Detention at the Border

of Asylum Seekers

Report

June 2026

JRS BELGIUM
JESUIT REFUGEE SERVICE

Jesuit Refugee Service Belgium
Maurice Liétart street 31/9, 1150 Brussels - Belgium
Tel: +32 2 738 08 18 – Email: info@jrsbelgium.org

This report can be downloaded at:
www.jrsbelgium.org

Publication date: June 2026
Author & layout: Nicolas Wéry
Responsible editor: Jörg Gebhard
Follow us:

CONTENTS

Every human being has a fundamental right to liberty. JRS Belgium and its partners from the Move coalition are joining forces to put an end to immigration detention. We therefore prefer the term "(administrative) detention centre" to "closed centre", so as to avoid confusion with the reception facilities for applicants for international protection – also known as open centres. This choice of wording keeps the focus on the harsh reality of detention. We also intend to cover every form of immigration detention, such as the "return houses", which we call "(administrative) detention houses".

Introduction

On 10 April 2024, the European Parliament adopted the Pact on Migration and Asylum. One of its stated aims is to introduce more efficient procedures at the borders of the European Union (EU). An integrated system for 'screening' people who cross the borders without authorisation is being set up, so that a swift decision can be taken on whether to grant them asylum or return them.[1]

In other words, the Pact intends to transform the way people arriving at European borders are dealt with, including those seeking protection. In the name of "efficiency", asylum seekers may indeed be processed under an accelerated border procedure and detained so that they can be removed swiftly would their asylum application be rejected.

For Belgium, it is worth asking whether this system will, at first glance, bring any major change. JRS Belgium sees it week after week: Belgium already detains, as a matter of routine, people who arrive at the border to seek asylum. The Pact, however, is a package of ten texts running to more than a thousand pages, and various draft laws are transposing its content into Belgian law. Its effects on both legislation and Belgian practice are therefore undeniable. To grasp them, one first needs a clear picture of the current law and practice. That is the purpose of this report: to set out, step by step, what actually happens in practice when a person arrives at Brussels Airport and applies for asylum.

This stocktaking exercise will make it possible to measure precisely what the Pact will change in the future. At the same time, Belgian practice can be instructive when trying to imagine what the Pact will bring about at the borders of other European countries. The value of this report therefore lies both before and after the Pact enters into force, scheduled for June 2026.

[1] European commission, *New Pact on Migration and Asylum: building trust and a new balance between responsibility and solidarity*, 23 September 2020, available online.

1. Detention, asylum & border

Administrative detention of foreign nationals has existed in Belgium since 1988. The authorities use it mainly to remove migrants in an irregular situation from Belgian territory.[2] Detention can also be used to prevent entry. This is what happens when a person presents themselves at a Belgian border post without meeting all of the entry formalities.

The people concerned are held in one of the country's six administrative detention centres or, in the case of families with minor children, in a return house – which we call detention houses.[3] They are deprived of their liberty not because of any crime or offence they have committed, but because of their administrative status.

Number of detention centres	6
Capacity of the centres in 2024	459
Number of people detained in 2024	4804
Number of family detention houses	27 (across 5 sites)
Number of adults detained in detention houses in 2024	217
Number of children detained in detention houses in 2024	304

Each year, Belgium detains between 6,000 and 8,000 people.[4] Since the Covid-19 pandemic this figure has fallen slightly. The table opposite gives, by way of example, the most recent figures available, those for 2024.

The decision to resort to detention is taken by the Immigration Office (IO), acting on behalf of the Minister for Asylum and Migration. The Immigration Office is also responsible for the day-to-day management of the detention centres and houses.

As regards international protection, 34,439 people applied for asylum in Belgium in 2025.[5] The reception and accommodation of asylum-seekers on the territory is handled by the Fedasil agency.[6] When a person or a family lodges an asylum application at the border, for example at Brussels National Airport, without meeting

[2] They are mostly people whose residence application and/or appeal procedure ended negatively and who have received an order to leave the territory.
[3] Unaccompanied minors are normally non detained.
[4] See the annual reports of the immigration office, available (in French & Dutch) online.
[5] CGRS, *Asylum statistics: overview 2025*, 27 January 2025, available online.
[6] Since the end of 2021, Belgium has been facing a reception crisis. As a result, not all applicants for international protection are immediately taken into care. See: Amnesty International, *Unhoused and unheard – How Belgium's persistent failure to provide reception violates asylum seekers' rights*, 2 April 2025, available online.

the entry conditions, they are normally transferred to a detention centre or house.[7] In 2024, 753 applications were lodged at the border, or 1.9% of all applications.[8]

Finally, some context on the notion of "border". Belgium is part of the Schengen area. This means that a person can move within that area without travel documents. Checks at internal borders are, in principle, not carried out. In return, checks at the external borders are reinforced and harmonised. The arrangements for these checks, as well as the conditions for entering Belgian territory, are thus governed by the Schengen Borders Code.[9]

Belgium has thirteen external-border crossing points: six airports, six ports and one international railway station (the Eurostar terminal). It is at these border posts that the policy checks whether persons meet the entry requirements to the Belgian territory. The post where the largest number of people present themselves and are refused access is Brussels National Airport. When a person is refused entry, they are placed in detention pending their return, or "refoulement", to the other side of the border. Since Belgium has no external land borders, this may seem abstract; in practice, the person is sent back to the last country from which they travelled.

Overview of refoulement decisions by border post[10]

Air borders				Sea borders			
	2022	2023	2024		2022	2023	2024
Brussels-National	1637	1672	1551	Antwerp	0	1	0
Charleroi	608	794	1001	Ghent	0	0	0
Bierset	3	7	4	Zeebrugge Blankenberge	0	0	0
Deurne	0	2	0	Ostend Nieuwpoort	0	0	0
Ostend	0	0	0				
Total	2248	2475	2556		0	1	0

[7] Since 2024, the Immigration Office speaks of "community based open living units".
[8] Myria, *Presentation contact meeting*, 29 January 2025, p. 2, available (in French) online.
[9] Regulation (EU) 2016/399 of 9 March 2006 on a Union Code on the rules governing the movement of persons across borders.
[10] Source: IO, *Annual report of 2024*, 2025, p. 50, available (in French & Dutch) online. The Kortrijk-Wevelgem airport and the Eurostar terminal are not included in the IO's figures.

2. The asylum seeker's journey

From the moment of arrival at a border post to release or removal, a person (or family) may pass through as many as seven stages.

2.1 Arrival at the border

When a person travels to Belgium from a country that is not part of the Schengen area, they are subject to a border control.[11] This check, usually a mere formality for Schengen residents, can prove more complicated for other travellers. One has to establish that one meets all the entry conditions set out in the Schengen Borders Code.

That Code has been incorporated into the Belgian Aliens Act of 15 December 1980 (the Aliens Act).[12] It lays down a list of formalities a person must satisfy in order to be admitted to the territory. The conditions are as follows:

- hold a valid passport or travel document and, where required, a visa;
- justify the purpose and conditions of the journey and have sufficient financial means for the duration of the stay and the return. These amounts vary from one European State to another. For a short stay in Belgium, a person must have at least 45 euros per day if staying with friends or family, and 95 euros per day if staying in a hotel[13] ;
- not be flagged as inadmissible in the Schengen Information System[14] ; and
- not be regarded as a threat to public order, national security, public health or international relations.[15]

[11] The same applies to people transiting to another country in the Schengen area. It is the first country of arrival that is responsible for the check.
[12] Act of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners, chapter 2.
[13] IO, *FAQ – short stay*, available online.
[14] For example, some people receive an "entry ban" valid for a certain period when they have already previously been forcibly removed from the Schengen area.
[15] Aliens Act, Art. 3.

The officers at the border-post desks form the first line of border control. They carry out a general check of the entry conditions, examine the authenticity of documents using scanners, take the fingerprints of people holding a visa, and consult various databases (national, Interpol or Schengen) to check whether a person is the subject of a particular alert. In case of doubt, or where the person applies for asylum, the officer completes the form below. The person is then redirected to the second line of control for a more thorough examination.

Stamp

HR IN :
HR OUT :
Name Immigration Officer

INTERCEPTION NOTE

NR.

BN/ /0..

ARRIVAL ◯ DEPARTURE ◯ TRANSFER ◯ GATE-CTL ◯ TRANSIT ◯ INAD ◯ DEPO ◯

Name + Given names concerning:

Nat.

Reason for check in second line:

Transit to : at Hr

From / To :

Flight nr .

IMM ◯

O No visa
O Expired visa
O Visa Not valid
O no sufficient means of subsistence
O Unclear travel reason
O No valid ID-doc.
O SIS-HIT (Art 96)
O Seaman
O Dublin agreement

FORGERY DESK ◯

O Photo substitution
O Imposter / Look-a-Like
O Visa p.;
O Stamps p.;
O Personal details
O Political asylum
O Risk assessment

INTEL ◯ On demand of screening ◯

Judicial Police ◯

PZ ◯

O CSB Nr.
O Reason:
O SIS -HIT (Art 95, 97, 98, 99 or 100)

Officer :	Decision
1.	
2.	
3.	

In concrete terms, at Brussels National Airport everyone who has to undergo a second-line check – whatever their profile, including unaccompanied foreign minors (UAMs) – is taken to a single waiting room. On request they can be given water there, and food is handed out at set times. This waiting room connects to the control offices, where three services operate:

- the immigration service, responsible for thoroughly checking the entry conditions;
- the false-documents service, which checks the authenticity of documents and is also responsible for registering applications for international protection;
- the cross-border crime service, which steps in where human trafficking or smuggling is suspected.

At this stage the police are required to provide people with written information, in a language they understand, about the purpose of the control.[16]

[16] Schengen borders code, Art. 8§5.

If, after verification, it turns out that the person meets the entry conditions, they will be allowed to enter Belgium. Otherwise, or if the person applies for asylum, a detailed report is drafted and forwarded to the Immigration Office. On the basis of that report, the Office decides whether or not to authorise entry. The decision is notified by a second-line officer. For people travelling on a visa, the visa may be annulled following a decision by the Immigration Office if it appears that the real reason for the stay is asylum and not the purpose for which the visa was issued.[17] It is worth noting that even where the entry conditions are not met, the Immigration Office can always authorise entry on grounds of "international obligations" or for "humanitarian reasons".[18]

The second-line control is normally fairly short, except where a decision from the Immigration Office is needed. In such cases the wait can drag on, particularly in the evening or during weekends. People we meet in detention regularly report long waits at the airport before their transfer to the Caricole detention centre. JRS Belgium has no systematic data on this. In any event, the wait cannot lawfully exceed 24 hours.[19]

As for families with minor children, they can no longer be held in detention centres.[20] Where entry is refused, a detention order may nonetheless be issued against them, and they are then transferred to return houses – or family detention houses. The 34 families arrested at the border whom we met in these facilities in 2023 said they had spent between four and eight hours at the airport before being taken to a house. In 2024 we met 43 families arrested at the border; nine of them said they had spent the night at the airport, though without complaining about it. In the past, these transfers could take longer, and some families had to spend the night at the Caricole centre, separated from other detainees. This practice no longer seems to apply.

The airport police officers are part of the federal police. Belgium does not, strictly speaking, have a dedicated border-guard corps.[21] In addition to their basic training, officers assigned to border control follow a two-month specialised training.

Regarding figures, statistics from after the Covid-19 pandemic are not public. By way of example, in 2018, 9.6 million passengers from countries outside the Schengen area presented themselves at Brussels Airport's border posts and underwent a first-line check. Of these, 33,030 were subject to a second-line check. Of that number, 5,942 were the subject of a further inquiry into their entry conditions. After verification and intervention by the Immigration Office, 2,233 people were declared "inadmissible" and 663 applied for international protection. The other 3,046 were allowed to enter Belgium.[22]

---

[17] Myria, *Myriadoc 9 – Un nouveau paradigme pour le modèle d'asile européen*, July 2019, p. 91, available (in French & Dutch) online

[18] Schengen borders code, Art. 5(4) & Aliens Act, Art. 74/11, §2. It is up to the IO to assess the scope of these reasons.

[19] Aliens Act, Art. 74/7.

[20] However, the current government has planned to reassess this ban.

[21] Note that since 2025, the European Border and Coast Guard Agency Frontex has been authorised to operate in Belgium.

[22] Myria, *Myriadoc 9 – Un nouveau paradigme pour le modèle d'asile européen*, July 2019, p. 87, available (in French & Dutch) online.

It is worth stressing, lastly, that the law allows for administrative discretion. Notions such as "public order" or "travel conditions", for example, are not defined in the law. In our experience these criteria can sometimes be interpreted in a strict way. In our 2023 monitoring report we noted having met several tourists in detention who, despite holding valid travel documents, ended up detained for various reasons: a hotel booked but not yet paid for, no return ticket, difficulty answering certain geography questions or backing up their travel plans in detail, among others.[23]

2.2 Lodging an application for international protection

The balance between border control and access to international protection can be a delicate one. There is a real tension between the prerogative to refuse access to the territory to people who do not meet the entry conditions and, on the other hand, the duty to respect the right to asylum and to give access to the protection procedure.[24] Border control has to be organised so as to reconcile these two objectives.

There is no official tally in Belgium of cases of *pushback,* understood as sending a person back to a country without having given them the chance to apply for international protection.[25] Myria, the Federal Migration Centre, nonetheless notes that obstacles to accessing the procedure do exist in practice.[26]

A person (or family) wishing to apply for international protection can do so either directly on arrival at the border post or during their second-line interview. The person will normally be redirected to the "false-documents" section to lodge the application, as the officers of that service have been trained accordingly.

The law provides that a foreign national who enters the territory without meeting the entry conditions and who wishes to seek protection must make that application "without delay [...] at the moment when [the authorities] ask them for details about the purpose of their stay".[27] An officer will never explicitly ask whether a person wishes to apply for asylum. In case of doubt, if the person does not clearly express that they are seeking protection, they will be asked a series of questions to probe their intentions (for example, the reasons why they cannot return to their country). The airport police maintain that in the vast majority of cases it is clear that a person wishes to apply for asylum.[28]

[23] JRS Belgium, *Detention centres for migrants: 2022 report*, September 2023, p. 16, available online.
[24] The right to asylum is enshrined in Article 18 of the EU Charter of Fundamental Rights and guaranteed by the 1951 Convention relating to the Status of Refugees.
[25] For an overview in the EU, see 11.11.11, Centre for Peace Studies et al., *Beaten back at Europe's borders: 2025 annuel report on pushbacks*, février 2026, available online.
[26] Myria, *Myriadoc 9 – Un nouveau paradigme pour le modèle d'asile européen*, July 2019, p. 85, available (in French & Dutch) online.
[27] Aliens Act, Art. 50.
[28] Exchange of 6 October 2022 between the Move Coalition and the airport police of Brussels Airport.

That said, distrust of law-enforcement bodies can be very real among people seeking protection. Many of them may have had a negative experience with the authorities in their country of origin or along the way. The fact that it is the police who register their asylum application therefore does not always appear to be the best option. Communication can also be complicated. The Brussels Airport police told us they rarely use interpreters, because some communication is possible, sometimes through colleagues; where there are real problems, a translator can be reached by phone.[29] At this stage, access to a lawyer is not provided for by law. In practice, it is not unusual for JRS Belgium to meet people in immigration detention who did not know they could apply for protection as soon as they arrived at the border, or who did not know whom to turn to.[30]

When a person makes it clear they want to apply for asylum, the police draft a report that is sent to the Immigration Office. This report contains no information about the substance of the application; it only records a person's wish to lodge an application along with their basic information. Internal guidelines on the precise content of this report exist, but they are not public. Once the application is registered, the person is given a certificate known as "Annex 25".[31] This document, issued in a national language (at Brussels Airport, in Dutch), records only a few personal details and whether or not the person wishes to use an interpreter in a particular language during their asylum interview with the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), the body responsible to deal with applications for international protection.

2.3 The removal decision...

When the Immigration Office confirms the refusal of entry, a decision to remove the person is taken. This decision indicates, as the place of return, not the person's country of origin, but the country from which they travelled.[32] Under the Chicago Convention on civil aviation, it is moreover the airline with which the person travelled that is responsible for organising this return.[33] Where the airline has a flight scheduled in the next few hours, and provided the person has not applied for international protection, they will simply wait in the second-line control waiting room until boarding. The standard document given to people who are to be removed is an "Annex 11".

[29] Idem.
[30] As part of its work providing legal assistance to people in need of international protection held in detention at the border, Nansen highlights the same problem. See Nansen, *Note 2025-1 : Procédure de protection internationale et détention à la frontière*, 3 July 2025, p. 19, available (in French) online.
[31] Royal Decree of 8 October 1981 on access to the territory, residence, establishment and removal of foreigners, Art. 72.
[32] Aliens Act, Art. 74/4.
[33] See below, section 2.7.

Kingdom of Belgium
Federal Public Service Interior
Federal Police
DAC LPA BRU-NAT GC/VR
Zaventem Airport

ANNEX 11

REFOULEMENT

On ..... at ..... (time),
the undersigned officer .....

hereby informs:

Mr. / Ms.: .....
last name: ..... first name: .....
date of birth: ..... / ..... / ..... sex: M / F
nationality: .....
domicile (address): .....
travel document: type: .....
number: .....
issued on: ..... / ..... / .....
visa (if applicable): type: .....
number: .....
issued on: ..... / ..... / ..... valid until: ..... / ..... / .....
for the purpose of: .....
days, valid for destination: .....
provenance from: ..... by .....
(indicate the name of the transport company and flight/vehicle number)

I hereby inform you that entry into the territory is refused in accordance with Article 3, paragraph 1(6) of Law of 15.12.1980 on access to the territory, residence, establishment and removal of foreigners, for the following reason(s):
.....
.....

☐ (A) You do not possess a valid travel document / travel documents.

☐ (B) You possess a travel document that is false / counterfeit / falsified.
Reason for the decision:
Document: .....
Justification: .....

☑ (C) You do not possess a valid visa or a valid residence permit.
Reason for the decision:
The visa (if required) or residence permit is not valid or does not entitle you to stay.

☐ (D) You possess a visa or residence permit that is false / counterfeit / falsified.
Reason for the decision:
Document: .....
Justification: .....

☐ (E) You cannot justify the purpose and conditions of the intended stay.
Reason for the decision:
The submitted supporting documents are not considered valid: .....
.....

☐ (F) You have remained for 90 days over a 180-day period within the territory of the Schengen States.

☐ (G) You do not have sufficient means of subsistence, either for the duration of the stay envisaged or for the return to the country of origin or transit to a third country into which your admission is guaranteed, or you are not in a position to acquire such means.
Reason for the decision: .....

☐ (H) (Not applicable) at the end of non-admission (ISG or other Schengen databases).
Reason for the decision: .....

☐ (I) You are considered a threat to public policy, national security, public health or the international relations of one or more Member States.
Reason for the decision: .....

☐ (J) Other (to be specified): .....
.....

Observations: .....
.....

Date and signature

It contains personal details (surname, first name, date and place of birth) and sets out whether the person carries any identity or travel documents. Then follows a list of entry conditions, each accompanied by boxes to be ticked for every condition that is not met.[34] An explanatory line accompanies these boxes. The document is given to the person in one of the national languages. It states that its most important elements can be translated to the person.

To ensure compliance with the principle of non-refoulement, which prohibits States from sending a person back to a country where they would risk inhuman or degrading treatment, the law provides that a removal decision can be taken against an asylum seeker only once the CGRS has refused their application and thereby assessed their need for protection.[35] In current practice, anyone refused access to the territory, whether or not they apply for asylum, automatically receives a removal decision. Its enforcement is suspended while the asylum application is processed.[36] This practice is not without consequences, as Myria explains:

> *the time limit for appealing a removal decision begins the moment the person is notified of that decision. As a result, by the time the CGRS issues its negative decision, the deadline for appealing the removal decision has already passed.*[37]

In other words, current practice makes appealing a removal decision difficult.[38]

[34] Article 4 of the Aliens Act indeed requires that the removal decision must indicate which entry condition(s) are not met.
[35] Aliens Act, Art. 52/3§2.
[36] Aliens Act, Art. 49/3/1.
[37] Myria, *Myriadoc 9 – Un nouveau paradigme pour le modèle d'asile européen*, July 2019, p. 92, available (in French & Dutch) online.
[38] For an extensive analysis, see Nansen, *Note 2025 – 2 : Effectivité des recours contre une décision de refoulement*, 3 July 2025, available (in French) online.

Removal decisions are individual, but their reasoning – the "reasons for the decision" lines accompanying each ticked box on the document – is in fact completed in a brief, descriptive and standardised way. For people applying for international protection, we commonly see two scenarios.

For nationals of countries that do not need a visa to enter Belgium and who apply for protection, it is box "(E) is not in possession of documents justifying the purpose and conditions of the intended stay" that is ticked. It is then argued that "the person is considering a prolonged stay in Belgium" – since they are applying for asylum – "without being in possession of a long-stay visa". As a person seeking protection does not intend to return to where they came from, the absence of a return plane ticket is also regularly invoked.

Where the person needs a visa to enter the territory, the problem is often the absence of such a visa or its withdrawal – again because the intended stay is different. In that case, box "(C) is not in possession of a valid visa" is ticked. By way of justification, one finds the repetitive sentence "the person concerned is not in possession of a valid visa". This may be combined with the absence of a passport, in which case the stated reasoning reads: "the person concerned is not carrying a cross-border document".[39] We will see in the next section why this lack of argumentation proves problematic.

In terms of figures, in 2024 the Immigration Office took 2,556 removal decisions and 6,196 decisions granting access to the territory at the borders. Of the latter, 5,972 were issued to seafarers in transit. Another 224 entry decisions were taken, including 15 for unaccompanied minors (who cannot be detained). We do not know the context in which the remaining decisions were taken.[40]

2.4 ...and the detention decision

A person (or family) who does not meet the conditions for access to the territory will be refused entry and will receive a removal decision. If they cannot be removed the same day, they will be placed in immigration detention while their removal is being organised. Although the police confirmed to Myria that, when an asylum application is registered, the person is sent to the Caricole centre (or to a detention house if it is a family),[41] the Immigration Office maintains that the detention of asylum seekers at the border is not automatic. This raises the question of what

[39] Nansen made the same observation in 10 case files analysed from late 2023 to 2025. See Nansen, *Note 2025-1 : Procédure de protection internationale et détention à la frontière*, 3 July 2025, p. 9, available online.
[40] Note that 159 people transited through Belgium as part of a return. IO, Annuel Report 2024, 2025, p. 52-53, available (In French & Dutch) online.
[41] Myria, *Myriadoc 9 – Un nouveau paradigme pour le modèle d'asile européen*, July 2019, p. 91, available (in French & Dutch) online.

effect an application for international protection has on detention at the border. This section sets out, necessarily in technical terms, the applicable theoretical framework and practice.

Let us begin by recalling that the individual right to liberty is a fundamental right guaranteed by the European Convention on Human Rights (ECHR)[42] and the EU Charter of Fundamental Rights.[43] Seeking asylum is a right,[44] and the Refugee Convention guarantees freedom of movement for asylum seekers.[45] Because asylum seekers are often forced to cross borders irregularly, that same convention prohibits penalising them on this ground.[46] Their freedom of movement may be restricted, but not beyond what is necessary.[47]

The ECHR sets out a list of exceptions to the right to liberty, and border control is included as a valid ground.[48] The European Court of Human Rights has further stated that detention must nevertheless not be arbitrary, a standard that is, all in all, fairly flexible.[49]

The EU framework, transposed into Belgian law, provides more safeguards. The Reception Directive[50] regulates the detention of asylum seekers. The Procedures Directive (recast)[51] in turn introduces an asylum border procedure.[52] Let us take a detour through the latter, because border procedure and detention are closely intertwined in Belgium.

Border asylum procedures are used to fast-track certain applications for international protection.[53] Those judged, for example, to be abusive or to have little chance of success are thus to be swiftly concluded so that the rejected applicant can be removed as soon as possible.[54] Applications that are, *prima facie*, more "solid" are not meant to be processed under such a procedure.

Belgian law provides that the CGRS may use the border procedure only in the following cases:

- the application is manifestly unfounded;
- the applicant comes from a safe country of origin;

[42] ECHR, Art. 5.
[43] EU Charter, Art. 6.
[44] EU Charter, Art. 18.
[45] Refugee Convention of 1951, Art. 26.
[46] Refugee Convention of 1951, Art. 31(1).
[47] Refugee Convention of 1951, Art. 31(2).
[48] ECHR, Art. 5.
[49] European Court of Human Rights, *Saadi c. Royaume-Uni*, 29 January 2008, n°13229/03. For an extensive analysis of the case law of the Court, see Nansen, *Note 2025-1 : Procédure de protection internationale et détention à la frontière*, 3 July 2025, p. 22-25, available (in French) online.
[50] Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).
[51] Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).
[52] Asylum Procedures Directive, Art. 43.
[53] In this respect, the new Pact and its Procedures Regulation are much more explicit when they state that the border procedure aims to allow "the rapid assessment of applications that are likely to be inadmissible or unfounded with a view to enabling return" (Regulation 2024/1256 of 14 May 2024, recital (64)). The current legislation, like the parliamentary records, is much vaguer on the subject.
[54] Accelerated procedures follow the same logic (see CJEU, 28 July 2011, C-69/10, §31).

- the applicant has tried to deceive the authorities or has destroyed identity or travel documents;
- the applicant has made manifestly inconsistent and contradictory statements;
- it is a subsequent asylum application;
- the application is intended only to delay removal;
- the applicant refuses to provide their fingerprints;
- the applicant poses a threat to public order or national security.[55]

The CGRS deals with the application at the border as a priority and must reach a decision within four weeks. The time limit for appealing a negative decision is ten days. Once that period has passed, the person must be allowed to enter the country, and their asylum application must then be processed under the ordinary procedure.[56]

In practice, however, and as explained more in detail in section 2.6, we see that this is barely respected. The CGRS in fact applies the border procedure to everyone arriving at the border, without regard to these limited instances provided for by the law.[57]

This detour through the border procedure matters, because according to the Belgium authorities detention is necessary to effectively maintain a person at the border.

Indeed, when it transposed the Procedures Directive into Belgian law in 2017, the parliamentary preparatory works noted that the border procedure was "in all cases accompanied by a measure depriving the person of liberty[.]".[58] Yet the Reception Directive prohibits detaining a person simply because they have applied for asylum.[59] It also requires that detention be "the result of a case-by-case assessment", "necessary", and applied only where "other less coercive measures cannot be applied effectively".[60] Belgium did not transpose the Reception Directive correctly, because these conditions are absent from Article 74/5 of the Aliens Act, which establishes detention at the border. In 2018n the Court of Cassation therefore condemned this "unconditional" detention. According to the Court, it is not enough for the conditions of Article 74/5 to be met in order to resort to detention; those laid

[55] Aliens Act, Art. 57/6, §3 & 57/6/4 (see below, section 2.6). These instances are the same as those of the accelerated procedure set out in Article 56/6/1 of the Aliens Act.
[56] Aliens Act, Art. 57/6/4.
[57] Which the CGRS moreover acknowledged during a study day organised by the *Agentschap Integratie & Inburgering* (AGII, *Presentaties studiedag wetswijzigingen in de asielprocedure en opvang van asielzoekers*, 23 March 2018, available (in Dutch) online). The Procedures Directive nevertheless requires that recourse to this procedure be subject to an individual statement of reasons. This can be inferred from recital 21, which states that "the absence of documents on entry or the use of forged documents should not in itself entail automatic recourse to the border procedure", and follows from the exhaustive list of cases in which it applies (Cornelisse, *Territory, Procedures & Rights: Border Procedures in European Asylum Law*, Refugee Survey Quarterly 35, May 2016, p. 78).
[58] Chambre of Representatives, DOC 54 2548/001, p. 150.
[59] Aliens Act, Art. 74/5, §1 which transposes Art. 8 of the Reception Directive.
[60] Reception Directive, Art. 8. The Court of Justice of the EU has had the opportunity to rule on the scope of these conditions (see judgments M.A., C-72/22 of 30 June 2022 and V.L., C-36/20 of 25 June 2020).

down by the Reception Directive have to be met as well.[61] The law was however never changed.

Belgian legislation thus does not provide for it, but let us unpack whether and how the conditions of individual assessment, necessity and subsidiarity required by EU law are taken into account in Belgian practice. On the condition that detention should be the result of an individual decision, the parliamentary works state:

> *The individual examination carried out when applying the border procedure is performed in light of the interest in effective border surveillance. Border surveillance is in fact only effective where a custodial measure is imposed in that context. Automatically lifting the detention measure upon an application for international protection at the border would deprive border surveillance of all effect.*[62]

The legislator therefore had little intention of individualising decisions, since it is the general objective of protecting the borders that is put forward. Indeed, in practice it is the reasoning relating to non-compliance with the entry formalities, as set out in the removal decision ("Annex 11"), that the Immigration Office uses to justify that a detention decision is individualised. Detention decisions are routinely worded as follows:

> *The person concerned is not being held solely on the ground that they are an applicant for international protection. The detention is assessed individually given that the person concerned attempted to enter the territory without being in possession of the documents required under Article 2 of the Aliens Act and without meeting the entry conditions laid down in Article 3 of the Aliens Act, and lodged an application for international protection.*

While there is indeed an assessment of the entry conditions in the removal decision, relying on it – and on the fact that the person has applied for protection – is, in our view, a thin basis for then deeming the detention decision, in turn, to be individualised. We have moreover seen above that removal decisions are repetitive and standardised.[63]

As to the condition of subsidiarity, during the discussions on transposing the directives the State Secretary for Asylum and Migration ruled out introducing less coercive measures at the border, on the ground that such alternatives "would entail authorising access to the territory".[64] In practice, the principle of subsidiarity is not assessed in the reasoning of detention decisions at the border.[65] Families at the border are transferred to a detention house, described by the Royal Decree

[61] Cass., 4 July 2018.
[62] Chamber of Representatives, DOC 54 2548/001, p. 150.
[63] The IO specifies that each application is processed individually, taking into account the documents presented, and that the use of standardised and repetitive phrases does not preclude the application of the legal framework.
[64] Chamber of Representatives, DOC 54 2548/002, p. 41.
[65] The Court of Cassation ruled that, by deciding to resort to detention, the IO implicitly rejected the possibility of alternatives (Cass., 17 mars 2016).

regulating them as an alternative to detention, yet a detention order is issued against them.[66]

Finally, as to the criterion of necessity, detention decisions state, in standardised terms, that "detention of the person concerned [...] is necessary in order to guarantee possible removal from the territory" and that:

> *A foreign national who does not meet the entry conditions cannot automatically be admitted to the territory simply because they have lodged an application for international protection at the border. Automatically cancelling a detention measure upon an application for protection would deprive border control of all effect.*

In short, detention is used as a tool for regulating border surveillance, which sits poorly with the safeguards contained in the Reception Directive. Neither the law nor the practice takes those safeguards into account. This is also what the Court of Cassation recalled in its 2018 ruling. To take this case law into account, the Immigration Office started to argue that detention of asylum seekers at the border is necessary to obtain all the necessary information relevant to the persons' application and to prevent them from absconding. Detention is thus deemed necessary in order to:

> *determine the elements on which the application for international protection is based and which could not be obtained if the applicant were not detained, in particular where there is a risk of absconding.*[67]

In most cases, this risk of absconding is inferred from the fact that the person "came to the Kingdom for purposes other than those for which they lodged an application for protection". If they apply for protection, the argument runs, these people are contemplating a long stay, "and that without being in possession of a long-stay visa". Reference is also made to the reasons why the people do not have the documents needed to enter the territory (use of forgeries, none existed, or they were destroyed, hidden or lost).

Yet the preamble to the Procedures Directive recalls that the absence of documents or the use of forged ones should not automatically trigger the use of the border procedure (and of detention). This is however what happens in Belgium, decision having further no regard to the individual circumstances and just stating the absence or misuse of documents. The use of the border procedure hence becomes the consequence of detaining the applicant for international protection. In the view of JRS Belgium, this blanket approach raises questions of compatibility with the EU framework.

In 2021, the Constitutional Court's "Mammoth" ruling changed the picture. The Court held that the border procedure constituted a more specific regime than the detention regime of the Reception Directive. The Procedures Directive should

[66] Preamble of the Royal Decree of 14 May 2009 establishing the regime and operating rules applicable to the accommodation places within the meaning of Article 74/8, § 1, of the Aliens Act. On the evaluation of these centres as an alternative, see Plate-forme mineurs en exil, *Les maisons de retour en Belgique : Une alternative à la détention à part entière, efficace et respectueuse des droits de l'enfant ?*, January 2021, available (In French & Dutch) online.
[67] Standard paragraph present in detention decisions since 2018.

therefore be regarded as a *lex specialis*, with the Reception Directive applying only in so far as it is compatible with the specific features of that procedure.[68] The Court went further, declaring that the detention conditions laid down by the Reception Directive were not compatible with the border procedure of the Procedures Directive. There was therefore no need to take them into account.[69]

The Immigration Office quickly relied on this ruling to justify the lack of reasoning in its border decisions. The Constitutional Court's decision is open to criticism, however, in that the Court of Justice of the EU (CJEU), responsible for interpreting Union law, traditionally seeks to render compatible different texts applying to the same situation. It seeks to establish coherence in Union law, which the Constitutional Court was did not do. We share the view of the Nansen asylum-expertise centre that, in matters of detention, the *lex specialis* is the Reception Directive.[70] After all, its preamble makes clear that, in order to guarantee equal treatment of all asylum seekers, it should apply to all stages and all procedures concerning international protection.[71]

Pending clarification from the CJEU or the implementation of the European Pact, the Immigration Office continues to detain asylum seekers at the border routinely, without – in our view – its decisions meeting the conditions imposed by the Reception Directive.[72]

The Office has explained many times that some applicants arriving at the border who do not meet the entry conditions are not placed in detention (these certainly include unaccompanied minors, and perhaps some pregnant women, who cannot be forcibly returned after 24 weeks of pregnancy). There are, however, no figures on this.

Nor is there, at the border, any formal vulnerability-screening protocol as such that would automatically exclude a person from being detained.[73] A person may thus, in detention, find themselves exposed to a heightened risk of harassment or of physical, psychological or sexual violence, even though they fled their country and applied for asylum precisely to escape such violence. This is typically the case for LGBTQIA+ people, as we noted in our 2023 report on vulnerability.[74] In 2022, for instance, we met a trans woman from Malaysia at Caricole. Because of the stress generated by her confinement, after a week she decided to withdraw her asylum

[68] In this instance, that Article 43 of the Procedures Directive is the lex specialis and that Article 8 of the Reception Directive applies, in whole or in part, only if compatible.
[69] C.C., jugment n°23/2021 du 25 April 2021, recitals B122.7 et seq.
[70] Nansen, *Bijdrage 2021/3 - Tegen de systematische detentie van asielzoekers aan de grens*, 29 septembre 2021 p, 5, available (in Dutch) online.
[71] Recital 8. The new European Pact is even more explicit on this point. That the provisions of the Reception Directive apply to the border procedure is indeed taken up in Article 43 itself, which introduces this procedure. It states unequivocally that "any measures taken by Member States to avoid unauthorised entry into their territory shall be taken in accordance with the [Reception] Directive" (Regulation 2024/1348 of 14 May 2024, Art. 43(2)).
[72] The Court of Cassation recalled that there was a general obligation to state reasons under Article 62 of the Aliens Act.
[73] On how vulnerability is being taken into account in detention, see: JRS Belgium, *Vulnérabilité en détention*, March 2023, available (in French & Dutch) online. The IO specifies that vulnerable persons are taken into care by the medical and psychological team of each centre upon their arrival.
[74] Idem.

application and returned to Malaysia where, despite the persecution, she had a support network.

2.5 Places of detention

Let us recap. A person or family arriving at a border post who does not meet the entry requirements will be given a removal decision. If they cannot be sent back the same day from, they will be sent to a detention centre. An asylum application will have no real bearing on this situation, in the sense that, in practice, the Immigration Office will give priority to the fact that the person does not meet the entry conditions, that Belgian law – despite the EU framework – does not say otherwise, and that the Constitutional Court did not find this problematic.

Top 3 applications at the border in 2024[75]		
Palestine	134	41%
Türkiye	37	11%
Syria	27	8%

As to where people and families are detained, the Aliens Act speaks of "specific places situated at the borders"[76] or places treated as such. In the past, people arrested at the border were held at the INAD centre ("INAD" for "inadmissible passenger", in airline jargon). Those applying for asylum were transferred to Centre 127. In 2012, these two centres were replaced by the Caricole transit centre. This new facility, leased to the Belgian State for a term of 36 years at an annual rent of 1.2 million euros, has a capacity of 114 spots. It is in this centre, just a stone's throw from Brussels National Airport, that the vast majority of people intercepted at the border have since been held.

The Caricole centre owes its name to the spiral shape of the building, an architectural concept that, among other things, meets anti-radar requirements designed not to interfere with the airport's control tower. The infrastructure meets sustainable-construction criteria and aims, unlike the centres it replaced, to combine human and security considerations, through various relaxation spaces, an inner courtyard, and the replacement of bars with alarms. This "gilded cage" nonetheless remains a place of detention where asylum seekers are routinely being held. It should be noted that people arrested on the territory may also be held at Caricole. In a legal fiction, people who are not supposed to have entered the territory thus rub shoulders daily with people who are on the territory.

In 2024, 2,047 people were held at Caricole. Of these 2,047, 1,387 were inadmissible – arrested at the border for failing to meet the entry conditions. To these are added the 326 people who applied for asylum at the border. There were also two people who applied for asylum at the border but had to be returned to a European country

[75] This concerns only the people subsequently sent to the Caricole centre. Source: annual report of the Caricole centre.
[76] Aliens Act, Art. 74/5.

to complete their asylum procedure there under the Dublin Regulation. The remaining 332 people were arrested on the territory (16.2%).

The other five detention centres have the status of "places treated as being at the border". The number of people arrested at the borders who are held there is, however, negligible compared with Caricole. Most of these people, moreover, are likely to have passed through Caricole first.

Detention of people arrested at the borders in 2024[77]						
	Caricole	127bis	Bruges	Holsbeek	Merksplas	Vottem
IP applicants	326	6	2	47	1	0
INAD	1387	2	1	1	1	1

Let us recall, finally, that a person can always apply for international protection from within a detention centre. In 2024, 93 protection applications were lodged from Caricole. It is unclear what proportion came from people who were maintained at the border.

From 2001 to 2008, families with minor children were held in detention centres, including at the border. After a conviction by the European Court of Human Rights for detaining children in inappropriate conditions in late 2006, the Belgian authorities opened the first family detention houses in 2008. These can house up to 27 families. In practice, they are studios, flats or small houses spread across five sites throughout Belgium. The "return coaches" are the only Immigration Office staff present on these sites. Although they are hard to compare with the centres and offer a degree of comfort and privacy – something regularly noted by the families arrested at the border – JRS regards the detention houses as an alternative form of detention for two reasons: legally, a detention order is issued against the families placed there, and their freedom to come and go is restricted.[78]

The vast majority of families held in the detention houses are not families in a return procedure intercepted on the territory, but families who arrive at the border to seek protection. In 2024, 165 families passed through the detention houses. Of these, 121 were arrested at the border and 13 on the territory. To this are added 31 families who, under the European Dublin Regulation, should be returned to another European country where they had already begun their asylum procedure. It is unclear what proportion of these 31 families were intercepted at the border or on the territory.[79]

[77] Source: annual reports of the different centers.
[78] For the evaluation of these centres as an alternative to detention, see Plate-forme mineurs en exil, *Les maisons de retour en Belgique : Une alternative à la détention à part entière, efficace et respectueuse des droits de l'enfant ?*, January 2021, available (In French & Dutch) online.
[79] Source: IO, *Annual Report 2024*, 2025, p. 72, available (in French & Dutch) online.

2.6 The asylum procedure in detention

A person who applies for asylum has the right to remain in Belgium, including at the border, while their application is being examined.[80] At this stage there are three possibilities.

First, the CGRS can, in a limited number of situations, declare the application inadmissible:

- where the person has a first country of asylum;
- where they come from a safe country, are a national of an EU Member State or have protection there;
- where their application is a subsequent one with no new elements;
- where they are an accompanied minor who does not invoke facts justifying a separate application following a negative decision concerning the person accompanying them.[81]

The procedure may then end here, or the person may lodge an appeal against the inadmissibility decision within ten days. For a subsequent asylum application lodged in detention, this time limit is reduced to five days.[82] The aim is to wrap up these procedures as quickly as possible in order to proceed with the return.

Second, the CGRS can take a decision on the merits of the application at the border where the circumstances justify the use of the accelerated procedure: the person comes from a safe country of origin,[83] invokes only elements irrelevant to protection, has misled the authorities about their identity or nationality or refuses fingerprinting, has destroyed their travel or identity documents, makes statements that are manifestly false or implausible, where a decision has already been taken, where the application is intended only to delay removal, where it is made late, or where the person poses a threat to public order.[84]

As noted in section 2.4, these are applications that do not have much chance of leading to a positive decision. They are not 'legally' accelerated, but the CGRS deals with them as a priority and must decide within four weeks, failing which the person will be allowed to enter the territory.[85] The time limit for appealing a CGRS decision is ten calendar days.

In these first two scenarios, the asylum procedure is handled entirely at the border, within particularly short processing and appeal deadlines. In all other situations, the CGRS is supposed to decide that the asylum application requires a further, more

[80] Asylum Procedures Directive, Art. 2 & 9.
[81] Aliens Act, Art. 57/6, §3.
[82] Aliens Act, Art. 39/57, §1.
[83] The list of safe third countries is updated each year by royal decree and currently includes the following countries: Albania, Bosnia and Herzegovina, Kosovo, Morocco, Montenegro, North Macedonia and Serbia (Royal Decree of 3 December 2025 implementing Article 57/6/1, § 3, paragraph 4, of the Act of 15 December 1980).
[84] Aliens Act, Art. 57/6/4.
[85] Aliens Act, Art. 75/6/4.

thorough examination, and the person should be allowed to enter the territory and be released from detention.[86]

Despite the set list of situations in which the CGRS may use the border procedure, in practice it uses it as a matter of routine for people intercepted at the border. In the files we have analysed, the CGRS simply repeats the Immigration Office's reasoning justifying detention, without any further individual analysis or reference to the concrete elements of the case. For example, where there are no travel documents and no visa, the CGRS will state, without reference to concrete elements of the file:

> *The fact that it was probable that, in bad faith, you had destroyed or disposed of an identity or travel document that would have served to establish your identity or nationality was, until then, established, and justified applying an accelerated procedure to the handling of your application at this stage of the procedure.*

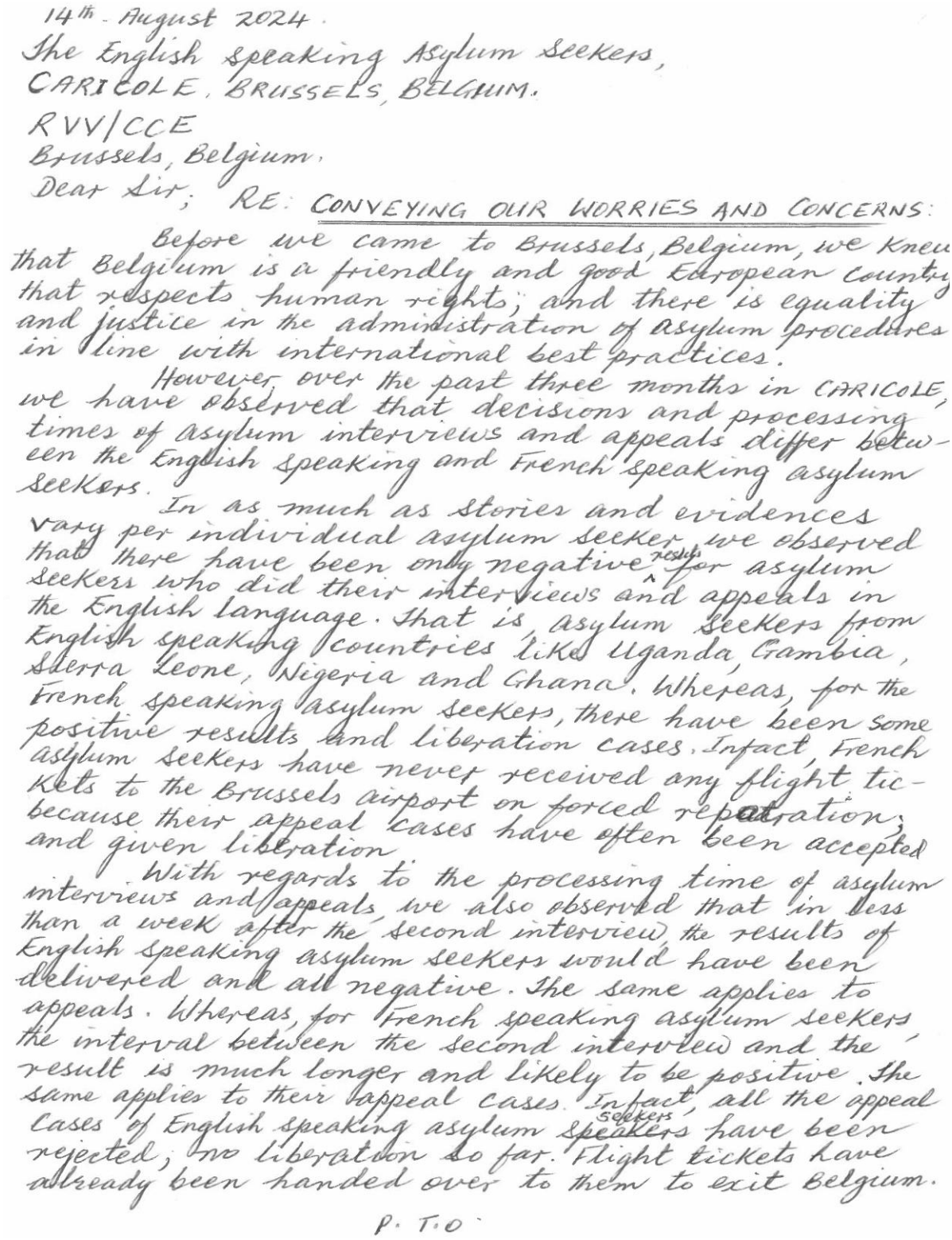
In other files, the CGRS does not justify the use the border procedure. Nansen, which has published an in-depth analysis on the subject, reaches the same conclusion.[87]

This routine recourse to the border procedure, and the stereotyped reasoning claiming that the conditions for the accelerated procedure are met, have recently been called into question by the Council for Alien Law Litigation (CALL). Since 2023, the French-speaking chambers of the CALL have in fact been annulling every CGRS decision that does not properly substantiate the existence of these conditions.[88] In practice, people who end up in a French-language asylum procedure have a strong chance that the use of the border and accelerated procedure will be found unlawful by the CALL. After what is sometimes a series of decisions shuttling back and forth between the CGRS and the CALL,[89] these people will be admitted to the territory and released with a pending asylum procedure.

There is therefore currently a real difference in treatment between asylum seekers in the French-language and the Dutch-language procedures. The former will be released and will thus have more time to prepare their asylum application, gather evidence, obtain documents or secure medical certificates. This is all the more problematic because, in detention, people have limited access to the outside world: they have no smartphone (sometimes needed to log into one's email via two-factor authentication), internet access is regulated, it is hard to contact and persuade a doctor to come to the detention centre to draw up a certificate,[90] difficult to get in touch with organisations that could support them (for example LGBTQIA+ people),[91] and access to legal aid is restricted owing to the shortage of lawyers specialising in

[86] Aliens Act, Art. 57/6/4.
[87] Nansen, *Vulnérabilités en détention et accès à la protection internationale : procédure d'asile à la frontière et procédure accélérée*, 9 Novembre 2020, available (in French & Dutch) online.
[88] See for example CALL, 10 February 2023, no. 284,595 or CALL, 12 September 2023, no. 294,093. The Dutch-speaking chambers also note the substantive irregularity but do not attach the same consequences to it and do not annul these decisions (RvV, 19 April 2024, no. 305,148).
[89] The grim prize goes to a Congolese woman whose CGRS decision was annulled four times by the CALL before she was released. She will have spent 231 days in detention.
[90] The law allows the visit of an external doctor at one's own expense. Since 2025, Médecins Sans Frontières has been regularly visiting the centres free of charge.
[91] The IO specifies that attempts at collaboration have been made with NGOs in this area, but that they have so far not been successful.

immigration law. This situation was denounced in August 2024 by the detainees themselves, in the open letter reproduced below:



14th August 2024.

The English speaking Asylum Seekers,
CARICOLE, BRUSSELS, BELGIUM.

RVV/CCE
Brussels, Belgium.

Dear Sir; RE: CONVEYING OUR WORRIES AND CONCERNS:

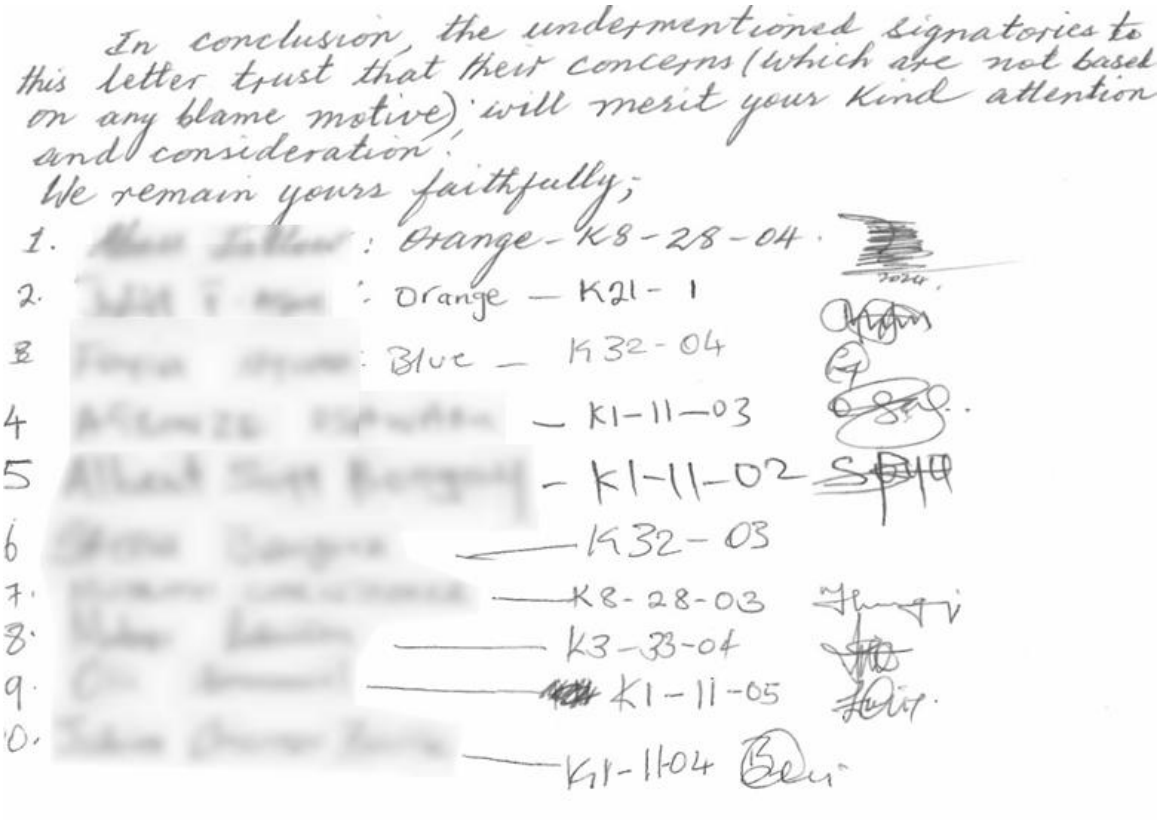
Before we came to Brussels, Belgium, we knew that Belgium is a friendly and good Edropean country that respects human rights; and there is equality and justice in the administration of asylum procedures in line with international best practices.

However over the past three months in CARICOLE, we have observed that decisions and processing times of asylum interviews and appeals differ between the English speaking and French speaking asylum seekers.

In as much as stories and evidences vary per individual asylum seeker, we observed that there have been only negative results for asylum seekers who did their interviews and appeals in the English language. That is, asylum seekers from English speaking countries like Uganda, Gambia, Sierra Leone, Nigeria and Ghana. Whereas, for the French speaking asylum seekers, there have been some positive results and liberation cases. Infact, French asylum seekers have never received any flight tickets to the Brussels airport on forced repatration; because their appeal cases have often been accepted and given liberation.

With regards to the processing time of asylum interviews and appeals, we also observed that in less than a week after the second interview the results of English speaking asylum seekers would have been delivered and all negative. The same applies to appeals. Whereas, for French speaking asylum seekers the interval between the second interview and the result is much longer and likely to be positive. The same applies to their appeal cases. Infact, all the appeal cases of English speaking asylum seekers have been rejected; no liberation so far. Flight tickets have already been handed over to them to exit Belgium.

P. T.O


In conclusion, the undermentioned signatories to this letter trust that their concerns (which are not based on any blame motive) will merit your kind attention and consideration.
We remain yours faithfully;
1. [redacted] : Orange – K8-28-04
2. [redacted] : Orange – K21-1
3. [redacted] : Blue – K32-04
4. [redacted] – K1-11-03
5. [redacted] – K1-11-02
6. [redacted] – K32-03
7. [redacted] – K8-28-03
8. [redacted] – K3-33-04
9. [redacted] – K1-11-05
10. [redacted] – K11-1104

Let us recall, finally, that the border procedure should also not be used for applicants with special procedural needs, such as victims of rape and torture.[92] In practice, identifying these needs does not seem to prevent application of the border procedure either. In various cases, certificates established by Doctors Without Borders attesting to torture have not had the effect of removing the people from the border procedure. The CGRS has clarified that the existence of special needs does not automatically lead to exemption from the border procedure. The 2024 figures are not known to us, but in 2023, 84 files were the subject of a decision for further examination; in nine of these, the person had special needs.[93]

A person (or family) stopped at the border and transferred to detention can, at this stage, request the free assistance of a lawyer. This request is made through the detention centre's social service. The quality of the legal aid varies, in the sense that many of the *pro deo* lawyers assigned have no expertise in immigration or asylum law (the legal-aid offices have no specialised immigration-law section). We thus regularly see lawyers fail to accompany their client to asylum interviews, miss appeal deadlines, or refuse to appeal despite real chances of success. There is, moreover, a small number of available lawyers, as the remuneration for these *pro*

[92] Aliens Act, Art. 48/9, §5.
[93] Source: Minutes of Myria contact meeting, March 2024, available (in French & Dutch) online. This may have followed a decision by the French-speaking chambers of the CALL.

deo services in immigration law is less attractive than for other services. Finding a lawyer can thus take several days, while changing lawyers can prove complicated.

Once an asylum application has been received, whether forwarded by the airport police or by the detention-centre, the Immigration Office organises a first interview. This covers the applicant's identity, family situation, the places where they have stayed, their journey to Belgium, and, briefly, the reasons why they are seeking protection. This first interview serves as the basis for the second one, with the CGRS, during which the reasons why the person applied for asylum are examined. As noted above, at this stage the CGRS may also decide that the application is inadmissible or that a further examination is needed (this can happen at any point in the asylum procedure, even after the second interview).

The first interview is systematically conducted by videoconference, often, moreover, before a lawyer has been able to be assigned or has had time to visit their client. Lawyers will rarely have access to the transcript of this interview before the second one, as the publication deadline is 30 days. For families in detention houses, transport to the Immigration Office is arranged and this interview takes place in person. On the basis of this first interview, the Immigration Office and the CGRS decide whether the person has special procedural needs and may thus decide to exclude them from the border procedure.

The asylum interview with the CGRS, where the person must explain in detail why they fled and cannot return to their country, will, in the vast majority of cases, also take place by videoconference, except for families in detention houses. These videoconference interviews were introduced during the Covid-19 pandemic. At the time they were found unlawful, because the law did not provide that the CGRS could conduct such interviews online; they were legalised at the end of 2022.[94]

During the pandemic, videoconferences were justified by the need to limit physical contact. They are now justified for practical reasons: online interviews take less time and money. The practice remains however problematic. Among other things, one can name: the impersonal nature of these interviews; the emotional detachment of the protection officer; the difficulty of establishing the necessary relationship of trust; sound and image quality that undermines proper understanding and communication; interpretation difficulties; the impossibility of examining documents; and the complete unsuitability of such interviews for vulnerable people. That a videoconference interview should be available as an option is unquestionably positive; that it should become the rule is, in our view, debatable. In practice, lawyers can write to the CGRS to request an in-person interview on the basis of certain arguments (the person's vulnerability or the sensitivity of the subject, for example). Some detainees refuse to make this request, for fear of having their interview postponed.

The CGRS is supposed to take a decision within four weeks of receiving the asylum application.[95] A person will have limited time to prepare their case. We have indicated above why this can be problematic (less time to prepare the interview,

[94] Through an amendment to the Royal Decree of 11 July 2003 establishing the procedure before the Commissioner General for Refugees and Stateless Persons and its functioning.
[95] This time limit was set by the European legislator out of a concern not to leave applicants in often precarious conditions at the border. On the ambiguity left by the law as to when this time limit begins, the Constitutional Court specified that it begins not when the application is transmitted to the CGRS but, in line with European law, from the moment the application is lodged (C.C., judgment no. 23/2021 of 25 February 2021, point B.125.1).

difficulty gathering evidence and documents, medical ones in particular, from detention, and so on). When the four-week deadline passes without a CGRS decision, the applicant must be granted access to the territory. The person must then be released. In practice, however, the Immigration Office will take a new detention decision, holding the person no longer at the border but on the territory (an "Annex 39bis").[96] To be clear, the person or family will not be physically moved to another place of detention; only their legal status changes.[97]

The Immigration Office justifies these detention decisions by invoking a potential risk of absconding and that the elements regarding the asylum application still need to be determined. This risk of absconding is inferred from the fact that the person travelled with false documents or without the necessary documents.[98] In many cases, the personal interview with the CGRS has already taken place by the time this new decision is taken. That interview is, in essence, the very moment at which the elements of the protection application are determined. One may therefore question the lawfulness of a detention order resting on this ground.[99] According to Nansen, the reasons justifying these decisions are, moreover, stereotyped and repetitive.[100]

This mechanism creates a perverse dynamic: aware that the absence of a decision within the four-week deadline will systematically result in a new detention decision from the Immigration Office, the CGRS tends to let that deadline elapse, thereby avoiding having to give reasons for using the border procedure or to take a decision quickly. The four-week deadline, meant to protect applicants from prolonged detention, is thus circumvented in practice. In 2021, an asylum seeker spent on average 31.5 days at Caricole. In 2024, this figure had risen to 48 days.[101]

2.7 Removal via Chicago

When the CGRS grants a person international protection, they are released. In 2024, 165 people intercepted at the border hence left the Caricole centre with protection status.[102] To this number are added 63 people released with an ongoing asylum procedure. As a reminder, 326 people were held at Caricole as asylum seekers at the border. In addition, 93 people lodged a protection application once placed in the centre, though it is not possible to determine whether they had been intercepted

[96] Based on Article 74/6 of the Aliens Act. The explanatory memorandum of the bill introducing this article confirms this possibility (Chamber of Representatives, Bill amending the Act of 15 December 1980 and the Act of 12 January 2007, 22 June 2017, no. 54-2548/001, p. 151).
[97] In a judgment of April 2026, the CJEU did not consider this problematic. (CJEU, 16 April 2026, C-50/24).
[98] or else because the person travelled for reasons other than to seek protection.
[99] Nansen further argues that this detention does not pursue a legitimate aim (see Nansen, *Bijdrage 2021/3 - Tegen de systematische detentie van asielzoekers aan de grens*, 29 September 2021 p, 6-7, available (in Dutch) online).
[100] Nansen, *Note 2025-1 : Procédure de protection internationale et détention à la frontière*, 3 July 2025, p. 35-40, available (in French & Dutch) online.
[101] Source: annual reports of the Caricole transit centre.
[102] Of whom 14 with subsidiary protection status. Source: annual report of the Caricole transit centre.

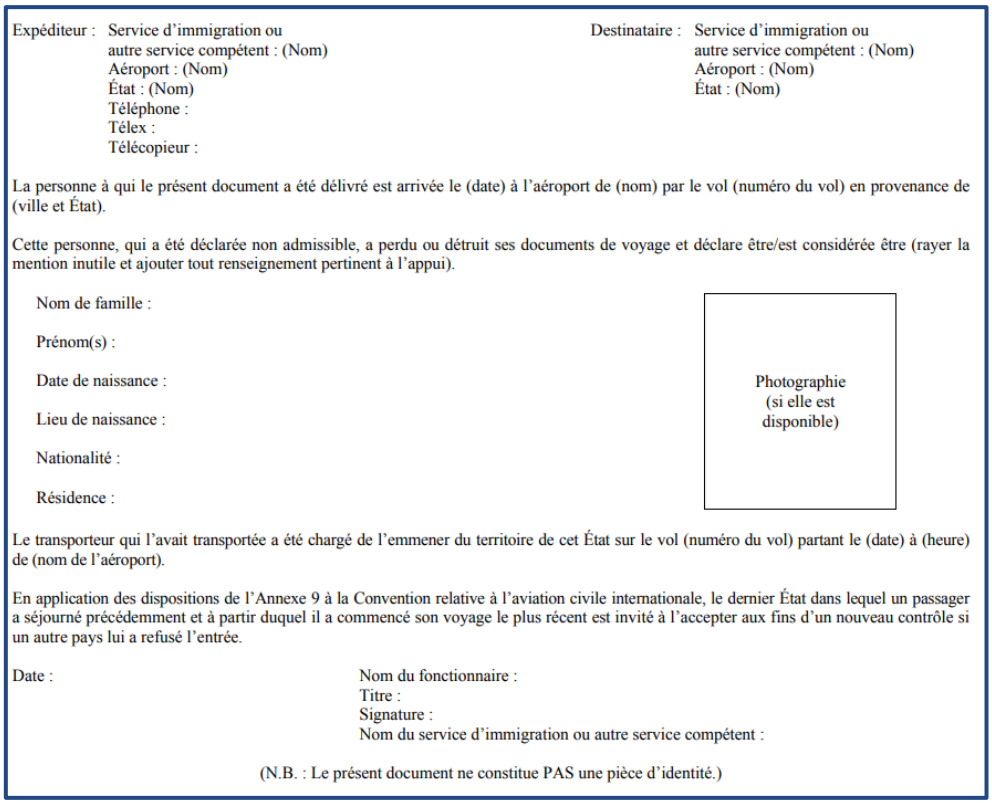
at the border or on the territory. A certain number of people therefore had their asylum application rejected in detention,[103] which triggered the opening of a return procedure against them.

For people intercepted at the border, this return takes the form of a refoulement or removal, that is, a return not to the country of origin, but to the country from which the person travelled. This is governed by the Chicago Convention on International Civil Aviation.[104]

As noted in the previous section, where the CGRS does not rule on an asylum application within four weeks, the person concerned is normally allowed to enter the territory.[105] In practice, however, the Immigration Office adopts a new detention decision, this time on the territory. When the asylum application is rejected, no order to leave the territory is issued; the initial removal measure is then used to ground the person's return.[106] Thus, once the asylum procedure is over, the person is, questionably, "brought back" to the border in order to be removed under the Chicago Convention. It is worth recalling that all of this takes place entirely from within the Caricole centre, which is legally treated as a place situated at the border. The applicant's material situation therefore never changes.

The Chicago Convention is the cornerstone of the system regulating air transport. It is supplemented by several annexes adopted by the International Civil Aviation Organization, which are binding.[107] Annex 9, on "facilitation", requires airlines to take charge of returning inadmissible passengers to their country of departure.[108] Where the person does not have the required entry documents, the airline may be required to bear the costs of detention and care until the return is organised.[109] Furthermore, a State will be required to accept "a person removed from a State where they were found inadmissible, if that person began their journey from its territory".[110] Unlike a person returned from within the territory, no laissez-passer or identity document is required in this context: it is enough to complete a form[111] such as the one below:

[103] The number of recognitions cannot simply be subtracted from the applications to obtain this figure, as some applications were not completed at the end of 2024.
[104] Of 7 December 1944.
[105] The Court of Cassation confirmed that the mere expiry of the time limit gives rise to the right of entry and that a formal decision authorising entry into the territory is not required (Cass., 17 October 2018, P.18.1005.F).
[106] According to Nansen, entry into the territory is in fact not real and effective (Nansen, *Note 2025-1 : Procédure de protection internationale et détention à la frontière*, 3 July 2025, p. 57-73, available in French & Dutch online)
[107] See, among others, judgment 191.296 of 12 March 2009 of the Council of State.
[108] Norm 5.11.
[109] Norm 5.9.
[110] Norm 5.12.
[111] See Appendix 9 of Annex 9.



Expéditeur : Service d'immigration ou autre service compétent : (Nom)
Aéroport : (Nom)
État : (Nom)
Téléphone :
Télex :
Télécopieur :

Destinataire : Service d'immigration ou autre service compétent : (Nom)
Aéroport : (Nom)
État : (Nom)

La personne à qui le présent document a été délivré est arrivée le (date) à l'aéroport de (nom) par le vol (numéro du vol) en provenance de (ville et État).

Cette personne, qui a été déclarée non admissible, a perdu ou détruit ses documents de voyage et déclare être/est considérée être (rayer la mention inutile et ajouter tout renseignement pertinent à l'appui).

Nom de famille :

Prénom(s) :

Date de naissance :

Lieu de naissance :

Nationalité :

Résidence :

Photographie (si elle est disponible)

Le transporteur qui l'avait transportée a été chargé de l'emmener du territoire de cet État sur le vol (numéro du vol) partant le (date) à (heure) de (nom de l'aéroport).

En application des dispositions de l'Annexe 9 à la Convention relative à l'aviation civile internationale, le dernier État dans lequel un passager a séjourné précédemment et à partir duquel il a commencé son voyage le plus récent est invité à l'accepter aux fins d'un nouveau contrôle si un autre pays lui a refusé l'entrée.

Date :

Nom du fonctionnaire :
Titre :
Signature :
Nom du service d'immigration ou autre service compétent :

(N.B. : Le présent document ne constitue PAS une pièce d'identité.)

In so far as the person is legally regarded as not having entered the territory, the Convention relieves Belgium of (almost) all responsibility towards them.

The interpretation and application of these provisions can, however, give rise to difficulties in practice. By way of illustration, in August 2024 Palestinian nationals who held protection in Greece but were travelling without documents were refused entry at Brussels Airport. Having transited through Albania, they were removed to that country. The Albanian authorities, however, did not regard them as "inadmissible passengers" but as "deported" persons. As a result, they were refused access to Albanian territory because they had no documents, and were sent back to Belgium. This kind of situation can lead to repeated back-and-forth journeys and prolonged periods of detention.

The "Chicago system" changes not only the rules on the documents required (no laissez-passer) and on the return destination (country of departure rather than country of origin), but also the way the return is carried out. It is not Belgian police officers who handle the forced return, but airline staff or agents of the destination State.[112] In other words, people acting outside the authority and control of the Belgian State.[113] For a long time now, actors such as the United Nations High Commissioner for Refugees and the Council of Europe's Commissioner for Human Rights have warned about the risks of fundamental-rights violations generated by

[112] Note that the Act of 12 May 2024 on the proactive return policy amending the Aliens Act also makes it possible for Frontex agents to be in charge of these returns. For an analysis, see Move, *Avis sur le projet de loi relatif à la politique de retour proactif*, 2024, available (in French & Dutch) online.
[113] It is the General Inspectorate that monitors forced returns (see Act of 15 May 2007 on the General Inspectorate and laying down various provisions relating to the status of certain members of the police services, and the Royal Decree of 20 July 2001 on the functioning and personnel of the General Inspectorate of the federal police and the local police).

the involvement of private actors in return policy.[114] But even where foreign State agents are involved, the risks of inhuman or degrading treatment during the return remain.

Article 3 of the European Convention on Human Rights requires States not to expose a person to inhuman or degrading treatment. This risk is not limited to the carrying out of the return; it also extends to the situation in the country of destination.

Within the asylum procedure, this risk is assessed by the CGRS. Where there is a risk of ill-treatment on return, international protection is normally granted. But the CGRS's assessment concerns only the country of origin, whereas a removal may take place to a different country (of travel or of transit). And yet the Immigration Office, in practice, takes the view that a person whose asylum application has been rejected runs no risk of ill-treatment on return. As a result, after their removal, some people may be exposed to risks such as prolonged arbitrary detention, ill-treatment at the hands of the authorities, or falling back into human-trafficking networks.

Some people are also excluded from refugee status yet still run a risk of ill-treatment on return. Others are refused protection because their nationality is not established, which prevents the CGRS from assessing the risk on return. Lastly, some people may suffer ill-treatment on return owing to medical vulnerabilities or humanitarian circumstances that fall outside the criteria for international protection.[115]

To reduce the risk of such violations upon return, the Immigration Office set up an "Article 3 Unit" in 2020, tasked with examining whether return decisions are compatible with Article 3 ECHR. This unit relies in particular on the statements the person provides as part of their right to be heard, on the situation in the country, and on other relevant elements of the administrative file. [116] Since 2018, a questionnaire has been completed by the police to gather information about a person's fear of return and their health state.[117] These elements are used to substantiate orders to leave the territory in light of Article 3. This questionnaire, however, is not used at the border. In any event, removal decisions never contain any arguments regarding Article 3. The Article 3 Unit's remit does not, in fact, extend to the situation of people detained at the border, which remains problematic.

An appeal can be lodged with the Council for Alien Law Litigation against the removal decision in order to prevent possible violations. The problem is that the removal decision is issued before the asylum application is even lodged. In practice, the deadline for lodging an appeal has therefore often passed by the time the asylum procedure concludes and the removal becomes enforceable. Moreover, the destination set out in the removal measure is the one from which the aircraft that

[114] See for example, following the death of a person, UNHCR, *Report of the Working Group on the use of mercenaries as a means of violating human rights*, 4 July 2011, available online or Council of Europe Commissioner for Human Rights, *Airlines are not immigration authorities*, 12 October 2010, available online.
[115] See Move, *Inéloignables et en détention,* May 2023, p. 11 et seq., available (in French) online.
[116] IO, *Annual report 2021*, 2022, p. 63, available (in French & Dutch) online.
[117] Myria, *La migration en chiffres et en droits – Chapitre 4 : Protection internationale*, 2018, p. 63, available (in French & Dutch) online.

brought the person to Belgium took off. Often this will be the transit destination, whereas the final removal will be to the initial place of departure.

It remains that a person who fears ill-treatment on return to the country from which they travelled can ask the Immigration Office to change the return destination. This option exists only if the person holds valid travel documents and a right of residence in that other country. The costs would then be borne by the person. This request is not provided for in any text, so it is up to the Immigration Office whether or not to act on it.

Let us end with the case of people admitted to the territory after four weeks because no decision was taken by the CGRS, in respect of whom the Immigration Office decides to prolong the detention. At this stage, only a new detention order is issued for these people. When the asylum claim concludes negatively, the Immigration Office will not issue an order to leave the territory, taking the view that the person has already been the subject of a return decision – the removal decision – which then becomes enforceable. In other words, even though the person was admitted to the territory, once their asylum application is rejected they will once again be regarded as being at the border, and the Chicago Convention will be applied. It will therefore be the airline that is responsible for removal to the country of departure. Yet it seems to us more correct that an order to leave the territory should be issued at this stage and that the person should be repatriated to their country of origin. That would, in any event, limit the risks of violations of Article 3 ECHR, already assessed by the CGRS.

Conclusion

In this stocktaking exercise we have sought to retrace the journey of a person arriving at the Belgian border to seek international protection. This has led us both to depict the police premises at Brussels Airport and to sketch the landscape of immigration detention in Belgium, as well as to address the technicalities surrounding the Immigration Office's removal decisions and the CGRS's decisions to use the border procedure.

We have seen that the authorities resort to detention systematically, using it as a genuine tool for regulating border surveillance. In this context, applying for asylum has little bearing on detention, despite the safeguards that EU law puts in place in theory. In practice, the various decisions taken by the authorities in respect of a person seeking protection – the decisions to detain, to remove, and to use the border procedure – are, on our analysis, open to criticism.

Finally, we have highlighted Belgium's singular use of the system established by the Chicago Convention on aviation. This system does indeed make returns easier, in that it lightens travel formalities and shifts responsibility for the return from the State to the airlines. At the same time, it raises problems as to compliance with the European Convention on Human Rights, which prohibits exposing a person to inhuman or degrading treatment.

Having described in detail the journey of a person seeking asylum at the Belgian border, we will be in a position to assess the real changes that the European Pact on Migration and Asylum will soon introduce. Whether or not practice at the border will be greatly altered is a question for a future report.

CONTACT

Nicolas Wéry

Advocacy Officer

nicolas@jrsbelgium.org

+32 (0)456 31 72