# Protecting human rights and the role of administration in Belgium

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In recent years, Belgium's administration has been subject to a dual action of dismemberment and diversification, the former prompted by a gradual move towards federalism and the latter as a result of emerging new needs in public service management. Use of the plural is unavoidable nowadays: the monolithic and highly centralised administration of the 19th century has given way to a diverse and fragmented type of administration. Today, more than ever, we are dealing with a plurality of administrations.

How should we perceive the role of these multiple administrations in protecting human rights which, as we approach the dawn of the next millennium, has become an absolute imperative imposed on all countries?

At every level, Belgium's administrations are governed by a state of law, meaning that they are required to abide by the law in the broad sense.[1] For this reason, they have to ensure that they exercise their powers in such a way that they do not ignore the recognized fundamental human rights of individuals.

However, this should not be enough to satisfy us. Is it not true to say that the administrative world is undergoing a process of change? If we are to believe the latest thinking on administrative science, a new paradigm is currently emerging:

> it will strip the administration of its legendary faded finery of unity and rationality, of its all-powerful, codified, unilinear vision of the law, only — according to a post-modernist vision bred from a world of complexity — for it to take on the fluid and changing garb of a humanitarian engineer who is in tune with social and general-interest issues.[2]

In such a context, administrations are no longer able to content themselves with simply respecting human rights when applying the law.[3] Over and above this requirement, it is their duty — at least for some administrations — to take a more dynamic approach to promoting such human rights.

Since it is no easy matter, it is worth emphasizing the administration's special

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role in protecting human rights. Need anyone be reminded that 'invested with a share of public authority, the civil servant fulfils his/her mission and carries out his/her duties under conditions which do not make it easy for him to respect or promote human rights'.[4]

The aim of this descriptive study is to provide an overview, first, of the constraints which human rights impose on contemporary Belgian administrations and, secondly, of the institutional initiatives taken by the said administrations to promote human rights.

## The administration's respect for human rights

The protection of human rights takes two distinct forms, depending on whether one adopts a national or international standpoint. Although the two share a common ideal — that of humanistic societies concerned for the integrity of human dignity– they nevertheless take quite a different methodological approach to the issue. We shall examine first the international legal framework and then the national legal framework.

In both cases, respect for human rights is imposed on administrations, not only for the benefit of all citizens — or 'administrative constituents' — as a whole, but also, in the case of certain rights, for the benefit of those who are their organs or agents.[5] Civil servants therefore find themselves

> in a situation of intrinsic solidarity with public service users and, more specifically, in a situation that is at once rich with complicity, yet uncomfortable, where the public official is both the instrument for respecting users' rights, whilst at the same time being indebted to his public service employer for an identical right.[6]

What interests us first and foremost is the civil servant's responsibility for preserving the rights of public service users.

### *The international legal framework*

Just like any other public authority, the administrations are bound by many multilateral treaties which include provisions for safeguarding human rights. They must therefore comply with the rules contained in these treaties, provided that the latter have been introduced into and are directly applicable under, Belgium's domestic legislation.[7]

The primary source of international legal provisions is, without a doubt, the European Convention on Human Rights, signed in Rome on 4 November 1950, together with its associated protocols. Need anyone be reminded that Belgium has subscribed to other commitments in this area? We refer, in particular, to the International Covenants of 19 December 1966, concerning civil and political rights, as well as economic, social and cultural rights. In addition to these commitments, there is the Treaty on European Union, signed in Maastricht on 7 February 1992, which in its own way contributes to protecting human rights, either by directly enshrining them — as in the case of political rights — or by making reference to the European Convention on Human Rights and the constitutional traditions common to the member states. The Treaty of Amsterdam, signed on 17 June

1997, takes the same approach and 'unequivocally reflects the will of the European Union to construct its own system for safeguarding fundamental rights'.[8]

For the most part, the human rights enshrined in these various texts are described in general terms. Virtually all apply to and are enforceable in all areas of social life, including the administrative sector. This means that the tax administration may not become excessively involved in the private lives of taxpayers, nor may state-run schools unlawfully invade their pupils' freedom of conscience, nor may police forces inflict physical abuse. The influence of general fundamental rights is brought to bear on the material and procedural branches of administrative law.[9]

It is largely failure to respect the fundamental rights of foreigners which has given rise to sentencing decisions based on the European Convention of Human Rights. In its judgment of 18 February 1991, the European Court of Human Rights ruled that the expulsion of a Moroccan national by the Belgian authorities was an infringement of his private and family life, which was protected by Article 8 of the Convention.[10] Under domestic legislation, the Council of State has handed down similar decisions.[11] It also considered that, in view of one Turkish woman's age, family situation and state of health, sending her back to Turkey would constitute inhuman treatment against her, in contravention of Article 3 of the Convention.[12]

*The national legal framework*

The legal text in which a state independently enshrines a corpus of human rights is usually the Constitution itself. In the case of Belgium, Section II of the Belgian Constitution, entitled 'The Belgians and Their Rights', lists a whole series of fundamental rights that are applicable under domestic legislation. A few more fundamental rights were added in later texts, such as the rights of persons awaiting trial. The stability and supremacy of the text of the constitution underscore the importance of including such rights. Moreover, the specific structure of the public authorities, founded as it is on the principles of separation of powers and institutional cooperation, surely provides an additional guarantee for these fundamental rights?

It is these two generations of the most firmly established human rights which are reflected in the Belgian Constitution.

*First-generation human rights.* In 1831, those responsible for framing the Constitution recognized a number of civil and political rights, known as the first generation of human rights. These rights, which were subject to immediate application by their beneficiaries, were originally seen as imposing on the state and therefore on the administrations, an obligation of refraining.[13] Since individuals had to be able to assert such rights against the administrative apparatus, they did indeed form 'an essential element of the legal system'.[14]

We refer in particular to the principle of equality and non-discrimination — especially enshrined for the civil service — (Articles 10 and 11 of the Constitution), individual liberty (Article 12), the inviolability of private property

(Article 15), the right to own property (Article 16), freedom of religion and expression (Article 19), freedom of education (Article 24), freedom of the press (Article 25), freedom of assembly (Article 26), freedom of association (Article 27), the right of petition (Article 28) and, finally, freedom in the use of languages (Article 30). We also refer to the right to vote and to stand for office.

Legislative actions serve to embody these constitutional rights, including in the administrative sphere. So, pursuant to Article 10–2, of the Royal Order of 2 October 1937 relating to conditions of service for public officials, the latter should treat the users of their services with understanding and without any discrimination.[15] Similarly, the law of 30 July 1981, aimed at curbing certain acts inspired by racism or xenophobia, punishes any act of racial discrimination committed by civil servants in the performance of their duties.

It also sets up protection mechanisms which effectively help to constitutionalize administrative law.[16] Some are devoid of any judicial character, such as appeals to the administrator in office or to the ombudsman.[17] We also refer to the various political control procedures, such as establishing a parliamentary commission of inquiry. The others are judicial in nature: appeals to administrative courts with special powers; appeals against abuse of power referred to the administrative section of the Council of State; proceedings in criminal courts;[18] disciplinary proceedings; cases of negligence before the civil courts (or, in cases where there are exceptional damages, appeals for compensation to the administrative section of the Council of State), etc. In this regard, note that, in accordance with Article 31 of the Constitution, no prior authorization is required in order to bring an action against civil servants for their administrative acts, including acts which constitute an infringement of a constitutional right.

Nevertheless, even though the administrations are required to respect civil and political rights, they are not expressly obliged to promote such rights.[19] For example, despite the fact that the public services responsible for delivering the mail are required to respect the confidentiality of the letters entrusted to their care, this is only a passive and not very restricting duty.

*Second-generation human rights.* Over the years, those responsible for framing the Constitution have no longer been content to apply the approach founded on fundamental rights. So, when the Constitution was amended in 1993/94, the second generation of human rights were resolutely affirmed in the Constitution.

Adopted on 31 January 1994, Article 23 of the Constitution lays down several economic, social and cultural rights, including, for example, the right to work, the right to social security, the right to decent housing, the right to the protection of a healthy environment, the right to cultural and social fulfilment and another right — which shapes all the others — to lead a life that is in keeping with human dignity.

With the advent of this particular category of fundamental rights, the role of the state, which was formerly confined by an obligation of refraining, then became encompassed within the welfare state rationale. Public authorities were obliged to

intervene in order to progressively enforce these rights, as befitting the country's organization and resources, that is to say, taking primarily pecuniary considerations into account. Economic, social and cultural rights therefore imply the active intervention of the public authority, through positive measures aimed at guaranteeing that citizens are indeed able to enjoy their rights.

The fact remains that these rights, as enshrined in Article 23 of the Constitution, formally impose obligations only on legislators, namely the federal legislator and the legislators of the Communities and the Regions.[20] Failing legislative action, an administrative constituent would have no other alternative than to plead to the administration for the so-called direct effect which such rights would produce. What use are they, then, in the administrative sphere? It is generally agreed that, even though they are devoid of immediate effect, the fundamental rights enumerated in Article 23 of the Constitution do at least serve as reference values which are likely to help interpret the rules of law.[21]

At the same time, the Belgian legal system has also taken a step towards constitutional recognition of the administrative constituent's right to transparency, thereby embodying the idea of an administrative democracy.[22] Is it not one of the concerns of modern democracies to improve relations between the administration and the citizen?

The right to administrative transparency has been translated into rights to passive and to active information,[23] as well as into a right to receive formal justification for administrative documents.

1. The right to passive information. Article 32 of the Constitution raises the right to passive information to the rank of a constitutional right. This article lays down that everyone has the right to consult or to receive a copy of any administrative document, except in the cases and under the conditions established by any law, decree or rule mentioned in Article 134. The right to passive information therefore means that each citizen is allowed to consult a document in situ and to obtain a copy of it. As stated by the Court of Arbitration, by declaring, in Article 32 of the Constitution, that each administrative document — a notion which, in the view of those responsible for framing the Constitution, must be interpreted very broadly — is, in principle, public, those responsible for framing the Constitution have elevated the right to have access to administrative documents to the rank of a fundamental right.[24]

Although the Constitution sets forth the principle of passive access to administrative documents, it nevertheless leaves it to the discretion of each legislator — both the federal legislator and the federated legislators — to define the cases and the practicalities for applying the right of access to documents held by the administrative services under their responsibility, or even to establish exceptions to this right.

In execution of this constitutional provision, the federal legislative authority adopted the law of 11 April 1994 relating to administrative access.

This law grants all administrative constituents — including, according to the Council of State,[25] corporate entities — the right to consult a given administrative

document in situ, the right to request explanations about the content of this document and the right to receive a copy of it. Except for access to personal documents, the interest of any administrative constituent being able to consult administrative documents is irrefutably presumed; the existence of this interest must nevertheless be brought to the knowledge of the competent federal authority. In certain cases explicitly defined by law, the administrative authority is obliged to reject a request for consultation, explanation or information. This applies, for instance, in cases where the access to information is less important than the protection of the freedoms and fundamental rights of administrative constituents.

A committee on access to administrative documents was set up to perform three different missions. The first is a consultative mission: either at the request of the administrative authority, or on its own initiative, it may pronounce on whether or not a particular administrative document should be made available. Its second mission is one of appraisal: it can put forward opinions regarding the general application of the law relating to administrative access. The third mission is one of mediation: it acts as an intermediary between the administrations and administrative constituents in cases where the latter encounter difficulties in gaining access to, or rectifying, documents.

Similar texts have been adopted at the level of the federated entities, which is not without problems when it comes to distributing responsibilities.

Similar rules also exist in specific sectors such as the environment.[26] Here too, a number of different authorities have been set up.

2. The right to active information. The right to active information can be defined as the right of any person to receive information from the administration, without that person having to take steps to do so.[27] This right is enshrined in the aforesaid law of 11 April 1994, which goes beyond what is prescribed in the Constitution, by imposing respect for a certain number of obligations to provide the public with clear and objective information on the activities of the federal administrative authorities.

Firstly, the legislator makes the King responsible for governing the organization and defining the missions of the federal information service, which has the role of ensuring and structurally supporting the active communication of information.

Secondly, in order to help administrative constituents to pick their way through the administrative maze, each federal administrative authority is obliged to publish a document describing its scope of competence and internal organization. This document is made available to anyone who so requests.

Thirdly, each federal administrative authority is required to indicate on all correspondence the name and administrative details of the civil servant who is able to provide further information about the case.

However, there are no specific sanctions if any of these three obligations is disregarded.

A fourth and final obligation is imposed by the legislator: the federal adminis-

trative authorities are obliged to indicate on any decisions or individual administrative acts which form the subject of a notification, the possible channels of appeal, the authorities competent to judge the issue, as well as the formalities and deadlines to be complied with. One legal sanction is foreseen: in the event of a failure to abide by this obligation, the limitation period for filing the appeal does not start to run.

Beyond these constraints explicitly imposed by the legislator, it goes without saying that any administration is at liberty to adopt further initiatives in order to boost its information policy.

Texts adopted at Community and Regional level also set out formalities for active access.

3. The right to formal justification for administrative acts. Prior to the existence of the law of 29 July 1991 relating to formal justification for administrative acts, exemption from formal justification was the accepted principle in Belgian law. Any administrative acts that were not of a judicial character did not need to be formally justified, except where there was an express legal or statutory provision, or else by virtue of a specific legal precedent of the Council of State.[28] However, decisions concerning administrative disputes have always had to be formally justified, pursuant to Article 149 of the Constitution.

Since the law of 29 July 1991, any unilateral individual administrative act must be formally justified, unless there are legal exceptions. So, the obligation to provide justification is not required in cases where indicating the grounds for the act are liable to jeopardize a state's external security, to be detrimental to public order, to infringe the right to privacy or else to be in violation of the provisions regarding professional confidentiality.

As underlined by the Council of State on several occasions, the aim of the obligation to provide justification is to enable the interested party to learn why a decision has been taken to his/her detriment, so as to enable him/her, by due process of law, to defend him/herself against this decision, by proving that the grounds stated in the justification are unfounded.[29]

The requirement for such justification consists of indicating in the administrative act the de jure and de facto considerations which underpinned the decision. De jure grounds are understood to mean the legislative or statutory provisions on which the administrative authority bases its action, whereas de facto grounds refer to the principal elements, drawn from the administrative dossier, which justify the administrative act. The administration is no longer able to content itself with vague, catch-all phrases or standard clauses.

In the event of a failure to respect this material formality, three types of sanction are possible. The administrative decision is annulled, pursuant to Article 14 of the coordinated laws on the Council of State, possibly after having been suspended by the administrative high court. Or, pursuant to Article 159 of the Constitution, the judicial or administrative courts refuse to apply the decision. Or — if it concerns a decision taken by a local authority — it is annulled by the supervisory authority in the exercise of its legislative supervisory duties.

**Promotion of human rights by administrations**

Literally-speaking, the term 'promote' means to encourage, foster or boost. Although any administrative service should, in one way or another, help promote human rights, some are specially appointed to perform such a mission. These may be divided into two categories.

The first category includes administrative services invested with a *global* mission of promoting human rights in general.

One of the administrations under the Ministry of Justice is the Criminal Law and Human Rights Administration, which has the primary mission of advising the Justice Minister on criminal law and human rights issues, on drafting bills, as well as ensuring that the law is applied in these areas. It also plays a role in international relations: bilateral and multilateral negotiations; coordination with the European Union, etc. This administration includes a Human Rights Service.

Within the Ministry of Foreign Affairs, there is a Directorate-General for Policy, which is responsible for all issues relating to foreign policy, both bilateral and multilateral. Its mission is chiefly centred on measures for maintaining peace and stability in the world, including the protection of human rights.

The second category includes administrative services — or, at the very least, services assuming public service duties — that have been entrusted with a *special* mission of promoting human rights, specifically oriented towards one or other of these rights. Here are a few notable examples.

*The Centre for Equal Opportunities and the Fight against Racism*

Created by the law of 15 February 1993, the Centre for Equal Opportunities and the Fight against Racism is an autonomous public institution endowed with legal status. A Royal Order of 28 February 1993 establishes its organic statute.

The Centre was invested by law with the general mission of promoting equal opportunities and combating all forms of discrimination, exclusion, restriction or preference on the grounds of race, colour, descent, origin or nationality. To this end, the legislator granted it broad powers, which it uses to the full.[30]

First and foremost, the legislator authorized the Centre to carry out any studies or research required to fulfil its mission and to produce and supply any information or documentation which are useful to its mission. Designed to be far-reaching, this authorization permits the implementation of a wide diversity of measures.

The Centre is also responsible for sending to public authorities opinions and recommendations, or even proposals for reform, in order to improve the legislation and regulations in this field. For example, since criminal proceedings are not appropriate in certain cases, either due to the facts or to their perpetrator, acknowledging the advantages offered by the criminal mediation process, the Centre drew the legislator's attention to the usefulness of legislative reform in this area.

In more concrete terms, the Centre provides support and guidance to legal aid

institutions. This led it to set up specific training programmes (for teachers, prison guards, police officers, etc.).

On an individual level, the Centre is, within the limits of its remit, authorized to help anyone who requests a consultation concerning the scope of his/her rights and obligations. This involves helping the beneficiary to obtain information and advice on means for asserting his/her rights. Indeed, several hundred requests for information are recorded annually, either via the freephone number, the ordinary telephone line, letter or fax, or personal visits or contacts. Most of the requests concern the residence of foreigners on Belgian territory, the acquisition of Belgian nationality or else general questions concerning racism.

Many of the numerous other complaints sent to the Centre (1472 in 1997) come from municipal level (67 percent). For example, the Centre is regularly consulted about grievances concerning education, ranging from enrolment refusal to ethnic discrimination, so much so that mediation is then initiated at the level of the school; in general, schools display openness and declare their willingness to cooperate. Many of the complaints from federal level are brought against the Foreigner's Office (Office des Étrangers).

The Centre sometimes goes beyond its role of advisor and mediator. Indeed, it is sometimes required to intervene in specific legal cases. Either on its own initiative or at the request of a specialized reception centre, it may request the assistance of lawyers, for example in cases relating to traffic in persons. The aim of such initiatives is to help defend the victim's interests through legal proceedings.

In fact, the Centre is always at liberty to go to court in any dispute which could give rise to application of the law of 30 July 1981 aimed at curbing certain acts inspired by racism or xenophobia. Nevertheless, it only takes the decision to bring civil action in cases that are considered to be serious and which serve to set an example, where sufficient evidence of discriminatory intent has been gathered and where no alternative method for settling the dispute — i.e. mediation — has been possible. In actual fact, the Centre more often than not takes preventive action with respect to the law of 30 July 1981. One example of this was the racism awareness campaign, launched by means of posters distributed to the federal and federated institutions, as well as to the summit meetings on equal opportunities and against racism, held on 29 November 1997, which were a huge success.

In the same vein, the law of 23 March 1995 aimed at curbing the denial, minimization, justification or approval of the genocide committed by the German national-socialist regime during the Second World War[31] authorizes the Centre to take to court any disputes which could give rise to application of this law.

*Public Welfare Centres*

Under the terms of Article 23 of the Constitution, every individual has the right to lead a life that is in keeping with human dignity, which includes the right to welfare. In accordance with the organic law on Public Welfare Centres of 8 July

1976, amended several times, the latter have the status of public institutions endowed with a legal personality.[32] Each district council is served by a centre. Public Welfare Centres should therefore be seen as public bodies working in close cooperation with the district councils with the specific aim of providing welfare assistance.

Each Public Welfare Centre is administered by a Welfare Council, the composition of which varies depending on the size of the municipal council's population. Nominated as candidates by one or more municipal councillors, the official and alternate members of this council are elected by the municipal council and must be Belgians, aged at least 18, who have their main residence within the jurisdiction of the centre and who are not ineligible on any of the grounds provided for under municipal council law.

In fact it is this council which settles all matters which fall within the remit of the Public Welfare Centre, except where otherwise stipulated by law. This jurisdiction is extensive. In this study we confine ourselves to its primary mission.

Public Welfare Centres provide welfare assistance to any individual who does not have the necessary means to lead a life that is in keeping with human dignity, irrespective of nationality, age or place of residence. The legislator has stipulated that the term 'welfare assistance' should cover not only palliative or curative welfare, but also preventive welfare. What is more, welfare can also be material, medical or psychological.

Welfare essentially consists of providing guidance to assisted persons, so as to enable them to gradually overcome their own difficulties. It might mean, for example, helping them to find cheaper accommodation. Furthermore, if assisted persons are not insured against sickness and disability, the Centre affiliates them to its own chosen insurance organization and, failing that, to the Auxiliary Sickness and Disability Insurance Fund. What is more, when a person has to prove that he or she has worked for a certain period in order to benefit in full from certain welfare benefits, the Centre does its utmost to find that person a job; if required, it acts as employer itself for the required period. Welfare can also take a novel form devised by the Centre itself. It might mean paying gas and electricity bills, for example.

Ultimately, the Public Welfare Centre is free to determine what, in its opinion, is the most appropriate form of aid for each individual case. In practice, it is the case-by-case examination of the particular situation of each interested party that determines whether or not the aid is to be granted and in what form. In order to help the Centre to measure the scale of need for welfare assistance, beneficiaries are required to provide all relevant information about their situation and to inform the Centre of any new element which might have a repercussion on the aid they are granted. When the Centre's decision is communicated to the person concerned, it must be justified and indicate the possibilities for appeal.

Contrary to widespread recognition of the right to welfare, the Centre grants emergency medical aid only to foreigners who are staying illegally in the Kingdom, it being stipulated that this automatically covers any foreigner who has

declared himself to be a refugee and has applied to be recognized as such, but whose request for asylum has been rejected and who has been served notice to leave the country.[33]

It is widely acknowledged that the right to welfare is a subjective right and that the obligation assumed by the public welfare centre is an obligation of result. Added to this last obligation is an obligation of diligence: the Centre must take all of the necessary steps in order to inform the public about the various forms of aid granted by it; furthermore, it is obliged to give all relevant advice and information and to take steps to secure for the interested parties the rights and benefits to which they are entitled under Belgian and foreign legislation.

*Commission for the Protection of Privacy*

Article 22 of the Constitution sets forth the principle whereby every individual is entitled to respect for his/her private and family life, except in the cases and under the conditions established by law. Moreover, the law of 8 December 1992 relating to the protection of privacy with regard to the processing of personal data[34] stipulates that all private individuals have the right to respect for their privacy in the processing of any personal data concerning them.

The Commission for the Protection of Privacy is the administrative authority responsible for protecting the privacy of citizens against the spread of information technology and, in particular, against any abuses associated with the automated processing of personal data.

Organically attached to the Ministry of Justice, the Commission is an independent institution comprised, on the one hand, of ex-officio members chosen by the supervisory committees set up by sectoral regulations and, on the other hand, of members appointed directly by the Parliament (sometimes by the Chamber of Representatives and sometimes by the Senate) upon nomination by the Council of Ministers. The Commission is composed in such a way as to maintain a balance between the various socioeconomic groups.

What are the missions of the Commission for the Protection of Privacy?

First, the Commission keeps a register of the automated processing of personal data. This register normally allows any individual to have access to the information that is kept concerning him and to identify the holders of such information. Consequently, prior to embarking on this type of processing a declaration must be made to the Commission. This declaration must, in particular, mention the aim pursued, the categories of data to be processed, the categories of person authorized to receive such data, the means by which the people concerned by the data are to be informed of such data, the services with which the right of access will be exercised and the measures taken to facilitate the exercise of this right. If the registered data are not correct, the person concerned has the right to apply to the Commission, free of charge, in order to exercise his/her right of access and rectification.

Secondly, the Commission has a general role to make proposals to and advise the public authorities. Either at its own initiative, or at the request of the

Parliament or the Federal Government, of a Community or Regional Council or Government, or of a supervisory committee, it issues reasoned opinions or recommendations on any issue relating to the protection of privacy.

Thirdly, the Commission exercises general supervisory powers over application of the law. First, without prejudice to any legal proceedings and except where the law stipulates otherwise, the Commission examines any signed and dated complaints that are sent to it. If it deems the complaint to be admissible, it undertakes any conciliation proceedings which it judges to be useful. Failing conciliation, it issues an opinion on whether or not the complaint is well founded. Its opinion may be accompanied by recommendations for the officer handling the file. Secondly and again, always providing that the law does not stipulate otherwise, the Commission denounces to the Crown Prosecutor any infringements of which it has knowledge.

*Consultation and Defence Bureaus*

Access to justice is an unconditional right, without which there is no real human dignity. It cannot be dissociated from the rights which are recognized as being human rights and must be granted to any person, with no consideration other than that the person is human.[35] Recently enshrined in Article 23 of the Constitution, the right to legal aid is now a fully fledged fundamental right. With the aim of guaranteeing the effectiveness of this right, Article 455 of the Judicial Code stipulates that, in order to provide assistance to people with insufficient income, the Bar Council shall establish a Consultation and Defence Bureau, set up in any form it sees fit.

It is therefore each bar that is responsible for organizing a consultation and defence bureau, in accordance with the needs of the population of the judiciary district to which it belongs, as well as with its capabilities.[36] According to the articling regulations adopted by the French Bar Council of barristers practising in Brussels, the Consultation and Defence Bureau is headed by a chairman appointed from among the council's members. The chairman of this bureau supervises the distribution of the student barristers into different columns, directed by column officers. Each of them receives at the Law Courts, in prisons or in another other duly-appointed premises, anyone who applies to the Consultation and Defence Bureau, on set days and hours. The mission of the column officer is to distribute the bureau's cases among the student barristers. However, any patently groundless cases are not allocated. The distribution is made so as to entrust roughly an equal number of cases to each student barrister every year. The latter keeps an up-to-date appointment list for all of the cases which the bureau entrusts to him/her. S/he is required to make a detailed report to the bureau on the proceedings s/he has instigated for the cases entrusted to her/him. S/he submits an annual report to her/his column officer on the active cases. In principle, the column officer is the only person authorized to grant the student barrister a discharge from a case with which s/he has been entrusted. S/he can do so if s/he finds that the claims are ill-founded or if, through the client's own fault, it is

impossible to continue assisting her/him. Before the student barrister is granted a discharge, s/he may be asked to demand further explanation from the client. Of course, any student barrister discharged from a case must immediately notify the client of this. No client who has been deprived of the assistance of a student in this way is allowed to secure a further appointment for the same case, unless new circumstances arise.

Prior to appointing a student barrister to take charge of the case, an initial examination is made of the claimant's material situation, because if it emerges that the claimant is not destitute or is only partially destitute, he will be required to pay the appointed student barrister a retainer or fees set by the bureau.

The conditions for access to the Consultation and Defence Bureau are laid down in a National Law Society regulation of 12 June 1987, amended on 24 June 1993. The accessibility threshold, aligned with the minimum sum immune from seizure stipulated in Article 1409 of the Judicial Code, is currently around 30,000 BF.

When a person takes a case to the Consultation and Defence Bureau, there are three possible scenarios. Where the person's income is lower than the basic income support rate, the student barrister is not authorized to charge for his/her services and is therefore paid only the allowance granted by the State. Where the person's income comes between the amount of income support and the income threshold for access to the Bureau, the student barrister benefits from the State allowance, but may also ask the Chairman of the Bureau to set a modest fee and reimburse his/her costs. Where the client's income is above the access threshold, the solution varies depending on the Bar (in Brussels, the student barrister is not entitled to the state allowance, only to fees and costs set by the Chairman of the Bureau).

In other words, the state is obliged to intervene in the costs incurred by the Bars and barristers in taking on the defence of destitute people. Every year a Royal Decree establishes the conditions for granting the allowance to student barrister barristers, together with the rate and payment terms for the allowance. The allowance is distributed on the basis of a system whereby a set number of points are allocated for each procedure, based on the National Law Society's recommendation concerning fees.

*The National Standing Committee for the Cultural Pact*

Article 11 of the Constitution enshrines two fundamental principles: non-discrimination in the enjoyment of rights and liberties and, to this end, guaranteed rights and liberties for ideological and philosophical minorities. Article 131 of the Constitution provides that the prevention of discrimination on ideological and philosophical grounds is the remit of the federal legislator. In execution of these constitutional provisions, a law was adopted on 16 July 1973, designed to guarantee protection for ideological and philosophical tendencies.[37]

The National Standing Committee for the Cultural Pact owes its existence to this law. Although it is not subordinate to the executive authority and its members

are elected by assemblies, its mission is to help the administration to run smoothly, while respecting all ideological and philosophical tendencies.

The two principles governing the Committee's composition are the principle of linguistic parity and the principle of ideological and philosophical balance. All of the members are elected, depending on the case, either by the Council of the French-speaking Community or by the Flemish Council, in proportion to the representation of the political groups comprising these assemblies.

What are the missions of the National Standing Committee for the Cultural Pact? Its task is to monitor compliance with the provisions of the law of 16 July 1973, which is a matter of public policy and is directly applicable.

This law lays down the fundamental principle that the decrees adopted by the Community Councils, and a fortiori the rules of lower authorities, may not contain any discrimination on ideological or philosophical grounds, nor may they infringe the rights and liberties of ideological and philosophical minorities.

Various legislative provisions complement this fundamental principle.

Therefore each ideological and philosophical trend represented on a Community Council must have access to the means of expression which come within the remit of the public authorities of the Community concerned. This means that they are recognized as having a full right to airtime. For example, in an opinion of 23 June 1980, the Committee considered that the political tendency represented by the single elected representative of the Democratic Union for Respect for Labour — a minor party that is now defunct — benefited from this right; as a consequence, the Committee rejected a plea by the TV and radio corporation of the French-speaking Community RTBF in favour of a minimum threshold of representativeness set by the board of directors' regulations.

So the public authorities are required to include all of the recognized representative organizations and all of the ideological and philosophical tendencies when developing and implementing their cultural policy. What is more, in the field of art, literature and science, all interventions by or incentives from the public authorities must be based exclusively on artistic, aesthetic and scientific criteria. Equal rights must be assured between citizens of every persuasion, especially with regard to the award of prizes, grants, loans and allowances of whatsoever nature, participation in sporting competitions and cultural activities and incentives for research.

In connection with its role of monitoring compliance with the law of 16 July 1973, the Committee has the power to receive and examine complaints.

Any complaint against a breach of the provisions of this law which may have been committed by a public authority must be filed by a person with the capacity and position to act and must be of proven benefit; since the law is a matter of public policy, the benefit condition is interpreted broadly. Such a complaint must be submitted within 60 days of the date on which the disputed decision was made public or notified. Before judging its admissibility, the Committee hears the plaintiff, as well as the defendant.

The Committee examines any complaints referred to it; it is allowed to make

investigations on the premises, to request receipt of any information and documents it deems necessary for examining the case and to hear all witnesses. It then strives to secure a conciliation, by putting the parties into contact and inviting them to negotiate. Failing a conciliation, it issues a reasoned opinion concerning the cause of the complaint, accompanied, if required, by a recommendation to the authority concerned asking it either to acknowledge the nullity of the disputed decision, or to take any measure required to ensure compliance with the provisions of the law. The authority is not, however, bound by such an opinion, nor by any recommendation, neither of which have binding effect.

In reality, the Committee is as pragmatic in its decisions as it is consensual in its internal workings. As stated by Hugues Dumont, its concern to settle cases on a case-by-case basis usually takes precedence over any legal consideration.[38]

*The Delegate-General for Children's Rights and Youth Support*

Since the decree of 4 March 1991 relating to youth support, a new official has existed within the French-speaking Community, namely the Delegate-General for Children's Rights and Youth Support.[39] The Order of the Government of the French-speaking Community of 10 July 1991 describes the Delegate-General's missions and resources.

The Delegate-General is appointed by the Government of the French-speaking Community from among Ministry of Culture and Social Affairs officials, for a term of six years, renewable twice. S/he reports directly to this Government, which provides her/him with five other staff members from the same administration, as well as the material and financial means he needs to carry out his mission.

What are the missions of the Delegate-General for Children's Rights and Youth Support?

Having taken up office during the French-speaking Community's youth support reform, s/he is responsible for ensuring that the rights and interests of all children and all young people are safeguarded, meaning any person under the age of 18 (or anyone under 18 for whom support was requested when s/he was under 18, in application of the youth aid and protection legislation). The Delegate-General's activities are therefore not confined to the specialized sector of youth support. Defined to be more general in scope, his/her role consists of ensuring respect for the fundamental rights of all young people and of defending their interests.[40]

The Delegate-General is authorized to take action in a variety of areas in order to successfully complete his/her mission.

It is his/her responsibility to inform public and private individuals about the rights pertaining to young people.

He is allowed to submit proposals to the Government of the French-speaking Community for amending the legislation and regulations in force, as well as to make any recommendations in this area which s/he deems to be necessary to afford more comprehensive and effective protection of young people's rights.

S/he is authorized to monitor the proper application of the legislation and

regulations concerning young people, for example in the field of employment contracts. To this end, any person whomsoever may refer a complaint to him/her denouncing an infringement of any specific right. Requests for mediation may also be submitted to him/her. S/he examines the complaints and the requests for mediation, investigates them and decides what action is to be taken, after having conducted any inquiries which might be required. If s/he finds that the incriminating acts do constitute an infringement, s/he informs the Crown Prosecutor of this. Once the denunciation has been made, s/he can content him/herself with a judicial inquiry or, if s/he deems it appropriate, s/he can file her/his own law suit.

The Delegate-General has the power to refer to the federal, Community, Regional, provincial or municipal authorities, as well as to any institutions which come under them, any requests for an inquiry or investigation which s/he may require in order to accomplish her/his mission. Furthermore, within the limitations set by the Constitution, laws and decrees, the Delegate-General has free access during normal working hours to all of the premises of public services subsidized by the French-speaking Community, such as children's homes. The management and staff of such services are required to communicate to the Delegate-General any documents or information which the latter deems necessary, except those covered by medical privilege or privileged communication.

## Conclusion

In Belgium, the protection of human rights and the role of administrations have evolved in parallel. During the first half of the 20th century, only the conventional freedom rights, the so-called 'defensive' rights, were protected. The state's obligation was to refrain from infringing such rights. The administrations were confined to the same role, which was all the more limited since the public authorities had very little contact with citizens. In those days, administrations were poorly developed and covered only a few sectors of community life.

Since the second half of the 20th century, new rights have emerged. In the main, these are claim rights. The latter — should we need any reminder — enable their holders to demand concrete benefits from the community and are chiefly economic and social — or even, taking a broader view, cultural — in nature.[41]

The responsibility of administrations has therefore changed in this respect. Moreover, administrations are increasing in number and size and are establishing direct relationships with private individuals.[42] The relationship between administrations and their administrative constituents has changed as a result. The fate of human rights is in the hands of these public authorities. Their involvement in such matters has to go beyond mere passivity, since human rights, which are neither an ideology nor a way of thinking, exist only if they are encompassed within practices, if they are applied in concrete situations.[43]

This has meant that, from being a regulatory value, the human rights ideal has developed into an innovative value for administrations. The goal of fostering

these human rights has become a driving force behind the whole administrative apparatus.

## Notes

1. F. Delpérée, 'La mutation du système juridique et le droit de l'administration en Belgique', in G. Marcou (ed.) *Les mutations du droit de l'administration en Europe — Pluralisme et convergences* (Paris: L'Harmattan, 1995), p. 177.

2. G. Timsit, A. Claisse and N. Belloubet-Frier (eds), *Les administrations qui changent — Innovations techniques ou nouvelles logiques?* (Paris: PUF, 1996), p. 218. See also G. Timsit, *Archipel de la norme* (Paris: PUF, 1997), pp. 43–103.

3. See J.-P. Costa and G. Della Cananea (eds) *Droits de l'homme et administrations publiques* (Brussels: IIAS, 1997).

4. A. Plantey, 'Opening Address', in *Le fonctionnaire au service des droits de l'homme*, Proceedings of the Twelfth Symposium of the Association Internationale de la Fonction Publique, Avignon, 17–19 July 1989 (Brussels: IIAS, 1990), p. 19.

5. J.-C. Geus, 'L'administration et le respect des droits de l'homme', in *L'administration en 7 questions*, Proceedings of the Study Session of 22 March 1996 (Brussels: Bruylant, 1996), p. 89.

6. E. Gillet, 'Les droits et les obligations des agents', in J. Sarot (ed.) *Précis de fonction publique* (Brussels: Bruylant, 1994), pp. 220–1.

7. Regarding this last point, see J.-F. Flauss, 'L'incorporation indirecte des traités de protection des droits de l'homme', *Revue trimestrevelle des droits de l'homme* (1997): 35–40: in the light of the British and Australian experiences, the author envisages the obligation for administrative authorities to take into consideration human rights treaties which have not been incorporated into national law.

8. F. Sudre, 'La Communauté européenne et les droits fondamentaux après le Traité d'Amsterdam. Vers un nouveau système européen de protection des droits de l'homme?', *La Semaine juridique*. (1998, D): 9.

9. R. Abraham, 'Les incidences de la Convention européenne des droits de l'homme sur le droit constitutionnel et administratif des Etats parties', *Revue universelle de droits de l'homme* (1992): 413. See also R. Ergec, 'L'incidence du droit du Conseil de l'Europe sur le développement du droit administratif', *Administration publique* (1993): 1–11.

10. European Court of Human Rights, Moustaquim Ruling, of 18 February 1991.

11. See E.C., in particular, Chairi and Yousri Ruling, No. 64.900, of 27 February 1997.

12. E.C., Ozkan Ruling, No. 50.103, of 9 November 1994.

13. Nevertheless the conditions of service for state officials of 2 October 1937, which we know to be a reference text for all public officials, contain no provisions which might convey a philosophy concerning the relationship between a civil servant and human rights. See F. Delpérée and F. Jongen, 'Le fonctionnaire au service des droits de l'homme' *Rapport pour le XIIème colloque de l'Association internationale de la fonction publique* (1998, typescript in Belgian, p. 9).

14. F. Delpérée, 'Constitution et administration en Belgique', *Annuaire européen d'administration publique* (1993): 127.

15. In the same vein, see Article 7, Section 2, of the Royal Order of 26 September 1994 establishing the general principles for the administrative and pecuniary conditions of service for public officials, applying to the staff of Community and Regional Governments and of the Colleges of the Joint Committee of the Communities and of the Committee of the French-speaking Community, as well as to any public corporations which come under them.

16. See, in particular, L. Favoreu, 'La constitutionnalisation du droit administratif', in *Etat, Loi, Administration — Mélanges Ep. Spiliotopoulos* (Athens: Sakkoulas/Brussels: Bruylant, 1998), pp. 97–113.

17. See Centre d'études constitutionnelles et administratives, *Le médiateur* (Brussels: Bruylant, 1995).

18. Many criminal offences can have the effect of infringing the fundamental rights of public service users. Moreover, the capacity of 'civil servant', or 'public official' or 'person entrusted with a public service' is a constituent element of a number of these offences (civil servant collusion, misappropriation of public funds, corruption, abuse of power, etc.).

19. See *infra* (II. Promotion of Human Rights by the Administrations).

20. R. Ergec, 'General Introduction', in *Les droits économiques, sociaux et culturels dans la Constitution*, Proceedings of the Symposium held at the Free University of Brussels on 21 and 22 December 1994 (Brussels: Bruylant 1995), p. 16.

21. P. Martens, 'L'insertion des droits économiques, sociaux et culturels dans la Constitution', *Revue belge de droit constitutionnel* (1995): 19.

22. A. Heymann-Doat, *Libertés publiques et droits de l'homme* (Paris: LGDJ, 1997), p. 183. See also R. Ergec, 'La transparence administrative comme droit fondamental et ses limites', *Administration publique* (1993): 87–95.

23. See, in particular, C. de Terwangne, 'L'accès du public à l'information détenue par l'administration', *R.B.D.C.* (1996): 107–38; F. Jongen, 'La publicité de l'administration', *Journal des tribunaux* (1995): 777–88; P. Lewalle, *Contentieux administratif* (Liège: Ed. Scientific collection of the University of Liège Law Faculty, 1997), pp. 43–107.

24. C.A. Ruling, No. 17/97, of 25 March 1997, B.2.1. See also E.C., M.J. Ruling, No. 66.860, of 18 June 1997.

25. E.C., s.a. Electrification du rail ruling, No. 62.547, of 14 October 1996.

26. See J. Sambon, 'L'accès à l'information en matière d'environnement comme droit fondamental', *Aménagement* (1996): 237–55.

27. M. Verdussen and A. Noël, 'Les droits fondamentaux et la réforme constitutionnelle de 1993', *Administration publique* (1994): 133.

28. D. Lagasse, 'L'incidence en matière de marchés publics de la loi du 29 juillet 1991 relative à la motivation formelle des actes administratifs et de la loi du 19 juillet 1991 instaurant un référé administratif devant le Conseil d'Etat', *Administration publique* (1992): 94.

29. E.C., Rondelez Ruling, No. 39.161, of 3 April 1992.

30. See the annual reports of the Centre for Equal Opportunities and the Fight against Racism (Centre pour l'égalité des chances et la lutte contre le racisme), for the years 1995, 1996 and 1997.

31. Regarding this law, see B. Blero, 'La répression légale du révisionnisme', *Journal des tribunaux* (1996): 333–7.

32. Regarding this law, see P. Lambert (ed.) *Manuel de droit communal*, Vol. II, *La loi organique des centres publics d'aide sociale* (Brussels: Bruylant/Nemesis, 1996).

33. Regarding this issue, see S. Sarolea, 'Aide sociale aux étrangers en situation illégale: les droits de l'homme en quête d'effectivité', *Journal des tribunaux* (1998): 345–54.

34. Regarding this law, see, in particular, M.-H. Boulanger, C. De Terwangne and T. Léonard, 'La protection de la vie privée à l'égard des traitements de données à caractère personnel', *Journal des tribunaux* (1993): 369–88.

35. M.-B. Bertrand, 'L'aide légale: l'aboutissement d'une longue démarche. Un grand chambardement?', *Journal des tribunaux* (1995): 257.

36. R. De Baerdemaeker, 'Le bureau de consultation et de défense. Professionnalisme et accès à la justice', *La Conférence* (1998, 4): 19.

37. Regarding this law, see H. Dumont, *Le pluralisme idéologique et l'autonomie culturelle en droit public belge*, Vol. 2, *De 1970–1993* (Brussels: Bruylant, Publications des Facultés universitaires Saint-Louis, 1996).

38. H. Dumont, op. cit. note 37, pp. 208–9.

39. Regarding the Delegate-General for Children's Rights and Youth Support, see, in particular *L'aide à la jeunesse — Anatomie du décret du 4 mars 1991*, Proceedings of the Symposium held in Liège on 25 October 1991, Editions du Bavieau de Liège, pp. 105–11; C. Lelièvre, 'Le délégué général aux droits de l'enfant et à l'aide à la jeunesse en Communauté francaise de Belgique', in *La protection juridique et sociale de l'enfant* (Brussels: Bruylant, 1993), pp. 131–3.

40. C. Lelièvre, op. cit. note 39, p. 132.

41. M. Verdussen, 'Cinquante années de protection internationale des droits de l'homme', *Louvain* (Nov. 1998): 15.

42. S. Cassese, 'Le citoyen et l'administration', Proceedings of the 24th International Congress on Administrative Sciences (Paris: International Institute of Administrative Sciences, 1998), pp. 35–6.

43. F. Tulkens, 'L'effectivité des droits de l'homme', *Louvain* (Nov. 1998): 23.