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Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives



Executive Summary

Alternative policy approaches to RR: regularisation and other recognised statuses

Case Study: Belgium

Authors: Isabelle Carles, Magdalena Grevesse, Victor Hennenon

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This document provides a concise summary of the key findings from the WP2 National Report in Belgium about the *alternative policy approaches to Returns and Readmissions: regularisation and other recognised statuses*. For detailed analysis, evidence, and comprehensive insights, please refer to the full report. The information in this summary should not be considered complete or fully representative of the entire study.

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Rights of non-deportable third country nationals in Belgium

Although the Belgian authorities recognise that a certain number of third-country nationals (TCNs) cannot be returned for various reasons (technical or medical), they are granted few rights and no residence permit. The Belgian legislator transposed the provisions of the Return Directive concerning this category of persons into the Belgian Aliens Act of 1980 without a clear regulatory framework.

TCNs who cannot be returned find themselves in a very precarious situation. They can apply for a suspension of the deportation order (order to leave the territory), but this measure is only intended to be temporary. In practice, people whose deportation has been suspended only receive an order to leave the territory for a very short period. At the end of this period, the person must apply again for an extension. This situation does not give any right to stabilisation of residence status, as it is not accompanied by a residence permit, while people can remain in this situation of non-status for a long time for various reasons. An analysis of the suspension of orders to leave the territory granted in 2021 by the Immigration Office reveals that these requests concern a very small number of people. Only 272 people had submitted such a request this year. Of these, only around one hundred were granted a suspension. The low number of applications suggests that this procedure is not well known among non-returnable TCNs and that information about this possibility is not widely disseminated.

Number of extensions of order to leave the country (2021)

Reason Extension BGV	2021 ⁽¹⁵²⁾	
	Request	Extension
Children attending school	6	2
Illness	33	16
Pregnancy	6	4
Birth	16	14
IOM	87	80
Legal cohabitation	8	7
Humanitarian reasons	1	0
Others	115	49
Request persons Open Return Places	-	1

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Source: EMN

The fact that so few people fall into the category of non-returnable TCNs argues for the recognition of a specific status and right of residence. The government has paved the way by proposing in its Government Agreement 2020 to grant a residence status to stateless persons. However, the other categories of non-returnable TCNs should also be granted a right of residence, as several organisations, such as Myria and Belgian civil society organisations have been demanding for several years.

Moreover, it appears that the relevant authorities are attempting to avoid deciding regarding the residence status of TCNS by deflecting responsibility to other parties. To illustrate, the entity tasked with adjudicating asylum applications (CGRS) has asserted that it is not the appropriate authority to address the issue of the residence of individuals who are not eligible for removal. This is on the grounds that its mandate is limited to the recognition of international or subsidiary protection. Conversely, the Immigration Office has asserted that it bears responsibility for the organisation of returns, including forced returns, yet does not extend this purview to encompass the residence status of non-returnable TCNS.

For TCNs, the only way to obtain a more stable right of residence is to apply for regularisation on medical or humanitarian grounds. However, for the duration of the procedure, which can sometimes be very long, people remain in a precarious situation and have no right to work as they are not granted a residence permit. Only applicants for regularisation on medical grounds, whose application has been deemed admissible, are granted a temporary residence permit for the duration of the procedure, but again without any possibility of access to the labour market.

In recent years, the number of positive responses to regularisation applications has fallen significantly. In the event of a negative decision, the possibility of an appeal may be available. However, this will require financial and cultural capital, which the migrant may lack. Furthermore, the appeal available cannot be considered an effective remedy. The Court cannot examine the substance of the decision, but merely checks whether the Immigration Office has made an error of law which leads to a procedural ping-pong between the judicial authorities and the Immigration Service that can last several months or even several years. Even if the answer is positive, the path to a permanent residence permit is long, as the Immigration Office mainly issues temporary residence permits. Only after a five-year renewal of the temporary permit, following an annual check by the authorities, can the applicant claim permanent residence in Belgium.

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Non-returnable TCNs are condemned to a provisional status, with varying degrees of protection depending on the type of procedure, without being able to enjoy full autonomy and integration in the host country. The case law developed by the employment tribunals, while to be commended, is nevertheless part of this tendency to grant social assistance only on a provisional basis to certain non-returnable TCNs. The same applies to the extension of the material assistance granted to certain categories of persons whose applications for international protection have been rejected but who cannot be temporarily removed. In addition, access to urgent medical assistance, which is granted to undocumented TCNs, is becoming increasingly difficult. This aid is only accessible after a complex and cumbersome administrative procedure, which varies from one PCSW to another. Coverage by the PCSW is only effective after a social investigation and a meeting with the PCSW monthly committee, which in practice slows down effective access to care.

Promising practices

Initiatives have recently been developed to offer alternatives to the detention of irregular migrants. Some initiatives are developed by civil society, while others are led by federal institutions such Fedasil and Immigration Office. In most of the initiatives, however, government officials and NGO staff, as well as cities are working together.

Alternatives to detention run by public institutions

The Small -Scale shelter and orientation projects are run operationally by civil society organisations and managed by city administrations. of the major Belgian cities such as Ghent, Antwerp, Bruges and Brussels. The aim is to support homeless migrants in very precarious situations by offering them accommodation for an indefinite period. The condition is that they cooperate with social workers in finding a lasting solution, with a priority, if possible, to the right of residence.

The second main initiative is the Alternatives to detention (ATD) department tun by the Immigration Office. The role of the Individual Case Management coaches is to examine the administrative situation of the TCN. Coaches, including possibilities for legal residence. If it appears that legal residence is not an option, the ICAM coach will suggest possible options for voluntary return and provide the necessary information. If a TCN refuses to cooperate, he will be informed about the possibility of forced return.

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If these solutions are attractive in that they adopt a vision of migration policy geared towards alternatives to return. However, they are not without danger because of the diversity of the players involved in these projects. In particular, the presence of agents from the IO may give rise to fears that migrants' data will be collected, leading to their detention and expulsion if they are unable to stay in Belgium.

Practices from the civil society

The "Plan Together" project has been run by JSR since 2020 and is a pilot project offering an alternative to detention. Its aim is to help people who have been living irregularly in Belgium for a long time to find lasting solutions. One of the aims of this pilot project is to shift the approach of the immigration authorities, which focus exclusively on increasing the "return rates" of undocumented migrants, towards promoting sustainable solutions. Several actors can be involved in the process, promoting contact between families and a lawyer and liaising with other service providers to support the family's needs.

Many other initiatives have been developed in Belgium to support undocumented migrants. Some initiatives developed predominantly by civil society and undocumented migrants' organisations are regarded as promising insofar as they endeavour to enhance access to a more stable situation and facilitate access to housing

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