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BELGIUM: URGENT ACTION NEEDED TO END HUMAN RIGHTS VIOLATIONS AGAINST ASYLUM SEEKERS

Since October 2021, Belgium has consistently failed to meet its human rights obligations under international law to provide housing and other essential goods and services to asylum seekers. For over two years, the state's failure has resulted in people seeking international protection, including children, being denied any form of accommodation and left destitute. Many have had to resort to sleeping in the streets or in makeshift tents in dire circumstances.¹

Around 2,600 people are currently still waiting for the state to provide them with reception accommodation.² Currently, their suffering is only alleviated thanks to the invaluable work of Belgian NGOs.

Though the government has increased the capacity of its reception system, the measures it has taken have been slow and insufficient to solve a self-inflicted reception crisis.

Thousands of court decisions, including by Belgium's highest administrative court³ and the European Court of Human Rights⁴, have recognised that Belgian institutions violated their obligations to adequately assist asylum seekers. By not giving any significant follow up to comply with the rulings, the government has shown a shocking contempt for not just the rights of asylum seekers but also the rule of law.

Amnesty International urges the Belgian authorities to take all possible measures, potentially including the activation of the 'dispersal plan' as provided for by law to increase reception capacity, in order to adequately respect, protect and fulfil the rights of asylum seekers and to comply with the court rulings ordering Belgium to provide adequate accommodation.

FAILURE TO TAKE PREVENTATIVE ACTION

It is a responsibility of the Belgian authorities to ensure that all persons arriving in the country who seek international protection receive adequate assistance.⁵ This also entails that they must take preventative action to ensure that sufficient capacity is maintained to address upward fluctuations in the number of people entitled to receive reception from the state.

¹ See e.g. Dokters van de Wereld, "Opvangcrisis klein kasteeltje: situatie opnieuw onhoudbaar", 18 July 2022, doktersvandewereld.be/nieuws-publicaties/opvangcrisis-klein-kasteeltje-situatie-opnieuw-onhoudbaar, Vluchtelingenwerk Vlaanderen, *Nota: 1 jaar opvangcrisis*, 20 September 2022, vluchtelingenwerk.be/publicatie/nota-1-jaar-opvangcrisis, Dokters van de Wereld, "Koudeprik verontrust hulporganisaties. Dokters van de Wereld vreest voor onderkoeling en doden door hypothermie", 13 December 2022, doktersvandewereld.be/nieuws-publicaties/koudeprik-verontrust-hulporganisaties-dokters-van-de-wereld-vreest-voor, Médecins sans Frontières, "1 maand medische interventie aan Pacheco-registratiecentrum: cijfers, tendenzen en aanbevelingen", press.msf-azg.be/1-maand-medische-interventie-aan-pacheco-registratiecentrum-cijfers-tendenzen-en-aanbevelingen, Dokters van de Wereld, "Opvangcrisis: een trieste verjaardag", 23 January 2023, doktersvandewereld.be/nieuws-publicaties/opvangcrisis-een-trieste-verjaardag, Ciré, Vluchtelingenwerk Vlaanderen, Médecins du Monde, Médecins sans Frontières, BelRefugees, Caritas International, Hub Humanitaire, *Dashboard Opvangcrisis*, May 2023, vluchtelingenwerk.be/sites/default/files/media/documenten/2023-05-25-opvangcrisis-rapport-nl.pdf.

² Myria, *Contact meeting on International Protection*, October 2023, www.myria.be/nl/contactvergaderingen-internationale-bescherming. During the monthly 'contact meetings', representatives of the Belgian government and both international and national organisations working on international protection share information and are given the chance to ask questions to each other. The figure of 2,600 was mentioned by Fedasil during the contact meeting in October 2023.

³ Council of State, 257.300, 13 September 2023, www.agii.be/raad-van-state-13-09-2023.

⁴ European Court of Human Rights (ECtHR), *Camara v. Belgium*, Application 49255/22, Chamber judgment, 18 July 2023, hudoc.echr.coe.int/?i=001-225884.

⁵ See e.g. Convention Relating to the Status of Refugees of 28 July 1951 and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

Indeed, the number of people applying for asylum in any given country is normally subject to fluctuations, and Belgium is no exception. In the last ten years, new applications averaged at just below 27,000 per year, with a minimum of 16,910 in 2020 and a maximum of 50,456 in 2015.⁶

The occupancy of the reception system recorded a marked increase from 2018 through to 2020. Following a lull in arrivals in 2020, as a result of the Covid-19 pandemic, in 2021 the number of requests for international protection predictably and gradually returned to pre-pandemic levels.

In 2021, civil society organisations warned that action was needed to increase reception capacity, to avoid people being denied shelter.⁷ Despite such warnings, the government failed to take appropriate measures to deal with the situation.

Whereas the number of new applications for international protection has increased in following years – though remaining below the figures seen in 2015 – Belgian authorities have not adopted the necessary measures to increase reception capacity as necessary. The backlog in asylum applications being processed has also resulted in a drop in the number of people leaving the reception system.⁸ As a result, the capacity of the Belgian reception services to provide people registering for international protection with the assistance to which they have a right, has been insufficient since October 2021.

SHELTER DENIED

On 19 October 2021, the first group of 50 asylum seekers were denied accommodation in Brussels' asylum registration centre and saw no other option but to camp outside of the centre. This centre serves as a 'one stop shop' for the start of someone's asylum procedure: applicants for international protection need to introduce their claim here and are then assigned to a reception facility. Such scenes became a daily occurrence, with predominantly single male asylum seekers being routinely left outside.

Authorities also carried out forced evictions against asylum seekers camping on the street or in squats with no alternative accommodation being provided. In at least one case, police destroyed makeshift tents set up near the registration centre, made from cardboard and other materials, leaving people entirely without shelter.⁹ Several informal settlements emerged in Brussels, notably one located in Rue des Palais, which served as a shelter for approximately 1,000 people. The living conditions within this settlement were reportedly extremely challenging, characterised by limited access to basic hygiene and sanitation and food provision, combined with the presence of infectious diseases such as scabies and diphtheria.¹⁰ The 'palais des droits', as it was ironically called, was cleared out by the police in February 2023, following orders from the federal government, the Brussels region and the municipality of Schaerbeek. While most people were offered alternative shelter, many others were left homeless.¹¹ More squats and informal settlements developed in the following months, and the authorities proceeded to clear them out, sometimes providing no alternative accommodation for all or at least some of the asylum seekers.¹²

⁶ Between 2014 and 2023, the number of individuals who submitted applications for international protection were: 22,848 in 2014, 50,456 in 2015, 18,710 in 2016, 19,688 in 2017, 23,443 in 2018, 27,742 in 2019, 16,910 in 2020, 25,971 in 2021, 36,871 in 2022, and 25,231 so far in 2023. See Office of the Commissioner General for Refugees and Stateless Persons (CGRS), *Asylum statistics December 2022*, January 2023, www.cgrs.be/sites/default/files/asylumstat_december_2022_en.pdf and Office of the Commissioner General for Refugees and Stateless Persons (CGRS), *Asylum statistics September 2023*, October 2023, www.cgrs.be/en/news/asylum-statistics-september-2023.

⁷ See e.g. Vluchtelingenwerk Vlaanderen, "Zet alle zeilen bij om nieuwe opvangcrisis te voorkomen", 20 September 2021, vluchtelingenwerk.be/nieuws/zet-alle-zeilen-bij-om-nieuwe-opvangcrisis-te-voorkomen.

⁸ In the first half of 2023, for instance, it took on average 434 days to decide on an asylum application. See Myria, Contact Meeting on International Protection, September 2023, www.myria.be/files/20230920_PV_r%C3%A9union_contact_-_contactvergadering_EXCL_DVZ-OE.pdf, p. 25-26.

⁹ Vluchtelingenwerk Vlaanderen, "Politie vernielt kartonnen tenten van minderjarige asielzoekers: trieste episode van een structureel probleem", 19 October 2022, vluchtelingenwerk.be/nieuws/brusselse-politie-verniet-kartonnen-tenten-van-minderjarige-asielzoekers; De Morgen, "Brussels burgemeester Close laat kartonnen tenten van minderjarige migranten vernietigen: trieste episode van een structureel probleem", 19 October 2022, www.demorgen.be/nieuws/brussels-burgemeester-close-laat-kartonnen-tenten-van-minderjarige-migranten-vernietigen-trieste-episode-van-een-structureel-probleem~b9483b07/.

¹⁰ De Morgen, "Migrant overleden in Brussels kraakpand met asielzoekers: 'Hij had psychologische hulp nodig'", 29 December 2022, www.demorgen.be/snelnieuws/migrant-overleden-in-brussels-kraakpand-met-asielzoekers-hij-had-psychologische-hulp-nodig~b0fed8aa/.

¹¹ RTBF, "Crise de l'accueil : 200 demandeurs d'asile à la rue après l'évacuation complète du squat de la rue des Palais", 16 February 2023, www.rtbf.be/article/crise-de-laccueil-200-demandeurs-dasile-a-la-rue-apres-l-evacuation-complete-du-squat-de-la-rue-des-palais-11153686;

Vluchtelingenwerk Vlaanderen, "Evacuatie Paleizenstraat verloopt chaotisch", 16 February 2023, vluchtelingenwerk.be/nieuws/evacuatie-paleizenstraat-verloopt-chaotisch.

¹² See e.g. VRT nws, "Politie ontruimt tentenkamp aan klein kasteeltje met meer dan 150 bewoners", 7 March 2023, www.vrt.be/vrtnws/nl/2023/03/07/politie-ontruimt-tentenkamp-aan-klein-kasteeltje/; De Morgen, "Politie zet asielzoekers en activisten uit Brussels pand,

Not until 24 December 2021 did the authorities again provide shelter for all those wanting to apply for asylum, briefly proving that the government has the means to do so. However, this lasted for only one month. Since 24 January 2022, not a single day has gone by on which Belgium has complied with its obligation to provide reception to all those who were entitled to it, according to NGO Vluchtelingenwerk Vlaanderen.¹³

From October 2021 to September 2022 Vluchtelingenwerk Vlaanderen counted over 10,000 instances of accommodation being denied by the state.¹⁴ These ‘denials of reception’ are routinely given multiple times to the same asylum seeker. According to Fedasil, the government body responsible for reception, between October 2021 and 15 September 2022, 4,633 asylum seekers were not given a reception place and on 15 September 2022, 1,236 asylum seekers had an asylum request pending but no access to reception.

No similar data is currently available for 2023. However, as of 31 October 2023, around 2,600 people were still waiting for reception.¹⁵

For most of the reception crisis, authorities denied shelter to single men, as the government considers them to be less ‘vulnerable’. However, on 8 December 2021, authorities forced 15 unaccompanied minors to remain on the streets.¹⁶ On 12 October 2022, the authorities also denied 21 unaccompanied minors their right to reception¹⁷ and on 13 October 2022, 125 people, including families with children, were denied reception places.¹⁸ NGOs, including Vluchtelingenwerk Vlaanderen and Médecins du Monde, provided shelter for many of them.¹⁹

VIOLATION OF THE RIGHT TO ASYLUM

Amnesty International notes with concern that in previous years some instances were reported where authorities refused to receive asylum requests, in breach of the right to asylum. In at least one case, the Brussels Court of First Instance noted, that this practice violated their right to asylum, as well as hindering the enjoyment of the right to reception and other fundamental rights.²⁰

INADEQUATE ACTIONS TO ADDRESS THE RECEPTION CRISIS

In response to the reception crisis, the government created around 6,600 additional reception places, bringing the total to 34,425 in October 2023.²¹ Moreover, in September 2023, the State Secretary for Asylum and Migration, Nicole de Moor,

geen andere opvang voorzien”, 10 March 2023, www.demorgen.be/snelnieuws/politie-zet-asielzoekers-en-activisten-uit-brussels-pand-geen-andere-opvang-voorzien~b43e8df4/ and Bruzz, “Kraakpand in Wetstraat ontruimd”, 20 October 2023, www.bruzz.be/samenleving/kraakpand-wetstraat-geevacueerd-2023-10-20.

¹³ Vluchtelingenwerk Vlaanderen, correspondence with Amnesty International, 27 October 2023, on file with Amnesty International.

¹⁴ In October, November and December 2021, Vluchtelingenwerk Vlaanderen counted 3,284 instances of accommodation being denied by the Belgian state. From 1 January 2022 up to 8 September 2022, the organisation counted 6,983 such denials. Vluchtelingenwerk Vlaanderen, correspondence with Amnesty International, 27 October 2023, on file with Amnesty International.

¹⁵ Myria, *Contact meeting on International Protection*, October 2023, www.myria.be/nl/contactvergaderingen-internationale-bescherming. The figure of 2,600 was mentioned by Fedasil during the contact meeting in October 2023.

¹⁶ VRT nws, “Tiental minderjarige migranten en vluchtelingen voor gesloten poort Klein Kasteeltje”, 8 December 2021, www.vrt.be/vrtnws/nl/2021/12/08/minderjarige-vluchtelingen-en-migrantenvoor-gesloten-poort-kleiv/.

¹⁷ RTBF, “21 réfugiés mineurs d’âge dehors toute la nuit, Fedasil avoue qu’il n’y a plus de place pour les MENA”, 12 October 2022, www.rtf.be/article/21-refugiés-mineurs-d-âge-dehors-toute-la-nuit-fedasil-avoue-qu-il-n-y-a-plus-de-place-pour-les-mena-11084180.

¹⁸ De Standaard, “21 minderjarigen hebben nacht op straat doorgebracht”, 12 October 2022, www.standaard.be/cnt/dmf20221012_92819131 ; Vluchtelingenwerk Vlaanderen, “Minderjarigen slapen ’s nachts op straat, een nieuw dieptepunt in de opvangcrisis”, 12 October 2022, vluchtelingenwerk.be/nieuws/minderjarigen-slapen-s-nachts-op-straat-ee-nieuw-dieptepunt-de-opvangcrisis; See the following Flemish Children’s Rights Commissioner’s statements on the issue: Kinderrechtencommissariaat, *Opvangcrisis: Kinderen en gezinnen horen niet op straat te slapen*, 17 October 2022, www.kinderrechten.be/nieuws/opvangcrisis-kinderen-en-gezinnen-horen-niet-op-straat-te-slapen and Kinderrechtencommissariaat, *Opvangcrisis: dat jongeren op straat moeten slapen mogen we niet gewoon worden*, 2 December 2022, www.kinderrechten.be/nieuws/opvangcrisis-dat-jongeren-op-straat-moeten-slapen-mogen-we-niet-gewoon-worden.

¹⁹ European Council on Refugees and Exiles (ECRE), “Reception Crises: Court Rejects Dutch State’s Demand to Postpone Implementation of a Ruling Favoring Refugees, Brussels Police Destroys Tents of Asylum Seekers As Belgium Fails to Provide Accommodation”, 21 October 2022, ecre.org/reception-crisis-court-rejects-dutch-states-demand-to-postpone-implementation-of-a-ruling-favoring-refugees-brussels-police-destroys-tents-of-asylum-seekers-as-belgium-fails-to-provide-acco/.

²⁰ Tribunal de première instance francophone de Bruxelles, Section civile, 2022/4618/A, 29 June 2023, Judgment, www.agii.be/sites/default/files/20230629_rb_brussel.pdf.

²¹ The network grew from 27,726 places in October 2021 to 34,424 places in September 2023. Since January 2023, the number of reception places hovers around 34,000. See Fedasil, “Cijfers”, www.fedasil.be/nl/statistics (accessed on 27 October 2023). For an overview of the growth of the network

announced a "winter plan" that includes the creation of extra places, such as reception on campgrounds that are not used during winter but also measures aimed at speeding up the process of asylum seekers leaving the reception network.²² In addition, on 29 September 2023, the government decided to create a task force, involving several ministerial cabinets and government departments, tasked with creating an additional 2,000 temporary places.²³

While welcoming most of the decisions and actions aimed at increasing Belgium's reception capacity, Amnesty International is still deeply concerned by the slow and inadequate response by Belgian authorities and by the fact that measures adopted so far are highly likely to be insufficient to ensure that all asylum seekers can enjoy adequate accommodation and assistance.

In this respect, Amnesty International notes that one of the most logical potential solutions remains unimplemented. Belgian law provides for the possibility to activate a 'dispersal plan' in times of emergency.²⁴ The aim of this plan is to increase the amount of reception places by requiring local governments to create an amount of extra places. The law sets out criteria ensuring equity in responsibility-sharing among local governments and determining the number of reception places that each local government would be tasked to create. Examples of such criteria include the number of residents in the municipality and the number of places provided by the local authority in the past.²⁵ The federal government's reluctance to activate this plan shows that the reception crisis, and the human rights violations it is resulting in, are essentially down to a lack of political will.

This conclusion is reinforced by the fact that since Russia's full-scale invasion of Ukraine in February 2022, over 75,000 people fleeing Ukraine have been registered in Belgium for temporary protection.²⁶ For the vast majority, their protection needs were registered within a reasonable amount of time and housing was provided in varying forms, including emergency accommodation specifically set up for them.²⁷ This laudable feat shows that the state's failure to provide accommodation for other people seeking international protection is not due to the size of the challenge, but mostly due to a lack of political will.

A TEMPORARY HALT ON RECEPTION FOR SINGLE MEN

On 29 August 2023, the State Secretary for Asylum and Migration, Nicole de Moor, decided to temporarily halt reception for all single men applying for asylum, ostensibly to avoid families with children having to sleep on the streets during winter months. The decision was later openly endorsed by the Prime Minister, Alexander De Croo.²⁸

The measure and practice is highly discriminatory, as it deprives individuals of the opportunity to exercise a right only on the basis of their gender. The measure is driven by the idea that men are inherently less 'vulnerable' than other people, an understanding based on gender stereotypes.

Civil society organisations challenged the clearly discriminatory measure by initiating proceedings before the Council of State, Belgium's highest administrative court. On 13 September 2023, the Council suspended the decision and stated

in 2021 and 2022, see Fedasil, *Balans 2021. Opvang – Hervestiging – Vrijwillige terugkeer*, June 2022, www.fedasil.be/sites/default/files/jaarverslag_2021.pdf, p. 13-21 and Fedasil, *Balans 2022. Opvang – Hervestiging – Vrijwillige terugkeer*, June 2023, www.fedasil.be/sites/default/files/jaarverslag_2022.pdf, p. 12-21.

²² De Standaard, "Winterplan moet asielopvang alleenstaande mannen weer mogelijk maken", 1 September 2023, www.standaard.be/cnt/dmf20230901_94959780.

²³ Fedasil, "Een taskforce opvangplaatsen", 4 October 2023, www.fedasil.be/nl/nieuws/opvang-asielzoekers/een-taskforce-opvangplaatsen.

²⁴ Belgium, Reception Act, www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007011252&table_name=wet, Article 11, §2, 2°; Belgium, Act of 8 July 1976 on Public Social Welfare Centers, www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=nl&nm=1976D70810&la=N, Article 57ter/1; Belgium, Royal Decree of 17 May 2016 determining the criteria for a balanced distribution among the municipalities of the reception places for the asylum seekers, www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=16-06-10&numac=2016000341.

²⁵ Belgium, Royal Decree of 17 May 2016 determining the criteria for a balanced distribution among the municipalities of the reception places for the asylum seekers, www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=16-06-10&numac=2016000341.

²⁶ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32022D0382.

²⁷ Fedasil, "Ontheemden uit Oekraïne", statbel.fgov.be/nl/visuals/oekraïense-ontheemden (accessed on 27 October 2023); Civil society partners note to Amnesty International that many Ukrainian refugees in Belgium now also struggle to have their housing needs met. The above assessment refers solely to the initial government response.

²⁸ Knack, "De Croo: 'Opvangstop alleenstaande mannen is tijdelijk'", 31 August 2023, www.knack.be/nieuws/belgie/de-croo-opvangstop-alleenstaande-mannen-is-tijdelijk/.

that the law "does not allow the [government] to deprive a category of asylum seekers, consisting of single men, of the right to reception in order to resolve the difficulties it claims to be facing."²⁹

In response to the ruling, the State Secretary announced that she would ignore it and continue to implement the suspension for single men in practice. Remarkably, the State Secretary acknowledged that she knew in advance, even before announcing her decision, that the instruction would be overturned by the Council of State.³⁰

Amnesty International is extremely concerned by the decision of Belgium's federal government first to knowingly put in place measures that are against the law and subsequently to ignore a ruling by the Council of State and continue implementing a practice that has been ruled unlawful. These actions run against Belgium's obligations under international law and risk carrying lasting damage to the rule of law, within the country and even beyond, by sending signals to other governments.

As a result of this practice, most single men are systematically denied accommodation and forced to sleep rough for months. It should be noted that there is not a blanket halt on reception for single men: each day, reportedly, Fedasil continues to invite about 10 men to effectively gain access to reception centres, based on an assessment of their 'vulnerability'.³¹ Even for these few individuals, however, the average waiting time is reportedly estimated by Vluchtelingenwerk Vlaanderen to be at least 7 months.³²

LEGAL FRAMEWORK

Within the European Union (EU), the right to reception for individuals applying for international protection is safeguarded by Article 17 of the EU's Reception Conditions Directive.³³ This provision has been transposed into the Belgian Reception Act, which affirms that every asylum seeker is entitled to reception that ensures a dignified standard of living. Reception, as defined by the Act, encompasses not only housing but also essential provisions such as food, medical assistance, and legal support.³⁴ The right to reception starts when individuals make their application for international protection,³⁵ i.e. the moment when someone expresses the need for international protection,³⁶ and ends once the procedure for international protection is completed.³⁷ However, even after the end of the procedure, people continue to have a right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions.³⁸

Fedasil coordinates the different types of reception places, which counted around 28,000 beds before 2021 and currently stand at 34,424.³⁹ In 2015, when Belgium was also confronted with a larger than anticipated number of individuals seeking international protection, a so called 'dispersal plan' was put in place and underpinned by law. Belgium's legislation now explicitly stipulates that "[t]o ensure a balanced distribution of reception places among municipalities", the government can determine the criteria for the mandatory distribution of reception places. Civil society organisations have advocated for the activation of the dispersal plan since 2021.⁴⁰

²⁹ Council of State, 257.300, 13 September 2023, www.agii.be/raad-van-state-13-09-2023, p. 9. This is an unofficial translation from French to English.

³⁰ De Standaard, "Raad van State fluit staatssecretaris De Moor terug: opvangstop voor alleenstaande mannen geschorst", www.standaard.be/cnt/dmf20230913_94652464.

³¹ Commission on Internal Affairs, Security, Migration and Administrative Affairs, *Integral Report*, CRIV 55 COM 1184, 4 October 2023, www.dekamer.be/doc/CCRI/pdf/55/ic1184.pdf.

³² Vluchtelingenwerk Vlaanderen, correspondence with Amnesty International, 24 October 2023, on file with Amnesty International; The average waiting time for people on these lists is no longer reported on by the government. In a recent Dutch court case on a Dublin transfer to Belgium, the Belgian Immigration Office acknowledged that it is currently no longer possible to estimate the average waiting time for (non-vulnerable) single men on the waiting list. See Court of the Hague, NL23.19257, 12 October 2023, uitspraken.rechtspraak.nl/#/details?id=ECLI:NL:RBDHA:2023:15458&showbutton=true&keyword=dublin%2Bbelgie&idx=7.

³³ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033, Article 17.

³⁴ Belgium, Reception Act, www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007011252&table_name=wet, Article 3.

³⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033, Article 17.

³⁶ Court of Justice of the European Union, *Commission v. Hungary*, C-808/18, 17 December 2020.

³⁷ Vluchtelingenwerk Vlaanderen, *Country Report: Short overview of the reception system*, 21 April 2023, asylumineurope.org/reports/country/belgium/reception-conditions/short-overview-of-the-reception-system/.

³⁸ International Covenant on Economic, Social and Cultural Rights, Article 11.

³⁹ Fedasil, "Cijfers", www.fedasil.be/nl/statistics (accessed on 27 October 2023).

⁴⁰ See e.g. recommendation no. 9 in the 'programme of action' as published in September 2022, vluchtelingenwerk.be/sites/default/files/media/documenten/Draaiboek%20om%20uit%20de%20opvangcrisis%20te%20geraken%20-%20NL.pdf.

THE BELGIAN GOVERNMENT'S PERSISTENT REFUSAL TO COMPLY WITH JUDICIAL DECISIONS

Assisted by civil society organisations, asylum seekers have taken legal action to claim their right to reception. Through an urgent procedure, they have requested labour courts⁴¹ to order Fedasil to provide adequate reception. Since the onset of the crisis in 2021, the Belgian state has been ordered more than 8,000 times by the courts to provide adequate accommodation to relevant applicants. The Belgian government has consistently refused to comply with the judgements, even if these were final and immediately executable.

In these cases, Fedasil is - in theory - obliged to make a penalty payment to all of these individuals. Yet in practice, Fedasil has not yet made any of the payments.

The Brussels Court of First Instance⁴² has condemned the Belgian state for violating the right to asylum, as mentioned above, and the right to reception. In summary proceedings, it found on 19 January 2022 that authorities had failed to provide material assistance to applicants for international protection, without conditions or delay, and ordered them to provide immediate remedy, under penalty of a fine of 5,000 € per each day of delay.⁴³ In March 2022, the penalty was increased to 10,000 € per day. In June 2023, the court ruled on the merits of the case, and found that the state had violated the right to asylum and the right to reception.⁴⁴

Amnesty International is not aware of the Belgian government paying any of the penalties as of 31 October 2023. At the time of writing, these legally binding penalty payments have reached their maximum.

In July 2023, the European Court of Human Rights found in the case of *Camara v. Belgium* that the Belgian state had violated Article 6 of the European Convention on Human Rights. This violation resulted from the authorities' refusal to execute an immediately enforceable court order requiring Belgium to provide an asylum seeker with accommodation and material support.⁴⁵ The Court moreover stated that the case "reveal(ed) a systemic failure on the part of the Belgian authorities to enforce final judicial decisions concerning the reception of applicants for international protection" and that there had been "a clear refusal to comply with the orders issued by the domestic court, thereby impairing the very essence of the right protected by Article 6 of the Convention."⁴⁶ Additionally, the European Court of Human Rights has ordered interim measures under Rule 39 in over 1,000 relevant cases since November 2022.⁴⁷ In its measures, the Court stated that Belgium should comply with the orders made by domestic courts in respect of each applicant and to provide them with accommodation and material assistance to meet their basic needs for the duration of the proceedings before the Court.

NATIONAL AND INTERNATIONAL CRITICISM

Alongside the judgment of the European Court of Human Rights, numerous human rights experts, bodies and institutions have expressed grave concerns regarding the reception crisis and its impact on the human rights of asylum seekers in

⁴¹ Article 580 of the Belgian Judicial Code provides that the labour courts have jurisdiction to hear disputes concerning the Reception Act.

⁴² This proceeding – contrary to the proceedings before the Labour Court – was not primarily about a dispute concerning the law of 12 January 2007, but about the tortious acts of the authorities, which fall under the competence of the Court of First Instance.

⁴³ Tribunal de première instance francophone de Bruxelles, Section civile, 2021/164/C, 19 January 2022, Ordonnance, www.agii.be/sites/default/files/20220119_rb_brussel.pdf.

⁴⁴ Tribunal de première instance francophone de Bruxelles, Section civile, 2022/4618/A, 29 June 2023, Judgment, www.agii.be/sites/default/files/20230629_rb_brussel.pdf.

⁴⁵ European Court of Human Rights (ECtHR), *Camara v. Belgium*, Application 49255/22, Chamber judgment, 18 July 2023, hudoc.echr.coe.int/?i=001-225884.

⁴⁶ *Ibid.*, paras 118 and 121.

⁴⁷ European Court of Human Rights (ECtHR), *Camara v. Belgium*, Application 49255/22, Interim Measure, 31 October 2022, hudoc.echr.coe.int/eng-press?i=003-7477467-10255069; European Court of Human Rights (ECtHR), *Msallem and 147 Others v. Belgium*, Applications 48987/22 and 147 others, Interim Measure, 15 November 2022, hudoc.echr.coe.int/eng-press?i=003-7491502-10277700; European Court of Human Rights (ECtHR), *Reazei Shayan and 189 Others v. Belgium*, Applications 49464/22 and 189 others, Interim Measure, 21 November 2022; European Court of Human Rights (ECtHR), *Almassri and 121 Others v. Belgium*, Applications 49424/22 and 121 others, Interim Measure, 1 December 2022; European Court of Human Rights (ECtHR), *Al-Shujaa and Others v. Belgium*, Applications 52208/22 and 142 others, Interim Measure, 13 December 2022, hudoc.echr.coe.int/eng-press?i=003-7525712-10331596; European Court of Human Rights (ECtHR), *Niazai and Others v. Belgium*, Applications 55140/22 and 16 others, Interim measure, 13 December 2022, hudoc.echr.coe.int/eng-press?i=003-7525712-10331596; In 1350 cases, the European Court of Human Rights decided to lift the interim measures and strike out the applicants since the application forms had not been provided to the Court within the time limit. See hudoc.echr.coe.int/eng-press?i=003-7663696-10564401%22].

Belgium. At the supranational level, four Special Rapporteurs of the United Nations⁴⁸ and the Human Rights Commissioner of the Council of Europe⁴⁹ have all emphasised that the Belgian government must take action to provide asylum seekers with adequate accommodation. The European Commission is also reportedly in contact with the Belgian government on the issue.⁵⁰

At the domestic level, various sectoral human rights institutions, including the Federal Human Rights Institute, have criticised the decision of the State Secretary for Asylum and Migration to continue the suspension of reception for single men, despite the ruling of the Council of State. The Institute moreover stated that governmental policies are not only violating the right to reception of relevant individuals, but also raise serious concerns regarding several rights enshrined in the European Convention on Human Rights, such as the prohibition of torture and inhuman or degrading treatment or punishment, the right to respect for private and family life, the right to an effective remedy, and the principle of non-discrimination.⁵¹

CONCLUSION

Despite over 8,000 court orders from Belgian courts and the judgment in the case of *Camara v. Belgium* by the European Court of Human Rights and the decision of the Council of State, the Belgian government continues to fail to uphold its obligations under international, EU and domestic law, to provide adequate accommodation to people seeking asylum in the country.

As a result of this failure, people who have reached Belgium in the hope to obtain protection from conflict, persecution and human rights violations, are forced to live on the streets for months, in situations that gravely affect their dignity and human rights. While the government has adopted some measures to increase the country's reception capacity, these are still insufficient, largely due to a lack of political will to address a foreseeable and manageable challenge. Moreover, the government's contempt for legally binding court decisions and penalties indicates a flagrant disregard for the rule of law.

Civil society organisations have suggested viable solutions and recommendations to ensure that all persons who are entitled to receive reception have access to it, but political will is lacking and the human rights costs continue to mount.

Authorities should make efforts to resolve the issue in the short term, for instance through the activation of the 'dispersal plan' as provided for by domestic law, and also adopt sustainable solutions to deal with fluctuations in the numbers of people seeking protection in Belgium.

<https://twitter.com/amnesty> Amnesty International calls on Belgium to make urgent and necessary investments in and management of its reception system to uphold the rights and dignity of all people seeking protection in the country, in compliance with international, EU and Belgian law.

⁴⁸ Special Rapporteur on the human rights of migrants, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, *Letter to the Belgian government*, AL BEL 1/2023, 30 March 2023, spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gl=27940.

⁴⁹ Commissioner for Human Rights, *Letter to State Secretary for Asylum and Migration of Belgium by Dunja Mijatović*, CommHR/DM/sf 040-2022, 13 December 2022, rm.coe.int/letter-to-state-secretary-for-asylum-and-migration-of-belgium-by-dunj1680a974ea.

⁵⁰ Euractiv, "EU Commission questions Belgium for suspending reception of single male asylum-seekers", 1 September 2023, www.euractiv.com/section/politics/news/eu-commission-questions-belgium-for-suspending-reception-of-single-male-asylum-seekers/.

⁵¹ Federaal Instituut voor de Rechten van de Mens, "Opvangcrisis: Mensenrechteninstellingen nodigen Europa en de Verenigde Naties uit om mensenrechtenschendingen te onderzoeken", 29 September 2023, www.institutfederaaldroitshumains.be/nl/opvangcrisis-mensenrechteninstellingen-nodigen-europa-en-de-verenigde-naties-uit-om.