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BELGIUM – Country Sheet

ASYLUM LAWS, POLICIES AND PRACTICES IN EUROPEAN COUNTRIES: WHAT IS THE IMPACT ON FGM-AFFECTED WOMEN AND GIRLS?

Main issues

1. Qualification

a. Legal framework

In Belgium, the Immigration Act considers FGM as a ground for asylum under (a) physical or mental violence, including sexual violence; [...] (f) acts directed against persons on account of their sex or against children. Persecution on the grounds of membership of a particular social group has increasingly been put forward in FGM-based asylum claims.

Categories of asylum seekers that are granted asylum based on FGM in Belgium: Women and girls being at risk of FGM; Individuals opposing FGM (persecution on the ground of political opinion can include persecution on the grounds of opinions regarding gender roles).

Women and girls who have already undergone FGM are entitled to protection from re-cutting for instance or infibulation, defibulation or reinfibulation, upon marriage or at child birth and who fear being cut again upon return for instance at the time of marriage. However, it appears that the CALL questions this continuous nature of the persecution. It considers that the purpose of asylum is to provide a claimant with protection against possible persecution and not to allow compensation for the damage inherent in previous persecution. Since 12 April 2019, the CGRS has formally amended its policy on the assessment of applications for international protection submitted by parents on behalf of a girl who fears FGM: the individual fear of parents of being the parents of uncircumcised girl is no longer accepted. The parents of these recognised girls are automatically denied refugee and subsidiary protection status if they do not have a distinct and well-founded personal fear of persecution and if they are not at risk of serious harm.

Moreover, in Belgium there is the legal status of “refugee sur place”, where international protection is granted for applicants coming from FGM-affected countries but who have lived a period of their lives in the EU and face return at the time the claim is lodged. (e.g. a medical student who has undergone FGM in her country of origin becomes aware of the harmful consequences of FGM on her health after her arrival in Belgium and decides to oppose the custom for herself or her daughter. At the end of her studies, she decides to apply for international protection to avoid a return to her country where she risks being banished from society.)

b. Criteria for assessment

For women and girls at risk of FGM:

In Belgium, age as a risk factor is assessed on a case-by-case basis, socio-economic status is sometimes seen as a protection factor but recently this has been more and more questioned, and COI is taken into consideration to assess risk of persecution. Belgium has a safe countries of origin list, but this contains mainly Balkan countries, Georgia and India, therefore so far has not undermined access to international protection for FGM-affected women (although both for India and Georgia it could).

For women and girls who have already undergone FGM:

In Belgium, the CGRS has a list of competent doctors to certify the existence and extent of FGM. More often, recognition is based more on the severity of the trauma than on the risk of re-cutting. Risk of re-cutting is difficult to demonstrate, however cases of Type III where there is a risk of re-infibulation after delivery are more likely to be granted asylum.

c. Country of Origin Information

Belgium has a specific internal department of documentation and research called CEDOCA with updates information on specific countries situations (Subject Related Briefings or COI Focus). These integrate more general information on COI contained in ecoi.net, Refworld and COI from other European countries.

2. Procedures

a. Early identification of vulnerable persons, provision of information and related support

In Belgium, through the registration form at the Immigration Office the most vulnerable categories are *identified* (including victims of violence), and such form is made available to the reception authority as well to take into account any special needs. Moreover, further mechanisms such as the “Social Intake” and the “Medical Intake” in the Arrival Centre and in the reception centres are standard practice. During the 30 days following the designation of a reception centre, the personal situation of the beneficiary must be assessed by the reception staff in order to verify whether the centre is adapted to his/her specific needs. This examination must be continued throughout the duration of the reception. However, in practice, the implementation of the identification of vulnerable applicants affected by FGM is not consistent and not always carried out properly, mostly due to lack of time, interpreters, language barriers and issues of trust on very sensitive issues. *Information* about all phases of the asylum procedure should be provided by a designed social worker of reference for the applicant.

In terms of *support*, the applicant can ask for her case to be handled by caseworkers of the preferred gender, including interpreters. The Immigration Office will take the preference into account to the extent possible. Moreover, they are allowed to bring an accompanying

person of choice. Asylum seekers are also given access to free legal aid throughout the asylum procedure. The appointed social worker of reference is also in charge of liaising with the lawyer and supporting the applicant before and after the hearings.

b. Available gender-sensitively trained stakeholders

In Belgium, all protection officers of the CGRS who deal with applications for protection of persons from countries where FGM is practiced receive in-depth training on FGM. Initial training is subsequently reinforced in regular sessions organised whenever necessary. All new Fedasil employees receive a basic training at the start of their employment, of which gender-based violence, including FGM, will soon become a structural part. Through the AMIF programme, Fedasil funded the development of a trajectory by the non-profit organisation GAMS to support and refer FGM-affected girls and women in the reception facilities. In order to guarantee the concrete follow-up of the trajectory, a reference person was appointed a trained on FGM in each of the reception facilities. CGRS uses the services of a pool of freelance interpreters, who can be trained in specific issues at the offices of CGRS.

c. Role of certificates in the asylum procedure / cooperation between sectors

In Belgium, the CGRS considers that certificates represent a decisive evidence for the recognition of refugee status on this ground. The CGRS has a list of competent doctors to certify the existence and extent of FGM through a standardised model. Psychological certificates to asses the trauma can also be considered within the asylum application, but some psychologists are reluctant to make such reports for fear of being instrumentalised[1]. An important obstacle posed in terms of the cooperation between sectors is the medical professional secrecy, which might undermine an adequate support to asylum seekers, e.g. because physical and mental health information over the applicant is not shared with reception centres personnel or social workers, information that could be useful to support the behaviour and the well-being of a resident in the reception facility.

d. Protection measures for refugee women and girls at risk of FGM

In Belgium after signing an honour pledge not to subject their daughter(s) to FGM in order the girl(s) to obtain the refugee status, parents are invited to submit an annual medical certificate to verify the integrity of their daughter(s). However, the legality of this control organized by the CGRS is often put into question.

e. Late disclosure and the credibility issue

Late application does not invalidate the request for international protection, but it is an element to be evaluated in terms of credibility. It is very common that the profiles of vulnerability of victims of FGM emerge only at the presentation of a second asylum application, in consideration of the difficulty of making this life experience to emerge before the presentation of the first application.

[1] INTACT (2016), 'Assessment of asylum applications based on gender violence in view of medical and psychological documents https://www.intact-association.org/images/analyses/Studie-CHarlotte.pdf

f. Family reunification

Generally, there are no ways to facilitate family reunification of girls at risk of FGM (unless they fall into the family reunification criteria, which concerns spouses, (dependent) parents and minor children).

In general, when it comes to family reunification procedure of unaccompanied minors with a relative in another European country, most of the countries require a Best Interests Assessment of the child to be drafted, in order to examine if it is really in the best interests of the child to be reunified with the family member. In this context, the possibility that the relative would submit the minor girl to FGM could be investigated, through the opening of a risk assessment file.

g. Dublin decisions' effects on procedures

It would be possible to argue for overthrowing a Dublin decision based on the fact that the country of first entry does not offer sufficient protection to asylum applicant. In situations of vulnerability, it is possible to lodge appeals against Dublin decisions for reasons of, for example, interruption of the therapeutic path in progress in the second country. It would be equally possible to overthrow a Dublin decision if there was a risk of chain refoulement in case the applicant is sent to another Member State in the context of the Dublin Regulation.

3. Reception Conditions

a. Gender-sensitive reception centres

There are specific separate reception facilities, or general reception facilities with specific spaces, for vulnerable women (due to specific medical needs, age, difficult family relations and situations of violence and abuse) available, as well as for unaccompanied children. However, these places are limited in comparison with the general reception places. Since 2018, all reception centres have adopted minimum standards for reception, including for vulnerable persons, among which separate wings or separate pavilions for women and separate opening hours for women in the common areas.

b. Gender-sensitive accessible general and specialised services

In Belgium, services are not distributed homogenously from a geographical perspective on the national territory. Moreover, there are difficulties in terms of language accessibility and level of training for professionals in general services. Civil society tries to fill the gap left by the authorities in terms of access to specialized services. Through the AMIF programme, Fedasil funded the development of a trajectory by the non-profit organisation GAMS to support and refer FGM-affected girls and women in the reception facilities to adequate specialised services in case needed.

c. Policies to prevent and respond to gender-based violence in reception centres

In Belgium, there is a GBV trajectory developed by the non-profit organisations GAMS and Intact. A national working group has been set up and is managed by a Fedasil support committee.

d. Dublin decisions' effects on reception conditions

In all countries, a woman/girl who is subject to a Dublin decision still has all the rights associated with the status of asylum seeker.

4. Data collection

e. National registry for FGM cases in the asylum system

Belgium has been gathering data since 2008 on number of asylum cases analysed (and on which a final decision has been taken) on the ground of FGM and number of asylum granted on ground of FGM. The data is gathered by Office of the Commissioner General for Refugees and Stateless Persons (CGRS) although not made public, but can be provided it upon request.

5. Integration

f. Tailored service provision after being granted asylum

In Belgium, all parents from FGM-practicing countries of origin must sign an honour pledge not to subject their daughter(s) to FGM in order the girl(s) to obtain the refugee status, and they are given the CGRS the brochure 'You are recognized as a refugee in Belgium: your rights and obligations'. However, they are not referred to specialized services once coming out of the reception centre.