

EXAMPLES OF GOOD PRACTICE IN THE FIELD OF PROTECTION AND PROMOTION OF HUMAN RIGHTS

In response to the invitation by the Commissioner for Human Rights

Example from Belgium Alternatives to detention of families with minor children

1. DESCRIPTION OF THE PRACTICE

Belgian legislation

The Belgian Immigration Legislation¹ foresees the same rules for families with minor children who are irregular residents, who are refused entry at the border or are applying for asylum at the border, and for every other person who is in the same status, which means that an eventual detention in a closed centre is possible.

In the last years different measures have been taken to adapt the detention policy for families with children:

Families as a whole

Around the turn of the century, it was customary to detain only the head of the family (in practice the father). The family members were invited to present themselves at the airport on the date of removal, so that they could be removed together with the father. However the other family members absconded in many cases.

On the basis of an instruction from the Minister in charge of the immigration policy, on 15 May 2001, it was decided to detain the families as a whole.

Families with schoolable children

The Circular Letter of 29 April 2003 of the Minister of Interior foresees that families with schoolable minor children, who are in an irregular status, can stay until the end of the school year under specific circumstances if they receive an order to leave the country valid from the Easter holidays.

Alternatives for detention - first steps

In order to respond to the concerns and the critics against the detention of families with children, the government commissioned a study on alternatives, which was carried out between October 2006 and February 2007 and presented to the Parliament on 25 April 2007².

¹ Immigration Law, 15 December 1980. (M.B. 20 December 2007).

² SumResearch NV, *Study for alternatives for detention of families with children in the closed centers*, www.sum.be/research/item.php?item=21&ID=38&lang=1.

The Immigration Office was requested to make a feasibility study on the proposed alternatives and recommendations. Objective was to reduce or avoid the detention period and to identify the families who should return prior to the organization of the removal.

On this basis, the Immigration Office started in February 2008 to invite families staying irregularly to present themselves in Brussels for an interview in order to discuss the possibilities of return to their country of origin. This initiative was not successful: only 13 % of the invited families presented themselves. No return could be organized. Therefore the initiative was abandoned in July 2008.

An alternative for detention - Family Units

The government then decided that from 1 October 2008, families with children who are already present on the Belgian territory should no longer be detained in closed centres. Only families who were refused entry at the border remained detained in closed centres.

Individual houses and apartments were provided and accommodated for the temporary stay of families with children in irregular status. The families could be formally "detained" in the family units but have in practice certain liberties of movement. These family units received a specific status, which has been regulated in the Royal Decree of 14 May 2009³.

It was then decided that from 1 October 2009, families with children arriving at the border and who would not be removable within 48 hours after arrival should also be brought to the family units. Most border case families who are transferred to the family units have requested asylum upon arrival at the airport.

The families receive a removal decision under the same articles in the law as persons detained in the closed centres⁴. Since the family units are open, the families can leave the houses under specific rules, in order to e.g. visit their lawyer, bring their children to school, buy groceries or participate in religious celebrations. Visits in the family units are allowed.

All educational, medical, logistical, administrative and nutritional costs are taken on by the Immigration Office. There are however some limitations: there is a weekly budget per family for logistical and nutritional costs and medical costs are only reimbursed if the physician has been contacted by the coaches. Every family can apply for a pro bono lawyer.

Since the Belgian initiative is innovative, the family unit scheme could benefit from funding of the EU Return Fund.

Applicable scheme within the housing facility

The family signs an acceptance agreement in order to benefit from such place during the time they need to take the necessary action to get the right to enter the territory or to be granted the residence permit or the necessary identity documents with a view to their turning back, their taking back, their voluntary return or their expulsion.

The supporting officer informs the family of their rights and duties as well as the internal rules.

The officer informs them that he acts as a link between the Belgian Authorities and the private and public partners involved with housing of the family members and in the organization of their entry to the territory or their turning back.

The family takes all necessary steps enabling the supporting officer to accomplish the administrative procedures in each housing facility between 07:00 and 20:00. Outside these hours, access is granted when necessary in order to, for example, assist the family in case of fire, malfunction of the heating or electric facilities, or on the request of the family, or if the organization of the return requires it. In this last case, the family is informed beforehand in order to respect their family life.

³ M.B. 27 May 2005.

⁴ Immigration Law, 15 December 1980, (art. 7, 27, 51/5, 74/5, 74/6).

Each family is entirely **free to quit the housing facility** in order to, among others, run errands, consult a lawyer, go to the doctor or take the children to school. However, it is required that one adult member is permanently present.

The family and their relatives are informed that if one of them permanently leaves the housing facility, without being granted the right to enter the territory or outside the framework of the implementation of their turning back or expulsion, an order will be issued for their detention in a closed centre upon arrest by the police.

The family has the possibility to lodge a complaint with the Complaints Board set up pursuant to Article 130 of the Royal Decree of 2 August 2002 concerning the provisions provided for in the Royal Decree of 14 May 2009.

Finally, in cases of non cooperation with the effective return, despite the assistance and supervision provided by the supporting officer, the family will be informed that it is possible to order their detention in a closed centre. In this case, the detention of a minor and his/her family would not normally contravene Article 37 of the Convention on the Rights of the Child, nor Article 5 of the European Convention on Human Rights, given the fact that this measure is as brief as possible and taken as a last resort. It is ensured that the infrastructure is adapted to the needs of the family. Since the setting-up of housing facilities in October 2008, no such measure has been taken.

Coordination mechanism

Supporting officers (coaches) are appointed by the Immigration Office to accompany the families during their staying in the family units. These civil servants collect all necessary information for the further identification of the families, inform the families about the legal procedures (asylum, appeals, ...) and will assist the families in their preparation of the return to their country either in case that the persons are inadmissible or if their asylum request is rejected or if they are in irregular status on the Belgian territory. If a return should be prepared, the coaches will first of all propose voluntary return scheme to the families and try to help to lift the barriers which could impede the return. They also inform the families that – as an ultimate measure – the Immigration Office could decide to detain the family in a closed centre if the family would not cooperate to return or if the rules of the family units are not respected (e.g. if the family absconds). It has been considered in the best interest of the child to remain with his/her family members.

As for now, no family has been detained in a closed centre because of these reasons, since it necessary to adapt the infrastructure within the closed centre area.⁵

The coaches also take care of all appointments – if necessary – with lawyers, schools, communal administration, police services, medical practitioners, local merchants, pharmacies etc. in order to give logistical, administrative and medical support to the families. They also organize meetings with diplomatic and consular representations, in cooperation with the competent services at the Immigration Office.

Monitoring system

Another element of success has been the transparent communication about the family units with the press and the **NGO's**. There have been regular meetings with the NGOs, who have also the right to visit the family units on a monthly basis, in order to discuss with the coaches and with the families (if these are interested). The families can also take contact with the NGOs at their own initiative.

In order to protect the privacy of the families, the number of visitors is limited; therefore the NGOs have indicated specific accredited persons who will visit the family units.

⁵ Specific family units will be installed in 2011, which would be in accordance of the ECHR judgment [*Muskhadzhiyeva and others v. Belgium*](#) - no. **41442/07** of 19 January 2010.

2. HUMAN RIGHTS ISSUES AT STAKE

The UN Convention on the rights of the child clearly stipulates that children should only be subjected to detention as a measure of last resort and for the shortest appropriate period of time (Article 37). During detention, the full enjoyment of several human rights may be compromised – alternatives to detention help overcome such problems.

Freedom of worship and public practice of the latter, as well as freedom to demonstrate one's opinions on all matters, are guaranteed, except for the repression of offences committed when using this freedom. On the family's request, the supporting officer passes on the list of the religious establishments located nearby the housing facility. The family has the possibility to exit the housing facility in order to practise a religion. It emerges from the foregoing that the provisions of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 are observed. Indeed, the family has the possibility to practise their faith or their philosophic beliefs individually or collectively while going to the religious or philosophic establishments of their choice.

Children attend school. The family can be assisted by the supporting officer in order to register them for school. Children can be taken to school by a member of the family daily.

The **right to privacy and to family life** is ensured as well. The family is entitled to receive visitors if they want and may pay all the visits they wish outside the housing facility. The only restrictions are that one member of the family is present in the housing facility, that it is forbidden to house visitors and that visits which are not private are subject to the approval of the Immigration Office. In the event of visits, the family has to write down the visitor's identity on the register.

The housing facility is not accessible to the supporting officer between 20:00 and 07:00 am, unless it is necessary, requested by the family or required for the organization of the return. In this case, the family will always be informed beforehand in order to respect their privacy. The housing facility enables the family to benefit from an infrastructure adapted to their needs. Indeed, the child can live with his/her parents or with the persons who exercise parental authority as well as minors who are part of the family and family relatives up to the second degree, without any obligation to share this accommodation with other families or adults.

The family has the **right to exchange mail** on a daily basis and in an unlimited way. **Phone calls are not limited.** The family may use their cell phone or the phones available outside the housing facility. The family is also entitled to make a free national phone call of at least 10 minutes upon their arrival in a housing facility and to call their lawyer and diplomatic authorities free of charge with the cell phone of the supporting officer once per weekday. Finally, a fixed phone is put at the family's disposal in case of emergency.

The family also benefits from legal, medical, social and psychological assistance. Legal assistance can be provided by the legal assistance bureau. In practical terms, the supporting officer asks the family upon their arrival in a housing facility if they already have a lawyer. If not, the legal assistance bureau is contacted to appoint one. Lawyers may visit the families in the housing facilities at any time and the families may go to their lawyer (without any restrictions). The appeal procedures are always explained to the families by the supporting officers.

The family also has the possibility to benefit from psychological or social assistance upon request to their supporting officer. The latter makes a proposal according to the specific situation of the family. In case of emergency, a psychologist may be appointed by the Immigration Office. The family can also consult a psychologist at their own expenses.

3. IMPACT ASSESSMENT AND EVALUATION

Statistical Overview

From October 2008 until 06 October 2011, **237 families**, with 430 minor children, stayed in the family units.

227 families have in the meanwhile left the family units for various reasons:

- **96** families returned to their country of origin or a third country (22 with support of the International Organization for Migration, 25 “Dublin”-cases, 4 on the ground of a bilateral agreement, 14 “forced” removals, 30 refusals at the border, 1 voluntary departure without assistance of IOM);
- **57** families absconded;
- **74** families were liberated for different reasons (regularization, medical grounds, new asylum procedure, temporary non removable, court decision, not identified or recognized refugee / subsidiary status);
- **1** child was transferred to an open centre for minors because it was established that the child was not related to the adult who was accompanying the child. The adult has been put in detention.

The average staying period in the family units was **23,4 days**.

Evaluation

A rather positive evaluation of the family units has been made by both government and civil society. This however does not mean that everything is already functioning according to the foreseen objectives.

Since the start of the transfer of border case families, **the number of arrivals at the border increased considerably**. In the period November 2009 – December 2010, 49 families were not permitted to enter at the border and were detained in the closed centres. In the period January 2011 – October 2011, already 61 families were not permitted to enter at the border. 16 returned back to the place of departure, 25 finally got access to the territory, 18 of them obtained refugee status or international protection.

The Immigration Office has also experienced that the **border case families now have other nationalities than beforehand**. Where in 2009 the families were mostly coming from Africa, we see a more diverse public (Afghanistan, Iraq, Iran, Sri Lanka, ...). None of the families arrive directly from their country of origin. Some of them already stayed several weeks, months or years in third countries. It is feasible that there has been some “publicity” amongst the potential immigrants about the fact that families are no longer detained.

For those families who are already on the Belgian territory and are in irregular status, it is **necessary to establish interagency cooperation** to give correct and comprehensive information to all families from the beginning of their procedures (asylum claim, request for staying permit) in order to avoid that families with children live in a precarious situation on the Belgian territory and in order to prepare them to all possible scenarios, whether return or integration, depending on the immigration decision.

The small number of family units in comparison to the potentially high number of families staying irregularly on the Belgian territory means nevertheless that this individual approach remains a water drop on a hot plate. **A comprehensive case management approach** with cooperation between the different agencies, responsible for the decision making and the reception of families is necessary to ensure considerable welfare and immigration outcomes. The principal objective of the case management model is to prepare families (and individuals) for all possible immigration outcomes, whether return or legal stay (depending on the immigration decision) and thus preparing the family for

all possible scenarios. This information should be given as soon as possible in the reception centres in order to avoid “detention” in a family unit.

It will also remain necessary to detain families in exceptional cases for a period that should be as short as possible, in order to tackle abuses and remove effectively those who are not willing to depart voluntarily. Therefore a specific project for a family infrastructure in a closed environment has been foreseen and will be implemented in 2012.

4. CONCLUSIONS FOR SIMILAR PROJECTS ELSEWHERE

It is clear that the experience of the family units has been **useful for the Immigration Office to rethink its methodology of the organization of sustainable return of families with minor children in irregular status**. The individual approach of the families by the coaches helped also to have a more in-depth analysis of the personal cases of the families and give the opportunity to obtain new information to make an objective case evaluation. It helped to identify some cases where obviously a (temporary or permanent) staying permit should be granted. The decision however remains with the responsible services within the Immigration Office. The coaches are an important information channel to make correct decisions.

In comparison with the removal of families prior to the family units, the number of removed families from detention centres was higher in absolute numbers (bigger capacity; 103 families departed between January and December 2008). The percentage of departing families was also higher (70 %). At the same time, the accommodation conditions for the families are now more adapted to daily family life. **The family units help to ensure that children are living in the same circumstances as they were before being submitted to a decision of “detention”.**

On the basis of the statistics, the use of the family units shows a rather positive result for those families who did respect the regulations. 35 families obtained a refugee status or international protection, 96 families could return to their country of origin or a third country after having stayed in the family units and one child was put into protection.

However the absconding rate remains high (26 % in 2011); it has been established that most families abscond very quickly (within hours or a few days after arrival at the family unit) or just after having been informed, that a removal will actually take place. It is therefore important that the specific family units within the closed centre area will be operational as soon as possible, in order to have a deterrent and avoid bogus asylum seekers and migrants.

5. CONTACT

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