

# **Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law**

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# 1 Civic space developments in 2021

<b>1.1 Impact of COVID-19</b>	
Area	Financing framework
Topic	Tax regime
Impact	Major

COVID-19 related government measures still impacted the work of civil society organisations. While the 'empire of freedom' allowed organisations to return to 'business as usual', it was short-lived as the government re-introduced work from home measures in November 2021.<sup>1</sup>

Nevertheless, civil society organisations adapted themselves to the changing work environment due to COVID-19-related measures. For example, the organisation against discrimination and the promotion of equal opportunities (Unia) assured continued support despite their inability to organize face-to-face contacts.<sup>2</sup> Unia even reported an increase in notifications and noticed specific conflicts related to the COVID-19 related government measures.<sup>3</sup> The organisation was satisfied that the people increasingly find their way to it, especially during the pandemic.

## 1.1.1 Tax advantage donations not extended in 2021

Despite the impact of the COVID-19 pandemic on society as a whole, the so-called 'good causes' (a manifold of Belgian organisations and foundations that are active for the common good in Belgium) received a remarkable amount of donations in 2020.<sup>4</sup> Erik Todts, President of the Association for Ethics in Fundraising (Vereniging voor Ethiek in de Fondsenwerving - VEF) points to the positive influence of the government measures to temporarily increase the fiscal advantage for donations from 45% to 60% and to simultaneously increase the tax reduction from 10% to 20%.<sup>5</sup> These measures were taken in light of the Federal Plan for Social and Economic Protection (Federaal Plan voor Sociale en Economische Bescherming). This plan was "primarily aimed at the voluntary sector

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<sup>1</sup> De Wereld van Morgen, Lode Vanoost, "Corona, PFOS and education were the subjects of 2021" ("[Corona, PFOS en onderwijs waren dé thema's van 2021v](#)"), 30 December 2021.

<sup>2</sup> Unia, "Unia is there for you – also in corona times" ("[Unia staat klaar voor jou – ook in tijden van corona](#)"), 30 March 2021.

<sup>3</sup> Unia, "Corona crisis leaves serious mark on the work of Unia" ("[Coronacrisis drukt stevige stempel op werk van Unia](#)"), 15 June 2021.

<sup>4</sup> De Wereld van Morgen, Erik Todts, "Belgians are very generous in corona year 2020, higher fiscal advantages was effective" ("[Belgen zeer vrijgevig in coronajaar 2020, hoger fiscaal voordeel werkte](#)"), 20 December 2021.

<sup>5</sup> We Social Movements, "Additional tax reduction for gifts in 2020" ("[Extra belastingvermindering voor giften in 2020](#)"), 26 juni 2020.

and wished to aid NGOs and non-profit organisations who are negatively affected by the pandemic”.<sup>6</sup>

The VEF and other organisations queried the Minister of Finance, Vincent Van Peteghem, to renew the 60% measure in 2021. They argued that the negative impact of the pandemic would continue also after 2020. Despite this call and the initial positive reaction from the government, the measure was not renewed in 2021. The affected organisations reacted with disappointment and fear financial repercussions due to this decision.<sup>7</sup>

### 1.1.2 More organisations receive COVID-19 related subsidies

The federal government continued to financially aid various organisations during 2021. For example, organisations in the cultural sector could appeal to an interest-free loan from the government to assuage the consequences to the pandemic-related measures.<sup>8</sup> A similar scheme was established for sports organisations.<sup>9</sup> The government further introduced additional COVID-19 support measures for unsubsidized organisations in the cultural sector that had previously been excluded.<sup>10</sup> As a result, organisations that had never before received any government funding received funds from the Flemish government in 2021.

<b>1.2 'Affair El Kaouakibi' marks federal and regional subsidy landscape</b>	
Area	Financing framework
Topic	Funding landscape + accounting and auditing
Impact	Major

Early 2021, a forensic audit revealed the entanglement of personal initiatives of politician Sihame El Kaouakibi and her subsidized non-profit organisation "Let's

<sup>6</sup> Belgium Public Procurement (BOSA), "Federal plan for social and economic protection in response to the health crisis (Covid-19)" ("[Federaal plan voor sociale en economische bescherming naar aanleiding van de gezondheids crisis \(Covid-19\)](#)"), 02 April 2020.

<sup>7</sup> De Wereld van Morgen, Erik Todts, "Belgians are very generous in corona year 2020, higher fiscal advantages was effective" ("[Belgen zeer vrijgevig in coronajaar 2020, hoger fiscal voordeel werkte](#)"), 20 December 2021.

<sup>8</sup> Open VLD, "Culture Reparation loans are a hit" ("[Herstel Cultuurkredieten slaan aan](#)"), 3 September 2021; CD&V, Orry Van de Wauwer, "CD&V welcomes interest-free Culture Reparation loans for cultural sector" ("[CD&V verwelkomt renteloze Herstel Cultuurkredieten voor de cultuursector](#)"), 15 March 2021.

<sup>9</sup> Open VLD, "Emergency loan up to 1 million euro for Flemish sports clubs" ("[Noodlening tot 1 miljoen euro voor Vlaamse sportclubs](#)"), 24 February 2021.

<sup>10</sup> Open VLD, Stephanie D'Hose, "Cultural activities financial support from the Flemish government went in 90,5% of the cases to organisations which had never received subsidies before" ("[Culturele activiteitenpremie Vlaamse overheid ging in 90,5% van de gevallen naar organisaties die nooit eerder gesubsidieerd waren](#)"), 19 February 2021.

Go Urban”, an urban dance project for vulnerable youth.<sup>11</sup> The contested sum amounted to several hundred thousand Euro.

The ‘El Kaouakibi-affair’ resonates in the subsidy landscape, both on the federal as well as regional levels. The affair marks the start of a trend where especially subsidies for organisations in the domain of integration are more thoroughly and more severely scrutinised.<sup>12</sup> Right-wing party Flemish Interest (Vlaams Belang) even calls for an immediate audit of all internal control mechanisms on the attribution of subsidies on the Flemish as well as the Brussels level, and systematic controls on future subsidy procedures.<sup>13</sup> In turn, New-Flemish Alliance (Nieuw-Vlaamse Alliantie; N-VA) has filed a legislative proposal that introduces a drastic change in subsidies for NGOs that are active in the field of development cooperation.<sup>14</sup>

The near refusal of a renewal of the project subsidy to aid local organisations to address polarisation, disinformation, and hate speech, attributed to the Hannah Arendt Institute<sup>15</sup> (a research centre on diversity, urbanisation, and citizenship with a special focus on societal challenges such as migration, socio-economic and political subordination), further illustrates this new climate of mistrust.<sup>16</sup> In particular, the N-VA and Vlaams Belang were opposed to a renewal of the centre’s subsidy.<sup>17</sup> The party claimed that director Christophe Bush ‘contributes to the polarisation which he simultaneously wishes to combat’.<sup>18</sup> Additionally, the Finance Inspection had several remarks regarding the centre’s human resources policy, criticizing the fact that the centre uses a part of the subsidy to pay communication employees, whilst its objectives focus on scientific research.<sup>19</sup>

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<sup>11</sup> De Standaard, Bart Brinckman, “The downfall of Sihame El Kaouakibi” ([“De val van Sihame El Kaouakibi”](#)), 31 December 2021.

<sup>12</sup> De Standaard, Bart Brinckman, “NVA refuses subsidy for the Hannah Arendt Institute” ([“NVA weigert geld voor Hannah Arendt Instituut”](#)), 10 December 2021.

<sup>13</sup> Vlaams Belang, “#SihameGate: Vlaams Belang Brussels wants audit of award procedure subsidies” ([“#SihameGate: Vlaams Belang Brussel wil audit van toekenningsprocedure subsidies”](#)), 30 March 2021.

<sup>14</sup> N-VA, “N-VA wants different rules of play for NGOs active in development cooperation” ([“N-VA wil andere spelregels voor ngo’s actief in ontwikkelingssamenwerking”](#)), 10 November 2021.

<sup>15</sup> [Hannah Arendt Instituut - Diversiteit, stedelijkheid & burgerschap \(hannah-arendt.instituut\)](#)

<sup>16</sup> De Standaard, BELGA, Hannah Arendt Institute receives Flemish Project Subsidy of 805.000 euro” ([“Hannah Arendt Instituut krijgt Vlaamse Projectsubsidie van 805.000 euro”](#)), 11 December 2021.

<sup>17</sup> Ibid.; Vlaams Belang, “Halt subsidies for the Hannah Arendt Institute” ([“Stop de subsidies voor het Hannah Arendt Instituut”](#)), 11 December 2021.

<sup>18</sup> De Standaard, Bart Brinckman, “NVA refuses subsidy for the Hannah Arendt Institute” ([“NVA weigert geld voor Hannah Arendt Instituut”](#)), 10 December 2021.

<sup>19</sup> Ibid.

<b>1.3 New regulation for 'association work'</b>	
Area	Financing framework
Topic	Tax regime + legislative acts
Impact	Major

In April 2020, the Belgian Constitutional Court found the Legislation on Association Work (Wet op het Verenigingswerk) to be unconstitutional.<sup>20</sup> The Union of Independent Entrepreneurs (Unie voor Zelfstandige Ondernemers - UNIZO), the General Christian Trade Union of Belgium (Algemeen Christelijk Vakverbond België - ACVB), and the Neutral Syndicate for the Self-Employed (Neutraal Syndicaat voor Zelfstandigen - NSZ) had introduced legal proceedings against this legislation in early 2019.<sup>21</sup> The organisations deemed the law to be discriminatory and they opined that it would lead to unfair competition. The Constitutional Court followed the applicants' arguments entirely.

This judgment held repercussion for several activities which – until then – allowed for untaxed extra earnings, among which the activities of 'association workers' who find themselves, in-between regular employees and volunteers. Following the judgment, the government instigated a fiscal emergency solution, the so-called 'Side job law' (Bijkluswet).<sup>22</sup> Both the sports and the cultural sector qualified for a temporary exception under the side job law and could make use of an adapted statute of association work.

### **Political impasse**

When the deadline for a definite regulation drew nearer (the temporary regulation expired at the end of 2021), the political impasse was complete as the different parties could not agree on taxation and employment conditions. The left-wing parties under the guidance of Ministers Frank Vandenbroucke (Forward (Vooruit)) and Pierre-Yves Dermagne (Socialist Party (Parti Socialiste - PS)), as well as the unions, were wary of an 'in-between statute' and wanted a strict regulation of association work; while the liberal parties led by Vincent Van Peteghem (Christian-Democratic & Flemish (Christen-Democratisch & Vlaams - CD&V)), who support untaxed side jobs, wished to install a flexible regulation with few legal obstacles.<sup>23</sup> As a result, some parties wished to lower taxation to 10%, however other parties (primarily Walloon parties) wanted to keep the existing regulation which foresees an exemption of the obligation to pay social contributions for some employers from the socio-cultural and sports sector under some circumstances for certain employees, which in practice would result in a taxation of minimum 33% for sports

<sup>20</sup> Belgium, Constitutional Court, [Decision nr. 53/2020](#), 23 April 2020.

<sup>21</sup> Nathan Schryvers, "Appeal for annulment against 'Side job law' with the Constitutional Court" ("[Vernietigingsberoep ingediend tegen de 'Bijkluswet' bij het Grondwettelijk Hof](#)"), 04 February 2019.

<sup>22</sup> Flanders, "Untaxed supplementary income – Association Work" ("[Onbelast bijverdiene – Verenigingswerk](#)"); Belgium, "Association Work" ("[Verenigingswerk](#)").

<sup>23</sup> CD&V, "CD&V pushes for solution for association work" ("[CD&V dringt aan op oplossing voor verenigingswerk](#)"), 26 November 2020.

clubs.<sup>24</sup> Concerning the employment conditions, there was no consensus among the parties either. The cabinet of the Minister for Economy and Employment, Pierre-Yves Dermagne, considered association workers to be regular employees which means that the employment legislation as a whole is applicable.<sup>25</sup>

The Flemish Sports Federation and the Federation for Socio-Cultural Work and Amateur Arts feared that stricter taxation and more rigid employment regulations, as was proposed by several parties, would destroy association work in Belgium.<sup>26</sup> The federations asked the government to not regard association workers as employees and to implement a realistic taxation scheme.<sup>27</sup>

### **Last-minute regulation**

At the beginning of December, the council of Ministers approved the new regulation which took a start on 1 January 2022.<sup>28</sup> Under the new legislation, association workers will be able to work up to 300 hours for organisations in the socio-cultural sector and up to 450 hours for organisations in the sports sector. The association workers will have to pay 10% income tax.

Reactions from civil society organisations are overall positive. They are satisfied that the government could agree on a final regulation, and they are contented with the taxation scheme. However, they regret the different regulations for the socio-cultural sector on the one hand and the sports sector on the other.<sup>29</sup>

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<sup>24</sup> De Standaard, Christof Vanschoubroek, "Amateur sport wrestles with PS regarding the statute of coaches" (["Amateursport worstelt met PS over statuut trainers"](#)), 28 October 2021.

<sup>25</sup> De Standaard, Christof Vanschoubroek, "Amateur sport wrestles with PS regarding the statute of coaches" (["Amateursport worstelt met PS over statuut trainers"](#)), 28 October 2021.

<sup>26</sup> De Federatie, "Association work: Flemish sports and cultural sector fear late and unachievable regulation due to political impasse" (["Verenigingswerk: Vlaamse sport- en cultuursector vrezen te late en onhaalbare regeling door politieke impasse"](#)), 27 October 2021.

<sup>27</sup> Ibid.

<sup>28</sup> De Federatie, "The die is cast: A final regulation for association work as of 1 January 2022" (["De kogel is door de kerk: Een definitieve regeling voor het verenigingswerk vanaf 1 januari 2022"](#)), 8 December 2021.

<sup>29</sup> Vlaams Steunpunt Vrijwilligerswerk, Leen Megens, "Final regulation association work from 1 January 2022" (["Definitieve regeling verenigingswerk vanaf 1 januari 2022"](#)), 2 December 2021.

<b>1.4 Strategic dialogue with civil society organisations for the future of development cooperation</b>	
Area	Participation and cooperation with authorities
Topic	Access to consultation/participation in decision-making and civil dialogue
Impact	Major

Several NGOs, such as Fraternal Sharing (Broederlijk Delen) and 11.11.11, together with the Belgian government, several universities, and unions, sat together to discuss cooperation strategies in light of the future of development cooperation.<sup>30</sup> The stakeholders are highly positive about this initiative calling it 'unique' since they have never witnessed such an advanced strategic dialogue in other donor countries, especially not at such a local level.

<b>1.5 Participation and consultation of civil society to renew the statute of cultural workers and the statute of artists</b>	
Area	Participation and cooperation with authorities
Topic	Access to consultation/participation in decision-making
Impact	Minor

On 27 April, the federal Ministers of Social Affairs (Frank Vandenbroucke), Economy and Employment (Pierre-Yves Dermagne), and the Self-employed and SMEs (David Clarinval) announced that the federal government will **modernise the statutes of cultural works and artists**.<sup>31</sup> The ministers explicitly announced the participation and consultation of civil society during the development process.<sup>32</sup>

As a first step, the ministers launched a digital platform<sup>33</sup> where all stakeholders can give their input. During the next step, the ministers announced to engage in dialogue with the different stakeholders and they want to further develop several proposals. By doing this, the ministers wish to get a clear perspective on the socio-economic challenges artists and cultural works experience. The ministers, together

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<sup>30</sup> MO, Melanie Schellens, "Does Belgian development cooperation transgresses classic North-South relationship?" ("[Raakt Belgische ontwikkelingssamenwerking voorbij de klassieke Noord-Zuidverhouding](#)"?), 21 May 2021.

<sup>31</sup> Knack, Belga, "Government asks input of cultural workers to modernise statute of artists" ("[Regering vraagt input van cultuurwerkers om kunstenaarsstatuut te moderniseren](#)"), 27 April 2021.

<sup>32</sup> Vooruit, "[Cultural works help to shape new artists statute](#)" ("[Cultuurwerkers geven het nieuwe kunstenaarsstatuut mee vorm](#)"), 28 April 2021.

<sup>33</sup> <https://workinginthearts.monopinion.belgium.be/?locale=nl>



with the government and Parliament, plan to re-consult the stakeholders after further developing the proposals.

<b>1.6 Investigation of NGOs active in Palestine</b>	
Area	Financing framework
Topic	Terrorist financing
Impact	Minor

The Palestinian NGO 'Defense for Children Palestine', together with four other organisations active in Palestine, has been the subject of an internal investigation by the Belgian government. The investigation was instigated after an 'alarming' Israeli report had been delivered to the Belgian ambassador in Tel Aviv.<sup>34</sup> The report asserted that the Palestinian NGOs, that receive funding through their partnerships with Belgian NGOs, transferred money to the Popular Front for the Liberation of Palestine (PFLP). The PFLP has been listed as a terrorist organisation by the EU since 2002.<sup>35</sup>

Members of the opposition, N-VA, and Vlaams Belang, asked for an immediate suspension of all funding to the NGOs concerned.<sup>36</sup> The Minister for Development Cooperation, Meryame Kitir, immediately started an investigation through the Belgian Directory-General Development Cooperation and Humanitarian Aid (DGD). Following this internal investigation, the Minister stated that there is 'no reason to freeze funds, nor to execute an additional external investigation'.<sup>37</sup> She added that her 'trust in the Belgian partner organisations and the existing control mechanisms remain'.<sup>38</sup>

For the time being, this case is closed for Belgium. No funding has been suspended (yet). On a European level, the European anti-corruption department (Olaf) has also started an investigation based on the Israeli report.<sup>39</sup> After their investigation, the Dutch government was on the same wavelength as Belgium concerning the Israeli report, calling the information 'not concrete'.<sup>40</sup> While this case is closed (for now), the parties in the opposition are advocating for a drastic re-orientation of

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<sup>34</sup> De Tijd, Lars Bové, "Belgium continues delicate support for Palestinian organisations" ("[België zet door met heikele steun aan Palestijnse organisaties](#)"), 03 August 2021.

<sup>35</sup> Official Journal of the European Union, [Annex to the Council implementing Regulation \(EU\) 2021/138 of 5 February 2021 implementing Article 2\(3\) of Regulation \(EC\) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation \(EU\) 2020/1128](#), L 43, Vol. 64, 8 February 2021

<sup>36</sup> N-VA, "Belgian development funding for terrorist purposes?" ("[Belgisch ontwikkelingsgeld voor terroristische doeleinden?](#)"), 2 juni 2021; Vlaamse Belang, "[Kitir continues to fund terrorist organisations](#)" ("[Kitir blijft terroristische organisaties steunen](#)"), 4 August 2021.

<sup>37</sup> Commission for Foreign Affairs ([Commissie voor Buitenlandse Betrekkingen](#)), 14 July 2021.

<sup>38</sup> Ibid.

<sup>39</sup> De Tijd, Lars Bové, "Belgium continues delicate support for Palestinian organisations" ("[België zet door met heikele steun aan Palestijnse organisaties](#)"), 03 August 2021.

<sup>40</sup> Ibid.

the development cooperation landscape. They want to put a halt to the ‘financing of terrorist organisations with our tax money’.<sup>41</sup> In a public statement, several Belgian civil society organisations reacted to this so-called ‘slander campaign’ from the Israeli government, asking the Belgian government to immediately react to the Israeli government.<sup>42</sup>

The Israeli report emerged shortly after the Palestinian NGO ‘Defense for Children Palestine’ did not attend a briefing of the UN Security due to an explicit request from the Israeli Ambassador in Brussels in 2020. At that time, the Ambassador reproached the organisation for spreading ‘anti-Israel’ messages through social media.<sup>43</sup>

<b>1.7 Legal conviction of trade unionists upheld by Court of Appeal</b>	
Area	Freedom of expression and information
Topic	Criminalisation of social movements
Impact	Minor

The Court of Appeal of Liège upholds last year’s sentence by the Correctional Court of Liège of the president of the Socialist Union (Algemeen Belgisch Vakverbond - ABVV), together with sixteen trade union members, to suspended prison sentences and fines of €600 to €4,800 for malicious obstruction of traffic.<sup>44</sup>

The conviction was already criticised in an open letter by a group of civil society organisations, coordinated by Defend the Defenders.<sup>45</sup> The conviction, as well as the decision to uphold the initial conviction, is considered a dangerous precedent for anyone who takes collective action and thus criminalises social movements and renders social rights practically impossible. The ABVV plans to take this case to the Belgian Court of Cassation, and if necessary to the European Court of Human Rights.<sup>46</sup> They argue that this conviction constitutes a serious violation of

<sup>41</sup> Vlaamse Belang, “[Kitir continues to fund terrorist organisations](#)” (“[Kitir blijft terroristische organisaties steunen](#)”), 4 August 2021.

<sup>42</sup> 11.11.11., “[Stop criminalizing Palestinian organisations](#)” (“[Stop criminalisering Palestijnse organisaties](#)”), 26 October 2021.

<sup>43</sup> FRA, “[Legal environment and space of civil society organisations in supporting fundamental rights – Belgium](#)”, January 2021.

<sup>44</sup> ABVV, “[17 trade unionists of ABVV convicted in appeal proceedings](#)” (“[17 vakbondsleden van ABVV in hoger beroep veroordeeld](#)”), 19 October 2021.

<sup>45</sup> MO, Gabriëls, N. (2020), ‘[Defend the Defenders! Fifty social organisations raise the alarm](#)’ (‘[Defend the Defenders! Vijftig sociale organisaties trekken aan de alarmbel](#)’), 10 December 2020; De Wereld Morgen, Callewaert, C. (2020), ‘[Imprisonment \(with suspension\) for trade union action? In Belgium it is now possible](#)’ (‘[Gevangenisstraffen \(met uitstel\) voor een vakbondsactie? In België kan het voortaan](#)’), De Wereld Morgen, 10 December 2020.

<sup>46</sup> De Wereld van Morgen, Lode Vanoost, “[ABVV will defend democratic rights until Strasbourg](#)” (“[ABVV zal democratische rechten verdedigen tot in Straatsburg](#)”), 19 October 2021.

the right to freedom of expression, the right to collective action, and the exercise of the right to strike.<sup>47</sup>

Early December, the ABVV demonstrated in Brussel in defence of the right to collective action.<sup>48</sup>

<b>1.8 Censorship of CSOs</b>	
Area	Freedom of expression and information
Topic	Censorship
Impact	Major

On 10 December, the International Day for Human Rights, 40 civil society organisations demonstrated in Brussels.<sup>49</sup> They demanded attention for the increasing pressure on, and scrutiny of social movements on a global scale, but also in Belgium. They referred to the discontinuation of subsidies, the criminalisation of social action, and the failure of governments to comply with commitments; pointing to the criminal conviction of 17 trade unionists (see section 1.7), the dismissal of trade unionists, and the failure of Belgian’s asylum and migration policies despite the country’s international human rights obligations, to support their arguments.

In light of demonstrating solidarity with human rights defenders worldwide and nationally, Defend the Defenders sent an open letter to the Ministers of Home Affairs (Annelies Verlinden), Foreign Affairs (Sophie Wilmès), and Development Cooperation (Meryame Kitir), demanding the implementation of effective protection mechanisms to allow social movements in Belgium (and on a global scale) to safely take up their role in society, and the compliance with international obligations.<sup>50</sup>

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<sup>47</sup> De Tijd, “ABVV to Cassation against conviction for motorway blockades” ([“ABVV naar Cassatie tegen veroordeling voor snelwegblokkades”](#)), 19 October 2021.

<sup>48</sup> De Wereld van Morgen, Malkia Mutiri, “In the picture: Trade unionists stand up for fair wages and the right to social action” ([“In beeld: 6000 vakbondsmilitanten komen op voor eerlijke lonen en recht op sociale actie”](#)), 6 December 2021.

<sup>49</sup> De Wereld van Morgen, Evi Van Thienen, “Human Rights Activists globally and in Belgium victim of censorship and repression” ([“Mensenrechtenactivisten wereldwijd, ook in België, slachtoffer van censuur en repressie”](#)), 10 December 2021.

<sup>50</sup> Defend the Defenders, “Broad coalition of trade unions, NGOs and social movements celebrate solidarity with human rights defenders on international human rights day” ([“Brede coalitie van vakbonden, ngo’s en sociale bewegingen viert solidariteit met mensenrechtenverdedigers op mensenrechtendag”](#)), 10 December 2021.

## 2 Examples of civil society contributions to the rule of law

<b>2.1 CSOs react after the closure of the cultural sector</b>	
Topic	Monitoring the legality and proportionality of laws, measures and practices; triggering the judicial review of laws, measures and practices and the enforcement of rulings

On 22 December 2021, the federal government announced new measures in light of the Omikron-variant of the corona virus.<sup>51</sup> One of the measures announced the closure of all indoor spaces in the cultural, festive, and recreational sectors. Only museums and libraries were allowed to stay open, other big indoor events and activities were forbidden.<sup>52</sup> This measure, which the government called the 'most drastic one' among the new measures, hit the cultural sector the hardest and was taken despite the call of several organisations a few weeks earlier to not take 'random' decisions or to completely shut down the activities of socio-cultural organisations.<sup>53</sup> The following weekend, approximately 5.000 people gathered at the 'Hill of Arts' (Mont des Arts/Kunstberg) in Brussels to protest against the measures.<sup>54</sup>

Upon the announcement of the measures, a coalition of organisations among which the Flemish and Walloon League for Human Rights (respectively Liga voor Mensenrechten and Ligue des droits humains) led by Mathieu Pinte, turned to the Council of State (Raad van State) and asked for a suspension of the measures.<sup>55</sup> They argued that the measures taken for the cultural sector were not justified and not in accordance with the principle of proportionality. They pointed, among others, to the expert reports which did not recommend closure of the cultural sector. The organisations further argued that the measures were a violation of the right to participate in cultural life, as well as the rights of employees in the cultural sector as protected by the Belgian Constitution and by several international human

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<sup>51</sup> VRT NWS, Denny Baert, OVERVIEW – From shopping to sports: these new corona measures will take effect from 26 December" ("[OVERZICHT – Van winkelen tot sport: deze nieuwe coronamaatregelen gaan in vanaf 26 december](#)"), 22 December 2021.

<sup>52</sup> Belgium, Royal Decree, [Nr. C-2021/43624](#) concerning the amendment of Royal Decree of 28 October 2021 concerning the measures of the administrative police to prevent or limit the impact for the public health of the epidemic state of emergency concerning the coronavirus COVID-19 pandemic" ("Koninklijk Besluit houdende wijziging van het koninklijk besluit van 28 oktober 2021 houdende de nodige maatregelen van bestuurlijke politie teneinde de gevolgen voor de volksgezondheid van de afgekondigde epidemische noodsituatie betreffende de coronavirus COVID-19 pandemie te voorkomen of te beperken"), 24 December 2021.

<sup>53</sup> The Federation, "Keep the local association life open and upright" ("[Hou het lokale verenigingsleven open en overeind](#)"), 10 November 2021.

<sup>54</sup> De Standaard, Lieve Van de Velde, "So we dance" ("[Alors on danse](#)"), 27 December 2021.

<sup>55</sup> De Standaard, "Cultural sector files claim for suspension with Council of State" ("[Cultuursector dient vordering tot schorsing in bij Raad van State](#)"), 28 December 2021.

rights treaties to which Belgium is a Party. These rights, they concluded, were not fairly balanced against other rights, freedoms, and interests at stake.

On 28 December 2021, the Council of State adjudged that the measure to close down the cultural sector was disproportionate and was not based on adequate grounds that demonstrated why visiting cultural performances would be extremely dangerous for public health.<sup>56</sup> The closure of other indoor activities was retained.

Shortly after the judgment, a new Royal Decree was drafted, re-opening theatres and cinemas.<sup>57</sup>

### **Other initiatives to suspend corona-related measures catch the bullet**

The aforementioned turn to the Council of State after announcing the closure of the cultural sector was not the first attempt of civil society organisations to fight measures taken by the government in light of the COVID-19 pandemic. Several procedures were earlier introduced to the Council of State and other judicial authorities.

For example, the Flemish and Walloon League for Human Rights initiated an emergency procedure to prohibit the Minister of Internal Affairs, Annelies Verlinden, to implement new measures on the sole basis of a ministerial decree (MD).<sup>58</sup> While the Court of Summary Jurisdiction ruled in favour of the organisations, the Court of Appeal did not follow suit.<sup>59</sup> The Court of Appeal perceived a problem with the constitutionality of the measures, as well as with the criminal sanctions that could be taken based on the MD. The Court also noted that the Minister did not inquire the required advice of the Council of State. However, since identical questions were already being examined by the Belgian Constitutional Court, the Court of Appeal considered that it lacked jurisdiction.

Dozens of other procedures concerning the COVID-19 measures which had been introduced earlier to the Council of State have systematically been rejected.<sup>60</sup>

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<sup>56</sup> Belgium, Council of State, [Decision nr. 252.564](#) in Mathieu Pinte against the Belgian State, 28 December 2021.

<sup>57</sup> De Standaard, Wim Winckelmans *et al.*, "Politics capitulate after resistance: Theatres and cinemas re-open" ("[Politiek capituleert na verzet: theaters en bioscopen weer open](#)"), 29 December 2021.

<sup>58</sup> Liga voor Mensenrechten, "League for Human Rights turns to judge regarding the corona measures: 'Our rights may not be restricted by one minister'" ("[Mensenrechtenliga naar rechter over coronaregels: 'Onze rechten mogen niet beknot worden door één minister'](#)"), 25 February 2021;

<sup>59</sup> Liga voor Mensenrechten, "Court of Appeal decides not to follow Summary Court – Need for Pandemic legislation to avoid legal uncertainty" ("[Hof van Beroep beslist kortgedingrechter niet te volgen – Nood aan een pandemiewet om rechtsonzekerheid te vermijden](#)"), 7 June 2021.

<sup>60</sup> With the exception of a case concerning the right to religious gatherings; De Standaard, Wim Winckelmans *et al.*, "Politics capitulate after resistance: Theatres and cinemas re-open" ("[Politiek capituleert na verzet: theaters en bioscopen weer open](#)"), 29 December 2021.

## 2.2 Civil society organisations vs Belgium in legal proceedings

Topic	Assisting victims in accessing judicial and non-judicial mechanisms of justice + Monitoring the legality and proportionality of laws, measures and practices; triggering the judicial review of laws, measures and practices and the enforcement of rulings
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In 2021, several legal proceedings were introduced by civil society organisations against the Belgian state on different levels. While some drew a blank at an early stage, others proved to be successful.

### 2.2.1 Belgium convicted in climate case

On 1 December 2014, the non-profit organization Climate case (Vzw Klimaatzaak) subpoenaed the Belgian government with regards to the country's failing climate policies.<sup>61</sup> After a legal battle that continued for several years, a semi-victorious judgment for the organisation was issued on 17 June 2021 by the Court of First Instance of Brussels. The Court of First Instance followed the arguments of Climate case and condemned Belgium's negligence when it comes to its climate policies. Belgium's climate change policy was deemed so substandard that the country violates its duty of care and several human rights.<sup>62</sup>

Climate case was partly satisfied with the judgment, particularly in the sense that their claims are now taken seriously. Concerning the lack of imposition of clear climate objectives by the court however, the organisation reacted with disappointment.<sup>63</sup> Therefore, the organisation has appealed against the judgment regarding this last specific aspect. Simultaneously, Climate case has filed a complaint with the European Court of Human Rights.<sup>64</sup>

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<sup>61</sup> Klimaatzaak, "[The course of Climate case](#)" ("[Het verloop van Klimaatzaak](#)"; "[Le déroulement de l'Affaire Climat](#)").

<sup>62</sup> Belgium, Court of First Instance Brussels, [Nr. 2015/4585/A](#), Vzw Klimaatzaak against Belgium, 17 June 2021.

<sup>63</sup> VRT NWS, Denny Baert et al., "Belgian governments convicted for faulty climate change policy, Climate case now wants real reduction objectives" ("[Belgische overheden veroordeeld voor gebrekkig klimaatbeleid, Klimaatzaak wil nu ook echte reductiedoelstellingen](#)"), 17 June 2021.

<sup>64</sup> Ibid.

## **2.2.2 Legal victory for Greenpeace regarding Flanders' failing air quality policies**

In 2017, in light of its 'Clean Air' campaign, Greenpeace started legal proceedings against the Flemish Government because the latter failed to protect its citizens against unhealthy air pollution.<sup>65</sup>

In a final step, the Court of Appeal of Brussels rules in favour of Greenpeace.<sup>66</sup> The Flemish Government will now have to develop an ambitious air-action plan and, in anticipation of the implementation of this plan, pay penalty payments.

The penalty payments have thus far already risen to an amount of 750.000 EUR. Greenpeace will use this sum of money to create the Clean Air Foundation (Fonds Gezonde Lucht).<sup>67</sup> The foundation will support neighbourhood committees, action groups, and associations that establish local projects which aim to develop better air quality and a healthy environment.<sup>68</sup>

## **2.2.3 Antwerp public prosecutor dismisses complaints 'Right to air'-action**

During the summer of 2021, the action group 'Right to Air' (Recht op Lucht) together with 350 Antwerp citizens, filed a criminal complaint with the Antwerp Prosecutor's office, demanding to open an investigation into health damage as a consequence of air pollution in Antwerp.<sup>69</sup> They further asked to prosecute those responsible for involuntary assault and battery and culpable omission.

While the Prosecutor General received a delegation of the action group to hear their complaints and concerns, the Office of the Prosecutor decided to dismiss the complaints at a later stage. The Prosecutor explained that they do not believe that the complaint will hold before a criminal judge.<sup>70</sup>

Right to Air reacted with disappointment.<sup>71</sup> While they understand the complexity of the case, they indicated the clarity of the facts at hand and pointed to the many

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<sup>65</sup> Greenpeace, "It was in the air: Greenpeace wins case against Flemish Government" ("[Het hing in de lucht: Greenpeace wint rechtszaak tegen de Vlaamse overheid](#)"), 14 December 2021.

<sup>66</sup> Ibid.

<sup>67</sup> De Wereld van Morgen, "Greenpeace wins lawsuit against the Flemish government, can establish new Clean Air Foundation" ("[Greenpeace wint rechtszaak tegen Vlaamse overheid, kan nieuw Fond Gezonde Lucht oprichten](#)"), 15 December 2021.

<sup>68</sup> Greenpeace, "It was in the air: Greenpeace wins case against Flemish Government" ("[Het hing in de lucht: Greenpeace wint rechtszaak tegen de Vlaamse overheid](#)"), 14 December 2021.

<sup>69</sup> Right to Air, "News letter #3" ("[Nieuwsbrief #3](#)"), 5 June 2021.

<sup>70</sup> De Wereld van Morgen, "Antwerp Public Prosecutor wants to dismiss 350 complaints Right to Air-action: Action group prepares further legal steps" ("[Antwerps parket wil 350 klachten Recht op Lucht-actie seponeren: actiegroep bereidt volgende juridische stappen voor](#)"), 23 September 2021.

<sup>71</sup> De Standaard, Sanne De Clerck, "Give us clean air, Your Honour" ("[Geef ons schone lucht, edelachtbare](#)"), 17 November 2021.



reprimands of the European Commission directed against Belgium regarding this exact issue. The action group now plans to take further (legal) steps.

#### **2.2.4 Lawsuit against Belgian government concerning weapon export to Turkey**

The NGOs Peace Action (Vredesactie) and the National Coordination of Actions for Peace and Democracy (La Coordination Nationale d'Action pour la Paix et la Démocratie - CNADP), with the support of Amnesty International Belgium, subpoenaed the Flemish Government because of Flanders' export of military components to the Turkish air force, which the organisations deem to violate the Flemish Weapon Trade Decree and several international weapon embargos.<sup>72</sup> On 22 December 2021, a hearing took place in the Court of First Appeal. The judgment will follow in 2022.

One week before the hearing, 15 civil society organisations, among which Amnesty International Belgium, 11.11.11, Refugee Work Flanders (Vluchtelingenwerk Vlaanderen), and Movement.net (Beweging.net), sent an open letter to Flemish Prime Minister Jan Jambon requesting him to improve the controls on the end-use of the Flemish weapon export.<sup>73</sup>

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<sup>72</sup> VRT NWS, Jens Franssen, "Flemish government in court for 'weapon export to Turkey' ("[Vlaamse regering voor rechtbank voor 'wapenexport naar Turkije'](#)")", 27 October 2021; Wereld van Morgen, Vredesactie, "NGOs subpoena Flemish weapon export to Turkey" ("[Ngo's dagvaarden Vlaamse wapenexport naar Turkije'](#)")", 27 October 2021.

<sup>73</sup> Wereld van Morgen, "Civil society organisations call to Jambon for controls on end-use Flemish weapon trade" ("[Middenveldorganisaties roepen Jambon op om eindgebruik Vlaamse wapenhandel te controleren'](#)")", 14 December 2021.



### 3 Other relevant developments

<b>3.1 Establishment of new regional human rights institute</b>	
Topic	Feeding into and supporting the work of independent authorities and bodies (e.g. judiciary, NHRI, Ombudsperson)

On 17 December 2021, the Flemish Government adopted a draft decree regarding the establishment of a Flemish human rights institute with A-status per the Paris Principles.<sup>74</sup> The new institute will be authorised to handle all discrimination cases for which Flanders is competent.<sup>75</sup> A consequence of the establishment of this new institute is the termination of the cooperation with Unia, the organisation for discrimination, and the promotion of equal opportunities. A consequence that had been announced in the Flemish government agreement of 2019 to end the fragmentation of the human rights protection landscape in Flanders when discrimination is concerned.<sup>76</sup> With the establishment of a new institute, the Flemish government hopes to be more effective when it comes to the protection of Belgian citizens against discrimination.

Unia confirms that it will constructively cooperate with the government to swiftly transfer personnel and expertise.<sup>77</sup> Additionally, Unia indicates that it will ensure continued support for citizens who are victims of discrimination. The organisation deems it primarily positive that the Flemish government focuses on the protection of human rights. Other organisations are more concerned. After the adoption of the draft decree, 21 organisations that represent or stand up for victims of discrimination and other human rights violations expressed their concern.<sup>78</sup> They fear that the new institute will have less clout compared to Unia since the new institute's main focus lies on mediation instead of seeking justice through legal proceedings.

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<sup>74</sup> Flemish Parliament, "Report of the assembly Commission on Home Affairs, Equal Opportunities and Integration" ("[Verslag vergadering Commissie voor Binnenlands Bestuur, Gelijke Kansen en Inburgering](#)"), 21 September 2021.

<sup>75</sup> Open VLD, "Flanders pursues Human rights institute with international top ranking" ("[Vlaanderen gaat voor Mensenrechteninstituut met internationale top ranking](#)"), 19 December 2021.

<sup>76</sup> Flanders, "Flemish Government 2019-2024 Government agreement" ("[Vlaamse regering 2019-2024 Regeerakkoord](#)"), 30 September 2019.

<sup>77</sup> UNIA, "New Flemish organisation in the make: Unia focuses on cooperation" ("[Nieuwe Vlaamse instelling in de maak: Unia focust op samenwerking](#)"), 20 July 2016.

<sup>78</sup> VRT NWS, Frank Segers, "Flanders gets Flemish Human Rights institute in 2023" ("[Vlaanderen krijgt in 2023 een Vlaams Mensenrechteninstituut](#)"), 19 December 2021.