

REPORT TO THE COMMITTEE ON THE RIGHTS OF THE CHILD

Report of the Children's Rights Commissioner, Flemish Community (Belgium)
regarding the second report filed by Belgium

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Introduction

This report has to be considered as an addition to the official report filed by the Belgian government. The Children's Rights Commissioner can agree in general with the content of the state's report and will not go into topics that have already been covered in this report as such. In this report, the Children's Rights Commissioner will only add information, give remarks and point out existing difficulties that were not mentioned yet.

The Children's Rights Commissioner wants to thank the Committee for taking an interest in reports by other than state parties, in order to get as much information as possible and to make a critical review of the official reports.

After some introductory remarks, the first chapter will cover general issues and suggestions for discussion or for further implementation of the Convention on the Rights of the Child in Belgian legislation and policy.

In the second chapter, the Children's Rights Commissioner will report on the implementation of the Convention on the Rights of the Child, according to the general guidelines set by the Committee on the Rights of the Child, with additional information to the Belgian report. Some issues will not be covered, due to the lack of competence in certain areas, the lack of information or data or due to the fact that there is nothing to add to the Belgian report.

In the third chapter, the Children's Rights Commissioner will go into the follow-up of the concluding observations made by the Committee on the Rights of the Child on the initial report by Belgium¹.

In a country like Belgium, the implementation of children's rights is seldom considered as problematic. Most children lead happy lives, in caring families and with access to facilities like school, health services, youth work etc. However, children contacting the office of the Children's Rights Commissioner offer a different perspective, not always known by adults or policymakers. While the protection and provision rights are usually not too problematic to implement, the implementation of participation rights is quite another issue.

In this report, the Children's Rights Commissioner will point out the difficulties that children encounter in having their rights put into practice.

The office of the Children's Rights Commissioner² was established by the Flemish Parliament (decree of July 15th 1997, see annexe) as a result of the recommendations made by the Committee on the Rights of the Child on the initial Belgian report³. The main task of the Children's Rights Commissioner is to monitor the implementation of the Convention on the Rights of the Child by the Flemish Parliament. The office of the Children's Rights Commissioner therefore has to:

act as an ombudsservice⁴ for children: receive and investigate complaints, handle questions on children's rights and speak out for children;

follow-up and conduct research on children and collect information on children's living conditions;

inform⁵ the general public, both children and adults, on children's rights and increase children's possibilities to participation in society;

advise⁶ the Flemish Parliament on the implementation of the Convention on the Rights of the Child.

In this report, the Children's Rights Commissioner will give additional information to the state's report, based on information and experience, collected while executing the above mentioned tasks.

It should be noted that this report will primarily cover issues that relate to the competences of the Flemish Parliament and government, as the office of the Children's Rights Commissioner has no competence on federal or other levels.

¹ This exercise has not been made in the official Belgian report.

² www.kinderrechtencommissariaat.be (website in Dutch). Basic information in English can be found on the ENOC website: www.ombudsnet.org

³ CRC/C/15/Add. 38, 13

⁴ 2000-2001: 1.056 cases were reported, concerning 1.357 children.

⁵ leaflets, brochures, website, activities, participation projects and campaigns.

⁶ on all areas: welfare, child care, urban development, education, environment, ...

Moreover, due to lack of time and insufficient data, this report should not be considered exhaustive. The Children's Rights Commissioner will above all go into the topics that are problematic to children themselves, into the issues that are brought to the office as complaints or questions.

In general, it is fair to say that children's rights issues have been increasingly figuring on the agenda of policymakers. It has to be said however that this is not always done in a pro-active way.

In most cases, the focus of attention lies mostly on the protection rights, more than on the rights to participate. The dreadful Dutroux-case has created a certain policy climate, with a clear focus on protecting children as such, against all sorts of danger 'from outside', rather than on protecting children's rights. It was until recently still more of a 'care' issue than a debate on children's rights.

In addition, children's rights are usually only mentioned when discussing problematic situations for children individually (e.g. juvenile justice). The focus lies on violations of rights. The basic and proactive promotion of children's rights as such, as an instrument to take citizens under 18 more seriously, or attention for children's wellbeing in general (e.g. physical and psychological space for children) is hardly a topic of concern. Children seem to become an issue in politics only when they either have problems or create them, not for being children with certain rights in se.

The Belgian report gives a rather complete overview of what has been done in legislation since the first report until 1998-1999. It does however not give a more dynamic picture of what has happened since the initial report. Nor is it a status quaestionis on what really has made a change on the field, on what has actually had an impact on the daily life of children in reality. The report gives an accurate picture on most legislative changes, but does not show how or to what extent these laws have been already put into practice. The differences between law or policy on paper and practices on the field can however be quite substantial! E.g. the Flemish Community has every right to be proud of the legislation on Child Impact Assessment, but fails to add that hardly any impact-studies have been made up until now⁷. E.g. there is the important new article 22bis in the Belgian Constitution in which the fundamental right of the child to physical, sexual, psychological and moral integrity is guaranteed, but children have not yet experienced what difference this change has made in their daily lives.

⁷ E.g.: a government proposal of decree on the financial cost of education has been accepted by the Flemish Parliament without any impact study. This happened in spite of the decree on Child Impact Assessment, by which it is obligatory to make such an assessment for every proposal that concerns the interests of children.

We can state that children's rights have indeed become a more important topic in public and political debate. However, the fundamental problem remains: children themselves, bearers of rights, are still legally incapable to exercise their rights autonomously. First they still need to know more about their rights and even so, they still need assistance or representation by an adult.

Issues of concern

General children's rights POLICY

The Belgian state structure, with divided areas of competence, makes it difficult at times to design a comprehensive and coherent children's rights policy. Some of the issues that Communities are working on cannot be finalised or followed through in practice, as long as federal legislation is not changed accordingly and vice versa. (In this context it is vital that the preparatory work on the establishment of a National Commission on Children's Rights could be finalised and set to work on a permanent and structural basis).

In the Flemish Community, a minister of youth was appointed since the last elections. One of the ambitions is to develop a common youth policy within the Flemish government as a whole, covering all Flemish departments and thus trying to get a more comprehensive strategy to implement the Convention on the Rights of the Child. On the federal level this does not exist.

Both the French⁸ and the Flemish⁹ Communities have a children's ombudsman¹⁰. There is no such agency on the federal level. It is highly recommended that this would be established since a lot of the federal competencies have important links with children's rights (Justice, Social Security, Health,...) The function of this agency could however be different from the existing ones. The Délégué Général aux Droits de l'Enfant and the Children's Rights Commissioner are accessible to all children in Belgium (according to their language). However, when their questions concern certain issues that resort under the federal authority, it is difficult or even impossible to handle the case successfully. Both ombudsmen express the need for an independent office on the federal level to refer those cases that fall outside their own competence too. Besides that, both ombudsmen also have recommendative and advisory functions and monitor whether decree proposals comply with the Convention on the Rights of the Child. This screening function is definitively necessary on the federal level as well¹¹.

The legal status of the child is an incoherent one. Although it is now undisputedly true that children (all persons under the age of 18) are in fact bearers of rights, it is also true that they are considered as legally incapable to exercise their rights, let alone enforce them when necessary. They cannot execute their rights autonomously and they have no independent access to the courts. Some specific laws however have

⁸ Le Délégué Général aux Droits des l'Enfant.

⁹ The Children's Rights Commissioner .

¹⁰ More information on children's ombudswork can be found on the website of the European Network of Ombudsmen for Children, ENOC: www.ombudsnet.org.

¹¹ Until now, both ombudsmen have been asked for their opinion on several legislative initiatives on the federal level (e.g. youth advocates, family name) but this depends on the goodwill of the individual members of parliament. We have no formal link.

introduced certain age-limits under 18, defining at least some degree of capacity for the minor. For example: laws regarding filiation disputes give certain capacities to children from the age of 15, young people can freely consent to sexual relations at the age of 16, children can open bank accounts at the age of 12, at 16 they can get a drivers' license for a motorcycle, the Flemish decree on juvenile aid requires the consent of the child when it reaches the age of 14, ...

The use of different age-limits is rather confusing to minors because of the lack of logic on the whole.

Other laws refer to a vague notion of 'age of discernment', which has to be interpreted by the courts, leaving a wide range of discretion to the judge.

It is obvious that a more coherent and a more empowering legal status should be developed so that minors, in their own capacity, can actually do something with their rights.

In the context of procedural law, minors have no formal independent access to the courts. They will either need to be represented by their parent(s), or in some cases by a guardian ad litem, if the interests of parents and child are in conflict. The status of children has improved by giving them a possibility to be heard in procedures that affect them (cf. *infra*, art. 12 commentary), but the fact remains that this is only possible when a procedure has indeed been started and a case is pending. If this is not the case, children cannot adhere to a judge to give him their opinion or view.

There is no legal aid system for minors. Both the ombudsmen as well as some private organisations can give information on children's rights and on the current laws and regulations. They are however not entitled to function as a legal representative for children in individual cases. Children in general can not appoint a lawyer to represent them in court or in other procedures. Only in some specific laws (e.g. youth protection) it is stipulated that the minor will get a state-appointed lawyer to defend his or her case. This is however only the case when the procedure has actually been started.

It is necessary to set up a legal aid system for minors, where they can get free legal advice and representation in cases that affect them. A law proposal regarding 'youth lawyers' has been introduced to this effect. The idea is to provide special training on children's rights for these lawyers and to have them integrated in the general legal aid system, which already exists for adults. This proposal has not yet been voted on, let alone put into practice.

To strengthen the monitoring power of the Committee on the Rights of the Child, the Belgian state should endorse the proposal to expand the Committee on the Rights of the Child to 18 members.

It is recommended that exercises such as Child Impact Studies apply on all legislation and are also carried out before ratification of international conventions. In

this context, we refer to the European Convention on the Exercise of Children's Rights, which lowers the standard set in the Convention on the Rights of the Child. If realised, this could have negative effects on the legal status of children.

INFORMATION ON CHILDREN'S RIGHTS

The Belgian authorities have not put a lot of effort into making the principles of the Convention on the Rights of the Child widely known. The same can be said about the initial report.

It is true that the Communities have somewhat delegated this task to their ombudsmen for children, but this should not mean that the authorities themselves no longer have any obligations in this area.

Besides information on the Convention on the Rights of the Child as such, it is also useful to inform the younger public on current policies in a way they can understand. This is especially the case when dealing with certain issues that are of great interest to minors. In this context, we have noticed that children and young people have not been sufficiently and correctly informed on policies that directly affect them. At times it is unclear for them (as it is for adults!) to understand the difference between the political debate on a certain issue and the decision that is taken in the end¹².

We strongly recommend the compulsory and clear integration of children's rights in school curricula, starting in elementary schools. Until now, this obligation has been too vague and has been left too much to the discretion of the schools. The same recommendation is made regarding the curricula of higher education, especially for those that can lead to working with children and young people (law, psychology, medicine, education, social work, police work, ...).

PARTICIPATION

In recent years a lot has been said on participation of children in decision making. Many initiatives have been developed on the field, showing a wide variety in participative methods. Knowledge and evaluation of different projects have already made it clear that not all participation is effective participation and that not all projects really give 'due weight' to the input of children and young people. There has to be a constant awareness of the risk of tokenism and other misuse of the participation idea. Good and effective participation requires more than discussing a certain issue with some minors every now and then. Participation refers to a certain climate, to a process and should not only serve as a legitimisation *ex post*. In many cases honest and open feedback is still lacking and some young people have already

¹² e.g.: the political debate on legalising the individual use of cannabis under certain conditions, the debate on lowering the age of sexual consent to 14, lowering the voting age to 16, ... No final decisions have been made on these issues so far, but the information on the debates often confuses young people, in a way that they might think that the decisions have already been taken.

made it clear that they are getting tired of being asked for their opinion when there is no explanation on what will happen with their input.

More research and development is needed on methods of participation as well as on the issue of what is meant by 'due weight'.

EDUCATION

It is unacceptable that in a welfare state like Belgium, based on constitutional principles of equality, many children still don't have equal and free access to all forms and all types of education.

Only last summer e.g., the Flemish Parliament agreed upon a proposal of decree by the minister of Education, which makes it possible for schools, even elementary schools, to bill the parents for certain costs and activities, organised by the school. For some families this constitutes a high cost and this decree is in fact a violation on international laws (Convention on the Rights of the Child, UN Treaty on Economical, Cultural and Social Rights, European Treaty on Human Rights) for elementary schools, and a violation of stand-still regulations for secondary schools. Both the 'conseil d'Etat' and the Children's Rights Commissioner strongly opposed to this proposal.

Exclusion of children is not only still happening on the basis of the socio-economic status of the parents, children with handicaps also encounter excluding measures if they want to attend regular schools. Further development and introduction of inclusive education is highly recommended.

Additional comments on the Belgian report following the guidelines of the Committee on the Rights of the Child ¹³

GENERAL MEASURES OF IMPLEMENTATION

In the implementation of the Convention on the Rights of the Child, specific problems arise due to the federal state structure of Belgium. Several children's rights issues need to be taken up on different levels of competence (federal, community, region). The risk of overlap, or inconsistent laws on those different levels is present in issues such as refugee children, adoption, legal status of the child a.o.

Many children's rights issues are situated on the competence level of the three communities, such as education, welfare, environment and assistance to persons. But maybe even more fundamental issues lie within the competence of the federal authority, such as justice, social security and external/international affairs.

A national strategy on children's rights is lacking and there is no Children's Rights Commissioner (yet) for federal issues. Both the Flemish and the French Community have established a children's 'ombudsman'. Although they both have freedom of speech, there is no institutional link between their offices and the federal parliament or government. They can look into the decrees of both communities and screen them on conformity with the Convention on the Rights of the Child, but they lack that same competence with regard to federal laws. It is therefore necessary that there is also an independent agency on federal level to check federal legislation on its conformity with the Convention on the Rights of the Child. Until now, there is no such controlling instance with political independence (cfr. supra).

In the state's report on general measures, a clear illustration of what was said above is shown in the initiatives on the federal level. Most measures that have been taken, cover issues such as sexual abuse, parental abduction, children as victims, missing children etc. The Children's Rights Commissioner emphasizes that these issues are indeed important, but a lot still needs to be done, especially considering the equal importance of the three P's. Participation rights are hardly considered an issue on federal level. There is a certain willingness to support participation issues, but this has not yet been translated into new legislation or policy. E.g. the minister of Justice has financially supported the What Do You Think?-project, but it remains to be seen whether the competent authorities will actually do something with the outcome of the project.

The report also mentions items that have not been put into practice yet.

¹³ All titles and subtitles of the general guidelines figure in this report. On some issues there is no additional information to be given, due to the lack of comments or other informative data.

The Convention of The Hague on Adoption for instance has not been ratified yet and adoption laws, both on the federal and the community level, have not yet been re-aligned (status in Nov. 2001).

The National Commission on the Rights of the Child, mentioned in the report, has not yet been formally established. This is a rather difficult exercise, due to the fact that this kind of commission has to consist of authorities from all levels.

The concluding report of the Expert Commission on Sexual Exploitation, with recommendations both on the general and the more specific issues of children's rights, has not been completely followed up: changes have been made in the Constitution and in criminal law, but more general recommendations regarding strategies to promote ALL children's rights, have been left uncovered.

Regarding art. 42, most actions and initiatives have been conducted by the offices of the Children's Rights Commissioners in both communities or by NGO's. The federal authority has not really taken up this obligation towards the general public. The Convention on the Rights of the Child as such nor the initial report have been made 'widely' known. The report has not been the subject of any debate, be it on the political or any other forum.

DEFINITION OF THE CHILD

In Belgian law, the legal status of minors is laid down in several separate laws and decrees (cf. supra). This can give an incoherent picture, unclear to children themselves. Some laws and decrees set clear age standards, others refer to rather vague notions such as 'age of discernment'. The use of different age limits tends to be confusing and leaves children not knowing at what age they have which competence. In filiation cases for example, consent of the child is required when it is 15 or older, while the new proposal on adoption requires the child's consent from 12 years on. In civil jurisdiction on torts and liability, a child is considered to know right from wrong, to know the consequences of its actions from the age of 7-8. The age of sexual consent is set at 16. In the Flemish decree on assistance and protection for children, the child has to be heard from 12 years on and has to give its consent with the proposed measure of assistance from 14 years on.

When no specific age is mentioned, the principle is that a child has no legal competence to act until the age of 18.

Apart from this legal setting, there is also a certain incoherence in practice given the different application and interpretation courts can give to children's maturity or 'discernment'.

The most fundamental problem for children is that they have rights, laid down in the Convention on the Rights of the Child and in Belgian laws, but that they can hardly exercise them independently of adults, as was explained in the general issues of concern.

Outside the court system, minors can have access to social, medical and other services for help and assistance, but the range of this capacity is sometimes unclear. For example, children seeking help, children as patients etc. are not always sure whether their privacy will be respected vis-à-vis their parents. Or, they encounter practical problems, such as having access to services but not being able to pay for that service without having their parents being informed about the fact that they visited e.g. a doctor, an abortion clinic, a social service etc...

Art. 12 in courts

In this context, it is important to take a closer look at the law and practice of the right to be heard in court proceedings. We can state that the translation of art. 12 of the Convention on the Rights of the Child has not been done completely or diligently. The right of the child to express its views is hampered by the fact that this is only possible when a case is already pending in court, which means that an adult has started a procedure. The question whether due weight is then given to that view is somewhat problematic, given the fact that the judge has a very large discretion here.

The general principle (art. 931 procedural law) states the following: a child can be heard in any procedure that affects him/her. It is either the judge who can invite the child, or the child who can ask to be heard. The judge can refuse to do so when he judges that the child lacks the necessary capacity of discernment.

Aside the general principle there is also the law on Youth Protection (federal), by which the judge is obliged to invite the child in civil cases from the age of 12 onwards.

(There is also the decree on juvenile aid/assistance (community level). Here, decisions are not taken by a judge but by a committee on juvenile aid. From the age of 12, the child's opinion has to be heard before taking certain measures (of placement for example) and from the age of 14, the child has to agree with the proposed measure.)

First of all, a lot of children do not know that they have the right to be heard. There is no guarantee that children will be informed of this right systematically in all procedures that affect them. When the judge decides not to invite them, their opinion on the case remains simply unheard.

Second, when a child does know about this right and asks the judge to be heard, the judge can refuse to do so, even without first seeing the child. The judge can decide on the child's capacities without any further investigation. Even so, the child has no right to appeal to this refusal.

Third, it remains unclear how the courts give 'due weight' to the child's opinion.

It is also clear that the child will never become a party in the procedure, even when it can give its view on the case. There are therefore no means of appeal for children.

The co-existence of several laws and regulations is not only confusing, but also possibly discriminatory. For example: the divorce procedure takes place before different courts in different stages. Depending on the status of the procedure, we see a different implementation of the right to be heard. During the procedure before the general court, the general rule of art. 931 Procedural Code applies with all uncertainties mentioned above. However, once the divorce procedure is over, conflicts on custody, co-parenting etc. are brought before Juvenile Court, where more specific rules are applied, such as the obligation to invite the child to be heard from 12 years onwards.

An illustration can make clear how the risk of different treatment is imminent. A custody conflict during the divorce procedure, does not set an age limit for a judge to invite the children to be heard. He could even consider a 14-year-old not mature enough to give an opinion about the case. The same case, after the divorce, would give the children, 12 and older, the guarantee that they will be invited to give their view on the case.

Due to the lack of accurate information, the general public, children and adults, sometimes have certain ideas on the position of children in courts. It is e.g. a current misunderstanding that children, from the age of 12-14, can decide who they want to live with after the divorce of their parents. Or, children believe that, when they do get heard, this means that the judge will follow their opinion.

Many complaints in our ombudswork refer to this lack of clarity on what children can and cannot expect from the courts in proceedings that affect them directly. A clear general message that children often send the office of the Children's Rights Commissioner is that hardly anyone takes their views seriously anyway.

GENERAL PRINCIPLES

A. Non-discrimination

As a rule, all children are treated equally under Belgian law. In reality however, it is clear that not all children have the same access to children's provisions. Children of immigrants, children of deprived families, children with a handicap are still victim of exclusion in schools, in social services, in youth work, ...

Efforts have been made over the past years to tackle these unwanted excluding effects, but a lot of work remains to be done. The issue of exclusion is also an issue that can not only be dealt with by laws and regulations. It is a lot more complex as it also relates to attitudes, behaviour, communication and 'culture'. E.g. the disciplining methods of Moroccan parents can sometimes be too quickly judged as abusing, while underneath lies a different understanding of parental authority. Low-income families can sometimes be wrongly considered as rather neglecting towards the children, while it is more of a basic issue of money for food, clothing and decent housing.

People who experience this exclusion, report on the average 'middle-class' values, attitudes and standard setting of social workers, doctors, judges, ... Standards they can hardly try to achieve. They feel the stigma of being poor, of not being able to live up to the standards, of being judged by everyone on everything and have difficulties trusting social and other services.

Knowledge about living in poverty, learning through 'experts by experience' is necessary for all professionals working in schools, social services, courts, ...

More specific issues of discrimination are at hand in the education system.

For children with a handicap, the principle of 'inclusive' education is promoted by several academics, by the Flemish Advisory Board on Education (VLOR), by different grassroot organisations and by the Children's Rights Commissioner. However, few schools are working by this principle and children with handicaps are still referred to Special Education schools in most cases. The practice of inclusive education is still too dependent of the goodwill of a school, and of the efforts of parents and teachers willing to invest in inclusive education. Different regulations, e.g. financial support, educational aid, school busses etc..., make it difficult for parents and children to choose for inclusion and enrolment in a regular school, because they get more benefits and support when they go to the Special Education school system. Support on a structural level is still lacking, although some possibilities have been created in the area of 'integrated' education.

Children of migrants, mostly North-African and Turkish, and refugee children, encounter discriminatory practices both with enrolment in schools as within the schools.

The Flemish education policy is aimed at avoiding 'concentration' schools and at spreading children from different ethnical or cultural backgrounds across the schools to stimulate integration and mutual understanding. Schools need to work on local agreements on how these aims can be achieved. There is a clearly positive mission statement on 'intercultural' learning and on the importance of an intercultural school environment. These aims are very positive as such and they certainly prove the will to tackle discrimination.

In practice however, this has lead to local agreements among schools, by which schools can work with certain agreed percentages of 'target-group' pupils. This allows them to deny access to their school for certain pupils once their percentage has been reached. E.g. a school, that already has 20% North-African pupils, can refer applying pupils from the same ethnical background to other schools, thus violating the right to freely choose one's own school.

At this moment this is a difficult and delicate topic of discussion. The Flemish minister of education is working on a new decree changing the policy from the 'right' to refusal for schools into a right to access for all pupils. The Children's Rights

Commissioner already made this recommendation earlier before, based on the complaints on discrimination.

It is also clear that more detailed data are necessary on this issue. The office of the Children's Rights Commissioner, in co-operation with the local integration centres, is currently trying to collect such relevant data.

Concerning the issue of discrimination within the schools, problems are mentioned on topics like: the chador for Islamic girls, the fact that these children are more easily referred to vocational schools, the difficult access to higher education, the denigrating remarks on the Islamic religion and the rules of conduct that go with it.

B. Best interest

The 'interest of the child' is a recurring theme in many of our laws and decrees. The question remains however what this 'best interest' is exactly and who defines it. Usually this best interest is defined and judged by adults, based on their knowledge on what is best for a child. The input of the child, as the expert on its own interests, is not always considered. The combination of art. 3 and 12 in other words, is far from evident.

There is a need for research into the capacities of children to define what is in their best interest, as these capacities still seem to be largely underestimated by most adults.

C. Right to life, survival and development

Cf. Belgian report

The whole package of preventive support services, guaranteed to all parents of young children, as provided for by Child and Family, a public agency, seems to be rather unique, compared to other countries. The investment in these services is very positive, especially since it is linked to the mere fact that a child is born and not to the occurrence of a specific problem.

During the past years, Child and Family has also increasingly invested in the support for more vulnerable families and children. E.g. the services have also been organised for refugees, disregarding the fact whether they have a legal status or not. E.g. intercultural mediators and 'experts by experience' have been included in the personnel to better understand the needs and questions of resp. migrant families and underprivileged families.

D. Respect for the views of the child

Of all the articles in the Convention on the Rights of the Child, art. 12 is perhaps still the most problematic one, not only in terms of implementation but also in terms of understanding the principle itself.

It remains difficult to give a legitimate place to the views of the child. From grassroot level and out of legislative initiatives, several structures have been set up through which children can make their views known. Examples are: conferences and courses

on Children's Rights, student councils in schools, children's community councils on local level, resident councils in children's institutions, the What Do You Think project etc... The office of the Children's Rights Commissioner has worked out campaigns on children's rights in the local community and on children's rights in schools.

This is of course a positive evolution.

The issue however is not only to give children channels through which they can voice their opinion, but also to give 'due weight' to those opinions. That is were a lot of the initiatives get frustrated in the end. It seems as if giving (financial or other) support to those initiatives suffices as compliance with art. 12.

It also remains rather difficult for children to set up their own channels as well. Most initiatives are still organised by adults who then keep on 'running' them with or for the children. Some initiatives are basically an adult set-up, either as a form of tokenism or to legitimise adult decisions. This is the case e.g. with some children's councils on the local level.

Many of the participation initiatives still depend on goodwill of adults, rather than on the notion that it is in fact the basic right of children as citizens.

Participation should be more than just the fashionable thing to do. We need constant awareness to break through those mechanisms of tokenism and children's participation only on adult demand.

The right to participate is often narrowed and limited to the right to voice an opinion or to react on questions, mostly asked by adults. There is a tendency to forget that children (are able to) participate all the time, whether adults ask them or not. They live, they walk the streets, they go to school, they are citizens... so they participate. Participation is not only the issue in participative channels and mechanisms. It is also a question of adults wanting to see and hear what children say, verbally or otherwise, and to take that into account.

Participation in schools

The Belgian report covers the structural participation bodies in schools of the Flemish Community. There is in fact a decree on student councils in secondary schools: if asked by one third of the students, a student council has to be established. However, not all students know that and certainly not all existing student councils have effective powers within the school. Student representation or participation in elementary schools is not regulated by decree, but some schools have been running successful projects in this area.

On the structural level, parents are mostly represented in school bodies and not the students themselves, as was put in the official report.

Participation in the family

Regarding art. 12 in the setting of the family, we hear some children complain that their opinion is not taken into account by their parents. Within the upbringing of children it is often difficult to find the right balance between the rights of the child to

its own opinion and the right (and responsibility) of the parents to guide their children through childhood. The office of the Children's Rights Commissioner receives complaints on these issues regarding certain house rules, contacts with friends, disciplining practices, violations of privacy (e.g. reading diaries and letters), ...

Participation in the community

In 2000, the office of the Children's Rights Commissioner set up a voting ballot for children aged 8-12, coinciding with the local elections. The children could vote, not on persons or political parties, but on thematic issues that concern them. Over 70.000 children responded and their message was clear: they express the need for more space, both the formal spaces for children like playgrounds and other 'hang-outs', as well as their informal space on the streets, in public parks etc. More and more children are referred to children's 'reservations', safe areas, set apart from the outer (adult) world. Children in public open spaces tend to be regarded as a burden for the adults so they are moved towards their own skating ramps and play areas, often under adult supervision. The children made it clear that they want to (re)claim their place in public. They also expressed a clear wish for more safety in traffic so that they can exercise their own right to mobility, instead of having to become the so-called 'backseat-generation'. Another claim of the children was the one for cleaner cities and a better environment in general.

All in all, although there seems to be a growing interest in hearing children's views, the actual impact of their opinions still leaves a lot to be desired for. In areas such as urban planning, housing environment, traffic and mobility, children's views are barely asked or known and thus hardly taken into account.

CIVIL RIGHTS AND FREEDOMS

A. Name and nationality - B. Identity

The right of the child to know its filiation can sometimes be problematic.

In the area of IVF and other methods of medically supported fertility, both male and female donors of the necessary 'material' remain anonymous. It is the right of the parent(s) who raise(s) the child to decide whether or not the child will be informed on its origins.

A similar freedom of choice lies with the adoptive parents, although the adoption will be of course more obvious when the child has a different ethnical background. In the process of adoption, prospective adoptive parents are systematically informed about the importance to inform the child on its background and to be supportive when the child wants to investigate its origins. Programs for roots travels have been set up over the past years for this purpose.

C. Freedom of expression

In order to be able to express an opinion or to make a statement, children need to have access to adequate information. Several initiatives in this regard are mentioned in the state's report. However, we do get the message from children that several services that are set up to offer them relevant information are not always known very well by children themselves.

Concerning the (Flemish) media, we want to report that, over the past few years, all newspapers that used to have a special children's section, have now decided not to invest in such children's pages any longer, mostly due to budgetary or commercial reasons.

The Flemish public television has a set of children's programmes scheduled on a daily basis. Still, there is no children's news programme as of yet, in spite of popular demand by children. We also notice that programmes get cancelled or changed without any motivation or explanation to children, even when they are very popular among children.

D. Freedom of thought, religion, conscience

Few complaints were lodged on this issue, but the ones we did receive were rather fundamental. E.g. an Islamic child was punished in school because she would not eat lunch during the Ramadan. An adolescent catholic girl in a youth facility was not allowed to go to church on Sundays without a reasonable motivation. For Islamic girls it is often a problem to wear their chador in school.

E. Freedom of association, peaceful assembly¹⁴

Again, children mention the gap between theory and practice. It is legally impossible for children to actually set up an association without the input and co-operation of adults. In order to get financial support for certain youth work-projects e.g. it is necessary to operate from within a legal structure or association. Without the representation through adults, children cannot establish these structures themselves.

The office of the Children's Rights Commissioner has produced two booklets, the 'Megaphone', on Children's Rights in the neighbourhood and Children's Rights in schools. In these publications kids can look for information on Children's Rights and they get practical tips on how to take action or whom to turn to to make some changes. They were distributed in all the Flemish elementary schools.

F. Protection of privacy

¹⁴ For example: During the Dutroux-investigation there were several public manifestations after a specific court decision was taken. Many secondary schools students participated in those manifestations. As they were absent from school however, many of them got sanctioned afterwards. This happened again during the recent manifestations after 9/11. Whereas adults can take time off work for such occasions, this is not possible for school going children.

As mentioned in the state's report the right to privacy is guaranteed in several laws and regulations. What is less evident however, is the way in which this right can be exercised by minors themselves and what they can do against violations.

Again, we need to consider the delicate balance between the right of the child and the authority of parents or other caretakers. We have received complaints from children about parents reading diaries, about the lack of 'a place of their own', about interference of parents in the choice of friends etc... The problem here is, that once a violation of privacy has taken place, little or nothing can be done to restore that.

In the context of privacy, there is the issue of discretion in the use of certain provisions for children. A specific problem in this area is the free access to telephone help lines for minors. In Flanders e.g. there is a children's phone, as well as help lines on more specific issues like drugs, unwanted pregnancy, homosexuality... Due to EU-regulations on consumer rights, phone bills now have to be very detailed. As a consequence, the parents can always see which toll-free lines have been called from their homes by their children.

G. Access to information

The Belgian report covers several informative actions and initiatives for children. Information on children's rights or children's services however, is still not disseminated enough. Through the ombudscases and research of the office of the Children's Rights Commissioner we learn that there are still quite a lot of children who do not know anything, or enough, about their rights or about services that can provide them with information.

As for the office of the Children's Rights Commissioner, the data on ombudswork show an increase in cases reported by children themselves. The first year (1998-1999) barely a quarter of all calls came from children; three years later almost half of the people who contact the office are under 18.

H. No cruel treatment, torture, ...

As of Jan. 2002 it is no longer possible to detain young people between 16 and 18 in 'adult' prisons. Separate closed institutions will be established to detain minor offenders.

For some crimes it is however still possible for the juvenile judge to refer the minor to the adult criminal court, which can then sentence the minor to prison.

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental guidance¹⁵

¹⁵ Until several years ago, parental authority changed after a divorce: one parent became the main responsible and got custody over the child, both legally and practically, while the other only had

The Belgian report mentions the principle in civil law, by which parental responsibilities are legally equal for both parents, the so-called co-parenthood. This rule applies for married as well as unmarried parents, whether the parents live together or not. This rule also applies in divorce cases: even after the divorce both parents keep sharing the parental authority. Co-parenting is the guiding principle in the legal context. This does not necessarily need to be translated in a living situation where the child needs to live with both parents equally. E.g. even when the child lives with the one parent and only visits the other parent every other weekend, both parents are still co-parents. However, in divorce cases, it is still possible for the judge to rule differently, and to give parental authority to only one of the parents, whenever needed in the interest of the child. Practice shows that in quite a lot of cases, this is still applied. This means that one parent will get full legal custody while the other parent gets a visitation right and a partial right to monitor the upbringing of the child.

It is our view that this has a lot to do with the fact that the laws on divorce are still quite governed by the idea of finding one 'guilty' party, while in general, the child best interest seems to be best suited when a divorce can be settled through mediation and by mutual agreement. In these cases, custody battles, usually harming the child, are less likely to develop.

The Children's Rights Commissioner has frequently advised on the beneficial impact on children's wellbeing of mediation in family conflicts like divorce. Recently a change was made in the federal law on divorce: during the procedure the judge can now refer the parties to a mediator. More detailed regulations on the level of the Flemish Community still need to be taken¹⁶ before the federal law can be fully implemented.

B. Parental responsibilities

Basic support for parents in their educational tasks is very well arranged in Belgian society. Recently, a Flemish decree was passed concerning the organisation of educational support programmes, in addition to what already existed (cf. Child and Family, as described in the state's report).

C. Separation from parents

Through ombudswork, children (and parents) often lodge complaints about post-divorce regulations. The problem is often that the children don't feel respected in their views and wishes either to see, or not to see one of the parents. E.g. in cases of abuse, children complain about the fact that they are still forced to follow court

limited powers and certain visitation rights. This former rule has now become the exception in legal terms, but we see in reality that the exception is still often applied.

¹⁶ Regulations on quality control on mediators. Up until now anyone can act as a mediator, as there are no strict requirements.

orders on visitation rights. There is also mentioning of cases where the parents use the children in their custody conflict, keeping the child from seeing the other parent or boycotting all possible contact.

Given the increase in mixed marriages, there is also an increase in so-called parental abduction.

D. Family reunification

E. Illicit transfer and non-return

F. Recovery of maintenance of the child

G. Children deprived of their family environment

H. Adoption

The main issue here is the fact that the Hague Convention on Intercountry Adoption has still not been ratified. Both the federal and the Community governments have certain responsibilities in this area and it seems rather difficult to get all necessary legislation correctly drafted.

We also notice a tendency to give certain priorities to the interests of prospective adoptive parents, rather than to the interest of the child. Several proposals are at this moment under discussion, but it remains unclear what the Belgian state will do to prevent the so-called 'private' adoptions.

I. Periodic review of placement

J. Abuse and neglect

Since the Dutroux case (1996), a lot of changes took place on the issue of sexual abuse and (commercial) exploitation.

However, a lot of children still suffer different forms of abuse and the services are far from well known. The Confidential Centres for Child Abuse are still understaffed to deal with the numbers of reported cases. Waiting lists in this area are still too long. The primary source of violence, of any kind, and neglect towards children is, sadly, still more prevalent within the family.

BASIC HEALTH AND WELFARE

A. Disabled children

The legislation and measures that have been taken for children with a handicap have been explained in the Belgian report. It is clear that dealing with children with a handicap is still reserved for specialised services and parallel provisions. The idea of inclusion (e.g. in schools, youth work etc.) is at this point still a rather academic one.

B. Health and health services

The access of children to health services is guaranteed, for as long as the parents know about the fact that the child is seeking assistance. It is however much harder for young people to get e.g. medical assistance without their parents knowing about it, which can be the case when dealing with more personal or intimate questions such as questions relating to sexuality (birth control, advice on STD or unwanted pregnancy) or problems relating to drug(ab)use.

A recent study on health of young people in Belgium has shown that their general lifestyle regarding health is not all that positive. More and more young people are smoking, less young people engage regularly in sports, and many of them have rather unhealthy eating habits. As in most modern societies 'new' diseases such as anorexia and bulimia are occurring more and more frequently, esp. with adolescent girls.

C. Social security

D. Standard of living

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

It is important to know that the Belgian laws on education are based on the fundamental principle of 'freedom of education', meaning that anyone has the right to organise a certain kind of school system and that everyone has the freedom to choose to attend a certain school (however, mostly the parents will choose a school for their children, as a part of their parental authority. The children themselves will hardly be able to exercise that freedom of choice). As a consequence there are different parallel school systems, both public and private. The public schools are run by the state and fully financed by the state. Private schools (e.g. catholic schools, Steiner schools...) can also apply for state funding if they meet certain conditions. In the Flemish community e.g. the catholic schools (about 70% of all schools) are 'private', but they are almost completely working with public funding. Every school has the autonomy to work out a certain pedagogical project. This also means that the state can set out general conditions that have to be met in order to receive public funding, but the state can not interfere with the school's own policy.

In the context of children's rights, this principle can sometimes limit the state's interference. The principle of the autonomy of schools is almost untouchable, giving the state a rather limited margin of intervention.

A. Education

(see also remarks on art. 2)

Recent studies have shown that the Flemish school system is still excluding certain categories of children. We already mentioned the discriminatory practices that still

occur in some schools. Also, children from disadvantaged families tend to get caught in a system where they rather end up in vocational schools, even when they have the capacity to attend general secondary school. Apparently, the education system has not fully succeeded in breaking through socio-economic barriers and sometimes even strengthens the different socio-economic strata. Poor schooling, limited access to higher education and poverty seem to be hereditary and tend to be confirmed by the system. It is obvious that this is not a problem that can be solved through legislation only. A different culture and change in mentality is necessary to really give equal opportunities to all children.

Another problematic issue in schools is the participation of students in their schools. Although it is legally stated that every child has the right TO education, it is less evident that children also have rights IN school¹⁷. Where it is e.g. obligatory to organise a student council if one third of the pupils want that, it is less clear what advisory or decisive powers these councils have. Within the ombudswork, the office of the Children's Rights Commissioner has noticed an increase in complaints of pupils about their lack in participation rights.

They have no input in the school regulations such as dress code, exam systems, sanctions etc.

B. Aims of education

The learning goals and aims have been formulated into decrees (see Belgian report). Respect for human rights in general is one of the aims, but it has been insufficiently defined and integrated in the school curricula. Also, there's a lot to be desired of training of teachers on this subject. Knowledge on children's rights, or human rights in general is not highly prioritised in practice. The obligation to integrate human rights into school education is defined rather vaguely and schools can fit it into the program with a wide range of freedom on how they do that. Based on their own pedagogical project they can fit it in as they want, and there is little room for the state to organise this imperatively. E.g. the minister of education cannot define in detail the curricula of higher education, since this is part of the above-mentioned 'autonomy' of the school. As a consequence, it is difficult for the state to comply with its obligation under the Convention on the Rights of the Child (e.g. art. 29.1b), as these are not easily delegated to the school boards. Some school sectors still even question the direct applicability of the Convention on the Rights of the Child as such.

C. Leisure...

A recent study has shown that the physical condition of children and young people is deteriorating, due to a.o. the lack of sports. To give just one example: in elementary schools, children often get only one swimming period every two weeks.

¹⁷ During the fall of 2001 the office of the Children's Rights Commissioner has developed a participation project for elementary schools, with the support of the minister of education.

On one hand, children no longer seem all that interested in engaging in sports activities. On the other hand, a minority of them tends to exercise sports so excessively that this in turn becomes a possible threat to their health. Adding to the Belgian report, we want to mention that the regulation on young cyclists has been changed: the age to enter on the competitive level has been lowered from 12 to 8. The office of the Children's Rights Commissioner had given a negative advice on a parliamentary initiative on this subject and the proposal never got voted in Parliament. Some time later however, the minister of Sports did introduce this lower age-limit anyway¹⁸. One of the arguments was that Belgium should align its regulations with other countries in Europe so that Belgian children could better compete with children of those countries where lower age limits are set. It seems, once again, that the interests of the sports 'business', run by adults, are better served here than the interests of the children. On the competitive level, there are certain risks involved: possibility of too much pressure and stress, physical excess, use or abuse of certain drugs...

A questionnaire of the Children's Rights Commissioner demonstrates that children complain about the lack of space, esp. in their free time. In the public areas there seems to be less room for them, both physically and psychologically. Public areas are either not accessible enough for children or too unsafe for them, so that more and more children are referred ('put away') into specifically defined and controlled children's areas such as playgrounds and skating ramps. They lose some of their autonomy and power to take up their own space in public open spaces such as the streets and the parks. Also, the adult users of those open spaces tend to become less tolerant towards children's behaviour. In some cities e.g. curfews have been established for young people, skaters have been banned from public places and adults lodge complaints about the noise children make. Instead of trying to create child friendly towns, children are referred to their own 'reservations', as if they were not citizens like everybody else.

SPECIAL PROTECTION MEASURES

A. Emergency situations

Refugees

Up until now, children have no specific status in the context of asylum legislation. There is no legally defined custody or guardian-system for unaccompanied minors, although this has been advised frequently by the Children's Rights Commissioner and other actors on the field. Many unaccompanied minors end up on the streets or in malafide networks of prostitution and sale of children. However, exact data on this specific group are not available or do not even exist.

Armed conflict

¹⁸ The same initiative also introduced certain quality requirements for trainers

B. Juvenile justice

administration of juvenile justice

deprivation of liberty

sentencing of children

physical and psychological recovery and social reintegration

In general, it is difficult to report correctly on these issues since they are all under fundamental review at this point.

Another difficulty results from the division of competencies on the different government levels. Where the federal level needs to legislate on delinquent minors, the communities need to take care of children in problematic family situations. In reality both problems are closely linked, since a lot of juvenile delinquency cases are directly connected with the problematic living conditions of young people: broken homes, low socio-economic status, educational weaknesses of parents and lack of support.

In the Flemish community, the minister of Welfare is working on a new concept of assistance, aid and social services for minors with problems of any kind. The general idea is to set up networks between different sectors in order to be able to provide a continuum of aid, whenever it is needed and fitted to the individual case. Co-operation will therefore be needed in the sector of education, special youth care, care for children with a handicap, mental health, social welfare and Child and Family.

On the federal level a new law is under review trying to find the answers to delinquent behaviour of minors. The general aim is to combine three different models: refer minors to the juvenile aid sectors, introduce restorative justice when possible and turn to repressive reaction when needed in order to protect society. As of Jan. 2002 it will no longer be possible to detain minors in the adult detention centres for 14 days.¹⁹ To this day it is unclear how the juvenile judges will solve this, since they have been claiming for a long time that there are not enough 'closed' facilities for minor offenders.

There is also a need for exact data on juvenile delinquency. The past few years the message has been proclaimed that youth has become more delinquent than before, but this statement has hardly been confirmed by scientific data. It is also unclear whether the correct questions have been asked: are some categories of young people prosecuted more than others (e.g. based on their ethnic background)²⁰? Is there

¹⁹ With this rule, the Belgian state has followed the suggestion of the Committee on the Rights of the Child. (CRC/C/15/Add.38, 15)

²⁰ There has been a lot of discussion and debate on a research project, financed by the minister of Justice. He asked to do research on the link between delinquency and children of North-African and Turkish background. The manner in which the questions were put, suggested that young people of foreign background are in fact more criminal than Belgians.

maybe less tolerance towards 'deviant' behaviour, that formerly used to be considered as 'part of growing up', as the so-called status offences?
On the federal level, plans have been made to revive the formerly existing Study Centre for Juvenile Delinquency.

C. Exploitation

economic

drugs

sexual

sale

other

D. Minorities

Follow-up of the committee's concluding observations to the initial report²¹

PRINCIPAL OBJECTS OF CONCERN

The establishment of a National Commission on the Rights of the Child has been on the agenda of the minister of Justice for quite some time now. This committee would have an important task of gathering all relevant data and it would serve as a permanent co-ordinating body regarding the official reports for Belgium. The idea is to have representatives from all governmental levels included, as well as the relevant children's rights NGO's and Unicef. Both existing ombudsmen would also be included as observers. Due to all kinds of (political) arguments, mostly concerning the budget, a final decision on the establishment has not yet been taken.

The precarious situation of children who seek asylum, unaccompanied children and children without legal status has not really improved dramatically. They are all permitted to attend schools, some are lucky to get a place in the few existing institutions with a specific mandate for unaccompanied minors, but very little is known about the numbers and the living conditions of these children. Street corner workers report that the number of unaccompanied minors has increased to several hundreds and that some of them end up in prostitution networks. Official, exhaustive data are not available. Even the department of the Foreign Office, responsible for minors seeking asylum have contacted the Children's Rights Commissioner to report on the lack of adequate places in juvenile care for this specific category of children.

The competencies on asylum are also divided between several government levels. The federal level is in charge of the asylum laws and access to the territory, while the community level is in charge of providing the necessary help, schooling and support. It is necessary that these regulations are aligned and that all competent levels of governance take up their responsibility in ensuring that these minors get all that they are entitled to based on the Convention on the Rights of the Child.

Policies on poverty and disadvantaged families have been continued and the law on the declaration of abandonment no longer exists. On community level, efforts have been made on the organisation of educational support. Still, there's a long way to go. A recent study e.g. has shown that education has not had the democratising effects, that on the contrary the school system continues to enforce the gap between the have's and the have-nots.

As for the concern about art. 38 and 53 of the Youth Protection Act, art. 53 has been abolished, but art. 38 still exists and is still frequently used. As stated above, the

²¹ CRC/C/15/Add.38 (June 20th 1995)

whole Youth Protection system is currently under review.

SUGGESTIONS AND RECOMMENDATIONS

Since three years, the Flemish Community has a Children's Rights Commissioner.

The death penalty has been abolished and the sanctions on physical violence have been strengthened through a revision of the Penal Code. The fact that there is a certain bond of authority between the offender of physical violence and the victim serves as an aggravating circumstance. It is unclear however whether the public opinion has knowledge of these legal changes and considers this as a complete prohibition of corporal punishment. In view of the Swedish successful experience in the late seventies, it is a missed chance that the government has not used this change to set up an awareness-campaign on the zero-tolerance of violence.²²

Above we have already discussed the lack of large-scale informative efforts of the state concerning the Convention on the Rights of the Child and its application. Most informative work and awareness campaigns towards the public opinion so far have been done by the ombudsmen for children and the NGO's. There is little or no progress in the area of human rights education. To give some examples of the contrary: the much appreciated and qualitatively high 'International, interdisciplinary course on children's rights' (Ghent University) had to be cancelled this year due to the fact that government funding is no longer available. A foundation on human rights education was established but hardly gets any means to actually get to work. An article²³ by the secretary-general of catholic elementary schools states that these schools are not bound by the provisions of the Convention on the Rights of the Child since they are private institutions.

The minister of education can hardly interfere in detail in the school and training curricula of the various groups of professionals that are relevant for children.

²² A small campaign 'Stop violence yourself' with TV broadcasts was carried out in 1998 by Child and Family, the Confidential Centres for Child Abuse and the Children's Rights Commissioner.

²³ This article was published in a regular magazine that is distributed to all catholic schools.