

BELGIUM

ARRIVALS

1. Total number of individual asylum seekers who arrived, with monthly breakdown and percentage variation between years

Table 1:

Source: Immigration Office, Ministry of Interior

Month	2002	2003	Variation +/- (%)
January	1,858	1,449	-22.0
February	1,394	1,103	-20.9
March	1,433	1,276	-11.0
April	1,520	1,188	-22.0
May	1,489	1,115	-25.1
June	1,335	1,279	-4.2
July	1,564	1,545	-1.2
August	1,669	1,394	-16.5
September	1,770	1,674	-5.4
October	1,843	1,627	-11.7
November	1,391	1,558	+12.0
December	1,539	1,732	+12.5
TOTAL	18,805	16,940	-10.0

2. Breakdown according to the country of origin/nationality, with percentage variation

Table 2:

Source: Immigration Office, Ministry of Interior

Country	2002	2003	Variation +/- (%)
Democratic Republic of Congo	1,789	1,778	-0.6
Russian Federation	1,156	1,680	+45.3
Iran	743	1,153	+55.1
Kosovo	917	675	-26.3
Cameroon	436	625	+43.3
Turkey	970	618	-36.2
Rwanda	487	450	-7.5
Algeria	936	400	-57.2
<i>Others</i>	<i>11,371</i>	<i>9,561</i>	<i>-15.9</i>
TOTAL	18,805	16,940	-9.9

Compared to 2002 there was a notable increase in asylum applications submitted by Iranian nationals. This was mainly the result of the fact that, following a massive demonstration at the Université Libre de Bruxelles (ULB), approximately 500 Iranians were allowed to lodge a second asylum application. There is no specific explanation for the significant rise in applications from the Russian Federation and Cameroon and the significant drop in applications from Algeria.

3. Persons arriving under family reunification procedure

No figures available.

4. Refugees arriving as part of a resettlement programme

Belgium does not operate any resettlement programmes.

5. Unaccompanied minors

A total number of 589 unaccompanied minors were registered at the border in 2003.

RECOGNITION RATES

6. The statuses accorded at first instance and appeal stages as an absolute number and as a percentage of total decisions

Table 3:

Source: Commissioner-General for Refugees and Stateless Persons (situation at 31 March 2004)

Statuses	2002				2003			
	First instance		Appeal		First instance		Appeal	
	Number	%	Number	%	Number	%	Number	%
No status awarded	3,425	74.6	1,160	87.9	4,962	80.5	2,009	91.7
Convention status	1,164	25.3	160	12.1	1,201	19.5	183	8.3
TOTAL	4,589	100	1,320	100	6,163	100	2,192	100

As refugee status can only be granted at the second stage of the Belgian asylum procedure (on the substance of the claim), the numbers above concern only decisions taken during the second stage. The total number of decisions taken by the Commissioner-General in 2003 was 24,980, 18,817 of these were admissibility decisions (5,181 positive and 13,636 negative) and 6,163 were decisions based on the substance of the claims.

7. Refugee recognition rates (1951 Geneva Convention) according to country of origin, at first instance and appeal stages

No information provided.

RETURNS, REMOVALS, DETENTION AND DISMISSED CLAIMS

8. Persons returned on ‘safe third country’ grounds

No figures available.

9. Persons returned on ‘safe country of origin’ grounds

The concept of ‘safe third country’ has not yet been introduced into Belgian legislation.

10. Number of applications determined inadmissible

Number of applications determined inadmissible by the Immigration Office: 11,708. In 2002, 92.53% of applications were determined inadmissible by the Immigration Office.

Number of applications determined inadmissible by the Commissioner-General: 13,636. (2002: 18,112).

11. Number of asylum seekers denied entry to the territory

No figures available.

12. Number of asylum seekers detained, the maximum length of and grounds for detention

According to the Aliens Act every rejected asylum seeker (or any third country national illegally residing in Belgium) can be put in detention awaiting his/her removal. The maximum length of detention is two months. This can be extended by up to two months if the necessary steps for removing the person

have been taken within a period of seven working days and these efforts are being continued and effective removal can be executed within a reasonable time period. After one extension of two months, the decision to further detain the person must be taken by the Minister of Interior. After a maximum period of eight months the person must be released. In practice, however, the Immigration Office takes a new decision to detain every two months. As a consequence, a new period of two months of detention commences. This has been considered lawful by the *Cour de Cassation*. The result is that some persons are being detained longer than the maximum period of eight months laid down in the Aliens Act.

Statistics are only partially available for a limited number of detention centres (five in total). The average length of detention in centres was as follows: Brugge (32.6 days), Merksplas (41.9 days), Vottem (41.0 days), transit centre (127 days) and Melsbroek (22 days).

13. Deportations of rejected asylum seekers

In 2003, a total number of 11,290 foreigners residing illegally in Belgium were forcibly returned. This number concerns both illegal residents and rejected asylum seekers. 7,742 persons were repatriated after being arrested for illegal residence and 3,548 persons were immediately returned because they did not have appropriate entry documents at the border. (2002: an estimated number of 11,510 persons were forcibly returned, 7,510 persons were staying illegally on the territory and approx. 4,000 were sent back at the border).

14. Details of assisted returns, and numbers of those returned

The International Organization for Migration (IOM) was the only organisation assisting third country nationals with voluntary return. In 2003, a total number of 2,814 departures were registered. The main countries to which returns were made were: Brazil (365), the Russian Federation (272), Slovak Republic (225), Ecuador (184), Armenia (168), Bulgaria (133) and Kosovo (129). Out of 2,814 voluntary returns, 1,549 concerned rejected asylum seekers, 1,124 concerned those illegally resident who had not applied for asylum and 141 concerned asylum seekers who withdrew their asylum application. Nationals of the new EU Member States will be allowed to make use of the Return and Emigration of Asylum Seekers ex Belgium (REAB) until 31 December 2004, but without a return grant. IOM normally arranges the departure and provides both financial and material assistance.

A specific return to Afghanistan has been run by IOM since January 2003. The target group has been Afghans who arrived in Belgium before 28 June 2002 (date of the establishment of the Loya Jirga, a consultation body among local Afghan authorities). The offer consists of a return grant of €500 per adult and €250 per child younger than 18 (the normal REAB return grant is €250/125 respectively), information upon arrival about reconstruction projects, short term transit reception in Kabul, transit to the final destination and vocational training. 11 persons were returned within the framework of this .

15. Number of asylum seekers sent back to the Member State responsible for examining the asylum application under the Dublin Convention (Dublin II Regulation).

Table 5:

Source: Immigration Office, Ministry of Interior

	Total number of requests presented by Belgium to other Dublin States	Total number of requests addressed to Belgium by other Dublin States
Requests presented	1,642	1,304
Requests accepted	1,369	998
% of requests accepted in requests presented	83.4%	76.5%
Requests refused	173	149
% of requests refused in requests presented	10.5%	11.4%

Requests pending	100	112
Requests annulled	-	45

SPECIFIC REFUGEE GROUPS

16. Developments regarding refugee groups of particular concern

Afghans

After lifting the ‘decision-moratorium’ for Afghan asylum seekers, the Commissioner-General rejected a considerable number of Afghan asylum seekers. The negative decisions were sent collectively to the asylum seekers in July 2003. This provoked a reaction from the Afghan community. During three weeks, approximately 300 Afghans went on hunger strike in a church in Brussels. After long and difficult negotiations with the Minister of Interior an agreement was reached. The execution of the expulsion orders for the Afghan asylum seekers was initially extended until 1 March 2004 for single persons and until 1 July 2004 for families with children of school age. At the same time, Afghans were granted a provisional work permit. Afghans staying in Belgium for more than three years (families with children of school age) or four years (singles) during the asylum procedure, including the extension of an expulsion order, could obtain a permanent residence permit (regularisation on the basis of Article 9 (3) of the Aliens Act). The arrangement was only applicable to Afghans who applied for asylum before 1 January 2003. The arrangement was extended for a second term until 1 September 2004 in March 2004 based on the ongoing insecurity in Afghanistan. *Overlegcentrum voor Integratie van Vluchtelingen* (OCIV) and *Coordination et Initiatives pour Réfugiés et Etrangers* (CIRE) together with Amnesty International, Human Rights Watch and *Médecins Sans Frontières* (MSF) produced a report on the safety situation in Afghanistan supporting the demand to at least prolong this arrangement for Afghans.

Iranians

Similar actions were taken by a group of 500 rejected Iranian asylum seekers in October 2003. The main action was organised at the ULB (Université Libre de Bruxelles). The Iranians mainly protested against the way their asylum applications were examined by the asylum bodies and the paradoxical situation, whereby Iranians were not forcibly returned but at the same time were not granted a residence permit in Belgium. They also began a hunger strike. In November 2003, the Minister of Interior decided that Iranians involved in the protest could submit a second asylum application. This was mainly due to the fact that the Iranian embassy in Brussels had written an official letter to the Head of the ULB accusing the protesters of having links with terrorist movements such as the Mujahedin-e Khalq Organization (MKO). As a consequence, the Iranians involved in the protest were no longer excluded from being considered as ‘*réfugiés sur place*’. All these second asylum applications were still being examined by the asylum bodies at the end of 2003.

LEGAL AND PROCEDURAL DEVELOPMENTS

17. New legislation passed

‘*Circulaire*’ of 19 February 2003 concerning the application of Article 9(3) of the Aliens Act (published in the *Moniteur Belge*, the official legal journal, of 17 March 2003).

The ‘*circulaire*’ replaces the former ‘*circulaire*’ of 15 December 1998, which contained clear criteria for regularisation. The new ‘*circulaire*’ does not provide substantial criteria but only lays down the procedure to be followed in the case of an application based on Article 9 (3) of the Aliens Act (application for regularisation). The Minister of Interior grants extensive discretionary power in the assessment of these demands. The Minister’s policy remains very unclear as regards the criteria for regularisation.

Royal Decree of 6 February 2003 modifying Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 on Employment of Foreign Workers. The most relevant change for asylum seekers was the introduction of work permit C, which can be used for any employer (and is not limited to one employer

as before), but is limited to the period of validity of the residence permit. It is valid for a maximum of one year. Only asylum seekers whose asylum application is declared admissible by the asylum bodies can apply for a work permit C. Employers do not require a special permit to engage holders of a work permit C (which was the case in the former system).

'Circulaire' of 6 October 2003 concerning provisional work licenses for Afghan nationals who applied for asylum in Belgium before 1 January 2003. The *'circulaire'* resulted from negotiations between the Afghan hunger strikers and the Government (mentioned in Section 16 above). It was an exceptional measure allowing employers to ask for a license to employ Afghan nationals whose asylum applications had been definitively rejected by the asylum bodies. The measure was directly linked to the prolongation of the expulsion orders for Afghans.

Law of 22 December 2003 amending the Aliens Act (parallel with the *'loi'* of 22 December 2003, published in the *Moniteur Belge* of 31 December 2003). The law reintroduces Article 55 into the Aliens Act. According to this article the asylum procedure will be automatically terminated if the applicant has obtained a permanent residence permit on other grounds within the Aliens Act. An exception will be made only if the applicant notifies the asylum body examining the claim in writing, within 60 days after this provision has entered into force or after the residence permit was granted, that he/she wishes to continue with the asylum procedure. The *Conseil d'Etat* (highest administrative court) will cancel any appeal against a decision in the asylum procedure if the applicant has obtained a permanent residence permit, unless he/she explicitly requests the continuation of the procedure before the *Conseil d'Etat*.

18. Changes in refugee determination procedure, appeal or deportation procedures

There were no significant changes in these procedures in 2003. Two decrees, laying down procedural guarantees for asylum seekers during the examination of an asylum claim, were finally agreed upon by the Government at the end of 2003 and published in the *Moniteur Belge* in January 2004.

19. Important case-law relating to the qualification for refugee status and other forms of protection

No. 115.210 of 29 January 2003

In this judgement the *Conseil d'Etat* suspended the negative decision of the Commissioner-General for Refugees on the admissibility of the asylum application of a Chinese couple. The asylum claim was based on the fact that the woman was pregnant with her second child. The couple invoked fear of persecution because of the one-child policy of the Chinese government. The Commissioner-General had decided that the asylum claim did not fall under the scope of the 1951 Geneva Convention because the one child-policy was an internal Chinese matter, a general rule applied in a non-discriminatory way (on all Chinese parents) and the number of forced abortions had decreased since 1995. The *Conseil d'Etat* found that a risk of forced abortion still existed and thus the life of the second or following child was in danger. They found that this was a matter of fundamental human rights, the violation of which can be a legitimate reason to leave the country of origin. Accordingly, the Commissioner-General could not decide that the asylum application was outside the scope of the 1951 Geneva Convention and should have examined the substance of the claim.

No. 103/2003 of the 22 July 2003

In a landmark judgment the *Cour d'Arbitrage* found Article 16 of the Law on Regularisation of 22 December 1999 not discriminatory. According to Article 16, a third country national who has applied for regularisation on the basis of the law of 22 December 2004 is excluded from introducing an application for a residence permit on humanitarian grounds based on Article 9(3) of the Aliens Act. This meant that a considerable number of rejected applicants for regularisation were being condemned to live illegally in Belgium for years, as the Immigration Office appeared to apply the judgement of the *Cour d'Arbitrage* rather strictly.

20. Developments in the use of the exclusion clauses of the 1951 Geneva Convention in the context of the national security debate

There were no developments in the use of exclusion clauses in 2003.

21. Developments regarding readmission and cooperation agreements

Law of 11 April 2003 approved the agreement between the Benelux countries and Romania on the readmission of illegally residing persons or of those who entered the country illegally (published in the *Moniteur Belge* of 4 September 2003).

Law of 13 May 2003 approved the agreement between the Benelux-countries and Hungary on the readmission of illegally residing persons (published in the *Moniteur Belge* on 4 November 2003).

Readmission agreements with the Slovak Republic and Slovenia were approved in 2004.

THE SOCIAL DIMENSION

22. Changes in the reception system

The Government introduced by a '*circulaire*' of 20 December 2001 a new system for those asylum seekers who received a negative decision during the admissibility stage and appealed before the *Conseil d'Etat*. These asylum seekers were entitled to further material support but they could only receive it in three specialised (open) reception centres. As the procedure before the *Conseil d'Etat* had no suspensive effect, asylum seekers were concentrated in these centres in order to facilitate repatriation measures. The result of this measure was that a large majority of asylum seekers chose not to go to these centres because they were afraid of being returned and were consequently left on the streets without any support at all. In 2002, an additional centre was created for this purpose. Since mid-2003 this system was no longer applied in practice simply because the four specialised centres had no more space (they also had to provide reception facilities for asylum seekers in the admissibility stage of the asylum procedure). Nevertheless, the '*circulaire*' was not officially withdrawn in 2003.

23. Changes in the social welfare policy relevant to refugees

There were no changes in the social welfare policy in 2003.

24. Changes in policy relating to refugee integration

There were no changes in refugee integration policy in 2003.

25. Changes in family reunion policy

There were no changes in family reunion policy in 2003.

OTHER POLICY DEVELOPMENTS

26. Developments in resettlement policy

There were no developments in resettlement policy in 2003.

27. Developments in return policy

At the end of November 2003, the Minister of Interior began pilot projects in eight municipalities. These projects were intended to combat illegal residence (including that of rejected asylum seekers). Those arrested during the pilot phase were immediately transferred to a detention centre. On arrest, the Immigration Office was contacted in order to dispatch the persons concerned to a detention centre.

28. Developments in border control measures

More stringent border controls, introduced in 2002 at the harbour of Oostende and at the Eurostar terminal at the Brussels Midi train station, were continued in 2003. They focused on the fight against illegal migration and human smuggling to the United Kingdom. One major incident involved a large number of Afghans who were caught trying to move to the United Kingdom via the Belgian coast.

29. Other developments in refugee policy

There were no further developments in refugee policy in 2003.

POLITICAL CONTEXT

30. Government in power during 2003

After the elections of 18 May 2003, a coalition of Liberals and Socialists came to power (the green parties, Flemish and Walloon, lost heavily and were no longer needed to ensure a majority in parliament). Guy Verhofstadt remained prime minister and began his second term. The governmental agreement promised a humane and realistic asylum policy. A ‘subsidiary protection’ status is to be created and structural measures were to be taken to solve the backlog of the *Conseil d’Etat* in cases concerning asylum seekers and other third country nationals. The living conditions in the existing detention centres are to be improved *inter alia* by creating separate sections for families. Finally, the Reception Directive is to be implemented before February 2005.

31. Governmental policy vis-à-vis EU developments

In 2003, the Belgian government promoted further European integration and harmonisation in many policy areas. With regard to asylum and immigration, like many other EU Member States, one of the main concerns of the Belgian delegation was to maintain the existing national system as far as possible (especially in the areas of reception and asylum procedures). Officially, the Belgian government was in favour of a more harmonised approach to asylum issues at the European level. It remains to be seen, however, what position it will adopt regarding the second stage of the harmonisation of European asylum policy and long-term initiatives (for example processing asylum applications in the regions of origin).

32. Asylum in the national political agenda

2003 was characterised by a further decline in the number of asylum applications in Belgium. In spite of this, asylum issues dominated the national political agenda at certain moments, for example during the hunger strikes by rejected Afghan and Iranian asylum seekers (see Section 16 above). However, due to the low number of asylum applications, there was no urgency for the Government to discuss qualitative and structural changes to the asylum procedure. Attention was increasingly given to the administrative backlog of the asylum bodies and the *Conseil d’Etat*. A secret agreement among the majority parties on the regularisation of old asylum cases was not honoured in 2003. The agreement was revealed by a Flemish newspaper, creating (apparently false) hope amongst many asylum seekers who had been waiting many years for a decision on their asylum application.