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## Impact of Covid 19 measures in BELGIUM

### Report of the SAD

#### I. Restrictions on fundamental rights:

In Belgium, we are in a lockdown situation since the 18<sup>th</sup> march 2020.

We're slowly going out of confinement, since the 4<sup>th</sup> of May, following different phases, but restrictive measures are still in place.

On the 27<sup>th</sup> march 2020, the Parliament adopted a law granting special powers to the King for three months: during that period, the government can take important measures without having to follow the usual procedure and parliamentary debate.

Those measures have of course affected freedom of movement (the only movements allowed were the ones deemed "essentials" and the possibility to go for a small walk near your home).

We would like to underline three aspects of those restrictive measures:

- The right to protest has of course been strongly affected. It is still to this day officially prohibited to hold a protest in Belgium. A protest to support the movement Black lives matter has recently taken place and has been "tolerated" by the police but there's no guarantee that other protest will be allowed. Furthermore, it isn't a concern of the government and it shouldn't be addressed in the future de-confinement announces.
- The fact that the countries inside the European Union have closed their border underlines the failure of a common European response to tackle the problem. It also led to dramatic situations, with families being separated and unable to get reunited for months.
- On the 4<sup>th</sup> of May, the government has issued a bill, allowing the collect of data in order to trace people who have been in contact with covid 19 patients. This bill however doesn't respect the guidelines on respect of private life and concerns have been raised by organisations defending human rights (including SAD). Similar procedures seem to be considered or implemented in other European countries and it could be interesting, for our respective organisations, to come out with a common response.



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## II. Specific impact on the right of access to justice:

At the start, there was no measure taken by the government regarding justice but the different jurisdiction took decisions in order to restrain the number of proceedings. There wasn't a great coordination, so different measures were taken in different tribunals. It lead to chaos, for the lawyers as well as their clients...

Generally speaking, all cases were suspended, except the emergencies. In family law, for example, only one hearing took place every week and we had to ask the chief of the tribunal to grant us the permission to plea.

In civil law, only the urgent cases (*référés*) and the one related to sequestration were going on

In criminal law, only the cases concerning people who were in detention were pleaded. However, the detainees weren't brought to the court, except in exceptional circumstances. They were represented by their lawyers. The access to the jail was still possible but more complicated and lawyers contacted mainly their clients by phone. Lawyers asked for their clients to get electronic tagging (to avoid detention) but there was no electronic devices left...

On the 9<sup>th</sup> of april, the government has taken two bills applying to justice.

The first one concerns civil law and tackles two issues:

- The deadlines : the prescription periods, in civil law, are prolonged, at least until the 17th of June. All the deadlines in the proceedings (appeal or conclusions, for example) were also postponed , until the 3<sup>rd</sup> of june
- The written proceedings: all the cases in which conclusions have been taken by the two sides will be automatically judged according to the written proceeding. No pleading will take place and the judge will decide on basis of the conclusions. If somebody doesn't want the written proceeding to apply, he has to write to the judge to explain his position at least 7 days in advance. The generalisation of the written proceeding is a problem, specially for people who don't have a lawyer and who were counting on the hearing to develop their arguments. It will also be problematic for them to contact the judge in time...



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The second one concerns the criminal proceedings:

- There will also be a suspension until the 17th of June of the periods set by statute of limitation for offences
- In front of some courts (tribunal in charge of the execution of the sentence), the detainees won't be able to come personally and will be represented by their lawyers

In immigration law, there was no extension of the deadlines, at the start, which constituted a discrimination (the other civil and administrative fields were provided with an extension). The deadlines to attack a decision are very short and it was even more difficult in those circumstances to respect them. It's only on the brink of deconfinement, on the 6<sup>th</sup> of May, that a bill extending those delays was published. The SAD has written a complaint to the "special rapporteur" of the United Nations concerning that discrimination.

Regarding deconfinement, more and more pleadings can now take place : the cases are usually set at a determined time to avoid too much contact between people. However, again, each judge has a different interpretation of the rules and it's very difficult to know if your case will be taken or not: it's extremely confusing. The delays to have a new pleading in some jurisdictions are appalling.

The general feeling is that during confinement justice wasn't a public service anymore and that people have been left out. The situation in jails is quite difficult. As I said, the inmates can't leave the jail, they can't see their families and they have to talk to their lawyers by phone (lawyers visits are not prohibited but they are less frequent because of all the protection measures)... Inmates who are sick are transferred to a medicalised aisle in a specific jail, or are transferred to the hospital.

We also have concerns for the future: there are discussions in order to generalize video-conference in criminal law.

### III. Treatment of vulnerable groups:

#### a. Jails:

The situation in jails is quite difficult. The inmates can't leave the jail, they can't see their families and they have to talk to their lawyers by phone (lawyers visits are not prohibited but they are less frequent because of all the protection measures)... Inmates who are sick are transferred to a medicalised aisle in a specific jail, or are transferred to the hospital.

Regarding prisoners, the criminal proceeding bill (dated 9<sup>th</sup> of April) enables the director of the jail to grant an interruption of the sentence to inmates who respect certain conditions. However those conditions are quite restrictive and discriminatory: for example, some prisoners couldn't apply for the leave, because they had been initially sentenced for a particular offence, and despite the fact that they met all the other criteria (having a place to stay, absence of risk to commit new



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offences,...). That bill has been attacked in front of the “Conseil d’Etat” by lawyers in order to denounce that discrimination (the case is still pending). Following the bill, there has been a diminution of the total number of inmates but we are still over the normal jail capacity...

Futhermore, all the other forms of leaves for prisoners have been suspended during the time of the crisis.

#### b. Migrants:

Regarding the migrants in detention centre, a lot of them have been freed but some are still inside.

The measures had also a big effect on migrants without papers. They were working “off the books” in order to survive and don’t have any source of income now.

In terms of proceedings as described previously, it has been extremely difficult for them to reach a lawyer in time.

#### IV. The practice of lawyers in Covid Times:

Lawyers are of course financially affected by the situation.

For two months, they couldn’t start new cases unless they were extremely urgent and couldn’t receive clients in their offices.

Now, our clients can come back to our offices but we have to take specific measures (masks, soap, cleaning, no more than one client in the waiting room) which are costly and time consuming.

The state offers some compensation (between 1291 and 1614 € a month) if a lawyer office has to close more than 7 days in a row during a month. Some lawyers can also apply for a specific grant of 2500 €.

The government gives the possibility to put you employees under temporary unemployment if there’s a recess in business.

They have also exceptionally extended parental leave to self-employed people (considering the fact that schools have been mainly closed until the 8<sup>th</sup> of June).