

## **Substantive recommendations on the second national report of Belgium on the occasion of the United Nations Universal Periodic Review**

### **Introduction: Caritas International Belgium**

Caritas International supports victims of war, natural disasters and poverty and also provides assistance to migrants, in collaboration with national and international networks to which we belong.

During an intervention following a crisis we provide a fast and efficient assistance. We realize rehabilitation and development projects, creating opportunities for beneficiaries to become self-sufficient.

In Belgium Caritas International provides shelter and assistance for migrants and defends the rights of refugees. We provide an individual social and legal assistance. Based on our experience, we take positions to improve policy in terms of reception, asylum and migration.

### **1: Right to family life**

To complement Section F, Article 55.

Situation:

A migrant with irregular stay in Belgium who is placed in a closed center awaiting repatriation should not be returned to his/her country of origin by the Immigration Office, if that person has a child with a legal residence permit in Belgium. Every child is entitled to his/her mother and father.

Recommendation:

For each decision about the residence of a migrant that may violate the right to respect for private and family life (Article 8 ECHR) Belgium must take the best interests of the child into consideration. Belgium must analyze the balance of interests ('fair balance' test) which is a balance between the interest of the state to control immigration and the importance of the migrant to have a family life on Belgian territory. In this consideration, the government should assign appropriate weight to the best interests of the child.

### **2: Discrimination and mistrust of Roma**

To complement Section C, Article 18 and 19.

Situation:

Despite the fact that many countries where Roma reside (Romania, Bulgaria, ...) belong to the European Union, rapid connection and inclusion of this population is not evident:

- Roma themselves are suspicious of the host society.
- The host society distrusts the Roma with their particular lifestyle.

Many Roma are not welcome in Western Europe. For example: In 2008, France wanted to deport the Roma, even though they are European citizens.

Recommendation:

Belgium must ensure that Roma are not discriminated against and must work on a policy of inclusion and integration of Roma.

### **3. Submit a complaint without fear of sanction**

#### **A. After family reunification**

To complement Chapter E Article 48.

Specifically:

If a person meets the conditions for family reunification, the Belgian residence permit for the arriving family members is temporary in the first couple of years. If an audit reveals that a person no longer meets one or more conditions, the Immigration Office can put an end to the residence. This is possible when both partners no longer have an actual wedding or family life. A woman leaving her husband because of abuse or rape, in principle, no longer meets the requirement for a residence permit.

Recommendation:

Belgium must treat any filing of a complaint with regard to conjugal violence with the guarantee that the right of residence is retained.

#### **B. In the case of clandestine work**

To complement chapter H.

Specifically:

Clandestine work is the work carried out by migrants who do not have the necessary permits (residence or work permit). This is not the same as black work. When employed, the employer is the only one punishable for any undocumented labor whatsoever. Fines can never be imposed on employees. Even when in irregular employment, employees can exercise their labor rights. However, in practice it is rare for individuals to submit a complaint to the Surveillance of Social Legislation (in Dutch: Toezicht Sociale Wetten) in the case of exploitation or non-payment of salary by the employer.

Currently the Supervision of Social Legislation will inform the Immigration Office when an employee does not have the necessary permits.

Recommendation:

Belgium should treat the monitoring of workers' rights and a possible filing of a complaint, regardless of an immediate review of the right of residence.

### **4. Minors in detention**

#### **A. Unaccompanied Minor Children (UAMs)**

To complement Section H, Art. 70.

Situation:

UAMs can be detained by law up to 6 days in a detention center at the border. In all other cases the detention of unaccompanied minors is explicitly prohibited by law.

Recommendation:

A formal ban on detention of UAMs. The child's interests and the right to go to school must be respected at all times.

## **B. Families with underage children**

To complement Section H, Art. 70.

Situation:

If a family with irregular stay has a fixed residence in Belgium, they are allowed to stay there awaiting their voluntary return to their country of origin. If the family does not respect the terms of the agreement for return, one of the following sanctions may be imposed:

- detention of the entire family in a return home or residential unit
- detention of one member of the family in a detention center until the entire family will be repatriated
- detention of the entire family in a closed center for a period as short as possible awaiting repatriation.

Recommendation:

A formal ban on detention of families with minors. The child's interests and the right to go to school must be respected at all times.

In 2014-2019 the coalition agreement explicitly refers to the construction of residential units on the site of the detention center 127bis, which would be adapted to the needs of families. Closed residential units are in our opinion in conflict with the best interests of the child and their right to go to school.

## **5. Minor boat stowaways**

To complement chapter H.

Situation:

We notice a decrease in the number of reported juvenile boat stowaways (for example via the port of Antwerp). Given the generally increasing number of unaccompanied minors, this decline is remarkable.

We are concerned that preference is given to keeping stowaways aboard (especially if they are considered as adults), which therefore doesn't give them the opportunity to apply for asylum if they wish to do so.

Recommendation:

The competent authorities must be able to guarantee the right to asylum by boat stowaways, regardless of any doubt of age.

## **6. Transfer under the Dublin III Regulation**

To complement Section H, Art. 69.

Situation:

Since early 2014, the Dublin III Regulation applies to determine the Member State responsible for examining an asylum application. Given the fact that many candidate refugees enter the EU through the borders of Europe, countries like Italy and Greece receive the largest influx.

Recommendation:

Despite the application of the Dublin III Regulation, the Belgian state authorities should determine whether sufficient shelter and social assistance can be guaranteed by the responsible Member State

**7. List of safe countries**

To complement chapter H.

Situation:

By Royal Decree Belgium has determined a list of 'safe countries of origin'. Asylum seekers who come from these countries have a heavier burden of proof and a faster processing of their asylum request (usually 15 days).

In addition to Belgium there are other European countries that have a safe country list. But no list is identical to another.

Recommendation:

Belgium should consult with other European countries to achieve a common and reasoned list of 'safe countries of origin'.

**8. Medical regularization**

To complement chapter H.

Situation:

A medical regularization (article 9ter) can be requested, if a person is seriously ill. And if the treatment needed is not available or accessible in the home country. In practice, we observe a very long waiting list for the treatment of medical regularization applications and a very low number of positive decisions.

It is often difficult to obtain qualitative information on the availability and accessibility of medical care in the countries of origin.

Recommendation:

Access to health care is a basic right for everyone. Belgium needs to objectively motivate in their decisions for medical regularization how medical care in the country of origin has been assessed. Moreover, the processing time of an application should be determined by law.