

## BELGIUM

Belgium is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First Optional Protocol. Belgium's asylum procedure is governed by the country's Aliens Law, which divides it into an admissibility phase and a substantive phase.<sup>1</sup>

During 2000, 42,691 applications for asylum were filed and approximately 45,000 applications were pending decision at the end of the year.<sup>2</sup> In 2001, 24,550 new asylum applications were lodged.<sup>3</sup> In the first quarter of 2002, 4,685 applications were filed.<sup>4</sup> When an asylum seeker requests asylum, the Aliens Office of the Ministry of the Interior first determines whether Belgium is responsible for reviewing the asylum application, and then rules on the admissibility of the claim within eight working days.<sup>5</sup> The General Commission for Refugees and Stateless Persons (GCRS) reviews appeals of negative admissibility decisions within five working days at the border, or 30 days in-country.<sup>6</sup> The country's highest administrative court, the State Council, is the last recourse for the suspension or annulment of orders to leave the territory.<sup>7</sup> GCRS issues decisions on the

---

<sup>1</sup> U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 195 *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

<sup>2</sup> U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 203 *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001].

<sup>3</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, NUMBER OF ASYLUM APPLICATIONS SUBMITTED IN 30 INDUSTRIALIZED COUNTRIES, 1992-2001, (May 31, 2002), *available at* [http://www.unhcr.ch/cgi-bin/texis/vtx/home/+NwwBmem\\_Xx8wwwqwwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqEvXafDm1BGowcoSnmagd1DBGon5Dzmxwwwwww/opensoc.pdf](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+NwwBmem_Xx8wwwqwwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqEvXafDm1BGowcoSnmagd1DBGon5Dzmxwwwwww/opensoc.pdf) (last accessed Aug. 29, 2002) [hereinafter *Asylum Applications Lodged in 1992-2001*].

<sup>4</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, ASYLUM TRENDS IN 28 INDUSTRIAL COUNTRIES: JANUARY TO MARCH 2001—JANUARY TO MARCH 2002, *available at* <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+2wwBmelFXx8wwwwwwwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqF+8afDm15BGowcoSnmagd1DBGon5Dzmxwwwwww/opensoc.pdf> (June 13, 2002) (last accessed Aug. 29, 2002) [hereinafter *Asylum Trends in 28 Industrialized Countries*].

<sup>5</sup> USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 195.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

merits of admissible claims.<sup>8</sup> Applicants may contest negative decisions on the merits before the Permanent Commission for Appeals.<sup>9</sup>

The Aliens Law authorizes the Aliens Office to detain asylum seekers who arrive at ports of entry without valid travel documents or identification while decisions on their admissibility are pending.<sup>10</sup> The Aliens Office may also detain in-country applicants who entered Belgium without proper documentation if it decides that their asylum applications are inadmissible.<sup>11</sup> Detainees in such circumstances have 24 hours to appeal their admissibility decisions, while those not ordered detained have three days to appeal.<sup>12</sup> In deciding whether to detain a given undocumented asylum seeker, the Aliens Office considers whether an appeal is likely to be rejected, whether the asylum seeker comes from a country from which few asylum applications are granted on the merits, and whether space is available in a detention center.<sup>13</sup> Asylum seekers may be detained for up to two months, but are rarely detained for so long.<sup>14</sup>

In 1999, 4.1% of asylum seekers in border proceedings were detained while their claims for admissibility were determined.<sup>15</sup> However, all asylum seekers without valid visas arriving at Zaventem-Brussels airport are reportedly detained during the admissibility procedure.<sup>16</sup> In 2000, a total of 1,693 asylum seekers were detained in that airport's

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> AMNESTY INTERNATIONAL, DETENTION OF ASYLUM SEEKERS IN THE EUROPEAN UNION at 4 (December 2000) [hereinafter AMNESTY EU REPORT 2000]; DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN WESTERN EUROPEAN COUNTRIES at 27, *available at* <http://www.english.drc.dk/publications/> (May 2000) [hereinafter DRC W. EUR. REPORT 2000].

<sup>11</sup> DRC W. EUR. REPORT 2000, *supra* note 10, at 27; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, RECEPTION STANDARDS FOR ASYLUM SEEKERS IN THE EUROPEAN UNION at 53 (July 2000) [hereinafter UNHCR EU REPORT 2000].

<sup>12</sup> E-mail from Gérald Gaspart, Coordination et initiatives pour réfugiés et étrangers (CIRE), to Jaya Ramji, Debevoise & Plimpton (Oct. 5, 2001) (on file with Debevoise & Plimpton) [hereinafter CIRE Correspondence].

<sup>13</sup> UNHCR EU REPORT 2000, *supra* note 11, at 45; CIRE Correspondence, *supra* note 12.

<sup>14</sup> AMNESTY EU REPORT 2000, *supra* note 10, at 4.

<sup>15</sup> *Id.*

<sup>16</sup> Belgian Ministry of the Interior, Immigration Department, Response to LCHR Questionnaire on Detention of Asylum Seekers (Jan. 18, 2002) at 1 (on file with Debevoise & Plimpton) [hereinafter Belgian Response to LCHR Questionnaire].

transit zone.<sup>17</sup> Belgian NGOs have criticized the treatment of asylum seekers in the airport's center.<sup>18</sup>

Recognized refugees receive one-year renewable residence permits. Authorities can also issue residency permits to rejected asylum seekers on humanitarian grounds.<sup>19</sup> Belgian NGOs report that detained asylum seekers may be deported immediately upon denial of their substantive asylum claims without the chance to appeal.<sup>20</sup>

Non-detained asylum seekers are assigned to accommodation centers funded by the government and run by either the Red Cross or the state or to smaller centers run by NGOs.<sup>21</sup> There are no restrictions on leaving the centers daily. The centers provide food (in accordance with religious requirements if necessary), medical care, social and legal counseling, activities and classes, including school for children, and some transportation expenses.<sup>22</sup>

Belgium has recently cut off financial assistance for asylum seekers whose applications or appeals are pending during the admissibility stage of the asylum procedure. Asylum seekers continue to receive welfare assistance, but such aid is in kind rather than monetary.<sup>23</sup> When accommodation centers are overcrowded, newly arrived asylum seekers may be referred directly to a social welfare center to obtain financial assistance for housing.<sup>24</sup>

*Is there independent review of the detention decision?* No substantive review.

---

<sup>17</sup> *Id.*

<sup>18</sup> Suke Wolton, *Barbed Wire Europe: Conference against Immigration Detention*, 13 JOURNAL OF REFUGEE STUDIES 415, 419 (2000).

<sup>19</sup> USCR WORLD REFUGEE SURVEY 2001, *supra* note 2, at 203.

<sup>20</sup> Wolton, *supra* note 18, at 419.

<sup>21</sup> UNHCR EU REPORT 2000, *supra* note 11, at 49. OCIV and CIRE run small scale accommodation centers that provide support in kind and housing. E-mail from Kris Pollet, OCIV, to Jaya Ramji, Debevoise & Plimpton (Feb. 12, 2002) [hereinafter OCIV Correspondence].

<sup>22</sup> Belgian Response to LCHR Questionnaire, *supra* note 16, at 5.

<sup>23</sup> OCIV Correspondence, *supra* note 21; USCR WORLD REFUGEE SURVEY 2001, *supra* note 2, at 203.

<sup>24</sup> DRC W. EUR. REPORT 2000, *supra* note 10, at 35. This is only a possibility in the law and a measure of last resort for the government. It has not yet been applied in practice. OCIV Correspondence, *supra* note 21.

There is no review of detention during the first two months, except for the detention of asylum seekers awaiting deportation.<sup>25</sup>

Asylum seekers may appeal only the legality of their detention, not the merits of decisions to detain, and must initiate their own appeals.<sup>26</sup> Asylum seekers may appeal decisions by the Aliens Office extending detention by two months to the Council Chamber of the District Court, which rarely modifies initial administrative decisions to detain.<sup>27</sup> If decisions are not made within five days, asylum seekers must be released.<sup>28</sup> The Council Chamber's decisions can be appealed by asylum seekers or by the public prosecutor within twenty-four hours to the Indictment Division of the Court of Appeal.<sup>29</sup> If the Indictment Division fails to rule in fifteen days, asylum seekers must be released.<sup>30</sup> Final appeals can be made to the *Cour de Cassation*.<sup>31</sup> These appeals are very costly.<sup>32</sup>

*Are there limits on the period of detention?* Yes. Generally two months. In addition, there is a limit of five months while awaiting deportation. Only for public order or national security reasons can detention be extended up to eight months.

If decisions on admissibility are not made within two months, asylum seekers are released from detention.<sup>33</sup> Asylum applicants who applied in-country and are detained because they lack entry documents must also be released if decisions are not made within two months.<sup>34</sup>

The detention of asylum seekers awaiting deportation who have not filed appeals with suspensive effect may be extended by two month periods to a total of five months by the

---

<sup>25</sup> Belgian Response to LCHR Questionnaire, *supra* note 16 at 3.

<sup>26</sup> *Id.*

<sup>27</sup> UNHCR EU REPORT 2000, *supra* note 11, at 53; Telephone Interview by Jaya Ramji with Kris Pollet, OCIV (Sept. 19, 2001) [hereinafter OCIV Interview]; *also* Belgian Response to LCHR Questionnaire, *supra* note 16, at 3.

<sup>28</sup> Belgian Response to LCHR Questionnaire, *supra* note 16, at 3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*; UNHCR EU REPORT 2000, *supra* note 11, at 53.

<sup>32</sup> USCR WORLD REFUGEE SURVEY 2001, *supra* note 2, at 203.

<sup>33</sup> AMNESTY EU REPORT 2000, *supra* note 10, at 4.

<sup>34</sup> UNHCR EU REPORT 2000, *supra* note 11, at 45.

Minister of the Interior.<sup>35</sup> Such extensions are permitted as long as necessary steps for removal were taken within seven days of detention, removal is being diligently pursued, and the possibility of removal has been demonstrated.<sup>36</sup> Asylum seekers must be released if they have not been deported within five months.<sup>37</sup> If further detention is found to be necessary for reasons of public order or national security, it can be extended up to eight months.<sup>38</sup>

Amnesty International reports that some asylum seekers have been held for up to eight months while awaiting deportation.<sup>39</sup> The Collectif de Résistance aux Centres Fermés et aux Expulsions reports that the five-month limit is frequently exceeded in practice, and on occasion detention can last for a year.<sup>40</sup> Coordination et Initiatives pour Réfugiés et Étrangers (CIRE) reports that, where attempts at removal are unsuccessful, the Aliens Office sometimes makes new decisions to detain, effectively beginning new periods of detention without taking into account the length of detention already endured.<sup>41</sup>

*Is there periodic review of detention?* No substantive review.

Decisions to prolong detention for two more months may be appealed to the Council Chamber each month at the request and at the considerable expense of asylum seekers. As stated above, however, the Council Chamber and the appellate divisions may review only the legality of prolonged detentions, not the merits of decisions to detain.<sup>42</sup>

Decisions to prolong detention for a fifth month must be referred by the Minister of the Interior to the Council Chamber for review of their legality within five working days; otherwise, the asylum seekers in question must be released.<sup>43</sup>

*Is there access to government-funded legal aid?* Yes, but limited.

---

<sup>35</sup> UNHCR EU REPORT 2000, *supra* note 11, at 53.

<sup>36</sup> *Id.* (reports 8 months, but is less current); DRC W. EUR. REPORT 2000, *supra* note 10, at 32; USCR WORLD REFUGEE SURVEY 2001, *supra* note 2, at 204 (reports 5 months).

<sup>37</sup> AMNESTY EU REPORT 2000, *supra* note 10, at 4.

<sup>38</sup> Belgian Response to LCHR Questionnaire, *supra* note 16, at 2.

<sup>39</sup> AMNESTY EU REPORT 2000, *supra* note 10, at 4.

<sup>40</sup> Wolton, *supra* note 18, at 419.

<sup>41</sup> CIRE Correspondence, *supra* note 12.

<sup>42</sup> UNHCR EU REPORT 2000, *supra* note 11, at 53.

<sup>43</sup> Belgian Response to LCHR Questionnaire, *supra* note 16, at 3.

Free legal advice and representation is provided to asylum seekers throughout the asylum application process.<sup>44</sup> *Pro bono* attorneys are assigned by the Bar and paid by the federal state to represent asylum seekers.<sup>45</sup> These lawyers are often obliged to take on asylum cases as part of their mandatory legal training, and often do not have expertise or interest in asylum law. More experienced lawyers can also take on asylum cases and benefit from state funding.<sup>46</sup>

The law states that lawyers must have access to detention centers every day between 8 a.m. and 10 p.m.<sup>47</sup> However, CIRE reports that, because closed detention centers are only accessible to individuals with private cars, *pro bono* attorneys often have difficulty gaining access to their clients. In 2000, over 50% of detained asylum seekers in the Vottem detention center never saw their attorneys.<sup>48</sup> What is more, a Belgian NGO reports that detainees are not permitted to contact human rights organizations and cannot receive phone calls.<sup>49</sup>

*Alternatives to detention:* None.

*Vulnerable groups:* Unaccompanied minors without entry papers who apply for asylum at the border are detained while their asylum applications are processed on an accelerated basis.<sup>50</sup> Children whose parents are denied refugee status may also be detained while awaiting deportation.<sup>51</sup>

A program to provide guardians for unaccompanied minors exists, but the Danish Refugee Council has reported that it is not always successful in practice.<sup>52</sup> As there are few beds and social programs for unaccompanied minors, UNHCR estimates that

---

<sup>44</sup> UNHCR EU REPORT 2000, *supra* note 11, at 48.

<sup>45</sup> Belgian Response to LCHR Questionnaire, *supra* note 16, at 4.

<sup>46</sup> OCIV Interview, *supra* note 27.

<sup>47</sup> EUROPEAN COUNCIL ON REFUGEES AND EXILES, STUDY ON THE AVAILABILITY OF FREE AND LOW-COST LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EUROPEAN STATES at 55, available at <http://www.ecre.org/research/legalassistance/index.shtml> (November 2001) [hereinafter ECRE EUR. STUDY 2001].

<sup>48</sup> CIRE Correspondence, *supra* note 12. There are six detention centers in Belgium, but Vottem is the only center for which attorney access statistics are available.

<sup>49</sup> Wolton, *supra* note 18, at 419.

<sup>50</sup> Belgian Response to LCHR Questionnaire, *supra* note 16, at 6.

<sup>51</sup> *Id.* at 6, 9.

<sup>52</sup> DRC W. EUR. REPORT 2000, *supra* note 10, at 36.

approximately 50% of children who apply for asylum in Belgium and are not detained during the process or pending deportation are lost to human trafficking and prostitution.<sup>53</sup>

---

<sup>53</sup> UNHCR EU REPORT 2000, *supra* note 11, at 51.