

Committee against torture

71st Session

4th Periodic report of Belgium – 2021



Parallel Report

of the

NHRI

U N I A

and of

M Y R I A

The English version is a translation of the original in French. The English version is provided for the convenience of the Committee. In case of discrepancy, the French version will prevail.

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# 1 Introduction

## 1.1 Institutions contributing to this report

1. **Unia** is an independent public institution that combats discrimination and promotes equal opportunities. **Unia's independence and engagement in favour of human rights are recognized by the Global Alliance of National Human Rights Institutions<sup>1</sup> (status B)**. Unia has interfederal competence, which means that, in Belgium, Unia is active at the federal level as well as the level of the regions and communities. Unia is in charge of giving assistance to victims of discriminations based on the protected criteria, stipulated in the antidiscrimination laws executing the European directives 2000/43 and 2000/78. As of 12<sup>th</sup> of July 2011, Unia has also been designated as an independent promotional mechanism for the promotion, protection, and monitoring of the implementation of the Convention of the United Nations on the Rights of Persons with Disability.
2. **Myria**, the Belgian Federal Migration Centre, is an independent public body. It analyses migration, defends the rights of foreigners and promotes the fight against human smuggling and trafficking. Myria promotes public policies based on evidence and human rights and has also been appointed as Independent National Rapporteur regarding human trafficking.
3. Myria and Unia are both legal successors of the former Centre for equal opportunities and opposition to racism. They have agreed on a protocol for co-reporting on the UN human rights instruments. This protocol was submitted in the accreditation process, that led to the recognition of Unia as a NHRI with a B status.

## 1.2 Methodology

4. We appreciate the opportunity to establish this brief presentation to inform the Committee against torture. Our contribution is based on different sources of information: reports submitted to Unia and Myria by individuals or associations; the results of our monitoring and recommendation missions; our participation in various working groups, commissions and advisory boards; reports of the authorities and bodies concerned; reports and recommendations of civil society. Sources are identified in endnotes. Finally, it should be noted that the period covered by this report is from August 2013 to April 2021.
5. In terms of structure, our contribution is articulated around the List of Points established by the Committee for the submission of Belgium's fifth periodic report. The responses provided by the Belgian State in its report have been taken into account in order to avoid any repetition. This contribution therefore, aims to complement and, where appropriate, nuance this report. We also make a series of recommendations and, when appropriate, suggest questions that could be asked to Belgium by the Committee during the Session. The annexes are intended to clarify certain responses to the List of Issues, beyond the explanation provided in the report. We hope that this contribution will represent a useful source of information for the Committee and that the recommendations raised below can be addressed during the Session.

## 2 Information specifically concerning the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

### 2.1 Articles 1 and 4

#### 2.1.1 Response to Point 1: Legal definition of torture

6. In its concluding observations on the sixth periodic report of Belgium, the Human Rights Committee noted that “*article 417bis of the Criminal Code has not yet been amended to include acts of torture committed by a third party at the instigation or with the express or implied consent of a public official and acts of torture motivated by any form of discrimination*”.<sup>2</sup> The Belgian Penal Code criminalizes acts of torture committed by any person, whether they are a public official or not. We would rather respond to the question of acts of torture motivated by a form of discrimination.

7. For a certain number of crimes, the Criminal Code foresees an obligatory increase<sup>3</sup> or a facultative increase<sup>4</sup> of the punishment in the cases in which the motivation of the perpetrator is based on hatred or disdain for a person due to one of the protected criteria. But this is not applicable to cases of torture or inhuman or degrading treatment. This explains the fact that in 2015 a religious healer was pronounced guilty of crimes qualified as torture by the Correctional Tribunal,<sup>5</sup> but without the investigation of the motivation with regards to homophobia. Even though certain elements in the case implied that the victim’s sexual orientation played a role in the offense, this was not taken into consideration for the judgment and the subsequent punishment.

#### **Recommendation:**

1. Amend the Criminal Code to extend the optional or mandatory increase of the penalty on abject grounds or the possibility of examining the abject ground to a range of other offences (at least to: murder, abuse of authority, threats, torture, inhuman treatment, degrading treatment, theft with violence or threats and extortion).

#### 2.1.2 Response to Point 3: Judgments on acts of torture

8. To answer this question from the Committee, the Belgian State is producing an annex. The figures and explanations in it reveal a problem with the handling and accounting of complaints and lawsuits. Furthermore, none of these tables answers the Committee's question which had to do with the sentences pronounced in these cases.

#### **Suggested question:**

Does Belgium have statistics on the convictions and the penalties issued in these cases?

If not, how does Belgium plan to tackle this lack of data?

### 2.1.3 Response to Point 4: Antisemitism

9. The issue of **collecting statistics on acts of anti-Semitism** is addressed below, in response to Point 5.

10. **Anti-Semitism** remains a serious concern. Recently, during the Aalst Carnival in 2019 and 2020, floats displaying anti-Semitic imagery circulated. This gave rise to numerous complaints to Unia.<sup>6</sup> Instances of anti-Semitism persist in Belgium, especially on the Internet.<sup>7</sup> In 2018, following an FRA report on anti-Semitism in Belgium, the Senate adopted a Resolution on combating anti-Semitism,<sup>8</sup> which invites the government to implement various measures.

11. Regarding **positive developments**, it should be noted that the Anti-Semitism watchdog committee was relaunched in 2019 and met twice. The meetings planned in 2020 had to be cancelled due to the pandemic, but two meetings are already planned in 2021.

#### Suggested question:

What measures recommended by the resolution on combating anti-Semitism have already been implemented? Which ones does Belgium intend to implement by 2025?

#### Recommendation:

2. Ensure regular meetings of the Anti-Semitism watchdog committee.

### 2.1.4 Response to Point 5: Hate Crime Statistics

12. The reporting on the **statistical data** concerning the cases of '**discrimination, hate crime and hate speech**' remains problematic. In fact, the figures presented in the Belgian State report, in particular for hate crimes, do not reflect the actual number of cases in which a criminal complaint has been filed. This can be explained by different recording systems between the prosecution and the police and the racist/hate motive for the crime, which is not systematically recorded at the police or prosecution level. In addition, the small number of categories of motives that can be registered prevents us from measuring certain phenomena such as anti-Semitism and Islamophobia.

13. Indeed, the **implementation** of the Circular relating to the investigation and prosecution policy regarding discrimination and hate crimes<sup>9</sup> (COL 13/2013) remains a challenge. In January 2020, the Equal Opportunities Unit of the FPS Justice organised a 2-day workshop on the problems encountered in collecting data on hate crimes.<sup>10</sup> The Public Prosecutor's Office, the local police, the federal police, Unia, the Institute for the Equality of Women and Men, experts from the FPS Justice and the cabinet, and IT and statistics specialists were able to target the various problems and suggest possible solutions.

#### Recommendation:

3. Ensure the finalisation and implementation of the proposals formulated within the framework of the collaborative project coordinated by the Equal Opportunities Unit of the FPS Justice aimed at improving the collection of complete and reliable statistical data with regard to hate crimes.

## 2.2 Article 2

### 2.2.1 Response to Point 6: National human rights institution

14. From 2018 onwards, Unia has been recognized as a NHRI type B. The Partnership Agreement of 12 June 2013 between the Federal State, the regions and the communities establishes a cooperation between the different levels of power in order to ensure the independence of Unia (the Agreement refers to the Paris Principles), its mandate and its territorial (throughout the territory) and material (for all levels of power) competences. On 1 July 2019, the Federal Law establishing a Federal Institute for the Protection and Promotion of Human Rights entered into force.<sup>11</sup> This Institute has competence for all matters relating to fundamental rights under federal jurisdiction, except those that are handled by sectoral organisations for the promotion and protection of human rights.

15. Therefore, the effectiveness and equal enjoyment of the rights deriving from International Conventions for persons residing in Belgium are ensured through human rights organizations that have either a partial mandate, a partial geographical competence or a relative independence. These institutions meet every month on their own accord and autonomously within the Human Rights Platform of which Unia and Myria are members.<sup>12</sup> The methods of concertation between the new Institute and these Belgian sectoral human rights organizations still needs to be clarified.

#### Recommendation:

4. Conclude a partnership agreement between the federal state and the federated entities in order to create a national human rights institution with territorial jurisdiction over the whole of Belgium and jurisdiction covering all levels of power.

### 2.2.2 Response to Point 8: Fundamental guarantees in the event of deprivation of liberty

16. A number of questions arise regarding the arrest of foreigners in the context of migration.

17. Thus, the **law on the police function** establishes what the rights and guarantees applicable to administrative arrests. However, it does not explicitly refer to administrative arrests under the Aliens Act. As mentioned in a recent report of the Comité P, the question therefore arises whether this law and the guarantees it offers are indeed **applicable to the administrative arrests of foreigners**.<sup>13</sup> The law should specify that the law on the police function applies to the administrative arrests of foreigners or, otherwise, that the rights enjoyed by foreigners arrested administratively are framed in another law.

18. In addition, the **mass administrative arrests of migrants in transit** have been the subject of several recent publications. Reports from the Comité P,<sup>14</sup> by Médecins du Monde<sup>15</sup> as well as a memorandum from Myria<sup>16</sup> raise various issues, including in particular excessively long periods of confinement or a lack of information. Certain findings in these reports are set out in more detail in [Annex 1](#).

19. In general, **arrests under the Aliens Act** raise questions about the procedural rights and guarantees enjoyed by the arrested person. This concerns in particular the following points (which are explained in more detail in [Annex 1](#)):

- respect for the right to be heard before the adoption of a return decision and possible detention in a closed centre;
- the lack of consideration of possible vulnerabilities;
- insufficient access to an interpreter;
- the absence of the right to the assistance of a lawyer;
- difficulties related to medical assistance (access to a doctor, recording of information and payment of costs).

**Suggested Questions:**

Do the rights of arrested persons appearing in articles 33 to 33septies of the law of 5 August 1992 on the police function apply to the arrests of foreigners carried out on the basis of articles 21 of this same law and 74/7 of the Aliens Act of 15 December 1980? If so, based on what legal or regulatory provision, or possible case law? If not, what measures are being considered to fill this gap?

**Recommendations:**

5. Introduce additional guarantees in the context of the administrative arrest of a foreigner in particular in order to guarantee:

- the right to be heard, by providing that the police must interview the person in such a way that they can express all the elements relating to their personal situation likely to have an impact on the decision to remove them, and send the information to the Immigration Office before any decision is made;
- consideration of vulnerabilities;
- the right for foreigners to be informed, in a language they understand, of the reasons for their detention, by establishing a more systematic system of interpretation;
- at the request of the person, the right to benefit from the assistance of a lawyer at the time of their administrative arrest by the police;
- effective access to medical assistance. This should include the systematic recording of medical information.

### 2.2.3 Response to Point 10: Medical examinations

20. There is no **procedure** that systematically organizes, at the initiative of the police or judicial authorities, a **medical examination in accordance with the Istanbul Protocol** following any complaint filed for acts of torture or ill-treatment. This Protocol is still hardly known by the medical world. Belgian investigation authorities rarely refer to it.

21. The regulations on closed centres were amended in 2018. According to this amendment, **foreigners detained in closed centres** who have been **subjected to an unsuccessful removal attempt** are no longer systematically examined by a doctor from the centre upon their return to the closed centre. Such an examination remains nonetheless compulsory in the event of the use of coercive measures or an escort, a request from the person concerned or a presumption of harm to his physical or mental integrity.<sup>17</sup> The detained foreigner examined by the doctor in the closed centre does not automatically receive a document concerning this examination.<sup>18</sup> He has the right to choose the doctor only if he can pay the costs of this consultation,<sup>19</sup> which in practice is often an insurmountable obstacle. If he cannot pay these fees, he is forced to use the doctor at the closed centre. In practice, foreigners and their lawyers often find it difficult to obtain access to and copies of documents written by doctors in closed centres. This complicates or even impedes the right of the person who considers himself to be the victim of ill-treatment to file a complaint.

22. In practice, based on its interventions in individual cases of detained foreigners, Myria is incapable of determining whether or not the **medical examination** carried out by the doctor of the closed centre is **in compliance with the Istanbul Protocol**. However, the presence of an independent and professional interpreter during this examination is almost never guaranteed, which makes it difficult to listen to the patient's story in a climate of trust and empathy, as indicated by the Istanbul Protocol.<sup>20</sup> Myria is not aware of situations where an examination in accordance with the Istanbul Protocol was carried out by a doctor from the closed centre, using the diagrams annexed to the Protocol or an analysis of compatibility between the injuries observed and the patient's story, as indicated in §187 of the Protocol. In addition, even if the regulations provide that the doctor attached to the centre 'maintains professional independence from the director of the centre' and that 'the doctor's assessments and decisions that relate to the health of the occupants are based solely on medical criteria'<sup>21</sup>, this doctor is often not seen as sufficiently independent by detained foreigners to encourage them to confidently talk about the violence they have suffered.

**Suggested question:**

Is the Istanbul Protocol studied in the training courses attended by medical and socio-psychological personnel working in places of detention (police stations, prisons, closed centres for foreigners, etc.)? If not, why not? If so, in what way?

**Recommendations:**

6. Organize practical training on the Istanbul Protocol for healthcare workers, psychosocial workers, legal experts, lawyers and magistrates.
7. Guarantee in practice the quality and confidentiality of medical aid and rapid and unconditional access for the detained person and their lawyer to the medical file.
8. Ensure the establishment by the authorities and at their expense of medical examination, in accordance with the Istanbul Protocol for each complaint concerning ill-treatment.

#### 2.2.4 Response to Point 11: Inspection of detention places and remedies against detention

23. The **places of administrative detention of foreigners** are not subject to systematic checks or inspections by an independent body. Certain institutions, such as Myria, have a statutory right of access to closed centres<sup>22</sup> and make occasional visits. However, the scope of this right of access is not framed by law, for example with regard to freedom of movement during these visits, access to information and files of detained persons or the possibility to speak with them. Some NGOs have also been granted accreditations which allow certain members of their staff to visit closed centres on a regular basis to meet detained persons. However, this right granted to NGOs is not explicitly provided for by law, which is likely to weaken their position. Belgian ratification of the OPCAT would allow better control of the administrative detention of foreigners.

24. Among the provisions of the *Set of Principles for the Protection of All Persons Subject to Any Form of Detention or Imprisonment* is also the **right to appeal** in order to challenge the lawfulness of the measure of detention and to obtain immediate release if this measure is irregular (principle 32). In Belgium, the detained foreigner has the possibility of appealing against the detention decision before the investigating courts. Belgium was recently condemned, twice, by the European Court of Human Rights in cases concerning appeals before the investigating courts against a measure depriving an individual of liberty in the context of the administrative detention of foreigners.<sup>23</sup> These cases recall two convictions in 2013 on the same issue.<sup>24</sup>

25. This procedure has not undergone any significant changes since then and still raises many questions which may have the effect of rendering the appeal completely ineffective. This concerns in particular the extent of the review, the absence of a suspensive effect of the appeal on removal, the consequences of the issuance of a new detention certificate on the appeal filed and the unsystematic nature of this review (see [Annex 2](#) for more details).

**Recommendation:**

9. Establish independent monitoring of the places of administrative detention of foreigners and strengthen the legal framework for visits to closed centres for institutions that already have a right of access and of NGOs that carry out visits on the basis of accreditation.
10. Modify the procedure for monitoring the administrative detention of foreigners so as to make it systematic and effective.

## 2.2.5 Response to Point 12: Independent control mechanism

### a) Creation of an independent investigation mechanism

26. Several departments monitor the work of the police (internal police department, general police inspectorate (AIG), Comité P). This fragmentation makes it difficult to obtain reliable **statistics** on all complaints filed against the police for torture and inhuman and degrading treatment, and the judicial follow-up given to them. This lack of reliable statistics was also highlighted in a report published in June 2017 by the NGO Hungarian Helsinki Committee on the effectiveness of investigations in the event of allegations of torture or inhuman or degrading treatment.<sup>25</sup>

27. In **practice**, the possibility for migrants to file complaints raises difficulties. In a recent report on transit migration, the NGO Médecins du Monde notes that out of 440 migrants interviewed, a quarter declared that they had been the victim of police violence in Belgium: kicking, punching or truncheon use on people already under control, strip searches with no understandable explanation, people stripped naked by force and stripped naked in the presence of fellow prisoners or police officers of the opposite sex, deprivation of food or access to decent sanitation, sleep deprivation, intimidation, in particular for the purpose of taking migrants' fingerprints. Almost one in two people claiming to be a victim would refuse to tell the details of these acts of violence to a humanitarian NGO guaranteeing their anonymity, chiefly because they have other priorities or do not see the point of doing so, but also out of fear of police reprisals.<sup>26</sup> The Comité P indicates that it received only 5 complaints on this subject between 2017 and the end of 2018. It nevertheless recognizes that it is complicated for migrants without a fixed base in Belgium to initiate legal proceedings.<sup>27</sup>

28. For illegal aliens the **risk of being detained and then possibly removed following the filing of a complaint** remains a very important obstacle, including against reporting incidents of serious violence. The Immigration Office has made an informal commitment not to detain foreigners who have spontaneously presented themselves to the police to file a complaint.<sup>28</sup> However, the obligation not to discriminate against victims of crime on the basis of their residence status, imposed by the European directive on victims,<sup>29</sup> has not been specifically transposed into Belgian law.

29. In practice, the effective possibility of **filing a complaint following violence in the context of a removal** also meets a number of obstacles, such as: the lack of information in a language comprehensible by the detained persons, on the possibilities of filing a complaint, the absence of a mechanism guaranteeing the suspension of removal in order to allow the acts of the investigation requiring the presence of the victim (testimony, reconstruction, medical examination in accordance with the Istanbul Protocol...), the slowness in the processing of the complaint and the termination of investigation without further action. Another obstacle is the difficulty of identifying the perpetrators of violence in view of the absence of means of identification of the police in most cases (section 41 of the law on the police function is rarely respected in practice).

30. The authorities should **proactively investigate** alleged police violence (including by migrants in transit) without waiting for a formal complaint from the victim.<sup>30</sup>

### b) Comité P

31. Police officers accused of acts of violence often file complaints of defamation or rebellion against the victim themselves. Unfortunately, no statistics exist to our knowledge that allow us to measure the extent of this phenomenon.

### c) Police training on children's rights

32. The return process is a particularly risky time from the point of view of the human rights of all individuals and of children in particular. This is especially the case in the context of arrest with a view to removal, which can also have a significant emotional and psychological impact on minors. This is why all the actors involved in its implementation should always make consideration for children a priority. The United Nations Committee on the Rights of the Child has also recommended to Belgium that all those who work with children systematically receive training on the rights of the child.<sup>31</sup> Rules of conduct should also be established in order to best frame the practice and the decisions taken by the actors concerned. This would make the best interests of the child a primary consideration.

**Recommendations:**

11. Take steps to ensure that an undocumented victim can enjoy the same rights as any other victim, in particular to avoid the risk of police arrest and removal when they file a complaint and during the subsequent stages of the criminal procedure.
12. All actors (police officers and staff of the Immigration Office) involved in the process of return and removal of families with minor children should undergo specific training on the rights of the child and how best to respect them in practice.

### 2.2.6 Response to Point 15: Domestic violence

33. In Belgium, there are specific provisions in the legislation aimed at protecting migrant persons benefiting from a legal stay based on family reunification who are victims of domestic violence. They can request an independent stay and are authorized to legally remain in Belgium although they live apart from the violent family member.

34. However, the situation is different for people who have applied for family reunification - and are thus legally staying in Belgium - but who have not yet received their first residence permit. Indeed, this protection is ineffective in practice during the examination of their request, which can last from 6 months to 1 year. In addition, in the event of a negative decision by the Immigration Office concerning the application of these protective provisions, judicial review is marginal: the Aliens Litigation Council may annul an illegal decision, without being able to rule on the merits of the right to stay. The law should be amended to give the Aliens Litigation Council full jurisdiction (with regard to both facts and law) over family reunification cases.

35. Finally, these specific provisions are not applicable to migrant persons who are staying illegally and are victims of domestic violence, even in the event of serious violence against women or children. The administrative report completed by the police should state that the person has voluntarily appealed to the police as a victim. This would allow the Immigration Office to take the status of victim into account, for example by refusing to deprive the person of liberty.<sup>32</sup>

**Recommendations:**

13. Add a section to the administrative report completed by the police following the arrest of an illegal alien, making it possible to specify that the person has voluntarily called on the police services as a victim.
14. Amend the Aliens Act to give the court full jurisdiction in cases of family reunification.

### 2.2.7 Response to Point 16: Victims of trafficking

36. Despite the authorities' efforts, particularly in terms of training, fieldwork reveals that the **national mechanism for the referral of victims of trafficking** is not always applied correctly. When a victim who is a national of a third country is not detected through the monitoring activities of the front-line services, that victim runs the risk of being placed in a closed centre with a view to repatriation. In addition, the police or labour inspection services which are non-specialized or based far away from the shelters for victims do not always comply with the obligation to inform victims of the existing procedure for assistance.

37. Detection of **minors suspected of being trafficked** remains a problem. This is also an observation made by the Council of Europe group of experts responsible for assessing the implementation by States of the Council of Europe Convention on action against trafficking in human beings (GRETA ) in the context of its second evaluation report concerning Belgium.<sup>33</sup> GRETA also recommended that Belgium intensify its efforts to prevent trafficking in children.<sup>34</sup> In order to obtain a residence permit as a victim of trafficking (with the prospect of definitive settlement), minors are subject to the same conditions as adults and are required to cooperate with the judicial authorities.

38. Finally, even though the fight against trafficking in human beings is mentioned as a national priority, the **resources** allocated to the services responsible for detecting victims in the field are insufficient. Shelters for victims still do not have structural funding.

#### **Recommendations:**

15. Continue and intensify training of front-line services faced with potential victims of trafficking in human beings, in particular concerning their duty to inform victims and the national referral mechanism.

16. Once again make trafficking in human beings a priority in the field, by allocating the human and material resources necessary for front-line services and by structurally funding specialized shelters for victims.

### 2.2.8 Response to Item 17: Trafficking statistics

39. Myria's annual reports on trafficking in human beings<sup>35</sup> use the key figures transmitted to it by the six players<sup>36</sup> likely to play a role in a human trafficking case. However, there is a lack of harmonization between the figures from the different organisations. They are therefore not sufficient as a basis for policy evaluation or to support strategic analyses.

40. In addition, the figures presented only reflect the crimes and the victims that have been identified by the authorities. There is currently no estimate of the unidentified crimes and victims. These figures and their evolution thus actually say more about the action of the authorities to fight trafficking in human beings than the phenomenon as such. Figures need to be developed to better understand the extent of this phenomenon as a whole. Myria plays an active role in the development of tools, in collaboration with all the actors in the Belgian interdisciplinary model.

## 2.3 Article 3

### 2.3.1 Response to Point 18: The monitoring of forced returns by the General Inspectorate of the Federal and Local Police (AIG)

41. Since 2012, following the transposition of the return directive<sup>37</sup> in Belgium, **the General Inspectorate of Federal and Local Police (AIG)** has been responsible for monitoring forced returns in the context of migration. However, several difficulties are encountered in carrying out this monitoring (see [Annex 3](#) for more details):

- lack of independence and impartiality;
- difficulty in identifying the AIG - absence of any distinctive exterior sign or clothing;
- possible language difficulties in communicating with the returnee;
- lack of transparency associated with the lack of publication of annual and individual reports;
- insufficient human and financial resources impacting the monitoring capacity.

In 2019, AIG carried out 96 checks, of which 79 led to the effective removal of 105 people out of a total of 6,061 people removed from Belgium in the same year (1.7% of removal operations effectively carried out).

42. Given the limited presence of the AIG, it is essential to implement an objective surveillance system by **video recording** each of the removal attempts.<sup>38</sup> This should be done using fixed or mobile cameras, filming at least the most sensitive areas and moments. The law of March 21, 2018<sup>39</sup> has considerably increased the possibility of using cameras, including body-cams by the police, and therefore allows this use during removal operations. Objections to their use<sup>40</sup> therefore do not seem justified.

43. There is a lack of clarity as to the **number of complaints** that have been filed with the Comité P or the AIG, in the context of a removal procedure and the follow-up given to such complaints. This number should in any case be interpreted with caution. A certain proportion of foreigners who consider themselves victims of violence do not file complaints. This mechanism is not always known to them. There is in fact no systematic procedure for informing them of the possibilities or for explaining how to make a complaint in the event of an allegation of abuse during a removal procedure.

44. The monitoring carried out by the AIG should also be coupled with an **independent national mechanism for monitoring detention** within the framework of the OPCAT, including the entire removal procedure.<sup>41</sup>

45. More broadly, an **assessment of the removal policy** (including assessment of the existing monitoring) should be carried out within the framework of a permanent independent commission for the assessment and monitoring of removals. The Evaluation Commission set up in 2018 was neither permanent (2-year mandate), nor independent (it was comprised only of the actors involved in the removal procedure - neither Myria, nor civil society were represented there). Myria has voiced criticism of the interim<sup>42</sup> report as well as the final report.<sup>43</sup>

#### **Recommendations:**

17. Guarantee more transparency on the activities of the AIG and the recommendations would make based on its observations.

18. Create an information brochure on possible complaint mechanisms that is distributed, in a language understood by the foreigner, before each removal procedure.

19. Guarantee more transparency with regard to the number of complaints filed either with the Comité P or with AIG, and the follow-up given to them.

20. Implement an objective monitoring system by recording video of each of the removal attempts.

21. Set up an independent permanent commission for the evaluation and monitoring of removals.

22. Establish an independent detention monitoring mechanism including the entire removal procedure.

### **2.3.2 Response to Point 19: Principle of non-refoulement**

46. The obligation to respect the principle of non-refoulement is mentioned in certain provisions of Belgian law. It basically provides **two mechanisms**:

- the prior opinion of the Commissioner General for Refugees and Stateless Persons (CGRS), the independent federal administration responsible for examining asylum applications, in the event of refusal or withdrawal of international protection;
- the temporary postponement of removal.

47. However, these mechanisms are insufficient and the principle of non-refoulement is not always respected by the Belgian state. The legislation section of the Council of State has also pointed out the **absence of appropriate provisions** in Belgian law to implement this principle.<sup>44</sup>

48. This is illustrated by **case law before the European Court of Human Rights**, particularly in the Trabelsi case. The applicant was extradited to the United States in violation of Article 3 of the ECHR and the interim measures in place.<sup>45</sup> Recently, the Belgian State has implicitly recognized in several cases that it has not respected the

obligation to effectively examine the risk of refoulement in asylum procedures by negotiating amicable settlements before the European Court of Human Rights.<sup>46</sup> The asylum authorities had not taken into account decisive documents in assessing the risk of ill-treatment of asylum seekers.

49. With regard to return decisions, the **existing recourse against them through the Council for Foreign Disputes (Conseil du Contentieux des Étrangers or CCE)** does not fully guarantee compliance with the principle of non-refoulement. It cannot be considered effective, as it is not automatically suspensive, even when there is a risk of violation of the prohibition of torture or inhuman or degrading treatment.<sup>47</sup> The appeal procedure against the expulsion decision should be revised to provide for a full appeal and grant an automatic suspensive effect to the ordinary suspension if the expulsion decision risks violating the principle of freedom from torture or inhuman or degrading treatment. However, the examination of the risk of violation of the principle of non-refoulement cannot be carried out only at the final stage of the appeal. A systematic examination of the risk of ill-treatment and violation of other fundamental rights must be carried out as soon as the administration prepares a return decision, the result of which must be included in the motivation of the decision. Given the absolute nature of the right guaranteed by Article 3 of the ECHR, this risk must be examined *ex officio*, and not only at the request of the person. To this end, it is important that the country of destination is included in the removal decision, as recently confirmed by the CJEU.<sup>48</sup> Belgian law and administrative practice should be reviewed in order to comply with these principles and to guarantee respect for the principle of non-refoulement.<sup>49</sup>

50. In 2017, the Immigration Office called on a delegation from the **Sudanese** security services to identify migrants arrested in Belgium who had not requested asylum. The National Court of Asylum in France considered that the identification operation organized by the Belgian authorities created a risk of persecution and granted refugee status to a Sudanese national who was targeted by this identification.<sup>50</sup> A February 2018 CGRS report commissioned following this case (known as the 'Sudanese' case) highlighted the lack of an adequate systematic examination of the risk of refoulement.<sup>51</sup> The Immigration Office **has adapted its practice** and has since organized, in the absence of an asylum application, an examination of the risk of violation of the prohibition of torture in the event of return. In particular, it has adjusted the 'right to be heard' questionnaire intended for use by the police at the time of the arrest and the questions asked during the social interview on arrival at the closed centre. The concept of an 'implicit asylum request' has also been introduced in cases where it is considered that a risk assessment must be carried out by the CGRS. This is a worrying practice since it involves the lodging of a request for asylum, often without the knowledge or despite the opposition of the person concerned.<sup>52</sup>

51. Finally, **stowaways on ships** arriving in Belgian ports do not benefit from any protection guaranteed by law against refoulement.<sup>53</sup> Indeed, they are in principle prohibited from disembarking from the ship and do not receive a motivated decision (only the owner receives a decision). Any form of recourse is *de facto* impossible for them. This gap in the legislation was unfortunately not filled by the adoption in 2019 of the new Belgian Navigation Code.<sup>54</sup>

#### Recommendations:

23. Modify article 62 §1 of the Aliens Act so that any foreigner, including at the border, benefits from the right to be heard before any delivery of a decision of removal or withdrawal of stay and can express, based on information transmitted in an understandable language, elements likely to demonstrate a serious risk of ill-treatment.

24. Introduce into the Aliens Act a transversal provision prohibiting the refoulement or removal of a foreigner in the event of a serious risk of treatment contrary to the right to life and the prohibition of torture.

25. Provide in the Belgian legislation that an examination must be carried out with regard to the risk of violation of the prohibition of torture and inhuman and degrading treatment, and the best interests of the child (whenever a removal decision directly or indirectly concerns a child) before the adoption of any return decision. This consideration should be reflected in the statement of reasons for the decision, which should explicitly include the country of return. Grant an automatic suspensive effect to appeals to the Aliens Litigation Council

against expulsion decisions whenever the alien invokes a risk of violation of Articles 2 and 3 of the ECHR, 3 of the CAT (or similar provisions such as Articles 3, 4 and 19 §2 of the EU Charter of Fundamental Rights).

26. Make the opinion of the CGRS binding in cases where it issues an opinion and concludes that there is a risk of ill-treatment in the event of removal. All deportation must be prohibited until the situation has been the subject of a new CGRS opinion finding that there is no serious risk of ill-treatment.

27. Incorporate in the legislation the obligation to systematically provide the stowaway with a decision on access to the territory (refoulement) and a possible deprivation of liberty, as well as information about his/her rights in a language he/she understands.

### 2.3.3 Response to Point 21: Statistics on asylum requests

52. Myria publishes an annual report each year with figures on international protection.<sup>55</sup> This includes the data relating to all the applicants for protection, on the basis of information provided by the authorities, which does not allow a distinction to be made between those who were or were not detained in a closed centre within the framework of their procedure.

53. In addition, the annual statistical report of the Immigration Office<sup>56</sup> includes information on the number of people detained in closed centres but without details on the profile of those detained. In 2019, 8,555 first detentions<sup>57</sup> in closed centres were recorded, an increase of 53% compared to 2014. Since 2011, the Immigration Office has also set up a database related to closed centres. However, this data has not currently been included in any publications

54. Finally, each of the closed centres prepares an annual report which is not made public and the data they contain is not presented in a uniform manner by the different centres. On the basis of these reports Myria attempts to annually<sup>58</sup> establish the profile of people detained in closed centres and the reason for their detention despite the methodological obstacles encountered. It also appears that in parallel to the increase in the number of first detentions in closed centres since 2016, there has been a slight decrease in the share of first detentions following a request for international protection at the border or on the territory.<sup>59</sup>

55. In the absence of uniform data compiled by the authorities, it is currently difficult to present figures which would allow an accurate representation of administrative detention in Belgium, in particular with regard to: the profiles of detained persons (nationality, sex, age categories or vulnerability), the reasons for which these people were detained, the length of detention or the use of alternatives to detention. However, the return, detention and expulsion of foreigners are moments in the migratory journey which pose important challenges in terms of fundamental rights. Practices and policies in this area must therefore be based on knowledge and analysis of the facts, especially based on figures. Reliable, complete and comparable data must be available and made public.

#### **Recommendation:**

28. Have the authorities make available data they have compiled on detention and its alternatives, in particular with regard to the profile of people detained in closed centres (age, sex, nationality or vulnerabilities), the reasons for detention (based on the first title of detention) and the total duration of their detention.

## 2.4 Article 10

### 2.4.1 Response to Point 26: Training on the prohibition of torture

56. Detecting previous signs of torture or ill-treatment is essential when dealing with an at-risk public such as applicants for international protection. It is therefore important that the staff of closed centres be specifically trained in the detection of people who have undergone such treatment, but also that professionals in contact with applicants for international protection before their possible placement in a closed centre be able to identify them. Indeed, in some cases, the fact of having been the victim of this type of treatment leads to a vulnerability which would justify the foreigner not being placed in a closed centre and being given an alternative to detention (see response to point 33 on the lack of alternatives to detention). Some organizations that regularly visit closed centres believe that vulnerable people are being detained in closed centres, including people who have been victims of torture or ill-treatment.<sup>60</sup>

### 2.4.2 Response to Point 30: Searches of detainees

57. The Federal Ombudsman recently wrote a highly comprehensive report<sup>61</sup> on the **implementation of the rules relating to strip searches** in prisons. He made a series of concrete and specific **recommendations**.

58. With regard to closed centres, the Aliens Act and the Royal Decree on closed centres set out the applicable rules. There is no mention of strip searches, which are therefore not permitted. Two other types of searches are authorised:

- security searches. Initially provided for in three situations (arrival, after a visit, departure from the centre), it is now possible since 2016 to carry out such a search at any time, when it appears necessary to maintain order or security. Despite the fact that the law states that these searches cannot be systematic or vexatious, the law does not provide sufficient guarantees to ensure this.
- clothing searches. Although these are not equivalent to strip searches, they nevertheless mean that the detained foreigner must undress under the supervision of the centre's staff.
- the decree on closed centres does not quite meet the requirements of the Aliens Act regarding the persons entitled to carry out these searches. The rules provided for in these two texts should be brought into line.

Annex 4 of this report sets out these elements in more detail. The law should provide a clear framework for the circumstances and conditions under which a search may be carried out, particularly with a view to ensuring that it is not systematic or vexatious. At the very least, the foreigner should be provided with written proof of the search at his or her request, so that he or she can lodge a complaint against it if he or she considers it necessary.

**Suggested questions:**

What are the recommendations of the Federal Ombudsman regarding strip searches that have already been carried out? Which ones does the Belgian State plan to implement in the next 2 years?

What measures are taken to ensure that security searches in closed centres, which are possible at any time when necessary to maintain order or security, are not of a systematic or vexatious nature?

What measures are taken to guarantee the integrity of the person whose clothes are searched and who has to undress in the presence of the centre's staff?

**Recommendation:**

29. Implement the recommendations of the Federal Ombudsman regarding strip searches.

30. Clearly frame the circumstances and conditions for carrying out a search, in the context of the administrative detention of foreigners, in particular with a view to ensuring that it is not systematic or vexatious.

### 2.4.3 Response to Point 31: Application of the 'Dupont Law'

59. The potpourri law IV of 2016<sup>62</sup> establishes a **right of complaint** to the Complaints Commission established with the Prison Supervisory Commission.<sup>63</sup> This right of complaint is effective since the end of the year 2020.

60. However, these monitoring commissions are made up of volunteers. In addition, the responsibilities entrusted to them (mediation, prison inspection<sup>64</sup> and handling of complaints)<sup>65</sup> are not compatible with each other. There are no judges on the complaints commission, and the complaints procedure is not governed by any regulations.<sup>66</sup>

61. All the provisions of the Dupont law relating to healthcare have not yet entered into force. In 2018, these provisions were the subject of legislative reform<sup>67</sup> which considerably limits their scope: thus, in particular, the articles relating to continuity of care in prison were repealed,<sup>68</sup> the right to care provided by qualified providers to meet the specific needs of the detainee,<sup>69</sup> and the organization of care within prison activities so that care is provided in optimal conditions.<sup>70</sup>

### 2.4.4 Response to Point 32: Prisoners with mental disorders

62. **In the prison system**, the report of the Federal Centre for Expertise in Health Care reveals that many prisoners are in **poor health**, suffer from serious illnesses or psychological disorders and use a lot of medication, in particular for mental health problems.<sup>71</sup> The suicide rate is high and the shortage of doctors does not facilitate access to care in prisons.

63. **As for persons subject to a psychiatric detention measure ("internement")**, the European Committee for the Prevention of Torture or Inhuman and Degrading Treatment or Punishment produced a report following its 2017 visit.<sup>72</sup> This report attests that the care of inmates in penal establishments is strongly marked by a security-based approach, at the expense of the therapeutic imperative: severe lack of health-care staff<sup>73</sup>, lack of training of prison officers in psychiatry<sup>74</sup>, treatment limited to pharmacological treatment without other therapeutic options (group therapy, leisure, training...)<sup>75</sup> and inadequate management of psychiatric emergencies.<sup>76</sup>

64. Belgium has been condemned several times by the European Court of Human Rights for violation of the fundamental rights of people interned in prison.<sup>77</sup> The judgment of 6 September 2016<sup>78</sup> urges Belgium to organize a system in keeping with the dignity of detainees.

65. Since then, several legislative and organizational reforms have been undertaken to improve the system of internment and to relieve congestion in prisons. The law of 5 May 2014 on internment restricts the scope of the internment measure. However, its implementation poses several difficulties, including:

- Maintaining internment as a safety measure which creates a **separate regime** based on disability;
- No possibility to exit the internment system for **undocumented** interned persons whose health status has stabilized (this concerns 10% of the population of interned persons). These people remain locked up without posing a danger to society.
- A **limited and complicated system of appeal** against the decisions of the social protection chambers.
- The wide margin of interpretation for judges with regard to the **scope of application** of the measure and the **differences** in the application of the law depending on the social protection chamber involved.

66. **Centres for Forensic Psychiatry** (hereinafter CFP) have been set up in Ghent and Antwerp. The Flemish Care Inspectorate (Vlaamse Zorginspectie) carried out two audits of the CFP in Ghent.<sup>79</sup> The CFP received a positive score for various aspects. However, the shortage of staff is very worrying, as it has a considerable impact on the working conditions of the health-care staff, the quality of care provided to patients, the quality of life of the interned persons, as well as the surveillance necessary during periods of isolation.<sup>80</sup>

67. The construction of three new CFP's is long overdue but is one of the priorities of the Minister of Justice. The CFP of Aalst aims to welcome interned persons '*for whom it is inconceivable that they will one day reintegrate into society*'.<sup>81</sup> These long stay sections resemble an **effective life imprisonment**, which is very worrying in a State governed by the rule of law.<sup>82</sup> In practice, it is difficult for interned persons to leave the CFP.<sup>83</sup> They struggle with moving to ordinary psychiatric establishments which are faced with a shortage of places and reluctant to accommodate interned persons.<sup>84</sup>

68. In general, both in penitentiary establishments and in Centres for Forensic Psychiatry, a generally regulated, clear and transparent policy **relating to the use of restraint** in the social protection sector is sorely lacking in Belgium.<sup>85</sup>

69. **With regard to closed centres for asylum seekers**, agreements exist between each closed centre and the nearest psychiatric hospital in order to monitor and possibly transfer people temporarily in the event of psychiatric problems. However, these are temporary measures planned in the event of a crisis, which means that in practice it is rare for people to receive assistance in the medium or long term. In addition, upon arrival at the centre, a medical screening is provided by the medical service, but no specific screening is organized by persons specialized in psychiatric care. There are therefore gaps in the detection of psychiatric cases.

#### 2.4.5 Response to Point 33: Dublin III Regulation and detention of asylum seekers

70. The administrative detention of foreigners raises various questions. The implementation of the Dublin III Regulation and the measures taken to avoid systematic detention in this context are among them. But the absence of alternatives to detention, the notion of risk of absconding or the detention of other specific groups (applicants for international protection at the borders, families with minor children, etc.) also raise questions.

##### **New legislation: supervision of the risk of absconding and alternatives to detention**

71. Two laws<sup>86</sup> that entered into force in 2018 substantially amend the Aliens Act and aim to transpose the directives on procedures<sup>87</sup> and reception<sup>88</sup> and, to a lesser extent, the return directive.<sup>89</sup> They also implement elements of the Dublin III regulation.<sup>90</sup>

72. They provide in particular that, when there is a significant risk of absconding, an applicant for international protection may be detained on the basis of eleven assessment criteria.<sup>91</sup> These criteria are also applicable for foreigners who are not seeking international protection. However, the criteria contained in the law remain very general and cover a large number of situations, which in practice makes it possible to detain all types of foreigners who are staying illegally or seeking international protection. Furthermore, the existence of only one of the criteria contained in the law is sufficient to establish the existence of a risk of absconding. Some of them however seem to be less serious and should not alone be allowed to justify the existence of a risk of absconding.

73. In addition, certain elements of this law relating to detention, including alternatives to detention, must be governed by a Royal Decree which has not yet been adopted. However, the reception directive explicitly states that States must provide for alternative measures to the detention of asylum seekers, such as ‘the obligation to report regularly to the authorities, the lodging of a financial guarantee or the obligation to remain in a specific place’. There are currently no alternatives to detention in Belgium, except those intended for families (home monitoring as part of an agreement and open family homes known as ‘maisons de retour’, literally ‘return homes’).

#### **Detention in the context of Dublin**

74. The Belgian State report explains the maximum detention times for applicants for the ‘Dublin’ international protection but does not really answer the question of what measures have been put in place to show that detention is only used as a last resort.

75. It should also be pointed out that if the return directive refers to the existence of a risk of absconding to justify detention (art.15), the Dublin III Regulation refers to a ‘non-negligible’ risk of absconding (Article 28). While Belgian law uses this terminology, it does not make it possible to distinguish these two scenarios and to determine on the basis of what criterion the risk should be considered as ‘non-negligible’. Finally, the appeal procedure against decisions implementing the Dublin III Regulation does not meet the requirements of this Regulation and the right to an effective remedy. An amendment of the law is therefore necessary.<sup>92</sup>

#### **Detention of applicants for international protection at the border**

76. The Aliens Act now mentions<sup>93</sup> that the applicant for international protection cannot be detained for the sole reason of having made an application. However, it does not provide that less coercive measures than detention should be considered at the border. This is not in conformity with the reception directive which, in article 8, provides, with regard to any applicant for international protection, and therefore also at the border, that detention is only possible if ‘it proves necessary and on the basis for a case-by-case assessment "and only if" other less coercive measures cannot be effectively applied’. The absence of such a reference entails the almost systematic detention of asylum seekers at the border, something that has already been the subject of international criticism.<sup>94</sup>

77. The new law also introduced into the Aliens Act the fact that aliens are allowed to enter the Kingdom ‘in respect of whom a decision has not been taken by the Commissioner General for Refugees and Stateless Persons within four weeks after receipt of the request for international protection sent by the Minister or his delegate’.<sup>95</sup> This is intended to transpose Article 43 of the Procedure Directive, which provides that if ‘no decision has been taken within four weeks, the applicant is granted the right to enter the territory of the Member State’. However, in practice, applicants regularly continue to be detained beyond this four-week period. This is done on the basis of a change in status of detention, which transforms detention at the border into detention as an applicant for international protection in the territory.<sup>96</sup> Furthermore, the Belgian law considered that this four-week period starts at the point when the file is transmitted to the CGRS, once Belgium has been identified as the responsible State. However, this is not included in the procedure directive and this deadline should therefore be considered as starting from the moment when application is made, as confirmed by the European Court of Justice<sup>97</sup> and more recently by the Belgian constitutional Court<sup>98</sup>.

#### **Detention of families with minor children**

78. The report of the Belgian State refers to two alternatives to detention to avoid the detention of families with minor children: home monitoring as part of an agreement and ‘return homes’.<sup>92</sup>

While these alternatives undoubtedly represent advances, it should be noted that:

- Few families have had access to home monitoring, which in reality does not take place at home but generally within the municipal administration. In 2019, 148 families were summoned for a home stay (258 minors and 217 adults).<sup>99</sup>
- Not enough resources are made available for the operation of the alternatives to detention. No publicly available assessment has been done to objectively understand how to increase their effectiveness.

- In August 2018, closed family units for families with minor children opened, next to the '127bis' closed centre near the national airport. Between August 2018 and April 2019, nine families were locked up, eight of whom were returned. One family remained in detention for more than 50 days (with a three-day respite in an open return home). In September 2018, the Committee on the Rights of the Child, following a complaint brought by the children of the family and using the possibility of taking provisional measures,<sup>100</sup> asked the Belgian authorities to release the family (while allowing the organization of the removal to continue).<sup>101</sup> The authorities did not comply with this request and the family was removed a few days later. The detention of families with minor children has stopped following a judgment of the Council of State of April 4, 2019. It should be noted that the current government agreement indicates that minors can no longer be detained in closed centres. However, the authorities have not yet indicated that they want to enshrine in law this ban on the detention of all children in a migratory context.
- The situation of unaccompanied foreign minors (UMs) is different since, according to Belgian law they cannot be detained.<sup>102</sup> Nevertheless, the definition of UM<sup>103</sup> only refers to people under the age of 18 who have been definitively identified as UMs by the Guardianship Service. This ban does not apply to people for whom there is doubt about their minority. UMs may therefore be detained in case of doubt as to their age.<sup>104</sup> Furthermore, the definition of UMs only covers nationals of countries that are not members of the European Economic Area. Nationals of a country in the European Economic Area are therefore not explicitly protected against detention.

### Detention of pregnant women

79. The Aliens Act does not address the issue of detention or removal of pregnant women. There are, however, several texts that refer to it: a circular from 2009<sup>105</sup> which states that for pregnant women, forced removal can no longer be carried out from 28 weeks of pregnancy; the 2007 Reception Act<sup>106</sup>, which provides for an extension of material assistance to pregnant women at the earliest at 7 months of pregnancy until the end of the 2nd month following childbirth at the latest; and the Royal Decree of 2002 on the operation of closed centres which includes a chapter entitled "Birth".<sup>107</sup>

Labour courts have also developed case law allowing social assistance to be granted during the period preceding (two months) and following (three months) the expected date of delivery because it is considered that the woman cannot be removed during this period.<sup>108</sup> The report of the Vermeersch Commission on the return policy, which has no binding value, considered that removal is possible until the 24th week, even if the person opposes it.<sup>109</sup> After that, removal can only take place if there is no opposition from the person concerned. In any event, it considers that it cannot take place after 36 weeks.<sup>110</sup> An internal memo from the Aliens Office deems possible a forced removal of up to 24 weeks and voluntary removal up to 34 weeks.<sup>111</sup> As long as removal is still being considered, pregnant women can therefore currently be detained without the law further specifying their conditions of detention<sup>112</sup>.

There are therefore no clear regulations that protect pregnant women before the birth of their child and the young mother as well as the newborn after birth against detention and/or removal. It is not clear up until how many weeks of pregnancy detention and removal are possible.<sup>113</sup>

#### Suggested questions:

When does Belgium plan to adopt a Royal Decree which will introduce alternatives to detention for applicants for international protection? What about other categories of foreigners?

What is the proportion of applicants for international protection at the border who are detained in closed centres?

What measures are in place to ensure that the use of detention of aliens under the Dublin Regulation only occurs as a last resort? Among the foreigners who are to be subject to a Dublin transfer, what is the proportion of people who will be detained in closed centres?

Does Belgium plan to follow up on the government's declarations to no longer detain children by enshrining this ban in law?

What measures is Belgium considering in order to better regulate the issue of detention and removal of pregnant women, both with regard to the possibility of detaining or deporting them, and the conditions of this detention or removal?

**Recommendations:**

31. Regard only a combination of several of the criteria as constituting a legitimate basis for determining a 'risk of absconding' and assessing this risk on a case-by-case basis.
32. Establish alternatives to detention for all foreigners who are administratively detained, including by adopting the Royal Decree provided for by law for applicants for international protection. Increase the resources allocated to alternatives to detention.
33. End the almost systematic detention of applicants for international protection at the border by putting in place alternatives to detention.
34. Establish a regular and transparent evaluation of existing alternatives to allow for possible improvement.
35. Enshrine in law the prohibition of the detention of children in closed centres, a detention which is considered to be against the best interests of the child. This prohibition on detention should also apply to the person claiming to be a minor while awaiting the result of an age check, if it is not patently clear that the person concerned is of legal age.
36. The law should further protect pregnant women and restrictively regulate the circumstances and conditions under which they can be detained in a closed centre and/or deported.

#### 2.4.6 Response to Point 37: Remedies and procedures in the event of torture or ill-treatment

80. A complaints system exists for foreigners detained in closed centres. Since 2004, these complaints can be filed with the Complaints Commission which was created for this purpose. Since 2014, detained persons can also file a complaint with the director of the closed centre.

81. The low rate of complaints filed, the insignificant rate of decisions ruling in favour of the complainants and the relatively harmless nature of the few complaints which have been declared well-founded, are all indicators that the complaints system itself must be questioned.

82. Different criticisms can be made of the Complaints Commission:

- lack of sufficient guarantees of independence and impartiality;
- mechanism insufficiently relevant from the point of view of the person filing the complaint;
- lack of sufficient procedural guarantees;
- lack of transparency.

83. Yet, a **complaints system** accessible to persons deprived of their liberty should in fact pursue as essential objectives respect for the human dignity of detainees as well as the prevention and, where necessary, the punishment of ill-treatment. Only an independent, accessible, efficient, credible and transparent system, perceived as such not only by foreign detained persons but also by all the actors concerned, can meet these requirements. The complaints system currently intended for people detained in a closed centre in Belgium does not meet these requirements either in its design or in its actual operation.<sup>114</sup>

84. A person deprived of his liberty who complains of **degrading conditions of detention** or conditions contrary to fundamental rights must be able to benefit from an effective remedy. This remedy must be capable of preventing the continuation of the alleged violation or of enabling detainees to obtain an improvement in their material conditions of detention.<sup>115</sup> A Complaints Commission which has no power to take individual measures to change the conditions of detention of a specific person is not an effective remedy.<sup>116</sup>

85. Furthermore, art. 5§4 of the ECHR requires that the judge responsible for monitoring the legality of the detention may also monitor the conditions of detention, but this is currently not the case.<sup>117</sup> There is no specific procedure for legal action against conditions of detention in closed centres. It should also be noted that the measures for maintaining order (placement in solitary confinement, disciplinary measures, etc.) are not the subject of any written decision given to the person concerned and are therefore neither motivated nor contestable as an administrative act.

86. [Annex 4](#) to this report contains these elements in more detail, including some figures on complaints filed with the Complaints Commission.

#### Recommendations:

37. Review the complaints system currently in force in closed centres. This system should provide the guarantees of independence and impartiality, should be accessible (without having to go through the management of the centre), be relevant from the point of view of the complainant, transparent and present enough procedural guarantees.

38. Amend the Aliens Act to include a review of the conditions of detention in the powers of the Advisory Chamber, in addition to its powers to monitor the detention.

## 2.5 Other questions

### 2.5.1 Response to Point 43: Ratification of the Optional Protocol to the Convention

87. Belgium is one of the last countries in the European Union not to have ratified the optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and not to have established a national prevention mechanism. However, it signed the Optional Protocol to the Convention on 24 October 2005. After many years of discussion and recommendations at international and national level, standards of assent have been adopted by all of the federated entities concerned. At the federal level, the House adopted a bill on 19 July 2018 relating to the ratification of the OPCAT. In the meantime, this instrument has not yet been ratified. A solution has not yet officially emerged on the establishment of one (or more) national prevention mechanisms (NPM), although discussions, organized in 2020 by the Ministry of Justice, brought together the relevant stakeholders. These discussions led to recommendations on the future national preventive mechanisms. Different hypotheses are envisaged as to the institution or institutions responsible for performing this function, but this choice has not yet been made.

88. This situation has serious human rights implications for detainees and internees. As of 30 May 2018, 530 **interned** persons were still in prisons.<sup>118</sup>

89. The monitoring, inspection and mediation services currently present in the **prison environment** do not have sufficient powers to effectively protect interned or detained persons from any abuse or violation of their fundamental rights.

90. As regards more particularly the question of the **administrative detention of foreigners**, this control should relate to all places/occasions of administrative detention (police stations, closed centres, 'return homes', but also ports, airports, prisons, removal procedures which constitute a form of deprivation of liberty, etc.).<sup>119</sup>

91. In the absence of an independent detention control mechanism, no body currently sufficiently monitors the conditions of detention in Belgium.

**Recommendations:**

39. Ratify the OPCAT.

40. Establish an independent detention monitoring mechanism including the places of detention of interned persons and the administrative detention of foreigners, including the removal procedure.

41. Urgently establish a system of periodic visits, without notice, by national and international observers with the aim of preventing torture and other cruel, inhuman or degrading treatment or punishment, as well as a complaints system that is efficient and adapted to persons interned or detained who have disabilities in all the places where they are placed.

## 2.5.2 Response to Item 45: Measures in response to the terrorist threat

92. Since 2010, Belgium has been the target of terrorist attacks on several occasions. In response, many legislative and administrative measures which have an impact on fundamental rights have been adopted. The Vigilance Committee in the fight against terrorism or Comité T (which is comprised of members of civil society) has analysed the current legislative framework in the fight against terrorism from the point of view of human rights.<sup>120</sup> The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism also published a report following her visit to Belgium.<sup>121</sup> For its part, Unia analysed reports linked to the climate of fear following the attacks or measures to combat terrorism<sup>122</sup>. The Comité T particularly identified the issue of the exceptional detention regime for persons 'linked to terrorism' as one of the main issues in terms of respect for fundamental rights.

## 2.6 Developments for the period 2020-2021

### 2.6.1 Police violence

93. Since 2014, many cases of police violence have been reported in the Belgian press and to Unia and Myria. A list of the incidents recorded<sup>123</sup> for the years 2019 and 2020 is provided in Annex 6. It is of concern that abuse and violence committed by police officers are still too often considered by Belgium as an isolated rather than a structural problem and, consequently, not dealt with in a coherent and systemic manner.

94. A Committee P study published in 2019<sup>124</sup> reviewed 21 police officers from 14 police areas. These police officers had each been accused of between 12 and 47 offences in the period 2001-2016, including at least one act of police violence per officer. Of these 21 police officers, only 11 were subject to light disciplinary sanctions and only one was convicted of a criminal offence. In this respect, the Committee P reiterates its 2009 recommendation that judicial and disciplinary proceedings are not mutually exclusive.

95. In its 2016 report<sup>125</sup>, the Hungarian Helsinki Committee points, among other problems, the unusual length of investigations, mild sanctions for the convicted police offenders, absence of centrally gathered data, inadequacy of disciplinary procedure, lack of specific safeguards, etc.

96. As regards migrants, in a report<sup>126</sup> on transit migration published in 2018, the NGO Médecins du Monde notes that out of 440 migrants interviewed, a quarter declared that they had been the victim of police violence in Belgium: kicking, punching, or truncheon use on people already under control, strip searches with no understandable explanation, people stripped naked and stripped naked in the presence of fellow prisoners or police officers of the opposite sex, deprivation of food or access to decent sanitation, sleep deprivation,

intimidation, in particular to take migrants' fingerprints. Almost one in two people claiming to be a victim would refuse to tell the details of these acts of violence to a humanitarian NGO guaranteeing their anonymity. The main reasons given were that they have other priorities or do not see the point of doing so, but also out of fear of police reprisals.<sup>127</sup> The Committee P indicates that it received only 5 complaints on this subject between 2017 and 2018. It nevertheless recognizes that it is complicated for migrants without a permanent base in Belgium to initiate legal proceedings.<sup>128</sup>

97. In August 2020, the dissemination of the video recording of the police intervention preceding the death of Jozef Chovanec, a Slovak national who died following a police intervention in a cell at Charleroi airport in February 2018 caused a major shock in the public opinion and political world. Investigations were made by several institutions<sup>129</sup> and others are still ongoing. The High Council of Justice (CSJ) regretted that the prosecution only denounced certain acts to the police authorities after the mediatisation of the case. As a result, for instance, no disciplinary proceedings were conducted until then against the police officer who made a Nazi salute. In the meantime, additional disciplinary proceedings were initiated against several senior officers. The CJS also recommended in its reports the placement of cameras with sound recording in places of deprivation of liberty and rapid and priority processing of this type of cases.

98. In April 2020, a young Sudanese migrant was victim of violence committed during the lockdown by a police officer. The latter was sentenced to a conditional sentence of one-year prison term by the Brussels Criminal Court<sup>130</sup>.

99. The Mons Criminal Court sentenced a police officer at first instance to a one-year suspended prison sentence and a fine of €400 for the unintentional fatal shooting of Mawda, a two-year-old Kurdish girl. This followed the high-speed police chase of a van, in which she was travelling with her parents, her minor brother as well as other transit migrants, and during which the officer used his weapon.<sup>131</sup> The treatment of the family at the time of this incident raised questions, including the fact that neither parent had the opportunity to accompany the seriously injured child in the ambulance and that her parents were instead taken into custody from where they learned of their daughter's death.<sup>132</sup>

Proposed question:

What measures have been taken to implement the recommendations made by Committee P in its monitoring survey on police violence in 2019?

## 2.6.2 Covid-19 and confinement

### Residential care and nursing homes for older persons (MR/MRS)

100. Unia conducted a qualitative survey between September and February 2021 on this subject. Eighty people<sup>133</sup> were interviewed. The information below reflects the results from this survey.<sup>134</sup>

101. Some MR/MRS resorted to **restraint measures** with the aim of protecting the person himself and other residents against the virus. In order to protect against risks and avoid any liability, some managers have in fact preferred to avoid any risk of contamination, falls, runaways (for disoriented people), by means of restraint measures. This type of restriction, although well-intentioned, poses a real problem in terms of the choice left to the person to take risks.

102. The question is also whether the use of coercive measures was proportionate in practice and whether it was really the only option to ensure the safety of residents. The use of coercive measures against them is not provided for by law. In the absence of a clear legal framework, even outside the context of the Covid, these measures are therefore contrary to the rights of residents.<sup>135</sup>

103. Interviews showed that older **people do not always decide themselves on their own treatment**, including whether or not to be admitted to hospital. Sometimes that decision was simply communicated to them. In

addition, due to the Covid-19 measures, it was no longer possible to provide person-centred care. Lack of time, staff and stress sometimes led to more serious situations (not changing incontinence materials for hours, lack of time for personal care or help with eating or drinking, ... ). Lack of access to care facilities for informal caregivers also plays a role. In fact, they generally have an important role in monitoring the resident's situation. These cases undoubtedly involve violations of residents' rights.

**Recommendations:**

42. Separate inspections relating to the quality of care and technical aspects and set up a "pool of inspectors" dedicated to inspecting the quality of care and respecting the rights of residents in MR/S.

43. Provide in the accreditation standards that the MR/S must have a policy against elder abuse and add additional conditions in the context of the use of restraint and isolation of residents.

44. Include the obligation to specify in the internal regulations the circumstances in which the rights of residents may be limited, in accordance with the applicable legislation.

45. Invest in additional preventive monitoring, complementary to complaint, inspection and sanction mechanisms, such as the National Prevention Mechanism (OCPAT).

46. Add to the accreditation standards the designation of a reference person for elder abuse in each MR/S.

**Residential care centres for persons with disabilities**

104. At the start of confinement, persons with disabilities living in residential care centres, or their relatives, had to make the difficult choice of staying in the centre or returning home full time, at the expense of the family, which was not always equipped or able to provide the necessary care. They had to decide very quickly, without receiving the necessary information or knowing the duration of the confinement. Visits weren't allowed, and videoconferencing and phone calls with family and friends weren't enough. Some parents even gave up, as the frustration of the person with a disability became unmanageable due to the lack of human contact.<sup>136</sup>

105. Therapeutic care was also reduced, in particular due to the lack of protective equipment available for staff and care providers.

**Recommendations:**

47. Authorise visits by outsiders to the residential care facilities, ensuring that appropriate protective equipment is provided where necessary, and allow testing for the staff of the residential care facilities and persons with disabilities.

48. Guarantee the continuity of care to ensure the physical and mental health of the person with a disability.

**Closed centres**

106. At the start of the pandemic, a large number of people held in closed centres were released (289 between March 13 and 31, 2020) and the number of new detentions was severely limited. In 2020, a total of 26 foreigners detained in closed centres were tested positive for Covid-19.

107. During the months of April and May 2020, Myria carried out visits to three closed centres, in particular after receiving reports from people who were detained there concerning, among other things, the conditions of detention (food, shower) or sanitary conditions. These visits raised questions which are addressed in a report published by Myria.<sup>137</sup> The report analyses the preventive and hygienic measures put in place and the measures to be taken in case of contamination. Myria recommends in particular that people only be detained if removal is possible within a reasonable period of time, that outside actors be allowed to carry out visits – where these have been temporarily suspended or restricted - and that the current complaints system should be revised.<sup>138</sup>

108. The situation at the Vottem detention centre made headlines after reports in the press that several detainees infected with Covid had been placed in solitary confinement.<sup>139</sup> Myria does not have precise information on the course of events in this context.<sup>140</sup> However, the question of the use of isolation cells intended for order measures for medical isolation purposes had already been raised by Myria during its visits.<sup>141</sup> The current regulations do not provide for a clear distinction between the different forms, or content, of

individual rooms or isolation cells (medical isolation, isolation for order/disciplinary measures and adapted regime) and should be amended accordingly.

**Recommendations :**

49. Guarantee in the regulations, the right for external actors to visit these places of detention, in compliance with the rules of hygiene and prevention;

50. Provide adapted medical rooms in all centres;

51. Adapt the regulations to specify the conditions to be met by the different types of isolation facilities (medical isolation, disciplinary isolation and adapted regime) so that they meet the needs of detainees.

## Annex 1: Point 8 - Fundamental guarantees in case of deprivation of liberty

### Arrests in transit migration

Several reports have been written on the administrative arrests of migrants in transit. These reports by the Comité P<sup>142</sup>, by Médecins du Monde<sup>143</sup>, as well as a memorandum by Myria<sup>144</sup> raise the following issues:

- Several police forces mark migrants with a number by using a marker that is difficult to remove, which constitutes a dehumanizing approach;
- Individuals being locked up for sometimes longer than the legal limit of 24 hours (with peaks of 35 hours) for unaccompanied foreign minors;
- Minor migrants often handcuffed without valid reasons;
- The information brochures, mentioned in the Belgian State report (§23), are rarely consulted or distributed and there are difficulties understanding them due to the absence of an interpreter;
- Migrants are not sufficiently informed about their right to medical assistance and the right to notify someone they trust about their arrest;
- Too little account is taken of the directives on trafficking in and smuggling of human beings and on the protection status of victims of trafficking in and smuggling of human beings;
- Victims are not sufficiently informed about the procedure and the protected status of victims of human trafficking or aggravated smuggling.
- The police sometimes ask migrants for their consent to seize their phone or read it. In order to do this, they ask them to sign a form written in Dutch or English, without any oral explanation.

### Arrests in connection with the Aliens Act

Questions also arise with regard to arrests under the Aliens Act.

- Respect for the right to be heard before the adoption of a return decision and possible detention in a closed centre

Following the arrest, the police will send an administrative report on the check of a foreigner to the Immigration Office. Based on this report, the Immigration Office may decide to issue an order to leave the territory, to detain the alien in a closed centre or not to issue an administrative decision to the foreigner arrested by the police on the territory and to let them go free.

The right to be heard which entails that the person concerned should be able to express their opinion before an order to leave the territory is issued. The police should therefore be able to ask all the relevant questions concerning the situation of the foreigner, including the risks of violation of the principle of non-refoulement in the event of removal or violation of his/her private or family life.

However, these questions are generally not really dealt with until the foreigner has been placed in a closed centre, during his interview with the social service where he will be asked to complete a 'right to be heard' form. This does not meet the requirements of the right to be heard since the interview of the person with this form comes after the decision to proceed with their detention has been taken.

- Failure to take into account possible vulnerabilities

The conditions of detention in police stations are not always adapted to the particular vulnerabilities of the arrested person. Furthermore, the police report sent to the Immigration Office does not always mention the particular vulnerabilities of the arrested person. However, it is on this basis that the Immigration Office will decide whether or not to detain the foreigner. It therefore happens that people arrive in closed centres when based on their condition they should be entitled to benefit from an alternative to detention.

- Insufficient access to an interpreter

In practice, the rights provided for in article 33ter of the law on the police function of 5 August 1992 (information on the reasons for the arrest in a language the person understands) are not always respected. The police can call on an interpreter if necessary, but they often fail to do so in practice. This renders the right to information purely theoretical for foreigners who do not speak a language spoken by the police.

- The absence of the right to the assistance of a lawyer

Foreigners arrested for administrative reasons related to their stay do not have the access to a lawyer during their detention in police stations. However, the presence of a lawyer at this stage represents a guarantee: the lawyer can question the legality of an arrest which might have been made in violation of the right to respect for residence or following a check on the basis of ethnic profiling. It is also during arrest at the police station that the illegal alien should be able - within the framework of the right to be heard - to express information pertaining to his situation (elements related to his family or private situation, risk of ill-treatment in the event of return, etc.), before the Immigration Office makes a decision. The absence of a lawyer and an interpreter also plays an unfavourable role at this level.

- Difficulties linked to medical assistance (access to a doctor, recording of information and payment of costs)

Regarding access to medical assistance, a 2019 Comité P investigation shows that access to a doctor is, in most cases, subject to the decision of the police officer on duty. The medical consultation, when it takes place, is often done in the presence of the police. In addition, there is no uniform way of recording medical information<sup>145</sup> while this is in total contradiction with the CPT's recommendations of 2016 and 2018.<sup>146</sup>

In addition, the costs of the medical consultation are sometimes charged to the arrested person when the consultation has been requested by the police.<sup>147</sup> However, the law limits the financial responsibility of the person to the situation in which he has asked to be examined by a doctor of his choice.

## Annex 2: Point 11 - Monitoring of places of detention and appeals against detention

The appeal against detention before the investigating courts raises various issues which call into question its effectiveness. This concerns in particular:

- The extent of the monitoring, which is essentially limited to the lawfulness of the detention. This therefore does not cover the advisability of detention, nor often even the notions of necessity and proportionality, except possibly through the examination of legality. It is important that the appeal can also relate to the question of the existence of alternatives to detention and the suitability of the place of detention for the needs of the detainee, taking into account in particular the specificities linked to age, gender and possible vulnerabilities (illness, disability, pregnancy, etc.).
- The absence of a suspensive effect of the appeal on removal. Thus, a foreigner could be removed even before a court had had the opportunity to rule on the lawfulness of his detention. In addition, when the court orders his release at first instance, the alien will remain detained if the authorities appeal, and this will last until the release decision has acquired the force of *res judicata*, and in other words, is no longer likely to be subject to appeal, even in cassation. The foreigner could therefore be removed during this appeal phase even though his detention was considered illegal at first instance.
- Furthermore, it frequently happens that an appeal is declared inadmissible because a new detention decision, which replaces the contested decision, has been issued to the foreigner. The latter will then be forced to file a new appeal against the new detention decision. This practice was recently condemned by the European Court of Human Rights in a case concerning the review of the detention of a foreigner in administrative detention.<sup>148</sup>
- The non-systematic nature of this monitoring. Given the particular vulnerability of migrants with irregular status, legal obstacles (non-suspensive recourse to expulsion, complexity of the procedure, etc.) and practical obstacles (lack of information, insufficient legal aid, language barrier, etc.), it would be appropriate that the judicial review of the legality of the detention be done automatically and at regular intervals in the event of prolonged detention. This was also recommended by the Special Rapporteur on the human rights of migrants in the context of the detention of foreigners.<sup>149</sup>

The monitoring of the detention of a foreigner detained in the administrative context is more complex and less protective than the control of preventive detention in the criminal context. This finding, as well as others on the existing procedure, was the subject of the 'Mercuriale' (argument) issued by Mr. André Henkes, prosecutor general at the Court of Cassation. This also served as grounds for the plea that some have made to entrust the control of administrative detention to the administrative court specializing in the Aliens Act, the Aliens Litigation Council.<sup>150</sup>

Whichever the jurisdiction in charge of monitoring detention, this monitoring should be done in such a way that its effectiveness can be ensured.

## Annex 3: Point 18 - The monitoring of forced returns by the General Inspectorate of the Federal and Local Police (AIG)

As mentioned in the report, several difficulties are encountered in carrying out the monitoring exercised by the AIG. This is also the subject of an in-depth analysis carried out by Myria, based on the annual and individual reports of AIG, in its latest report on detention and return.<sup>151</sup> These points are further explained in this appendix:

- **the independence and impartiality of the AIG** remain problematic. The AIG is integrated into the police forces and members of the **'forced return control' unit** are seconded police officers. Some of these seconded police officers are former members of the airport police who, in the future, may return to the force that they have monitored. AIG employees have police skills which can give rise to a suspicion of bias in the person being removed.

- **difficulty in identifying the AIG:** AIG members generally do not wear any identifying sign on their clothing (neither of their role, nor of their identity) and their role is not always well understood by persons being removed.

- **possible language difficulties in communicating with** the person being removed: AIG members do not use interpreters or information sheets in different languages to explain their mission.

**lack of transparency linked to the lack of publication of annual and individual reports:** the annual reports of the AIG on the monitoring of forced returns (containing more qualitative information on the observations made and the recommendations issued) are not published (only the figures relating to checks have recently been published in the activity report of the AIG). The individual reports of each control mission are not published, although they could be in an anonymized way. This reinforces the climate of mistrust of civil society (in particular NGOs) which are furthermore neither involved nor consulted by the AIG.

- **insufficient human and financial resources impacting the monitoring capacity:** the number of people performing these checks is quite limited.<sup>152</sup> Most of them devote only a part (sometimes a small part) of their working time to this task. These human resources are insignificant in view of the number of forced removals and attempted forced removals (infra) and the fact that, in a whole series of cases (in particular special flights), checks should ideally be carried out by two inspectors and this should be the case for the entire operation (until the destination). The monitoring capacity of the 'forced return monitoring' unit is also limited (to push-back) in the context of refoulement carried out with private escorts, which are however potentially riskier. As for the funding at its disposal (AMIF), it is temporary (and therefore precarious) and is not allocated according to actual monitoring needs. Nor does it determine a (minimum) number of checks to be carried out.

The insufficiency of the human and financial resources of the AIG obviously impacts its monitoring capacity and efficiency. In 2018, the AIG carried out 96 checks (involving 123 people) out of a total of 7,697 removal attempts (all places of departure combined), i.e. a rate of only 1.6%. In 2017, 92 checks were carried out with the Zaventem airport police for 7,901 attempted removals from this airport. This represents a 41% decrease in the number of checks carried out at this airport between 2013 and 2017. Note that it is important to look at the number of checks carried out based on the total number of removal attempts (with or without escort; successful or not) and not successful removals with escorts.

## Annex 4: Point 30 - Searches in administrative detention facilities for foreign nationals

The Aliens Act<sup>153</sup> was amended in 2016 to extend the possibilities of searching foreigners detained in a closed centres.<sup>154</sup> This mainly concerns **security searches**, i.e., those carried out "by palpating the body and clothing of the person searched as well as by checking his baggage." Until then, these were only possible at three times: upon arrival in the centre, after a visit and prior to a transfer.<sup>155</sup> This amendment allows a search to be carried out at other times, "when it appears necessary for the maintenance of order or security."

As a result of this amendment, the law specifies that these searches cannot be systematic or of a vexatious character. Nevertheless, does this formulation present sufficient guarantees to ensure that they are not systematic or abusive? What can the alien do if he considers that these searches are systematic or vexatious, knowing that he does not receive any document attesting that this search has been carried out unless one of his possessions is placed in custody?<sup>156</sup>

The case law of the European Court of Human Rights prohibits systematic searches.<sup>157</sup> The Belgian Constitutional Court also examined the question of searches with regard to criminal detention and then ruled that strip searches - without taking into account the individual behaviour of the detainee - violated the prohibition of inhuman and degrading treatment.<sup>158</sup> Even though security searches are less intrusive than strip searches, it is important that these only be carried out on the basis of a real need, taking into account the individual situation of the person concerned.

In addition, the law provides that the security search is carried out by a **delegate of the Minister of the same sex** as the person searched. However, the Royal Decree mentions that the clothing search is carried out by two **members of staff**. These must be of the same sex as the person searched during the clothing search, but for the security search, since 2018<sup>159</sup>, only the officer who actually carries out the search must be of the same sex. The report to the King on the detention centre decree<sup>160</sup> specifies that if the search cannot be carried out by a "member of the security personnel of the same sex" for practical reasons, it will be carried out by an "other member of the personnel of the same sex" under the supervision of the person in charge on duty. The law and the RD should be brought into line with regard to who can carry out these searches.

Finally, the law also mentions that it is possible when it is "necessary in the interests of security" to carry out a **search of the clothes** of the detained foreigner.<sup>161</sup> The law does not specify its scope, but the royal decree specifies that the detained alien may be required to "undress to allow a thorough search of his clothes."<sup>162</sup> While the search of the detained alien after undressing is not authorised, this procedure does not prevent a member of staff from verifying that the alien has taken off his clothes and that there will therefore be a priori a visual inspection of the naked alien. It would therefore be appropriate that this clothing search, which is currently authorised when this proves necessary, without any further specification either in the law or in the decree than that it "be done in a space where no other occupant or third party is present or cannot peek through"<sup>163</sup> should therefore be better regulated. This criterion concerning the place of the search, was until 2018<sup>164</sup> applicable to security searches which are no longer subject to this condition as regards their place of execution.

The Royal Decree on the transfers of foreigners by the security staff and drivers of the Aliens Office also includes a search provision.<sup>165</sup> It allows a security search to be carried out before boarding by the "security employee-driver of the same sex as the foreigner", or by "another member of the staff of the Aliens Office of the same sex, under the supervision of the security employee-driver." In the event of departure from a centre, the search can also be carried out by the personnel of the closed centre in accordance with the rules prescribed by the Royal Decree on closed centres.

## Annex 5: Point 37: Remedies and procedures in the event of torture or ill-treatment

### Figures relating to complaints filed

Between 2004 (establishment of the Complaints Commission) and 2016, 420 complaints were filed by foreigners held in a closed centre, of which 257 were declared admissible (61% of the 420 complaints filed). Of these 257 complaints deemed admissible, 12 were deemed (partially) well-founded (i.e. 5% of admissible complaints). During this same period, 90.214 people were detained in a closed centre. As for complaints to the director (possible since 2014), they are not subject to any uniform registration and processing procedure (the first figures available in the annual reports of closed centres relate to 2018 and give no indication of their content).

In 2019, 18 complaints were filed with the Complaints Commission (16 in 2018, 23 in 2017 and 19 in 2016). Of these 18 complaints, 4 were deemed inadmissible, 3 were withdrawn following mediation and 2 were deemed unfounded by the Secretariat. Of the complaints deemed admissible, 8 were dismissed as there was no longer any interest in taking action and one was deemed unfounded.

Nine complaints concerned people detained in Merksplas, four in Vottem, four in 127bis and one in Bruges.

### Reviews of the Complaints Commission

The chief criticisms of the existing complaints system are the following:<sup>166</sup>

- Lack of sufficient guarantees of independence and impartiality

It is the responsibility of the permanent secretariat to receive complaints, to find them admissible or not without the possibility of appeal, to investigate complaints, to attempt to facilitate reconciliation and to determine the specific composition of the Commission. In addition, foreigners who wish to use it can only do so through the management of the closed centre, which acts as a deterrent for many.

- Insufficiently relevant from the view of the person filing the complaint

The material scope of the complaints system is defined too restrictively, and human dignity cannot be reduced to compliance with the provisions of the Royal Decree of 2 August 2002. The complainant who, at the time when the Commission is called upon to rule, is no longer held in a closed centre (either because he was removed or because he was released) will have the complaint dismissed. Even the most serious allegations are the subject of an attempt at reconciliation. The very nature of the decisions which the Commission has the power to take considerably reduces the concrete interest which the detained foreigner may have in using them: it essentially rules by means of recommendations which, in essence, are not binding, and are only valid for the future. No form of compensation is provided. It is therefore not an effective remedy within the meaning of Article 13 of the ECHR since there is no 'appropriate remedy'.

- Lack of sufficient procedural guarantees

The procedure is not adversarial; the complainant does not have access to the case drawn up by the permanent secretariat; neither he nor, where applicable, his lawyer, is systematically informed of the hearing date; the complainant cannot call witnesses; inadmissibility decisions pronounced by the permanent secretariat are not motivated and are not formally subject to appeal; the result of the reconciliation is not submitted in writing to the complainant and it is not binding for the parties; the possibility of appeal for annulment before the EC against a decision pronounced by the Complaints Commission appears to be largely formal and theoretical.<sup>167</sup>

- Lack of transparency

The decisions of the permanent secretariat are not motivated; they are not submitted to the Commission itself; the decisions of the Complaints Commission are completely confidential. They are not published. They are only transmitted to the complainant and to the management of the closed centre concerned. The restrictive interpretation given by the permanent secretariat to its duty to inform Myria deprives it its essence: that of allowing Myria, through an efficient complaints system, to independently exercise a role of vigilance over the functioning of the closed centres, and, thus, to detect possible problems, either occasional or recurring.

Myria is regularly questioned about problems within the centres themselves such as the lack of trust in the staff, the lack of information, the difficult access to certain healthcare and, in extreme cases, beatings, hunger strikes or suicides. These questions are clear signals that there is still room for improvement in the conditions for those in detention.

The Eur Court. of H.R. has in the past also expressed doubts about this mechanism.<sup>168</sup>

**Appeal against conditions of detention**

As mentioned in the report, there is no appeal against the conditions of detention for persons detained in a closed centre. This issue of the lack of a remedy against conditions of detention is also present in criminal law and has been highlighted in two judgments of the Eur Court of H.R. against Belgium<sup>169</sup>. The remedies available against the conditions of criminal detention (before the courts and before the Council of State), according to the Court, are not effective. In addition, the Court also held that the system of Prison Supervisory Commissions was not effective since they had no 'power to take individual measures to change the conditions of detention of a specific person'. These findings are, in our view, similar for the administrative detention of foreigners. This is why the powers of the Council Chamber, in addition to its control over the legality of the detention, should be extended to monitoring the conditions of detention.

## Annex 6: List of allegations of police abuse and violence for the years 2019 and 2020

<b>Year 2019</b>
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- Complaint by a woman following alleged police violence during an attempted removal, which is still being examined by the judicial authorities<sup>170</sup>

**May:**

- Video showing a man on the ground kicked by a police officer (Brussels) while he was immobilized and handcuffed<sup>171</sup>

- A young man on a moped injured during a chase with the police (Brussels)<sup>172</sup>

**July:**

- Two rappers complain of being beaten and injured by police officers (Ostend) during a festival and filed a complaint with the Committee P<sup>173</sup>

**August:**

- Death of a 25-year-old motorcyclist during a police chase (Brussels)<sup>174</sup>

- Death of a 29-year-old Frenchman following a gunfire by a police officer during a chase (Brussels)<sup>175</sup>

- 17-year-old Mehdi died when he was run over by a police car while trying to escape a police check (Brussels)<sup>176</sup>

- A man and a woman complain of abuse and police violence in the context of the agricultural fair (Libramont)<sup>177</sup>

**September:**

- Complaint by a man after an allegation of police brutality during an attempted removal, the investigation of which is still ongoing<sup>178</sup>

**October:**

- Many demonstrators complain of police violence during a demonstration by the Extinction Rebellion movement (Brussels)<sup>179</sup>

Year 2020
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**January:**

- Beatings and injuries with racist remarks by police officers in the context of an arrest<sup>180</sup>

**March:**

- Various testimonies of police violence, supported by videos, as part of the World March of Women<sup>181</sup>
- Sudanese migrant kicked and beaten with truncheons by police during check, resulting in broken arm<sup>182</sup>

**April :**

- Death of a 19-year-old (Adil) struck by a police vehicle during a chase (Brussels)<sup>183</sup>
- Young Sudanese migrant aged 18 brutalized, mobile phone destroyed by police (Brussels)<sup>184</sup>

**June:**

- two children (11 and 13 years old) were arrested by police officers in Brussels, and one of them handcuffed<sup>185</sup>;
- a 19-year-old boy named Mounaime complained that he had been beaten up by police officers<sup>186</sup> on the sidelines of a protest "Black Lives Matters"<sup>187</sup>;
- the same day, a woman of Moroccan-Tunisian origin alleged that she had been controlled and mishandled by the police until her boyfriend (a well-known Belgian singer) intervened<sup>188</sup>;
- a 71-year-old Black MEP complained that she had been violently pressed against a wall because she tried to film a police intervention in the street. Police replied that she had insulted them.<sup>189</sup>

**July:**

- Death of a 29-year-old young man of Algerian origin (Akram) after being immobilized on the ground in a prone position by police officers (Antwerp)<sup>190</sup>
- Spraying pepper spray and slapping a young man who refused to wear a face mask (Roeselare)<sup>191</sup>

**August:**

- 3 young women claim to have been the subject of assault and battery (fractured wrist) and sexist remarks by the police (Brussels)<sup>192</sup>

**September :**

- Several people (more than 30 testimonies according to the press) claim to have been victims of assault and battery in the context of the (unauthorised) demonstration "La santé en lutte" (Brussels)<sup>193</sup>
- A student with a fractured humerus following an arm lock used by a police officer during her arrest (Mons)<sup>194</sup>

**December:**

- Following a denunciation for non-compliance with confinement rules and the intervention of the police, a family complains of police violence<sup>195</sup>

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## Endnotes

- <sup>1</sup> <https://www.unia.be/en/articles/unia-recognised-internationally-as-a-national-human-rights-institution>.
- <sup>2</sup> HUMAN RIGHTS COMMITTEE, Concluding observations on the sixth periodic report of Belgium, CCPR/C/BEL/CO/ 6, 7 November 2019, §25
- <sup>3</sup> The Criminal Code provides for a mandatory increase in penalties for hate crimes related to the following offences: homicide, assault and injury and administration (or attempt to administer) of substances that may cause death or serious health damage. This increase in the sentence also concerns the criteria of the anti-racism law, the anti-discrimination law and the gender and sex reassignment criteria.
- <sup>4</sup> The Criminal Code provides for an optional increase in penalties for hate crimes related to the following offences: voyeurism, sexual abuse, rape, culpable negligence, infringement of personal freedoms and the sanctity of the home by certain persons, attacks on the honor or reputation of persons, arson, destruction of buildings, steam engines and telegraph equipment, destruction and damage to food, goods or other movable property, graffiti and damage to real estate items. This increase in the penalty concerns the criteria of the anti-racism law, the anti-discrimination law and the "gender" criterion.
- <sup>5</sup> Corr. Antwerp, March 6, 2015 and Antwerp, March 25, 2016, [www.unia.be](http://www.unia.be) (see the page "case law").
- <sup>6</sup> UNIA, *Carnival and the limits of freedom of expression*, 2019, <https://www.unia.be/fr/articles/unia-plaide-pour-du-folklore-super-diversifie>.
- <sup>7</sup> UNIA, *Anti-Semitism remains painfully persistent, particularly on the Internet*, 27, January 2018, <https://www.unia.be/fr/articles/lantisemitisme-est-toujours-present-surtout-sur-internet>.
- <sup>8</sup> BELGIAN SENATE, Resolution on combating anti-Semitism, 14 December 2018, 6-437, [www.senate.be](http://www.senate.be).
- <sup>9</sup> COLLEGE OF PROSECUTORS GENERAL, Circular relating to the policy of research and prosecution in matters of discrimination and hate crimes « COL.13/2013 », 17 June 2013, [https://www.ommp.be/sites/default/files/u1/col13\\_2013\\_fr.zip](https://www.ommp.be/sites/default/files/u1/col13_2013_fr.zip).
- <sup>10</sup> The workshop was organized in partnership with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and with the European Union Agency for Fundamental Rights (FRA).
- <sup>11</sup> Law of 12 May 2019 establishing a Federal Institute for the protection and promotion of human rights, *M.B.*, 21 June 2019.
- <sup>12</sup> The Human Rights Platform is composed on a voluntary basis of Unia, Myria, the Collegium of the federal Ombudsmen, the Privacy Protection Commission, The Institute for the Equality of Men and Women, the Ombudsman of the German speaking Community, the Ombudsman of Wallonia and the Federation Wallonia-Brussels, the Commissioner for the Rights of the Child, the General Delegate for the Rights of the Child, the National Commission for Children's Rights, the Combat Poverty Service, Insecurity and Social Exclusion Service, the 'Comité R', the 'Comité P', the High Council of Justice and the Central Prison Supervisory Council.
- <sup>13</sup> Comité P, *La notification des droits dans le cadre des privations de liberté dans les lieux de détention de la police et l'application du droit à l'assistance médicale et du droit à un repas dans ce contexte*, 2019, p. 3, § 18
- <sup>14</sup> Comité P, *Le contrôle et l'arrestation des transmigrants par la police à l'occasion d'arrestations administratives massives*, February 2019, referred to below as the 'Report of the Comité P', <https://comitep.be/document/onderzoekrapporten/2019-02-06%20transmigrants.pdf>.
- <sup>15</sup> Médecins du Monde, *Violence policières envers les migrants et les réfugiés en transit en Belgique. Une enquête quantitative et qualitative*, October 2018, <https://medecinsdumonde.be/system/files/publications/downloads/MdM%20rapport%20Geweldmigratie%20FR%20HD.pdf>.
- <sup>16</sup> Myria, *Note: Police et migrants de transit, Respecter la dignité et enquêter sérieusement sur les violences*, September 2019, [https://www.myria.be/files/Note\\_Police\\_et\\_migrants\\_de\\_transit.pdf](https://www.myria.be/files/Note_Police_et_migrants_de_transit.pdf).
- <sup>17</sup> Art. 61/1 of the Royal Decree of 2 August 2002 laying down the operating regime and rules applicable to places situated on Belgian territory, managed by the Office for Foreigners, where a foreigner is detained, placed at the disposal of the Government or maintained, in application of the provisions mentioned in article 74 / 8, § 1, of the law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners (following its modification by the Royal Decree of 22 July 2018, MD, 1st August 2018).

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<sup>18</sup> This examination is recorded in the medical file of the detained foreigner.

<sup>19</sup> Art. 53 of the Royal Decree of 2 August 2002 laying down the operating regime and rules applicable to places situated on Belgian territory, managed by the Office for Foreigners, where a foreigner is detained, placed at the disposal of the Government or maintained, in application of the provisions mentioned in article 74 / 8, § 1, of the law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners.

<sup>20</sup> On the importance of collecting the story of the alleged victim as part of the medical examination, see § 163-167 of the Istanbul Protocol.

<sup>21</sup> Art. 53 al.2 of the Royal Decree of 2 August 2002 laying down the operating regime and rules applicable to places situated on Belgian territory, managed by the Office for Foreigners, where a foreigner is detained, placed at the disposal of the Government or maintained, in application of the provisions mentioned in article 74 / 8, § 1, of the law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners.

<sup>22</sup> Art. 44 of the Royal Decree of August 2002 laying down the operating regime and rules applicable to places situated on Belgian territory, managed by the Office for Foreigners, where a foreigner is detained, placed at the disposal of the Government or maintained, M.B., 12 September 2002.

<sup>23</sup> ECHR, *Makdoudi v. Belgium*, February 1, 2020, 12848/15; ECHR, *Muhammad Saqawat v. Belgium*, July 30, 2020, 54962/18.

<sup>24</sup> ECHR, *M.D. v. Belgium*, November 14, 2013, 56028/10; CEDH, *HR, Firoz Muneer v. Belgium*, April 11, 2013, 56005/10.

<sup>25</sup> HUNGARIAN HELSINKI COMMITTEE, *Investigation of Ill-treatment by the Police in Europe. COMPARATIVE STUDY OF SEVEN EU COUNTRIES*, 2017, pp. 23-35, [https://www.helsinki.hu/wp-content/uploads/HHC\\_investigation\\_ill-treatment\\_comp\\_EN.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_investigation_ill-treatment_comp_EN.pdf). This study compares the effectiveness of investigations into allegations of breaches of Article 3 of the ECHR in seven states of the European Union, including Belgium. This report finds that, despite the rather satisfactory quality of Belgian legislation to combat ill-treatment, indicators place Belgium at a lower level of protection than other European states, pointing out in particular the absence of reliable statistics and the difficulties to gather evidence.

<sup>26</sup> MÉDECINS DU MONDE, *Violences policières envers les migrants et les réfugiés en transit en Belgique. Une enquête quantitative et qualitative*, October 2018, <https://medecinsdumonde.be/system/files/publications/downloads/MdM%20rapport%20Geweldmigratie%20FR%20HD.pdf>

<sup>27</sup> COMITE P, *Le contrôle et l'arrestation des transmigrants par la police à l'occasion d'arrestations administratives massives*, February 2019, p. 11, § 35, p. 25, § 78.

<sup>28</sup> MYRIA, *Myriadoc Être étranger en Belgique en 2016*, pp. 28-31, [https://www.myria.be/files/Etre\\_etranger\\_en\\_2016-final.pdf](https://www.myria.be/files/Etre_etranger_en_2016-final.pdf)

<sup>29</sup> Article 1' §1 par. 2 of Directive 2012/29 / EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

<sup>30</sup> As provided for in Article 12 of the Convention against Torture and the settled case-law of the European Court of Human Rights.

<sup>31</sup> Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Belgium, 18 June 2010, observation 26.

<sup>32</sup> On this subject, see: *Faire appel à la police lorsqu'on est victime en séjour irrégulier. Se jeter dans la gueule du loup?*, dans: MYRIA, *Myriadocs 2: Être étranger en Belgique en 2016*, December 2016, available on: [http://www.myria.be/files/Etre\\_etranger\\_en\\_2016-final.pdf](http://www.myria.be/files/Etre_etranger_en_2016-final.pdf)

<sup>33</sup> GRETA, Report on the implementation of the Council of Europe Convention on action against trafficking in human beings by Belgium, Second evaluation cycle, Strasbourg, 16 November 2017, <https://rm.coe.int/2nd-rd-rpt-bel/1680766bdb>, §131.

<sup>34</sup> GRETA, Report on the implementation of the Council of Europe Convention on action against trafficking in human beings by Belgium, Second evaluation cycle, Strasbourg, 16 November 2017, <https://rm.coe.int/2nd-rd-rpt-bel/1680766bdb>, §73.

<sup>35</sup> These reports are available on the Myria website: [www.myria.be/fr/traite](http://www.myria.be/fr/traite).

<sup>36</sup> These are: the police (for the number of recorded offenses); the inspection services of the National Social Security Office (for offenses related to labour exploitation); the College of Public Prosecutors (for information relating to prosecutions); the Immigration Office (for residence permits issued to victims); specialized reception centers (for victims in care); the Criminal Policy Service of the Federal Public Service (FPS) Justice (for convictions and sentencing).

<sup>37</sup> Directive 2008/115 / EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures applicable in the Member States for the return of illegally staying third-country nationals.

<sup>38</sup> See Myria, The European Ombudsman's own-initiative inquiry concerning the means through which Frontex ensures respect of fundamental rights in joint return operations. The Belgian Federal Migration Centre's contribution, 3 April 2015, pp. 7-8, [https://www.myria.be/files/CONSULTATION\\_REPLY\\_OI-9-2014\\_201401114\\_20150804\\_120600\\_\(1\).pdf](https://www.myria.be/files/CONSULTATION_REPLY_OI-9-2014_201401114_20150804_120600_(1).pdf).

<sup>39</sup> Law of 21 March 2018 amending the law on the police function, with a view to regulating the use of cameras by the police, and amending the law of 21 March 2007 regulating the installation and use of surveillance cameras, the law of 30 November 1998 on the intelligence and security services and the law of 2 October 2017 regulating private and specific security.

<sup>40</sup> See § 71 of the contribution of the Belgian State.

<sup>41</sup> See for more information on this, answer to point 43.

<sup>42</sup> Myria, *Analyse du rapport intérimaire de la Commission chargée de l'évaluation de la politique de retour volontaire et de l'éloignement forcé des étrangers*, October 2019, see: [https://www.myria.be/files/Note\\_Myria - Rapport intérimaire Commission Bossuyt.pdf](https://www.myria.be/files/Note_Myria_-_Rapport_intérimaire_Commission_Bossuyt.pdf).

<sup>43</sup> Myria, Hearing of the final report of the Bossuyt Commission, October 21, [Audition du rapport final de la Commission Bossuyt | Myria](https://www.myria.be/files/Audition_du_rapport_final_de_la_Commission_Bossuyt_Myria.pdf).

<sup>44</sup> Preliminary draft which became the law of 19 January 2012 amending the law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners, Opinion of the C.E., *Doc. Parl.*, House, 2011-2012, n° 1825/1, p. 47.

<sup>45</sup> In the case of *Trabelsi v. Belgium* of 4 September 2014 Belgium was condemned for non-compliance with the principle of non-refoulement by the Belgian authorities. Also in the case of *A.T. v. Belgium* of 23 March 2017 Belgium had not respected the provisional measures of the ECHR with regard to the return at the Belgian border to Egypt of a foreigner for whom the refugee status was questioned due to problems of public order and national security. Also in the *M.S.S. vs. Belgium and Greece* of 21 January 2011 Belgium was convicted for violation of art. 3 of the ECHR.

<sup>46</sup> ECHR, *A.A. v. Belgium*, 26 September 2019, 51705/18; *Basra v. Belgium*, n. 47232/17, 10 July 2018; ECHR, 7 March 2019, 26763/18, *H.G.S. vs. Belgium*.

<sup>47</sup> CJEU, *LM v Center public d'action sociale de Seraing*, September 30, 2020, C - 402/19; CJEU, *B. v Center public d'action sociale de Liège*, September 30, 2020, C 233/19

<sup>48</sup> CJUE (GC), *FMS, FNZ (C924/19 PPU), SA, SA junior (C925/19 PPU) v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, Országos Idegenrendészeti Főigazgatóság*, May 14, 2020

<sup>49</sup> MYRIA, "Migration in figures and rights", 2018, [https://www.myria.be/files/MIGRA2018\\_FR\\_AS\\_1.pdf](https://www.myria.be/files/MIGRA2018_FR_AS_1.pdf), pp. 54-68.

<sup>50</sup> [Cour nationale du droit d'asile, N° 18037534, 26 juillet 2019](https://www.cour-nationale.be/fr/actualites/18037534-26-juillet-2019)

<sup>51</sup> CGRS, « Le respect du principe de non-refoulement dans l'organisation des retours de personnes vers le Soudan », 2018, [https://www.cgra.be/sites/default/files/enquete\\_sur\\_le\\_risque\\_de\\_retour\\_vers\\_le\\_soudan\\_2018.pdf](https://www.cgra.be/sites/default/files/enquete_sur_le_risque_de_retour_vers_le_soudan_2018.pdf).

<sup>52</sup> MYRIA, « Retour, détention et éloignement des étrangers en Belgique – Droit de vivre en famille sous pression » 2018, [https://www.myria.be/files/181205\\_Myriadoc\\_de%CC%81tention\\_2018.pdf](https://www.myria.be/files/181205_Myriadoc_de%CC%81tention_2018.pdf), p. 32.

<sup>53</sup> <https://www.myria.be/fr/publications/myriadocs-3-le-statut-juridique-des-passagers-clandestins>.

<sup>54</sup> Law of 8 May 2019 introducing the Belgian Navigation Code.

<sup>55</sup> MYRIA (2019), *La migration en chiffres et en droits*, <https://www.myria.be/fr/publications/la-migration-en-chiffres-et-en-droits-2019>.

<sup>56</sup> IMMIGRATION OFFICE (2019), *Rapport statistique 2018*, [https://dofi.ibz.be/sites/dvzoe/FR/Documents/Rapport\\_statistiques\\_2018.pdf](https://dofi.ibz.be/sites/dvzoe/FR/Documents/Rapport_statistiques_2018.pdf).

<sup>57</sup> The concept of first detention covers the fact of being detained on the basis of a first detention order in a closed centre. A person who is the subject of a change of status of detention or of a transfer to another closed centre will not be included in these figures. However, it should be noted that the same person detained several times in the same year will be counted as several first detentions, if he has been released between successive detentions.

<sup>58</sup> MYRIA (2020), *Myriatics #11 – January 2020, Le retour, la détention et l'éloignement des étrangers en 2018*, <https://www.myria.be/fr/chiffres/myriatics>. See also for 2017 data: MYRIA (2018), *Retour, détention et éloignement des étrangers en Belgique – Droit de vivre en famille sous pression*,

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[https://www.myria.be/files/181205\\_Myriadoc\\_de%CC%81tention\\_2018.pdf](https://www.myria.be/files/181205_Myriadoc_de%CC%81tention_2018.pdf) and for 2016, MYRIA (2017), *Retour, détention et éloignement des étrangers en Belgique- Un retour, à quel prix ?*, <https://www.myria.be/fr/publications/myriadocs-5-terugkeer-detentie-en-verwijdering>.

<sup>59</sup> The proportion of first detentions following a request for international protection at the border or on the territory increased from 15% in 2016 to 8% in 2017 and 2018. Thus in 2018, at the time of their placement in a closed centre, 6% of people detainees had applied for international protection at the border and 2% on the territory. These figures do not include foreigners who have applied for protection while in detention in a closed centre.

<sup>60</sup> GROUPE TRANSIT (2019), *Vulnérabilité et détention en centres fermés*, <https://www.cire.be/vulnerabilite-et-detention-en-centre-ferme-recommandations/>.

<sup>61</sup> FEDERAL OMBUDSMAN, *Fouilles à nu. L'équilibre entre la sécurité des prisons et la dignité des détenus*, 2019, [http://www.mediateurfederal.be/sites/default/files/rapport\\_enquete\\_fouilles\\_a\\_nu\\_-\\_mediateur\\_federal.pdf](http://www.mediateurfederal.be/sites/default/files/rapport_enquete_fouilles_a_nu_-_mediateur_federal.pdf).

<sup>62</sup> Art. 132 of the law of 25 December 2016 modifying the legal status of detainees and the supervision of prisons and laying down various provisions in matters of justice, *M.B.*, 30 December 2016.

<sup>63</sup> Royal Decree of 11 September 2019 amending the date of entry into force of the provisions of the Act of Principles of 12 January 2005 concerning the prison administration and the legal status of prisoners, relating to the processing of complaints and claims, *M.B.*, 17 September 2019.

<sup>64</sup> Art. 127 of the law of 25 December 2016 modifying the legal status of detainees and the supervision of prisons and laying down various provisions in matters of justice, *M.B.*, 30 December 2016, p.91963

<sup>65</sup> Art. 127 of the law of 25 December 2016 modifying the legal status of detainees and the supervision of prisons and laying down various provisions in matters of justice, *M.B.*, 30 December 2016, p.91963

<sup>66</sup> SARAH GRANDFILS (2018), *Le droit de plainte des détenus- Questionnements des commissaires de surveillance*, [https://www.cds-cvt.be/sites/default/files/presentationsg\\_cds\\_221118\\_fr.pdf](https://www.cds-cvt.be/sites/default/files/presentationsg_cds_221118_fr.pdf)

<sup>67</sup> Art. 50 et seq. of the law of 11 July 2018 laying down various provisions in the field of justice, *M.B.*, 18 July 2018.

<sup>68</sup> Former art. 89 of the law of principles of 12 January 2005 concerning the prison administration as well as the legal status of prisoners, *M.B.*, of 1 February 2005, p. 2815.

<sup>69</sup> Former art. 90 of the law of principles of 12 January 2005 concerning the prison administration as well as the legal status of prisoners, *M.B.*, of 1 February 2005, p. 2815.

<sup>70</sup> Former art. 97 of the law of principles of 12 January 2005 concerning the prison administration as well as the legal status of prisoners, *M.B.*, of 1 February 2005, p. 2815.

<sup>71</sup> MISTIAEN P. *et al*, « KCE Report – Soins de santé dans les prisons belges: Situation actuelle et scénarios pour le futur », 2017, [https://kce.fgov.be/sites/default/files/atoms/files/KCE\\_293Bs\\_Soins\\_de\\_sante\\_prisons\\_belge\\_Synthese.pdf](https://kce.fgov.be/sites/default/files/atoms/files/KCE_293Bs_Soins_de_sante_prisons_belge_Synthese.pdf).

<sup>72</sup> CPT, *op. cit.*

<sup>73</sup> CPT, *ibidem*, pp. 62-64.

<sup>74</sup> CPT, *ibidem*, p. 60.

<sup>75</sup> CPT, *ibidem*, p. 64.

<sup>76</sup> CPT, *ibidem*, p. 65.

<sup>77</sup> ECHR, *Oukili v. Belgium*, 9 January 2014, n ° 43663/09; ECHR, *Plaisier v. Belgium*, 9 January 2014, n ° 28785/11; ECHR, *Van Meroye v. Belgium*, 9 January 2014, n ° 330/09; ECHR, *Saadouni v. Belgium*, 9 January 2014, n ° 50658/09; ECHR, *Moreels v. Belgium*, 9 January 2014, n ° 43717/09; ECHR, *Gelaude v. Belgium*, 9 January 2014, n ° 43733/09; ECHR, *Lankester v. Belgium*, 9 January 2014, n ° 22283/10; ECHR, *Caryn v. Belgium*, 9 January 2014, n ° 43687/09; ECHR, *Smits and others v. Belgium*, 3 February 2015, n ° 49484/11, 4710/12, 15969/12, 49863/12 and 70761/12; ECHR, *Vander Velde and Soussi v. Belgium and the Netherlands*, 3 February 2015, n ° 49861/12 and 49870/12.

<sup>79</sup> FLEMISH WELFARE INSPECTION (DEPARTMENT OF WELFARE, PUBLIC HEALTH AND FAMILY AFFAIRS), « Oriënterende audit FPC Gent », 2015 and FLEMISH WELFARE INSPECTION (DEPARTMENT OF WELFARE, PUBLIC HEALTH AND FAMILY AFFAIRS), « *Gestandaardiseerde bevraging FPC Gent en opvolgingsaudit* », 2017. These reports have not been made public but can be obtained upon request.

<sup>80</sup> FLEMISH WELFARE INSPECTION, « *Verslag: Gestandaardiseerde bevraging FPC Gent en opvolgingsaudit* », 2017, p. 53, 63 et 64.

<sup>81</sup> H. ANNICK, « Un premier centre de long séjour pour 30 internés », *La Libre Belgique*, 2015, <http://www.koengeens.be/news/2015/09/17/un-premier-centre-de-long-sejour-pour-30-internes>.

<sup>82</sup> OIP, « Pour le droit à la dignité des personnes détenues - Notice 2016 », 2017, <http://oipbelgique.be/fr/wp-content/uploads/2017/01/Notice-2016.pdf>, p. 211.

<sup>83</sup> Question from Ms Karin Jiroflée to the Minister of Social Affairs and Public Health on "the problems of transferring internees from the CPL to other institutions " (n° P3023), available on <http://www.lachambre.be/doc/PCRI/pdf/54/ip239.pdf#search=%22P3023%22>, p. 21 ; CPT, "Report to the Government of Belgium on the visit to Belgium by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 March to 6 April 2017", 2017, <https://rm.coe.int/16807913b1>, p. 49.

<sup>84</sup> Between its opening and 13 December 2017, only 34 patients were allowed to leave CPL Ghent. On a request for admission to an external care establishment made for 118 patients, 83 patients were refused and no response was given for the other 35. On this subject, See parliamentary question of 13 December 2017 by Ms Goedele Uyttersprot to the Minister of Justice on 'the outgoing flow of interned persons' (n° 22506), available on <http://www.lachambre.be/doc/CCRI/pdf/54/ic780.pdf#search=%2222507%22>, p. 34.

<sup>85</sup> CPT, *op. cit.*, pp. 57,58,67,68 et 69.

<sup>86</sup> Law of 21 November 2017 amending the law of 15 December 1980 and law of 17 December 2017 amending the law of 15 December 1980. In July 2017 Myria sent a note to the attention of the Committee on the Interior, General Affairs and of the Civil Service, as part of the process of adopting these laws, which essentially examines the aspects related to detention, expulsion and effective remedy.

<sup>87</sup> Directive 2013/32 / EU of 26 June 2013 on common procedures for the granting and withdrawal of international protection.

<sup>88</sup> Directive 2013/33 / EU of 26 June 2013 establishing standards for the reception of persons seeking international protection.

<sup>89</sup> Directive 2008/115 / EC of 16 December 2008 on common standards and procedures applicable in the Member States for the return of illegally staying third-country nationals.

<sup>90</sup> Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a national of a country third party or stateless person.

<sup>91</sup> These hypotheses concern the absence of a request for stay or asylum lodged within the legal deadline, fraud, the absence of cooperation with the authorities, non-compliance with a previous expulsion measure or a private measure of freedom, the existence of a valid entry ban, the lodging of a residence request considered as dilatory, the will to conceal the taking of previous fingerprints in Eurodac, the succession of requests for international protection and / or a stay without a positive result, the concealment of the lodging of an application for international protection in another Member State, the stay motivated by objectives other than those put forward by the foreigner, the fine imposed for appeal manifestly abusive with the CCE.

<sup>92</sup> The Court of Justice of the European Union recently ruled in a case concerning Belgium (CJEU, H.A. v. Belgian State, 15 April 2021, C194/19). The Court recalled that it is up to the Member States to regulate the procedural arrangements for appeals if this is not explicitly provided for by Union law. It did not rule directly on the legality of the procedure in Belgium, but considered that the national legislation must allow the court to take account of the factors existing at the time it examines the appeal. This examination cannot, according to the Court, be made conditional on the occurrence of circumstances, such as the deprivation of liberty of the foreigner or the imminent execution of the removal decision. The ordinary suspension or annulment procedure before the Aliens Litigation Council does not currently allow for the consideration of elements subsequent to the adoption of the transfer decision. However, new elements could be examined, in particular if there is a risk of violation of fundamental rights, in the framework of an application for suspension in extreme urgency. However, this procedure is only possible in cases of imminent removal (Art. 39/82 Aliens Act and CCE, AG, No. 237 408, of 24 June 2020). The current appeal procedure should be reviewed.

<sup>93</sup> Following the adoption of the law of 21 November 2017 amending the law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners.

<sup>94</sup> See Myria (2016), *La migration en chiffres et en droits*, pp. 234-235.

<sup>95</sup> Article 74/5 of the law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners as modified by the law of 21 November 2017.

<sup>96</sup> This practice already existed before the entry into force of the law and therefore continued despite its adoption. See: Myria, *La migration en chiffres et en droits*, 2016, p. 235 as well as for more information, Nansen, *Note 2018/01- Demandeurs d'asile à la frontière: procédure à la frontière et détention*, April 2018.

<sup>97</sup> CJEU, *FMS et autres c. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, 14 May 2020, C 924/19 et PPU C 925/19.

<sup>98</sup> Const. Court, nr 23/2021, 25 February 2021.

<sup>99</sup> 85 families responded to this summons. Among these, 4 left the territory voluntarily and autonomously. No family has been removed after returning home. Myria does not have information on the fate of the other families. See Myria, *Myriatics # 13, The return, detention and removal of foreigners in 2019*, May 2021, <https://www.myria.be/fr/publications/myriatics-13-le-retour-la-detention-et-leloignement-des-etrangers-en-2019>.

<sup>100</sup> Third Optional Protocol to the Convention on the Rights of the Child establishing a procedure for the presentation of communications, adopted and open for signature, ratification and accession by the general assembly A / RES / 66/138 of 19 December 2011 entered into force on 14 April 2014, art. 6.

<sup>101</sup> Letter of 25 September 2018 from the United Nations High Commissioner for Human Rights explaining the decision sent to the State to the family lawyer. See also, RTBF, *Famille serbe au 127bis: injonction de l'ONU pour sa libération, que l'Office des Etrangers refuse d'exécuter*, (Serbian family at 127bis: UN injunction for their release, which the Immigrations Office refuses to execute, 6 September 2018, [www.rtbef.be/info/belgique/detail\\_famille-serbe-au-127bis-injonction-de-l-onu-pour-sa-liberation-que-loffice-des-etrangers-refuse-d-executer?id=10029695](http://www.rtbef.be/info/belgique/detail_famille-serbe-au-127bis-injonction-de-l-onu-pour-sa-liberation-que-loffice-des-etrangers-refuse-d-executer?id=10029695)).

<sup>102</sup> Article 74/19 of the law of December 15, 1980.

<sup>103</sup> Art. 61/14 of the law on foreigners which defines the UM as "a national of a country which is not a member of the European Economic Area, who is less than 18 years old, who is unaccompanied [...] and who has been definitively identified as UMs by the Guardianship service".

<sup>104</sup> Regarding UMs at the border, they may be under the reception law for the duration of the age determination procedure, which must be carried out within three working days of arrival at the border, a period which may exceptionally be extended by three additional working days (Art. 41, § 2, paragraph 2 of the reception law). The law does not provide anything for unaccompanied foreign minors arrested in the territory for whom there is a doubt about their minority, which means that they are sometimes detained.

<sup>105</sup> Circular of May 29, 2009 on the identification of illegally staying foreigners, M.D., July 15, 2009.

<sup>106</sup> Article 7 §2, 2° of the Reception Act, which provides that the benefit of material assistance may be extended to: "a foreigner whose asylum procedure and the procedure before the Council of State have been terminated negatively and who cannot comply with the order to leave the territory that was notified to her because of her pregnancy.

<sup>107</sup> See articles 122 and 123 of the Royal Decree of August 2, 2002.

<sup>108</sup> Based on the concept of medical impossibility of return developed by the judgment of June 30, 1999 of the Constitutional Court, n° 80/99.

<sup>109</sup> By taking all the necessary precautions to avoid any form of damage to the abdominal wall (including those that could be inflicted on the person themselves).

<sup>110</sup> Commission responsible for evaluating removal instructions, Final report presented to the Minister of the Interior, January 31, 2005, p.79.

<sup>111</sup> AO, Internal memorandum of March 21, 2008.

<sup>112</sup> Based on the annual reports of each closed center, it is observed that several pregnant women are detained each year. They were 59 in 2017. It is also noted that, in some cases, the removal takes place during the third trimester of pregnancy, that is, after the 31st week. According to the explanations received by the Aliens office, these were people arrested at the border and having consented to their removal.

<sup>113</sup> For more information, see Myria, *MyriaDoc # 8 Return, detention and removal of foreigners in Belgium 2018*, pp. 45-48, [https://www.myria.be/files/181205\\_Myriadoc\\_de%CC%81tentien\\_2018.pdf](https://www.myria.be/files/181205_Myriadoc_de%CC%81tentien_2018.pdf).

<sup>114</sup> See also "the 20 guiding principles on forced return" developed by the CAHAR of the Council of Europe (2005) = 6th principle: "If necessary, detained persons must have the right to lodge a complaint for ill-treatment or for default of protection against acts of violence by fellow prisoners. The complainant and his witnesses must be protected from the ill-treatment and intimidation to which the complaint or the supporting evidence may expose them."

<sup>115</sup> See especially Eur. Cour H.R. *Bamouhammad v. Belgium*, 17 November 2005, § 165-166.

<sup>116</sup> See Eur. Cour H.R. *Vasilescu v. Belgium*, 25 November 2014, §77

- <sup>117</sup> See Eur. Cour H.R., R.T. v. Greece, 11 February 2016, §94-10
- <sup>118</sup> Parliamentary question n ° 2794 (2018) by Gilles Vanden Burre to the Minister of Justice on the situation of internees staying in prison and answer of the Minister of Justice of 3 August 2018, <http://www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-B165-866-2794-2017201824031.xml>.
- <sup>119</sup> Myria, *La migration en chiffres et en droits* 2016, p.237, <https://www.myria.be/fr/recommandations/mettre-en-place-un-mecanisme-national-et-independant-de-contrôle-de-la-detention-comme-le-prevoit-lopcat-le-protocole-facultatif-a-la-convention-des-nations-unies-contre-la-torture>
- <sup>120</sup> The reports published in 2017 and 2019 by the T Committee are available on its website: [www.comitet.be](http://www.comitet.be).
- <sup>121</sup> HUMAN RIGHTS COUNCIL (2019), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium – A/HRC/40/52/Add.5*.
- <sup>122</sup> UNIA (2021), *Mesures et climat – Conséquences post-attentats*.
- <sup>123</sup> These are illustrative facts that have been reported in the press or of which Unia or Myria have been informed, and not an exhaustive list.
- <sup>124</sup> Comité P (2019), 'Violences policières. Enquête de contrôle' .
- <sup>125</sup> HUNGARIAN HELSINKI COMMITTEE (2016), *Investigation of torture in Europe. A comparative analysis of seven jurisdictions*, pp. 16-27.
- <sup>126</sup> MÉDECINS DU MONDE (2018), *Violences policières envers les migrants et les réfugiés en transit en Belgique. Une enquête quantitative et qualitative*.
- <sup>127</sup> MÉDECINS DU MONDE (2018), *Violences policières envers les migrants et les réfugiés en transit en Belgique. Une enquête quantitative et qualitative*.
- <sup>128</sup> COMITE P (2019), *Le contrôle et la détention de transmigrants par la police à l'occasion d'arrestations administratives massives*, §35 et §78 ; MYRIA, Myrianote, *Police et migrants de transit. Respecter la dignité et enquêter sérieusement sur les violences* (2019).
- <sup>129</sup> COMITE P (2020), *Flux d'information dans le cadre de l'arrestation de monsieur Chovanec* ; CONSEIL SUPÉRIEUR DE LA JUSTICE (2020), *Enquête particulière affaire « Jozef Chovanec »*.
- <sup>130</sup> RTBF (2020), *Une peine d'un an de prison avec sursis pour le policier qui a porté des coups à un migrant*.
- <sup>131</sup> Le Soir, *Affaire Mawda: le policier condamné à 1 an de prison avec sursis, le chauffeur de la camionnette à une peine de 4 ans ferme*, 12 February 2021, <https://www.lesoir.be/354868/article/2021-02-12/affaire-mawda-le-policier-condamne-1-de-prison-avec-sursis-le-chauffeur-de-la>. In the meantime, the police officer has appealed against this conviction, see : RTBF, *Le policier condamné dans l'affaire Mawda fait appel: il demande à être acquitté*, 10 March 2021, [Le policier condamné dans l'affaire Mawda fait appel: il demande à être acquitté \(rtbf.be\)](http://rtbf.be).
- <sup>132</sup> RTBF, *Mawda trial: "We were covered in blood, they knew there had been a shooting", Mawda's parents present their version of the facts to the court, November 22, 2020*, [https://www.rtbf.be/info/regions/detail\\_mons-debut-du-proces-des-trois-personnes-impliquees-dans-la-mort-de-la-petite-mawda?id=10637522](https://www.rtbf.be/info/regions/detail_mons-debut-du-proces-des-trois-personnes-impliquees-dans-la-mort-de-la-petite-mawda?id=10637522).
- <sup>133</sup> The interviews were carried out by videoconference. 24% of the participants work in nursing and care homes (MR / S). The others were mainly from associations (19%) which work in the field of people residing in the N/CH and the defence of the rights of the elderly in general. In the "experts" category, we included professionals from organizations that have developed actions and published study reports following work with the N/CH during the first wave, as well as an organisation that supports and assists the N/CH in the implementation of the "Tubbe model" (King Baudoin Foundation), and also researchers, teachers, gerontologists and geriatricians. Due to Covid-19, it was not possible to interview the residents of N/CH themselves. This has been compensated as much as possible by consulting organisations that represent the interests of the elderly and by consulting testimonials from elderly people in existing reports.
- <sup>134</sup> Publication of this survey is scheduled for August-September 2021.
- <sup>135</sup> UNIA AND GENERAL DELEGATE FOR CHILDREN'S RIGHTS (2014), *Bedwingings- en/of isoleringsmaatregelen: algemene aanbevelingen*. See also Flemish Elderly Council (2019), *Advies 2019/2: Over vrijheidsbeperking bij ouderen met zorgnoden*.
- <sup>136</sup> UNIA (2020), *COVID et droits humains : impact sur les personnes handicapées et leurs proches*, [https://www.unia.be/files/Documenten/Publicaties\\_docs/Resultats\\_consultation\\_impact\\_COVID\\_sur\\_les\\_personnes\\_handicapees\\_et\\_leurs\\_proches.pdf](https://www.unia.be/files/Documenten/Publicaties_docs/Resultats_consultation_impact_COVID_sur_les_personnes_handicapees_et_leurs_proches.pdf).

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<sup>137</sup> MYRIA (2020), *Visites de Myria dans les centres fermés de Merksplas, Bruges et Vottem entre le 10 avril et le 14 mai 2020 dans le cadre de la pandémie de COVID-19*. This report has been critically analyzed by the Aliens Office.

<sup>138</sup> See above on the closed centre complaints mechanism (n°80-83).

<sup>139</sup> LE SOIR, Coronavirus - Quatre résidents du centre fermé de Vottem détectés positifs au Covid-19, May 18, 2021, <https://www.lesoir.be/372854/article/2021-05-18/quatre-residents-du-centre-ferme-de-vottem-detectes-positifs-au-covid-19>.

<sup>140</sup> This question was raised in the House of Representatives. It was reported that: "When three more residents tested positive, there was no room left in the medical rooms. They were therefore placed for two nights in individual rooms which are useful for personalised programmes and, in particular, for orderly measures -". The Chamber, Full report, Interior Committee, June 4, 2021, CRIV 55 COM 503.

<sup>141</sup> MYRIA (2020), *Visites de Myria dans les centres fermés de Merksplas, Bruges et Vottem entre le 10 avril et le 14 mai 2020 dans le cadre de la pandémie de COVID-19*.

<sup>142</sup> Comité P, *Le contrôle et l'arrestation des transmigrants par la police à l'occasion d'arrestations administratives massives*, February 2019, referred to below as the 'Report of the Comité P », <https://comitep.be/document/onderzoekrapporten/2019-02-06%20transmigrants.pdf>.

<sup>143</sup> Médecins du Monde, *Violence policières envers les migrants et les réfugiés en transit en Belgique. Une enquête quantitative et qualitative*, October 2018, <https://medecinsdumonde.be/system/files/publications/downloads/MdM%20rapport%20Geweldmigratie%20FR%20HD.pdf>.

<sup>144</sup> Myria, *Note: Police et migrants de transit, Respecter la dignité et enquêter sérieusement sur les violences*, September 2019, [https://www.myria.be/files/Note\\_Police\\_et\\_migrants\\_de\\_transit.pdf](https://www.myria.be/files/Note_Police_et_migrants_de_transit.pdf).

<sup>145</sup> Comité P, *La notification des droits dans le cadre des privations de liberté dans les lieux de détention de la police et l'application du droit à l'assistance médicale et du droit à un repas dans ce contexte*, 2019, pp. 38-40.

<sup>146</sup> CPT, Report to the Government of Belgium on the visit to Belgium by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 24 September to 4 October 2013, CPT / inf (2016) 13, 31 March 2016, pp. 37-38; CPT, Report to the Government of Belgium on the visit to Belgium by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 March to 6 April 2017, 8 March 2018, pp. 17-18.

<sup>146</sup> Comité P, *La notification des droits dans le cadre des privations de liberté dans les lieux de détention de la police et l'application du droit à l'assistance médicale et du droit à un repas dans ce contexte*, 2019, p. 40, § 192-193.

<sup>147</sup> Comité P, *La notification des droits dans le cadre des privations de liberté dans les lieux de détention de la police et l'application du droit à l'assistance médicale et du droit à un repas dans ce contexte*, (The notification of rights in the context of deprivation of liberty in places of police detention and the application of the right to medical assistance and the right to a meal in this context) 2019, p. 40, § 192-193.

<sup>148</sup> ECHR, *Muhammad Saqawat v. Belgium*, June 30, 2020, no.54962 / 18.

<sup>149</sup> Report of the Special Rapporteur on the human rights of migrants, François Crépeau, A/HRC/20/24, April 2 2012, n°23.

<sup>150</sup> 'Mercuriale' argument issued by Mr. André Henkes, prosecutor general the Court of Cassation, September 2 2019, [https://justice.belgium.be/sites/default/files/downloads/cour\\_de\\_cassation\\_pg\\_mercuriale\\_2019\\_fr.pdf](https://justice.belgium.be/sites/default/files/downloads/cour_de_cassation_pg_mercuriale_2019_fr.pdf).

<sup>151</sup> MyriaDocs #11 Retour, détention et éloignement des étrangers en Belgique 2021, à paraître juin 2021.

<sup>152</sup> According to our information, 6 in January 2019.

<sup>153</sup> Article 74/8 of the Aliens Act of December 1980.

<sup>154</sup> Act of 4 May 2016 containing various provisions on asylum and migration and amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners and the Act of 12 January 2007 on the reception of asylum seekers and certain other categories of foreigners.

<sup>155</sup> According to a Royal Decree of 8 June 2009, which amended Article 111 of the Royal Decree of 2 August 2002 on closed centres concerning searches, it was possible to carry out searches 'at other times'. However, in a decision no. 208.281 of 20 October 2010, the Council of State annulled the provision of the RD establishing this hypothesis as it was not provided for by law.

<sup>156</sup> In this case, he will receive a copy of the inventory of the goods placed in custody in accordance with Article 111/3 of the Royal Decree of 2 August 2002 on closed centres.

<sup>157</sup> See in particular: ECHR, Valašinas v. Lituanie, 24 July 2001, n° 44558/98 ; ECHR, Van der Ven v. the Netherlands, February 4, 2003, n°50901/99 ; ECHR, Lorsé v. the Netherlands, February 4, 2003, n°52750/99 ; ECHR Frérot contre France, June 12, 2007, n°70204/01.

<sup>158</sup> C. Const., 30 October 2013, n° 143/2013.

<sup>159</sup> Following the adoption of the Royal Decree of 2 July 2018, amending the Royal Decree of 2 August 2002 on closed centres.

<sup>160</sup> Royal Decree of 2 August 2002 laying down the regime and operating rules applicable to places located on Belgian territory, managed by the Aliens Office, where a foreigner is detained, placed at the disposal of the Government or maintained.

<sup>161</sup> Art. 74/8 of the Aliens Act also specifies that this search may not be vexatious and must respect the dignity of the occupant.

<sup>162</sup> Art. 111/2 §1, 3° of the Royal Decree of 2 August 2002 on closed centres.

<sup>163</sup> Art. 111/2 §3 of the Royal Decree of 2 August 2002 on closed centres.

<sup>164</sup> Following the adoption of the Royal Decree of 2 July 2018, amending the Royal Decree of 2 August 2002 on closed centres.

<sup>165</sup> Art. 8. of the decree of 8 December 2008 setting the regime and the rules applicable during the transfer, executed by the security staff and drivers of the Immigration Office, foreigners referred to in article 74/8, § 1, of the law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners law.

<sup>166</sup> Myria, Complaints Commission 2004-2007: analysis and evaluation of an insufficient system, January 2008, [https://www.myria.be/files/Rapport\\_final\\_commission\\_des\\_plaintes.pdf](https://www.myria.be/files/Rapport_final_commission_des_plaintes.pdf).

<sup>167</sup> To date we have only been aware of an appeal to the EC, n° 241.168 of 28 March 2018 declared inadmissible because the EC declares itself incompetent for the benefit of the CCE. But then, see CCE, n° 214.432 of 20 December 2018 which declares that there is no longer any interest in acting because the effects of the decision are exhausted. However, the Eur. D.H., in its judgment RONALD VERMEULEN v. Belgium, 17 October 2018, §51-59 concluded that there had been a violation of Article 6 of the ECHR due to the fact that the Council of State had not considered the possible influence of the length of the proceedings before him on the applicant's loss of interest in bringing proceedings, thereby infringing the right of access to a court.

<sup>168</sup> Eur Court. H.R., Muskhadzhiev and others v. Belgium, 19 January 2010, §50: "As regards the applicants' failure to refer the matter to the Complaints Commission, the Court doubts the effectiveness of this remedy".

<sup>169</sup> Eur Court. H.R, Vasilescu v. Belgium, 25 november 2014, n° 64682/12 ; Eur Court. H.R, Bamouhammad v. Belgique, 17 november 2015, n° 47687/13. For a more detailed analysis, see : Myria, La Migration en chiffres et en droits 2016, pp. 235-236.

<sup>170</sup> Complaint brought to Myria's attention by the complainant's lawyer. For a description of this complaint see: Myria, MyriaDocs #11 Retour, détention et éloignement des étrangers en Belgique 2021, to be published in June 2021.

<sup>171</sup> Le Soir (2019), [https://www.rtf.be/info/regions/detail\\_soupeon-de-bavure-a-molenbeek-les-zones-de-police-bruxelles-ixelles-et-ouest-ouvrent-une-enquete?id=10226612](https://www.rtf.be/info/regions/detail_soupeon-de-bavure-a-molenbeek-les-zones-de-police-bruxelles-ixelles-et-ouest-ouvrent-une-enquete?id=10226612), consulted on 17 May 2021.

<sup>172</sup> BX1 (2019), <https://bx1.be/categories/news/molenbeek-un-jeune-en-cyclomoteur-hospitalise-apres-une-course-poursuite-avec-la-police>, consulted on 17 May 2021.

<sup>173</sup> Le Soir (2019), <https://plus.lesoir.be/238318/article/2019-07-24/festival-ostende-deux-rappeurs-portent-plainte-pour-violences-policieres>, consulted on 17 May 2021.

<sup>174</sup> Le Soir (2019), <https://plus.lesoir.be/240137/article/2019-08-03/bruxelles-un-motocycliste-perd-la-vie-dans-une-course-poursuite-avec-la-police>, consulted on 17 May 2021.

<sup>175</sup> RTBF (2019), [https://www.rtf.be/info/regions/detail\\_le-suspect-sur-lequel-la-police-a-tire-mardi-matin-est-decede?id=10300248#](https://www.rtf.be/info/regions/detail_le-suspect-sur-lequel-la-police-a-tire-mardi-matin-est-decede?id=10300248#), consulted on 17 May 2021.

<sup>176</sup> Politico (2020), <https://www.politico.eu/article/mehdi-bouda-no-charges-over-death-brussels-teenager-killed-police-car-prosecutor/>, consulted on 17 May 2021.

<sup>177</sup> Le Soir (2019), <https://plus.lesoir.be/240854/article/2019-08-07/des-visiteurs-denoncent-des-interpellations-musclees-en-marge-de-la-foire-de>, consulted on 17 May 2021.

<sup>178</sup> Complaint brought to Myria's attention by the complainant's lawyer. For a description of this complaint see: Myria, MyriaDocs #11 Retour, détention et éloignement des étrangers en Belgique 2021, to be published in June 2021.

<sup>179</sup> Le Soir (2019), <https://plus.lesoir.be/253441/article/2019-10-13/enquete-sur-les-violences-policieres-lencontre-dextinction-rebellion>, consulted on 17 May 2021 and RTBF (2019),

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[https://www.rtbf.be/info/belgique/detail\\_extinction-rebellion-quatre-procedures-d-enquete-disciplinaire-ont-ete-initiees-a-l-egard-de-policiers?id=10347479](https://www.rtbf.be/info/belgique/detail_extinction-rebellion-quatre-procedures-d-enquete-disciplinaire-ont-ete-initiees-a-l-egard-de-policiers?id=10347479), consulted on 17 May 2021.

<sup>180</sup> Case compiled by Unia, unpublished.

<sup>181</sup> Le Soir (2020), <https://plus.lesoir.be/285982/article/2020-03-10/bruxelles-de-nouvelles-vidéos-attestent-des-violences-policieres-la-marche-des>, consulted on 17 May 2021.

<sup>182</sup> Case compiled by Unia, unpublished.

<sup>183</sup> Le Soir (2020), <https://plus.lesoir.be/293963/article/2020-04-11/des-emeutes-anderlecht-suite-au-deces-dun-jeune-de-19-ans-lissue-dune-course>, consulted on 17 May 2021.

<sup>184</sup> BX1 (2020), <https://bx1.be/communes/bruxelles-ville/la-police-accusee-de-violences-sur-un-migrant-une-information-judiciaire-ouverte-quatre-policiers-entendus/>, consulted on 17 May 2021.

<sup>185</sup> THE BRUSSELS TIMES (2020), *Outrage after Brussels police arrest and handcuff minors*.

<sup>186</sup> THE BRUSSELS TIMES (2020), *Police investigate allegations of brutality against Brussels teen*.

<sup>187</sup> THE BRUSSELS TIMES (2020), *Belgian Network for Black Lives shocked by riots and police violence*.

<sup>188</sup> ARCHYDE (2020), *Sophie Dewulf, the partner of singer Arno, tacked to the wall by police when she walks her dog: she filed a complaint (video)*.

<sup>189</sup> POLITICO (2020), *Belgian police say MEP who accused them of racist violence insulted them*.

<sup>190</sup> RTBF (2020), [https://www.rtbf.be/info/societe/detail\\_agression-policiere-la-mort-d-akram-a-anvers-suscite-l-indignation-sur-les-reseaux-sociaux?id=10545966](https://www.rtbf.be/info/societe/detail_agression-policiere-la-mort-d-akram-a-anvers-suscite-l-indignation-sur-les-reseaux-sociaux?id=10545966), consulted on 18 May 2021.

<sup>191</sup> RTBF (2020), [https://www.rtbf.be/info/regions/detail\\_flandre-occidentale-le-parquet-enquete-sur-l-interpellation-musclee-d-un-jeune-sans-masque-a-roulers?id=10549544](https://www.rtbf.be/info/regions/detail_flandre-occidentale-le-parquet-enquete-sur-l-interpellation-musclee-d-un-jeune-sans-masque-a-roulers?id=10549544), consulted on 18 May 2021.

<sup>192</sup> BX1 (2020), <https://bx1.be/communes/saint-gilles/saint-gilles-trois-femmes-accusent-des-policiers-de-violence-la-police-conteste>, consulted on 18 May 2021.

<sup>193</sup> Le Soir (2020), <https://plus.lesoir.be/326867/article/2020-09-22/sante-en-lutte-itineraire-dun-deploiement-policier-qui-fait-mal>, consulted on 18 May 2021.

<sup>194</sup> RTL (2020), <https://www.rtl.be/info/regions/hainaut/une-etudiante-si-dit-victime-de-violences-policieres-a-mons-voici-la-version-du-parquet-1247918.aspx>, consulted on 18 May 2021.

<sup>195</sup> Le Soir (2020), <https://plus.lesoir.be/345312/article/2020-12-23/controle-policier-qui-tourne-mal-waterloo-le-pere-de-famille-maintient-sa>, consulted on 18 May 2021.