

Belgium: Collective judicial action as a weapon against social exclusion

ESPN Flash Report 2019/48

IDES NICAISE – EUROPEAN SOCIAL POLICY NETWORK

JULY 2019

A Belgian law from January 2019 creates new possibilities for associations defending the interests of vulnerable groups to take "collective judicial action" in ordinary courts, against private or public measures that risk undermining fundamental rights and freedoms. It opens up new possibilities for the fight against poverty in civil society organisations.



Description

In the past, associations defending the rights of poorer people have occasionally succeeded in stopping policy measures which they deemed in contradiction with basic rights. To do so, they could only submit complaints to the Constitutional Court, which limited the arguments for arrests to "objective law" (i.e. compatibility with the constitution) and involved a substantial investment in terms of time and know-how. Here are three examples (listed chronologically, in order of the date of their outcome).

In 2018, the "Collectif Solidarité contre l'Exclusion" (*Solidarity Collective against Exclusion*) and the League for Human Rights (backed by a number of other associations) addressed the Constitutional Court, asking it to bar the law that introduced the possibility for municipal social services to sanction minimum income recipients abandoning (unpaid) community service assignments, a sort of workfare. The Court nullified that law, arguing that since the latest state reform the federal government is no longer competent for "activation measures". That competence had been transferred to the Regions. In that sense, although the goal of the Platform was achieved, the Court did not really support the argument of the Platform that mandatory unpaid community service is equivalent to forced labour. It would thus remain legally possible for regional governments (in principle) to impose unpaid community service in the future (Vandemeulebroucke, 2018).

Another successful action was conducted against the introduction of a flat fee (€ 50 per application) for pro bono judicial assistance to needy citizens, following a governmental decision from 2016. Several associations - including the League of Human Rights - challenged the government's justification of the measure as a bulwark against "over-consumption" of judicial assistance; the associations argued that, on the contrary, the fee could well exclude some of the most vulnerable citizens from access to justice (Knack, 21/6/2018). In this matter, the Constitutional Court followed the argument of the associations and nullified the government's decision.

A third example relates to the law of March 2017, which strengthened the rights of foster parents. This well-intended law authorised foster parents to decide on key educational issues such as the religious or philosophical education or school choice for their foster children - giving them greater say in this than the natural parents. A couple of natural parents filed a complaint, arguing that the law violated their parental authority. Several associations supported the couple. The Constitutional Court also nullified this law (Beel, 28/2/2019).

Another door was opened in January 2019. Following a case where an unaccompanied immigrant under the age of 18 was unable to submit a case in court due to age restrictions, the Belgian legislator introduced the possibility of a judicial action in the collective interest. Cases can now be brought before

LEGAL NOTICE

This document has been prepared for the European Commission. However, it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

“ordinary” courts (subjective law) by associations defending human rights or fundamental freedoms, as recognised by the Constitution and the international legal instruments binding upon Belgium. For this, the association must comply with four conditions: a) it must have a collective interest goal in its statutes, distinguishable from the general interest; b) it has to pursue this goal effectively; c) the judicial action has to be related to this goal; and d) the association can only pursue judicial action for the collective interests of its target group(s).

In May 2019, a coalition of 28 Flemish organisations and 42 Flemish academics seized this opportunity to alert the future government to the housing crisis in Flanders. The coalition has denounced the rocketing costs of rent, water and energy, the discrimination in the private rental market, the unfair distribution of government subsidies between home-owners and tenants, and the glaring lack of social housing. As a reaction to this housing crisis, the coalition announced that it will submit cases (including to the European Committee for Social Rights) unless the new government takes urgent action to carry out a thorough reform of housing policies, including a drastic shift of public subsidies away from home-owners to tenants (ATD-Vierde Wereld, 2019).



Outlook and commentary

The examples discussed above illustrate that poverty is more than just a lack of financial resources. It is a lack of access to fundamental rights and freedoms, including the basic authority of parents, the right of access to justice for all citizens, the right to decent working conditions, freedom from forced labour, or equal access to housing.

The trend for anti-poverty associations to resort to collective judicial action illustrates the key role of civil society in empowering the most vulnerable and defending their basic human rights. Collective judicial action is becoming another lever for civil society organisations to participate in policy-making. It also demonstrates the importance of judicial authorities in protecting basic social rights, including those of more vulnerable groups.

Further reading

ATD-Vierde Wereld (2019), Woonzaak [The housing case], 6 May 2019 – retrieved from <https://atd-vierdewereld.be/woonzaak/>

Beel, V. (2019), Pleegouders terug naar af: Grondwettelijk Hof vernietigt nieuw statuut [*Foster parents back to square one: Constitutional Court nullifies new statute*], De Standaard, 28/2/2019

Knack (2018), “Forfaitaire bijdrage voor pro-deo advocaten is ongrondwettelijk” [*Lump-sum contribution for pro-bono lawyers is unconstitutional*], 21/6/2018 – retrieved from <https://www.knack.be/nieuws/belgie/forfaitaire-bijdrage-voor-pro-deo-advocaten-is-ongrondwettelijk/article-normal-1164503.html>

Vandemeulebroucke, M. (2018), “Le service communautaire dans les CPAS est anti-constitutionnel” [*The community service in Public Centres for Social Welfare is anti-constitutional*], Alter Echos, 5/7/2018 – retrieved from https://www.alterechos.be/le-service-communautaire-dans-les-cpas-est-anti-constitutionnel/?fbclid=IwAR0LwZuZ_UdkumC506IPS4fDbRLWHQUAo5mc7ttQ5S3Qi2ushhkWA7SHIB4

Author

[Ides Nicaise](#) (KU Leuven)

The Flash Reports are produced by the European Social Policy Network (ESPN) established in 2014 to provide the European Commission with independent information, analysis and expertise on social policies in 35 European countries. The topics covered are identified by ESPN experts in the light of significant developments in their countries, or in some cases suggested by the Commission or the Flash Reports’ editorial team (Eric Marlier and Slavina Spasova). The ESPN is managed by LISER (Luxembourg Institute of Socio-Economic Research), APPLICA and the OSE (European Social Observatory). More information on the ESPN: <http://ec.europa.eu/social/main.jsp?catId=1135&langId=en>.

Quoting this report: Ides Nicaise (2019). Belgium: Collective judicial action as a weapon against social exclusion, ESPN Flash Report 2019/48, European Social Policy Network (ESPN), Brussels: European Commission.