

EXPLANATORY MEMORANDUM

Reconsideration of previously ratified credentials of Belgium on substantive grounds

Unlike many other countries, Belgium did not proclaim a general state of emergency: the Belgian Constitution forbids the declaration of a formal state of emergency (Article 187). Instead, the federal Belgian government relied on the pre-existing legal process of Special Powers Laws and Decrees. As foreseen by Article 105 of the Belgian Constitution, the legislator can authorize the government to abrogate, complete, modify or replace legislative acts through royal decrees. These Special Powers Decrees must comply with **strict conditions** for their proper application: they can only be adopted under extraordinary circumstances, their material scope must be **predetermined by the legislator**, they need always be **limited in time** and they have to, eventually, be **confirmed by a legislative act within a one-year time frame**. Exactly one year ago, in March 2020, two of these Special Powers Laws granted the federal government special powers for three months (!), allowing the then minority government to combat the consequences and transmission of the virus through Special Power Resolutions. (based on: *M. De Ridder, "Belgium's Accordion Response to COVID-19"*)

However, to impose the far-reaching restrictions the Belgian population has been subject to since March 12th 2020 and to circumvent the Constitution, article 182 of the 2007 law on "Civil safety" was applied. This law reads as follows:

*"In the event of **imminent** circumstances, the Minister or his representative may oblige the population, in order to ensure its protection, to move away from places or areas which are particularly exposed, threatened or affected, and to assign a temporary residence to those involved in these measures; for the same reason he may prohibit any movement or movement of the population."*

Since March 12th 2020, the Belgian Government has ruled by Special Powers Laws and Decrees (which under no condition can supersede the Constitution) and has prevented the Chamber of Representatives and Senate from holding a debate on the imposed measures. The opposition is entirely curtailed. Most of the restrictive measures taken in response to Covid-19 were taken by Ministerial Decrees. These decrees are signed by one minister who does not have to defend his or her policy in parliament. After one year of continuous protests, the Government is finally drafting a bill to be presented to Parliament. On March 23^d 2021, the Belgian High Council of Justice declared the draft bill as *"unconstitutional, a possible complete violation of privacy and disproportionately repressive"*.

Therefore, we, Members of the Parliamentary Assembly of the Council of Europe, challenge the previously ratified credentials of Belgium on the following substantive grounds and ask the Parliamentary Assembly to investigate thoroughly:

1. the violation of Article 3 of the Statute of the Council of Europe, based on overstepping the principles of the rule of law by the Belgian Government and unconstitutionally limiting the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms;
2. the violation of Article 2 of the European Convention on Human Rights "Right to Life", based on the often inhumane and/or degrading circumstances in care homes for the elderly, leading in many cases to a premature death of residents (*during the first half of 2020*);

3. the violation of Article 5 ECHR “Right to liberty and security”: an unconstitutional curfew is still in place and the “right to freedom of movement” as guaranteed by Article 21 of the Treaty on the Functioning of the EU has been disregarded for almost one year now;
4. the violation of Article 8 ECHR “Right to respect for private and family life”, for imposing massive, long-lasting and excessive restrictions on private and family life and the use of police techniques normally only applied to combat terrorism;
5. the violation of Article 9 ECHR “Freedom of thought, conscience and religion”; when shops and sport clubs were temporarily reopened, houses of worship remained closed;
6. the violation of Article 11 ECHR “Freedom of assembly and association” for the arbitrary way manifestations are either allowed, either tolerated or forbidden and the often excessive force being used to break up manifestations. For the excessive force used against small gatherings non-related to manifestations, especially against minors;
7. the violation of Article 12 ECHR “Right to marry”, especially Belgian residents with foreign partners are made meeting impossible.

We therefore call upon the Parliamentary Assembly of the Council of Europe to examine these violations and if necessary to apply sanctions on the Belgian Delegation until Democracy, the Rule of Law, Human Rights and the Constitution are being restored in Belgium.

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