LIBERTIES RULE OF LAW REPORT 2024

BELGIUM

#ROLREPORT2024

LIGUE DES DROITS HUMAINS

FOREWORD

This country report is part of the Liberties Rule of Law Report 2024, which is the fifth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden, as well as a contributing partner organisation in Latvia.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2024 report was drafted by Liberties and its member and partner organizations, and it covers the situation during 2023. It is a 'shadow report' to the European Commission's annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties' report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2024 report includes 19 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Thirty-seven member and partner organisations and one independent human rights expert contributed to the compilation of these country reports.

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BELGIUM

About the authors

League of Human Rights

For over a hundred years, the Ligue des Droits Humains (LDH) (League of Human Rights) has fought injustices and infringements of fundamental rights in Belgium. LDH educates the public on the status of basic human rights (including institutional violence, access to justice, respect for minorities, women's rights), challenges the political powers on issues concerning human rights, trains adults in their awareness of human rights issues and the law, and brings issues regarding the development of educational tools and training to the attention of education stakeholders. Born in 1901, the League of Human Rights is a non-profit, independent, pluralistic and interdisciplinary organization. It is a movement in which everyone acts with concern and respect for the dignity of all. LDH works on subjects such as youth, prisoners' rights, migrant and refugees' situation and rights, access to justice, economic, social and cultural rights, psychiatric patients' rights, equal opportunities, privacy and diversity. LDH is also a member of the International Federation for Human of Human Rights (FIDH), a non-governmental organization with 192 leagues worldwide.

Key concerns

Generally in 2023, the persistent failure by the executive to respect validly rendered judicial decisions led to a stark situation in the field and was sanctioned by the ECtHR in its 18 July 2023 *Camara v. Belgium* decision. The refusal to comply with court decisions is a very worrisome issue of non-respect for a fundamental element of the rule of law. Regarding the European Commission's recommendations from the past rule of law report, although (small) steps have been taken to implement the Commission's recommendation to "provide adequate human and financial resources for the justice system", the gap is too wide: the justice system is severely under financed and the effort to enhance society's trust in the good faith of the authorities should be much greater.

In reference to the anti-corruption framework, the adoption of new whistleblower protection legislation and the preparation of new legislation regarding transparency of public documents is a sign of progress. However, both cases are hindered by limitations. In reference to the Commission's recommendations in this area, the "efforts to strengthen the framework for access to official documents" are not satisfactory, as competent bodies on administrative transparency don't yet have the ability to issue binding decisions and there are initiatives to unduly extend the restrictions to administrative transparency.

When it comes to media environment and media freedom, the judicial decision in the Rousseau case is a serious backlash for protection of journalists. This is part of a relatively favourable climate in Belgium, because courts on the whole tend to guarantee protection for journalists against SLAPPs. However, there is no mechanism under Belgian law whereby unmeritorious or SLAPP cases can be dismissed at an early procedural stage. LDH is unsure of how developments in this area relate to the European Commission's recommendations.

Regarding checks and balances, the Belgian State has yet to amend the law to guarantee access to police files in accordance with the ECJ decision. It should also secure that all National Human Rights Institutions comply with the Paris Principles. Finally, it should drop the draft bill limiting prerogatives of the Central Prison Supervisory Board. It is unclear how these developments reflect on the recommendations of the Commission.

Regarding civic space, the fact that a large number of human rights defenders are reporting that they are subject to some forms of attacks and intimidation is concerning. But above all, the fact that Belgian authorities plan to introduce in the Penal Code a new offence of "maliciously undermining the authority of the State" is a clear regression. It is unclear the extent to which these developments relate to the Commission's recommendations.

State of play (versus 2023)

- (No progress) Justice system
- (Progress) Anti-corruption framework
- (Regression) Media environment and freedom of expression and of information
- (No progress) Checks and balances
- (Regression) Enabling framework for civil society
- **N/A** Systemic human rights issues

Legend

Regression	No progress	Progress
↓	–	↑

Justice system

Key recommendations

- *In 2023, the failure by the executive to respect validly rendered judicial decisions led to a stark situation on the field and was sanctioned by an ECtHR severe decision. The refusal to comply with court decisions is a very worrisome issue of non-respect of a fundamental element of the rule of law. The Belgian State should always respect court decisions, even (and above all) those that are unfavourable to it.*

- *The length of proceedings is particularly long in Belgium, which is a cause for concern and subject to multiple condemnations both by international (ECtHR) and national courts. The lack of resources allocated to the justice system being the main reason, it is necessary to provide for massive investment in the judicial sector and give the judiciary control over the management of its budget. The Belgian State should also massively invest in judicial staff to cut down the dramatic backlog of cases in all jurisdictions, with a special attention to the Brussels situation.*

- *The draft bill introducing a security check or screening for magistrates and judicial staff should be dropped. If a screening of magistrates is set up, it should be done by an independent body emanating from the Judiciary (such as the High Council of the Judiciary, for example) and not from the executive, to protect the separation of powers and the rule of law principles.*

Judicial independence

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

At an undetermined date, the Minister of Justice drafted a preliminary draft law ("*avant-projet de loi*") with the aim of introducing a security check or screening of magistrates and judicial staff.[1] This screening would be done by secret security services. This project was heavily criticized by organisations representing the magistrates. The High Council of the Judiciary ("*Conseil Supérieur de la Justice*")

1 M. Benayad, Les magistrats bientôt soumis à un screening pour lutter contre les tentatives de corruption?, La Libre, 5 April 2023.

issued a very critical report about the draft bill,[2] stating that, “The preliminary draft runs counter to the principle of the separation of powers because of the risk of interference by the executive in the operation of the judiciary”, and that, “The preliminary draft raises serious questions about its compatibility with Article 6 §1 of the European Convention of Human Rights.” Faced with opposition, the Minister of Justice amended the draft bill, but unconvincingly, as the High Council of Justice reiterated its opposition despite the modifications that were made.[3] The League of Human Rights is of the opinion that this draft bill should be dropped. If a screening of magistrates is set up, it should be done by an independent body emanating from the judiciary (such as the High Council of the Judiciary, for example) and not from the executive, to protect the separation of powers and the rule of law principles.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Access to justice is a fundamental principle of the rule of law. Yet, it remains complicated in Belgium, despite the fact that the Constitution expressly states that everyone has the right to legal aid, and that the legislature cannot infringe this right.[4] A new worrying trend in this regard developed recently in Belgium: the increased use of unilateral applications (“*requêtes unilatérales*”). A unilateral application allows legal action to be brought in urgent matters or where there is no identified adversary.[5] Unilateral applications are therefore possible for very specific and uncommon procedures, and are subject to strict conditions. It should consequently remain relatively rare. The League of Human Rights has observed a trend in recent months of the use of unilateral applications, particularly in housing matters which can lead to the eviction of inhabitants,[6] and in labour law related disputes. The Delhaize case is the most recent and emblematic: last spring, the company’s management filed a unilateral application with the courts to obtain

2 Conseil Supérieur de la Justice, Avis - Avant-projet de loi introduisant une vérification de sécurité au sein de l’ordre judiciaire et de l’administration pénitentiaire, Approuvé par l’Assemblée générale du Conseil supérieur de la Justice 18 October 2023.

3 Conseil Supérieur de la Justice, Avant-projet de loi introduisant une vérification de sécurité au sein de l’ordre judiciaire et de l’administration pénitentiaire, 20 October 2023.

4 Plateforme Justice pour tous, Mémorandum à destination des Présidentes et Présidents de partis, 17 July 2023; Liberties Rule of Law Report 2022, p. 50.

5 Art. 584 of the Judicial Code.

6 Ligue des droits humains, La LDH dénonce le recours abusif aux requêtes unilatérales: on ne juge pas une affaire sans en entendre les deux parties, 15 November 2023.

a ban on picketing during a strike in Delhaize shops and depots in the region.[7] The ban was imposed by an order of the Brussels Court of First Instance and, even more worryingly, applied in the entire country. In this context, the Federal Institute for Human Rights, an independent public institution established and funded by Parliament, pointed out that "the unilateral application procedure undermines the protection of the right to strike and the right to take collective action."[8]

For its part, the Council of Europe's European Committee of Social Rights noted back in 2011 that unilateral applications were being misused to prohibit collective action in Belgium.[9] The League of Human Rights points out that abusive recourse to the unilateral procedure undermines several fundamental principles, such as the right of access to court, the right of defence and the right to a fair trial. Unilateral applications must remain the exception rather than the rule, and this requires a serious examination of their admissibility by the courts, especially when fundamental rights are at stake, such as the right to housing and the right to strike. Faced with these problematic interpretations by some courts, Belgian authorities should clarify the legislation and reaffirm the exceptional nature of this procedure.

There is also a blind spot in terms of access to justice in penal cases regarding procedural compensation ("*indemnités de procedure*"). This procedural indemnity is a lump-sum payment that must be paid to the successful party.[10] It hinders access to justice in some cases, such as complaints for police violence that are dismissed by the courts due to a systemic problem in this area.[11] Judges should enjoy more freedom in determining the amount of the procedural fees imposed on defendants and should therefore be able to set procedural costs outside the confines of the amount in dispute, in order to limit one of the obstacles to access to justice.[12] In addition, there is no reason why public authorities should be immune from paying these indemnities when they are unsuccessful: they should also be able to be ordered

7 J.F. Noulet, Conflit social chez Delhaize, recours à la justice et aux huissiers : que dit le droit?, RTBF, 12 April 2023.

8 Institut fédéral des Droits humains, Les procédures sur requête unilatérale portent atteinte au droit de grève, 23 May 2023.

9 European Committee of Social Rights, Confédération Européenne des Syndicats (CES)/Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/Confédération des Syndicats chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) c. Belgique, Réclamation n° 59/2009, Rapport au Comité des Ministres, Strasbourg, 16 September 2011.

10 Art. 1022 of the Judicial code.

11 On this issue, see Liberties Rule of Law Report 2022, pp. 75-77; S. Simon and M. Lambert, Violences policières: pour des mécanismes de plainte accessibles, efficaces et indépendants, Rapport Police Watch, April 2022.

12 Regarding the issue of the shortcomings of access to justice in Belgium, see the work of the 'Plateforme Justice pour tous'.

to pay these indemnities where appropriate. It's a question of equality of the parties.[13]

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

At an undetermined date, the Minister of Justice drafted a preliminary draft law ("*avant-projet de loi*") with the aim to introduce a general legal framework for the use of videoconference in civil and criminal matters. It is intended to be applied to all legal proceedings and to all courts of the judicial system. Both the High Council for the Judiciary and the Federal Institute for Human Rights issued reports stating that it is positive that the legislature wishes to provide a legal framework for the use of videoconferencing in order to respect the principle of legality.

However, the preliminary draft itself gave rise to serious objections, both in principle and in practice. For instance, the guarantees of a fair trial set out in the European Convention for Human Rights are insufficient, especially in penal cases.[14] The guarantees of a fair trial require the State to provide the necessary resources to ensure that hearings are open to the public and that litigants and the public have access to the courts, including persons who have to be transferred, the elderly or persons with disabilities. This applies to both external mobility (public transport) and internal mobility (ramps, equipment, etc.). Furthermore, as noted by the High Council for the Judiciary,

> *"According to the case law of the ECHR, the right to a fair trial (Art. 6 ECHR) includes in particular the right to access to the judge and to public hearings and, consequently, the right to participate effectively in the trial, which presupposes the existence, at a given stage of the proceedings, of a right to participate physically in the trial and thus, to be present in the courtroom. Hearings by videoconference are therefore possible, but not at every stage of the proceedings or throughout the proceedings"*.[15]

Another critical point is the possibility to prevent an individual from physically appearing if there is a serious and concrete risk to public safety, without defining this concept of public safety in the draft bill, raising concerns it could lead to a ban on physical participation in the trial for certain kinds of defendants.[16]

13 S. Benkhelifa et D. Tatti, 'Indemnité de procédure à charge de Ia partie civile : quand la procédure pénale compromet le respect des droits fondamentaux', Journal des Tribunaux, 21 October 2023, n° 6955, p. 573.

14 Conseil Supérieur de la Justice, Avis sur l'avant-projet de loi portant organisation des audiences par vidéoconférence dans le cadre des procédures judiciaires, 16 March 2023.

15 Ibid., p. 4.

16 Institut fédéral des Droits humains, Avant-Projet de loi portant organisation des audiences par vidéoconférence dans le cadre des procédures judiciaires, Avis n° 3/2023, 31 January 2023.

The right of access to a judge must be concrete and effective, not theoretical or illusory. It is therefore necessary to create conditions that enable all courts to dispense justice in a humane manner and within a reasonable time. In certain areas, particularly criminal law, the right to appear in person is a fundamental right recognised by the Constitutional Court.[17] The accused should therefore always be able to appear in person, assisted by his or her lawyer, unless he or she expressly waives this right. The use of videoconferencing poses a number of difficulties[18] and does not appear to be an acceptable alternative to holding hearings. Furthermore, the use of videoconferencing does not guarantee the public nature of hearings, which is an essential democratic guarantee protected by the Constitution and raises a number of data protection issues. In conclusion, because of the infringement of the right to a fair trial and the unresolved data protection issues, the use of videoconferencing should be prohibited in courtrooms, except in strictly defined exceptional cases and never in contradiction with the right to a fair trial.

Fairness and efficiency of the justice system

Length of proceedings

The available data show that the length of proceedings is particularly long, which is a cause for concern. This phenomenon is not recent, Belgium has already been condemned several times by the ECtHR for violation of the right to be tried within a reasonable time.[19] In September 2023, the ECHR once again severely condemned the Belgian authorities in its *Van den Kerkhof v. Belgium* decision.[20] In this instance, the case was lodged in 2015 and is due to be decided on appeal in 2026. Domestic courts have also condemned the Belgian State for the same reasons: the Ligue des familles, an NGO defending rights of parents and families, has brought an action for liability against the Belgian State because of the extent of the judicial backlog affecting Belgian courts. It led to a decision by the Brussels Civil Court ordering the Belgian State to publish all vacant positions in order to comply with the legal framework for

17 C.C., Judgment n° 76/2018, 21 June 2018.

18 It also raises concerns about the loss of quality of the remote hearing. Replacing a plea hearing with a remote hearing means abandoning human justice and introducing biases into the orality of the debate that pervert its effectiveness. See Council of State, Judgments n° 254.655 and 254.656 of 3 October 2022.

19 In the case of Bell vs. Belgium, the European Court of Human Rights condemned Belgium for the excessive length of civil proceedings in Belgium (ECHR, *Bell v. Belgium*, 4 November 2008, 44826/05). As noted by the Federal Institute for Human Rights in July 2022, this condemnation was handed down in 2008 and has not yet been implemented (Institut fédéral pour les droits humains, Communication au Comité des ministres du Conseil de l'Europe concernant l'affaire Bell c. Belgique, 29 juillet 2022). See Comité des Ministres, Résolution intérimaire CM/ResDH(2021)103 – Exécution de l'arrêt de la Cour européenne des Droits de l'Homme: Bell contre la Belgique, 9 June 2021, 1406e réunion des Délégués des Ministres.

20 ECHR, Van den Kerkhof vs. Belgium, 5 September 2023.

magistrates, court clerks and other administrative staff.[21]

The situation is so dramatic that the press reported that some cases have been postponed until 2040.[22] The lack of resources allocated to the justice system is one of the main reasons for the length of proceedings: resources allocated to the judiciary do not guarantee its independence. The only constitutional and consistent power against the executive is the judiciary. However, successive federal governments have considerably weakened it, which constitutes a danger for democracy as a whole. As the European Commission states, "the lack of human and financial resources remains a challenge for the judicial system".[23]

Finally, it should be noted that the Flemish Minister of Justice, followed by her political party, have announced their intention to de-federalise the judiciary during the next parliamentary term after the following general elections if they enter the federal government.[24] In view of the catastrophic situation described above, this position seems to be the last of the priorities and could even have a negative impact on the overall situation. Furthermore, if this were to be seriously considered, the legislature could not under any circumstances do without an impact analysis in terms of respect for human rights. In conclusion, the Belgian State should invest massively in judicial staff in order to reduce the dramatic backlog of cases in all jurisdictions, with particular attention to the situation in Brussels.

Execution of judgments

The past legislature has seen the accentuation of a particularly worrying trend in Belgium, that of the failure of the political authorities to respect court rulings, and even assume the fact that it does not respect them. Indeed, non-compliance with validly rendered judicial decisions has reached levels never before seen in the country. This is a very worrying failure to respect a fundamental element of the rule of law. One example is the catastrophic situation of the reception policy for asylum seekers, which led to a wave of hundreds of applications to the European Court of Human Rights,

21 L. Wauters, 'Arriéré au tribunal de la famille: l'Etat belge condamné', Le Soir, 19 December 2023; Ligue des Familles, Arriéré judiciaire au Tribunal de la Famille et de la Cour d'appel : l'État belge condamné en justice, 19 December 2023.

22 J.F. Noulet, L. Van de Berg and T. Denis, "Ce dossier fiscal attendra 2040 pour être plaidé devant la cour d'appel de Bruxelles: 'Je ne serai sans doute plus avocat'", RTBF, 13 December 2023.

23 Commission européenne, Rapport 2022 sur l'Etat de droit – Chapitre consacré à la situation de l'état de droit en Belgique, Luxembourg, 13 July 2022, SWD (2022) 501 final, p. 4.

24 A. Rochtus and S. Sottiaux, De defederalisering van justitie Een rechtsvergelijkende en rechtspolitieke studie, Larcier Intersentia, 2023 ; X. Van Gils, La délicate question de la régionalisation de la justice, La Tribune, n° 211; Belga, La Justice sera-t-elle bientôt défédéralisée? La N-VA veut entamer les discussions, Le Vif, 14 September 2023

ultimately resulting in a severe condemnation of the Belgian State in this area.[25] The Court criticised the fact that the Belgian authorities had not "simply" delayed but had manifestly refused to comply with the injunctions of the domestic courts.[26] Indeed, Belgium had also previously been condemned more than 7,000 times by its own courts. Despite this, the fines were not paid and the vast majority of those concerned remained on the streets.

An internal court ruling on 7 June 2022 called into question the government's "deliberate, concerted and persistent practice" of not granting accommodation rights to asylum seekers.[27] This behaviour, repeated hundreds of times, compromised the administration of justice to the extent that the court accused the executive of organising "the destabilisation of a jurisdiction of the judiciary".[28] In a joint note with Myria, the Federal Migration Centre, the Federal Ombudsman, the Delegates general for children's rights and the Federal Institute for the Protection and Promotion of Human Rights sounded the alarm on the crisis of the reception of asylum seekers.

They declared that "the situation regarding the reception of asylum seekers is extremely worrying (...). The law and the rule of law are being flouted".[29] In this case, the Belgian State is clearly violating its obligation and its attitude is in flagrant contradiction with one of the basic concepts of the rule of law. It is all the more worrying because this attitude is repeated, assumed and risks spreading among the organs of the state: indeed, despite the suspension by the Council of State of her decision to no longer provide reception places for single men,[30] the Secretary of State for migration has publicly and forthrightly declared that she will not abide by the decision of the highest administrative court.[31] Consequently, it is absolutely fundamental and extremely urgent that the Belgian State complies with all valid decisions handed down by the judiciary, even (especially) when they are unfavourable.

25 ECHR, *Camara v. Belgique*, 18 July 2023. See Institut fédéral des Droits humains, Crise de l'accueil : la Belgique viole le droit à un procès équitable, 18th June 2023.

26 Institut fédéral des Droits humains, Les condamnations en suspens pour l'État belge affaiblissent l'État de droit, 13 June 2023

27 A. François, Un tribunal bruxellois soupçonne Sammy Mahdi de violer sciemment le droit à l'accueil, VRT, 14 June 2022.

28 G. Derclaye and M. Biermé, Chaos migratoire: Fedasil condamnée pour procédures "abusives", Le Soir, 28 October 2022; J.F. Noulet and M. Joris, Explosion des requêtes unilatérales à l'encontre de Fedasil : le Tribunal du travail est débordé et critique Fedasil, RTBF, 25 May 2022.

29 Institut fédéral des Droits humains, Recommandations pour résoudre la crise de l'accueil, 21 December 2022.

30 C.E., Judgment n° 257.300 of 13 September 2023.

31 U. Santkin, Crise de l'accueil : malgré le camouflet du Conseil d'Etat, de Moor maintient le cap, Le Soir, 13 September 2023.

Anti-corruption framework

Key recommendations

- *Belgian authorities should grant to all state bodies responsible for the transparency of public administration the competence to issue binding decisions (at federal, regional and community levels). It should also not extend unduly the restrictions already in place to administrative transparency.*
- *Belgian authorities should rationalize the particularly complex system that has been set up in the field of whistleblowers protection, for example, by delegating this competence to a single authority.*

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

At present, various administrative authorities are excluded from the scope of application of certain provisions of the Act of 11 April 1994 on the publicity of the administration,[32] thereby exempting them from the obligations of transparency as well as from appropriate means of appeal. This law must be amended so that all administrative entities are subject to it, including multi-municipal police forces, ministerial offices and certain institutions and agencies created by the public authorities.[33] A Commission for access to administrative documents (Commission d'accès aux documents administratifs – CADA), an administrative authority charged with examining the authorities' refusals to grant access to documents, merely issues opinions which does not make it possible to ensure the effectiveness of the right of access to administrative documents conferred by article 32 of the Constitution.[34] At the federal level, as at other levels, the CADA must be able

32 M.B. 30 June 1994.

33 Avis de la Ligue des Droits Humains et de la Liga voor mensenrechten sur la proposition de loi du 6 avril 2021 modifiant la loi relative à la publicité de l'administration du 11 avril 1994 afin d'introduire une plus grande transparence dans l'usage des algorithmes par les administrations.

34 There is a possibility to contest an administrative decision not to grant access to public information in front of the Council of State. But it means that the applicant must file another legal action, with additional costs and delays, providing that he or she is still within the legal time limit for bringing such an action.

to issue binding decisions.[35] Therefore, Belgian authorities should grant to all competent bodies on administrative transparency the ability to issue binding decisions (at federal and non-federal levels). It should also not extend unduly the restrictions to administrative transparency.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

Appropriate whistleblowers protection and support regime is very important for a society where transparency and democratic accountability are essential and everyone's human rights are protected. The federal Parliament passed two laws, one for the private sector[36] and the other for the federal public sector,[37] which will now provide better protection for whistleblowers. It is undeniably a positive evolution for whistleblower protection.

However, it is regrettable that the system set up by the Belgian authorities is particularly complex, as a lot of different bodies are competent to deal with this issue. Indeed, under this legislation, the Federal Institute for the Protection and Promotion of Human Rights is responsible, among other responsibilities, for providing independent information and advice, as well as support measures for whistleblowers in legal proceedings.[38]

The Belgian Data Protection Authority (Autorité de protection des données) has been designated as the competent authority to receive alerts under the Act of 28 November 2022 on the protection of individuals who report violations of Union or national law observed within a legal entity in the private sector.[39] The Act of 8 December 2022 designated the Standing Police Monitoring Committee (Comité permanent de contrôle des services de police) as an external reporting channel, responsible for receiving

35 In September 2022, the Federal Institute for the Protection and Promotion of Human Rights also called for the federal CADA to be given effective decision-making powers. IFDH opinion n° 10/2022 of 16 September 2022. Various civil society associations, including the LDH, were heard by the Chamber on 23 May 2023 concerning the draft law amending the law of 11 April 1994 on the publicity of the administration and repealing the law of 12 November 1997 on the publicity of the administration in the provinces and communes (DOC 55 3217/001). See https://www.liguedh.be/six-propositions-pour-une-veritable-transparence-administrative-au/

36 Loi du 28 novembre 2022 sur la protection des personnes qui signalent des violations au droit de l'Union ou au droit national constatées au sein d'une entité juridique du secteur privé, M.B. 15 December 2022.

37 Loi du 8 décembre 2022 relative aux canaux de signalement et à la protection des auteurs de signalement d'atteintes à l'intégrité dans les organismes du secteur public fédéral et au sein de la police intégrée, M.B. 23 December 2022.

38 See https://institutfederaldroitshumains.be/fr/la-legislation-en-matiere-dalerte-et-le-soutien-aux-lanceurs-dalerte

39 Royal Decree of 22 January 2023 designating the competent authorities for the implementation of the Act of 28 November 2022, M.B. 31 January 2023.

and following up reports of breaches of integrity within the police, the Coordinating Body for Threat Analysis (OCAM) or the General Inspectorate of the Federal and Local Police (AIG).[40]

Finally, ombudsmen at different level of power (Federal, Regional and Community levels) deal with whistleblowers' reports of breaches of integrity and violations of the law in a professional context.[41] While we can only welcome the positive legislative developments in this area, we can also regret the particularly complex system that has been set up, which risks undermining the effectiveness of the mechanism.

Media environment and media freedom

Key recommendations

- *The decision in the Rousseau case is highly problematic and should lead the legislative power to pass a law reaffirming the prohibition of censorship and that a news article cannot be censored a priori, but only be subject to a posteriori liability claims.*
- *Belgian law should provide for a mechanism allowing the dismissal of unmeritorious or SLAPP cases at an early procedural stage.*

Pluralism and concentration

Levels of market concentration

The media landscape of Belgium is overall positively assessed, and the EU Commission Rule of Law Report did not make specific recommendations to Belgium in this regard. However, the issue of pluralism and concentration is worth mentioning, as according to the Media Pluralism Monitor (MPM), it is an ongoing issue which slightly worsened since 2023. The issue identified by the MPM is the small and concentrated media markets in BE.[42] As stated by the Resolution 1003 of the Council of Europe, "News organisations must consider themselves as special socio-economic agencies whose entrepreneurial objectives have

40 See https://comitep.be/breaches-of-integrity.html

41 See https://www.federaalombudsman.be/fr/lanceurs-alerte

42 See P. Valcke and E. Wauters, Monitoring media pluralism in the digital era, Belgium, June 2023. See also J.J. Jespers, Concentrations, pluralisme et liberté d'expression, La Chronique de la Ligue des droits humains, n° 198, March 2022, pp. 12-14.

to be limited by the conditions for providing access to a fundamental right",[43] namely the public's right to information. It is up to both the media and the public authorities to ensure that limiting journalistic pluralism does not have a negative impact on journalistic ethics and the public's right to information. The concentration of media markets in Belgium cannot, in any case, lead to a reduction of media pluralism and the freedom of the press.

Safety and protection of journalists and other media actors

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

After making racist remarks about Roma people at a party in Saint-Nicolas, Conner Rousseau, then chairman of the Vooruit party (central left), obtained a court order to prevent the police report of the incident from being published in the press.[44] The judge ruled in favour of Conner Rousseau on grounds of privacy and rights of defence. Such a measure is incompatible with the ban on censorship in Belgium. Indeed, Article 25 of the Constitution states that "Censorship can never be established". Despite this provision and a clear and long-standing position in case law and legal doctrine,[45] the President of the Court of First Instance in Dendermonde imposed a broadcasting ban on DPG Media, subject to a fine of €1,000 per hour of broadcasting and extending the ban to all media. This decision is outrageous[46] and should lead the legislative power to pass a law reaffirming the fact that censorship is forbidden and that a news article cannot be censored a priori, but only be subject to a posteriori liability claims. This is part of a relatively favourable climate in Belgium, because courts tend on the whole to guarantee protection for journalists against SLAPPs. However, as noted by Article 19, "Civil as well as criminal law provisions are used to bring SLAPP cases against journalists. In some cases, claimants can request a summary proceeding (injunction) to have a court order to prevent the broadcasting of a report, stop the distribution of a book or magazine, or have

43 Parliamentary Assembly of the Council of Europe, Resolution 1003, Ethics of journalism, 1993 - 44th Session - Sixth part, pt. 11.

44 B. Henne, Belgique : la censure de la presse est établie, RTBF, 27 October 2023.

45 ECHR, *RTBF v. Belgium*, 29 March 2011 ; B. Frydman et C. Bricteux, 'L'arrêt RTBF c. Belgique : un coup d'arrêt au contrôle judiciaire préventif de la presse et des médias', *Revue trimestrielle des droits de l'homme*, 2013, n° 94, pp. 331-350 ; Q. Van Enis, "Observations. Ingérences préventives et presse audiovisuelle : la Belgique condamnée, au nom de la 'loi'", *Revue de jurisprudence de Liège*, *Mons et Bruxelles*, 2011/26, p. 1270.

46 See A. Adam, L'affaire Conner Rousseau et l'interdiction de la censure, ou la fronde d'un juge, Justice-en-ligne, 6 December 2023;A. Noppe, La liberté de la presse en danger en Belgique? "Le jugement dans l'affaire Conner Rousseau est choquant", La Libre, 27 October 2023; B. Debusschere, Conner Rousseau heeft een onrustwekkend gebrek aan respect voor de grondwet en voor de persvrijheid, De Morgen, 2 October 2023.

online content removed from the Internet".[47] As there is no mechanism under Belgian law whereby unmeritorious or SLAPP cases can be dismissed at an early procedural stage, the Belgian legislature should provide for such a mechanism.

Checks and balances

Key recommendations

- ***The draft bill limiting the prerogatives of the Central Prison Supervisory Board (CCSP) should be withdrawn and authorities should not erode the right of complaint of prisoners.***
- ***Belgian authorities should follow the Court of Justice of the European Union's decision by amending the law of 30 July 2018, so that the right of access to police files is fully respected and the limitations finally comply with the European directive.***
- ***Belgian authorities should make sure that all human rights monitoring bodies comply with the Paris Principles, especially the more dysfunctional ones (Data Protection Authority, Standing Police Monitoring Committee, Police Information Monitoring Body).***

Independent authorities

The last parliamentary term saw the emergence of a new central player in the fight for respect for human rights through the creation of a Federal Institute for the Protection and Promotion of Human Rights ("*Institut Fédéral pour les Droits Humains*"), following the adoption of the law of 12 May 2019.[48] This is an undeniably welcome development, given that the international bodies monitoring respect for fundamental rights have long been urging the Belgian State to respect its commitments in accordance with the Principles relating to the status and functioning of national institutions for the protection and promotion of human rights (known as the Paris Principles). Although the Institute exists today, it still needs to be given the financial, human and legal resources it needs to carry out its tasks, as highlighted by the EU Commission.[49] For example, it could be given the role of coordinating or monitoring other institutions

47 Article 19, SLAPPs against journalists across Europe - Media Freedom Rapid Response, March 2022, p. 35.

48 Loi du 12 mai 2019 portant création d'un Institut fédéral pour la protection et la promotion des droits humains, M.B. 21 June 2019.

49 See Commission Européenne, Rapport 2023 sur l'état de droit - Chapitre consacré à la situation de l'état de droit en Belgique, Bruxelles, 5 juillet 2023, SWD(2023) 801 final, p. 27. See also Ligue des Droits Humains, Chiens de garde de la démocratie: mordants ou non?, Chronique n° 196, September 2021.

that protect and promote human rights. Such coordination work would make it possible to guarantee a consistent quality of work at the highest levels from these various bodies, in particular the most dysfunctional and/or criticised amongst them (Data Protection Authority, Standing Police Monitoring Committee, Police Information Monitoring Body etc.).[50] The aim is to ensure that these bodies are able to function properly, particularly in terms of their independence, working methods, human rights expertise etc.

Similarly, in order to avoid a proliferation of competing regional or local bodies, the Institute's remit should be extended to include the monitoring of federated entities.[51] There is currently a centrifugal tendency in terms of human rights protection, which aims in particular to create a series of human rights monitoring bodies at community level, to the detriment of the federal level. For example, UNIA is a well-established monitoring institution that fights discrimination and promotes equality.[52] In 2022, the Flemish government took the decision to withdraw from this inter-federal body and to create its own regional monitoring institution, the VRMI.[53] Such a trend is open to criticism[54] and cannot be justified in view of the indivisible and non-geographically variable nature of human rights. In conclusion, the federal government should provide the IFDH with the financial, human and legal resources it needs to carry out its work. It should also make sure that all human rights monitoring bodies comply with the Paris Principles, especially the more dysfunctional ones. Regarding deprivation of liberty, the supervisory body responsible for exercising the surveillance over the deprivation of liberty in prisons, the Central Prison Supervisory Board (*Conseil central de surveillance pénitentiaire – CCSP*), is seeing its prerogatives threatened.

Following a number of critical reports issued by the CCSP on the catastrophic state of Belgium's prisons and prison policies, the government seems to have chosen the path of retaliation by seeking to limit the CCSP's means of action.[55] The Minister of Justice has

50 Regarding the lack of independence and malfunctioning of these bodies, see Liberties Rule of Law Report 2023, pp. 18-22

51 Or, failing that, a cooperation agreement with the various federated entities should be adopted. See Commission Européenne, Rapport 2023 sur l'état de droit - Chapitre consacré à la situation de l'état de droit en Belgique, Bruxelles, 5 juillet 2023, SWD(2023) 801 final, pp. 26-27.

52 See https://www.unia.be/en

53 Vlaamse decreet van 28 oktober 2022 tot oprichting van een Vlaams Mensenrechteninstituut, M.B. 9 November 2022

54 UNIA, Départ de la Flandre : le personnel d'Unia prend la parole, 14 March 2022.

55 Conseil central de surveillance pénitentiaire, Communication du CCSP sur le projet de loi portant modification de la loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique du détenu, 31 August 2023.

tabled a draft bill that would both restrict the supervisory role of this body and erode the right of complaint recently opened to prisoners.[56] In addition to the fact that this step backwards is unacceptable, it is also contrary to Belgium's international commitments.[57]

Therefore, it is imperative that the draft bill limiting the prerogatives of the CCSP be withdrawn.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

On 16 November 2023, the Court of Justice of the European Union handed down a major ruling on access to police data in Belgium.[58] It was responding to a preliminary question from the Brussels Court of Appeal, which was seeking to ascertain whether citizens can access police databases where they are registered in accordance with European law. The answer is very clear: Belgium is making an exception to the rule, contrary to the European directive. In the Court's view, the general rule is that citizens should have the right of direct access to these police databases, and the right to appeal to the supervisory authority if this right is restricted. Therefore, Belgian law does not comply with EU law because it does not grant individuals the right to access police databases in which they are registered and does not provide an appeal process when this access is denied. This decision follows a case in 2016, when a person was refused security clearance that he was required to obtain for a job. He was on file for his participation in ten demonstrations, during which he was never prosecuted or arrested. His details appeared in the National Police Data Bank (Banque Nationale Générale – BNG), in which more than three million Belgian residents are registered.[59] This person wanted to assert his right to access the police databases to find out exactly which demonstrations justified his registration and to check that he had actually taken part in them.

This right to access the information that the police hold in their files is fundamental, as the

56 On the issue of prisoners' right to complain, see, among others L. Teper, Le droit de plainte des détenu.e.s : retour sur un an de pratique, Ligue des Droits Humains, État des droits humains en Belgique – Rapport 2021, 26 January 2022, p. 33.

57 Secrétariat du Comité des Ministres, Communication de la Belgique concernant l'affaire BAMOUHAMMAD c. Belgique (requête n° 47687/13), 23 November 2022, DH-DD(2022)1289.

58 EUCJ, Ligue des droits humains ASBL and B.A. vs. Organe de contrôle de l'information policière, 16 November 2023, Case C-333/22.

59 Indeed, Belgian law provides that police forces can register individuals in its database when there is a "concrete interest" for their missions. Which leads to a massive treatment of personal data by police forces. It can therefore include people who commit an illegal act or even peaceful protesters, if the police considers that there is a legitimate interest. See O. Bailly, BNG, la Base Non Gérée, Médor, 14 April 2021.

processing/use of this data by the police can have far-reaching consequences for the people on file. The League of Human Rights therefore intervened in this case in 2016.[60] Belgian authorities now have the obligation to follow the Court's decision by amending the law of 30 July 2018[61] so that the right of access is fully respected and the limitations finally comply with the European directive.[62] As stated by the Court, "where the rights of a data subject have been exercised…through the competent supervisory authority and that authority informs that data subject of the result of the verifications carried out, that data subject must have an effective judicial remedy against the decision of that authority to close the verification process".[63]

Implementation by the public administration and State institutions of final court decisions

The Secretary of State for Asylum and Migration announced at the end of August 2023 that single male asylum seekers would no longer be temporarily accommodated in the network of the Federal agency for the reception of asylum seekers (Fedasil). NGOs decided to file an administrative complaint against this decision, and the Council of State took the decision to suspend the implementation of the Secretary's decision to no longer offer reception to single male asylum seekers.[64] The Council of State considered that this decision did not respect the right to reception conferred on all asylum seekers by the law of 12 January 2007.[65] Despite this decision, the Secretary of State declared that she has no intention of changing course and that she would not respect the Council of State's decision: "The suspension by the Council of State does not mean that we

60 See LDH, Accès aux bases de données policières : la Cour de justice de l'Union européenne pousse la Belgique à réformer sa loi, 20 November 2023.

61 Loi du 30 juillet 2018 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel, M.B. 5 September 2018.

62 Article 17 of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

63 EUCJ, Ligue des droits humains ASBL and B.A. vs. Organe de contrôle de l'information policière, 16 November 2023, Case C-333/22, pt. 73.

64 C.E., Judgment n° 257.300, 13 September 2023.

65 Loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers, M.B. 7 May 2007.

suddenly have places for everyone. So my policy will not change[…]".[66] This decision, from a central figure of the federal government and with the full support of the Prime Minister, is outrageous and in flagrant contradiction with the core principles of the rule of law.[67]

Consequently, it is absolutely fundamental and extremely urgent that the Belgian State complies with all valid decisions handed down by the judiciary, even (and especially) when they are unfavourable.

Civic space

Key recommendations

- *Belgian authorities should imperatively withdraw the draft bill introducing in the Penal Code a new offence of "maliciously undermining the authority of the State".*
- *Strictly respect the ECJ jurisprudence in the "data retention" case by forbidding blanket surveillance of citizens and by limiting exceptions to the strictly necessary cases, providing sufficient safeguards are put in place.*
- *Belgian authorities should guarantee that human rights defenders are not subject to any forms of attacks and intimidation and, when it is the case, make sure that such cases are investigated efficiently and the perpetrators are held to account.*

Freedom of peaceful assembly

Bans on the use of symbols/slogans in protests

The League of Human Rights has received several converging accounts about the Brussels police ordering people carrying a Palestinian flag in the street to conceal it. The argument put forward by the police was "the neutrality of public space" - a police innovation that is particularly concerning for civil liberties.[68] The simple fact of carrying a national flag is covered by freedom of expression and does not in itself

66 Belga, Asile: le Conseil d'État suspend le refus d'accueillir des hommes seuls, L'Echo, 13 September 2023; U. Santkin, Crise de l'accueil : malgré le camouflet du Conseil d'Etat, de Moor maintient le cap, Le Soir, 13 September 2023.

67 J.J. Schmidt, Migrance et crise de l'accueil : Jean-Marc Picard, sans langue de bois, La Tribune, n° 239.

68 See also E. Boever, Drapeaux palestiniens ou israéliens aux fenêtres, en rue ou au stade : est-ce permis?, RTBF, 17 November 2023.

constitute a threat to public order or an incitement to violence or hatred that could justify a ban. The League has therefore written to the Brussels mayor to find out whether there is any instruction from (or relayed by) the commune or police area to this effect and, if so, what the unlikely legal basis is. This letter remains unanswered to this day. Whatever one's position on the situation in Israel, Gaza and the West Bank, limiting the freedom of expression of protesters and passers-by is not acceptable.

Criminalisation of protesters

Activists from the environmental organisation Greenpeace, who broke into the gas terminal of Fluxys, a Belgium-based company, mainly acting as a natural gas transmission system operator, in Zeebrugge on 29 April 2023 to protest against its contribution to greenhouse gas emissions, were found guilty of "intrusion in a port facility" by a criminal court in Bruges, but with the sentence suspended.[69] No sentence was therefore handed down.[70] The NGO expressed its relief for the activists, but is also "concerned about the increasing criminalisation of activism".[71] As Greenpeace itself puts it,

> *"the fact that these people have been found guilty puts pressure on the right to freedom of expression and the right to demonstrate. This verdict could discourage activists, at a time when actions of civil disobedience are more than necessary, in the midst of the climate and biodiversity crisis".*[72]

The risk of producing a chilling effect is indeed manifest. Furthermore, the government issued a draft bill with the aim of introducing to the Penal Code a new offence of "maliciously undermining the authority of the State" (atteinte méchante à l'autorité de l'État), including incitement to disobey a law. This provision is very worrying and should not be included in the Penal Code. As stated by the IFDH,[73] civil disobedience is protected by freedom of expression and can only be restricted in very specific cases. Penalties already exist for these specific cases (for example, incitement to hatred or violence), so the offence of maliciously undermining the authority of the State would not add any value.

69 This conviction is based on art. 546/1 and 546/2 of the Penal Code, namely "intrusion in a port facility". M. De Muelenaere, Quatorze activistes de Greenpeace condamnés après une action de désobéissance civile, Le Soir, 15 November 2023.

70 The "suspension du prononcé", means that the judge considers that the charges have been established, but suspends sentencing for a specified period of time. See art. 3 to 7 of the Loi, 29 June 1964 concernant la suspension, le sursis et la probation, M.B. 17 July 1964.

71 A. Collard, Activistes jugé·es coupables mais aucune peine prononcée : "Un soulagement, sur fond de préoccupation pour l'avenir du droit de protester", Greenpeace, 15 November 2023.

72 Ibid.

73 Institut fédéral pour les droits humains, Projet de loi introduisant le Livre II du Code pénal, Avis n° 12/2023, 5 October 2023, pp. 9-14

There is also a risk that this offence could be used to punish less serious acts such as calls for civil disobedience, which could lead to the criminalisation of certain forms of social protest. In conclusion, the LDH calls on Belgian authorities to withdraw this draft bill.

Surveillance of protests

On 13 June 2023, a coalition of Brussels-based human rights associations[74] appeared before the Brussels Parliament to call on MPs to take a stand against the use of facial recognition in Brussels.[75] This technology is not legal in Belgium, but tests have already been carried out by the federal police on several occasions. Moreover, there are no technical obstacles to its use in Brussels. This biometric surveillance technology threatens everyone's fundamental rights and freedoms. The risks associated with this technology are well known:[76] the use of facial recognition hinders the right to anonymity in the public space,[77] the right to demonstrate and the freedom of assembly, leading to a "chilling effect". This technology also reinforces existing discrimination, for example against communities already more widely targeted by police controls. Finally, the risks of leaks and piracy of highly sensitive personal data such as that collected by facial recognition are far from non-existent, especially in Brussels, capital of the European Union, headquarters of NATO and many other institutions.

The coalition asks the Brussels Parliament to adopt a resolution banning the use of facial recognition in the streets of Brussels. It also calls on the Parliament, under the supervision of the competent bodies, to honour its commitments and ensure greater transparency on these surveillance practices.[78]

Attacks and harassment

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

Alexis Deswaef, a lawyer and former President of the League of Human Rights, was summoned to appear before the Brussels Criminal

74 See https://www.protectmyface.be/.

75 See LDH, Plusieurs associations s'invitent au Parlement bruxellois pour revendiquer l'interdiction de la reconnaissance faciale, 12 June 2023.

76 See European Digital Rights, Ban Biometric Mass Surveillance - A set of fundamental rights demands for the European Commission and EU Member States, 13 May 2020.

77 The right to anonymity in the public space has no legal basis per se, but derives from the right to privacy.

78 See Parlement de la Région de Bruxelles-Capitale, Examen de la pétition contre l'usage de la reconnaissance faciale en Région de Bruxelles-Capitale, Rapport fait au nom de la commission des Affaires intérieures par M. Hicham TALHI, 13 June 2023, A-719/1 – 2022/2023.

Court as part of an appeal procedure initiated after his initial acquittal in 2021.[79] The case was brought by a police commissioner for the Brussels Capital-Ixelles area, who accused Alexis Deswaef, now vice-president of the International Federation for Human Rights (FIDH), of harassment and insult between 2008 and 2016. The charges were based on comments made by Alexis Deswaef in the media and on social networks in his capacity as a lawyer and as President of the LDH. His critical views of the police and of the divisional commissioner in charge of managing the demonstrations in Brussels fell within the scope of freedom of expression, which guarantees an independence that is essential to the defence of human rights and the fight against police violence. Commissioner Vandersmissen first lodged a complaint against Alexis Deswaef in 2016. After a detailed examination and an in-depth investigation, the prosecutor dismissed the complaint in 2019. The commissioner then took the initiative of summoning Alexis Deswaef to appear before the Brussels criminal court using a special procedure known as 'direct summons'. On 15 July 2021, the Brussels Criminal Court acquitted Alexis Deswaef. As for the charges of contempt, the court ruled clearly that the comments made fell within the scope of freedom of expression. Commissioner Vandersmissen has decided to appeal against this ruling. Incomprehensibly, this time he was followed by the public prosecutor.

This procedure[80] is a perfect illustration of the democratic problem of SLAPPs, abusive procedures aimed at silencing or intimidating human rights defenders. The country's police authorities and the public prosecutor's office send out the wrong signal with this judicial relentlessness against a human rights defender. Belgian authorities should refrain from persecuting legitimate human rights defenders.

Other

The Federal Institute for Human Rights (IFDH) conducted a survey of over 150 human rights organisations in Belgium. The findings show that half of the human rights organisations surveyed have been subjected to attacks and intimidation. Nearly one in seven say they censor themselves in response to pressure.[81] Among the most striking findings of the

79 See LDH, Suite du procès pour harcèlement et outrages contre Alexis Deswaef : l'ancien président de la LDH jugé en appel à Bruxelles, 28 November 2023; M. Benayad, Procès du policier Pierre Vandersmissen contre l'avocat Alexis Deswaef : la cour d'appel tranchera le 12 janvier, La Libre, 30 November 2023, Belga, Le procès en appel du commissaire Pierre Vandersmissen contre l'avocat Alexis Deswaef plaidé ce jeudi, RTBF, 28 November 2023.

80 The final judgment was delivered in 2024. https://www.liguedh.be/alexis-deswaef-acquitte-dans-le-proces-que-lui-a-intente-le-commissaire-de-police-vandermissen/

81 Institut fédéral des Droits humains, Première enquête sur les pressions subies par les organisations de défense des droits humains en Belgique : plus de la moitié des organisations interrogées ont subi des intimidations et agressions, 5 December 2023.

survey, there is the fact that more than half of the human rights organisations questioned said that they had been attacked and intimidated at least once between 2020 and 2022. In the majority of cases, this involved legal intimidation (bringing or threatening to bring legal action without justification). More than one in five say they have been subjected to defamation campaigns, and nearly one in five have been hit at least once by a targeted cyber-attack.

Online civic space

Digital surveillance

In February 2023, the League of Human Rights lodged an appeal with the Constitutional Court against the Data Retention Act of 20 July 2022.[82] This is now the third time that the LDH has referred this "data retention" issue, which governs the retention of citizens' metadata, to the Constitutional Court. While the analysis of metadata can be a tool in the fight against serious crime, this third law on data retention establishes an imbalance between this security objective and the violations of our individual freedoms. With regard to the two previous versions of the Data Retention Act, the Constitutional Court and the Court of Justice of the European Union ruled that the massive retention of the metadata of all Belgian citizens constituted a violation of the right to privacy. The laws had therefore been annulled.[83] In June 2022, the Federal Parliament passed a third version of the Data Retention Act, introducing differentiated retention. From now on, data may only be retained in certain sensitive areas. The government has developed various geographical criteria, such as places with a high crime rate and crucial institutions (e.g. airports, railway stations, hospitals, schools, border municipalities, motorways, municipalities with military barracks, universities, etc.), resulting in virtually complete coverage of Belgian territory. In these regions where data is stored, every citizen is permanently considered a potential suspect. As a result, a huge amount of their data is stored and no fewer than 10 authorities have access to it.

The number of areas reported is so high that this leads to de facto general retention and once again ignores the observations of the Constitutional Court and the European Union Court of Justice. The League is therefore challenging this law before the Constitutional Court, because it does not respect the safeguards set out by the European Court of Justice in terms of privacy protection.[84] The fight against crime does not legitimise mass surveillance or the treatment of every individual as a potential suspect.

82 Loi du 20 juillet 2022 relative à la collecte et à la conservation des données d'identification et des métadonnées dans le secteur des communications électroniques et à la fourniture de ces données aux autorités, M.B. 8 August 2022.

83 See C.C., 11 June 2015, n° 84/2015; C.C., 22 April 2021, n° 57/2021. See also Liberties Rule of Law Report 2023, pp. 27-29.

84 See LDH, La Ligue des droits humains introduit un recours contre la loi "data retention" devant la Cour constitutionnelle, 9 February 2023.

Contacts

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League of Human Rights

For over a hundred years, the Ligue des Droits Humains (LDH, League of Human Rights) has combated injustices and infringements of fundamental rights in the French Community of Belgium. LDH works on subjects such as: youth, prisoners' rights, migrant and refugees situation and rights, access to justice, economic, social and cultural rights, psychiatric patient's rights, equal opportunities, privacy and diversity.

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The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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