

Belgium

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries¹ of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.²

¹ The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

² The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

➤ Legal proceedings in right to life matters

Following the European Court's judgment, a fourth extradition request from the Spanish authorities was sent to the Belgian authorities in this case and its examination resulted in the extradition of the person concerned. In terms of general measures, a Memorandum was updated in 2020 and distributed to all public prosecutors, reminding them of the exceptional conditions under which a surrender may be refused, taking into account the principle of mutual trust between the states of the European Union.

Romeo Castano (835/17)
[Final Resolution
CM/ResDH\(2023\)166](#)

➤ Risk of ill-treatment (expulsion and extradition)

The Law on Foreigners was amended in 2014 notably with regard to the burden of proof of the asylum applicant's risk of ill-treatment in the country of origin, the modalities to examine the situation in the country of origin (*ex nunc* instead of *ex tunc*) and the urgent suspension of a removal decision if such a risk is real. According to an internal circular note by the Chair of the Aliens Appeals Board, a hearing may not take place earlier than four hours after a request for urgent suspension of the removal order.

M.S.S. (30696/09)
[Final Resolution
CM/ResDH\(2014\)272](#)

With regard to the extradition of the applicant to the United States of America despite an interim measure, the Belgian authorities entered into negotiations with the US authorities to obtain guarantees to avoid, or reduce as far as possible, the risk of the applicant being sentenced to an irreducible life sentence in the USA. The Federal Prosecutor provided a commitment to try to reach a plea agreement and, in case of trial, not to seek such a sentence. If the risk of an irreducible life sentence were nevertheless to materialise in the course of the proceedings, the Belgian authorities gave an undertaking in 2018 to intervene in those proceedings as *amicus curiae*. As part of general measures, awareness-raising measures were taken, and the Belgian authorities reiterated their commitment to respect the Court's interim measures in future.

Trabelsi (140/10)
[Final Resolution
CM/ResDH\(2018\)460](#)

A 2013 amendment of the Law on Foreigners transferred the competence to examine the admissibility of renewed asylum applications from the Aliens' Office to the General Commissioner for Refugees and Stateless Persons (a specialized, independent body), which must examine *in concreto* and *ex nunc* the risks incurred by the applicants. The amendment includes a new definition of the notion of "new element". In case of inadmissibility, the General Commissioner must give a reasoned opinion as to the risk of violating the principle of non-refoulement, directly or indirectly. Following a Constitutional Court's Ruling, a further amendment of the Law on Foreigners in 2014 provided, retroactively, for the Aliens Litigation Council's review of the General Commissioner's decisions, on the merits *in concreto* and *ex nunc*.

M.D. and M.A. (58689/12)
[Final Resolution
CM/ResDH\(2020\)302](#)

Several measures were adopted after the Court's judgment, including a memorandum in May 2017 to change the practice of interpellation services and closed centres, with regard to Article 3, when dealing with seriously ill foreign nationals. Examples were given of how this was put into practice. With regard to Article 8, a vademecum and two guides have been disseminated and case-law shows that the specific dependency relationship with the family that may result from a state of health is taken into account in expulsion decisions.

Paposhvili (41738/10)
[Final Resolution
CM/ResDH\(2023\)362](#)

► **Conditions of detention / effective remedy**

In October 2020, a specific remedy for detainees entered into force, which allows them to challenge their conditions of detention, including the transfers between prisons and the individual security measures. In 2016, the independence of the Central Prisons Supervisory Council (placed under the responsibility of the Federal Parliament) has also been strengthened.

Bamouhammad (47687/13)
 Final Resolution
 CM/ResDH(2022)370

► **Right to liberty and security**

In 1971, by amendment of the Vagrancy Act, persons detained for vagrancy were granted a right of appeal to a court against the decision ordering their detention.

De Wilde, Ooms and Versyp (vagrancy) cases (2832/66+)
 Final Resolution
 CM/ResDH(72)02

In 1990, recidivists and habitual offenders detained by virtue of a reasoned decision of the Minister of Justice were granted a right of appeal before the competent chambre du conseil of the court which had decided his placement, and thus a judicial review of the lawfulness of the Minister's detention order.

Van Droogenbroeck (7906/77)
 Final Resolution
 CM/ResDH(90)31

In a new Act on Detention on Remand of 1990 the access of the accused or his counsel to documents and case files was reinforced in proceedings for release from detention on remand.

Lamy (10444/83)
 Final Resolution
 CM/ResDH(91)8
Bernaerts (15964/90)
 Final Resolution
 CM/ResDH(95)104

Successive placements of juveniles in a remand prison by way of an interim custody measure were prohibited in 1994 and appropriate infrastructure capable of taking care of severely disturbed young persons was developed.

Bouamar (9106/80)
 Final Resolution
 CM/ResDH(95)16

The necessity for persons whose cases have been dismissed to adduce evidence to prove their innocence in order to obtain compensation for their detention on remand was abrogated in 2010.

Capeau (42914/98)
 Final Resolution
 CM/ResDH(2011)43

The practice of detaining unaccompanied foreign minors ended in 2007. In 2012, the Aliens Office was given the responsibility of ensuring that these minors are properly received and cared for upon arrival.

Mubilanzila Mayeka and Kaniki Mitunga (13178/03)
 Final Resolution
 CM/ResDH(2014)226

► **Functioning of justice**

➤ Right of access to court

A flexible reading by the Council of State of article 14§1 of the coordinated laws on the Council of State provides an effective remedy against a measure suspending a representative of the High Council of Justice. In addition, the repeal on 15 May 2024 of the second sentence of article 259bis-3, § 4, paragraph 1 of the Judicial Code now provides an effective remedy against the dismissal of a representative of this institution.

Loquifer (79089/13)
 Final Resolution
 CM/ResDH(2024)155

A law of 19 December 2023 (new article 1094/2 of the Judicial Code) enables the applicant (in civil proceedings) to submit to the Court of Cassation a supplementary petition with a plea based on the violation of a legal provision which came into force during the proceedings and applies retroactively to the dispute.

Vermeersch (49652/10)
 Final Resolution
 CM/ResDH(2024)25

In 1998, destitute people or those with insufficient means were placed on an equal footing with people with sufficient means in access to the legal aid system at the Cassation Court.

➤ Fairness of proceedings

In 1985, a change of the Court of Cassation's jurisprudence excluded investigating judges from participation in criminal proceedings as trial judges, thereby reinforcing the courts' independence and impartiality.

Following an amendment of the Judicial Code in 1992, decisions in disciplinary proceedings against lawyers had to be reasoned.

A law concerning the public conduct of disciplinary proceedings before the Appeals Boards of the Order of Physicians and the Order of Pharmacists was adopted in 1985.

The conformity of Belgian legislation with the requirements of impartiality in military criminal proceedings was ensured in the context of a broad legislative reform regarding the armed forces undertaken in 2001/02.

Procedural rules before the Assize Court were modernised and proceedings were streamlined in January 2010, with the aim of reducing the number of cases, improving the quality of judgments and promoting the rights of the defence. Jury decisions on guilt must henceforth also be reasoned. The use of evidence obtained under torture was excluded by an amendment to the Code of Criminal Procedure in 2013.

The legislative reform "Salduz", which had been initiated after 2008 to take account of the evolution of the European Court's case-law with regard to access to a lawyer, led to the adoption of laws in 2011 and 2016 granting full access rights to legal assistance as from arrest and during interrogations by police and investigating judges at pre-trial stage as well as all subsequent investigative acts. Detailed information on the right to remain silent should also be communicated.

➤ Excessive length of proceedings

The Law on organisation of the courts of August 1992 aimed at reducing the number of pending cases and preventing further backlogs. It allowed in particular litigants to ask the civil judge to fix by a binding decision, at the beginning of the proceedings, the deadlines for filing their pleadings as well as the date of the hearing.

At a later stage, further reforms were conducted to ensure more broadly that all proceedings took place within a reasonable time, including civil and criminal, in particular in Brussels.

Aerts (25357/94)
Final Resolution
CM/ResDH(2005)24

De Cubber (9186/80)
Final Resolution
CM/ResDH(88)20

H. (8950/80)
Final Resolution
CM/ResDH(93)19

Le Compte and Others
(7238/75)
Final Resolution
CM/ResDH(85)13

Albert and Le Compte
(7299/75+)
Final Resolution,
CM/ResDH(85)14

Pauwels (10208/82)
Final Resolution
CM/ResDH(2001)67

Taxquet (926/05)
Final Resolution
CM/ResDH(2012)112

El Haski (649/08)
Final Resolution
CM/ResDH(2014)110

Beuze (71409/10)
Final Resolution
CM/ResDH(2020)17

Serrien (19008/91)
Final Resolution
CM/ResDH(98)61

Dumont group (49525/99+)
Final Resolution
CM/ResDH(2015)245

Oval group (49794/99+)
Final resolution
CM/ResDH(2011)189

Other measures have been adopted to reduce the time taken to process criminal investigations, particularly in economic, financial and tax matters, thanks to a 2014 criminal policy circular.

De Clerck (34316/02+)
Final Resolution
CM/ResDH(2017)149

Finally, measures have also been adopted to reduce the time taken to process administrative proceedings before the Conseil d'État, including the creation of a specific jurisdiction for foreigners' rights.

*Entreprises Robert
Delbrassinne S.A.*
(49204/99+)
Final Resolution
CM/ResDH(2015)132

► Protection of private and family life

A Nationality Code was adopted in 1985 extending the right to acquire nationality to "a child who, for at least one year before the age of six, has had his principal residence in Belgium with a person to whose authority he was legally subject".

Moustaquim (12313/86)
Final Resolution
CM/ResDH(92)14

► Freedom of religion

In November 2021, the Judicial Code was amended with regard to the attendance of court hearings, to remove the reference to "uncovered head" and retain the sole notion of "in respect and silence". Prior to this legislative amendment, the President of the College of Courts and Tribunals requested that the judgment be disseminated to all judges. The Institute for Judicial Training was invited to incorporate this judgment into their initial and continued training in deontology and ethics, in order to recall that there exists no explicit prohibition of the wearing of religious symbols by individuals at court hearings and that exclusions may only be justified in cases of disruption of their proper course.

Lachiri (3413/09)
Final Resolution
CM/ResDH(2022)14

In July 2023, the authorities established a clear and regulated procedure to avoid violations similar to the one found by the Court (article 44 of the Code of Criminal Procedure). Henceforth, one month after an autopsy, the deceased's next of kin can request the return of the body from the King Prosecutor, who must give a written ruling within 15 days. The decision may be revoked at any time by the King Prosecutor, and the deceased's next of kin can reintroduce the same request three months after the last decision, and the King Prosecutor must again issue a written decision.

Aygun (28336/12)
Final Resolution
CM/ResDH(2023)360

► Protection against discrimination

➤ Children born out of wedlock

Legislative amendments in 1987 abolished the difference in the manner of establishing maternal affiliation and established equality with legitimate children as regards inheritance rights.

Marckx (6833/74)
Final Resolution
CM/ResDH(88)3

➤ Legal aid

The law of 6 July 2016 extended the benefit of legal aid to all foreign nationals residing illegally in Belgium, provided that they have attempted to regularise their residence, that their request is of an urgent nature and that the proceedings concern matters relating to the exercise of a fundamental right.

Anakomba Yula (45413/07)
Final Resolution
CM/ResDH(2016)243

➤ Access to education

The laws on the use of language in education, which prevented certain children, solely on the basis of the residence of their parents, from having

Belgian Linguistic cases
(1474/62+)

access to the French language schools existing in the six communes on the periphery of Brussels in the Dutch-language region, were reformed in 1970 following a revision of the Constitution to guarantee equal rights to all communities in the country.

1972, Consultative
Assembly Doc. 3210,
CM/ResDH(72)3

► Protection of property rights

Domestic courts changed their case-law and no longer applied the impugned provisions introduced in 1988 exempting the State retroactively from liability for damage occasioned by maritime accidents as a result of ship pilots' negligence. Later, the Act on the piloting of sea-going vessels 1967 was amended in 1996 and the reference to the State's exemption for pilots' liability deleted. An overall reform of the legislation on the piloting of sea-going ships was undertaken and completed in 2002.

*Pressos Compania Naviera
S.A. and Others* (17849/91)
Final Resolution
CM/ResDH(2011)