

Alternatives to detention: open family units in Belgium

Liesbeth Schockaert

Preliminary outcomes of an alternative to detention programme in Belgium, based on case management and individual 'coaches' for families, are positive and merit consideration by other countries.

Detention can lead to violations of the entire spectrum of human rights – from civil and political rights to economic, social and cultural rights. Prolonged detention can cause severe psychological and physical health problems which have long-term costs both for the individuals and for societies. These consequences and costs compel investigation, study and implementation of alternatives to detention.

'Alternatives to detention' is not a legal term but is used [...] as short-hand to refer to any legislation, policy or practice that allows asylum seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. As some alternatives to detention also involve various restrictions on movement or liberty [...], they are also subject to human rights standards.' (UNHCR 2012 Detention Guidelines)

Alternatives to detention thus need to comply with the principles of legality, necessity and proportionality and should be applied without discrimination and with due regard to the dignity of each individual.

While asylum seekers are generally accommodated in open reception centres which allow full freedom of movement¹ during the processing of their asylum claim, a number of asylum seekers continue to be held in closed detention centres (6,799 people in 2012). Those held in closed detention include people (except for families with children) applying for asylum at the external borders (airports, train stations and ports), people whom the Belgian state is intending to transfer to another European state as part of the implementation of the Dublin regulation,² and people whose asylum applications have been rejected and who have been ordered to leave the territory.

According to international law, detention should remain a measure of last resort and not be done systematically as it is currently for asylum seekers arriving at Belgium's borders.³ No account is taken of special circumstances and, in particular, of any vulnerability. Hence vulnerable people often detained in closed centres include older people, pregnant women, people with disabilities, victims of torture or trafficking, and people with psychiatric disorders, including war-trauma/PTSD. The stress of being confined exacerbates the mental suffering of these individuals, while the context of detention is often not conducive to the right kind of care.

Moving towards the use of alternatives

For years NGOs, the Federal Ombudsman and others had raised concerns about detention in Belgium and more particularly about the detention of children. In October 2006, the Belgian government responded by commissioning a study on alternatives to detention. The results were presented to Parliament in April 2007 and the different models for alternatives were furthered investigated through a feasibility study. The Belgian authorities subsequently chose to implement a model based on case management.

Each asylum seeker is assigned a case manager – more often referred to as a 'coach' – who is responsible for their entire case throughout the status determination process, including providing clear and consistent information and advice about the asylum process (including other migration and/or return processes, as applicable) and about any conditions on their release and the consequences of non-cooperation. The

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focus is on informed decision-making, timely and fair status determination, and improved support for coping mechanisms for the individuals themselves.

On 1 October 2008 a pilot project was launched in which families with children, who are already present on the territory and are required to leave the territory, should no longer be detained in closed centres. In October 2009 the project was enlarged to include asylum-seeking families who are not allowed to enter the territory but who may need to stay for more than 48 hours before being returned.

The families live in 'open family units' which consist of individual houses and apartments. People have freedom of movement with certain restrictions and rules. They can leave their accommodation in order, for example, to take their children to school, buy groceries, visit their lawyer and participate in religious ceremonies. Visitors are allowed in the family units. The family units help to ensure continuity of reasonably normal life for children.

Each family receives weekly coupons to buy food from a local supermarket in order to prepare their own meals. Every family member is also entitled to medical, social and legal assistance. All educational, medical, logistical, administrative and nutritional costs are covered by the Aliens Office. However, the cost of visiting a doctor is only reimbursed when the appointment has been made by a coach. All families can apply for a pro bono lawyer. NGO staff visit the family units regularly and can have discussions involving coaches and families together. The families can also contact NGOs on their own initiative. In order to protect family privacy, the number of accredited visitors is limited.

Case managers/coaches are appointed by the Immigration Office to support families during their residence in the family units pending a permanent solution – either right of residence or return with dignity – and act as official intermediaries between the Belgian

authorities and all other stakeholders. For rejected asylum seekers and other families for whom return is the only outcome possible,⁴ the coach collects all necessary information (for example, organising meetings with diplomatic and consular representations, in cooperation with the Immigration Office) and assists the families in preparing to return to their country. The coach will first of all propose a voluntary (assisted) return scheme to the families in collaboration with the International Organization for Migration (IOM) and will help in surmounting any barriers which could impede the return. They also inform the families that the Immigration Office can decide – as measure of last resort – to detain the family in a closed centre if the family refuses to cooperate or if the rules of the family units are not respected or if the family absconds.

The principal objective of this case management model is to prepare families and individuals for all possible immigration outcomes, whether return or legal stay. The system is based on the trust that families place in the procedures and in the role of the coach. Thus the skill-sets and personalities of case managers can contribute to the success or failure of alternatives. Recruitment and training of staff need to be well managed, including through tailored training and/or certification. Codes of conduct or other regulations relating to staff behaviour may be important.

Practical experience has shown that a family will invest more trust in a coach who clearly identifies and discusses all possibilities. People who have no entitlement to stay in Belgium choose then to return not as a result of being pressured by the authorities but as a conscious decision, provided that they believe that the asylum procedure has been fair.

Evaluation of the model

From October 2008 to December 2012, 423 families with 754 children lived in the different family units for an average period of 23.5 days. Of the total, 201 were families who had arrived at the border, 88 families

were in a Dublin procedure and 134 were in irregular stay. More than half the families were single mothers with children. The main countries of origin included Iraq, Afghanistan, Russia, Serbia and Kosovo.

406 families have left the units:

- 185 families departed to their country of origin or a third country (of these, 33 families departed with IOM assistance).
- 105 families absconded. Most families abscond within hours or a couple of days after arrival in the family unit or just after having been informed that a removal will take place. Most absconders were families for whom a transfer under the Dublin regulation was being organised.
- 115 families were released to live freely in the community (20 families were regularised,⁵ 39 families were recognised as refugees, 13 families received subsidiary protection and 18 families still had their asylum procedure pending but had stayed the maximum period).
- One family was a specific case where the child turned out not to be related to the family.

The preliminary outcomes of the programme are positive. The majority of the families did not abscond and remain in contact with their case manager, suggesting that there is no need to detain the people in question. Appointing individual coaches enables a more in-depth analysis of each family's case and can help identify cases where it is obvious that residence permits (whether temporary or permanent) should be granted.⁶

Individual case management, screening, trust and transparent communication are key components for the successful use of alternatives to detention, as well as collaboration with local authorities, social services, health services, police, NGOs and the community. The Belgian initiative appears to be a workable alternative to detention but

one could ask whether the transfer to special family units is necessary at all. Could not the same process take place wherever the families are staying? Would not families who apply for asylum at the border be better off staying at an open reception centre (rather than closed), where conditions are better adapted to the specific needs of asylum seekers, including legal and social accompaniment?

Alternatives to detention should be clearly established in law, and subject to judicial review as well as to independent monitoring and evaluation. UNHCR is actively promoting further use of alternatives to detention, and in November 2011 its Regional Representation in Western Europe organised a conference on alternatives to detention, examining the different models to be found in Western Europe.⁷ However, there is a need for more research into alternatives to detention in order, for instance, to assess how alternatives to detention which exist in law are being implemented in practice and how many people are able to benefit from them.

Liesbeth Schockaert schockae@unhcr.org is Associate Legal Officer with UNHCR's Regional Representation for Western Europe. www.unhcr.be The views expressed here are those of the author and not necessarily of UNHCR.

1. If they are absent for more than ten consecutive nights then they may lose their place but they can re-apply for another place.
2. Asylum seekers are in particular detained throughout the Dublin procedure, even when it has not yet been decided whether a transfer to a 'Dublin' country will and should actually take place.
3. When a person makes an asylum application at the border, the person is refused permission to enter the territory and the Aliens Office takes a decision to detain the person while the asylum application at the border is being investigated.
4. Because they are either inadmissible or their asylum request is rejected or they are irregularly residing on the territory.
5. Enabled to legalise their status in the country on humanitarian or medical grounds.
6. The decision on the residence permit rests with the Immigration Office.
7. The conference gave an overview of the existing international legal framework concerning the detention of asylum seekers, refugees and stateless persons and examined specific practices regarding alternatives to detention in Belgium, the Netherlands, and the UK. A 'Roadmap on Alternatives to the Detention of Asylum-seekers in Belgium' was presented. For details and key messages of the conference, see <http://tinyurl.com/UNHCR-WE-conf-alternatives>