

Belgium



The Refugee Forum (2010)
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Belgium's Asylum System

The Belgian asylum system has benefited from a substantial reform in 2006, rendering it fairer and faster. It is now a two-stage process, consisting of eligibility screening followed by a hearing on the merits of the asylum claim. In this first hearing, asylum seekers are given a chance to present their own case before a first decision is made on their claim. Belgium is one of the few countries to afford asylum seekers this opportunity. Notably, in its 2006 reforms, Belgium has created subsidiary protection for those who are not covered by the 1951 Convention but still face real dangers if repatriated. Although subsidiary protection does not come with the same privileges as Convention Refugee status, it helps fill a protection gap.

Although the reformed Belgian refugee system is generally applauded, critics still point to areas that need improvement, including complicated family reunification procedures, and over-zealous detention practices. Most recently, the European Commissioner for Human Rights Thomas Hammarberg has criticized Belgium for systematically detaining asylum seekers without documentation to enter Belgium. Hammarberg has also pointed to the conditions in closed detention centres relating to privacy, noise, hygiene and access to legal and medical services.

1. Types of Protection


Belgium offers 2 types of refugee protection.

a. Conventional Asylum

Like many other countries of asylum, Belgium principally grants protection to asylum seekers under the 1951 UN Convention. To merit protection under the Convention, asylum seekers must meet the criteria set out in the Convention definition of a refugee: they must (1) be outside their country of origin (2) have a well-founded fear of persecution (3) due to reasons of race, religion, nationality, political opinion or membership in a particular social group and (4) are unable or unwilling, by reason of their fear, to secure protection from their country of origin. The entire definition is available at <http://www.unhcr.org.au/basicdef.shtml>

Convention Refugees (CRs) are granted the right to stay in Belgium for an indefinite period. CRs may also apply to bring members of their immediate family to Belgium under the family reunification program. However, to do so, they must demonstrate sufficient resources to support family members.

CRs are not subject to scheduled reviews of their status. However, the Commissioner General has authority to revoke status should certain circumstances come to light. For example, the Commissioner General may terminate an individual's CR status if the individual's country of origin undergoes a fundamental and lasting change that renders it safe for the individual. In this case, the individual will lose their CR status but will not be required to leave Belgium immediately. The Commissioner General can also withdraw



CR status if it is found that the status was obtained fraudulently. The discovery of fraud may indeed lead to an order to leave Belgium.¹

b. Subsidiary Protection

If asylum seekers do not qualify to be a CR, they may still be able to obtain subsidiary protection. Subsidiary protection was introduced into Belgian law as part of the 2006 reforms. To gain subsidiary protection, asylum seekers must demonstrate that they would be subject to a real risk of serious harm in their country of origin, and where that they cannot, or because of this risk, do not wish to, seek state protection. Belgian law defines serious harm as including death, torture or a serious threat to life due to indiscriminate violence during armed conflict.²

Unlike CRs, those with subsidiary protection are not entitled to indefinite asylum. Instead, they are issued a one-year residency permit. They may renew this permit for an additional year if they still face this same risk. After five years of renewing their permits, those with subsidiary protection are granted permanent residency. It is only at this point that subsidiary protection recipients can apply for family reunification.

2. The Asylum Process

1) Access to Asylum

The Belgian asylum procedure has been simplified since 2006. It is now a two-stage process, consisting of an “eligibility” screening followed by a hearing on the merits of the claim. Any foreign national on Belgian territory is entitled to apply for asylum:

i) At the Border

Individuals arriving without legal documentation to enter Belgium may make an asylum claim at the border. These asylum seekers are detained at a *closed detention centre* for the duration of the asylum procedure.³

ii) Inside the Territory


Individuals who have entered Belgium legally or who have managed to enter the country without legal documentation may make an asylum application inside Belgium within 8 days of their arrival.

iii) At a Prison/Detention Centre

¹ Coordination et Initiatives pour Réfugiés et Étrangers (CIRÉ), *Guide on the Asylum Procedure in Belgium* (Bruxelles: CIRÉ, 2008), <<http://www.cire.irisnet.be/ressources/guides/guide-asile-en.pdf>> at 52 [CIRÉ].

² Office of the Commissioner General for Refugees and Stateless Persons (CGRA), *The Asylum Procedure in Belgium: Information for Asylum Seekers* (Bruxelles: Dirk van den Bulck, 2008), <http://www.cgvs.be/fr/binaries/PDF%20-%20The%20asylum%20procedure%20in%20Belgium_tcm126-42131.pdf> at 8 [CGRA].

³ CIRÉ, *supra* note 1 at 14.



Foreigners can also apply for asylum if they are detained in a prison or closed detention centre for other reasons.

2) Stage 1 – Registration & Eligibility Determination

Generally, an asylum seeker's first point of contact during the asylum process is the Immigration Department of the Ministry of Interior (*Office des Étrangers* – OE).⁴ The OE is responsible for registering asylum claims and for conducting an initial eligibility screening of claimants.

The registration procedure includes establishing the applicant's identity through questions and a review of documents. This procedure also includes fingerprinting, photographing, and a chest x-ray, and is concluded by a preliminary interview in order to determine the applicant's country of origin and the path they took in getting to Belgium.

The preliminary interview usually occurs on the same day that the application is filed. If applicants are being held in detention, then the interview is conducted at the detention centre or prison where they are located.

The applicant can choose either French or Dutch as the language in which to conduct proceedings. If they speak neither, interpreters are provided by the government. The applicant's initial language choice is crucial as all subsequent hearings (including any potential appeals) will be held in the language chosen at this stage and the applicant will not have the opportunity to change it later.⁵ The applicant can also request whether they wish to be interviewed by a male or female OE officer.⁶

* * *

The OE will also be determining whether the asylum seeker is eligible to apply for protection. Asylum seekers may be ineligible on the following grounds:

i) Dublin II

The OE applies the Dublin II Regulation to determine whether Belgium should be the country to adjudicate asylum seekers' request for protection. The Dublin II Regulation is a responsibility-sharing agreement among European countries over asylum seekers. Under this agreement, Belgium is not responsible for asylum claims if the asylum seeker has valid immigration documents from a country party to the Dublin II Regulation, has transited through one of those countries to get to Belgium, or has applied for asylum there. Certain exemptions apply for unaccompanied minors and other situations.⁷

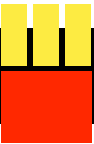
If the OE concludes that a Dublin II party is responsible for an asylum claim, they will request that this country take over the case. If the country accepts, the applicant will be removed to the border or given an order to leave Belgian territory and will be issued with "laissez passer" authorization to enter the destination country. If the country refuses to

⁴ Also commonly referred to as the *Aliens' Office*.

⁵ CIRÉ, *supra* note 1 at 21.

⁶ CIRÉ, *supra* note 1 at 21.

⁷ See CIRÉ, *supra* note 1 at 25 for more detail.



take over the applicant's case, Belgium may then agree to hear the request for protection.

An applicant may appeal a refusal by OE to take on the applicant's case to the Aliens Litigation Council (*Conseil du contentieux des Etrangers* – CCE) within 30 days of receiving the decision.⁸ However, the appeal is not suspensive, and the applicant may be deported in the meantime.

ii) Multiple Claims

Asylum seekers may not be eligible to apply for asylum if they have applied previously. The OE does permit new applications under two circumstances: if the applicants have evidence which was not available at the time of their first hearing or if new events have arisen in the country of origin since the first application was rejected.⁹

If these applicants are denied the ability to re-apply for asylum, they may face deportation. Failed applicants are entitled to the same appeal to the CCE as above under the Dublin II criteria.

iii) Threat to Public Safety

An asylum seeker is ineligible to apply for CR status if there are serious reasons for considering that they have committed any act contrary to Article 1(F) of the UN Convention.¹⁰ Similarly, they are ineligible for subsidiary protection if they have committed war crimes, crimes against humanity crimes against peace or other serious crimes.¹¹ Additionally, if the Minister is of the opinion that asylum seekers pose a threat to national security, he may refuse them entry into Belgium or may detain them.¹²

* * *

The Office of the Commissioner General for Refugees and Stateless Persons (CGRA) is then responsible for evaluating the merits of eligible asylum claims. If OE officer decides that the applicant is eligible to make an asylum claim, they will issue to the applicant a CGRA form seeking information about the reasons for fleeing the country of origin. The OE forwards the form to the CGRA.

The official CGRA Guide to Asylum suggests that it is in the applicant's best interest to fill out the form immediately in the presence of the OE officer and the translator.¹³ Conversely, a guide published by the NGO CIRÉ recommends that the applicant complete the form in the presence of a lawyer or social worker.¹⁴ Although asylum seekers are entitled to free legal representation, lawyers are not permitted to be present

⁸ CIRÉ, *supra* note 1 at 27; CGRA, *supra* note 2 at 12.

⁹ CIRÉ, *supra* note 1 at 27; CGRA, *supra* note 2 at 12.

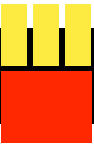
¹⁰ *Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, art. 55/2 [*Aliens Act*].

¹¹ *Aliens Act*, *supra* note 10, art. 55/4.

¹² See *Aliens Act*, *supra* note 10, arts. 49/2, 52/4 and 54.

¹³ CGRA, *supra* note 2 at 13.

¹⁴ CIRÉ, *supra* note 1 at 24.



during the OE interview. If the asylum seeker chooses not to complete the form at the interview, they must return it to CGRA within 5 days.¹⁵

3) Stage 2 – Interview at the CGRA

Once CGRA receives the application from the OE, the asylum seeker is called for an interview with a CGRA case officer. According to the *CGRA Guide*, case officers are qualified individuals with a university degree specializing in asylum.¹⁶ They have in-depth knowledge of country conditions and can rely on a team of researchers for up-to-date information about political developments in various countries.¹⁷

All asylum seekers who pass the initial OE screening are entitled to a minimum of one interview with a CGRA case officer.¹⁸ If the applicant is required to further clarify details surrounding their claim, they may be called in for subsequent interviews.¹⁹ If the applicant does not show up for the interview and does not provide adequate reasons for the absence within 15 days, the request for asylum is rejected.

Detained applicants are interviewed at the detention center where they are housed. All interviews are confidential. The applicant may have a lawyer, an interpreter and another trusted individual present at their interview. If the applicant's lawyer does not show up, the applicant must still go to the interview and request to re-schedule, although there is no guarantee that CGRA will accept this as a justification for delay.

i) At the Interview

At the interview, the CGRA case officer's responsibility is to verify the authenticity of any supporting documents submitted by the asylum seeker, to evaluate the applicant's credibility and to determine whether the applicant meets the criteria for asylum. Asylum seekers will have a chance to elaborate on information in the CGRA form that they were required to fill out earlier regarding the reasons for leaving their country of origin and the threats they face if they are returned.

Although a lawyer and trusted person may be present during the interview, they may not intervene during the hearing itself. These individuals are afforded an opportunity to make submissions on behalf of the asylum seeker at the end of the interview.

The case officer will note down the asylum seeker's statements in a report. The asylum seeker does not get a copy of the report, but they may request access to their asylum file later.²⁰

ii) After the Interview

Generally, CGRA should render a decision within 2 months if asylum seekers are not subject to detention or within 15 days if they are subject to detention. However, these

¹⁵ CIRÉ, *supra* note 1 at 23.

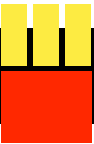
¹⁶ CGRA, *supra* note 2 at 15.

¹⁷ CGRA, *supra* note 2 at 15.

¹⁸ CGRA, *supra* note 2 at 14.

¹⁹ CIRÉ, *supra* note 1 at 33.

²⁰ CGRA, *supra* note 2 at 15.



are only suggested timelines.²¹ The case officer who conducted the interview will make a decision and submit it to a supervisor. After the supervisor reviews the draft, it is forwarded to the Commissioner General who must sign off on the decision before it becomes final.²²

One of three things can happen:

a. International Protection is Granted (2 variants)

The applicant may be recognized as a **Convention Refugee**. CGRA will then issue the CR a refugee card approximately a month after the decision is made. The CR can then use this card to apply for permanent residence.

Alternately, the applicant may be denied refugee status, but will be extended **subsidiary protection**. As noted earlier, this is a more limited form of protection resulting in renewable one-year residency permits. CGRA supplies the applicant with written reasons why refugee status was denied. The applicant may appeal this decision to the CCE within 15 days.

b. International Protection is Denied

CGRA may also deny an applicant both refugee status and subsidiary protection. Written reasons for the denial are provided to the asylum seeker and a removal order is issued. The applicant may appeal this decision to the CCE within 15 days.

Procedure for EU Nationals

EU nationals seeking asylum in Belgium are placed in a special procedure. Their applications are forwarded directly to the CGRA for an eligibility screening, thus bypassing the normal OE procedure. If the application is deemed to be eligible, then it follows the normal adjudication process.

The CGRA theoretically has five days to render a decision. If it decides not to consider the application, the asylum seeker may lodge an annulment appeal to the CCE within 30 days (see below). They CGRA may also decide to confer or to reject international protection. If the asylum application is denied, a full jurisdictional appeal is available to the CCE within 15 days (see below).


4) Appeal and Judicial Review of the Initial Decision

i) Conseil du contentieux des Etrangers (CCE)

The CCE (also known as the *Aliens' Litigation Council*) is an independent administrative appeal body established under the 2006 reforms. It began to operate on 1 June 2007,

²¹ CIRÉ, *supra* note 1 at 34.

²² CGRA, *supra* note 2 at 15.



replacing the Permanent Refugee Appeals Commission (*Commission Permanente de Recours des Réfugiés* – CPRR), previously responsible for asylum appeals.²³

The CCE draws its jurisdiction from art. 39/2 of the *Aliens' Act* and is responsible for reviewing OE and CGRA decisions. Depending on the type of action brought before it, the CCE may uphold a decision of the OE/CGRA and dismiss the appeal, reverse a decision or annul a decision and send it back for re-determination.

The appeal procedure before the CCE is complex, with a heavy emphasis on procedural formalities.²⁴ To this end, applicants are strongly encouraged to retain legal representation.

a. Appealing OE Decisions

Two types of appeals can be brought in response to a negative OE decision: **annulment** and **suspension**. The annulment appeal is in essence a judicial review – it must be based on an error of law. If the CCE finds that the OE erred on a point of law, it will send the case back to the OE for re-determination. The CCE may not substitute its own decision on these appeals.

Because annulment appeals do not have a suspensive effect, the applicant can simultaneously bring a suspension action. The suspensive action will stay the removal of the applicant until the CCE has had an opportunity to render its decision on the annulment action. The suspensive actions are granted if the CCE believes the applicant will suffer serious damage if removed by the OE.²⁵

Both types of action must be brought within 30 days of receiving a negative decision from the OE.

b. Appealing CGRA Decisions

In addition to an annulment appeal, an asylum seeker may lodge a “plein contentieux,” or full jurisdiction appeal against a negative decision by the CGRA within 30 days of an unfavorable decision. The full appeal can be based on errors of fact or law. It results in a new examination before the CCE.

The appeal is primarily based on written submissions, but counsel and the applicant will also have an opportunity to make oral arguments. The oral hearings are public, although they may be held in private in special circumstances.²⁶ The applicant or the CGRA may introduce new evidence, but only if it is connected to existing information in the asylum file, is of material value to the claim and if the applicant justifies to the CCE why it was not available earlier.²⁷

²³ Conseil du contentieux des Etrangers (CCE), *Rapport Annuel 2007-2008* (Bruxelles: CCE, 2008), <<http://www.rvv-ccce.be/DATA/PUBS/348/rapport%20annuel%202007-2008.pdf>> at 8 [CCE].

²⁴ For these procedural rules, see the law of 15 December 1980, art. 36/69.

²⁵ CIRÉ, *supra* note 1 at 39.

²⁶ Office of the Commissioner General for Refugees and Stateless Persons (CGRA), *Procédure d'asile en pratique: Audience* (CGRA, 2009), <http://www.cgra.be/fr/ProcEDURE_d_asile_en_pratique/Audience/> [CGRA, *Audience*].

²⁷ The exact requirements are specified in art. 39/76 of the *Aliens Act*; CGRA, *Audience*, *supra* note 26; CCE, *supra* note 23 at 17.

Full jurisdiction appeals have a suspensive effect – the applicant may not be removed from Belgium until the CCE renders a decision.

The CCE has a full range of decisions available when disposing of the appeal, though the results may vary slightly depending on what the applicant is challenging:

CCE Decision	Result of CCE Decision on appeal against:	
	Denial of Refugee Status	Grant of Subsidiary Protection
Uphold CGRA	Removal order against the applicant remains in force and his/her immigration status in Belgium is illegal	Subsidiary Protection remains. Normal procedure follows
Substitute Own Decision	CCE can grant refugee status or subsidiary protection. Normal procedure follows	CCE can grant refugee status, or it can deny both refugee status AND subsidiary protection. The latter result leads to a removal order
Annul & Send Back	Applicant's status remains illegal until the CGRA renders a new decision	-

Applicants in detention will have their appeals heard according to an accelerated timeline. Any appeals must be applied for within 15 days of receiving the decision. Consequently, the CCE will hear the claim within several days, and must render its decision in no more than 5 business days after the hearing.

ii) Conseil d'Etat (CE)

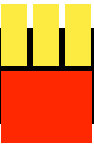
Negative CCE decisions can be further appealed to the Council of State on points of law. The appeal is not suspensive and must be filed within 30 days of receiving the CCE's decision.²⁸ The CE will conduct a preliminary review of the appeal in order to determine whether there are well-founded reasons for a full review.

The CE itself may not grant refugee protection. If the CE disagrees with the CCE's decision, it returns the matter to the CCE for re-examination. If the CE upholds the CCE's ruling, the asylum seeker is denied refugee and subsidiary protection. The CE is the final point of appeal for asylum seekers.

3. Detention

1) Grounds for detention of asylum seekers

²⁸ CIRÉ, *supra* note 1 at 44.



The *Aliens Act* outlines fifteen specific situations in which asylum seekers may be detained by the OE.²⁹ Detention can occur at several points during the asylum procedure:

- Upon lodging an asylum claim at the border
- During the Dublin II eligibility screening
- Following a negative decision by the CGRA³⁰

The primary responsibility for the detention of foreigners falls to the OE. The OE must ensure that detention does not surpass the allowed duration, which varies according to the reason for and stage of the detention. Asylum seekers who are detained systematically at the border for not possessing the requisite papers to enter Belgium may only be detained for two months. After this point, they are automatically released.³¹ However, the duration of their detention may be extended if they lodge an appeal with the CCE.³² Similarly, asylum seekers who are detained pending their transfer to another Dublin II country may also only be detained for a maximum of 2 months. However, asylum seekers who are detained after receiving an expulsion order (ie. claim for refugee protection is rejected) can be detained for a longer period of time. Their detention may be renewed month-by-month to a maximum of 5 months.³³ More disturbingly, when asylum seekers facing an expulsion order lodge an appeal or refuse to leave Belgium, the OE treats their detention as starting anew, thus potentially resulting in indefinite detention. Lastly, those who are detained on the grounds of national security or public order can be detained for a maximum of 8 months.³⁴

i) Appealing Detention

Decisions by the OE to detain an individual can be appealed to the Council Chamber of the Court of First Instance (*Chambre du Conseil*). This court will investigate legality of the OE's decision. The appeal is not suspensive, so an individual can be deported while it is ongoing.³⁵

2) Detention Statistics

Reliable statistics on the number of detained asylum seekers are generally not made available by Belgian authorities. The Council of Europe Commissioner for Human Rights reports that in 2008, 730 asylum seekers were held at closed detention centres.³⁶ The total number of first-time detainees in the closed detention centres was 6,902 according to OE statistics.³⁷

²⁹ See *Aliens Act* at art. 74/6.

³⁰ CIRÉ, *supra* note 1 at 29.

³¹ Renders, *Detention Administrative*, *supra* note XX at 1; CIRÉ, *supra* note 1 at 14.

³² CIRÉ, *supra* note 1 at 42.

³³ Renders, *Detention Administrative*, *supra* note 31 at 1.

³⁴ Office of the Commissioner for Human Rights, *Report by Mr. Thomas Hammarberg, Commissioner for Human Rights, on his visit to Belgium 15-19 December 2008 for the attention of the Committee of Ministers and the Parliamentary Assembly* (Strasbourg: Council of Europe, 2009) at para. 80 [*Hammarberg Report*].

³⁵ *Hammarberg Report*, *supra* note 34 at para 94.

³⁶ *Hammarberg Report*, *supra* note 34 at para 77.

³⁷ This figure does not only include asylum seekers, but all immigration-related detainees, Office des Étrangers, *Rapport d'Activites 2008* (Bruxelles: Direction Générale de l'Office des Etrangers, 2008), <<http://www.dofi.fgov.be/fr/jaarverslag/2008fr.pdf>> at 122.

3) Detention Conditions

In recent years, NGOs and international organizations have expressed great concern over the conditions Belgium's six closed detention centres. Additionally, the European Court of Human Rights (ECtHR) has ruled against Belgium in several cases relating to the detention of asylum seekers.

Although the closed detention centres are not legally considered to be prisons, some of these centres subject detained asylum seekers to prison-like conditions. Some centres have dormitory-style accommodation and scheduled shower, meal and break times. Some have been reported to use of solitary confinement of detained asylum seekers.³⁸ Additionally, several of these centres are located in close proximity to airports resulting in considerable noise, severely confined facilities, lack of privacy and lack of access to social workers and legal representation.³⁹

Although efforts are made to provide detained asylum seekers with health care, several observers have noted that individuals with more serious health concerns, particularly those with mental health issues, do not have adequate access to health care.⁴⁰ Medecins Sans Frontieres reports that most detained asylum seekers suffer from stress-related troubles.⁴¹ Suicides have occurred because of prolonged detention.

Securing interpretation and legal representation while detained is also extremely difficult.⁴² This is often compounded by the fact that asylum seekers must rely on detention centre staff as intermediaries, even though the staff is part of the enforcement mechanism.

Belgium is beginning to take steps to find alternate arrangements for certain categories of vulnerable persons. As of 2007, Belgian authorities have agreed not to place unaccompanied minor asylum seekers in detention centres.⁴³ Additionally, since October 2008, they have ceased detaining families with children in closed centres during the removal phase.⁴⁴

4. Removal of Refused Asylum Seekers

Precise numbers of removed asylum seekers are unavailable. To this end, the UN Committee Against Torture has criticized the Belgian government for the lack of transparency during removal procedures.⁴⁵

³⁸ *Hammarberg Report*, *supra* note 34 at para. 88.

³⁹ *Hammarberg Report*, *supra* note 34 at paras. 83–85; Human Rights Without Frontiers International, *Human Rights in Belgium: Asylum Seekers 2007-2008* (Brussels: HRWFI, 2009), <<http://hrwf.net/uploads/Asylum%20seekers%202007-2008.doc>> at 11 [*Human Rights in Belgium*].

⁴⁰ *Hammarberg Report*, *supra* note 34 at para. 87.

⁴¹ Medecins Sans Frontieres (MSF), *Belgium: Activity Report, 2007* (MSF, 2007) <http://www.msf.org/msfinternational/invoke.cfm?component=article&objectid=C96BCA4B-15C5-F00A-25C4D7499B686835&method=full_html>.

⁴² *Hammarberg Report*, *supra* note 34 at para. 93.

⁴³ *Human Rights in Belgium*, *supra* note 39 at 4.

⁴⁴ *Hammarberg Report*, *supra* note 34 at para. 99; Amnesty International, *Amnesty International Report 2009 – Belgium* (Amnesty International, 2009) <<http://www.unhcr.org/refworld/docid/4a1fadfd2d.html>>.

⁴⁵ UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture : Belgium*, 19 January 2009, CAT/C/BEL/CO/2, <http://www.unhcr.org/refworld/docid/49d480aa2.html> [accessed 28 July 2009] at 3.



5. State Support for Asylum Seekers

1) Employment

Asylum seekers whose applications are registered by the OE are entitled to apply for a work permit (Class C) while they wait for a final determination of their status by the CGRA. The work permit is valid for one year.⁴⁶

2) Financial Assistance and Housing

Following a new law passed on 12 January 2007, state support for asylum seekers has shifted from financial to material aid.⁴⁷ As such, asylum seekers no longer receive a monthly allowance. Instead, asylum seekers who are not detained at the border are entitled to stay at open reception centres for the duration of the asylum procedure. Asylum seekers do not have to stay at the reception centres, but do not receive any social assistance beyond health care if they do leave. These centres, coordinated by the federal agency *Fedasil*, provide free housing, meals, social assistance, legal aid, health care and counseling. Some may also provide access to training courses. A range of actors operate the centres, including *Fedasil* itself, the Red Cross, and local initiatives.

Technically, an asylum seeker's stay at a reception centre terminates upon a grant of asylum. However, it often takes successful asylum seekers a long time to find private accommodation and many of them remain in the reception centres beyond their allowed stay. Consequently, there has been a shortage of spaces for newly incoming asylum seekers, leaving some homeless.⁴⁸ To resolve this problem, the Belgian authorities have determined that since 2007, asylum seekers who have lived in the open centres for 4 months qualify for independent housing.⁴⁹

3) Education

Education is compulsory until age 18. *Fedasil* workers will enroll children in a school close to a reception centre. Those in higher grades (secondary school) are placed in regular programs or reception classes, which have a heavier emphasis on language training.

4) Health Care

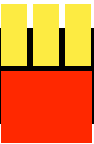
Preventive and therapeutic care is provided for asylum seekers in the open reception centres. Asylum seekers who choose not to stay in the reception centres are still eligible to receive free medical care. As previously mentioned, although health care is available

⁴⁶ Belgium, Overleg Centrum voor Integratie van Vluchtelingen, *Refugees' Contribution to Europe, Country Report: Belgium* by Katrien de Bruyn (Bruxelles: Overleg Centrum voor Integratie van Vluchtelingen, 2004) <http://www.vluchtelingenwerk.be/pdf/Res_Belgium_last.pdf> at 12.

⁴⁷ *Loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers*, *Moniteur belge*, du 7 mai 2007, p. 24027; *Human Rights in Belgium*, *supra* note 39 at 4.

⁴⁸ *Human Rights in Belgium*, *supra* note 39 at 9.

⁴⁹ United States Department of State, *U.S. Department of State Country Report on Human Rights Practices 2008 - Belgium* (United States Department of State, 2009) <<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119070.htm>>.



for detained asylum seekers as well, there have been reports of problems with adequate access to an appropriate range of medical services.⁵⁰

5) Legal Services

Legal representation has become especially important in light of the more complex procedures brought about by recent changes to the asylum system. Free legal aid is technically available to asylum seekers throughout the entire procedure. Again, asylum seekers in detention tend to have a harder time obtaining adequate legal representation. The detention centres do not have on-site legal counsel. Instead, detained asylum seekers must find a lawyer through intermediaries such as detention centre staff or social workers, which often takes several days. This means that some asylum seekers who are at risk of immediate deportation may not know that they can lodge an urgent appeal to stay the deportation. However, a 2008 decision of the Constitutional Court has found the 24 hour deadline to lodge such an appeal to be too short and has given the Belgian government until June 2009 to amend it to a more reasonable time limit.⁵¹

⁵⁰ *Hammarberg Report, supra* note 34 at para. 87.

⁵¹ *Hammarberg Report, supra* note 34 at para. 95.

6. Legislative authorities for the Asylum system

I International Law

Convention et protocole relatifs au statut des réfugiés

<http://www.unhcr.fr/cgi-bin/texis/vtx/basics/opendoc.pdf?tbl=BASICS&id=41a30b9d4>

II European Union Laws

Convention européenne de sauvegarde des Droits de l'Homme et des Libertés fondamentales, article 3

<http://www.echr.coe.int/NR/rdonlyres/086519A8-B57A-40F4-9E22-3E27564DBE86/0/FrenchFrançais.pdf>

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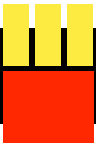
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Circulaire du 1er juin 2007 relative à l'octroi du permis de travail C pour les demandeurs d'asile à partir du 1er juin 2007, Moniteur belge, 18 juin 2007, p. 33309

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Circulaire du 21 juin 2007 relative aux modifications intervenues dans la réglementation en matière de séjour des étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006, Moniteur belge, 4 juillet 2007, p. 36849

Sur la délivrance au demandeur d'asile des annexes ainsi et de l'attestation d'immatriculation.

<http://www.ejustice.just.fgov.be/cgi/welcome.pl>