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Department for the Execution of Judgments of the ECHR  
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FRANCE

## COMMUNICATION

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements**

**by the Human Rights Centre at Ghent University\***

**CAMARA v BELGIUM, App. No 49255/22**

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## I. INTRODUCTION

The present submission is made in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements. It is about the European Court of Human Rights' (hereafter: the Court) *Camara v Belgium* judgment concerning Belgium's systemic failure to enforce final judicial decisions related to the reception of applicants for international protection. It aims to show that the Belgian Government has not taken substantial steps to comply with the *Camara* judgment and provides a series of general and concrete measures that need to be adopted to comply with this judgment

**The Human Rights Centre at Ghent University** is a leading centre of expertise on international human rights law in general, and ECHR law in particular. The Human Rights Centre valorizes its expertise through constructive impact-oriented activities. In that regard, it has submitted more than thirty third-party interventions before the European Court of Human Rights. The Human Rights Centre includes several experts on Belgian and European migration law.

## II. EXECUTIVE SUMMARY

The submitters provide **up-to-date information** on the systemic problem that was highlighted by the Court in its *Camara* judgment. This concerns both a **Rule of Law crisis**, - on account of the systematic non-enforcement of binding court rulings ordering accommodation and assistance to asylum seekers – and, as a result, a **humanitarian crisis**, as the non-enforcement of orders to provide accommodation and assistance results in large numbers of people living in dire circumstances deprived of shelter and exposed to serious health risks. In other words, the ongoing violation of Article 6 §1 by the Belgian government results in a dire humanitarian crisis which cannot be disentangled from the Rule of Law departure.

The submitters provide information on a series of **concrete measures** that could address these crises, and that have been on the table for over a year, yet that the Belgian government does not seem to adopt thus far.

The submitters respectfully ask the Committee of Ministers to put this case under **enhanced supervision**.

It is suggested that the Belgian authorities should provide concrete Action plans, both for **short-time emergency measures**, and for **long-term structural measures**, to remedy the current crises, and to prevent their reoccurrence.

The measures listed in the present submission would serve that purpose.

### III. CASE SUMMARY

*The case of Camara v Belgium* concerns systemic failure to enforce final judicial decisions concerning the reception of applicants for international protection.

On 15 July 2022 the applicant, a Guinean national who had arrived in Belgium three days earlier, filed an application for asylum with the initial reception centre for international protection applicants. He then went to the Federal Agency for the reception of asylum-seekers (“Fedasil”) with a view to obtaining a place in the reception network to which each asylum seeker is entitled on the basis of the 2007 Belgian Reception Act.<sup>1</sup> However, he was turned down on the grounds that the reception system was saturated.

On 22 July 2022, he obtained a decision from the President of the Labour Tribunal of Brussels by way of an immediately enforceable order enjoining the Belgian State, notwithstanding any appeal, to grant him accommodation and material support. That decision, which was notified by a bailiff on 29 July 2022, became final on 29 August 2022. It was ultimately enforced on 4 November 2022 when the applicant was assigned accommodation in a reception centre after the Court had indicated to the Belgian Government, under Rule 39 of the Rules of Court, that the applicant should be provided urgently with housing and support to meet his basic needs.

The Court unanimously found a violation of article 6 §1, underlying the systemic failure on the part of the Belgian authorities to enforce final judicial decisions concerning the reception of applicants for international protection (§§119 and 121). The Court judged that the time taken by the Belgian authorities in the present case to enforce a court order aimed at protecting human dignity had not been reasonable (§119) and that the clear refusal to comply with the orders issued by domestic courts impaired the very essence of the right protected by Article 6 § 1 (§121).

### IV. GENERAL CONTEXT

#### 1. Rule of Law Crisis

In the months since the *Camara* judgment, the Belgian authorities have not only continued their non-implementation of judgments ordering accommodation and assistance to asylum seekers, they have openly announced this as a policy choice (1.1.). The Rule of Law crisis regarding the reception of asylum seekers in Belgium has deepened, as non-compliance extended to a larger number of judgments, including not only labour tribunal rulings, but also a judgment of the Council of State, and of course the *Camara* judgment of the Court itself. Moreover, the non-compliance with judicial rulings extended from not providing accommodation and assistance to not paying the associated court-imposed penalties (1.2.), and to not complying with alternative measures imposed by courts (1.3.)

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<sup>1</sup> Belgian Reception Act of 2 January 2007 on the reception of asylum seekers and certain other categories of foreign nationals, M.B., 5 May 2007.

### **1.1. Defiant non-compliance: refusal to provide accommodation and material assistance to single men**

The *Camara* judgment found a violation of article 6 ECHR on account of “a blatant refusal to comply with the injunctions of the domestic court, which undermined the very substance of the right protected by Article 6§1 of the Convention (§ 121)”.<sup>2</sup> The Court noted that this was not an isolated instance, but rather revealed ‘a systemic failure by the Belgian authorities to enforce final court decisions relating to the reception of applicants for international protection.’ (§ 118).<sup>3</sup>

The *Camara* judgment was delivered on 18 July 2023.

On 29 August 2023, Ms Nicole De Moor, the Secretary of State for Asylum and Migration, supported by the Prime Minister, communicated in the media that she had taken a decision – which takes the form of a simple press release – that henceforth, single men seeking asylum would be excluded from accommodation and material assistance. She motivated this by referring to the limited capacity of the reception system in the face of the numbers of people seeking asylum in Belgium, and the government’s determination to avoid that women or children would be left without accommodation and assistance.<sup>4</sup>

In practice, this ‘instruction’ may not have changed much. This is because even before that time, it had already been extremely difficult for single men to receive accommodation and assistance, on account of priority being given to families, unaccompanied minors and women.<sup>5</sup> The government’s ‘instruction’ was challenged before the Council of State by several civil society organisations as well as a bar association. In its judgment nr. 257.300 of 13 September 2023, the Council of State ordered the suspension of the ‘instruction’ on account of its being against the law.<sup>6</sup> In a reaction to the judgment, Ms De Moor communicated that she did not intend to change her policy of reserving accommodation and material assistance only to families, unaccompanied minors and women. As late as 19 December, Ms De Moor formally confirmed that the illegal practice remains in place.<sup>7</sup> Currently the applicants have brought an action for annulment before the Council of State (currently pending).

In the same vein, instead of announcing the intention to comply with the *Camara* judgment and the measures that would enable this, the government did not take significant steps to comply either with national judgments or with the Court’s judgment.<sup>8</sup> As regards *Camara*-type cases pending before the Court, the Belgian government asked for them to be struck out from the list, with a one-line statement

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<sup>2</sup> Own translation from: ‘un refus caractérisé de se conformer aux injonctions du juge interne qui a porté atteinte à la substance même du droit protégé par l’article 6§1 de la Convention’.

<sup>3</sup> Own translation from: ‘une carence systémique des autorités belges d’exécuter les décisions de justice définitives relatives à l’accueil des demandeurs de protection internationale’.

<sup>4</sup> European Migration Network, “Nicole de Moor suspends the reception of single male asylum seekers”, 29 August 2023, available at <https://bit.ly/3U6B50y>.

<sup>5</sup> Priority was given based on vulnerabilities, see for example: Myria (the Federal Migration Centre), “PV réunion de contact protection internationale / Verslag contactvergadering internationale bescherming”, 15 maart 2023, available at <https://bit.ly/47Eq5dY>.

<sup>6</sup> Belgian Council of State, case nr. 257.300 of 13 September 2023, available at <https://bit.ly/3Hpah40>.

<sup>7</sup> Belgian Chamber of Representatives, CRIV 55 PLEN 278, 19 December 2023 [evening], available at <https://bit.ly/3HmFJQk>, p. 91.

<sup>8</sup> Ibid, p. 91. See also: Ciré asbl, “Politique de non-accueil: État des lieux Avril 2023 - September 2023”, available at <https://bit.ly/3tZFZSi>.



acknowledging that it had violated Article 6 ECHR, yet without spelling out any solutions or clear intentions to henceforth comply with similar court rulings.<sup>9</sup>

In May 2022, the French division of the Brussels Labour Tribunal already released a press statement on the negative impact of the non-implementation of judgments on the operation of the court.<sup>10</sup> Seeing that this situation, which is at the heart of the *Camara*-judgment, has not ameliorated, the negative impact of the Belgian authorities' defiance of the Rule of Law was decried moreover in a joint communication of 8 September 2023 by several of Belgium's independent national human rights institutions.<sup>11</sup>

On 27 October 2023, the Secretary of State for Asylum and Migration in charge of migration presented her annual policy note on migration and asylum for the next year. She declared that "the reception crisis has not disappeared" and that, contrary to what NGOs have been claiming for the past two years, there are no "easy solutions". She added that "to bring the situation and the reception crisis under control, we need to reduce inflows. This can only be achieved by taking the necessary measures at European level".<sup>12</sup> She further declared that the government would continue to "seek emergency humanitarian solutions in the months to come".<sup>13</sup> In fact, it seems that the minister did not present any sustainable solution in her note and therefore indirectly confirmed that she would not abide by the labour tribunal judgments, nor with the Court's judgment.<sup>14</sup>

In the meantime, Fedasil confirmed that all new reception places (recently opened or announced) in the Fedasil network (including partner centers, Red Cross or private partners) are for families or non-accompanied minors and *therefore not for single men who are automatically put on a waiting list*.<sup>15</sup>

### **1.2. Refusal to pay penalties for non-compliance**

Asylum seekers who were refused accommodation and assistance, continued to go to the labour tribunal and to obtain court orders in their favour, accompanied by "enforcement penalties" ("astreintes").<sup>16</sup> Fedasil, the Belgian reception agency, in charge of the management and coordination of the reception

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<sup>9</sup> See Annex I.

<sup>10</sup> Tribunal du travail francophone de Bruxelles Communiqué de presse "Contentieux Fedasil: plus de 1000 ordonnances sur requête unilatérale depuis le 1er janvier 2022", 24 May 2022, available at <https://bit.ly/47CHVOh>.

<sup>11</sup> Joint communication by Myria, the Federal Institute for the Promotion and Protection of Human Rights, Unia (the inter-federal equality body), the federal Institute for the Equality of Women and Men, the federal Ombudsperson, the Flemish Commissioner for the Rights of the Child, the Délégué général aux droits de l'enfant, and the inter-federal Service to Combat Poverty Insecurity and Social Exclusion, "Human rights also apply to single men seeking asylum", 8 September 2023, available at <https://bit.ly/3HkYfiW>.

<sup>12</sup> Note de Politique Générale, Asile et Migration, 27 October 2023, DOC 55 3649/008, available at <https://bit.ly/3Hpbfxa>, p. 3.

<sup>13</sup> Ibid., p. 26. Own translation.

<sup>14</sup> On the reception crisis as a deliberate act by the Belgian government see also: J.-B. Farcy, "The Belgian Reception Crisis before the ECtHR: The Court orders Belgium to respect the rule of law", 2 December 2022, <https://bit.ly/3O7OuSi>; S. Ganty and E. Sevrin, "Rule of Law Abnegated", 17 January 2023, <https://bit.ly/48XurOh>.

<sup>15</sup> Fedasil, "Accueil à Gand et via le secteur de la jeunesse", 30 November 2023, available at <https://bit.ly/3tQcvGy>. (see last paragraph).

<sup>16</sup> These enforcement penalties are pressure measures consisting in a sum of money due per day of non-compliance.

network (collective and individual places) has been convicted more than 8500 times.<sup>17</sup> The situation has not changed since Camara: 7,438 orders were notified (“signifiés”) mid-July,<sup>18</sup> and by Oct. 9, 8,152 orders had been notified.<sup>19</sup> The cumulative periodic penalties ordered by the labour tribunals so far amount to 35,524,200 euros and some pieces of furniture from the office of the Secretary of State for Asylum and Migration were seized for 119,623 euros.<sup>20</sup> The government continues to refuse to pay these sums of money, as well as it refuses to implement the judgments by the labour tribunals convicting the Belgian State and Fedasil to abide by the Reception Law.<sup>21</sup>

### 1.3. Refusal to comply with judgments ordering alternative solutions

*Assistance to squatters* - Some asylum seekers who are deprived of accommodation in reception centers found refuge in squats (occupied buildings belonging to the State or private companies). Several actions before courts were launched to ask the Courts to order the Belgian State to provide for these occupations all the material support. On 29 June 2023, the Brussels Labour Tribunal ruled that the Belgian State (together with Fedasil) had to provide such material support (showers, clothing, beddings, meals, urgent medical care etc.) to 80 asylum seekers occupying a building in rue de la Loi.<sup>22</sup> However, the Belgian State ignored this conviction as well and, a few weeks later, media,<sup>23</sup> lawyers<sup>24</sup> and activists<sup>25</sup> reported that the 80 asylum seekers were forced to leave the squats (some of them found accommodation in a hotel paid by the property developer whose building was occupied).

*Monetary assistance* - In exceptional circumstances, when no material accommodation can be offered, an asylum seeker has the right to claim monetary assistance to ensure adequate living conditions.<sup>26</sup> The saturation of the reception network counts as such an exceptional circumstance according to the Supreme Court of Belgium.<sup>27</sup> Although this constitutes one alternative for asylum seekers to seek shelter, the Belgian government has rejected this general approach.<sup>28</sup> The lack of implementation of judgments, has led the courts to not only rule in favour of immediate reception, but also to order the lifting of the allocation of specific reception facilities in their individual files (code 207), with the aim to allow

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<sup>17</sup> Belgian Chamber of Representatives, CRIV 55 PLEN 278, 19 December 2023 [evening], available at: <https://bit.ly/4aVJWlt>, at 91.

<sup>18</sup> This figure was communicated by Jessica Blommaert, policy officer at Ciré Asbl on 20 November 2023.

<sup>19</sup> This figure was communicated by Jessica Blommaert, policy officer at Ciré Asbl on 20 November 2023.

<sup>20</sup> Belgian Chamber of Representatives, QRVA 55 123, 19 November 2023, at <https://bit.ly/3tUkoe3>.

<sup>21</sup> Ciré asbl, “Politique de non-accueil: État des lieux Avril 2023 - September 2023”, available at <https://bit.ly/3tZFZSi>.

<sup>22</sup> Brussels Labour Tribunal, Judgment of 29 June 2023 (see Annex 2).

<sup>23</sup> See for example: VRT news, ‘Activisten kraakpand Wetstraat plaatsen nieuw tentenkamp voor asielzoekers aan Flagey’, available at: <https://www.vrt.be/vrtnws/nl/2023/09/15/activisten-kraakpand-wetstraat-plaatsen-nieuw-tentenkamp-voor-as/>; VRT news, Maand na aangekondigde ontruiming blijkt kraakpand in Wetstraat in Brussel nog bewoond, available at:

<https://www.vrt.be/vrtnws/nl/2023/10/04/maand-na-aangekondigde-ontruiming-blijkt-kraakpand-in-wetstraat/>.

<sup>24</sup> This was confirmed to us by the lawyer Hélène Crockart on 17 November 2023.

<sup>25</sup> This information was reported by the ADES network, available at <https://bit.ly/4b1AYsT>.

<sup>26</sup> Article 11 para., §3 reception Act.

<sup>27</sup> Hof van Cassatie (Belgian Supreme Court) 26 November 2012, S.11.026.N.

<sup>28</sup> See Myria, “PV réunion de contact protection internationale”, 20 september 2023, p. 53, pt. 9. See also: Belgian Chamber of Representatives, CRABV 55 COM, 24 January 2023 [morning], p. 16, available at: <https://www.dekamer.be/doc/ccra/pdf/55/ac966.pdf#search=%22code%20207%22>

applicants to access social welfare centres that can allocate an equivalent living wage. However, the Belgian authorities seem to be reluctant to implement by lifting the code 207 and when they do it, it is with a long delay as reported by the Vereniging van Vlaamse Steden en Gemeenten.<sup>29</sup> When they are not party to a case with a judgment ordering a ‘code 207 lift’, social welfare centres cannot offer monetary support as long as the authorities do not lift the code.<sup>30</sup>

**Summarized**, the open defiance of the Rule of Law by the Belgian government, through its refusal to comply with binding judgments, has continued and worsened since the *Camara* judgment:

- Non-compliance concerns more than 8500 labour tribunal judgments.
- It concerns both the substantive obligation to provide accommodation and assistance for asylum seekers and the payment of financial penalties (“astreintes”).
- It extends to judgments ordering alternative solutions for asylum seekers.
- In addition, the Belgian government refuses to comply with a judgment of Belgium’s highest administrative court, the Council of State.
- The deliberate non-compliance thus extends to the judgment of the Court itself.

Belgian actors in the field of justice and human rights have expressed their deep concern at this unprecedented Rule of Law crisis in Belgium. In the words of the Civil Tribunal of Brussels: “the failure to enforce a large number of court rulings is unacceptable, as it jeopardizes one of the fundamental foundations of the Rule of Law”.<sup>31</sup>

## 2. Humanitarian crisis

Although the Strasbourg Court did not address the violations of Articles 3 and 8 ECHR in *Camara*, it is essential to underline that the consequences of the violation of Article 6 §1 ECHR – and subsequently, the non-execution of the *Camara* judgment, *directly generate the ongoing humanitarian crisis in Belgium*. Therefore, the humanitarian crisis needs to be addressed in this submission as the direct consequence of the ongoing violation of Article 6 §1 by the Belgian government.

The humanitarian crisis mainly relates to health and shelter. Applicants are generally placed on a waiting list for several months –in December 4 to 5 months–,<sup>32</sup> creating a long period where they are left to fend for themselves (2.1.). Moreover, as long as asylum seekers are denied housing and other reception conditions, their right to claim asylum is de facto suspended as well (2.2.).

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<sup>29</sup> The Association of Flemish Cities and Municipalities, *Betere financiering en meer zekerheid moeten lokale besturen overtuigen om lokale opvanginitiatieven te openen*, available at : <https://www.vvsg.be/kennisitem/vvsg/materiele-opvang>.

.For older information about 2022 see also: Belgian Chamber of Representatives, QRVA 55 107, 30 March 2023, p. 348 available at: <https://www.dekamer.be/QRVA/pdf/55/55K0107.pdf>

<sup>30</sup> Article 57ter Organic Law of 8 July 1976 on Public Centres for Social Action.

<sup>31</sup> Own translation from “Le défaut d’exécution de très nombreuses décisions judiciaires est inacceptable dès lors qu’il met en péril l’une des bases fondamentales de l’Etat de droit”, Civil Tribunal of Brussels, 29 June 2023, no 2022/4618/A, para. 59.

<sup>32</sup> This information was provided by Jessica Blommaert policy officer at Ciré Asbl.

## 2.1. Health crisis and crisis of shelter

For the past two years, the denial of asylum seekers' right to reception has created a serious humanitarian crisis.<sup>33</sup> Amnesty International recently emphasised that many of those denied accommodation have to resort to sleeping in the streets or in makeshift tents in dire circumstances.<sup>34</sup> Since the *Camara* judgment, the situation on the ground has not improved. In December 2023, 2697 asylum seekers were placed on the waiting list of Fedasil, the Belgian reception agency. 869 of them have a court order recognizing their right to reception.<sup>35</sup> The Belgian government has overall been convicted up to 8595 times by national courts. Currently, there are still 187 cases with active interim measures as ordered by the Court.<sup>36</sup>

This humanitarian crisis has been decried amongst others in a letter of the UN Special Rapporteur on the human rights of migrants, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the UN Special Rapporteur on the Right to adequate housing and the UN Special Rapporteur on the human rights to safe drinking water and sanitation.<sup>37</sup>

*Health problems* - Dunja Mijatović, the CoE's Human Rights Commissioner, emphasized recently that "the lack of accommodation has serious consequences for the human rights of people applying for asylum in Belgium, including from the perspective of their right to health".<sup>38</sup>

Due to the lack of reception facilities, health problems remain underdetected and undertreated. The Humanitarian Hub, a civil society-organized day centre for medical, legal and material assistance collected data on applicants for international protection. This data shows a clear need for accommodation, with a large number of patients having skin disorders such as scabies, digestive problems, joint problems and mental health issues.<sup>39</sup> These issues have been confirmed again recently based on data gathered between July and September.<sup>40</sup>

In the summer of 2022, an epidemic of scabies severely affected asylum seekers, due to a lack of access to housing, hygiene and sanitation facilities and drinking water.<sup>41</sup> Another grave health risk is the

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<sup>33</sup> See most recently Ciré asbl, "Politique de non-accueil: État des lieux Avril 2023 - Septembre 2023", p. 8, available at <https://bit.ly/3tZFZSi>.

<sup>34</sup> Amnesty International, "Belgium: Urgent Action Needed To End Human Rights Violations Against Asylum Seekers", 31 October 2023, <https://bit.ly/3O8LrJz>.

<sup>35</sup> Information provided by Fedasil on 28 November 2023.

<sup>36</sup> Information provided by Fedasil on 28 November 2023.

<sup>37</sup> See the letter of the UN Special Rapporteur on the human rights of migrants, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the UN Special Rapporteur on the Right to adequate housing and the UN Special Rapporteur on the human rights to safe drinking water and sanitation, 30 March 2023, <https://bit.ly/3S1Y2z5>.

<sup>38</sup> Associated Press, "Belgium's asylum shelters will no longer take in single men in order to make room for families", 30 August 2023, <https://bit.ly/47lv9OI>.

<sup>39</sup> Ciré, "Crise de l'accueil: Etat des lieux", May 2023, p. 9-12, available at <https://bit.ly/46be1Ql>. See also "Artsen Zonder Grenzen bezorgd over medische toestand asielzoekers in Brussel", available at <https://bit.ly/4b49QcM>.

<sup>40</sup> "Politique de non-accueil: Etat des lieux Avril 2023 - Septembre 2023", p. 8 and further, available at :: <https://bit.ly/3tZFZSi>.

<sup>41</sup> Ciré, Crise de l'accueil: Etat des lieux", May 2023, p. 12, available at : <https://bit.ly/46be1Ql>.

outbreak of diphtheria, which has affected asylum seekers since September 2022.<sup>42</sup> Sciensano, the national public health institute of Belgium, shared a circular letter in July 2023, emphasizing the risks of diphtheria amongst asylum seekers, and the need for swift treatment.<sup>43</sup>

*Lack of shelter* - Those who are denied accommodation are camping outside. Those who sleep on the street are often uprooted and evicted by police. The police have destroyed makeshift tents set up by asylum seekers, essentially destroying all forms of shelter.<sup>44</sup> Asylum seekers in the street are also more likely to be victims of harassment and violence (including robbery), as shown recently in the asylum seekers camp installed on the Flagey square in Brussels.<sup>45</sup> For those who live in squats, evictions are also commonplace. At least in one case, belongings such as backpacks have been taken away from the asylum seekers sleeping in front of the immigration office by an external company.<sup>46</sup> Media have recently reported that the Immigration Agency (Office des étrangers) has just thrown away the belongings of fifty asylum seekers' that were left within its building.<sup>47</sup> Importantly, the loss of these belongings further threatens their asylum application, as they might lose essential documents supporting their claim for international protection.

*Overburdening civil society* - Finally, there is the impact of government non-compliance on the civil society organisations that try to address the resulting humanitarian crisis. The suffering of asylum seekers who are denied accommodation "is only alleviated thanks to the invaluable work of Belgian NGOs".<sup>48</sup> Organizations that used to focus on ensuring the basic needs of other categories of migrants, such as undocumented migrants, have systematically only been able to focus on the needs of asylum seekers. This has led different organizations to file a collective action before the Court of First Instance, claiming that the Belgian government should ensure access to the asylum procedure and provide accommodation. The Brussels Court of first instance found that as Belgium is neglecting these obligations, it is civilly liable, resulting in a new periodic penalty.<sup>49</sup> However, as above-mentioned, the

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<sup>42</sup> Ibid.; S. Jacquinet et. al., "Outbreak of *Corynebacterium diphtheriae* among asylum seekers in Belgium in 2022: operational challenges and lessons learnt", *Euro Surveill.* 2023, <https://bit.ly/3HtGo2g>.

<sup>43</sup> Circular Flemish Government (health care department), "Risico op difterie onder asielzoekers", 5 July 2023, available at <https://bit.ly/3O76U5o>.

<sup>44</sup> Vluchtelingenwerk Vlaanderen, "Politie vernielt kartonnen tenten van minderjarige asielzoekers: trieste episode van een structureel probleem", 19 October 2022, available at <https://bit.ly/3HIUMd0>; De Morgen, "Brussels burgemeester Close laat kartonnen tenten van minderjarige migranten vernietigen: trieste episode van een structureel probleem", 19 October 2022, available at <https://bit.ly/3tXtIU>.

<sup>45</sup> RTBF, "Ixelles : après les événements dans le camp de migrants places Flagey, 80 places libérées par la Région", 16 September 2016, available at <https://bit.ly/3HoyUxH>.

<sup>46</sup> Statement by Thomas Willekens, policy officer at Vluchtelingenwerk Vlaanderen on 1 December 2023. See also "Asielzoekers die belangrijk document kwijt zijn na opruiming Pacheco, krijgen duplicaat", available in Dutch at <https://bit.ly/421AX48>. Note that the replacement of documents mentioned in the article's title relate *only* to those documents issued by Belgian officials.

<sup>47</sup> La Libre, "Des associations d'aide aux réfugiés dénoncent un nettoyage à l'Office des étrangers : 'Ils ont emporté toutes les affaires des demandeurs d'asile'", 1 December 2023, available at <https://bit.ly/4b4JoQC>.

<sup>48</sup> Amnesty International, Public Statement, op. cit. "Belgium: Urgent Action Needed To End Human Rights Violations Against Asylum Seekers", 31 October 2023, <https://bit.ly/3O8LrJz>.

<sup>49</sup> Civil Tribunal of Brussels, 29 June 2023, 2022/4618/A, available at <https://bit.ly/3Ub27U>. See also previous judgments by the Civil Tribunal of Brussels, 19 January 2022, n° 2021/164/C and Civil Tribunal of Brussels, 25 March 2022 (upheld by Appeal Court of Brussels, 31 October 2022).

Belgian authorities continue to refuse to implement the judgments against them, as well as to pay said penalties.<sup>50</sup>

## 2.2. Obstructing access to the asylum procedure

The reception crisis also obstructs access to the asylum procedure. As UNHCR has stated in September 2023, adequate reception facilities are an essential aspect of fair and efficient asylum proceedings, and as such a prerequisite to guarantee access to international protection.<sup>51</sup>

The lack of reception has a negative, sometimes dramatic, impact on the asylum procedure of applicants living in the street. Indeed, after the registration of their asylum application, asylum seekers (mainly single men) are usually left on the street with no indications on how to access the legal assistance they are entitled to. In general, those who are denied reception will not be invited for the asylum interview by the CGRS/CGRA (the Office of the Commissioner General for Refugees and Stateless Persons, the authority processing asylum claims).<sup>52</sup> This policy was explicitly confirmed in the most recent communication of the CGRS/CGRA,<sup>53</sup> as lack of accommodation might negatively impact the asylum applications. Even when the applicant makes it to the merits interview with the CGRS/CGRA, the interview will be postponed in many instances because most of them are mentally or physically unable to conduct it, with a consequence that their asylum procedure will take even longer.<sup>54</sup> As such, a lack of accommodation often leads to a *de facto* suspension of the asylum procedure and this situation worries organizations, such as Vluchtelingenwerk.<sup>55</sup> There are currently no statistics available on this.

In any case, even without this exclusionary practice from the CGRS/CGRA, the lack of legal assistance and shelter has led to a high risk that asylum seekers will be unable to adequately prepare for the first interview (which is shorter than the merits interview with the CGRS/CGRA) with the Immigration Office (Office des étrangers/Dienst Vreemdelingenzaken) for the asylum procedure or even miss it, sometimes leading to a withdrawal of their applications.<sup>56</sup>

**Overall**, the humanitarian implications of this Rule of Law crisis are disconcerting. As we are writing this submission in December, civil society organizations are bracing themselves for what another winter will bring. Despite the fact that the Court has not yet ruled upon whether this situation breaches article 3 of the ECHR, national courts have. As they have the primary task of ensuring the respect of the rights embedded in the ECHR, the Dutch courts determined that Belgium's treatment is breaching article 3 of the ECHR, creating a *non-refoulement* obligation.<sup>57</sup> As such, the Netherlands has generally stopped transferring single male applicants to Belgium in the framework of the Dublin regulation.<sup>58</sup>

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<sup>50</sup> Belgian Chamber of Representatives, QRVA 55 123, 19 November 2023, at <https://bit.ly/3tUkoe3>.

<sup>51</sup> UNHCR Belgium and Luxembourg, "UNHCR: opvangcrisis in België is zorgwekkend, maar oplossingen zijn voorhanden", available at <https://bit.ly/423dlMx>.

<sup>52</sup> Myria, "PV réunion de contact protection internationale", 20 september 2023, p. 19, available at <https://bit.ly/3O7PtBY>.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid., at p. 9 and p. 19-20.

<sup>55</sup> Ibid., p. 8-9 and p. 19-20 read together.

<sup>56</sup> Vluchtelingenwerk Vlaanderen has emphasized their concerns in this regard, in a conversation on 24 November 2023.

<sup>57</sup> E. Sevrin, "Ook de Dublin-verordening kreunt onder de opvangcrisis", <https://bit.ly/3vzWeFY>.

<sup>58</sup> Den Haag Tribunal, 12 December 2023, NL23.33421, ECLI:NL:RBDHA:2023:19965; Den Haag Tribunal, 30 November 2023, NL23.14430, ECLI:NL:RBDHA:2023:18518; Den Haag Tribunal, 12 October 2023, NL23.19257,

## V. Suggested measures towards compliance

Whatever measures have been taken by the Belgian government since the *Camara* judgment to address the problems described above, they do not address the Rule of Law crisis, and are manifestly insufficient to address the humanitarian crisis.

The Government adopted a “political agreement to end the crisis” in March 2023.<sup>59</sup> At the end of September 2023, it created an operational task force responsible for finding and opening new temporary places in the reception network (at least 2,000 places). This task force is composed of several ministerial cabinets (Prime Minister, Asylum, Civil Service, Defense, Interior, etc.) and administrations (Fedasil, Defence, the National Crisis Centre etc.).<sup>60</sup> However, this task force does not seem to have come up with concrete plans so far although numerous concrete solutions have been on the table for more than a year now, as explained in the next section.<sup>61</sup>

As of today, Belgian authorities still fail to comply with Article 6 ECHR (and subsequently Belgian and EU reception provisions) by not abiding by thousands of Belgian labour tribunals judgments convicting the Belgian State to ensure that asylum seekers are accommodated in a reception centre, or in a hotel or other suitable establishment if no other space is available, and provide reception as defined by the Belgian Reception Act,<sup>62</sup> including paying a penalty (“astreinte”) for each night that an applicant is forced to spend outside the reception facilities or other emergency accommodation (see previous sections). Violation of the Rule of Law and denial of reception is increasingly normalized by the Belgian government.

However, the Belgian State has an obligation of results<sup>63</sup> and no *force majeure* excuse is admissible:<sup>64</sup> the reception crisis has been ongoing for two years and many concrete solutions, supported by 51 NGOs, have been on the table for more than a year.<sup>65</sup> It seems to us that political will is the main ingredient missing as the Belgian government does not use the means at its disposal to implement these solutions. The Court in *Camara* also insisted on the fact that no excuse is acceptable even despite the difficult circumstances (§ 119).

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ECLI:NL:RBDHA:2023:15458; Den Haag Tribunal, 29 November 2023, NL23.11747, ECLI:NL:RBDHA:2023:18377; The first judgment dates from February 2023, see Den Haag Tribunal 20 February 2023, NL23.382, ECLI:NL:RBDHA:2023:1853; See also “Asile: la Belgique pointée du doigt depuis le Pays-Bas”, available in French at <https://bit.ly/3Sn9HKc>.

<sup>59</sup> Premier Ministre de Belgique – Actualités, “Accord en kern sur les mesures pour sortir de la crise de l'accueil”, 9 Mars 2023, available at <https://bit.ly/48WF1VQ>.

<sup>60</sup> Fedasil, “Une task force pour des places d'accueil”, 4 October 2023, available at <https://bit.ly/426p64M>.

<sup>61</sup> This information was provided by Jessica Blommaert, policy officer at Ciré Asbl. See also: If you want to use it as a source: Myria, “PV réunion de contact protection internationale”, 18 October 2023, <https://bit.ly/3HrTltz>.

<sup>62</sup> Belgian Reception Act of 2 January 2007 on the reception of asylum seekers and certain other categories of foreign nationals, M.B., 5 May 2007.

<sup>63</sup> ECJ, 27 February 2014, C-79/13, *Saciri and Others v. Belgium*. See also: Civil Court of Brussels, 19 January, no. 2021/164/C.

<sup>64</sup> Civil Court of Brussels, 29 June 2023, no. 2022/4618/A, available at <https://bit.ly/3Ub27UB>.

<sup>65</sup> Ciré, “La sortie de crise de l'accueil des demandeurs de protection”, September 2022, available at <https://bit.ly/3vJMqtm>.

The reception problem is systemic as pointed out by the Court in *Camara* and we respectfully submit that the following concrete measures need to be implemented in order for the Belgian State to comply with Article 6 ECHR.

The measures below constitute the strict minimum to comply with the judgments handed down by the Belgian Courts and therefore *Camara*. They are not exhaustive and by no means imply an optimal reception system in accordance with Belgian and EU law. They are complementary. We distinguish between short term measures (i.e. measures which need to be implemented immediately to avoid asylum seekers having to spend the winter without shelter and developing serious health issues, among others) and long-term measures which need to be put in place to avoid any further “yoyo effects” leading to an aggravation of the saturation of the reception system.

### **1. Suggested short term measures**

The suggested measures relate to the need of urgent temporary shelters for all the reception beneficiaries, as soon as possible, in order for them to be treated with dignity and without distinction based on gender or family composition. All the following measures require to be put in place by political decision:

- Activation of the federal national crisis phase enabling the requisition of Civil Protection and Defense buildings and personnel in order to set temporary shelters. Such a requisition would imply that the coordination of this crisis would be in the hands of the Home Office Minister and the national crisis Centre;<sup>66</sup>
- Activation of a dispatch plan between municipalities. It constitutes one of the solutions provided for by Belgian law in the event of saturation of the reception network.<sup>67</sup> This would imply that each Belgian municipality welcomes an average of five asylum seekers.<sup>68</sup> Specifically, the Federal State can make this plan *compulsory* for the municipalities which would have no choice but to create more individual shelters in the so-called “local reception initiatives” (*Initiatives locales d'accueil* – ILA). In this way, additional shelter would be opened in a balanced manner between municipalities on Belgian territory. The individual local shelters should constitute 40% of the available reception shelters (against only 14% today);<sup>69</sup>

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<sup>66</sup> Ibid. See also Ciré, “Politique de non-accueil: Etat des lieux Avril 2023 - September 2023”, p. 17, available at <https://bit.ly/3tZFZSi>.

<sup>67</sup> According to Article 57ter/1 Organic Law of 8 July 1976 on Public Centres for Social Action. See also: Royal decree determining the criteria for a balanced distribution among municipalities of reception places for asylum seekers, available at <https://bit.ly/48yeTRc>.

<sup>68</sup> Ciré, “Politique de non-accueil: État des lieux Avril 2023 - September 2023”, p. 5, available at <https://bit.ly/3tZFZSi>.

<sup>69</sup> Ciré, “La sortie de crise de l'accueil des demandeurs de protection”, September 2022, available at <https://bit.ly/3vJMgtm>. See also: The Association of Cities and Municipalities (De Vereniging van Vlaamse Steden en Gemeenten (VVSG)), “Betere financiering en meer zekerheid moeten lokale besturen overtuigen om lokale opvanginitiatieven te openen”, 4 October 2023, available at <https://bit.ly/3O8Lpky>.



- Activation of a financial aid distribution plan with the Public Centres for Social action, as provided for in the reception Act and the Public Centre for Social action Act;<sup>70</sup>
- Providing a secure financial framework for operators who open places;
- Mobilizing, in the three regions, available rooms in hotels and listing and requisitioning all vacation sites/places made available at the end of the summer in order to temporarily shelter people;
- Finding sites to install additional 600 container units provided by the European Union Agency for Asylum to provide 750 persons with accommodation in emergency shelters;<sup>71</sup>
- Guaranteeing a suitable shelter for the most vulnerable persons, especially unaccompanied minors, in addition to providing a shelter for all beneficiaries;
- Freeing up places in existing shelters by:
  1. Allowing people to leave the shelter and live somewhere else, with the support of social services, in accordance with the Reception Act, through the so-called “Code 207 lift”,<sup>72</sup> in particular residents hosted for more than six months in reception facilities, without any further economic or employment conditions. The administration should facilitate access to an address/domiciliation for these people. It should be noted that the narrative that the only way to get out of the current crisis, is by creating more accommodation places, is mistaken. The government has not lifted the code 207 for all asylum seekers who are denied reception, while this would allow them to receive a minimum wage, and as such enabling them to ensure their basic needs, as above-explained.
  2. Accelerating the procedure of pending asylum applications, while ensuring quality of the decision-making process, including priority treatment of nationalities with a high rate of protection e.g. Palestinians.
- Providing lawyers and NGOs with transparent information about the way Fedasil draws up waiting lists;
- Ensuring unconditional and direct access to preventive and curative medical services to all asylum seekers.<sup>73</sup> Specifically, it is important to provide an accessible structure near the asylum application registration site in order for asylum seekers deprived from accommodation to benefit from medical screening for common pathologies, including scabies and tuberculosis and ensuring access to effective treatment (medication, showers, clean clothes) before access to accommodation, taking into account the issues caused by living in the street (eg: foot sores, dehydration, lice, etc.).

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<sup>70</sup> Article 11, para. 4 of the Reception Act. It should be noted that accommodation under the reception Act can be collective (center) or in individual reception facilities such as studio or flat. This depends on the profile of the asylum seeker and the phase of the asylum procedure.

<sup>71</sup> EUAA newsletter, *The EUAA adds new EU Country Operation in Belgium*, n°1/2022 (2022). Available at: <https://bit.ly/3u3C6vu>. Belgium is the first country not at an external EU border, in which such an EUAA operation is launched.

<sup>72</sup> Articles 11 and 13 of the Reception Act. The so-called cancellation of Code 207 implies to cancel the assignment to a reception structure and allow the asylum seeker to have access to social services directly. This means that they can request an equivalent living benefit and other additional assistance if they meet the other eligibility conditions.

<sup>73</sup> “Politique de non-accueil: Etat des lieux Avril 2023 - September 2023”, p. 17, available at <https://bit.ly/3tZFZSi>.

## **2. Suggested long term measures**

To avoid the continuation of the Rule of Law crisis implying the violation of Article 6 ECHR and the repetition of such a crisis in the future, the government has to put in place structural and preventive measures, which would ensure sufficient capacity to accommodate fluctuations in the number of asylum applicants. Indeed, these fluctuations of applications are inherent to any asylum system. These measures would entail, among others:

- Stabilizing the reception network capacity with a sufficient number of structural places as well as a sufficient number of buffer places (which can be reactivated and mobilized in case of need) to cope with fluctuations in arrivals;<sup>74</sup>
- Reaching a balance within the reception network to ensure that at least 1/3 of places are created in individual housing alongside collective reception places. Indeed, the number of individual housings has an impact on the management of the reception network and the crisis, as has been demonstrated in the past;<sup>75</sup>
- Reducing the backlog in processing asylum applications. This backlog has resulted in a drop in the number of people leaving the reception system. As the number of new applications for international protection have increased, the Belgian authorities should invest in the processing of these claims, while ensuring quality of the decision-making process;
- Providing asylum seekers and refugees with sufficient follow-up support to find adequate housing (with the help of social welfare organisations (OCMWs)) .

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

The non-implementation of the Camara judgment boils down to an unprecedented Rule of Law crisis in Belgium, characterized by the deliberate non-implementation of thousands of judgments. Severe concern about this Rule of Law crisis has been expressed by key stakeholders in Belgium as well as by important international human rights actors. Moreover, it is important to keep in mind that the concrete physical result of the non-implementation of judgments ordering accommodation and assistance, is a severe humanitarian crisis in which people are systematically left without shelter and exposed to health and other risks.

Having in mind the ongoing negative effects of the non-implementation of this judgment, the submitters respectfully ask the Committee of Ministers to:

- Examine this case under the enhanced supervision track.
- In its supervision of the execution of this judgment, address both the Rule of Law crisis and the humanitarian crisis that is intertwined with it.

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<sup>74</sup> In recent years, thousands of places have been closed (structural and buffer) to save money and without anticipating future flow variations, this should be avoided.

<sup>75</sup> Myria, "15 ans de loi accueil: un anniversaire en mode mineur, 7 September 2022, available at <https://bit.ly/47E1o15>.

- Request the national authorities to submit an Action Plan by 18 April 2024, based on the suggested measures included in the section above, and make sure that sufficient resources are allocated to implement it.
- Encourage national authorities to include and consult specialized civil society organizations in the development of their Action Plan.

It is suggested that general measures to be adopted by the Belgian government for the short and long term should include all of those mentioned in Section 4 of this submission.

## **VII. ANNEXES**

1. Declaration of the Belgian State related to the cases pending before the Court;
2. Brussels Labour Tribunal, Judgment of 29 June 2023.