

The individual Case Management in Belgium: An alternative to detention?

In its government agreement of 2020, the Belgian government undertook to implement a pro-active policy aimed at making the return of undocumented third-country nationals (TCNs) more effective. The general philosophy of the proposals was based on the principle of voluntary return, if possible, and forced return, if necessary. These proposals took concrete form with the recent adoption by the Belgian House of Representatives of a bill entitled "For a pro-active return policy".¹

This law contains provisions on alternatives to detention. These include Individual Case Management (ICAM), a practice developed by the 'Alternatives to Detention' department recently created within the 'Office des Etrangers', the public body responsible for applying Belgian government policy on the management of migratory flows.²

The mission of the Alternatives to detention (ATD) department is to put in place and apply alternative measures to detention for undocumented TCNs. People who have received an order to leave the country are invited to meet an ICAM coach from the ATD department to find, according to the terminology used by the *Office des étrangers*, sustainable prospects for their situation, taking into account all aspects of the person's legal and administrative residence situation.³

¹ On 2 May 2024, the bill was put to the vote in the House of Representatives, receiving 75 votes in favour, 44 against and 6 abstentions.

² The Aliens Office is the largest Directorate-General of the Federal Public Service Home Affairs (FPS Home Affairs).

³ See the information brochure on the scheme available to third-country nationals on the website of the Office des Etrangers, <https://dofi.ibz.be/sites/default/files/2024-07/Brochure%20ICAM%20FR.pdf>

By adopting this practice, Belgium is honouring the political commitments it made when it signed the UN Global Compact on Migration.⁴ This initiative also provides an opportunity to effectively implement European law in this area, which clearly stipulates that administrative detention of illegal residents may only be used as a measure of last resort.⁵

Begun in 2021 as a pilot project, the ICAM scheme has been enshrined in law since May 2024. This is to be welcomed insofar as it provides greater legal certainty and provides a more structured framework for a practice that had previously been freely developed by the Aliens Office. However, the question is whether the "ICAM" practice really represents an alternative to detention, or whether it is just another tool for controlling undocumented migrants.

The capacity of the *Office des Etrangers* to develop a practice anchored in civil society and based on a model that places the immigrant at the centre of the system must be critically examined. Applied to migration policy implementation, the Individual Case Management is defined as "a structured social work approach which implies personal support throughout a person's immigration procedure, with the aim to work towards case resolution".⁶

The main aim of this method is to find a way for migrants to get out of their irregular residence situation, by actively involving them in the procedures associated with their stay. For many years, NGOs have supported this concept of alternatives to detention, based on respect for the fundamental rights of migrants and their involvement in the procedures. By presuming that,

⁴ United Nations General Assembly, 2018, United Nations Global Compact on Migration.

⁵ Since the entry into force of the European Union's Return Directive, Member States "are obliged to assess the effectiveness of less coercive measures before resorting to detention" (art. 15).

⁶ See International Detention Coalition, PICUM & European Alternatives to Detention Network, March 2020, Implementing Case Management Based Alternatives To Detention In Europe ; International Detention Coalition, 2015, There are Alternatives: A Handbook for Preventing Immigration Detention, https://picum.org/wp-content/uploads/2020/04/Concept-Paper-on-Case-Management_EN.pdf

within a certain framework, migrants will respect administrative decisions concerning their stay, it reverses the dominant logic of current migration policy.⁷

The Belgian authorities, who wish to draw inspiration from this model, are nevertheless struggling to present the scheme clearly, oscillating between the offer of “tailor-made accompaniment and support in the search for a sustainable future”⁸ and return coaching, described as an “intensive accompaniment path in the context of a return procedure”, the aim of which is “to intensively monitor the foreign national in order to prevent him or her from remaining in Belgium illegally”.⁹ The inclusion of this measure in a law entitled “For a pro-active return policy” suggests that it is more about organising the migrant’s return than finding an alternative solution. In the law of May 2024, alternatives to detention are described as any action that encourages an illegal resident to comply with the return decision, without resorting to coercion and detention.¹⁰

In addition, CIRE, a Belgian coalition of 30 NGOs¹¹, is concerned about the future implementation of the obligation to cooperate in one’s own return, which is also enshrined in the law. The new law includes an obligation for TCNs who have been ordered to leave the country to cooperate in the return process, in particular by adhering to the intensive and individualised support program.

⁷ Cf.: CIRE, Les alternatives à la détention 1, Le cadre politique et juridique, 2024, p. 5.

⁸ It is presented in these terms on the website of the Office des Etrangers in a brochure designed to inform illegal residents. See <https://dofi.ibz.be/sites/default/files/2024-07/Brochure%20ICAM%20FR.pdf> , consulted on 3 December 2024.

⁹ Law of 2 May 2024, Commentary on the articles, p.22

¹⁰ Law of 2 May 2024, Commentary on the Articles, p. 19.

¹¹ CIRE is a pluralist coordinating body bringing together 30 organisations - social services providing support for asylum seekers, trade unions, continuing education services and international organisations. Its aim is to reflect on and take concerted action on issues relating to the reception of asylum seekers, the recognition of refugees, the fight against their confinement, the reception of foreigners and migration policies as a whole.

However, the advantage of this system is that the administrative situation of undocumented TCNs is clarified by an organisation that centralises all the information concerning the TCNs. The principle is to analyse the situation with the TCN, who is invited to take part in the support process, and to check whether a lasting solution to the residence problem can be found. If no such decision can be envisaged, the ICAM officer then informs the person of the possibilities for voluntary return. The 2023 report from the Office des Etrangers shows that of the 612 sustainable prospects proposed by ICAM officers, the possibility of a stay still accounts for 214 cases. This solution was mainly possible for the families monitored, since 162 of the 224 families monitored obtained the right to stay, through regularisation, family reunification or a work permit, among other things.¹² In the case of the individual processes, the proportion of those granted the right to stay was lower, with only 44 of the 131 processed being granted a right to stay. The second most important future prospect was voluntary return (283 cases) and autonomous return (107).

The introduction of Individual Case Managements represents a significant step forward in the treatment of TCNs who have been ordered to leave the country and are therefore at risk of deportation. Rather than being detained, these individuals now can seek a lasting stay in Belgium in some cases. Nonetheless, questions remain regarding the true scope of the system. In 2023, 7,651 invitations were sent out and 3,994 interviews were held,¹³ which seems relatively low in view of the number of return decisions - most of which are orders to leave the country - issued annually in Belgium.¹⁴ Furthermore, uncertainty persists regarding the fate of TCNs for whom no sustainable solution on Belgian territory has been identified. Although the ICAM system is a real alternative to detention for TCNs during their stay in the

¹² See the Office des Etrangers' 2023 Activity Report, p. 70.

¹³ Office des Étrangers, Rapport d'activité 2023, p. 63.

¹⁴ According to statistics published by the Office des étrangers, 36,364 return decisions were issued in 2023, involving 3,357 people. 23,873 of these were first decisions. https://5195.f2w.bosa.be/sites/default/files/2024-01/STAT_OOT-BGV_FR_2023_12_0.pdf

system, the fact remains that on leaving the system these individuals are in the same position as before their entry into the ICAM system. This is because they will always be subject to a deportation order, leaving them exposed to the prospect of forced return to their country of origin.

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