



ALTERNATIVE REPORT BY THE NGOs ON THE IMPLEMENTATION OF THE UN
CONVENTION ON THE RIGHTS OF THE CHILD IN BELGIUM

MARCH 1, 2010

TABLE OF CONTENT

Introduction and presentation	7
Introduction	7
De Kinderrechtencoalitie (KIRECO)	9
La Coordination des ONG pour les Droits de l'Enfant (CODE).....	10
1. Global policy on children's rights and follow-up of the recommendations of the Committee	12
1.1 Coordination of the policy on children's rights (C.O. 2002 no. 10, 13)	12
Policy coordination	12
National Commission for Children's Rights.....	12
National Action Plan for children	13
Identification and analysis of the budget set aside for children	13
Child impact assessment	13
Ombudsmen for children	13
1.2 Data collection (Art. 44; C.O. 2002 no. 14-15).....	14
1.3 Interpretative declaration Art. 2 (C.O. 2002 nr. 7)	14
1.4 Dissemination of the reports and recommendations (Art. 44,6; C.O. 2002 no. 34).....	15
1.5 Education on human rights and the rights of the child (Art. 29,b; Art. 42; CO 2002 no. 17, 26)	15
2. Children in poverty (Art. 27, preamble; Art. 2; Art. 14)	18
2.1 Acces to health care	18
2.2 School fees, failure at school and being relegated to the special needs education system	19
2.3 Too many children placed in care.....	19
2.4 Lack of childcare places	19
2.5 The right to leisure, sport and culture.....	19
3. Participation of children.....	21
3.1 Social participation of children (Art. 12; C.O. 2002 nr. 21, 22)	21
General.....	21
School.....	22
Health care	23
Juvenile justice system.....	24

Participation of socially vulnerable children and young people	24
3.2 Right to information (Art. 17)	25
General.....	25
In the framework of assistance	25
4. Violence against children	26
4.1 Introduction.....	26
4.2 Corporal punishment (Art. 19; Art. 37; Art. 24).....	26
4.3 Child abuse (Art. 3; Art. 19)	27
4.4 Violence in residential settings (Art. 19).....	29
4.5 Traffic violence	30
4.6 Bullying	30
New forms of bullying	30
Effects of bullying.....	31
4.7 Child soldiers (Art. 38; Art. 39; OPAC)	32
4.8 Sale of children, child prostitution and child pornography (Art. 34; Art. 35; Art. 36; OPSC).....	32
5. Children within the juvenile justice system	34
5.1 Legal position of minors	34
The right to be heard (Art. 12, C.O., 2002, no. 8-9, 21)	34
Assistance by juvenile law lawyers (Art. 12)	34
Access to the judge and the rule of law	35
5.2 Reform of the law on the protection of minors	36
Trial of juvenile offenders by adult courts (Art. 40, C.O.2002, nr. 6, 7, 31, 32)	36
Detention (Art. 37, art. 40, C.O.2002, nr. 31, 32).....	37
Parental training course (Art. 3).....	38
5.3 Municipal administrative sanctions.....	39
6. Foreign minors	41
6.1 Accompanied foreign minors	41
Confinement of foreign minors (Art. 2; Art. 3; Art. 27; Art. 28,1; Art. 31,1; Art. 37; Art. 3 EVRM; Art. 8 EVRM).....	41
Reception crisis (Art. 27; Art. 28; Art. 31; Art. 22; Art. 24; C.O. 2002, nr. 19)	41

Return houses	42
6.2 Unaccompanied foreign minors	43
Age determination (G.C. 2005, nr. 31)	43
Reception arrangements (G.C. 2005, nr. 39, 40, 44-45)	44
Residence and durable solution (G.C. 2005, nr. 31-32, 89).....	44
Guardianship (Art. 2; G.C. 2005, nr. 33, 35)	44
Coordination between agencies for assistance to unaccompanied minors (Art. 20)	45
Status of unaccompanied minors (Art. 3, Art. 4; Art. 22; COE – CM/ REC (2007)9).....	45
7. Education and leisure.....	48
7.1 Education.....	48
Inequality of opportunities (Art. 28, Art. 29)	48
Free education (Art. 28, C.O. 2002, nr. 19)	48
Dropping-out, exclusions and relegations (Art. 28, C.O. 2002, nr. 19)	49
Special education (Art. 2, Art. 23, C.O. 2002, nr. 19)	49
Culture (Art. 29, Art. 31).....	51
Human rights and the child at school	51
Stereotypes at school (Art. 29, C.O. 2002, nr. 26).....	51
Wearing of religious symbols (Art. 14).....	51
Student statute	52
7.2 Childcare for children aged 0-3 years (Art. 18, C.O. 2002, nr. 19).....	54
7.3 Leisure time for 3-18 olds.....	56
After school care for 3-12 olds (Art. 31, C.O.2002, nr. 19).....	56
Right to rest and leisure (Art. 31, Art. 12)	56
Use of public space	57
8. Family, care, youth assistance.....	59
8.1 Right to adequate youth care (Art. 2,1; Art. 18,2; Art. 39)	59
Youth assistance.....	59
Waiting lists.....	60
Legal status in the framework of integral youth assistance.....	60

8.2	Parenting support (Art. 14, Art. 18).....	61
	Separation from the parents.....	61
8.3	Right to personal relations with imprisoned parents (Art. 5; Art. 9; Art. 18; Art. 12; Art. 8 Echr)	63
8.4	Divorce (Art. 3; Art 5; Art 9; Art. 12; Art. 17, Art. 18; Art. 27)	64
8.5	Filiation	66
	Adoption (Art. 21)	66
	Preservation of the identity: access to personal origins (Art. 8).....	66
9.	Health.....	68
9.1	Inequalities in child health (Art 24, Art. 25 et Art. 27).....	68
9.2	Children with disabilities and children in hospitals, including those in psychiatric care	70
9.3	Sexual and affective life (Art 2, Art 17, Art 24, C.O. 2002, nr. 18 and 19)	74
9.4	Addictions (Art. 24 et Art.33).....	74
10.	Media and consumer affairs	75
10.1	Children and the media (Art. 16, Art. 17)	75
	Protection of children and young people with regard to media usage	75
	Media education	76
	Perception of children and young people in the media.....	76
10.2	Consumer affairs (Art. 24, Art. 6)	77
11.	Children’s rights in development cooperation (Art. 4)	79
	Bibliography	81
	International legislation	81
	National legislation	81
	Reports and observations	82
	Publications and articles	83
	Websites.....	85
	List of NGOs and people who have contributed to the report	87
	ANNEX: Suggested questions regarding the list of issues and the dialogue with the Belgian State.....	92
	General policy regarding the rights of children and the Concluding Observations of the Committee	92
	Child poverty	92

Children’s Participation	92
Violence against children	92
Children within the juvenile justice system	93
Foreign children	93
Education and leisure	94
Family, support to parenthood and Youth care	94
Health	94
Media and consumption	94
Rights of the child in the development cooperation	94



INTRODUCTION

By virtue of the role conferred by the Convention on the Rights of the Child to NGOs for monitoring its implementation, the Coordination des ONG pour les droits de l'enfant (CODE) and the Kinderrechtencoalitie Vlaanderen (KIRECO), hereafter referred to as "the NGOs", wish to contribute their expertise to the five-yearly assessment carried out by the Belgian State¹.

In developing this alternative report on the implementation of the Convention on the Rights of the Child, the NGOs also respond to an explicit request of the Committee.² In this context, they have also been invited by the Committee on February 1, 2010 in Geneva in order to outline their views³.

The NGOs' objective is to analyse how Belgian legislation and practices conform to the Convention. This should give a clear picture of how the Convention is put into practice in Belgium.

This report also aims to confirm or to invalidate information submitted to the Committee by the Belgian Government, by providing statistics, references and precisions. We will see that certain remarks were not followed up – which worries us.

With regard to the methodology used by the NGOs for their report, information was collected from the constituent associations, as well as from other partners that are experienced in this field. They are mainly members of the associative and university community. Wherever possible, we made sure to discuss all the areas covered by the Convention, while noting the challenge to provide a report as brief as possible, but which nevertheless highlights our major concerns. Because of the complicated institutional structure of Belgium and also the plight of many children, this was not easy.

Indeed, in Belgium, the field of children's rights is shared between various levels of authority: some issues (e.g. youth welfare and education) are under Community competence (implying different Community policies in the French and Flemish Communities), while others (e.g., justice) are, in whole or in part, in the hands of federal authorities.

¹ The Belgian official report was first coordinated by the National Commission for the Rights of the Child (effective since 2007) and was submitted to the Committee on the Rights of the Child of the United Nations in July 2008.

² Remember that this report has been submitted in 1994 and 2001, after the submission of the 1st and 2nd assessments of the Belgian State.

³ To this end, two notes, one from CODE, the other from KIRECO were addressed to the Committee in January 2010.

In all cases, the French and Dutch NGOs have worked together. This report is based on a collective work. It represents the position of the majority of the members of KIRECO and CODE. The members agree on most issues. Different points of view are mentioned in the report.

The data and information contained in this report are up-to-date as of January 15, 2010.

The report structure is as follows: after a brief presentation of CODE and KIRECO, we will develop our report around 11 topics. For each topic we will present our concerns regarding the five-yearly assessment made by the Belgian Government, as well as our recommendations. The articles of the Convention and the Concluding observations of the Committee on the Rights of the Child are reminded each time.

These 11 topics are:

1. General policy on children's rights and the Concluding observations of the Committee
2. Child poverty
3. Participation of children
4. Violence against children
5. Children within the juvenile justice system
6. Foreign children
7. Education and leisure
8. Family, support to parenthood and youth care
9. Health
10. Media and consumption
11. Children's rights in the development cooperation

Suggested questions regarding the list of issues and the dialogue with the Belgian State are proposed at the end of the report, followed by the bibliography and the details of all partners.

We hope that our critical and constructive comments, added to the future observations of the Committee addressed to Belgium, will advance respect for the rights of the child in the months and years to come.

We particularly hope that more attention will be devoted to access to their rights by children from vulnerable groups: children from poor families, migrant children, children in conflict with the law, as well as children with disabilities, sick and/or hospitalized children, in particular those in psychiatric care.

We remain at your disposal for any exchanges, comments and questions.

For CODE

Manuel Lambert, President

Frédérique Van Houcke, Coordinator

For KIRECO

Karin Maes, President

Nele Willems, Coordinator

DE KINDERRECHTENCOALITIE (KIRECO)

De Kinderrechtencoalitie Vlaanderen vzw (non-profit organisation) is a network of 29 non-governmental organisations. The areas in which these organisations work, the public they target and the levels at which they operate vary considerably, but they all have the children's interest at the heart of their programmes.

The 29 NGOs are the following:

Beweging voor Kinderen Zonder Papieren, Child Focus, crefi, Defence for Children International (DCI) België, Gezinsbond, Kinder- en Jongerentelefoon (KJT), Kinderrechtenhuis, Kinderrechts-winkels, Liga voor Mensenrechten, Plan België, Uit De Marge, Unicef België, Vivès, BZN Atlas, DAS&V, End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes (ECPAT), GRIP, In Petto, Jeugd & Vrede, Juna, Medimmigrant, Ondersteuningsstructuur Bijzondere Jeugdzorg (OSBJ), Onderzoekscentrum Kind en Samenleving, Steunpunt Algemeen Welzijnswerk, Vlaamse Confederatie van Ouders en Onderwijsverenigingen (VCOV), Vlaams Internationaal Centrum (VIC), Vlaams Welzijnsverbond, Welzijnszorg, and ZEBRA.

Globally, the Coalition aims to contribute to the implementation of and the compliance with the International Convention on Children's Rights (CRC). This objective leads to the following three elements in the statutes:

- The Kinderrechtencoalitie intends to exercise real and efficient control over the implementation of the CRC, from the NGOs' viewpoint;
- The Kinderrechtencoalitie intends to actively participate in the promotion of children's rights;
- The Kinderrechtencoalitie intends to actively and constructively contribute to the reporting process regarding compliance with the CRC.

In practical terms, the Kinderrechtencoalitie

- collects information and expertise with regard to the implementation of the CRC;
- strives to extend and strengthen the network of NGOs that are active in the field of children's rights;
- advocates, lobbies and monitors the policy and discloses the vision and the recommendations of NGOs.

In practical terms this means that the Coalition acts as a critical observer of the implementation of children's rights in Belgium. Based on the objective of vigilance that the

Coalition has adopted, it takes a census of all positive and negative experiences concerning children's rights. The Coalition initiates a constructive dialogue with other partners in order to step up the joint efforts.

The resultant operation is based on three pillars. First, the coalition aims at bringing together and unlocking information and expertise related to the implementation of the CRC: the gathering of data. Second, the Coalition aims to establish a network for organisations that focus on children's rights: bringing together people and NGOs. A final pillar relates to advocacy and monitoring of the policy. Based on the first two pillars, the Kinderrechtencoalitie wants to engage in dialogue with other key partners in the field of children's rights in order to boost the joint effort for the compliance with the CRC.

LA COORDINATION DES ONG POUR LES DROITS DE L'ENFANT (CODE)

La Coordination des ONG pour les droits de l'enfant (CODE) is a network of ten associations that promote and defend children's rights in Belgium and all over the world. This coalition was created in 1994 upon the initiative of Defence for Children International (DCI) on the occasion of the submission of the first alternative report on children's rights to the Committee on the Rights of the Child. CODE is a non-profit organization since 2000.

Currently, members include: Amnesty international, ATD Quart Monde Wallonie-Bruxelles, BADJE (Bruxelles Accueil et Développement pour la Jeunesse et l'Enfance), le Conseil de la Jeunesse, DEI (Défense des enfants international) Belgique section francophone, End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes (ECPAT), la Ligue des droits de l'Homme, la Ligue des familles, Plan Belgique, and UNICEF Belgique.

Beyond numerous exchanges by email and telephone, monthly meetings bring together members of CODE, so they can share their respective activities, but also initiate and follow all of the activities (press releases, articles, studies, advocacy, conferences, etc.) in order to enforce a greater respect for children in Belgium, and especially in the French Community (the Brussels-Capital Region and the Walloon Region).

To date, CODE employs three people part-time. With the members, they are endeavouring to fulfil the multiple missions of the association:

- Ensuring the implementation of the Convention on the Rights of the Child by Belgium, especially ensuring the follow-up of the recommendations of the Committee;
- Developing an action on information, awareness and education on children's rights;
- Writing analyses and studies in connection with children's rights, at least fifteen analyses and one study each year;

- Networking and being a hub of information on children's rights in Belgium and particularly in the French Community;
- Participating at several working groups (institutional and other) for a better implementation of the Convention in Belgium. Among these groups, we find the National Commission on the Rights of the Child, the Plate-forme Mineurs en exil, the Youth Commission of the League for Human Rights, and the working groupe on the CRC of the Observatoire de l'Enfance, de la Jeunesse et de l'Aide à la Jeunesse.
- Organizing roundtables, conferences, etc. on issues relating to children's rights.

CODE is recognized and subsidized by the French Community (Minister of Culture), as an association for continuing education in the field "analysis and studies". It is also subsidized by the Minister of Justice (Federal Government) and by the Minister for Children of the French Community.

To fulfil its objectives, CODE is open to other NGOs developing actions on children's rights, and collects all relevant information and analysis on the implementation of rights protected by the Convention.

1. GLOBAL POLICY ON CHILDREN'S RIGHTS AND FOLLOW-UP OF THE RECOMMENDATIONS OF THE COMMITTEE

1.1 COORDINATION OF THE POLICY ON CHILDREN'S RIGHTS (C.O. 2002 NO. 10, 13)

POLICY COORDINATION

In general, the NGOs emphasize a lack of coordination in the framework of many policies where jurisdictions are shared between various levels of government. The NGOs recommend the implementation of a coordinated cross-cutting policy on children's rights.

At the federal level, nobody is responsible for the coordination of the policy on children's rights. All members of the Government should aim to implement the Convention in their respective department.

In Flanders, the policy on children's rights is coordinated by the Minister for Youth, and in the French Community by the Minister-President. According to the NGOs, the coordination should be carried out in earnest and with more authority.

NATIONAL COMMISSION FOR CHILDREN'S RIGHTS

The creation in 2007 of the National Commission for Children's Rights, which brings together institutional and non-institutional actors in the field of the rights of the child on a national level, should be mentioned⁴, as a response to the latest Concluding observations of the Committee. However, this Commission faces important challenges. The Cooperation Agreement provides that *"the Commission aims to organize continuing consultation and exchange of information between the various authorities and bodies concerned with children's rights to ensure maximum synergy of policies. To this end, it reflects the recommendations of the Committee on the Rights of the Child"*. This role is poorly played. Although various bodies are associated with this work (ombudsmen, experts, NGOs, governments, etc.), all decisions are made by representatives of the authorities ("members who are entitled to vote"). This deprives the Commission of its own autonomy and real power to influence political decisions affecting the rights of the child. An assessment of its operation should be conducted.

We would also like to remind you that the Commission carries out the collecting, analysis and the processing of national data, which would require additional resources.

⁴ Law of May 1, 2006 approving the Cooperation Agreement between the State, the Flemish Community, the Flemish Region, the French Community, Walloon Region, the German speaking Community, the Brussels-Capital Region, the Joint Community Commission and the French Community Commission on creation of a National Commission for the Rights of the Child, signed in Brussels, September 19, 2005, *M.B.*, November 10, 2006.

Finally, note that the NGOs were invited to participate in various working groups prior to the preparation of the official five-yearly report. However, the NGOs draw attention to the low impact of their contribution in the official report.

NATIONAL ACTION PLAN FOR CHILDREN⁵

The NGOs regret the lack of long-term integrated vision in the National Action Plan. The current text focuses more on the measures that have been taken or are being developed instead of setting policies to implement in the next 10 years, like was done with the Global Action Plan "A World Fit for Children" adopted in New York in May 2002. More specifically, the text mentions many intentions, but provides little measurable actions, and gives no detailed timetables for the implementation of the proposed measures, for the budgets for projects and for the measures to assess the policies to implement.

IDENTIFICATION AND ANALYSIS OF THE BUDGET SET ASIDE FOR CHILDREN

At all policy levels, there is no commitment to analyse the budget and to identify fundings directly or indirectly allocated to children.

CHILD IMPACT ASSESSMENT

The Flemish Child Impact Assessment (Vlaamse Kindefectenrapportage) was recently extended to a Youth and Child Impact Assessment, thereby enlarging the target group to include young people up to age the of 25. The NGOs fear that this will result in less attention for young children.

At other policy levels, this control procedure does not exist.

OMBUDSMEN FOR CHILDREN

In Flanders and in the French Community, the authority of the ombudsmen with regard to federal issues is inadequate. Moreover, in the German speaking region there is no ombudsman to oversee the implementation of the Convention and to receive and treat complaints from children. The NGOs call for more cooperation, coordination between the two regional mediators (ombudsmen), since their areas of action concern indeed all children present on the national territory.

Recommendations

1. Designate a coordinating minister for children's rights at the federal level.

⁵ Federale Overheid, Nationaal Actieplan voor kinderen, 2006, pg. 99:

http://www.just.fgov.be/nl_htm/informatie/htm_justitie_atotz/nationaal_actieplan_kinderen.html

2. Make the Prime Minister and the Ministers-presidents responsible for the coordination.
3. Extend the Child Impact Assessment to all authorities in Belgium.
4. Make the Government show in the budget and/or the utilization of the resources which proportion is directly or indirectly allocated to minors. Considering the current economic crisis, this is all the more important.

1.2 DATA COLLECTION (ART. 44; C.O. 2002 NO. 14-15)

In order to monitor children's rights and develop policies tailored to their needs and interests, a collection of statistical and analytical data on children is essential. However, to date, data do exist, but they are often incomplete and/or too little utilised. The lack of data is obvious, especially disaggregated data (by age, sex, socioeconomic level of parents, the presence of any physical or mental disability, etc.) which would take into account all children from 0 to 18 years (and not only from 0 to 3 years on a given subject, 14 to 25 years on another, etc.), including children belonging to vulnerable groups (sick and hospitalized children, children with disabilities, children from poor families, migrant children, children in conflict with the law, foreign children, etc.).

Recommendations

1. Create a system of structural collection of data on the basis of clear indicators.
2. Collect disaggregated data on children's rights, taking into account all children from 0 to 18. Allocate substantial resources.
3. Pay special attention to children from the most vulnerable groups, while ensuring the strict application of ethical issues. Certain groups of children should not be stigmatized.
4. Ensure that multiple methods of evaluation are put into place; quantitative methods alone do not adequately reflect the experiences of people.

1.3 INTERPRETATIVE DECLARATION ART. 2 (C.O. 2002 NR. 7)

The Government report announced that the reflection on the procedure for withdrawing the interpretative statement to Article 2 of the CRC was put in motion. Since the adoption of the report in July 2008 there has been no further communication. The NGOs have no view on the situation and are concerned that in the meantime no steps have been undertaken in that direction.

Recommendation

Repeal the interpretative declaration.

1.4 DISSEMINATION OF THE REPORTS AND RECOMMENDATIONS (ART. 44,6; C.O. 2002 NO. 34)

Although Belgium has made available the second periodic report through the website of the Federal Public Service Justice, it was very difficult to find it, even for professionals in the children's rights sector, let alone for the general public. Even by November 2009, the third report was not yet made available on the website.

The responses of Belgium to the questionnaire of the Committee in the second report are not known, nor is there a report or summaries of the discussions with the Committee.

The recommendations of the Committee were only disseminated on a limited scale by the Government. It was mainly through the NGOs that they were made widely available to the public.

Recommendations

1. Make the third report of Belgium, together with Belgium's written replies to the questionnaire of the Committee, a summary of the discussion and the recommendations adopted by the Committee, available on the website of the National Commission on the Rights of the Child, and this in the 3 national languages.
2. Provide a child-friendly translation of these documents. Also, make these documents widely available to all children in Belgium.

1.5 EDUCATION ON HUMAN RIGHTS AND THE RIGHTS OF THE CHILD (ART. 29,B; ART. 42; CO 2002 NO. 17, 26)

To date, no specific legislation prescribes education on the rights of the child in school, accessible to all students at the beginning of primary education (6 years) until the end of secondary school (18).

In the French Community, the activities are not systematic. The rights of the child are only indirectly affected by the "Citizenship Decree" of 2007⁶. Moreover, the proposed reference manual is intended for students in their 5th and 6th year of secondary school (17-18 year). As for interdisciplinary activities mentioned by the decree, they do not mention the rights of the child, but only "responsibility" towards each other.

In the Flemish Community, a 1997 Decree requires education on the rights of the child at school⁷, but in rather vague terms, leaving teachers with a wide scope for manoeuvre. It is not assessed to what extent students actually know about the Convention and the implementation thereof in practice.

In compulsory education, "children's rights" is on the agenda, but the higher education is lagging behind. Further, in teacher training children's rights are not always mentioned.

Regarding the training of teachers of the French Community, only two training modules offered by the "Institut de formation en cours de carrière (IFC)"⁸ are linked with human rights. Only one concerns children's rights, but in a much targeted way; once again, children's rights are linked with obligations. Furthermore, the training is aimed at teachers and educators of children from 5 to 14 years old, but not those from 15 to 18 years old.

Recommendations

1. Ensure that, in schools, education on the rights of the child is cross-cutting and multidisciplinary, at the centre of a coherent and comprehensive approach. In school, explain how children's rights are put into practice. Social skills and social training should not be the privilege for students from specific disciplines. Any student from any discipline must have the opportunity to be trained as critical citizens for whom human rights and children's rights are a high priority.
2. Establish education on children's rights and integrate it by decree in the French Community in the curriculum from the beginning of primary education until the end of secondary school.
3. Offer an optional subject "children's rights", open to all directions in higher education and as a compulsory subject in teacher training as a minimum. Develop systematic and continuing training programs on children's rights for all professional groups working for and with children, especially teachers, both in initial training as in continuing training during the career.

⁶ Décret du 12 janvier 2007 relatif au renforcement de l'éducation à la citoyenneté responsable et active au sein des établissements scolaires organisés ou subventionnés par la Communauté française, *M.B.*, 20 mars 2007.

⁷ Decreet van 15 juli 1997 tot bekrachtiging van de ontwikkelingsdoelen en de eindtermen van het gewoon basisonderwijs, *B.M.*, August 28, 1997.

⁸ Voyez <http://www.ifc.cfwb.be/>

4. Raise awareness of the Convention in a manner appropriate to the public through four objectives: a) know that the Convention exists b) identify and incorporate the philosophy of the Convention; c) identify and integrate the content of the Convention; d) practice what is learned.
5. Offer initial training of professionals, preparing them for relations with the public with whom they will work, especially those who are furthest from their own reference medium.



2. CHILDREN IN POVERTY (ART. 27, PREAMBULE; ART. 2; ART. 14)

Although Belgium is a privileged country, poverty affects too many families. The figures are alarming and are increasing since 2002. According to data from the Annual Report on Poverty and Exclusion of 2009 from the University of Antwerp, 16.9% of children live below the poverty line, which is the 5th worst score in Europe. Among children under 6 years, 18% live below the poverty risk, amounting to nearly one in five children.

Some groups of people are at greater risk of falling into poverty. Thus, the 2009 Interfederal Barometer of poverty⁹ shows that 34.2% of people who are unemployed are at risk of poverty, and 74.5% of households without income from work with children are at risk of poverty. The household type is also important, because 35.8% of single parent families are at risk of poverty. Finally, nationality is also a significant factor since 53.3% of non-European nationals run the same risk¹⁰. The Centre for Equal Opportunities and Opposition to Racism indicates that these groups are more discriminated against.

Poverty is not only an economic issue. It is also a multidimensional, complex problem that affects all areas of life. Very often, precariousness is cumulative and reinforcing. Living conditions (housing, income, etc.) are no longer worthy of human dignity and ultimately have a major impact on all children's rights.

Most of the measures put in place do not reach their goals with populations in precarious conditions. One reason is the great distance between on the one hand professionals and institutional logic, and on the other hand the public. This has the effect of leading to misunderstandings, lack of empathy, inappropriate expectations, prejudices, negative judgments, fear and mutual distrust, which can have a tangible impact on the rights of these people (children and adults).

Here are some examples¹¹:

2.1 ACCES TO HEALTH CARE

The living conditions of children living in poverty endanger their physical and mental development¹².

⁹ Available at <http://www.mi-is.be>; source: EU-Silc 2007/revenus 2006.

¹⁰ The NGOs note that although a large number of factors related to child poverty at the micro level (household composition, employment rate, etc.) is linked to a particular cultural background, migration histories and integration processes, this link is not often made in the framework of research and policy.

¹¹ Each issue will be developed further on in this report.

¹² See Part 9.1.

2.2 SCHOOL FEES, FAILURE AT SCHOOL AND BEING RELEGATED TO THE SPECIAL NEEDS EDUCATION SYSTEM

Schools charge fees and the measures taken to improve access to free education remain fragmented. Moreover, too many school dropouts are related to poverty, because of successive failures, the difficulty of meeting the demands of school, difficulties regarding school attendance, misunderstandings between family and school, premature orientation to the special needs education system (while regular encouragement and “a nudge in the right direction” or a “helping hand” would certainly allow children from a precarious environment to continue their schooling in a regular school), etc.

2.3 TOO MANY CHILDREN PLACED IN CARE

Any separation from his family causes great suffering to any child and there is a danger of weakening the child¹³.

2.4 LACK OF CHILDCARE PLACES

Despite the genuine efforts made in the French Community, the right to a quality childcare for all children in Belgium is far from effective. Instead, the shortage is felt more strongly, and particularly affects the poorest people in society. Primarily, families where both parents work do have access to childcare places.

2.5 THE RIGHT TO LEISURE, SPORT AND CULTURE

The latest report of the Children’s Rights Ombudsman of the French Community¹⁴ shows that many parents from low-income families cannot afford leisure activities for their children, particularly summer camps.

¹³ See below.

¹⁴ Délégué général aux droits de l’enfant (2009). "Dans le vif du sujet. Rapport relatif aux incidences et aux conséquences de la pauvreté sur les enfants, les jeunes et leurs familles", Bruxelles, Communauté française, novembre.

Recommendations

1. Ensure that all families enjoy an adequate standard of living. Policies that have an impact on children's rights (taxation, family allowances, housing, employment, education, integration and equal opportunities, etc.) must be coordinated.
2. Improve data collection, by including the link between poverty, access to children's rights and migration. The collected data must reflect the real situation of children.
3. Develop a policy of decent housing for all.
4. The local authorities (especially the Public Welfare Centres) should be encouraged by central authorities to take initiatives to mind the problems of children in poverty.

3. PARTICIPATION OF CHILDREN

3.1 SOCIAL PARTICIPATION OF CHILDREN (ART. 12; C.O. 2002 NR. 21, 22)

GENERAL

The NGOs are pleased that in recent years progress has been made regarding the promotion of participation of children in various domains. This participation has also been legislated by decree¹⁵. Depending on the policy area, participation takes on different forms, ranging from participating at (cultural activities), residing in (say councils etc.) or being involved in (an organization or decision processes). Unfortunately, the interpretation of participation is often a leaner version of how the principles are enshrined in the UNCRC.

It is therefore urgent that work be done on the transformation of participatory structures to a real participatory culture which offers openness to a genuine dialogue with the children. Only this way participation can be realized on the micro-level as well, so that children can not only through existing structures, but also in their daily lives, be involved in the decisions which affect them.

The emphasis on the opinions of children and adolescents as seen in the children's rights documents is a first potential pitfall. If one focuses only on opinion, the question can be asked whether children are competent to form their own opinion – a question all too often used to limit the right to participation of children. The NGOs believe that if one would rather focus on and consider the perception of children, i.e. how children and young people experience the reality itself, we can avoid this "competency trap" and add real meaning to the participation debate.

Another pitfall lies in the fact that the various authorities, in their concerns on the participation of children, primarily seek unilateral initiatives characterized by imitation of the tools used in the participation of adults. There are many examples: children's councils, youth councils, and other formalized tools. The NGOs denounce the lack of initiatives to develop participation at the children's level. In line with this finding, it appears that consulting children is usually only done in cases with typical children's issues (e.g. setting up a playground) or border issues (e.g. order in the classroom). Issues that involve multiple actors, such as mobility or the content of educational objectives, are erroneously insufficiently discussed with children.

In general, the NGOs comment that the Government lacks the reflex to seek the advice of children and young people on drafting regulations that affect them directly or indirectly.

¹⁵ An overview of decrees and decisions on participation in the French Community can be read on the website of the Observatoire de l'Enfance, de la Jeunesse, et de l'Aide à la Jeunesse: http://www.oejaj.cfwb.be/rubrique.php?id_rubrique=87

SCHOOL

FLEMISH COMMUNITY

The provision of participatory structures in recent years has gained importance within the education policy. The Flemish Participation Decree¹⁶ (2004) requires schools to include students in the school council, thereby recognizing the students' council as an educational partner. In recent years students have also been recognized as educational partners in the Flemish Education Council. However, there are also some important comments to make.

SUPPORT FOR PARTICIPATION

In the Flemish Community, the expertise centre for schools that focuses on expanding the participatory culture in schools is not yet in operation, its opening having been postponed by the Government. The shutting down of the Support Centre for student's guidance, with a budget of 1 million euros, has caused a cut of 80% of the support structure for participation of students and students councils. The Vlaamse Scholierenkoepel (VSK) is expected to fill this gap, but it can not count on the same budget: since the entry into force of the Participation Decree, the budget for support for participation is indeed significantly lower. In practice this means that many issues can not be followed up and that student's participation at the level of the class can no longer be supported. In addition, there is a lack of support for (students in) school councils, for exchange initiatives between schools on the operation of school councils and for resources in support of governance, teachers and students. Also questions regarding support for primary schools receive insufficient follow-up.

ASSESSMENT OF THE DECREE

In order to assess the new decree, the Flemish Government would develop a tool to measure the formal and informal participatory culture in schools. Currently it is unclear whether this participation barometer is operational. There is no information about the form and content of this tool or about who should and can utilize it.

Apart from the assessment of the decree, it seems appropriate to allow schools to assess their own level of participation.

LIMITATIONS OF CURRENT FORMS OF PARTICIPATION

The hearing of childrens' opinions in the education sector is traditionally limited to within the constraints of school regulations and discipline. Similarly, the Flemish Government cites

¹⁶ Decree on participation in school and the Flemish Education Council of April 2, 2004. Surf to <http://www.ond.vlaanderen.be/edulex> and click successively on Rubrieken wetgeving, op Niveau-overschrijdend deel, op Lokale autonomie, inspraakregeling en medezeggenschap in het gesubsidieerd onderwijs and finally on the decree itself.

education as one of the problems to solve (No. 204), but absolutely ignores the involvement of children in the content of education. A survey of the VSK shows that students also want to express their opinion on issues such as assessment of teachers, the contents of the lessons, the determination of the final qualifications and the development of curricula. Up to now children are not allowed to express their opinions on the abovementioned issues or on the general organization of education (e.g. compulsory education). Students in secondary education do not feel that they are really allowed to participate¹⁷.

INFORMAL PARTICIPATION

The study "Students Participation in secondary education, between theory and practice"¹⁸ and a recent poll by the VSK¹⁹ confirm that informal participation at the class and school level is very important. Therefore, more attention should be paid to the participation of students who don't participate in formal bodies like the students council.

FRENCH COMMUNITY

In line with the Missions Decree²⁰, secondary schools (12-18 years) in the French Community are now obliged to have a participation council²¹. This council, which focuses on decisions related to the operation of the school, consists of teachers, parents and students in secondary education. Participation of pupils in primary schools (6-12 years) is also conceivable in some proportion.

HEALTH CARE

Hospitalized children (paediatric and/or psychiatric services) are excluded from the Decree on the Legal Status of Minor Patients. Hospitals are regulated by the Law on Patients' Rights²². In contrast to the UNCRC and human rights treaties, it is not the children themselves but their parents who exercise their rights. In accordance with the Law on Patients' Rights, the legal incapacity of children to exercise their rights is presumed. However, the minor patient must "be involved" in his or her treatment, and minors who show maturity²³ do have the right to exercise their rights, according to their capabilities. The

¹⁷ This is shown by an internet poll by Maks!, a magazine for young people under the umbrella of Klasse. More than one thousand young people between 14 and 18 years old participated. A poll of 500 teachers confirms the figures, see: <http://www.ond.vlaanderen.be/nieuws/archief/2006/2006p/1212-inspraak.htm>

¹⁸ De Groof, S., Elchardus, M., & Stevens F. (2001). "Leerlingenparticipatie in het secundair onderwijs, tussen theorie en praktijk". http://www.vub.ac.be/TOR/main/publicaties/downloads/t2001_15.pdf

¹⁹ Windey, E. (2008). "Wat maakt dat jij je goed voelt op school? We vroegen het aan 100 leerlingen" in: *Uitval en Uitsluiting in het onderwijs*, Kinderrechtenforum 5.

²⁰ Décret du 24 juillet 1996 définissant les missions prioritaires de l'enseignement fondamental et de l'enseignement secondaire et organisant les structures propres à les atteindre, *M.B.*, 23 septembre 1997.

²¹ Specifically, this requirement came into force on January 1, 2008.

²² Law of August 22, 2002 on the rights of the patient.

²³ The maturity is assessed case by case by an adult.

NGOs ask for a child focused implementation of the Law on Patient's Rights, so that children can also give their informed consent/refusal to a treatment.

JUVENILE JUSTICE SYSTEM

The NGOs' opinion on participation by children and young people in legal and administrative procedures is expressed in Chapter 5.

PARTICIPATION OF SOCIALLY VULNERABLE CHILDREN AND YOUNG PEOPLE

The question whether children are competent to form their own opinion is all too often used to limit the right to participation of children. Especially children in vulnerable situations (children living in poverty, children in situations of illegal migration or asylum seekers, children with disabilities, sick children, children in psychiatric institutions, very young children and children in conflict with the law) run the risk that adults make decisions in their place without their involvement. They thus have to suffer the sometimes dramatic and traumatic choices and actions, such as expulsion or placement. They are often excluded from participation initiatives. A recent poll by the Observatoire de l'Enfance, de la Jeunesse et de l'Aide à la Jeunesse²⁴ shows disparity of experiences of participation between young people according to social origin, socio-professional status of parents and education courses attended.

Various barriers prevent their participation: lack of information and reception, difficult financial, geographical and cultural access, etc. For participation to be put in place, one must: create a climate of trust, respect the pace, time and stages, be alert and supportive, and be aware of "differences".

Recommendations

1. Devote more attention and resources to initiatives that help to ensure a true participatory culture, where children and young people through their custom-developed tools share their opinions and perception regarding more than just typical childhood issues. The NGOs ask that the Coordinating Minister for children's rights be trained in this matter and that he raise awareness on children's rights with his fellow ministers in order to encourage the participation reflex.
2. Mobilise more resources in order to support (informal) participation in daily life and further develop good practices. In particular: developing learning and training for all professionals who come into contact with children; ensuring wider replication of good initiatives in the field of spatial planning (involving children and young people when

²⁴ Observatoire de l'Enfance, de la Jeunesse et de l'Aide à la Jeunesse (2007). "Enquête sur la participation des jeunes âgés de 10 à 18 ans en Communauté française de Belgique", Bruxelles, avril.

designing squares and parks and when building or renovating schools); mobilising resources in order to support students' participation; to not draft educational objectives without broad involvement of the children for whom they are intended.

3. Develop a child focused implementation of the Law on Patient's Rights so that children too, according to their capacities, can give their informed consent/refusal to a treatment.
4. Ensure the participation of socially vulnerable children and young people by complying with additional conditions such as confidence building, respect of time, support and awareness of "differences" and the risk of dependence.

3.2 RIGHT TO INFORMATION (ART. 17)

GENERAL

Children and young people are able to form their own opinion and to fully participate in society if they can obtain information that is accessible (easily available and disseminated through various media), comprehensible (adapted to their age and language) and adapted to their environment.

A child's/young person's (information) request should be taken seriously. After all, the children/young people put themselves in a vulnerable position when they ask a question. It is important to create a safe environment that is not judgmental.

IN THE FRAMEWORK OF ASSISTANCE

Children and young people are entitled to all information that concerns them. Children and young people who are informed learn the impact they have on their own lives and can also influence the situation wherein they find themselves.

Recommendations

1. Investing primarily in the promotion and dissemination of child-friendly informations about their fundamental rights, the right to information of all children being a prerequisite for meaningful participation.
2. Flemish information centres such as the Vlaams Informatiepunt (VIP) Jeugd and the Jeugdinformatiepunten (JIPs) have already made important steps to facilitate the dissemination of information to children and young people, but children and young people can too often not see the forest for the trees. The information must be well-ordered and structured.

4. VIOLENCE AGAINST CHILDREN

4.1 INTRODUCTION

All too frequently there is a tendency to narrow violence towards children down to violent behaviour of individuals, within the nuclear family or in society. An important source of violence towards children remains thus hidden: institutional violence, meaning the one coming from public institutions.

To live in poverty constitutes a permanent act of violence, which also affects children: stress, fear, menaces, intimidations, humiliations, deprivations, dependency, lack of privacy and of space... NGOs also note that these children are more frequently victims of abuse and institutional acts of violence (first in education, in homes and foster homes, etc.)²⁵ because they meet to a lesser degree the expectations and requirements of institutions, for the reason that they are fragile and that their families are less capable than others to defend them. Moreover, some legislations increase public interventions and controls within the very disadvantaged families, for instance by enforcing placement “to protect the child”, with the effect of stigmatising and weakening those families even more.

Finally, there exist intrinsically violent institutions for children. This is the case with detention centres, which can generate violence – even if they are or should be conceived for taking care of children²⁶.

4.2 CORPORAL PUNISHMENT (ART. 19; ART. 37; ART. 24)

The use of violence in education teaches children that violence is an acceptable strategy to solve conflicts or to get from people what they want. It is an ineffective form of disciplining. There are positive ways of correcting children’s behaviour, which are better for their development and which contribute to build relations based on trust and mutual respect. In the Government report (par. 312), the Government states laconically that efforts to stop corporal punishment and psychological violence will be increased. Such a vague non-compulsory commitment cannot be assessed. On the top of that, the Government sends a dual message: on the one hand it positively promotes a non-violent education, but on the

²⁵ Délégué général aux droits de l’enfant (2007). "Rapport final de la commission pour le droit à la scolarisation des enfants et des adolescents", Bruxelles, Communauté française.

²⁶ See also the sections of this report devoted respectively to the detention of adolescents (following a court decision) and foreign minors.

other hand it falls short of firmly stating that non-violent education should be the norm. Large-scale campaigns especially should offer guidance and support for a ban²⁷.

Recommendation

1. In the Civil Code, an Article 371bis should be inserted, stating: “Art. 371bis : A child is entitled to care, safety and a good education. It has to be treated respectfully regarding his or her person and individuality, and it should not be subjected to humiliating treatments, or to other forms of physical or psychological violence.”

4.3 CHILD ABUSE (ART. 3; ART. 19)

In Flanders, one out of ten children is the victim of physical or verbal violence by their parents²⁸. Mortality resulting from abuse of children in Belgium is higher than in most OECD countries²⁹. Abuse is the second cause of infant mortality in Flanders.³⁰

Actions against child abuse are characterized by a lack of proper cooperation and of a clear division of competence. Occasional measures have exacerbated the problems instead of providing solutions. In what follows, we will check off some important needs.

First, there should be no misunderstanding about voluntariness and compulsion. In the case of an obvious insecure educational situation, it is our opinion that the interest and the safety of the child, being the weakest link, should be the prime concern and that a direct access to the court of law should be made possible. If a department expertly investigates signals of abuse, it should be possible for a judge to be called in directly. Parents who prefer to protect an abusive partner instead of protecting the child make a choice to which both police and services which assist children should respond adamantly.

Secondly, we indicate that privacy legislation is still far too often an obstacle to tackling child abuse. Continuity and efficiency in care require transparency of available information. Too often parents determine the flow of information. It is in the interest of the child that we should have access to all information from a judicial and extrajudicial context in order to assess the risk quickly and correctly.

²⁷ CODE, however, wish to draw attention to the fact that such legislation is not without risk of adverse effects for the most vulnerable families living in poverty and stress. This could lead to more sanctions against them.

²⁸ From a Centrum voor Bevolkings- en Gezinsstudie research (2000) investigating the living conditions of 1.995 Flemish children between the ages of ten and eighteen years old.

²⁹ UNICEF (2003). “A League Table of Child Maltreatment Deaths in Rich Nations”, Innocenti Report Card 5, Florence, UNICEF Innocenti Research Centre, pg. 4.

³⁰ Gezinsbond (2004). “Geweld in het Gezin”, dossier, 2004, pg. 8.

We then point out the importance of well-considered campaigns. Awareness raising campaigns which call for the reporting of cases of child abuse, for instance, create a counterproductive effect if structures which can adequately create safety are not likewise provided for.

Since 1998, a program of prevention and positive treatment exists in the French Community, called “Yapaka”. It proposes interesting initiatives³¹ against child abuse to various audiences: children, adolescents, parents and professionals.

To stop violence against children also requires a strong political will and a firm commitment from the civil society. At regional, national and international levels, strong mechanisms should be put in place, accompanied by human and financial resources which allow to diminish violence against children and to react to it systematically. This includes, besides sanctions against the perpetrators, a shift in a too lax mentality and the elimination of social and economic factors fueling the violence. A focused international attention is crucial for the problems of children in situations of war, trafficking or sexual exploitation. The Belgian Government can do its part by putting into action its strategy paper about children’s rights in development cooperation.

In addition, we also point out that residential placement of children is in most cases not the best solution to meet their demand for care.

Recommendations

1. Increase the fight against poverty, which is a form of institutional violence. Give attention to welfare and dignity of each child.
2. Implement the UN Study of Violence against Children. Set up a national action plan to call a halt to all violence against children: this action plan should have realistic objectives, clear deadlines and should be systematically reviewed, and it should be coordinated in an overall application strategy by the National Committee on the Rights of the Child. The priorities of this action plan should be to strengthen prevention and prohibition of all forms of violence against children. This strategy should also include mechanisms for data collection improvement so that vulnerable groups can be identified, the nature and extent of violent acts may become better known, and progress can be measured so that a categorical policy becomes possible.

³¹ Website (www.yapaka.be), TV spots and radio, publications, etc. Yapaka is an initiative of the Coordination de l’Aide aux enfants victimes de maltraitance by the Minister of the French Community, and the result of the cooperation between several departments: the Administration générale de l’enseignement et de la recherche scientifique, the Direction Générale de l’Aide à la jeunesse, the Direction générale de la santé, and the Office national de l’enfance (ONE).

3. Set up campaigns against the use of violence against children and the promotion of nonviolent values; it should also be provided that those who work for and with children receive training in children's rights during their education.
4. Develop a useful and updated information tool for children: this is not just about the reporting of family violence but we should give the opportunity to all children to talk in confidence about violent situations, even within the context of education, placement or detention. The instrument should show them the way to services where they can get help and advice.
5. Always take into account the views of the child: one must listen to the children and let them participate in decisions that affect them, even regarding violence³².

4.4 VIOLENCE IN RESIDENTIAL SETTINGS (ART. 19)

Unaccompanied foreign minors in care and reception centres are a vulnerable group. Studies show³³ that refugees are more often than average victims of violence, particularly in the reception structures where they are staying. Perpetrators of violence can be found both among residents and among personnel of the centres.

Actors on the ground signal that living in a residential structure carries a relatively high risk of tensions and conflicts, especially when staying in large structures with little or no coaching.

Recommendations

1. Develop measures to prevent violence in reception centres. Provide monitoring, reporting and follow-up of incidents of violence in centres. Analyze violence enhancing factors in the reception structures to get a better grip on the problem.
2. Develop alternatives to residential placement: focus on the most vulnerable groups of children (children whose families live in poverty, children in an illegal situation, children with disabilities, children in conflict with the law, etc.) and give attention to their specific requirements appropriate to their age.

³² Additional relevant recommendations on stopping detention of children and the need for a policy against global poverty will be discussed more extensively in the relevant chapters.

³³ Temmerman, M. (2007). "Hidden violence is a silent rape", ICRH, UGent.

4.5 TRAFFIC VIOLENCE

According to the traffic statistics of the Federal Public Service Economy, Statistics Department, 11.280 children and adolescents were victims of traffic accidents on Belgian roads in 2007³⁴. 76 of them died, 913 children and youngsters were seriously injured and 10.291 children and young people were slightly injured. And these figures don't show the whole picture. All indirect victims (brothers, sisters, friends) who share the blow of an accident do not figure in these statistics. The NGOs insist that road accidents should be considered as a form of (physical and psychological) violence against children. This form of violence is still too often trivialized.

Traffic violence affects the physical and personal integrity of children. Rights of children as defined in the Convention, such as the right to development, access to information, education and leisure, etc., are somehow violated when these children are involved in a traffic accident.

Recommendations

1. More knowledge and skills are required to adequately deal with young traffic victims. Policy makers should confront this and provide resources. Different powers should take their responsibility: welfare, education, mobility,...
2. The NGOs believe that children who are somehow involved in a traffic accident should, without distinction, be better supported in their own environment and should be offered professional assistance tailored to their needs and requirements, for example through counseling. To make this happen, it is necessary that the different policy areas pull together.
3. In order to prevent traffic accidents, NGOs demand road infrastructure which takes into account children's perception of traffic, and the development of safer routes towards places that children often visit.

4.6 BULLYING

NEW FORMS OF BULLYING

A child or a young person is being bullied when he has to deal with persistent negative behavior from others, be it physical, psychological, social or material³⁵. Children and young people bully each other in very different ways. Verbal harassment remains popular. Cyber

³⁴ More recent statistics are not available.

³⁵ Deboutte, G., "Pesten en geweld op school. Handreiking voor een daadkrachtig schoolbeleid". E-publication ordered by the Flemish Minister of Education, www.pesteningeweldopschool.be, 2009, 196.

bullying is heard of more and more. E-mail, instant messaging, blogs, chat rooms, forums,... are part of the social world of children and young people, which inevitably leads to deviant use of this technology³⁶. Hate messages, flaming (to send abusive or threatening messages), privacy violating photos that are distributed via the internet or mobile phone, hacking a personal mail account: 6 in 10 Belgian youngsters have been the victim of such acts at least once; 4 out of 10 already 'played' the bully and made use of disrespectful or offensive e- or mobile-communication³⁷. Also steaming (situation where at least 1 underage person is threatening someone) and happy slapping (filming of a possibly staged conflict) can lead to bullying.

EFFECTS OF BULLYING

- The victim's self-image, confidence and trust in others are seriously affected. This often shows in poor school performance, increasing social isolation, violence to self or others, psychosomatic symptoms and depression.
- Victims of bullying consider suicide 4 times more often than other peers and also show up 4 times more often in the suicide statistics³⁸. In case of cyber bullying, the victim's desperation and sense of powerlessness increases in the absence of direct feedback and because of the anonymous and confrontational nature of these harassments³⁹.
- Bullies often show unacceptable and deviant behaviour.
- In learning groups where bullying arises, well being and group atmosphere take a serious blow⁴⁰.

Recommendations

1. Encourage consultation with and between all stakeholders (victim, bully, spectators, parents, teachers, etc.).
2. Provide more profound support for teachers and youth workers by providing tools, workshops and concrete actions.
3. Pay attention to all forms of bullying, including those that are less visible, such as cyber bullying.
4. Stop the taboo around bullying and make it debatable in schools and youth work.
5. Further promote the no-blame approach.

³⁶ Vandebosch, H., Van Cleemput, K., Mortelmans, D. & Walrave, M., "Cyberpesten bij Jongeren in Vlaanderen", studie in opdracht van het viWTA, Brussel, 2006.

³⁷ Goberecht, T., (2008), "Onderzoek naar het verband tussen emotionele en gedragsproblemen en cyberpesten bij jongeren uit de eerste graad secundair onderwijs", Eindeverhandeling tot master in de Psychologie (niet gepubliceerd), Brussel, Vrije Universiteit Brussel, 1-2.

³⁸ Deboutte, G., 2009, pp. 203-208.

³⁹ Goberecht, T., (2008), o. c., 8-9; Ybarra, M.L. & Mitchell, K.J. (2007). "Prevalence and frequency of internet harassment instigation: implications for adolescent health". *Journal of Adolescent Health*, 41, 189-195.

⁴⁰ Deboutte, G., (2009), o. c.

4.7 CHILD SOLDIERS (ART. 38; ART. 39; OPAC)

In April 2006, the Belgian Senate adopted a detailed resolution on children in armed conflicts, by which the Government was requested to commit itself in every aspect of its policy to fight against the use of child soldiers.

Recommendations

1. Include this resolution in its entirety into government policy and implement it.
2. In line with the resolution, focus on children in armed conflict to become a policy priority, both in terms of prevention and reintegration in the long term. Therefore, the budget for projects for disarmament, demobilization and reintegration (DDR) should be increased, the duration of the project extended, and projects should be integrated with general activities of peace building and reconstruction of basic structures such as education, health and agriculture, so that some continuity can be offered to former child soldiers who leave the reception centres. DDR projects should pay more attention to the training of relief workers and the specific situation of girls.
3. To guarantee the necessary and effective control of the arms trade and the enforcement of arms embargoes, we should make sure that the laudable Belgian legislation, which prohibits the import, export or transit of weapons to countries where it is firmly established that they engage child soldiers to battle, is also accepted and respected by the regions.

4.8 SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (ART. 34; ART. 35; ART. 36; OPSC)

According to a recent study on the protection of unaccompanied foreign minors (UFM) who are victims of trafficking in human beings, Belgium plays an international pioneering role in the fight against trafficking in human beings and protection of victims, but gaps nevertheless persist in this system of protection⁴¹.

Firstly, it appears that detection of a trafficking situation in which a UFM is the victim is difficult, especially in the context of economic and domestic exploitation. Secondly, the Belgian legislation on guardianship over UFM - and the consequent protection - excludes European unaccompanied minors, many of which are potential victims of trafficking in human beings. Then, if a victim of trafficking in human beings has the opportunity to ask permission to stay in Belgium as a victim, the conditions for granting this status are difficult - or impossible - to meet for most minors, resulting in a very small number of UFM victims

⁴¹ van Zeebroeck, Ch. (2009). "La protection des mineurs étrangers non accompagnés victimes de la traite des êtres humains", Editions Jeunesse et Droit, Collection du Centre interdisciplinaire des droits de l'enfant, avril.

being granted the status of victim. Finally, the study finds that all minors that turn out to be victims of trafficking are not always quickly directed to a specialized shelter for child victims and that most guardians registered with the Guardianship Service (FPS Justice) who have to assist child victims of trafficking are not specialized in this type of assistance.

Recommendations

1. Consider child victims of trafficking and trafficking in human beings first and foremost as minors to whom special protection should be granted as quickly as possible.
2. Direct child victims or alleged victims as quickly as possible to a specialised shelter where they will remain until a durable solution which is the most appropriate for them has been worked out.
3. Educate and train all persons likely to come into contact with unaccompanied minors, victims of trafficking, to learn how to detect situations of trafficking (guardians, lawyers, police, social or medical services, schools, reception structures, centres for young people, etc.).

5. CHILDREN WITHIN THE JUVENILE JUSTICE SYSTEM

5.1 LEGAL POSITION OF MINORS

As regards to the legal position of minors in Belgium, little has changed. The Government still does not respond to the comments on the right to be heard⁴², the assistance of juvenile law lawyers and the access to the judge.⁴³

THE RIGHT TO BE HEARD (ART. 12, C.O., 2002, NO. 8-9, 21)

In 2002, the Committee on the Rights of the Child told Belgium that the right to be heard, as written into Article 931 of the Judicial Code, is arbitrary and that the child's right is not adequately guaranteed⁴⁴. Under this Article, in all proceedings relating to him, a minor capable of discernment may, at his request or by a decision of the court, be heard by the judge or by the person appointed by the judge for that purpose. Article 56bis of the Law on the Protection of Minors (Jeugdbeschermingswet) states that minors over 12 years old should be summoned to the Juvenile Court in order to be heard. Contrary to Article 931 of the Judicial Code, this is an obligation to issue a summons to appear, with no exceptions possible to this rule, and the minimum age of twelve years is used as a criterion. The juvenile court can always decide to hear a minor under the age of twelve if it considers this appropriate (Article 51, 1st §, of the Law on the Protection of Minors - Jeugdbeschermingswet). The introduction of the right to be heard into Belgian legislation is obviously a good thing. It is an important step in the legal recognition of children as legal subjects but its effect is not consistent: sometimes an age is determined, sometimes not; only the Juvenile Court must issue a summons to appear while other courts are not under this obligation, etc.

ASSISTANCE BY JUVENILE LAW LAWYERS (ART. 12)

The role of counsel for the minor is not specified in any law. This is still very confusing for both the minor and the lawyer himself. Representative, confidant, advocate, counselor, guardian, spokesperson, etc., he must be all at once, and he must adapt to his interlocutor.

⁴² The NGOs prefer to call this right "the right to speak" because of the active role that is given to children: when exercising the right to speak, the child decides to express his opinion, while in the framework of the right to be heard, only the judge decides to hear the child.

⁴³ Coordination des ONG pour les droits de l'enfant asbl (CODE) & Kinderrechtencoalitie Vlaanderen vzw (KIRECO) (2001). "Alternative Report by the NGOs on the implementation of the Convention on the Rights of the child in Belgium".

⁴⁴ Concluding observations of the Committee on the Rights of the Child: Belgium, 13/06/2002, CRC/C/15/Add. 178.

Bar Associations organize a special training in juvenile law for lawyers willing to act for minors. Since 2005, the help desk for juvenile law is composed of lawyers who have followed this course or who have pledged to undertake this training. But not all Bar Associations follow the same directive, with the result that the same quality of legal aid is not offered to minors⁴⁵ and that in the current situation, almost nobody defends exclusively the interests of the child.

Belgian law does not provide a right to legal counsel at the first police interrogation. This applies to minors as well as to adults. Further, minors are not entitled to contact a trusted adult. Belgium was criticized for this by the UN Committee against Torture⁴⁶ and by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg⁴⁷.

In Belgium, children are often not a party to proceedings in which they are nevertheless directly or indirectly involved, e.g. procedures as part of the divorce process of their parents. Consequently, in these cases they have no right to legal counsel to defend their interests.

Francophone NGOs believe that the best interests of the child should be central to all concerns and systematic assistance of a lawyer should be considered.

The plan on creating a *family court* provide for the hearing of minors and the assistance of a specialized lawyer. The NGOs are satisfied with the focus on the legal position of minors in these plans, but will this meet our demands?

ACCESS TO THE JUDGE AND THE RULE OF LAW

The right of minors to self-initiate proceedings is still not unanimously accepted. Minors must rely on their legal representative(s). This is a problem when representatives do nothing or if the interests of the child are in conflict with those of their legal guardian(s).

The NGOs regard access to the judge as a general principle of law. The enforcement of the fundamental incapacity of the minor under Belgian law is also subject to criticism. In the present situation, nobody defends exclusively the interest of the child. The assistance of a juvenile lawyer would be a much stronger guarantee for the interest of the child than it is the case now. Legislation would improve the quality of the assistance, which already exists, for example in the case of juvenile delinquents.

⁴⁵ Decock, G. (2009). "De Unie van Jeugdadvocaten", Panopticon, 2.

⁴⁶ Concluding observations of the Committee against Torture: Belgique, 19/01/2009, CAT/C/BEL/CO/2, § 16.

⁴⁷ Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium December 15-19, 2008, for the attention of the Committee of Ministers and the Parliamentary Assembly.

Recommendations

1. Take decisive action on the legal status of minors. The 3 draft bills concerning the right to be heard, the access to justice and the assistance of a juvenile law lawyer are ready. Those three bills must be jointly introduced.
2. Adapt Article 931 of the Judicial Code in order to make it in line with Article 12 of the UNCRC. The NGOs consider this right as a *right to speak*; this implies an obligation for the judge to issue a summons to appear to the minor, but no obligation for the minor to appear in court.
3. Provide assistance by a lawyer *qualified to practice juvenile law* for all minors in any case in which he or she is directly or indirectly involved.
4. Include the right to a counsel at the time of questioning by the police in Belgian law. His role should be clearly defined: he is the defender and spokesperson of the child. Information should be given to children.
5. In all proceedings directly or indirectly relating to a minor, assure that access to a judge is guaranteed.

5.2 REFORM OF THE LAW ON THE PROTECTION OF MINORS

In Belgium, the juvenile justice system was extensively amended: the Act of 8th April 1965⁴⁸ on the protection of minors has been amended by the acts of May 15⁴⁹ and June 13⁵⁰, 2006.

In this reform, the policy of protection of minors, which is the prevailing approach to juvenile delinquency in Belgium, has been safeguarded. However, it is a hybrid legislation, in that it mixes protective measures, sanctions and restorative justice. The criminal approach is privileged: concepts of criminal law for adults are increasingly applied to minors.

Our main concerns are the following:

TRIAL OF JUVENILE OFFENDERS BY ADULT COURTS (ART. 40, C.O.2002, NR. 6, 7, 31, 32)

In Belgium, it is still possible to refer a person over 16 years old who has committed a serious offense to an adult court, in order to be tried as an adult. The legislator missed the opportunity to simply delete this referral procedure when reforming the 1965 Act, and did

⁴⁸ Loi du 8 avril 1965 relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait, *M.B.*, 15 avril 1965.

⁴⁹ Loi du 15 mai 2006 modifiant la législation relative à la protection de la jeunesse et à la prise en charge des mineurs ayant commis un fait qualifié infraction, *M.B.*, 2 juin 2006.

⁵⁰ Loi du 13 juin 2006 modifiant la législation relative à la protection de la jeunesse et à la prise en charge des mineurs ayant commis un fait qualifié infraction, *M.B.*, 19 juillet 2006.

not take into account the Concluding observations of the Committee and the concluding recommendations of the Committee against Torture⁵¹.

In opposition to the official report from the Belgian State, the creation in an adult court of a separate chamber dealing with juvenile offenders, composed of judges who have experience in juvenile law and criminal law, does not solve the problem. Indeed, judging a juvenile as an adult is not related to the qualifications of the judge, but to the nature of the law to which the minor is submitted. In this case, the criminal law for adults is applied.

An additional problem is that up until now in the Court of Assizes a decision of guilty or not guilty is still decided by a jury of 12 citizens without any special training. Moreover, the ECHR condemned Belgium because the decisions of the Belgian Courts of Assizes are not motivated.

DETENTION (ART. 37, ART. 40, C.O.2002, NR. 31, 32)

In Belgium, detention is the most common response to the deviant behaviour of a minor, including confinement in prison (together with adults) or in specialized institutions created specifically for this purpose (public residential institutions for the protection of minors⁵²). This is in total contradiction with the Convention.

The NGOs argue that there is no structural shortage of detention centres. The current shortage of detention centres for juvenile offenders is due to the large number of inappropriate placements in the community institutions and the lack of youth assistance services. If young people with a disability, a psychiatric problem or in a problematic educational situation currently residing in the Community institutions had been receptioned in a proper and appropriate manner, there would be no need for additional detention centres.

The closed detention centre for juvenile delinquents at Everberg, originally set up in 2002 for a period of two and a half years, allowed the abolition of placement of juvenile offenders in jail for a maximum of 15 days. However, this detention centre is still in use. The number of young people imprisoned in Everberg is constantly increasing: the report of the "Committee of Experts to assess the functioning of the Centre" highlights the fact that the number of juveniles locked up increased from 187 youngsters in 2002 to 570 in 2004. Meanwhile, the length of incarceration is also increasing.

On November 3rd, 2008, the Federal Government and the three Communities have signed a Memorandum of Understanding on the new federal closed centres for juvenile offenders that plans for a significant increase in the number of places. In addition, 10 new closed places are under construction at the IPPJ of Wauthier-Braine. Ultimately, in the French

⁵¹ Concluding observations of the Committee against Torture: Belgium, 19/01/2009, CAT/C/BEL/CO/2, § 17.

⁵² In short French: IPPJ.

Community, the number of closed places will increase from the current 85 to 239 (in 2012), nearly tripled in four years; in the Flemish Community, the number of closed places will increase from 130 to 266⁵³. On November 20th, 2009 a new federal institution for juvenile delinquents opened at Tongeren⁵⁴. It is unclear on which criterion young people will be placed in the institution at Tongeren. The extent to which the infrastructure and the facilities meet the requirements for the reception of minors is unclear. The institution is housed in a former prison, which was then abandoned because the infrastructure is not sufficient.

This general increase in the use of confinement has no link whatsoever with official statistics on juvenile delinquency. The National Institute for Criminalistics and Criminology (INCC) even specifies that youth crime has fallen slightly since 1968, and also that juvenile offenders today are not younger neither more violent than before⁵⁵.

In addition, the incarceration aspect of these centres is emphasized. According to Mr Hammarberg, the Commissioner for Human Rights of the Council of Europe, *“Nevertheless, it is feared that the increased number of places in closed centres will result in the holding of more minors in such facilities. The placement of minors in closed centres, which under Article 37 of the Convention on the Rights of the Child is supposed to remain the exception, is likely to become more common. The Commissioner urges the authorities to ensure that alternative penalties and educational measures are fully effective, so as to limit the use of placements in closed centres”*⁵⁶.

PARENTAL TRAINING COURSE (ART. 3)

Because of the focus on problematic educational situations, parents who encounter problems in the education process are less likely to openly acknowledge these problems, and they also tend to feel "guilty". The parental courses, created in 2007 for parents of young people who have committed serious offences, play a role in this negative aspect. The courses are designed for parents of young people who have committed an act qualified as an offence and who appeared indifferent to this. These training courses make little sense, first because parents who attend the courses are evidently not indifferent, and second because it makes no sense for parents who refuse to participate in those training. The criminalization of

⁵³ Figures collected by "Défense des enfants international (DEI) Belgique section francophone": Number of places: in Saint-Hubert + 50 in 2009, in Achêne + 120 in 2012, in Tongeren (Dutch speaking) + 34 in 2009, in Everberg (Dutch speaking) 50 + 76 in 2012. Within IPPJ, closed centres: 69 + 10 in 2009.

⁵⁴ Belgische Kamer van Volksvertegenwoordigers. Integraal Verslag Commissie voor de Justitie dinsdag 08/07/2008 Voormiddag. CRIV 52 COM 295.

⁵⁵ Vanneste, C., Goedseels, E., & Detry, I. (2008) "La statistique "nouvelle" des parquets de la jeunesse: regards croisés autour d'une première analyse", INCC, Academia Press, Gand. <<http://www.nicc.fgov.be/Download.aspx?ID=1569>>", According to statistics from the NCIC, in 1968, 60,000 crime cases in which juveniles were suspected were registered with the Prosecutor's Offices for Juvenile Delinquency in Belgium. This figure fell to 50,000 in 2005, a decrease of 17%. The proportion of juveniles involved in all crimes recorded in Belgium has decreased: 8,9% in 1968 to 6,4% in 2005.

⁵⁶ Report of the Commissioner for Human Rights of the Council of Europe, June 17, 2009, CommDH(2009)14, § 138.

parents does not improve the educational relationship between parents and children. This way, the needs and rights of children are not respected. The parental training courses do not work. The Federal Government invests 2.3 million per year in it, although only a few dozen cases are concerned. The cooperation agreement between the Federal Government (who pays) and the Communities (who execute) is ended. The statutory provision remains in effect.

Recommendations

1. Abolish the possibility to judge juvenile offenders like adults and guarantee the right of children to benefit from a procedure which promotes their sense of dignity and personal worth.
2. Assess the use of confinement as practiced today and freeze the creation of any new places in closed institutions.
3. Engage in significant cultural policies, education and youth policies, which play a role in preventing crime and under-recognized so far.
4. Suppress the legislation for parental training.
5. Recognize children and young people as active partners in education. Children's rights should be a common thread within the educational structure.

5.3 MUNICIPAL ADMINISTRATIVE SANCTIONS

Through an amendment in the Municipal Law, administrative sanctions for causing *nuisance* can from now on be imposed on minors over 16 years⁵⁷. It is also important to note that through this amendment more persons are allowed to act as sanctioning officers: municipal officials, officials from transport companies and security personnel were granted limited authority.

The implementation of these municipal administrative sanctions seriously undermines the right to equality before the law as well that the legal certainty. In an atmosphere of "zero tolerance", the intervention of the municipalities sometimes takes on absurd forms, and it is not clear who can hold the municipalities accountable in case of violations of the rights of children.

There are many concerns: the concept of *nuisance* is not defined and is almost randomly described. There is no proper implementation of the sanctions (fines or license revocation): from "mediation" (which can also consist of only a hearing) to restitutive provisions and provisions for 'community service'. There is no clear procedure for "mediation" (mandatory for minors), even for the hearing of minors. There is no practical limit to age anymore: also

⁵⁷ Note that a draft bill currently proposes that municipal sanctions may be imposed on young people over 14, see in particular articles published on Januari 12, 2009, available on www.lesoir.be and www.lalibre.be.

children under sixteen are clearly targeted. There is a danger of conflict of interests: administrative fines are paid to the municipality. The separation of powers is not respected: first municipalities decide which conduct they criminalize and then which sanctions they impose; however they are both legislative and judicial power and are also possibly involved when there is damage to their property. Moreover, there is an expansion of categories of persons who are authorised to impose sanctions. Regarding the right to equal treatment before the law, minors are given unequal treatment compared to adults: administrative fines are not registered in a criminal record, but administrative fines imposed on minors are transmitted to the Prosecutor's office in order to list repeat offenders. The general principles of criminal law are therefore not applicable to the municipal administrative sanctions procedure.

Recommendation

1. Thoroughly study the effects of the policy on administrative sanctions.

6. FOREIGN MINORS

6.1 ACCOMPANIED FOREIGN MINORS

CONFINEMENT OF FOREIGN MINORS (ART. 2; ART. 3; ART. 27; ART. 28,1; ART. 31,1; ART. 37; ART. 3 EVRM; ART. 8 EVRM⁵⁸)

Children accompanied by their parents are still locked up in detention centres, where they may stay several months. This concerns children of parents who apply for asylum at the border and who do not have the required documents to enter the territory⁵⁹. Research indicates that the arrest is traumatizing. The environment is not adapted to the presence of children: the children have little opportunity to play outside; only minimal education is offered to them; they live in a group system with adults and children together; the stress and tension levels in the centres are very high.

RECEPTION CRISIS (ART. 27; ART. 28; ART. 31; ART. 22; ART. 24; C.O. 2002, NR. 19)

The Law of January 12th, 2007⁶⁰ on the reception of asylum seekers and certain other categories of foreigners grants to asylum seekers and families with children who are illegal immigrants the right of residence in an asylum centre. Since the summer of 2008, we face a saturation of the reception network as a result of changes in the legislation on asylum. During the winter months, more than 1.000 people entitled to reception were not accepted in shelters and received no financial support from the Government. A similar number stayed at hotels. Although exact figures are not available, it is certain that there were a lot of children in that number. These asylum seekers do not receive the normal legal, social or medical support, which disadvantages them in their ongoing asylum procedure.

The living conditions in the emergency shelters and hotels do not constitute a decent and humane life for children. The food served in the emergency shelter is poorly varied and thus inappropriate to feed children for a longer period of time; there is a lack of meaningful leisure activities suitable for children; health care is limited to the strict minimum; and the children are not enrolled in any school. Children living on the streets with their parents are in even more precarious conditions and their rights are clearly violated: no housing, no school and no qualitative access to the asylum procedure.

⁵⁸ In addition to various articles of the Convention, this situation violates articles 3, 5 and 8 of the European Convention on Human Rights. This reasoning was followed by the European Court of Human Rights, which condemned Belgium on October 12, 2002, for the way Tabitha, a five year old girl, had been imprisoned and repatriated in 2002.

⁵⁹ As asylum seekers they are legal residents.

⁶⁰ Loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers, *M.B.*, 7 mai 2009.

Besides, the situation of families who had applied for asylum and were staying in a centre but received afterwards a negative decision, requires special attention. Because of the negative decision, they have to leave the centre, despite their right to material support. Between the filing of the application to the Municipal Public Welfare Centre (OCMW-CPAS), the response of the centre and the (possible) return to a reception centre carried out by Fedasil, these families live on the streets.

The fact that the Belgian Government violates its own Law on Reception is confirmed in numerous judgments of the labour courts.

RETURN HOUSES

In October 2008, the Minister for Migration and Asylum Policy decided to start a pilot project as an alternative to the detention of families in detention centres. In this project, the families are placed in "return houses". Such families are assigned a "coach" from the Foreigners' Office. We welcome this development, but we see a number of concerns:

This alternative to detention does not apply to all children. Children of parents who apply for asylum at the border but who do not have the required documents are still locked up in detention centres⁶¹.

The coaching of the family only starts when families have exhausted the procedure and are detected by the police. The role and status of the coach is therefore one-sided: he or she only offers "coaching" focused on the return to the country of origin and offers no comprehensive assistance/guidance on all possible prospects.

The arrest and transfer of families to return houses appears in many cases very traumatic for the families. There is no good information and cooperation among the various services involved.

Although the NGOs have (limited) access to families residing in the return houses, this remains a favour given at the discretion of the State Secretary for Migration and Asylum Policy.

It is not clear yet whether the findings of the NGOs will receive a full place in the assessment of the pilot project in order to ensure the continuation or structural embedding of the return houses in the asylum policy.

⁶¹ See above.

Recommendations⁶²

1. Put a stop to the detention of children by prohibiting the administrative detention of minors by law.
2. Take more effective measures, in order that every child that is entitled to reception under the Reception Law has the right to stay in an asylum centre. Ensure that each child receives equal care, regardless of the residence status or family situation of the child.
3. Protect family life and respect for privacy.
4. Start with a holistic approach in counseling families. This holistic approach begins when staying at the open reception centre and provides guidance for integration and support in developing a realistic perspective for the return to the country of origin, if in the best interest of the child.
5. Take the necessary measures to conduct the arrest and the transfer of families in a humane way.
6. Work together with the NGOs who are defending the rights of children in order to draft a definite scheme regarding visits to return houses and to include the findings of the NGOs in the assessment of the project on return houses.

6.2 UNACCOMPANIED FOREIGN MINORS

AGE DETERMINATION (G.C. 2005, NR. 31)

Since the entry into force of the Guardianship Act (May 1, 2004), the Guardianship Service is responsible for the identification of the Unaccompanied foreign minors (UFM). In the case of a doubt regarding the age of the person, this service performs a triple medical test: examination of the wrist bone, radiography of the clavicle and teeth analysis. The fact that this test is utilized for legal purposes is a matter of concern. This test is performed even when the minor possesses identity documents and the Guardianship Service relies solely on the results of this test to conclude whether the person is a minor or an adult. There is a controversy on the use of the medical test to determine the age. There are scientific evidences that the medical tests are not reliable because there is often a margin of error when testing children from Africa or Asia.

When a young person is considered an adult on the basis of these test results, no further protection is offered to him. The psycho-emotional test specified in the Royal Decree of December 22, 2003⁶³ was never implemented.

⁶² The NGO's adhere to the recommendations formulated by the federal ombudsman in his research regarding the open centres as well as the document written by Vluchtelingenwerk Vlaanderen "The Law on the reception, an evaluation" (2009), <http://www.vluchtelingenwerk.be/bestanden/evaluatie-wet-opvang-asielzoekers.pdf>

⁶³ Arrêté royal du 22 décembre 2003 portant exécution du titre XIII, Chapitre 6 " Tutelle des mineurs étrangers non accompagnés" de la loi-programme du 24 décembre 2002, *M.B.*, 29 janvier 2004.

RECEPTION ARRANGEMENTS (G.C. 2005, NR. 39, 40, 44-45)

The reception of UFM is organized by the Federal Government as well as by the Communities. It is structured in 3 phases: it starts with a first phase of observation and orientation for all UFM, whatever their administrative status is, and it occurs in 2 federal centres created in 2004. A second phase takes place in a reception structure - theoretically adapted to individual situations and needs. At the community level, additional centres have been created since September 2001. Reception adapted to the needs of young people is still utopia. In fact, the majority of UFM are placed in a federal centre during the second phase, which has large structures that can accommodate UFM. These structures are not suitable for the youngest children, and also not suitable for particularly vulnerable children. For several years now, the Communities do not want to make places available to UFM in difficulty. In addition, since September 2008, the federal reception network is completely saturated and UFM are placed in centres for adults or not placed at all. So it happens that they do not benefit from the reception and protection circuit: no shelters, no guardian, no qualitative assistance with the asylum procedure.

RESIDENCE AND DURABLE SOLUTION (G.C. 2005, NR. 31-32, 89)

The residence status of UFM who do not make an application for asylum, or failed asylum seekers who are UFM, is regulated since September 15, 2005 by a circular letter, published in the Official Gazette on October 7, 2005. This circular gives discretionary power to the Minister of the Interior or his delegate, the Foreigners' Office, which can grant a temporary right of residence to the minor until a durable solution in his best interest is found.

During the search for durable solutions, the UFM are granted a very precarious residence permit or are issued with an order to leave the territory which can sometimes be extended. The granting of temporary residence is conditional on owning a passport, often difficult to obtain. This is very damaging to children who remain uncertain about their future and the opportunities available to them. The Foreigners' Office has a very restrictive view of this durable solution that is first and foremost understood as a return to the country of origin. Although the guardian may suggest a durable solution, the Foreigners' Office has the power to decide whether to grant a residence permit or issue an order to leave the territory. Consequently, it is the Foreigners' Office that decides on this durable solution.

GUARDIANSHIP (ART. 2; G.C. 2005, NR. 33, 35)

Since May 1, 2004, Belgium has created a system of legal representation of UFM. The "Guardianship Law"⁶⁴, adopted on December 24, 2002, created the Guardianship Service. Its

⁶⁴ Titre XIII, Chapitre 6 "Tutelle des mineurs étrangers non accompagnés" de la loi-programme du 24 décembre 2002, *M.B.*, 31 décembre 2002 et Arrêté royal du 22 décembre 2003 portant exécution du Titre XIII, Chapitre 6 "Tutelle des mineurs étrangers non accompagnés" de la loi-programme du 24 décembre 2002, *M.B.*, 29 janvier 2004.

mission is to identify the minor, take charge of him/her and assign him a guardian. The creation of the Guardianship Service is an important step. However, NGOs are finding it very difficult for the Guardianship Service to fully assume all its missions with the human and budgetary resources at its disposal. There still are not enough salaried guardians (employed by an association). Most guardians are independent guardians. They have too disparate skills. The current training provided to guardians and the quality control of their work is not adequate.

Moreover minors from countries outside the EEA are excluded from the guardianship system since they are not UFM. They are also not under the protection procedure of the Ministry of Home Affairs, Foreigners' Office. These include in particular the Bulgarian and Romanian UFM to whom a guardian has not been assigned since 1 January 2007 and who in 2006 accounted for no less than 10% of UFM reported to the Guardianship Service (230 minors).

COORDINATION BETWEEN AGENCIES FOR ASSISTANCE TO UNACCOMPANIED MINORS (ART. 20)

Several authorities are involved in providing assistance to UFM. The federal agency Fedasil is responsible for the reception of unaccompanied foreign minors (asylum seekers and non-seekers) and the Guardianship Service is responsible for appointing the guardian. The Youth Welfare Agency (Flemish Government) is responsible for the accreditation, subsidies and regulations of the youth assistance in Flanders and for the specific residential facilities for unaccompanied foreign minors. The "Aide à la Jeunesse" (French community) is responsible for the accreditation, subsidies and regulations of the youth assistance in Wallonia.

A cooperation agreement between the various authorities and responsible authorities on organizing assistance, exchange of information and coordination of jurisdictions does not exist. This means that the type of assistance and the assistance process is randomly determined. In addition, the Guardianship Law provides that the reception and the coaching given to the UFM depend on the status of the youth (asylum seeker or not an asylum seeker) and not on the needs of the child. The lack of a cooperation agreement also hampers the exchange of information between the guardian and the care agencies that are not under the rule of shared professional secrecy. The position of the guardian in the framework of the assistance is also unclear.

STATUS OF UNACCOMPANIED MINORS (ART. 3, ART. 4; ART. 22; COE – CM/ REC (2007)9)

UFM, who do not apply for asylum, have no special status in the Residence Law. The protection of the right of residence of minors is addressed only by circular letter, which provides no legal certainty to the minors. In addition, the circular letter deals with the issuance of a removal order to be delivered to the (Belgian) guardian of unaccompanied

foreign minors. The decisions taken in accordance with the circular letter are not justified in function of the application of the principle of the “best interest of the minor”.

The NGOs also complain that the assistance given to a foreign minor depends on whether or not he has applied for asylum and therefore does not depend on the needs of the minor.

Recommendations

1. Diversify methods to determine the age (e.g.: preliminary interview by the Guardianship Service; seek the advice of persons who know the minor (social workers, his lawyer, etc.) and who, having observed his/her daily behaviour), could help to determine the age of the young person.
2. Carry out the triple test with the consent of the young person who claims the status of minor and after he has grasped the reasons for the examination. Also explain the randomness of the results.
3. In accordance with the Guardianship Law, any doubt as to age must benefit the young person who claims to be a minor.
4. Increase the reception capabilities for minors in general.
5. Adapt the reception of UFM in function of their individual needs, with the help of a guidance plan.
6. Organize additional, more specialized reception of certain categories of UFM: pregnant minors and minors with a child, minors suffering from (serious) psychological disorders, very young children, etc.
7. Grant all UFM the full right of residence on the territory until a decision on a durable solution in the best interest of the minor is made.
8. Insert this residence status in the Law of 15 December 1980 on foreigners.
9. Ensure that this issue is debated and decided by a committee of experts and not by the Foreigners’ Office. This decision must be taken after having taken into account the pros and cons of returning to the country of origin, a family reunification in a third country and a residence permit of indefinite duration in Belgium.
10. Only consider family reunification in the country of origin if this is in the best interests of the child, with guarantees as to the reception of the child and ensuring that the parents take charge of the child.
11. Delete the condition "are not nationals of the EEA" from the official definition.
12. Provide additional public funds to the Guardianship Service to enable it to realize all its missions.
13. Enhance the professionalization of guardianship, through training, adequate remuneration and monitoring the work done.
14. Make sure a cooperation agreement is drawn up between the authorities concerned.

15. Make sure that the Residence Law also includes protection status for UFM and that the decision is explicitly justified in terms of the assessment of "the best interests of the minor".



7. EDUCATION AND LEISURE

7.1 EDUCATION

INEQUALITY OF OPPORTUNITIES (ART. 28, ART. 29)

In Belgium, several decrees stipulate that achieving equal opportunities is one of the missions of the school⁶⁵. Yet, education remains largely unequal.

Specifically, education is characterized by great variation in performance between students⁶⁶, between types of education and between schools, high repetition rate (i.e. the proportion of pupils from a cohort enrolled in a given grade at a given school year who study in the same grade in the following school year), and early relegation to forms and types of education courses leading to very unequal training. The dropout rate is alarming. One in three fails to complete secondary education. These recurrent inequalities prove to be directly related to the socioeconomic and cultural origin of students⁶⁷.

The educational situation of children in poor families is particularly devastating. This is explained by several factors: difficult living conditions, lack of cultural resources, difficulty in coping with school expenses, difficult or nonexistent relationships between family and school, etc. Very early (sometimes at the time of nursery education), many children living in poverty are disaffected from school. A great number of children living in poverty fail at school. Many are relegated to special education (types 1 (mild disability), 3 (behavioural) and 8 (learning disabilities)), and few reach beyond the 2nd secondary. Some do not master reading at the end of their compulsory education. Finally, most have no diploma or at most a certificate of primary education⁶⁸.

FREE EDUCATION (ART. 28, C.O. 2002, NR. 19)

Free education, prescribed by Article 24 of the Belgian Constitution, is far from effective⁶⁹: costs are spread throughout the school year and they increase throughout the school

⁶⁵ See Part of the “Décret Missions” (Décret de la Communauté française du 24 juillet 1997 définissant les missions prioritaires de l’enseignement fondamental et de l’enseignement secondaire et organisant les structures propres à les atteindre, *M.B.*, 23 septembre 1997) and of the Decreet van 28 juni 2002 betreffende gelijke onderwijskansen-I (*B.M.*, September 14, 2002).

⁶⁶ Figures from PISA (Program for International Student Assessment) prove this.

⁶⁷ ATD Quart Monde Wallonie-Bruxelles (2008). “Le droit à l’éducation”, diverses analyses disponibles via www.atd-quartmonde.be.

⁶⁸ The Certificate of primary education is obtained at the end of the first cycle, i.e. at the approximate age of 12.

⁶⁹ See especially, A., Lacroix, J., & Hoyos, E. (Eds), “Le coût scolaire à charge des familles”, Bruxelles, 2006, to be downloaded from the website of la Ligue des familles. See also Ligue des familles, “Le coût de la rentrée scolaire 2009”, Bruxelles, août 2009.

curriculum; parents have little scope to reduce costs; some expenses are not authorized by the legislation; etc.

The measures implemented by the authorities to improve access to free education are inadequate (in the French Community: reduction and clarification of fees, allowance at the start of the school year, introduced in 2007, etc.). Therefore, the school has always been a cost to families, which leads to discrimination between students and undermines good school integration and schooling itself.

DROPPING-OUT, EXCLUSIONS AND RELEGATIONS (ART. 28, C.O. 2002, NR. 19)

In many cases, dropping out of school is linked to poverty, repeated failures, lack of perspective and meaning, difficulty of meeting the demands of the school, misunderstandings between families and schools, etc. It is the same for "recurring absenteeism," which can occur very early in the school, sometimes as a result of decisions and pressures by the school.

Services for combatting school drop-out are multiplying, but not really coherent. Often, principals as well as teachers, parents and youth themselves have difficulty finding appropriate assistance.

Overall, there is a general tendency to criminalize the concept of school dropout. The circular letter PLP 41⁷⁰, which bolsters contacts between police and school leads to reporting these young persons to the judicial authorities. In addition, criminologists working with the public prosecutor's office are requested to combat school drop-out. These new trends are introduced gradually, while no study on the causes of school drop-out has been made, and therefore without any scientific basis.

There is therefore a need for a new educational structure and a new school environment that would address exclusion, which already starts in pre-primary education. Repressive measures such as withdrawal of allowances in case of school truancy or insufficient attendance of nursery school do not contribute to greater involvement in the school system; on the contrary, they undermine the fundamental right to education.

SPECIAL EDUCATION (ART. 2, ART. 23, C.O. 2002, NR. 19)

The UN Convention on the Rights of Persons with Disabilities is in force in Belgium since July 2, 2009. We hope that this marks an important turning point because the situation of children with disabilities remains a concern at many levels, including in education.

⁷⁰ Circulaire ministérielle PLP 41 du 7 juillet 2006 en vue du renforcement et/ou de l'ajustement de la politique de sécurité locale ainsi que de l'approche spécifique en matière de criminalité juvénile avec, en particulier, un point de contact pour les écoles, *M.B.*, 24 juillet 2006.

Even today, barely 2% of students with a disability are integrated into mainstream education with a specialized program⁷¹, which makes Belgium one of the most segregated countries of the OECD. However, in the French Community, a recent decree proposes⁷² a series of measures to promote integration of disabled children in education, to simplify administrative arrangements and provide assistance to all students with special needs, whether they attend special education or not. We hope that this is a step that will be implemented in practice.

Since 2008 a political agreement was reached in Flanders on the reform of special education to an education continuum between mainstream and special education. This case has however stalled, and over the last 10 years the status quo remained. For children with severe disabilities the right to enrolment in mainstream education is significantly eroded, contrary to Article 2 and Article 23 of the UNCRC. Insufficient support mortgages the choice of inclusive education. Also in the learning care framework, which outlines the future of education for children with disabilities, access to mainstream education remains limited for children graded under care level 4.

Moreover, since the 90s, associations and academics⁷³ denounced the policy of relegating many children from precarious backgrounds and/or foreign nationals to special needs education⁷⁴. Education indicators⁷⁵ confirm an overrepresentation of disadvantaged children in the special needs education system. A child living in a very poor district is 4 times more likely to be oriented to the special needs education system than a child living in an affluent district. This risk is increased to 8 when we consider only type 1 (mild disability) education. Most affected children are relegated to the special needs education system when attending primary school or at the start of secondary education, while no specific disability has been detected. Because of their social, economic and/or cultural vulnerability, they have accumulated difficulties and delays to which mainstream education has failed to respond. This orientation is often painfully experienced by children and their families. Their educational background is also limited, as are their chances of returning to mainstream education, to continue their studies, and finally to integrate into the workplace and in society.

⁷¹ Ministère de la Communauté française de Belgique, “Les indicateurs de l’enseignement”/ETNIC Commission de pilotage de l’enseignement, 2006 et 2007. Downloadable at [http://www.enseignement.be/index.php?page=24775\[parms\]](http://www.enseignement.be/index.php?page=24775[parms])

⁷² Décret du 5 février 2009 portant des dispositions en matière d’enseignement spécialisé et d’accueil de l’enfant et de l’adolescent à besoins spécifiques dans l’enseignement obligatoire, *M.B.*, 10 avril 2009.

⁷³ See Tremblay, Ph. (2007), “Evaluation de la validité et de l’efficacité interne de l’enseignement spécialisé primaire de type 8 en Wallonie”, *Education-Formation: Tribune libre d’informations et de discussions pédagogiques*, e-286, novembre.

⁷⁴ ATD Quart Monde Wallonie-Bruxelles (2008), “Le droit à l’éducation: l’orientation massive d’enfants précarisés en enseignement spécialisé”, analyse.

⁷⁵ Ministère de la Communauté française de Belgique, “Les indicateurs de l’enseignement”, ETNIC Commission de pilotage de l’enseignement, 2006 et 2007. Downloadable at [http://www.enseignement.be/index.php?page=24775\[parms\]](http://www.enseignement.be/index.php?page=24775[parms])

CULTURE (ART. 29, ART. 31)

The creation of a Culture and Education task force within the French community is very positive. In addition, a decree of 2006⁷⁶ recognizes the practice of linking culture to education. However, this decree is unequal in its implementation as access to culture is not made mandatory; only teachers willing to practice this or informed teachers will derive any benefits from it for their students. In particular, we regret that no more attention is paid to an existing mechanism in the French Community, by utilizing down time to engage children in artistic activities. These are educational activities (APA⁷⁷) for primary school classes when the teacher is absent due to training.

HUMAN RIGHTS AND THE CHILD AT SCHOOL

Recall that, to date, neither the Flemish nor the French Community provide education on children's rights in school accessible to all students at the beginning of primary education (6 years) and up to the end of high school (18 years)⁷⁸.

STEREOTYPES AT SCHOOL (ART. 29, C.O. 2002, NR. 26)

The NGOs welcome the advances in the fight against stereotypes (sexist, racist, homophobic, etc.). However, on the ground, the awareness of the actors and decision makers is too partial and transient to induce in all the sectors concerned, a real commitment to change, for example, action plans, specific follow-up tools, training opportunities, regulatory changes, etc.

WEARING OF RELIGIOUS SYMBOLS (ART. 14)

Currently, there is no uniform law regarding the wearing of religious symbols in schools (veil, kippa, etc.) in the French Community. The "«Neutrality Decree"«⁷⁹ expressly guarantees students freedom of conscience and freedom to manifest one's religion or beliefs. Furthermore, the "Missions Decree"⁸⁰ enshrines the principle of equality. The decree states that "providing all students equal opportunities for social emancipation" is an objective of education. Each student has "«an obligation to participate in all activities related to certification by the school and perform the tasks resulting therefrom"» which excludes for example that girls who wear headscarves are exempt from physical education classes.

⁷⁶ Décret du 24 mars 2006 relatif à la mise en oeuvre, la promotion et le renforcement des collaborations entre la culture et l'enseignement, *M.B.*, 22 mai 2006.

⁷⁷ The Decree of July 11, 2002 (Décret relatif à la formation en cours de carrière dans l'enseignement spécial, l'enseignement secondaire ordinaire et les centres psycho-médico-sociaux et à la création d'un institut de la formation en cours de carrière (*M.B.*, 31 août 2002)) offers the possibility to replace teachers who are absent because of activities related to permanent education by pedagogical leisure activities.

⁷⁸ We have discussed this in a more detailed way in part 1.5.

⁷⁹ Décret du 31 mars 1994 définissant la neutralité de l'enseignement de la Communauté, *M.B.*, 18 juin 1994

⁸⁰ Décret du 24 juillet 1996 définissant les missions prioritaires de l'enseignement fondamental et de l'enseignement secondaire et organisant les structures propres à les atteindre, *M.B.*, 23 septembre 1997.

However, each school has different rules on the wearing of religious symbols in school, resulting in disparities⁸¹.

Nevertheless, to date, the authorities have not wanted to take a unilateral and consistent decision on this matter. This approach allows, in a sense, to take into account all the nuances and particularities of everyone even if it may also put the school in an awkward position.

In fact, more and more schools ban the wearing of the veil. This pushes students who wish to wear it to go to the few schools that still accept the wearing of the veil (10% in the French Community⁸²).

The situation is different in the Flemish Community. Since September 2009 the wearing of religious symbols is banned in the Community Education system (GO!⁸³). The Dutch speaking NGOs believe that this is inconsistent with the purpose of education as expressed in Article 29 of the UNCRC which states that education should teach respect for the parents of the child, for cultural identity, language and values of the country where the child lives and the country where it was born, and for other civilizations. At school, the child must learn values such as tolerance and friendship among all peoples and ethnic, national and religious groups. A general headscarf ban is an obstacle to the achievement of these objectives and also restricts the freedom of choice of foreign girls.

Prior to legislative action, the Francophone NGOs promote the opening of a broad political debate. The issue of headscarves in schools is complex and goes beyond the religious aspect. A reflection on social diversity and intercultural dialogue is necessary. A reflection on social diversity and intercultural dialogue is indispensable.

STUDENT STATUTE

Students need a better status in order to fully exercise their rights within the education system. An expertise centre for participation must support the involvement of parents and pupils from disadvantaged groups in education.

General Recommendations

1. Develop a culture of achievement for all and increase resources in schools that receive students from disadvantaged backgrounds, with attention to the pre-primary school (2.5-6 years) and primary (6-12 years) school, and ensure student-school bonding.

⁸¹ Note that as the school rules can be quickly modified, contrary to decrees, this can be problematic for young veiled girls who attended a school that allowed them to wear the veil and at the start of the next school year are only admitted in school if they remove their veil.

⁸² De Muelenaere, M., & Dorzee, H., "Ces règlements scolaires à peine voilés", Le Soir, 23 juin 2007, p. 2.

⁸³ GO! stands for the education system of the Flemish Community. The headscarf ban does not cover the official subsidized and the free subsidized education system.

2. Identify and address students' difficulties as they arise, by a regular support first and foremost in class.
3. Reduce the repetition rate within a culture of academic success.
4. Extensively upgrade the technical and vocational programs, while avoiding that they would become programs where one is relegated to.

Specific recommendations

Free education

5. Strive for totally free compulsory education. Amend relevant decrees in this sense.
6. Fight against discrimination related to the problems of school fees (discretion; proposal and search for respectful solutions⁸⁴; solidarity fund).
7. Take a broad view of the concept of "school cost" in order to also take into account the other costs involved such as child care expenses or meals.
8. Improving the school-parent communication, particularly with families who do not share the school culture.

Drop out, exclusions and relegations

9. Develop practices that facilitate student-school bonding from the beginning of compulsory schooling (quality of welcome, respect and listening, support in case of problems). School principals should be provided with a clear procedure for combatting school dropout, and financial and human resources to implement the procedure. Ensure that a final expulsion measure is a very exceptional measure. Also repressive measures in case of truancy such as withdrawal of education allowances should be abolished and replaced by counselling such as Time-out (in Flanders).
10. Provide adequate resources to the services specialized in preventive action and counselling for young school drop-outs.
11. With regard to the future comprehensive reform of secondary education, the NGOs ask the Flemish Government to focus on structural solutions for school and learning fatigue as well as for the waterfall effects that hit the disadvantaged harder. The voice of parents and pupils in this debate must be heard.

Special needs education

12. Promote the right of every child to be integrated into the regular classroom ("inclusive education") and receive direct specialized services needed for its full development.
13. Ensure that adequate financial, material and human resources are made available to significantly stimulate the creation and development of new integration experiences.

⁸⁴ Some of these respectful solutions were proposed through "L'enseignement n'est pas gratuit..." published by ATD Quart Monde Wallonie-Bruxelles in 1999.

14. Improve access to education for children who are excluded (multiple disabilities, autism, etc.)
15. Pay special attention to vulnerable children (poor children, foreign children, disabled children, children in hospital, etc.).
16. Conduct a more precise steering system of the special needs education system (e.g. through a specific external assessment) to reliably inform the Government on measures to be taken regarding the different school populations.
17. Increase parental knowledge about the rights their children hold regarding special needs education and school integration.

Culture

18. Ensure access and participation to culture for all students.

Human rights and the child at school

19. Implement transversal and multidisciplinary education on children's rights at the centre of a coherent and comprehensive approach for as long as the child attends school. Show the children the practical implementation of children's rights.

Stereotypes

20. Continue the fight against stereotypes in a cross-sectional perspective and identify sufficient resources for this purpose.

Students' statute

21. Effectuate more work on the drafting of a clear students' statute and an expertise centre for participation.

7.2 CHILDCARE FOR CHILDREN AGED 0-3 YEARS (ART. 18, C.O. 2002, NR. 19)

The childcare policy for 0-3 years old children must combine care and learning. In addition to its educational role, personal development and prevention, childcare is a lever in the fight against poverty and ensures greater equality of opportunity from an early age⁸⁵.

These needs are largely unmet in Belgium, particularly in the Brussels-Capital Region and Hainaut, regions experiencing a very strong child population growth. Thus, at June 30, 2009, the number of places available in the French Community was 36.343, which corresponds to 27.2% of overall coverage (needs). The shortage particularly affects the poorest people. Facing the pressure of demand, we are witnessing the emergence of alternatives "at all

⁸⁵ UNICEF (2008), "The child care transition: A league table of early childhood education and care in economically advanced countries", Innocenti Report Card 8, Florence, UNICEF Innocenti Research Centre.

cost", organizing a commoditization of childcare and encouraging the development of a two-tier system, reinforcing inequality.

In Flanders also there is a glaring shortage of childcare places and certain quality criteria are not met. Less than 80% of the staff has followed training for childcare. In addition, the NGOs ask for a ratio of staff to children of minimum 1/5 to be applied as standard. Other deficiencies concern parental leave (the norm of 1 year at 50% of the salary is not achieved) and total expenditure on childcare and nursery education (Flanders spends less than 1% of the NBP)⁸⁶.

The childcare sector suffers from several problems: structural underfunding, lack of regulation and financial support for childcare for children with disabilities, skill levels of staff too low, lack of links with the most vulnerable families (although they are essential to the successful integration of children in these places, and allow support for parenthood), deprofessionalization and unplanned non-sustainable privatization resulting in reduced emphasis on skill requirements and working conditions, etc.

Recommendations

1. Ensure accessibility of care for all children between 0 and 3 years, regardless of the parents' financial and professional situation or marital status, regardless of their special educational needs, ethnic origin, language, possible disability, etc.
2. In addition to improving the quantity of childcare centres, continue efforts to expand the availability of quality childcare. The rate of 33% set by the Barcelona targets cannot be regarded as the ultimate goal but as a step.
3. Structurally reduce the financial participation of parents with low and middle income.
4. Continue efforts in order to gradually meet the needs of qualified, monitored and assessed staff, able to step back and be receptive to the manifestations of the child and circumstances of different families. Organize full time training in higher education institutes for specialized educators for children (bachelor degree). Belgium is one of the few countries where such training does not exist.
5. Encourage accessibility of children with disabilities to the same structures as other children by providing them with expert assistance if necessary.
6. Paid parental leave should be extended to at least 6 months, in accordance with the period that the World Health Organization and UNICEF determine as the minimum period of breast feeding.

⁸⁶ UNICEF (2008), "The child care transition: A league table of early childhood education and care in economically advanced countries", Innocenti Report Card 8, Florence, UNICEF Innocenti Research Centre.

7.3 LEISURE TIME FOR 3-18 OLDS

AFTER SCHOOL CARE FOR 3-12 OLDS (ART. 31, C.O.2002, NR. 19)

Following the developments in the labour market, the social demand for after school care for 3-12 year olds (before school, during lunch time, after school, etc.) increased over the last twenty years in Belgium (especially for children under 6 years). Almost all structures must refuse children due to lack of space and/or resources.

Day care in school is characterized by weak financial backing, precarious working conditions, but also the lack of personnel as well as its low rating. These conditions prevent the care structures in schools to fulfil their social and educational functions, and often force the school to only be a custody location.

People living in poverty are in dire need of childcare, since their children generally have little opportunity to participate in recreational, cultural, artistic and sports activities. Childcare for children with disabilities also faces the lack of regulations and financial support. Finally, there are not enough activities on offer for adolescents.

RIGHT TO REST AND LEISURE (ART. 31, ART. 12)

The Flemish Government is primarily engaged in organizing various activities for children and young people⁸⁷. This is an important approach with regard to Article 31. One doesn't bear in mind that all these organized activities (to which we might add all childcare initiatives) mean that children have very little time to themselves to play. Or with a slogan: "The right to play is mainly restricted by lack of own time".

Playing is par excellence an activity that children define themselves. This becomes increasingly difficult due to the extensive organization of leisure time and the pedagogising of leisure time.

The Flemish Government must develop a policy regarding leisure time, not only from the childcare perspective, but also from the perspective of children themselves. This long term vision should be put on track.

The study "Outdoor Games"⁸⁸ shows how self-organized playing in the public domain has halved in 25 years. Moreover it is "stale": the creative game forms have firmly declined. One of the factors that contribute to an explanation of this phenomenon is the increasing organization of children's free time.

⁸⁷ See Government report, 522-530.

⁸⁸ Kind & Samenleving (2009). "Buiten spelen! Onderzoek m.b.t. de relatie tussen (on-)beschikbaarheid van bespeelbare ruimte, de mate van buiten spelen en de gevolgen daarvan op de fysieke, sociale, psychische en emotionele ontwikkeling van de Vlaamse kinderen en jongeren".

USE OF PUBLIC SPACE

The NGOs observe that there is a growing intolerance to the use of public space by children and adolescents. The “hanging around” of young people is no longer tolerated or they are forced to go to places that are specially equipped for them. Skating e.g. is prohibited in many places. The NGOs are therefore concerned that a general climate of intolerance towards children and young people, also in the media, may lie at the basis of the reduction of their rights.

This concern is confirmed by such phenomena as the hassling of young people with devices like the Mosquito. In recent years lawsuits against playgrounds and day-care centres also were front page news. This is reflected in the repressive climate that prevails with regard to children and young people. Here we also refer to the municipal administrative sanctions as described in Chapter 5.

According to NGOs, there is a moral panic with regard to young people in public spaces. Governments only address the symptoms, and leave the real problems of young people untouched until nuisance is caused. Moreover, there is a lack of support structures for young people in large cities, because funds are released only when an initiative is motivated by a "security perspective".

Recommendations

1. Develop a transversal policy of childcare: eventually, all childcare should be governed by a single consistent regulatory framework.
2. Recognize the educational role played by childcare and give it a place of importance equal to that granted to other places of education and socialization of children, particularly by valuing the workers in this sector in terms of training and remuneration.
3. Valuing the social mix within the childcare environment.
4. Promote a participatory culture. Encourage the participation of children from an early age within any childcare environment. Foster collaboration and involve parents and local communities, as well as child specialists and academic institutions in the definition of quality and monitoring services for early childhood. Highlight the importance of recruiting staff that represents the ethnic diversity of the community.
5. Consider and seek to reduce, by non-stigmatizing means, the various barriers to participation in cultural and recreational activities.
6. Promote an educational alliance between the school sector and that of childcare, putting the child at centre stage to develop a quality childcare, adapted to their needs, linked to, balanced and consistent with the living environment of the child.
7. Promote the integration of children with disabilities into after school care, setting up a network of partnerships.

8. In order to research the time dimension in a child's life, it is necessary that time perception research during leisure time be further explored. Such research should show how children can still enjoy autonomous leisure time within the framework of organized activities.
9. In addition to the time budget study of anyone older than 16 years, similar research should be developed with regard to younger people.
10. The NGOs expect the Government in the coming years to prioritize a policy of combating intolerance towards children and young people as well as the discrimination and stereotyping that are at the basis thereof, and to take the necessary steps regarding this matter, also by campaigning in the media.
11. Although in recent years a lot of policy attention went to "youth space" this issue should remain on top of the agenda of local Governments. Too often still based on potential risks, legislators view the space from a protective perspective. The needs of children and young people regarding the public space evolve with growing children and young people themselves. Therefore it remains important to investigate these needs and to identify and respond to them.

8. FAMILY, CARE, YOUTH ASSISTANCE

8.1 RIGHT TO ADEQUATE YOUTH CARE (ART. 2,1; ART. 18,2; ART. 39)

Many institutions and services are available in Belgium to support the lives of individuals and families, ensuring access to the basic rights of all: OCMW/CPAS, schools, various health services, nurseries, after school care,... Specialized services such as the Youth Assistance Service⁸⁹, act in second line in particularly problematic situations.

However, the NGOs note that poor families are generally insufficiently assisted, although their difficulties are numerous, and affect different areas: income, housing, health, administrative problems, debt, relations with school,... Frontline services and institutions fail to achieve their missions with respect to these families. On the other hand, the specialized second-line services (placements, etc.) often intervene but this is not understood, unsolicited, and thus perceived as intrusions. These interventions rarely provide adequate assistance and sometimes the contrary, they devalue and undermine families.

YOUTH ASSISTANCE

The Youth Assistance Service intervenes frequently for children and young people from disadvantaged backgrounds, perceived "in danger". Some of them, especially infants, are removed from their families and entrusted by the SAJ or SPJ (Department of Youth Protection) to a foster home or institution. These placements, initially temporary, tend to last longer in situations of poverty. Frequently, sometimes for financial reasons, the assistance turns into coercion. Thus, with some pressure, SAJ regularly offers poor families boarding school for children and if parents cannot afford to pay, the measure becomes a placement in an institution supported by the SAJ. Therefore parents do not have any control anymore over the situation of their children.

In general, poor people bear witness to their difficulties to enforce their point of view, to know their rights, to receive assistance and support their need, while preserving their freedom and their parenting role. The NGOs wish to remind that children's rights are intimately related to family rights and that the right to family life is a fundamental right.

In the sector of youth work with socially vulnerable children and young people the NGOs note that on the one hand socially vulnerable children and young people are under-represented within the directly accessible assistance structures and on the other hand over-represented in the not directly accessible assistance structures.

⁸⁹ In French: Service d'Aide à la Jeunesse (SAJ).

WAITING LISTS

Despite the promise of the authorities⁹⁰ to make an effort regarding this matter, the gap between supply and demand in the youth and child assistance continues to grow, and children still do not receive adequate assistance. In the province of Antwerp (Flanders) alone more than one thousand young people⁹¹ who urgently need assistance and adequate care are sent back, put on a waiting list, because youth psychiatry and other forms of assistance cannot cope with so many people. The right to youth assistance is undermined by limiting it to the available capacity. Numerous decisions are taken according to the feasibility and availability of solutions. The right to assistance must be a priority.

LEGAL STATUS IN THE FRAMEWORK OF INTEGRAL YOUTH ASSISTANCE

The Integral Youth Assistance is a policy measure with the aim of six sectors to work together to give young people the most appropriate assistance tailored to their needs. The Decree on the Legal Status of Minors within the Integrated Youth Assistance⁹² which took effect on July 1, 2006, granted the minor his own legal status and certain rights. This is an important step towards the improvement of the status of the minor within youth assistance. The legal capacity of minors is described as the right to information, participation and the right to participate in the assistance given to them, etc. However, it is not obvious to translate a legal status into a status that affects the educational practice of the social worker and the way this assistance is shaped. Funds were provided for training initiatives in the sectors concerned and for publications to keep everyone updated. These funds may not be reduced and remain necessary to continue to support the implementation process.

Some sectors are only partially covered by the decree, e.g. the Centra voor Leerlingenbegeleiding (CLB) (Pupil Guidance Centres) and the sector of Mental Health. Minors do not always know what status they have. Furthermore it should be encouraged to present the Decree on the Legal Status as a source of inspiration to other sectors, e.g. the education sector where no students' status exists.

Recommendations

1. Release additional funds to address the waiting list issue in a global and professional way. Also, investigate the causes of this waiting list and find a remedy through agreements, i.e. making the institutions responsible for the tackling of the waiting list problem. In addition, encourage and support successful experiments in reducing the waiting lists.

⁹⁰ See Government report, § 318.

⁹¹ Data collected through the central waiting list of Youth assistance.

⁹² Decreet van 7 mei 2004 betreffende de rechtspositie van de minderjarige in de integrale jeugdhulp, *B.M.*, 11 oktober 2004.

2. Work towards a youth assistance in which the path that the child or the young person travels would be as short as possible.
3. Work towards the continuity of youth assistance, for example by appointing a family guardian.
4. Make directly accessible youth assistance be more accessible to socially vulnerable children and young people and train the staff of this sector specifically to learn to communicate with this target group.

8.2 PARENTING SUPPORT (ART. 14, ART. 18)

Parenting support in Flanders is mainly seen as preventing and tackling problems. The enriching and empowering function for all parents is insufficiently recognized. This shows from the preponderance of assistance in education networks and education shops⁹³ and the allocation of budgets in the youth assistance⁹⁴.

There is no ecological vision in the parenting support policy which would recognize that both environmental factors and children are active players. Parenting support should therefore always be carried out with the vision that affordable housing, education and health care sustain parental support. Education should never be seen as one way traffic. Children and young persons are active players in the educational relationship. All too often parental support programs focus on parental skills.

In addition to the right to care and contact with both parents, there are many other children's rights that play an important role in education, such as the right to their own opinion, right to appropriate information, right to freedom of association and the right to privacy. Parents want the best for their children, but as in the wider society participation rights often cause tension. Parents can be supported here. Also the right to physical, psychological and sexual integrity must be respected in the education⁹⁵.

Parental support is essential but affects few families living in poverty, while they need it most. We note that these families have little access to the introduced initiatives due to lack of information and accessibility, but also, apparently, due to a lack of political will and competence to accommodate them.

SEPARATION FROM THE PARENTS

Yet around the world, extreme poverty causes separation within families. Specifically, under the guise of "child protection", it is not uncommon for states to withdraw a child from his/her family, because the family is deemed "unable" to raise children and sometimes guilty

⁹³ See Government report, § 246.

⁹⁴ See Global Plan in Government report, § 250.

⁹⁵ See also 4.1 Corporal Punishment.

of negligence or abuse, given the harsh living conditions they face. In Belgium, most very poor families live this kind of experience, sometimes for several generations. In its 2002 report, the Observatoire de l'Enfance, de la Jeunesse et de l'Aide à la Jeunesse estimates that 2/3 of placements of children under 7 years are related to problems of parents, and 7 to 11% are related to precariousness only. The situation has not improved since then⁹⁶. On the contrary, families have more difficulties or are unable to obtain housing.

However, any separation from his family causes great suffering and even a danger of weakening the child and his parents, because strong emotional ties have been forged. This impact, which is more recognized now, is still rarely taken into account by institutions and professionals.

Recommendations

1. Develop a soliciting approach however based on voluntariness. Base this family support and assistance on the needs and expectations of parents themselves. Assess the different measures of care and support for parenting, especially in relation to the public that is actually affected.
2. Diversity in parental support must be maintained with respect for informal support that parents find with each other. Only a broad and diverse range of support for all parents avoids that parents who ask for help would be labelled "problematic".
3. Children and young people should be recognized as active partners in the parenting support structure and children's rights should be a common thread within the parenting support.
4. Help maintain the child in his family in the best possible conditions, by providing resources to access decent living conditions and provide support for parenting, in consultation with affected persons (children and parents). If this is not possible, ensure the maintenance of relationships between the placed child and his parents, and promote the return to the family as soon as possible, while ensuring good conditions for the return.
5. Stimulate reflection between "actors" on the "best interests" of the child, as well as on the notion of "danger" in this context; promote the expression of different views in different situations.

⁹⁶ Délégué général aux droits de l'enfant (2009). "Dans le vif du sujet. Rapport relatif aux incidences et aux conséquences de la pauvreté sur les enfants, les jeunes et leurs familles", novembre.

8.3 RIGHT TO PERSONAL RELATIONS WITH IMPRISONED PARENTS (ART. 5; ART. 9; ART. 18; ART. 12; ART. 8 ECHR)

In 2007, 10.000 people were imprisoned in Belgium and on the other side of the bars, at least 10.000 children are deprived of a father (in 90% of cases), sometimes a mother. A worrisome situation that in the future, certainly will involve more and more children because the number of inmates is steadily increasing in Europe and Belgium: + 2% per year. And among them more and more women: 395 in 2003 against 447 in 2007.

The situation of children whose parents are detained highlights a double movement. On the one hand, a relative humanization of prison because of, inter alia, the attention given to maintaining the parent-child relationships, but on the other hand, a real trivialization of incarceration, particularly through preventive detention. The overlapping nature of these two realities raises questions. Furthermore, although multiple actions are taken by associations to ensure that the link between a child and his imprisoned parent is maintained, the fact remains that according to the associations in the field, one in two children never visits his parent in prison.

The Law of January 12, 2005, also called the « Dupont Act »⁹⁷, that establishes the principles ensures the basic rights of the detainee, including the right to maintain contacts outside of prison (art. 53) and the right to visits, including intimate visits (art. 58; 63). However, to date, this law is only partially applied, and the correlative rights of children to maintain relationships with their imprisoned parent(s) are not consistently respected⁹⁸.

The Decree of the French Community called "child-parent relationship service" of April 28, 2004⁹⁹ "allows the imprisoned parent to continue a relationship with his/her child if the parent has requested this" (art. 1). The NGOs regret however that the French Community has "chosen to include the support of the family relationship in conjunction with its social assistance to prisoners, based on requests from parents in prison and not on the basis of the right of a child to maintain a relationship with its parent, which would have included this concern in the jurisdiction of the Youth Assistance". Note, also, that according to the information collected in the reference made by the Houtman Fund¹⁰⁰ in 2007, this decree would have no future for budgetary reasons.

There is no similar legislation in Flanders. There is however a Strategic Plan on assistance and services to prisoners, but the pillar "parent-child" should be much better developed.

⁹⁷ Loi de principes du 12 janvier 2005 relative à l'administration des établissements pénitentiaires ainsi que le statut juridiques des détenus, *M.B.*, 1^{er} février 2005.

⁹⁸ Kaminski, D. (2006). "Droit des détenus et protection de la vie familiale", in *Les enfants de pères détenus, Les politiques sociales*, 3-4.

⁹⁹ Décret du 28 avril 2004 modifiant le décret du 19 juillet 2001 relatif à l'aide sociale aux détenus en vue de leur réinsertion sociale, *M.B.*, 21 juin 2004.

¹⁰⁰ Website www.fonds-houtman.be.

However, it appears that recognition of the principle of continuity of the relationship is beneficial for the reintegration of prisoners and essential for the psychological construction of the child. Therefore, legal and institutional efforts should be twofold: both in the field of assistance to prisoners (federal) as in the youth assistance structure.

Recommendations

1. Ensure that all children separated from one or both of their parents have the right to maintain regular personal relations with them, unless this is contrary to the child's best interest. The child's right to visit its parent in prison and the conditions of the visit should be priorities.
2. Develop a coordinated policy between the various authorities who are qualified on the subject (prison, early childhood, youth assistance, aid to prisoners).
3. Assign more resources to welfare services (internal and external to the prison) and the parents-children associations to enable them to achieve their mission under the best conditions, in the interests of the rights of all children concerned.
4. Assess the various methods used to date to allow the child a continuous relationship with its parents.

8.4 DIVORCE (ART. 3; ART 5; ART 9; ART. 12; ART. 17, ART. 18; ART. 27)

In 2006 the Divorce Law was substantially reformed. Main concern is the removal of the fault from the divorce proceedings. Separation based on irretrievable breakdown is possible. The NGOs are satisfied with this reform. Yet Belgium has a number of important challenges that need to be addressed.

The new Law of July 18, 2006 that favours an evenly divided housing of the child whose parents are divorced, says that in the absence of an agreement of the parents and if one of the parents asks for this, the judge should first and foremost examine the possibility of evenly shared residence of children. Co-parenting with regard to residence is not always the best solution. The NGOs are strongly opposed to the opportunities the law provides for the court to impose coercive measures, allowing the removal of the child in the presence of a bailiff if the parent does not comply with the residence arrangement. Such practices are traumatic for children.

In 2008 our country had 35.366 new divorces, an increase of approximately 17.6%.¹⁰¹ On average, 3/4 of the divorces involve children. Much research indicates that divorce can have a negative impact on children and that parental conflict can be a negative reinforcing

¹⁰¹ Source: Statistical information "Meer echtscheidingen in 2008" van 22 juli 2009 van de Algemene Directie Statistiek en Economische Informatie van de FOD Economie.

factor¹⁰². Professor Ann Buysse states that there is no consensus as to whether shared residence would be the best residence arrangement. The best residence arrangement is the arrangement with which the parents agree¹⁰³. But other research shows that only a minority (less than 10% of 1.000 respondents) prefers mediation. Parents know the possibility and the advantages of mediation too little. In a divorce on grounds of irreparable breakdown, the law requires that the judge explains the possibility of mediation, but only 1 in 5 people have heard an understandable explanation¹⁰⁴.

The determination of the amount of alimony by the court remains to this day often guesswork, which is a contributing factor to conflicts over alimony. The NGOs welcome the introduction of a standard method of calculating alimony in an objective way. It is encouraging that the Alimony Claims Service¹⁰⁵ was founded in 2004. At the request of the person entitled to alimony the DAVO pays advances on outstanding alimony. The DAVO recovers the amount of the monthly alimony and arrears, for and on behalf of the person entitled to alimony. The creation of DAVO was necessary because, according to a study in 1999 only 60% of divorced women received their regular alimony¹⁰⁶. This means that 40% of all alimony debtors either pay alimony irregularly or don't pay it at all. Based on that rate we can say that the potential for DAVO is significantly higher than what this service achieves today. In 2007, DAVO could recover only 14% of the advances paid¹⁰⁷. For this reason, the number of single parent families below the poverty line is too high. The Government's promises regarding the improvement of the operation of the DAVO, including raising the income ceiling for obtaining advances, is still not fully realized¹⁰⁸.

When divorcing, parents must initiate proceedings in various courts. This makes the procedure extremely complex. Procedures are thereby unnecessarily prolonged. Currently the federal Government is preparing a pilot project concerning the creation of a specialized family court that should have jurisdiction for the proceedings surrounding family issues.

The minors' right to be heard is still not optimal¹⁰⁹. Children often feel misunderstood; their questions are not answered. Youth Judges who are to assess the residence and visitation rights in divorce, are required to hear children over 12 years old. In practice this is little effective. Younger children usually remain in the cold¹¹⁰.

¹⁰² E.g. Van Peer, Ch. (2007) "De impact van een (echt)scheiding op kinderen en ex-partners", SVR-Studie 2007/1.

¹⁰³ Buysse, A., & Renders, M. (2007). "De impact van scheiding op kinderen: knelpunten gekoppeld aan de nieuwe wetgeving", Tijdschrift voor Jeugdrecht en Kinderrechten. 3, 147-151.

¹⁰⁴ Results from the First 1000 respondents from a major inquiry.. IPOS (2008).

¹⁰⁵ In Flanders: DAVO; in the French Community: SECAL.

¹⁰⁶ Bawin-Legros, B. (1999), "Famille, mode d'emploi", Mardaga, Bruxelles, 60-63.

¹⁰⁷ DAVO (2007). "Evaluatieverslag".

¹⁰⁸ Derde periodiek rapport van België betreffende het Internationaal Verdrag van de Rechten van het Kind (2008).

¹⁰⁹ See Alternatief Rapport van de Belgische NGO's (september 2001).

¹¹⁰ Kinderrechtencommissariaat (2008). "Jaarverslag 2007-2008".

Recommendations

1. Make the prevention of parental conflict a policy priority. Parents should be better informed about and be directed to divorce and parental mediation. An arrangement that parents mutually agree with offers the best guarantee that agreements are respected and that everyone - children and parents- is satisfied. The law on divorce should be amended in such a way that a divorce can only be pronounced if an agreement is reached on the residence of the children.
2. Optimize the operation of the Alimony Claims Service. The calculation of child support payments should be done in an objective manner.
3. Develop the family court will, with consideration given to the legal position and the minors' right to speak. Judges in all judicial proceedings should pay more attention to the views of the child. The regulations and practice concerning the right to speak urgently need to be adapted.

8.5 FILIATION

ADOPTION (ART. 21)

Since September 1, 2005, Belgium has a new legal framework concerning adoption. It is part of an overall effort to humanize the process and give priority to respect for the best interest of the child, in line with the UNCRC, but also of The Hague Convention¹¹¹. However, some recommendations should be given.

PRESERVATION OF THE IDENTITY: ACCESS TO PERSONAL ORIGINS (ART. 8)

In Belgium, the mother must be named in the birth certificate of her child. The Civil Code and the Penal Code do not allow anonymous or secret delivery. However, regularly legislative proposals suggest the introduction of a discrete delivery, which means hiding the identity of the mother and therefore also the child's identity. These proposals are based on arguments of public health and/or women's rights, while the child is derived from his or her rights. However, recognition is growing that the deliveries in secret, even partly secretive and anonymous adoptions have devastating effects for the individual.

¹¹¹ Hague Convention of May 29, 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Recommendations

1. Strictly apply the principle of subsidiarity with the aim of making adoption a subsidiary measure to other measures both nationally and internationally. In this framework, provide support to precarious individuals and families, ensuring their access to fundamental rights in order for the child to stay with his or her family. Also, check carefully that no pressure of any kind has been carried out directly on the family of origin of an adopted child, both at the national and international level.
2. Modify and simplify the existing procedures and harmonize domestic and international procedures.
3. Provide sufficient resources to institutional stakeholders to enable them to continue their mission under the best conditions and in the interest of the rights of the child.
4. Confirm the right of access to personal origins in legislation, while respecting the fundamental rights of the child.
5. Consider the relevance of legislation authorizing childbirth in anonymity or discretion in Belgium. Conduct a study to assess at the legal and psychological levels both the motivations of mothers in Belgium wishing to give birth without revealing their identity, the magnitude of the situations described and the consequences of this choice for children and biological parents themselves.
6. Upon request of the child make the information on his/her prenatal identity available before his/her majority.

9. HEALTH

By way of introduction, it seems important to quote the Innocenti Report Card 7¹¹² which is an assessment of child and teenager well-being in 21 rich countries through the consideration of 6 dimensions¹¹³. Belgium ranks 16th with regard to health and safety (infant mortality rate, low birth weight and accidental death for the 0-19 year old), 19th for risk behaviour (cigarette consumption, teenage pregnancies) and 16th for subjective well-being of children. This low ranking should be emphasized.

9.1 INEQUALITIES IN CHILD HEALTH (ART 24, ART. 25 ET ART. 27)

Health inequalities concern the child even before his/her birth and continue in all age groups. The living conditions of children living in poverty endanger their physical and mental development.

Children from precarious families have poorer health from early childhood on. The risk of premature birth or having a low birth weight is 1,2 times higher. Mortality in the first year of life is 3,3 higher in a family without declared income than in a family with two incomes¹¹⁴. The relatively high infant mortality in Brussels (compared with Flanders, Wallonia, and other European countries) is explained by the large number of children living in difficult social situations¹¹⁵.

The percentage of premature births increases with the level of poverty in municipalities (7.36% for Class 1, which represents the richest municipalities, against 8.75% for Class 5, which represents the poorest municipalities)¹¹⁶. In addition, children¹¹⁷ living in nursery, shelter or foster care are more likely to have a language delay (65.6% against 14.7% for children living with both parents)¹¹⁸. This type of delay is particularly important when starting school and has an impact on school-student bonding.

¹¹² UNICEF (2007). "Child poverty in perspective: an overview of child well-being in rich countries", Innocenti Report Card 7, Florence, UNICEF Innocenti Research Centre.

¹¹³ These 6 dimensions are: material well-being, health and safety, education, family and peer relationships, risk behaviour and subjective well-being.

¹¹⁴ Observatoire de la Santé et du Social de Bruxelles-Capitale (2008). « Plan d'action bruxellois de lutte contre la pauvreté », Rapport bruxellois sur l'état de la pauvreté 2008, Commission communautaire commune.

¹¹⁵ Observatoire de la Santé et du Social de Bruxelles-Capitale (2008). « Rapport bruxellois sur l'état de la pauvreté 2008 », Bruxelles, Commission communautaire commune, p. 41 and after.

¹¹⁶ Office National de l'Enfance (ONE) (2009). « Rapport Banque de Données Médico-Sociales. Données Statistiques 2006-2007 », Bruxelles, p. 130.

¹¹⁷ Children of 30 months old.

¹¹⁸ O. c., p. 155.

The inequalities are sometimes linked to the nationality of the mother, when it is caused by poorer living conditions, discrimination, lifestyle, less good contacts with health services or access to care¹¹⁹.

Regarding teenagers, an international longitudinal study of the association "Health Behaviour in School-aged Children (HBSC)"¹²⁰, reveals that young people, according to their social origin, are not equal healthwise¹²¹. Young people with low family affluence and those living in a recomposed family and in a one-parent family are most likely to report that they don't have good health. Children in primary school (6-12 years old) who live with neither parent (e.g. placed in care) describe their health 3,47 times more negatively than children who live with their two parents (2,15 times for recomposed families and 2,14 times for single families).

Poverty also affects long-term health. Disadvantaged people develop and accumulate more diseases. Some are inconsequential (e.g. impetigo, lice), but have an impact on the social lives of children. Others are more disabling diseases, including chronic illnesses. Finally, the risk of home accidents, poisonings CO, etc. (consequences of which can be tragic), are higher in these families. In addition, poor people are generally hospitalized for longer periods than others. Their life expectancy and particularly their life expectancy "in good health" is much lower compared to the highest social classes¹²².

With regard to access to health care, precarious families encounter various obstacles, including financial reasons (in Belgium, 28,6% of single parent families and 10,7% of couples with children report having had to postpone health care for financial reasons¹²³), but also administrative (lack of information and understanding, etc.), cultural (difficulty in relation to writing), and psychosocial reasons (fear of social control), etc.

A low level of affluence also influences behaviour related to health (food choices, physical activities, etc). Regarding risk behaviour, lack of information, sense of well-being and good health, research results show great disparities between students from different social backgrounds, which are even more pronounced for school dropouts¹²⁴.

Finally, the promotion of health is too often reduced to risk management and prevention. Even if they are necessary, these interventions do not implement a promotion in a positive

¹¹⁹ The Brussels Report notes that children from maghrebian mothers (11.3 %), from mothers from Subsaharian Africa (6.3%) and from mothers from Turkey (2%) have the highest perinatal mortality risk.

¹²⁰ See the website of HBSC, www.hbsc.org.

¹²¹ Also see Godin, I., Decant, P., Moreau, N., de Smet, P., & Boutsen, M., 2008, o. c.

¹²² Recherche HISIA, 2004, citée par l'Institut scientifique de santé public, see www.iph.fgov.be.

¹²³ Institution scientifique de Santé Publique (2006). "Enquête de santé par interview", Belgique, Service d'Epidémiologie.

¹²⁴ "La santé et le bien-être des jeunes d'âge scolaire. Quoi de neuf depuis 94?", Participation à la recherche internationale de l'OMS, collectif, 2006.

sense¹²⁵: what is being done to improve the overall environment so that it is conducive to health, to enable children and parents to maximize their abilities and skills, etc.?

Recommendations

1. Provide all families with a standard of living adequate for the physical, mental, spiritual, moral and social development of its members, by developing a comprehensive policy to fight against poverty, active in all areas at once: sufficient means of subsistence, adequate housing, access to employment, family support and assistance, respect for individual dignity and consultation with affected persons.
2. Implement coordination between policies that have an impact on the determining factors of health (housing, education, job quality, etc.).
3. Develop better access to care and quality care.
4. Implement policies to promote health.
5. Improve data collection on health by creating indicators that measure social inequalities and facilitate reciprocal exchanges between the French Community, the Flemish and Brussels-Capital Region.

9.2 CHILDREN WITH DISABILITIES AND CHILDREN IN HOSPITALS, INCLUDING THOSE IN PSYCHIATRIC CARE

CHILDREN WITH DISABILITIES AND CHILDREN IN HOSPITALS, INCLUDING THOSE IN PSYCHIATRIC CARE

The situation of children with disabilities, sick children and children in hospitals, including those in psychiatric care, remains a concern at many levels. Their frail health requires adequate assistance and their human rights are sometimes hardly respected.

The NGOs wish to emphasize the right to family life as well as support for parents. When their child is ill or has disabilities, parents face many difficulties in reconciling work and family responsibility. We must develop and expand supervision opportunities at home so that the child has the opportunity to stay at home without being hospitalized or placed in an institution.

In terms of participation, there still is a long way to go. Children are seldom heard on their treatment and alternatives to hospitalization/institutionalization. They are not sufficiently informed in an appropriate language. More worryingly, the right to information is lacking for the administration of drugs and the duration of the treatment.

¹²⁵ In the sense of the WHO Ottawa Charter for the Health Promotion (1986), that promotes a positive approach and the accentuation of competencies.

To ensure that these children can grow and develop harmoniously, they must also have the right to play and participate in cultural activities with other children. This implies “integrated recreation”, but in reality, outside contacts are limited and integration projects remain limited and ad hoc.

CHILDREN WITH DISABILITIES (ART 23, PAR 1-3, C.O. 2002,0 NR. 15, 16, 18 ET 19)

Current statistics show that about 2.000 children are born with disabilities or developmental problems in Belgium¹²⁶.

NGOs are concerned about the divisions between the “specialized” world (focusing on disability) and the “ordinary” level of pre-school, school and leisure. Children with disabilities often have little choice of school and options in school. We hope that the recent decree adopted in 2009 by the Government of the French Community¹²⁷ is a step that will be quickly implemented in practice.

The NGOs wish to emphasize the right to family life as well as support for parents with a child with disabilities in their midst. Many families are actually forced to call on residential institutions for the care for their child. This is contrary to Article 19 of the Convention on the Rights of Persons with Disabilities.

CHILDREN IN HOSPITALS (ART 2, ART 9, PAR 2, ART 12, PAR 1, ART 24, PAR 1, ART 25, OBS FIN N°18,19 ET 22)

NGOs point out that various rights of hospitalized children deserve special attention: while Belgian hospitals that have a paediatric ward¹²⁸ provide better care for children (77% of hospitals offer to parents the opportunity to spend the night on site, and parents may be present when their child is under anaesthesia in 70% of cases), we find that too few parents are informed and make use of opportunities offered to them. This is especially true for parents who are less educated¹²⁹.

More worrying, the presence of parents at the time of waking up in the recovery room is still banned in 16% of hospitals and preoperative consultation with the anaesthetist (when he informs the child and his parents) is still not widespread.

Children are generally satisfied with the nursing staff but not with the doctors and the emergency department, although emergency departments are the first door in half of all

¹²⁶ According to the Belgian national institute for the social security and self-employed, the number of children receiving increased family allowances (due to a disability) amounts to 1825 children aged 0 to 18. <http://www.rsvz.be/fr/tools/statistics/children.htm>.

¹²⁷ Décret de la Communauté française du 9 février 2009 relatif à l'intégration des enfants à besoins spécifiques. See also the relevant Chapter 7 (education).

¹²⁸ About 100 Belgian hospitals now have a paediatric ward.

¹²⁹ Research by Test-Achats in Novembr 2009; see “Quel hôpital pour votre enfant?”, via www.test-achats.be/dossiers/childhospital/fr/intro.aspx.

hospitalizations. Lack of participation and tailored information is a real problem (insufficiently accessible language, lack of coordination between different specialists and partners), and lack of children friendly spaces (especially in emergency departments). We find that the treatment of pain is concern for most children in hospitals¹³⁰. It is unacceptable that children suffer when analgesics are available to reduce pain. Finally, the school is an essential activity for any hospitalized child. Ensuring their right to education is paramount.

CHILDREN IN PSYCHIATRIC CARE

From 2004 to 2007, the number of licensed beds in psychiatric services (also called “K services”) increased from 668 to 695. The children stay for varying periods ranging from 3 weeks to several years. In 2004, a total of 4.600 children passed through psychiatric services in Belgium.

NGOs note that the issue of child psychiatry is very worrying and must be considered holistically in the light of the rights of the child: this is not a matter of right to health, and even less a matter of places available in existing centres. Other rights are concerned: non-discrimination, education, information, family life and personal relationships with parents and relatives, privacy, culture and recreation, participation, etc.

NGOs are particularly concerned that detention is not a measure of last resort for children who are sent to psychiatric wards and in most cases, children do not know how long their hospitalization will last. NGOs are also worried that measures limiting the freedom (including isolation) are used as punishment and not used in exceptional cases for the protection of young children. In addition, drug treatment, which still restricts the physical integrity of children, is the norm and not a measure of last resort. Finally, NGOs are concerned that life in a “K service” is completely cut off from the outside world. Contact with the world outside is almost impossible. These restrictions are not justified and clearly explained. It is not uncommon for children to be required to stay the weekend at the hospital only because they occupy a bed. It is totally unacceptable that the right to see his family is restricted for financial reasons.

Main Recommendations

1. Only use placement or deprivation of liberty as a measure of last resort. Further develop supervision opportunities at home as well as a reception structure so that the child has a real opportunity to stay with family or be placed in care. Review placement periodically.
2. Promote effective participation of disabled or hospitalized children in all areas of their life, in family, school, institution, hospital, etc.

¹³⁰ UNICEF Belgique (2005). “Dessine-moi l’hôpital. L’hôpital à travers le regard des enfants”, Rapport des enfants malades, What Do You Think?.

3. Provide children with appropriate information about their disability or illness and about treatment, including its duration.
4. Develop a coordinated policy between the different levels of power that promotes and fosters integration of children with disabilities in school education, pre-school and play.

Specific Recommendations

Children in hospitals

5. Generalize the presence of relatives at all times of hospitalization, including during the operation and in the recovery room. Humanize the emergency wards and regularly provide adequate information to ill children and their families. Generalize education for children in hospitals and the use of analgesics (treatment of pain), also for children who are in end of life care.

Children in psychiatric care¹³¹

6. Resort to deprivation of liberty only as a measure of last resort for children in psychiatry. It is the same for isolation and drug treatments that restrict the integrity of children. Contact with the outside world must remain possible. Education should be a right for children in a “K service”.

Children with disabilities

7. Implement the International Convention on the Rights of Persons with Disabilities
8. Eliminate the apparent contradiction and dichotomy between special and inclusive education¹³²
9. Consider children with disabilities as full members of the society. They are entitled to participate in their families, schools, institutions, courts and in all decisions that affect them.
10. Give children with disabilities enough suitable opportunities to participate in games, sports and arts.
11. Systematize and develop the issue of disability and integration in the initial and continuing training of all professionals involved.
12. Improve information of the public about the reality and experiences of people with disabilities.
13. Systematically collect data needed to define policies tailored to the needs of children with disabilities.

¹³¹ For all recommendations for hospitalized children, particularly in psychiatry, we refer to the project “What do you think?” of UNICEF Belgique, and especially to the Alternative Report submitted to the Committee on the Rights of the Child.

¹³² See the relevant Chapter 7 (education).

9.3 SEXUAL AND AFFECTIVE LIFE (ART 2, ART 17, ART 24, C.O. 2002, NR. 18 AND 19)

In Belgium, compared to adults, children are a very heterogeneous group which represents an incidence and prevalence of HIV/AIDS that can be described as weak: less than 6% of all infected people are between 0 and 18. However, in recent years we have seen an increase in sexually transmitted infections (STIs) in general (excluding AIDS) among young people. Overall, we see that communication about sexual and affective life (friends, family, school and school environments) remains largely insufficient. Furthermore, projects aimed specifically at 0-15 years are rare and occasional.

Recommendations

1. Keep HIV/AIDS and sexually transmitted infections (STIs) as priorities in terms of health promotion, and allocate the necessary budgets.
2. Improve medical care to suit the age of these patients, as well as access to psychological support structures adapted to children.
3. Promote, through the media, the continuity, quantity, quality and relevance of information on STI/AIDS, sexuality and targeted audiences.

9.4 ADDICTIONS (ART. 24 ET ART.33)

In recent years, the NGOs have found many efforts to ensure that tobacco use is prohibited, especially in schools. Note that more attention should be paid to alcohol use among young people and addictions in general (alcohol, drugs, doping, etc.).

Recommendations

1. Support and develop health promotion on addiction.
2. Support and develop programs to reduce the risks of addiction.
3. Prioritize social-educational and health strategies and prohibit repressive police interventions towards children.

10. MEDIA AND CONSUMER AFFAIRS

10.1 CHILDREN AND THE MEDIA (ART. 16, ART. 17)

The media are an important part of the social world of children and young people. They open a range of opportunities, but at the same time there are risks involved. Although the protection of minors remains an obvious need, the NGOs also insist on a more positive approach to the relationship between children and media.

PROTECTION OF CHILDREN AND YOUNG PEOPLE WITH REGARD TO MEDIA USAGE

Children and young people are still faced with many hazardous material (violence, pornography, advertising, extremist messages) on the Internet, their mobile phone, on TV, in games and other media. Until now, the parents and the minors themselves were responsible for the protection of children and young people from harmful or undesirable material. The Government does not make enough efforts for the protection of children. In 2007 the so-called "five minutes rule"¹³³ with regard to children's programs was replaced by relatively lax rules applicable for advertising aimed at children. In 2009, a new media decree came into force that unfortunately only contains a limited number of protective measures. The NGOs also note that the antiquated Belgian system of film classification impedes the introduction of a system of target ages or screening of the content and that the Government does not keep its promise to change that.¹³⁴

NGOs complain that when children themselves participate in television programs, for example in reality shows such as "The Super Nanny", their privacy and dignity is often not adequately respected. Online too, the right to privacy (art. 16 of the UNCRC) is ignored: research shows that eight out of ten websites that are designed primarily for children collect personal data, while only four in ten have a privacy statement. Moreover, this mandatory information is often incomplete¹³⁵.

In 2005 the Flemish Council for the Media (Vlaamse Regulator voor de Media) was established to monitor the compliance with the media regulations. The NGOs are satisfied with the establishment of this Council, but note that the VRM is still insufficiently known to the general public and that its powers are limited. The NGOs believe that television viewers and radio listeners should be able to contact the VRM with regard to their complaints and comments.

¹³³ Advertising is banned on children's programs on TV 5 minutes before and after the broadcast.

¹³⁴ Vlaams Actieplan Kinderrechten (2004-2012):

http://www.cjism.vlaanderen.be/kinderrechten/documentatie/tekst_beeld/VAK020404_def.pdf.

¹³⁵ Walrave, M. (2005). "Cyberkids' e-Privacy – Minderjarigen, minder rechten? ", Privacy Paper nr. 4.

In the French Community, two organizations are involved in the media sector: the Higher Council of Media Education (Conseil Supérieur d'Education aux Médias, since 2009) and the High Council for Audiovisual (Conseil Supérieur de l'Audiovisuel). While the former, as its name suggests, aims at encouraging young people to adopt a critical approach to the media, the second verifies the application of the regulations. New rules are currently under development to adapt the law to current developments in audiovisual media channels (on-demand service, Internet, etc.).

MEDIA EDUCATION

The NGOs welcome the many initiatives taken in the French Community in media education. However, we wish to recall that while the media are important, they are not necessarily the only source of information. To reach young children and the most disadvantaged children and their families, we need other methods than the traditional media, or a "mediator" who facilitates their access.

PERCEPTION OF CHILDREN AND YOUNG PEOPLE IN THE MEDIA

To their regret the NGOs observe that young people are mainly represented in a negative way in the media. A striking example is how often one-sided reporting on juvenile delinquency confirms the general feeling that juvenile delinquency is on the increase, while bodies such as the National Institute for Criminalistics and Criminology emphasize that this view is not confirmed by any statistics¹³⁶. The NGOs ask for an accurate representation of children and young people in the media and extra vigilance with regard to negative perceptions and stereotyping.

Recommendations

1. Support socio-cultural institutions and schools in their initiatives related to media education. Not only children but also parents must actively be made aware about both opportunities and risks of various media, especially the audiovisual media and the Internet.
2. Reform the film classification system. NGOs expect a uniform classification system that classifies a variety of media (television, film, DVD, video, games,...) according to age and content as is done in The Netherlands.
3. Ensure a better protection of minors against advertising that is directed specifically to them and new advertising techniques such as split screen, virtual and interactive advertising. Apply the public networks' regulations intended to protect children also to private broadcasters.

¹³⁶ See press release on the NICC website: <http://nicc.fgov.be>.

4. Turn the Flemish Council for the Media into a truly accessible hotline where television viewers and radio listeners can file their complaints and comments.
5. Make sure that the right to privacy is safeguarded when children participate in television programs and use the internet. Make work of online identification systems.
6. Ensure access to media education for all children. In this context, particular attention must be given to the most vulnerable children (children living in extremely precarious conditions, children with disabilities, sick children, migrant children and of foreign origin, etc).
7. Actively promote a positive image of minors.
8. Journalists' training should include lessons on ethics, particularly in the context of children's rights.

10.2 CONSUMER AFFAIRS (ART. 24, ART. 6)

The Federal Agency for the Safety of the Food Chain monitors the safety and quality of food. There are already some initiatives on consumer safety. There are certain product and environmental standards, but these are not strictly applied and are adapted to adult users, while for children stringent standards should apply. For example, the residue levels of pesticides found in fresh fruits, vegetables and cereals in Belgium is still 6.94% (versus 8.8% in 2006)¹³⁷. This is a high percentage for children. Research shows that children with higher levels of pesticides suffer from reduced language comprehension skills and a delayed motor development¹³⁸. Families do not know the composition of most consumer goods. The Government should adopt the precautionary principle that starts with determining safety standards. It should also take into account the accumulation of various harmful substances in consumer goods (chemical cocktails) and long term effects if ingested.

The impact of the environment on children is high¹³⁹. Recently we read that air pollution peaks in Flanders increase the risk of infant mortality by 11 percent¹⁴⁰ and that lead pollution harms the IQ of newborns¹⁴¹. We know that pesticides and chemicals pollute the environment and may have an impact on human health as manifested by an increase in cancer, endocrine disruption, damage to the nervous system etc. Given the physical characteristics (thinner skin, lighter weight, smaller bodies) of unborn and (young) children

¹³⁷First annual report on Pesticides Residues, July 9, 2009,

http://www.efsa.europa.eu/cs/BlobServer/Report/Appendix_III,0.pdf?ssbinary=true.

¹³⁸ De Standaard, 31 maart 2009, about research conducted by the Steunpunt Milieu en Gezondheid.

¹³⁹ Objective 10 of the document "A world fit for children" is "protect the Earth for children". We must safeguard our natural environment, with its diversity of life, its beauty and its resources all of which enhance the quality of life, for present and future generations. We will give all assistance to protect children and minimize the impact of natural disasters and environmental degradation on them. See UN (2002) "A World fit for children", http://www.unicef.org/specialsession/docs_new/documents/A-RES-S27-2E.pdf.

¹⁴⁰ De Morgen, 4 juni 2009, about the first results of the Parhealth research programme..

¹⁴¹ De Standaard, 31 maart 2009, about research coordinated by the Steunpunt Milieu en Gezondheid.

the consequences of unhealthy products are much more serious because in proportion to their body weight larger quantities are ingested.

Recommendations

1. Adapt product and environmental standards to the most sensitive users: our children. The child norm should be applied.
2. Conduct strict objective inspection of goods, among producers, importers and in shops.
3. Besides standardization and control, provide families with easily accessible and understandable information in order to encourage them to adopt conscious consumption.

11. CHILDREN'S RIGHTS IN DEVELOPMENT COOPERATION (ART. 4)

Through an amendment of the law, since 2005 children's rights are incorporated as a cross cutting theme in the Law on Belgian Development Cooperation. As a result of that change, the issue of the rights of the child has a central place in all actions concerning development¹⁴². In 2006 this has also led to the drafting of a strategic paper on children's rights. In July 2008, the strategic paper was signed by the Minister of Development and transmitted to parliament.

However, since the signing of the strategic paper, its implementation remained very limited. To date there is no real mainstreaming of the rights of the child in all actions concerning development cooperation. The attention to the rights of the child in development cooperation remains at this time limited to a number of very specific violations of children's rights, whereby one particularly focuses on combatting the use of child soldiers.

Moreover, the monitoring and assessment of efforts (including budgetary) regarding children's rights is unsatisfactory. There is a children's rights "marker" to measure the part of Official Development Aid (ODA) spent on children's rights, but to date there are methodological problems regarding the implementation of the marker. As a result, there is as yet no clear view on the budget allocated to children in development cooperation.

Belgium has also imposed itself by law to reach the OECD target of allocating 0.7% of its GNI to ODA in 2010. The officially published figures show that Belgium does not achieve this target yet. In 2008 Belgium reached a figure of 0.48%. This is an increase compared to 2007 but is still less than the initially proposed 0.50%. For 2009, the Government allocates 0.6% and aims to reach the 0.7% target in 2010.

It should however be noted that the ODA amounts cited by the Belgian authorities also include the cancellation of the debts and the sums spent on the reception of asylum applicants. The NGOs believe that the two amounts should not be included in the calculation because these funds are not actively used for poverty reduction in partner countries.

If the amounts of debt cancellation and the reception of asylum applicants are deducted from the amount invested, Belgium is at 0.43% real relief effort. Despite clear progress over the past years this rate remains far below the 0.7%. It is therefore feared that the Belgian Government will not successfully achieve the required percentage in 2010.

¹⁴² Derde Periodiek Rapport van België, artikel 42, p.25.

Recommendations

1. Implement the strategy paper on children's rights including all recommendations contained therein in the practice of the Belgian Development Cooperation. Focus specifically on mainstreaming children's rights in all actions concerning development cooperation and ensure that attention to the rights of children is not limited to the fight against some very specific violations of children's rights.
2. Improve monitoring and assessment of the efforts made with regard to children's rights in development cooperation, ensure accurate measurement of the ODA budget spent on children's rights and research into how children's rights could be mainstreamed in development cooperation and the development of relevant M&A methods for children's rights in development cooperation.
3. Fulfil the international and legal commitment to spend 0.7% of the GNP on ODA in 2010. Do not include debt cancellation and expenses for the reception of asylum seekers in ODA figures.

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ANNEX: SUGGESTED QUESTIONS REGARDING THE LIST OF ISSUES AND THE DIALOGUE WITH THE BELGIAN STATE

GENERAL POLICY REGARDING THE RIGHTS OF CHILDREN AND THE CONCLUDING OBSERVATIONS OF THE COMMITTEE

What steps will Belgium take to structurally coordinate the data base over a long period of time, covering all parts of the UNCRC?

What steps did Belgium take since July 2008 to retract the interpretative declaration regarding Article 2 CRC?

What initiatives does Belgium have in place to divulge the reports, answers, summary of the discussion and concluding remarks of the Committee to a broad audience, including children?

CHILD POVERTY

What efforts has Belgium made with regard to the coordinated fight against poverty?

What attention is paid to early childhood and access to education (especially regarding free education)?

CHILDREN'S PARTICIPATION

To what extent are children involved in the education policy of the authorities?

What initiatives does the Government have in place to strengthen informal participation of children?

VIOLENCE AGAINST CHILDREN

Can the Government identify any concrete efforts that have been made to stop corporal punishment and psychological violence against children?

Can the Government indicate which positive, non-violent forms of conflict resolution have been consolidated? Are evaluations conducted on the efficiency and effectiveness of these programs?

What and how often were awareness campaigns mounted by the various authorities? Were these campaigns reviewed and, if so, what were the results of the evaluation? Are there any known effects on reducing the incidence of child abuse?

Are there any known effects on the awareness and changed attitudes towards physical and mental punishment?

Is there any progress in the planned establishment of a knowledge centre on child abuse?

Is any research available regarding the applicability of a temporary restraining order in situations of child abuse?

Will Belgium in the near future explicitly report on the violence against children refugees in the reception centres, on measures taken to prevent violence and on measures to care for victims of violence?

CHILDREN WITHIN THE JUVENILE JUSTICE SYSTEM

Despite the expansion of youth prisons, minors are still locked up in adult prisons. General care, medical care, education, culture,... is too limited, even for adults. It is absolutely unacceptable that minors are put in prisons for adults. How many minors are staying in adult prisons? Can the Belgian authorities ensure that in future minors are no longer locked up in institutions for adults?

In 2002 the Committee expressed its concern about the creation of a detention centre in Everberg by the temporary Law of March 1, 2002. Based on what arguments has one decided to allow this detention centre to still exist? And why is there an increase in the number of detention centres for juvenile offenders?

FOREIGN CHILDREN

Will the Government stop the detention of children?

What measures will the minister responsible for social integration take to resolve the reception centres crisis once and for all and when is the minister going to take these measures?

How and when will the Government evaluate the project on alternatives to detention (where houses are made available to families with children)?

Will the Government include obligatory alternatives to detention into Belgian legislation?

Will the Belgian State motivate the decisions on the right of residence of non-asylum seeking unaccompanied foreign minors in order to ensure the best interest of minors?

Can the Belgian State explain to a Belgian guardian the procedure and the reasons to issue an Annex 38?

EDUCATION AND LEISURE

Many children's leisure time is increasingly spent within the framework of childcare initiatives. What measures are taken to reconcile children's leisure time and reception?

FAMILY, SUPPORT TO PARENTHOOD AND YOUTH CARE

What efforts has the Government made since the submission of the report mid 2008 to address the issue of the waiting lists?

Is there any intention to give greater recognition to the active role of children in education within the framework of support to parenthood?

How will the Government encourage informal forms of educational support?

HEALTH

How does Belgium fight to address social inequalities in health?

MEDIA AND CONSUMPTION

What plans does the Government have to improve the consumer information on nutrition and food when there could be a health risk?

What steps does the Government take in order to emphasize the environmental impact on children in the legislative processes?

RIGHTS OF THE CHILD IN THE DEVELOPMENT COOPERATION

Can the Belgian Government indicate what percentage of the ODA is spent on children?

How does the Belgian Government organize the mainstreaming of children's rights in development cooperation? What initiatives are planned for the future?