

Alternatives for detention for families with minor children – The Belgian approach

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By: Verbauwhede

1. Historical perspective

The Belgian Immigration Legislation foresees the same rules for families with minor children, who are in irregular staying, who are refused entry at the border or are even applying for asylum at the border, as 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 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

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 has been carried out between October 2006 and February 2007 and which was presented to Parliament on 25 April 2007 ⁽¹⁾. The Minister requested the Immigration Office to make a feasibility study of the different 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.

(¹) 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.



a. Invitation

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.

b. 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 were 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 2009.

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 centres ⁽²⁾. 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 to religious celebrations. Visits in the family units are allowed.

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 a(n) (assisted) 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.

⁽²⁾ Immigration Law 15.12.1980, art. 7, 27, 51/5, 74/5, 74/6.

As for now, no family has been detained in a closed centre because of these reasons ⁽³⁾.

The coaches also take care of all appointments – if necessary – with lawyers, schools, communal administration, police services, medical practitioners, local merchants, pharmacies, ... in order to give a 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.

It is important to emphasize that 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.

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 NGO's, 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 NGO's at their own initiative.

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

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

Statistical Overview

From October 2008 until 2 September 2010, **106 families**, with 189 minor children, stayed in the family units.

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

- **46** families returned to their country of origin or a third country (15 with support of the International Organization for Migration, 18 "Dublin"-cases, 1 on the ground of a bilateral agreement, 5 "forced" removals and 7 refusals at the border);
- **19** families absconded;
- **33** families were liberated for different reasons (regularization, medical grounds, new asylum procedure, temporary non removable, court decision, not identified or recognized refugee / subsidiary status);

⁽³⁾ 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.



- **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 **21,4 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 accordingly the foreseen objectives.

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 the day to day family life. The family units help to ensure that children are living in similar circumstances as they were before being moved to the family units.

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. 16 families obtained a (temporary or permanent) staying permit, 46 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, there are still 37 families who were not removed (half of them because they absconded) nor obtained any right to stay. The absconding rate remains high (20 %); 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.

We have also to bear in mind that since the start of the transfer of border case families, the number of arrivals at the border increased considerably. In the period January 2009 – September 2009, only 17 families were not permitted to enter at the border and were detained in the closed centres. In the period January 2010 – August 2010, 44 families were not permitted to enter at the border, of which 16 preferred to return directly back to the place of departure and 28 families were transferred to the family units. 18 of the transferred families applied for asylum; 5 of them obtained international protection status and there are still 7 pending cases.

In fact, at this moment the 7 family units in use are inhabited by border case families. This means that neither irregular migrants nor Dublin cases can be put into family units at this time.

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 staying, it is necessary to establish an interagency cooperation, in order 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.

Conclusion

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.

The little 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 principle 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 voluntary. Therefore a specific project for a family infrastructure in a closed environment has been foreseen and will be implemented in 2011.

Possible discussion topics

- Coaching must start as soon as possible after arrival on the territory: case management as the best alternative to detention?
- How can you deal with the return of families with children that do not cooperate with the given alternatives. Should detention remain a last resort?
- Should detention of families with children, very limited in time, remain possible for border cases, provided that an adapted infrastructure for families is installed and the children's rights (e.g. education) are respected.
- Should case management also focus on the broader psychosocial well being of the family, and not just on their immigration outcome?