

ECRE COUNTRY REPORT 2002: BELGIUM

ARRIVALS

1. Total number of individual asylum seekers who arrived, with monthly breakdown and percentage variation between years:

Table 1:

Month	2001	2002	Variation +/- (%)
January	3,239	1,858	-42.6
February	1,734	1,394	-19.6
March	1,788	1,433	-19.9
April	1,733	1,520	-12.3
May	1,960	1,489	-24.0
June	1,879	1,335	-29.0
July	2,096	1,564	-25.4
August	2,349	1,669	-28.9
September	2,053	1,770	-13.8
October	2,277	1,843	-19.1
November	1,714	1,391	-18.8
December	1,687	1,539	-8.8
TOTAL	24,549	18,805	-23.4

Source: Ministère de l'Intérieur, Direction générale de l'Office des Etrangers.

Comments: Statistics represent the number of applications, not the number of persons.

2. Breakdown according to the country of origin/nationality, with percentage variation:

Table 2:

Country	2001	2002	Variation +/- (%)
DR Congo	1,371	1,789	+30.5
Russian Federation	2,424	1,156	-52.3
Turkey	900	970	+7.8
Algeria	1,709	936	-45.2
FRY (Kosovo)	1,081	917	-15.2
Iran	1,164	743	-36.2
Slovak Republic	898	635	-29.3
Romania	697	631	-9.5
<i>Others</i>	<i>14,305</i>	<i>11,028</i>	<i>-22.9</i>
TOTAL	24,549	18,805	-23.4

Source: Ministère de l'Intérieur, Direction générale de l'Office des Etrangers.

3. Persons arriving under family reunification procedure: Figures unavailable.

4. Refugees arriving as part of a resettlement programme:

Belgium does not run a resettlement programme.

5. Unaccompanied minors: 1,740 (2001: 1,220).

Source: Ministère de l'Intérieur, Office des Etrangers; Direction Accès et séjour; and Service mineurs non-accompagnés et victimes de la traite des êtres humains.

Comments: This figure includes both asylum seekers and illegal minors.

RECOGNITION RATES

6. The statuses accorded as an absolute number and as a percentage of total decisions:

Table 3:

Status	2001		2002			
	Overall		First instance		Appeal	
	Number	%	Number	%	Number	%
No status awarded	*4,282	78.7	3,425	74.6	1,160	87.9
Convention status	*1,157	21.3	1,164	25.4	160	12.1
TOTAL	*5,439	100	4,589	100	1,320	100

Source: Commissariat-général pour les Réfugiés et les Apatrides; Commission Permanente de Recours pour les Réfugiés (*Figures for 2001 provided by UNHCR).

Comments: The figures under first instance for 2002 concern the decisions of the *Commissariat-général* in the second stage of the asylum procedure (on the substance of the claim). The *Commission Permanente de Recours* is the competent body dealing with appeals against negative decisions of the *Commissariat-général* on the substance of the asylum claim, and is an administrative court. It should be noted that approximately 70% of asylum claims are rejected at the first stage of the asylum procedure, and are therefore never examined in substance.

7. Refugee recognition rates (1951 Convention: as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages:

Figures unavailable.

RETURNS, REMOVALS, DETENTION AND DISMISSED CLAIMS

8. Persons returned on safe third country grounds: Figures unavailable.

9. Persons returned on safe country of origin grounds: Figures unavailable.

10. Number of applications determined inadmissible: 18,112 (2001: 20,633).

This number relates to the number of negative decisions made by the Commissioner-General for asylum seekers in the admissibility stage.

11. Number of asylum seekers denied entry to the territory: Figures unavailable.

12. Number of asylum seekers detained, the maximum length of and grounds for detention:

In 2001 a total number of 2,726 asylum seekers were held in detention centres. This number includes 1,569 persons who were detained at the border and 1,157 persons who made an in-country asylum application but were detained during the procedure or after a negative decision. There are no detailed statistics on the maximum length of the detention. According to the law detention of asylum seekers is possible in the following instances:

- In order to implement a Dublin Convention decision.
- Where the asylum seeker applies for asylum at the border.

- During the 'urgent appeal' procedure before the *Commissariat-générale*, if exceptionally serious circumstances justify detention (these are not defined in law).
- If the asylum claim has been rejected, the asylum seeker can be detained in anticipation of his expulsion.
- If there is serious cause to consider the asylum seeker a risk to national or public security.

According to the Aliens Law, an asylum seeker may be detained for a maximum period of two months by a decision of the *Office des Etrangers*, which can subsequently be extended for two months. Ministers may prolong the detention measure for a further month, and if invoking public security, may even prolong the detention for a maximum period of up to eight months. In order to be able to prolong the detention, three conditions must be met: preparations regarding expulsion must be made within seven working days of the asylum seeker being detained, expulsion measures must be cautiously observed, and there should be a possibility to effectively repatriate the person within a reasonable period. It should be noted that in practice, notwithstanding the aforementioned legal provisions concerning the length of detention, the *Office des Etrangers* can keep a person in detention for an unlimited period. Indeed, in many cases the *Office des Etrangers* takes a new decision to detain the person when a repatriation attempt failed, instead of a decision to prolong the detention measure. By doing so, the maximum time limits for detention are avoided.

There are no statistics available for 2002.

13. Deportations of rejected asylum seekers: 2,387 (2001: 1,917)

Source: Minister of Home Affairs.

Comments: Figures include foreigners staying illegally on the territory as well as rejected asylum seekers.

14. Details of assisted return programmes, and numbers of those returned: 3,221 (2001: 3,633)

IOM was the only player in the field of assisted return. It implemented two return programmes: a general programme (REAB - run since 1984) and a specific one, particularly for nationals from the Czech and Slovak Republics, Bulgaria and Romania (run from January until September 2002, and for Slovak returnees to the city of Košice until December 2002).

IOM arranges the departure and gives both financial and material assistance. Returnees to the Czech and Slovak Republics, Bulgaria and Romania were received by IOM at the airport in their home country, and if necessary transported to their final destination. For three months after return, IOM provided support tailored to the individual person.

Of the 3,221 persons IOM assisted in returning to their home country in 2002 the main nationalities were Bulgarians (14%), Slovaks (11%), Czechs (9%), Russians (9%), Kosovars (6%) and Ukrainians (5%).

15. Dublin Convention practice comments:

The competent body to apply the Dublin Convention is the *Office des Etrangers*, which initially examines every asylum claim using the Dublin criteria. In a case in which Belgian authorities wish to apply the Dublin Convention, the asylum seeker receives a decision in which Belgium denounces its responsibility to examine the asylum application since another EU Member State is deemed responsible. Such a decision can only be appealed before the *Conseil d'Etat* (not suspensive) within a period of thirty days. Belgium does not apply the Dublin Convention very frequently: in most cases it is more convenient for the Belgian authorities to examine the claim than to enforce a transfer of the applicant to the responsible state.

15.1 Dublin Convention practice:

Table 4:

	Total number of requests presented by Belgium to other Dublin States	Total number of requests addressed to Belgium by other Dublin States
Requests presented	1,046	1,165
% of requests in total number of applications	5.6	6.2
Requests accepted	842	832
% of requests accepted in requests presented	80.5	79.5
Requests refused	95	136
% of requests refused in requests presented	9.1	16.3
Requests under Article 9	-	-

Source: Ministère de l'Intérieur, Direction générale de l'Office des Etrangers, Cellule Dublin.

15.2 Requests by country:

Table 5:

Country	Number of requests presented by Belgium to other Dublin states	Number of requests addressed to Belgium by other Dublin states
Austria	19	19
Denmark	5	89
Finland	4	7
France	332	196
Germany	388	360
Greece	24	-
<i>Iceland</i>	-	1
Ireland	3	6
Italy	29	7
Luxembourg	1	32
Netherlands	166	174
<i>Norway</i>	4	150
Portugal	12	2
Spain	33	5
Sweden	7	82
United Kingdom	19	35

Source: Ministère de l'Intérieur, Direction générale de l'Office des Etrangers, Cellule Dublin.

Comments: *Italics* refer to non-EU countries.

SPECIFIC REFUGEE GROUPS

16. Developments regarding refugee groups of particular concern:

Afghanistan

The Commissioner-General for Refugees and Stateless Persons announced a partial decision-making moratorium in Afghan cases on 21 November 2001, as a consequence of the war in Afghanistan and subsequent overthrow of the Taliban regime. In the first phase of the asylum procedure (on admissibility of the claim), interviews with Afghans continued with the exclusive aim of checking the nationality of asylum seekers. Those Afghans who could indicate a fear of persecution were declared admissible, while those persons falsely claiming to be Afghans automatically received a negative decision. In the second stage of the procedure (on the substance) no decisions were taken in Afghan cases until in October 2002 the Commissioner-General lifted the moratorium. As a consequence, all Afghan asylum seekers who were still in the asylum procedure at that time received a request for information from the Commissioner-General. They were asked whether or not they wanted to continue with the asylum procedure, and to explain why they thought that they could not return to Afghanistan. In cases where they did not reply within a month they received a negative decision, although in a number of cases people did not receive the request for information for a variety of reasons (for instance through postal errors or lack of notification of a change of address). Although there are no exact statistics available, most of the Afghan asylum seekers who indicated that they wanted to continue the asylum procedure were interviewed again. The actual decision-making in Afghan cases started again in May 2003. The Commissioner-General sent a fact-finding mission to Afghanistan to collect additional information, but there is currently no information on the outcome of this mission, nor on the way this information will be used in individual cases.

Iraq

The Commissioner-General for Refugees announced a decision-making moratorium vis-à-vis Iraqi asylum claims on 19 March 2003, as a consequence of the war in Iraq. Temporarily there are no decisions taken, but the examination of cases will continue, including those of recent applications. The necessity of this measure is to be re-evaluated every two weeks, although the Commissioner-General continues to give negative decisions in 'fraudulent' cases of people of another nationality pretending to be Iraqi. The moratorium was still upheld at the time of writing.

LEGAL AND PROCEDURAL DEVELOPMENTS

17. New legislation passed:

The law of 18 March 2003 amending the Aliens Act implements Directive 2001/55/EC on temporary protection, and provides for the submission of an asylum claim at any time during the temporary protection regime. The examination of the asylum claim will be automatically suspended until the temporary protection regime has ended. Persons under temporary protection will receive a residence permit for one year, which may be renewed for six-month periods until the end of the EU temporary protection regime. The residence permit is only valid as long as the temporary protection regime lasts.

The *Arrêté Royal* of 2 August 2002 determines the functioning of detention centres in Belgium. It defines the rights and duties of foreigners (including asylum seekers) and personnel in those centres. The AR replaces that adopted in 1999, and then annulled by the *Conseil d'Etat* in June 2001. The most innovative aspect is the creation of a Complaints Commission exclusively for detention centres, although at this moment the Commission is not yet functioning in practice.

18. Changes in refugee determination procedure, appeal or deportation procedures:

Current determination, appeal and deportation procedures were not formally changed through a modification of the Aliens Act. However, there were a number of important administrative changes worth mentioning. Firstly, the Minister of Home Affairs adopted an internal directive concerning the non-removal clause included in negative decisions of the Commissioner-General for Refugees. According to the Aliens Law, the Commissioner-General must express his opinion on the question as to whether or not a rejected asylum seeker may be removed to his country of origin. This is a non-binding opinion passed to the Minister of Home Affairs, according to the Aliens Law. However, the internal directive that was adopted in August 2002 introduces an automatic prolongation of the expulsion order in cases where the negative decision of the Commissioner-General contains a non-removal clause, and indeed this seems to work in practice, as the *Office des Etrangers* does automatically prolong expulsion orders. As a consequence, the persons concerned cannot be removed from the territory, and they are further entitled to reception facilities, though without the right to work. In cases where the *Office des Etrangers* would like to return an individual, they would have to ask the Commissioner-General whether or not he upholds the non-removal clause. Only in cases where the Commissioner-General withdraws the non-removal clause can the *Office des Etrangers* begin repatriation measures.

Secondly, as a consequence of the Conka case, in which the European Court of Human Rights condemned Belgium for collectively returning a group of 74 Slovak Roma, the Minister of Home Affairs adopted before the *Conseil d'Etat* an internal directive concerning 'extremely urgent appeals' in expulsion cases. The directive states that in cases where an extremely urgent suspension appeal is introduced against an expulsion order before the *Conseil d'Etat*, the *Office des Etrangers* cannot execute the expulsion measure before the *Conseil d'Etat* has taken a decision on the appeal. According to the case law of the *Conseil d'Etat*, such an appeal should be introduced within a period of five days after the expulsion measure has been taken.

Finally, the former government agreed on two *Arrêtés Royaux* laying down a number of procedural guarantees concerning the processing of asylum claims by the *Office des Etrangers* and the Commissioner-General for Refugees. The content of both texts are rather disappointing as they only translate already existing administrative practice.

19. Important case-law relating to the qualification for refugee status and other forms of protection:

The Commissioner-General for Refugees granted refugee status to a Slovak Rom in 2003, which, to our knowledge, is the first case in Belgium. The Appeals Board granted refugee status in preceding years in only three cases of Rom asylum seekers.

In February 2003 a Palestinian whose asylum claim was rejected at the border was released from the detention centre at the airport into the transit zone, as the *Office des Etrangers* could not repatriate him. By doing so, the *Office des Etrangers* ostensibly implemented the decision of the *Chambre du Conseil* of 20 January 2003, which was confirmed by the Appeal judge on 3 February 2003, to release this individual. In reality, however, he was trapped in the transit zone of the airport, having no access to the territory. According to the *Office des Etrangers*, the decisions of the *Chambre du Conseil* and the Appeal judge did not imply access to the territory, and as a result both the individuals concerned were compelled to stay in the transit zone of the airport for twelve days without proper accommodation or assistance. Consequently, a civil judge condemned the Belgian authorities, allowing them to leave the transit zone of the airport without restrictions. Nevertheless, the *Office des Etrangers* transferred them again to a detention centre, stating that they did not have the necessary documents to enter Belgian territory. This time, the *Office des Etrangers* did manage to repatriate one of them on 3 March 2003. A complaint to the Strasbourg organs is presently being prepared, and is supported by OCIV (the organisation involved in producing this report).

A third important case concerns a five-year-old Congolese girl, Tabitha, who was detained for two months in a detention centre near the airport in Brussels after arriving with her uncle on 18 August 2002. The latter, living in the Netherlands at the time, wanted to look after her while she awaited family reunification with her mother, who had been granted refugee status in Canada. As she did not possess the necessary entry documents she was detained, and her asylum claim declared inadmissible by the *Office des Etrangers*; a decision which was confirmed by the Commissioner-General for Refugees on 25 September 2002. Notwithstanding the fact that the Commissioner-General, in his decision, pointed at her young age and the fact that she had a right to be reunited with her mother, the *Office des Etrangers* decided to repatriate her to the Democratic Republic of Congo. Meanwhile, arrangements had been made for a foster family to take care of Tabitha as long as she could not be reunited with her mother, and contact had already been made with the Canadian embassy, *inter alia*, through an intervention by the Belgian branch of UNHCR. The *Office des Etrangers* did not wish to consider the foster family option, and an order of the *Chambre du Conseil* on 16 October 2002 that Tabitha should be released from the detention centre was ignored by the *Office des Etrangers*, and she was repatriated the following day. She arrived unaccompanied in Kinshasa without monitoring from the Belgian embassy, and was eventually accommodated by a private person. Finally, and after the story of Tabitha had been widely commented in the national and international press, the Belgian Prime Minister personally made an agreement with his Canadian counterpart so as to allow Tabitha to be reunited with her mother in Canada. A procedure against the Belgian government for breach of the European Convention on Human Rights (Articles 3, 5.1 and 8) commenced with the European Court of Human Rights in April 2003 with the support of OCIV.

20. Developments in the use of the exclusion clauses of the Refugee Convention in the context of the national security debate:

There were no specific developments in the use of exclusion clauses in 2002.

21. Developments regarding readmission and cooperation agreements:

In 2003 readmission agreements have been concluded between the Benelux countries and the following states:

- Lithuania: readmission agreement concluded on 9 June 1999. Belgian law approving the agreement adopted on 17 May 2002; published in the '*Moniteur belge*' on 5 March 2003.
- Estonia: readmission agreement concluded on 3 February 1999. Belgian law approving the agreement adopted on 17 May 2002; published in the '*Moniteur belge*' on 20 February 2003.
- Bulgaria: readmission agreement concluded on 7 October 1998. Belgian law approving the agreement adopted on 17 May 2002; published in the '*Moniteur belge*' on 3 August 2002.
- Romania: readmission agreement concluded on 6 June 1995. The draft law approving the agreement was presented to the Belgian Parliament on 9 January 2003 but has not yet been approved.

The agreements with Estonia, Lithuania and Bulgaria apply both to nationals of the contracting parties and to third country nationals who entered the territory of a contracting party via another contracting party. The readmission agreement with Romania only concerns nationals of the contracting parties.

THE SOCIAL DIMENSION

22. Changes in the reception system:

As reported in the 2001 Country Report, the government introduced by *circulaire* of 20 December 2001 a new system for asylum seekers who receive a negative decision in the admissibility stage, and who introduce an appeal before the *Conseil d'Etat*. These asylum seekers are further entitled to material support but they can only receive it in three specialised, open reception centres. As the procedure before the *Conseil d'Etat* has no suspensive effect, asylum seekers are concentrated in these centres in order to facilitate repatriation measures. The result of this measure has been that a large majority of asylum seekers subject to this new rule chooses not to go to these centres because there are afraid of being returned, and are consequently left on the streets without any support whatsoever. This new system has applied since 7 January 2002, and over the course of 2002 an additional centre was built for this purpose.

Measures were also taken to strengthen the dispersal plan for asylum seekers with an admissible claim (and who thus enter the second stage of the asylum procedure). Those asylum seekers are entitled to financial support during the examination of the substance of their claim. A dispersal plan allocates each asylum seeker to a social welfare centre located in each village, in order to organise effective 'burden-sharing' between the social welfare centres. However, according to Belgian law it is not possible to impose an obligation upon the asylum seeker to live in the town or village of the responsible social welfare centre. In reality, most asylum seekers prefer to find accommodation in large cities, rather than to stay in small villages where the responsible social welfare centre is located. Furthermore, many social welfare centres are content with this situation, and make no effort to prevent this. As a result, large communities of asylum seekers are situated in certain areas of the larger cities in Belgium, creating tensions in some of these areas. In reaction to all this, the government decided to sanction those social welfare centres who could not produce sufficient proof of their efforts to offer the asylum seekers for whom they are responsible appropriate housing. These new measures were introduced by *circulaires* of the responsible Minister in June and July 2002 and an *Arrêté Royal* of January 2003. There has been no substantial evaluation of these measures as yet.

23. Changes in the social welfare policy relevant to refugees:

There were no changes in the social welfare policy relevant to refugees in 2002.

24. Changes in policy relating to refugee integration:

On 26 May 2002, the law on the right to social integration was adopted (published in '*Moniteur belge*' on 31 July 2002), according to which every person has the right to social integration (Article 1). Recognised refugees are explicitly included in the scope of the law. Under the conditions laid down in the law, the right to social integration can consist of employment and/or a 'life wage' (*revenu d'intégration*) either with or without an individualised social integration project. Such a project should prepare the person concerned for an employment contract within a certain period through intervention by the social welfare centres (*Centres publiques d'aide social*). Social welfare centres can support employers financially in order to encourage them to employ eligible persons. Under certain conditions, social welfare centres can themselves employ these persons on a partial basis.

25. Changes in family reunion policy:

As a consequence of the judgment of the Court of Justice of the European Communities of 25 July 2002, the Minister of Home Affairs published a *circulaire* ('*Moniteur belge*', 29 October 2002) to bring the administrative interpretation and practice of the *Office des Etrangers* into line with the judgment of the Court of Justice. Family members, who are themselves non-EEA nationals, of an EEA or Belgian national should now receive a residence permit immediately if they can prove their kinship or relation by marriage to an EEA national, as well as their identity. A valid passport or a passport that

is no longer valid either with or without a valid visa should be sufficient to give proof of identity. Before the judgment of the Court of Justice, the *Office des Etrangers* only accepted a valid passport and visa when necessary. When lacking such a document, the family member received an expulsion order that could be appealed. However, during the appeal procedure, the family member's presence on the territory was illegal.

OTHER POLICY DEVELOPMENTS

26. Developments in resettlement policy:

Belgium does not participate in any resettlement schemes.

27. Developments in return policy:

With a view to more and better return, and particularly reintegration support, a Centre for Voluntary Return and Development (CVRD) was established in May 2001. The Centre, which served as a consultation platform, was evaluated in great detail in August 2002. The major bottleneck was the proposal of return programmes for target groups that could not be forcibly removed.

As the government was of the opinion that the return allowance was a pull factor, it suspended the grant for nationals from Romania, Bulgaria, Hungary, the Czech Republic and Poland. The grant had already been suspended for nationals from the Slovak Republic in May 2001.

The government decided that Afghan returnees could appeal for a double return grant (€500 for an adult and €250 for a child).

28. Developments in border control measures:

More stringent control measures have been introduced in 2002 and the first half of 2003 at the harbour of Oostende, including use of sophisticated equipment to detect the presence of human beings in container trucks. Additionally, an informal cooperation agreement between the Belgian border police and British police officers has been established at the Eurostar Terminal at the Brussels Midi train station.

29. Other developments in refugee policy:

There were no other significant developments in refugee policy.

POLITICAL CONTEXT

30. Government in power during 2002:

In 2002 the Belgian government consisted of a coalition of liberal, socialist and green Parties, with the liberal element being the most significant numerically. Both green parties (Flemish and Walloon) lost heavily during the national elections held on 18 May 2003. As a result they no longer have any representatives in Parliament. The socialist parties and the liberal parties now have a comfortable majority in parliament, and are currently negotiating a new governmental agreement. Guy Verhofstadt (Flemish liberal), the former Prime Minister, will also lead the new government.

31. Governmental policy vis-à-vis EU developments:

In general, the government has adopted the same attitude vis-à-vis EU developments as its predecessors. This means that it is, generally speaking, in favour of ongoing European harmonisation in many areas, including immigration and asylum, without, however, taking the lead in the discussions on this issue.

32. Asylum in the national political agenda:

The year 2002 was characterised by a further dramatic decrease in asylum applications. According to the government this was due to the fact that financial support during the admissibility stage of the procedure was no longer available, deterring asylum seekers from applying for asylum in Belgium. As a result none of the political parties were prepared to push for further changes in legislation on the asylum procedure as demanded by Belgian NGOs. Although the government in 1999 announced a drastic change in asylum procedure, it was never achieved.