

## Immigration in Belgium

Belgium's emphasis on migration management according to labour market needs has led to restrictive measures against documented and undocumented migrant workers. The detention of undocumented migrants, as practised by Belgian authorities, violates migrants' human rights.

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### Vulnerability of migrant workers<sup>1</sup>

Since 1974, Belgian borders have been officially closed to labour migration. However, this closure has not been a reality. Labour migration has remained possible for highly qualified workers and low skilled workers also manage to enter irregularly or through other migration channels, such as asylum or marriage, which is also becoming more and more restrictive. Currently, like other European countries, Belgium has a large group of undocumented migrants who work mostly in undeclared jobs to survive. Many of these migrants are experiencing labour rights violations.

The labour of undocumented migrants is seen as something that needs to be eradicated, both because it is assumed to involve social fraud and because it is believed to attract more irregular migration. In Belgium, the law reserves the heaviest sanctions for employers who hire workers without residence and/or work permits. In the last decade, efforts to fight irregular migration and employment have been stepped up. Several police and inspection services work with the Foreigners' Office to conduct large-scale workplace raids.

While the accession of new countries to the European Union regularised large groups of undocumented workers, transitory measures still restrict access for new EU citizens to the labour market as paid workers. Because of the free movement of services, however, they can work freely as independent contractors. Restrictions for A8 Countries<sup>2</sup> were lifted on 1 May 2009, but those for Bulgarians and Romanians remain in place.

In 2008, in line with the debate at the European level, the discourse on labour migration shifted. From the very start of her term, Annemie Turtelboom, Minister of Migration (Flemish Liberals) indicated her preference for migration management according to labour market needs: "we should pick

and choose 'useful' immigrants, and restrict the arrival of migrants that depend on social benefits". The shift in the debate was inspired by the growing labour shortage, especially in the Flemish north and before the global economic crisis in the second half of 2008.

This shift also changed the nature of discussions about undocumented migrants. Not only did the Minister of Migration announce, in March 2008, the regularisation of people with jobs, she also pushed the condition of having a job, or at least of having the skills to find one, as a requirement for the regularisation of migrants for humanitarian reasons. Furthermore, migrants should, preferably, be restricted to jobs in professions experiencing labour shortages.

What is missing in these debates is a reflection on the impact of restrictive migration measures on

the position of both documented and undocumented workers in the workplace. Workplace raids mostly result in undocumented workers being deported, or simply disappearing, and labour rights violations often remain unaddressed. Although the law provides for heavy sanctions on employers, these sanctions are difficult to enforce, if they are ever imposed. Hiring undocumented workers remains highly attractive to unscrupulous employers. The EU Directive on sanctions for employers of undocumented workers, adopted in 2008, is unlikely to change this situation.

EU accession has not saved new EU workers from this precarious situation. Many of them are still part of the irregular labour market: Bulgarians, Romanians and Polish were among the main nationalities deported in recent years. Many others are

### BOX 6: Regularisation: Hope and despair

**Rix Depasse**  
**CIRE**

Following a complaint by the Forum Asile et Migrations, a platform of more than 120 organisations of which the CIRE is an active member, the Federal Ombudsman<sup>1</sup> produced a report<sup>2</sup> in November 2008 recommending that the Foreigners' Office ensure a clearer line of conduct on dealing with regularisation requests by persons of irregular stay.

The administration of the Foreigners' Office has the discretionary power to evaluate individually each regularisation request. However, the Ombudsman noted that, "in spite of what the administration contends, the current Directives are far from being clear". No text of legal value specifies the criteria for regularisation, in spite of the promise by the Minister of Immigration, Annemie Turtelboom, who declared in mid-2008 that she would implement a government agreement of March 2008 by providing precise criteria for the regularisation of a number of categories of undocumented immigrants.

According to the Ombudsman, this legal and political situation triggers "judicial uncertainty and a lack of legitimate trust" by these people. The content of the government agreement gave them the hope of regularisation, while, in reality, the administration proceeded with arrests, detentions and expulsions. Judicial uncertainty was also reflected in the divergent responses given to the various undocumented migrants: people who carried out hunger strikes often received different responses in terms of residence and work permits than others in a similar situation who did not participate in this kind of action. It is worth noting that the year 2008 was characterised by numerous protests by undocumented migrants; notably, the occupation of buildings, often leading to hunger strikes. Hundreds of people were involved in these protests, which took place in universities, churches, disused offices and even cranes.

The Ombudsman concluded that such extreme actions tend to be reinforced when the State's response is uncertain. However, this appeal was not seriously addressed until July 2009 when, after political reorganisation, a new Immigration Minister was assigned. The new political configuration has brought about new measures for regularisation that address the demands of the Federal Ombudsman for legislation, giving a clear line of conduct on regularisation.

<sup>1</sup> The Federal Ombudsman is an independent and impartial institution that examines complaints regarding the acts and functioning of Federal administrative authorities.

<sup>2</sup> This report is available from: <[www.federaalombudsman.be/fr/bibliotheque/recommandations/recommandations-officielles/2008/ro-0803](http://www.federaalombudsman.be/fr/bibliotheque/recommandations/recommandations-officielles/2008/ro-0803)>; the media release by CIRE is available from <[www.cire.irisnet.be/ressources/presse/2008-11-13.html](http://www.cire.irisnet.be/ressources/presse/2008-11-13.html)>.

<sup>1</sup> By Sabine Craenen, O.R.C.A

<sup>2</sup> The term A8 refers to the 8 Central and Eastern European countries that joined the EU in 2004.

misclassified as independent contractors, which leaves their actual employers with no obligation to respect their labour rights. In the debates on transitory measures, the labour conditions of the A8 workers are barely considered.

The announced opportunity for undocumented migrants to regularise their status has not yet materialised (as at July 2009)<sup>3</sup>. In the meantime, workers have been lured into 'buying' work contracts and working for companies offering them a 'declared job', or even more dubious propositions, all in the hope of enhancing their chances for regularisation.

Even legal status, if it remains precarious, does not end vulnerability. Regularised migrants needing a job to prolong their status are willing to tolerate any conditions. Work permits tied to one employer make workers dependent on that employer. Social organisations trying to assist these workers are facing a serious dilemma: to accept rights abuses or risk the migrant losing his/her status? If the authorities have not yet realised this, unions and social organisations are raising serious concerns about the current work permit system.

### Migrants and asylum seekers behind bars<sup>4</sup>

Since the end of the nineties, detention has been broadly used by Belgian authorities to prevent illegal entry or to implement orders of removal. Several categories of foreigners may be subject to detention: those who are turned back at (air)ports, apply for asylum in transit zones or are staying illegally in Belgium. Some asylum seekers also risk being locked up, namely, applicants that Belgium wants to transfer to another European country or whose application is considered 'abusive'.

In 2007, 7,506 foreigners were detained in 5 detention centres, less than in previous years when the number rose above 8,000. This fall may be due to a rise in the average duration of detention: from 26.9 days in 2006 to 29.4 in 2007 (Office des Etrangers, 2008, pp.116–119). The maximum legal detention in Belgium is five months. However, every time a foreigner opposes removal, the detention order is considered anew, lengthening the detention period.

### More asylum seekers in detention

In 2006, new legislation extended the scope of detention for asylum seekers. As a result, more people in search of international protection have been detained. In 2007 and 2008, around 1,600 asylum seekers were detained; in 2004, this figure was less than 1,200<sup>5</sup>.

Specifically targeted for detention are asylum applicants to be transferred to another EU country under the Dublin II Regulation, which aims to determine the State responsible for the examination of an asylum application (European Council, 2003). Since June 2007, an asylum applicant may be detained, not only after the requested State has agreed to take him/her back, but also from the date of the application if Belgium intends to request another State to declare itself responsible for the examination. Detention in such cases can be lengthy: often over two months. In 2008, 921 persons were detained under the 'Dublin scheme' and 1,019 decisions taken to transfer asylum applicants to other Member States.

One of the 'Dublin countries' to which Belgium removes a lot of asylum applicants is Greece. These asylum seekers are usually Iraqis and Afghans who enter the EU after crossing the Aegean Sea from Turkey. In Greece, asylum seekers encounter many problems: detention and ill treatment by the police, no access to decent reception facilities, and slow and unfair asylum procedures. This situation was highlighted by NGOs and, in February 2009, by the Council of the Europe Commissioner for Human Rights. In 2008, the United Nations High Commissioner for Refugees (UNHCR) publicly asked EU Member States not to send asylum applicants back to Greece (UNHCR, 2008). However, Belgium continues to detain asylum applicants to be transferred to Greece and has even re-established identity control at Brussels airport on the flights from Athens in order to lock up potential asylum seekers who passed through Greece as quickly as possible.

### Detention of minors

Since the introduction of strict limitations on the detention of unaccompanied minors in 2007<sup>6</sup>, the detention of families with children has changed drastically. In 2007, 188 families with 398 children were detained; in 2008, these figures dropped to 137 families with 270 children (Office des Etrangers, 2008, p.119; Centre pour l'égalité des chances et la lutte contre le racisme, 2009, p.131). The main reason for this was the launch in October 2008 of an alternative scheme run by the Federal Immigration Service. Under this scheme, families that Belgium intends to remove due to their irregular stay or their transfer to another 'Dublin country' are not detained

(CBAR). Reports of these meetings are available at: [www.cbar-bchv.be/reunions.htm](http://www.cbar-bchv.be/reunions.htm). For 2004, the figures come from a report published in 2006 by several NGOs visiting detention centres: Centres fermés pour étrangers: Etat des lieux, p.13, Brussels, available at <[www.jrsbelgium.org/images/stories/docs/french/etat-des-lieux-centres-fermes.pdf](http://www.jrsbelgium.org/images/stories/docs/french/etat-des-lieux-centres-fermes.pdf)>.

6 Before June 2007, unaccompanied minors were detained to prevent their irregular entry into Belgium. They are now hosted in 'Observation and Orientation Centres', except those whose minority is disputed by the authorities and who may be detained while their age is determined (maximum six days).

in the first instance, but are placed in 'return houses' where they retain (conditional) freedom of movement. Such families are assigned a coach whose job is to motivate them to abide by the removal order and to facilitate their removal. It is too early to assess the operation of this new model, although NGOs fear that it may fail due to lack of trust between the family and the coach, because the coach is not independent and as the only option is 'removal'. However, this scheme is a significant improvement on detention, which has a strong negative impact on the mental health of children. Unfortunately, families who apply for asylum at Brussels airport do not fall within the scheme and remain in detention.

### Detention conditions and regulations

The administrative detention of foreigners is regulated by the Royal Decree of 2 August 2002, which defines detainees' rights and obligations. On 10 December 2008, the Council of State cancelled some provisions related to visits by family, access to information and isolation in case of suicide risk. Interestingly, the Council of State noted that, in many respects, administratively detained foreigners have fewer rights than mainstream prisoners. Moreover, the Council of State has stipulated that it is not admissible that the centres where foreigners prevented from entering Belgium are detained awaiting return, the so-called INAD ('inadmissible') centres, are excluded from the scope of the Royal Decree, and stipulated that they should receive their specific regulation (Conseil d'Etat, 2008).

Some aspects of detention conditions are very harsh, namely, the lack of privacy linked to the obligation to live in a group, the strict timetable, and also the disciplinary regime (punishments, day-long isolation). NGOs have noted the disproportionate use of restraint by detention centre staff to control aggressive detainees. Particularly worrying is the injection of sedatives without consent. Detainees can complain, but the efficacy and transparency of the complaint system have been judged insufficient by the Centre pour l'égalité des chances et la lutte contre le racisme (2008).

Between September 2007 and November 2008, four deaths occurred in detention centres in Belgium, among them two suicides; between 2001 and 2006, there was only one. This sharp increase raises questions about the detention conditions and the appropriateness of medical care in detention centres.

### Legal assistance in detention

Although the Royal Decree gives foreigners in detention the right to free legal assistance, many obstacles prevent detainees from effectively exercising this right. Such obstacles include lack of timely and adequate information about rights, procedures and appeals; problems communicating with

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3 In July, after political reorganisation a new Minister of Immigration was assigned and the government announced a regularisation campaign which is to take place between 15 September and 15 December 2009.

4 Written in May 2009 by Christophe Renders, JRS.

5 These figures are not official. For 2007 and 2008, they were compiled from information given by the Federal Immigration Service (Office des Etrangers) during meetings organised by the Comité Belge d'Aide aux Réfugiés

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lawyers; and a lack of motivation and skill on the part of the lawyers appointed to defend detainees. These obstacles are magnified by the expeditious nature of procedures in detention centres: e.g., in detention centres an appeal regarding asylum must be lodged within 15 days, instead of the normal 30 days. These accelerated procedures make it more stressful for the lawyer and client, compounding other obstacles.

These and other findings were made public in November 2008 in a report by NGOs visiting detention centres (CIRE, 2008).

To challenge their detention, foreigners may appeal to the *Chambre du Conseil*, the tribunal responsible for deciding about remanding people in custody. However, this judicial review is not automatic, as in criminal affairs, and control by the tribunal is limited. The judge may only assess the lawfulness of the detention, not whether or not the detention is proportionate and adequate according to the specific circumstances of the case. These limitations explain why only a small proportion of detention orders, 16 per cent, are challenged. ■

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in family structure and the stresses imposed by living 'between' two countries and cultures can also lead to children experiencing learning difficulties in school, and, in some cases, drug and alcohol abuse (Brzuskiwicz, 2004), although other factors may also play a part.

### BOX 9: Siemiatycze chain migration to Brussels

Since the late 1980s, the small town of Siemiatycze of 16,000 inhabitants, located 140 km north-east of Warsaw has had a particular economic, social and cultural relationship with Brussels. It is difficult to remember who initiated the chain migration, but the town mayor estimates that between 2,000 and 3,000 thousand people from the town are working in Brussels. Interestingly, the local newspaper publishes daily weather reports for Brussels. Until 1 May 2009 and the opening of the Belgian labour market to new EU members, the vast majority of migrants worked illegally in construction and housekeeping or as nannies. The majority of migrants have been investing money in Siemiatycze. The successful ones, locally called 'Brusselites', own expensive villas on the lake shore, wear fashionable hairdos and clothes, and go to trendy pubs and restaurants, atypical of other towns in the region. Since this migration flow began, the number of divorces in Siemiatycze has risen significantly, and there has been an increase in drug and alcohol abuse among youth from non-traditional family structures. Nevertheless, a vast majority of school students surveyed consider Brussels as an obvious, although often temporary, option for their future (Brzuskiwicz, 2004).

The decision to migrate is often based on accounts given by family or friends. These personal links create rather curious patterns, resulting in chain migrations, like between the small town of Gostynin and Antwerp, Skarysko Kamienna and Rome, Gorzów Wielkopolski and Alsace, and the small village of Stare Juchy and Iceland (Gazeta Wyborcza, 4 August 2004).

The global financial crisis has affected Polish migration. With unemployment rising in West European countries, East-West migration flows are shrinking. An ILO report (2009) indicates that, in the United Kingdom, the number of work applications from nationals of new EU member states, and particularly Poland, are shrinking. The number of applications decreased from 53,000 for a three-month period in 2007 to 29,000 for the same period in 2008.

Some Polish trade unions recently called for restrictions towards foreign workers from the Ukraine and Belarus to make room for potential Polish returnees from Western European countries.

However, a massive return of Polish migrants has not been registered (ILO, 2009). According to a report by the Migration Department of the Ministry of Labour and Social Policy (2009, p.63), there has been no massive return, perhaps because migrants are trying to make use of every option available to them in their country of residency, such as accepting lower pay, taking on jobs below their qualification level, and unemployment and family subsidies. An additional alternative is migration to a country where the effects of the crisis are less severe. ■

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