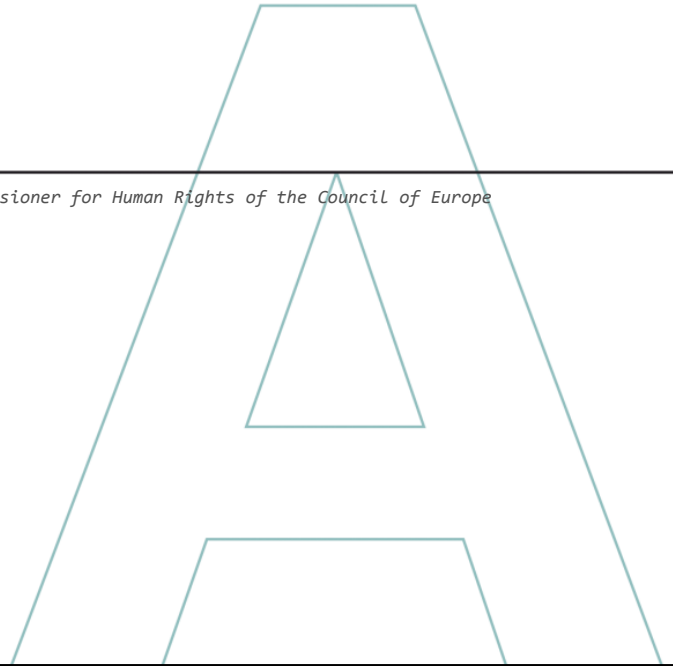


Analysis

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Report on children's rights for specific groups in Flanders

In view of the visit of Mr. Nils Muižnieks, Commissioner for Human Rights for the Council of Europe, to Belgium in September 2015, the Flemish Children's Rights Commissioner's Office has prepared a summary report focusing on the situation of refugee children, children from Roma and Traveller families, and children with disabilities.

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1. Refugee children's rights

In December 2013 we published an extensive report in which we analysed the legal situation of refugee children in Belgium. We summarized our concerns in 24 observations with recommendations. In the past eighteen months a number of changes in legislation and regulations were passed that, at least at first sight, appear to answer some of our concerns. A number of other relevant initiatives were launched as well.

- ▶ KINDERRECHTENCOMMISSARIAAT, Dossier 'Heen en retour'. *Rechtspositie van kinderen op de vlucht. [Back and forth. The legal status of refugee children]*, December 2013, www.kinderrechtencommissariaat.be – Publicaties.

In this section we list the 24 concerns and recommendations and indicate recent changes in Belgian law and policy making. Some of these concerns pertain to children from refugee families, other ones to unaccompanied minors.

1.1. With respect to legal procedures to obtain residence permit

We observed a need for

1. More transparency with respect to how children's best interest is taken into account,
 2. More involvement of children from refugee families, including the right for children to express their experiences and opinions and their right to be heard,
 3. Professionalizing officials in interviewing (young) children and for legal counselors to be sensitive to children's need to express their own experiences and opinions, separate from their parents if needed for the child to speak freely.
- ▶ In November 2014 the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) launched a project on how to improve the way the best interest of the child is taken into account in the asylum procedure for families. A diversity of stakeholders were invited to participate. Recently the CGRS announced that as a result of that project (1) the right for children to be heard will be adopted in new Belgian legislation regarding asylum procedures, and (2) the team responsible for interviewing children will be strengthened as to extend their activities to accompanied minors as well (and not only to unaccompanied minors). Specialized interpreters will assist that team. The CGRS will also look into possibilities to further professionalize the team with respect to interview techniques suitable for minors, the cognitive development of children, and cultural sensitive communication.
 - ▶ No conclusion has been reached yet with respect to another topic discussed in the workshops, the socio-economic and cultural rights of children and from which degree of violation of those rights children can be considered as victims of persecution in the sense of the Geneva Convention. Several lines of thought are still to be explored.

- ▶ A particular issue relates to the situation of children who lose their residence permit (derived from their parents' residence permit) and are expelled after it was found out that their parents gave false information to obtain a residence permit. This also happens many years after the procedure was concluded and also affects children who have been living in Belgium for many years (up to 15 years even), who were born here and have never been in their parents' country of origin. It even affects the third generation. We argue that these children have not committed any fraud themselves and therefore their situation calls for regularization on humanitarian grounds.

4. Having the best interest of the child taken as the primary concern in the special procedure leading to a sustainable solution for unaccompanied foreign minors.

Besides the procedures also accessible for other refugees (such as the asylum procedure), unaccompanied minors can also start a special procedure, leading to a 'sustainable solution' fitting within the minor's 'life project'.

Current policy for determining the appropriate sustainable solution is to first look if the minor can be reunited with his or her parents in the country of origin (or another country), second to look for shelter in the minor's country of origin. Only if these two options are not possible, a permanent residence permit for Belgium is considered. Such a strict order of priority is not always in the best interest of the child.

If the Foreign Office has decided that the sustainable solution for an unaccompanied minor does not include a permanent residence permit for Belgium, his/her guardian will receive an order to repatriate the minor. However, if the minor refuses repatriation (which most of them do), no forced eviction will take place before the minor's eighteenth birthday.

5. Having it possible to start the special procedure for unaccompanied foreign minors before or at the same time as other procedures, such as the asylum procedure.

- ▶ In the meantime a recent change of law (passed in February 2015) has made this possible by abolishing the previously existing restrictions that excluded cumulating the special procedure with other procedures.

6. Participation of the minor, his/her guardian and the Guardianship Agency in the final decision on the sustainable solution for an unaccompanied foreign minor.

At present, within the special procedure for unaccompanied foreign minors it is up to the minor's guardian to make a proposal for a sustainable solution, after having examined various options. But the final decision is solely in the hands of the Foreign Office. This may cast doubts whether the final decision reflects the best interest of the child.

7. Better legal protection of European unaccompanied minors.

At the time we published our report (end of 2013) the law excluded unaccompanied minors from Switzerland or a country belonging to the European Economic Space from the abovementioned protective measures (guardianship, special procedure for sustainable solution). Some protection was provided, but without legal basis.

- ▶ In May 2014 a change of law was passed, also providing guardianship now to unaccompanied under aged EES- or Swiss nationals, not officially residing in Belgium and without written permission from their parents to

travel to Belgium if they either (1) requested for a temporary residence permit in Belgium, or (2) were found to be in a vulnerable situation.

- ▶ However, a similar change in definition of ‘unaccompanied minor’ was not made with respect to the legislation on the special procedure for unaccompanied minors leading to a sustainable solution. As a result European unaccompanied minors in a vulnerable situation are still excluded from an essential part of the legal protection provided to non-European unaccompanied minors.
- ▶ Moreover, depending on the specific law one looks at, we have three different definitions now of “unaccompanied foreign minor”, making the whole situation rather unclear.
- ▶ Looking at the children who are most likely to be found in a vulnerable situation, this situation is particularly unfortunate for Slovakian, Bulgarian, and Romanian nationals with a Roma-background.

And for foreign children and youngsters in youth care or foster care

- ▶ About 90 children and youngsters in Flemish foster care have no or a very precarious residence status, so has been reported recently. Even if they have been staying in Belgium from a very early age on, they risk to be expelled when they reach the age of 18. Moreover, Foreign Office made clear that if those youngsters only ask for a residence permit once they have reached the age of 18, they are considered as newcomers, regardless the age they actually arrived in Belgium. We ask that when protective measures (such as youth care or foster care) are taken towards foreign children or youngsters, their residence status from that moment on is automatically considered as “regular”.

8. More and better support and training for guardians.

- ▶ In this regard some initiatives have been taken since, e.g. by the Guardianship Agency.

1.2. With respect to housing, social and legal support, and medical and psychological care

We receive no complaints regarding housing, material support or medical care of refugee families with children or unaccompanied minors who still have their legal procedures for a residence permit going on. However, we observed a need for:

17. More and more specialized psychological care for refugee children

This specialized care should not be restricted to children and youngsters who are (or whose parents are) still having legal procedures going on and who reside in one of the open asylum centers or local refugee housing initiatives. Very often the children’s and youngsters’ need for psychological help in order to come to terms with their psychological traumas only becomes clear to its full extent after the stressful phase of getting a residence permit is finished and they (and their families) got a residence permit.

18. / 19. Better access to specialized youth care

When following up the recent reform in the Flemish youth care system, we recommend the Flemish authorities to pay special attention to refugee children with a disability who are in need of specialized help. Access to such

care officially does not depend anymore on prior conditions with respect to parents' residence status as used to be the case in the past. But we still receive complaints about refusals based on the old conditions. We also ask the Flemish authorities and professionals involved not to abruptly stop specialized help given to unaccompanied minors when they reach the age of 18, nor to refuse such help in view of their imminent 18th birthday.

10. Humane return procedures, avoiding to move around undocumented families with children, to separate them or to put them into detention

When families with children did not receive or lost their residence permit for Belgium actual (voluntary or forced) return procedures often require them to move from one place to another within Belgium. This causes additional distress for the children, especially when it causes them to change school – even changing the language of instruction (from Dutch to French or vice versa). This additional distress is unnecessary and could easily be avoided.

- ▶ Since November 2011 the law provides the possibility to grant voluntary return program assistance at home. It took almost three years before rules of implementation were defined by the Royal Decree of Sept. 17th, 2014. The conditions put forward in this Royal Decree are very strict, leaving us wondering how many undocumented families could really meet conditions – among other ones – such as:

- providing for their own income,
- paying a deposit to guarantee their return,
- paying a compensation for any damage or loss the Belgian state would suffer when the family no longer meets the conditions.

Moreover, the sanctions that can be given when the family subsequently breaks any of those conditions create a highly repressive context whereas the whole idea originally was to create a more humane approach to the return process. Those sanctions not only include the possibility of a forced moving to one of the open family units (an acceptable alternative to detention), but also detention of one adult family member (usually the father) or even the detention of the whole family in a closed family unit.

- ▶ Despite the positive comments Belgium received in recent years on its practice to avoid detention of undocumented families with children, using alternatives such as the 'open family units', the actual federal government explicitly put the option of 'closed family units' forward in its asylum and migration policy statement (November 2014). So far, those closed family units are not operational yet.
- ▶ In recent years, we got many complaints of families being separated in the course of a return procedure with one adult family member (mostly the father) taken into detention.

15. Involving children in the return programs

If a family is engaged in a voluntary or forced return procedure, more attention should be given to the psychological needs of the children during this process. For children too this is a very difficult period in their lives calling for psychological and social assistance, which cannot always be provided by the parents.

9. / 11. Appropriate 'bread, bed and bath' facilities for undocumented families with young children

Immigrants who fail to obtain a residence permit and ignore the order to leave the country are not always immediately repatriated. Their living conditions in

Belgium then are mostly very precarious. This is also true for undocumented families with young children. Legally undocumented families with underaged children are entitled to sheltering organized by a federal authority, but in recent years this was made conditional on agreeing to engage in a return program. Since for many of those families returning to their country of origin is not an option, they can only rely on charity or trying to make a living outside the official economy. The precarious living conditions of the children involved call for regularisation on humanitarian grounds for those families.

12. / 13. / 14. Better support for unaccompanied minors who received residence permit

For those unaccompanied minors who received a residence permit (acknowledged as refugee under the Geneva Convention or granted subsidiary protection) we ask:

- The federal government to take the necessary measures so that local public social welfare centres (CPAS / OCMW) fulfill their legal obligations with respect to giving the financial support unaccompanied minors with a residence permit are legally entitled to.
- To give the assisted living and housing projects a structural basis.
- A continuation of assisted living and housing programs beyond the unaccompanied minors' eighteenth birthday, depending on the individual needs of the youngsters.

1.3. With respect to education

We note that

- children and youngsters cannot be refused enrollment in a school because of their residence status, or their ethnic, social or religious background. Parents are entitled to free choice of school.
- information on the residence status of pupils and their parents cannot be obtained from schools' pupil enrollment registers; the police cannot pick up undocumented children at school or on the way to or from school (unless there are indications that they are left behind).
- in the Flemish Community reception program or reception classes are organized (lasting for a few months to one year or longer) to prepare non-Dutch speaking newcomers to enter the regular educational system.
- In the Flemish Community schools receive extra resources (in terms of staff and financial means) for underprivileged pupils. Among the pupil characteristics taken into account are: low family income, having a lowly educated mother, home language other than Dutch, belonging to the category of Roma and Travellers, being homeless. These extra resources are supposed to help schools to compensate for the underprivileged home situation of the pupils involved.
- In the past years, and particularly since 2012, efforts were made by the Flemish Government to provide local authorities with tools to combat social and ethnic segregation in schools; this segregation is rather considerable, particularly in the larger cities.

However, we observe a need for

20. / 21. More attention to the wide diversity among non-Dutch speaking newcomers in Flemish schools

According to the Flemish legislation the actual educational programs for non-Dutch speaking newcomers have to focus on the acquisition of Dutch language skill and social integration. But schools report that some newcomers have little or no school experience at all and face large educational lags in

other domains as well. In the case of refugee children special attention should also be given to their psychological wellbeing.

- ▶ It should also be noted that most of the non-Dutch speaking newcomers end up in schools that already have a large proportion of pupils with a migration background.
- ▶ At present a reform of the Flemish rules regarding school enrolment is being prepared. The impression is that much less attention will be given to the issue of social and ethnic segregation in schools.

22. Follow up of all non-Dutch speaking newcomers in Flemish schools

In order to make such a follow up possible, the registration of who enters a Flemish school as a non-Dutch speaking newcomer should be refined to include every non-Dutch speaking newcomer, not only those who are in sufficient numbers to generate additional resources for their school .

23. Keeping connected with language and culture of (parents') country of origin

We consider this to be important for both children who will (have to) return as for those who will stay in Belgium. Although some schools make efforts to support this connection, in the official Flemish educational policy this element is completely ignored as integration into Flemish society is the only policy focus. For many migrant and refugee children, we cannot solely rely on the parents to provide education in the language and culture of their country of origin.

24. Letting refugee children finish their education first before returning to (their parents') country of origin

We ask the federal and regional authorities to sit together and examine under which conditions foreign youngsters who received an order to leave the country, could be granted a (temporary) residence permit in order to first obtain an educational degree.

- ▶ In response to a call from a group of teachers, we presented a more detailed proposal in June 2015.

2. Traveller children's rights

Belgium has a population of about 1000 Belgian traveling families, i.e. about 2600 individuals including 650 children. Based on their history and ethnic-cultural roots, three categories of traveling families can be distinguished:

- Sinti or Manouches (8 %) who arrived in our regions in the 15th century and have been leading a semi-nomadic life ever since,
- 'Rom', a Roma population who came from Romania in the course of the 19th century, after the abolition of slavery in Romanian law (22 %),
- Travellers with Belgian/Western-European origins whose ancestors adopted a traveling life in the course of the 19th century (70 %). They are called "Voyageurs".

The families we focus on in this section all have Belgian nationality. In the 'traveling season' (mainly the summer time) one can meet similar families from neighbouring countries (France, Germany, Ireland, England, ...) in our country.

Most of the Belgian traveling families would prefer a semi-nomadic life, staying most of the year (winter time) with their caravan in a residential caravan site and moving around during the summer season.

This section is based on a recent report we published:

- ▶ KINDERRECHTENCOMMISSARIAAT, *Knelpuntennota Kinderen van woonwagenbewoners: kinderrechten op de tocht [Travellers' children: children's rights at stake]*, 2014-2015/1, www.kinderrechtencommissariaat.be - Adviezen en Standpunten

2.1. With respect to housing

We observe

1. A serious shortage of residential caravan sites resulting in forced continuously moving around

Although the right 'to live on wheels' is explicitly provided in the Flemish Housing Code, and establishing appropriate caravan sites is subsidized up to 100%, at present only 500 out of the 1000 traveling families can find a place on one of the approx. 30 residential caravan sites. Many of the other families have their caravan on a spot where they legally cannot stay because by doing so they violate all kind of regulations (e.g. local building codes). Other ones can only find a place on caravan sites meant for Travellers passing by and where they can only stay for a few weeks. Since the last municipal elections, many municipalities have adopted a more strict policy vis-à-vis unlawful parked caravans, having the police chase those families away. At the same time local authorities are not very willing to arrange or extend residential caravan sites within their territories. And higher authorities appear to lack the legal means to make them do so.

As a result, more and more traveling families are forced to move around continuously, even in winter time, staying on places without appropriate facilities, etc.

2. Adverse effects on children's lives

Include:

- **Violation of children's right on education.**
When having to move around continuously, it becomes difficult to attend school.
- **Violation of children's right on appropriate health care**
For similar reasons access to health care becomes more difficult.
- **Precarious living conditions**
Some families have to do without the most elementary facilities (water supply, toilets, electricity, etc.)
- **Being excluded from participation in society**
Children lose contact with friends, can no longer attend after school activities, etc. Moving continuously around also prevents children to build relationships and have a social life in their neighborhood.

At present approximately 100 children from traveling families are already affected.

We ask:

- To stop chasing traveling families away without providing them with a reasonable alternative, respecting their culture, their intergenerational

context, and children's rights on a sufficient living standard, education and appropriate health care.

- To make people's right 'to live on wheels' enforceable and have better coordination between the agencies and authorities involved.

2.2. With respect to social service

We observe

3. A shortage of capacity for 'reference addresses'

People without permanent residence (where they live for at least 6 months per year) can register with a reference address. If they do so at one of the three non-governmental agencies supporting traveling families, the social workers behind the reference address can act as intermediate agents with regular social services near the place the traveling family is actually staying. In this way traveling families need not be excluded from society.

However, there is a big shortage of capacity for reference addresses. The three agencies involved cannot adopt more traveling families. As a result the families who are forced to move around, are excluded from their services. This of course adds to the adverse effects on children's lives mentioned above.

We ask for an extension of the capacity to organize reference addresses including social service.

2.3. With respect to education

Apart from the adverse effect on attending school mentioned above and caused by recent developments, for quite a much longer time we also have been observing

4. Low participation in education by Belgian traveling Rom children

Although this population of Belgian traveling Roma (descending from Romanian people who arrived in our country in the 19th century) is rather small (only 22% of the traveling population), the number of children involved is relatively large. We talk about approximately 300 children (on a total of 650 children within the Belgian traveling population). Less than 60% of them attend primary school. Making the transition to secondary school, with 35% of the Rom-youngsters attending special education and most of the rest of them being in a vocational track, the Belgian Rom-population is vastly over-represented in the lower tracks of secondary education. Most of them leave school at the age of 14 or 15, although in Belgium education is compulsory till the age of 18.

From these figures it is clear that the situation for this group is much worse compared to the situation of other traveling groups: 90% of the Manouche and Voyageurs children attend pre-primary school regularly; 20% transfers to special education.

We ask the authorities and agencies involved to come up with an appropriate strategy to enhance the participation in education by Belgian traveling Rom children. Specific expertise should be developed and made available to local actors.

3. Central and Eastern-European Roma children's rights

A much different and larger group are the Roma-families who migrated from Central and Eastern Europe in the 1990's, after the fall of the Iron Curtain. In 2012 their numbers were estimated at 10,000 persons residing in the Flemish Community and 7,000 residing in the Brussels Capital Region. Many of these families come from countries that now are part of the EU (Bulgaria, Romania, Slovakia, ...) Other ones come from outside the EU (Serbia, Macedonia, ...). Although the reasons for them to come to Western Europe may be very similar, their legal situation is quite different. Additionally, within each of both groups, there is also quite some diversity.

3.1. With respect to their legal situation

We notice that

1. Violation of economic, social and cultural rights is no ground for international protection (yet)

For many Roma families (and unaccompanied Roma minors) the reasons to migrate and eventually claim international protection would in most cases fall within the category of 'violation of economic, social and cultural rights'. As mentioned in section 1.1, within the CRGS the issue whether violation of social, economic or cultural rights could constitute a ground for international protection under the Geneva Convention is still not resolved (see p. 2). As a result many (non-EU) Roma families fail to get asylum or subsidiary protection, despite the fact that returning to their home country very often leaves them and their children in a most precarious situation. For non-EU families the only ways left to gain a (temporary) residence permit for Belgium is to apply for regularization on humanitarian grounds or - if applicable - for regularization on medical grounds or to ask protection as a victim of human trafficking.

The problems faced by non-EU Roma families who fail to get a residence permit are similar to what we described under paragraph 1.2 (recommendation 9, page 5).

2. Some EU Roma families fail to meet the conditions for a permanent stay in Belgium and end up in extreme poverty

For EU-residents who want to live permanently in another EU-country, EU-rules are quite strict. Staying longer than three months in another EU-country is only allowed if one can provide for his or her own income. Some EU Roma families fail to meet this condition. This causes a chain of severe consequences: they cannot find housing, they cannot register in the municipality, hence they are not entitled to support by the local social welfare agency, etc. We met Roma families living in an overcrowded squat with dozens of children in most deplorable circumstances. In the meantime in the same city, other Roma families - with other origins - appear to be doing relatively well.

Our impression at this moment - still to be verified by a more thorough investigation - is that EU-programs meant to promote the integration of Roma-families, at least in Belgium fail to reach the most vulnerable Roma families.

3. There is still a need for better legal protection of unaccompanied minors from EU-countries

As explained in section 1.1 (page 3–4, recommendation 7) the legal position of unaccompanied EU-minors in a vulnerable situation, most of them Roma children and youngsters, is still not clear yet. They are less well protected compared to unaccompanied minors from non-EU countries.

3.2. With respect to education

We note that Flemish schools cannot refuse children because of their residence status or their social, ethnic or religious backgrounds, that programs are organized to prepare non-Dutch speaking newcomers to enter the regular educational system, and that Flemish schools receive extra resources for certain categories of pupils, including children from Roma and Travellers (see section 1.3 on page 6).

However, we also notice that

4. Schools report that Roma newcomers start with a big educational gap

Even at the age of 9 or older, many newcomers with a Roma background appear to have no school experience at all. Schools ask for specialized support in order to help this children better. To close this educational gap, much more is needed than reception classes or reception programs focusing on the acquisition of Dutch language skill and social integration.

We further refer to the issues raised in section 1.3 (page 7).

5. The identification of children belonging to the population of Roma and Travellers is contested

In order to receive extra resources for teaching Roma and Travellers' children, for each of the children involved schools need to have a document, issued by a competent agency in Belgium (ngo or municipality) or in the country of origin, certifying that the child belongs to the population of Roma and Travellers. More and more agencies who are authorized to issue such documents refuse to do so, stating they do not want to commit actions they consider to be ethnic labeling. We also notice that at the local level attempts are made to replace the notion of "Roma" by a set of other, 'not ethnic based' criteria. In some places the word "Roma" is banned from all official communication and replaced by a less precise term (such as 'internal European Migrants' or IEM). Also, when using interpreters to advance communication with parents, in the case of Roma families this is often restricted to the official languages of the countries of origin (Bulgarian, Slovakian, etc.), although native Romani speakers with high proficiency in Dutch language are locally available.

We wonder why there is such a reticence, particular in view of messages such as issued by the European Roma and Travellers Forum on International Roma Day (April 7, 2015), stating: *"On this day, the Roma can stand up and proudly say: We are Roma, this is what we are"* (www.ertf.org). We also wonder how this relates to the social en cultural rights of the Roma people and their children. It is another issue we would like to further investigate.

4. The rights of children with disabilities

4.1. Significant step towards more inclusive education system

The situation as it was till recently

Compared to other countries and regions, in the Flemish Community a relative high number of pupils aged 3 – 18 attend special education: more than 50,000 which is 4.5% of all pupils in pre–primary, primary and secondary education (Feb. 1st, 2014). In the past 10 years an increase of 12% has been observed.

Boys are more likely to be found in special education than girls, both in primary education (5.4% vs. 3.2%) as in secondary education (5.9% vs. 3.4%).

In special education we also observe an overrepresentation of low SES children, children with a migration background and children from ethnic-cultural minorities.

New legislation in Flemish Community

In March 2014 the Flemish parliament passed the so-called M-decree, putting a significant step forward in meeting the expectations set by article 24 of the 2009 UN Convention on the Rights of Persons with Disabilities. By that convention States Parties committed themselves to ensure an inclusive education system in which reasonable accommodation to the individual's requirements is provided. Shortly after the government submitted the draft decree to the Flemish Parliament, we presented our recommendations to the Flemish parliament.

- ▶ KINDERRECHTENCOMMISSARIAAT, *Advies Ontwerp van decreet over maatregelen voor leerlingen met specifieke onderwijsbehoeften [Advice on the draft decree on measures for pupils with special educational needs]*, 2013–2014/6, www.kinderrechtencommissariaat.be – Adviezen en Standpunten

The decree came into force on September 1, 2015. It does not abolish special schools, but it does entitle children with disabilities to enrol in regular schools if the necessary accommodation to their needs can be considered reasonable.

We notice several positive elements in this reform:

- The decree distinguishes between pupils who can follow the (or a) common curriculum – albeit with some accommodation – and pupils who need a completely individually tailored curriculum. Accommodation to a pupil's needs does not exclude following the or a common curriculum, even when this accommodation includes compensatory measures or dispensation of some parts of the curriculum. This is important because following a common curriculum entails the possibility to conclude one's school career with certificates and diplomas equivalent to those of other pupils, which is crucial for their participation in society.

- Pupils who need an individually tailored curriculum can also enrol in a regular school if the necessary accommodation to meet their needs and to provide such a tailored curriculum are reasonable. The certificates they get indicate the skills they have acquired.
- Access to special education is more restricted. Attestations granting access to special education can no longer be solely based on the pupil's social-economic background. It has to be shown that the regular school the pupil has attended so far has tried out all possible and reasonable measures to answer the pupil's educational needs.
- For pupils who do need special education at the secondary school level, the possibilities to follow a high level curriculum are extended by creating more opportunities to cooperate with regular schools offering an equivalent curriculum.
- The resources that are freed by a lower intake in special education, will be made available to support the staff in regular schools.

Early impact

The impact of the new decree became visible much sooner than expected. In the school year before the decree came into force the number of pupils enrolled in special education at the primary school level already decreased by 3% (more than 900 pupils). In response the Flemish Government decided to advance the scheme to make the freed resources available for additional support of regular schools by one school year.

Still room for improvement

We observe a need for:

1. A clearer framework for how to assess the reasonableness of the necessary accommodations

The 2007 protocol the decree refers to is too general and not enough tailored to the educational context to be of real use. We observe a similar need with respect to issue whether the accommodations considered necessary and reasonable can still lead to equivalent educational certification or whether they would constitute an individually tailored curriculum.

2. Better guaranteed involvement of pupils and parents

The decree stipulates that parents and experts from the local pupil guidance centre should be consulted before decisions on the reasonableness of accommodations and the equivalence of the resulting curriculum with the common curriculum are taken. But with respect to the procedure for this consultation no requirements are defined.

3. More legal certainty for pupil and parents

Final decisions rest in the hands of the group of teachers responsible for a class group. To what extent those decisions have to be motivated remains unclear. Even more unclear is it whether those decisions are binding only for one school year or for a longer period. Can a pupil count on it that once an accommodation is considered reasonable, this will be the case for the rest of his school career? Based on complaints we received, we have our doubts about that. Since the teaching staff changes as a pupil moves on to a next grade and each group of teachers can make their own autonomous judgements, pupils and parents are left in much uncertainty.

4. Tools to ensure that pupils with special needs seeking for inclusive education do not all end up in a limited number of regular schools

Although at present in the Flemish educational system we have a well-defined individual right on enrolment in the school of the parents' choice, in the past years we could already observe a tendency to refer pupils with special educational needs seeking for inclusive education to a rather limited number of regular schools. This is particularly the case in the larger cities. This practice does not really correspond with the idea of effective inclusive education. The actual decree does not provide any tool to monitor, let alone to avoid such phenomena. We fear that this kind of segregation will add up to the already existing social and ethnic segregation mentioned in section 1.3.

5. Better tools to avoid social segregation

The new Flemish legislation explicitly seeks to avoid overrepresentation of low SES children in special education. However, explicitly forbidding to refer pupils to special education because of their social-economic background does not appear to be enough. Parents who opt for inclusive education face a number of extra efforts and costs:

- They have to find a regular school that is willing and capable to meet their child's needs. Principally this should no longer be a problem, but the way from legal reform to changes in practice can be long sometimes.
- The legal uncertainties mentioned above may cause them to have to make similar efforts every school year. Not to find a new school, but to convince the new teachers to continue the accommodations which were agreed upon last year.
- When their child needs specialized therapeutic help, this can no longer be fully provided during regular school time. So, they have to organize (part of) this help themselves after school time, bringing their child to a specialized centre, and sometimes pay for it themselves.

Such extra efforts and costs are less likely to be made by low SES parents. Professionals fear that, as a result, inclusive education will prove to be something for the happy few mainly, for those who can afford to spend time and money on it. And of course, in that case the overrepresentation of low SES children in special education will not decrease or not as much as one could hope for.

And a long way to go

The full implementation of the M-decree at the start of school year 2015–2016 is a hot topic in Flemish press. From the many reactions, both from parents as well as from teachers, principals and professionals in the field, we can only conclude that the way from legal reform to change of practice is a long one in many places.

4.2. In the meantime on the school bus...

Every school day over 40,000 pupils enrolled in special education take the bus to school. For free. Pupils attending schools for special education are entitled to a free bus ride to the most nearby school within the educational network of their choice, offering the type of education that meets the pupil's educational needs. The 'educational network' refers to the free choice parents have (as defined in the Belgian constitution) between (1) schools run by the State (i.c. the Flemish Community), (2) publicly funded schools run by a local authority (e.g. city) or (3) publicly funded schools run by a private organisation (e.g. catholic schools, Jewish schools, etc.).

Individual interviews and group meetings with pupils reveal a number of problems:

- The bus rides take too long.
- Bus rules are not accommodated to the target group (e.g. children with behavioural problems).
- The accompanying adult is not sufficiently trained for the job and does not have enough time to take properly care of the pupils.
- The high turnover of bus drivers and their poor language ability hampers communication.
- There is no independent person or body to contact or to mediate in case of conflict.
- When a conflict escalates, the pupil cannot go to school anymore.

Our recommendations (proposed in 2013):

- Reorganise bus routes in order to restrict the time pupils spend on the bus to a maximum of two hours per day.
- Put children's wellbeing forward as a leading principle in the instructions on the organisation of transportation by school bus.
- Consider to give accompanying adults more training.
- Consider to have more accompanying adults on the school buses.
- Organise a contact for complaints.
- Provide a more accessible and better known coordination body for bus routes.
- Organize a better geographic spread of schools for special education and encourage inclusive education.
- Ensure the continuity of pupils' school careers.

As one of the first results the ban on drinking water on school buses was lifted.

4.3. Restricted access to organized leisure activities

Children with disabilities experience restrictions with regard to access to organized leisure activities, such as organized playground activities during school holidays. We ask for a more inclusive approach, better training of coaches and involving mediators to help to solve problems and conflicts.