

Alternative report to the

UN Committee on the Rights of the Child

28 February 2018

Alternative report of the
Flemish and French children's
rights commissioners on the
fifth and sixth periodical
report by Belgium
in implementation of
article 44 of the Children's
Rights Convention



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The Kinderrechtencommissariaat (KRC) and the Délégué général aux droits de l'enfant (DGDE) were established by decree as independent institutions. The KRC was set up by the Flemish Parliament and ensures children's rights in Flanders. The DGDE ensures the implementation of the Convention on the Rights of the Child in the French Community.





The KRC and the DGDE are children's ombudsman services. We pick up signals from children, young people, parents and professionals. We investigate complaints concerning violations of children's rights and based on the Convention, provide advice to the Flemish, French, Brussels or Belgian governments and parliaments.














Belgium submitted its fifth and sixth periodic report to the UN Committee on the Rights of the Child on 14 July 2007.















In this alternative report, we zoom in on the efforts and shortcomings in the Flemish, Walloon and Belgian policy for minors over the last seven years. We start from the complaints we get about violations of children's rights from minors and their representatives and from the signals from people in the field. We provide elements that enable a critical analysis of the Belgian periodic report. And we formulate recommendations that can feed the concluding remarks of the UN Committee for the Flemish, Walloon, Brussels and Belgian governments.







We are aware that a common alternative report is not always evident. There are sometimes large differences between the different communities in the policy areas that are important for children. We will consider these differences if relevant. At the same time, we note that many bottlenecks in the two communities are very parallel.

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1. The periodic report says a lot but not everything

We are pleased that the Belgian governments continue to comply with article 44 of the Convention. The Belgian periodic report, which bundles the efforts of the Flemish, Walloon and other governments, illustrates that all governments continue to strive for the realization of children's rights. Each chapter in the periodic report describes how the various ministers and governments contributed within their own competence.

Nevertheless, we lack basic elements in the periodic report to get a more complete picture of the situation regarding children's rights in Belgium.

Article 44 requires an overview of efforts and difficulties

Article 44 of the Convention requires Belgium to include not only the efforts but also the possible difficulties in implementing the Convention.

The Belgian periodic report mainly describes the efforts and successes of the Belgian governments. The difficulties are hardly discussed in detail. Yet they are there and they deserve our attention. They are dealt with in the DGDE and KRC annual reports. In practice, there is often a constructive dialogue between our institutions and the policy. It is a pity that it can hardly be found in the official report. A children's rights policy and its evaluation benefit from an open dialogue. As regards the strengths but also the vulnerable parts of that policy.

Be transparent about answers to concluding observations

The Belgian periodic report mainly provides an overview of the concluding observations that the Government picked up. The unrecorded concluding observations do not come into the picture. Two examples: the concluding observation about the prohibition of corporal punishment for children in all environments including at home and in non-institutional childcare or the concluding observation about the need for a National Action Plan for children.

Identify the challenges that Belgium faces

Belgium has faced major challenges since the attacks in Paris and in Brussels. That led to new policy actions. If we screen the report on how Belgium deals with radicalization and the risk of new attacks, then we find only one general reference to the "Flemish action plan aimed at the prevention of radicalization processes, which may lead to extremism and terrorism". All Belgian governments have nevertheless taken policy measures.

We regret that the Belgian periodic report does not go into these policy measures in more detail, while they affect the rights of children, young people and their parents. And the work of teachers, youth workers and other professionals.

The KRC and the DGDE receive signals from youths who feel targeted because they wear religious clothing. We receive complaints from youths who have been labelled "dangerously radicalized" because they shouted "Allahu Akbar" on the playground.

Youth workers, teachers, juvenile judges and security services are looking for good practices to detect and deradicalize extremely radicalized young people.

Not seldom do these services hold different visions and definitions. The legal definitions are not sufficiently defined, which puts the legal position of young people in jeopardy.

Choosing too often leads to losing

Belgium limited the number of pages in its periodic report at the request of the Committee on the Rights of the Child of the UN. The previous periodic report from Belgium was over 200 pages. The current report is just over 50. The limiting of the number of pages is not without consequences. The Belgian governments

had to choose. As a result, some problems that put children's rights under pressure and that certain players in the field of children's rights regularly raise remain underexposed. For example: What about the rights of child refugees who live their entire lives in Belgium but must now leave the country? What about the right of minors to freedom of religious experience? What about minors' weaker position when it comes to participation in the local policy?¹

Recommendations

The Belgian periodic report shows that the Flemish, French and Belgian governments continue to strive to realize children's rights. But article 44 also requires that any difficulties in implementing the Convention be included.

- The Belgian report zooms in too unilaterally on the successes.
- Some problems that put children's rights under pressure and that certain players in the field of children's rights regularly raise remain underexposed.
- There is no overview of or arguments why some of the concluding observations from the previous report of the UN Committee received no attention.
- The Belgian report hardly mentions the policy actions for the prevention and detection of radicalization, although these will still have consequences for the rights of children.

2. Belgium remains committed to the instruments of children's rights but ...

The fact that the KRC and the DGDE exist shows by itself that the Belgian governments continue to take children's rights seriously. The KRC and the DGDE were set up to hold up the policy for minors in Flanders, the French Community and Belgium against the light of children's rights and to formulate recommendations for a more child-friendly policy on the basis of their children's ombudsman and advice function.

The communities also developed various instruments in order to implement the Convention. Flanders is even internationally praised for its children's rights instruments, such as the child and youth impact report, which assesses the effects of new regulations on children and young people.

However, we are concerned about the declining impact of these instruments and about regulations that do not always fully support the rights of children.

Children's rights do not pass through enough in legislation

The Convention covers many areas that are important for children and young people. Children's rights are more strongly embedded in some policy areas than in others. Some legislation takes too

little account of the rights of children. It is impossible to go into detail in the scope of this report. We will limit ourselves to two examples.

- Donor children struggle with their right to identity. They cannot ascertain who their "biological" fathers are. The Law on Anonymous Donorship of 2007

hardly pays any attention to the perspective of children.

- We note that the Belgian legislation still allows the referral of a juvenile delinquent to an adult court despite various calls from the UN Committee to abolish this referral.

Some rights became more conditional. For example: the refugee status of recognized refugees will be re-evaluated after five years.

Lack of coordination

Belgium has a complicated State structure. There is the Belgian Federal State. There are the communities and the regions. And there are the local governments. They all have their own powers. All governments determine children's lives. Does the Federal Government cut the basic provisions? Then this has consequences for the communities. Do the communities or the regions not sufficiently anticipate the needs of children, young people and their parents? Then this weighs on the federal or local governments.

Good coordination between the youth and children's rights policy in Belgium is crucial. Belgium unfortunately falls short in this.

Waiting for action plans

There was once a National Action Plan on Children's Rights

There is no National Action Plan on Children's Rights. There used to be. It was part of the world action plan *A World fit for Children*.

The Flemish and French communities do have children's rights policy plans, but they have lost their strength.

When will we see the next child poverty reduction plan?

The poverty policy pays attention to reducing child poverty. Child poverty found its way to the Flemish and French Community action plans on poverty reduction and to the federal plan on

poverty reduction. The national child poverty reduction plan 2013-2014 led to a coordinated plan of the Federal Government, the regions and communities.

We regret that at the beginning of 2018, there is still no national child poverty reduction plan for 2016-2019.

Independent monitoring incomplete

The KRC and the DGDE monitor violations of children's rights in the Flemish and French Community and in the Flemish and Walloon Region.

- For powers of the Federal and the Brussels authorities, the Walloon Region and the German-speaking Community, no specific independent children's ombudsman service exists. These powers are assumed by the KRC and the DGDE on a voluntary basis and the federal Ombudsman takes the best interest of the child into account at federal level when executing his assignment.
- To date, Belgium has not put in place an independent human rights mechanism which complies with the Paris Principles. Various human rights organisations have voluntarily teamed up as part of a platform, where the Nationale Commissie voor de Rechten van het Kind (NCRK), the KRC and the DGDE work together.

Allocation of public funding

The KRC and the DGDE urge the government on a regular basis to devise a tracing system which delivers transparency in the allocation of public funding for children and youngsters.

The Belgian authorities have repeatedly pledged their willingness to work up a clear-cut run-down of the allocations. Sadly, they continue to fail to deliver on that commitment, arguing that as good as all budgets are relevant to children, which dispenses with the need for these budgets to be separately detailed.

Data collection

The NCRK worked up a set of children's rights indicators, enabling the authorities to report on the way children's rights are safeguarded in Belgium on a more structured footing. The Flemish and French-speaking authorities too are making efforts to follow up on the living conditions of children and youngsters with research.

However, what is lacking are clear undertakings from all Belgian authorities to continue to invest in numerical data from a children's perspective, and to take action setting out from the results. Children's rights indicators are meaningful only when they are put to use as a cogent monitoring tool for children's rights.

Child rights education

Child rights education in policy plans

Child rights education and information was cited as a priority in the 2011-2014

Flemish Action Plan on Children's Rights. International research from 2009² shows that Belgian youngsters do not do well when it comes to democratic political citizenship.

The subsequent 2015-2019 plan does not earmark children's rights education as a priority focus. However, the plan does put forward research into children's rights education. In 2016, young people attained a slightly better score.³

Child rights education in formal education

In primary and secondary education, children's rights are not very visible. They are implicitly contained as part of the inspection model for schools and in the basic competences of teachers. The aforesaid research shows that, compared to other countries, Belgian teachers have fewer opportunities to upskill themselves in the area of civic education. In 2018, the attainment targets for pupils are to be updated, with a greater focus to go out to citizenship.

Recommendations

The KRC and the DGDE duly rate the actions fielded by the Belgian authorities surrounding the various children's rights instruments. In doing so, they are acting in compliance with articles 4 and 42 of the Convention on the Rights of the Child. But that is not enough.

- Belgium needs to put more measures in place to ensure that the laws and regulations and the administrative arrangements are compliant with the provisions and the principles of the Convention.
- An efficacious coordination mechanism and a nationwide action plan on children's rights are needed in order to enable a cohesive children's right policy to be conducted at Federal and Community level.
- A Federal and Brussels children's ombudsman service is required.
- Belgian authorities need to urgently improve their budgetary transparency in the allocation of public funds for children and ensure strategic budget lines for vulnerable children are in place.
- The data gathering in strategic policy areas needs to be developed even further.
- The NCRK coordinates the data gathering and the authoring of the regular reports. It is important that sufficient manpower and financial resources remain available to this end.
- Child rights and human rights education needs to be further strengthened and developed. An overarching action plan for child rights education is required. Children's rights also need to be expressly enshrined in formal education.

3. Non-discrimination, the best interest and the opinion of the child

Not all children have the same opportunities

The non-discrimination principle is enshrined in the Belgian Constitution (articles 10 and 11). Specific regulations, instruments and control mechanisms help to counteract discrimination. At various levels of governance, bodies are in place where complaints may be entered for individual cases of discrimination: *Unia*, for all grounds of discrimination set out in statutory law, other than the grounds of gender and language, the *federaal instituut voor de gelijkheid Man-Vrouw*, and the *GenderKamer* as part of the Flemish Ombudsman Service for discrimination on the grounds of gender. Steps are being put in place against structural discrimination to counteract the discrimination of sections of the population, in amongst other things in the area of education.

In spite of the laws and regulations, the policy instruments and the supervisory bodies, discrimination remains a major issue. For instance, a high level of discrimination is seen to exist when it comes to rental homes and jobs, in amongst others against people with a migration background, a disability or who live in poverty. Children and youngsters are directly or indirectly affected by this discrimination. The inequality between children and youngsters because of their origin, social position or disability remains considerable, in amongst other things in education and the world of leisure. Research shows that perceived discrimination on the grounds of religion, language and skin colour among Flemish youngsters is not a marginal problem.⁴

Racism and Islamophobia are a major social problem. Prejudice, stereotypes and hatred of Muslims and people who have a dark skin colour or a migration background are manifestly visible in the public debate. Which is very harmful to the development of identity in children and youngsters from these groups. Although

efforts are being made to counteract *hate speech*, not every manifestation of prejudice, stereotypes and hatred is consistently publically decried by the political classes as a whole.

Interpretative statement to non-discrimination principle still remains in place

In promulgating the ban on discrimination, Belgium put forward an interpretative statement. The Belgian government contends that differences in treatment between minors based on nationality or residence status are not ruled out as long as they are based on objective and reasonable considerations and comply with the principles of a democratic society.

This interpretative statement is superfluous. The UN Committee on the Rights of the Child interprets the ban on discrimination in the same sense as Belgium. However, it would be an important symbolic gesture if Belgium were to repeal the interpretative statement, as a step which the UN Committee on the Rights of the Child has been calling for years.

The best interest of the child is not always a prime concern

Belgium has made various efforts to more emphatically do justice to the best interest of the child. The best interest of the child is enshrined in the Constitution and have been translated into practice here and there. Under the Belgian Presidency of the Council of Europe, Belgium organized a conference on the best interest of the child.

Organizations and official bodies are making efforts to screen their operations and procedures from the perspective of the best interest of the child and are taking steps to remedy the way they operate. In association with various outside partners, the General

Commissioner for Refugees and Stateless Persons for instance reviewed ways to better align its own procedures to deliver international protection with the best interest of the child as early as 2014. In 2017, this resulted in major amendments to the Aliens Act and the pertaining Royal Decree, with respect to the right of accompanied minors to be heard, even in case of requests for international protection submitted by their parents. For important aspects however, we remain dependent on clarifications in the explanatory memorandum to the Aliens Act and on the interpretation and appraisal of the situation by the civil servant concerned.

Examples also exist which go against this fundamental right of children: Where is the best interest of the child when the referral of a juvenile delinquent to an adult court continues to exist? Is it in the best interest of the child to be made to spend the night in a police cell because there are not enough places in youth care services? Where is the best interest of the undocumented child when it is deported with its parents to the parents' country of origin, even though Belgium is the only country the child has ever known and it has been living here for years? Is locking up children and parents in a detention centre, pending their return, in their interest? Previously, Belgium was singled out for international praise because we did not lock up children as part of the country's return policy. With the present policy choices this appears to be a thing of the past for good.

The opinion of the child all too often goes ignored

The Belgian authorities invested in the right to participation.

As part of a broad-based consultation round, all parties involved were able to lend their input in respect of the attainment targets in the field of education. The Care Inspectorate involves children and youngsters in its inspections of youth care facilities. The field of education involves pupils in school inspections as part of a trial project, and the Flemish Pupil Union is in place.

Flemish and local youth councils are able to advise on Flemish and local policy decisions. Family Court judges invite children to be heard on all matters of concern to them. Respect for the opinion of children in medical matters has been enshrined in the Patient Rights Act.

Nonetheless, the KRC and the DGDE are made to find on an almost daily basis that the right to participation is not yet a vested right. Research shows that local youth councils have less impact on the local decisions.⁵ The right to vote in local elections at age 16 has not been enshrined in statutory law, however substantial the support for this step. Policy plans are alive to participation projects but once the project has been finalised, the efforts risk being lost. The participation of socially vulnerable groups remains inadequate. The right to participation has been especially accomplished through the participation in official boards and councils, whilst minors are keen to also co-decide on matters affecting their daily lives and their futures outside of these bodies.

The wish to die of children facing unbearable suffering

Sick children who face unbearable suffering in Belgium may request euthanasia, subject to very strict conditions.

The attending physician first seeks to establish whether the child is of sound mind and judgement, and is duly conscious. The physician is also required to consult the child psychiatrist or psychologist. The attending physician subsequently seeks to determine whether the child's medical condition offers no prospects of recovery, whether the child is facing persistent and unbearable physical suffering and whether he/she will die within the foreseeable future. The physician is also under obligation to seek a second opinion from another independent physician. Both parents or the child's legal representatives need to consent to their child's wish to die.

The KRC and the DGDE put forward a positive opinion on the Euthanasia Act for

minors. Children who are terminally ill or who have been affected by a serious accident can suffer the same kind of unbearable suffering without prospects of recovery as adults. The strict conditions for euthanasia on minors strike a balance between protection and participation.

Moreover, in our opinion we strongly underscored the importance of guidance and support of children and their context.

Since 2014, Belgium has favourably answered the wish to die of two terminally ill children.

Recommendations

Belgium needs to more resolutely act in favour of the best interest of the child. When adopting laws or regulations that relate (in)directly to children, a systematic study of the impact of these measures on the children and their best interests must take place.⁶ Especially the best interests of socially vulnerable children and youngsters need to have a more emphatic impact on policy decisions. A first step is to scrap the interpretative statement to article 2 of the Convention on the Rights of the Child. A second step is to tackle discrimination and to promote the inclusion of groups in vulnerable situations to ensure they are given the same opportunities as other children.

The right to participation on the part of children and youngsters demands a sustained focus of attention. Not only through consultation or surveys, but also by raising the awareness of adults who co-determine the lives of children.

The KRC and the DGDE put forward a positive opinion on the Euthanasia Act for minors. Children who face unbearable physical suffering and who will be dying in the foreseeable future without any prospect of recovery, are also entitled to a dignified end of their life, same as adults who face unbearable suffering.

4. Civil rights and freedoms

Action plan against violence against children

The Belgian authorities have set up various schemes to counteract abuse, maltreatment and neglect of children.

Since 2001, the nationwide action plan against domestic violence has clustered the various actions against domestic violence. These actions also take in children. On 14 March 2016, Belgium ratified the Convention of the Council of Europe on preventing and combating violence against women and domestic violence. Under this Convention too, the protection of children is a matter of priority.

Children, youngsters and parents who face violence can contact the helplines 1712 (Flanders) or 103 (French Community). Awareness campaigns are rolled out. Extra

research is to be conducted into violence in the various areas of children's lives. Under-age victims of domestic violence can rely on guidance and support in the youth care system or in child-parent shelters. Projects are in place to streamline the collaboration between security and welfare services in case of domestic violence.

In spite of all these efforts, parents and children continue to be victims of violence.

- Each year, 40,000 cases of domestic violence are reported to the Police.
- In 2015, close to 15,000 minors were involved in reports of child abuse.
- Inappropriate sexual behaviour is still encountered all too often in the world of sports. The *sense of urgency* among sports clubs remains inadequate to act in such cases.

Acrimonious divorces are a form of violence

In some cases, children and youngsters are bound up in the battle between their parents to such a degree that this too becomes a form of child abuse. The mentality of parents is difficult to tackle by law. What can be done is for support to be made available to parents towards a culture of consensual agreement through mediation rather than a culture of conflict which is pursued through the courts.

In spite of the various efforts, the KRC and the DGDE continue to receive a lot of complaints about acrimonious divorces.

Freedom of thought, conscience and religion

Article 14 of the Convention on the Rights of the Child acknowledges the right to freedom of thought, conscience and religion. This article requires governments to respect the rights and obligations of parents to induct their children in the exercise of their right in a way that is compatible and on a par with their developing mental abilities. To which the Convention on the Rights of the Child

adds that the freedom to express your religion or creed may be restricted only insofar as this is necessary and permitted by law, with a view to maintaining public peace, for instance.

Belgium is presently struggling with this right to religion or creed. Especially when it comes to children and youngsters. And especially when this goes for Muslim youngsters. But young people from other religious communities (such as the Sikhs) too are finding it difficult to express their identity. One of the places where this is seen to manifest itself most vividly nowadays is in schools. In their child ombudsman activities, the KRC and the DGDE are seeing that religion and the practice of one's religion at school often proves a thorny topic. Pupils continue to complain of the no headscarf rule or the ban on wearing other religious symbols. We are also getting complaints on fasting during Ramadan and on disputes about swimming activities as part of school PE lessons. Many schools seek out and come up against the boundaries of their own philosophical expertise. Parents often feel targeted and in some cases feel embarrassed about the way they are raising their children. Generally speaking, faced with issues that touch on the right to one's beliefs this makes us feel awkward as a society.

Recommendations

Put in place a statutory ban on corporal punishment

We need to see stronger public signals on violence against and abuse of children. The Council of Europe recently condemned Belgium. The UN Committee on the Rights of the Child too has repeatedly drawn Belgium's attention to its duties in this regard. The way in which the ban on corporal punishment has been set out in Belgian laws and regulations is insufficiently explicit. Foreign examples show that a statutory ban makes a lot of difference.

Do more to protect the integrity of children and youngsters

Children and youngsters still feel highly diffident and anxious about reporting inappropriate sexual behaviour. The Belgian authorities need to step up efforts to protect the physical, mental and sexual integrity of children and youngsters. We need a zero tolerance culture on violence and sexual intimidation.

Devise an overall approach towards acrimonious divorces

The Belgian authorities need to make greater efforts to prevent children from ending up piggy in the middle between two parents involved in an acrimonious divorce.

- The Belgian authorities need to put in place the parenthood plan, whereby divorcing parents jointly decide how they will assume their roles as parents after the divorce has been pronounced.

- The Belgian authorities need to put in place compulsory information sessions on the existing offering of mediation services. Often the parties are unaware that there is such a thing as mediation.
- A global action plan is required. Collaboration with all the experts and between all policy levels that work on prevention, intervention and remedial action is called for.

Give freedom of religion breathing space

A key role for the Belgian authorities is to keep open the debate on creed and identity among young people.

- The Belgian authorities need to do more to act in response to the substantial lack of understanding and expertise on the various creeds.
- We need a greater focus of attention to go out to the quality of the teacher training for Islamic religion as a school subject.
- The attainment targets in primary and secondary education need to be reviewed from a diversity perspective.
- Schools need to be able to rely on the support of inter-creed mediators.
- A clear regulatory framework is required for organisations (such as schools or swimming pools) looking to ban religious/philosophical symbols or certain types of clothing. This regulatory framework needs to observe the strict conditions imposed by the European Convention on Human Rights on such bans to safeguard the freedom of religion and the expression of religion.

5. Family life and alternative care

Social and educational function of day care for babies must continue to come first

Day care for babies and toddlers plays a major role in the development of any child, and of socially vulnerable children in particular. Day care has an educational, economic and social function in our society.

Yet not everyone has the same degree of access to quality day care.

The shortage of places in quality day care continues to exist, in spite of the progress made in recent years. Big differences are found to exist between different municipalities and quarters.

In the Brussels Capital Region, the available number of places in day care centres greatly differs, from over 60 to barely 10% per neighbourhood. The municipalities with the greatest number of vulnerable families contend with the greatest shortages.

Flanders has poured substantial investments in the training and educational guidance of staff in recent years. Various instruments have been put in place to ensure educational quality. Yet the minimum price has gone up. The other Communities urgently need to catch up in the areas of training and guidance.

The training level of day care workers in the French Community, , remains among the lowest in the advanced economies, even though we know full well how important quality staff are to small children.

Complaints entered with the KRC and the DGDE show that the day care lacks flexibility. The day care organisations need to be able to act in better response to constantly more diverse demand (emergency day care, occasional day care or even part-time day care). The awarding of places to the most underprivileged groups too continues to lag behind, to the benefit of the 'traditional' day care services for children from families with two working parents.

Recommendations

- Ensure the available places in day care for babies are geographically distributed in accordance with the proportion of babies and toddlers in a given neighbourhood.
- Diversify the offering in day care places to meet the evolving and changing needs of families.
- Ensure a day care offering for all families, regardless of their living standard.
- Improve or continue to focus on the training of day care workers.

Child and youth care continues to come up against persistent barriers

The Belgian Communities make ongoing efforts to raise the quality of and the accessibility to child and youth care services. According to the letter of the law, children can rely on youth care either on their own or together with their parents. Flanders has decrees in place which outline the rights of youngsters to and in youth care.

In 2018, the French Community adopted a new 'Code de l'Aide à la jeunesse'. The implementing orders are under preparation. The DGDE welcomes the fact that children from age 12 are to be involved in decisions on the care they need.

In Flanders, over 900,000 children and youngsters who need assistance sought

broad-based access, with 9,868 children calling on child and youth care crisis services in 2016. Flanders dealt with 6,062 foster care situations. 12,589 children and youngsters knocked on the door because they needed more intensive youth care assistance. 4,734 minors were monitored by the Youth Courts.⁷

In the French Community, the youth care services provided care and shelter for 40,371 youngsters for at least one day in 2014. 93% of these youngsters face difficulties or are in danger. 5% are youngsters who committed an offence qualified as a crime and 2% are youngsters facing difficulties or who are in danger, and who have committed an offence qualified as a crime. On 1 January 2014, 3,523 youngsters were living with reception families. A further 2,937 youngsters were living in sheltered accommodation recognised by child and youth care.⁸

Recommendations

In spite of the children's rights-friendly laws and regulations and the wide degree of variation in the different types of youth care available, year after year complaints from children, youngsters, parents and professionals entered with the KRC and the DGDE highlight the same persistent barriers in child and youth care .

Rights of minors in youth care not always translated into practice

Level of attention for information and communication on the legal position of minors continues to fall short. Especially the way this is translated into practice and the significance this has for minors demands greater attention.

There is insufficient participation in the delivery of youth care at various levels

Children, youngsters and parents continue to experience a lack of participation at various levels. In some cases, they may suggest an alternative solution which chimes with the interests of the child, yet their suggestion are left aside .

Services play too much of a game of back and forth ping-pong

Requests for assistance from youngsters sometimes get bogged down in a to and fro process between various providers of youth care services.

The waits are too long

- The latest annual report put out by the *Agentschap Jongerenwelzijn*, the Flemish child and youth care administration, specifies an average wait of anything from 122 to 277 days, depending on the sector.⁹ In 2016, the number of youngsters waiting for more intensive and radical assistance was seen to fall thanks to extra efforts. Nonetheless, children and youngsters are faced with longer waiting lists for directly accessible assistance.
- Figures in Wallonia show that the average wait for non-residential assistance stands at four months. For court-imposed assistance this is five months. For assistance by sheltered accommodation services and educational assistance, the average wait is less than three months.

Youth care lacks continuity

- The delivery of care has insufficient continuity. Care delivery sometimes stops without the required new care having been set afoot.
- There is a need for 'pathway-guidance' and better - more complementary - collaboration between the various youth care services.

Admission requirements impede access to youth care

More demand-led care delivery is required. Minors are at risk of exclusion due to an unduly strict implementation of target group and admission requirements.

Youngsters with complex problems too often fall by the wayside

- Children with complex problems frequently come up against a lack of care that meets their need for psychiatric help. As a result, they are at risk of ending up in a Community-run detention centre.
- More investments need to go into highly specialist services for youngsters with complex problems. Geographical distribution and accessibility are currently found wanting.

Transition from being a minor to legal age is too abrupt

The transition from being a minor to legal age is very abrupt for youngsters in youth care. The care delivery stops overnight and they risk ending up on the street. Youngsters need to be better prepared for life after having been in care. As they reach 18 years of age, it is important that they continue to get support and guidance in different areas of life: education, employment, housing, money, and building a social network.

The status of unaccompanied minor refugees in care remains precarious for too long

Unaccompanied foreign minors who need youth care come up against a lack of specialist youth care services.

Children deprived of their family environment

Both legally and in practice, the Communities have put in place various steps to provide parents with preventive support in order to avoid their child(ren) from being removed from their home and

being deprived of their family environment.

- Decrees are in place that hone in on preventive family support and encourage collaboration between organisations that work to serve children and families. Services exist which inform and advise parents with young children and deliver preventive

health care services for young children.

- The Communities are investing in non-residential, directly accessible youth care services.
- If a choice needs to be made between different types of care, decrees ensure priority is given to the least incisive form of care.
- Often the youngster's request for care is screened, analysed and evaluated by

various bodies before the youngster is put into care.

Nonetheless, youngsters from socially vulnerable families are overrepresented in youth care services. Research in Flanders shows that half of the youngsters in youth care come from a socially vulnerable family.¹⁰ There is a lack of concrete plans to step up efforts to put in place basic facilities that ensure an appropriate living standard.

Recommendations

- Preventive family support needs to go further than educational and parenting support. Belgium needs to keep up its commitment to deliver a decent income for parents and quality basic amenities for children and parents.
- Belgian authorities need to invest more in supporting socially vulnerable families. Too often, children who have been put into youth care come from these families.
- Greater collaboration is needed between the authorities responsible for delivering youth care, the preventive family support sector and the authorities who provide material and financial support to families.

Foster care: legal preference for foster home care

Flanders has made distinct efforts to put foster care forward as the first option in cases where children or youngsters are removed from parental care. As such, placing children or youngsters in a family environment is the preferred option.

- A legal framework has been worked up for foster home care. In 2014, there

were 5,325 foster care situations. Two years later, this number had gone up by 14%: 6,062.

- On 1 January 2014, nearly three in every ten youngsters put into care in the French Community were put into a foster family, and close to a quarter of them by a recognised youth care service. The Belgian government has adopted regulations which bolster the status of the foster carers. As a result, more vulnerable families prefer to see their children put into an institution.

Recommendations

- We welcome the efforts made by the Flemish and French-speaking authorities to further develop foster care. Foster care is the first option in cases where a child or a youngster is removed from parental care.
- However, the KRC and the DGDE are concerned about the position of the biological parent. The Belgian government has put in place steps towards a clearer status for foster carers. The new status may put pressure on a child's right to have contact with its biological or legal parent or impede a return to the family of origin.

Access to information about the donor is needed for donor-conceived children

The reports show how important it is to know who your parents are. This demand is seen to emerge among adopted children, children who were conceived with an anonymous donor and children whose mother gave birth without disclosing her identity. These children and youngsters are faced with a biological and

social reality. Even though the social aspect is the most important, a lot of children struggle with a double sense of loyalty.

For inter-country and domestically adopted children alike, a transparent right of access to the relevant records exists. Where the information is available, every adopted child from the age of 12 has the right to access his adoption file. This does not apply to children who were conceived with donor sperm or donor eggs.

Recommendations

- The Act of 6 July 2007 sets out that sperm or egg donations are anonymous as a rule. It is important that these minors are also gradually given access to identifying and non-identifying details.
- Belgium needs to take steps to scrap anonymous sperm or egg donations, to enable children who were conceived with donor sperm or donor eggs to also gain access to parentage information.

Rights of adopted children are not taken into appropriate consideration

Adoption, especially in its intercountry form, is among the most complex protection measures for minors. Not just

because a lot of actors with different responsibilities are directly involved, but particularly because they need to reckon with different factors. The fact that inter-country adoptions come with a fair few risks is seen in the recent problems Belgium encountered with the adoption channels in Congo, Uganda, Ethiopia and Sri Lanka.

Recommendations

- The Regional regulations need to be more mindful of the perspective of adopted children and the impact adoption has on their lives.
- Intercountry adoption is not always used as a measure of last resort, with family-based, permanent and domestic solutions generally preferable. The children's interests are not always the paramount consideration during the whole adoption process.. We have reservations as to the adoptability of some children. Especially older children who have been adopted deserve particular attention and guidance.
- Only allow adoptions of children from countries that have ratified The Hague Adoption Convention. Conclude bilateral agreements with non-signatory States containing provisions from The Hague Adoption Convention.
- The implementation of the provisions set out in the Adoption Convention in the signatory and non-signatory States needs to be supervised and monitored.
- Avoid adoptions from countries that do not register births as widely as possible. The risk of child trafficking and corruption is too considerable.

6. Disability, health and welfare

Care for disabled children

We welcome the fact that Flanders supports the right to participation on the part of disabled people and children. The Personal Assistance Budget (PAB) enables parents and youngsters to decide for themselves which kind of care they wish to buy.

In some cases, parents get to hear that their child's need for care complies with the requirements to qualify for a PAB, only to find they miss the boat as part of the annual round where the budgets are effectively awarded: there is not enough money to go around and there are situations where the need for care is even greater. In 2016, a child or youngster waits an average of five years for a PAB.

Moreover, complaints received by the KRC and the DGDE show that more funds are still required for residential and specialist care. In 2016, 2,334 disabled children were on the waiting list for not directly accessible care at a facility in Flanders. The average wait is 277 days. Their entitlement to care and to the continuity of that care is under pressure. The same applies in the French-speaking part of Belgium.

Complaints filed with the federal Ombudsman show that there is no harmonization of the recognition criteria that are taken into consideration at the tax level and in the area of the child benefit. As a result, a child's disability may be recognized in the child benefit scheme, but not in the tax field.

Recommendations

- The Personal Assistance Budgets are too low. Children and youngsters are made to wait for their budget for too long and in some cases the actual amount is insufficient to find a suitable response to their care needs.
- For specialist multidisciplinary care (such as for autism, trisomy or chronic conditions) there are insufficient places, which moreover are inadequately geographically distributed.
- Children with complex care needs (physical or mental disability combined with mental or behavioural problems) come up against unduly long waiting lists. The lack of stable and adapted care threatens to aggravate their situation.
- In the entire French-speaking part of the country, the respite services are inadequate. In most cases, they are unable to ensure regular support, however much this would be welcome, for families and for specialist institutions.

Inclusive education is too slow in taking off

The national report refers to the Flemish M-Decree on the transition towards a more inclusive education system. The M-Decree is a major step forward in the implementation of the UN Convention on the Rights of Persons with Disabilities.

The proportion of pupils in special needs education in Flanders has since substantially fallen, especially in primary education. In times to come, pupils with specific learning needs and their teachers

in regular education can look forward to even greater quality support by a specialist network.

In spite of these initiatives, the transition towards more inclusive education in Flanders still faces multiple barriers.

In the French-speaking part of the country, integration and inclusion remain a fundamental source of concern. Both the number of children integrated in regular schools and the number of children in special needs education schools has gone up in recent years, because the criteria are much too vague. Thankfully, an increasing number of schools are devising projects

for reasonable adjustments to suit children with learning difficulties. Sadly, reasonable adjustments for children with other impairments such as behavioural or mental disorders are seen to lag behind.

A decree on reasonable adjustments was adopted in late 2017 and is set to take effect when the 2018-2019 school year gets under way. The implementation will need to be assessed over the years ahead.

Recommendations

- Too much legal uncertainty remains when it comes to the access of disabled children to the regular education system. Which adjustments should schools consider to be 'reasonable'? For how long do arrangements apply that were made in respect of reasonable adjustments? With which kind of adjustments is a qualification or certificate still feasible, and with which adjustments is this not the case?
- There is no mediation body for disputes over the nature of the reasonable adjustments.
- There are no direct ways for pupils with specific educational needs or their parents to be heard when applying for support.
- Specific therapeutic treatments on the other hand are available in special needs education, during school hours. This is not always the case in regular education.
- There is too much variation in the number of hours in support available to pupils with a comparable impairment. Each pupil must be able to rely on a minimum number of hours in guidance and support, adapted to his/her impairment.
- Some pupils with specific educational needs can only attend regular education if they are given personal assistance. The resources available do not always allow for this kind of assistance.

Health care

Financial barriers in health care

Belgium enjoys quality health care. A lot of effort goes into making this health care affordable for all. Nonetheless health care remains insufficiently accessible to some groups of children because of the cost involved.

- Parents first need to pay a portion of the doctor's fee out of their own pocket and have this portion refunded later on. This advance and the patient fee constitute barriers to a lot of people living in poverty.
- Some health care expenses, such as those for mental health care or certain types of dental care are either not reimbursed or what refunds exist are insufficient.
- Hospital bills can run up to very considerable sums, and in some cases may cause people on low incomes to get into debt.
- The cost of medicines too can run up.

1 in 3 do not feel good about themselves

We are asking for more attention to go out to the accessibility of mental health care.

Nearly one youngster in every three does not feel good about himself or herself. Youngsters call the suicide line because they feel misunderstood, are getting bullied or made to face violence.¹¹ Compared to other European countries, suicide figures in Belgium are high. Research shows that seeking mental health care in Belgium is an even bigger taboo than it is in other countries and that mental health care needs to be much more accessible.

Various authorities have devised policy plans that put in place a number of initial steps towards accessible quality mental health care for children. Prevention, early detection, screening, referrals, diagnoses, treatment and inclusion are advanced as focus areas. The collaboration between services has been enhanced.

However, children and youngsters with mental health problems continue to come up against high barriers.

Shortage of places in mental health care put a strain on children's rights

Waiting lists

In residential mental health care, the waiting lists for children run up to several months.

A mental health care offering is in place which is geared to people's income when it comes to cost. For this affordable offering too, waiting lists are often seen to exist.

Financial barriers

Plans exist to widen the reimbursement of mental health care expenses by the health insurance. A number of occupations in mental health care have been officially recognised, which opens the door to reimbursement in due course. However, these reimbursement mechanisms are presently not in place yet.

Minors in adult psychiatry or in Community institutions

Due to a lack of places in child psychiatry, youngsters with complex mental and behavioural problems often end up in adult psychiatry.¹² Or, if they are sectioned, they are put into Community run detention centre.

Use of medication remains alarming

In 2005, minors in Belgium took a total 1.6 million doses of Ritalin each day. In 2010, this figure had already gone up to 4.7 million daily doses.

In 2010, the Committee called on Belgium to be vigilant for the rising use of medication by minors. To date, we are seeing no signs of a spectacular drop. The use of Ritalin among minors remains alarming. By 2015, we had reached 4.5 million daily doses of Ritalin.

Solitary confinement and isolation in child psychiatry

In Flanders, the Care Inspectorate reviewed detention measures for minors in child psychiatry institutions:¹³

- The ambition to resort to detention measures as little and for as short a time as possible fails to be reached at all times and in all cases.
- The number of minors who are / were kept in close confinement or isolation in psychiatric institutions gives grounds for concern. Of the 192 minors reviewed, one in seven was locked up or tied down during the time they were admitted.
- In some departments detention is part of everyday life and of the department's rules. One example is that of patients who are locked into their room, which is seen to occur both during the day and at night.
- All too often youngsters are still segregated for reasons other than acute and grave danger (in 37% of the solitary confinement cases reviewed).

The inspection report serves as an impetus for further action.

Inspections are also planned to take place in respect of detention measures imposed on minors at youth care facilities, facilities for disabled children and in adult psychiatry where minors are assigned at times.

Right to information and co-determination in psychiatry

Children in psychiatric institutions often do not have information about their situation. Their right to co-determination in the decisions made about themselves and complaint or appeal mechanisms are as good as non-existent, or they are not or insufficiently adapted to children.

Recommendations

- Eliminate financial barriers to give all children access to the health care they need, irrespective of their family's economic status. Do so not only for the broad-based primary care, but for all health care that is needed for the development of children, including mental health care.

- Provide a sufficient and accessible mental health care offering for children, so that children are not left without assistance or with maladapted assistance. Eliminate waiting lists.
- Put more measures in place to drive down the prescription of psychoactive medicines for minors where psychological, educational and social alternatives exist.
- Put measures in place to ensure child psychiatry institutions and other facilities act in observance of the international frameworks on detention measures. Avoid the solitary confinement and isolation of minors. Solitary confinement may be used solely as an exceptional measure to ensure safety, and must be kept as brief as possible.
- Set up child-friendly complaint and appeal mechanisms in health care.

Fight against child poverty

The various authorities expressly acknowledge child poverty as a problem, and focus on this endeavour in their action plans to counteract poverty. The Government of Flanders has articulated a clear set of objectives, the idea being to halve the proportion of children who are born into poverty by 2020. We duly rate the annual measurement efforts and the publication of the indicators.

Nonetheless, the poverty figures show no signs of improvement. Instead of slashing the numbers by half as intended, the number of children born into deprived families has continued to rise. From 7.6%

in 2008 to 12.82% in 2016. The disadvantage index is much higher among children whose mother was not a Belgian national when she was born (31.6%) than it is among children whose mother was born a Belgian national (5.8%).

On average, families living below the poverty line are 471 euros a month short to meet the poverty line. This poverty gap greatly varies depending on the composition of the family: families living in poverty with 1 child on average are 310 euros short each month, those with 2 children are 527 euros short, those with 3 children are 414 euros short, those with 4 children 855 euros euro and single parent families on average are 551 euros short of meeting the poverty line.

Recommendations

Actions required that effectively counteract poverty

The existing action plans are inadequate to achieve the objectives. Most actions only mitigate the effects of poverty, but do nothing to reduce the poverty as such. No calculations have been made to establish how much each action is meant to contribute to the pursued reduction of child poverty figures. Vulnerable groups, such as families with a migration background or without legal residence status, are given little in the way of specific attention.

- Belgian authorities need to include concrete actions in their action plans which effectively reduce the child poverty figures.
- Articulate indicators per action as part of a total package which delivers an appropriate response to the challenges posed by child poverty.
- Monitor the outcomes of the actions, assess them and take remedial action where needed.

Minimum income of families should not be permitted to go below the poverty line

Assurances are needed that the income of families with children does not go below the poverty line, for all family compositions. The various authorities need to make joint arrangements to achieve this aim.

Family benefits

The powers in respect of child benefits were transferred to the Communities in 2014, which each worked up a new system of their own. The Flemish and French Communities decided that an identical basic sum is to be paid for all children, regardless of the employment status of their parents. This is a forward step towards the equal treatment of children.

International research shows a strong link between targeted investments in child benefits and falling child poverty figures. The existing Belgian child benefits system has a substantial impact on child poverty.

The fact that the new system will bring about a limited reduction of the child

poverty figures is positive. A scientific simulation shows that the new Flemish system is effectively resulting in a slight fall.

Nonetheless, this large-scale reform would have allowed for a greater reduction of the child poverty figures to be achieved.

The Communities have missed the opportunity to use child benefits more purposively in the fight against child poverty.

The KRC and the DGDE regret the differential treatment of children born before or after 2019, which sparked a broad public debate.

The case is still being discussed in the Brussels Region.

Recommendations

- Keep monitoring the effects of the new child benefits system on child poverty, with a due focus going out to different types of families.
- Use the family benefit as a tool to combat child poverty, with a particular focus going out to the greater risk of poverty among large and single parent families. Consider differentiation in the income caps and social benefits according to the family composition.
- Keep supporting the parents in Flanders whose children have been put into foster families over an extended period of time, to maintain the ties with their children. The new system scraps the allowance for the parents.

Taxation of the Family

In addition to family benefits, tax measures for dependent children are the main instrument used by the authorities to financially support families.

A research by the Federal Ombudsman shows that the complexity of the legislation is so great that for children in similar situations, the effects of tax measures could be completely different.¹⁴

Recommendations

There is a need for regulatory review in order to develop legislative initiatives that would make it possible to adapt the system of taxation of dependent children to the current and future family forms of ever-changing family organization. A number of basic principles have to be taken into account in this respect.

- The possible consequences of every change in legislation regarding the different life situations in which children may be tax-dependent must be analyzed.
- When his life situation changes, the citizen must be able to assess how his taxation will be affected as far as his tax-dependent children are concerned.

Right to adequate housing conditions

Everybody is entitled to adequate housing conditions. That includes the very youngest, the minors.

Lack of social housing

Flanders is making clear forward steps to tackle the lack of social housing and to beef up the quality of state-subsidised rental homes. Yet, these efforts continue to fall short.

- Over 90,000 families are on the waiting list for a state-subsidised rental home.
- An appreciable minority of minors cannot expect to live in an affordable quality home in a decent environment.
- In Flanders, 260,000 children are growing up in homes that do not have basic comfort. Among deprived families, this is one in every three children.¹⁵

The situation in Brussels and Wallonia is highly disconcerting. In Wallonia the number of social housing units has even fallen, with waits varying from 4 to 7 years. Normally, every municipality is expected to make 10% of homes available to underprivileged families. Out of 262 municipalities, just 39 comply with this

regulation, with 160 failing to hit as much as the 5% mark. We are still awaiting the new Walloon Housing Code.

In Brussels, the rising demographic growth is also exacerbating the waits, which can go up to 8 or even as much as 10 years.

Homeless children

By late 2014, the Flemish homeless services provided accommodation for 3,730 homeless clients: 1,728 minors lived in this type of accommodation along with their parents.¹⁶ In 2016, the Flemish Housing Inspectorate found 2,838 victims of slum landlords. One in five were under-age. 25 children were not even 12 months old.¹⁷ In 2017, in just one hour 653 homeless children were counted in Brussels.¹⁸

Lack of pitches for caravan dwellers/travellers

Since 2012, caravan dwellers/travellers are increasingly being chased away from their regular pitch and forced to keep travelling. This involves around one thousand families who have Belgian nationality. The number of legal pitches currently covers just one third to half of the actual needs, in spite of the 100% grant set aside by the Government of Flanders to build residential sites for travellers.

Recommendations

- Poor housing quality needs to be tackled more quickly.
- Families living in dwellings unfit for habitation need to be able to rely on fast-placed rehousing.
- There is a great paucity of state-subsidised rental homes. Large families struggle to find state-subsidised rental homes.
- The Communities need to be more alive to homeless children, youngsters and families. More preventive housing guidance and short-term child-friendly sheltered accommodation is needed with a fast throughput to affordable quality homes.
- Single youngsters leaving the youth care system at age 18 are very vulnerable. This group is at real risk of becoming homeless. These young people need to be able to rely on continued support when leaving the youth care system.
- The Communities need to focus more actively on new sites for caravan dwellers/travellers and their children. Their right to an appropriate living standard, to education and health care is under pressure.

7. Education, leisure activities and cultural activities

Continue to further the scrapping of school expenses

Even though access to primary and secondary education is free, parents are still left to pay quite a few school bills. Flanders introduced capped billing for primary education. Schools are increasingly more aware of school expenses and work to confine these outlays.

In the French-speaking part of the country, the circulars follow in quick succession, but they are hardly implemented. Nonetheless, education is not entirely free. The capped bill went up by 10 euros per child in Flanders and fails to fully recognise indirect expenses. An increasing

number of schools are charging for lunch break supervision or are seen to raise the prices.

There is no capped bill in secondary education and significant differences are seen to exist in expenses between degree courses. In a lot of technical and vocational degree courses – where youngsters from low income families are overrepresented – pupils need expensive tools.

The Government of Flanders is putting in place initiatives to automatically assign educational allowances and student grants. In doing so, it is keen to prevent people from failing to get the support they are entitled to.

Recommendations

- Make primary education entirely free of charge.
- Be alive to indirect expenses, such as day care during lunch break, early morning and after-school.
- Put measures in place to keep down the expenses for secondary education, such as capped billing.
- Keep monitoring study expenses. The monitor may be used to align the amounts of the school allowances.

Sufficient school capacity remains a concern

The competent authorities are making budgetary efforts to cater for the need to expand school capacity and renovate school infrastructure, particularly in the

large cities. Continued monitoring of the capacity needs and added efforts remain necessary if we mean to enable every child to attend a local school.

Contrary to what we had hoped, the Flemish capacity monitor does not put out regular updates of the expected need for school capacity.

Recommendations

- Ensure permanent and continuous monitoring of the need for school capacity.
- Keep making efforts to ensure sufficient school capacity.

Make inclusive education accessible to disabled children from deprived families

To socially vulnerable parents, the step towards inclusive education is often difficult, also because the therapies which their child can enjoy in special needs education during school hours are not included in the regular education system. In which case the parents are forced to organize this therapy themselves outside

of school hours, often at their own expense.

For some children, inclusive education may be achieved only if they get individual guidance on what amounts to as good as a permanent basis. Often, this is feasible only if the parents are able to call on a network of volunteers.

The two situations point towards the danger of a new form of social segregation, as a result of which inclusive education can sometimes risk becoming a fairly exclusive matter.

Recommendations

Make sure children effectively get the individual guidance or therapy they need because of their impairment in inclusive education so that access to inclusive education is not contingent on the financial capacity or the social network of the parents.

Ensure equal education opportunities for all children

Flanders is endeavouring to ensure the right to education for all children in a variety of different ways, regardless of their socioeconomic or migration background.

- Schools that are home to a lot of socially vulnerable pupils (from families with a low socioeconomic status) get extra staff and resources.
- Socially vulnerable pupils who speak a language at home that is different from the teaching language count extra towards the subsidies schools receive.
- The Government of Flanders monitors the participation of pre-schoolers in education and fosters actions to promote pre-schooler participation, especially among socially vulnerable groups.
- Especially in schools with non-Dutch speaking under-age newcomers, the Flemish Community subsidizes additional support for newcomers and/or reception classes focusing on language acquisition and civic integration. Due to the greater influx of under-age refugees since the summer of 2015, more funds were

made available for those reception classes and the additional support for newcomers.

In spite of these efforts, a wide gap continues to exist between groups of children from different socioeconomic backgrounds.

A wide gap between underachieving and high achieving pupils remains

The gap between underachieving and high achieving pupils is and remains substantial in Belgium. The socioeconomic and ethnic-cultural background of pupils is closely bound up with a greater risk of grade retention, a greater risk of ultimately ending up – through the cascade system - in degree courses that offer less favourable prospects or of leaving school without a qualification. The OECD's Pisa studies show that in secondary education, this association between background and academic achievement in Belgium (Flemish and French Community) is stronger than in most other countries.¹⁹

Pre-schooler participation is lower among deprived groups

The participation of pre-schoolers is very high (98.5% of three-year-olds are enrolled; around 97% of three to five-year-olds attend school on a sufficiently regular basis). But this participation in pre-school education is considerably less among the most deprived groups. We doubt whether some of the measures which the Government of Flanders is planning to put in place to further ramp up pre-schooler participation (by including a 'universal participation allowance' in the restyled child benefits) will produce the desired effect.

Newcomers hit on bottlenecks

The reception classes for newcomers, which Flanders greatly focuses on in secondary education, continue to come up against bottlenecks. Amongst other things, these include the difficulties

encountered by schools to develop and retain expertise in education for non-Dutch speaking newcomers, the often isolated position of non-Dutch speaking newcomers at schools, their limited interaction with other pupils, the scant focus that goes out to the role informal language learning is able to play and the orientation and follow-up of these pupils after the first reception classes. These bottlenecks probably explain what tend to be the less favourable school careers of non-Dutch speaking newcomers in secondary education. They are overrepresented in vocational and special needs education.

Transgender youngsters demand to be recognised

In recent years, we have been asked to be alert to transgender children at school. This is gradually becoming an issue which will gain in significance when the Belgian legislation is amended.

Recommendations

- Measures are needed that are more selectively aimed at eliminating the barriers which stop socially vulnerable parents from sending their pre-schoolers to school on a regular basis.
- The Communities need to continue their focus on equal opportunities in education. In amongst other things, this means the continued commitment to a better social mix at the schools, putting an end to the cascade logic in secondary education, and getting rid of financial barriers for parents.
- Alongside the current financial efforts towards schools and parents, the role played by hidden discrimination in schools, e.g. through study orientation and the resulting social-economic and ethnic-cultural segregation in secondary schools needs to be examined and acknowledged.
- For transgender children we are calling for the collection of objective data to get a better understanding of the needs of these children, respect for the given name and gender of the child, and the option to make toilets, sports fields, changing rooms and uniforms gender-neutral.

Counteracting early school leaving

The competent authorities have worked up strong plans to counteract early school leaving. We welcome these plans and realise they are necessary. It is important that we continue to aspire to an education system which offers optimum

opportunities for all pupils. Nonetheless we have some remarks.

The UN Committee on the Rights of the Child is calling on Belgium not to put in place repressive measures against socially vulnerable children. Nonetheless, Flanders is recovering the educational allowances for pupils who are absent too frequently. This sanction solely affects the lowest

income groups. We are also seeing fewer early school leavers, but more exclusions at schools. Especially youngsters in socially vulnerable positions are at greater risk of exclusion: pupils with a foreign nationality, whose home language is not the teaching language or who are entitled to an educational allowance.

Reports received by our Complaints Lines show that punishments may have a

negative impact on youngsters, which in turn often leads to school fatigue, and only acts to heighten the risk of truanting and early school leaving. Pupils can only give it their best when they are made to feel welcome at school, have a good relationship with teachers and classmates and they are given the chance to get their act together.

Recommendations

- Reconsider the measure that seeks to recover educational allowances for pupils who truant too frequently. Keep devising coherent strategies to prevent early school leaving.
- Place a greater focus on a positive school atmosphere and on pupil well-being to see fewer exclusions and punishments. Integrity and participation, infrastructure, good pupil guidance and adopting a restorative approach are important aspects.
- Take seriously the signs that youngsters in socially vulnerable positions are at greater risk of exclusion.

Counteract bullying and other forms of violence at school

Right to safety and protection are basic rights of children and youngsters. Violence may affect their integrity. Violence at school is one of the problems most reported to the KRC and DGDE's Complaints Lines in the field of education. This includes violence among pupils themselves, but also from teachers against pupils.

It is the responsibility of every school to turn itself into a place that is safe and enjoyable for all pupils. This entails that children must be able to create a safe comfort zone for themselves. It is also important that children and youngsters be given space to play an active role in the way they lend shape to their integrity.

Participation is crucial if we mean to take the integrity of every child seriously.

Even though the Communities and the schools are making considerable efforts to bring bullying out into the open and to put in place anti-bullying policies, pupils and parents sometimes feel abandoned. Children and parents turn to the KRC and the DGDE because they feel the school is not taking their problems seriously, or because the school's care system fails to bring sustainable solutions.

A positive learning and upbringing situation stands or falls by the quality of the relationship between the teacher and the pupil. Teachers need to be able to maintain authority. But they need to do so with respect for the integrity and the rights of pupils. This means they are not allowed to humiliate, threaten, verbally abuse or hit pupils, or hold them up for ridicule.

Recommendations

- Place a greater focus on a broad and integrated approach that involves all actors at school and is alive to classroom practices, the school culture, the infrastructure and social media.
- Set up an anti-bullying policy which is based around preventive and curative measures and shows respect and consideration for the perpetrator and the victim with a restorative approach. Bullying is a group thing in which bystanders play a crucial role.

Leisure

Child-friendly environment

Playing, exercise, meeting friends and feeling welcome in your local quarter: to many children these are just as important as food and drink. Sadly, children come up against unsafe and child-unfriendly quarters.

- Research shows that 75% of families are satisfied with their local neighbourhood. But enquiring into recreation facilities and spaces to play in the quarter, this rate drops to 50%.²⁰ Children who grow up in underprivileged city quarters are hit all the harder by a lack of security and an environment that is unfriendly to children.
- Children's independent mobility is diminishing. In 2000, 40% of children travelled to school by bicycle. In 2014, this figure had gone down to 31%.²¹ 66% of parents take their children to school by car. One in four does so because the road to school is too dangerous because there are so many cars.

Youth work should remain youth work

The positive and trustful way youth work organisations operate is under pressure. The KRC and the DGDE are receiving reports from youth organisations. On the one hand, they are encouraged to take a positive approach to youngsters on the path to radicalisation. On the other hand,

youth organisations risk being approached as organisations that need to help identify youngsters on the path to radicalisation. This pre-pressive approach to youth work is at odds with the open and positive preventive approach operated by a lot of youth work organisations.

Not every child has the same opportunities to engage in play and recreation

The Communities support the right to play and leisure in a variety of different ways. There are cultural activities; children can sign up as members of sports clubs or youth organisations. Summer camps are held during the school holidays.

But not every child has the same opportunities to join in:

- To a lot of under-privileged families, the activities are too expensive, which means the choice open to the children is sometimes confined to playground-type activities, whereas the varied and original activities are often organised by private associations at what are sometimes prohibitively costly fees. A system of cheques or financial assistance would give all children access.
- The cultural offering remains insufficiently accessible to a lot of families who already feel that theatre, museums or dance is not for them. Adapted information could help change this.
- The accessibility for disabled children to specialist and inclusive activities alike remains inadequate.

Recommendations

- The competent authorities need to invest more in developing child-friendly public spaces
- The Regions and the local authorities need to work towards ensuring independent mobility for children. Children and youngsters need to be able to travel safely and independently.
- We are calling for respect for the freedom of children and youngsters in their spare time. Youth work should not be used for different purposes, such as to detect signs of radicalisation.
- The competent authorities need to make extra efforts to promote accessibility to cultural and leisure activities.

Media

The government rolls out initiatives to inform and raise awareness among children, youngsters and their educational workers on the media. The Federal Commission for the Protection of Privacy has built a website where youngsters, parents and teachers will find information on the protection of their personal details in new media. The Communities foster media savviness, a broad-based approach to the kind of skills needed to deal with the new media in a way that is aware, critical and creative.

Nonetheless we fail to see initiatives that promote the media providers to be more

mindful of children's rights, for instance by way of accessible complaints procedures and by being clear and cautious with paid options.

As media consumers, children and youngsters deserve an adapted offering. The Flemish Media Decree sets out rules to protect minors against commercial messages and harmful content. In Flanders, children have their own TV station in *Ketnet* as part of the public broadcasting corporation. Online, Ketnet runs a website and an interactive community for children. The French Community sorely lacks a comparable initiative.

Recommendations

- The Communities need to continue to focus on media savviness and privacy protection.
- Where necessary, the regulations need to be amended to appropriately protect minors against harmful content or excessive advertising.

The Communities need to continue their commitment to an adapted quality offering for children and youngsters.

8. Specific protection measures

Child refugees

The right to be heard and the concept of 'interests of the child'

The legal position of accompanied minors seeking international protection has been

reinforced. The Belgian government has put in place steps to more firmly enshrine minor's right to be heard and the notion of 'interests of the child' in the statutory provisions that govern the procedures conducted by the Office of the General Commissioner for Refugees and Stateless Persons.

Recommendations

The government needs to incorporate sufficient quality assurances so that the hearing procedures for accompanied minors seeking international protection take appropriate account of the vulnerable position of the youngster and so that the interviews themselves are conducted in a child-friendly manner. These quality assurances need to apply for the various bodies which minors have to deal with in seeking international protection.

Children not to be placed in detention centres

So far Belgian policy included not locking up migrant children in detention centres as a matter of principle. With a few exceptions:

- Someone who claims to be under-age and where the border control officers have doubts as to this purported minority may be locked up upto 6 working days in a detention centre at the border.
- Families with children whose application for international protection (asylum) has been turned down are first held in open return centres or homes as part of the return procedure.
- Effective confinement in closed detention centres remains restricted 48 hours with a view to the return flight.

The State Secretary for Asylum and Migration is looking to reintroduce a more systematic locking up of families with children who refuse to cooperate with the authorities when ordered to return to their country of origin. Five closed units for families are being built in detention centre 127bis. The State Secretary justifies this by stating that the newly built closed family units will be adapted to the needs

of families with children and that their confinement will be kept as short as possible.

The European Council Commissioner for Human Rights responded to this announcement saying that confinement for migration purposes, even for a brief length of time and materially appropriate conditions, is never in the best interest of the child.²²

Other human rights bodies too have gone on record, saying that the confinement of families with children in detention centres can never be in the best interest of the child:

- The Federal Ombudsman says that the confinement of children cannot be justified, neither legally nor medically.²³ In 2016 he stated that no steps may be taken to make it possible that families with children be locked up in closed housing units at the site of the 127bis center.²⁴
- The special UN rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concludes that the 'detention of children based on the migration status of their parents is never in the best interests of the child, fails to meet any needs and is excessive, and may constitute a cruel, inhuman or degrading treatment for migrant children.'²⁵

Recommendations

Belgium has not locked up any children for reasons of migration for almost ten years. Belgium has commissioned the building of five closed family units, which sees the country take a huge backward leap. Confinement for reasons of migration is not in the best interest of the child, no matter how much the Belgium government posits that the units comply with the needs of families with children.

Material assistance to families applying for asylum with under-age children

Since July 2012, *Fedasil* systematically refuses to provide shelter for families with children who have entered a second or third application for international protection. However, *Fedasil* does not always state precise reasons for its decisions to deny shelter. Nor does it always take into account the vulnerability

of the children, as explicitly demanded by EU-rules. The matter was repeatedly raised with the Federal Ombudsman in 2016. His intervention resulted in a new review of the situation of the families, with *Fedasil* eventually agreeing to provide shelter for six of the seven families. One may wonder whether the administrative authorities actually bear in mind the best interest of the child in deciding to deny shelter to families with children.

Recommendations

Have the competent bodies provide shelter for all families that apply for international protection (asylum), even families who enter repeated applications. The amended law does not enough protect families with young children who enter a second or third application for international protection. Until their application is declared admissible, these families lose their material assistance. They are systematically made to leave the shelter on a temporary basis, even if they have vulnerable children.

Unaccompanied minors

Belgium put in place various measures to better protect unaccompanied minor refugees (UMR). For instance, the Guardianship Act was expanded to include youngsters from countries that are part of the European Economic Area (EEA) and Switzerland. In response to the higher influx of refugees, a lot more sheltered accommodation for UMR was created in the Federal shelter network and the youth

care system. UMR cannot be returned without their consent until they reach age 18.

In spite of the proper protection of unaccompanied minor refugees in Belgium, some longstanding bottlenecks continue to exist, with the problems of under-age transit migrants becoming more pressing. These minors do not wish to stay in Belgium, do not apply for international protection and consequently have no access to shelter.

Recommendations

Unequal legal protection for UMRUMR from the EEA

The expansion of the Guardianship Act to include unaccompanied youngsters from the EEA and Switzerland has not been extended to the Aliens Act. As a result, these youngsters have no access to the special 'sustainable solution' procedure and the protection they have is still less than that afforded to UMR from other countries.

Insufficient sheltered accommodation in third phase

Shelter for UMR is provided in three phases. In 2016, the number of places in sheltered accommodation was raised in the first and second phase (collective shelters), but not in the third phase (more individualized, small scale sheltering). Nonetheless, the minors need to move on to the third phase at some point. If no added sheltered accommodation is created in the third phase, these shelters will become saturated very soon, which will inevitably have repercussions for the entire shelter system for UMR.

Limited throughput to individual shelter

The individual shelter system is first and foremost reserved for highly vulnerable UMR (under-15s, pregnant girls, victims of human trafficking). The other UMR qualify for individual shelter only when they have been awarded residence status for at least three months and when they have reached age 16. (Due to the shortage of places, a temporary lower limit set at 17 years of age currently applies.) Combined with the shortage of places in individual sheltered accommodation (third phase), the protracted procedure for granting international protection has a harmful impact on the mental stability and the development of some UMR. We advise to keep the sheltering of minors in collective centres down to six months, irrespective of the actual status of the UMR.

Disproportionate sanctioning

A long stay at a collective shelter, combined with unclear prospects for the future results in added stress. The number of disciplinary transfers is seen to rise in cases of aggression.

Age assessments too inaccurate

Belgium uses a triple medical test to establish the age of youngsters claiming to be under-age, where the Guardianship Department or another competent authority have doubts regarding their age. There are good reasons to cast aspersions over the accuracy and correctness of the way in which the results of these medical tests are interpreted and reported. If these youngsters are truly minors, wrongful emancipation gravely violates their rights. For this reason, the procedures used to assess their age need to be revised and refined.

Hovering between under-age and legal age

A ruling returned by the Council of State finds that the age, as recorded in the Foreign Nationals Register based on the statement of a youngster, can subsequently no longer be changed pursuant to an age assessment by way of medical tests. The Council of State draws on a European Directive which specifies that these age assessments may be used only to establish whether a youngster is under-age or of legal age. In practice, this ruling results in the highly undesirable situation whereby the guardianship over a youngster ceases to apply after a while because this young person is considered to be of legal age based on an age test carried out upon his arrival, whereas according to the Foreign Nationals Register he is still under-age and therefore legally incompetent.

Undocumented children

Families with children or single youngsters arriving in Belgium as UMR and without prospects of a residence status, are often deported only years later. In the meantime, these children and youngsters have been attending school in Belgium for all this time and have become firmly rooted. Belgium became their new home.

Such late deportations are not in the interests of the child.

An unduly strict and perpetual linkage between the residence status of the parents and that of the children is not in the interests of the child either. For instance, not only the residence status of the parents but equally that of the children is revoked if it appears that the parents were awarded residence status years ago based on false statements. In such cases,

children, even those who by now are almost adults, are forced to leave Belgium

along with their parents. Even when born in Belgium.

Recommendations

Humane return policy required

Undocumented children need to be able to rely on a humane return policy, based on fast and efficient procedures which are conducted in a child-friendly manner with a due focus going out to enabling these children to say goodbye to their classmates and friends in Belgium and to pick up life in their country of origin.

Continuity in education pathway in the balance

Quite a few unaccompanied minors who were denied the status of recognized refugee are required to leave Belgium when reaching 18 years of age. At which point many of these youngsters are just about to obtain their secondary education qualification. Belgium needs to enable these youngsters to complete school before they are forced to return to their country of origin. Integrate obtaining the secondary education qualification as part of their return pathway.

Future prospects for long stays in Belgium

For undocumented children and youngsters who have been living in Belgium for a long time and who are firmly rooted in our society, it is in their best interest to put in place permanent residence permits for them and their families.

Begging children

During winter, the KRC and the DGDE received more reports on begging children.

Parents are forced to go out and beg due to a lack of shelter and a lack of resources. In quite a few cases, these are families without a clear residence status. Some minors are victims of exploitation.

Recommendations

- Belgium needs to put in place measures to counteract human trafficking at national and international level.
- Belgium needs to seek out a social response to begging children. The Committee previously argued in favour of a broad-based 'child protection' approach and a case-by-case analysis which puts the interests of the child at the forefront.

Children in conflict with the law

Right to a lawyer in all procedures

The Belgian government has made efforts in recent years to enable minors to be

assisted by a lawyer or a juvenile law lawyer as early on as their first Police interview. Minors are entitled to free legal assistance in all matters that come under youth care and juvenile delinquency law. Most Bars will assign minors a lawyer trained in juvenile law, even though this is not a statutory obligation yet.

Recommendations

- Make sure that under-age victims and witnesses too can have themselves assisted at any interview by a juvenile law lawyer or another confidential counsellor.
- Make sure that youngsters are able to rely on legal assistance at all times, not just before the courts but also in practice.
- Make sure that youngsters are assisted by a trained juvenile law lawyer at all times.
- Remind the lawyers of the obligation to take into account what the children themselves have to say.

New regulations for juvenile delinquency in the offing

The Communities are working on new regulations for minors who committed an offence qualified as a crime.

The French Community has nearly completed its new regulations and is now working on the implementing orders.

In the Flemish Community too, these regulations are nearing completion. The first drafts of the new regulations address a number of aspects of article 40 of the Convention.

- Both authorities continue to work towards specific regulations and a

distinct approach to offensive behaviour by minors.

- The minor's legal certainty is strengthened by setting clear boundaries in respect of the measures and sanctions imposed.
- In each phase of the judicial procedure, the youngster can rely on the assistance of a lawyer.
- Dedicated services and facilities are to be put in place to guide and protect the youngsters.
- Attention is made to go out to extra-judicial and judicial responses.
- Flanders is prioritising restorative consultation.

The first drafts of the new Flemish regulations are clearly found wanting in a number of respects.

Recommendations

Public Prosecution's Office with discretionary powers

The Public Prosecutor has a range of powers to respond to the delinquent behaviour of minors. In doing so, the legislator is looking to provide a wider framework for possible extra-judicial responses. Nonetheless the legislator is walking a thin line when it comes to the presumption of innocence (and other principles of fair trial). The Public Prosecution's office will be able to impose conditions without proof of guilt. The Youth Court judges too will be able to impose measures on youngsters whilst the investigation is still ongoing

Fragmented legal position of the minor

- The legal position of minors is not sufficiently articulated. Minors who committed an offence qualified as a crime currently need to scout out their legal guarantees in various decrees, Federal regulations and statutory Acts for adults.
- The new regulations allow for mental health care for minors with a mental illness to be delivered in a detention setting. There is a lack of rules that respect the rights of these youngsters and of plans that render explicit the implementation of the care delivered in a detention setting.

Long-term detention

- We deplore long-term guidance delivered in a detention setting for minors. From now on, under exceptional circumstances, 12-year-olds may be imposed guidance in a Community run detention centre for a period of two years, 14-year-olds for a period of five years and 16-year-olds for a period of seven years.

- In theory, minors with a mental illness can spend up to eleven years in a detention care setting under the new Flemish regulations.

Referrals of juvenile delinquents to adult courts remains in place

The new regulations do not repeal the system of referrals of juvenile delinquents to adult courts.

On each of the three occasions Belgium submitted a country report with the UN Committee on the Rights of the Child, the Committee commented that the referral of a juvenile delinquent to an adult court is incompatible with the Convention on the Rights of the Child.

The opinion of the NCRK lists serious objections:

- The Committee's General Comment no. 10 argues in favour of a 'comprehensive juvenile justice policy'. The juvenile justice system is to be applied to all youngsters up to 18 years of age, without exception.
- Research shows that referrals of juvenile delinquents to adult courts are also used for property crime and first offenders.
- Referrals of juvenile delinquents to adult courts are also used more frequently for youngsters with a vulnerable profile.
- And referrals of juvenile delinquents to adult courts have a negative impact later on in life.

Guarantees that children are not subjected to de facto isolation or unduly protracted time-out

At the impetus of the Care Inspectorate, Community institutions in Flanders have continued to work up a policy on solitary confinement in recent years. A good thing. Nonetheless we are seeing that Community institutions still put youngsters in isolation for a certain length of time upon arrival as a matter of routine. According to the institutions, this enables them to inform youngsters of the internal rules of procedure and customs of the institution, to chart the identity and the

social context of the youngsters and to build a safe working relationship between the youngster and the institution.

For years, Flanders has seen the practice of time-outs, which allows for youngsters from a private institution to be transferred to a Community institution for a fortnight – a move which may be extended once. This solitary confinement extra muros too merits the attention of the Care Inspectorate. We are receiving reports that youngsters are made to spend time in time-out for longer than permitted, for instance because the facilities refuse to readmit the youngsters.

📶 Recommendations

- Routinely isolating youngsters upon arrival should never be allowed. All Community institutions are to review their operations in this regard.
- We call on the Care Inspectorate to scrutinise time-outs in the Community institutions more closely.
- In the French-speaking part of the country, we continue to deplore the fact that the different forms of solitary confinement which lurk behind all manner of names a priori elude any form of control.

Referrals of juvenile delinquents to adult courts are made to occur in undignified buildings

Since 2009, youngsters who have been referred to an adult court are locked up at the Federal detention centre in Tongeren, a former prison for adults which was closed down as it was no longer fit for purpose, and at the youth detention centre in Saint-Hubert. In spite of the efforts of

management and staff, the infrastructure does not offer sufficient scope to ensure crucial legal guarantees. For one thing, there is no space to develop residential community groups.

Moreover, the youngsters held in Saint-Hubert largely hail from Brussels, whilst Saint-Hubert is a 90-minute drive from Brussels, making it almost impossible to involve the youngsters' families in their rehabilitation.

Recommendations

Close down the *De Wijngaard* Federal detention centre in Tongeren and the Federal youth detention centre in Saint-Hubert. Detention centres that are unsuited for adults are even less so for youngsters.

More supervision on the enforcement of detention of minors

We are happy to find that the Flemish Parliament has set up a Supervisory Committee for youth detention centres. This Committee enables Parliament to properly monitor the places where minors serve their detention. The Committee is made up of visiting officers who are volunteers and who visit the centres each month. As the chair of the Committee, the Children's Rights Commissioner heads up the Committee's administrative office, enabling the Committee to perform its assignment wholly independently.

The French Community is planning a similar initiative in its Code de l' Aide à la jeunesse. The practical design is in progress.

Administrative sanctions for minors continue to exist

2013 saw the adoption of the new Municipal Administrative Sanctions Act

(MAS). This Act enables municipalities to impose administrative sanctions on youngsters from as early as age 14. In doing so, the Belgian government is acting entirely counter to the recommendation of the UN Committee for the Rights of the Child in its concluding observations for 2010, in which it expressed its grave concerns over the option open to municipalities to impose administrative sanctions on children for antisocial behaviour outside of the juvenile justice system.²⁶

The Constitutional Court ruled that the MAS system is compatible with the Belgian Constitution, provided specific assurances are incorporated for minors. For one thing, in all cases minors are entitled to a verbal defence.

In public transport too, administrative fines may be imposed on minors for offences. The law does not set out specific assurances or adapted fines for minors. Minors are dealt with in the same way as adults.

Recommendations

- Scrap the municipal administrative sanctions for minors.
- Put in place an adapted system of sanctions for minors in public transport.

Minors in Police cells

The KRC and the DGDE receive reports about youngsters who are locked up in Police cells. This is permitted by law in case of serious offences, pending the offenders' appearance before the Youth Court judge.

Nonetheless, we are seeing young offenders being placed in cells that are less clearly enshrined in statute law. Sometimes youngsters end up in Police cells, because they are no longer welcome at the youth care facility after an incident or an escape. Or judges may impose placement in a cell because no places are available at a youth care facility or in crisis situations where there are no places in a crisis shelter.

Recommendations

Make sure there is enough cooperation between the Youth Courts, youth care and child psychiatry to prevent youngsters being locked up in Police cells.

Report published on March 1, 2018.

The Kinderrechtencommissariaat is an independent institution set up by the Flemish Parliament.



The Délégué général aux droits de l'enfant is an independent institution set up by the French Community.



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