

# Decree

## 15th July 1997 - Decree creating a Commission for Children's Rights and establishing the post of Commissioner for Children's Rights (1)

The Flemish parliament has adopted, and we the Government have agreed as follows:

**Art. 1.** The present decree concerns a regional and community matter.

**Art. 2.** For the purpose of the present decree:

- 1) 'Convention' means the Convention on the Rights of the Child, adopted in New York on 20th November 1989;
- 2) 'Commission for Children's Rights' means the Commissioner for Children's Rights and the staff who assist him/her in carrying out his/her duties;
- 3) 'child' means any minor;
- 4) 'administrative authority' means administrative authority in the sense of the joint legislation the Council of State, dealing with the powers of the Flemish Community and the Flemish Region.
- 5) 'institutions' means all private institutions recognised by the Flemish Government or by Flemish public bodies.

**Art. 3.1.** The post of Commissioner for Children's Rights, hereinafter called the Commissioner, is hereby established.

2. The Commissioner shall be appointed by the Flemish Parliament.

3. The conditions of employment of the staff of the Commission for Children's Rights shall be determined by the Flemish Parliament on the proposal of the Commissioner.

**Art. 4.** The Commissioner shall defend the rights and interests of the child.

To this end s/he shall:

- 1) monitor respect for the Convention;
- 2) ensure the monitoring, analysis and assessment of children's conditions of life;
- 3) act as the defender of children's rights, interests and needs.

**Art. 5.** In execution of the duties laid down in Art. 4, the Commissioner, having regard to the Convention, shall ensure in particular:

- 1) dialogue with children and with organisations active in the field of individual and collective services to children or in the defence of children's interests;
- 2) the social participation of children and the accessibility to children of all services and organisations of interest to them;
- 3) the monitoring of the conformity to the Convention of all laws, decrees, ordinances and other legislative instruments, including procedural regulations governing any matter which falls within the jurisdiction of the Flemish Community or the Flemish region;
- 4) the dissemination of information relating to the content of the Convention, especially in the interests of children.

To this end, the Commissioner may call in particular upon the experience and scientific experience of the *Vlaams Centrum voor de Bevordering van het Welzijn van Kinderen en Gezinnen* (the Flemish Centre for the Promotion of the Child and Family Welfare), without however in any case hindering the activities of the centre.

**Art. 6.** In the fulfilment of the duties laid down in Art. 4 the Commissioner shall be empowered:

- 1) to carry out investigations on his/her own initiative or on the request of the Flemish Parliament into any matter relating to respect for the Convention.
- 2) to examine any complaint regarding non-respect of the Convention, and as far as is possible to refer it to the [relevant] institutions. The examination of a complaint shall be suspended in the case of legal proceedings or administrative appeal in the matter of the complaint. The administrative authority shall notify the Commissioner of any appeal lodged. The making of a complaint and its examination shall in no way affect the time-limits for appeals in the courts or in the administrative tribunals. The Commissioner shall inform the complainant of the outcome of the complaint.

**Art. 7.1.** At his/her appointment and during his/her period in post the Commissioner shall satisfy the following conditions:

- 1) have Belgian nationality, be resident in the Flemish region or in a bilingual area of Metropolitan Brussels, and be the holder of a Flemish-speaking certificate;

- 2) be of irreproachable conduct;
- 3) enjoy full civil and political rights;
- 4) hold a university degree or equivalent;
- 5) have at least 5 years of professional experience relevant to the post;
- 6) correspond to the profile determined by the Flemish Parliament.

7.2 The Flemish Parliament shall appoint the Commissioner for a term of 5 years, which may be once extended.

7.3 Before entering into post, the Commissioner shall take the following oath before the President of the Flemish Parliament:

"I swear to be faithful to the King of the Belgians, to obey the Constitution and the laws of the Belgian people".

**Art. 8.1** Appointment to the post of Commissioner is not compatible with the holding of any other mandate, post or position, paid or unpaid.

The Commissioner shall not have held public electoral office in the three years before appointment.

During the three years following the termination of the appointment the Commissioner shall not be nominated as a candidate for public electoral office. For the purposes of the present paragraph, the posts of burgomaster appointed from without the municipal council, of administrator of a public body, and appointments as a government commissioner or governor, deputy-governor or vice-governor shall be regarded as equivalent to electoral office.

8.2 The Commissioner shall enjoy the status of a counsellor of the *Cour des Comptes*.

The rules governing the payment of counsellors of the *Cour des Comptes*, included in the law of March 21st, 1964 on the payment of members of the *Cour des Comptes* shall apply to the Commissioner.

8.3. Within the limits of his/her own competence, the Commissioner shall receive no instruction from any authority. The Commissioner shall be entirely independent in the exercise of his/her functions.

The Commissioner may not be relieved of his/her post by reason of acts carried out in the context of his/her duties.

**Art. 9.** The Flemish Parliament may terminate the appointment of the Commissioner:

- 1) at his/her own request;
- 2) when s/he reaches the age of 65;
- 3) in the case of such incompatibility as referred to in Art. 8.1.
- 4) for grave cause, without prejudice to Art. 8.3.

**Art. 10.1.** The authorities shall make available to the Commissioner all information required for the fulfilment of his/her duties. They shall provide on request all relevant information and documentation.

10.2. The Commissioner, in the exercise of his/her duties, may request the opinion of the authorities.

10.3. Without prejudice to Art. 15 of the Constitution, the Commissioner shall have free access to all public buildings and institutions. Public officers and members of their staff shall be duty bound to communicate to the Commissioner any material or information s/he may consider relevant, except such as may be protected by medical confidentiality or which s/he ['they' in the Dutch original] may have been given in confidence.

**Art. 11.** Article 485 of the *Code pÉnal* shall be applicable to the Commissioner and his/her staff.

**Art. 12.1.** The Commissioner shall address to the Flemish Parliament an annual report on his/her activities as described in Art. 4.

The report shall be discussed by the Parliament in plenary session. The report shall be made public. The Commissioner may also, should s/he consider it useful, make interim reports to the President of the Flemish Parliament with a view to discussion in plenary session.

12.2. The Commissioner shall communicate his/her reports to the federal authorities, so that they may take them into account in drawing up the report which Belgium is required to submit every five years to the Committee on the Rights of the Child, in application of Art. 44 of the Convention. The Commissioner shall evaluate this report.

**Art. 13.** The Flemish Parliament shall determine annually, on the proposal of the Commissioner, the credits necessary for the operation of the Commission for Children's Rights.

**Art. 14.** Within 6 months of his/her appointment, the Commissioner shall draw up a proposal for standing orders for the operation of the Commission. Upon approval by the Flemish Parliament these regulations and any amendments to them shall be published in the *Moniteur belge*.

The present decree is promulgated, and ordered to be published in the *Moniteur belge*.

Brussels, 15th July 1997.

The Minister-President of the Flemish Government,

L. VAN DEN BRANDE

The Flemish Minister of Culture, the Family and Social Affairs,

L. MARTENS