



Ref: CommHR/DM/sf 062-2018

Mr Theo FRANCKEN

Secretary of State for Migration and Asylum
Belgium

Strasbourg, 5 June 2018

Dear Secretary of State,

The human rights of migrants, including asylum seekers, are a central aspect of my work as Council of Europe Commissioner for Human Rights and in this context, immigration detention of children is an issue to which I pay particular attention. I would therefore like to continue the dialogue you had with my predecessor, Mr Nils Muižnieks, on this issue and follow-up on a letter of 12 December 2016, in which he called on you to reconsider plans to build new closed units where migrant families with children could be detained.

I am informed that the construction of the new detention units for migrant families with children near Brussels airport has been completed and that families could be detained in these units in the very near future.

I share my predecessor's position that children should never be detained because of their own or their parents' immigration status. Even when the material conditions of the detention are appropriate and the duration short, immigration detention is never in the child's best interests. Providing a child-friendly environment is no substitute for ensuring that children are not deprived of their liberty and for safeguarding their well-being and best interests.

As stressed by the UN Committees on the Rights of the Child and on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2017 in their joint general comment No. 4, while the UN Convention on the Rights of the Child allows for the possibility of detaining children as a measure of last resort in criminal juvenile justice, the 'last resort' standard is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.

More generally, any migration management objectives, such as encouraging the return of migrants in an irregular situation to their countries of origin, must be implemented in compliance with international human rights standards, including those enshrined in the UN Convention on the Rights of the Child.

I note from your reply to my predecessor's letter that alternatives to detention for families with children have not yielded the results you had hoped for. In my view, this situation could be addressed by increasing efforts to improve alternatives, rather than reintroducing detention in closed facilities. Over the last years, a wealth of knowledge has been developed on how to make alternatives to detention work better. In this context, I would like to draw your attention to a report recently adopted by the Council of Europe Steering Committee for Human Rights on this issue ("*Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration*") which stresses that alternatives to detention, if adequately applied, can improve compliance with immigration procedures and, thus, be an effective migration governance tool.

In the last decade, Belgium has invested in the development of these human rights compliant alternatives, becoming a reference for positive practice in this field. I strongly encourage your authorities to continue on this path and not to revert to past practices, which jeopardise the protection of children's rights.

I look forward to receiving your reply and pursuing a constructive dialogue.

Yours sincerely


Dunja Mijatović