

## Detention of migrant children:

### Belgian government yet again scolded by the Council of State (Conseil d'Etat)

Brussels, 20th June 2016, joint press release

The Belgian Council of State ruled in favour of UNICEF Belgium, Defence for Children International Belgium, the League for Human Rights, Jesuit Refugee Service-Belgium, Brussels Youth Rights Service, Vluchtelingenwerk Vlaanderen, CIRE [Coordination et initiatives pour réfugiés et étrangers] and the Minors in exile Platform when it clearly pointed out in its decision that the Belgian Office for Foreigners may under no circumstances hold in detention centres families with minors.

In particular, the administrative high court annulled a number of provisions from a royal decision because they allowed detention of single members of families with minors, holding this person hostage in order to facilitate the application of removal orders to the whole family, and because they allowed holding whole families in detention centres while making no mention of how such detention centres should be suited to the needs of children.

The eight associations who lodged this appeal warmly welcome this formal reminder and call for the Belgian State to cease once and for all any form of detention of children based on their migrant status or their resident status. This practice gravely contravenes with fundamental rights of children and causes them considerable harm. Their rights are enshrined in the Convention for the rights of the child to which all European countries are parties. The best interest of the children must be the first and foremost consideration in any decision applicable to families with minors, regardless of their migrant status.

### Children's rights shall not be sacrificed in detention centres

Since 2011, the law provides that holding children in detention centres is forbidden. Therefore, illegal resident families with minors are in principle not held in detention centres anymore. However, exceptions remain but they require in any case that the detention facility is « suited to the needs of families with minors ». Already in 2013, The Belgian Constitutional Court pointed out exactly that when it considered that detention of children is illegal if it takes place in a facility that is not suited for children and it is the duty of the government to take care that facilities where children might be held are suited to their needs.

Therefore, families may live under specific conditions in private housing or in [« returnee houses »], these being open facilities. The conditions that families must meet are stipulated in an agreement concluded between a family and the Office for Foreigners. A family may be detained for a limited time only to the extent that it does not comply with the provisions of the agreement and under condition that other strong but less constraining measures cannot be applied effectively.

On 17th September 2014, the federal government put forth to the King the text of a decision setting the content of such agreements, including the obligation for the family to collaborate towards the planning of its return to its country of origin. This text also foresees sanctions for not complying with the agreement but it must be noted that these sanctions do not provide for the case where the State is the party not complying with the agreement. The royal decision provides that in case of non-compliance either the whole family or a single family member may be held in a detention centre.

In its analysis of the royal decision of 17th September 2014, the Council of State made **two fundamental criticisms** :

1. It considers that holding a single family member (oftentimes the father) in a detention centre causes **a disproportionate restriction to the right to respect for family life** as guaranteed by the European Convention for Human Rights and by the Constitution. It adds that « it does not see how the measure would be relevant in ensuring the effective removal of families unless one is to imagine, what is obviously inconceivable, that the Office for Foreigners would consider with this provision holding a family member « hostage » to guarantee that the rest of the family will comply with the removal order so that the family member held is subsequently released. »
2. It considers that by limiting itself to providing that families with minors are held in detention centres **without requiring that such detention centres are suited to family needs**, the government does not comply with the requirements pointed out by the Constitutional Court.

**Following logic, the Belgian Council of State annulled the provisions of this decision that allow detaining families with minors or single family member. Consequently, migrant children or members of their families may not be held in detention centres, as the State has so far thankfully refrained from claiming that detention centres are suited to children.**

### **Belgium may not transgress the rights of migrant children**

For years and under pressure from international authorities – prominently the Committee for Children’s Rights and the European Court for Human Rights – the Belgian State was brought to drastically limit cases in which foreign families with minors may be held in detention centres.

Despite numerous recommendations but also being severely sanctioned by Courts, the Belgian State is persisting in its will to organize the detention of families with minors in facilities that have proven to be in no way suited to meet their fundamental rights.

The fact that laws applicable to foreigners were made stricter in 2011 and again by this 2014 decision are fresh evidence of this will.

Therefore, it is very much welcome that the Council of State has underlined such fundamental principles as the right to respect for family life (which forbids the separation family members without duly justified and proportionate reasons) or the right for children to live in a place suited to their needs.

Of course, the Belgian government could try to adopt a new decision by arguing that detention centres are suited to the needs of children. That would be an extremely difficult case to make, taking into account the amount of evidence showing how detention is a highly traumatic experience for children, the consequences of which are often permanent and damaging for the children’s personal development.

The signatory associations will remain vigilant as regards the absolute safeguard of the fundamental rights of children, including illegal residents, without discrimination or unjustified restriction.

**UNICEF Belgium**

**Defence for Children International - Belgium**

**League for Human Rights**

**Jesuit Refugee Service-Belgium**

**Brussels Youth Rights Service**

**Vluchtelingenwerk Vlaanderen**

**Le CIRE (Coordination et initiatives for réfugiés and foreigners)**

**Minors in exile Platform**

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