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The progress of the Assembly's monitoring procedure (October 2014-August 2015)

Periodic review report of countries not under the monitoring procedure sensu stricto or engaged in a post-monitoring dialogue:

Belgium

Report¹

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe
(Monitoring Committee)

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1. See also [Doc. 13868 Part 1](#), [Part 2](#), [Part 4](#) and [Part 5](#).



Explanatory memorandum by Mr Schennach, rapporteur

1. Introduction

1. The Kingdom of Belgium (hereafter Belgium) joined the Council of Europe on 5 May 1949. It is a founder member of the Organisation. Upon accession, it committed itself to respecting the obligations incumbent upon every member State under Article 3 of the Statute with regard to pluralist democracy, the rule of law and human rights.

2. Belgium is a parliamentary democracy with a limited constitutional monarchy. Situated in western Europe, Belgium covers an area of 30 528 square kilometres and has a population of 10 449 361.²

3. According to its Constitution, “Belgium is a federal State made up of three communities, three regions, and four linguistic regions (three monolingual, one bilingual)”. The country has complex institutions and is divided into three regional government areas. Decision-making powers are divided between the federal State, three communities and three regions. Belgium’s regions and communities are invested with legislative power. For years, the federal system has been challenged by centrifugal forces, pushing for more autonomy at the community and region levels and less centralisation, and questioning the national identity. With the successive State Reforms, and notably with the Sixth State Reform, Belgium has moved towards a less centralised State: the three communities (Flemish, French and German-speaking) and the three regions (the Flemish, Walloon and Brussels-Capital regions) have been assigned increasingly important governmental powers.

4. At the federal level, the executive branch is in the hands of the federal government. The Council of Ministers is composed of no more than 15 members. The federal parliament is composed of a Senate and a Chamber of Representatives. The Chamber’s 150 representatives are elected under a proportional voting system from 11 electoral districts. Since the Sixth State Reform (see below), the Belgian Senate has fewer members (reduced from 71 to 60 members) who are no longer directly elected: 50 are elected by the community and regional parliaments and 10 are co-opted members. The co-opted members are elected by their peers: six by the Dutch linguistic group and four by the French linguistic group.³ The King is the Head of State but has limited prerogatives. He appoints the Prime Minister and the ministers that have the confidence of the Chamber of Representatives to form the federal government.

5. The communities are political entities which are based on language. It has three official languages and thus three communities. Belgium is divided into three regions that are territorial entities. Its two largest regions are the Dutch-speaking region of Flanders in the north and the French-speaking southern region of Wallonia. A German-speaking community exists in eastern Wallonia. The Brussels-Capital Region has bilingual status. Language is the fundamental issue at the core of Belgium’s deep divisions. Over the decades, the politicians have contrived to create a system where there is no unifying institution. The country operates on the basis of linguistic divisions, which exist in all spheres of society. In Brussels, and in particular in its outlying districts, where the two cultures exist, the coexistence is a fiction, with a clear separation between the French-speaking and Dutch-speaking societies. As the same time, as the main seat of the European Union institutions and the main location of the European Union-wide civil society, Brussels has grown into a crossroads of diverse languages and cultures.

6. In its [Resolution 1301 \(2002\)](#) on protection of minorities in Belgium,⁴ the Parliamentary Assembly noted that because of the transfer of power from the federal centre to the Belgian federal entities, the Framework Convention for the Protection of National Minorities would have to be ratified by the seven competent parliamentary assemblies (including the Flemish Parliament and the Parliaments of the French-speaking and German-speaking communities) for it to come into effect in Belgium. The existence of national minorities in Belgium at all levels must be assessed in the context of the decentralisation of the Belgian State, and especially of the wide powers of the three communities in the area of minority rights.⁵ According to the Venice Commission:⁶ “In Belgium, in the light of the existing equilibrium of powers between the Dutch-speaking and

2. CIA World Factbook, July 2014: <https://www.cia.gov/library/publications/the-world-factbook/geos/be.html>.

3. www.senate.be/english/SenateCompoEN.html.

4. <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta02/eres1301.htm>.

5. In its [Opinion](#) on possible groups of persons to which the Framework Convention for the Protection of National Minorities could be applied in Belgium, adopted in March 2002, the Venice Commission analysed which possible groups the Framework Convention could be applied to in Belgium. It concluded as follows: “In a context of downward transfer of political powers, an increasing number of laws and decisions affecting the rights of persons belonging to national minorities are taken at the regional or local level, not at the state level. In case of territorial sub-divisions, the state might even lose competence in those fields of interest for minorities. While it remains internationally accountable for the respect

the French-speaking at the State level, French-speakers are in a position of co-dominance and therefore do not constitute a minority within the meaning of the framework convention at this level, despite being numerically inferior to Dutch-speakers. German-speakers, instead, are to be considered as a minority in the sense of the framework convention at the State level.” On this basis, the Assembly recommended in 2002 the ratification by Belgium and its respective competent parliamentary assemblies (including those at the level of the regions and the communities) of the Framework Convention for the Protection of National Minorities (ETS No. 157) as well as the signature and the ratification of the European Charter for Regional or Minority Languages (ETS No. 148). To date, Belgium has still not ratified the Framework Convention, and neither has it signed or ratified the European Charter for Regional or Minority Languages.

7. Elections in Belgium are organised for legislative bodies only, and not for executive functions. Direct elections take place for the European Parliament, the Chamber of Representatives of the bicameral federal parliament, the parliaments of the communities and regions, the provincial councils, the municipal councils and a few district councils. At the federal level, the Chamber of Representatives consists of 150 members, each elected for a five-year term by proportional representation.

8. Participating in the ballot is mandatory in Belgium.⁷ It has a multi-party system and uses proportional representation in all elections, which in general requires coalition governments.

9. As at 30 July 2015, Belgium had ratified 132 Council of Europe treaties and signed 36 additional treaties without ratification.⁸ On 13 September 2012, Belgium signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210). On 8 March 2013, Belgium ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201). On 25 March 2015, Belgium was amongst the 14 member States that signed the new Council of Europe Convention against Trafficking in Human Organs. On 7 May 2015, Belgium ratified the European Convention on the Adoption of Children (Revised) (CETS No. 202).

10. This periodic report was drafted in line with [Resolution 2018 \(2014\)](#) and the explanatory memorandum approved by the committee on 17 March 2015.⁹ It was discussed at committee level on 17 March 2015 and 3 September 2015. I would like to thank the members of the delegation who presented comments.¹⁰ This report is based on, *inter alia*, the most recent findings of the Council of Europe monitoring mechanisms, the reports of the Parliamentary Assembly and the Commissioner for Human Rights and, when relevant, reports prepared by other international organisations and civil society.

2. Background information

11. Belgium’s electoral system, with Dutch- and French-speaking parties appealing to voters in linguistically distinct regions, typically results in government coalitions with alliances of at least two parties from each side. The Federal Council of Ministers, headed by the Prime Minister, remains in office as long as it retains the confidence of the Chamber of Representatives.

12. In recent years, the Belgian federal government has faced political and cultural divisions. Following elections, Belgium went without a government for months because of the divisions between Dutch-speaking and French-speaking communities. Tensions between the two main language communities have also brought down several governments, creating frequent political instability.

13. In particular, tensions between the regions and major parties after the June 2010 federal elections contributed to the 541-day delay needed to form a six-party coalition government. In that period, the Belgian Parliament took a leading role, voting bills and taking special temporary measures. Regional and local institutions also continued to operate at sub-national level.

of its commitments, it must take this decentralisation of powers into consideration when deciding the scope of application of the framework convention. ... it is normally the sub-State entities that are competent in respect of the fields of interest to minorities: to exclude the applicability of the framework convention at the sub-State level would thus be contrary to the object and aim of the convention itself.”

6. Venice Commission [Opinion](#) on possible groups of persons to which the Framework Convention for the Protection of National Minorities could be applied in Belgium, adopted in March 2002.

7. See Title VI “On mandatory voting and sanctions” of the Electoral Code.

8. www.conventions.coe.int/treaty.

9. Document AS/Mon (2015) 12.

10. Document AS/Mon (2015) 23.

14. After long negotiations between Flemish and Francophone parties, a compromise was found by the Sixth State Reform of Belgium on 10 October 2011 – with the so-called “Butterfly Agreement” – among the Christen-Democratisch en Vlaams (CD&V, Christian democratic), the Centre démocrate humaniste (cdH), the socialist Socialistische Partij Anders (sp.a), the Parti Socialiste (PS), the liberal Open Vlaamse Liberalen en Democraten (Open Vld), the Mouvement Réformateur (MR) and the ecologist Groen! and Ecolo. The first six parties (so without the green parties) then formed the Di Rupo I Government that was sworn in on 6 December 2011. The Flemish nationalist party N-VA, which became the largest after the 2010 elections, was neither part of the agreement nor of the government coalition.

15. In the context of the economic crisis, Belgium has been plunged into debates about language and culture. The Belgian case of multicultural federalism has been torn between the common values of identity and diversity through cohesion and common purpose on the one hand, and the aspirations for partition and separation of a linguistically divided country on the other hand.

16. Political developments in recent years and notably the repetitive governmental-political crises have shown that the policy of multiculturalism and multilingual cohabitation can hardly, if at all, function any longer as a united political system. The successive State reforms have led to more decentralisation and weakened the unitary State. Questions have been raised following the constitution of the Belgian federal centre-right government coalition (see paragraph 27 below) as it includes the New Flemish Alliance (N-VA) that promoted confederalism.¹¹ When entering the coalition, members of the government reportedly halted their agenda of institutional change and based their programme on the implementation of the Sixth State reform.

17. These developments are likely to weaken the imprint of Belgium’s unitary past, and push for further decentralised State reforms, and towards a possible territorial split in the future. The proposed establishment of a “confederation” to replace the existing federal structure is seen by some as the only way out in the long run, although such a move could threaten the institutional weight of the existing political forces. On the other hand, some have expressed views that the constitution of the new government at the end of 2014 and its programme have shown a political will for compromise in the framework of the existing State structure.

3. Democracy

18. Political divisions between the Dutch-speaking Flemings of the northern part of Belgium and the French-speaking Walloons of the southern part have led in recent years to constitutional amendments granting these regions formal recognition and autonomy.

19. The political Butterfly Agreement¹² defined the Sixth State Reform. As outlined in the Institutional Agreement, the purpose of the State Reform was to produce “a more efficient federal state and a larger autonomy for the federated entities”. The Sixth State Reform was planned to take place in several stages.

20. The two main decisions respectively concerned the transfer of a large block of powers from federal level to the federated entities and the preparation of a major revision of the Special Finance Act. In addition, a number of other agreements were reached on splitting the Brussels-Halle-Vilvorde electoral district and reforming parliament, including simultaneous elections at the various levels of power and abolition of direct elections to the Senate.

21. The Sixth State Reform was undoubtedly a historic step with the substantial transfer of federal competences to the communities and regions. The whole package of power transfers was extensive (and represents nearly 20 billion euros), especially in comparison with previous State reforms. Almost all sectors of the Belgian economic and social landscape were concerned. For the very first time, competences regarding social security were decentralised. The responsibility concerning family allowances was decentralised from the federal level to the communities.

22. The reform included a split of the electoral constituency of Brussels-Halle-Vilvoorde into one electoral district for Flemish Brabant and one for Brussels-Capital (19 municipalities). A reform of the judicial district of Brussels was also foreseen regarding the composition and language of the public prosecutor’s departments, the division between Dutch-speaking and French-speaking courts, as well as the legal provision on the use of languages in legal matters. The Brussels district became one of the 12 new legal districts created by the justice reform.

11. <http://english.n-va.be/en/about/faq>.

12. See paragraph 14 above.

23. The reform also fundamentally modified the Special Finances Act. With the financial reform, communities and regions are financed differently, with a substantial increase of the fiscal autonomy of the regions.

24. The reform was transposed into national legislation by the Special Laws of 6 January 2014 and entered into force on 1 July 2014.

25. On 23 April 2012, after members of the then Belgian opposition brought the matter to the attention of the Council of Europe, the Parliamentary Assembly asked the Venice Commission to provide an opinion on the recent constitutional amendment procedure in Belgium, more particularly concerning the amendment to Article 195 of the Constitution relating to the revision of the Constitution. The amendment of the Constitution was aimed at opening the way for the sixth stage of the State reform that should also contribute to the solution of the governmental and political crisis of the country. In its opinion on the revision of the Constitution of Belgium, adopted on 15-16 June 2012, the Venice Commission¹³ concluded that the procedure did not seem to have violated this Constitution or international standards, although more transparency would have been desirable through a longer formal procedure ensuring proper debate.

26. In its recommendation¹⁴ of 15 October 2014, the Congress of Local and Regional Authorities of the Council of Europe welcomed the entry into force of the Sixth State Reform. It considered that the constitutional and legislative foundations of self-government were fully complied with throughout the country and that the scope of local self-government was generally respected. The Congress invited the authorities to improve the procedure for consulting the communities and regions, and urged the community and regional authorities to pay particular attention to the financial situation of municipalities and provinces, ensuring that they had diversified and adequate resources.

27. On 25 May 2014, triple European, federal and regional elections took place simultaneously. Regional strategies played a strong role in shaping the new federal coalition that took office after three months of negotiations. 139 days after the federal elections, the new Belgian federal centre-right government, led by the liberal francophone Charles Michel, took office. It is composed of one francophone party, the liberal Mouvement Réformateur (MR) and three Flemish parties: the liberal Open Vlaamse Liberalen en Democraten (Open Vld), the Christian democratic Christen-Democratisch en Vlaams (CD&V) and the Flemish nationalist Nieuw-Vlaamse Alliantie (N-VA). For the first time since 1988, the governing coalition did not include the francophone Socialist Party (PS). The N-VA – which consolidated its position as the Belgian Parliament's largest political party – entered the new coalition. Since the May 2014 elections, the Humanist Democratic Centre (cdH) is no longer part of the federal government.

28. In a 207-page coalition programme, the government developed a reform agenda on the fiscal, social and economic fronts. According to the coalition parties, the programme is based on a strong common consensus which is instrumental in the implementation of its related policies. They consider it a major change from the past as, in their view, the new political set-up will allow actual implementation of reforms.

29. Belgium has been severely affected by the global economic crisis. The coalition government committed to cut its public sector deficit in line with EU obligations and to reach a balanced budget by 2018. Major criticisms were raised from the political opposition and trade unions. At the end of 2014, a month of intermittent industrial action was launched by the Belgian trade unions to protest against new government austerity measures, which culminated in a general stoppage in mid-December 2014. At the beginning of 2015, the trade unions launched new anti-government action against austerity measures.

30. The coalition government is confronted with various challenges due to the complexity of the institutional, political and economic situation in the country. The government's fiscal consolidation agenda is provoking significant resistance from the opposition socialists and trade unions. Although the coalition has 85 of the 150 seats in the Lower House, it only has 20 out of 63 French-speaking deputies in the Lower House. In addition, the political representation in the federal government totally differs from the representation at regional level in the French-speaking part of the country, which could lead to political tension and create a challenging environment for the implementation of important reforms.

31. Furthermore, the Prime Minister is not the leader of the biggest coalition partner. The government is also facing strong (and mostly united) political opposition in the Chamber of Representatives. And yet, coalition government members reportedly do not consider that this perceived instability and opposition will hamper the implementation of the government's policies.

13. [CDL-AD\(2012\)010](#).

14. [Recommendation 366 \(2014\)](#).

32. The announcement by the Belgian Prime Minister of a 12-point plan against terrorism and radicalism following the Paris terrorist attacks and the anti-terror raid conducted by the Belgian police on 15 January 2015 has prompted additional tensions within the ruling coalition.

4. Human rights and fundamental freedoms

33. Following the recent attacks in Paris and the dismantling of a terrorist cell in Belgium, the Belgian government announced 12 measures to improve the effectiveness of the fight against radicalism and terrorism including, *inter alia*: extending the use of special investigative methods; expanding opportunities for deprivation of citizenship; temporary withdrawal of an identity card, passport denials and assets seizure; exchange of information and capacity to analyse State security; the fight against radicalism in prisons; calling the army for specific supervisory tasks. The League of Human Rights expressed concerns over the measures taken¹⁵, recalling that the principles of necessity and proportionality should be applied, so as to ensure that fundamental freedoms do not become collateral damage in the legitimate struggle against terrorism.

34. In the Belgian constitutional set-up, in which the State powers are divided among and exercised by the federal authority, the communities and the regions, co-ordination between the different State entities is essential for the protection of human rights.

35. In the field of anti-discrimination, the European Commission against Racism and Intolerance (ECRI) published its last report¹⁶ in February 2014, in which it noted steps forward. However, it highlighted a number of issues, such as the problematic application of the anti-discrimination legislation in certain areas and certain questionable aspects of the integration programmes.

36. On the one hand, ECRI's report acknowledges the fact that the Centre for Equal Opportunities and Opposition to Racism will be able to work at all State levels due to an agreement between the federal authorities and the federated entities. The legislative process to turn the existing Centre for Equal Opportunities and Opposition to Racism into an inter-federal institution still needs to be completed. Numerous judicial proceedings have been initiated against individuals and legal entities advocating hatred and violence. Media self-regulatory bodies are particularly active in combating the dissemination of hate speech through the media. The ECRI report also welcomes the action plan to combat homophobic and transphobic violence and anti-discrimination legislation towards LGBT persons.

37. On the other hand, as noted by ECRI, Belgium has not yet ratified Protocol No. 12 to the European Convention on Human Rights. Anti-racism and anti-discrimination legislation is scattered in a number of laws at federal and federated entities level, and its implementation remains problematic. Data on hate speech and racist violence are too fragmentary to give a clear picture of the situation in the country. Ethnic and religious groups, in particular Muslims, continue to face discrimination. Although measures have been taken by the authorities in recent years, there are still not enough properly equipped transit sites for Travellers. Despite specific provisions of the law, there is no independent body competent on questions relating to discrimination on grounds of language. The situation concerning hate speech on the Internet is extremely worrying, and Belgium has not ratified the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

38. On 1 July 2015, a round table was organised by ECRI in co-operation with the Belgian Inter-federal Centre for Equal Opportunities to discuss the follow-up to the recommendations contained in the ECRI report. Once available, the conclusions of the roundtable will be a useful tool to assess the state of implementation of the recommendations and to ensure proper follow-up.

39. The Belgian authorities have taken a number of important steps to prevent and combat trafficking in human beings in compliance with the Council of Europe Convention on Action against Trafficking in Human Beings. In particular, based on GRETA's findings, the Committee of the Parties' Recommendation CP(2013)8¹⁷ acknowledged the following: a legal and policy framework is in place; specialised anti-trafficking structures have been set up; awareness-raising measures for professionals are being implemented; a co-ordinated and multidisciplinary approach towards victims is being applied; significant efforts are being made to carry out proactive investigations.

15. www.liguedh.be/espace-presse/130-communiqués-de-presse-2015/2242-mesures-contre-le-terrorisme-attention-aux-effets-contreproductifs-et-aux-dommages-collatéraux.

16. Report published on 25 February 2014:

www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Belgium/BEL-CbC-V-2014-001-ENG.pdf.

17. Recommendation CP(2013)8 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium, adopted at the 12th meeting of the Committee of the Parties on 7 October 2013.

40. Based on the Committee of the Parties' recommendation, the authorities will need to take further action in order to improve the implementation of the Convention on Action against Trafficking in Human Beings, in particular: pay increased attention to measures against child trafficking; ensure that the referral and assistance mechanisms are adapted to the victims' needs; systematically inform victims of the possibility of benefiting from a recovery and reflection period; ensure that there are repatriation assistance arrangements suitable for all victims of trafficking; continue efforts in the field of prosecution of traffickers. The government is expected to report to the Committee of the Parties on the measures taken by 7 October 2015.

41. One issue has been raised for years by the Council of Europe bodies, without noticeable improvements: the Commissioner for Human Rights, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Court of Human Rights ("the Court") have criticised Belgium several times for its failure to treat mentally ill prisoners properly.¹⁸ Applicants claim that they are kept for long periods of time in institutions which do not offer the care and support their psychiatric condition requires, i.e. prison psychiatric wings (violation of Article 5.1 of the European Convention on Human Rights (ETS No. 5, "the Convention") in all cases; violation of Article 3 in certain cases¹⁹). In several cases,²⁰ the Court also held that there was a lack of an effective remedy to complain about the conditions of detention (violation of Article 5.1).

42. The Belgian authorities provided a revised action plan on the execution of such cases on 10 February 2014 and 10 June 2014, after eight new final judgments joined this group of cases.²¹ Concerning the violations of Article 5.1 and of Article 3 of the Convention, the revised action plan indicated notably that the Federal Ministry of Health and the Federal Ministry of Justice were working on mapping the population of internees, the supply of health care to internees and the needs in this field. Moreover, the authorities have engaged in a reflection on ways in which medical assistance to interned persons can be improved. The authorities also reported on the adoption of a new law on psychiatric detention on 5 May 2014. Concerning the violations of Article 5.4 of the Convention, the authorities indicated that recent court decisions demonstrate that there are effective remedies in Belgium for interned persons.

43. The structural issue nevertheless remains and further efforts are needed. This question has been at the core of several media articles²² in recent months, with a number of mentally ill prisoners in Belgium having requested euthanasia due to the absence of adequate medical treatment in the detention facilities. This raises important issues about the use of euthanasia, in the light of the discussions within the Parliamentary Assembly in recent years.²³

44. A series of judgments of the European Court of Human Rights have assessed the compliance of the Belgian procedure with international standards when immigration decisions could have a detrimental effect on human rights. Both the Belgian Constitutional Court and the European Court of Human Rights have come to the conclusion that the Belgian framework of immigration litigation lacks the necessary level of effective remedy when claims of violation of human rights are presented.²⁴ In its Resolution CM/ResDH(2014)272 on the execution of the judgment *M.S.S. v. Belgium and Greece*, the Committee of Ministers closed the examination in respect of Belgium in December 2014, based on the set of measures taken in response to the Court's finding of a violation of Article 13 of the Convention. The question of whether asylum seekers benefit from a remedy with automatic suspensive effect only in cases where they are deprived of their liberty nevertheless remains open.

45. Concerning the detention of asylum seekers, the United Nations Committee against Torture recommended in its concluding observations on the third periodic report on Belgium²⁵ that the State Party should only detain asylum seekers as a last resort and, when it is necessary, for as short a period as possible and without excessive restrictions. In 2013, the authorities increased the number of spaces in reception

18. Group of cases *L.B. v. Belgium* (Application No. 22831/08), 2 October 2012; judgments of 9 January 2014 in the cases: *Oukili v. Belgium* (Application No. 43663/09); *Plaisier v. Belgium* (Application No. 28785/11); *Van Meroye v. Belgium* (Application No. 330/09); *Saadouni v. Belgium* (Application No. 50658/09); *Moreels v. Belgium* (Application No. 43717/09); *Gelaude v. Belgium* (Application No. 43733/09); *Lankester v. Belgium* (Application No. 22283/10); *Caryn v. Belgium* (Application No. 43687/09).

19. Cases *Claes and Lankester v. Belgium*.

20. Cases *Claes, Van Meroye, Oukili, Moreels, Gelaude and Saadouni v. Belgium*.

21. Cases *Oukili, Plaisier, Van Meroye, Saadouni, Moreels, Gelaude, Lankester and Caryn v. Belgium*.

22. www.bbc.com/news/magazine-30708585.

23. Protecting human rights and dignity by taking into account previously expressed wishes of patients, *Doc. 12804, Resolution 1859 (2012) and Recommendation 1993 (2012)*; Assistance to patients at end of life, *Doc. 10455*.

24. *M.S.S. v. Belgium and Greece*, Application No. 30696/09, judgment of 21 January 2011 (Grand Chamber).

25. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT/C/BEL/CO/3&Lang=En.

centres for asylum seekers. However, according to Amnesty International, places remain insufficient, and undocumented migrant families are still denied access.²⁶ It is worth recalling that various measures have been taken by the Belgium authorities over the years to adapt the former detention policy for unaccompanied and accompanied minors. In its [Resolution 2020](#) (2014), the Assembly noted with satisfaction that Belgium had taken steps towards ending the immigration detention of children.

46. In the case *Trabelsi v. Belgium*,²⁷ the country disregarded the interim measure (Rule 39 of the Rules of Court) issued by the European Court of Human Rights by extraditing a Tunisian national from Belgium to the United States, where he has been prosecuted on charges of terrorist offences and is liable to life imprisonment. The Court ruled that Belgium failed in its obligations under Article 34 of the Convention. The failure of the Belgian State to observe the suspension of extradition indicated by the Court has irreversibly lowered the level of protection of the rights secured under Article 3 and interfered with the applicant's right of individual petition.

47. In view of the above, it is important that the Belgian Parliament becomes involved in efforts to promote the execution of the Court's judgements. To this end, it should task a committee with looking into the implementation of the Convention and the Court's jurisprudence at national level, as recommended by Parliamentary Assembly President Anne Brasseur during her last visit to Belgium.

48. The European Committee of Social Rights found Belgium to be in breach of the European Social Charter with regard to corporal punishment of children. In a decision published in May 2015, it found that the corporal punishment of children was not prohibited in a sufficiently clear, binding and precise manner in Belgian legislation or case law, and also pointed out that it had repeatedly found that the situation was not in conformity with Article 17 of the Charter (Conclusions 2011).²⁸

49. There are no other specific concerns to raise relating to the protection and promotion of human rights in Belgium.

5. Rule of law

50. The issues of prison overcrowding and conditions of detention in Belgian prisons have been raised for years by the Council of Europe monitoring bodies.²⁹ In the case of *Vasilescu v. Belgium*,³⁰ the European Court of Human Rights recently held that there was a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights regarding the physical conditions of the applicant's detention. The problems arising from prison overcrowding in Belgium, and the problems of unhygienic and dilapidated prison institutions, are structural in nature.

51. The Court has recommended that Belgium envisage adopting general measures guaranteeing prisoners conditions of detention compatible with Article 3 of the Convention and affording them an effective remedy by which to put a stop to an alleged violation or allow them to obtain an improvement in their conditions of detention. It is worth noting that in its Government Agreement of 10 October 2014, the government foresaw a renewed penitentiary policy, including measures to combat prison overcrowding and adequate treatment facilities for detainees with mental illness.

52. The perception of corruption in Belgium is at a relatively low level, and below the EU average. Petty corruption seems relatively rare. And yet corruption remains an issue in Belgium and the situation is far from being satisfactory. While the legal framework to fight corruption is largely in place, a number of GRECO recommendations on criminal law and party funding have remained unimplemented or partly implemented. In its third evaluation round, GRECO issued a third interim compliance report³¹ in March 2015 acknowledging the progress made by Belgium by implementing fully three recommendations and partly nine recommendations, out of the fifteen contained in the evaluation report. GRECO decided that the level of compliance was no longer "globally unsatisfactory" based on Rule 31, paragraph 8.3 of the Rules of

26. www.amnestyusa.org/research/reports/annual-report-belgium-2013.

27. *Trabelsi v. Belgium*, Application No. 140/10, judgment of 4 September 2014.

28. [Decision on the merit](#) published on 29 May 2015, Association for the Protection of All Children (APPROACH) Ltd. v. Belgium, Complaint No. 98/2013.

29. CPT report published in December 2012 ; Commissioner for Human Rights' report of June 2009.

30. *Vasilescu v. Belgium*, Application No. 64682/12, judgment of 25 November 2014.

31. Third evaluation round: [second interim compliance report](#) on Belgium: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding", adopted by GRECO at its 61st plenary meeting, Strasbourg, 14-18 October 2013, published on 4 July 2014, GRECO RC-III(2013)19E.

Procedure, and that it would not continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the evaluation report. GRECO again reiterated its appeal to Belgium to pursue more resolutely the implementation of the various outstanding recommendations.

53. GRECO regretted that only one recommendation for political financing (Theme II) had been fully implemented. It noted that amendments had been introduced in January 2014 which impacted positively transparency and control of political financing, but on the whole represented only limited advances. For example, Belgium had taken steps to ensure that the regulations also apply to political parties ineligible for public grants at federal level, in order to strengthen the supervisory machinery or to establish a wider, more proportionate and more effective scale of sanctions. And yet the new regulations on support by legal persons coming under the definition of sponsorship remained problematic. Measures also remained to be taken with regard to the federated entities and their regulations.

54. Concerning Theme I on incriminations, no definite advance was to be reported at the federal ministerial level, in particular with regard to the implementation of the recommendation calling for a remedy to a legal vacuum left by the removal of a reservation to the Criminal Law Convention on Corruption.

55. GRECO asked the authorities to report by 31 July 2015 on the measures taken to implement the outstanding recommendations of the third evaluation round.

56. In its evaluation report in the fourth evaluation round, GRECO³² acknowledged that Belgium's judiciary overall enjoys public confidence. The Belgian justice system can be seen to be independent and decentralised.

57. The Belgian judicial and prosecuting authorities have to contend with funding and staffing shortages. There is no general system to assess the functioning of the courts. The High Council of Justice should reinforce its auditing role and managerial function within the courts and the prosecution service should be developed. One of the issues raised by GRECO is the increased use of "back-up magistrates" who sometimes account for half of the staff in court, due to budgetary constraints.

58. As underlined by GRECO in its report, meeting the highest standards of judicial integrity is a requirement that concerns all parts of the judicial system, including the administrative courts. However, to date, the organisation of the system of administrative justice had not yet been finalised. There is a need to reinforce preventive measures concerning corruption within judicial institutions.

59. Since the publication of the GRECO report, a reform of the justice system, including geographical reorganisation and increased mobility, entered into force in April 2014. On 18 March 2015, the Minister of Justice presented his Action Plan for Justice (Plan Justice) to the Belgian Parliament, announcing reforms of criminal and civil procedures as well as an overhaul of the judiciary. In this framework, the Council of Ministers examined on 25 June 2015 in first reading the draft law entitled "pot-pourri II" (criminal law and criminal procedure), while the draft law entitled "pot-pourri I" (civil procedure) was approved in second reading by the Council of Ministers and ready for submission to the parliament.

60. Concerning preventive measures against corruption within the parliamentary institutions, codes of deontology and a Federal Ethics Committee have been established, as well as preventive measures for federal parliamentarians, which include a system for the declaration of donations, official appointments, other positions held and assets.

61. However, the regulatory system suffers from a lack of effectiveness and sometimes appears to be unnecessarily complex. Following GRECO's recommendation, it is important to ensure that more coherent and effective regulations are put in place, notably concerning gifts and other benefits, and also on how to engage in relations with third parties, such as lobbies, who seek to influence the parliamentary process. Moreover, the system of declarations has to be revised in order to clearly include the income and an estimate of the value of the assets of members of parliament, which must be public and easily accessible.

62. GRECO invited the authorities of Belgium to submit a report on the measures taken to implement the recommendations of its fourth evaluation round by 30 September 2015, to be assessed in the framework of its specific compliance procedure.

63. There is no other specific concern for Belgium in the area of the rule of law.

32. Fourth Evaluation Round: corruption prevention in respect of members of parliament, judges and prosecutors: [evaluation report](#): Belgium, adopted by GRECO at its 63rd plenary meeting, Strasbourg, 24-28 March 2014, published on 28 August 2014, Greco Eval IV Rep(2013)8E.

6. Conclusions and recommendations

64. Overall, Belgium has been honouring its membership obligations to the Council of Europe in the period under review.
65. In recent years, the Belgian federal government has faced frequent political instability, with tensions between the two main language communities having prevented the constitution of governments and having brought down governments. Belgium's political scene has been torn between the common values of identity and diversity through cohesion on the one hand, and the aspirations for partition of a linguistically divided country on the other, which have hampered the functioning of the State structures. The recent Sixth State Reform that is still under way is an attempt to find a political consensus and is aimed at producing a more efficient federal State and greater autonomy for the federated entities. Further steps are needed to secure the functioning of the State structures taking into account Belgium's specificities. It is important for Belgium to pursue reforms based on proper debate and transparent processes so as to allow for political stability through co-operation and cohabitation between communities.
66. With regard to racism and intolerance, there have been positive developments in Belgium with progress being made in a number of fields. The outstanding issues will have to be addressed in the light of the conclusions of the round table recently organised by ECRI in co-operation with the Belgian Inter-federal Centre for Equal Opportunities.
67. Measures have been taken by Belgium with regard to its framework of immigration litigation to address the lack of the necessary level of effective remedy for cases where asylum seekers are deprived of their liberty. Action is still needed to address the issue of detention of asylum seekers and to ensure access to reception centres. It is important to note that the former detention policy for unaccompanied and accompanied minors has been adapted with a view to ending the detention of immigrant children.
68. The ratification in 2013 of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the European Convention on the Adoption of Children (revised) further demonstrates Belgium's commitment to the protection of children's rights.
69. Although the authorities have taken a number of measures in the framework of the implementation of the GRECO recommendations for the third evaluation round, they need to pursue more resolutely the implementation of the various outstanding recommendations. The assessment of the implementation of the recommendation of the fourth evaluation round will take place in the framework of the compliance specific procedure.
70. The issues of prison overcrowding and conditions of detention in Belgian prisons remain a structural issue that needs to be urgently addressed in order to guarantee prisoners conditions of detention compatible with Article 3 of the Convention and afford them an effective remedy. The failure to properly treat mentally ill prisoners is a long-standing problem in Belgium. The authorities have taken measures to address the situation, but the structural issue nevertheless remains and further efforts are needed.
71. It is essential that Belgium conforms with interim measures (Rule 39 of the Rules of Court) issued by the European Court of Human Rights, in full compliance with its obligations under Article 34 of the Convention. It is important that the Belgian Parliament becomes involved in efforts to promote the execution of the Court's judgments through the designation of a committee to look into the implementation of the Convention and the Court's jurisprudence at national level.
72. Belgium has so far not signed/ratified certain Council of Europe conventions. Based notably on the findings of the main monitoring mechanisms, Belgium should be encouraged, *inter alia*, to:
- 72.1. ratify Protocol No. 12 to the European Convention on Human Rights (ETS No. 177);
 - 72.2. ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence;
 - 72.3. ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems;
 - 72.4. ratify the Framework Convention for the Protection of National Minorities.
73. With regard to prison overcrowding and conditions of detention, including the situation of mentally ill prisoners, Belgium should adopt without delay general measures as recommended by the European Court of Human Rights and the Committee of Ministers in the case *Vasilescu v. Belgium* and the *group of cases L.B. v. Belgium*.

74. In the light of the findings of the Council of Europe monitoring mechanisms, a certain number of additional issues raise concerns and should be addressed by the authorities before the next periodic review. The committee therefore recommends that the authorities:

74.1. continue efforts on issues relating to racism and intolerance and further implement the recommendations of ECRI;

74.2. further implement the Congress of Local and Regional Authorities' recommendations on the situation of local and regional democracy in Belgium;

74.3. continue implementation of the outstanding GRECO recommendations, taking into account the conclusions of its existing and forthcoming evaluation and compliance reports.

74.4. take further action in order to improve the implementation of the Convention on Action against Trafficking in Human Beings, based on the recommendations made by GRETA and the Committee of the Parties to combat trafficking in human beings.

Appendix

Council of Europe conventions signed and/or ratified between 1 October 2013 and 30 July 2015 by Belgium

CETS No. 063: European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers

Signature: 10/12/2014

CETS No. 202: European Convention on the Adoption of Children (Revised)

Ratification or accession: 7/5/2015

CETS No. 208: Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters

Ratification or accession: 8/12/2014; Entry into force: 1/4/2015

CETS No. 213: Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms

Signature: 7/10/2013

CETS No. 216: Council of Europe Convention against Trafficking in Human Organs

Signature: 25/3/2015

Recent findings of Council of Europe monitoring mechanisms and other bodies as at 30 July 2015

European Court of Human Rights	European Convention on Human Rights (ETS No. 5) ratified in 1955 Protocol No. 1 (ETS No. 009) ratified in 1955 Protocol No. 2 (ETS No. 044) ratified in 1970 Protocol No. 6 (ETS No. 114) ratified in 1998 Protocol No. 12 (ETS No. 177) signed in 2000 Protocol No. 13 (ETS No. 187) ratified in 2003 Protocol No. 14 (CETS No. 194) ratified in 2006 Out of a total of 69 900 applications pending before a judicial formation on 31 December 2014, 367 concerned Belgium. Resolutions adopted by the Committee of Ministers: 2 in 2013, 8 in 2014 and 3 in 2015. See Press country profile Belgium
Congress of Local and Regional Authorities	European Charter on Local Self-Government (ETS No. 122) ratified in 2004 Last report and recommendation on local and regional democracy in Belgium adopted on 15 October 2014: CG(27)7FINAL and Recommendation 366 (2014)

Group of States against Corruption (GRECO)	<p>Civil Law Convention on Corruption (ETS No. 174) ratified in 2007 Criminal Law Convention on Corruption (ETS No. 173) ratified in 2004, Additional Protocol (ETS No. 191) ratified in 2009</p> <p><i>Third evaluation round: second interim compliance report on Belgium: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding",</i> adopted by GRECO at its 61st plenary meeting, Strasbourg 14-18 October 2013, published on 4 July 2014, GRECO RC-III(2013)19E second interim report</p> <p><i>Third evaluation round: third interim compliance report on Belgium: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of political party funding",</i> adopted by GRECO at its 65th plenary meeting, Strasbourg 6-10 October 2014, published on 5 March 2015, Greco RC-III(2014)20E third interim report</p> <p><i>Fourth evaluation round: corruption prevention in respect of members of parliament, judges and prosecutors: evaluation report: Belgium,</i> adopted by GRECO at its 63rd plenary meeting, Strasbourg, 24-28 March 2014, published on 28 August 2014, Greco Eval IV Rep (2013)8E</p>
Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)	<p>Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) ratified in 1998 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) ratified in 2009</p> <p>Belgium is not a member of MONEYVAL.</p>
Commissioner for Human Rights	<i>Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium 15-19 December 2008,</i> CommDH(2009)14
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	<p>Convention (ETS No. 126) ratified in 1991, Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) ratified in 1996 Publication of the last report: December 2012, CPT/Inf (2012)36 (in French only) Last country visit: September-October 2013</p>
Group of Experts on Action against Trafficking in Human Beings (GRETA) and Committee of the Parties	<p>Convention (CETS No. 197) ratified in 2009</p> <p>1st Evaluation Round:</p> <ul style="list-style-type: none"> - Evaluation visit in October 2012 - GRETA's Evaluation Report and Government's Comments published in September 2013, GRETA(2013)14 - Recommendation CP(2013)8 of the Committee of the Parties adopted in October 2013
Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and Committee of the Parties	Convention on preventing and combating violence against women and domestic violence (CETS No. 210) signed in 2012 but not ratified
European Commission against Racism and Intolerance (ECRI)	The 5 th report on Belgium was adopted in December 2013 and made public in February 2014, CRI(2014)1 .
Venice Commission	Last opinion: <i>Opinion on the Revision of the Constitution of Belgium</i> adopted by the Venice Commission at its 91 st Plenary Session, Venice, 15-16 June 2012, CDL-AD(2012)010

Other Treaties:

Framework Convention for the Protection of National Minorities	Convention (ETS No. 157) signed in 2001 but not ratified
European Charter for Regional or Minority Languages	Convention (ETS No. 148) neither signed nor ratified
European Social Charter	<p>European Social Charter of 1961 (ETS No. 35) ratified in 1990 European Social Charter (revised) (ETS No. 163) ratified in 2004 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) ratified in 2003 See Country factsheet Belgium</p>