

Conference at the ULB The Belgian Migration Policy: What assessment, what prospects?

The Law Students with Refugees and the Ligue des Droits humains organized a conference on the 25th of April at the Université libre de Bruxelles. The speakers were Pierre Verbeeren, General Director of Médecins du Monde ; François Gemenne, academic researcher specialized in geopolitic issues of environment ; Sarah Ganty, academic researcher specialized in migrants and refugees rights, integration policies, and Human Rights ; and Sotieta Ngo, General Director of Ciré-ASBL.

May 17th, 2019

The objective of this conference was to present an overview of migration and asylum policies and measures implemented between the years of 2014 and 2019 in Belgian legislature and at the European level. The speakers then provided some ideas and proposals for future developments of integration and migration management policies at both levels.

Assessments of Belgian Migration Policies

The Director of Ciré, Sotieta Ngo, opened the event with a general overview of the Belgian migration-related policies and discourses. She shed light on the restrictive and absurd aspects of these policies, described as “humane and firm” by the Belgian federal government, as well as commenting on its failure to learn lessons from previous experiences. She observed that, globally, procedures, possibilities and criterias for asylum seeking, refugees rights, familial reunification, visa granting, regularization, etc. have become increasingly restrictive. At the same time, this trend is challenging the rule of law in the country, as it leads the government to disrespect national judicial decisions.

Visas

In the case of Belgian visa policies, she raised issue of the highly arbitrary nature of the visa granting process : because of various officious, non-formal, non-written criterias that play an important role, some applicant's can be refused, even in cases where all official and formal criterias are met. An illustration of this arbitrary dimension can be found in a current request before the ECHR concerning the Office des étrangers refusing to grant visas to a Syrian family despite the contrary decisions issued by the Conseil du contentieux des étrangers as well as by the Tribunal de première instance de Bruxelles.¹ This refusing is also an example of the weakening of the rule of law in Belgium : the executive power denies the division of powers by imposing its authority against the judicial power, while this separation is essential to an effective rule of law and democracy.

Deterrence

The increase in the number of deterrence campaigns being implemented in origin countries was also mentioned. Recently, an Office des étrangers's online campaign dedicated to migrants in origin and transit countries, particularly for Moroccan and Palestinian people, was implemented.²

Detention

Another example is the return to the old practice of putting foreign children into closed centers through a royal decree adopted in 2018.³ This practice of detaining children was suspended by the Belgian Council of State in April of this year, arguing that the living conditions of the 127bis center constituted inhuman or degrading treatment, what is inconsistent with article 3 of the European Convention on Human Rights. That is notably because of the 127bis center's proximity with the Brussels airport.⁴ Indeed, the Council of State had already expressed, in the Legal Opinion of 13 June 2018, that “ minor children detention in the context of the migratory movements control can raise

¹ CEDH, *M.N. et autres c. Belgique*, Requête n°3599/18, Communiqué de presse du Greffier, 24 avril

² <https://www.maggiedeblock.be/fr/loffice-des-etrangiers-lance-une-nouvelle-campagne-de-dissuasion/>

³ See <https://www.bic-rhr.com/projects/belgium-has-retained-old-practice-detaining-families>

⁴ Conseil d'Etat, Section du contentieux administratif, Arrêt n°244.190, 4 avril 2019. <http://www.raadvst-consetat.be/arr.php?nr=244190&l=fr>

serious concerns regarding article 3 of the European Convention of Human Rights, which prohibits in an absolutely way torture and other inhuman or degrading treatments or punishments”.⁵

Monitoring

In Belgium, there are no permanent and independent mechanisms in place, aimed at visiting and monitoring such detention centers, even though these mechanisms are essential for the protection of human rights in those centres. The Belgian Office des étrangers has already given accreditation to some civil society organizations : however this accreditation can be withdrawn at any point. In this way any organization perceived by the Office des étrangers to be too critical can have their permission revoked. That possibility would not be possible with a specific public independent organ.

Non-refoulement principle

Through focussing on on article 3 of the ECHR, and applying a more legally oriented criticism, Sarah Ganty illustrated the non-refoulement principles apply to all persons at risk of torture or inhuman or degrading treatment (and not only to recognized refugees). It has a declaratory effect, this means that it applies to anyone who find themselves in such a situation, even in the cases where they have not been administratively recognized as a refugee or have not applied for asylum. That was the case for some Sudanese people who were in Belgium without a refugee status, and were returned to Sudan in 2017, even though they had suffered degrading or inhuman treatment and were at potential risk of further maltreatment in case of their return to their origin country.⁶

Overall Sotieta Ngo deems all these measures to be an illustration of a more general regression in terms of respect and protection of migrants’ rights and of the rule of law in Belgium. These measures are highly symbolic but do not constitute a policy. They appear to be intended to frighten the population through stigmatization and dissuasion, and gain political clout in a context of perpetual electoral and political calculations. They illustrate the fact that, while there exists an international “right to migrate” (from an origin country), there is no international or universal “right to immigration” (into the destination country).

François Gemenne agrees with the idea there isn’t currently an effective European or Belgian migration policy. He considers the Belgian policy either to be to simply do nothing, thus creating fear and building one’s own political popularity (the Theo Francken way), or implementing a managerial approach with dehumanizing logic (the Maggie De Block way). In Belgium, Pierre Verbeeren added, the current situation of many migrants represents a reconfiguration of what had already been abandoned by the authorities regarding poverty, socio-economic and fundamental rights issues, in general.

Future Prospects for Belgium

Mr. Verbeeren presented some prospects for future Belgian policies. Firstly, it is necessary to take the migration and asylum responsibilities out of the hands of the Home Ministry. Currently, as nowadays,

⁵ Cité dans Conseil d’Etat, Section du contentieux administratif, Arrêt n°244.190, 4 avril 2019, §44

⁶ See <https://plus.lesoir.be/133410/article/2018-01-11/soudan-la-belgique-na-pas-respecte-les-droits-humains> ; <https://www.nytimes.com/2018/04/22/world/africa/migration-european-union-sudan.html>

the Secretary of State for Migration and Asylum is part of this Ministry, which basically is the major institution that detains the State's "monopoly on the legitimate use of violence".⁷

The simple fact of including the migration questions within this portfolio is quite problematic and questionable. Secondly, the violation of the rule of law in Belgium, through the government's rejecting of several national judicial decisions, must be stopped. Thirdly, the socio-economic integration of migrants in Belgium is essential and should be prioritized, by valuing and enhancing their contributive capacities, at the same time as stopping the detention of children. Finally, the violence suffered by migrants and refugees must be taken more seriously by political authorities.

Assessment of EU Migration Policies

As the discussion transitioned to a more European focus, Mr. Verbeeren explained that the EU has been discredited due to its pragmatic approach to migration management in recent years. This has come at the expense of core EU values such as human rights, and is a result of a lack of prioritization of integration or inclusions programs by the European Commission. Mr. Gemenne explained that, in his opinion, European institutions tend to consider the migration phenomenon as a "political anomaly", what prevents the decision-makers from constructing an effective political vision.

Mrs Ganty then observed that European directives for migration issues attempt to provide vague, and sometimes flexible, guidelines for European member States, which are not invokables in the case of trial proceedings. They are being interpreted by European member States in increasingly restrictive ways, what the EU Court of Justice tends to accept, avoiding conflict with member States.

Mrs Ganty made the keen observation that while Europe is theoretically dedicated to allowing European citizens "freedom of movement", when discussing non-EU citizens, matters become very nationally focused, with an emphasis on words like "immigration" and "integration". However, some justice decisions at Belgian and European level led to a differentiation among EU-citizens regarding the required criterias for the issuance of residence permits within an European member State. The Roma population, for example, is affected by this practice, and they are often obliged to give proof that they have a minimum of financial resources to stay in Belgium, otherwise they get a Belgian "order to leave the territory". Such a legal practice tends to create a political and social hierarchization among EU citizens by treating some of them as "second-class citizens".

Future Prospects for the EU

Mr. Gemenne and Mr. Verbeeren then presented some of the proposals they made in the book they collaborated on (*Au-delà des frontières - Pour une justice migratoire*)⁸ for future European political legislature. Among these measures, the possibility for asylum applicants to file within an origin or transit country before beginning migration. This is dramatically different from Europe's current approach of asylum procedures externalization. Indeed, the application would still be to a European

⁷ Max Weber, *Le savant et le politique*, Plon, 1998

⁸ Gemenne François, Verbeeren Pierre, *Au-delà des frontières : pour une justice migratoire, Espace de libertés*, 2018

country, and it would not prevent people from filling the application directly within an European country at the end of their migration pathway, if they prefer.

The authors also suggest the creation of an “European Asylum Agency” which would be dedicated to combining the reception capacities of each European country with the country destination demands made by each asylum seeker. What is more, European member States could benefit from the Schengen system only in the case where they accept to fully cooperate with the functioning of this Agency. It has also been proposed that each European member State has a Special Prosecutor for the national fight against racism, while at the same time, reinforcing the fight against racist statements within political discourses.

Finally, the authors propose that a random lottery system for “economic migration” is introduced, where a certain number of residence permits per year are allocated by the EU for this type of migration. They feel this would constitute a more equitable, non-arbitrary system and allow reduction of human trafficking businesses. However, Mr. Gemenne was sure to highlight an interesting dilemma when it comes to the terms “economic migration” and their application to people who are forced to migration but not for direct political or conflict reasons. He explained that many of those who are described as “economic migrants” could also be qualified as “environmental migrants”. Indeed, for the majority of people migrating for economic reasons, their income and resources are closely linked to climate conditions in the area they work. As a study led by the European Bank for Reconstruction and Development and the IFO Institute⁹ demonstrated, a majority (63%) of both refugees and economic migrants had a job in their origin country before migrating. Yet, their economic situation is unsustainable since they find themselves in a permanent and increasing instability due to climate change.

Conclusion

The current migration situation, perhaps more than ever before, needs efficient and cohesive integration policies. The next Belgian and EU legislatures can not afford to turn a blind eye to these essential challenges. It is important that policy makers take a comprehensive and long-term view when making political decisions. Yet, this conference organized at the Université libre de Bruxelles provided an interesting and realistic view of all shortcomings and disconnected decisions that future political decision-makers will have to review and deal with.

⁹ Refugee's self-selection into Europe: who migrates where? See our article <https://www.bic-rhr.com/projects/ceps-conference-refugees-self-selection-europe>



Avenue Louise, 89 - 1050 Brussels - Belgium

Tel: +32 02 725 84 66

www.bic-rhr.com

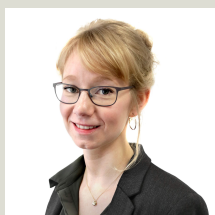
info@bic-rhr.com

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ABOUT THE AUTHOR



Ariane Gemander
Outreach Department Intern

