

NGO Alternative Report

on the implementation in Belgium
of the Convention on the Rights of the Child

2018



CODE
COORDINATION DES ONG
POUR LES DROITS DE L'ENFANT


KINDERRECHTENCOALITIE
VLAANDEREN

WITH THE SUPPORT OF



Vlaanderen
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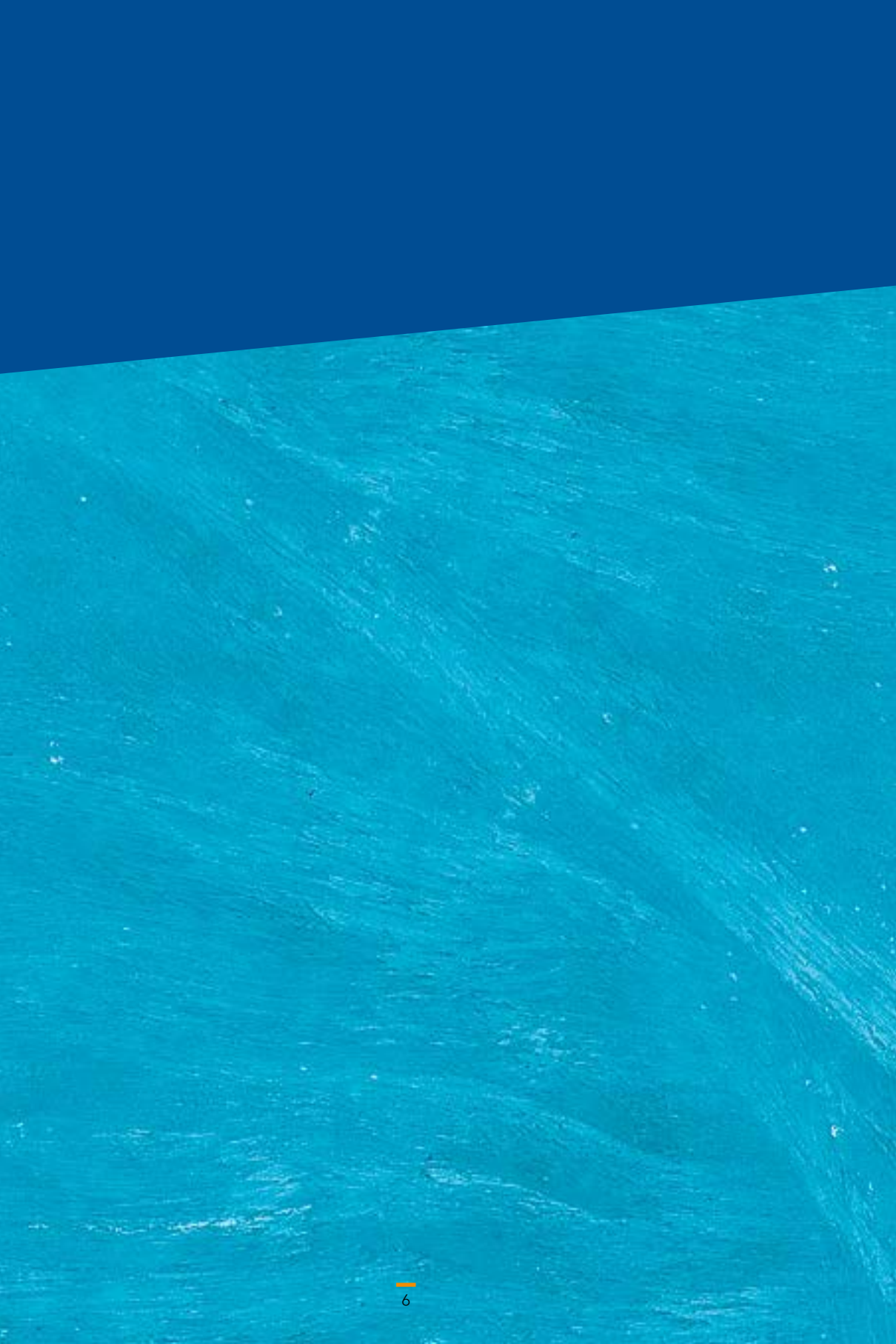


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Introduction

On 14 July 2017, Belgium submitted its fifth and sixth periodic reports combined on the compliance with and the implementation of the CRC. The report comprises the contributions of all the Belgian authorities.

This alternative report lists the concerns of the various NGOs monitoring the implementation of the CRC. This report was written by Coordination des ONG pour les droits de l'enfant (CODE – 14 NGOs) on the Francophone side and Kinderrechtencoalitie Vlaanderen (KIRECO – 27 NGOs) on the Flemish side, with an input of other civil society organizations.

This report addresses the topics whose flawed implementation is not sufficiently highlighted in the official report. A comprehensive analysis of all children's rights is however impossible due to the imposed page restrictions. We therefore hope that each recommendation is perceived as a summary of the most pressing needs.

In particular, we would like to urge the Committee to pay particular attention to:

- The universality of the rights of the child: many children are not accounted for in research and numerical data i.e. children affected by poverty, migrant and refugee children accompanied or not by their parents, children with a disability, sick children, children in conflict with the law, children separated from their parents (placed in



closed or open institutions...). Their invisibility makes them vulnerable because it renders them politically negligible.

- **Poverty:** Belgium has a structural problem of poverty. Indeed, almost 15% of the population has an income below the poverty line. For children, the situation is even more worrisome: on average, 17.4% of the children between the ages of 0-15 and 19.5% of the 16-24 age group grow up in poverty. In Brussels, this percentage rises to 40%.
- **Asylum and migration:** in recent years, the number of asylum applications has sharply increased in Belgium. In 2016, 4,960 children applied for asylum, of which 1,076 were non-accompanied. An important increase of the number of applications is observed since July 2017, concerning mostly families and unaccompanied migrant children. Almost half of the number of unaccompanied migrant children did not apply for asylum, making them an easy target for human traffickers and/or prostitution. The rights of those children, accompanied or not, are globally little respected.
- **Education:** schools don't fulfil the social mobility function. The huge differences in educational performances between students of different socio-economic backgrounds remain worrisome.
- **All forms of violence against children, including institutional violence:** in 2014, 13,000 cases of violence on children were registered in Belgium, representing an increase of 12% between 2010 and 2015.
- **The situation in Brussels:** the percentage of families living in poverty is twice as high as in Wallonia and three times as high as in Flanders; 44,000 families are waiting for social housing and a considerable number of children are homeless or on the run, accompanied or not; the lack of places for preschool children, but also the lack of schools is growing; the number of children falling behind in school

and dropping out of school is significantly higher than in the rest of the country...

We also point out the increasing policy fragmentation in Belgium, an evolution hindering the monitoring of the implementation of the CRC: each region, each community and even each city makes its own policy, grants rights to civilians on its own territory and collects data. The growing differences threaten the principle of equality and legal certainty. The higher authorities should ensure that children's rights are guaranteed at all levels of governance.

We hope that this alternative report provides the necessary additional data and recommendations for the Committee's additional questions and concluding observations that will be addressed to our country.



1. Policies and measures of general application

Safeguarding children's rights is a task crosscutting through all policy domains and levels. While the Government report lists a wide range of policy and action plans; it does not mean however that the child's best interests is the main concern in Belgian legislation or policy.

1.1 Legislation, coordination and planning

[ART. 4; C.O. 8, 12, 14, 16, 85

The NGOs stress the lack of coordination of policies on the rights of the child, which is indispensable given the Belgian institutional structure and the fragmentation of powers in this area. For example, there is still no coordinating Minister at the federal level.

The National Commission for the Rights of the Child, which was created in 2007 in response to the Observations of the Committee, brings together institutional and non-institutional actors responsible for the rights of the child at a national level. However, it does not have any political power. It comprises an advisory body that assembles various actors, including CODE and KIRECO. As its name suggests, it issues recommendations (for example with regard to the situation of migrant children in 2015, or regarding children's rights indicators in 2016) but compliance with these recommendations at the political level is quite feeble.

At the level of the communities and regions, the Minister-President of the French Community (Fédération-Wallonie Bruxelles) officially became, in

2013, the coordinating Minister for the rights of the child for the French speaking part of the country. While, NGOs welcome this progress, it seems that the Minister rarely acts as such.

Always for the French speaking part of the country, action plans on the rights of the child are in place respectively for the Walloon Region and for the French Community. While aiming for the improvement of the implementation of the CRC at the political level, these plans do not impose the necessary structural changes to guarantee the full integration of children's rights in policies. Most measures are limited in scope. Furthermore, the action plans fit into specific project logics (at times not readable and insufficiently concrete) and are not focused on generating results for children. While these action plans are ambitious, they have relatively little impact on the lives of the most vulnerable children.

The situation is similar in Flanders, where the policy on children's rights is not effective. The juvenile and children's rights action plan is not included in the Flemish Government Agreement. Inclusion is however necessary to obtain the necessary financial means and to make it binding upon the other Ministers. The Flemish Minister for Youth is only responsible for youth policy, which focuses mainly on leisure. Other crucial policy areas fall outside the scope of authority of the Flemish Government: tax and social policy are federal matters, while child policy and leisure fall under the authority of local communities. In recent years, Flanders has increased the autonomy of cities and municipalities and no longer grants Flemish subsidies to local authorities. This has resulted in a deregulation no longer guaranteeing a minimum local policy in the field of youth, culture, integration, supportive education, sports or development cooperation.

The Flemish legislation is subjected to a regulation and impact analysis, including a child and youth impact assessment (JoKER) and a poverty test. This is an important advance (which doesn't exist in the Francophone part of the country). But these analyses are limited to

a formal audit and have little influence on the development and the adjustment of actual policies.

Since the last Concluding Observations, Belgium still has not ratified the following human rights conventions and protocols:

- The International Convention for the Protection of All Persons from Enforced Disappearances (signed on 6 February 2007).
- The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (signed on 24 October 2005).

Equally, Belgium has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families despite the recommendations of the Committee. Conversely, we commend Belgium for ratifying in 2014 the 3rd Optional Protocol to the CRC on a Communications Procedure and the Optional Protocol to the international Covenant on Economic, Social and Cultural Rights.

RECOMMENDATIONS

1. Assign the responsibility for coordinating compliance with and application of the CRC to the Prime Minister at the federal level and to the Ministers-Presidents of the communities and regions, and adjudicate the necessary resources. Highlight the necessity of focusing special attention on children in socially vulnerable situations.
2. Turn assessment instruments such as the JoKER and poverty tests into permanent participatory processes for the policy of all the governments in Belgium that can amend policy when the best interests of the child are affected negatively.

Sources

- CODE (2012), « Evaluation de la CODE du Plan d'action 2011-2014 de la Fédération Wallonie-Bruxelles » - www.lacode.be
- CODE (2014), « Les droits de l'enfant ont 25 ans. Avancées et défis en Fédération Wallonie-Bruxelles ».
- Kenniscentrum Kinderrechten (2012), « Evaluatie van de kind en jongereneffectrapportage (JoKER) » - www.keki.be
- Op de Beeck S. & De Peuter, B. (2017), « Eenmeting jeugdbeleid in lokale besturen, Lokaal jeugdbeleid in een nieuwe context van strategische meerjarenplanning, Onderzoek in opdracht van de Vlaamse overheid », KU Leuven Instituut voor de Overheid - www.kekidatabank.be
- Van Damme, J. & De Peuter, B. (2014), « Lokaal jeugdbeleid in een nieuwe context van strategische meer jarenplanning. Nulmeting jeugdbeleid in lokale besturen », Bruxelles: Agenschap Sociaal-cultureel Werk voor Jeugd en Volwassenen – www.sociaalcultureel.be

1.2 Data collection

[ART. 4; C.O. 8, 22

Available data on children remain particularly fragmented in Belgium. They are largely incomplete, and often difficult to compare.

Certain groups of children are not included in the data i.e. children affected by poverty, migrant and refugee children accompanied or not by their parents, children with a disability, sick children, children in conflict with the law, children separated from their parents (placed in closed or open institutions...).

NGOs know from experience that children who are not included in the statistics hardly get any political attention rendering them even more vulnerable.

RECOMMENDATIONS

1. Establish a federal coordinating mechanism for the collection of data regarding all children with a special focus on children from socially vulnerable groups.
2. Ensure that the right to privacy of children and their families is respected in the process of collecting data (anonymity and confidentiality).

Source

- CODE (2007), « La collecte des données, première priorité en matière de droits de l'enfant » - www.lacode.be

1.3 Child-budgeting

[ART. 4; C.O. 16 (c), 20; G.C. 19 (2016)

The budgets assigned to childhood and youth policies are marginal compared to the national budget and do not allow the development of ambitious policies for children. NGOs regret that strategic budget items intended for the most vulnerable children are not defined, bearing in mind the large number of children affected by poverty. The NGOs also regret that children's rights are not systematically taken into account in public spending (child-budgeting).

RECOMMENDATIONS

1. Assign substantial budgets to policies relating to the rights of the child.
2. Identify in the budget plans of all authorities the financial means that are directly spent on the improvement of the situation of children

Sources

- CODE (2016), « Les droits de l'enfant ont le blues. Impacts de la crise économique sur les droits de l'enfant » - www.lacode.be
- Vinikas, B. (2017), « Sur la difficile mesure de la pauvreté et les difficultés d'en parler », Le Forum – Bruxelles contre les inégalités, Pauvreté n°14 - www.le-forum.org

1.4 Education on the rights of the child

[ART. 4, 42, 44 (6); C.O. 24, 26, 86

The NGOs regret that Belgium has not made any specific effort concerning education on the rights of the child since the Concluding Observations of 2010.

Dissemination of reports

To date, Belgium has not taken any specific action to promulgate the reports nor the Concluding Observations of the Committee, except making the documents available on the website of the national Commission for the Rights of the Child.

A children's rights culture

In Belgium, there is no general undertaking aimed at creating a "culture of children's rights" for both children and adults including professionals (such as teachers, judges, lawyers, social workers, care-takers...). This is partly due to the fact that the relevant training of these different actors has not been made uniform.

Educating children on the rights of the child

Children's rights are not applied at all levels of the education system. While some schools pay attention to the rights of the child, including on a daily basis, most schools limit themselves to specific lessons which the students need "to learn by heart". NGOs continue to emphasize

the importance of transversal, multidisciplinary, coordinated and continued (until the final year of high school) children's rights education for students and professionals.

RECOMMENDATIONS

1. Promote the CRC and the Concluding Observations of the UN Committee to the public opinion in the three national languages and disseminate it all over Belgium. Make a child-friendly translation of these documents available to children.
2. Include children's right education into the curricula of primary and high school in a transversal and interdisciplinary manner as part of a coherent, general and adjusted approach.
3. Turn acquiring insights into the CRC into an explicit requirement in the training of all professionals dealing with children, and especially teachers, police officers, social workers, judges, lawyers and medical personnel.

Sources

- CODE (2012), « Formation des enseignants: place aux droits de l'enfant ! » - www.lacode.be
- CODE (2012), « Je suis un enfant. J'ai des droits ? ».
- DEI Belgique (2014), « Les droits de l'enfant expliqués aux grands » - www.dei-belgique.be
- Françoise, C. (2014), « Le droit: une ressource pour les mineurs en difficulté », Service droits des jeunes de Bruxelles – www.sdj.be.
- Kinderrechtencoalitie Vlaanderen (2014), « Kinderrechteneducatie in het onderwijs », Kinderrechtenforum n°10 – www.kinderrechtencoalitie.be.

1.5 Development cooperation

[ART. 4; C.O. 30

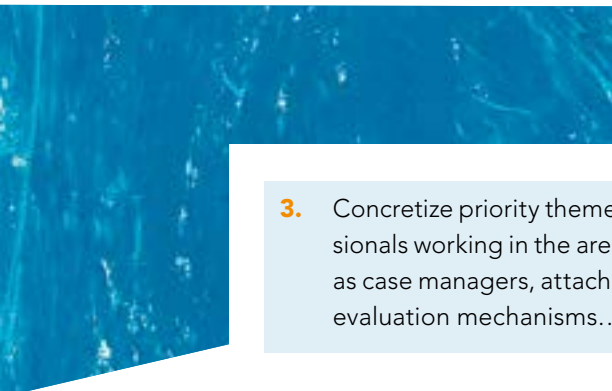
In Belgium, the budget allocated to development assistance decreases every year.

Between 2015 and 2016, however, the budget increased from 0.42 to 0.49% of the GNI (the European average is 0.47%). This rise is not representative of more development assistance because it is caused in reality by the increased costs related to the management of migration in Belgium, including the organization of returns. A further decline of the budget allocated to development cooperation has been undertaken in 2017 due to additional budgetary cuts.

NGOs regret that the Government does not pay more attention to education in every sense (basic education, stimulation of young children...), to the rights of the child (including education on those rights) and to gender equality in development cooperation.

RECOMMENDATIONS

1. Comply with the obligation to allocate 0.7% of the GNI to development cooperation and ensure the proper allocation of resources. Don't count debt cancellation, hospitality to refugees and assistance for foreign students as expenses accredited to the development cooperation budget.
2. Adopt and implement a human rights approach, including children's rights, to development cooperation in accordance with the law on cooperation of 2013. Strengthen Belgium's support for basic education, including education and stimulation of young children, both in development cooperation and humanitarian aid.

- 
3. Concretize priority themes and transfer them clearly to professionals working in the area of development cooperation - such as case managers, attachés and diplomats - to monitoring and evaluation mechanisms...

Sources

- Bureau fédéral du Plan (2016), « Progrès vers les Objectifs de développement durable de l'ONU : bilan 2016 » - www.plan.be
- CNCD-11.11.11 (2017), « Rapport sur l'aide belge au développement. Priorité à la mobilisation du secteur privé » - www.cncd.be
- CODE (2013), « Droits de l'enfant dans la coopération : que dit la nouvelle loi? » - www.lacode.be



2. Best interests of the child and non-discrimination

2.1 Best interests of the child

[ART. 3 ; C.O. 34 ; G.C. 14 (2013)]

In 2008, a fourth paragraph was added to article 22bis of the Belgian Constitution which states that the best interests of the child should be taken into account in all decisions concerning him. In reality, this has hardly been the case.

First, there are a number of apparent gaps in the relevant legal texts. The wording used is too general and abstract and does not allow for a concrete examination of the interests of the child. Secondly, despite the recommendations of the General Comment N° 14, Belgian courts have refused to recognize the direct effect of article 3.1 of the CRC as well as of article 22bis, paragraph 4, of the Constitution. While, a small number of courts disagree, they cannot rectify the violations of the CRC by the Belgian government in this matter.

The Committee also stated in 2013 that “the best interests of the child” has a substantive legal meaning i.e. every child has the right to have his best interests considered at first in all decisions affecting him. To exercise this right effectively, every child must have knowledge of all elements used by the decision maker when assessing the child’s best interests. Therefore, there is a need for transparent procedural guidelines to assist judges and administrative authorities when making such decisions.

RECOMMENDATIONS

1. Consider the best interests of the child in all legislation, regulations and procedures affecting children, ensure that the best interests of the child is the primary concern when balancing different interests and establish a concrete control mechanism to this end.
2. Recognize the direct effect of article 3.1 of the CRC and article 22*bis*, paragraph 4, of the Constitution.
3. Evaluate regularly the way in which the interest of the child is considered in the procedures and decisions concerning him.

Sources

- Fierens, J. (2013), « Le droit belge : l'enfant et ses multiples visages », in T. Moreau, A. Rasson-Roland & M. Verdussen (dir.), « Le droit de l'enfant au respect », Anthemis, p. 32 et s.
- Mathieu, G. & Rasson, A. (2013) « L'intérêt de l'enfant sur le fil. Réflexions à partir des arrêts de la Cour constitutionnelle en matière de filiation », Journal des Tribunaux, n°6525, p. 425 et s.
- Melkebeek, C. (2014), « Het belang van het kind », in C. Aerts & C. Van Roy, « Wet en Duiding Kids-Codex, boek II », Bruxelles, Larcier.
- Van Keirsbilck, B. (2014), « Commentaire de l'arrêt de la Cour constitutionnelle sur la loi permettant l'enfermement d'enfants », Journal du droit des jeunes, n°332, p. 40 et s. – www.jdj.be

2.2 Non-discrimination

[ART. 2; C.O. 10, 32

Discrimination is a form of psychological violence, sometimes accompanied by physical violence.

The Belgian anti-discrimination law formally complies with international standards, but in its application several elements have proven to be problematic for children with a migration background, children in poverty and disabled children in particular with regard to housing, education or leisure (cf. chapters 7,8 and 12). In 2010, the Committee expressed concern regarding the “continued discrimination” of foreign children in Belgium.

The Committee has requested Belgium repeatedly to revoke its interpretative declaration relating to article 2 of the CRC. Belgium however has declined to do so because it does not consider the declaration to be contrary to article 2 as long as the distinction made between Belgian citizens and foreigners is based on objective and reasonable criteria used in all democratic societies.

The different forms of discrimination and stigmatization (e.g. racism) of different categories of children are discussed throughout this report: education, public environment, ethnic profiling, disabled children, migrant and refugee children, children in poverty...

RECOMMENDATIONS

1. Revoke the interpretative declaration on article 2 of the CRC.
2. Create a common action plan against racism and discrimination between the federal government, the communities, the regions and the local authorities. Encourage social actors to strengthen positive approaches to diversity and make people aware of the effects of discrimination.
3. Map out the impact of discrimination and racism on children through empirical and focused data collection. Support the victims of discrimination with restorative measures and adapted guidance in concrete cases.

Sources

- CODE (2015), « Les droits de l'enfant ont 25 ans : avancées et défis en Fédération Wallonie-Bruxelles » - www.lacode.be
- Homans L. (2014), « Beleidsnota Armoedebestrijding 2014-2019 » - www.vlaanderen.be
- Kinderrechtencoalitie Vlaanderen (2015), « Het zal wel aan mij liggen. Omgaan met de effecten van discriminatie en racisme op kinderen » - www.kinderrechtencoalitie.be
- OCDE (2016), « PISA 2015. Résultats à la loupe » - www.oecd.org
- UNICEF Belgique (2016), « Rapport annuel 2016 » - www.unicef.be

3. Participation

[ART. 12; C.O. 20 (c), 36, 38; G.C. 12 (2009)

There is still a long way to go before article 12 of the CRC is fully implemented in Belgium. Children constitute a third of the Belgian population and, yet they are barely involved in the development of policy and the organisation of their living environment. Concerns raised by professions working daily with children - such as educators, youth workers and welfare assistants - hardly reach policy makers. There is a pressing need to listen more carefully to children, in particular children belonging to vulnerable groups. Indeed children affected by poverty, migrant children accompanied or not by their parents, children with a disability, sick children, children in conflict with the law and children separated from their parents are not enough listened to. At the local level, children are too little involved in policy decisions that go beyond youth and leisure themes, while these issues have a great impact on their daily lives.

3.1 Participation in policy

At present, there are no rules guaranteeing children's continuous involvement in local policies. Furthermore, the existing participation structures are unsuitable for children.

In 2015, the Flemish government significantly strengthened the autonomy of local authorities. As a result, cities and municipalities are no longer required to draft a local youth policy plan or to reserve a separate budget for youth policy, in order to obtain subsidies from the Flemish government. Preliminary research illustrates that the local youth councils feel less involved and that the attention for children's participation deteriorates. The Flemish NGOs are in favour of lowering the voting age to the age of 16.

In the French Community, there are many municipal councils for children but these are however unequally distributed and very diverse in

terms of their composition, role and mode of operation. Because there is no legal framework, there are no ethical standards regarding the counselling of children by qualified professionals. Adequate budgets are missing too.

3.2 Participation in youth care

In the French Community, a child needs to formally consent to any measure concerning his/her placement in alternative care from the age of 14. Children, however, should be heard even at a younger age in all decisions affecting them: such as the decision regarding the placement in foster families or in institutions, the development of care plans, the review of placement measures and the maintenance of contact with the family of origin. This is not the case today.

Also, in the French community, there is a large difference between the underlying rationale of the Regional Decree of Youth Care - that regulates the issue of written evidence for instance- and its actual implementation. While the text is compliant with children's rights standards, families, relevant civil society organizations and professionals list many instances where a lack of transparency and transmission of written documents have violated parents' rights and thus children's rights. Families report not to have knowledge of all documents in the file and have experienced difficulties in exercising their right of access to these documents (their right to access is not always clearly explained and is sometimes subjected to requirements such as applying in writing to obtain documents or pay for copy costs). Families also regret that their point of view is not always incorporated into the file of their child. In addition to transparency and transmission, families report that they do not understand the decisions taken by the authorities because the documents are drafted in non-comprehensible and inaccessible language, putting them in a disadvantageous situation.

Although the legislation is different in Flanders, similar problems exist. Participation was supposed to occupy an important place in the text of the new Flemish Decree on Integral youth care (2014). In reality, the new digital sign-in system provides for distance, bureaucracy and extra administration. Decisions regarding children are made through various steps, without consulting the children themselves. Participation is said to be achieved through several advising procedures; these are however so formal and technical that it is nearly impossible for children to have their voices heard.

To sum up, children should be more involved in the policies concerning youth care.

3.3 Participation in school

In recent years, various studies conducted in Belgium have illustrated that children are not adequately listened to at school. NGOs regret that, to this day, there does not exist any specific education on the rights of the child that is part of wider cross-cutting and multidisciplinary children's rights' culture at school, with the exception of schools using alternative pedagogical methods.

Since 2004, there is in Flanders a Decree that outlines the rules on participation at school. However, the Decree is not sufficiently known to students and departments. The Decree limits participation mostly to Student Councils and certain themes such as school regulations and conflict resolution.



3.4 Participation in justice

The Belgian legislation provides that children have the right to be heard in court from the age of 12 in certain proceedings that affect them (civil and juvenile justice/child welfare) (cf. Chapter 13). Children are required to formally consent in cases concerning acknowledgement of paternity and adoption. If they are under 12 years of age, they can solely be heard at their request, at the request of their parents, of the Prosecutor's Office or at the initiative of the judge.

NGOs regret that the judge can refuse any new request to hear a child if the child has already been heard during the procedure, even before another court. NGOs also regret that the right to be heard has not been extended to all matters affecting children.

Children should get assistance from lawyers, who are qualified in juvenile justice, are familiar with youth care services and have received training in communicating with children. However, the bill of 2002 has still not been voted on in the federal Parliament and thus qualified lawyers are not available in all legal districts. NGOs regret that some lawyers, who, are either overworked or not enough invested, arrive at court hearings without knowing the child, and treat all cases in a similar manner.

The current process of budgetary savings requires courts to work faster with less means, resulting in less time allocated to each litigant. Real participation by a child in a judicial procedure is hardly ever a reality.

NGOs stress the need for ongoing training of the judges of juvenile courts and the need for more rooms suitable for children.

3.5 Participation in health care

The rights children enjoy as patients are exercised by the persons having the authority over the children such as the parents or guardians, unless the healthcare provider considers the child being mature enough to be consulted. Depending on his/her age and maturity, the child is involved in the exercise of his/her rights (organ donation, euthanasia). However, the paternalistic attitude which tends to subsist in the medical field limits both parents' and children's participation and involvement.

Despite progress at a legislative level, the situation is different in each of the various psychiatric and pediatric hospitals where children are often not properly informed on their right to participate in decisions affecting them. A children's rights-based approach is necessary which implies: a child friendly framework, providing adequate information, the presence of trusted persons, better knowledge of sedatives and its use, including for dying children.

3.6 Participation in migration

The right of migrant children to participation, including the right to accessible information, the right to be heard and access to legal remedies and adjusted complaint mechanisms should be ensured in all relevant decision-making processes and procedures, upon their arrival in Belgium. This is not yet the case (cf. chapter 12).

3.7 Participation in the reporting process

The “What Do You Think?” project led by UNICEF Belgium tries to include the most vulnerable children in the reporting process. It is important that these children can continue to be heard by the Committee and by policy makers in Belgium, including beyond this process. The future of this project, however, remains uncertain.

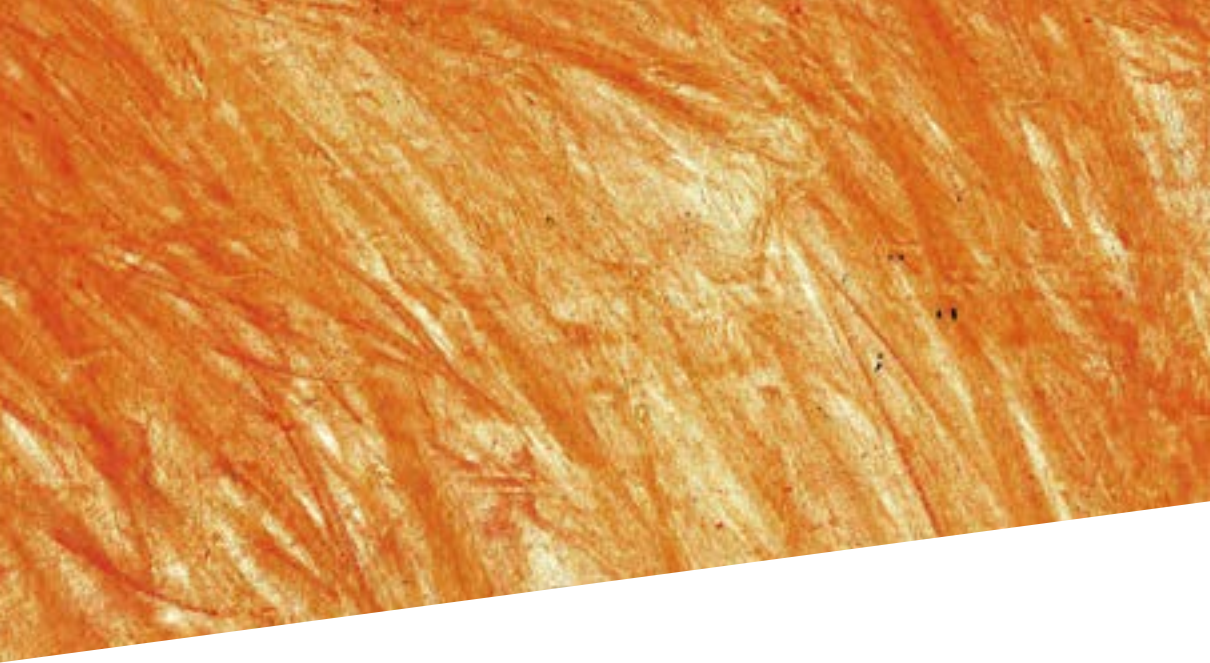
RECOMMENDATIONS

1. Ensure that children and their families can effectively participate in and have access to adequate information regarding any legal, administrative or medical decision affecting their lives. Extra attention should be paid to socially vulnerable children, such as children affected by poverty, migrant and refugee children accompanied or not by their parents, children with a disability, sick children, children in conflict with the law, children separated from their parents.
2. Improve training in children’s rights for all professionals dealing with children (lawyers, judges, police officers, civil servants, social workers, medical staff, teachers...). Set up legal permanencies with pro bono lawyers specialized in children’s rights and youth care in all districts.
3. Provide children with access to a justice system that is adapted to their needs without requiring them to be represented by a parent or guardian. Grant children the right to go to court. Strive to change the legislation regarding the legal standing of associations protecting the rights of children. Extend the rights of children to be heard in court for all matters concerning them.
4. Create and encourage a participatory culture at school and train teachers and principals to encourage participation. Stimulate an atmosphere of dialogue and informal contact between students, parents and teachers.

5. Fund long-term participatory structures to ensure the participation of all children, including the most vulnerable ones, from the local level to the national level and in all sectors of life.
6. Put children's perception, experience and living environment first when implementing policies. Explain the way in which the interests of the child have been taken into account and/or whether children have been heard. Ensure that formal participation structures are child-friendly and draft for each process that involves children a participation plan (in each step of the process).
7. Foster more participation for children in local politics. The Flemish NGOs request that the voting age is lowered to 16 years, in order for young people to contribute actively in the development and implementation of policies.

Sources

- CODE (2015), « Les jeunes ont une voix ! Trois initiatives pour récolter la voix des jeunes dans le cadre du Dialogue Structuré Européen » - www.lacode.be
- CODE (2017), « La participation des enfants ne doit pas être un vœu pieux ».
- Observatoire de l'Enfance, de la Jeunesse et de l'Aide à la Jeunesse (2014), « La participation des enfants aux décisions publiques. Pourquoi et comment impliquer les enfants ? » - www.oejaj.cfwb.be
- Op de Beeck S. & De Peuter, B. (2017), « Eenmeting jeugdbeleid in lokale besturen, Lokaal jeugdbeleid in een nieuwe context van strategische meerjarenplanning, Onderzoek in opdracht van de Vlaamse overheid », KU Leuven Instituut voor de Overheid - www.kekidatabank.be
- Vlaamse Jeugdraad (2016), « Advies 1608, Stemrecht voor zestien- en zeventienjarigen » - www.vlaamsjeugdraad.be
- Vlaamse Scholierenkoepel (2014), « Dossier leerlingenparticipatie, Niet over ons maar met ons praten » - www.scholierenkoepel.be
- What Do You Think? (2010, 2014, 2017), « Consultations en matière de pauvreté, éducation et migration », UNICEF Belgium - www.unicef.be



4. Freedom of opinion and religion

[ART. 2, 13, 14, 29, 30; C.O. 32

Children value deeply their personal right to freedom of religion and their right to security. They often feel that they and other people are not welcome at school, on the streets or on the bus due to their faith (more than origin). Many have been discriminated against because of their origin or faith.

In order to maintain neutrality, schools prohibit their students from wearing religious signs, which generally means a ban on headscarf for girls. Many children consider this to be demeaning and discriminatory. For girls, the ban influences their choice of school or study, even their choice of student jobs and/or volunteer positions organized by the local government.

The rise in Islamophobia, since the attacks in Western Europe, constrains the right to freedom of religion. This stigmatizes children and creates a feeling of discrimination.

Learning to deal with philosophical diversity is a challenge for the educational system and the society. A ban on philosophical signs at school is a violation of children's rights. The Council of State has rejected the general prohibition as an infringement of the right to freedom of religion.

RECOMMENDATIONS

1. Support and promote equal treatment of children regardless of their religion or belief.
2. Respect the right of children to express their religion or belief, as well as to show the signs linked to it, at school, within their family and in public space.

3. Denounce publicly all instances that incite to violence, discrimination or hatred.
4. Include “knowledge and skills on non-discrimination and dealing with diversity” in professional profiles of police officers, teachers and other functions that exercise authority or come into contact with children.

Sources

- CODE (2007), « Le port du voile à l'école » - www.lacode.be
- Kinderrechtencoalitie (2015), « Het zal wel aan mij liggen. Omgaan met de effecten van discriminatie en racisme op kinderen » - www.kinderrechtencoalitie.be
- Kinderrechtencoalitie (2015), « Levenbeschouwelijke tekenen bij leerlingen in het onderwijs, Position paper ».
- Unia (2016), « Les signes d'appartenance convictionnelle: état des lieux et pistes de travail » - www.signes.diversite.be

5. Violence

[ART. 19, C.O. 43; G.C. 13 (2011)

5.1 Violence within the family

[ART. 19; C.O. 42, 43, 49

In Belgium, the extent of child abuse is not sufficiently documented, partly because the recording process is not standardized in the various services (i.e. youth care and child welfare services and prosecutor's offices). Data is collected by "SOS Enfants" teams in the French Community, and by "Kind & Gezin" in Flanders.

In 2016, in the French Community, 5,167 cases of child abuse were reported to a social or medical authority, either by a professional or a non-professional witness. Most of the reports relate to domestic abuse. In most cases, the children were subjected to several types of violence. The following forms of abuse are most commonly reported in the French Community according to the latest figures from "SOS Enfants": exposure to domestic violence (which is widespread and whose impact on children is recognized by experts) is the most commonly diagnosed by the authorities (26%), serious negligence (21%), sexual abuse (19%), psychological abuse (18%), physical abuse (12%) and institutional abuse (4%). These figures are lower than the actual numbers, since they comprise "only" the cases which have been reported. Many cases are noticed (by a family member, a professional, a neighbour...) but are never reported. Note that only 2 to 3% of reports come from general medical practitioners.

Girls are more likely to become victims than boys, and children between the ages of 6 to 8 represent the largest group (because these are the cases which are most often reported). Children under the age of 3 are a particularly vulnerable category, given that they are not in contact with school structures and that abuse is consequently more easily

overlooked. Nowadays, more and more siblings are concerned whereas before, abuse affected generally one member of the family.

In Flanders, “Kind & Gezin” collects all reports on (alleged) child abuse from various organizations. The child abuse centres play a central role: they register reports from citizens and professionals. In 2016, 9133 children were reported to the child abuse centres (an increase of 5.2% compared to 2015); 14.2% of them were under 3. Most common complaints are: physical abuse or neglect (28.6%), emotional abuse or neglect (29.9%) and sexual abuse (14.9%).

In terms of prevention and reporting, the francophone NGOs are concerned that professionals are generally unfamiliar with the existing network, the legal framework governing professional confidentiality and the methods of reporting. A lack of training is also visible. Excessive workload combined with a lack of staff represents one of the major challenges that the relevant specialized services have to face. In Flanders the relevant organizations are more familiar with the functioning of the centres on child abuse which explains a higher number of reports in that part of the country.

Professionals also regret a shortage of shelter facilities for child victims (and, if applicable, for the parents, cf. Section 6.2.)

RECOMMENDATIONS

1. Carry out regular campaigns to prevent abuse by promoting caring and non-violent communication for all (parents, all professionals dealing with children and the general public).
2. Strengthen the first line services (adequate training and funding) to allow an early reporting of any form of violence against children, adequate care of children (ensuring the continuity of care, as long as necessary), as well as support for families.
3. Train professionals (teachers, doctors...) to listen to children, especially to make them more attentive to situations of abuse (spoken and non-spoken).
4. Ensure that the data collection process is standardized and anonymized in child abuse cases.

Sources

- Centre Fédéral d'Expertise des Soins de Santé (2016), « Comment améliorer la détection de la maltraitance infantile ? », KCE Report 269Bs - www.kce.fgov.be
- CODE (2013), « Enfants victimes de violence conjugale » - www.lacode.be
- Fédération Wallonie-Bruxelles (2013), « Un enfant exposé aux violences conjugales est un enfant maltraité » - www.egalite.cfwb.be
- Fédération Wallonie-Bruxelles (2017), « La Fédération Wallonie-Bruxelles en chiffres. Année 2016 » - www.federation-wallonie-bruxelles.be
- Fonds Houtman (2017), « Les enfants témoins mais aussi victimes des violences conjugales », Les Cahiers du Fonds Houtman, n°23 – www.fonds-houtman.be
- Kind & Gezin (2016), « Het Kind in Vlaanderen » - www.kindengezin.be
- ONE (2017), « Maltraitements sur enfants : 2053 cas diagnostiqués par les équipes SOS Enfants en 2016 », communiqué de presse 12 octobre 2017 - www.one.be

5.2 Corporal punishment

[ART. 19, 28 (2), 37 ; C.O. 40 ; G.C. 8 (2006)

Belgium has not yet enacted explicit standards for corporal punishment of children. A bill was filed on 4 April 2016 but has still not been approved.

Although it happens very rarely, certain courts continue to grant the right of “educational correction” to the parents. The Correctional Court of Nivelles has rendered a judgment in that sense in 2011 and in 2013, acquitting parents of assault and battery of their children notwithstanding the fact that the parents had confessed and the fact that the file contained compelling evidence of significant violence. Fortunately, these two decisions have been reformed by the Court of appeal of Brussels. However, in a decision of 13 March 2012, the Court of appeal of Antwerp has legitimized the right of “educational correction”.

RECOMMENDATIONS

1. Prohibit corporal punishment explicitly in legislation.
2. Promote a culture of non-violence in education and offer parents alternative modes of conflict resolution.
3. Conduct regular information and awareness campaigns on corporal punishment.

Sources

- CODE (2011), « Point de vue de la CODE sur les châtements corporels » – www.lacode.be
- DEI Belgique (2015), « Châtiments corporels: Non, ce n'est pas pour son bien ! », outil pédagogique n°3 – www.dei-belgique.be
- Salmona, M. (2014), « Pourquoi interdire les punitions corporelles et les autres violences éducatives au sein de la famille est une priorité humaine et de santé publique » – www.memoiretraumatique.org

5.3 Gender-based violence

[ART. 2, 19; C.O. 42

At present, it is very difficult to gain a comprehensive overview of the extent of gender-based violence among girls in Belgium given the lack of data or their fragmentary nature. The realities on the ground indicate however, that gender based violence (sexism) is present in all its forms, everywhere, all the time: harassment, sexist perception of relationships between men and women in textbooks, discrimination in leisure (cf. chapter 11), victims of "loverboys" (cf. section 5.5.), human trafficking of children, excision, forced child marriages, violence against people with disabilities in institutions....

In that respect, $\frac{3}{4}$ of the respondents polled by Plan International Belgium know at least one girl who was called after on the streets or who was confronted with sexually related comments; 13% of the girls have personally been victim of unwanted touches in public places on a "regular" or "very regular" basis, whereas one girl out of four is "regularly" or "very regularly" called after or receives comments on her physical appearance.

RECOMMENDATIONS

1. Collect and deepen existing data on gender violence.
2. Actively listen to girls so that their environment/town/city/school... can be adapted to their specific needs with respect to education, public spaces, public transport, sanitation and safety.

Sources

- CEMEA (2013), « Pour une éducation à l'égalité des genres. Les manuels scolaires et les stéréotypes sexués: éclairage sur la situation en 2012. Étude exploratoire » – www.cemea.be
- Chevalier, C. (2017), « Quelle protection pour les filles et les femmes ayant subi une mutilation génitale féminine ou exposées à cette violence de genre? », Université des femmes, n°119– www.universitedesfemmes.be
- Fédération Wallonie-Bruxelles (2012), « Sexes et manuels. Promouvoir l'égalité dans les manuels scolaires » - www.egalite.cfwb.be.
- Gams, « Jeu photolangage. Mutilations génitales féminines et violences basées sur le genre » – www.gams.be
- Plan International Belgique, « Belgique: Unlock the power of girls » – www.planinternational.be
- Vie féminine (2014), « Une loi contre le sexisme qui concerne tous les milieux » - www.viefeminine.be

5.4 Bullying

[ART. 2, 19, 24, 29; C.O. 43, 69

In 2014, nearly 15% of all Belgian children between the ages of 11 and 15 years stated that they were bullied twice a month. Recent research by Ghent University shows that about 20% of the Flemish students have faced experiences of bullying. About 34,500 Flemish students in the age category of 10 to 18, which means 5%, are bullied every week. A survey conducted in the French Community states that 16% of the students say that they are victim of bullying, 14% confesses to harass regularly other children and 5% declare to be both victim and perpetrator.

Bullying has a deep impact on the feeling of security of children: on children between 7 and 16 years, researches state that bullying has a more serious impact than sexual and physical abuse in the first eight years of their life. In addition to the human costs, the social costs, including psychiatric and health care, or costs for crime prevention are also high.

NGOs organize awareness campaigns and training courses on bullying, but the Government does not really have an anti-bullying policy in place. Schools are not asked to pursue a policy against bullying, there is no knowledge centre that combines insights and supports diverse actions against bullying and there is no real point of contact for bullying. The people concerned (victims, perpetrators, acquaintances) do not know where to turn to for help. The existing assistance mechanisms are not sufficient to assist them even if in both the French and the Flemish Community a general service available by phone (“Ecoute-Enfants” number 103 and “Awel” number 102) for children facing difficulties or questioning themselves in all the areas of life now exists.

Addressing bullying is therefore an important element for governments and other authorities to consider in the protection of children against physical or mental violence.

RECOMMENDATIONS

1. Carry out awareness campaigns about bullying, at all levels, particularly at school: about consequences of bullying, attitudes to be developed to prevent and face bullying at school, create “points of contact” within the school and outside and inform children and parents about them .
2. Develop a policy of “living well together” at school, including measures to combat bullying, with participation of the students. Train professionals working with children in general and school professionals in particular (such as directors, teachers, education assistants), to identify and adequately address this phenomenon in both basic and continued education.
3. Use assessable minimum standards for an anti-bullying policy in all schools with structural measures such as training for staff members, the creation of a point of contact, an action

framework for employees and participation opportunities for students and parents.

4. Organize a point of contact, respectively for the French and the Flemish Community, with both first- and second-line assistance accessible to every person concerned by bullying (victims, perpetrators, parents, fellow students, teachers, directors, social workers...).
5. Establish and support two knowledge centres on bullying, one for each Community, strengthening the actors in the field by sharing knowledge and operationalizing insights from scientific research.

Sources

- Awel (Service Écoute-Enfants en Flandre) – www.awel.be
- CODE (2014), « Harcèlement à l'école : Identification et pistes d'action » – www.lacode.be
- Galand, B. (2017), « Prévenir le harcèlement à l'école. Oui, mais comment? », Presses universitaires de Louvain - www.reseau-prevention-harcelement.be
- Lereya, S.T., Copeland, W.E., Costello, J.E. & Wolke, D. (2015), « Adult mental health consequences of peer bullying and maltreatment in childhood: two cohorts in two countries », in The Lancet Psychiatry, Vol. 2, No. 6, pp. 524–531, avril 28.
- Service Écoute-Enfants en Fédération Wallonie-Bruxelles - www.103ecoute.be
- UNICEF (2017), « Building the Future. Children and the Sustainable Development Goals in Rich Countries », Innocenti Report Card 14 – www.unicef.org

5.5 Sexual exploitation and trafficking

[ART. 34, 35, 36; C.O. 43, 49 et 81

In Belgium, many victims of trafficking have not yet been identified, and there is still no centralized system for collecting data. In addition, despite the efforts of the Federal Government, training of front-line actors has not yet been systematized and is based in part on the initiatives of NGOs.

Sex Trafficking

In 2016, Child Focus received 60 reports of teenage prostitution (37 were victims of so-called “loverboys”), but all actors fear that the phenomenon is much larger. This phenomenon requires a structural approach and cannot be minimized as behaviour of certain “problem children” which is most commonly the case. The youth care sector and the judges are not sufficiently attentive to the important problem of “loverboys”.

The actors of the sector are insufficiently specialized, both in terms of assisting the victims and in prosecuting the perpetrators. We regret the lack of suitable shelter for victims of “loverboys” in Flanders (such a reception centre exists in Wallonia).

It is important that cases of “loverboys” are always labelled as human trafficking. But the information on cases of “loverboys” is fragmented and the exchange of information between police, justice and youth care is limited.

Concerning the questioning of children who are victims of sexual exploitation, local police stations often do not have the equipment or the trained staff as required by the European Directive on sexual exploitation (2011). In addition, there is not enough material available to inform children who are potentially victims of sexual abuse of their rights.

RECOMMENDATIONS

1. Develop a comprehensive and coherent data system on trafficking in human beings in order to gather reliable statistical data.
2. Systematize the training of front-line actors (police, social workers, lawyers, guardians...) on child trafficking issues and inform, educate and train the general public, including children, about this problematic (in schools, in universities...).
3. Grant children victims of trafficking a residence permit on the basis of their best interests.
4. Ensure greater harmonisation and coordination in Belgian policy, including with NGOs, both in the field of justice and youth care (both for perpetrator and victim). Ensure transparency and exchange of best practices, technology, knowledge and skills across the territory.
5. Ensure that children who are potentially victims of trafficking have access, without discrimination, to services such as adapted housing (including the creation of a center for children who are victims of trafficking in Flanders), medical care and psychological support as well as access to education.
6. Bring the Belgian definition of child prostitution in line with the definition of the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.
7. Apply systematically the provisions of the European Directive on combating the sexual abuse and sexual exploitation of children and child pornography with regard to child-friendly justice (audio-visual recording, training of staff...) and inform children of their rights and the course of the procedure.

Sexual exploitation of children in travel and tourism

At present, it is impossible to obtain the exact number of persons being prosecuted in Belgium for sexually abusing children abroad. Although Belgium is obliged to implement the extraterritorial legislation (1995), few human and financial resources are invested in conducting investigations abroad. The exchange of information between countries is particularly problematic.

RECOMMENDATIONS

1. Improve the exchange of information regarding criminal records in Belgium and abroad.
2. Systematize the use of Interpol's green notices at the different levels of police.
3. Systematize the awareness-raising of different sectors (tourism, police, justice, foreign affairs, associations sending volunteers abroad...) as well as the general public on this issue, on the extraterritorial legislation and on the reporting procedures.

Child Sexual Abuse Material (CSAM or "child pornography")

An EU directive obliges Member States to combat the spread of CSAM over the Internet and to remove any related content, but Belgium is lagging behind in the implementation of the Directive.

The penalties for "viewers" are too light and do not reflect the seriousness of the fact that every photo is evidence of a child being sexually abused which should be treated as a priority. CSAM is a matter for international criminal networks and requires more resources, both from the Federal Prosecutor's Office and from the Federal Police. Civilian hotlines could act as a "filter" so that the authorities could concentrate on the identification and rescue of victims, and the prosecution of perpetrators. The backlog in the identification of CSAM victims is problematic both

for the rescue of the victims themselves and for identifying perpetrators and other potential victims.

CSAM is tackled too fragmentarily: actors have different views and there is not enough coordination and cooperation. Cooperation with NGOs and outreach is inadequate and possibilities of international cooperation remain underused. The main challenge is the lack of knowledge among all actors about the living environment of children.

RECOMMENDATIONS

1. Invest in expertise, a better legal framework and international cooperation in the fight against sexual exploitation.
2. Make the guidelines with regard to investigation and prosecution applicable for investigations regarding cybercrime.
3. Strengthen research capacity at both the Federal Prosecutor's Office and the Federal Police with a team for the identification of CSAM victims, the necessary technology and the support of local teams.
4. Prioritize the identification of victims with a view to providing assistance.

Sources

- ECPAT Belgique (2015), « Lutter contre l'impunité des auteurs d'abus sexuels commis sur des enfants à l'étranger » - www.ecpat.be
- ECPAT Belgique (2016), « La traite des enfants en Belgique: Identification et protection des victimes ».
- Groupe d'experts sur la lutte contre la traite des êtres humains (GRETA) (2017), « Rapport concernant la mise en œuvre de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains par la Belgique. Deuxième cycle d'évaluation », n°26, 16 novembre - www.coe.int/en/web/anti-human-trafficking
- Stop Child Prostitution - www.jedisstop.be
- Child Focus (2016), « Slachtoffers van tienerpooiers in Vlaanderen » - www.childfocus.be

5.6 Female genital mutilation

[ART. 24 (3); C.O. 42, 63; G.C. 18 (2014)

The latest prevalence study, published in 2014, estimated that more than 17,000 women and girls were excised or at risk of being excised in Belgium. This estimate is probably lower than the actual figures. Yet, since 2000, female genital mutilation is prohibited in Belgium according to Article 409 of the Penal Code.

The 2015-2019 National Action Plan includes various measures, largely supported by the associative sector, concerning female genital mutilation, and more generally forced marriage and honor-related violence. However, NGOs note a lack of available financial means and of a coherent approach between the different levels of power.

RECOMMENDATIONS

1. Address the lack of national coordination on female genital mutilation.
2. Grant structural financial means to the associations working in the field.
3. Invest more in prevention and in raising awareness of all (men and women, parents, citizens, professionals...).
4. Assign referent persons in all professions dealing with girls at risk of being excised or who are already excised, given the specific nature of this form of violence.
5. Develop child-friendly guidelines and specific services for child victims of female genital mutilation.

Sources

- Beague, M. (2016), « L'intérêt de l'enfant dans le cadre des procédures protectionnelles et répressives en lien avec les mutilations génitales féminines », INTACT – www.intact-association.org
- Dubourg, D. & Richard, F. (2014), « Etude de prévalence des femmes excisées et des filles à risque d'excision en Belgique », Bruxelles: SPF Santé Publique - www.health.belgium.be
- Leye, E. (2016), « Combating female genital mutilation and other harmful practices. The EU Mutual Learning Programme in Gender Equality. Comments Paper – Belgium », 28-29 avril.

5.7 Traffic violence

In 2016, 8,629 persons under the age of 19 were involved in a traffic accident in Belgium of which 510 were seriously injured and 53 died within 30 days of the traffic accident. Many accidents can be prevented by improving the road infrastructure and vehicle technology, by adjusting the relevant regulations, by monitoring compliance, by raising awareness and by providing education. Child victims of traffic accidents have special needs. The medical, psychosocial, financial and other consequences in education and leisure are far-reaching and life altering. In many cases, the people affected do not receive the proper support.

RECOMMENDATIONS

1. Provide an urban infrastructure that protects the most vulnerable road-users and accommodates better the traffic perception of children. Create safe routes to places that are important to children (schools, playgrounds, other leisure activities...).
2. Clarify the division of responsibility between local authorities and regions for the road infrastructure. Accelerate the necessary adjustments.

3. Support campaigns on the hidden effects of traffic accidents both in the short and long term. Focus on the problems of young victims in awareness campaigns.
4. Provide both high-quality and long-term care for traffic victims. Organize tailored counseling with particular attention to minor victims of traffic accidents.

Sources

- Algemene directie statistiek – Statistics Belgium (2017), «Verkeersongevallen dossier 2016» – www.statbel.fgov.be
- OMS (2015), «Dix stratégies pour la sécurité des enfants sur la route» - www.who.int



6. Family

6.1 Early childhood care and family support

[ART. 18; C.O. 45

Early childhood care (0-3 years)

Regarding early childhood care (0-3 years), there are large differences between the cities and the countryside (shortage of spaces mainly in the cities), between the different municipalities (in Brussels namely) and also depending on the fact that the family has special needs or not due to one or some vulnerabilities (handicap, poverty...). In the French Community, two-thirds of the children do not have a place in a day-care facility (coverage rate of 33.1% in 2016). In Brussels, the percentage dropped to 30.94%, meaning that only one child out of four has secured a place in a day-care facility. In Wallonia, the percentage is 34.9% and in Flanders 52.9%. The latter percentage hides the fact that there is an actual shortage of available spaces, especially in the cities

In both the North and the South of the country, there are not enough places available for disabled children between the ages of 0 and 3 in the regular structures. Human and logistical resources are needed for adjusted and accessible care. In addition, the training of professionals does not sufficiently consider the specific needs of these children.

In the French Community, 23.3% of the places available in early childhood care services are subsidized i.e. the cost is proportional to the family income. The cost of the remaining 9.8% places available is too expensive, except in some cases, and is therefore inaccessible to the majority of families. The shortage of places affects particularly the most disadvantaged groups of the society. In 2015, Flanders increased the costs of subsidized early childhood care services for the lowest incomes from 1.57 to 5.02 euro per day.

People wanting to benefit from subsidized Dutch-speaking early childhood care services in Flanders and Brussels are required to draft a care

plan indicating the days when the child will attend the service. This system forces parents to pay for reserved places, after their quota of respite days is over, even if they choose not to use them. This significantly hinders access to early childhood care for parents with a lower income, without a fixed job or in training. Other impediments are lack of flexibility, lack of parent involvement and inappropriate guidance per child.

The quality of the places available needs to be improved significantly. This can be achieved by inter alia improving basic and continued education of staff members especially at the socio-psychoeducational level (a basic education degree is currently required).

At present, the situation is alarming, due to the policy of recent years which has focused on creating new places but without adjusting the funding of the existing structures.

Family support

The Flemish Decree on the Organization of Preventive Family support (2014) provides for local “houses of the child” that offer preventive health care, educational support and meeting-places for all families, with a focus on families with specific needs. While acknowledging that this is a good initiative, the NGOs would like to point out the following concerns: there are insufficient spaces available for families with adolescents, the houses are not enough demand-driven and the cooperation with other areas such as education and youth care needs to be improved.

In the French Community, more than 150 meeting-places where parents can engage with their children are available. These places are open to all families in a collective setting (non-therapeutic) and are freely accessible (free of charge or by voluntary contribution). Unfortunately, the sector is underfunded, which affects their opening hours and their further development. As a result, vulnerable families are still hindered in their access to these meeting-places.

RECOMMENDATIONS

1. Guarantee for all children between the ages of 0 and 3 years access to quality care, regardless of the personal situation of their parents (marital status, work, studies, financial means...).
2. Continue to develop quality early childhood care, through basic and continued education of relevant staff. Assure that professionals understand the reality of poverty and social diversity.
3. Align all relevant sectors of family support, as well as legislation, to support families both adequately and locally.
4. Install structurally and sustainably an offer of support for early childhood care services focused on accessibility, diversity, and occupation level, bearing in mind the specificities of each care facility.
5. Increase efforts to provide early childhood care for the most vulnerable children. Increase subsidized care and lower the cost for the lowest incomes. Make early childhood care more accessible to disabled children and/or children requiring special care. Invest in flexible childcare initiatives for families with irregular hours and additional needs.
6. Create a high-level training program, with a strong focus on both theory and practice, on early childhood care in the French Community (such training already exists in Flanders).

Sources

- CODE (2012), « Le défi démographique bruxellois » – www.lacode.be
- CODE (2014), « Les lieux de rencontre enfants et parents: des lieux de socialisation ouverts à la diversité des familles ».
- CODE (2017), « Accueil de la petite enfance: sujets de préoccupation et Recommendations ».
- Office de la Naissance et de l'Enfance – www.one.be
- Vakgroep Sociaal Werk en Sociale Pedagogiek van de Universiteit Gent (2016), « Cartografie van de Nederlandstalige gezinsvoorzieningen in het Brussels hoofdstedelijk gewest », in opdracht van de Vlaamse Gemeenschapscommissie.

6.2 Youth care

[ART. 5, 9, 16, 18, 19, 20, 25; C.O. 45, 47

The NGOs are shocked by the number of children at risk or experiencing difficulties and by the combination of these two; and their number is increasing. Moreover, the NGOs note that there are insufficient appropriate reactions to the needs and interests of children and families in Flanders, in Wallonia and in Brussels. Examples include limited capacity (places, staff...); overrepresentation of children from precarious backgrounds; difficulties in maintaining child-family relationships; lack of communication between authorities, professionals and parents; lack of children's participation... While essential, there is insufficient family support available to families living in precarious situations.

Delegation of parental authority to foster families

The French-speaking NGOs are concerned about the adoption of the law of 19 March 2017 on the creation of a specific status for foster families which facilitates the delegation of parental authority under certain conditions, either by agreement or, in absence of an agreement, after the passage of the period of one year in foster care, upon request to the Family Court.

The NGOs recall that alternative care is supposed to be a temporary measure, imposed as a last resort with the clear aim of reuniting children with their own family. The NGOs believe that it is important for parents to remain involved in all decisions affecting their child and that they retain parental authority. It is therefore neither adequate nor desirable to delegate attributes of parental authority to foster families.

Causes of intervention by youth care (French Community)

Since 1 January 2010, data on the reasons for intervention and support are collected by the youth care services of the French Community.

Approximately 40,000 children are cared for daily by youth care services in the French Community. Sometimes they have been removed from the family environment, because they are in danger or difficulty. The reasons for this support may vary: increased vulnerability, increased complexity of family situations, increased judicialization for administrative reasons (inter alia because front-line services are not open 24/7)...

Most difficulties at the origin of intervention and support by youth care services are:

- Problems with the child himself (41% of the care);
- Problems with the parents (personal problems 36% and difficulties to assume their parental role 28%);
- Strained relationships between adults in the family (29%);
- Abuse (28%);
- Material and financial difficulties (12%); in more than half of the situations it is a housing problem (absence, poor sanitation, lack of space).

The figures provided by the youth care services confirm the findings of relevant field organizations: there is a link between the risk of intervention by youth care services and the socio-economic status of families. The most vulnerable families have little access to material resources and information, have difficulties with reading and comprehending, do not grasp the culture of school, of youth care, of the judiciary system.... Poverty is a direct and indirect cause of intervention by youth care services and namely placement of children into alternative care.

Limited accessibility

In Flanders, access to youth care is problematic. At present, there isn't any accurate data on the scope of the problem: in "directly accessible care" (services accessible without a professional referral) there is no reliable registration and in "non-directly accessible care" (services accessible only with professional referral) people requiring help are on multiple waiting lists.

Approximately 7,350 children are waiting for more intensive youth care in Flanders. That figure has remained practically unchanged throughout the years. The offer is being expanded (e.g. for children with autism) but in the meantime the demand is increasing. The range of “directly accessible care” is limited. As a result, the problems aggravate, and ultimately, the children are placed in more drastic institutional care.

The government focuses on preventing further inflow into the “non-directly accessible care” by shortening trajectories and encouraging children to rely on their “own strength”. However, it is not always possible to reinforce networks, especially for vulnerable groups.

In brief, in Belgium, children do not necessarily get the help they need but the help that is available. This undermines the quality of and the faith of children and families in the youth care system.

High thresholds

In general, children experience many challenges when facing youth care. They need professionals, who listen to them, do not judge them and can provide expert assistance in an easily accessible environment where children are welcome without any condition.

In Flanders, many children address online assistance. Children request the relevant actors to combine forces and expertise in function of quality and 24/7 availability. Children also request a recognizable and available point of contact at school, guaranteeing transparency, reliability and discretion. Student guidance should not be limited to support in school, but should also include support for their general well-being. Assistance should also be made available during holiday periods and combined with other forms of care. Care policies at school should also include the workings of the school itself: many children list “problems at school” as a cause of stress and ill-being.

Problematic continuity

Another problem in Flanders is the lack of continuity in the files and the follow-up. Children and families do not have a permanent counsellor who makes sure that they receive the help they require. There is a consensus in the field about the necessity of such supervisors, but the Flemish government rejected the idea because of budgetary reasons.

The Flemish government wants to fill the gap by introducing voluntary “confidential advisers”. But they cannot replace the professional counsellor. Moreover, many children do not have a network from which they can appoint a “confidential adviser”.

Youth care services in Flanders offer mediation as an alternative way to resolve conflicts as well as consultations in complex situations. But these possibilities are barely used, and children can seldom participate. The new trend towards deinstitutionalization and socialization of youth care may not focus on cutting expenses and limit the number of places available. Professional care must be available when needed. The government must guarantee this right for every child. Calling on a child’s “own strength” cannot replace existing care. Socialization must bring care into the living environment of children.

Alternative care (including placement in hospitals)

In about half of the cases of intervention by youth care in the French Community, the child is being taken into care and thus removed from its family environment. The fact that children are taken away from their parents due to reasons regarding their living conditions is an unacceptable violation of their rights.

One third of these children are placed in foster families, the other two thirds live in institutions. Occasionally, children are placed in hospitals for non-medical reasons. At times, these placements in hospitals are prolonged. The only figures available are regarding children between the ages of 0 and 6 years old. These numbers show that in 2014, 275

children have been placed in a hospital in the French Community. The duration of the placement varies (11% of the children had stayed longer than 6 months in the hospital, while a complete assessment takes about 4 weeks).

Professional workers express, amongst others, the following concerns:

- Hospital structures are not adapted to the needs of children: there is a risk of developing emotional attachment disorders for infants, a lack of appropriate and stimulating activities, a lack of a (pre-) scholastic framework...
- The post-partum stays at hospital are too limited: since 2016 the period of the stay after giving birth has been limited to 4 or 5 days, but certain hospitals limit it to 2 days which is becoming the standard.

The measures that were announced in 2016-2017 by the Minister of Childhood and the Minister of Youth Care (such as refinancing certain services and establishing new centres, recruiting new emergency foster families, creating more places where children and parents can engage with each other...), have not all been implemented and regardless, they are insufficient.

Relationship between children in alternative care and their families

At the level of the French Community, the decree on youth care encourages the maintenance and/or the restoration of family ties. In reality, however, large differences exist between the practices of one institution to another and from one foster family to another especially with regard to the communication between the families and professionals and the conditions under which the children in alternative care and their families can meet (frequency, location, presence of a third party or not, cost sharing).

Several organizations dealing with poverty eradication, notice difficulties in the continuation of satisfactory relationships between the children

and their family especially when the children are placed in foster families who are supported by foster placement services (generalized supervised visits that are limited to a few hours per month).

RECOMMENDATIONS

For the French Community

1. Repeal the section in the law of 19 March 2017 which in case of child placement in a foster family allows for the automatic delegation of parental authority without the explicit agreement of the parents of origin by the mere passage of time (after one 1 year of placement) and establish procedures to accompany and inform the parents of origin during the negotiation and on the exercise of parental authority in case of placement in a foster family.
2. Evaluate and harmonize policies and practices in the field of youth care at all levels (family support, nature of care, child-family relationship, transparency of documents...).
3. Implement a preventative policy on family support by investing in the home environment, allocating effective support means and by taking into account the skills and aspirations of parents and children.
4. Train professionals in the difficulties and the violations of the rights of children and families.
5. Create a system of 24/7 assistance in youth care (to avoid, to the extent possible, the judicialization of the situation).
6. Focus on the creation of tools for children in alternative care, which contain all relevant information regarding their trajectory (for "memory" purposes). This tool (written document or other) will follow the child and parts will be made available to him/her taking into account his age and needs (when reaching

adulthood, the entire file will be handed over) together with appropriate guidance.

7. Improve the motivation of decisions regarding child placement in alternative care to allow genuine participation of all parties involved, rethink communication with families and ensure transparency of documents, so that parents can better understand decisions and the evolution that is expected from them.

For the Flemish Community

1. Strengthen the offer of fast low-threshold assistance available 24/7. Make assistance accessible to and affordable for each child. Provide more resources for both "directly" and "indirectly accessible" youth care. Provide a clear, recognizable and available contact point at each school. Guarantee and explain transparency, reliability and discretion to each student.
2. Make the telephone and online assistance more accessible by investing in sufficient manpower and capacity. Bundle the strength and expertise of the relevant actors.
3. Focus on expanding the number of foster families and provide guidance.
4. Enable the appointment of a youth care counsellor. Provide sufficient resources for professional care networks to better meet the increasing demand.
5. Make mediation more widely known to youth care workers as well as children and their parents. Encourage client consultation and monitor the actual participation of the children.
6. Respect client participation as provided for in the legal decree regarding the legal status of minors. Train future youth care providers in the necessary insights, attitudes and skills necessary for children's participation.

Sources

- Agentschap Jongerenwelzijn (2016), « Jaarverslag 2016 van de jeugdhulp » - www.vlaanderen.be
- AGORA (2012), « La transparence et la transmission des écrits. Actes de la journée de réflexion et de dialogue organisée le 29 novembre 2011 » - www.armoedebestrijding.be
- Cachet (2013), « Visietekst cliëntparticipatie » - www.kennisplein.be
- Chambeau, M. (2011), « Pour une glasnost dans l'Aide à la jeunesse. La communication des écrits aux familles », Liège: Edition Jeunesse & Droit.
- CODE (2013), « La pauvreté: un motif de placement en Fédération Wallonie-Bruxelles » - www.lacode.be
- CODE (2015), « Les écrits de l'Aide à la jeunesse sont-ils respectueux des droits de l'enfant et des familles? ».
- CODE (2016), « Enfants placés à l'hôpital par l'Aide à la jeunesse en Fédération Wallonie-Bruxelles. Et les droits de l'enfant dans tout ça? ».
- CODE (2016), « Position de la CODE sur la proposition de loi relative à l'instauration d'un statut pour les accueillants familiaux ».
- Fédération Wallonie-Bruxelles (2017), « La Fédération Wallonie-Bruxelles en chiffres. Année 2016 » - www.federation-wallonie-bruxelles.be
- Kinderrechtswinkels (2006), « Werkmap aan de slag met het decreet rechtspositie van de minderjarige in de integrale jeugdhulp » - www.tzitemzo.be
- Vandeurzen, J. (2015), « Actieplan Jeugdhulp. De kracht van de jeugd naar 2020 » - www.vlaanderen.be
- Vlaamse Jeudraad (2017), « Advies 1706 Psychisch Welzijn ». – www.vlaamsejeudraad.be
- Zorginspectie (2010), « Werk maken van kinderrechten, De decreten integrale jeugdhulp in de praktijk », Sectoraal cijfer rapport: Centra Integrale Gezinszorg – www.vlaanderen.be

6.3 Family allowances

[ART. 18, 26, 27; C.O. 20, 65

Family allowances are designed to support financially families with children but the NGOs believe that they should also be a tool in the fight against child poverty. The amount of the allowances granted is not sufficient to cover the actual cost of raising children. In addition, Flanders has not indexed the amount of family allowances twice and the French Community once, both lowering the purchasing power of families with children. Families with extra needs, such as families with disabled children, single-parent families with low incomes or poor families, are entitled to increased family allowances but many have never applied for it due to lack of information (e.g. 21% of the children having a file at the Flemish agency responsible for people with disabilities in Flanders have not applied for extra allowances).

With the sixth governmental reform, the authority on family allowances has been transferred from the federal state to the Regions and Communities in 2014. On 1 January 2020, at the latest, family allowances will not be managed and paid by the federal state anymore but by four federated entities, namely the Walloon Region, the Cocom (Common Community Commission of Brussels-Capital), the German-speaking Community and the Flemish Community, each having its own conditions, method of calculation and organization. This transfer raises questions and concerns amongst many families about the sum and the continuity of payment.

In 2016, an agreement was reached in Flanders and the German-speaking Community on reforming the family allowances system. In Wallonia such an agreement was reached in 2017. In the Brussels Region no agreement has been reached to date causing a lot of insecurity for families living in Brussels.

Research on the Flemish reform measures by the KULeuven predicts a decrease in the risk of poverty of 3% for children born before 2019 and

of 15.2% for children born after 2019. This is insufficient. In Wallonia, an analysis of the reform measures on poverty (Vinck, Lancker, Guio) illustrates that 56% of the families' situation would improve whereas 44% of the families' situation would deteriorate. Notwithstanding the recommendation from several organizations working with families living in poverty to increase family allowances, especially for financially deprived families, socially vulnerable groups do not benefit sufficiently from the Flemish and Walloon reforms.

In Flanders, families will receive a fixed amount per child. The supplements based on age (previously at 6, 12 and 18 years) and on the order of the child in the family are abolished. This is also the case in Wallonia, where only one small supplement (10 euro) will be paid when the child turns 18. The NGOs favour introducing a fixed amount for all children but regret the abolition of supplements based on age in Flanders and the very low supplement in Wallonia at the age of 18, considering that the cost of raising a child increases with age.

Both the Walloon and the Flemish reform programs provide for social supplements related to the parents' income and to the size of the family, which is commended by the NGOs. However, the amounts and conditions of these supplements differ, sometimes significantly, from one region to another, which is deplored. Large families formed after 2019 will receive significantly less family allowances after the reform compared to families today, both in Flanders and Wallonia.

Children who are partly orphan (who only have one parent alive) will receive 240 euros of family allowances in Flanders and 232 euros in Wallonia, compared to about 350 euros today.

The kindergarten allowance given at the age of 3 in Flanders is made dependent upon the child's attendance at school, which means turning an unconditional financial support measure -designed to cover a child's living expenses- into a conditional one.

RECOMMENDATIONS

1. Increase the budget for family allowances, and protect acquired rights (no reform measure ought to lower allowances currently given to families and children). Guarantee the unconditional granting and payment of family allowances, including supplements. Guarantee the right to family allowances during the transitional period of the reform plan.
2. Clearly inform families about the reform of family allowances and its consequences.
3. Respect the deadlines given to the federated entities to set up a system to pay these allowances (by 1 January 2020 at the latest).
4. Take into account the age and the number of children in the family when calculating the amount of social supplements.
5. Ensure extra protection and maximum allowances for families in poverty, families with disabled children and families with uncertain or without any residence permit.
6. Base the calculation of the amount of family allowances for families in poverty on the minimum costs of upbringing children at any age and grant the highest supplements to all families living below the poverty line.

Sources

- Gezinsbond (2013), « Simulaties voor de impact van de hervorming van de Vlaamse kinderbijslag op de portemonnee van de Vlaamse gezinnen, zowel bestaande als toekomstige - Standpunt Vlaamse en Brusselse kinderbijslagen ». – www.welzijnzorg.be
- Gezinsbond (2016), « Vlaamse kinderbijslag. Evaluatie van de Gezinsbond » - www.gezinsbond.be
- Kind & Gezin (2017), « Armoedetoets Vlaamse kinderbijslag kwalitatief en kwantitatief luik » - www.kindengezin.be

- Ligue des familles, « Une réforme réaliste et ambitieuse », Campagne Allocs en mieux – www.ligue.be
- Mahy, C. & Doyen, P. (2017), « La réforme des allocations familiales: une occasion historique ratée de réduire les inégalités par les politiques publiques! Est-il vraiment trop tard? », Réseau wallon de lutte contre la pauvreté – www.rwlp.be

6.4 Young carers

[ART. 16, 18 (2), 28, 31 ; C.O. 47, 67 (d) et 71

According to the figures available, in Belgium, 14% of the children are carers (which corresponds to around 3 per class). These children help several hours a day (medical and intimate care, household and administrative tasks, emotional support...) a family member who is dependent. The situation of "young carers" is unknown by everyone (professionals, politicians, general public). Their family situation often prevents them from completing their studies (research shows that those children are more at risk than others to dropping out of school, sometimes under the age of 12, because they stay at home to care for younger brothers or sisters), having leisure time, and later finding jobs. Some develop physical or mental illnesses.

In Flanders, an expertise centre about carers ("Vlaams Expertisepunt Mantelzorg") was launched on 19 June 2017. The biggest challenge is to adequately guide children and young adults to this centre and provide information tailored to their needs.

NGOs hope that a specific attention will be given to the situation of young carers, including to the listening of their needs and the respect of their rights.

RECOMMENDATIONS

1. Give children the right to recognition as carers.
2. Raise awareness with the general public, professionals and politicians about the situation of young carers.
3. Disseminate and broaden the research already available to fully understand the reality in Belgium as well as the needs of young carers.
4. Support children and families by providing long-term support using a global approach (systemic).
5. Develop and subsidize a specific service for young carers that carries out studies, collects information, provides training and conducts advocacy.
6. Set up data collection on young carers.

Sources

- Institut scientifique de santé publique (2014), « Enquête de santé 2013. Rapport 4: Environnement physique et social » - www.wiv-isp.be
- Jeunes Aidants Proches: www.jeunesaidantsproches.be

6.5 Professional secrecy

[ART. 16

The principle of professional secrecy of social workers is under strain. But if it is not guaranteed, children defer getting help or do not tell their whole story.

On 5 May 2017, a law was adopted introducing an obligation for staff of Public Centres for Social Welfare (CPAS/OCMW) - who provide social

assistance for people who don't have sufficient means to live on - to inform the judicial authorities when there are "serious indications of a terrorist offense" (a penalty can be provided in the case of non-compliance). While the purpose of this law is to contribute to the fight against terrorism, the general fear is that it would undermine the trust between social workers and anyone approaching a social security authority. Respect for privacy, non-discrimination and non-stigmatization are essential in this context. Moreover, Belgian law already stipulates certain exceptions to the principle of professional secrecy allowing professionals to disclose such facts legally.

Article 458ter of the Penal Code, which came into force in August 2017, establishes the sharing of professional secrecy in specific troubling circumstances (such as child abuse, domestic violence, and radicalization) even before an offence is committed, undermining assistance to people in general. Paradoxically, the legislator intends to elevate the penalty for violating the principle of professional secrecy. The latter measure no longer prioritizes the best interest of the person and undoubtedly creates dilemmas for social workers.

Some families become more vulnerable, which may tend to isolate them even further (because they don't want to share their problems because they fear being judged or that their children will be taken into alternative care) and even put their children at risk.

RECOMMENDATIONS

1. Respect, in the legislation concerning cooperation between different actors, the specific role and opinion of every actor involved (especially when actors having a dominant position are involved, such as the police or judicial authorities). Allow social workers to put the care and the trusted relationship with the people first.

2. Limit the list of exceptions to the principle of professional secrecy in a consistent and proportionate manner, including by restricting the possibilities for social workers to disclose confidential information about persons.
3. Strengthen the training of workers in the personal assistance sector on matters relating to professional secrecy.

Sources

- CODE (2017), « Secret professionnel limité, droits fondamentaux bafoués? » - www.lacode.be
- Fédération des CPAS (2017), « Le secret professionnel (en CPAS), une valeur fondamentale en danger! », 3 février, Union des villes et communes en Wallonie – www.uvcw.be
- Front peu commun (2017), « Le secret professionnel: une valeur fondamentale des droits sociaux en danger » – www.liguedh.be
- Vlaamse Scholierenkoepel (2009), « Praten of zwijgen: het juiste evenwicht? VSK-advies over leerlingenbegeleiding » - www.mijnvclb.be

7. Disability

[ART. 2, 23; C.O. 45, 55, 67, 71; G.C. 9 (2006)


7.1 General situation

Despite many action plans and other reform plans, the rights of children with disabilities in Belgium are not guaranteed. They cannot participate fully in society due to a lack of funds required for appropriate support.

The exact number of children with disabilities is unknown. Which implies a shortage of quantitative analysis on the needs of children, and participation of children and their families at all levels.

The policy on disability is fragmented in Belgium, impeding access to information and thus the effective exercise of rights and access to services. This affects particularly the children from most vulnerable families (families living in poverty, foreign or newly arrived families...). In general, there is a lack of reasonable accommodations (i.e. concrete measures to compensate for the disadvantages of being disabled and living in a non-adjusted environment).

The term "carer" is defined by the law of 3 April 2014 (but children are not included in this definition, cf. section 6.4). While this acknowledgment is important, it does not grant any specific social rights or financial support, except in a roundabout way via the Personal Assistance Budget (PAB) that allows people who are in a situation of high dependence to benefit from help at home to improve their quality of life. However, the conditions to obtain such a budget are ruled by the different Communities with the consequence that the amounts (much higher in the Flemish Community than in the French Community) and the number of beneficiaries (under ten in the French Community) are very different from one Community to another.



Given the differences in regulations and practices between the French and the Flemish community, the NGOs have chosen to address the situations in both communities separately. However, the NGOs have been able to identify a list of common recommendations.

RECOMMENDATIONS

1. Establish a coordinated policy between the different levels of authority favouring the inclusion of children with disabilities at all levels: living environment, pre-school care, school, transportation, leisure (including through the establishment of reasonable accommodations).
2. Actively engage children with disabilities in the development, implementation and evaluation of policy.
3. Support adequately children with disabilities and their families, including through providing the necessary financial support.
4. Grant concrete rights and services adapted to the needs of carers and their families by adopting an implementation decree concerning the law of 3 April 2014 on the recognition of the status of carers.

7.2 In the French Community

Lack of accessibility

In general, accessibility (of buildings, public places, means of transport, education, recreation...) remains a challenge for children with disabilities in the French Community.

Inclusive education

The number of children attending specialized education in the French Community is increasing continuously. Belgium is regularly denounced

for degrading children to specialized education in an unjustified way, not taking into account the best interests of the child.

On this issue, the French Community is behind on Flanders and its “M Decree” (cf. section 7.3). Although the decree of 5 February 2009 of the French Community provides for the inclusion of children with disabilities in mainstream education, the figures show that it is applied marginally because its application relies on the good will of schools.

The NGOs deplore the lack of designated subsidies to better support inclusive schools and the lack of places adapted to the needs of children with disabilities both in schools and in care facilities. Specialized education facilities, which remain the preferred formula for some children, have insufficient places and are badly distributed geographically (very long commute to school...). The current lack of care forces many parents to reorganize their lives, especially their professional activities, often leading to a loss of income.

RECOMMENDATIONS

1. Develop a coherent strategy for the inclusion of children in the mainstream school and childcare system, providing for adequate human, material and financial resources (reasonable accommodation).
2. Ensure a better geographic distribution of specialized schools and standardize the implementation of school transportation.

7.3 In the Flemish community

Supporting children with disabilities and their families

In 2000, the Flemish government adopted the necessary regulations for a Personal Assistance Budget (PAB), which constitutes a first step towards specifically tailored care and support to persons with disabilities and their families. From 2001, adults and children with disabilities can apply for a PAB to set up personalized assistance.

The PAB has proven to be an important tool for improving inclusion. Yet PAB-applicants have been on the waiting list for years. The average waiting time for a PAB for children is 5 years and sometimes even 15 years. This undermines inter alia the right to grow up in a family and the right to inclusive education, particularly since it is easier to send your child away as the average waiting time for boarding school/semi-boarding is only 9 months. On 31 December 2016, a total of 1,191 children were on the waiting list for a PAB. In 2016, only 31 PABs were granted to children, while 2,666 children started a trajectory in an institution.

Due to the lack of support, parents are forced to support their child themselves or to give up their jobs. As a result, they suffer from burnouts, they cannot provide enough for the other children in the family and the relationships in the family are strained. Their only chance to receiving appropriate assistance is to apply for a place in an institution.

The Flemish Government is planning to reform its policy on children, similar to the policy reform regarding adults with disabilities of 1 January 2017. However, it is uncertain whether such reform will solve the problems outlined above. The right to inclusion for adults, including the long waiting times, remains limited.

Inclusive education

Several categories of children are entitled to inclusive education with extra support: children with disabilities, ill children, children with learning and development disorders and newly arrived immigrant children

On 12 March 2014, the Flemish Parliament approved the “M-Decree”. This constitutes a first irreversible step towards inclusive education. However, there are important concerns:

- Inclusive education remains conditional meaning that the inclusive education is offered as an option, which does not meet the recommendation of the Committee.
- The right for disabled children to register is not guaranteed. A report from the Centre for Inclusion (“Steunpunt voor Inclusie”) states that 73% of the examined refusals by schools to register a child with a disability did not comply with the registration law and were therefore unlawful.

To provide inclusive education to children with disabilities, extra support is needed (human and financial). Until now, this was possible via extra support hours for integrated or inclusive education but the hours available are insufficient or unavailable to many children. Resources remain available when a child transfers from special education to inclusive education, but the resources are linked to the school and not to the child. It is possible that a child receives support in special education but not in mainstream education.

On 1 September 2017, a new support model became effective. Its adoption happened quickly, unclearly and without the involvement of the parents or children. As a result, certain support measures are lost, or it is not clear how one can apply for it. The lack of continuity and perspective for these vulnerable children is a major problem and affects particularly the weakest families.

Special attention should also be paid to children who are exempted from compulsory education due to their high level of care needed. More than 500 children are currently being cared for in day centres and boarding schools, without a learning trajectory.

RECOMMENDATIONS

1. Choose resolutely for deinstitutionalization so that placement of children in institutions becomes the exception.
2. Assign more resources to person-related budgets so that every child with a disability receives sufficient support at home, at school and in its free time.
3. Provide budgets that cover all care needs, regardless of whether the care is offered by professionals or carers.
4. Assign person-related budgets within a reasonable period so that the disabled child's family and social network is not overloaded (no waiting lists).
5. Ensure that the Personal Assistance Budget is high enough so that the organization of decent day care or guidance regarding the labour market becomes possible when the child reaches adulthood.
6. Ensure the continuity and availability of support for every child throughout its school career, regardless of the type of education.
7. Assign resources to the school and to the parents for supporting students with disabilities in inclusive education.
8. Make sure that inclusive education doesn't entail additional costs for parents.
9. Guarantee the right to register to children with disabilities and their parents and give them more participation and control over the care offered to the child.

10. Raise awareness on the role of schools in the development and participation of children with disabilities in society and support the schools when playing their role.

Sources

- CODE (2011), « Avis des acteurs de défense des droits de l'enfant dans le cadre du premier rapport de la Belgique sur la Convention relative aux droits des personnes handicapées » - www.lacode.be.
- Fédération Wallonie-Bruxelles, « Les aménagements raisonnables » - www.enseignement.be
- Gamp (Groupe d'action qui dénonce le manque de places pour personnes handicapées de grande dépendance) - www.gamp.be
- Gezinsbond (2017), « Standpunt Zorg en ondersteuning voor personen met een handicap » - www.gezinsbond.be
- Grip (2015), « Brochure Ja zeggen ja doen, een reisgids voor parlementsleden en beleidsmakers bij de implementatie van het VN-Verdrag inzake de Rechten van Personen met een Handicap » - www.gripvzw.be
- Handikids, le portail de l'enfance handicapée - www.handikids.be
- Ligue des droits de l'enfant (2015), « Livre blanc: Accueil de l'enfant malade ou handicapé à l'école » - www.ligedroitsenfant.be
- Ligue des familles (2015), « Aménagements raisonnables. Droits, obligations et opportunités pour une société inclusive » - www.laligue.be
- Ouders voor inclusie (2016), « Rapport drempels en barrières, samen met ouders op pad, ervaringen uit de praktijk in het realiseren van inclusief onderwijs » - www.oudersvoorinclusie.be
- Unia (2017), « A l'école de ton choix avec un handicap: les aménagements raisonnables dans l'enseignement » - www.unia.be
- UNICEF (2013), « La situation des enfants dans le monde 2013. Les enfants handicapés » - www.unicef.org

8. Poverty

8.1 General situation

Belgium has a structural poverty problem, despite being a prosperous nation. Poverty violates fundamental rights including children's rights. A child growing up in poverty sees his future jeopardized. Poverty has an impact on all aspects of life.

The European poverty indicator "risk of poverty or social exclusion" covers 20.7% of the population in Belgium and 14.9% of the people live with an income below the poverty line. Poverty is distributed unequally across the country: in Flanders, 10.3% of the population is at risk of facing poverty, 18.3% in Wallonia and 29.7% in Brussels. The subjective risk of poverty complements the objective indicators. According to the EU-SILC 2016 survey, 21.5% of Belgians acknowledged that it was "difficult" or "very hard" to make ends meet.

Belgium has one of the highest rates of child poverty in Europe. In the age category of 0 to 15-year-olds, the poverty percentage is 17.4% and it rises to 19.5% for the 16 to 24 year-olds. There are important differences between the regions of the country: 4 out of 10 children growing up in Brussels live in poverty, in Wallonia this is 1 out of 4 children and in Flanders this is 1 out of 10 (figures from 2016).

Specific risk groups are families with children where both parents are unemployed (risk of poverty of 72.8%), single-parent families (35.7%), families from outside the EU (41.5%) and tenants (32.8%).

The NGOs regret that poverty is still a reason justifying the placement of children in alternative care (cf. section 6.2).

8.2 Impacts of poverty

[ART. 18, 26, 27 ; C.O. 20 (d), 65, 67, 71

Income

In Belgium, minimum wages and social allowances are below the poverty line. Families cannot live a dignified life with these amounts. Moreover, in the past few years there have been considerable budget cuts (in particular for young people right out of school) such as reductions and exclusions of the unemployment benefits. The benefits have been made digressive more quickly and the waiting period (between the inscription for unemployment benefits and the actual collection of the benefits) and the number of reasons justifying the loss of the benefits have been extended. At the same time, since 1 January 2015, the right to time-credit without justification is no longer accompanied by benefits while this benefit represented a support to improve work-life balance.

This dual evolution (pressure on income and social services) weakens families and makes them more vulnerable to the challenges of life (illness, accident, job loss, separation...). The impact on all rights is obvious.

Housing

Bad housing accelerates inequality. One out of four people are living in poor housing conditions. By estimate, one out of three homeless people is underage. Housing costs constitute the largest expenses for families. By average the poorest families spend 39% of their budget on housing, with a maximum of 58%. In addition, unhealthy housing conditions affect considerably all aspects of life: health, social life, school work, food, stress... Many efforts are required to ensure decent housing for everyone in Belgium.

Every year about 800 children in Flanders are evicted from their homes together with their parents. On the francophone side, the figures available show that for nearly 1,700 children there is an intervention of the

youth care services, sometimes leading to the placement of children in alternative care, for a housing problem (cf. section 6.2).

It should be noted that the figures from the different regions cannot be compared against each other (number of social housing available, different application requirements, potential premium...) but they remain interesting.

The waiting lists for social rental housing have become longer in Flanders, Brussels and Wallonia. Some families must wait nearly 8 years to receive social housing. In the meantime, they have to rent a house on the private rental market, which generally sets higher prices (in ten years the prices have doubled) and certain residences are in extremely bad conditions. The number of people on the waiting lists has risen in Flanders, from 95,953 in 2010 to 117,681 in 2015 and in Brussels, from 37,825 in 2010 to 45,742 in 2015. In Wallonia, the number of households on the waiting list for social housing was nearly 40,000 in 2016 (an increase of more than 22% in 10 years). Unlike in Flanders, there is no premium in Wallonia to help people renting on the private market but waiting for social housing (which, combined with long waiting lists, may tend to discourage registration). However, in Flanders, the different premiums and allowances are only available to 3.75% of the private tenants. 10% of the quality of housing in Flanders is "bad" to "very bad". On the private housing market, the percentage is 16%.

The need for housing is increasing, but the number of available affordable and qualitative housing has not risen. The construction of new social housing is postponed or not executed, and the government does not invest enough in currently available housing. The housing policy mainly provides tax relief when acquiring property, even for a secondary residence. In this way, financial resources for housing profit to families with a higher income.

Education

Various studies indicate that in Belgium, children coming from disadvantaged families, and particularly children with a migration background, are more likely to fall behind in school. This can be explained by several factors: difficult living conditions, lack of cultural and economic resources, lack of perspective and purpose (difficulty of projection in the future), difficulties in dealing with school requirements, including school fees, competitive education or ghettoization of schools, and difficult or non-existent relationships between school and family. Various studies and real-life experiences have shown that these children do not attend school regularly (starting when in kindergarten).

The Belgian education system is characterized by, one, large differences in performance between students, sectors and schools, two, a high repetition rate, three, early orientation towards specialized education (sometimes from kindergarten) or towards sectors leading to very unequal education (technical or professional) and four, an alarming drop-out rate (one out of five adolescents does not finish high school).

Health

Living in poverty affects people's general state of health (difficulties in paying for preventive and even curative care, lack of stimulation in housing that is too small...) and a bad health condition causes more poverty (additional costs due to health care, inability to go to school resulting in falling behind in school, increased isolation...)(cf. chapter 9).

Insufficient protection and non-take-up of rights

A large group of people do not receive any protection. They are living in precarious conditions and are entitled to guidance or financial support, but do not benefit from them because they are not aware of their rights. Social welfare does not reach these groups and evidently does not elevate their poverty situation.

RECOMMENDATIONS

1. Raise the social minima and the social benefits beyond the poverty line as provided for in the federal government agreement of 2014.
2. Develop a poverty test at all policy levels and for all decisions that affect the situation of people in poverty in general and children in poverty in particular. Adjust the policy based on the results.
3. Focus on maximum automation of rights and proactive services to avoid people not claiming their rights. Invest in social housing, rent subsidies and housing counseling for vulnerable families. Avoid evictions and extended periods of emergency shelters for families with children.
4. Raise awareness and train professionals, especially those working with infants, working in education and youth care, to address the socio-economic realities of families in precarious situations.
5. Never suspend the social allowances (minimum wage granted by the government under certain conditions) of people with children.
6. Study the nexus between the socio-economic index of families and the intervention of youth care and child welfare services, particularly in the case of placement in alternative care (in particular with regard to situations of frequently renewed placements).

Sources

- ATD Quart Monde (2017), « Campagne Stop Pauvreté » – www.atdquartmonde.be
- Brusselse Gewestelijke Huisvestingsmaatschappij (2016), « Jaarverslag 2015 » - www.slrbririsnet.be
- Charlier, J. (2015), « Ya Basta! Assez! Echec à la pauvreté! », Réseau Wallon de Lutte contre la Pauvreté – www.rwlp.be
- CODE (2013), « Recommandation européenne 'Investir dans l'enfance pour briser le cercle vicieux de la pauvreté'. La CODE fait le point! » - www.lacode.be
- CODE (2015), « Sale temps pour les enfants. L'impact de la crise sur les droits de l'enfant ».
- Delvaux, A. & Grévisse, F. (2017), « Le scandale de la précarité énergétique », Le Forum – Bruxelles contre les inégalités, Pauvreté n°17 - www.le-forum.org
- Eurochild & EAPN (2013), « Vers le bien-être des enfants en Europe: explicatif sur la pauvreté infantile dans l'Union Européenne » - www.eurochild.org
- Fédération des maisons médicales et des collectifs de santé francophones, « Politiques fiscales en Europe à l'ère de la crise économique. Implications sur la santé et l'accès aux soins », Santé Conjuguée, décembre 2014.
- Fédération Wallonie-Bruxelles (2017), « La Fédération Wallonie-Bruxelles en chiffres. Année 2016 » - www.federation-wallonie-bruxelles.be
- Fondation Roi Baudouin (2016), « Femmes et enfants en errance, le sans-abrisme au féminin » - www.kbs-frb.be
- L'Observatoire (2015), « Besoins primaires dans un contexte d'opulence » – www.revueobservatoire.be
- Van de Velde, C. & Guyot, M. (2017), « Jeunes, pressions et injonctions », Le Forum – Bruxelles contre les inégalités, Pauvreté n°13 - www.le-forum.org
- Van den Broeck K., Haffner M., Winters S. & Heylen K. (2017), « Naar een nieuw stelsel van huursubsidies » - www.steunpuntwonen.be
- Vlaamse Maatschappij voor Sociaal Wonen (2016) « Jaarverslag 2015 » - www.vmsw.be
- Wagener, M. (2013), « Monoparentalité et précarité », Le Forum – Bruxelles contre les inégalités, Pauvreté n°2 - www.le-forum.org
- Winters S., Ceulemans W., Heylen K., Pannecoucke I., Vanderstraeten L., Van den Broeck K., De Decker P., Michael Ryckewaert M. & Verbeeck G. (2015), « Wonen in Vlaanderen anno 2013 De bevindingen uit het Grote Woononderzoek 2013 gebundeld » - www.steunpuntwonen.be

8.3 Begging

[ART. 3, 9, 27 ; C.O. 47, 73

Undoubtedly, it is essential to firmly acts against all who exploit child beggars and who are part of trafficking networks, and to ensure that all elements raising suspicion are studied in depth. However, one should be wary not to punish the victims of these networks by taking generalized repressive actions against all families and children who are forced to beg. Therefore, the NGOs support the current penal law of 10 August 2005, which punishes the perpetrators of exploiting children and trafficking in human beings in the context of begging, but they are against criminalisation of the mere fact of begging albeit alone or in the company of children. Indeed, it is in the best interests of the child to not be separated from their parents, except when there is evidence that the parents are exploiting or harming their children.

RECOMMENDATIONS

1. Develop a child protection policy which, based on social surveys, allows to define the situation of each child living on the street and to take appropriate decisions aimed at supporting and providing him and his family with the necessary assistance for their well-being and dignity.
2. Promote a policy aimed at ensuring the socio-professional integration of families who are forced to beg.
3. Include in the next Concluding Observations of the Committee the earlier clarification of 2013 regarding the Concluding Observation of 2010 concerning the prohibition of begging with children.

Sources

- CODE (2010), « Analyse des Observations finales 2010 du Comité des droits de l'enfant relatives à la mendicité des mineurs » - www.lacode.be
- CODE (2013), « Mendicité avec enfants : l'arsenal législatif est suffisant, mais un renforcement des droits des enfants roms s'impose ».
- Kinderrechtencoalitie (2013), « Standpunt Kinderrechtencoalitie Bedelen met Kinderen » - www.kinderrechtencoalitie.be
- Lambert, M. & Fierens, J. (2014), « De l'inutilité de la répression de la mendicité », Forum – Bruxelles contre les inégalités, Pauvreté n°5 - www.le-forum.org

9. Health

[ART. 24, 39; C.O. 57, 59; G.C. 15 (2013)

9.1 General situation

In its comprehensive analysis of children's well-being (2016), encompassing issues of general happiness, income and education, UNICEF ranks Belgium 29th out of the 35 OECD and EU countries that were analysed (Innocenti Report 13).

Belgium ranks 30th with regard to the question of satisfaction in life. UNICEF came to this conclusion after interviewing children of the ages 11, 13 and 15. The children were asked to score their level of satisfaction in life with a number from 0 to 10. Nearly 10% of the children interviewed rated their level of satisfaction with a 4 or less.

In terms of health, Belgium ranks 15th; 1/4 of the children interviewed reported at least one health problem per day. It is important to note that inequalities regarding health issues in Belgium have increased drastically from 2002 to 2014.

Sources

- Observatoire de l'Enfance, de la Jeunesse et de l'Aide à la Jeunesse (2008), « Ce que les enfants entendent par bien-être et les leçons à en tirer pour le choix et la définition d'indicateurs de bien-être », Recherche réalisée par Synergies & Actions – www.oejaj.cfwb.be
- Office de la Naissance et de l'Enfance – www.one.be
- UNICEF (2016), « Enfants dans les pays développés », Bilan Innocenti 13 – www.unicef.org

9.2 Accessibility to health care

Children remain dependent on their parents for access to health care (financial means and legal capacity). There is no free unconditional basic health care for children (or for as long as they are entitled to family

allowances) and they are not seen as a special group to whom the third-party payment scheme applies; while more and more Belgian families postpone health care because of financial reasons.

In its Innocenti Report 13 published in 2016, UNICEF highlighted the close and diverse relationship between the impact of the recession on national economies and the decline in child well-being since 2008, the year of the economic crisis.

About 10% of the population cannot pay their health costs. According to a survey (Trendhuis, 2014), 1 out of 5 people living in Wallonia, 1 out of 8 in Flanders and 1 out of 4 in Brussels have indicated to have postponed or relinquished health care. Each social barometer indicates that social inequalities are most noticeable in the Brussels Region in terms of perinatal and child health.

Babies from low-skilled parents are twice as likely to be born with a low birth weight. Children who are born in a household with no income from work are almost twice as likely to be stillborn or 1.5 times more likely to die before the age of 1 compared to children born in a household with two fee earners.

Less-educated young people often lack the means for a healthy lifestyle, which entails various health risks later in life. Low-income groups suffer from more chronic conditions and disabilities. Financing the support and special care needed for children with disabilities entails a significant financial cost for families (twice the average). The health care of migrants and refugee children is also an alarming issue.

In general, children must be better protected against health risks such as air pollution, tobacco smoke and unhealthy food.

RECOMMENDATIONS

1. Ensure access to appropriate and quality health care for all.
2. Broaden the scope of the third-party payment scheme to include children until 18 or as long as they are entitled to family allowances. Expand the scope of this regulation to include all medical disciplines e.g. dental care, physiotherapy and psychotherapy.
3. Invest in comprehensive health insurance making extra insurance products unnecessary.
4. Invest in accessible, high-quality primary health care, including by developing local health care centres.

Sources

- Billiet A. & Dubourg D. (2015), « Inégalités sociales de santé et accès aux soins de santé », L'Observatoire, n°54/2015, Liège, p.57-60 – www.revueobservatoire.be
- Fondation Roi Baudouin (2017), « Santé périnatale. Des inégalités dès la naissance » - www.kbs-frb.be
- Observatoire de la Santé et du Social de Bruxelles-Capitale (2017), « Baromètre social 2017 », Bruxelles: Commission communautaire commune - www.observatbru.be
- UNICEF (2016), « Enfants dans les pays développés », Bilan Innocenti 13 – www.unicef.org
- Robert, A. (2017), « Soins de santé : difficultés d'accès et non-recours », Le Forum – Bruxelles contre les inégalités, Pauvreté n°16 - www.le-forum.org
- Trendhuis – www.trendhuis.be

9.3 Mental health care

Many children and young adults in Belgium suffer from psychological problems. This is a structural problem that requires to be addressed urgently by a coherent policy at different levels.

Belgium has a very high rate of suicide among young people. Research shows that about half of the mental problems that adults face, arose during adolescence. By average, 31.4% of Flemish adolescents between the ages of 15 and 24 are not in good mental shape. This is significantly more than five years ago. A survey with more than 5,000 students conducted by the overarching Flemish Student Body (“Vlaamse Scholierenkoepel”) illustrates that 76.8% of the children suffer from stress and more than 40% even experience a lot of stress. According to more than one out of three students, schools do not undertake any action to alleviate the stress. In the French Community, 27% of Walloon adolescents and 28% of Brussels adolescents (15-24 years old) say they struggle with minor psychological problems.

The impact of psychological problems on a personal, social and economic level cannot be underestimated. Society perceives psychological well-being as a matter of individual problematic functioning. Social factors are not addressed. Children feel too little informed about their psychological well-being.

When treating psychological problems, the clinical approach still dominates. Psychological problems are treated as a “disease” and medication is considered the sole remedy. More than 80% of mental health expenditure goes to psychiatric hospitals and less than 5% to primary care. Figures provided by the government show that one million children between the ages of 12 and 17 take medications daily, i.e. a double the number than ten years ago.

Children with complex problems and a small social network are often referred too quickly to psychiatric residential care even when there is no real psychiatric problem. Such a premature reference to psychiatry threatens to stigmatize the child, aggravating the problem. The outflow from the residential setting is sometimes difficult, especially when the children do not have a strong network on which they can rely on. Due to a shortage of suitable follow-up alternatives, children have to stay longer than necessary in a facility.

At the same time, there is a distressing lack of accessible primary help, ambulatory or mobile care that provides relief in places nearby the living environment of the child. Despite the announcement in the spring of 2014, the reimbursement of psychological care via health insurance is still not regulated.

Various studies indicate that refugee and migrant children are the most vulnerable category on a psychological level (cf. chapter 12). Non-specialized shelter facilities do not systematically offer psychological consultations. Due to a lack of financial means, the presence of psychologists is not guaranteed. Moreover, the number of consultations that are reimbursed has decreased as a result of a law, initiated in 2016 by the Minister of Health, which restricts the status of psychotherapist to doctors and clinical psychologists. Thus, alternative psychotherapies, which are sometimes better suited to address the problems of unaccompanied refugee and migrant children (foreign language, trauma...), will no longer be reimbursed.

RECOMMENDATIONS

1. Improve primary psychological assistance for children and young adults. Make psychological assistance more accessible in particular by reimbursing treatments and medication.

2. Strengthen initiatives to provide access for children and their parents to a wide range of psychological, educational and social care.
3. Strengthen the capacity of primary care and outreach support. Organize more collaboration between psychiatric facilities and the facilities for children's well-being, both ambulatory and residential.
4. Assign psychiatrists, psychologists and specialized therapists, as well as intercultural mediators and interpreters to the services for unaccompanied refugee and migrant children.

Sources

- Crésam, Centre de Source en Santé Mentale – www.cresam.be
- Hoge gezondheidsraad (2011), « Kinderen en jongeren: Gedragsstoornissen in context » - www.geestelijkgezondvlaanderen.be
- Vlaamse Jeugdraad (2017), « Advies 1706 rond Psychisch Welzijn » - www.vlaamsejeugdraad.be.
- Vlaamse Scholierenkoepel (2017), « VSK-Peiling over stress op school. 5964 leerlingen over de oorzaken en gevolgen van schoolstress – Scholierencongres, 2017 » - www.scholierenkoepel.be
- Werkgroep Metaforum KU Leuven (2010), « Het toenemende gebruik van psychofarmaca » - www.kuleuven.be

9.4 Over-medicalization (ADHD)

In Belgium, the number of prescriptions for Ritalin, a methylphenidate-based drug designed to treat motor activity and/or attention disorders, has risen. This psychostimulant is part of the treatment for children who actually suffer from the "Attention Deficit /Hyperactivity Disorder" (ADHD). However, it appears that it is often prescribed before any other non-medical treatment (therapy) has been tried or even without an objective diagnosis. The drug is prescribed to "control" a child and/or improve his performances, especially in school. Moreover, more

boys coming from precarious and foreign backgrounds are diagnosed with ADHD, which has an impact on the education of the child and is a clear violation of the right to non-discrimination.

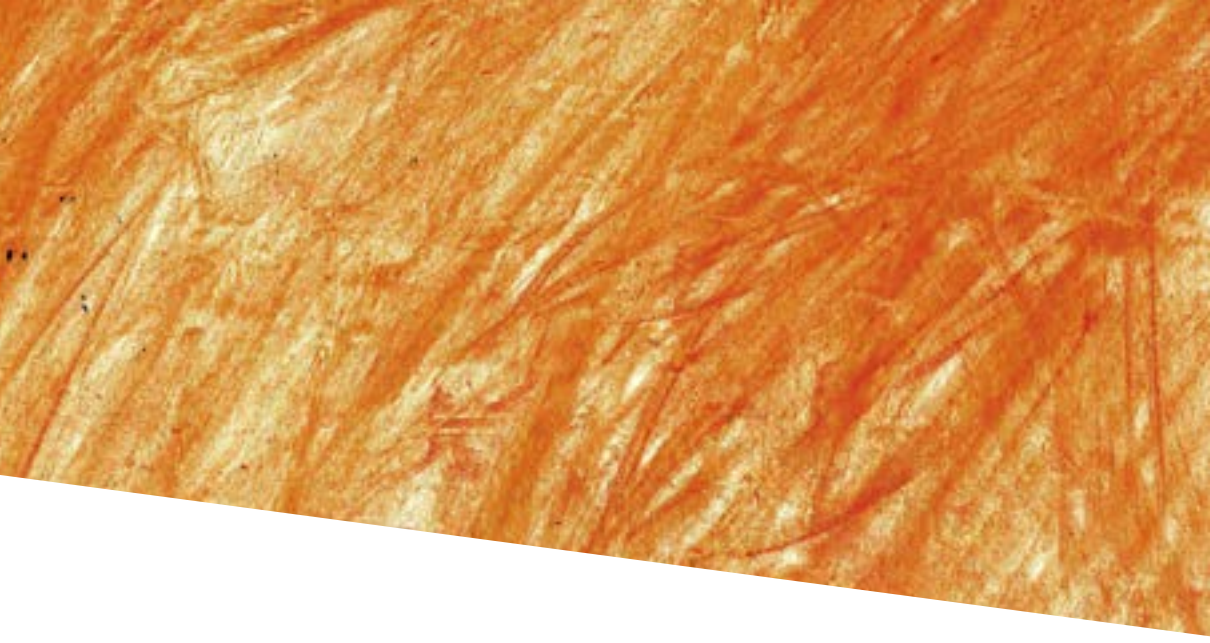
For some psychiatrists the increasing number of prescriptions attests to the increasing concern of parents for their children's success. Parents claim that the schools put too much pressure on children to perform while the doctors who are accused of prescribing Ritalin too quickly without resorting to alternative non-drug treatments first, they deplore pressuring parents and aggressive marketing strategies from the pharmaceutical industry.

RECOMMENDATIONS

1. Inform and educate the general public (including parents and teachers) about the alternatives to address ADHD.
2. Train physicians in the diagnosis and treatment of people with ADHD.
3. Conduct studies on the long-term impact of methylphenidate on children and once they have reached adulthood.

Sources

- CODE (2017), « Rilatine: traitement ou produit dopant contraire à l'intérêt supérieur de l'enfant ? » - www.lacode.be.
- De Man, C. (2015), « Médicalisation de l'accès à la scolarité: quand les comportements des enfants troublent l'école », Journal du droit des jeunes, n°348, pp. 5-6 – www.jdj.be



10. Education

[ART. 12, 28, 29; C.O. 67; G.C. 1 (2001)]

10.1 Inequalities

PISA surveys have shown that since many years the educational system in Belgium is among the most unequal in Europe (EU/OECD) and does not allow children to climb up the social ladder. The current school system reinforces inequalities, especially for children coming from socio-economically disadvantaged backgrounds and from migration backgrounds. To date, no sufficient action has been taken to fight this. A recent report notes that in both communities, the level difference between the strongest and the weakest students amounts to more than 8 years of schooling.

In general, children coming from socio-economically disadvantaged groups experience difficulties at school. In the French Community, 15 year old students coming from privileged backgrounds are 112 points ahead in science on the poorest students which means that poor students have a three-year setback in training. This constitutes one of the biggest inequalities highlighted by the PISA study (2015 figures). Concerning primary schools (6 to 12), they expect parents to help their children with their homework but this is not always possible.

10.2 Discrimination

In both Flemish and French-speaking schools, native children score significantly better than children with a migration background.

Schools fail to adequately support the development of children with a migration background. Many teachers and school books confirm the existing stereotypes. Schools experience difficulties in showing respect for other philosophies and especially for Islam. Only a limited number of

schools allow the headscarf. The social polarization is visible in schools. Discriminatory language and/or behaviour from teachers are detrimental to the development of a child, to educational opportunities and to faith in social institutions. The fact that teachers do not take action against discrimination is also perceived as discrimination. Children and parents do not know where to go if they are the victim of discrimination.

10.3 Mother tongue

Flemish schools do not value the fact that children speak another language at home and often prohibit its use on the playground. Communication with parents occurs solely in Dutch. Parents feel that the school has a negative image of their mother tongue and of their knowledge of Dutch. They worry about the school career of their child. A negative attitude at school and in society toward the foreign mother tongue has a negative influence on the general well-being of students and parents.

Mechanisms exist in the French Community to promote the integration of immigrant children into schools and to promote intercultural dialogue, but their application is unsatisfactory due to the fact that teachers lack the time and resources to train themselves and to implement it in their classes.

10.4 School fees

The lack of free education, although enshrined in various texts (Constitution, Decrees, Circulars), has a significant impact on inequality. According to a study conducted by the Ligue des familles, one out of 12 parents testifies to have experienced difficulties in paying for school fees. In the French Community one must pay about 300 euro for kindergarten (equipment, meals, and after-school care) and 1,250 euro

for primary school (equipment, meals, after-school care and travel) per year and per child. School fees have a negative impact on the relationship between child/family and teacher/management, which can lead to avoidance behaviour and absenteeism, and has a direct impact on school dropout.


In Flanders, since 2008, kindergartens (3 to 6) and primary schools (6 to 12) are bound by a maximum invoice. But many schools do not have sufficient funds and charge additional costs to parents. Moreover, pre-school and after-school care, supervision during lunch and use of the dining hall are not included in the amount set by the maximum invoice. For high school (12 to 18), the costs depend on the stream of study. The costs are high in the technical or vocational stream where there is no maximum invoice. The policy is limited to raising awareness and research. The high costs of education preclude children from following the stream of their choice at the school of their choice.

10.5 Repetition

The number of students repeating their school year is particularly high in the French Community. In OECD countries, the percentage of 15-year-olds who had already repeated at least one year was 13% in 2012, compared to 48% in the French Community and 27% in the Flemish Community.

10.6 Educational streams and relegations

In Belgium, children need to make an important decision regarding their educational stream when entering high school (12 years). Children from lower social groups mostly end up in technical or vocational education (sometimes in the middle of the school year). Negative choices demotivate students and make them drop out of school. The education



indicators of the French Community indicate that children from precarious backgrounds are overrepresented in special education (cf. chapter 8). Both Communities provide additional funds to schools to improve equal opportunities but these are not satisfactory and there is no coordinating policy inside each Community.

10.7 Exclusions

In 2012-2013, 2,793 students were expelled permanently from Flemish schools and the number is rising. It mainly concerns children from socially vulnerable groups: their parents are less educated and the language spoken at home is usually not Dutch. This exemplifies once again the presence of social inequality in the educational system. Moreover, the independence of the appeal committees is not guaranteed and schools determine themselves the period to appeal. Expelled students must be assisted by the school and the centre for student counselling in their search for an appropriate school, this however is merely an obligation to use best endeavour.

In the French Community, the number of students permanently expelled from school (mostly 14/15 year old boys) also continues to grow each year. This increase is confirmed by the professionals in the field and by the Minister of Education herself (but without the official figures being published so far). On the basis of the few figures available, we note that for the school year 2015-2016 in the French Community nearly 3,800 adolescents were excluded from their school, either during the school year or by prohibiting them to re-register for the following school year. School exclusions were three times less frequent 20 years ago. There was a significant increase between 2014 and 2015 (+ 14%). This increase mainly comprises cases of discipline problems (disruption of classes...). From a strictly legal point of view, however, exclusion may solely be imposed for serious and substantiated facts. The number of expulsions hides a shortage of pedagogical support.

The “Missions Decree” in the French Community currently does not provide for an effective appeal procedure in case of expulsions from school (long delays, no possibility to appeal before an impartial external non-judicial chamber, high costs for families...). The deadlines which are foreseen to adjudicate on the appeals are partly respected in the “non-official” (catholic...) educational system, but they are never respected in the “official” educational system. Indeed, adolescents and/or their parents who have appealed often need to wait several months to get an answer, which completely deprives these appeals of their meaning. Such procedures hinder the continued education of children.

10.8 Lack of capacity

Especially in the larger cities where the population has been growing for the past years, there is a shortage of places both in primary schools and in high schools, especially starting from the schoolyear 2020-2021. In Brussels, for example, where the problem is the most pressing, in two to three years, there will be a lack of 7,000 places for children aged between 12 and 18 and of 1,300 places for children aged 6 to 12. The scarcity mainly affects the socio-economically weaker families (queuing and complex procedures hinder access to education).

10.9 Reforms

For many years, the NGOs have been calling for a large reform of the Flemish secondary educational system. The barriers between the mainstream, technical and vocational secondary education must disappear ensuring that children can follow the course of study that matches their interests and talents. This would be made possible by, inter alia postponing the choice of educational stream until (at least) after the first phase of high school (around 14-15 years). However, the 2015 reform was only a simplification, solely the number of optional courses in the 2nd and 3rd stage of secondary education has been limited.

The Flemish policy against school absenteeism requires children to be present at school and threatens parents to reclaim the school allowance when non-complying. This affects severely people from socio-economically weaker groups. Moreover, the living conditions of children in poverty are not improved by penalizing absence from school. Reclaiming allowances further impoverishes families, which stimulates more absenteeism.

A large reform of the educational system in the French Community, entitled “le Pacte pour un Enseignement d’Excellence”, started in 2015 but was slowed down due to a political crisis. It aims, inter alia to reduce school inequalities by various measures: reinforcement of pre-primary education, core curriculum until the age of 15, (effective) reduction of repetition... The NGOs want this reform to succeed and to effectively reduce inequality in the educational system, with the necessary guarantees and supported by a realistic budget.

In general, children and parents want teachers to invest in relationships of trust. This requires thorough training and permanent support. Young teachers are not very familiar with the living environment of children from various ethnic-cultural minority groups and from socially vulnerable groups in an urban context. Teachers who understand, respect and speak about the living environment of children, enjoy more trust. Striking is also the large number of starting teachers leaving the profession. Job insecurity, high flexibility and heavy workload imposed on young teachers are listed as reasons for leaving.

10.10 NEETs

The number of young people who are not in education, employment or training (NEETs) is increasing steadily. In the larger cities more than 1 out of 5 young people drop out of school without a diploma. Students and parents in poverty or with a migration background do not receive proper guidance.

RECOMMENDATIONS

At a federal level

1. Insure the right to qualitative education for every child in Belgium.
2. Adopt strong measures to end inequality in education. Promote policies that encourage equal opportunities at school.
3. Strengthen support for vulnerable children.
4. Focus on a positive school climate in which students and teachers feel safe and in which diversity is the norm. Let schools deal with multilingualism of students and parents as something positive. Use the education on children's' rights to empower children and to develop a positive identity that makes children resilient to racism and discrimination. Include more diversity and non-Western history and culture in the school curricula and learning materials.
5. Integrate in the training for teachers a thorough course on children's rights and diversity.
6. Enable teachers to build relationships of trust with students by giving them several tools.
7. Postpone the moment when children have to decide on what educational stream they want to follow until after the first stage of secondary education. Monitor effectively the study and school choice of children.
8. Provide the necessary support for the transition from primary to secondary education.
9. Adjust schools' policy on homework in primary school. Make their abolition effective.
10. Apply the legal framework regarding free education.
11. Create new schools to meet the current demographic needs.

For Flanders

1. Replace the penalties imposed on families in a difficult situation in the policy against absenteeism. Only expel students as a last resort and at the condition that the student has a place in another school.
2. Find a solution for the non-educational services (lunch supervision, pre- and after school care...) that are not covered by the maximum invoice. Prohibit schools to address collection agencies for gathering school costs. Install a maximum invoice for high school.
3. Enforce an anti-discrimination policy at school. Encourage schools to perceive the language spoken at home as an asset and no longer prohibit its use on the playground. Install a contact point for children, adolescents or parents who are discriminated against by management, teachers or fellow students.

For the French Community

1. Value all educational streams and end unnecessary transfers to specialized, technical or vocational education and avoid the ghettoization of schools.
2. Strengthen the basic and continued education of teachers.
3. Complete the "Pacte pour un Enseignement d'Excellence" (core curriculum, abolition of repetition...), with the necessary guarantees and supported by a realistic budget.
4. Better inform parents, raise awareness for educational actors, punish irregularities and evaluate the periodic fees charged by the school.
5. Collect disaggregated data on school exclusion and disseminate the data. Strengthen the monitoring of and support provided by the school for expelled students until they are enrolled in a new school (guaranteeing the right to education).

Establish an independent and impartial authority to adjudicate on the appeals against final exclusions and provide a binding deadline to adjudicate on the appeal.

Sources

- ChanGements pour l'Égalité – www.changement-egalite.be
- CODE (2015), « Devoirs scolaires: quelle place dans la vie de l'enfant » - www.lacode.be
- CODE (2015), « Exclusions scolaires définitives: quels droits pour les jeunes? ».
- CODE (2015), « Gratuité scolaire... mais à quel prix? ».
- CODE (2017), « Dispositif d'Accueil et de Scolarisation des élèves Primo-Arrivants: état des lieux ».
- Félix, R. & coll. (2013), « Tous pour réussir! Partir des élèves dont on n'attend rien », ATD Quart Monde – www.jeunessequartmonde.be
- Goosen, K., Boone, S., Dehertogh, B., Kavadias, D., Mahieu, P., Van Avermaet, P., Vanhoof, J., Van Houtte, M. & Van Kerckhove, C. (2017), « Is dat iets voor mij, juf? Leerlingen versterken in het keuzeprocess van basis naar secundair », Leuven: LannooCampus.
- Ligue des droits de l'enfant, « Tout ce que vous n'avez jamais voulu savoir sur le Pacte d'Excellence » - www.liguedroitsenfant.be
- Ligue des familles (2016), « Six balises pour l'école de demain » – www.laligue.be
- Nicaise, I., B. Spruyt, M. Van Houtte & D. Kavadias (2014), « Het onderwijsdebat. Waarom de hervorming van het secundair broodnodig is », Antwerpen: EPO – TOR 18.
- Pacte pour un Enseignement d'Excellence: www.pactedexcellence.be
- PISA (Programme international pour le suivi des acquis des élèves): www.oecd.org/pisa
- Portail de l'enseignement de Fédération Wallonie-Bruxelles – www.enseignement.be
- Van Avermaet, P. & Van de Craen, P. (2015), « Meertaligheid als realiteit op school », OBPMO – www.onderwijs.vlaanderen.be
- Van Avermaet, P. (2014), « Diversiteit is de norm. Er leren mee omgaan de uitdaging. Presentatie op de studiedag van Welwijs op 07.10.2014 » – www.welwijs.be
- What Do You Think? (2013), « Égalité des chances à l'école. Voilà ce qu'ils en pensent », UNICEF Belgium - www.unicef.be



11. Leisure, sports and culture

[ART. 15, 31 ; C.O. 71 ; G.C. 17 (2013)]

The application of the right to leisure is similar in the North and the South of the country, although the figures available sometimes relate to different aspects. In sum, leisure opportunities for the most vulnerable children are scarce. As a reminder, non-supervised leisure activities take place at home, in the public space, parks, museums, on vacation... and supervised leisure activities (extracurricular activities) are offered for example by associations, in or outside the schools.

11.1 Leisure activities in the public space and at home

Children are particularly vulnerable in the public space (traffic, pollution, lack of green space...). Every day, 6 hectares of green space disappears in Flanders, 10% of the territory is forest and in only 2% of the forest children can play freely.

The use of public space by children is also limited in the city. There are few child-friendly places and children are often not welcome in the public space: activities such as skating or football are often prohibited and children can barely hang out (cf. Section 13.6).

The "Institut pour un développement durable" states that 28% of the children living in Belgium never go on holiday. The poorest children hardly have access to leisure activities at home, by discomfort (lack of space, noise, pollution, sanitary conditions, shortage of electricity, 6% of the Belgian population does not heat their homes for economic reasons...). Social isolation is often reinforced. The poorest municipalities in Brussels are also those where the number of children is the highest, where the houses are small, the traffic and environmental noise heavy and where gardens and green space are scarce.

At the same time, the cultural sector is particularly affected by the savings measures (since the crisis of 2008: 16% fewer resources are provided to museums, libraries, theatres...).

French studies indicate that $\frac{3}{4}$ of the public spending on leisure activities is beneficial to boys, especially through free access sports equipment such as skate parks. Girls are gradually avoiding these places, which can lead to both feelings of insecurity and stimulating stereotyped leisure activities. The situation is similar in Belgium.

11.2 Extracurricular activities

Extracurricular activities play an important role in the development of the child because it stimulates other skills than those stimulated at school (functioning in group life, self-esteem, creativity, sensitivity, physical development, development of multiple forms of intelligence...).

Extracurricular activities are seen as a powerful tool to improve integration of the most vulnerable children, including children in precarious situations, children of foreign origin, children with disabilities.

However, in Belgium, only a minority of children benefit from quality extracurricular activities. More than 30% of children aged 1 to 15 living in a household at risk of poverty cannot engage in regular leisure activities outside their home, compared to around 3% of children living in a household that is not at risk of poverty. For example, 25% of socio-economically disadvantaged children have never participated in a sports club, compared to 12% of more advantaged children.

Children with disabilities have also limited access to extracurricular activities. There is a shortage of places for these children adding to the complexity. Few centres are accessible to persons with reduced mobility and are willing to accommodate children with disabilities without outside help or additional support.

There are many obstacles to leisure: the financial cost of activities, transportation difficulties, the burden (in terms of time) of school requirements, the lack of infrastructure, lack of access to information, incompatibility between children's leisure schedule and that of working parents and for the poorest children the fear of being rejected and stigmatized. In general, the extracurricular leisure sector is poorly structured, poorly regulated and poorly funded.

Additionally, in some schools, children go to the swimming pool less frequently or not at all (due to lack of budget, staff, or simply because the municipality closed the swimming pool). This is also the case for cultural activities.

RECOMMENDATIONS

1. Increase the budget for youth work, comprising a specific offering for socially vulnerable children and an offering for inclusive youth work accessible to all.
2. Provide children in their own neighbourhood the space and opportunity to meet in a safe and simple environment.
3. Provide more room to play in the open nature, for example by making forests more accessible.
4. Guarantee the autonomy of children by providing a safe walking and cycling network, reducing the number of cars in traffic and focusing on child-friendly and playground structures in the residential areas.
5. Let children participate in concrete mobility projects and spatial planning processes, both at local and supra-local level.
6. Execute a proactive policy to improve access to extracurricular care through proactive and inclusive outreach towards families.

7. Strengthen the relationship between schools, extracurricular structures and parents to achieve a better educational alliance.
8. Conduct sociological and geographical research on the link between gender and leisure activities.
9. Introduce more diversity in the leisure places designed for adolescents (including through appropriate urban planning policies).

Sources

- Badje, « L'extrascolaire sans barrière » - www.badje.be
- CODE (2013), « Manifeste Pauvreté et extrascolaire : quelles priorités ? » - www.lacode.be
- Fondation Roi Baudouin (2016), « L'extrascolaire au cœur de l'intégration. Présentation et rapport d'impact 2013-2016 » - www.kbs-frb.be
- Institut pour un développement durable : www.iddweb.be
- Raibaud, Y. (2014), « Une ville faite pour les garçons » - www.lejournal.cnrs.fr
- Vlaamse Jeugdraad (2012), « Advies 12/13, Advies Inspraak en participatie in ruimtelijke planningsprocessen » – www.vlaamsejeugdraad.be
- Vlaamse Jeugdraad (2017), « Advies 1701 rond het witboek beleidsplan ruimte in Vlaanderen ».

12. Migration

[ART. 2, 3, 6, 7, 10, 19, 22, 30, 35, 37; C.O. 32, 75, 77 ;
G.C. 6 (2005)

12.1 General situation

In 2016, 4,960 children applied for asylum in Belgium, of which 1,076 were unaccompanied. Since July 2017 we note a significant increase in the number of asylum seekers, which mainly concerns families and unaccompanied children. Almost half of the unaccompanied migrant children do not apply for asylum for different reasons (lack of information, the situation they have fled don't allow them to apply for asylum (violence within the family, poverty...), intention to go to another European country (e.g. United Kingdom...)). NGOs have seen a higher influx of mainly unaccompanied children under the age of 12 in recent months.

The Belgian government focuses in its communication on keeping asylum seekers and migrants out and sending them back. Regularly, asylum seekers are referred to as "fortune hunters" or "criminals". This strengthens the negative image and violates the principle of putting the best interests of the child first.

12.2 Vulnerability and traumas

More and more refugee children are traumatized because of the situation in their country of origin (war) or because of what they have gone through in refugee camps, on the run or even in the country of arrival.

Most of the children on the run haven't received any schooling since they left their homes. They experience stress due to social isolation, insecurity about the accommodation and problems of adaptation. The psychological or even psychiatric problems of those children are increasing, in some proportions never seen before.

Deprivation of liberty, deportation, transfer from one reception centre to another, in short the conditions of refugee reception have a profound negative impact on the general well-being and the further development of children: depression and anxiety, suicide, mental disorders and developmental problems, sleep disorders... Civil society organizations demand an alternative. There should be an intervention of an independent, multidisciplinary team who considers the interests of the children in every decision that affects them.

Unaccompanied children risk disappearing or being exploited especially when they have not been appointed a guardian yet or when they do not apply for asylum. Child Focus handled over 90 files of missing unaccompanied migrant children between January and November 2016. Children who disappear evidently risk becoming a victim of exploitation or even human trafficking.

12.3 Legislation and reception

The NGOs are very concerned about the legislative changes regarding access to the territory, residence, settlement and deportation of migrants (Law of 15 December 1980) and the reception of asylum seekers and other categories of foreigners (Law of 12 January 2007). The amendment of the law of 15 December 1980 threatens the independence of the Commissioner General for Refugees and Stateless Persons (body who rules the asylum applications), which endangers the right of migrant children to a fair and accurate asylum procedure. It is of fundamental importance to qualitatively analyse the stories of asylum seekers about their journey, including for children. The amendment to the law speeds up procedures for requests for international protection and shortens the appeal periods, including for children.

The NGOs fear that many children will no longer have a genuine opportunity to prove persecution to obtain international protection.

This exposes them to danger when returning to their country of origin. The burden of proof to demonstrate the genuine nature of their claim becomes disproportionate. The lack of documents certifying identity or nationality is now becoming a negative indication of overall credibility. Moreover, the obligation to produce original identity documents will deter many children to apply for asylum.

The concepts of “safe third country” and “first country of asylum” also render the burden of proof disproportionate. There is a big risk that children will be sent back to a country where they are not safe.

Furthermore, the administrative detention of migrants and therefore also of children has been made easier. The amendment of the law of 12 January 2007 may allow restricting or withdrawing accommodation. As a result, children may end up on the streets, exposing them to potential abuse and exploitation. Children can also be referred to emergency reception facilities that are not suitable for children.

Unaccompanied migrant children have the right to special protection: the right to a guardian, to health insurance, to childcare up to 18 years, to a sustainable solution and to family reunification. But in reality, the rights of migrant children are not guaranteed. Unaccompanied migrant children are assigned a guardian, but this should be done earlier in the procedure, namely from the moment of identification or as soon as a child declares to be unaccompanied. The situation of unaccompanied migrant children is always precarious, especially when their age is queried.

Reception centres for asylum seekers differ in the quality of assistance and supervisors tend to focus on the behaviour of children instead of their needs. If a child displays “difficult” or “problematic” behaviour, supervisors prefer transferring the child instead of assisting him/her. Youth care services are not equipped to deal with the specificity of migrant children (multiple traumas...), waiting lists are very long and

there is a lack of coordination between the different levels of power about the organization of assistance. There are insufficient facilities that provide psychosocial support and most of them are not adapted to the reality undergone by these children.

12.4 Family reunification

The right to be reunited with their family is not respected because the procedures are complex, the necessary documents are expensive and Belgian embassies are inaccessible in conflict areas.

12.5 Age determination

The procedure used to determine the age of unaccompanied migrant children is problematic. Too many authorities have the right to doubt the age and many authorities do in fact actually express doubt about the age of these children. In 2016, in up to 44% of all cases a doubt was expressed. It therefore appears that this procedure is part of the policy. The best interests of the child are clearly not taken into account.

The methods used for determining the age are unreliable, which is confirmed by many professionals working in the scientific and medical world. The triple bone test used (wrist, collarbone, teeth) presents an important margin of error (from one to two years), it is not designed to estimate the age of a person and the reference groups on which the test is based (young Americans in the 1930's) are not the same as the groups on which the test is applied. A more global and interdisciplinary assessment is needed because many children are currently declared to be adults with all the consequences that this entails in terms of protection. Finally, the procedure to appeal the determination of age is ineffective.

12.6 Detention

Children who migrate with their parents also need special protection and attention from policy makers. Families with children can be detained in Belgium, if they request asylum in the airport upon arrival or if they reside on the territory without legal authorization. Currently these families are being held in the “Return Houses” (open family homes that are an alternative to detention). However, at the end of August 2017, the Belgian government started to build a new closed centre to put families with children in a detention centre. The detention of children due to the migration status of their parents always violates their rights and the principle of the best interests of the child. The European Court of Human Rights has confirmed several times that detaining children in closed centres constitutes inhuman and degrading treatment, taking into account the special vulnerability of children. Belgium has been repeatedly convicted in the past by the Court for the detention of children in closed centres in horrible conditions.

12.7 Deportations

Belgium still deports children after they have been residing in Belgium for a long time, without analysing their best interests. The law of 15 December 1980 stipulates however in article 74/13 that the impact of a potential deportation on children must always be examined.

RECOMMENDATIONS

1. Integrate the best interests of the child as a guiding principle in the Belgian migration legislation. Implement this principle in the facts. Do not introduce new provisions that hinder obtaining asylum or international protection.

2. Embed the prohibition on detention of children in the law of 15 December 1980 and the law of 12 January 2007.
3. Assign a provisional guardian to unaccompanied migrant children immediately after being reported i.e. in the identification phase even when a doubt exists with regard to their age. Assign "specialized" guardians to the unaccompanied children in a particularly vulnerable situation (e.g. prostitution or very traumatic experiences). Provide the necessary training for guardians and support during the whole process.
4. Inform the child on his/her arrival in Belgium in an appropriate way about his/her situation, his/her prospects and the persons and services where he/she can turn to. Involve the child in all decisions that affect his/her situation, in the choice of procedure, in the assignment of accommodation and for his education.
5. Solely raise doubt regarding a child's age in individual cases that are justified. Prescribe by law the obligation to justify formally the raising of doubt. Assign the authority to raise doubt exclusively to the "Service des Tutelles/Dienst Voogdij" (federal guardianship service). Improve the procedure of age determination so that it is scientifically valid, comprehensive and interdisciplinary and is only used as a last resort.
6. Investigate and justify the best interests of the child - regardless of his/her family situation - in every step of the process (decision should be supervised by an independent and multi-disciplinary team): the choice of residence application procedure, assignment of a guardian, accommodation assignment, age determination...
7. Organize specialized shelter for certain categories of unaccompanied migrant children, for example those with significant psychological or psychiatric disorders, very young children, pregnant girls and/or having a child...

Sources

- CODE (2015), « Accueil des enfants étrangers : la Belgique condamnée ! » - www.lacode.be
- CODE (2016, 2017, 2018), « Santé psychique des MENA ».
- CODE (2017), « Migrant mineur, préjudice majeur. Le triple test osseux à la loupe des droits de l'enfant ».
- Kinderrechtencoalitie Vlaanderen (2016), « Papieren rechten. Kinderrechten in een migratiecontext », Kinderrechtenforum 12 – www.kinderrechtencoalitie.be
- Organe d'avis de la Commission nationale pour les droits de l'enfant (2017), « Avis sur la situation des enfants dans la migration », 20 novembre – www.ncrk-cnede.be
- Plate-forme Mineurs en exil - www.mineursenexil.be
- Van Caillie, C. (2017), « Les soins de santé des MENA. Quelles sont les dispositions qui s'appliquent ? », Journal du droit des Jeunes, n°361, p. 36 – www.jdj.be
- Van den Abeele C. & Dominicy M. (2016), « Les enfants en exil prennent la parole », UNICEF Belgique – www.unicef.be
- What Do You Think? (2018), « Les enfants migrants et réfugiés en Belgique prennent la parole », UNICEF Belgique.

13. Justice

13.1 General situation

Justice is suffering from a lack of human and financial resources. Its budget decreases each year. Consequently, many retired judges are not being replaced (replacement of one out of six judges by 2020) and the number of court clerks is being significantly reduced. This impairs the efficient and swift functioning of the judiciary (loss of files, extended waiting periods to fix a hearing, limited time spent on each file, limited accessibility by phone of court services, reduction of the competences of the public prosecutors...).

Access to justice has become more complex in recent years, especially for the most vulnerable people, as a result from various successive reforms. Since January 2014, lawyers are subject to VAT, increasing their fees by 21%. In addition, the court fees have been increasing every year and since September 2016, second-line legal aid (pro bono), which is supposed to be free, is subject to a lump sum contribution and to strict follow-up and access conditions. Due to these high costs, more and more families do not go to court to enforce their rights, or those of their children.

Another major problem is the lack of training of judges and lawyers on children's rights and on child-friendly approaches. Training programs exist but are insufficient and are too little attended due to the lack of time and work overload. The cryptic language and the formalism used by courts should also be revisited, because they limit its accessibility.

Sources

- CODE (2015), « Justice : quand les moyens manquent au détriment du justiciable » - www.lacode.be
- Bufraquech, C. (2017), « Le pouvoir judiciaire et la séparation des pouvoirs sous pression », Ligue des droits de l'Homme – www.liguedh.be

13.2 Family Court

[ART. 3, 12, 40; C.O. 36, 38

In September 2014, the Family and Youth Court became operational. It is a positive step in children's rights because it combines the various jurisdictions over family matters (filiation, adoption, divorce, parental authority, child custody, child support, alimony, inheritance...) which were hitherto divided between several different courts. Its creation aims to make the judiciary more effective and more accessible for families, including a more consistent treatment of their case(s).

The principle behind the creation of the Family and Youth Court is: "one family = one file = one judge" guaranteeing that the same judge is responsible for all issues related to the same siblings at a civil level (in the child welfare system it was already the case). However, in practice, this principle has not been applied strictly, and practices differ (sometimes strongly) from one judicial district to another.

Children of 12 years and older are now automatically invited to be heard by the judge in the context of their parents' divorce proceedings. Children have the right to refuse this invitation. Children under the age of 12 may be heard at their own request, at the request of the parties, the Public Prosecutor or ex officio by the judge. However, the intervention of a lawyer is not foreseen in such a hearing while this is a particularly stressful event for the child where he/she may be manipulated by one or both parent(s), thus preventing him/her to speak freely. Therefore, the presence of a lawyer of trust, specialized in the assistance and the defence of children, is necessary to prepare and assist the child. The impossibility for the child to be heard a second time when there is no new element requiring him/her to be heard again is also regrettable.

Moreover, despite the creation of the Family and Youth Court, the NGOs regret that the exchange of information between the "family" and the

“youth” chambers is non-existent. Indeed, it happens regularly that a child, or even all the siblings, is/are involved in both a procedure at the civil level (“family” chambers) and in a juvenile justice or child welfare procedure (“youth” chambers) but lawyers do not have the right to share certain documents and information related to one procedure in the context of the other procedure. As a result, judges do not always have a total view on the situation of the child and they sometimes miss important elements, which prevents them to handle the cases adequately and efficiently.

Additionally, since 1 January 2016 (following the law of 19 October 2015, often referred to as “Pot-pourri I”), the presence of the public prosecutor in hearings has been made optional in civil cases, including in family cases. The prosecutor is supposed to defend the interests of the child and to make the connection between the “family” and “youth” chambers (by sharing information). The NGOs deplore the fact that he does not interfere any longer in all family cases, and that his written opinion is solicited only at the explicit request of the Court.

RECOMMENDATIONS

1. Allocate sufficient financial and human resources for the creation of an efficient judiciary that respects the rights of the child. In particular:
 - Increase the number of judges and court clerks to reduce the backlog of cases and allow the processing in a reasonable period of all litigations involving children – both civil and juvenile justice or child welfare cases.
 - Impose the presence of the public prosecutor at all hearings concerning children and allocate the necessary resources to enable the public prosecutors to deal thoroughly with cases.

2. Improve the training of judges in the field of children's rights and at the psychological level, in particular, so that they can conduct the hearing of children in a child-friendly way.
3. Improve the training of all the youth lawyers so that they can offer child-friendly assistance to enable the children to better understand their situation and to participate in the defence of their case (by adopting understandable language, by gaining their confidence, by adjusting the defence to the child's age, vulnerability and maturity...).
4. Streamline Civil Family Court practices throughout the country so that the principle of "one family = one case = one judge" is effectively applied.
5. Facilitate the exchange of information between the "family" and "youth" chambers in proceedings involving the same family or the same child, in particular by allowing lawyers to share documents related to a juvenile justice or child welfare procedure in a civil procedure and vice versa, taking into account the best interests of the child
6. Provide for the intervention of a specially trained lawyer in the defence and assistance of children during hearings before the judge in the divorce proceeding of their parents.

Sources

- CODE (2015), « Article 12: le droit d'agir en justice » - www.lacode.be
- CODE (2015), « Article 12: le droit d'être entendu en justice »
- CODE (2015), « Le Tribunal de la famille, un an plus tard ».
- DEI Belgique (2017), « Le rôle de l'avocat du mineur dans les procédures protectionnelles et pénales en Belgique » (projet européen My Lawyer, My Rights) - www.dei-belgique.be

13.3 The exceptional procedure of “divestiture”

[ART. 40; C.O. 83 (a); G.C. 10 (2007)

Regardless of the obligations imposed by the CRC and the Committee’s Observations, a juvenile judge can refer a case concerning a child who is 16 years of age or older and who has committed a serious offense to a specific chamber attached to the Youth Court that applies the common criminal law (or to the Assize Court if the child has committed a crime).

Research illustrates that such a referral procedure does not improve the re-integration process into society, to the contrary.

If the “divested” child is sentenced to imprisonment, he/she will serve his/her sentence in a closed centre. Once he/she has reached adulthood, he/she may be transferred to prison due to overcrowding or for disciplinary reasons. In 2016, there were three transfers from a closed centre to the prison, two due to overcrowding and one for disciplinary reasons. The Dutch-speaking boys are sent to the closed centre in Tongeren, while the French-speaking ones are sent to Saint-Hubert (in the Ardennes) since 2010. This potentially creates a large distance between the places of confinement and the family home or the lawyer’s office (95% of the young people who have been “divested” are from Brussels), further complicating the maintenance of relationships, which we know are crucial for reintegration.

RECOMMENDATIONS

1. End the “divestiture” system.
2. Provide alternatives to address serious juvenile delinquency.

Sources

- Délégué général aux droits de l'enfant (2015), « Avis du Délégué général aux droits de l'enfant quant à la mesure de dessaisissement » - www.dgde.cfwb.be
- Organe d'avis de la Commission nationale pour les droits de l'enfant (2017), « Quel futur pour le dessaisissement? », Journal du droit des jeunes, n°363, p. 36 – www.jdj.be
- Nuytiens, J., Christiaens, J. & Eliaerts, C. (2004), « Eindrapport: ernstige jeugddelinquenten worden gestraft? Een onderzoek naar de praktijk van de uithandengeving » – www.cris.cumulus.vub.ac.be

13.4 Towards a Flemish Youth Criminal Law?

Since the 1980s, a debate is ongoing regarding the introduction of a Youth Criminal Law in addition to the Youth Protection Law of 1965. On the federal level there has not been much initiative. The competence for youth criminal matters has been assigned to the communities during the latest governmental reform. The draft of a Flemish Decree – that is set to enter into force on 1 January 2019 – replaces the protection model by making children more accountable for their actions from the age of 12. The juvenile judge is assigned more possibilities to address delinquent behaviour.

In 2016, 2,341 children appeared before a juvenile judge following the commission of a crime. The number of children appearing before a juvenile judge due to difficulties at home is much larger. In addition, the youth care services do not have sufficient capacity: thousands of young people are on long waiting lists. Consequently, in order to find a place in a facility for the child, juvenile judges often focus on the crime instead of the “difficulties at home”.

The youth criminal law is depicted as the third section of a set of three including the youth care services and services focusing on recovery. The latter two services are not performing adequately. The NGOs opine that the law can solely be introduced if the right to youth care is effectively provided and guaranteed for all children.

RECOMMENDATIONS

1. Postpone the implementation of the youth criminal law until the right to youth care for every child is effectively realized and guaranteed.
2. No unilateral penalties should be imposed on children from 12 years.

Sources

- Agentschap Jongerenwelzijn (2015), «Jaarverslag 2015»–
www.jongerenwelzijn.be
- Kinderrechtencoalitie (2017), «Naar een Vlaams jeugddelinquentierecht? Realiseer eerst het recht op jeugdhulpverlening», Position Paper -
www.kinderrechtencoalitie.be

13.5 Confinement

[ART. 37, 40; C.O. 83 (d-g), 84

At the national level, there are a myriad of bodies responsible for executing control over places of confinement, but they all lack structural and/or functional independence as well as regularity and efficiency. Neither are they continuously accessible and suitable for children deprived of their liberty. However, in Flanders, a supervising commission has been established in 2017, presided by the Child's rights commissioner, to control the Flemish closed facilities for children which is a positive evolution.

In addition, the vast majority of children confined in Belgium are confined on a provisional basis. Deprivation of liberty is therefore often not used as a measure of last resort. In addition, body searches, solitary confinement as punishment, insufficient and/or non-qualifying educational programs and lack of activities adjusted to the age of the detained child violate the provisions of the CRC.

Belgium has not yet ratified the Optional Protocol to the Convention against Torture (OPCAT). As a result, national preventive mechanisms have not been established or designated under this protocol. A National Institute for Human Rights has not been created either.

RECOMMENDATIONS

1. Ban the creation of new places in closed facilities.
2. Stop confining children.
3. Ratify the OPCAT and set up a national prevention mechanism with the mandate to control all places of confinement, for adults and children, independently, regularly and constructively.
4. Establish effective internal and external legal remedies for children deprived of their liberty, including an accessible and adapted complaints procedures, and appropriate assistance, advice and support to file a complaint and to bring it to a conclusion in a correct manner and a reasonable period.

Sources

- CODE (2011), « L'enfermement des mineurs délinquants : état des lieux » - www.lacode.be
- DEI Belgique (2015), « Au travers des barreaux. Regards de jeunes privés de liberté » - www.dei-belgique.be.
- DEI Belgique (2016), « Guide pratique : Monitoring des lieux où des enfants sont privés de liberté ».
- Lenne, L. (2017), « Mineurs derrière les barreaux : l'enfermement ne m'a pas aidé à réfléchir sur mon délit » - www.rtb.be

13.6 Municipal administrative penalties

[ART. 2, 15, 16, 40; C.O. 83 (h)

Contrary to the advice of the NGOs, Belgium has lowered the age at which a child may be subject to a municipal administrative penalty (Law of 24 June 2013) to the age of 14. When a child of 14 years of age or older at the time of the incident, commits a small offense such as graffiti without authorization, deliberate damage, local authorities can directly impose a penalty.

NGOs tried to have the law annulled by the Constitutional Court due to conflicting fundamental legal principles with the ECHR and the CRC. But on 23 April 2015, the Court rejected that request.

The NGOs are most critical on the following aspects of the penalties: the notions of incivility and nuisance are very vague; it is possible to impose a criminal penalty on a child without him/her benefiting from the law on juvenile justice/child welfare; there is a lack of impartiality and independence of the municipal officer instructed with ascertaining the facts, writing and collecting the penalty; there is also a lack of information for young people, particularly regarding the fact that for the same act people can be penalized differently depending on the municipality where the offense was committed. Moreover, it is regrettable that the law does not include a preventive educational approach.

In reality, municipal administrative penalties are not given frequently to children, rendering them less useful and even counterproductive when they are used.

RECOMMANDATION

1. Exclude children from the scope of the law on municipal administrative penalties.

Sources

- CODE (2013), « SAC et droits de l'enfant: quelle compatibilité ? » - www.lacode.be.
- Conseil de la Jeunesse « Avis du Conseil de la Jeunesse concernant les amendes administratives (SAC) » - www.conseildelajeunesse.be
- Vlaamse Jeugdraad (2013), « Advies 13/03 Gemeentelijke Administratieve Sancties » - www.vlaamsejeugdraad.be

13.7 Youth and police

[ART. 3, 16, 19, 40; C.O. 83 (b)]

Regardless of the presence of many control bodies and the possibility of appeal for young people who believe that their rights have been violated by the police (particularly if they have been the victims of police violence), NGOs are concerned about limitations and lack of clarity of the system. These limits are visible at different levels: lack of information of young people and even of certain police officers, the time, burden and costs of judicial procedures, lack of independence and transparency of the police control bodies (limited access to the file and no report of the outcome), symbolic judicial penalties imposed on police officers...

In the public space, "ethnic profiling" by the police is visible. This has negative consequences for the relationship between young people and the police: many young people feel targeted and not protected. Discrimination and stigmatization by persons exercising authority are detrimental at all levels and particularly for confidence and faith in society and its institutions.

The "Salduz" law is an improvement but there are several problems regarding its implementation. Since 1 January 2012, under this law, anyone suspected of having committed an offense has the right to be assisted by a lawyer from his first interrogation by the police. Children cannot waive this right because they are presumed to be vulnerable.

The implementation of the “Salduz” law is difficult because of the lack of specialized lawyers available when called by the police (expected to arrive within two hours) and the procedures that police officers must follow are very cumbersome and time consuming. Young people sometimes have to wait for a long time in their cell, which is very stressful (cells by definition are not adapted to children and are not separated from the adults’ section). In addition, the suspected minor who appears at his hearing, when summoned, will always be presumed to have consulted a lawyer while in the majority of cases, he has failed to do so. Lastly, police officers often distrust lawyers because they consider them as someone trying to sabotage the process, which can have a negative impact on the course of the interrogation.

RECOMMENDATIONS

1. Train police officers, in a continuous, systematic and obligatory manner, in children’s rights, multi-culturalism, non-discrimination and to diversity in the broad sense (such as culture, handicap, psychiatry...).
2. Create “Family-Youth” sections within police stations with specially trained police officers qualified in child-friendly approaches.
3. Inform children better about their rights and the role of the police.
4. Make sure that children benefit from the services of a specialized lawyer during interrogation by the police, by allocating sufficient resources to the implementation of an effective “Salduz” system.
5. Ensure the identification of police officers in accordance with the Law of 4 April 2014 amending article 41 of the Law on the Police Function of 5 August 1992, while improving the protection of their private life (the law has not yet entered into force

because the competent Minister has not issued the necessary implementing decrees).

6. Provide an efficient and effective complaint mechanism to allow an effective response to the problem of police violence. Guarantee the independence of the Committee controlling the police services ("Comité P") in accordance with international recommendations

Sources

- Beys, M. (2014), «Quels droits face à la police ? Manuel juridique et pratique», Bruxelles: Couleur Livres.
- CODE (2016), « Article 12: l'avocat du mineur » - www.lacode.be
- CODE (2016), « Mes droits face à la police »
- Commission européenne (2009), « Rapport contre le racisme et l'intolérance (ECRI) sur la Belgique (quatrième cycle de monitoring) », 26 mai, p. 46, n°170, CAT/C/BEL/CO/2, § 11.
- DEI Belgique (2017), « Le rôle de l'avocat du mineur dans les procédures protectionnelles et pénales en Belgique » (projet européen My Lawyer, My Rights) - www.dei-belgique.be
- Ligue des droits de l'Homme, « Campagne Quels droits face à la police » - www.liguedh.be

13.8 Infants in prison

[ART. 3, 5, 9, 12, 18, 37

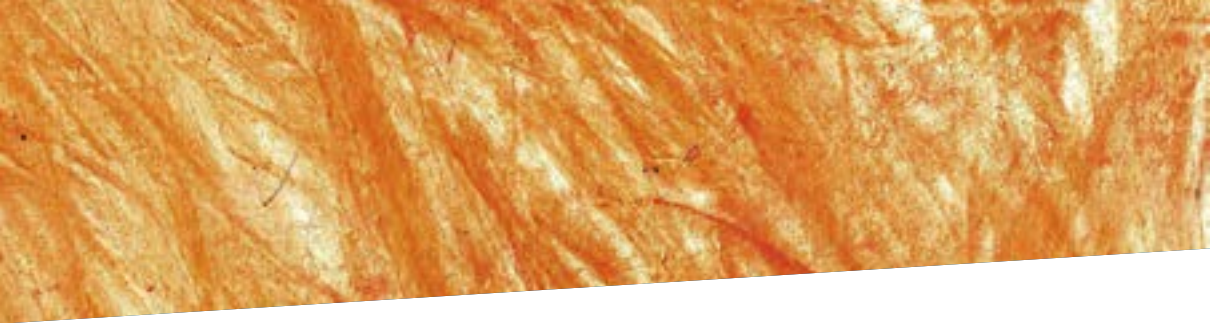
Some prisons have a specific regime for young mothers. However, the details are not specified in a law such as equipment, rules of living, medico-social support or training of prison officers. The regime has been implemented very differently in the various facilities. Some prisons even allow new-borns without having developed a specific framework to regulate it.

RECOMMENDATIONS

1. Provide an alternative to confining infants alongside their mothers in prison.
2. Favour “birth centres” outside of prisons.
3. Raise awareness amongst all stakeholders, including the judiciary, to limit the number of occasions in which mothers and infants are separated and take into account the best interests of the child.
4. Establish better co-ordination between the judiciary, police services and child welfare services at key moments in the legal procedure pertaining to mothers and children, particularly during arrest.

Source

- Fonds Houtman (2016), « Guide des bonnes pratiques concernant la prise en charge et l’accompagnement des enfants en bas âge dont la mère est incarcérée en Belgique francophone », Bruxelles – www.fonds-houtman.be



Organizations

that have contributed to this report

- Amnesty International Belgique francophone - www.amnesty.be
- Arktos - www.arktos.be
- ATD Quart Monde Wallonie-Bruxelles - www.atd-quartmonde.be
- Awel - www.awel.be
- Badje (Bruxelles Accueil et Développement pour la Jeunesse et l'Enfance) - www.badje.be
- Cachet - www.cachetvzw.be
- Centra voor leerlingenbegeleiding GemeenschapsOnderwijs - www.go-clb.be
- Child Focus - www.childfocus.be
- Chirojeugd-Vlaanderen - www.chiro.be
- Conseil de la Jeunesse - www.conseildelajeunesse.be
- Coordination des ONG pour les droits de l'enfant (CODE) - www.lacode.be
- Défense des Enfants International (DEI) - Belgique - www.dei-belgique.be
- Défense des Enfants International (DEI) - Belgique
- Demos - www.demos.be
- End Child Prostitution and Trafficking of Children for sexual purposes (ECPAT) Belgique - www.ecpat.be
- Famisol - www.famisol.be
- GAMP (Groupe d'action qui dénonce le manque de places pour personnes handicapées de grande dépendance) – www.gamp.be
- GAMS Belgique (Groupe pour l'abolition des mutilations génitales féminines) – www.gams.be
- Gezinsbond - www.gezinsbond.be

- Grip (Gelijke Rechten voor Ieder Persoon met een handicap) - www.gripvzw.be
- Janusz Korczak Vlaanderen - www.korczakvlaanderen.com
- Jeunes aidants proches – www.jeunesaidantsproches.be
- Jong – www.vzwjong.be
- Jonge Helden - www.jongehelden.be
- Kif Kif - www.kifkif.be
- Kinderrechtencoalitie Vlaanderen (KIRECO) - www.kinderrechtencoalitie.be
- Kinderrechtenhuis - www.kinderrechtenhuis.org
- Kinderrechtswinkels - www.kinderrechtswinkel.be
- KIYO ngo voor kinderrechten - kiyo-ngo.be
- Le Forum-Bruxelles contre les inégalités - www.le-forum.org
- Liga voor Mensenrechten - www.mensenrechten.be
- Ligue des droits de l'Homme - www.liguedh.be
- Ligue des familles - www.laligue.be
- Lokaal Overlegplatform Brussel Basisonderwijs - www.agodi.be/lop
- Medimmigrant - www.medimmigrant.be
- Minderhedenforum - www.minderhedenforum.be
- Minor-Ndako & Juna - www.minor-ndako.be
- Mobiel 21 - www.mobiel21.be
- Netwerk tegen Armoede - www.netwerktegenarmoede.be
- Ondersteuning CLB's van de OVSG - www.ovsg.be/over-ovsg/ondersteuning-clb
- Onderzoekscentrum Kind & Samenleving - www.k-s.be
- Ouders voor inclusie - www.oudersvoorinclusie.be

- Pimento - www.pimento.be
- Plan International Belgique/België - www.planinternational.be
- Plate-forme Mineurs en Exil - www.mineursenexil.be - www.kinderenopdevlucht.be
- Réseau wallon de lutte contre la pauvreté (RWLP) - www.rwlp.be
- Rondpunt - www.rondpunt.be
- Service Droits des Jeunes (SDJ) de Bruxelles - www.sdj.be
- Steunpunt Jeugdhulp - www.steunpuntjeugdhulp.be
- Tumult - www.tumult.be
- Uit De Marge - www.uitdemarge.be
- UNICEF Belgique / UNICEF België - www.unicef.be
- VCOV - www.vcov.be
- Vereniging Vlaamse Jeugddiensten - www.vvj.be
- Via Don Bosco - www.viadonbosco.org
- Vlaams patiëntenplatform - www.vlaamspatienentplatform.be
- Vlaams Welzijnsverbond - www.vlaamswelzijnsverbond.be
- Vlaamse Jeugdraad - www.vlaamsejeugdraad.be
- Vlaamse Scholierenkoepel - www.scholierenkoepel.be
- Vluchtelingenwerk Vlaanderen - www.vluchtelingenwerk.be
- Vrije CLB-koepel - www.vclb-koepel.be
- Welzijnszorg - www.welzijnszorg.be

The Convention on the Rights of the Child (CRC) of 20 November 1989 entered into force in Belgium in 1992. Since then, the Belgian authorities submitted in 2017 their fifth and sixth periodic reports combined on the compliance with and the implementation of the CRC. In order to assure that the Committee on the Rights of the Child can fulfil its monitoring assignment, the NGO's assembled their additional data and recommendations in an Alternative Report. This Alternative Report will feed the Concluding Observations for Belgium, which are to be expected early 2019.

The Coordination des ONG pour les droits de l'enfant (CODE) and the Kinderrechtencoalitie Vlaanderen (KIRECO) realised this Alternative Report, which will be submitted to the Committee on the Rights of the Child end February 2018.

We invite the reader to use this Alternative Report as a source of information, awareness and advocacy regarding the rights of the child in Belgium.



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