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Behind the desk: Examining the decision-making and legitimation practices of immigration officials in return procedures in Belgium

Za biurkiem. Badanie praktyk podejmowania decyzji i ich uzasadniania przez urzędników imigracyjnych w procedurach powrotowych w Belgii

Abstract: Scholars have highlighted the crucial role that immigration officials play as "street-level bureaucrats" in the implementation of restrictive immigration policies. This study describes the working and decision-making practices of immigration officials in return procedures in Belgium, based on observations, expert interviews, and an analysis of case law. We demonstrate that their work primarily involves desk work and writing justifications in their decisions. Their decision-making is characterized by a heavy sense of pragmatism and standardization, primarily focusing on "what holds up in administrative court." In return procedures, Belgian immigration officials therefore experience little need for legitimation work: from their perspective, legitimation primarily entails meeting administrative burdens of proof. Our analysis indicates that this distanced administrative system disadvantages the affected migrants, especially considering that the appellate body evaluates procedural aspects of the decision-making rather than conducting in-depth case (re-)evaluations.

Keywords: immigration officials, administrative decision-making, desk work, legitimacy, legitimation work, crimmigration

Abstrakt: Uczeni podkreślają kluczową rolę odgrywaną przez urzędników imigracyjnych jako „biurokratów pierwszego kontaktu" we wdrażaniu restrykcyjnej polityki imigracyjnej. W niniejszym artykule, na podstawie obserwacji, wywiadów z ekspertami i analizy orzecznictwa, opisaliśmy pracę

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urzędników imigracyjnych w procedurach powrotowych w Belgii i ich praktyki podejmowania decyzji. Pokazujemy, że praca urzędników polega przede wszystkim na pracy przy biurku i pisaniu uzasadnień decyzji. Proces decyzyjny charakteryzuje się w dużym stopniu nastawieniem na pragmatyzm i standaryzację oraz koncentruje się przede wszystkim na tym, „co utrzyma się w sądzie administracyjnym". W związku z tym w procedurach powrotowych belgijscy urzędnicy imigracyjni nie skupiają się na uzasadnianiu: z ich punktu widzenia uzasadnienie polega głównie na spełnieniu administracyjnych wymogów dowodowych. Z przeprowadzonej przez nas analizy wynika, że ten zdystansowany system administracyjny jest niekorzystny dla migrantów, których dotyczą te decyzje, zwłaszcza w świetle faktu, że organ odwoławczy ocenia proceduralne aspekty procesu decyzyjnego i nie przeprowadza pogłębionej (ponownej) oceny sprawy.

Słowa kluczowe: urzędnicy imigracyjni, podejmowanie decyzji administracyjnych, praca biurowa, prawomocność, proces uzasadniania

Introduction

In an increasingly globalized world marked by enhanced mobility, an apparent paradox arises: the dissolution of national borders and the increased movement in an interconnected, yet stratified world paradoxically heightens the need to regulate and control migration (Barker 2012; Aas 2013; Bauman 2013). Since the 1980s, the blurring of the once-dominant significance of national borders has pushed migration control to a level transcending individual nations, evolving into a complex, supranational phenomenon (Leitner 1997). Emerging from concerns associated with transnational crime and mobility, migration policies have become intertwined with broader considerations of domestic and foreign security and crime governance (Huysmans 2000). As migration control intertwines with crime regulations, it propels the development and enforcement of more restrictive migration policies (Barker 2012). These policies aimed at "fighting illegal migration" (Broeders, Engbersen 2007) encompass diverse strategies – from coercive measures such as detention and expulsion (Barker 2017) to preventive measures such as risk assessments and risk analyses during preventive police or immigration controls (Rodrigues, van der Woude 2018; van der Woude 2019).

However, the most profound implications of these rigorous migration policies materialize through the "criminalization of migration" itself, where the previously distinct domains of criminal and immigration law now intersect (Miller 2002; Stumpf 2006). Introducing the concept of "crimmigration," Juliet Stumpf (2006) points out the heightened criminalization of immigration law violations and the growing association between criminal convictions and immigration consequences. For example, following a criminal conviction, residency rights may be revoked by administrative decision (Bosworth 2011). In Belgium, the Immigration Office can, after an individual assessment, proceed to the revocation of a residence permit of convicted migrants in prison due to "public order or national security concerns."

This phenomenon was further exacerbated following the 2016 Brussels shooting, prompting an amendment to the Belgian Immigration Law (Act of 15 December 1980) in February 2017 aimed at "fighting serious forms of criminality" (Macq 2018). This amendment extended the revocation of residency rights to apply to all migrants regardless of their previous residence status (e.g., long-term resident). In 2018, 83 foreign nationals lost their residency rights due to "public order or national security concerns," rendering them deportable. This trend persisted in subsequent years, with 68 people losing their residency rights in 2022 (Immigration Office 2022).

Scholars in many countries observe this convergence between crime and migration control, particularly among foreign national prisoners, for whom an administrative decision such as expulsion becomes the concluding step in their criminal proceedings (Turnbull, Hasselberg 2017; Ugelvik 2017; Brouwer 2020). Despite the ostensibly administrative nature of such coercive measures, officially deemed non-penal and non-punitive (Wilsher 2004), they are often accompanied by deprivation, harm, and suffering (Barker 2017) and are rather experienced as punitive (Bosworth 2014). Consequently, the legitimacy of such return decisions is strongly contested by the people subjected to them (Bosworth 2013; Leerkes, Kox 2017; Eule et al. 2019; Brouwer 2020; Van Houte et al. 2021; Breuls 2022a). Their experience is primarily marked by the difficulties and uncertainties associated with the lack of residency rights: "The pains of detention are dictated by the absence of citizenship" (Bosworth 2012: 134). Scholars even speak of a "cumulative punitiveness," considering that administrative decisions such as return decisions, re-entry bans, and detention can be imposed cumulatively alongside or as a consequence of a criminal conviction (van der Leun, de Ridder 2013).

Scholars highlight the crucial role that immigration officials play in making these administrative decisions as "street-level bureaucrats" (Borrelli, Lindberg 2018; Lipsky 1980). These officials interpret and implement immigration policies and laws through their administrative decisions, significantly influencing people's lives and shaping migration control while contributing to ongoing migration policy development. Operating within established legal frameworks, immigration officials exercise a discernible degree of discretion in their decision-making (Pratt 2010; Eule et al. 2019; Schultz 2020). This discretionary capacity is intrinsic to the application of rules and laws, involving interpretative work and choices about their relevance (Miaz, Achermann 2022). Moreover, this discretion is not merely a matter of interpreting explicit legal guidelines; it also arises due to the intricacies of the multifaceted situations and cases that immigration officials face. This discretionary power is further shaped by resource constraints and overwhelming caseloads, demanding practical wisdom to navigate through diverse and complex cases (Borrelli 2018a; Eule 2018; Eule et al. 2019). While discretion in policy implementation and interpretation is deemed inevitable (Miaz, Achermann 2022), it is potentially problematic for it to extend beyond the stipulated contexts or diverge from legal precedents (Eule et al. 2019: 87). These discretionary practices markedly shape the practical implementation of migration policies, affecting the criteria and procedural aspects governing administrative decisions, thereby significantly impacting the lives of those subject to such decisions (Miaz, Achermann 2022). A study of these decision-making practices is thus important.

As previously mentioned, this also raises questions about the legitimacy of return decisions. International research indicates that immigration officials, in their encounters with migrants in return procedures, must exert considerable effort in legitimizing decisions (Kalir, Wissink 2016; Ugelvik 2016; Leerkes, Kox 2017; Borrelli, Lindberg 2019; Brouwer 2020). This process of legitimation often involves highlighting the procedural and legal fairness of their actions (Ugelvik 2016; Miaz 2017; Wittock et al. 2023) and underscoring the administrative, non-punitive nature of their decisions while also linking them to the maintenance of security within the welfare state (Borrelli, Lindberg 2019). However, it has already been observed in Belgium that decision-makers in return procedures rarely, if ever, interact with the people about whom they are making decisions (Mascia 2021; Breuls 2022a; 2022b). Consequently, forms of relational legitimation work observed in other countries and settings are less relevant here (Ugelvik 2016; Jubany 2017; Miaz, Achermann 2022; Hertoghs 2023).

In this article, we demonstrate that the work of Belgian immigration officials responsible for making return decisions primarily involves desk work and writing justifications in their decisions. We argue that the distance between decision-makers and migrants can be seen as a bureaucratic and organizational neutralization technique, as decision-makers are not confronted with legitimacy questions expressed by migrants. Belgian immigration officials therefore experience little need for legitimation work. We demonstrate that, from their perspective, legitimation primarily entails meeting administrative burdens of proof. Moreover, their decision-making is characterized by a heavy sense of pragmatism and standardization, primarily focusing on "what holds up in administrative court." Our analysis indicates that this distanced administrative system disadvantages the affected migrants, especially considering that the appellate body, the Belgian Council of Immigration Law Litigation, evaluates procedural aspects of the decision-making rather than conducting in-depth case (re-)evaluations.

1. Methodology

1.1. Ethnographic fieldwork at the "return departments" of the Immigration Office

In Belgium, decisions in return procedures are made at the headquarters of the Immigration Office in Brussels, in which people without legal residence stopped by the police may be subject to a return decision, potentially accompanied by a re-entry ban (decisions of departments A and B of the Immigration Office); the same applies to people whose residency is denied (follow-up by department C of the Immigration Office); criminally convicted prisoners with legal residence may lose their residency rights as a result of their conviction and may subsequently be subject to a return decision, potentially accompanied by a re-entry ban; and prisoners without legal residence may also be subject to the same (decisions of department D of the Immigration office). There are also services responsible for identification procedures and the practical organization of forced returns (follow-up by department E). In 2022, we conducted expert interviews with the heads of these five departments within the Immigration Office of Belgium, with a specific focus on elucidating the (evolution of the) decision-making processes concerning return orders, revocations of residence permits, and the imposition of re-entry bans. It became evident that these diverse decision-making processes shared common elements, which we delineate in this article.

Additionally, in 2023, we started our ethnographic fieldwork at these departments, a study which remains ongoing at the time of writing. With their informed consent, immigration officials permitted us to observe their daily work throughout our fieldwork. We engaged them in discussions regarding their decision-making process, which they elaborated upon. The impact of jurisprudence on their decision-making was also discussed. Furthermore, we obtained internal documents detailing departmental procedures and guidelines for immigration officials' decision-making. Extensive fieldnotes were compiled and thematically analyzed.

All research steps were approved by the Ethics Committee for Human Sciences of the Vrije Universiteit Brussel and a research agreement was established in advance with the Immigration Office.

1.2. Analysis of written decisions

During our fieldwork, it became apparent that decision-makers primarily engage in desk work and follow a fairly standardized approach in making their decisions (see Sections 3 and 4). However, we also aimed to examine their written decisions in more detail. Due to privacy concerns, permission was only granted to study anonymized decisions. Therefore, we opted to utilize the database of the Belgian Council of Immigration Law Litigation (CALL n.d.). This free, public repository contains decisions regarding return orders, revocations of residence permits, and re-entry bans that have been appealed. These decisions are already anonymized and include the full rationale provided by the Immigration Office, as well as the arguments presented by the Council of Immigration Law Litigation on appeal. It is important to note that the Council conducts only marginal reviews. It is authorized, within its legal oversight, solely to ensure that the Immigration Office considered accurate factual information, assessed it "correctly," and did not "unreasonably reach its decision" based on that assessment (BSC 2001). Given the relatively standardized decision-making process and the numerous unsuccessful appeals, we can assume that there are no significant differences in the Immigration Office's rationales between appealed and non-appealed decisions. Therefore, the selected method facilitated a systematic analysis of the decisions while adhering to the GDPR principle of data minimization.

We conducted targeted searches in the database of the Belgian Council of Immigration Law Litigation using three distinct keywords in both Dutch and French: "revocation of a residence permit" ("beslissing tot beëindiging van verblijf" / "décision de fin de séjour"), "order to leave the territory" ("bevel om het grondgebied te verlaten" / "ordre de quitter le territoire"), and "re-entry ban" ("inreisverbod" / "interdiction d'entrée"). We focused solely on rulings where a complete decision of one of these types was accessible. Consequently, we omitted cases in which the appeal ruling mentioned that the applicant had received a return decision, but the return decision itself was not contested in the appeal.

In 2023, the database recorded a total of 3,168 rulings containing the term "order to leave the territory," with the highest number of rulings registered in January (n=417). Recognizing the significance of this month in terms of the volume of appeals and to ensure temporal consistency, January was selected as the sample month for analysis across all decision categories. From this dataset of 417 rulings, a random sample of 100 rulings containing the term "order to leave the territory" was chosen for analysis. Among these, 26 rulings met the inclusion criteria, while 74 did not (i.e., the return decision is only mentioned but not challenged in the appeal). Similarly, in 2023, there were a total of 560 rulings including the term "re-entry ban," with January again having the most rulings (n=71). Of these 71 rulings, 20 met the entry criteria, while 51 did not. However, it is notable that in the entirety of 2023, only 40 rulings included the term "revocation of a residence permit." This discrepancy is logical, as the Immigration Office issues fewer decisions to revoke a residence permit (e.g., there were 68 such decisions in 2022 [Immigration Office 2022]) compared to orders to leave the territory (3,951 such orders in the same year [Immigration Office 2022]). Acknowledging the disproportionate prevalence of orders to leave the territory and re-entry bans in comparison with revocations of residence permits in the appeals, we realized that a proportional sample approach towards the latter type of decisions was not feasible due to the significantly fewer rulings in January (n=1). Therefore, we opted for an approach wherein all appeal rulings against revocations of residence permits issued in 2023 were studied (n=40). Among these, 18 rulings met the inclusion criteria, while 22 did not.

This resulted in the analysis of 61 unique rulings: 18 rulings against the revocation of residence permits, 20 rulings against the imposition of re-entry bans, and 29 against orders to leave the territory.[1] Our analysis encompassed scenarios wherein decisions by the Immigration Office were annulled or upheld by the Council of Immigration Law Litigation. Through thematic analysis of the 61 rulings, patterns and themes began to surface, as well as indications that certain earlier key rulings established important principles or precedents that shaped subsequent legal interpretations and decision-making norms (e.g., pertaining to the right to be heard; see section 4.2). Consequently, we conducted further analysis

[1] We speak of 61 unique rulings, given that six of them involved appeals lodged against both a re-entry ban and an order to leave the territory.

focusing on six key rulings frequently mentioned by the Council of Immigration Law Litigation, from 2014 (2) and 2018 (4).

The analysis of the written decisions was further complemented with insights from the ethnographic fieldwork: we not only analyzed the written decisions, but also asked immigration officials what impact an appeal ruling has on their work and on their future decision-making processes (e.g., elucidating the implications of pivotal rulings on their working practices).

2. Remote desk work – a lack of dialogue

The legitimacy of decisions regarding returns is strongly contested by those subjected to them (Bosworth 2013; Leerkes, Kox 2017; Brouwer 2020; Van Houte et al. 2021; Breuls 2022a). Such legitimacy questions typically also impact the power-holders who, when faced with them, must develop "legitimation narratives" (Bottoms, Tankebe 2012; Ugelvik 2016). Anthony Bottoms and Justice Tankebe (2012) developed a relational and dialogical model of legitimacy, stating that "[l] egitimacy should not be viewed as a single transaction; it is more like a perpetual discussion, in which the content of power-holders' later claims will be affected by the nature of the audience response" (Bottoms, Tankebe 2012: 129).

Organizations, however, employ techniques to neutralize potential tension, conflicts, ambiguity, and legitimacy questions (Thompson 1980; Kraatz, Block 2008). One of these strategies – also used in immigration policy (Masocha 2014; Eule et al. 2019) – is the distribution of responsibilities among multiple actors. This strategy "enable[s] individual state officials to denounce responsibility and "pass the buck" of morally and emotionally challenging work tasks onto other actors" (Eule et al. 2019: 189).

In Belgium, this neutralization strategy is observable within the Immigration Office. A clear distance is created between immigration officials making decisions regarding returns and the people subjected to these decisions: they essentially never come into face-to-face contact with each other. Decision-makers handling residency-related and return decisions are based at the Brussels headquarters of the Immigration Office and thus operate remotely, creating a distinct physical disconnection from those whose futures hinge on their decisions (Breuls 2022a). The decision is always communicated by another actor, either police officers (during a police check), social workers in immigration detention centers (if the person is detained), or "return officers" in prisons (if the person is imprisoned). None of these actors make the decision. The actual decision-making occurs at the central offices of the Immigration Office in Brussels. Across all these scenarios, the prevailing characteristic of such decision-making is thus remoteness: decision-makers are disconnected from the immediate contextual realities of the situations. Their insight into the situation is derived solely from reports and files, while they remain behind their desks. "Desk work" aptly describes the work of the decision-makers as we observed it. Throughout the majority of the day, they work in silence on their decisions.

During the fieldwork, we also observed that the organizational "neutralization technique" outlined above results in immigration officials/decision-makers at the headquarters in Brussels seldom questioning the legitimacy of their work and their decisions. These observations are vastly different from the fieldwork conducted, for example, in immigration detention centers (Breuls 2022a). When we as researchers explicitly raised such legitimacy questions at the headquarters in Brussels, the immigration officials stated 1) that they as decision-makers only apply the law and internal guidelines, 2) that the responsibility lies with the migrant who fails to comply with the law, and 3) that this especially applies if the migrant has committed criminal offenses, in which case, the aim of the Immigration Office is to protect public order. Considering the lack of dialogue between immigration officials and migrants, it becomes evident that a relational and dialogical model of legitimacy seems to have limited relevance here.

3. Legitimation as addressing administrative burdens of proof

3.1. Standardized reasonings

Within this context of distant decision-making, another "legitimacy question" looms large in the discourses of decision-makers: "Am I substantiating my decision in a manner that will withstand the scrutiny of the administrative appellate body (i.e., the Belgian Council of Immigration Law Litigation)?" Specifically, this question pertains to the "correct" application of human rights law – whereby "correct" should be interpreted as "in a manner that will hold up in court."

Indeed, the Immigration Office has an important procedural obligation to conduct a "human rights assessment." This assessment should strike a fair balance between state interests in upholding public order and immigration policies and the rights of individuals, including the right to privacy, family life, health, and the prevention of torture or degrading treatment. Decisions made by the Immigration Office, such as forced return decisions, have the potential to encroach upon a person's right to respect for their private and family life, safeguarded by Article 8 of the European Convention on Human Rights (ECHR). Additionally, these decisions may expose people to the risk of torture or degrading treatment upon their return to their country of origin, which would violate Article 3 of the ECHR. Explicit reflections on these matters must be incorporated into the decisions.

Here again, we observe organizational tactics being employed to handle these questions related to human rights in a pragmatic, bureaucratic fashion. In particular, relatively standardized reasonings have been developed within the Immigration

Office and are commonly used by the decision-makers. Indeed, several examples consistently reappear in many cases:

> Merely having built a private life in Belgium during one's illegal stay does not give rise to a legitimate expectation for permission to stay and protection against removal under Article 8 of the ECHR. (counted six times in the dataset; CILL 2023a; 2023b; 2023f)

> Contact with [family members] can be maintained in other ways, either through visits (in a third country) or through modern means of communication. (counted 13 times in the dataset; CILL 2023e; 2023i)

> Article 3 of the European Convention on Human Rights (ECHR) does not guarantee the right to remain within a State solely because that State can provide better medical care than the country of origin. Even the circumstance that deportation may affect the health condition or life expectancy of a foreigner is not sufficient to constitute a violation of this provision. (counted eight times in the dataset; CILL 2023n; 2023p)

In one of the interviews with a department head, the interviewee indicated that the need to provide extensive reasoning has significantly increased under the influence of European jurisprudence and the jurisprudence of the Belgian Council of Immigration Law Litigation. However, this has had little impact on the ultimate decisions:

> I have the impression that I am still making the same decisions as 20 years ago. Now I just have to justify a lot more. In the past, with a third-country national, we could just say: "He has no documents and is convicted, so forced removal is needed." Now we also have to examine family life, his family situation, etc. (interview with department head)

Applying standardized reasoning and justifications based on paper records is therefore one of the core tasks of immigration officials at the headquarters in Brussels.

3.2. Instrumentalization of the right to be heard

A concrete example of how organizational techniques are deployed to facilitate the continuation of prior decision-making practices, despite judicial developments, is the swift instrumentalization of the right to be heard by decision-makers. In the 2010s, the European Court of Justice issued a series of significant judgments emphasizing the crucial role of "the right to be heard" in administrative procedures (ECJ 2012; 2013; 2014a; 2014b), allowing people the opportunity to be heard before any decision is made against them that may detrimentally impact their interests (i.e., an order to leave the territory, a re-entry ban, or a revocation of a residence permit) (see Arts. 3 and 8 of the ECHR).

The influence of this jurisprudence was also observable in Belgium. Those appealing before the Belgian Council of Immigration Law Litigation quickly recognized the strength of invoking this legal principle, fostering a discernible shift in national jurisprudence. Aligning with the European Court of Justice, both the Belgian Council of State and the Belgian Council of Immigration Law Litigation adopted case law that reinforces the centrality of the right to be heard in administrative proceedings (CILL 2014b; 2014c; BSC 2016a; 2016b; 2017). This legal evolution resulted in the inclusion of the right to be heard in Belgian immigration law after a 2017 amendment (Act of 15 December 1980). This amendment specifically mandates "hearings" by the administration for people facing return decisions, such as orders to leave the territory or re-entry bans.[2]

Two significant observations stand out. Firstly, despite the obligation to hear people before making a decision, decision-makers continued to uphold the distanced procedure, wherein they do not directly interact with those affected by their decisions. Indeed, the "hearings" do not require face-to-face interaction with the decision-makers from the Immigration Office; instead, individuals are required to complete a "written" questionnaire within 15 days. This essentially asks people to not just write down, but distill, their life stories, familial ties, and health situations onto the stark, impersonal canvas of a paper questionnaire, with questions like:

> Do you have reasons why you cannot return to your own country?
> Do you have an illness that impedes your ability to travel or return to your country of origin?
> Do you have children in Belgium or in another European Union member state?

The task of facilitating the right to be heard (i.e., administering the questionnaire) was delegated to the actors without decision-making powers described above: social workers administer the questionnaire in immigration detention centers, while return officers or prison clerks carry out this task in prison settings. During police arrests, the apprehended person completes the questionnaire, with or without assistance from the police officers. In all these instances, the person's voice is only captured on paper and later evaluated by the decision-maker at their desk at the Brussels headquarters. The lack of direct interaction between the decision-makers and those involved raises important questions about the depth of understanding and contextual awareness that immigration officials have of the individuals' circumstances.

Secondly, we noted that hearing the person – incorporating the person's "voice" through written means – has not resulted in significant changes in the decision-making outcomes. Although the right to be heard requires immigration officials to engage in more thorough reasoning, provide additional substantiation, and allocate more time to make their decisions, we observe that the right to be heard is heavily instrumentalized by immigration officials in practice. Excerpts from the answers in the questionnaire are often copied by immigration officials and used to support the Immigration Office's position, again relying on stand-

[2] Additionally, the Immigration Office reserves the prerogative, under circumstances deemed "exceptional" or in case of concerns regarding "national security" or unreachability, to proceed with decisions without engaging in a formal hearing.

ardized justifications, such as "[t]he person declares to not have a family life or minor children" (CILL 2023r), or "[t]he person fails to provide evidence of suffering from an illness hindering their return to their country of origin" (CILL 2023g). The latter justification also illustrates how the absence of information can be interpreted negatively by immigration officials. We can in this regard once again refer to the above quote: "I have the impression that I am still making the same decisions as 20 years ago. Now I just have to justify a lot more" (interview with department head). This process of justifying the decision is then supported by standardized arguments.

Even when elements are provided, such as those related to family life, the assessment will often be unfavorable to the person involved, again frequently based on standardized reasoning but tailored to the specific circumstances of the case or the information provided in the questionnaire:

> The person declares not to have a family life or minor children in Belgium. She states she has a medical issue with her uterus, but this has not prevented her from voluntarily undertaking a journey to Kinshasa. A violation of Articles 3 and 8 of the European Convention on Human Rights (ECHR) is not demonstrated. (CILL 2023r)
>
> It does not appear that the person can only have a family life in Belgium, and that it would not be possible to develop his family life in the country of origin or elsewhere. The mere fact that his partner cannot be compelled to leave Belgian territory does not imply that she could not voluntarily accompany the person to the country of origin or elsewhere. There are no significant obstacles evident in continuing the family life in the country of origin or elsewhere in this case. Both the person and his partner knew or should have known that the family life in Belgium was precarious from the outset, given the person's illegal residence status in Belgium. A violation of Article 8 of the ECHR does not seem plausible at first glance in this context. (CILL 2023c; 2023d; 2023s; 2023t)

These examples make it clear that the right to be heard rarely influences the decisions made by immigration officials. Instead, the responses on the questionnaire from "illegalized persons, who generally hold weak rights' claims on the state" (Borrelli, Lindberg 2019: 53) seem to be strategically used against those involved, ultimately failing to bring about significant changes in the decisions.

4. Immigration law litigation

It became evident that immigration officials primarily focus on the question of what holds up in administrative court. Therefore, an important question is how appeals are judged by the Council of Immigration Law Litigation. Out of the 61 rulings studied, the Council deemed the appeal unjustified in 44 cases and justified in 17 cases, leading to the annulment of the Immigration Office's decision. This indicates that the Council of Immigration Law Litigation generally considers the reasoning of the Immigration Office to be sufficiently motivated. It is essential to recall that the Council of Immigration Law Litigation conducts only a marginal review: within its legal oversight, the Council is authorized solely to ensure that the Immigration Office considered accurate factual information, assessed it correctly, and did not unreasonably reach its decision based on that assessment (BSC 2001). Therefore, the Council's case law often implicitly aligns with the logic of the Immigration Office.

Such case law of the Council of Immigration Law Litigation is also regularly instrumentalized by the Immigration Office afterwards. For instance, immigration officials make reference to previous case law to strengthen their current reasonings, as in the following example:

> The Council of Immigration Law Litigation already ruled that it is not manifestly unreasonable to infer from the fact that previous convictions did not prevent the person from committing new criminal acts that there is a current risk of recidivism. (CILL 2023o)

In 16 rulings, however, the appeal was deemed justified by the Council of Immigration Law Litigation. Below, we focus on several themes in these successful appeals.

4.1. Breach of the right to be heard

The imperative role of the right to be heard in administrative proceedings (see Section 4.2) is strongly emphasized by the Council of Immigration Law Litigation. In earlier rulings, it underscores that for the Immigration Office to effectively carry out an individual assessment, it is crucial to provide people with a fair opportunity to express themselves (CILL 2014a). In practice, however, the Immigration Office instrumentalized this right to be heard into written questionnaires, shifting the burden of proof onto the person who may be subject to an adverse decision (see Section 4.2).

Nonetheless, the Council of Immigration Law Litigation sets limits on this instrumentalization. According to the Council of Immigration Law Litigation, the Immigration Office cannot simply infer, from the applicant's failure to submit a questionnaire form or to provide information, that there are no individual elements that could potentially constitute a violation of fundamental rights. In a case where a man whose right to residence was revoked and who, after failing to complete the questionnaire within the stipulated time frame, became a father, the Council of Immigration Law Litigation ruled against the Immigration Office's omission of the applicant's new information, indicating that it could not use the lack of prior information to justify its decision: "The Immigration Office cannot hide behind the fact that the applicant failed to inform them that he had become a father" (CILL 2018b). In another judgment, where a decision was based on a blank questionnaire form that had been submitted, the Council of Immigration Law

Litigation also stated that "it is a mystery on what basis the Immigration Office concludes in its decision that there is no violation of Article 3 of the ECHR founded on the applicant's declaration" (CILL 2023g).

Another question that arises is how long the Immigration Office can consider information provided in the questionnaire to be up-to-date. The legal articles concerning the right to be heard do not provide an answer. While delayed decisions might potentially violate the right to be heard and may require a second hearing, an important European Court of Justice ruling rejected a second hearing for a subsequent return decision (ECJ 2014a). The Court ruled that Mrs. Mukarubega was able to properly and effectively express her remarks regarding the illegality of her stay. She was able to articulate her views on various occasions during the asylum procedure and following her arrest, which took place shortly before her second return decision. In another case, however, the Belgian Council of Immigration Law Litigation specified that for subsequent or new return decisions, taken a year and a half after the first one and thus after completing the initial questionnaire, a different questionnaire must be administered (CILL 2018a). Even in the case of first decisions, if the Immigration Office decides eight months after the right to be heard was exercised, it breaches this right. The Council of Immigration Law Litigation pointed out that "[t]he applicant could reasonably assume that the Immigration Office had abandoned its original intention to revoke her residence after hearing her" (CILL 2018c).

While the Council of Immigration Law Litigation does set some boundaries on the instrumentalization techniques used by the Immigration Office, the Council's influence in this regard remains somewhat limited: had the right to be heard been fully respected, people "might" have had the opportunity to present influential elements that "could potentially alter" the Immigration Offices' decisions. However, the nuances in the preceding sentence are extremely important and reflect the limitations of the Council's jurisdiction, primarily reviewing whether the Immigration Office's decision was based on accurately evaluated facts and whether it exhibited manifest unreasonableness. The appeal process can only yield two potential outcomes: 1) annulment of the Immigration Office's decision or 2) rejection of the appeal. While a number of violations of the right to be heard were identified in the aforementioned judgments, the authority of the Council remains circumscribed to considering the adherence to procedural rights rather than influencing the substantive determination of the case (i.e., marginal review). Indeed, the annulment of the Immigration Office's decision does not prevent subsequent actions by the Immigration Office: if the Immigration Office re-evaluates the case considering the new elements, the Council's decision does not necessarily serve as an impediment to, for example, the revocation of a residence permit.

4.2. Risk assessment

The revocation of a migrant's residence permit is possible in Belgium due to "public order or national security concerns." Although case law requires that the "current" nature of the threat is demonstrated by the Immigration Office, relatively low requirements are imposed for such "threat analysis." This aligns with what has been repeatedly observed in the crimmigration literature: legal safeguards within the realm of administrative law are less robust than those in criminal law (Stumpf 2006; Legomsky 2007; Aas 2014).

In criminal law, for instance, risk assessment tools are frequently employed. While these tools certainly do not go uncriticized (Krasmann 2007; Hannah-Moffat, Maurutto, Turnbull 2009), they are at least used under the assumption that risk is dynamic and can be subject to change. For instance, the risk-needs-responsivity model by James Bonta and Donald A. Andrews (2017) includes seven dynamic (i.e., changeable) risk factors and only one static (i.e., unchangeable) one: criminal history. Criminal justice interventions that aim to reduce the risk of recidivism should of course primarily focus on the seven dynamic risk factors. Strikingly, however, immigration officials often base their decision to revoke residence rights after a criminal conviction solely on the criminal history: the Immigration Office frequently uses the severity of past offenses to assert the "current" existence of the threat:

> The enumeration of these severe convictions illustrates a concerning mentality, demonstrating a propensity for violence, the use of combat techniques, and a complete lack of respect for others' physical integrity. […] The personal behavior of the person constitutes a current, real, and sufficiently serious threat to the public order and national security. (CILL 2023m)

Even more strikingly, immigration officials sometimes disregard assessments by penitentiary actors that may indicate a low risk of recidivism:

> The penitentiary actors may have assessed the risk of reoffending as "low," but that by no means implies that he would no longer pose a danger to the public order. (CILL 2023k)

However, the latter approach came under criticism from the Council of Immigration Law Litigation in one case:

> While the person was detained for a prolonged period, she has been under electronic surveillance since 2019. Contrary to opposing assertions, the assessment of a low risk of recidivism by the court for sentence execution is not negligible. (CILL 2023k)

In two annulments (CILL 2023h; 2023k), the Council also cautioned against solely relying on a person's criminal record or their past or present incarceration to determine the "current" nature of the threat. It has stated that the Immigration Office cannot assume that several severe convictions from over 10 years ago support the "current" nature of the threat. The mere presence of a criminal record or a previous prison sentence, suggesting a risk to the public order, should not overlook a person's existing circumstances, such as their release from prison, employment status, and family situation. The Council further stated that the Immigration Office's reasoning concerning the immediacy of the danger should reflect that the person would persist, continue, or repeat their (criminal) behavior in the future (CILL 2023h).

4.3. Stereotypical reasonings?

We demonstrated that standardized reasonings are commonly employed by the immigration officials in their decision-making. An important question that then arises is how the Council of Immigration Law Litigation evaluates these standardized justifications provided by the Immigration Office. It becomes clear from their rulings that the use of a standardized "template" and decision-making process is not considered flawed per se (BCS 2006; 2007; CILL 2020). In fact, within its limited jurisdiction, the Council has ruled that this approach does not necessarily imply a lack of individual consideration for the person's circumstances:

> The applicant considers it a stereotypical rationale, yet this does not imply that it is inadequate, flawed, or irrelevant. (CILL 2023j)

This illustrates again a critical aspect of the appeal process: it is difficult to get a decision annulled and seemingly only possible in cases of explicit and evident errors by the Immigration Office. While such "mechanical" errors result in an annulment, getting a decision annulled in an appeal on grounds of stereotypical and standardized reasoning remains challenging. In only one case did the Council of Immigration Law Litigation cast a critical eye on this practice. The Council noted identical reasonings in earlier decisions by the Immigration Office despite a clearly different economic profile of the person, describing it as "a purely stereotypical reasoning" (CILL 2023l).

Conclusion

In this article, we took a closer look at the work and decision-making practices of immigration officials at the Belgian Immigration Office. Although scholars emphasize that immigration officials play a crucial role in implementing restrictive immigration control policies (Dahlvik 2017; Eule 2018; Borrelli, Lindberg 2019), our understanding of their daily administrative practices is limited. We tried to fill this gap, looking at the situation in Belgium, illustrating that decision-makers at the headquarters of the Immigration Office in Brussels are primarily engaged in desk work. Their main tasks are reviewing files and questionnaires related to the right to be heard and justifying their decisions based on this information. The focus of this article was on return decisions, revocations of residence permits, and re-entry bans. Although these measures are administrative in judicial nature, they clearly result in the imposition of deprivations, harm, and suffering – they are indeed punitive in practice (Barker 2017).

It became evident that at both the organizational and individual levels, various strategies are employed to approach the decision-making work in a pragmatic/bureaucratic manner. This includes neutralizing potential legitimacy concerns by avoiding direct interactions between decision-makers and people who need to return, and thus working with intermediaries, using standardized reasonings in their decisions, instrumentalizing the right to be heard, and mobilizing previous reasoning from the Council of Immigration Law Litigation to back up a new argument – and in that sense also instrumentalizing earlier case law.

These strategies, such as the dependence on standardized justifications to cope with workload pressures, might contribute to what Borrelli (2018b) characterizes as "structural violence." For instance, the use of questionnaires to facilitate the right to be heard runs the risk of inadequately capturing the nuances, emotions, and complexities often associated with personal experiences. This results in a bureaucratic system where people's voices are merely "processed" on paper, with decision-makers primarily focusing on "what holds up in administrative court."

Previous research has demonstrated that employing these pragmatic/bureaucratic strategies for making decisions that have a profound impact on the lives of those subjected to them contributes to the perceived injustice they have already experienced (Bosworth 2013; Leerkes, Kox 2017; Eule et al. 2019; Brouwer 2020; Van Houte et al. 2021; Breuls 2022a). Indeed, they feel they have little to no influence on these high-impact decisions: administrative decision-makers are invisible, lawyers often indicate no avenues for appeal, and judges – due to the principle of marginal review – adhere to the logic of forced return policies (see also Eule et al. 2019; Breuls 2022a). The people subjected to these return decisions thus do not have the feeling that there is a dialogue with the decision-makers. Given that legitimacy is a relational and dialogical concept (Bottoms, Tankebe 2012), it is not surprising that they continue to question the legitimacy of the restrictive immigration policy they are subjected to.

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