

The Belgian situation: the non-execution of judicial decisions by the State of Belgium on asylum matters*

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In Belgium, since 2020, State authorities such as the Federal Agency for the Reception of Asylum Seekers and the Secretariat of State for Asylum and Migration have failed to execute thousands of court decisions imposing them to grant material assistance to asylum seekers and refugees pending the review of their application. Invested with the matter, the European Court of Human Rights highlighted the systemic deficiency of the Belgian authorities in failing to execute enforceable court decisions aimed at protecting human dignity. The case of Belgium shows how a crisis of reception can quickly pave the way to a crisis of the rule of law.

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1. Introduction

Ladies and gentlemen, Dear colleagues,

First of all, I am very honored to be here with you to speak on behalf of the *Association Syndicale des Magistrats* (ASM) on a subject that we have concerned about in recent years, namely the non-execution of judicial decisions by the State of Belgium on asylum matters.

For those who do not know us, the ASM is a non-profit organization, founded in the 1970's, composed of Belgian judges and members of the public prosecution. Our organization is a founding member of MEDEL.

Our organization aims to promote the proper functioning of justice and the rule of law, in Belgium and abroad, the protection and defense of human rights and fundamental freedoms, in particular the right to a fair trial and access to the law and individual rights.

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I will focus my presentation on the difficulties in Belgium with regard to the reception of asylum seekers.

I will articulate my presentation as follows:

- first, I will briefly the institutions taking part in an asylum application; in other words: who is who? and who does what?
- secondly, and that will be the heart of my presentation, I will explain the impact of the so-called ‘*reception crisis*’ or ‘*asylum crisis*’ on the Belgian courts and the rule of law in Belgium.

2. Who is Who? And Who does what?

In Belgium, an asylum seeker first has to file his application with an administration, the Immigration Office (*Office des étrangers*). If deemed admissible, the application is examined by another administrative authority, the “office of the commissioner general for refugees and stateless persons” (*Commissariat général aux réfugiés et aux apatrides* – CGRA), which decides to grant asylum or not.

In case of refusal, an appeal is open before an administrative court, the “The Council for alien law litigation” (*Conseil du Contentieux des étrangers* – CCE).

In accordance with EU-law, during the exam of his application, the applicant has a right to reception which ensures a dignified standard of living.

He must be granted material support (accommodation, medical assistance, legal aid, etc).

Under domestic law, those rights are granted to him by the Law of 12 January 2007 on the reception conditions of applicants for international protection and certain other categories of aliens (the ‘*reception Law*’).

This law transposes into Belgian law the (Reception condition) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

The law has created an agency that has legal personality, namely the Federal Agency for the Reception of Asylum Seekers, or in short FEDASIL. This agency is under the responsibility of the Secretary of State for Asylum and Migration.

FEDASIL, together with its partners¹, has the obligation to provide material reception conditions as soon as the asylum application is submitted. This material assistance is normally due for the entire duration of the asylum procedure.

3. The Crisis

¹ Public Centre for Social Action (CPAS) and various non-governmental organisations (NGOs).

In recent years, with the increase in the number of asylum seekers, FEDASIL has no longer been able to fulfil its obligations.²

For example, since January 2022, applicants for which no material assistance is available on the date of their asylum application have to register on an online waiting list and must live on the streets during the duration of their procedure³.

In October 2022, women and children were also forced to sleep outside⁴.

The non-profit sector, which is very active on the field, makes up as it can for the shortcomings of the State, but cannot compensate all the latter's failings, especially regarding accommodation.

4. Disputes, litigation, procedures

This situation, which is no less than a humanitarian disaster, forced the asylum seekers to turn to the courts to compel FEDASIL to fulfil its obligations with regard to material assistance.

This led to an overwhelming number of legal disputes.

Here are a few examples:

- 1) Individual urgent actions before the (French speaking) Labour Court of Brussels (*Tribunal du travail francophone de Bruxelles*).

The purpose of these actions is to compel FEDASIL to provide the material assistance required by law and international legislation, possibly with penalties.

There are two types of urgent actions:

- a) an adversarial urgent procedure (« *en référé* »)
- b) a unilateral procedure of extreme urgency (unilateral, i.e. in the absence of Fedasil before the President of the Court)

- 2) An ordinary procedure on the merits before the Labour Court.

These actions seek recognition of the responsibility of FEDASIL and of the State of Belgium and to obtain damages.

² After the previous “crisis” of 2015, the Belgian government had hastily shut down reception centers which diminished the number of available beds.

³ www.fedasil.be/fr/liste-dattente-ca.

⁴ www.rtb.be/article/des-familles-et-des-enfants-contraints-de-dormir-en-rue-la-crise-de-l-accueil-en-belgique-franchit-un-nouveau-cap-11085098.

The (French speaking) Labour Court of Brussels thus had to deal with an extremely important number of cases.

The few numbers that I will give you illustrate the extent that these cases have taken. This increase in the number of cases destabilizes and drowns this court.

Thus:

The number of extreme urgency proceedings before the (French speaking) Labour Court of Brussels between 2014 and 2019 (5 years) , was of 361 appeals.

For the years 2020 to 2023, i.e. a shorter period of 3 years, the total reached 799.

In 2019, the (French speaking) Labour Court of Brussels had received 49 unilateral procedure requests in extreme urgency. The number of cases was therefore quite small.

In 2020, this number rose to 1.249 and even reached 6.706 requests in 2022 and 2.651 in 2023.

In May 2022, that court published a press release on its website to alert on this situation⁵. The press release specifies that in such procedures, FEDASIL does not challenge the application and merely invokes the saturation of its reception network.

Last year, FEDASIL was fined by the court for abuse of defense. It should be noted that the sentencing of a party to such a fine is extremely rare in Belgian judicial law.

The Labour Court of Appeal of Brussels notes:

“FEDASIL commits an obvious procedural abuse by obliging applicants for international protection to take legal action while the holding of a trial was clearly not justified on any serious or reasonable grounds, as the individual right claimed in court is not disputed. The gravity of the conduct and the proportionality of the fine must be assessed taking into account aggravating circumstances, such as the particular vulnerability of the applicants and the disruption of the public service of justice caused by the number of similar cases and the urgency in which they are to be dealt with”⁶.

In 90% of cases, the asylum seeker obtains a decision ordering FEDASIL to fulfil its obligations.

No appeal is lodged against these judicial decisions, which become enforceable, but remain in many cases without any follow-up.

Since 2020, thousands of court decisions, mostly taken in extreme urgency (on unilateral request) have remained without execution by the state.

⁵ www.tribunaux-rechtbanken.be/fr/tribunal-du-travail-francophone-de-bruxelles/news/902.

⁶ Labour Court of Appeal of Brussels, 25.05.2023, *Revue de Jurisprudence de Liège, Mons et Bruxelles*, n°2023/37, p. 1710.

As a result of the non-execution of the decisions, hundreds of applicants then turned to the European Court of Human Rights.

In view of the gravity of the situation, the European Court of Human Rights has issued hundreds of interim measures requiring the State of Belgium to execute the decisions of the (French speaking) Labour Court of Brussels for each applicant, and to provide them with accommodation and material assistance to meet their basic needs for the duration of the proceedings before the Court.

On 18 July 2023, in the case *Camara against Belgium*, the European Court of Human Rights delivered a very strong judgment against the State of Belgium.

It notes that the Belgian authorities have shown a *systemic deficiency* by failing to execute enforceable court decisions aimed at protecting human dignity⁷.

The Court further notes that that systemic failure has had a significant impact on the functioning of a national court and on the functioning of the Court itself.

It found a violation of Article 6 of the European Convention on Human Rights, because “*the Belgian authorities did not ‘simply’ delay but rather manifested a characterised refusal to comply with the injunctions of the domestic court which infringed the very substance of the right protected by Article 6 § 1 of the Convention*”⁸.

One might think that such a sentence would change the situation.

However, the feedback we had from the activities of the Labour Court of Brussels at the beginning of this year predict that the situation will hardly improve this year.

Failure to comply with the reception obligation has also led to other procedures.

3) Several actions of collective interest for interim measures and on the merits before ordinary civil courts.

These proceedings, introduced by the French and German-speaking Bar, resulted in decisions recognizing the responsibility of the State of Belgium and FEDASIL for the systemic violation of European Union law in the reception of asylum seekers.

These decisions refused the ground of *force majeure* invoked by the State of Belgium.

The State of Belgium and FEDASIL were sentenced to put on end to these systemic violation on pain of periodic penalty payment.

In 2023, the French-speaking Civil Court of Brussels (4th Chamber) has sentenced:

⁷ European Court of Human Rights, 18.7.2023, *Camara v. Belgium*, 49255/22, n° 118, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-225884%22%5D%7D>.

⁸ *Ibidem*, n° 121.

“the State of Belgium and the Federal Agency for the Reception of Asylum Seekers jointly and severally liable to put an end to the systemic violation of EU law on reception and to take the necessary measures to enable, without delay, all applicants for international protection to receive material assistance in accordance with Article 6 of the Law of 12 January 2007 on the reception of asylum seekers and certain other categories of aliens; on pain of a penalty payment of EUR 10,000 for each day, from the date of service of the judgment, where at least one person wishing to implement his right to reception will have been refused the benefit of that material aid while he was entitled to it, with a maximum of EUR 2,000,000”⁹.

4) Claim of periodic penalty payments before the judge of seizure (*juge des saisies*).

As with the decisions of the French-speaking Labour Court of Brussels, the decisions rendered following actions of collective interest before ordinary civil courts have not been enforced either.

The periodic penalty payments reached an amount of several million euros¹⁰.

These cases went to the judge of seizure – the judge of the enforcement of civil judgments – to enforce some of the periodic penalty payments.

For one of these decisions, the authorized periodic penalty payments reached an amount of 2.9 million euros¹¹.

However, it should be mentioned that these amounts are difficult to recover since most of the State’s assets cannot be seized under Belgian law¹².

5) The justices of the peace (*Juge de paix*) – application for expulsion without title or right.

The procedures that take place before the justices of the peace are also worth mentioning. They are local judges competent in matters of lease and occupation of buildings without title or right.

The lack of material assistance provided by the State gave rise to occupations without title or right.

In one of these cases, the justice of the peace sentenced the State and FEDASIL to pay the bills for water and electricity consumption¹³.

⁹ French-speaking Civil Court of Brussels, 4th Chamber, 29.06.2023, *Revue de Jurisprudence de Liège, Mons et Bruxelles*, n° 2023/37, p. 1720.

¹⁰ www.rtb.be/article/crise-de-laccueil-les-astreintes-imposees-a-fedasil-grimpent-a-2785-millions-deuros-11160757.

¹¹ www.brusselstimes.com/907275/ngos-allowed-to-seize-e2-9-million-from-fedasil-for-failure-to-shelter-asylum-seekers.

¹² www.justice-en-ligne.be/Le-recouvrement-force-des-1771.

¹³ www.lesoir.be/532546/article/2023-08-22/squat-rue-de-la-loi-la-justice-condamne-letat-belge-et-fedasil-qui-feront-appel.

6) Council of State.

To be completely complete, I should also mention that last September, the Council of State, the highest administrative court in Belgium, has annulled an illegal order by the Secretary of State for Asylum and Migration.

The Secretary of State had decided to refuse the right to material assistance to single men who applied for asylum or international protection.

The Council of State found this instruction to be illegal as the benefit of material assistance applies to all asylum seekers according to the law:

“Article 3 of the above-mentioned Law of 12 January 2007 provides that ‘everyone’ seeking asylum is entitled to a reception to enable him or her to lead a life in conformity accordance with human dignity, that ‘reception’ means material aid granted in accordance with ‘this Law or social assistance granted by public social action centres in accordance with the Act of 8 July 1976 on public social action centres’. Article 6(1) of the same Law provides that the benefit of material assistance shall apply to ‘any’ asylum seeker from the time of submission of his application for asylum and shall have effect throughout the asylum procedure.

The law of 12 January 2007 does not allow the opposing party to deny the right to reception to a category of asylum seekers, constituted by single men, in order to resolve the difficulties with which it indicates to be confronted”¹⁴.

Immediately after that decision, the Secretary of State for Asylum and Migration announced on X (ex-Twitter) that her policies would not change notwithstanding the ruling by the Council of State¹⁵.

5. Not a crisis of reception, but a crisis of the rule of law

As you will have understood, the situation in Belgium is such that we may dare to speak of a crisis of the rule of law, because the State refrains from respecting the law and the judicial decisions that apply the law¹⁶.

¹⁴ Council of State of Belgium, 15.09.2023, n° 257.300, www.raadvst-consetat.be/arr.php?nr=257300.

¹⁵ <https://www.lesoir.be/536994/article/2023-09-13/malgre-larret-du-conseil-detat-nicole-de-moor-maintient-sa-position-de-ne-pas>.

¹⁶ M. Doutrepoint, « *Quand on veut, on peut* ». *La feinte impuissance du gouvernement face à la « crise » de l'accueil : analyse d'une énième condamnation de l'État belge restée lettre morte*, *Revue de Jurisprudence de Liège, Mons et Bruxelles*, n° 2023/37, p. 1731 ; H. Crokart and V. Van Der Plancke, « *Faire respecter le droit d'asile?: des avocat.e.s contre l'Exécutif renégat* », *Revue Politique*, juin 2023, www.revuepolitique.be/faire-respecter-le-droit-dasile-des-avocat%2%b7es-contre-lexecutif-renegat/; O. Moreno, « *Les critères fixant l'état de droit retenus par la Commission de Venise : la Belgique est dans le collimateur !* », *Justine*, 2023/63, p.15, <https://asm-be.be/wp-content/uploads/2023/03/Justine-63-Mars-2023-compresse.pdf>.

This has led to many outraged reactions in the academic world¹⁷ and the associative world¹⁸ – the *Association Syndicale des Magistrats* (ASM) has reacted many times on this subject, especially on the Day of Justice that takes place every year on 20th March¹⁹.

The bars together with several organizations even organized a symbolic funeral for the rule of law²⁰.

Even the workers of FEDASIL have expressed their discontent in the press, complaining that this persistent situation has an impact on their working conditions. They also feel ashamed that they are not given the means to do their job properly at the service of asylum seekers²¹.

Yet another consequence of this dramatic situation can be found in judicial decisions from the Netherlands that refuse to apply the principle of mutual trust in asylum matters, considering that Belgium does not respect the rule of law.

On 12 December 2023, the Court of The Hague refused to apply the principle of inter-State mutual trust regarding Belgium because of the lack of reception places and the lack of an effective remedy, following the failure to comply with the judicial decisions issued by the Labour Court, for unmarried, adult and non-vulnerable male asylum seekers²².

The European Commission’s report on the rule of law in Europe devotes a few lines to this. The report talks about “concerns”²³, which is a far too meek way to describe the situation.

We may conclude with a non-optimistic thought: Belgium has gone very far in undermining the fundamental rights of asylum seekers. Should we fear the next regression?

¹⁷ www.lesoir.be/538243/article/2023-09-20/migration-quallons-nous-pouvoir-dire-nos-etudiants

¹⁸ www.myria.be/fr/evolutions/crise-de-laccueil-8-institutions-de-defense-des-droits-humains-invitent-leurope-et-les-nations-unies-a-examiner-les-violations-de-droits-humains.

¹⁹ www.youtube.com/watch?v=ubL7ZLPpOWY&t=1538s; <https://66jours.be/#2>.

²⁰ www.lesoir.be/480638/article/2022-12-01/crise-de-laccueil-des-avocats-enterrent-letat-de-droit-belge; www.rtf.be/article/asile-des-avocats-font-part-symboliquement-du-deces-de-letat-de-droit-au-ministre-de-la-justice-11115288; <https://asm-be.be/2022/crise-daccueil/>.

²¹ www.lesoir.be/571775/article/2024-03-01/asile-et-migration-jai-honte-de-dire-que-je-travaille-pour-fedasil.

²² Court of Den Haag, 12 december 2023, ECLI:NL:RBDHA:2023:19965, <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2023:19965&showbutton=true&keyword=dublin&idx=51>.

²³ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Belgium*, July 2023, SWD(2023) 801 final, p. 25, https://commission.europa.eu/document/download/d60ca7ce-3628-4c22-9245-67c77a93a093_en?filename=7_1_52566_coun_chap_belgium_en.pdf.