

**questionnaire related** **to**

**the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful**

1. Please describe your national institution’s concern and practice with the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court.

The Centre for Equal Opportunities and Opposition to Racism (hereafter the “Centre”) is a public service, independent in the accomplishment of its missions established by an Act of Parliament in 1993. It also acts as a NHRI with a B-status. One of its legal missions on migration is to ensure the respect for the fundamental rights of foreigners. In this context, it has been entitled to visit detention centres for irregular migrants (according to the Royal Decree of 02/08/2002) and INAD (‘inadmissible’) detention centres located in the airports and created to detain aliens in the airports international transit zone in order to avoid their irregular entry within the territory (Royal Decree of 08/06/2009).

**The Centre works on several strategic priorities regarding detention of migrants, among which the access for detainees to legal aid. In 2009, the Centre has organised a round table with the main stakeholders (Bar associations, Legal Aid Offices, NGOs, Aliens Office and Directions of detention centres) on this issue. Since then, it has actively followed two pilot projects of legal consultations by lawyers in the detention centres of Bruges and Vottem (Liège). Since last year, the Centre focusses its activities more specifically on the right to legal aid in the detention centres located in the suburbs of Brussels (127 bis and Caricole). It has visited these detention centres and discussed with the Directions in view to improve the efficiency of the pro bono lawyers mechanism and thus the right for detainees to appeal against** measure of deprivation of liberty. **It has facilitated a better collaboration between the Legal Aid Office representatives and the detention centres. The Centre will also organise in December 2013 a training for pro bono lawyers working for detainees focusing on the legal remedies against measure of deprivation of liberty.**

The Royal Decree of 2 August 2002, which regulates the functioning of detention centres for foreigners, asylum seekers and undocumented migrants, also establishes a Commission and a permanent secretariat, charged with the handling of individual complaints of residents regarding the application of the rights embedded in the Royal Decree. This Royal Decree requires that the permanent secretariat of the Complaints Commission informs the Centre of the complaint, the treatment and the outcome thereof. Although the Commission interprets this obligation to inform in a very restrictive manner, the Centre conducts, on the basis of the information it receives, an analysis and assessment of the complaints system, both on the legal and the practical implementation thereof and consults annually with the permanent secretariat.

The Centre also grants information and legal advices to migrants who seek for assistance. In this context, the Centre is frequently in contact with detainees and their lawyers in order to inform them on the legal proceedings.

1. How far is the right of anyone deprived of his or her liberty to bring proceedings before court part of the laws of your country?

The right to appeal before the jurisdiction (Council chamber, Chamber of Indictments and in last resort the Court of Cassation) against a measure of deprivation of liberty is foreseen by the Alien Law (Art.71-74 of Alien Act 15.12.80).

In principle, all migrants detained in Belgium are also entitled to free legal advice and representation from a lawyer in order to make the right of appeal effective. The practical organisation of such legal aid is in the hands of the local Bar associations in each judicial district in Belgium. The Aliens Act also grants free legal assistance to all appellants, at every stage of the procedure (Art. 39/56 and 90).

1. Please describe the most common problems individuals face in their realization of the right in your country.

* Scope of the review: according to the law the Court is competent to assess the legality of the measure of deprivation of liberty but not its opportunity or proportionality. Therefore the scope of the review is quite limited. However since the implementation of the return directive (Directive 2008/135) in Belgian law some elements of proportionality related to the application of less coercive measures are taken into consideration. But this appreciation remains limited and does not apply for migrants who do not fall under the personal scope of the Return directive (such as inadmissible migrants at the borders or asylum seekers).

- No suspensive effect: the Belgian appeal procedure before the Court against a measure of deprivation of liberty has no suspensive effect against the removal order. Legal remedies to suspend the forced return are accessible (procedure for applying for a stay of execution under the extremely urgent procedure before the Aliens Litigation Council or summary judgment procedure before the President of the judicial Court) but are in practice rarely efficient. Therefore an irregular migrant could be returned before the Court has assessed the legality of his detention.

- New procedure in case of deportation attempt : in case of a failed forced removal attempt the pending proceedings against the measure of deprivation of liberty will be considered by the Court as no longer relevant because the object of the case (the old decision of deprivation of liberty) will no longer exist. The migrant will be detained on the basis of a new decision and will need to restart the appeal procedure against this new measure of deprivation of liberty from scratch.

1. How does your national institution assist individuals who do not enjoy the right to bring proceedings before the court?

As mentioned above, the Centre assists detained migrants as regards their right to bring proceedings before the court on two levels:

- *Structural approach*: the Centre works on the issue of access to legal aid in detention centres with the main stakeholders.

- *Individual approach*: the Centre assists aliens and provides them legal advices, including on the judicial remedies against detention.

1. Does your national institution assist your country in the realization and implementation of this right? If yes, please explain how.

The Centre does not assist directly Belgium in the realisation and implementation of this right but works indirectly on it through its annual reporting on Migration issues, devoting a whole section to the administrative detention of migrants, through the elaboration of policy advice and recommendations to public authorities in charge of this matter, and more specifically on a better access for detainees to legal aid and through the elaboration of recommendations on the appeal procedure against measures of deprivation of liberty through collaboration with the administration (Aliens Office and Detention centres) and specialised lawyers.

1. How would the general principles and guidelines that the Working Group has been entrusted to elaborate on the realization of the right to bring proceedings before court best support your work?

These guidelines could be very useful for our strategic planning and could be used as an evaluation tool to assess the Belgian policies and practices. It could also support our recommendation on the appeal proceeding against the measures of deprivation of liberty or our work on the right for detainees to benefit from an appropriate and efficient legal assistance and representation.

1. In your view, how would these general principles and guidelines best support your country?

These principles and guidelines could be used by Belgium as a self-evaluation tool. It could also orientate the legislator and encourage him to take appropriate measure to ensure that the international standards on this issue are further guaranteed by the Belgian legislation.