



Updated January 2012 (statistics 2011)

# Belgium

## Ratified the European Convention on Human Rights in 1955

**National Judge: Françoise Tulkens** (Since 01/11/1998)

[Judges' CVs](#) are available on the ECHR Internet site

Previous Judges: Henri ROLIN (1959-1973), Walter-Jean GANSHOF VAN DER MEERSCH (1973-1986), Jan DE MEYER (1986-1998)

Applications processed in	2009	2010	2011
Applications allocated to a judicial formation	256	304	157
Communicated to the Government	27	30	14
Applications decided:	112	73	91
- Declared inadmissible or struck out (Single Judge)	37	62	82
- Declared inadmissible or struck out (Committee)	56	1	0
- Declared inadmissible or struck out (Chamber)	8	6	5
- Decided by judgment	11	4	4
Interim measures:	69	153	31
- Granted	33	100	6
- Refused (including out of scope)	36	53	25

For information about the Court's judicial formations and procedure, see the [ECHR internet site](#)

Applications pending before the court on 18/07/2011	
Total pending Applications*	759
Applications pending before a judicial formation:	645
Single Judge	380
Committee (3 Judges)	37
Chamber (7 Judges)	228
Grand Chamber (17 Judges)	0

\*including applications for which completed application forms have not yet been received

## Belgium and ...

### Its contribution to the Court's budget

For 2011 the Court's budget amounts to just over 58.9 million Euros. That budget is financed by contributions from the 47 member States of the Council of Europe in accordance with scales based on population and GDP; the 2011 contribution of Belgium to the Council of Europe's (EUR 211.4 million) budget is **EUR 4 498 159**.

### The Registry

The task of the Registry is to provide legal and administrative support to the Court in the exercise of its judicial functions. It is composed of lawyers, administrative and technical staff and translators. There are currently **640** Registry staff members of whom **8** are Belgian.

**At the end of 2010, the Court had delivered 162 judgments concerning Belgium, of which 113 found at least one violation of the European Convention on Human Rights, primarily of Article 6 (right to a fair hearing / length of proceedings), and 19 found no violation.**

## Noteworthy cases, decisions and judgments delivered

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### **Taxquet v. Belgium**

Grand Chamber Judgment 16.11.2010

The case essentially concerned Mr Taxquet's complaint that his conviction for murder had been based on a guilty verdict which had not included any reasons and could not be appealed against to a body competent to hear all aspects of the case. Violation of Article 6 § 1 (right to a fair trial). The Court held that it could not call into question the lay jury system in itself but that, in Mr Taxquet's specific case, there had been insufficient safeguards in the proceedings for him to be able to understand why he had been found guilty.

### **Hakimi v. Belgium**

29.06.2010

The applicant complained that his application to have set aside a judgment convicting him in his absence had been rejected as being out of time. He stressed that he had not been informed by the prison authorities of the time-limit for applying to have the judgment set aside. He had been sentenced to seven years' imprisonment and a fine of 2,500 euros for his participation in the activities of a terrorist group.

Violation of Article 6 § 1 (right of access to a court).

### **Poncelet v. Belgium**

30.03.2010

Criminal proceedings against a senior civil servant at the Ministry for Public Works.

Violation of Article 6 § 2 (presumption of innocence)

### **Cakir v. Belgium**

10.03.2009

Ill-treatment inflicted on the applicant, who was of Turkish origin, at the time of his arrest (during a brawl) and while in police custody. The proceedings brought by the

applicant before the Belgian courts lasted five years, with the result that the prosecution was time-barred. The Minister of Justice publicly apologised, emphasising that this was an isolated incidence of malfunctioning, which had not been intended to protect the police officers concerned.

Violation of Article 3 on account of the violence inflicted and the ineffectiveness of the investigation into the incident; violation of Article 3 in combination with Article 14 (prohibition of discrimination), in that the authorities failed to investigate whether the violence had been racially motivated.

### **Anakomba Yula v. Belgium**

10.03.2009

Refusal to grant legal aid to a Congolese woman, unlawfully resident in Belgium, to bring an action to contest paternity against her husband.

Violation of Article 6 § 1 (right to a free trial) in conjunction with Article 14 (prohibition of discrimination).

### **Khatchadourian v. Belgium**

Decision delivered 29.01.2010

The applicant is a Lebanese national and one of the suspects in a judicial investigation opened in November 1990 concerning the textile group Beaulieu. He complained of the length of the proceedings, which he considered excessive, and alleged that he had not been informed in detail in a language which he understood of the accusation against him.

Declared inadmissible

### **Féret v. Belgium**

16.07.2009

Conviction of a Member of Parliament, president of a political party, who was sentenced to 250 hours' work and declared ineligible to hold office, for public incitement to discrimination or hatred, on the basis of a 1981 Law which penalised certain acts inspired by racism or xenophobia.

No violation of Article 10 (freedom of expression). For the first time, the Court accepted interference in the freedom of expression of a member of parliament outside the Parliament building, giving weight to the fact that the distribution of the leaflets in question took place during electoral campaigns, when the impact of racist and xenophobic discourse was more harmful. The Court also recognised the existence of a pressing social need to protect public order and the rights of the immigrant community.

#### **Lee Davies v. Belgium**

28.07.2009

Unlawful obtaining by the police, without a search warrant, of evidence used as the basis of a conviction and sentencing for drug trafficking.

No violation of Article 6 § 1 (right to a fair trial)

#### **De Schepper v. Belgium**

13.10.2009

Medical detention of a paedophile at the end of his prison sentence, justified by the danger he posed. He alleged that the minister's decision had been based on the lack of adequate medical treatment.

No violation of Article 5 § 1 (right to freedom and security)

#### **Muskhadzhiyeva and Others v. Belgium**

19.01.2010

The case concerned the administrative detention for one month of a woman and her four small children, who were Russians of Chechen origin and had sought asylum in Belgium, and their expulsion to Poland, a country through which they had travelled en route to Belgium.

Violation of Articles 3 (prohibition of inhuman and degrading treatment) and 5 § 1 (right to freedom and security).

#### **L'Erablière ASBL v. Belgium**

24.02.2009

The applicant association complained about the *Conseil d'Etat's* decision to declare inadmissible its application for judicial review of planning permission to extend a waste collection site, on the ground that the application did not contain a statement of the facts explaining the background to the case.

Violation of Article 6 § 1 (right of access to a court). The Court held that the limitation

on access to a court imposed on the applicant association was disproportionate to the requirements of legal certainty and the proper administration of justice.

#### **Radiotélévision belge de la communauté française (RTBF) v. Belgium**

29.03.2011

Temporary injunction preventing the RTBF from broadcasting a programme on, among other things, patients' rights with regard to doctors, pending a final judgment in a dispute between the RTBF and the doctor who was the subject of the broadcast. The RTBF complained about the refusal by the Court of Cassation to take into consideration the second limb of its appeal concerning its freedom of expression and about the interim injunction preventing the broadcasting of the programme.

Violation of Article 6 § 1 (access to court); violation of Article 10 (freedom of expression)

#### **Trévalec v. Belgium**

14.06.2011

Gunshot wounds received by journalist filming a special police unit in action.

Violation of Article 2 (right to life) because the journalist's life was endangered; no violation of Article 2 as regards the effective nature of the investigation.

"Dublin case" (see also the [factsheet](#) on that subject):

#### **M.S.S v. Belgium and Greece**

21.01.2011

The case concerned the expulsion of an asylum seeker to Greece by the Belgian authorities in application of the EU Dublin II Regulation.

Violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) by Greece both because of the applicant's detention conditions and because of his living conditions in Greece;

Violation of Article 13 (right to an effective remedy) taken together with Article 3 by Greece because of the deficiencies in the asylum procedure followed in the applicant's case;

Violation of Article 3 by Belgium both because of having exposed the applicant to risks linked to the deficiencies in the asylum procedure in Greece and because of having exposed him to detention and living

conditions in Greece that were in breach of Article 3;

Violation of Article 13 taken together with Article 3 by Belgium because of the lack of an effective remedy against the applicant's expulsion order.

Article 46 (Binding force and execution of judgments): It was incumbent on Greece, without delay, to proceed with an examination of the merits of the applicant's asylum request that met the requirements of the European Convention on Human Rights and, pending the outcome of that examination, to refrain from deporting the applicant.

There are currently about 960 cases pending before the Court concerning the application of the "Dublin" Community law system to asylum seekers. They are mostly applications lodged against the Netherlands, Finland, Belgium, the UK and France.

#### **Ullens de Schooten and Rezabek v. Belgium**

20.09.2011

Refusal of the Belgian Court of Cassation and the *Conseil d'Etat* to refer questions relating to the interpretation of European Union (EU) law to the Court of Justice for a preliminary ruling.

No violation of Article 6 § 1 (right to a fair hearing)

#### **De Donder and De Clippel v. Belgium**

06.12.2011

Suicide in prison by a mentally disturbed young man placed in the ordinary section of the prison.

Violation of Article 2 (right to life) concerning the death of Tom De Clippel in prison.

No violation of Article 2 concerning the investigation into his death.

Violation of Article 5 § 1 (right to liberty and security).

#### **Kanagaratnam and Others v. Belgium**

13.12.2011

Detention of a mother and her three children, who were asylum seekers, in a closed centre for illegal aliens pending their removal.

Violation of Article 3 (prohibition of inhuman or degrading treatment) concerning the three children.

No violation of Article 3 concerning the mother.

Violation of Article 5 § 1 (right to liberty and security) concerning the mother and her three children.

#### **Yoh-Ekale Mwanje v. Belgium**

20.12.2011

Threatened deportation of alien at advanced stage of HIV infection to country of origin without certainty that appropriate medical treatment was available.

No violation of Article 3 (in case of deportation)

Violation of Article 3 (conditions of detention)

Violation of Article 13 (right to an effective remedy) in conjunction with Article 3

Violation of Article 5 § 1 (f)

The Court decided to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to remove the applicant until the present judgment becomes final or further order.

### **Noteworthy pending cases**

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#### **Vergauwen v. Belgium**

Communicated 25.05.2009

The case concerns, firstly, the lawfulness of major public works (extension of the Port of Anvers), carried out on the basis of an *ad hoc* law, and, secondly, the fairness of the proceedings before the Constitutional Court, which refused to suspend and set aside that law.

#### **Josef v. Belgium**

Communicated in December 2010.

Case concerning applicant in ill-health and threatened with expulsion.

#### **Lankester v. Belgium**

Communicated in August 2010

Mentally-ill applicant who was held in the psychiatric wing of a prison while waiting for placement in a high-security psychiatric hospital.

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