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Institute for the equality
of women and men



Kinder
rechten
commissariaat
Geeft kinderen een stem



DROITS DE
L'ENFANT
Le Délégué général

To the attention of Leyla
Kayacik, Special
Representative of the
Secretary General on
Migration and Refugees

Brussels, 22 September 2023

CC: Alexander De Croo, Prime Minister of Belgium; Annelies Verlinden, Minister of the Interior;
Nicole de Moor, Secretary of State for Asylum and Migration

Subject: systemic violations of the human rights of applicants for international protection in Belgium

Dear Special Representative of the Secretary General on migration and refugees,

The undersigning Belgian human rights institutions are writing you to request your urgent attention regarding the systemic violation of the human rights of individuals seeking international protection by the Belgian State. Since mid-October 2021, thousands of individuals seeking international protection have been denied their right to reception or material assistance (housing, food and clothing, health care), thereby leaving them in the streets in inhuman conditions and without access to basic services. While in the streets, they are moreover being exposed to numerous risks of crimes and exploitation (including human trafficking, exploitation for prostitution, drug abuse). Thousands of court orders issued against the Belgian authorities concerning this issue have not been implemented by these same authorities, resulting in dire circumstances for vulnerable applicants for international protection. Moreover, this constitutes a significant erosion of the rule of law by the Belgian State. We assert that this ongoing human rights crisis requires ongoing international attention and scrutiny.

Since mid-October 2021, Belgium has been facing a severe reception crisis for applicants for international protection. Throughout 2022 and 2023, the shortage of places in reception centres has exacerbated, and the available places have been allocated mainly to those considered as the most vulnerable applicants for international protection. Adult single male applicants for international protection have been systematically denied access to the reception network, thereby violating their right to reception, as enshrined in both the Belgian Reception Act and the EU Reception Conditions Directive.

During the course of this protracted reception crisis, numerous legal proceedings have been initiated against the Belgian authorities. These proceedings have led to over 7,000 convictions by Belgian courts ordering the Federal Reception Agency (Fedasil) to provide applicants for international protection with accommodation and material assistance. However, Fedasil and the Belgian authorities have consistently not executed these court orders, leaving many applicants for international protection destitute. Furthermore, the European Court of Human Rights issued over 1,000 interim measures (Rule 39) instructing the Belgian government to comply with the orders made by the Belgian courts.

In addition to these interim measures, the European Court of Human Rights in its judgment in the case of *Camara v. Belgium*, no. 49255/22, convicted the Belgian state in July 2023 for the violation of the right to a fair trial (article 6 ECHR) by manifestly refusing to comply with the domestic decisions. The Court underscored that these circumstances are not isolated but rather emblematic of a systemic failure within Belgian authorities to execute final judicial decisions pertaining to the reception of applicants for international protection.

Despite these numerous court orders and the conviction by the European Court of Human Rights, the Secretary of State for Asylum and Migration, Nicole de Moor, announced on 30 August 2023, the temporary suspension of accommodating single men seeking asylum in Belgium. This policy decision transposes an already existing practice into an official measure: single men have to register on a waiting list, awaiting an invitation for reception once it becomes possible again. Practice has shown that this can take months. On 13 September 2023 the Council of State suspended this measure as it considered that the policy decision is inconsistent with the right to reception granted to all applicants for international protection granted by the Belgian Reception Act of 12 January 2007. Despite this ruling of the Council of State, the Secretary of State for Asylum and Migration announced that the policy will nevertheless continue to be applied.

The practice, as well as the policy measure, of persistently denying reception to those who are entitled to it not only violates article 3 of the Belgian Reception Act and article 17 of the EU Reception Conditions Directive but also raises serious concerns in relation to several rights of the European Convention on Human Rights, such as Article 3 (Prohibition of torture and inhuman or degrading treatment or punishment), Article 8 (Respect for private and family life), Article 13 (Right to an effective remedy), Article 14 (Non-discrimination) . As mentioned above the European Court of Human Rights has already found a violation of article 6 ECHR judgment in the case of *Camara v. Belgium*.

Manifestly denying such rights as well as ignoring the national and international court rulings has far-reaching consequences beyond the migration policy and undermines the very principles of the rule of law.

This ongoing humanitarian crisis calls for the authorities to take more substantial and appropriate action. Currently, minors still have access to reception services, but it could be that in the future, families, children and young single men will also be put on the streets, as they were in the autumn of 2022. This risk often concerns young people whom the authorities doubt are minors. They are consequently treated as adults, and risk being refused reception and being exposed to numerous

dangers. They also belong to a vulnerable group. During the previous crisis, we also noted that the various vulnerable profiles were thus in competition with each other.

In view of the aforementioned circumstances, we respectfully ask you to pay attention to this dire situation, e.g. by considering conducting a fact-finding mission to Belgium on the human rights situation of applicants for international protection.

We appreciate your consideration of this matter and want to emphasize our readiness to offer further details or engage in discussions regarding potential actions to address these concerns.

Sincerely,

Martien Schotsmans, Director, Federal Institute for the Protection and Promotion of Human Rights

Koen Dewulf, Director, Federal Migration Centre (Myria)

Henk Van Hootegem, Coordinator, interfederal Combat Poverty Service

Els Keytsman and Patrick Charlier, Managing Directors, Unia

David Baele and Jérôme Aass, Federal Ombudsmen, the Federal Ombudsman

Michel Pasteel, Director and Liesbet Stevens, Managing Director, Institute for the Equality of Women and Men

Caroline Vrijens, Children's Rights Commissioner, Flemish Office of the Children's Rights Commissioner

Solaÿman Laqdim, The General Delegate for Children's Rights

Annex : additional information

- Announcement of measure of 30 August 2023 (available in French or Dutch Only): Fedasil, [Pas d'accueil pour les hommes isolés](#), 30 August 2023.
- Joint Declaration of Myria - the Federal Migration Centre, the Federal Institute for Human Rights (FIRM/IFDH), the Federal Ombudsman, Unia, the General Delegate for Children's Rights and the Flemish Office of the Children's Rights Commissioner, the Institute for the Equality of Women and Men, and the intergovernmental Service to Combat Poverty, [Les droits humains valent aussi pour les hommes seuls qui demandent l'asile](#), 8 September 2023 (online available in French and Dutch)
- Joint Policy Note of Federal Migration Centre (Myria), Federal Institute for Human Rights, the Federal Ombudsman, and the Children's rights Commissioners: the General Delegate for Children's Rights and the Flemish Office of the Children's Rights Commissioner, December 2022, [Crise de l'accueil : des institutions pour les droits humains tirent la sonnette d'alarme](#) (only available in French and Dutch)
- Myria, *La migration en chiffres et en droit-2022*, [Cahier du rapport annuel : Protection internationale](#), pp. 20-28
- **Examples of national case law on the reception crisis**
 - **Council of State**, [ruling nr. 257.300 of 13 September 2023](#): the Council of State suspended the measure to temporarily suspend accommodating single men seeking asylum as it considered that the policy decision is inconsistent with the right to reception granted to all applicants for international protection granted by the Belgian Reception Act of 12 January 2007.
 - **Tribunal of first instance of Brussels, 19 January 2022**, 2021/164/C, available in French at <https://bit.ly/363Nqvk>: Condemnation of the Belgian State and Fedasil for not ensuring access to the asylum procedure and to reception conditions.
 - **Tribunal of first instance of Brussels, 25 March 2022**, 2022/13/C, available in French via <https://bit.ly/3FcOke1>: Heightening of the penalties imposed on Fedasil by the judgement of 19 January 2022 to €10.000 for each day during the following 3 months on which Fedasil does not give someone access to the reception system.
 - **Tribunal of first instance Brussels (distrain chamber), 30 January 2023**: Based on the judgements of 19 January 2022 and 25 March 2022, Fedasil was ordered to pay €490.000 of fines. As Fedasil did not pay these fines, the case was brought before the seizure court. The Court found that "Fedasil is clearly failing to provide unconditional and timely material assistance to any person applying for international protection". It further states that Fedasil did not execute the court orders of 19 January and 25 March 2022. The existence of the waiting list for persons without reception provided ample evidence. As long as at least one person is on this waiting list, Fedasil does not respect the right to reception, according to the Court. As a result, the Seizure court confirmed the list of goods that can be claimed (Source: [AIDA Report Belgium](#), pp. 20-21, April 2023)
- **ECtHR, Interim measures:**

- Interim measure of 31 October 2022, *Camara v. Belgium*, application no. 49255/22; Interim measure of 15 November 2022, *Msallem and 147 Others v. Belgium*, applications nos. 48987/22 and 147 others;
 - Interim measure of 21 November 2022, *Reazei Shayan and 189 Others v. Belgium*, applications nos. 49464/22 and 189 others;
 - Interim measure of 1 December 2022, *Almassri and 121 Others v. Belgium*, applications nos. 49424/22 and 121 others.
- **ECtHR, Judgments**
 - Judgment of 18 July 2023, *Camara v. Belgium*, application no. 49255/22