



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Ref: CommHR/NM/sf 047-2016

Mr Theo FRANCKEN
Secretary of State for Migration and Asylum
Belgium

Strasbourg, 12 December 2016

Dear Secretary of State,

As you may remember, when we last met in September 2015 as part of my official visit to Belgium, our discussions covered, among other topics, the detention of migrant children, an issue to which I have devoted priority attention in my work across Europe since the beginning of my mandate as Council of Europe Commissioner for Human Rights.

In the report I published in January 2016 following that visit, I made a number of recommendations on this topic, which I would like to follow-up on. In particular, I called on the Belgian authorities to refrain from resuming the practice of detaining migrant families with children. I furthermore expressed the view, also shared by Belgian national human rights institutions, that a prohibition of administrative detention of all children on grounds of their or their parents' migratory status should be enshrined in Belgian law.

However, I note your intention expressed in your recent general policy statement to resume in 2017 the detention of migrant families with children in closed family units situated near Brussels airport and near the immigration detention centre "Caricole", which I also visited in September 2015. I share the concerns recently expressed by the Federal Migration Centre Myria that such a development would not be in the best interests of the children concerned, which, under the United Nations (UN) Convention on the Rights of the Child, the Belgian authorities are obliged to treat as a primary consideration in all actions.

I am aware that you plan to implement the detention of families with children in closed facilities as a measure of last resort with a view to implementing return decisions and that the closed units will be adapted to the needs of families with children. However, I believe that, even for a short period of time and in adequate material conditions, immigration detention is never in a child's best interests. The damages resulting from detention have been amply documented and highlighted by several international human rights bodies, including the UN Committee for the Rights of the Child and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In July 2016, the European Court of Human Rights stressed that the accumulation of psychological and emotional aggressions to which children in administrative detention were subjected, even when the material conditions of the facilities were considered appropriate, necessarily had negative consequences on young children that could amount to inhuman and degrading treatment (*Affaires A.B. et autres c. France*, application No. 11593/12, judgment of 12 July 2016).

Moreover, I consider that detention is a disproportionate measure as the harm inflicted on children in the context of detention cannot be justified by immigration control requirements. Additionally, I took note, during my visit, of the fact that the costs of detention in closed facilities were significantly higher than those of accommodation in open facilities.

During my visit, I could see that since 2008 Belgium has developed valuable alternatives to detention, including open family units, which are far more conducive to the respect of children's rights than detention in a closed facility. In my report, I stressed that, despite some challenges, the authorities should maintain and further develop these alternative arrangements.

Belgium has in fact become a source of inspiration for other countries as regards alternatives to detention. Resuming the detention of families with children in closed facilities would jeopardise these achievements and bring Belgium back to the situation prevailing before 2008, which resulted in the country being repeatedly found in violation of the European Convention on Human Rights.

Therefore, I am urging you to reconsider the decision to resume this practice. I encourage you to take steps towards a complete end of child immigration detention and to uphold Belgium's leading role in the development of alternatives to detention.

I look forward to receiving your reply and continuing a constructive dialogue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nils Muižnieks', with a long horizontal flourish extending to the right.

Nils Muižnieks