

Brussels

Tuesday, 22.11.2022

Press Release

The European Court of Human Rights reminds the Belgian State of its duty to provide reception facilities for asylum seekers

FEANTSA together with its Belgian members and partners welcome the decisions of the European Court of Human Rights (ECHR) to adopt an interim measure in the case of asylum seekers who were left to sleep rough in Brussels for several nights in a row. We call on the Belgian authorities to immediately implement the decisions of the Court and to take urgent action by offering all asylum seekers dignified reception conditions, a right guaranteed under EU asylum law.

On November 15, the ECHR Chamber (seven judges) decided to indicate an interim measure (Rule 39 of the Rules of the Court) in the case of Msallem and 147 Others v. Belgiumⁱ (application no. 48987/22 and 147 others)ⁱⁱ. Previously, on the 31st of October the Court issued a similar decision in the case of Camara v. Belgium (application no. 49255/22). In both decisions, the Court decided to order the Belgian State to comply with the orders made by the Brussels Labour Court. The decision points that the Belgian authorities should provide each asylum seeker with accommodation and material assistance to meet their basic needs for the duration of the proceedings before the Court.

All applicants involved had previously applied to the Belgian authorities for international protection and have not been assigned accommodation on account of the alleged saturation of the network for receiving asylum-seekers in Belgium. The applicants were left to sleep rough, on the street in front of the reception centres in Brussels for nights in a row. Additionally to sleeping rough, in the case of Camara v. Belgium the applicant mentions that he suffered from hunger and health problems, as well as the scabies epidemic among homeless asylum seekers in Brussels, a situation exacerbated by poor sanitation.

The applicants have all obtained a final domestic decision from the Brussels Labour Court ordering the Federal Agency for the Reception of Asylum-Seekers (Fedasil) to provide them with accommodation and material assistance. These orders, despite final and subject to penalties in case of non-compliance, have not been executed. Consequently, after exhausting all the remedies available at national level, the applicants turned to the ECHR.

The Court drew the parties' attention to the principle that failure by a Contracting State to comply with the measures under Rule 39 could entail a violation of Article 34 of the Convention. Requests for interim measures are dealt with as a matter of priority. The Court grants such requests only on an exceptional basis when the applicants would otherwise face a real risk of irreversible harm.ⁱⁱⁱ

Background information:

In Brussels, for over a year now, asylum seekers, among them minors and more recently families with children (one as young as six months old)^{iv} are left sleeping rough nights in a row in front of the asylum reception centres. Underage migrants have slept in cardboard tents on the street, which the mayor of Brussels has ordered to be destroyed^v without offering an alternative.

Since early 2022, Fedasil, the Belgian Federal Asylum Agency, has been convicted more than 4,500 times for failing to provide shelter in its reception centres.^{vi} FEDASIL, supported by civil society NGOs in Brussels have taken to the street to demonstrate against the lack of support from the authorities and to ask for immediate action to increase reception capacity and address the issue of having overworked and insufficient staff.^{vii}

Several emergency measures were discussed by authorities, among which the current Secretary of State for Asylum and Migration Nicole De Moor has mentioned removing working asylum seekers from the reception centres.^{viii} Hosting people in hotel rooms^{ix} was also discussed together with opening new reception spaces by December,^x which remains challenging to achieve because of a lack of staff at FEDASIL and difficulties with recruiting. More structural and medium/long term strategy is still lacking, as concerns over the health situation of asylum seekers facing homelessness are growing.^{xi} However, homelessness among asylum seekers continues in Brussels and has started to affect Ukrainian refugees as well, as was reported by FEANTSA member SAMUSOCIAL as of 18 of November.^{xii}

MEPs have written to the European Commission (EC) to enquire on the measures the EC plans to take in order to ensure that Member States respect the minimum standards for reception conditions, as stipulated by the Reception Conditions Directive 2013/33/EU.^{xiii} On 18 November the EC answered the written question essentially stating that they are following closely the situation *“With a view of supporting the Member States whose reception systems are under particular pressure, the European Union Agency for Asylum (EUAA) has operations in Belgium, the Netherlands and Spain, which focus mainly on reception support”*.^{xiv}

Secretary of State for Asylum and Migration Nicole de Moor has reacted to the decision of the Court from 31 October by emphasizing that she does not see the Court’s decision as a condemnation of the Belgian State, but as an “urgent request to ensure the reception of asylum seekers” and continues to say that authorities are taking measures to ensure a sufficient number of reception places.^{xv} The European Commission representatives refrain from any comments as of now, mentioning only that they are in contact with the Belgian authorities on this issue.^{xvi}

Signatories:

FEANTSA

AMA - Fédération des maisons d’accueil et des services d’aide aux sans-abri

Bruss’Help

New Samusocial asbl/vsw

Vluchtelingenwerk Vlaanderen

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- ⁱ <https://www.echr.caselaw.com/en/echr-decisions/the-echr-issues-a-temporary-measure-obliging-the-belgian-state-to-provide-accommodation-and-material-assistance-to-homeless-asylum-seekers/>
- ⁱⁱ <https://www.echr.caselaw.com/en/echr-decisions/asylum-seeker-was-left-on-the-street-without-shelter-and-cw-without-material-assistance-to-meet-his-basic-needs-application-of-interim-measure-in-belgium-to-enforce-a-court-order/>
- ⁱⁱⁱ https://www.echr.coe.int/documents/pd_interim_measures_intro_eng.pdf
- ^{iv} <https://www.brusselstimes.com/belgium/308204/reception-crisis-in-belgium-families-with-children-now-being-left-to-sleep-on-streets>
- ^v <https://www.brusselstimes.com/brussels/309608/brussels-mayor-orders-cardboard-tents-for-underage-migrants-destroyed-again>
- ^{vi} <https://www.aa.com.tr/en/europe/belgium-s-asylum-agency-convicted-over-4-500-times-in-2022-for-failing-to-provide-shelter/2705520>
- ^{vii} <https://www.hln.be/brussel/personeel-fedasil-legt-uur-lang-het-werk-neer-uit-protest-tegen-opvangcrisis-te-veel-mensen-belanden-op-sstraat-en-nu-zijn-er-zelfs-minderjarigen-bij~a2d1b308/>
- ^{viii} <https://www.rtbf.be/article/asile-les-demandeurs-dasile-qui-travaillent-doivent-quitter-le-reseau-daccueil-plaide-la-secretaire-detat-de-moor-11084934>
- ^{ix} <https://www.brusselstimes.com/belgium/306569/hosting-asylum-seekers-in-hotel-rooms-is-not-the-answer-says-de-croo>
- ^x <https://www.brusselstimes.com/310347/defence-ministry-pledges-500-new-reception-places-for-asylum-seekers>
- ^{xi} https://www.tijd.be/politiek-economie/belgie-federaal/Groeiende-zorgen-om-gezondheid-asielzoekers-door-tekort-aan-opvang/10425489?utm_medium=twitter&utm_source=dvr.it
- ^{xii} <https://www.brusselstimes.com/brussels/323627/belgiums-reception-crisis-ukrainian-refugees-now-also-sleeping-rough>
- ^{xiii} https://www.europarl.europa.eu/doceo/document/E-9-2022-002976_EN.html
- ^{xiv} https://www.europarl.europa.eu/doceo/document/E-9-2022-002976-ASW_EN.pdf
- ^{xv} <https://www.7sur7.be/belgique/la-belgique-condamnee-par-la-cedh-pour-defaut-dhebergement-dun-demandeur-dasile-guineen~af3c38b3/?referrer=https%3A%2F%2Fwww.google.com%2F>
- ^{xvi} <https://www.youtube.com/watch?v=ruZPMzt0orc>