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CIVIL AND POLITICAL RIGHTS IN BELGIUM

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Administration of justice, including impunity, and the rule of law

1.1 Transparency of Judicial Procedures and Automated Decision-Making

Belgium's justice system is experiencing rapid digitalization, including the use of algorithmic tools to assist in judicial and administrative decisions. This trend promises efficiency but also raises transparency and fairness concerns. Under Article 6 of the European Convention on Human Rights (ECHR), individuals have the right to a fair trial, which encompasses the duty of courts to give sufficient reasons for their decisions. The European Court of Human Rights (ECtHR) has affirmed that a lack of adequate reasoning – for example, failing to address crucial evidence or arguments – can violate Article 6§1[1]. Automation must not undermine this obligation. Any use of Artificial Intelligence (AI) or automated decision-making in judicial procedures should be transparent and explainable. Notably, the Court of Justice of the EU ruled in 2025 (Dun & Bradstreet Austria case) that data subjects are entitled to a "concise, transparent, intelligible and easily accessible" explanation of the logic behind an automated decision; providing only abstruse technical details is insufficient[2]. This principle, rooted in the GDPR, reinforces that people should understand how decisions affecting them are made – a fortiori in the justice sector, where decisions can deprive liberty or rights.

Belgium has begun aligning with emerging European standards on AI. In March 2025, the government listed regulators responsible for fundamental rights oversight in relation to "high-risk" AI systems as required by the forthcoming EU AI Act. These include the Data Protection Authority and national human rights institutions, empowered to demand documentation or audits of algorithms. Such measures are crucial to ensure that any algorithm influencing judicial outcomes respects due process and equality of arms. In sum, transparency and human oversight must be guaranteed at all stages of automated decision-making in judicial and administrative procedures, so that the introduction of AI strengthens rather than erodes the rule of law.

Recommendations:

(1) Ensure Reasoned Decisions with AI: Require that when courts or authorities use algorithmic tools in decision-making, the final decision includes an understandable statement of reasons, as mandated by Article 6 ECHR. Even if assisted by AI, judges and officials must explain the outcome in accessible terms, thereby safeguarding the individual's right to a reasoned judgment.

[1] ECtHR, *Rusishvili v. Georgia*, no. 15269/13, 30 Sept. 2022: https://www.cambridge.org/core/journals/cambridge-forum-on-ai-law-and-governance/article/rethinking-the-judicial-duty-to-state-reasons-in-the-age-of-automation/0984E85BC2519D5E5E448FAFCCBD98F6

[2] CJEU, *D.S. v. Dun & Bradstreet* (Case C-203/22), judgment of 27 Feb. 2025: https://www.lexology.com/library/detail.aspx?g=06d868b7-8f48-473e-a993-3ff2ac97e01f#:~:text=involving%20automated%20decision,h

(2) Legislate Transparency and Oversight: Adopt legislation or guidelines obliging public bodies to disclose the use of automated decision systems to affected persons and to provide a meaningful explanation of how such systems inform decisions. Incorporate the EU AI Act's requirements by 2026, including mandatory human oversight for high-risk AI, and create an audit trail for decisions to enable independent review.

(3) Empower Regulatory Bodies: Support and utilize the mandate of oversight authorities (such as the Data Protection Authority, Federal Institute for Human Rights, etc.) to monitor, audit, and enforce fundamental rights compliance in automated decision-making. Provide these bodies with sufficient resources and legal authority to inspect algorithmic systems used in the justice sector, ensuring they can promptly address any opaque or biased AI practices.

1.2 Mental Health and Forensic Psychiatric Placement

Belgium has faced longstanding criticism for the treatment of mentally ill offenders ("internees"). These individuals, found not criminally responsible due to mental disorder, were historically held in ordinary prisons without adequate psychiatric care – a practice the ECtHR has condemned as inhuman and degrading (Article 3 ECHR) in a string of cases[3]. In 2016, the Court's pilot judgment *W.D. v. Belgium* highlighted systemic dysfunctions and urged reforms within a set timeframe. Belgium responded with a 2014 Internment Law (amended 2016) and opened new forensic psychiatric centers (FPCs) to transfer internees out of penal facilities. While some progress was made (the interned prison population reportedly dropped from 1,087 in 2013 to 689 by mid-2021 as specialized facilities opened), serious problems persist[4].

Recent evidence indicates relapse and stagnation in the reform's effectiveness. The number of internees held in prison psychiatric wings climbed again to 886 in the first half of 2023 – a 64% increase since 2019 – due to shortages of appropriate external placements and delays in constructing new clinics. In August 2024, the ECtHR once more found Belgium at fault in *B.D. v. Belgium* for its handling of an interned person. The Court in *B.D.* identified both substantive and procedural violations: the applicant's continued detention in inadequate conditions impeded his recovery and thus violated the right to liberty and security under Article 5§1 (detention not in an appropriate therapeutic environment), and he lacked an effective means to challenge the legality of his internment, breaching Article 5§4. Notably, due to a quirk in the law, B.D. could not personally appeal the Social Defense Court's decisions prolonging his internment and his lawyers failed to act, leaving him *de facto* without recourse. The ECtHR stressed that ensuring a genuine

[3] Van Bael & Bellis, *VBB on Belgian Business Law – March 2025: https://strasbourgobservers.com/2024/11/22/b-d-v-belgium-a-revisitation-of-the-inadequacy-of-belgian-internment-policy/#:~:text=On%20August%2027%2C%20in%20the,Belgium*

[4] H46-6 L.B. group (Application No. 22831/08) and W.D. (Application No. 73548/13) v. Belgium – September 2021**:** https://rm.coe.int/0900001680a39eb1#:~:text=Figures%2Fimpact%3A%20There%20are%20446%20places,of%20placements%20outside%20of%20prisons

opportunity to periodically review the lawfulness of detention is especially crucial given Belgium's known structural failings in this area. It concluded that, although states are not obliged to provide multiple levels of appeal, if an appeal is provided it must be effectively accessible in practice, which had not been the case for B.D.

The Council of Europe's Committee of Ministers has kept Belgium's internment situation under enhanced supervision for years. At its September 2023 meeting, the Committee expressed deep concern at the "significant increase" in internees still in prisons and at the slow pace of building new facilities. It pointed to persistent shortages of psychiatric staff and beds, and it even prepared a draft interim resolution to be adopted if no tangible progress is achieved by the end of 2024. In sum, despite reforms, mentally ill detainees continue to suffer delays in transfer to care, and preventive remedies (like avenues to complain about lack of care or to enforce transfer orders) remain inadequate. These shortcomings engage Belgium's obligations under Articles 3, 5§1 and 5§4 ECHR, and urgent action is needed to fully execute the ECtHR's judgments and meet Council of Europe standards.

Recommendations:

(1) End Detention of Internees in Prisons: Permanently end the placement of internees in ordinary prisons by accelerating the opening of new forensic psychiatric centers (e.g. two FPCs in Wallonia, 500 places by 2025–2026) and expanding existing capacity. Ensure no person with a psychosocial disability is held in prison due to lack of appropriate care, in line with Article 3 ECHR and the W.D. v. Belgium judgment.

(2) Expand Forensic Treatment Capacity: Increase psychiatric bed numbers and staffing (e.g. psychiatrists, nurses, social workers) to meet demand. Ensure full funding for all planned forensic units so no internee lacks appropriate care. Pair expansion with strong rehabilitation programs, in line with the Mandela Rules and CRPD healthcare standards.

(3) Strengthen Legal Safeguards: Ensure internees have effective access to justice, including access to case files, treatment plans, and judicial review of detention (e.g. appeals of CDS decisions). Provide specialized training for legal actors and implement independent oversight to comply with Article 5(4) ECHR and Article 13 CRPD.

1.3 Detention Conditions and Digital Access to Justice

Prison conditions in Belgium remain a serious concern, notwithstanding some reforms. Chronic overcrowding has plagued Belgian prisons for decades, contributing to unsanitary and unsafe conditions. In June 2022, the Council of Europe's Committee of Ministers – supervising execution of the *Vasilescu* group of cases – voiced its "deep concern at the worsening situation in Belgian prisons," noting that many measures long announced to curb overcrowding had not materialized. Despite building new prison blocks and introducing early-release schemes, Belgium's

incarceration rate continues to outstrip capacity[5]. In some facilities detainees have been forced to sleep on the floor due to lack of beds. Domestic and European courts have documented instances of detainees enduring lack of access to toilets or clean water, poor ventilation and hygiene, and other conditions amounting to degrading treatment in violation of Article 3 ECHR. The ECtHR's judgments (e.g. *Vasilescu v. Belgium*, 2014; *Clasens v. Belgium*, 2019) identified these issues as *structural*, prompting calls for both material improvements and the creation of a preventive remedy for prisoners to complain about conditions.

The authorities have taken some steps – such as legislation to allow limited early release and plans for a new Penitentiary Council – but the impact has been insufficient. The Committee of Ministers in 2022 ordered Belgium to devise a comprehensive strategy to reduce prison overcrowding, addressing all factors driving the prison population. It recommended increasing the use of alternatives to detention (like probation, electronic monitoring, or community service) and even considering caps on the prison population, in line with European standards. The Flemish Government acknowledged the importance of alternatives but cited cost concerns – a stance at odds with the urgency of humane treatment obligations. As of 2023, Belgium's prisons still rank among the most densely populated in Western Europe, and a fully effective remedy for prisoners (such as a fast-track complaint mechanism or specialized judge to address conditions) has yet to be implemented, seven years after the ECtHR's call. This vicious cycle – where overcrowding strains conditions, and poor conditions in turn strain the rule of law – demands bold action. Failure to act not only perpetuates Article 3 violations but also undermines rehabilitation prospects and regional cooperation (courts in the Netherlands and Germany have occasionally delayed transfers of convicts to Belgium, citing conditions concerns)[6].

In parallel, Belgium's justice system is undergoing digital transformation – a process accelerated by the COVID-19 pandemic and EU-wide initiatives to "digitalise justice." Courts increasingly use electronic filing, remote video hearings, and online platforms for case information. While these innovations can improve efficiency, they risk excluding detainees and other vulnerable groups unless accompanied by inclusive measures. Prisoners typically have severely limited internet access and technological resources. Access to justice in the digital era must be guaranteed for all, including those behind bars or without digital literacy. Council of Europe experts have emphasized that *digital participation in legal processes must be unconditionally available to all societal groups without discrimination*[7]. No person should lose the ability to defend their rights because proceedings moved online. Thus, if an incarcerated person needs to file an application, consult

[5] Lauren Walker, "Belgium ordered to tackle worsening situation in prisons," The Brussels Times - 13 June 2022: https://www.brusselstimes.com/237756/belgium-ordered-to-tackle-worsening-situation-in-prisons
[6] ECtHR, *Camara v. Belgium*, no. 49255/22, Judgment of 18 July 2023: https://www.questionegiustizia.it/speciale/articolo/the-belgian-situation-the-non-execution-of-judicial-decisions-by-the-state-of-belgium-on-asylum-matters#:~:text=Yet%20another%20consequence%20of%20this,respect%20the%20rule%20of%20law
[7] Friedrich Scholz, "Will Digitalisation Help without Meaningful Access to Justice?" in *Criminal Justice, Fundamental Rights and the Rule of Law in the Digital Age* (CEPS 2021)

judicial decisions, or attend a hearing, the State must provide alternative means (e.g. paper forms, prison IT kiosks, or video links) to ensure equivalence of access.

The principle of equality of arms (Article 6) extends to technological context: if the prosecution or a civil adversary can leverage digital tools, a detained litigant should not be disadvantaged by lack of a computer. Moreover, Article 13 ECHR (effective remedy) requires practical accessibility – a remedy available only through an online portal is ineffective for someone who cannot go online. In recognition of this, many European justice systems have installed video-conferencing facilities in prisons for court hearings and set up secure email or electronic document systems for lawyer-client communication with inmates. Belgium should do the same at scale. The goal must be that digital justice initiatives leave no one behind. As one legal commentator put it, digitalization can enhance access to justice – but only if developed in line with the rule of law and the citizen's needs. This means proactively accommodating those who are *digitally vulnerable*, such as prisoners, people with disabilities, or those lacking education in technology. Importantly, the use of online procedures should *never diminish procedural safeguards* for those unable to use them. Belgium's forthcoming Justice Digitalisation Plan (as referenced in policy declarations) must therefore integrate a strong focus on accessibility for detainees.

Recommendations:

(1) Improve Prison Conditions: Urgently ensure detention facilities meet basic standards, reduce overcrowding through alternatives to detention, and upgrade infrastructure. Implement CPT recommendations to guarantee minimum living space, hygiene, outdoor access, and healthcare, in line with Article 10 ICCPR and the Mandela Rules.

(2) Expand Digital Access for Inmates: Deploy secure systems (e.g. PrisonCloud) in all prisons to enable access to legal info, education, and communication with authorities. Ensure inmates can view court documents and contact counsel confidentially. Provide digital literacy training to support effective use.

(3) Enable Remote Court Participation: Establish protocols for detainees to join hearings via videoconference when in-person attendance isn't feasible. Provide private, well-equipped spaces with secure internet to ensure confidentiality and uphold fair trial rights under Article 6 ECHR.

1.4 Rule 39 Interim Measures and Compliance Failures

Under Rule 39 of the ECtHR's Rules, the Court can indicate interim measures to states – typically urgent steps to prevent irreparable harm, such as suspending an expulsion or ensuring life-sustaining treatment – while a case is pending. Although interim measures are formally "requests," the Strasbourg Court has made clear that they are binding in practice, given that ignoring them would allow potential Convention violations to occur before the Court can adjudicate. In an unprecedented situation, Belgium since 2021 has been the subject of *hundreds* of interim measures

in the context of its asylum reception crisis. Faced with a surge in asylum seekers and an overwhelmed reception network, the Belgian authorities (notably the Federal Agency for Asylum Seekers, Fedasil) failed to execute thousands of domestic court orders that mandated providing shelter, food, and basic care to destitute asylum applicants. As a result, desperate individuals – including families – were left homeless, prompting many to lodge urgent applications in Strasbourg. The ECtHR responded by ordering the Belgian State, via Rule 39 measures, to abide by those domestic injunctions and ensure material reception conditions for each applicant during the proceedings. This flood of interim measures against an EU country was extraordinary, reflecting a breakdown in domestic compliance with the rule of law.

The culmination of this issue was the ECtHR's judgment in *Camara v. Belgium* (18 July 2023), which addressed an asylum seeker's prolonged street homelessness despite a Belgian court order in his favor. The Court delivered a scathing verdict: it found that the Belgian authorities' persistent non-compliance with final and enforceable judicial decisions exhibited a "manifest refusal" to execute those judgments, undermining the very essence of the right to a fair trial (Article 6§1 ECHR). The right to a court is empty if state organs can simply ignore judicial rulings. In *Camara*, Belgium was held to have violated Article 6 because the applicant's victory in court was rendered pyrrhic by the administration's inaction – a systemic deficiency that also overburdened the courts and the Convention system. Importantly, *Camara* and related cases highlight that compliance with domestic judgments and with ECtHR interim measures are intertwined: a state that respects its own court orders would likely not face Strasbourg intervention in the first place.

Failure to comply with Rule 39 measures also engages Article 34 ECHR, which protects the right of individual petition. The ECtHR has explicitly held that disregarding interim measures violates Article 34 because it hinders the applicant's effective exercise of the right to bring a case and can render any eventual judgment ineffectual[8]. In other words, a state that defies a Rule 39 order (for example, by deporting a person whom the Court asked not to be deported, or by refusing to prevent imminent harm) is failing to "respect the undertakings" it made under Article 1 of the Convention to secure rights, and is obstructing the Court's process. Belgium has generally complied with interim measures in removal (expulsion) cases, but the asylum reception saga exposed a gap in implementation: interim relief was granted to hundreds, yet the underlying systemic issue remained unresolved for too long. This drew criticism domestically as well – Belgian civil society and even judicial associations described the situation as a "crisis of the rule of law" when a government entity chronically disobeys court orders. The credibility of the judiciary and international obligations are at stake if court decisions are seen as optional. It even had international repercussions: courts in the Netherlands, citing Belgium's non-compliance with

[8] ECtHR, *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, ECHR 2005-I: https://www.echr.coe.int/documents/d/echr/fs_interim_measures_eng#:~:text=interim%20measures%20indicated%20under%20Rule,properly%20examining%20the%20application%20and

asylum reception duties, temporarily suspended transfers under EU arrangements, questioning whether asylum seekers' rights would be respected in Belgium.

To restore faith, Belgium must unequivocally reaffirm its commitment to comply with interim measures and court judgments. The Government has recently increased reception capacity and settled many pending cases, but it should also establish procedures to prevent future non-compliance. This could include internal directives that any Rule 39 indication is communicated immediately to the responsible minister and executed, as well as possibly giving such orders direct effect in domestic law. Additionally, accountability mechanisms (administrative or even criminal sanctions for contempt of court orders) may be needed as a deterrent for officials who would flout judicial mandates.

Recommendations:

(1) Respect and enforce ECtHR interim measures: Establish a formal mechanism to ensure that any Rule 39 interim measure from the European Court of Human Rights is immediately communicated to all relevant authorities and complied with in practice. The government should issue clear instructions underscoring that these measures are binding legal obligations, per the ECtHR's authority and Article 34 ECHR, and that failure to implement them undermines Belgium's commitments under the Convention.

(2) Address root causes to prevent Rule 39 cases: Remedy the structural problems that have given rise to interim measures, notably the chronic shortage in asylum reception capacity. By rapidly expanding accommodations and resources for asylum-seekers (in line with the EU Reception Conditions Directive) and enforcing domestic court orders providing for their care, Belgium can preempt the need for Strasbourg interventions.

(3) Ensure oversight and accountability: Implement monitoring procedures for situations where interim measures are indicated, with regular reviews by Parliament or an independent body to identify obstacles and delays in compliance. In cases of non-compliance, establish clear accountability: officials responsible for inaction should face consequences, and affected individuals should receive appropriate redress.