



Staatssecretaris voor Asiel en Migratie en Administratieve Vereenvoudiging
Lambermontstraat 2 - 1000 Brussel - Tel: [REDACTED]

Contact: [REDACTED]

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CABINET AVRAMOPOULOS											
DA	DS	IS	AN	CE	SA	CO	FL	MP	GG	IP	CC
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N° Ares: 251 9028											

Dear Commissioner Avramopoulos,

For the past few months, Belgium has been confronted with migrants who only wish to travel through the territory of Belgium without seeking asylum here. These migrants refuse to apply for asylum in Belgium either because they fear that Belgium is going to send them back to the member state who is responsible for the examination of the asylum application, or because they fear that the United Kingdom is later going to send them back to Belgium.

Given the lack of asylum application, the return directive is of application and Belgium is supposed to send them back to their country of origin. However, once they are arrested, these migrants in transit claim, while refusing to apply for international protection, that a return to their country of origin would lead to the violation of article 4 of the EU Charter/3 ECHR given their personal situation.

Belgium is well aware that each return should be tested in light of a potential violation of article 4 of the EU Charter/3 ECHR. Belgium is of the opinion that the migrants should follow the procedure that the member state has set up to this end, namely the asylum procedure. A different procedure for the examination of the fear of persecution under article 4 of the EU Charter would be against the objective of a Common European Asylum System, and would undermine the functioning of the Dublin Regulation. Furthermore, it is in the best interest of the migrant since the examination of an asylum application provides for adequate procedural safeguards.

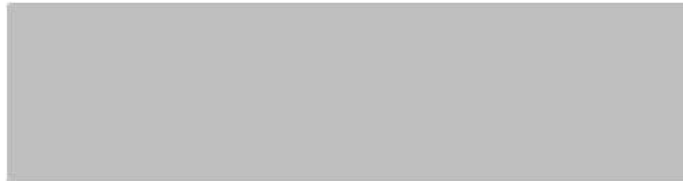
In addition, Directive 2013/32 of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) defines an 'application for international protection' or 'application' as 'a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status'. Given this definition, the refusal to return in his or her country of origin whilst invoking an individual fear of persecution or a real risk of serious harm could (according to our view) be understood as an application for international protection. Such a qualification would allow Belgium to examine the credibility of these allegations in the realm of the asylum procedure in the case Belgium is the state responsible for the examination of the asylum application instead of setting up alternative proceedings under a different procedure.



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Belgium would like to request the opinion of the Commission about the possibility to consider an application "article 4 EU Charter" as making an application for international protection (with the potential application of the Dublin Regulation accordingly in light of the decision in Mengesteab (c-670/16)) and this even in the case the migrant explicitly indicates that he/she does not intend to apply for asylum. In case the Commission is of the opinion that the situation of these migrants in transit who invoke a fear for persecution or a real risk of serious harm but refuse to introduce a formal asylum request in order to avoid the application of the return directive or the Dublin regulation do not fall within the scope of the asylum procedures directive, Belgium would also like to know whether this would imply a member-state has the obligation to provide for a specific procedure applying to such migrants who refuse to regularize their situation following the rules provided by the existing EU instruments.

Yours sincerely,



Theo Francken

Belgian State Secretary for Asylum and Migration