

An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory

Belgium

2022

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1. Civic space developments in 2022

1.1. Non-respect of judicial decisions by the Executive power

Area	Access to justice
Topic	Capacity to represent collective interests
Impact	Major

In 2022, the Executive power in Belgium repeatedly disrespected judicial decisions. Three cases serve to illustrate this.

The first is the Trabelsi affair. In 2014, the European Court of Human Rights (ECtHR) found that Belgium's extradition of Mr. Trabelsi to the United States was done in violation of the European Convention on Human Rights.¹ Mr. Trabelsi was extradited even though he had already completed his sentence in Belgium, where he was convicted for the same facts that he may now be tried for in the United States. After the ECtHR's decision, Belgian Courts repeatedly handed down decisions calling on Belgium to respect its international obligations.² In 2022 alone, the Brussels Court of Appeal issued two decisions against the Belgian State.³ In the most recent decision, from September, the Court of Appeal ordered the Belgian State to inform the Belgian witnesses called to testify in the United States that by doing so they would contribute to the violation of double jeopardy. The Court also ordered to compensate Mr. Trabelsi for his years of detention in the United States, as well as for the permanent incapacity resulting from his extradition and to cover his medical expenses. Finally, it ordered the State to request

¹ European Court of Human Rights (ECtHR), *Trabelsi v. Belgium*, No. 140/10, 4 September 2014.

² Ligue des Droits Humains, [Affaire Trabelsi : une question de respect de l'État de droit](#), 29 September 2022 (last accessed 9 January 2023).

³ See e.g. RTL Info, [Appel Bruxelles - L'État belge à nouveau condamné dans l'affaire Nizar Trabelsi](#), 27 May 2022; Le Soir, [Affaire Nizar Trabelsi: l'Etat belge condamné par la justice belge de manière cinglante](#), 27 September 2022; RTBF, [La cour d'appel de Bruxelles enjoint l'État belge à rapatrier Nizar Trabelsi des Etats-Unis](#), 27 September 2022 (all links accessed on 9 January 2023).

the return of Trabelsi to Belgian territory.⁴ In view of the lack of action with regard to the previous judicial decisions, the Belgian Human Rights League (Ligue des Droits Humains) questions whether the Belgian State will implement these recent judgements.⁵

The second issue of concern involves the Walloon government and its arm deals with the Kingdom of Saudi Arabia. In 2021, the Belgian Council of State suspended the execution of four licences for the export of arms and defence-related equipment issued by the Walloon Region to Saudi Arabia. The Council of State considered that these licenses were not adequately motivated with regard to the clear risk that the military technology or equipment whose export is envisaged would be used for internal repression or to commit serious violations of international humanitarian law in the context of the conflict in Yemen.⁶ NGOs⁷ and academics⁸ echoed these concerns, yet new licences were granted to allow weapons from Wallonia to leave the Belgian territory for Saudi Arabia.⁹

Lastly, the third issue of relevance concerns the reception crisis. Due to the lack of capacity, hundreds of asylum seekers in Belgium are not being placed in a reception facility and thus end up on the streets.¹⁰ A group of human rights organisations came together to denounce this situation in December 2022, noting that the authorities (Fedasil and sometimes also the State of Belgium) were ordered by the labour court to

⁴ See Le Soir, [Affaire Nizar Trabelsi: l'Etat belge condamné par la justice belge de manière cinglante](#), 27 September 2022; RTBF, [La cour d'appel de Bruxelles enjoint l'État belge à rapatrier Nizar Trabelsi des Etats-Unis](#), 27 September 2022 (all links accessed on 9 January 2023).

⁵ Ligue des Droits Humains, [Affaire Trabelsi : une question de respect de l'État de droit](#), 29 September 2022 (last accessed 9 January 2023).

⁶ Conseil d'État, [Licences d'exportation d'armes et de matériel lié à la défense vers l'Arabie saoudite](#), 5 March 2021 (last accessed 9 January 2023).

⁷ See e.g. Amnesty International, [Exportation D'armes : La Wallonie Immorale](#) (last accessed 9 January 2023).

⁸ See e.g. Le Soir, [La Région wallonne doit rejeter les demandes d'exportations d'armes présentant un risque pour les droits humains](#), 1 July 2022 (last accessed 9 January 2023).

⁹ See Ligue des Droits Humains, [Armes wallonnes : les révélations choquantes de Médor démontrent l'absolue nécessité d'une transparence accrue](#), 2 September 2022; Médor, [Armes belges vers l'Arabie Saoudite : exporter coûte que coûte](#), 31 August 2022 (all links accessed 9 January 2023).

¹⁰ Ligue des Droits Humains, [Recommandations pour résoudre la crise de l'accueil](#), 21 December 2021 (last accessed 9 January 2023).

provide reception to asylum seekers thousands of times, being subjected to a penalty for each day accommodation is not provided. However, in practice, asylum seekers continue to wait for months after a court decision before being placed in a reception facility, if at all. In addition, the penalty payments imposed are not paid.¹¹ These organisations further noted that on 31 October and on 15 November 2022, the ECtHR ordered Belgium to provide a reception place for 149 asylum seekers.¹² Concerning these men, Belgium had already been convicted by the Brussels Labour Court to provide a reception place, but this had not changed their situation, which made them turn to the ECtHR.¹³

As a consequence of this lack of respect for judicial decisions, civil society organisations find themselves unable to represent collective interests efficiently, as judicial action may not yield results.

¹¹ Myria, [Le gouvernement fédéral en échec face à la crise de l'accueil : crise humanitaire et atteinte à l'Etat de droit](#), December 2022 (last accessed 9 January 2023).

¹² See ECtHR, [La Cour applique une mesure provisoire concernant un demandeur d'asile sans hébergement depuis son arrivée en Belgique](#), 2 November 2022; ECtHR, [La Cour applique une mesure provisoire concernant 148 demandeurs d'asile sans hébergement en Belgique](#), 16 November 2022 (all links accessed 9 January 2023).

¹³ Myria, [Le gouvernement fédéral en échec face à la crise de l'accueil : crise humanitaire et atteinte à l'Etat de droit](#), December 2022 (last accessed 9 January 2023).

1.2. Criminalisation of participation in roadblock during protest

Area	Freedom of peaceful assembly
Topic	Participation to assemblies
Impact	Major

Deciding body (in original language)	Cour de cassation de Belgique
Deciding body (in English)	Court of cassation of Belgium
Case number (also European Case Law Identifier ECLI, where applicable)	Arrêt N° P.21.1500.F ECLI:BE:CASS:2022:ARR.20220323.2F.4
Parties	<ol style="list-style-type: none"> 1. H.D., J.-Y., P., 2. L. M. D., J., A., 3. G. G., E., L., 4. R. E., J.-C., C., 5. N. H. N., 6. L. B. G., G., 7. L. S., 8. A. G., N., F., 9. Q. B., J.-M., 10. C. A., C., G., 11. D. F., J.-M., C., 12. G.B. S.-A., 13. C.F., 14. L. K., F., G., 15. F. A., 16. B. T., E., J.-M., 17. C. A.M., E.,

Decision date	23 March 2022
Web link to the decision (if available)	https://juportal.be/JUPORTAwork/ECLI:BE:CASS:2022:ARR.20220323.2F.4 FR.pdf
Key facts of the case also situating the fundamental rights dimension (max. 250 words)	On October 19, 2015, during a day of national strike, around 300 demonstrators blocked the Cheratte viaduct on the E40 motorway in Belgium. Because of these actions, 17 trade unionists, leaders and affiliates of the General Federation of Labour of Belgium (Fédération Générale du Travail de Belgique or FGTB) were convicted by the court of first instance. The Liège Court of Appeal upheld the decision and so they turned to the Court of Cassation (case at hand), which confirmed the decision of the Court of Appeal, making their conviction final. ¹⁴
The key legal question raised by the Court	Whether protestors could be criminally punished for a roadblock during a demonstration, even when the concerned protestors were not considered organisers of the demonstration nor were the ones who created the block.
Result of the case in terms of factual outcome, and in terms of assessment of the legal question raised	The Court of Cassation considered that the offence of malicious obstruction of road traffic is a continuous one, that is, the Court said that if the law prohibits the malicious obstruction of traffic, it is clear that the offence does not lie only in the construction of the obstacle but also in the blocking that this obstacle ensues, as long as it has not been lifted. Thus, the protestors could be found guilty due to their participation in the blockade, despite not having been the ones who blocked the road in the first place. The convicted protestors also claimed that their rights to freedom of expression and freedom of assembly had been violated by the conviction, but the Court of Cassation found that the prevention of accidents or dangers to traffic is a necessary objective in a democratic society, and that the repression of acts which seriously undermine it is not disproportionate with regard to the right to strike and freedoms of expression and association, since this right and these freedoms can be exercised in a way that does not disrespect criminal law.
Give interesting quotes where the Court deals with civic space	“Les demandeurs font valoir que leur condamnation constitue, par rapport aux droits et libertés consacrés par les articles 10 et 11 de la Convention de sauvegarde des droits de l’homme et des libertés fondamentales, une restriction non conforme au second paragraphe de chacun de ces articles. (...) Les juges d’appel ont considéré que la prévention des accidents ou des dangers pour la circulation est un objectif nécessaire dans une

¹⁴ See RTBF, [Blocage du viaduc de Cheratte et Cour de cassation : les pourvois des 17 militants de la FGTB condamnés rejetés](#), 4 April 2022 (last accessed 22 December 2022).

	société démocratique, et que la répression des actes qui y portent gravement atteinte n'est pas disproportionnée au regard du droit de grève et des libertés d'expression et d'association, dès lors que ce droit et ces libertés peuvent s'exercer sans prêter la main aux agissements décrits ci-dessus."
Give full English translation of these quotes	<p>"The plaintiffs argue that their conviction constitutes, in relation to the rights and freedoms enshrined in articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, a restriction not in accordance with the second paragraph of each of these articles. (...)</p> <p>The appeal judges considered that the prevention of accidents or dangers to traffic is a necessary objective in a democratic society, and that the repression of acts which seriously undermine it is not disproportionate with regard to the right to strike and freedoms of expression and association, since this right and these freedoms can be exercised without lending a hand to the actions described above."</p>
Provide your analysis of the legal and factual relevance of the judgment	<p>As Hannah Ghulam Farag notes in her analysis of the case in the Human Rights Magazine,¹⁵ before this case, conviction for roadblocks during protests had been limited to a person considered to be an organiser of the protest. In the current case, however, it was considered that everyone's individual, voluntary and conscious presence on the blockade and their failure to dismantle it functioned as encouragement, and so they were considered essential for the roadblock to stand and indicated an intention to cooperate to it being maintained, which justified their conviction. According to Farag, this shows a broadening of the criminalisation of malicious roadblock. The FGTB, in turn, announced that it would bring a case against Belgium to the European Court of Human Rights.¹⁶</p>

¹⁵ Liga Voor Mensenchten, [Het Belgische stakingsrecht onder vuur](#), 24 October 2022 (last accessed 22 December 2022).

¹⁶ FGTB, [Fête du 1er mai // Syndicalistes. Pas criminel.le.s](#), 1 May 2022 (last accessed 22 December 2022).

1.3. Enactment of whistleblower protection law

Area	Safe space & protection
Topic	Other: whistleblower protection
Impact	Minor (indirect impact)

The Belgian law on the protection of whistleblowers,¹⁷ transposing Directive (EU) 2019/1937, was approved in November 2022 and published in the Official Belgian Gazette in December. It will come into force in February 2023. The law, proposed by the Belgian Minister of the Economy and Employment,¹⁸ aims to protect whistleblowers in the private sector from reprisals such as dismissal and legal proceedings. The law establishes three reporting channels for any potential whistleblower: an internal channel within companies, an external channel with the authorities, and also one for the press.¹⁹ At the same time, two organisations, the federal ombudsman and the Federal Institute for the Protection and Promotion of Human Rights, will be responsible for better informing, guiding and supporting whistleblowers.²⁰

The federal ombudsman will act as the federal coordinator for external reports, receiving external reports, checking their admissibility and transmitting the information to the competent authority. In exceptional cases, the ombudsman also carries out the investigation on the merits and deals with protection cases. The Federal Institute for the

¹⁷ Belgium, Law on the protection of persons who report breaches of Union law or national law observed within a legal entity in the private sector (*Loi 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 / Wet betreffende de bescherming van melders van inbreuken op het Unie- of nationale recht vastgesteld binnen een juridische entiteit in de private sector*). Published in the Official Belgian Gazette on 15 December 2022.

¹⁸ Pierre-Yves Dermagne, [Une meilleure protection pour les lanceurs d'alerte](#), 25 February 2022 (last accessed 22 December 2022).

¹⁹ The Brussels Times, [Whistleblowers to receive improved protection in Belgium](#), 25 November 2022 (last accessed 22 December 2022).

²⁰ Pierre-Yves Dermagne, [Une meilleure protection pour les lanceurs d'alerte](#), 25 February 2022 (last accessed 22 December 2022).

Protection and Promotion of Human Rights, in turn, will provide whistleblowers with professional, legal and psychological support.²¹

²¹ Federal Institute for the Protection and Promotion of Human Rights, [Nouvelle mission : soutenir les lanceurs d’alerte](#), 28 November 2022 (last accessed 22 December 2022).

2. Promising practice in 2022

2.1. « Tant qu'il le faudra! » (as long as it is necessary): funding for civil society organisations working on gender issues

In March, the Belgian Institute for the Equality of Men and Women²² and the Belgian Secretary of State for Gender Equality, Equal Opportunities and Diversity²³ announced that the Belgian Government would be supporting civil society initiatives related to gender issues with over 2 million EUR (with each supported project receiving between 25000 and 60000 EUR). Financing was awarded to 48 projects²⁴ related to:

- Fight against gender violence, including intra-family violence, sexual violence, economic violence, obstetric and gynaecological violence, female genital mutilation, cyber violence, among others.
- Strengthening the presence and representation of women in the public space.
- Promoting the economic autonomy of women (equitable contribution to expenses between partners or roommates, inequalities in wealth, wage gap, pink tax and specific costs borne by women and gender minorities, etc.)
- Promoting and improving access to health care (abortion, contraception, endometriosis, etc.)
- Promoting positive actions in the fight against discrimination on the basis of sex or gender.

²² Institute for the Equality of Men and Women, [TANT QU'IL LE FAUDRA ! APPEL À PROJETS POUR L'ÉGALITÉ DES GENRES](#), 2022 (last accessed 19 December 2022).

²³ Sarah Schlitz, [« Tant qu'il le faudra! »](#), 7 March 2022 (last accessed 19 December 2022).

²⁴ Sarah Schlitz, [Appel à projets "Tant Qu'il le Faudra" : 48 projets sélectionnés](#), 16 June 2022 (last accessed 19 December 2022).

2.2. Involvement of civil society in the implementation of the Istanbul Convention

On 26 November 2021, Belgian authorities adopted the National Action Plan to Combat Gender-based Violence (NAP) 2021-2025.²⁵ The NAP 2021-2025 is based on the Council of Europe (CoE)'s Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and on the recommendations addressed to Belgium by the CoE's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) concerning the implementation of this Convention.²⁶ The national plan is the responsibility of the Federal State, the Communities and the Regions and is based on seven strategic axes. In accordance with the NAP 2021-2025, a National Platform representing Belgian civil society is set up²⁷ to respond specifically to the recommendations of the GREVIO final report, as well as to the recommendations of the Committee of the Parties, to establish a more effective coordination mechanism to monitor the implementation of the NAP. Within this framework, 16 associations have been selected as members of the National Platform representing civil society and will benefit from structural funding for the fulfilment of their mandate. The purpose of this National Platform is to ensure the independent monitoring of the NAP 2021-2025 and to give advice during the interim and final evaluations of the NAP 2021-2025.

²⁵ Sarah Schlitz, [Le Plan d'Action National de Lutte contre les violences basées sur le genre 2021-2025 a été adopté ce vendredi 26 novembre 2021 !](#), 27 November 2021 (last accessed 19 December 2022).

²⁶ GREVIO, [Rapport d'évaluation de référence – Belgique](#), 2020 (last accessed 19 December 2022).

²⁷ Institute for the Equality of Men and Women, [APPEL À CANDIDATURES - PLATEFORME NATIONALE DE LA SOCIÉTÉ CIVILE - PAN 2021-2025](#), 9 May 2022 (last accessed 19 December 2022).

2.3. Survey on pressure on human rights defenders

In October 2022, the Federal Institute for the protection and promotion of Human Rights contacted over 1000 human rights defenders from multiple organisations to conduct a large-scale survey on the possible pressures (such as threats or aggression) faced by these organisations.²⁸ According to the Institute, the results of the study (expected to be published in 2023) will allow the monitoring of the possible pressures faced by human rights organisations and can also inform decisions concerning the necessary space for these organisations to express and organise themselves and carry out their activities.

²⁸ Federal Institute for the Protection and Promotion of Human Rights, [Lancement de l'enquête concernant les pressions sur les défenseurs des droits humains](#), 24 October 2022 (last accessed 22 December 2022).

3. Visa for human rights defenders

3.1. Entry and stay for human rights defenders (HRDs) at risk

Dedicated visa scheme for HRDs at risk available in your country	No
Other type of visa or alternative legal entitlement or derogation clause applied to HRDs	Yes

Belgium does not have a dedicated visa scheme for HRDs or specific derogation clauses that apply to them. HRDs who seek to enter and stay in Belgium can resort to the asylum procedure (if they are already on the Belgian territory)²⁹ or apply for a humanitarian visa from abroad.³⁰ The former grants status to those who meet the refugee definition as described in the 1951 Refugee Convention and to those who risk irreparable harm (such as torture or a serious threat to life) in their country of origin (subsidiary protection), while the latter gives the Immigration Office a discretionary power to grant a visa in certain situations.

There is no specific criteria or guidance regarding who may benefit from humanitarian visas. According to the Flemish Integration Agency (Agentschap Integratie en Inburgering), when assessing humanitarian visa applications in practice, the Immigration Office takes into account the vulnerability, needs, humanitarian and/or isolated situation of family members and any protection risks in the country of origin (or country of residence), as well as ties with persons in Belgium – mainly family members (affective

²⁹ Title II, Chapter II, Law on access to the territory, stay, establishment and removal of foreigners ([Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers](#) / [Wet betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen](#)). Published in the official Belgian Gazette 31 December 1980.

³⁰ Ibid., articles 9 and 13.

and/or financial dependence). Additionally, proof of sufficient means of subsistence of the family member in Belgium may also play a role.³¹

As of 2019, Myria – an independent public body which analyses migration, defends the rights of foreigners and combats human smuggling and trafficking - noted that, according to their knowledge, humanitarian visas were mainly granted in four cases: resettlement of people selected by the United Nations Refugee Agency (UNHCR) and the Office of the Commissioner General for Refugees (CGRS); rescue operations for Syrian nationals; humanitarian requests from family members of people (usually refugees) residing in Belgium; and urgent humanitarian, medical or professional reasons.³²

After the Taliban takeover of Afghanistan, the Flemish Integration Agency also pointed out that the then-Secretary of State for Asylum and Migration indicated that, concerning humanitarian visas, he would take particular account of the profiles of people eligible for evacuation, in particular persons running an increased risk of persecution (such as those who had worked for the Ministry of Defence, human rights organisations, other (inter)governmental organisations and international organisations, as well as journalists and members of women's movements, etc.).³³

Thus, it is possible that HRDs at risk may be granted humanitarian visas but there is no express mention of them in the available information concerning such procedures and it is therefore unclear whether they have and are being considered for such support in practice.

³¹ Agentschap Integratie en Inburgering, Humanitarian Visa ([Humanitair visum](#)) (last accessed 9 January 2023).

³² Myria, [Visas Humanitaires: Vers Une Politique Encadrée Et Transparente](#), 29 January 2019 (last accessed 9 January 2023).

³³ Agentschap Integratie en Inburgering, Afghanistan: residence applications and assistance since Taliban takeover ([Afghanistan: verblijfsaanvragen en bijstand sinds machtsovername Taliban](#)), 21 December 2021 (last accessed 9 January 2023).