coming to an end, this will not be realised under the current government. FIRM-IFDH advocates (pp. 56-57) for relevant authorities to draw up a cooperation agreement extending its mandate to cover matters falling within the competence of the Communities and Regions (with the exception of matters falling within the competence of the Flemish Region and the Flemish Community, for which the FLANHRI is competent, as well as the regional and community mandates of Unia and the Combat Poverty Service).

2. Unannounced and free access to inspect and examine public premises

The SCA recommends providing FIRM-IFDH with an unannounced and free access to inspect and examine any public premises, such as places of deprivation of liberty, as well as any documents, equipment, and assets without prior notice. FIRM-IFDH recommends that its legal mandate be strengthened by providing a right to access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals. Such a provision is currently absent from the law and no such reform has been announced.

3. Annual report

The third SCA recommendation suggests an amendment to FIRM-IFDH's enabling law to ensure that Parliament discusses and considers its annual, special, and thematic reports. The new draft law creating a National Prevention Mechanism within FIRM-IFDH provides for a yearly discussion of its report within Parliament.

4. Pluralism and diversity and implication of civil society

The SCA recommends that FIRM-IFDH advocates for the formalization of processes that ensure that pluralism and diversity are reflected in its composition and/or work. Pluralism, according to the SCA, refers to broader representation of national society, with consideration given to ethnicity, minority status, and persons with disability. The new draft law stipulates that FIRM-IFDH's board of directors must be composed in a way as pluralist and diverse as possible. If adopted, it would also state that FIRM-IFDH must ensure that pluralism and diversity are reflected in its composition or its activities.

Unia

Given the fragmented landscape of existing Belgian equality bodies and NHRIs, 'A' status is not possible in Belgium, without a cooperation agreement between the federal state and the various communities and regions, or the (potentially asymmetrical) inter-federalization of an institution.

Regulatory framework

FIRM-IFDH

1. Support to whistleblowers

The national regulatory framework concerning FIRM-IFDH has evolved in the last year. FIRM-IFDH was recently given an additional competence of supporting whistleblowers under the new Belgian federal whistleblower legislation (pursuant to EU Directive 2019/1937). According to the two laws, FIRM-IFDH's new competence has four main components: be an information center for whomever requires information on whistleblowers' protection; provide support measures to whistleblowers, including legal, financial, psychological, practical, media and social support; conduct an evaluation of the legal framework on whistleblowing; and promote a whistleblower-friendly culture. FIRM-IFDH received an additional budget to conduct this mission. In 2023, FIRM-IFDH received 126 such individual requests, resulting in providing information to 55 individuals, the redirection of 53 cases to other institutional actors, and the implementation of support measures for 18 individuals. FIRM-IFDH has established lists of professionals such as lawyers, psychologists, media trainers, and coaches willing to assist whistleblowers. FIRM-IFDH is also working on developing its network to strengthen collaboration with partners and enhance the impact of its work on the topic. FIRM-IFDH has also conducted presentations to several groups (unions, integrity network, etc.) outlining its legal missions. It has published several articles in legal journals on the missions of FIRM-IFDH with regard to whistleblowers. Finally, an information campaign has been launched in February 2024.

2. NHRI appointed focal point on SLAPPs

In February 2023, FIRM-IFDH was appointed by the Ministry of Justice as national focal point on the fight against Strategic Lawsuits against Public Participation (SLAPP, pursuant to EU Recommendation 2022/758).

3. Draft bill on the creation of an independent prevention mechanism under OPCAT

On December 21, 2023, a draft bill amending the Act of 12 May 2019 establishing a Federal Institute for the Protection and Promotion of Human Rights was submitted to the federal Parliament to establish an independent prevention mechanism at the federal level within the FIRM-IFDH, in conformity with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Belgium signed the OPCAT in 2005 but has not ratified it so far. The prevention mechanism envisaged will be an autonomous department within FIRM-IFDH that works closely with other independent public institutions already monitoring places of deprivation of liberty and/or certain persons deprived of their liberty (CTRG-CCSP, Myria and the Police Standing Committee). Its competence will be limited to places of deprivation of liberty falling under the federal competence, such as

prisons, detention centres for migrants, and police cells.

4. FIRM-IFDH's mandate

Finally, FIRM-IFDH's mandate has not yet been expanded to matters under the competence of the Brussels Region, the French and German Communities and the Walloon Region, nor has FIRM-IFDH received the competence to handle individual complaints. Both of these measures were recommended by the Sub-Committee on accreditation in its 2023 decision and were envisaged by the federal government.

Unia

1. Legal basis

Unia has a legal basis in the form of a cooperation agreement between the Communities, the Regions and the Federal State. This agreement has the same legal rank as a law. On March 15, 2023, the Flemish Region and Community withdrew from the cooperation agreement and established FLANHRI, the Flanders Human Rights Institute, transferring Unia's former tasks for all matters under the competences of the Flemish Authority, with implications on the available budget and scope of actions by Unia. This was a political decision and was agreed upon in the Flemish coalition agreement from 2019 to 2024 (p. 111). Unia remains responsible for all federal competences in the entire territory of Belgium (i.e. Flanders as well as in Brussels and Wallonia).

2. Amendment of anti-discrimination legislation

In addition, Belgian anti-discrimination legislation was amended in 2023. The amendment includes better compensation for victims of discrimination, the introduction of the concepts of "cumulative" and "intersectional" discrimination, and the recognition of discrimination by association and discrimination based on a perceived criterion.

FLANHRI

1. Creation and mandate of FLANHRI

On October 28, 2022, the Flemish Parliament adopted the founding decree for a new Human Rights Institute in Flanders (FLANHRI), closely modelled after the UN Paris Principles and SCA's General Observations. The Flemish Parliament appointed the Board of Directors in February 2023, after an open procedure. The institute became operational on March 15th.

FLANHRI has a broad mandate to safeguard and promote all human rights, including non-discrimination in all matters falling within the competences of the Flemish Community and the Flemish Region, including unilingual Flemish institutions in Brussels (eg. schools, daycare…). FLANHRI has assumed the

Flemish responsibilities previously held by the Flemish Ombudswoman on Gender and Unia. FLANHRI also has similar (mainly policy advisory) powers as FIRM-IFDH for all matters relating to human rights with regard to Flemish competences. The establishment of FLANHRI creates a quasi-tribunal and promotion-type institute, while at the same time expanding the mandate to all human rights within Flemish competences. The Flemish Government at the same time invested significant additional resources, more than quadrupling the original budget. FLANHRI includes a quasi-jurisdictional organ, the Litigation Chamber, based on the Dutch model ("College voor de Rechten van de Mens"). In cases of potential discrimination, individuals can file a complaint with FLANHRI, following initial assistance. Individual complaints first undergo mediation between parties, and if mediation proves unsuccessful or impossible, the Litigation Chamber can render a non-binding judgment.

FLANHRI also handles all human rights complaints and questions within the competences of the Flemish government, by informing the public, raising awareness, conducting research, and advising government(s), either on demand or on its own initiative on the issue of human rights. Furthermore, FLANHRI explicitly carries a mandate to promote, protect, and oversee the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), adopted on December 13, 2006.

The legal framework applied during the mediation procedure and by the Litigation Chamber to determine whether discrimination has occurred, was established much earlier, in the Framework Decree of 10 July 2008 on equal opportunities and equal treatment. There is an ongoing regulatory process to amend the Flemish anti-discrimination policy on various points:

- Personnel and material scope, including an expansion of the protected grounds;
- Forms of discrimination;
- Justification grounds;
- Positive action;
- Enforcement, including an increase in the compensation fees and the addition of criteria that may lead to an increase or decrease of the fee (e.g., compliance with measures recommended by FLANHRI Litigation Chamber).

NHRI enabling and safe environment

FIRM-IFDH

1. Advisory opinions on legislative proposals

FIRM-IFDH is regularly asked by the executive and Parliament to provide advisory opinions on legislative proposals. In 2023, FIRM-IFDH issued advisory

opinions (of which 12 upon request of Parliament or the Government). FIRM-IFDH is regularly in contact with parliamentarians, the Government and public authorities to present and discuss its recommendations. Nevertheless, FIRM-IFDH does not automatically receive feedback from the authorities. While the Act of 12 May 2019 allows FIRM-IFDH to request written explanations regarding the follow-up of these opinions, recommendations and reports (art. 6 §3), the Institute has not used this possibility yet.

2. Opinions, recommendations and parallel reports

FIRM-IFDH closely collaborates with public bodies promoting human rights, by issuing joint opinions, recommendations, parallel reports to UN Treaty bodies, etc.

Several reports were drafted in 2023, including to the European Committee of Social Rights, the UN Human Rights Council and the European Commission. Furthermore, FIRM-IFDH addressed several "Rule 9" submissions to the Council of Europe's Committee of Ministers regarding the follow-up of some judgments issued by the European Court of Human Rights (ECtHR) against Belgium.

Unia

Unia, as other human rights institutions in Belgium, operates in a complex institutional environment with six different state-level authorities. This situation raises numerous questions on the limits of each authority's competences and on citizens' rights under each legislation.

1. Involvement in the legislative process

In addition, the willingness of the executive power to create new regulatory frameworks or modify existing ones varies greatly depending on the political actors involved and the topics raised. In some cases, Unia was heavily involved in the legislative process and its views were taken into account, such as with the codification of anti-discrimination regulations by the Brussels-Capital Region, the French Community Commission (COCOF) and the Common Community Commission (COCOM). Other legal projects, such as the revision of the Criminal Code, did not actively involve Unia and it was very challenging to receive feedback to its recommendations. This disparity in the executive and legislative branches accessibility in the legislative process means that Unia's impact depends largely on the willingness of policymakers to be open to its recommendations.

2. Impact of VMRI's creation on Unia's mandate

The creation of the FLANHRI affected Unia's mandate: matters within the competence of the Flemish Region and Community previously falling within the mandate of Unia are now under the mandate of FLANHRI. Under the Belgian

constitutional framework, this also includes complaints handling on these matters for unilingual Brussels institutions. The Belgian Council of State expressed reservations about the creation of this new structure, pointing to the increasing complexity of the human rights landscape in Belgium: «The fact that a separate institution will be established for the Flemish Community and the Flemish Region together, in place of the role currently played by Unia in this regard, has the consequence that persons wishing to address such an institution will have to orient themselves in an increasingly complex landscape (…). This will probably be most evident in the territory of the bilingual Brussels-Capital Region (…).» The criterion to define the competent equality body in Brussels (and Flanders as well) is not the language of the resident (Dutch or French). It is determined by the facts concerned. Socio-cultural institutions in Brussels, amongst others, can be a Flemish institution, used by French speaking citizens. Given the importance of the socio-cultural and educational institutions of the Flemish Community in Brussels (VGC), there is a risk this will have an impact on the actual level of protection of Brussels residents. Unia and FLANHRI have different mandates to respond to human rights violations (see p. 26), including in the capacity to take legal action before a court in individual cases and mediation possibilities.

3. Expressions of hatred in political discourse

In addition, expressions of hatred in political discourse, which are not always legally condemnable but fuel polarization, have become more common. The upcoming elections in June and October has renewed the debate about the role of Unia. Not all electoral programs have been published at the time of writing but the far-right Vlaams Belang party already proposes to abolish Unia.

FLANHRI

Given the recent establishment of FLANHRI, definitively assessing whether state authorities provide an enabling environment for independent and effective operations is premature. In its first operational year, FLANHRI has published several advisory opinions on draft legislation, including one at its own initiative. It also launched a publicity campaign and received and handled more than 900 complaints. One issue which needs to be closely monitored is the evolution of the allocated budget of the FLANHRI, especially after the originally planned startup years (2023-2024).

NHRI’s recommendations to national and regional authorities

Study and implement investigative powers for equality bodies

In its final report, the Commission for the Evaluation of Federal Anti-Discrimination Legislation recommended that the possibility of granting

investigative powers to federal equality bodies (Unia, IGVM-IEFH) be studied (recommendation 51). These bodies currently find it difficult to have access to all relevant elements of an individual's file, and it is not uncommon for incriminating evidence to be deliberately concealed, with the result that it is sometimes difficult to prove discrimination. One solution would be to give equality bodies investigative powers. The FLANHRI has such powers where public services are concerned (Art. 22, FLANHRI decree). The European Commission has deemed this competence necessary in its 2022 proposal for a directive on standards for equality bodies.

Financial stability

FLANHRI recommends to the Flemish Parliament that it ensures a robust and stable budget for the Institute. Adequate financial resources are essential to facilitate FLANHRI's operational capabilities and guarantee its autonomy. This recommendation can also be replicated for all other public independent human rights institutions at federal, regional and Community level.

Interfederal cooperation agreement to extend FIRM-IFDH's competences and to clarify relations with other human rights institutes

FIRM-IFDH recommends the adoption of a cooperation agreement that would extend its mandate to matters falling within the competences of the Communities and Regions (with the exception of matters falling within the competences of the Flemish Region and the Flemish Community, for which the FLANHRI is competent). This agreement should include provisions for the cooperation with existing human rights institutes already competent for regional and community matters, such as Unia, the Combat Poverty Service and FLANHRI. Lastly, FIRM-IFDH should be given the competence to receive and handle individual complaints, as was stated in the 2020 Federal Government Agreement.

Belgium 2024

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Democracy - checks and balances, disinformation, and other topics

Separation of powers

The separation of powers is one of the most fragile aspects of the rule of law in Belgium. Several reasons can be pointed out, including the chronic underfunding of the justice system which leads to a severe backlog of court cases and/or the lack of enforcement of judgments against Belgian authorities. Additionally, a number of laws, practices and trends gradually shift competences from the judiciary to the executive. The following section focuses on this erosion of separation of powers.

Chronic judicial understaffing

The attribution of adequate resources and staff to courts and tribunals remains an important issue. Recently, following a terrorist attack in Brussels, the government announced opening several job positions in the Brussels Prosecutor office. Prior to this decision, the office was severely understaffed with 95 prosecutors instead of the 119 provided by law. While this particular decision is positive, it also shows that staffing of the judiciary is highly contingent on political will. This is illustrated by a recent condemnation of the State by the Brussels first instance tribunal due to the excessive length of proceedings in the Brussels family tribunal. In November 2023, the Court of appeal of Brussels further condemned the Belgian State to open all job postings for judges and judicial personnel normally provided for by law. As a result, Belgian authorities published all job postings in February 2024.

Establishing a National Prevention Mechanism

Taking into account the specific Belgian context, ratification of the OPCAT by Belgium requires that not only the federal government but also each of the federated entities appoint an independent prevention mechanism. Close consultation and cooperation between the different prevention mechanisms will be paramount to ensure the efficiency, coherence and uniformity of the OPCAT-system in Belgium.

Administrative approach to deal with public order

In recent years, Belgium has seen an expansion of administrative law instruments to deal with public order disturbances and criminal phenomena: e.g. preventive administrative measures taken to address the risks of radicalization or local powers to impose so-called municipal administrative sanctions, area bans and preventive demonstration bans.

This trend continued into 2023. On November 16, 2023, the federal Parliament

adopted the Act on the municipal administrative approach.. This Act introduces the possibility for municipalities to refuse, suspend or withdraw a business license or to close down a business in case of an identifiable serious risk that it might be used to commit criminal offences or for money laundering purposes. A bill pending in parliament provides for the possibility of imposing an administrative ban to enter recreational areas (and adjacent areas) for up to ten years for persons having committed certain infractions, such as not respecting a steward's orders or throwing one or several objects on the ground, during a visit to such an area.

FIRM-IFDH has issued negative advisory opinions regarding both bills. This broader trend of expanding administrative law powers is concerning, as it shifts the power to adopt individual measures (potentially) restricting fundamental rights from the judiciary to the executive. Executive decisions do not provide the same safeguards in terms of independence and procedural guarantees as judicial ones. This is inadequately compensated for by the possibility of challenging the measures before the courts. Furthermore, preventive measures can often be adopted on the basis of a mere risk of future disturbance rather than on proven blameworthy conduct. According to FIRM-IFDH, more restraint in empowering the executive further is desirable.

Scan-cars and the rights of persons with disabilities

In July 2022, the Brussels regional Parliament undermined the rights of people with disabilities in its push for automated parking control using scanner vehicles ("scan-cars"). The case dates back to May 2, 2022, when the President of the Brussels first instance tribunal ruled that the system of automated parking control using scanner vehicles, as used by the Brussels regional parking agency Parking.brussels, led to indirect discrimination on the basis of disability, since it required additional steps for people with disabilities that were not provided for in the legislation. These steps were either pre-register using a mobile application or the specific button on the available parking meter; or contest the fee received. The judge ordered Parking.brussels to put an end to this discrimination. Unia was a party to the case. However, the Brussels Parliament has since revised the Parking Ordinance, and now requires people with disabilities to register digitally in order to benefit from free parking. The ordinance now requires disabled people to pre-register digitally. The procedures for pre-registration vary from one municipality to another. For municipalities where parking is managed by Parking.brussels, this has to be done via a whitelist, the pay and display machine, via an app or website, or via SMS. Other municipalities are only obliged to offer pre-registration via a whitelist. Unia has attempted to reverse this amendment by questioning MPs, meetings with the Mobility minister's cabinet, publishing a press release and drafting an advisory opinion, without success. The legislator did not conceal that this amendment was introduced in order to circumvent the finding of discrimination made by the beforementioned court decision, and thus to

neutralize the enforcement of the judgment handed down. In 2023, Unia continued to question this practice in detail and considers it a threat to the principle of the separation of powers.

Prisoners' right to complaint under threat

Since October 1st, 2020, prisoners have been able to lodge a formal appeal against decision made by their prison director. The Act of Principles also allows them to appeal against the failure to make a decision when the director is legally required or reasonably expected to make a decision. CTRG-CCSP has been entrusted by the Act with the responsibility of organizing this right to complaint. The complaints and appeals commissions, set up and supported by CTRG-CCSP, are independent and impartial jurisdictions dealing with these complaints.

In 2023, 4,165 complaints were submitted, compared with 2,394 in 2022 (see p. 36) and 1,794 in 2021 (see p. 43). This increase will sooner or later require an adaptation of the relevant legal provisions, both in terms of procedures and organisation, to ensure that complaints continue to be handled properly. Furthermore, an examination of the new case law highlights that a number of decisions by complaints commissions are slow to be implemented, or even, more worryingly, are ignored. However, the Act of Principles provides that any decision by the complaints commission is enforceable even in case of an appeal, unless otherwise decided by the president of the appeals commission, who may suspend its enforcement in whole or in part. Failure to enforce a decision can be the subject of a new complaint but questions arise as to whether such a complaint can be considered well-founded.

Any failure by authorities to enforce a judicial decision, such as a decision of the complaints commission, is a violation of the rule of law.

Security clearances for magistrates

In February 2023, the federal government approved the first reading of a draft law requiring a security clearance and regular security checks for magistrates. The measure would aim to better protect the judiciary against feared infiltrations by criminal organizations. Upon request of the Minister of Justice, the High Council of Justice raised a number of concerns in an advisory opinion dated April 11, 2023. The High Council pointed out that such a requirement would weaken the separation of powers, since the control would be made by organs of the executive power. It would impair the competence of the High Council itself, which will only be able to recommend for appointment magistrates who have cleared the security checks. The draft law could also constitute a violation of the right to a fair trial, the principles of legality, of legal certainty and would require disproportionate means in order to achieve its objectives, given the existence of other forms of integrity control for magistrates. This criticism echoes similar concerns raised by the Council of

Europe's Consultative Council of European Judges in a 2018 opinion, as well as by the European Commission's 2023 Rule of Law Report on Belgium.

No further development has been reported on this draft law since the publication of the High Council's advisory opinion.

Disciplinary proceedings against judges

Several new law proposals have been introduced in Parliament in 2023 in order to reinforce rules regarding disciplinary procedures applicable to judges and prosecutors. Law proposals differ from draft laws as they are not introduced in Parliament by the government, but by a member of the Parliament.

One of the law proposals would create a permanent disciplinary prosecution office, which would be able to open disciplinary investigations against magistrates and start proceedings before a non-permanent disciplinary tribunal. As with other prosecution offices, the disciplinary prosecution office would not be fully independent from the executive order, even if efforts have been made to improve this aspect compared with other prosecution offices: contrary to other prosecution offices, it would not be placed under the authority of the Minister of Justice but under the joint authority of the College of Courts and Tribunals and the College of the Public Prosecutor (whose members are under the authority of the Minister of Justice). Its members would be nominated by the government following a recommendation by the High Council of Justice.

The disciplinary prosecutors would be given the competence to appeal against the decision of the chef de corps (chief magistrate) not to inflict a sanction or only a light penalty against a magistrate guilty of a disciplinary offence. This law proposal would also reinforce the independence of the disciplinary tribunal – meaning reinforcing its independence from the magistrates' themselves – by involving external actors such as the Batonniers (chiefs) of the Bar associations and law professors as judges (conseiller) of the disciplinary tribunal.

In general, the law proposals seem mostly intended to break from the tradition of magistrates' disciplinary proceedings being conducted wholly by magistrates themselves, in order to improve both the effectiveness of the proceedings and its appearance of impartiality for the larger public. Yet, it also risks weakening the separation of powers and the independence of the judiciary. In other European Member States, the creation of permanent disciplinary prosecution offices has sometimes been used to make a judiciary more compliant with the executive's wishes. While some guarantees are here provided to avoid such an outcome, there remains cause for concern.

The process for preparing and enacting laws

A number of laws, processes and practices restrict the participation of

vulnerable stakeholders within the procedures to prepare and enact laws and policies in Belgium. Three examples are examined below.

The right to vote for people with disabilities

On March 28, 2023, a new Act "containing various amendments on elections" was adopted. This new law amended the law on guardianship. As of October 1st, 2023, a tribunal must explicitly and systematically decide (on the basis of a comprehensive checklist) whether a person with a disability is capable to exercise his or her political rights, including the right to vote and stand for election. The tribunal can now deprive the person of his or her right to vote without justification and without being specifically asked to. This is likely to make it more difficult for people with disabilities to exercise their right to vote, especially given judges' practice of ticking off the entire checklist, which often entails the deprivation of an unproportional amount of rights for the disabled person in question, without an individual and appropriate assessment. With this new law, the right to vote becomes even further out of reach for people with disabilities. This reform is a clear step backwards and is contrary to what the Government had previously announced in its Federal Disability Action Plan. Indeed, the Plan's "measure 119" aimed to "investigate how to minimize the suspension of the exercise of the right to vote among protected persons". Moreover, the danger of a broad interpretation of the "exercise of political rights" lurks around the corner, further constraining related rights. Unia considers the Act of 28 March 2023 a clear violation of the constitutional right of people with disabilities to full inclusion in society.

Equal treatment of all types of hate speech

Only racist and xenophobic hate speech can currently be prosecuted in criminal (correctional) courts. All other forms of hate speech (disability, age, gender, etc.) fall within the jurisdiction of the Court of Assizes, meaning a costly and complicated procedure involving a jury trial. This rule, originally intended to protect press freedom from political prosecution, has resulted in de facto impunity for hate speech other than racist or xenophobic ones. This problem also concerns cyber hate, i.e. hate speech spread through social media. Any solution requires to amend article 150 of the Constitution, following which xenophobic and racist hate speech falls within the jurisdiction of the ordinary criminal courts and all other forms of hate speech belong to the Court of Assizes' jurisdiction. However, the complex procedure for amending the Constitution and the lack of understanding of the need for this amendment by the Government and Parliament leads the judiciary to apply de facto a different treatment to equal situations, since racist and xenophobic hate speech are currently easier to prosecute than other forms of hate speech. On December 21st, 2021, a decision (nr. 2021/6615) by the Brussels first instance tribunal pointed out that the article 150 protection raises questions regarding the right to an effective remedy, the right to respect for private and family life -

including reputation - and freedom of expression.

Gender mainstreaming

IGVM-IEFH has found a lack of scrutiny and evidence-based policy-making in the process for preparing and enacting laws and policies. The Act of 12 January 2007 on Gender mainstreaming requires the integration of a gender perspective in all actions of the federal Government, including in the preparation of laws and policies, in order to ensure that the specific situations of women and men are taken into account. The Act has led to numerous progresses, including pinpointing where the integration of the gender perspective has yet to happen correctly. The Act on Gender mainstreaming requires that a regulatory impact assessment (RIA) is performed for legislation and regulation submitted to the federal Council of Ministers. While some RIAs are carried out properly, past evaluations have underlined that the RIA checklist is often not answered adequately. Very little use is made of gender-disaggregated data to ensure that the RIA is made in an evidence-based way. Inadequate RIA use has important consequences on the integration of a gender perspective for policy preparation.

Access to information

Too little progress on access to public documents reform

As mentioned above, FIRM-IFDH issued an advisory opinion on two pending legislative proposals submitted by members of parliament in 2022, as well as an advisory opinion upon the request of the Minister of the Interior. In 2023, the government subsequently submitted its own legislative proposal to parliament, which remains under consideration as well. In spite of some positive elements – including the expansion of the law to previously uncovered administrative entities –, this legislative proposal still falls short of reforms deemed necessary, including to the (current) advisory appeal body tasked with overseeing refusals to access to documents. Among other recommendations, FIRM-IFDH underlines that this appeal body should be given a broader mandate, more resources and decision-making powers.

An expanded definition of state secrets at odds with the proportionality principle and press freedom

The new Criminal Code has expanded the definition of ‘state secrets’. FIRM-IFDH has noted in an advisory opinion on the proposal for a new Criminal Code that this would consequently expand the scope of the existing crimes of disclosing and receiving state secrets. According to FIRM-IFDH, the government has not demonstrated the need for this expansion, invoking vague grounds of changing social and political context to justify it. Moreover, the definition is very broad and contains several ambiguities, making it difficult, in practice, to

know what is punishable and what is not. The new provision therefore also poses a risk to press freedom, as journalists could be prosecuted for receiving and disclosing certain information without even necessarily realizing the information can be qualified as a state secret.

The need for a journalistic exception for data processing and the right to film police officers

FIRM-IFDH has also advocated for the implementation of the so-called 'journalistic exception' (Art. 85, §2 GDPR) in national legislation in a way that makes it clear that non-professional journalists may rely on certain data processing exceptions. The current provision in Belgian law leads to uncertainty in this regard.

FIRM-IFDH also recommends that a separate legal framework is created clarifying the rules regarding the filming of police officers by citizens and establishing the basic principle that everyone has the right to film police officers in the course of their duties, even if exceptions to this rule are possible.

Concerns regarding time frames for transparency request in Flanders

FLANHRI notes that, in Flanders, time frames for a transparency request are legally defined (article II.26 – II.51 decree of December 7, 2018 regarding the administrative decree). Everyone (any individual, legal entity, or group thereof) may submit a request for transparency. A transparency request must be responded to within a maximum period of 20 calendar days, extendable to 40. In the event of an appeal against the decision, the appellate body must communicate its decision within 30 calendar days, extendable to 45. The governmental entity possessing the information shall implement the decision within 15 calendar days of receiving the appellate body's decision.

While these time frames may not appear unreasonably long, there are situations where a quicker decision period is required. As highlighted in the European Commission 2023 Rule of Law Report, response time for transparency requests remain a persistent issue according to the Flemish Association of Journalists. FIRM-IFDH underlined similar findings at the federal level in its 2022 advisory opinion on the reform of the law on access to public documents.

Independence and effectiveness of independent institutions (other than NHRIs)

The Central Monitoring Council for Prisons (CTRG-CCSP), the Institute for the Equality between Women and Men (IGVM-IEFH) and the Knowledge Center of the Data Protection Authority (APD-GBA) have reported laws, practices or legal

processes negatively impacting or threatening their independence or effectiveness.

CTRG-CCSP: reform of the Act of Principles

At the end of April 2023, CTRG-CCSP was informed of the finalization of a draft law aimed at comprehensively reforming the Act of Principles. The Act of Principles organizes CTRG-CCSP's control powers as well as the prison supervisory commissions it supports and coordinates. It also establishes the prisoners' right to complaint, also organized by CTRG-CCSP. The draft law would bring significant changes to CTRG-CCSP's functioning as well as restricting prisoners' right to complaint. Among other changes, the scope of application would be narrowed, admissibility requirements tightened, investigative possibilities limited and the enforceability of the decisions curtailed. Drafted without consulting CTRG-CCSP, the draft project has been criticized in great detail by CTRG-CCSP, as well as by FIRM-IFDH. The draft law appears to have been temporarily abandoned for the time being, likely due the coming elections. Indeed, electoral time frames make it impossible to complete such a reform before the end of the legislature. However, this project is likely to find itself back on the agenda at a later date.

IGVM-IEFH: Suspension of the collaboration provisions of the joint circular on the prosecution of discrimination

To improve the practical application of various anti-discrimination legislations, a joint circular from the Minister of Justice, the Minister of the Interior, and the College of General Prosecutors was adopted in 2013, namely COL13/2013 regarding the policy on research and prosecution in the field of discrimination and hate crimes (including gender-based discrimination).

This circular establishes the collaboration between the Public Prosecutor's Office, Unia, and IGVM-IEFH. COL13/2013 is currently undergoing revision to improve its practical application and address field-observed challenges. During these revisions, questions arose regarding the compatibility of certain of its provisions with GDPR requirements. These include the systematic transmission to Unia and IGVM-IEFH of court hearing dates, judicial decisions, and the contact details for reference magistrates and police officers.

Following these discussions and in view of legal uncertainty regarding the consequences of GDPR application on the collaboration established by COL13/2013, the College of Prosecutors General decided on December 1st, 2023, to suspend the application of the current circular's collaboration provisions pending a thorough examination of the issue. A new circular was adopted on January 18th but Unia and IGVM-IEFH have not yet been informed whether the GDPR issue has been resolved. As a result, no announcement of court hearing dates or judgments are being given to Unia and IGVM-IEFH anymore. This situation hinders IGVM-IEFH and Unia from properly fulfilling

their legal missions of supporting victims of discrimination, intervening in judicial procedures resulting from the application of anti-discrimination laws, and publishing anonymized judicial decisions.

APD-GBA's Knowledge Centre: shorter deadline for APD-GBA's missions puts the institution under pressure

A new law has been adopted bringing significant changes to the functioning of the Data Protection Authority (APD-GBA), including shorter deadlines to issue advisory opinions and to authorize access to communication metadata. According to APD-GBA's Knowledge Centre, those changes raise significant challenges for the fulfilment of its missions.

The time frame to issue an advisory opinion has changed from a standard 60 days – 15 days in case of a motivated emergency – to 30 (default notice period) or 60 days, and only 5 days in case of a motivated emergency. The 5-days deadline appears extremely difficult to fulfil, if not impossible. These time frames are significantly shorter than those applicable to comparable national data protection authorities in other countries. For example, the emergency procedure for the French Data Protection Authority, CNIL, is set at one month, whereas their standard procedure foresees two months (which may be extended by one additional month). The reduction in the time frame within which the APD-GBA must issue its opinions threatens to negatively impact its capacity to exercise its a priori control, as anchored in Article 81 of the GDPR.

The Government aims to align the time frame for APD-GBA's advisory opinions with those of the Council of State. Yet, the two institutions have very different operating methods and means. For example, the current DPA law requires collegial decision-making for opinions, until the end of the term of office of the current external members. Furthermore, it is striking that the authority requesting the opinion can impose its own time frame on APD-GBA, without allowing to adapt it to the volume or complexity of the issue.

APD-GBA can issue authorizations for access to communication metadata relating to data traffic or to locations for purposes that do not fall within the criminal sphere (eg. data collected for scientific research purposes). The new law also sets particularly short deadlines for APD-GBA to issue its authorization: 10 days from the time the request for authorization has been completed (art. 18§3). Once again, tight deadline will put the institution under pressure to monitor this type of request, the volume of which is currently unknown.

Enabling environment for civil society and human rights defenders

ENNHRI's 2023 Rule of Law Report's country chapter on Belgium particularly focused on the numerous human rights challenges faced by civil society and

human rights defenders in Belgium. Topics included safety of journalists, protection of the right to strike, intimidation of human rights defenders, etc. Several of these themes are reviewed and updated below.

Defend the Defenders

In its study "Room for Human Rights Defenders", FIRM-IFDH surveyed 159 Belgian civil society organizations. The majority of the respondents rated favorably the quality of Belgium's civic space. Yet, 55% of them stated they had been subjected to intimidation or aggression at least once in 2020-2022. The respondents report facing mainly legal intimidation (24%), negative media campaigns (22%), cyber-attacks (19%) and political sanctions (17%). 25% of the respondents stated they had faced difficulties in funding their operations,18% in participating in the political process and 15% had been subjected to political pressure.

The study also showed that pressure exerted on employees or volunteers working for the organizations is more likely to be perpetrated by people from the public than from political actors, while the opposite is true for acts committed against the organizations (as a legal entity).

Threats and intimidation against civil society weaken its resilience and its ability to play its role effectively. While most organizations explain that they have never (or only sporadically) adapted their strategic objectives, working methods or activities as a result of these pressures, they emphasize that this context can have psychological, emotional and safety consequences for workers that should not be underestimated. Coping mechanisms need to be put in place to support them. The full report of this research will be published in 2024.

FIRM-IFDH’s appointment as SLAPP focal point

In 2023, the Minister of Justice appointed FIRM-IFDH as ‘focal point’ under the EU Recommendation 2022/758. FIRM-IFDH also participates as an observer in the Belgian anti-SLAPP working group, that brings together (legal) practitioners, academics and others to discuss ongoing SLAPP developments. FIRM-IFDH is currently preparing to publish information regarding SLAPP on its website and will inform the public on what are SLAPPs and existing support and remedies.

The year was also marked by the use of emergency unilateral applications before several tribunals to limit public participation, in particular against journalists exposing political scandals and to evict undocumented migrants occupying public buildings, as denounced by the French-speaking Human Rights League.

Administrative and judicial prohibitions to participate in

demonstrations

As mentioned in ENNHRI's 2023 Rule of Law Report, the Minister of the Interior issued a circular in August 2022 clarifying that the municipal authorities have the competence to take preventive measures prohibiting a specific person from participating in a demonstration. The ban must be based on concrete indications that this person aims to disturb public order. In 2023, the government introduced in parliament a draft law allowing for a judicial demonstration ban for persons having committed certain offences in the context of a demonstration, in order to prevent disturbances.

FIRM-IFDH issued negative advisory opinions regarding both the administrative (by the municipal authority, as addressed by the aforementioned circular) and the proposed judicial demonstration bans. The necessity of such new instruments has not been demonstrated, taking into account the existing possibilities to prosecute offences committed during demonstrations and the chilling effect resulting from preventive restrictions on freedom of assembly. The circular clarifying the municipality competence to ban demonstration also lacks an adequate legal basis.

In January 2024, due to large mobilization of civil society and the opposition, the government withdrew the draft articles on the judicial demonstration ban.

New criminal offence of malicious attack on government authority

FIRM-IFDH issued an advisory opinion in the context of the reform of the Criminal Code, emphasizing the risks of incorporating a new criminal offence of malicious attack on government authority. It is considered that this offence, which also covers incitement not to comply with the law, would allow for disproportionate restrictions being imposed on the freedom of expression and demonstration, and could particularly be used to stifle calls for civil disobedience. The bill has been amended by the federal parliament, adding a condition that the perpetrator must be impairing the binding force of the law or the rights or authority of constitutional institutions and to be directly inducing failure to comply with a law. The list of grounds for prosecution has also been restricted, even if it remains too broad. Finally, the sanctions have been mitigated. The new Criminal Code, including this new offence, has been adopted by Parliament.

The new offence remains concerning from a human rights point of view, even if its impact has been somewhat reduced. The amended version represents some progress over the original text and makes it less likely to be applied to social protest or civil disobedience. However, the criticism that the offence adds little to the existing legal framework (because calls for violence etc. are already punishable, among other things) remains relevant.

Abuse of unilateral judicial proceedings to restrict human rights

In 2023, there has been a stark increase in unilateral applications to start judicial proceedings with negative consequences for the enjoyment of certain human rights. In those procedures, an application is brought forward under an emergency procedure and only the requesting party is heard before the judge issues his or her ruling. Such applications were notably used in labour law, in the context of several disputes between trade unions and several large retail chains. The employers made extensive use of unilateral emergency applications, which were – at least in part – favorably received by the courts and made it possible to prohibit certain strike-related actions. In 2011, however, Belgium was condemned by the European Committee of Social Rights for the abusive use of unilateral emergency applications to prohibit collective action (C.S.C., F.G.T.B. and C.G.L.S.B. v. Belgium, September 13, 2011). The European Committee found that the failure to summon both parties to the hearing was a violation of the right to a fair trial, and that their recurrent use showed the existence of a structural problem in Belgium.

FIRM-IFDH denounced the renewed use of unilateral applications to curtail human rights in an opinion published on May 23, 2023. The authorities have not yet reacted to put an end to this violation of fundamental rights. Some of these decisions have been overturned on appeal, with courts noting the abuse of the emergency unilateral procedure.

Online transphobic and hate speech on social media

IGVM-IEFH is concerned by the dissemination of transphobic and sexist hate speech online on social media and the extremely limited actions it can use against them. This content can be easily spread in a minimum amount of time and read by thousands of users. Sexist and transphobic hate speech in written form are almost never prosecuted, even when punishable.

As mentioned heretofore, these offences are considered press offences, as defined by Article 150 of the Constitution. The perpetrator of an offense that meets the elements of a press offense, not inspired by racism or xenophobia, often enjoys criminal immunity. Therefore, the Belgian legislator needs to amend the Constitution to treat discriminatory press offenses as lesser offenses that can be brought before an ordinary criminal court, regardless of the type of discriminatory motive behind them.

Budgetary restrictions for civil society

The place and role of civil society are undermined by strict policies in terms of budget allocation. Civil society must be able to play an independent role in informing policy-makers about its experience of human rights violations.

NHRI’s recommendations to national and regional

authorities

- Guarantee prisoners' right to complain to the full extent of the possibilities detailed in the Act of Principles, and implement it diligently by the prison administration.
- Amend article 150 of the Constitution in order to allow efficient prosecution of non-racist hate speech off- and online.
- Reform the legal framework applicable to access to official documents, in the following ways:
    - Simplify the legal framework by integrating the different legal bases into one unique act;
    - Broaden the duty to find and communicate certain information by public authorities;
    - Strengthen the appeal bodies existing to challenge refusal of access to documents by merging them into a single federal authority, giving it decision-making powers on top of its current advisory capacity, with increased resources. FIRM-IFDH also recommends that the decisions of this appeal body should be published online and that there should be a legal obligation to either consult or inform it of any draft legislative amendment relating to the publicity of the administration;
    - Finally, create an emergency procedure that allows for the speedy delivery of the requested documents if the facts of the case justified it to be urgently considered.

Belgium 2024

Information from: Federal Institute for the Protection and the Promotion of Human Rights (FIRM-IFDH); Unia (Interfederal Centre for Equal Opportunities and Opposition to Racism); Myria (Federal Centre for the analysis of migration flows, the protection of fundamental rights of foreigners and the fight against human trafficking); Combat Poverty, Insecurity and Social Exclusion Service; Central Monitoring Council for Prisons (CTRG-CCSP)

Securitisation's impact on the rule of law and human rights

Securitisation narratives and practices are a growing trend in Belgium, as in other European countries. 2023 was a particularly active year for legal

proposals aiming at improving public security, sometimes with a lack of concern for their human rights impact. Many of those changes were introduced as part of the Criminal Code reform, and others can be included within ongoing concerns regarding anti-terrorism legislation, police attitude towards minorities and internment of mentally disabled individuals.

1. Criminal Code reform

The new Criminal Code has introduced several new offences that could pose serious human rights issues. Three were highlighted in FIRM-IFDH's second advisory opinion to Parliament on the proposal for a new Criminal Code: expanding the definition of state secrets; the malicious attack on government authority; and glorification of terrorism. Both the expanded definition of state secrets and the malicious attack on government authority have been discussed heretofore but the new offence against glorification of terrorism has not.

Establishing a criminal offence against glorification of terrorism significantly extend the scope of terrorist offences, at the risk of having a disproportionate impact on freedom of expression, both directly – by prohibiting certain speech – and indirectly, through a chilling effect. Other human rights – such as the right to freedom of assembly, the right to work, right to free movement, the right to privacy – are also likely to be severely impacted, given the wide-reaching effects of terrorism offences on a large swath of domains. To enshrine the prohibition of glorification of terrorism is all the more objectionable given that Belgian law already contains an offence against direct and indirect incitement to commit terrorist acts. This new offence therefore logically prohibit non-inciting glorification. Furthermore, the penalties initially proposed were so severe that some terrorist offences could be punished less severely than the glorification thereof. For these reasons, FIRM-IFDH has urged the legislator not to criminalize that does not amount to incitement of terrorism. The proposal has been adopted at the end of February 2024. The adopted law amended the proposal to reduce the severity of the penalties and requiring an intent to create a risk of a terrorist offence.

The new Criminal Code also focuses on the importance of a more diversified range of sanctions and of the individualization of punishment. It recognizes the need to constructively address underlying problems that condemned persons face and that have contributed to the criminal behavior in specialized institutions outside prisons. The new Code involves both a new principal sentence called 'treatment under deprivation of liberty' and a new additional sentence called 'extended follow-up'. In an opinion on the preliminary draft bill, FIRM-IFDH identifies a number of issues with these new sentences, such as the absence of an appeal on the merits against decisions of the sentence application court and the absence of an expert opinion at certain stages of the procedure. Finally, FIRM-IFDH pointed out the risk of an endless accumulation of sentences, which could lead to possible human rights violations. Taking into

account the need for sufficient capacity in the care circuit outside prison to implement these new sentences and the already existing deficit, the entry into force of these new sentences will be postponed until January 1st, 2035 at the latest. This will further multiply the number of people and the diversity of profiles in secure care facilities.

2. Security measure for the protection of society

In addition, on February 22, 2024, the federal Parliament approved a draft law that introduces a new security measure for the protection of society. The measure has much in common with internment and is closely linked to it in terms of scope and implementation. It risks reproducing the problems identified by the ECtHR in the L.B. v. Belgium case: the deprivation of liberty of people with a disorder in prison-like institutions for an indefinite period of time, without any real plan of care. Unia is concerned since this new security measure legalizes the possibility of locking up for life people who do not suffer from a mental disorder that eliminates their ability to reason.

3. Common database related to Terrorism, Extremism and Radicalisation Process

The Government has also submitted to Parliament a bill on the "common Terrorism, Extremism and Radicalisation process database" (in which the data of entities involved in acts relating to terrorism, extremism and violent radicalism are recorded) and on the functioning of local security task forces (LTF). Both APD-GBA and FIRM-IFDH were asked to give an opinion on the draft law.

APD-GBA's advisory opinion focused on data processing carried out by authorities outside the remit of the Supervisory Body for Police Information (COC) and the Standing Intelligence Agencies Review Committee (Committee I). With regard to the arrangements for access by certain authorities to the data they need to carry out their duties, the legislator has to require technological solutions to comply with the standards protecting fundamental freedoms and not to legalize access to unnecessary data in order to adapt to the operation of an existing technological solution.

APD-GBA made several additional observations, concerning:

- the foreseeability of certain provisions (e.g. with regard to the capacity in which a mayor is likely to be the recipient of personal data covered by the draft);
- the fact that the new legal framework should cover not just one database, but all the processing operations provided for in the draft; and
- the shortcomings in demonstrating that a measure is necessary and proportionate (e.g. with regard to the recording of data on the

biological or adopted children of a terrorist fighter, aged between 0 and 18, with a view to "ensuring follow-up", or with regard to the mere mention of tragic events to justify increased interference).

APD-GBA has also indicated that it welcomes the legislative framework for LTFs.

FIRM-IFDH also noted that the draft law would be an improvement compared with the current situation because it would provide a proper legal basis for the common database. FIRM-IFDH also raised concerns regarding the database's impact on human rights. First, the database would include individuals based on speech which is neither criminalized nor an incitement to terrorism, which is likely to pose a threat to freedom of expression. Second, the databank provides for insufficiently effective remedies for the individual which was the subject of the surveillance, even though both the Belgian Constitutional Court and the European Court of Justice (CJEU) have found important flaws in the right to effective remedies regarding the database. Lastly, there are a number of concerns regarding children's rights, including the registration of children as young as 12 years old in the database and the registration of children that are not suspected of being radicalized or extremists but have lived in an area controlled by jihadists in the past.

4. Violence by police officers

Police violence remains a concern. The OSCE Handbook on Democratic Policing stipulates that police forces should collect and analyze complaint data in order to identify and address the causes of police misconduct (§ 91). Yet statistical data on the number and nature of complaints filed still remains limited or unavailable. Cases of police misconduct remain underreported, and complaints made to other bodies are not included in figures published by the Standing Police Monitoring Committee. 'Institutional racism' in policing does receive increasing attention from Belgian press, civil society and certain political parties.

5. Internment

Contrary to the legislator's intentions with the Act of 5 May 2014 concerning internment (which had reduced the scope of the internment measure) and despite numerous convictions by the ECtHR, the number of internees is increasing year after year, especially in Flanders. Since 2019, the number of new internment decisions has been higher than the number of final releases. Unia notes a lack of preventive measures and, in particular, a lack of accessible health care and treatment. In addition, the quality of forensic psychiatric expert testimony, which advises the judge on mental disorders, is inadequate due to a shortage of experts to conduct the examinations, and insufficient time allotted for the examinations.

The average daily population in prison has increased from 537 internees in 2019 to 891 in June 2023 (these figures were provided to Unia by the Justice Cabinet via the General Directorate on Prison Establishments in September 2023). A stay in prison damages their care trajectory, due to the lack of care and treatment focused on autonomy and reintegration (pp. 28-32). Despite the Minister of Justice's statement in 2020 (p. 26) that internees do not belong in prison, the number of available places in facilities or units for the protection of society within prisons has continued to increase in recent years, reaching 642 in 2023.

The presence of internees in prisons is a direct result of the ongoing shortage of places in placement facilities and regular sector facilities. Detention facilities are saturated and occupied by a public for which these facilities were not originally designed: a significant number of internees remain in facilities that do not meet their needs and profile, either in terms of care or security. In response, the Minister of Justice has increased the number of places in prisons and intensified care in these places, without prioritizing an increase in the number of places in ordinary care facilities.

NHRIs' actions to promote and protect human rights and rule of law in the context of national security and securitisation

Unia monitors the implementation of the UN Convention on the Rights of Persons with Disabilities. It fulfils this mission by submitting recommendations at the national level (on draft laws, on the reform of Book I of the Criminal Code, etc.), as well as at the international level, e.g. in the context of the Universal Periodic Review, the parallel report submitted to the UN Committee on the Rights of Persons with Disabilities during the evaluation of Belgium and the revised Belgian Action Plan. In October 2022 and June 2023, Unia formulated an advisory opinion on various proposals for legislative amendments in the context of the Criminal Code reform. From the perspective of the UN Convention, Unia regrets that the reforms introduce measures that are intrinsically linked to the presence of a mental disorder. Thus, they treat individuals differently based on the existence of a disability and are therefore discriminatory in nature. In addition, the measures respond to security objectives rather than the idea of equal treatment within the criminal justice system. This intrinsic link with mental disorder was reflected during the parliamentary debates concerning the Criminal Code reform (for example, p. 4) This policy is not in line with the United Nations Committee's guidelines on Article 14 of the UN Convention (freedom and security of the person). These guidelines strongly emphasize that the principle of the UN Convention prohibits any deprivation of liberty based on an actual or perceived disability, even if the disability is accompanied by another justifiable reason, such as posing a danger to society or the existence of a care need. The new Criminal Code

introduces new punishments and security measures based on the person's mental condition which therefore constitute a discrimination.

In July 2023, Unia, in a joint Rule 9 communication with FIRM-IFDH and CTRG-CCSP, responded to the Belgian Action Plan to the Council of Europe's Committee of Ministers (which is responsible for the follow-up of judgements before the ECtHR) in the cases L.B. and W.D. v. Belgium. The Committee of Ministers largely followed Unia, CTRG-CCSP and FIRM-IFDH's conclusions, finding that Belgium was not making sufficient progress in relation to care facilities for interned people residing in Belgian prisons. The Committee asked its secretariat to draft an interim resolution to be adopted in December 2024 if no tangible progress has been made by then.

In December 2023, Unia published a report on the reintegration of internees, containing 66 recommendations to the competent authorities, after having interviewed 91 internees and 113 professionals between 2021 and 2023. The report states that the fundamental rights of internees are not respected due to several systemic failures. In particular, their rights to care and full participation in society are violated in several areas.

FIRM-IFDH also voiced its concerns about the impact of securitization on human rights in a number of advisory opinions issued in 2023. In addition to the above-mentioned opinions on the reform of the Criminal Code and common database on terrorism, FIRM-IFDH worked on OPCAT ratification with a view to creating a National Prevention Mechanism in Belgium. FIRM-IFDH's recommendations on securitization and human rights have also been the subject of advocacy, including through the dissemination of briefing notes and its 2024 elections memorandum and meetings with political parties, relevant ministerial cabinets and civil society.

NHRIs' recommendations to national and regional authorities

- Given their indeterminate duration, both internment and the new security measure introduced by the Criminal Code reform fail to meet the principles of legality and proportionality. These measures should be made time-limited.
- Since many internees are placed in places where they are deprived of their liberty (at best in a placement facility, at worst in a prison), the availability of places in ordinary care facilities must be increased so that each internee is placed in a facility that matches his or her actual risk profile and care needs. The challenge is to ensure a smooth care pathway for all concerned and to strike a balance between occupancy and availability.
- Under the current conditions, a prison can in no way be considered a

place of care. It disrupts already fragile lives. It must be forbidden as a place of residence, even temporarily, for internees.

Belgium 2024

Information from: Federal Institute for the Protection and the Promotion of Human Rights (FIRM-IFDH); Unia (Interfederal Centre for Equal Opportunities and Opposition to Racism); Myria (Federal Centre for the analysis of migration flows, the protection of fundamental rights of foreigners and the fight against human trafficking); Combat Poverty, Insecurity and Social Exclusion Service; Central Monitoring Council for Prisons (CTRG-CCSP)

Implementation of European Courts' judgments

The ENNHRI 2023 Rule of Law Report laid its focus on the issue of non-implementation of European judgments - i.e. those handed down by the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (CJEU) and, to a lesser extent, the decisions by the European Committee of Social Rights (ECSR). This issue is particularly important in Belgium, which is currently facing a real crisis of the rule of law, due to the refusal of some governments – both the federal government and certain regional governments – to enforce court rulings finding a violation of human rights. Authorities condemned by a tribunal, or a court simply refuse to comply with the judicial decision. This problem concerns both European courts' decisions and judgments handed down by national courts in support of international and European law – including several thousand definitive rulings by courts and tribunals regarding asylum seekers' right to reception. The following section examines the (non-)implementation of a number of decisions handed down by the European Courts, as well as certain decisions rendered by Belgian courts concerning issues linked to European law.

This issue has become exacerbated in 2023, with statements by some members of the federal government announcing their explicit refusal to implement judicial decisions. Additionally, the implementation of most leading European judgments has seen little to no progress and several major issues have worsened, including prison overcrowding and lack of care for people in psychiatric wings of prisons.

The issue was raised by Justice Commissioner Didier Reynders during the parliamentary hearing on December 5, 2023, as well as by leading civil society organizations and independent public institutions including FIRM-IFDH, Myria and several others. Yet, no concrete steps have been taken by the government or Parliament to address the non-implementation of judgments, despite apparent recognition of the problem by those same authorities. Generally, non-implementation of judgments, especially key leading ones, has been rising for several years in Europe, as found by the Legal and Human Rights Committee of the Council of Europe's Parliamentary Assembly in its 8th, 10th and 11th report on the implementation of judgments issued by the ECtHR.

1. European Court of Human Rights' judgments

Bell – excessive length of proceedings

Despite some efforts by authorities, no progress can be attested with respect to the problem of excessive length of judicial proceedings. A study conducted by the College of Courts and Tribunals to assess the needs in terms of staffing of the Courts and Tribunals was published on February 20, 2024. One of its main findings shows that a 43% increase in the number of magistrates is required just to allow the judges and prosecutors to deal with the amount of cases in a timely manner. Additional hires are likely required in order to deal with the massive case backlog. Efforts by the College to produce accurate statistics on the length of judicial proceeding are ongoing but have yet to produce adequate measurement of the length of proceedings before first instance tribunals. In the meantime, a severe judicial backlog persists in some courts with cases being scheduled up to 2040. Other tribunals are furthermore at risk of closing due to a lack of judges.

Measures taken by authorities to reduce the length of investigations and prosecution include the "immediate penal transaction" mechanism. This mechanism enables police officers to offer a person suspected of having committed an offence to pay a penal transaction. The payment is made through the police officer by means of a payment terminal, a QR code via mobile phone or a bank transfer within 15 days. FIRM-IFDH found that the mechanism lacked a legal basis, challenged the principle of separation of powers, and threatened the rights of individuals.

Furthermore, there remains a lack of adequate statistical data on the redress procedure against excessive length of proceedings, which is based on the general non-contractual responsibility regime. This procedure enables a litigant to claim compensation when he or she has experienced a judicial procedure that exceeded a reasonable delay. Redress procedures to complain about the excessive length of judicial proceedings should be treated with special diligence by the authorities as, by definition, they follow an already too long

procedure. On September 5, 2023, the ECtHR condemned Belgium for the excessive length of the redress procedure for excessive length of proceedings (Van den Kerkhof v. Belgium). For these reasons, FIRM-IFDH considers it necessary for the Belgian State to provide statistical data on the domestic redress procedure against excessive length of judicial proceedings.

Camara – reception of asylum seekers

More than 6 months after the ECtHR's Camara judgment, court rulings ordering accommodation and assistance to asylum seekers are still systematically not enforced by Belgian authorities. The Council of State's judgment of September 13, 2023 ordering the suspension of the 'instruction' of the State Secretary on Asylum and Migration to exclude isolated men from the asylum reception system and prioritise the reception of women and families, is not enforced either. On December 19, the State Secretary confirmed that the illegal practice remains in place, despite Belgian authorities having been convicted up to 8595 times by labour courts. This results in a humanitarian crisis, with scores of people, especially men, living in dire circumstances deprived of shelter and exposed to serious health risks. In January 2024, 3055 persons were registered on the waiting list to get a place in a reception facility. Moreover, the Belgian authorities continue to refuse to pay the penalties ordered by the labour courts for non-compliance with court judgments (currently amounting to 35 million euro). On February 2, 2024, the Brussels Court of Appeal allowed several civil society organizations to seize up to 2,9 million euros on the Federal Agency for the Reception of Asylum Seekers's accounts due to unpaid penalty payments. Secretary of State on Asylum and Migration, Nicole de Moor, publicly announced that Fedasil would contest the decision.

Vasilescu – prison overcrowding

In 2023, the Council of Europe's Committee of Ministers again highlighted the structural problem of prison overcrowding and the lack of effective domestic remedies to complain about the resulting human rights violations. The Committee noted the authorities' commitment to implement various initiatives, such as organizing stakeholders' consultation or improving detainees' right to complaint, to remedy the situation and announced it would resume reviewing the situation in December 2024.

It is essential to take, in the very short term, necessary measures to reduce prison overcrowding so that at least one bed is available for each prisoner. Then prison overcrowding should be reduced to a level that does not exceed the capacity of each prison.

L.B. and W.D. – internment in prison psychiatric wings

The L.B. and W.D. group of cases is discussed in the section on securitisation. Given the ongoing increase of internees in prison, in 2023, the Committee

reiterated that the structural problem of internment concerns the prolonged holding of internees in prison psychiatric wings without appropriate therapeutic supervision, which affects the effectiveness of the preventive remedy, due to a lack of suitable places in care facilities outside the penitentiary system and of qualified staff in prisons. As with Vasilescu, the Committee decided to resume consideration of this follow-up by December 2024 at the latest.

2. Court of Justice of the EU

El Dridi – Prison sentence for illegal residence

In ENNHRI's 2023 Rule of Law Report, Myria noted that that there were still concerns about the non-implementation of the CJEU case-law subjecting to certain conditions the imposition of prison sentences for illegal residence. Non-execution of these decisions has continued in 2023. It took more than 12 years after the CJEU El Dridi judgment for the Court of cassation to render a judgment correctly applying EU case-law. A recent bill takes this case law into account in cases of illegal residence on the territory. However, it also provides for a prison sentence for illegal residence if the person has already been subjected to a detention measure or a less coercive measure that ended before the person could be removed from the national territory (pp. 89-90). This seems to contravene the CJEU case-law, which requires that the detention or coercive measure must have reached the end of its maximum term as opposed to only having been initiated.

Order of Flemish Bar Associations – cooperation in the field of taxation

On December 8, 2022, the CJEU answered a preliminary ruling request from the Belgian Constitutional Court regarding the case Order of Flemish Bar Associations v. the Flemish Government. The case revolved around the obligation for attorneys to notify other intermediaries, as stipulated in the Flemish Decree of 21 June 2013, which transposed Council Directive 2011/16/EU on administrative cooperation in the field of taxation. The CJEU determined that this obligation encroached on legal professional privilege, was unwarranted and contravened the fundamental right to uphold confidentiality in lawyer-client communications.

Consequently, on July 23, 2023, the Belgian Constitutional Court annulled key provisions of the decree. Attorneys were relieved from the obligation to inform non-client intermediaries and allows them to maintain legal professional privilege when reporting on specific tax constructions. However, in the Constitutional Court's ruling, there are unresolved issues pending answers from the Court of Justice of the EU. These pertain to the commencement and conclusion of the deadline for fulling the reporting obligation, the definition of the term "intermediary" which currently lacks clarity and the obligations and presumptions of aggressive tax planning. Further clarification from the CJEU is needed to comprehensively grasp the broader legal implications of the ruling.

Hakelbracht – protection against retaliation for discrimination complaints

Following the CJEU Hakelbracht judgment, the federal antidiscrimination law has been amended to ensure greater protection for witnesses and victims of discrimination. Consequently, the law reinforced the prohibition to adopt detrimental measures against a person due to the filing or the content of a report, complaint, or legal action for an alleged violation of anti-discrimination legislation. The prohibition was broadened to include witnesses of the discrimination and individuals that have provided advice, assistance, or support to this person, among others. Furthermore, the protection can now be invoked without de any specific formal conditions.

The author of a detrimental measure must pay financial compensation to the person against whom it was adopted. Additionally, if the retaliation was adopted within the context of employment and working conditions, the protected person may ask to be reinstated in his or her previous function instead of financial compensation. The law does not compel the employer to accept such request.

While the federal Parliament has now implemented the Hakelbracht judgment, modifications still need to be made to Regional and Community antidiscrimination legislation in order to fully comply with European case law. IGVM-IEFH underlines that it is particularly the case for the French Community, where the notion of a "complaint" – a condition to trigger the protection mechanism – is defined in a restrictive way.

3. Belgian Constitutional Court

The Belgian authorities failed to fully implement the Constitutional Court's 2017 judgment stating that foreign detainees without residence rights in Belgium should have equal access to measures of conditional release and preparation for social reintegration. They cannot be excluded on the basis of their residence status. In practice, many foreign detainees are excluded from these possibilities, as was observed by Myria and CTRG-CCSP during a 3-day visit of the prison of Tongeren in 2023.

NHRI's actions to support the implementation of European Courts' judgments

FIRM-IFDH, Unia, CTRG-CCSP, Myria and the Combat Poverty Service also stepped-up their efforts in 2023 to increase their participation to international rule of law mechanisms, including through several Rule 9 submissions. Those Rule 9 submissions were sent to the Council of Europe's Committee of Ministers regarding the execution of the Vasilescu (prison overcrowding, by CTRG-CCSP and FIRM-IFDH) and L.B. and W.D. (internment, by Unia, FIRM-IFDH and CTRG-CCSP) cases. FIRM-IFDH follows up on the Bell group of cases, regarding the

excessive length of judicial proceedings. In March 2023, FIRM-IFDH met with the Council of Europe's Department for the Execution of Judgments of the ECtHR to discuss the Bell case. While initially scheduled for December 2023, the evaluation of the case was postponed to June 2024. FIRM-IFDH will submit a new Rule 9 submission in anticipation of this evaluation.

CTRG-CCSP particularly highlighted prison overcrowding in its 2023 action plan. It held a colloquium on prison overcrowding, as well as on the problems directly linked to overcrowding and the various ways of remedying them in November 2023. At the same time, CTRG-CCSP paid particular attention to plans to build new establishments, including new prisons, presented by the Minister of Justice as small units likely to provide better conditions for those sentenced to less than 3 years.

FIRM-IFDH, Unia, IGVM-IEFH and the French-speaking Children Rights Commissioner (Délégué général aux droits de l'enfant) sent a simplified report to the European Committee on Social Rights regarding the execution of its decisions by the Belgian State. The report particularly noted that Belgian authorities had made little to no progress in any of the five convictions examined in the report.

Finally, several public human rights institutions, including Myria and FIRM-IFDH, have repeatedly called on public authorities to act regarding the reception crisis, in particular stressing the risks to the rule of law. FIRM-IFDH held a symposium with Unia, Myria, CTRG-CCSP and the Combat Poverty Service in December 2023 for the 75th anniversary of the Universal Declaration of Human Rights which focused on the impact of the asylum reception crisis on the rule of law and the situation of internees.

NHRI's recommendations to national and regional authorities

L.B.

- Analyze the reasons for the sharp increase in the number of people in psychiatric institutions (from 537 in 2019 to 886 in 2023).
- Transfer people currently in psychiatric institutions to appropriate care facilities, giving priority to the ordinary care facilities.
- Avoid forensic psychiatric centers becoming the dominant model and being used to the detriment of extending (or maintaining) ordinary care provision (in more open residential structures).

Bell

- Commit to providing sufficient staff and resources to courts and tribunals. Additional resources should be allocated to help clear the

backlog of particularly affected courts and tribunals. These resources should not be conditional on performance standards decided by the executive in order to avoid threatening the independence of the judiciary.
- The Commission should request data on disposition time. The data should account for the disparities between judicial districts and include all Belgian judicial jurisdictions and provide specific data on redress procedures for excessive length of proceedings.

Vasilescu

- Implement the Council of Europe's recommendations on prison overcrowding without further delay. These include giving priority to reducing the prison population rather than increasing capacity; reducing the use and duration of pre-trial detention to a strict minimum and ensuring that each person incarcerated has a minimum living space both in individual cells and in collective cells. This latest recommendation should be completed with the royal decree of 3 February 2019, which provides for a minimum space of 10m² for an individual cell and 12 m² for a two-person cells. These minimums must be respected.

Camara

- Enforce all judgments condemning the State. Provide asylum seekers with the reception their dignity entitles them to.

Belgium 2024

Information from: Federal Institute for the Protection and the Promotion of Human Rights (FIRM-IFDH); Unia (Interfederal Centre for Equal Opportunities and Opposition to Racism); Myria (Federal Centre for the analysis of migration flows, the protection of fundamental rights of foreigners and the fight against human trafficking); Combat Poverty, Insecurity and Social Exclusion Service; Central Monitoring Council for Prisons (CTRG-CCSP)

Other challenges to the rule of law and human rights

Artificial intelligence and transparency

FIRM-IFDH reiterates its findings with respect to the opacity regarding the uses of artificial intelligence by public authorities. While some authorities are reportedly using the technology, they do not have an obligation to divulge the use of those systems, their functioning and how they are used. This creates an accountability gap which prevents the assessment of potential human rights violations. FIRM-IFDH and Unia have both recommended the creation a public register of authorities' uses of artificial intelligence.

Unia is also concerned about the impact of the use of technology on media freedom, and legal systems without sufficient safeguards are a cause for concern. It is currently impossible to measure/monitor well the extent to which AI systems (i.e. content moderation and curation) negatively impact media freedom. In addition, given the lack of transparency in the use of AI in the public sector, Unia has difficulty in accurately assessing the extent to which the government is already using AI in the judiciary and acting accordingly. As part of its new strategic plan, Unia wants to pay particular attention to the polarizing effects of AI and other emerging technologies. The Belgian newspaper Le Soir reported on December 11 that Amazon automatically recommends books that deny climate science, criticize women's rights, and generally push a far-right agenda. For example, a search for "covid" returns 80% of denialist literature. As part of its mandate to deal with complaints and self-referrals, Unia is currently considering how to address the social impact of this recommendation system, possibly through a legal clinic with the University of Leuven.

Threats and violence against journalists

Belgian journalists have been confronted with increased violence in recent years, as highlighted in surveys, studies and parliamentary discussions. In June 2023, the French-speaking (AJP) and Flemish (VVJ) professional Journalists' Associations published their third study 'Portrait of Belgian journalists' surveying almost 1400 journalists on a variety of subjects, including threats and violence they had experienced. 55,8% of journalists reported having been confronted with transgressive behaviours, including verbal violence (41,3%), threats and intimidation (29,2%), sexually transgressive behaviours (7,1%) and physical violence.

The picture gets considerably darker when distributed by gender: 64,1% of female journalists reported having been targeted by transgressive behaviours, compared with 51,4% of male journalists. The difference is mainly due to much more prevalent forms of sexual transgressive behaviours (18,6 % of female journalists, compared to 1,2% of male journalists), discrimination (14,8% of female journalists compared to 4,4% of male journalists). Physical violence also appears to have a gendered component: twice as many men were victims (6,6 % to 3,2% for women). Concerns over increasing online intimidation against female journalists, especially those of color, arise as well, as illustrated

by other studies and highlighted in FIRM-IFDH's 2023 contribution to the European Commission stakeholders' consultation on the rule of law.

This situation is particularly problematic given that there are significantly more male than female journalists : 2/3 of journalists in Belgium are male, a noticeable difference with comparable countries such as France (45% of female journalists) or Italy (42%). The gender imbalance considerably worsens for older journalists : women constitute slightly more than half (51,7%) of journalists under 35 years old, this drops precipitously for next age category (35-44) with 35,7% to 64,3%. Only 22,6% of journalists over 55 are female. The median age for a journalist in Belgium is 46 years old. This drop does not seem to be only – or principally – attributed to past exclusions of female journalists, since there are slightly more female journalists in the 45-54 age bracket than in the 35-44 one. The threats and experiences of violence and the difficulty to combine journalism with a family life – in a society where women still undertake the lion share of household and child-rearing tasks – are likely to be contributing factors.

Journalists are currently not included in the (former) Criminal Code among those professionals performing a societal function – e.g. medical professionals, police officers – against whom violence may lead to harsher sentences. The new Criminal Code has added journalists to that list of professions (future art. 79). Following the adoption of the Criminal Code, murder (future art. 103 bis), incitement to suicide (future art. 109 and 110), torture (future art. 115/1), inhumane treatment (future art. 122/1) and violence (future art. 189) against a journalist will be more severely punished than against a person not exercising such a societal function. Because there is currently no specific qualification of facts for violence against journalists within the police nomenclature, the General National Database does not include at present information on the number of registered complaints.

In addition, Belgium's transposition of the GDPR regarding the processing of personal data for journalistic purposes (art. 85 GDPR) has been criticised by the legal doctrine. Belgium opted for a strict definition of the notion of journalist, which is now contrary to the case law of the CJEU (Buivids v. Datu valsts inspeckcjia). Under Belgian law, only persons who are subject to "journalistic ethics" (déontologie/deontologische regels) are allowed to invoke the exemptions provided for journalists by the GDPR. However, the CJEU has a broader definition which encompasses – for example – citizen journalists as well.

NHRI's recommendations to national and regional authorities

Public registry on AI uses by public authorities

Create a registry of AI uses by public authorities, describing the AI and how it is used by public authorities. It should also include information on the AI learning capacity, as well as information on the datasets used to train it.

Systematic notification of AI use to assist individual decision-making processes by public authorities

Systematically notify individuals when they use AI to assist decision-making processes for individual decisions, in order to increase transparency and allow individuals to request additional human oversight.

Protection of journalists

Facilitate data collection on the number of complaints regarding violence against journalists in the police's General National Database; Include specific measures to fight all types of on- and offline violence against female journalists in national action plans, paying special attention to intersectional vulnerabilities. Currently, the 2021-2025 National Action Plan against Gender Violence identifies female journalists as particularly vulnerable to cyberviolence, but does not include specific measures.

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