

Legal environment and space of civil society organisations in supporting fundamental rights

Belgium

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Contractor: Vrije Universiteit Brussel, Fundamental Rights Research Centre (FRC)

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1 Five most significant civic space developments in 2020

1.1 Appointment of the Flemish participation organisation

1.1.1 No renewal of the cooperation agreement with Minderhedenforum

The Flemish Integration Policy includes the appointment by the government of a single organisation - the 'participation organisation' - to act as a forum of organisations of persons with a migrant background. The participation organisation aims to empower persons with a migrant background in Flanders by representing them and promoting their interests, issuing policy recommendations, raising awareness among local stakeholders and supporting those stakeholders in taking initiatives to promote the policy participation of persons with a migrant background.² The appointment of the participation organisation 'Minderhedenforum', ended in December 2020. In March 2020, however, the Flemish Minister of Equal Opportunities already announced that the **cooperation** with Minderhedenforum would not be renewed as the government opted for an 'umbrella organisation', rather than a 'network organisation'. The aim was for more people with a migrant background to feel effectively represented by the organisation. More specifically, the Minister criticized Minderhedenforum for still presenting itself strongly as an umbrella organisation of self-organisations whose members are associations of ethnic-cultural minorities.

According to the Minister, associations that claim to represent the community are at risk of reducing each individual to a single identity thereby promoting segregation rather than inclusion (also see *infra*, 1.2). The Minister stated that "a modern and effective integration and equal opportunities policy does not pigeonhole people and allows itself to be advised by a participation organisation with different actors who are not necessarily members of an association. (...) By opening up the participatory organisation to professors, social workers, teachers, businesses and engaged citizens who all want to defend the interests of people of migrant origin, more people of foreign origin will eventually feel effectively represented."³

¹ Flanders, Decree of 7 June 2013 Concerning Flemish Integration Policy (<u>Decreet betreffende het Vlaamse integratie- en inburgeringsbeleid</u>), Belgian Official Gazette 26 July 2013.

² Article 8 of the Decree of 7 June 2013 Concerning Flemish Integration Policy (<u>Decreet betreffende het Vlaamse integratie- en inburgeringsbeleid</u>), Belgian Official Gazette 26 July 2013.

³ Open VLD (2020), 'Minorities should be represented by a broad network, not just by interest groups' ('Minderheden moeten vertegenwoordigd worden door een breed netwerk, niet enkel door belangenorganisaties'), 5 March 2020.

In line with this new approach, the **Flemish Government approved new accreditation criteria** for the participation organisation.⁴ Candidates are selected and appointed through a public call. After an evaluation by the Agency for Domestic Policy (Agentschap Binnenlands Bestuur), the Minister of Equal Opportunities him/herself selects one candidate, which then has to be approved by the government.⁵ Although Minderhedenforum transformed into a network organisation⁶ and applied to the open call for the participation organisation, the Minister of Equal Opportunities announced on 9 November 2020 that he **selected a new organisation** for potential appointment as the participation organisation: 'Join.Vlaanderen'. ⁷

1.1.2 Criticism from opposition, academics and civil society

The decision not to renew Minderhedenforum's appointment was met with serious criticism from members of the opposition, academics and civil society organisations. The government's aim to appoint a network organisation with a better social and ethnic mix is considered fake, especially as it applies only to ethnic-cultural organizations and not 'white' civil society as a whole. This is considered to be the last step in "a long history of **controlling, monitoring and disciplining ethnic-cultural civil society** and integration practice." The decision not to appoint Minderhedenforum was also referred to as a political reckoning and an attempt to silence anti-racist civil society. A coalition of 60 civil society organisations publicly condemned the decision and warned that over 20 years of expertise would be lost, as public attacks had led the Flemish government to take a decision that is unjust and dangerous for a democratic society. 9

The criticism that this was **a political decision**, referred amongst others to tensions with the previous Flemish Minister of Equal Opportunities and Minderhedenforum. The latter stated in 2017 that she intended to tighten the rules for participation organisations such as Minderhedenforum, to ensure that the viewpoints they express are widely supported by their target groups. The underlying reason for this was the unwillingness by Minderhedenforum to sign a

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⁴ Knack (2020), 'Flanders determines recognition criteria for successor Minderhedenforum' ('<u>Vlaanderen legt erkenningsvoorwaarden voor opvolger Minderhedenforum vast</u>'), 12 May 2020.

⁵ Flanders, Decision of 26 June 2020 implementing the Decree of 7 June 2013 on the Flemish integration and civic integration policy (<u>Besluit van de Vlaamse Regering van 26 juni 2020 tot uitvoering van het decreet van 7 juni 2013 betreffende het Vlaamse integratie- en inburgeringsbeleid), Belgian Official Gazette 9 July 2020.</u>

⁶ Minderhedenforum (2020), 'A new story: Minderhedenforum transforms from an umbrella organisation to a network organisation' ('Een nieuw verhaal: Minderhedenforum transformeert van koepelorganisatie naar <u>netwerkorganisatie'</u>), 30 September 2020.

⁷ Bart Somers (2020), 'Bart Somers wants to continue with innovative Join.Vlaanderen as a new participation organisation' ('Bart Somers wil verder gaan met vernieuwend Join.Vlaanderen als nieuwe participatieorganisatie'), 9 November 2020.

⁸ MO (2020), 'The last domino block falls with the Minderhedenforum' ('Met het Minderhedenforum valt de laatste dominosteen'), 11 November 2020.

⁹ NAPAR Coalition (2020), 'Flanders muzzles anti-racist civil society ' ('<u>Vlaanderen muilkorft het antiracistisch middenveld</u>'), Press release, 13 November 2020.

'black pete' pact: a text advocating for a Sinterklaas celebration free of racial stereotyping. ¹⁰ The organization found the measures not to be sufficient, as the clothing of 'black pete' still includes a reference to slavery. According to the previous Minister, however, this did not represent the viewpoint of the majority of persons with a migrant background. She therefore publicly criticized the organization, stating for instance that "Minderhedenforum is not granted funds to spew this Black Pete nonsense". ¹¹

Finally, the decision not to appoint Minderhedenforum was also criticized as Join. Vlaanderen had barely been set up. The latter did not have a functioning website at the time of their selection, and several of its supposed partners publicly announced that they were in fact not informed or had not agreed to working with the organisation, despite claims by the new organisation stating so.¹²

1.1.3 Decision suspended by the Council of State

Ultimately, Minderhedenforum brought the case before the Council of state (Conseil d'État/Raad van State). The latter decided to suspend the decision to appoint Join.Vlaanderen, as well as the decision to cut funds for Minderhedenforum. It found that the application of Join.Vlaanderen was assessed with greater leniency than that of Minderhedenforum. Moreover, it was not clear from the decisions why Join.Vlaanderen was preferred. The procedure for recognising the participation of the organisation was therefore suspended.¹³

On 29 December 2020, all parties came to the agreement that Minderhedenforum would join forces with Join.Vlaanderen by January 2022.¹⁴

¹⁰ Flemish Parliament (2017), <u>Written Question to the Minister of Equal Opportunities</u>, 10 March 2017.

¹¹ VRT NWS, Saerens, Z. (2016), 'Homans: Minderhedenforum does not receive funding for Black Pete nonsense'' ('Homans: "Minderhedenforum krijgt geen subsidies voor Zwarte Piet-onzin''') 14 November 2016.

¹² Abbeloos, J.-F. (2020), Somers changes course after criticism of rejection Minority forum ('<u>Somers verandert geweer van schouder na kritiek op afwijzing Minderhedenforum'</u>), De Standaard, 12 November 2020.

¹³ Belgium, Council of State, <u>Decision nr. 249.047</u> in vzw Forum van etnisch-culturele minderheden (het minderhedenforum) vs the Flemish Community, 25 November 2020; Belgium, Minderhedenforum, (2020), 'Minority forum proven right before Council of State: decision on the selection of participation organisation is suspended' ('Minderhedenforum krijgt gelijk bij raad van state: beslissing somers rond selectie van participatie organisatie wordt geschorst'), 25 November 2020.

¹⁴ Belgium, Het Laatste Nieuws (2020), 'Minority Forum and Join.Vlaanderen reach agreement to merge' ('Minderhedenforum en Join.Vlaanderen bereiken kerstakkoord om samen te smelten'), 29 December 2020.

1.2 Financing of civil society organisations

1.2.1 Exclusion of organisations focused on ethnic-cultural origin for funding

The Flemish Government Agreement 2019-2024 states that the integration policy does not intend to address people on the basis of their ethnic-cultural origin. That it strives, on the contrary, for an inclusive society and that **initiatives that focus on ethnic-cultural origin encourage segregation.** They will therefore no longer be subsidised by the Flemish government. This was reiterated in the Equal Opportunities Policy Statement. In line with this new policy, a **draft Decree on socio-cultural work** was submitted to Parliament, emphasising that only organisations that combat segregation and do not simply focus on ethnic-cultural origins will be funded. According to the explanatory memorandum, advice of external experts would be taken into account when awarding subsidies, but the actual consideration of the content of the regulatory policy objectives and criteria and the determination of the subsidy amount itself remains in the hands of the government only, without restrictions.

The opposition, however, initiated an **ideological** <u>emergency procedure</u>¹⁹ as they found the draft Decree to be discriminatory. Consequently, the parliamentary discussions were put to a halt and the Presidents of the Flemish Parliament, the Chamber, the Senate and the Parliament of the French Community jointly decide that the motion was admissible.²⁰ However, it was then up to the Chamber and Senate to determine whether or not it is discriminatory to exclude organisations that focus on ethnic-cultural origin from government funding.²¹ The Parliamentary

¹⁵ Flanders (2019), Flemish Government Agreement 2019-2024, 30 September 2019.

¹⁶ Flanders (2019), Equal Opportunities Policy Statement, 8 November 2019.

¹⁷ Flanders, Flemish Parliament, Draft Decree amending the Decree of 7 July 2017 on the subsidisation and recognition of socio-cultural adult work (<u>voorstel van decreet houdende wijziging van het decreet van 7 juli 2017 houdende de subsidiëring en erkenning van het sociaal-cultureel volwassenenwerk</u>), 27 November 2019.

¹⁹ The Ideological Emergency Procedure entails that if at least 31 people's representatives believe that a proposal or draft decree is discriminatory on philosophical or ideological grounds, they can submit a motion to suspend the discussion of that proposal or draft. Flemish Parliament, 'Ideological Emergency Procedure' ('<u>Ideologische alarmbelprocedure'</u>).

²⁰ Flemish Parliament, Report of the Plenary Meeting, 4 December 2019.

²¹ If the motion is admissible, the Chamber and the Senate examine whether the disputed draft or proposal for a decree indeed discriminates against certain population groups on philosophical and ideological grounds. If both the Chamber and the Senate decide that there is no discrimination, the proposal or draft decree can be further discussed in the Flemish Parliament. If the Chamber or the Senate conclude that there is discrimination, then the proposal or draft decree cannot be further discussed in the Flemish Parliament.

Commission on constitutional and institutional renewal, as well as the Senate found the motion submitted by the opposition to be unfounded.²² Meanwhile, the review process on the grant applications is currently taking place according to the existing decree. Any potential amendments to the Decree will only take effect in the next policy period (2021-2026).²³

1.2.2 Budget cuts for socio-economic organisations

In 2019, the Flemish Government announced significant budget cuts for sociocultural associations: as of January 2020 these organisations were expected to cut their budgets by 6 percent.²⁴ The annual evaluation of the Flemish budget by the SERV (Social and Economic Council of Flanders) shows that the budgets for nonprofit organisations (civil society, culture, etc.), decreased by just over 100 million Euro. Budget cuts are reflected in the subsidies to non-profit organizations, which account for a total of 18.0% of the savings. This is especially evident in the policy areas with many subsidy streams to non-profit organizations, such as Culture, Youth, Sports and Media (CJSM) and Welfare, Public Health and Family (WVG).²⁵

Organisations had been protesting heavily in previous months. In November 2019, 125 civil society organisations announced actions against the Flemish government's budget cuts, including trade unions, health insurance funds, youth movements, women's movements and organizations for minorities. On average, the organisations have to save 6 percent of a total of \in 3bn in subsidies.²⁶ In an open letter, they criticized the budget cuts for civil society in general, and the changed policy regarding associations of ethnic-cultural minorities (see *supra*) in particular.²⁷

²² Belgium, Chamber of Representatives, Commission on constitutional and institutional renewal (2020), <u>Decision on the Motion for a declaration of discrimination</u> on ideological and philosophical grounds regarding the draft decree amending the decree of 7 July 2017 on the subsidisation and recognition of socio-cultural adult work, 30 January 2020; Belgium, Senate (2020), <u>Decision on the Motion for a declaration of discrimination</u> on ideological and loose grounds tabled in the Flemish Parliament regarding the draft decree amending the decree of 7 July 2017 on the subsidisation and recognition of social and cultural adult, 14 February 2020.

²³ De Federatie (2020), 'Discrimination motion decree socio-cultural work is unfonded according to Chamber and Senate' ('<u>Discriminatie-motie decreet sociaal-cultureel</u> volwassenenwerk ongegrond, aldus Kamer en Senaat'), 6 March 2020.

VRT NWS, Verstraete, J. (2020), 'Associations join cultural sector in actions against budget cuts by Flemish government' ('Verenigingsleven sluit zich aan bij cultuursector met acties tegen besparingen Vlaamse regering'), VRT NWS, 21 November 2019.
 SERV (2020), 'Evaluation report on the initial budget 2020BO' ('Evaluatierapport over de initiële begroting 2020BO'), 18 February 2020; De Standaard (2020), 'Municipalities winners, companies losers in Flemish budget' ('Gemeenten winnaars, bedrijven verliezers in Vlaamse begroting'), 17 February 2020.

²⁶ VRT NWS, Verstraete, J. (2020), 'Verenigingsleven sluit zich aan bij cultuursector met acties tegen besparingen Vlaamse <u>regering'</u>, VRT NWS 21 November 2019.

²⁷ De Wereld Morgen (2020), 'Open letter signed by 125 organisations: "If the Government wants a warm Flanders it will scale back its disatrous plans" ('Open brief - Ondertekend door 125 organisaties: "'Als de regering een warm Vlaanderen wil, dan schroeft ze haar desastreuze plannen terug'"), De Wereld Morgen, 21 November 2019.

One stakeholder faced with particularly serious budget cuts is SAM vzw, an organisation that supports social work professionals and volunteers. The Minister of Welfare decided to reduce SAM's subsidies by 1 million Euro starting in 2020. As a result, the organisation lost 27 percent of its budget, with a major impact on the functioning of the organisation.²⁸ In the press, the organisation's president denounced the budget cuts, stating: "this is certainly not a question of efficiency gains. This is a political choice to eliminate part of civil society."²⁹

Later in the year, the government decided that the timing for the budget cuts was not appropriate due to the pandemic. Instead, the government announced that it would allocate 70 million Euro for socio-cultural organisations over the next five years, that organisations will lose a maximum of 15 per cent of their subsidies and that 18 new organisations will receive subsidies .³⁰ The Federation of Socio-Cultural Work expressed its relief over the allocated budgets, but disappointment that no additional funds are being invested in a sector that will play a very important role in the post-COVID-19 social recovery.³¹

1.3 Impact of COVID-19

COVID-19 related government measures, such as restrictions on the freedom of movement, also impacted the work of civil society organisations. As working from home became the rule, they too had to reorganise in order to carry out their missions and tasks. Telephone or e-mail hotlines were used so that front-line workers could accompany and inform their target public. Nevertheless, due to the digital divide and the socio-economic situation of their target groups, many organisations were not able to carry out their work with and for the people who needed them most.³²

The sector of socio-cultural organisations is also particularly affected by unemployment during the pandemic.³³ As of 1 September 2020, most sectors

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²⁸ SAM vzw (2020), 'SAM in 2020: the impact of the budget cuts' ('<u>SAM in 2020: de impact van de besparingen</u>'), 13 January 2020.

²⁹ VRT NWS, Verstraete, J. (2020), 'Associations join cultural sector in actions against budget cuts by Flemish government' ('Verenigingsleven sluit zich aan bij cultuursector met acties tegen besparingen Vlaamse regering'), VRT NWS, 21 November 2019.
³⁰VRT NWS, Petralia, N. (2020), 'Flemish government sets aside 70 million euros for socio-cultural organisations: "Glad no havoc was wreaked".' ('Vlaamse regering trekt 70 miljoen euro uit voor socioculturele organisaties: "Blij dat geen ravage is aangericht".'), VRT NWS, 25 September 2020.

³¹ VRT NWS, De Federatie (2020), 'Decision on subsidy allocations for socio-cultural work: no havoc, but no relief either' ('Beslissing subsidie-enveloppes sociaal-cultureel werk: Geen ravage, maar ook geen relance'), Press release 25 September 2020.

³² Written response by a Brussels based anti-racism organisation, 22 January 2021.

³³ Belgium, Federal Minister of Employment Nathalie Muylle (2020), 'Temporary unemployment until end of year for most affected sectors and companies' ('<u>Tijdelijke werkloosheid tot einde van jaar voor zwaarst getroffen sectoren en bedrijven</u>'), press

entered a transitional phase in terms of temporary unemployment benefits and were required to fulfil additional criteria.³⁴ The federal Minister of Employment decided, however, that the entire sector of socio-cultural organisations was impacted in particular by the pandemic and therefore continued to benefit from the simplified procedure for temporary unemployment.³⁵

1.4 Independence of NGOs active in Palestine

The Palestinian NGO 'Defense for Children Palestine' did not attend a briefing of the UN Security Council. Belgium, president of the Security Council at the time, had invited the NGO, but postponed the speech after increasing pressure from Israel. The Israeli Ambassador in Brussels explicitly asked to rescind the invitation to the NGO as its main policy advisor had allegedly spread "anti-Israel" messages through social media.³⁶

Four NGOs who are active in Palestine, pledged to 'reduce the influence of pro-Israeli voices' in Belgium and the Middle East. The NGOs Broederlijk Delen, Viva Salud, Socialist Solidarity and OxfamSol provide direct aid to Palestinian civil society. As such, they receive subsidies from the Belgian government. Their mission is defined in a joint strategic framework for the period 2017-2021.³⁷ In this document, approved by the Minister of Development Cooperation, the NGOs call for "strengthening local CSOs to increase their advocacy efforts towards the European institutions and member states, promoting respect for international law and mitigating the influence of pro-Israel voices".³⁸ The Israeli ambassador considers this action to be inimical and stated that Belgium should either stop funding these NGOs or force them to review the formulation of their objectives in accordance with international law. In response, the Belgian Ministry of Foreign Affairs, for its part, stated that it considers this issue to fall under the NGOs'

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release 26 August 2020; Belgium, National Employment Office, 'Nathalie Muylle, "Temporary unemployment until end of year for most affected sectors and companies" ('Nathalie Muylle: "<u>Tijdelijke werkloosheid tot einde van jaar voor zwaarst getroffen sectoren en bedrijven"</u>), press release 27 August 2020.

³⁴ Belgium, Royal Decree Nr. 46 of 26 June 2020 implementing article 5, § 1, 5° of the law of 27 March 2020 authorising the King to take measures in the fight against the spread of the coronavirus COVID-19 (II) supporting employers and employees ('Koninklijk besluit nr. 46 tot uitvoering van artikel 5, § 1, 5° van de wet van 27 maart 2020 die machtiging verleent aan de Koning om maatregelen te nemen in de strijd tegen de verspreiding van het coronavirus COVID-19 (II) tot ondersteuning van de werkgevers en de werknemers'), Belgian Official Gazette 1 July 2020.

³⁵ Belgium, Federal Minister of Employment Nathalie Muylle (2020), 'Temporary unemployment until end of year for most affected sectors and companies' ('<u>Tijdelijke werkloosheid tot einde van jaar voor zwaarst getroffen sectoren en bedrijven</u>'), press release 26 August 2020.

³⁶, De Standaard (2020), 'Belgium withdraws invitation to Palestinian NGO after Israeli pressure' ('België trekt uitnodiging aan Palestijnse ngo in na Israëlische druk'), De Standaard, 21 February 2020.

³⁷ ACODEV (2017), <u>Joint Strategic Framework Palestine</u>.

³⁸ ACODEV (2017), Joint Strategic Framework Palestine.

autonomy and that it is not up to government to exercise this type of control over NGOs.³⁹

1.5 Legal conviction of trade unionists

The current president of the Socialist Union (ABVV) was sentenced, together with sixteen trade union members, by the Correctional Court of Liège to suspended prison sentences and fines of €600 to €4,800 for malicious obstruction of traffic. The conviction was criticised in an open letter by a group of civil society organisations, coordinated by Defend the Defenders. They state the sentencing of trade unionists is disturbing, and is not an isolated event. Two years ago, the Antwerp president of the ABVV was convicted because of a trade union action in the port of Antwerp. The conviction is considered a dangerous precedent for anyone who takes collective action and thus criminalises social movements.

2 Examples of promising practice

2.1 Consultation of civil society

On 25 September 2020, the federal Minister of Equal Opportunities announced that the federal government and the various regional governments reached an agreement to draw up a **National Action Plan against Racism**. A starting paper was adopted, which proposes a process and working method and sets out the content of the future Action Plan. It provides for the involvement of civil society and the target groups themselves in the process.⁴¹ More specifically, the Action Plan will be developed together with the NAPAR Coalition, a group of 60 civil society organisations.

Importantly, the policy declarations of the Wallonia-Brussels Federation,⁴² the Brussels Capital Region,⁴³ the Walloon Region⁴⁴ and the Federal Secretary of State

³⁹ L'Echo, Georis, V. (2020), 'Belgian NGOs want to reduce "pro-Israeli voices" ('<u>Des ONG belges veulent réduire "les voix pro-israéliennes"</u>), L'Echo, 3 July 2020.

⁴⁰ MO, Gabriëls, N. (2020), 'Defend the Defenders! Fifty social organisations raise the alarm' ('<u>Defend the Defenders! Vijftig sociale organisaties trekken aan de alarmbel</u>'), 10 December 2020; De Wereld Morgen, Callewaert, C. (2020), 'Imprisonment (with suspension) for trade union action? In Belgium it is now possible' ('<u>Gevangenisstraffen (met uitstel) voor een vakbondsactie? In België kan het voortaan</u>'), De Wereld Morgen, 10 December 2020.

⁴¹ Belgium, Muylle, N. (2020), 'Outline of action plan against racism approved' ('<u>Krijtlijnen voor actieplan tegen racisme goedgekeurd</u>'), 25 September 2020[last accessed 27 September 2020].

⁴² Walloon-Brussels (2019) Federation, Policy Declaration 2019-2024.

⁴³ Brussels Capital Region (2019), <u>General policy statement of the Brussels Government</u> 2019-2024.

⁴⁴ Walloon Region (2019), Policy Declaration 2019-2024.

on Equal Opportunities⁴⁵ also all explicitly include a commitment to actively involve and **consult with civil society.**

2.2 New ways of working during the pandemic

Civil society organisations were able to adapt to the new work environment created by COVID-19-related measures. Faced with the need to use new channels of communication, civil society has widely deployed social networks in order to reach out to their public. Various digital platforms have been created to inform people about their rights as well as to collect information on the difficulties faced by citizens on the ground. For example, on the occasion of the International Day against Racism (21 March), a group of civil society organisations organised a digital protest against racism. Ver 1.500 persons attended the Facebook event.

⁴⁵ Belgium, Chamber of Representatives, <u>Policy Declaration Gender Equality, Equal Opportunities and Diversity</u>, 6 December 2020.

⁴⁶ Written response by a Brussels based anti-racism organisation, 22 January 2020.

⁴⁷ Mrax (2020) 'National protest against racism', ('<u>Sunday 24 March Manifestation</u> nationale contre le racisme, dimanche 24 mars'), Press release 14 March 2020.