Detention - Belgium

Overview

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Relevant EU legislation

Belgium is bound by the recast Reception Conditions Directive, the recast Asylum Procedures Directive and the Dublin III Regulation and has transposed their provisions through the Law of 15 December 1980 on the entry, residence, establishment and removal of foreign nationals | Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Aliens Law.

National legislation

- Dublin III Regulation: Law of 15 December 1980 on the entry, residence, establishment and removal of foreign nationals | Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Aliens Law (specifically in Articles 51/5 and 51/5/1).
- Reception Conditions Directive: Law of 21 November 2017 amending the Aliens Law.
- Asylum Procedures Directive: Law of 21 November 2017 amending the Aliens Law and Law of 17 December 2017 amending the Aliens Law.

Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority
Detention decision	Immigration Office | Office des Etrangers | Dienst Vreemdelingenzaken	Not applicable

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Area	National authority/ stakeholder	Assistance to competent authority
Administration and management of detention facilities	Immigration Office | Office des Etrangers | Dienst Vreemdelingenzaken	Not applicable
Information provision in detention	Immigration Office | Office des Etrangers | Dienst Vreemdelingenzaken	Not applicable
Interpretation services in detention	Immigration Office | Office des Etrangers | Dienst Vreemdelingenzaken	Not applicable
Access to the procedure and provision of asylum information in detention	Immigration Office | Office des Etrangers | Dienst Vreemdelingenzaken	Not applicable
Detention for the Dublin procedure	Immigration Office | Office des Etrangers | Dienst Vreemdelingenzaken	Not applicable

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Area	National authority/ stakeholder	Assistance to competent authority
Processing of asylum applications of applicants who are in detention	Immigration Office | Office des Etrangers | Dienst Vreemdelingenzaken; Office of the Commissioner General for Refugees and Stateless Persons | Commissariat Général aux Réfugiés et aux Apatrides | Commissariaat-generaal voor de Vluchtelingen en de Staatlozen; Council for Alien Law Litigation | Conseil du Contentieux des Etrangers | Raad voor Vreemdelingenbetwistingen	Not applicable
Legal assistance and representation in detention	The law provides for access to free legal assistance for the judicial review of the detention decision. Free legal assistance is provided for in the Judicial Code under the same conditions as for other asylum-related procedures.	Not applicable
Review of detention	Council Chamber of the Criminal Court	Not applicable

Grounds for detention during the asylum procedure

Grounds for detention in national law

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A. Detention in the context of identification or verification of identity

Applicants for international protection within the Belgian territory (Aliens Law, Article 74/6(1)): Applicants for international protection within the Belgian territory are in principle not detained. However, when it proves necessary on the basis of an individual assessment, if other less coercive alternative measures cannot be applied effectively, applicants within the Belgian territory can be detained:

i) to determine or verify identity or nationality;

ii) to determine elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of the applicant absconding;

iii) when he/she is subject to a return procedure in order to prepare the return or carry out the removal process. This must be substantiated on the basis of objective criteria, including that the person already had the opportunity to access the asylum procedure and that there are reasonable grounds to believe that he/she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

iv) when the protection of national security or public order so requires.

B. Detention to determine elements on which the application for international protection is based, in particular where there is a risk of absconding

The risk of absconding must be actual and real. It is established after an individual assessment and is based on one or more objective criteria, taking into account the specific circumstances of each case.

Aliens Law, Article 1(2) lists the following as objective criteria for determining the risk of absconding:

- The person has not applied for a residence permit following an irregular entry or during an illegal stay or has not made an asylum application within the 8-day deadline set out by law;
- The person has provided false or misleading information or false or falsified documents or has resorted to fraud or other illegal means in the context of an asylum procedure, a residence procedure or an expulsion or removal

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procedure;
- The person does not cooperate or has not cooperated with the authorities competent for implementing or overseeing the provisions of the law;
- The person has declared the intention not to comply or has already resisted compliance with any of the following measures: transfer decision, refoulement or removal order, entry ban, liberty-restrictive measures;
- The person is subject to an entry ban in Belgium or in another Member State;
- The person has lodged new asylum application or a new application for residence immediately after receiving a decision ending residence or a measure ordering expulsion or removal;
- When asked, the person has concealed the fact that he/she was fingerprinted in another Dublin state following an asylum application;
- The person has lodged several asylum applications or applications for residence in Belgium or in one or several other Member States, which have been rejected;
- When asked, the person has concealed the fact of lodging a prior asylum application in another Dublin state;
- The person has declared – or it can be deduced from his or her files – that he/she has come to Belgium for other purposes, than those stated in the asylum application or in an application for residence;
- Has been fined for lodging a manifestly abusive appeal before CALL.

C. Detention in the context of a procedure to decide on the applicant's right to enter the territory

Applicants for international protection at the border (Aliens Law, Articles 74/5(1) and (2)): Foreigners who attempt to enter the Belgian territory without meeting the entry conditions (Schengen Borders Code, Article 6) and who make an application for international protection at the border may be detained at the border, awaiting permission to enter the territory or *refoulement*, when it proves necessary. The Aliens Law, Article 74/5(1) clarifies that applicants cannot be detained for the sole reason that they made an application for international protection.

D. Detention in the context of a return procedure

All grounds mentioned under the Return Directive, Article 15 have been transposed to national law. Aliens Law, Articles 7, 27 and 29.

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Former applicants waiting for a removal and third-country nationals staying illegally: Aliens Law, Article 7 underlines that they can only be detained for the time strictly necessary to carry out the return decision, if no other less coercive measures can be applied, in particular when there is a risk of absconding or when the foreign national tries to frustrate or delay the preparation for a return or the removal process.

E. Detention in the context of national security and public order

Under the Aliens Law, Article 74/6 (1) (4) applicants within the Belgian territory can be detained when protection of national security or public order so requires. These are mainly individuals who have either been convicted by the courts for serious acts or who have been reported for their involvement in acts that undermine national security or public order.

F. Detention for the purpose of a Dublin transfer

Dublin cases (Aliens Law, Articles 51/5, 51/5/1): Applicants and third-country nationals going through the Dublin procedure can be detained during the time necessary to determine the Member State responsible for examining the application for international protection and during the time necessary to carry out the transfer to the responsible Member State. Detention in these cases is only possible, on the basis of an individual assessment, when there is a significant risk of absconding and detention is proportional and other less coercive alternative measures cannot be applied effectively. No one may be detained for the sole reason of undergoing the Dublin procedure.

Less coercive measures (alternatives to detention)

Aliens Law, Articles 74/6 relate to the need for less coercive alternative measures to be considered before imposing detention. These alternatives are defined in Aliens Law, Articles 74/9 and 74/24-74/28. These include:

- Individual case management, as alternative to detention: Since 1 June 2021, a new Department on alternatives to detention has been created within the Immigration Office. The focus is on individual interviews by coaches. The target group consists of individuals and families, where vulnerabilities will be taken into account (e.g. minors, sick people, etc.). Individual Case Management (ICAM) coaches work close to migrants in regional offices. This proximity aims to increase the accessibility of the procedure. Through a

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proactive follow-up policy, the aim is to offer respectful, uniform and intensive coaching as soon as an order to leave the territory is issued. The main challenges include motivating migrants to come to the appointment, exploring the field, developing cooperation with the partners involved, and proper training of ICAM coaches.

- Obligation to reside at a designated place of residence:

Applicants in the Dublin procedure can be accommodated at specific facilities, so-called Dublin places.

Families with minor children are placed in facilities (open family units) adapted to the needs of families. The families stay in these houses during the asylum procedure and are assisted by a coach. In practice, these families have a certain liberty of movement under the control of a coach. Children are able to go to school and adults can go, on the condition that at least one adult is present in the facility.

The detention of unaccompanied minors is explicitly prohibited by law. Since the entry into force of the Reception Act of 12 January 2007, unaccompanied minors are in principle no longer placed in detention centres. When an unaccompanied minor is refused entry to the country at the border, they are assigned to an Observation and Orientation Centre (OOC) for unaccompanied minors. These centres are not closed centres, but they are secured and fall under the authority of Fedasil instead of the Immigration Office. A Royal Decree of 9 April 2007 regulates the functioning of these centres. Specific measures are taken to protect and accompany the minors during their stay (a maximum of 15 days, which can be extended once). The OOC is legally considered to be a specific place at the border, which means that the unaccompanied minor is not considered to have formally entered the territory. Within 15 calendar days the Immigration Office must find a durable solution for the minor. Otherwise access to the territory must be formally granted. When an unaccompanied minor is intercepted on the territory, the Ministry of Justice – Guardian Service is contacted to take the necessary measures. Specific measures are taken to protect and accompany children during their stay in the OOC. Their contacts are subjected to special surveillance, and during the first 7 days of their stay, they are not allowed to have any contact other than with their lawyer and their guardian. The modalities of the visits, outside activities, telephone conversation and correspondence are strictly determined in the house rules.

- Presentation or deposit of identity or travel documents to the competent authority;

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- Obligation to report at specific times to the police services or to the Immigration Office.

Application for international protection and processing while in detention/impact on the asylum procedure

The procedure for a removal is suspended, but applicants are kept in detention during the asylum procedure. Applications from international protection are prioritised by the CGRS. The applicant is informed of the first instance decision by the return officer at the centre. The applicant is immediately released if international protection is granted.

As with all persons held in the centres, an applicant may be released for medical reasons or at the end of the legal detention period, among other reasons. In this case, they will receive all the information they need to continue the procedure.

Whilst in detention, applicants have access to information, interpretation and legal counselling related to the asylum procedure, covering first and second instance determination.

Procedural safeguards

Access to information and interpretation

Detention is always ordered based on a formal decision, motivated in fact and law. The decision is issued by the Immigration Office. This decision states the reasons for detention and the possibility of appeal. Upon arrival at the centre, the person concerned receives further information about the detention decision in a language they understand and an information brochure with 10 thematic sheets. This brochure is available in 22 languages. A list of NGOs is also included in this brochure.

Legal assistance and representation

The law provides for access to free legal assistance for the judicial review of the detention decision. Free legal assistance is provided for in the Judicial Code under the same conditions as for other asylum-related procedures. Every person maintained in a closed centre has the possibility to submit a request for release

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to the Advisory Chamber and appeal to the Indictment Division against the decision to continue detention.

Lawyers have access to their client in detention, along with representatives from UNHCR, Children's Rights Commissioner, the National Centre for Equal Rights and supranational human rights institutions. NGOs need to get authorisation from the Immigration Office.

Length of detention

Applicants for international protection within the Belgian territory: Pending a decision, the law provides a maximum of a 2-month detention period for applicants for international protection, which can be prolonged up to 6 months when protection of public order or national security requires. This detention period is suspended for the time used to appeal the asylum decision for 10 or 5 calendar days. If after 2 months (or 6 months if the applicant is detained when protection of national security or public order requires) an order to leave has not been given to the applicant or the enforcement of an order to leave is still suspended, the applicant must be released from detention (Aliens Law, Articles 52/3 and 74/6).

Applicants for international protection at the border: Aliens Law, Article 74/5 includes two situations:

- A foreigner is not permitted on the territory and does not apply for international protection: The person can be detained for 2 months in order to refoul them. This detention can be extended up to 5 months (if conditions are met).
- A foreigner is not permitted on the territory and applies for international protection: The border procedure starts and the CGRS has 4 weeks to make a decision. If the final decision is reached within this timeframe, the person can be refouled. The Immigration Office needs to respect the 2-month maximum detention period (and the possibility for extension up to 5 months). However, if the decision is not made within the timeframe of 4 weeks, the foreigner is admitted to the territory and the procedure will continue on the territory.

Dublin cases: For detainees who are in the Dublin procedure, the detention period can last:

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- 6 weeks during the Dublin inquiry;
- 6 weeks in view of a Dublin transfer. The period of detention is interrupted if the applicant files a suspension appeal against the transfer decision (Appendix 26quater). A new period of 6 weeks starts as soon as the appeal no longer has a suspensive effect. The applicant can no longer be detained on this ground if the transfer does not take place within the 6-week period.

Former applicants: Immigration detention linked to a return decision can be 2 months when there is a risk of absconding or the third country national frustrates or delays the preparation of the return or removal process. The detention can be extended with period of 2 months for maximum 5 months, if the following three criteria all apply: i) the necessary steps to return the foreign national have been taken within 7 working days following the beginning of the detention; ii) they are continued with due care and iii) the effective removal is still possible within a reasonable period of time. The detention can be extended for maximum of 8 months for reasons of public order or national security.

Judicial review of detention

Detained applicants receive the detention decision in writing, including its reasons and the possibility to lodge an appeal.

The detainee can lodge an appeal against the detention with the Council Chamber of the Criminal Court every month. The Council Chamber must decide within 5 working days, and if this time limit is not respected, the applicant for international protection must be released from detention. An appeal can be lodged against the decision of the Council Chamber before the Indictment Chamber at the Court of Appeal (Chambre des mises en accusation | Kamer van Inbeschuldigingstelling) within 24 hours. The Indictment Chamber must decide within 15 days. Against this final decision, a purely judicial appeal can be introduced at the Court of Cassation.

After the applicant has spent 4 months in detention, only the competent minister can take a decision to extend detention for another month. The minister must refer the matter to the Council Chamber within 5 working days. The applicant must be released from detention if this time limit is not respected.

The judicial review of detention remains restrictive in scope. Only the legality of the detention can be examined, not the appropriateness or proportionality of it.

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Specific conditions relating to detention

Conditions of detention

Applicants have access to open-air spaces. In some centres they are allowed outdoor access during the day whenever they want. In other centres this is strictly regulated. A minimum of 2 hours of exercise outside is provided.

The Royal Decree of 2 August 2002 regarding the regime and operational measures in the immigration detention centres details visits and access to external communications. Applicants are entitled to visits from their direct relatives and family members for at least 1 hour a day. Intimate visits from a person with whom the applicant has a proven durable relation are allowed twice a month for 2 hours.

Lawyers have access to their client in detention, along with representatives from UNHCR, the Children's Rights Commissioner, the national Centre for Equal Rights and supranational human rights institutions. NGOs need permission from the Immigration Office. Members of parliament and of the judicial and executive powers can visit specific detainees if they are identified beforehand and if they can indicate to the managing director of the centre that such a visit is part of the execution of their office.

Residents have access to the Internet for a minimum of 2 hours per week. Residents can write and receive unlimited letters. Residents can make unlimited phone calls at their own expense.

The social service of the centre organises sport, cultural and recreational activities. Every centre has a library.

No school courses are available because there are no minors in detention (children until the age of 18, while residing in a family unit (ATD) must be enrolled in a school in the neighbourhood).

With regards to freedom of movement, detainees cannot leave the facility, except for certain medical reasons or to appear before the court. The freedom of movement depends on the infrastructure of the detention facility. Free movement is possible within the centre. Exceptions to this group regime must be justified

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The law provides for access to free legal assistance for the judicial review of the detention decision. Free legal assistance is provided for in the Judicial Code under the same conditions as for other asylum-related procedures.

Applicants can have access to interpretation and translation services in all kinds of languages (telephone interpretation) and information leaflets and documentation about the procedures and the detention centres are provided in different languages.

Employees of the detention centre can request assistance from translators to communicate with residents.

Access to healthcare (medical, psychological and psychiatric) is provided and every centre has its own medical service with independent doctors. A resident can be transferred to a specialised medical centre, if necessary.

Detention of applicants with special needs

Legislative overview

Royal Decree of 2 August 2002 establishing the system and operating rules applicable to places located on Belgian territory, managed by the Immigration Office, where a foreigner is detained, placed at the disposal of the Government or maintained, in application of the provisions cited in Article 74/8, § 1 , of the law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners | Arrêté royal du 2 aout 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, § 1er, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers

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