

RESILIO Country Report Belgium



Mathieu Leloup

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Autor: Mathieu Leloup
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1. Introduction

Belgium is a constitutionally, institutionally and socially complex country. It consists of a federal level, three linguistic communities (Dutch-speaking, French-speaking, German-speaking) and three regions (Flanders, Wallonia, Brussels-Capital), as well as provinces and municipalities. While the regions and communities largely overlap geographically, they each have their own specific competences, with their own parliament and government. Besides a difference in language, there are general disparities in socio-economic situation and in political leanings between the Dutch-speaking and French-speaking parts of the country. In many ways Belgium is thus a complex, even somewhat divided society. This is also reflected in some of the resilience factors that will be discussed below.

Nevertheless, the rule of law situation in Belgium is generally quite positive. Belgium consistently scores among the better countries in international reports or indexes. Its overall position for 2022 in the World Justice Project Rule of Law Index was 14th out of 140.¹ The Global Economy

Ranking Rule of Law index places Belgium on the 23rd place out of 191.² Freedom House ranks Belgium as a free country, with a score of 96/100.³ V-Dem has labelled Belgium as a Liberal Democracy since it started counting in 1972 and puts Belgium on the 7th place out of 179 countries in its Liberal Democracy Index in 2023.⁴ The RESILIO project ranked Belgium 7th out of the 27 EU countries.

These numbers show that, while it is not always at the absolute top, it is consistently among the higher-ranking countries.

That position is, moreover, generally rather stable. Throughout the years, there are no huge shifts, either in the positive or the negative sense. The scoring of Belgium in the World Justice Project Rule of Law Index has, for example, remained virtually unchanged, jumping back and forth between 0.77 and 0.79 in the last 8 years. V-Dem also shows a very slow but stable upward trend for the Liberal Democracy Index since the 1960s, moving from 0.75 to 0.82.⁵ Every now and again there is some smaller scandal or a point of discussion in the Belgian legal and political system, but such instances remain contained and are not capable of truly upsetting the rule of law in Belgium. The existing institutional checks and balances – some of which will be discussed below as resilience factors – such as the judicial system, the media, an active political opposition and a general culture of respect for constitutional values, generally seem to be able to flag and mitigate such points of discussion and to prevent or absorb any shocks. Afterwards, the government generally seems to be willing to draw the necessary conclusions and make the changes necessary to make sure that something similar does not happen again.

The general situation for the rule of law in Belgium can thus be characterised as a slow and stable attempt to continuously improve the situation. An important factor that contributes to this is the fact that Belgium is generally very

responsive to international and European impulses and is eager to implement changes that are suggested by actors like GRECO or the European Commission in its Rule of Law Reports.⁶

In what follows, I will discuss three factors that contribute significantly towards strengthening the resilience of the rule of law in Belgium: judicial resilience, media resilience, and economic resilience.

2. Analysis of the country along RESILIO model

2.1. Most important systemic factor: judicial resilience

The most important systemic resilience factor in Belgium is the judiciary. Overall, the level of trust in the Belgian court system and its perceived independence is rather high. According to the most recent EU Justice Scoreboard 66% of the general population and 59% of the companies perceive the level of independence of courts and judges to be “fairly or very good”.⁷ These numbers have remained relatively stable over the course of the last few years. The independence of the judiciary is enshrined in Article 151 of the Constitution. Other important aspects of the judiciary, such as the principle of legality for the courts and the irremovability of judges, are also laid down in the Constitution.

The current institutional set-up regarding the Belgian judiciary is the consequence of a largescale reform in 1999. After a big scandal involving mistakes that were made during the investigation of a man who had kidnapped, raped and killed several young girls, widescale protests erupted which criticised the perceived politicised judiciary. As a response, a wide-scale reform took place, which, among other things, established a judicial council. This council was given important competences for the appointment of judges and the control of the Belgian judiciary. While it is still the King who formally appoints and promotes judges, the real decision-making power now lies within the judicial council, which proposes a single candidate to the King with a two thirds majority. In 2013, another aspect of the judiciary, namely the system of judicial discipline, has also been significantly amended. As a consequence of those large reforms, the current institutional framework surrounding the Belgian judiciary, including the systems of appointing, promoting, dismissing, and disciplining judges, generally comply with the European judicial standards and best practices.⁸

The Belgian judicial set-up allows for a complete system of judicial review of government measures. The Constitutional Court can annul laws and decrees by the federal and regional parliaments. Administrative acts can be challenged before the Council of State or one of the specialised administrative tribunals. In urgent cases, the Constitutional Court and the administrative tribunals may also suspend the law or the administrative act. While according to the law, the Constitutional Court is only allowed to assess laws against the (rather limited) fundamental rights catalogue enshrined in the Constitution, it has greatly increased the scope of its review throughout the years. It has done so by interpreting the fundamental rights in the Belgian Constitution in light of the European and international fundamental rights, and by assessing the laws indirectly against other binding norms of international law.

Generally speaking, Belgian courts can be perceived as operating impartially and independently and do not seem hesitant to rule against the interests of the government or large businesses. In the first half of 2023, the Belgian courts – the Constitutional Court, the administrative courts and the common court system – ruled against the government in several high-profile cases, in areas of, among other things, environmental law, migration law, and social security law. During the COVID-19 pandemic, the courts at times also ruled against the government’s position. In general, the government accepts such rulings.⁹ While every now and then a member of the government may criticize the judiciary for a certain judgment or decision,¹⁰ such actions remain the exception and there is often an immediate and sharp response from other politicians, or from other actors such as the judicial council, the magistrates’ association, or academics, pointing to the importance of the independence of the judiciary, the separation of powers and the rule of law.

One element that may characterise the Belgian judiciary and set it somewhat apart from other countries is its strong interaction with international and European law in general and with the case law of the European Court of Justice and the European Court of Human Rights in particular. It is commonly known that Belgian courts have a very open attitude towards international and European law.¹¹ The Belgian Constitutional Court, for example, relies heavily on the case law of the European Court of Human Rights and the European Court of Justice, and, in doing so, manages to update the rather limited and outdated fundamental rights catalogue enshrined in the Belgian Constitution. The advisory section of the Council of State, which

provides advisory opinions to draft legislation, also consistently takes the international norms into account, which helps to bring the Belgian legislation more in line with European standards. The Belgian courts, including the Constitutional Court, also interact strongly with the European Court of Justice via preliminary references. The Council of State has, for example, also quickly made use of the possibility provided by the 16th Protocol to the European Convention on Human Rights to ask for an advisory opinion to the European Court of Human Rights.¹² This strong judicial interaction with the European Courts also takes place in difficult or politically contentious cases. There have for example been recent preliminary references coming from Belgian courts in cases about whether civil servants are allowed to wear religious symbols,¹³ and on the permissibility of exit-bans to fight the spread of Covid-19.¹⁴ This intense interaction with the European Courts and their case law contributes to a strong protection of (fundamental) rights of individuals. It also ensures that such difficult legal issues are immediately brought before the highest European Courts. As such, this interaction could be seen as a best practice.

The Belgian judiciary is made up overall of competent, hard-working individuals. The judicial system is generally accessible and affordable, with legal assistance for those who cannot afford access to justice. One longstanding issue that nevertheless hampers the efficiency of the Belgian system is the underfunding,¹⁵ both in terms of human and financial resources.¹⁶ The Minister of Justice has promised to provide 300 million euros of extra yearly funding during this legislative term, 50 million of which is earmarked for ICT.¹⁷

2.2. Most important subsidiary factor: media resilience

Belgium traditionally scores well when it comes to the freedom of the media. In 2023, it ranked number 30 out of 180 in the worldwide ranking by Reporters Without Borders, though it must be noted that this rank is considerably lower than in 2022 (number 23) and certainly 2021 (number 11).¹⁸ The 2023 country report on Belgium by the Media Pluralism Monitor also mentioned that Belgium overall scored positively, but that risk levels had increased since 2017.¹⁹

The freedom of the media is constitutionally entrenched. More generally via the freedom of expression, enshrined in Article 19 of the Constitution, and more specifically via Article 25 of the Constitution, which states that “the print-

ing press is free”²⁰ and that “censorship can never be installed”. Article 150 of the Constitution moreover dictates that so-called printing press crimes are to be decided by a jury, except when they are motivated by racist or xenophobic reasons. The idea behind that provision was that the people themselves should be the judge of the press, rather than (politically appointed) judges. The confidentiality of a journalist’s sources is furthermore protected by a law.²¹ Since the press freedom is a right that is protected by the Constitution for everyone, this protection is afforded not only to professional journalists but to everyone.²²

The above mentioned division in linguistic communities in Belgium has important consequences for the access to media and the media landscape. The main competence for the media lies within the communities, which means that the Belgian media landscape is essentially divided into three separate sections, one for the Dutch-speaking part, one for the French-speaking part and one for the German-speaking part. Each of the three communities has its own media law and its own public service media provider.²³ In general, there is free access to various media outlets for each of those parts, providing a varied range of views which includes the different voices of the political spectrum. Importantly, there is also free access to media of the other linguistic communities and to international media. Given the rather small media markets as a consequence of the linguistic division, such international access is important for each of the three communities (Dutch-speaking community – access to media of the Netherlands; French-speaking community – access to media of France; German-speaking community – access to media of Germany). Access to internet is almost universal, with 94.4% of households having internet access in 2022.²⁴ Belgium currently ranks 22nd in worldwide broadband speed.²⁵

Since the main competence for media lies with the linguistic communities, there are separate regulatory authorities for each of the three communities for broadcasting (radio and television).²⁶ These authorities, among other things, monitor respect for the legislative provisions by the broadcasters, sanctioning any violation, and issue permits for broadcasting. The Flemish regulatory authority also contributes to the transparency in the media landscape by annually publishing a detailed media concentration report concerning all sectors.²⁷

The independence of these regulatory authorities is generally accepted and stems from a solid legal framework.²⁸ The relevant legislation protects formal independence requirements, such as incompatibilities for those holding positions in the legislative or executive branches. It furthermore establishes an independent and representative composition. For example, the general chamber of the regulatory authority for the Dutch-speaking community consists of five members, two of whom must be magistrates with at least five years of experience, and three media experts, which have at least five years of academic or professional experience with the media.²⁹ There is no indication that there is any willingness by the government to interfere with the independence of the regulatory authorities. While there are less explicit legal safeguards for the print media, there are two self-regulatory bodies which manage to effectively ensure political independence for print media.³⁰

This robust legal and institutional framework has led to a generally independent media that effectively fulfils its function as a check on the public power. There are regularly news stories that receive national attention concerning the actions by the government or its members. In the last few years there have, for example, been widely published stories about close connections between local politicians and building promoters, or extra pensions for ex-presidents and highly placed civil servants working for the Chamber of Representatives. There is also widespread attention to court proceedings where government measures are being challenged, for example when the Belgian courts ruled on the measures that were taken to battle the Covid-19 pandemic or cases before the Constitutional Court. Generally, there are no indications that the media experience any sort of retaliation for such coverage.³¹

2.3. Most important contextual factor: economic resilience

In 2023, the yearly Global Wealth Report by Credit Suisse reported that Belgians are the richest people in the world. The report stated that the Median wealth per adult in Belgium in US Dollars had reached 249.940\$, thereby jumping over the previous number 1, Australia (247.450\$), for the first time ever.³² While some serious caveats can be made regarding that number,³³ it shows that, generally speaking, the economic situation for the average person in Belgium is quite good. The country has also consistently scored quite well on the Legatum Prosperity Index, currently ranking 18th out of 167.³⁴

An important factor for the economic resilience in Belgium is that there is a relatively high degree of income equality. The country consistently scores among the best countries in the world regarding the Gini index, which is an index that measures the extent to which the distribution of income among individuals within an economy deviates from a perfectly equal distribution. A Gini index of 0 means perfect equality, a Gini index of 100 means perfect inequality. According to the latest available data, the Gini index for Belgium lies around 25-26.³⁵ That puts Belgium in the top five in the European Union and worldwide.³⁶

A fundamental reason for this relative income equality is the high level of redistribution through taxes and transfers. Income inequality before taxes is actually rather high in Belgium, with a Gini index of 50. However, as was mentioned earlier, after taxes, Belgium ranks among the best countries in the world in terms of income equality. The difference in Gini index between income pre taxes and transfers, and income post taxes and transfers, was 23,2 percentage points in 2018, which is among the highest percentage of income redistribution in the world.³⁷

Another factor that contributes to the relatively stable economic position of people residing in Belgium is the strong social security system. One of the factors that helps explain the high rate of taxation in Belgium is that a considerable part of taxes goes to social security. As a consequence, social security remains accessible to a big part of the population. This in turn means that things like unforeseen medical expenses remain affordable for the general population.

One of the factors that contributes most to the economic resilience of the people, and which sets Belgium quite apart from other countries, is the automatic indexation of wages, benefits and pensions. This automatic indexation applies to the wages of all people that work for the government and for almost all employees in the private sector. It is tied to the so-called “health-index”. That is a national index of the consumption prices, excluding products that are dangerous for your health, such as tobacco or alcohol. When the prices of those goods have increased beyond a certain threshold, the wages, benefits and pensions are automatically increased. The system was designed to protect the people in Belgium against inflation and rising costs of living, without having to bargain, either individually or collectively, for an increase in their wages.

The automatic indexation has shown its importance over the course of the last few years. With the Covid-19 crisis, followed by the war in Ukraine, inflation has risen drastically worldwide. Because of the automatic indexation, the wages, benefits and pensions likewise increased automatically in those months, for some in several smaller increases, for others in one larger increase. For those who receive a yearly indexation of their wage, the wages increased with no less than 11% in January 2023.³⁸ Others had received five smaller increases of 2% throughout 2022. This means in practice that the high inflation of the last years has been felt less intensely by many people working in Belgium. In fact, the high inflation, coupled with the automatic indexation actually improved the economic position of people in Belgium in some ways. People who had a fixed rate mortgage, for example, saw their wages increase significantly, while the costs of their mortgage remained stable, making their mortgage relatively cheaper.

Recently, some economists have also suggested that this automatic indexation is part of the reason why the Belgian economy is doing well in comparison to other economies in the European Union.³⁹ The Belgian National Bank equally stated that the Belgian economy has shown great resilience in the last couple of months.⁴⁰

In August 2023, Eurostat stated that Belgium had noted the lowest yearly inflation of all Eurozone countries with 1.7% and that its GDP had increased more than in many other countries.⁴¹ The argument is that, since wages in Belgium increased automatically, the spending power of Belgian people has remained rather stable, and that consumption could therefore remain on a similar level. The Federal Planning Office has announced in February 2023 that the real disposable income is expected to increase with more than 4% this year, also pointing to the automatic indexation as one of the main reasons.⁴²

This automatic indexation of wages, benefits and pension, together with the extensive redistribution of wealth and the robust social security framework are important factors that explain the economic resilience of Belgium. While it is of course no panacea and important challenges remain, those factors help to explain how the Belgian economy and the financial situation of its people manage to absorb big economic shocks.

3. Impact of crises on the rule of law: the reception crisis of asylum seekers

Recently, Belgium was caught once more by a reception crisis of asylum seekers. In the second half of 2022, the government failed in providing thousands of asylum seekers with reception facilities, especially when it concerned single adult men without kids. Many asylum seekers subsequently appealed to the labour courts in an attempt to receive a declaratory judgment, forcing the government to provide them with housing. Many of them won their case and the Belgian state was convicted over 7.000 times. The government, however, refused to comply with these court orders, arguing that it simply did not have space and that it recently had offered places to many Ukrainians. It also did not pay the penalty payments that the labour courts had imposed. In a joint press release, five human rights institution stated that the situation was a violation of the rule of law.⁴³ The situation is indeed extraordinary. No other instances come to mind in which the Belgian government has ignored decisions by national courts on such a large scale and in such a systematic manner, in blatant disregard of the requirements of the rule of law.

After being confronted with the unwillingness by the Belgian government to respect the rulings by the labour courts, many asylum seekers ultimately filed a complaint to the European Court of Human Rights. The Court ordered the Belgian state, via interim measures,⁴⁴ to provide shelter and food to the asylum seekers and to respect the judicial decisions by the Belgian courts. On 18 July 2023, the European Court issued a judgment in the case of *Camara v Belgium*,⁴⁵ the first of hundreds of cases pending concerning the Belgian reception crisis. It found a violation of Article 6 ECHR, because the Belgian state had failed to comply with the judicial decisions by the Belgian courts.

In September of 2023, the state secretary of asylum and migration decided that adult men without kids would no longer be given a spot in reception facilities, in order to secure spaces for women and kids. Several organisations challenged this decision before the Council of State, which indeed suspended it, as discriminatory and in violation of the law.⁴⁶ The state secretary nevertheless indicated that she would continue her policy, which in turn led to strong criticism, among others by constitutional law scholars.⁴⁷

The reception situation has also had effects on the relationship between Belgium and other European countries. On 20 February 2023, a Dutch judge refused to return an asylum seeker to Belgium under the Dublin Regulation, because of the fact that he would in all likelihood not be able to stay in proper reception facilities.⁴⁸ The Dutch court argued that the reception crisis, as shown by various news outlets and by the interim measures of the European Court of Human Rights, sufficed to rebut the mutual trust that should exist between both countries.

4. Conclusion

As was mentioned in the introduction, the state of the rule of law in Belgium must be seen as robust. While the above sometimes painted in rather broad strokes and might not always give the most nuanced picture, it pointed to three factors that contribute to that state of affairs and that help explain why the rule of law in Belgium has proven to be resilient. An independent court system that allows for a complete system of judicial review of government measures and that is extremely responsive to European jurisprudence, coupled with a varied landscape of free and independent media, form two very important checks on government action, contributing strongly to the respect for the rule of law. Moreover, the factors that were highlighted above that contribute to the economic resilience of Belgium and its citizens guarantee that sudden economic and societal shocks can be absorbed without too much damage. While challenges of course remain and complacency should certainly be avoided, those factors provide a solid foundation for Belgium to keep building at steadily improving the rule of law.

Sources

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- ¹⁵The European Court of Human Rights has regularly found violations for failure to respect the reasonable length of proceedings. See, among others: European Court of Human Rights (2008) Appl. No. 44826/05 Bell v Belgium, Judgment of the Court of 4 November 2008, ECLI: CE:ECHR:2008:1104JUD004482605.
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About the author

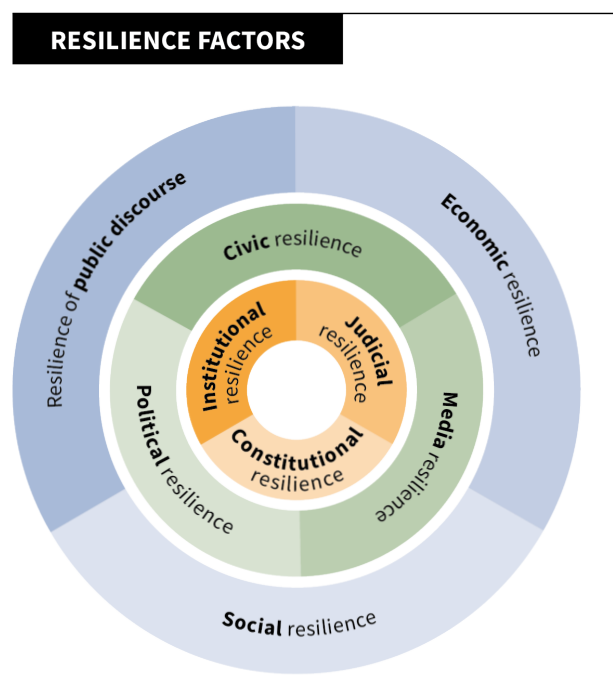
Mathieu Leloup is an assistant professor in constitutional and administrative law at Tilburg University and a postdoctoral researcher at the Judicial Studies Institute at Masaryk University.

About the project

RESILIO aims to identify institutional and societal factors that make the rule of law more resilient, thus adding a constructive contribution to academic and policy debates. It draws on a “thick” definition of the rule of law, understood as closely connected to democracy and fundamental rights. The resilience of the rule of law means that the rule of law can experience hazardous events or incremental threats without losing its core function, structure and purpose.

About the paper

This paper is part of the **RESILIO Country Report series**. It is a collection of compact analyses that assess the source of rule of law resilience in each EU member state by examining the most prominent resilience factors, using the analytical framework of the RESILIO model.



RESILIO offers a multi-layered model of the rule of law resilience. Systemic dimension (orange) reflects upon the resilience of the legal setup; subsidiary dimension (green) looks at the phenomena and tendencies present in societies as possible facilitators; and contextual dimension (blue) analyses the broader habitat, determined by structural and systemic variables like economic growth, social cohesion, and general political climate. RESILIO also takes into account the horizontal effects of unpredicted and unprecedented crises that can affect all dimensions of rule of law resilience with different intensity.

While each factor is necessary for a resilient rule of law, they are only sufficient in combination.

The considerations in this paper are compatible with the developed conceptual model of the resilience of the rule of law. They focus on **social resilience** as a contextual factor strengthening the rule of law.

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